
A BILL FOR AN ACT

RELATING TO LANDFILLS.

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

1 SECTION 1. Chapter 340A, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . PRIVATE LANDFILL PERMIT PROGRAM**

5 **§340A-A Definitions.** As used in this part, unless the
6 context otherwise requires:

7 "Compliance plan" means a plan which includes a description
8 of how a private landfill proposes to comply with all applicable
9 requirements pursuant to this part and includes a schedule of
10 compliance and a schedule under which the permittee will submit
11 progress reports to the department no less frequently than every
12 six months.

13 "Department" means the department of health.

14 "Permit" means written authorization from the director to
15 construct, modify, relocate, or operate any private landfill.

16 "Private landfill" means a landfill other than one operated
17 by the State or a county.



1 **§340A-B Specific functions, duties, and powers of the**
2 **director.** The director shall have the functions, duties, and
3 power to:

4 (1) Issue permits for a fixed term not to exceed five
5 years;

6 (2) Ensure compliance by all private landfills required to
7 have a permit with each applicable standard or
8 requirement provided by federal or state statutes,
9 regulations, or rules;

10 (3) Terminate, modify, or revoke and reissue permits;

11 (4) Enforce permits, permit fee requirements, and
12 compliance with this part including the recovery of
13 civil penalties; and

14 (5) Issue permits with environmental permit shields
15 pursuant to such rules as the director may adopt.

16 **§340A-C Permits; requirements; renewal.** (a) The owner or
17 operator of a private landfill shall obtain a permit from the
18 department.

19 (b) Within twelve months after the effective date of this
20 Act, the owner or operator of an existing private landfill shall
21 submit to the department an application for a permit and a
22 compliance plan.



1 (c) No person shall begin construction of a new private
2 landfill, or modification or relocation of an existing private
3 landfill without first obtaining a permit from the director.

4 (d) A permit to operate a private landfill shall expire no
5 later than five years after issuance. The expiration of a
6 permit to operate terminates the private landfill's right to
7 operate unless a timely and complete renewal application is
8 submitted to the department. Permits being renewed shall be
9 subject to the same procedural requirements that apply to
10 initial permit issuance. The director may renew a permit to
11 operate provided the owner or operator has acted consistently
12 with the permit previously granted, and all plans,
13 specifications, and other information submitted as a part
14 thereof.

15 **§340A-D Application for permit.** (a) An application for a
16 permit required pursuant to this part shall be in the form
17 prescribed by the director, and for existing private landfills,
18 the application shall also be accompanied by a compliance plan.

19 (b) The department may require that permit applications be
20 accompanied by other plans, specifications, monitoring data, and
21 any other information necessary to identify environmental
22 impacts and to determine whether the proposed private landfill



1 installation, modification, or operation will be in accord with
2 applicable rules and standards.

3 **§340A-E Action on permit application.** (a) Within sixty
4 days of receipt of an application the department shall give the
5 applicant written notice that the application is complete, or
6 give the applicant written notice of incompleteness outlining
7 additional information required.

8 (b) The department shall take final action on each permit
9 application within eighteen months after the application is
10 determined or deemed to be complete. The department may
11 prioritize final action on applications for construction or
12 modification to existing private landfills.

13 (c) Each application for a permit shall be subject to
14 federal oversight, as necessary.

15 (d) For each application for a permit the director shall
16 provide public notice, including the method by which a public
17 hearing can be requested, and an opportunity for public
18 comments.

19 **§340A-F Approval of permit.** (a) The director shall issue
20 a permit for any term not exceeding five years if it is
21 determined that the private landfill will comply with all



1 requirements of this part and the rules and standards adopted
2 pursuant to this part.

3 (b) The permit may be subject to such reasonable
4 conditions as the director may prescribe.

5 (c) The director, on application, shall renew a permit for
6 a term not exceeding five years, if it is determined that the
7 private landfill complies with all requirements of this part and
8 the rules and standards adopted pursuant to this part.

9 (d) The director shall not deny an application for the
10 issuance or renewal of a permit without affording the applicant
11 an opportunity for a hearing in accordance with chapter 91.

