

JAN 23 2009

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 which is located on private property.



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

- 4 (1) Issue permits for a fixed term not to exceed five
5 years;
- 6 (2) Ensure compliance by all private landfill permittees
7 with each applicable standard, regulation, or
8 requirement provided by federal or state statutes or
9 rules adopted by the director pursuant to chapter 91;
- 10 (3) Terminate, modify, or revoke and reissue permits for
11 cause;
- 12 (4) Enforce permits, permit fee requirements, and
13 compliance with this part including the recovery of
14 civil penalties; and
- 15 (5) Issue permits with environmental permit shields
16 pursuant to rules adopted by the director pursuant to
17 chapter 91.

18 (b) The director shall adopt rules pursuant to chapter 91
19 necessary for the purposes of this part.

20 **§340A-C Permits; requirements; renewal.** (a) The owner or
21 operator of a private landfill shall obtain a permit from the
22 director.



1 (b) Any owner or operator of a private landfill operating
2 prior to July 1, 2009 shall submit to the director an
3 application for a permit and a compliance plan no later than
4 July 1, 2010.

5 (c) No person shall begin construction, modification, or
6 relocation of a private landfill without first obtaining a
7 permit from the director.

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

19 **§340A-D Application for permit.** (a) An application for a
20 permit required pursuant to this part shall be in the form
21 prescribed by the director; provided that private landfills



1 subject to section 340A-C(b) shall also submit a compliance plan
2 with the application.

3 (b) The director may require that permit applications be
4 accompanied by other plans, specifications, monitoring data, and
5 any other information necessary to identify environmental
6 impacts and to determine whether the proposed private landfill
7 installation, modification, or operation will be in accord with
8 applicable rules.

9 **§340A-E Action on permit application.** (a) Within sixty
10 days of receipt of an application the director shall give the
11 applicant written notice that the application is complete, or
12 give the applicant written notice informing the applicant that
13 the application is incomplete and outlining the additional
14 information required.

15 (b) The director shall take final action on each permit
16 application within eighteen months after the application is
17 deemed to be complete. The director may prioritize final action
18 on applications for construction or modification to private
19 landfills subject to subsection 340A-C(b).

20 (c) Each application for a permit shall be subject to
21 applicable federal oversight.



1 (d) For each application for a permit the director shall
2 provide public notice, including the method by which a public
3 hearing can be requested, and an opportunity for public
4 comments.

5 **§340A-F Approval of permit.** (a) The director shall issue
6 a permit for any term not exceeding five years if it is
7 determined that the private landfill will comply with all
8 requirements of this part.

9 (b) The permit may be subject to reasonable conditions as
10 the director may prescribe.

11 (c) The director, on application, shall renew a permit for
12 a term not exceeding five years, if it is determined that the
13 private landfill complies with all requirements of this part,
14 and applicable standards and rules.

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

18 **§340A-G Other permit action.** (a) The director, on the
19 director's own motion or the application of any person, may
20 terminate, modify, suspend, or revoke and reissue any permit if,
21 after affording the permittee an opportunity for a hearing in
22 accordance with chapter 91, the director determines that:



- 1 (1) The permit contains a material mistake made in
- 2 establishing requirements of the permit;
- 3 (2) The action is required to ensure compliance with this
- 4 part, and applicable standards and rules;
- 5 (3) The action is required to address additional
- 6 applicable requirements of this part, and applicable
- 7 standards and rules;
- 8 (4) There is a violation of any condition of the permit;
- 9 (5) The permit was obtained by misrepresentation or
- 10 failure to disclose fully all relevant facts;
- 11 (6) There is a change in any condition that requires a
- 12 temporary or permanent modification of terms of the
- 13 permit;
- 14 (7) More frequent monitoring or reporting by the permittee
- 15 is required; or
- 16 (8) It is in the public interest.

17 In determining the public interest, the director shall consider
18 the environmental impact of the proposed action, any adverse
19 environmental effects that cannot be avoided should the action
20 be implemented, the alternatives to the proposed action, the
21 relationship between local short-term uses of the environment
22 and the maintenance and enhancement of long-term productivity,



1 any irreversible and irretrievable commitments of resources that
2 would be involved in the proposed action should it be
3 implemented, and any other factors that the rules prescribe;
4 provided that any determination of public interest shall promote
5 the optimum balance between economic development and
6 environmental quality.

