

ACT 233

S.B. NO. 2852

A Bill for an Act Relating to the Voluntary Response Program.

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

SECTION 1. Section 128D-31, Hawaii Revised Statutes, is amended to read as follows:

“**[[§128D-31[]] General.** (a) Except as otherwise provided in this part, all requirements of rules adopted pursuant to part I shall apply to voluntary response actions conducted pursuant to this part. All voluntary response actions, where an exemption from liability may be granted by the department, shall follow the public participation requirements of the remedial process as described in rules adopted pursuant to part I. [Additionally, the requesting party shall post a sign at the site notifying the public of participation in the voluntary response program and the public’s opportunity to comment.]

(b) Additionally, within ten days of receiving an application and processing fee, the department shall:

- (1) Post a sign at the site notifying the public of participation in the voluntary response program, the public’s opportunity to comment, and how a copy of the application may be obtained; and
- (2) Send a brief summary of the application to the office of environmental quality control for publication in the office’s bulletin along with instructions for obtaining a copy of the application and commenting procedures to the department.

The comment period shall run concurrently with and shall not delay the application process.

[(b)] (c) This part shall apply to any person who chooses to conduct a voluntary response action. However, the exemption from liability in section 128D-40 shall only apply to prospective purchasers.”

SECTION 2. Section 128D-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This part shall apply to all releases or threats of releases to which the director is authorized to respond under section 128D-4, except:

- (1) A site listed or proposed to be listed on the National Priorities List (NPL) pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA);
- (2) Those sites with respect to which an order or other enforcement actions has been issued or entered under CERCLA and is still in effect;

- (3) A site where the United States Coast Guard has issued a federal Letter of Interest;
- (4) A site that is [the] subject [of] to corrective action under Subtitle C of the Resource Conservation and Recovery Act (RCRA) or chapter 342J; and
- [(5) At the discretion of the director, a site where the director has issued an order or is conducting a response pursuant to an enforceable agreement under this chapter and chapter 342L;
- (6)] (5) A site [which] that poses an imminent and substantial threat to human health, the environment, or natural resources as determined by the director[; and
- (7) A site where the director has determined that there is a significant public interest].”

SECTION 3. Section 128D-35, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director may deny an application submitted under section 128D-34. In denying an application, the director may consider the following:

- (1) [An administrative enforcement action has been initiated that concerns the remediation of the hazardous substance, pollutant, or contaminant;] The nature and extent of any past, current, or future actions by the department regarding the proposed site and the impact the voluntary response action might have on these past, current, or future actions;
- (2) Site eligibility based on the criteria in section 128D-33;
- (3) Completeness and accurateness of the application:
 - (A) If an application is denied because it is incomplete or inaccurate, the director, not later than forty-five days after receipt of the application, shall identify the omission or inaccuracy for the requesting party. A requesting party whose application has been denied because it is incomplete or inaccurate, may resubmit an application for the same response action without submitting an additional application fee; and
 - (B) If a requesting party’s application is denied a second time, the director may require an additional \$1,000 processing fee for any subsequent submittal;
- (4) Inappropriate or inadequate scope of work;
- (5) Pending litigation;
- (6) The capacity of the requesting party or the requesting party’s agent to carry out the response action properly;
- (7) Whether the [department] public will receive [a] substantial benefit [for] from the cleanup [or an indirect public benefit in combination with a reduced direct benefit to the department;], including but not limited to environmental improvement and economic development;
- (8) Whether the continued operation of the site or new site development, with the exercise of due care, will aggravate or contribute to the existing contamination or interfere with the department’s response action;
- (9) Whether the continued operation or new development of the property will pose health risks to the community and those persons likely to be present at the site; or
- (10) The financial viability of the prospective purchaser.”

SECTION 4. Section 128D-39, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The letter of completion shall be noted on the property deed and shall be sent to the county agency that issues building permits. The exemption from future liability and other benefits and restrictions identified in the letter of completion shall run with the land and apply to all future owners of the property. The exemption from liability noted in section 128D-40 [does] shall not apply to those persons who were liable pursuant to section 128D-6 prior to conducting the voluntary response action.”

SECTION 5. Section 128D-40, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) To qualify for an exemption from liability, a requesting party that is also a prospective purchaser [must have obtained final approval to conduct a voluntary response action from] shall enter into a voluntary response agreement with the department prior to becoming the owner or operator of the property[.] that is the subject of the agreement.

(b) Prospective purchasers who complete a voluntary response action and receive a letter of completion from the department shall be exempt from future liability to the department for those specific hazardous substances, pollutants, contaminants, media, and land area addressed in the voluntary response action. Parties who purchase property from an owner who has completed a voluntary response action and received a letter of completion from the department shall be exempt from future liability to the department for those specific hazardous substances, pollutants, contaminants, media, and land area specified in the letter of completion issued to the party who conducted the voluntary response action.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 20, 1998.)