12 **§340A-G Other permit action.** (a) The director, on the
13 director's own motion or the application of any person, may
14 terminate, modify, suspend, or revoke and reissue any permit if,
15 after affording the permittee an opportunity for a hearing in
16 accordance with chapter 91, the director determines that:

17 (1) The permit contains a material mistake made in
18 establishing requirements of the permit;

19 (2) The action is required to assure compliance with this
20 part, and the applicable standards and rules adopted
21 pursuant to this part;



- 1 (3) The action is required to address additional
- 2 applicable requirements of this part, and the
- 3 applicable standards and rules adopted pursuant to
- 4 this part;
- 5 (4) There is a violation of any condition of the permit;
- 6 (5) The permit was obtained by misrepresentation or the
- 7 permittee or applicant failed to disclose fully all
- 8 relevant facts;
- 9 (6) There is a change in any condition that requires
- 10 modification of terms of the permit;
- 11 (7) More frequent monitoring or reporting by the permittee
- 12 is required; or
- 13 (8) Such is in the public interest.

14 In determining the public interest, the director shall consider
15 the environmental impact of the proposed action, any adverse
16 environmental effects that cannot be avoided should the action
17 be implemented, the alternatives to the proposed action, the
18 relationship between local short-term uses of the environment
19 and the maintenance and enhancement of long-term productivity,
20 any irreversible and irretrievable commitments of resources that
21 would be involved in the proposed action should it be
22 implemented, and any other factors that the director may by rule



1 prescribe; provided that any determination of public interest
2 shall promote the optimum balance between economic development
3 and environmental quality.

4 (b) The director may revise a permit administratively if
5 the revision:

- 6 (1) Corrects typographical errors;
- 7 (2) Identifies a change in the name, address, or telephone
8 number of any person identified in the permit, or
9 provides a similar minor administrative change at the
10 source;
- 11 (3) Allows for a change in ownership or operational
12 control of a private landfill where the department
13 determines that no other change in the permit is
14 necessary, provided that a written agreement
15 containing a specific date for transfer of permit
16 responsibility, coverage, and liability between the
17 current and new permittees has been submitted to the
18 department; or
- 19 (4) Makes any other change that the department determines
20 to be similar to those in paragraphs (1) to (3).



1 **§340A-H Permit conditions; monitoring requirements.** (a)

2 The owner or operator of a private landfill to whom a permit is
3 issued shall:

4 (1) Maintain records and, upon request of the department,
5 provide to the department a report, with copies of the
6 records related to the period of operation, detailing
7 the dates, times, and locations, and the volumes or
8 flow-rates of any discharge of sewage or other
9 wastewater into the area or waterway, or the quality
10 of air emissions; and

11 (2) Collect periodic samples of any treated sewage, other
12 wastewater, and any air emissions that are being
13 discharged into the area or waterways of the State.

14 The sampling technique shall be approved by the
15 department before the sample is collected. The number
16 of samples to be collected under this paragraph shall
17 be the greater of two per calendar year or the number
18 of samples required to be collected under federal law
19 and regulations for sewage or other environmental
20 discharges.

21 (b) The department, through an independent contractor, may
22 collect additional samples of any treated sewage that is being



1 discharged into the area or waterways of the State by a
2 permittee, or monitor the quality of any air emissions released
3 by a permittee.

4 (c) The owner or operator of a private landfill required
5 to collect samples under subsection (b), as required by the
6 department, shall have the samples tested. Tests required may
7 include tests for fecal coliform, ammonia, residual chlorine, pH
8 (degree of acidity or alkalinity), chemical oxygen demand,
9 biochemical oxygen demand, total suspended solids, heavy metals,
10 volatile organic compounds, asbestos, and any other parameters
11 as required by the department. An analytical testing method
12 approved by the department before the testing is conducted shall
13 be used. A laboratory used for testing under this subsection
14 shall agree to confidentiality and shall not disclose testing
15 results to any person other than to the department, the county
16 in which the private landfill is located, and the owner or
17 operator of the private landfill.

18 (e) All testing and sampling required under this section
19 shall be at the expense of the permittee.