7 (b) The director may revise a permit administratively if
8 the revision:

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



1 (4) Makes any other change that the director determines to
2 be similar to those in paragraphs (1) to (3).

3 **§340A-H Permit conditions; monitoring requirements.** (a)

4 The owner or operator of a private landfill to whom a permit is
5 issued shall:

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

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

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



1 (b) The director, through an independent contractor, may
2 collect additional samples of any treated sewage that is being
3 discharged into the area or waterways of the State by a
4 permittee, or monitor the quality of any air emissions released
5 by a permittee.

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

21 (d) All testing and sampling required under this section
22 shall be at the expense of the permittee.



1 (e) If the owner or operator of the private landfill, when
2 complying with another state or federal law that requires
3 substantially equivalent monitoring and data collection, has
4 collected the type of information required under this section,
5 the owner or operator shall be considered to be in compliance
6 with this section; provided that the information is provided to
7 the director. The director shall establish requirements for
8 determining substantially equivalent monitoring and data
9 collection by rules.

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

- 14 (1) Establish, maintain, and submit records;
- 15 (2) Draft reports;
- 16 (3) Install, use, and maintain monitoring equipment, and
17 use audit procedures or methods;
- 18 (4) Sample emissions or discharges in accordance with the
19 procedures or methods, at the locations, at the
20 intervals, during periods, and in the manner as
21 prescribed by rules;



- 1 (5) Keep records on the private landfill and the control
- 2 equipment parameters, production variables, or other
- 3 indirect data when direct monitoring is impractical;
- 4 (6) Sample and analyze the composition of the gas, waste,
- 5 or other products being burned or incinerated;
- 6 (7) Submit compliance certifications; and
- 7 (8) Provide other information as the director may require.

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

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

- 15 (1) Reviewing and acting upon any application for or
- 16 renewal of a permit;
- 17 (2) Implementing and enforcing the terms and conditions of
- 18 any permit, including legal support;
- 19 (3) Monitoring, inspection, and auditing of private
- 20 landfills;
- 21 (4) Preparing generally applicable rules;



1 (5) Performing or reviewing modeling, analyses, and
2 demonstrations; and
3 (6) Preparing inventories and tracking waste releases.
4 (c) Private landfills shall be assessed an annual
5 compliance fee based on the number of tons of solid waste
6 accepted by the private landfill. Unless rules state otherwise,
7 annual compliance fees shall be changed in December of each year
8 only by the percentage, if any, by which the consumer price
9 index for that calendar year exceeds the consumer price index
10 for the prior calendar year. The consumer price index for any
11 calendar year is the average of the consumer price index for all
12 urban consumers published by the United States Department of
13 Labor, as of the close of the twelve-month period ending on
14 August 31 of each calendar year.
15 (d) Nothing in the annual compliance fee provisions of
16 subsection (c) shall restrict the director from assessing more
17 or less than the amount determined under subsection (c) from any
18 one private landfill or any class or category of private
19 landfills, as designated by the director; provided the director
20 collects a total amount of fees sufficient to cover the costs of
21 the permit program.



1 **§340A-K Judicial review.** The applicant and any person who
2 participated in the public comment process may obtain judicial
3 review in state court of the final action on a permit issuance
4 or renewal. This is in addition to judicial review otherwise
5 available.

6 **§340A-L Government records; confidential information.**

7 (a) The director shall make all government records maintained
8 pursuant to this part open to public inspection in accordance
9 with chapter 92F unless access is restricted or closed by law.

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

- 12 (1) Permit applications and all supporting information;
- 13 (2) Compliance plans (including schedules of compliance);
- 14 (3) Compliance monitoring reports;
- 15 (4) Certifications;
- 16 (5) Permits; and
- 17 (6) Except for testing results made confidential under
18 section 340A-H(c), any other information submitted to
19 the director pursuant to the permit program.

20 (c) Upon a showing satisfactory to the director by any
21 person that records, reports, or information, or particular part
22 thereof, to which the director has access pursuant to this part,



1 contain information of a confidential nature concerning secret
2 processes or methods of manufacture, these records, reports, or
3 information shall be kept confidential except that the record,
4 report, or information may be disclosed to other officers or
5 employees of the department and federal authorities concerned
6 with carrying out this part or when relevant in any proceeding
7 pursuant to this part. The contents of the permit itself shall
8 not be entitled to confidentiality protection.

