

ACT 9

H.B. NO. 2147

A Bill for an Act Relating to Municipal Solid Waste Landfill Permits.

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

SECTION 1. Act 73, Session Laws of Hawaii 2020, deleted the phrase, “any federal agency,” from the entities included in the term “person” under section 342H-52, Hawaii Revised Statutes, in defining “person.” The legislative intent, as described in Standing Committee Report No. 1273-20, was for “[m]aking inapplicable to federal agencies the prohibition on construction, operation, modification, expansion, or closure of a municipal solid waste landfill unit without first obtaining a permit from the Director of Health”. However, section 342H-1, Hawaii Revised Statutes, defines “person” to mean “any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity”. Thus, at a minimum, there is a conflict between the plain language of the law and the intent.

More importantly, as confirmed by the United States Environmental Protection Agency in a letter signed April 19, 2021, “the removal of the [Hawaii Department of Health’s] authority to issue permits to federal agency municipal solid waste landfills appears to place the State in non-compliance with the Resource Conservation and Recovery Act, section 4005(c) codified in 42 United States Code, section 6945, Code of Federal Regulations section 239.6(e), which require that states adopt and implement permit programs that assure each solid waste management facility within their state obtains a permit and complies with the applicable criteria”.

As stated in title 40 Code of Federal Regulations section 239.13, “Criteria and procedures for withdrawal of determination of adequacy”, states, “(a) The Regional Administrator [of the U.S. Environmental Protection Agency] may initiate withdrawal of a determination of adequacy when the Regional Administrator has reason to believe that: (1) A state no longer has an adequate permit program; or (2) The state no longer has adequate authority to administer and enforce an approved program in accordance with this part.”

The removal of the Department of Health’s authority to permit federal municipal solid waste landfills not only removes regulatory oversight of the design, construction, and operation of federal municipal solid waste landfills, but creates the loss of an approved municipal solid waste landfill permit program in accordance with federal regulations. The loss of a federal approved program will deny other municipal solid waste landfills in the State, which are currently all owned by the counties, the ability to design, operate, close, and monitor their landfills using alternative designs or methods to the federal standards that could be more suitable for local site conditions and more cost-effective. For example, federal prescribed liner systems require a minimum of two feet of soil with a maximum hydraulic conductivity of 0.0000001 cm/s. However, soil with this type of permeability on the island of Hawaii is nearly impossible to find on-island. A geosynthetic alternative to this soil could be utilized to meet this design standard, but this option would not be permissible without a state-approved permit program.

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The purpose of this Act is to reinstate the department of health's authority to permit federal municipal solid waste landfills by restoring "any federal agency" to the entities included in the term "person" in section 342H-52(a), Hawaii Revised Statutes.

SECTION 2. Section 342H-52, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person, including any federal agency, the State, or any county, shall construct, operate, modify, expand, or close a municipal solid waste landfill unit, or any component of a municipal solid waste landfill unit, without first obtaining a permit from the director. All permits for municipal solid waste landfill units shall be subject to any terms and conditions that the director determines are necessary to protect human health or the environment."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 21, 2022.)