20 (f) If the owner or operator of the private landfill, when
21 complying with another state or federal law that requires
22 substantially equivalent monitoring and data collection, has



1 collected the type of information required under this section,
2 the owner or operator shall be considered to be in compliance
3 with this section so long as the information is also provided to
4 the department. The department shall establish, by rule,
5 requirements for determining substantially equivalent monitoring
6 and data collection.

7 **§340A-I Recordkeeping and monitoring requirements.** In
8 addition to the requirements of section 340A-H, the director may
9 require an owner or operator of any private landfill on a
10 continuous, periodic, or one-time basis to:

- 11 (1) Establish, maintain, and submit records;
- 12 (2) Draft reports;
- 13 (3) Install, use, and maintain monitoring equipment, and
14 use audit procedures or methods;
- 15 (4) Sample emissions or discharges in accordance with such
16 procedures or methods, at such locations, at such
17 intervals, during periods, and in such manner as
18 prescribed by the director;
- 19 (5) Keep records on the source and the control equipment
20 parameters, production variables, or other indirect
21 data when direct monitoring is impractical;



- 1 (6) Sample and analyze the composition of the fuel, waste,
- 2 or other products being burned or incinerated;
- 3 (7) Submit compliance certifications; and
- 4 (8) Provide other information as the department may
- 5 require.

6 **§340A-J Fees.** (a) The director shall establish by rule
7 fees for permits issued pursuant to this part to be paid by the
8 applicant prior to the issuance of the permit and an annual
9 compliance fee.

10 (b) Fees shall adequately cover the direct and indirect
11 costs required to develop, support, and administer the permit
12 program, including the reasonable costs of:

- 13 (1) Reviewing and acting upon any application for or
- 14 renewal of a permit;
- 15 (2) Implementing and enforcing the terms and conditions of
- 16 any permit, including legal support;
- 17 (3) Monitoring, inspection, and auditing of private
- 18 landfills;
- 19 (4) Preparing generally applicable rules or guidance;
- 20 (5) Performing or reviewing modeling, analyses, and
- 21 demonstrations; and
- 22 (6) Preparing inventories and tracking waste releases.



1 (c) Private landfills shall be assessed an annual
2 compliance fee based on the number of tons of solid waste
3 accepted by the private landfill. Unless changed by rules,
4 annual compliance fees shall be changed in December of each year
5 only by the percentage, if any, by which the consumer price
6 index for that calendar year exceeds the consumer price index
7 for the prior calendar year. The consumer price index for any
8 calendar year is the average of the consumer price index for all
9 urban consumers published by the United States Department of
10 Labor, as of the close of the twelve-month period ending on
11 August 31 of each calendar year.

12 (d) Nothing in the annual compliance fee provisions of
13 subsection (c) shall restrict the director from assessing more
14 or less than the amount determined under subsection (c) from any
15 one private landfill or any class or category of private
16 landfills, as designated by the director; provided the
17 department collects a total amount of fees sufficient to cover
18 the costs of the permit program.

19 **§340A-K Judicial review.** The applicant and any person who
20 participated in the public comment process may obtain judicial
21 review in state court of the final action on a permit issuance



1 or renewal. This is in addition to judicial review otherwise
2 available.

3 **§340A-L Government records; confidential information.** (a)

4 The department shall make all government records maintained
5 pursuant to this part open to public inspection in accordance
6 with chapter 92F unless access is restricted or closed by law.

7 (b) Except as provided in subsection (c), the following
8 permit program documents are deemed to be government records:

- 9 (1) Permit applications and all supporting information;
- 10 (2) Compliance plans (including schedules of compliance);
- 11 (3) Compliance monitoring reports;
- 12 (4) Certifications;
- 13 (5) Permits; and
- 14 (6) Any other information submitted to the department
15 pursuant to the permit program.

16 (c) Upon a showing satisfactory to the director by any
17 person that records, reports, or information, or particular part
18 thereof, to which the director has access pursuant to this part,
19 contain information of a confidential nature concerning secret
20 processes or methods of manufacture, these records, reports, or
21 information shall be kept confidential except that the record,
22 report, or information may be disclosed to other officers or



1 employees of the department and federal authorities concerned
2 with carrying out this part or when relevant in any proceeding
3 pursuant to this part. The contents of the permit itself shall
4 not be entitled to confidentiality protection.