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

19 (e) Any officer, or employee of the department, or agent
20 of the director acquiring confidential information from any
21 inspection authorized by section 340A-M who divulges the
22 information except as authorized in this part or except as



1 ordered by a court or at an administrative hearing regarding an
2 alleged violation of this part or of any rule shall be fined not
3 more than \$1,000.

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

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

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

20 (1) An order specifying a reasonable time during which
21 that person shall be required to take measures as may



1 be necessary to correct the violation and to give
2 periodic progress reports;

3 (2) An order imposing penalties provided in section
4 340A-S; and

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

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

15 (1) Shall order the alleged violator or violators to
16 submit a written schedule within thirty days
17 specifying the measures to be taken and the time
18 within which the measures shall be taken to bring that
19 person into compliance with this part, any rule, or
20 any permit issued pursuant to this part. The director
21 shall accept or modify the submitted schedule within
22 thirty days of receipt of the schedule. Any schedule



1 not acted upon after thirty days of receipt by the
2 director shall be deemed accepted by the 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, or any permit issued pursuant to this part,
6 if that person does not submit a written schedule to
7 the director within thirty days. This order shall
8 remain in effect until the director accepts the
9 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 the violation or
21 noncompliance with reasonable particularity.



1 (d) Any order issued pursuant to this part shall become
2 final, unless within twenty days after the notice of violation
3 and order is served, the person or persons named therein make a
4 written request for a hearing before the director. Any penalty
5 imposed pursuant to this part shall become due and payable
6 twenty days after the notice of penalty is served, unless the
7 person or persons named therein have made a timely written
8 request for a hearing before the director. When a hearing is
9 requested on any penalty imposed pursuant to this part, the
10 penalty shall become due and payable only upon completion of all
11 review proceedings and the issuance of a final order confirming
12 the penalty in whole or in part. Upon request for a hearing,
13 the director shall require that the alleged violator or
14 violators appear before the director for a hearing at the time
15 and place specified in the notice and answer the charges
16 complained of.

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



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

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

- 15 (1) Notice was given;
- 16 (2) A hearing was held or the time granted for requesting
17 a hearing expired without a request for a hearing;
- 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 with the approval of the governor,
10 without a public hearing, may order any person causing or
11 contributing to the release of pollution or contaminants from a
12 private landfill to immediately cease operations, and may take
13 any and all other actions as may be necessary. The order shall
14 fix a place and time, not later than twenty-four hours
15 thereafter, for a hearing to be 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 the declaration, if
19 the power is conferred by statute or constitutional provision,
20 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, or any condition of a permit pursuant to this
3 part, without the necessity of prior revocation of the permit,
4 to impose and collect civil penalties, to collect administrative
5 penalties, or obtain other relief. The court shall have the
6 power to grant relief in accordance with the Hawaii rules of
7 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 its principal place of business, or in
12 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, any condition of a permit issued pursuant
18 to this part, or any fee or filing requirement, shall be fined
19 not more than \$25,000 for each separate offense. Each day that
20 a violation continues shall constitute a separate offense.

21 (b) Any person who denies, obstructs, or hampers the
22 entrance, inspection, or monitoring by any duly authorized



1 officer or employee of the department of any building, place, or
2 vehicle that the officer or employee is authorized to enter and
3 inspect shall be fined not more than \$25,000 for each separate
4 offense. Each day that a violation continues shall constitute a
5 separate offense.

6 (c) Notwithstanding subsection (e), unless stated
7 otherwise, state of mind shall not be an element of proof for
8 civil violations.

9 (d) The penalties provided in this section shall be in
10 addition to any other penalties provided by state or federal
11 law, including chapters 128D and 128E.

12 (e) Any organization that knowingly releases or discharges
13 pollutants, contaminants, or extremely hazardous substances
14 outside the private landfill placing a person in imminent danger
15 of death or serious bodily injury violates this subsection. The
16 organization shall be subject to a civil fine of not more than
17 \$1,000,000.

18 **§340A-S Administrative penalties.** (a) In addition to any
19 other administrative or judicial remedy provided by this part or
20 by rules, the director may impose the penalties specified in
21 section 340A-R by written order.



