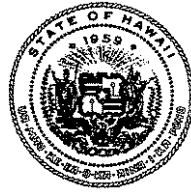


LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND  
AFFORDABLE HOUSING  
COMMITTEE ON INTERGOVERNMENTAL AND MILITARY AFFAIRS  
S.B. 2497, RELATING TO MUNICIPAL SOLID WASTE LANDFILLS

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health  
February 6, 2008  
9:00 A.M.

- 1 **Department's Position:** The department respectfully opposes this measure.
- 2 **Fiscal Implications:** The department would be required to transfer personnel positions assigned to the  
3 regulatory oversight of municipal solid waste landfills, and associated appropriations and equipment to  
4 the Public Utilities Commission. Two positions and approximately \$120,000 in associated general fund  
5 appropriations would be affected.
- 6 **Purpose and Justification:** This measure proposes to accomplish three major actions: (1) prohibit the  
7 extension of permits on any existing municipal solid waste (MSW) landfill unit after June 30, 2008; (2)  
8 prohibit the construction of new MSW landfill units within 15 miles of an existing MSW landfill unit in  
9 counties with a population of more than 500,000; and (3) transfer the jurisdiction and regulatory  
10 oversight of MSW landfills from the Department of Health to the Public Utilities Commission.
- 11 The first action, the prohibition of extending permits on any existing MSW landfill unit after  
12 June 30, 2008, would force the closure of all existing MSW landfills within the next five years. This  
13 action seems to contradict the second proposed action that allows the permitting of new landfills on the

1 neighbor islands. If an existing MSW landfill has remaining disposal capacity, that capacity should be  
2 utilized instead of closing the landfill and constructing a new one. For example, the West Hawaii  
3 Landfill on the Big Island has remaining permitted capacity of over 40 years. It is inconceivable that the  
4 Legislature would force the county to close this landfill only to allow construction a new landfill  
5 elsewhere. Typically the environmental and economical impact of maintaining the landfill at the same  
6 location is less than that of a new landfill established at a different location.

7 The second action, the prohibition of new MSW landfill units within 15 miles of an existing  
8 MSW landfill in counties with a population of greater than 500,000 would only apply to the City and  
9 County of Honolulu. The measure did not differentiate between active or closed MSW landfills. If  
10 "existing" landfills applies to both, no new MSW landfill units would be allowed on the island of Oahu.

11 The third action, the transfer of jurisdiction and regulatory oversight from the Department of  
12 Health to the Public Utilities Commission, would be inefficient and ineffective. The department  
13 currently provides regulatory oversight to approximately 300 permitted solid waste management  
14 facilities, of which ten are active MSW landfills. Of our three environmental engineers and four  
15 inspectors assigned to the state's solid waste program, only one engineer and one inspector are assigned  
16 to landfills. The two employees, the associated files and equipment are all that would be transferred to  
17 the Public Utilities Commission. Our remaining engineers and inspectors will still be tasked with  
18 permitting and inspection of transfer stations, recycling and materials recovery, salvage, composting,  
19 remediation and special waste facilities. We believe that the segregation of the solid waste program  
20 would lead to inefficiencies in the use of personnel in both technical review of permit applications and  
21 site inspections particularly during travel to the neighbor islands. We have no solid waste staff on the  
22 neighbor islands.

23 This third action would also make the current regulatory framework ineffective, given the nature  
24 of the federal law. The state, through the department's promulgation of rules establishing a permit

1 program for MSW landfills, received a "Determination of Adequacy" from the U.S. Environmental  
2 Protection Agency. This determination allows owners and operators of MSW landfills located in states  
3 with approved permit programs to use the site-specific flexibility provided by 40 CFR Part 258. This  
4 flexibility allows the owners and operators to more appropriately design, construct and operate the  
5 landfill in a manner that is reflective of site conditions. This determination of adequacy also provides  
6 the regulator flexibility in establishing more appropriate requirements than those generically listed in the  
7 federal regulations. If this bill passes, the existing state MSW landfill rules and established permit  
8 program would be invalid, and any permits issued to MSW landfills under this program would also  
9 become invalid. Until the Public Utilities Commission can establish rules, only the federal MSW  
10 landfill regulations would apply. The federal regulations do not include a permit program, but is instead  
11 a self-implementing program.

12 For all of these reasons, the department opposes this measure.

13 Thank you for the opportunity to testify on this measure.

14

15

16

17

18

19

20

21

22

23

24

**LATE**

**TESTIMONY OF CARLITO P. CALIBOSO  
CHAIRMAN, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEE ON INTERGOVERNMENTAL AND MILITARY AFFAIRS AND  
THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,  
AND AFFORDABLE HOUSING**

**FEBRUARY 06, 2008**

**MEASURE: S.B. No. 2497**

**TITLE: Relating to Municipal Solid Waste Landfills**

Chairs Inouye and Kokubun and Members of the Committees:

**DESCRIPTION:**

The purpose of the bill is to transfer jurisdiction of the permitting of municipal solid waste landfills from the Department of Health to the Public Utilities Commission ("Commission"), to prohibit extensions on the use of existing landfills, and to prohibit, on Oahu, new landfills from being situated within fifteen miles of an existing landfill.

**POSITION:**

The Commission has serious concerns about this bill as it pertains to the transfer of jurisdiction over the permitting of municipal solid waste landfills to the Commission.

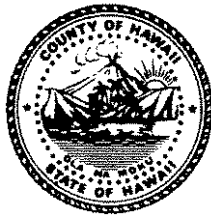
**COMMENTS:**

- **The bill's description is inaccurate.**
  - The description of the bill states, among other things, that it "transfers jurisdiction of municipal solid waste landfills from the counties to the [Commission]."
  - The statutory amendments in the bill, however, transfer jurisdiction over the permitting of municipal solid waste landfills from the department of health to the Commission. It appears that any county jurisdiction or authority would remain unchanged.
  