5 (d) No records, reports, or information for which
6 confidentiality is claimed by the person from whom they are
7 obtained shall be disclosed until that person has received
8 reasonable notice under the procedures set forth in 40 Code of
9 Federal Regulations Part 2, section 2.201 et seq. and has had
10 the opportunity to demonstrate why these should not be
11 disclosed, including a reasonable opportunity to obtain judicial
12 relief. In any such proceedings, confidentiality shall be
13 accorded to any documents which satisfy the criteria set forth
14 in 40 Code of Federal Regulations Part 2 or any rules adopted by
15 the department pursuant to chapter 91.

16 (e) Any officer, employee, or agent of the department
17 acquiring confidential information from any inspection
18 authorized by section 340A-M who divulges the information except
19 as authorized in this part or except as ordered by a court or at
20 an administrative hearing regarding an alleged violation of this
21 part or of any rule or standard adopted pursuant to this part
22 shall be fined not more than \$1,000.



1 (f) Sections 92F-16 and 92F-17 shall apply to any officer,
2 employee, or agent of the department acquiring any confidential
3 information as defined in this section.

4 **§340A-M Inspection of premises.** The director may enter
5 and inspect any private landfill to investigate an actual or
6 suspected source of contaminant release, runoff, or other
7 pollution, to ascertain compliance or noncompliance with this
8 part or any rule or standard adopted by the department pursuant
9 to this part, or any permit or other approval granted by the
10 department pursuant to this part, and to make reasonable tests
11 in connection therewith.

12 **§340A-N Enforcement.** (a) If the director determines that
13 any person has violated or is violating this part, any rule
14 adopted pursuant to this part, or any permit issued pursuant to
15 this part, the director shall serve written notice by certified
16 mail or personal service upon the alleged violator or violators
17 specifying the alleged violation and may include with the
18 notice:

- 19 (1) An order specifying a reasonable time during which
20 that person shall be required to take such measures as
21 may be necessary to correct the violation and to give
22 periodic progress reports;



1 (2) An order imposing penalties provided in section 340A-
2 S; and

3 (3) An order that the alleged violator or violators appear
4 before the director for a hearing at a time and place
5 specified in the notice or to be set later and answer
6 the charges complained of.

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

13 (1) Shall order the alleged violator or violators to
14 submit a written schedule within thirty days
15 specifying the measures to be taken and the time
16 within which the measures shall be taken to bring that
17 person into compliance with this part, any rule
18 adopted, or permit issued pursuant to this part. The
19 director shall accept or modify the submitted schedule
20 within thirty days of receipt of the schedule. Any
21 schedule not acted upon after thirty days of receipt



1 by the director shall be deemed accepted by the
2 director;

3 (2) Shall order the alleged violator or violators to cease
4 and desist from the activities that violate this part,
5 any rule adopted, or permit issued pursuant to this
6 part, if that person does not submit a written
7 schedule to the director within thirty days. This
8 order shall remain in effect until the director
9 accepts the written schedule;

10 (3) May impose penalties as provided in section 340A-S;
11 and

12 (4) May order the alleged violator or violators to appear
13 before the director for a hearing at a time and place
14 specified in the notice or to be set later and answer
15 the charges complained of.

16 (c) If the director determines that any person has
17 violated an accepted schedule or an order issued pursuant to
18 this section, the director shall impose penalties by sending a
19 notice in writing, either by certified mail or by personal
20 service, to that person, describing such nonadherence or
21 violation with reasonable particularity.



1 (d) Any order issued pursuant to this part shall become
2 final, unless not later than twenty days after the notice of
3 violation and order is served, the person or persons named
4 therein request in writing a hearing before the director. Any
5 penalty imposed pursuant to this part shall become due and
6 payable twenty days after the notice of penalty is served,
7 unless the person or persons named therein request in writing a
8 hearing before the director. Whenever a hearing is requested on
9 any penalty imposed pursuant to this part, the penalty shall
10 become due and payable only upon completion of all review
11 proceedings and the issuance of a final order confirming the
12 penalty in whole or in part. Upon request for a hearing, the
13 director shall require that the alleged violator or violators
14 appear before the director for a hearing at the time and place
15 specified in the notice and answer the charges complained of.

