

CHAPTER 342H
SOLID WASTE POLLUTION

Part I. Definitions and General Provisions

Section

- 342H-1 Definitions
- 342H-2 Administration
- 342H-2.5 Department of health; delegation of enforcement powers
- 342H-3 Duties; rules; appointment of hearings officers
- 342H-4 Permits; procedures for
- 342H-4.5 Repealed
- 342H-5 Variances
- 342H-6 Inspection of premises
- 342H-7 Enforcement
- 342H-8 Emergency powers; procedures
- 342H-9 Penalties
- 342H-10 Administrative penalties
- 342H-10.5 Disposition of collected fines and penalties
- 342H-11 Injunctive and other relief
- 342H-12 Appeal
- 342H-13 Fees
- 342H-14 Public records; confidential information; penalties
- 342H-15 Nonliability of department personnel
- 342H-16 Other action not barred
- 342H-17 Enforcement by state and county authorities
- 342H-18 Other powers of department not affected
- 342H-19 Effect of laws, ordinances, and rules
- 342H-20 Priority in courts
- 342H-21 Unauthorized removal of recyclable materials

Part II. Solid Waste Control

- 342H-30 Prohibition; civil
- 342H-31 Rules; specific
- 342H-32 Plans and reports
- 342H-33 Appointment of masters
- 342H-34 Consultation and advice
- 342H-35 Research, educational, and training programs
- 342H-36 Recycling for agricultural purposes; encouraged
- 342H-36.5 Leaf blower debris
- 342H-37 Felony disposal of solid waste
- 342H-38 Felony disposal of solid waste; deferred prosecution agreement
- 342H-39 Petty misdemeanor disposal of solid waste

Part III. Plastic Container Coding

- 342H-41 Definitions
- 342H-42 Prohibition

Part IV. Municipal Solid Waste Landfill Criteria

342H-51 Definitions

342H-52 Prohibition

342H-53 Applicability and requirements

342H-54 Public participation

342H-55 Rules; specific

342H-56 Other powers

342H-57 Intervention

Cross References

Construction projects; recycled glass requirements, see §103D-407.

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Glass container recovery, see §§342G-81 to 87.

Litter control, see chapter 339.

Special wastes recycling, see chapter 342I.

Law Journals and Reviews

Liability Insurance Coverage for Pollution Claims. 12 UH L. Rev. 83.

Municipal Waste Combustion: A Wasted Investment? 12 UH L. Rev. 215.

"PART I. DEFINITIONS AND GENERAL PROVISIONS

§342H-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Complaint" means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

"Department" means the department of health.

"Director" means the director of health.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste onto any land or water so that such solid waste, or any constituent thereof, may enter the environment, be emitted into the air, or discharged into any water, including ground waters.

"Incineration" means the treatment of solid waste by burning in a furnace designed for the purpose wherein solid waste is essentially reduced to ash, carbon dioxide, and water vapor.

"Inert fill material" means earth, soil, rocks, rock-like material such as cured asphalt, brick, and clean concrete less than eight inches in diameter, except as specified by a licensed soils engineer with no exposed steel reinforcing rod. The fill material shall not contain vegetation or organic material, or other solid waste.

"Open dump" means a disposal site that is operating in nonconformance with applicable standards, relevant permit conditions, rules, or this chapter.

"Party" means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

"Permit" means written authorization from the director to construct, modify, and operate any solid waste management system or any component of any solid waste management system. A permit authorizes the grantee to construct, modify, and operate any solid waste management system in a manner or amount, not forbidden by this chapter, or by rules adopted pursuant to this chapter but requiring review by the department.

"Person" means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Petroleum" means any petroleum, including crude oil or any fraction thereof, that is liquid at standard temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Petroleum-contaminated soil" means soil that has been contaminated by a release of petroleum to a degree that exceeds levels determined to be acceptable by the director.

"Pollution" means solid waste pollution.

"Recycling" means the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

"Sanitary landfill" means a land site on which engineering principles are utilized to bury deposits of solid waste without creating a nuisance or hazard to public health or safety.

"Secondary resources" means postconsumer material collected and processed for feedstock in a manufacturing process.

