

ACT 208

H.B. NO. 2026

A Bill for an Act Relating to Clean Air.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 342B, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“**§342B- Exemptions.** The hydrogen sulfide standard adopted pursuant to this chapter shall not apply to waste ponds, waste piles, crops, feed, animals, or manure incident to agricultural operations necessary for the raising of animals or the growing or processing of crops.”

SECTION 2. Section 342B-1, Hawaii Revised Statutes, is amended by amending the definitions of “covered source” and “regulated air pollutant” to read as follows:

““Covered source” means:

- (1) Any major source;
- (2) Any source subject to a standard of performance for new stationary sources as established [in] by the director pursuant to this chapter;
- (3) Any source subject to an emissions standard for hazardous air pollutants as established [in] by the director pursuant to this chapter;
- (4) Any source subject to the rules for the prevention of significant deterioration of air quality as established [in] by the director pursuant to this chapter; and
- (5) Any source in a source category designated by the director.”

““Regulated air pollutant” means:

- (1) [A] Nitrogen oxides or any volatile organic compound;
- (2) Any air pollutant for which a national or state ambient air quality standard has been adopted; and
- (3) Any air pollutant that is established by rule pursuant to this chapter pertaining to standards of performance for new stationary sources and emissions standards for hazardous air pollutants.”

SECTION 3. Section 342B-7, Hawaii Revised Statutes, is amended to read as follows:

“**[§342B-7] Annual reports.** The department shall compile an annual report summarizing:

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- (1) Air quality data from all air quality monitoring stations;
- (2) Annual criteria pollutant emissions;
- (3) Annual air toxic emissions; and
- (4) All completed or issued enforcement actions.”

SECTION 4. Section 342B-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsections (b) and (c), where public participation is deemed appropriate by the director or is required, the director shall provide for notice and opportunity for public comment as follows:

- (1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
 - (A) Information on the subject matter;
 - (B) All information submitted by the applicant, except for that deemed confidential;
 - (C) The department’s analysis and proposed action; and
 - (D) Other information and documents deemed appropriate by the department;
- (2) The director shall notify the public of the availability of information listed in paragraph (1). Notification shall be published in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
- (3) Public notice shall be mailed to any person, group, or agency upon request;
- (4) The director shall provide a period of not less than [sixty] thirty days following the date of the public notice during which time interested persons may submit written comments on the subject matter, application, department’s analysis and proposed actions, and other appropriate considerations. The period for comment may be extended at the discretion of the director; and
- (5) The director, at the director’s sole discretion, may hold a public hearing if the public hearing would aid in the director’s decision. Any person may request a public hearing. The request shall be in writing and shall be filed within the [sixty-day] thirty-day comment period prescribed in paragraph (4) and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The director shall publish the public notice for a hearing in accordance with paragraph (2) at least thirty days in advance of the hearing date and shall conduct the hearing in the county which would be affected by the proposed action, or in which the source is or would be located.”

SECTION 5. Section 342B-24, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) For each application for a covered source permit the director shall provide [for] public notice, including the method by which a public hearing can be requested, and an opportunity for public comments[, and an opportunity for public hearing] in accordance with section 342B-13.”

SECTION 6. Section 342B-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director, after providing public notice [and opportunity for], including the method by which a public hearing can be requested, and an opportunity for public comment pursuant to section 342B-13, may issue a general permit covering numerous similar sources. The owner of any source covered by a general permit must apply to the department for use of the general permit.”

SECTION 7. Section 342B-42, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the director determines that any person is continuing to violate this chapter, any rule adopted, permit issued, or variance granted pursuant to this chapter after having been served notice of violation, the director shall serve written notice by certified mail or personal delivery upon the alleged violator or violators specifying the alleged violation. With the notice the director:

- (1) Shall order the alleged violator or violators to submit a written schedule within thirty days specifying the measures to be taken and the time within which [such] the measures shall be taken to bring that person into compliance with this chapter, any rule adopted, permit issued, or variance granted pursuant to this chapter. The director shall accept or modify the submitted schedule within thirty days of receipt of [such] the schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director;
- (2) Shall order the alleged violator or violators to cease and desist from the activities that violate this chapter, any rule adopted, permit issued, or variance granted pursuant to this chapter, if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until [such time that] the director accepts the written schedule; [and]
- (3) May impose penalties as provided in section 342B-48 [by ordering]; and
- (4) May order the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice or to be set later and answer the charges complained of.”