16 (e) Any hearing conducted pursuant to this section shall
17 be conducted as a contested case under chapter 91. If, after a
18 hearing held pursuant to this section, the director finds that a
19 violation or violations have occurred, the director shall affirm
20 or modify any penalties imposed or shall modify or affirm the
21 order previously issued or issue an appropriate order or orders
22 for the prevention, abatement, or control of the violation or



1 discharge of pollutants involved, or for the taking of such
2 other corrective action as may be appropriate. If, after a
3 hearing on an order or penalty contained in a notice, the
4 director finds that no violation has occurred or is occurring,
5 the director shall rescind the order or penalty. Any order
6 issued after a hearing may prescribe timetables for necessary
7 action in preventing, abating, or controlling the violation.

8 (f) If the amount of any penalty is not paid to the
9 department within thirty days after it becomes due and payable,
10 the director may institute a civil action in the name of the
11 State to collect the administrative penalty which shall be a
12 government realization. In any proceeding to collect the
13 administrative penalty imposed, the director need only show
14 that:

- 15 (1) Notice was given;
- 16 (2) A hearing was held or the time granted for requesting
17 a hearing has run without such a request;
- 18 (3) The administrative penalty was imposed; and
- 19 (4) The penalty remains unpaid.

20 (g) In connection with any hearing held pursuant to this
21 section, the director shall have the power to subpoena the



1 attendance of witnesses and the production of evidence on behalf
2 of all parties.

3 **§340A-O Emergency powers; procedures.** (a)

4 Notwithstanding any other law to the contrary, if the governor
5 or the director determines that an imminent peril to the public
6 health and safety is or will be caused by the actions of an
7 owner or operator of a private landfill or the release of any
8 pollution or contaminants requires immediate action, the
9 governor or the director, without a public hearing, may order
10 any person causing or contributing to the release of pollution
11 or contaminants from the private landfill to immediately reduce
12 or stop the release, and may take any and all other actions as
13 may be necessary. The order shall fix a place and time, not
14 later than twenty-four hours thereafter, for a hearing to be
15 held before the director.

16 (b) Nothing in this section shall be construed to limit
17 any power that the governor or any other officer may have to
18 declare an emergency and act on the basis of such a declaration,
19 if the power is conferred by statute or constitutional
20 provision, or inheres in the office.

21 **§340A-P Injunctive and other relief.** The director may
22 institute a civil action in any court of competent jurisdiction



1 for injunctive and other relief to prevent any violation of this
2 part, any rule adopted, or condition of a permit pursuant to
3 this part, without the necessity of prior revocation of the
4 permit, to impose and collect civil penalties, to collect
5 administrative penalties, or obtain other relief. The court
6 shall have the power to grant relief in accordance with the
7 Hawaii rules of civil procedure.

8 **§340A-Q Appeal.** If any party is aggrieved by a decision
9 of the director, the party may appeal in the manner provided in
10 chapter 91 to the circuit court of the circuit in which the
11 party resides or has the party's principal place of business or
12 in which the action in question occurred; provided that the
13 operation of a cease and desist order shall not be stayed on
14 appeal unless specifically ordered by a court of competent
15 jurisdiction.

16 **§340A-R Civil penalties.** (a) Any person who violates
17 this part, any rule adopted pursuant to this part, any condition
18 of a permit issued pursuant to this part, or any fee or filing
19 requirement, shall be fined not more than \$25,000 for each
20 separate offense. Each day of each violation shall constitute a
21 separate offense.



1 (b) Any person who denies, obstructs, or hampers the
2 entrance, inspection, or monitoring by any duly authorized
3 officer or employee of the department of any building, place, or
4 vehicle that the officer or employee is authorized to enter and
5 inspect shall be fined not more than \$25,000 for each separate
6 offense. Each day of each violation shall constitute a separate
7 offense.

