
A BILL FOR AN ACT

RELATING TO HAZARDOUS WASTE.

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

1 SECTION 1. The legislature finds that since Congress
2 passed the Resource Conservation and Recovery Act in 1976, the
3 cost of disposing hazardous substances has increased more than
4 fivefold. As a result, businesses are always looking for ways
5 to dispose of industrial by-products in more cost-effective
6 ways. One common cost-cutting practice is for businesses to
7 recycle their industrial by-products into agricultural products
8 like fertilizers.

9 An example of this process was reported in the article,
10 "Fear in the Fields: How Hazardous Wastes Become Fertilizer," in
11 The Seattle Times on July 4, 1997. The article describes a
12 trucker picking up a load of gray, toxic ash from a metal
13 processing plant in California to transport to Nevada. The ash
14 load is marked "hazardous waste" as it is transported to Nevada,
15 but as the truck crosses the Nevada state line, the ash is
16 considered "fertilizer ingredients" rather than "hazardous
17 waste." Once in Nevada, the waste is delivered to a factory in
18 Reno, treated to remove part of the heavy metals, blended with



1 other materials, and sold to farmers in, among other places,
2 California.

3 This practice is legal. Fertilizer and animal feed are not
4 regulated by the federal government, and to the degree it is
5 regulated, it is regulated on a state-by-state basis. Most
6 farmers and home gardeners have no idea that they are putting
7 recycled hazardous wastes on their crops when they apply
8 fertilizers, and although there are limits on the amount of
9 additives that can be added to newly manufactured products like
10 paint or concrete, those same additives have no limits when used
11 for fertilizers. For example, there are limits on the amount of
12 lead used in a can of paint; however, there are no limits on how
13 much lead can be used in fertilizer.

14 The purpose of this Act is to:

- 15 (1) Require the director of health to adopt rules to
16 develop and implement a regulatory program for
17 hazardous waste-derived products, such as fertilizers,
18 agricultural minerals, soil amendments, auxiliary soil
19 and plant substances, liming material, and animal
20 feed; and
- 21 (2) Establish a temporary prohibition on the manufacture
22 and import into the State of hazardous waste-derived



1 products, which prohibition shall remain effective
2 until the foregoing rules are adopted.

3 SECTION 2. Chapter 342J, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§342J-A Waste-derived products; standards; rules. (a)

7 Notwithstanding any other law to the contrary, no later than
8 July 1, 2009, the director shall adopt rules under chapter 91 to
9 develop and implement a regulatory program for waste-derived
10 products that:

11 (1) Incorporates more stringent standards than the
12 applicable standards established by the United States
13 Environmental Protection Agency and the Association of
14 American Plant Food Control Officials;

15 (2) Limits imports of waste-derived products, recyclable
16 materials, and hazardous substances to those that meet
17 the more stringent standards;

18 (3) Informs a consumer of the presence of any hazardous or
19 waste-derived substance in a fertilizer; and

20 (4) Regulates recyclable materials, even if recycling
21 involves the use, reuse, or return of the materials to
22 the original process. For purposes of this section,



1 the following recyclable materials shall be deemed to
2 be hazardous waste:

3 (A) Materials that are identified as:

4 (i) RCRA hazardous waste; or

5 (ii) Non-RCRA hazardous waste;

6 (B) Materials used in a manner constituting disposal;

7 or

8 (C) Materials used to produce products that are
9 applied to the land including materials used to
10 produce fertilizers, agricultural minerals, soil
11 amendments, auxiliary soil and plant substances,
12 liming material, and animal feed; or

13 (D) Materials used to produce food for domestic,
14 livestock, wildlife, or aquatic animals;

15 provided that the department may exclude paragraph (4) (B)
16 materials that are non-RCRA hazardous waste from regulation.

17 (b) For purposes of this section:

18 "Fertilizer" means a substance containing one or more
19 recognized plant nutrients, which substance is:

20 (1) Used for its plant nutrient content; or

21 (2) Designated for use or is claimed to have value in
22 promoting plant growth, including animal and vegetable

1 manure, and commercial, bulk, custom, and specialty
2 fertilizer.