- 1 (b) Factors that may be considered in imposing an
2 administrative penalty include:
- 3 (1) The nature and history of the violation and of any
4 prior violations;
- 5 (2) The economic benefit to the violator, or anticipated
6 by the violator, resulting from the violation;
- 7 (3) The opportunity, difficulty, and history of corrective
8 action;
- 9 (4) Good faith efforts to comply; and
- 10 (5) Other matters as justice may require.
- 11 (c) It is presumed that the violator's economic and
12 financial conditions allow payment of the penalty, and the
13 burden of proof to the contrary is on the violator.
- 14 (d) In any judicial proceeding to recover the
15 administrative penalty imposed, the director need only show
16 that:
- 17 (1) Notice was given;
- 18 (2) A hearing was held or the time granted for requesting
19 a hearing expired without a request for a hearing;
- 20 (3) The administrative penalty was imposed; and
- 21 (4) The penalty remains unpaid.



1 **§340A-T Criminal penalties.** (a) Any person who knowingly
2 violates any applicable standards or limitations, any condition
3 in a permit issued pursuant to this part, any order, any rule,
4 or any fee or filing requirement, shall be guilty of a class C
5 felony; provided that the maximum fine shall be not more than
6 \$25,000.

7 (b) Any person who knowingly makes any false statement,
8 representation, or certification in any form, in any notice or
9 report required by a permit, or who knowingly renders inaccurate
10 any monitoring device or method required by the director to be
11 maintained by the person pursuant to this part, or who fails to
12 report as required by this part, shall be guilty of a class C
13 felony; provided that the maximum term of imprisonment shall be
14 not more than two years, and the maximum fine shall be not more
15 than \$25,000.

16 (c) Any person who negligently releases or discharges
17 pollutants, contaminants, or extremely hazardous substances
18 outside the private landfill and who at the time negligently
19 places another person in imminent danger of death or serious
20 bodily injury shall guilty of a class B felony; provided the
21 maximum term of imprisonment shall be not more than one year.
22 If a conviction of any person under this subsection is a second



1 violation of this section, the person shall be guilty of a class
2 C felony; provided the maximum term of imprisonment shall be not
3 more than two years, and the maximum fine shall be not more than
4 \$25,000.

5 (d) Any person who knowingly releases or discharges
6 pollutants, contaminants, or extremely hazardous substances
7 outside the private landfill and who knows at the time that
8 another person is thereby placed in imminent danger of death or
9 serious bodily injury shall be guilty of a class A felony;
10 provided the maximum term of imprisonment shall be not more than
11 fifteen years, and the maximum fine shall be not more than
12 \$25,000.

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 including rules, orders, and permits issued by
20 the director.

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, any rule, or ordinance of any county shall be
8 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 the permit.

14 (b) Notwithstanding any other powers it has under the law,
15 the circuit court shall have jurisdiction to:

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

19 (2) Order the director to perform an act or duty required
20 by this part; and

21 (3) Apply any appropriate civil penalties.

22 (c) No action may be commenced:



- 1 (1) Under subsection (a) (1):
 - 2 (A) Prior to sixty days after the plaintiff has given
 - 3 notice of the violation to the director and any
 - 4 alleged violator of the standard, limitation, or
 - 5 order; or
 - 6 (B) If the director has commenced and is diligently
 - 7 prosecuting a civil action to require compliance
 - 8 with the standard, limitation, or order, but in
 - 9 any such action any person may intervene as a
 - 10 matter of right; or
- 11 (2) Under subsection (a) (2), prior to sixty days after the
- 12 plaintiff has given notice of the action to the
- 13 director. Notice under this paragraph shall be given
- 14 in the manner prescribed by rules.
- 15 (d) An action for a violation of this part by an owner or
- 16 operator of a private landfill shall be brought in the judicial
- 17 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 the award to be
3 appropriate. If a temporary restraining order or preliminary
4 injunction is sought, the court may require the filing of a bond
5 or equivalent security in accordance with the Hawaii rules of
6 civil 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 the civil penalties, in lieu of being deposited in
14 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,~~] the Resource Conservation and Recovery Act (RCRA), such
 3 as commercial solid waste, nonhazardous sludge, small quantity
 4 generator waste and industrial solid waste. Such a landfill
 5 [~~may~~] shall be publicly [~~or privately~~] owned. A municipal solid
 6 waste landfill unit may be a new municipal solid waste landfill
 7 unit, an existing municipal solid waste landfill unit, or a
 8 lateral expansion."

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

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

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

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

19

INTRODUCED BY: _____



Report Title:

Solid Waste; Private Landfill Permit Program

Description:

Transfers regulation of private landfills from the counties to the department of health; establishes a private landfill permit program administered by the department of health.