8 (c) State of mind shall not be an element of proof for
9 civil violations.

10 (d) The penalties provided in this section shall be in
11 addition to, and not in lieu of, any other penalties provided by
12 state or federal law, including chapters 128D and 128E.

13 **§340A-S Administrative penalties.** (a) In addition to any
14 other administrative or judicial remedy provided by this part,
15 or by rules adopted pursuant to this part, the director is
16 authorized to impose by order the penalties specified in section
17 340A-R.

18 (b) Factors to be considered in imposing an administrative
19 penalty include:

20 (1) The nature and history of the violation and of any
21 prior violations;



1 (2) The economic benefit to the violator, or anticipated
2 by the violator, resulting from the violation;

3 (3) The opportunity, difficulty, and history of corrective
4 action;

5 (4) Good faith efforts to comply; and

6 (5) Such other matters as justice may require.

7 (c) It is presumed that the violator's economic and
8 financial conditions allow payment of the penalty, and the
9 burden of proof to the contrary is on the violator.

10 (d) In any judicial proceeding to recover the
11 administrative penalty imposed, the director need only show
12 that:

13 (1) Notice was given;

14 (2) A hearing was held or the time granted for requesting
15 a hearing has run without such a request;

16 (3) The administrative penalty was imposed; and

17 (4) The penalty remains unpaid.

18 **§340A-T Criminal penalties.** (a) Any person who knowingly
19 violates any applicable standards or limitations, any condition
20 in a permit issued pursuant to this part, any order, any rule,
21 or any fee or filing requirement, shall be punished by a fine of



1 not more than \$25,000 for each day of each violation or by
2 imprisonment not to exceed five years, or both.

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

11 (c) Any person who negligently releases or discharges
12 pollutants, contaminants, or extremely hazardous substances
13 outside the private landfill and who at the time negligently
14 places another person in imminent danger of death or serious
15 bodily injury shall be punished by a fine of not more than
16 \$25,000 for each day of each violation, or imprisonment for not
17 more than one year, or both. If a conviction of any person
18 under this subsection is for a violation committed after a first
19 conviction of the person under this subsection, the maximum
20 punishment shall be doubled with respect to both the fine and
21 imprisonment.



1 (d) Any person who knowingly releases or discharges
2 pollutants, contaminants, or extremely hazardous substances
3 outside the private landfill and who knows at the time that
4 another person is thereby placed in imminent danger of death or
5 serious bodily injury shall be punished by a fine of not more
6 than \$25,000 for each day of each violation, or imprisonment for
7 not more than fifteen years, or both. Any organization which
8 violates this subsection shall be subject to a fine of not more
9 than \$1,000,000. If a conviction of any person under this
10 subsection is for a violation committed after a first conviction
11 of the person under this subsection, the maximum punishment
12 shall be doubled with respect to both the fine and imprisonment.

13 **§340A-U Disposition of collected fines and penalties.**

14 Fines and penalties collected under sections 340A-R, 340A-S, and
15 340A-T shall be deposited into the environmental response
16 revolving fund established by section 128D-2.

17 **§340A-V Enforcement by state and county authorities.** All
18 state and county health authorities and police officers shall
19 enforce this part and the rules, orders, and permits of the
20 department.

21 **§340A-W Nonliability of department personnel.**

22 Notwithstanding any other law to the contrary, no member,



1 officer, or employee of the department shall be liable for any
2 acts done by the member, officer, or employee in the performance
3 of the member's, officer's, or employee's duties; provided that
4 this section shall not apply to violations of section 340A-L.

5 **§340A-X Other action not barred.** No existing civil or
6 criminal remedy for any wrongful action which is a violation of
7 any statute or any rule of the department or the ordinance of
8 any county shall be excluded or impaired by this part.

9 **§340A-Y Priority in courts.** All actions brought pursuant
10 to this part shall in the discretion of the court receive
11 priority in the courts of the State.