SECTION 8. Section 342B-47, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342B-47]]~~ **Civil penalties.** (a) Any person who violates the vehicular smoke emission rules adopted by the department pursuant to this chapter shall be fined not less than \$25 nor more than \$2,500 for each separate offense. Each day of each violation constitutes a separate offense.

(b) Any person who violates the open burning control rules adopted by the department pursuant to this chapter shall be fined not more [that] than \$10,000 for each separate offense. Each day of each violation constitutes a separate offense.

(c) Any person who violates this chapter, any rule adopted pursuant to this chapter, other than vehicular smoke emission control and open burning control rules, any condition of a permit issued or variance granted pursuant to this chapter, or any fee or filing requirement, shall be fined not more than \$25,000 for each separate offense. Each day of each violation constitutes a separate offense.

(d) Any person who denies, obstructs, or hampers the entrance, inspection, or monitoring by any duly authorized officer or employee of the department of any

building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$25,000 for each [violation.] separate offense. Each day of each violation constitutes a separate offense.

(e) State of mind shall not be an element of proof for civil violations."

SECTION 9. Section 342B-49, Hawaii Revised Statutes, is amended to read as follows:

"[§342B-49] Criminal penalties. (a) Any person who knowingly violates any applicable standards or limitations, any condition in a permit issued pursuant to this chapter, any order, any rule, or any fee or filing requirement, shall be punished by a fine of not more than \$25,000 for each day of each violation or by imprisonment not to exceed five years, or both.

(b) Any person who knowingly makes any false statement, representation, or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any monitoring device or method required by the department to be maintained by the person pursuant to this chapter, or who fails to report as required by this chapter, shall be punished by a fine of not more than \$25,000 for each day of each violation or by imprisonment for not more than two years, or both [for each instance of violation].

(c) Any person who negligently releases into the ambient air any hazardous air pollutant or extremely hazardous substance and who at the time negligently places another person in imminent danger of death or serious bodily injury [upon conviction,] shall be punished by a fine of not more than \$25,000 [or] for each day of each violation, or imprisonment for not more than one year, or both. If a conviction of any person under this subsection is for a violation committed after a first conviction of [such] the person under this subsection, the maximum punishment shall be doubled with respect to both the fine and [the] imprisonment.

(d) Any person who knowingly releases into the ambient air any hazardous air pollutant or extremely hazardous substance and who knows at the time that another person is thereby placed in imminent danger of death or serious bodily injury[, upon conviction,] shall be punished by a fine of not more than \$25,000[, or] for each day of each violation, or imprisonment [of] for not more than fifteen years, or both. Any organization which violates this subsection shall be subject to a fine of not more than \$1,000,000. If a conviction of any person under this subsection is for a violation committed after a first conviction of [such] the person under this subsection, the maximum punishment shall be doubled with respect to both the fine and imprisonment."

SECTION 10. Section 342B-55, Hawaii Revised Statutes, is amended to read as follows:

"[§342B-55] Consent orders; settlement agreements. [At] Notwithstanding section 342B-13, at least thirty days before a consent order or settlement agreement of any kind under this chapter to which the director or the State is a party is final or filed with a court, the director shall provide public notice and [a reasonable] an opportunity for the public to comment. The director shall promptly consider any [such] written comments and may withdraw or withhold consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that [such] the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this section shall apply to civil or criminal penalties under this chapter."

SECTION 11. Section 342B-1, Hawaii Revised Statutes, is amended by deleting the definition of “modification”.

[““Modification” means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any air pollutant or hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any air pollutant or hazardous air pollutant not previously emitted by more than a de minimis amount.”]

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 13. This Act shall take effect upon its approval.

(Approved June 10, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.