- **The Commission has no experience with the regulation and permitting of municipal solid waste landfills.**
  - The Commission regulates electric, telecommunications, water, and sewer utilities, as well as motor carriers and water carriers. Additionally, the Commission was recently tasked with administering the petroleum industry monitoring and reporting program. The regulation and permitting of municipal solid waste landfills is a complex area in which the Commission has no experience.

- The Commission does not know the reasons why the proponents of this bill believe the transfer of jurisdiction is warranted, and given its lack of experience in the area, questions whether the transfer would effectively address those reasons.
- **The Commission's regulatory duties should not become so broad ranging as to reduce its effectiveness.**
  - The Commission is concerned that adding the regulation and permitting of municipal solid waste landfills to its current regulatory obligations, could diminish its focus and effectiveness. Our state faces many difficult challenges in areas the Commission is currently deeply engaged in, especially energy. Adding landfill permitting, which can be very complex and contentious issue, to the Commission's duties, would likely distract both staff and the commissioners from some of their current priorities.

Thank you for the opportunity to testify.

Harry Kim  
Mayor



Bobby Jean Leithead-Todd  
Director

Nelson Ho  
Deputy Director

**County of Hawai'i**  
**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
25 Aupuni Street • Hilo, Hawai'i 96720  
(808) 961-8083 • Fax (808) 961-8086  
[http://co.hawaii.hi.us/directory/dir\\_envmng.htm](http://co.hawaii.hi.us/directory/dir_envmng.htm)

February 5, 2008

The Honorable Lorraine R. Inouye, Chair  
And Members of the Intergovernmental and Military Affairs Committee  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

The Honorable Russell S. Kokubun, Chair  
And Members of the Commerce, Consumer Protection and Affordable Housing Committee  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Hearing: Wednesday, February 6, 2008  
Time: 9:00 a.m.  
Place: Conference Room 229  
State Capitol  
415 South Beretania Street

**Re: SB 2497 – Relating to Municipal Solid Waste Landfills**

Dear Chairs and Committee Members,

I am Bobby Jean Leithead Todd, Director of the Department of Environmental Management for the County of Hawai'i and am providing testimony opposing SB 2497 which would transfer the jurisdiction and oversight of municipal solid waste landfills from the Department of Health (DOH) to the Public Utilities Commission (PUC).

I apologize that I cannot testify in person but must remain on the Big Island due to the department's and County's ongoing clean-up efforts relating to the ongoing flooding.

Hawai'i County operates two active landfills, in Hilo and Pu'uana'hulu, and has two closed landfills in Waimea and Kealakehe.

The Department of Health (DOH) has staff and policies and regulations in place to appropriately handle these applications. The PUC does not. We feel that transferring oversight from DOH to PUC will adversely affect our operations.

We have concerns relating to the purpose and intent of this Bill and ask that it not be sent forward.

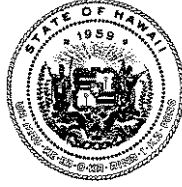
Thank you for the opportunity to provide our comments in opposition of SB 2497.

Sincerely,

A handwritten signature in black ink that reads "Bj. Leithead-Todd". The signature is written in a cursive, slightly slanted style.

Bobby Jean Leithead Todd  
DIRECTOR

cc: Harry Kim, Mayor  
Michael Dworsky, SWD Chief



LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

LAWRENCE M. REIFURTH  
DIRECTOR

RONALD BOYER  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEES ON COMMERCE, CONSUMER  
PROTECTION, AND AFFORDABLE HOUSING AND INTERGOVERNMENTAL  
AND MILITARY AFFAIRS

THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

Wednesday, February 6, 2008  
9:00 a.m.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR,  
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND  
CONSUMER AFFAIRS, TO THE HONORABLE SENATORS KOKUBUN AND  
INOUYE, CHAIRS AND MEMBERS OF THE COMMITTEES

**SENATE BILL NO. 2497 – RELATING TO MUNICIPAL SOLID WASTE  
LANDFILLS.**

**DESCRIPTION:**

This measure: (1) Transfers jurisdiction of municipal solid waste landfills from the counties to the Hawaii Public Utilities Commission ("Commission"); (2) Provides no extensions on use of existing landfills; and (3) Provides that new landfills cannot be situated within fifteen miles of an existing landfill in counties with a population greater than 500,000.

**POSITION:**

The Division of Consumer Advocacy ("Consumer Advocate") understands the intent of this measure, appreciates the complexity of the landfill siting process, and provides comments for these Committees' consideration. We defer to the Commission as to any resources that may be necessary to accomplish the transfer of such jurisdiction.



S.B. No. 2497

Senate Committees on Commerce, Consumer Protection, and Affordable  
Housing and Intergovernmental and Military Affairs  
Wednesday, February 6, 2008, 9:00 a.m.

COMMENTS:

The Consumer Advocate is, ex officio, a party to each and every proceeding before the Commission. We question what role, if any the Consumer Advocate will have if regulation over landfills is transferred to the Commission.

With due respect to the Commission, we doubt that, at present, the Commission has the expertise in land use, siting, permitting, health and safety issues to immediately assume jurisdiction over this complex process. The Consumer Advocate, if given a role in this siting process, will need much more time, staff, and resources to competently make recommendations to the Commission.

Given the role that the Commission and Consumer Advocate play in determining important energy policy issues that are being addressed, it appears imprudent to divert the time and resources of agencies that are already strained for the purpose of addressing new and complex areas that are outside the agencies' areas of expertise.

Thank you for this opportunity to testify.