12 **§340A-Z Consent orders; settlement agreements.** At least
13 thirty days before a consent order or settlement agreement of
14 any kind under this part to which the director or the State is a
15 party is final or filed with a court, the director shall provide
16 public notice and an opportunity for the public to comment. The
17 director shall promptly consider any written comments and may
18 withdraw or withhold consent to the proposed order or agreement
19 if the comments disclose facts or considerations that indicate
20 that the consent is inappropriate, improper, inadequate, or
21 inconsistent with the requirements of this part. Nothing in



1 this section shall apply to civil or criminal penalties under
2 this part.

3 **§340A-AA Citizen suits.** (a) Any person may commence a
4 civil action on that person's own behalf against:

5 (1) Any person (including the State and the director) who
6 is alleged to be in violation of this part;

7 (2) The director where there is alleged a failure to
8 perform any act or duty under this part that is not
9 discretionary; or

10 (3) Any person who proposes to construct or constructs any
11 new or modified private landfill without a required
12 permit or who is alleged to be in violation of any
13 condition of such permit.

14 (b) The circuit court shall have jurisdiction to:

15 (1) Order the owner or operator of a private landfill to
16 comply with this part and any rules adopted pursuant
17 to this part;

18 (2) Order the director to perform such act or duty; and

19 (3) Apply any appropriate civil penalties.

20 (c) No action may be commenced:

21 (1) Under subsection (a)(1):



1 (A) Prior to sixty days after the plaintiff has given
 2 notice of the violation to the director, the
 3 department, and any alleged violator of the
 4 standard, limitation, or order; or

5 (B) If the director or the department has commenced
 6 and is diligently prosecuting a civil action to
 7 require compliance with the standard, limitation,
 8 or order, but in any such action any person may
 9 intervene as a matter of right; or

10 (2) Under subsection (a)(2) prior to sixty days after the
 11 plaintiff has given notice of such action to the
 12 director. Notice under this paragraph shall be given
 13 in such manner as the director shall prescribe by
 14 rule.

15 (d) Any action respecting a violation of this part by an
 16 owner or operator of a private landfill may be brought only in
 17 the judicial circuit in which the private landfill is located.

18 (e) In any action under this section, the director, if not
 19 a party, may intervene as a matter of right at any time in the
 20 proceeding.

21 (f) The court, in issuing any final order in any action
 22 brought pursuant to this section, may award costs of litigation



1 (including reasonable attorney and expert witness fees) to any
2 party, whenever the court determines such award is appropriate.
3 The court, if a temporary restraining order or preliminary
4 injunction is sought, may require the filing of a bond or
5 equivalent security in accordance with the Hawaii rules of civil
6 procedure.

7 (g) Nothing in this section shall restrict any right that
8 any person may have under any constitutional provision, statute,
9 or common law to seek any other relief.

10 (h) Penalties received under subsection (b) shall be
11 deposited into the environmental response revolving fund
12 established by section 128D-2. The court shall have discretion
13 to order that such civil penalties, in lieu of being deposited
14 in the fund, be used in beneficial mitigation, education, or
15 protection projects which enhance public health or the
16 environment."

17 SECTION 2. Chapter 340A, Hawaii Revised Statutes, is
18 amended by designating sections 340A-1 to 340A-3 as part I,
19 entitled:

20 **"PART I. GENERAL PROVISIONS"**

21 SECTION 3. Section 340A-3, Hawaii Revised Statutes, is
22 amended to read as follows:



1 **"§340A-3 Disposal of solid waste.** (a) The county agency
2 responsible for the collection and disposal of solid waste may
3 require that all solid waste transported by the county agency,
4 collectors, businesses or individuals be disposed of at
5 facilities or in areas designated by the county agency if it is
6 found to be in the best public interest; provided that
7 agricultural solid waste and source separated waste transported
8 for recycling purposes shall not be subject to the provisions of
9 this section; and provided further that if regional transfer
10 stations are designated, transportation to the stations shall be
11 considered so as to minimize the operating costs of the
12 collector.

13 The best public interest shall be found if disposal at the
14 designated facilities or areas will:

- 15 (1) Result in reusable materials being recovered from
16 solid waste; or
- 17 (2) Achieve the solid waste volumes necessary to meet a
18 resource recovery facility's minimum operating
19 requirements; or
- 20 (3) Lessen the demand for landfill sites; or
- 21 (4) Conserve natural resources.