3 "Hazardous substance" means any liquid, solid, gas, or
4 sludge, including any material, substance, product, commodity,
5 or waste, regardless of quantity, that exhibits any of the
6 characteristics or criteria of hazardous waste, as described in
7 rules adopted pursuant to chapter 91, regardless of whether the
8 substance is waste or virgin material as defined under state or
9 federal law.

10 "Liming material" means all suitable materials containing
11 calcium or magnesium in the chemical form, physical condition,
12 and quantity capable of neutralizing soil acidity, which shall
13 include, but need not be limited to, limestone, burnt lime,
14 marl, and industrial by-product meeting the State's standards
15 established under this section.

16 "Non-RCRA hazardous waste" means any hazardous waste that
17 is:

- 18 (1) Not identified as an RCRA hazardous waste;
- 19 (2) Regulated in the State;
- 20 (3) A hazardous substance; or
- 21 (4) Identified, pursuant to regulations adopted by the
22 department, as a non-RCRA hazardous waste.

1 "RCRA" means the Resource Conservation and Recovery Act
2 (Title 42, United States Code).

3 "Recyclable material" means a hazardous waste, including
4 any hazardous waste identified in the definition of "waste-
5 derived product", that is capable of being recycled, including:

6 (1) A residue;

7 (2) Spent material, including a used or spent stripping or
8 plating solution or etchant;

9 (3) A material that is contaminated to such an extent that
10 it can no longer be used for the purpose for which it
11 was originally purchased or manufactured;

12 (4) A by-product identified by the department as
13 "hazardous waste from specific sources" or "hazardous
14 waste from nonspecific sources"; and

15 (5) Any retrograde material that has not been used,
16 distributed, or reclaimed through treatment by the
17 original manufacturer or owner by the following dates:

18 (A) One year after the date when the material became
19 a retrograde material; and

20 (B) If the material has been returned to the original
21 manufacturer, one year after the material is
22 returned to the original manufacturer.



1 "Soil amendment" means any substance that is intended to
2 improve the physical characteristics of the soil, except
3 composted materials, fertilizers, liming materials, animal
4 manures, vegetable manures, food wastes, food processing wastes,
5 and materials exempted by rule.

6 "Waste-derived product" means any fertilizers, agricultural
7 minerals, soil amendments, auxiliary soil and plant substances,
8 liming material, and animal feed, derived in whole or in part
9 from:

10 (1) Any waste identified as a hazardous waste in the
11 Resource Conservation and Recovery Act (chapter 1,
12 subchapter I, part 261, Code of Federal Regulations
13 and its appropriate appendices); provided that a
14 hazardous waste regulated in the State is presumed to
15 be hazardous waste under the Resource Conservation and
16 Recovery Act unless the department determines
17 otherwise pursuant to rules adopted under chapter 91;

18 (2) Any hazardous waste that is regulated by the State,
19 including but not limited to:

20 (A) Hazardous waste as defined in section 342J-2; or

1 (B) Any hazardous waste identified as non-RCRA
2 hazardous waste pursuant to rules adopted by the
3 department under chapter 91;

4 (3) Solid waste as defined in section 342G-1; or

5 (4) Any hazardous substance as defined in this section;
6 provided that a waste-derived product may be derived from
7 recyclable material, even if recycling involves the use, reuse,
8 or return of the materials to the original process."

9 **SECTION 3. Waste-derived products; temporary prohibition.**

10 From January 1, 2007 through June 30, 2009, no person shall
11 manufacture or import into the State any waste-derived product,
12 as defined under section 342J-A, Hawaii Revised Statutes.

13 SECTION 4. In codifying the new sections added by section
14 2 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 5. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

Report Title:

Recyclable Materials; Hazardous Waste Use; Regulation

Description:

Requires DOH to adopt rules to regulate hazardous waste-derived products, including recyclable materials. Establishes a temporary prohibition on the manufacture and import into the State of hazardous waste-derived products until the rules are adopted. (SB2679 HD1)

