
A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 128D-4, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Whenever any hazardous substance is released or there
4 is a substantial threat of such a release into the environment,
5 or there is a release or substantial threat of such release into
6 the environment of any pollutant or contaminant that may present
7 a substantial danger to the public health, welfare, or the
8 environment, the director is authorized to act, consistent with
9 the state contingency plan, to remove or arrange for the removal
10 of, and provide for remedial action relating to, such hazardous
11 substance, pollutant, or contaminant at any time, including its
12 removal from any contaminated natural resources, or take any
13 other response measure consistent with the state contingency
14 plan [~~which~~] that the director deems necessary to protect the
15 public health or welfare or the environment. The director may:

- 16 (1) Issue an administrative order or conduct any other
17 enforcement or compliance activities necessary to
18 compel any known responsible party or parties to take



1 appropriate removal or remedial action necessary to
2 protect the public health and safety and the
3 environment;

4 (2) Upon determining that there may be an imminent and
5 substantial endangerment to the public health or
6 welfare or the environment because of an actual or
7 threatened release of a hazardous substance, issue
8 without a hearing, such orders as may be necessary to
9 protect the public health, welfare, and the
10 environment;

11 (3) Solicit the cooperation of responsible parties prior
12 to issuing an order to encourage voluntary cleanup
13 efforts[+] and, if necessary, negotiate enforcement
14 agreements with responsible parties to conduct needed
15 response actions according to deadlines established in
16 compliance orders or settlement agreements;

17 (4) Undertake those investigations, monitoring, surveys,
18 testing, sampling, and other information gathering
19 necessary to identify the existence, source, nature,
20 and extent of the hazardous substances or pollutants
21 or contaminants involved and the extent of danger to
22 the public health or welfare or to the environment;



1 (5) Perform any necessary removal or remedial actions so
2 as to abate any immediate danger to the public health
3 or welfare or to the environment; [~~and~~]

4 (6) Contract the services of appropriate organizations to
5 perform the actions set forth in paragraphs (1), (2),
6 (3), (4), and (5) [~~and~~];

7 (7) Enter into environmental covenants under chapter ;
8 and

9 (8) Issue an administrative order to compel compliance
10 with the terms and conditions set forth in an
11 environmental covenant under chapter ."

12 SECTION 2. Section 128D-8, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§128D-8 Civil and administrative penalties.** (a) Any
15 person who is liable for a release, or threat of a release, of
16 hazardous substances, and who fails, without sufficient cause,
17 to properly provide removal or remedial action pursuant to an
18 administrative order issued by the director, may be liable to
19 the department for punitive damages up to three times the amount
20 of any costs incurred by the fund pursuant to this chapter as a
21 result of the failure to perform the actions specified in the
22 order. The director is authorized to commence a civil action

1 against any such person to recover the punitive damages, which
2 shall be in addition to any costs recovered from such person
3 pursuant to section 128D-5.

4 (b) In addition to liability for costs incurred by the
5 State for the investigation, assessment, containment, and
6 removal of a release or a threat of a release of hazardous
7 substances, any person who wilfully, knowingly, or recklessly
8 violates or fails or refuses to comply with any provision of
9 this chapter, or any order issued, or rule adopted under this
10 chapter, shall be subject to a civil penalty not to exceed
11 \$50,000 for each separate violation. Each day a violation
12 continues shall constitute a separate violation. The director
13 is authorized to commence a civil action in the appropriate
14 circuit court to recover such penalties.

15 (c) Any rule issued pursuant to this chapter shall be
16 adopted in accordance with chapter 91.

17 (d) Civil penalties collected under this chapter shall be
18 paid to the department for deposit into the revolving fund and
19 may be recovered in a civil action in a court of competent
20 jurisdiction where the violation is alleged to have occurred.

21 (e) In determining the amount of any civil penalty
22 assessed pursuant to this section, the court shall take into



1 account the nature, circumstances, extent, and gravity of the
2 violation or violations and, with respect to the violator,
3 ability to pay, any prior history of such violations, the degree
4 of culpability, economic benefit of savings, if any, resulting
5 from the violation, and such other matters as justice may
6 require. The director may compromise and settle any claim for a
7 penalty pursuant to this chapter.

8 (f) Any person who violates the terms and conditions of an
9 environmental covenant under chapter _____ or fails to comply
10 with any order issued to compel compliance with an environmental
11 covenant pursuant to section 128D-4, shall be subject to an
12 administrative penalty not to exceed \$25,000 for each separate
13 violation. Each day a violation continues shall constitute a
14 separate violation.

15 (g) Any administrative hearing conducted under this
16 section shall be conducted as a contested case hearing under
17 chapter 91.

18 (h) If the amount of any administrative penalty is not
19 paid to the department within thirty days after it becomes due
20 and payable, the director may institute a civil action in the
21 name of the State to recover the penalty."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval
4 only if H.B. No. 1706 in any form passed by the legislature,
5 Regular Session of 2006, becomes an Act.



Report Title:

Environmental Covenants

Description:

Authorizes director of health to enter into environmental covenants and issue orders compelling compliance with environmental covenants. Establishes an administrative penalty for violation of environmental covenants and authorizes state-instituted civil actions to recover penalties that are not paid.
(HD1)