1 (b) For a county that has a resource recovery facility in
 2 use or when the design for such a facility has begun, the
 3 director shall not grant a permit for other solid waste disposal
 4 activities including landfills, for a term extending beyond the
 5 planned operational date for the resource recovery facility
 6 unless the other disposal activity is to be used for one or more
 7 of the following:

- 8 (1) Disposal of ash or residue from a resource recovery
 9 facility;
- 10 (2) Disposal of solid waste which, because of its chemical
 11 or physical characteristics, is not suitable for
 12 processing at a resource recovery facility;
- 13 (3) Provide an emergency backup or overflow capacity for a
 14 resource recovery facility;
- 15 (4) Provide for solid waste disposal for those areas not
 16 served by a resource recovery facility as designated
 17 by the county agency responsible for the collection
 18 and disposal of solid waste.

19 (c) Operation of private landfills shall be regulated
 20 pursuant to part _____."

21 SECTION 4. Section 342G-2, Hawaii Revised Statutes, is
 22 amended by amending subsection (b) to read as follows:



1 "(b) In implementing this chapter, the department and each
2 county shall consider the following solid waste management
3 practices and processing methods in their order of priority:

4 (1) Source reduction;

5 (2) Recycling and bioconversion, including composting; and

6 (3) Landfilling and incineration.

7 The respective roles of landfilling and incineration shall be
8 left to each county's discretion[-]; provided that private
9 landfills shall be regulated by the department pursuant to part
10 of chapter 340A."

11 SECTION 5. Section 342G-25, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) The program element shall include at a minimum:

14 (1) A waste stream assessment component;

15 (2) A source reduction component;

16 (3) A recycling and bioconversion component;

17 (4) An energy-balance component;

18 (5) A special waste component;

19 (6) A household hazardous waste component;

20 (7) A public education and information component;

21 (8) A public landfill and incineration component;

22 (9) A marketing and procurement of materials component;



1 (10) A program implementation component; and

2 (11) A program funding component."

3 SECTION 6. Section 342G-26, Hawaii Revised Statutes, is
4 amended by amending subsection (h) to read as follows:

5 "(h) The public landfill and incineration component shall:

6 (1) Assess the county's current public landfill capacity
7 and ways to extend that capacity;

8 (2) Assess the availability of land for future public
9 landfills;

10 (3) Estimate the amount of waste currently going into
11 incineration facilities and the remaining available
12 capacity;

13 (4) Estimate the amount of ash generated at incineration
14 facilities; and

15 (5) Describe provisions for ash disposal."

16 SECTION 7. Section 342H-51, Hawaii Revised Statutes, is
17 amended by amending the definition of "municipal solid waste
18 landfill unit" to read as follows:

19 ""Municipal solid waste landfill unit" means a discrete
20 area of land or an excavation that receives household waste and
21 is not a land application unit, surface impoundment, injection
22 well, or waste pile. A municipal solid waste landfill unit also



1 may receive other types of waste regulated under subtitle D of
 2 RCRA, such as commercial solid waste, nonhazardous sludge, small
 3 quantity generator waste and industrial solid waste. Such a
 4 landfill ~~[may]~~ shall be publicly ~~[or privately]~~ owned. A
 5 municipal solid waste landfill unit may be a new municipal solid
 6 waste landfill unit, an existing municipal solid waste landfill
 7 unit, or a lateral expansion."

8 SECTION 8. In codifying the new sections added by section
 9 1 of this Act, the revisor of statutes shall substitute
 10 appropriate section numbers for the letters used in designating
 11 the new sections in this Act.

12 SECTION 9. This Act does not affect rights and duties that
 13 matured, penalties that were incurred, and proceedings that were
 14 begun, before its effective date.

15 SECTION 10. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 11. This Act shall take effect upon its approval.

18

INTRODUCED BY: Josh Green M.D.
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JAN 14 2008



Report Title:

Solid Waste; Private Landfills

Description:

Transfers regulation of private landfills from the counties to the department of health.