"Solid waste" means garbage, refuse, and other discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved materials in domestic sewage or other substances in water sources such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants, or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923).

"Solid waste management system" means a system for the storage, processing, treatment, transfer, or disposal of solid waste.

"Variance" means special written authorization from the director to do an act that deviates from applicable standards or from the requirements of rules adopted under this chapter.

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the atmosphere, lands or waters of this State. [L 1989, c 212, pt of §4; am L 1990, c 34, §21 and c 298, §6; am L 1992, c 245, §2; am L 1993, c 190, §5 and c 281, §2; am L 1994, c 210, §3; am L 1997, c 268, §2; am L 1998, c 226, §1]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[\$342H-2] Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules. [L 1989, c 212, pt of §4]

Cross References

Regulation of nondegradable solid waste, see §§339-21 to 24.

" **[\$342H-2.5] Department of health; delegation of enforcement powers.** The department, pursuant to rules adopted in accordance with chapter 91, may delegate to agencies of the various counties the powers or authority vested in the department to investigate alleged violations of section 342H-30(c). [L 1994, c 210, §2]

" **[\$342H-3] Duties; rules; appointment of hearings officers.**
(a) In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate solid waste pollution in the State. In the discharge of this duty, the director may make, amend, and repeal state rules controlling and prohibiting solid waste. All rules shall be adopted pursuant to chapter 91. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.

(b) In addition to other specific powers provided in this chapter, the director may appoint without regard to chapter 76, hearings officers to conduct public participation activities

including public hearings and public informational meetings. [L 1989, c 212, pt of §4; am L 2000, c 253, §150]

" **§342H-4 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for permits be accompanied by plans, specifications, and any other information it deems necessary in order for it to determine whether the proposed installation, alteration, disposal, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that such is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit;
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts;
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted disposal; or
- (4) Such is in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(d) The failure of the director to act on an application for the issuance of a permit or an application by a permit

holder for the modification or renewal thereof within one hundred eighty days of the receipt of such application, except for all federally delegated permit programs and federally approved programs, shall be deemed a grant of such application provided that the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.

(e) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application provided that the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof. [L 1989, c 212, pt of §4; am L 1990, c 298, §7; am L 1992, c 245, §3; am L 1993, c 190, §6]

" **§342H-4.5 REPEALED.** L 2007, c 25, §1.

" **§342H-5 Variances.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to applicable standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the standards established pursuant to this chapter.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the disposal of solid waste in nonconformance with applicable standards or rules. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the disposal occurring or proposed to occur by the granting of the variance is in the public interest as defined in section 342H-4;
- (2) The disposal occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the applicable standards or rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and

under conditions consistent with the reasons therefor, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the solid waste pollution involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the solid waste pollution involved;
- (2) The director may issue a variance for a period not exceeding five years; and
- (3) Every variance granted under this section may be subject to such conditions as the director may prescribe.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for a variance not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(h) Any application for a variance submitted pursuant to this chapter, shall be subject to the following public participation requirements:

- (1) Public notices of every completed application for a variance shall be given in a manner designed to inform interested and potentially interested persons of the proposed disposal or other proposed activity.

Procedures for giving public notice shall include at least the following:

- (A) Notice shall be given within the geographical areas of the proposed disposal or other proposed activity;
 - (B) Notice shall be mailed to any person or group upon request; and
 - (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area;
- (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written reviews with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director;
- (3) The contents of public notice of applications for variances shall include at least the following:
- (A) Name, address, and phone number of agency issuing the public notice;
 - (B) Name and address of each applicant;
 - (C) Brief description of each applicant's activities or operations which result in the disposal or other activity described in the variance application;
 - (D) A short description of the location of each disposal or activity indicating whether the disposal or activity is new or existing;
 - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) and any other means by which interested persons may influence or comment upon those determinations; and
 - (F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents; and
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of

the proposed disposal or other proposed activity, or other appropriate area, at the discretion of the director.

(i) Variances shall not be granted to owners or operators of municipal solid waste landfill units except where specifically provided for in the rules adopted pursuant to this part. [L 1989, c 212, pt of §4; am L 1992, c 245, §4; am L 1998, c 2, §91]

" **[§342H-6] Inspection of premises.** The director, in accordance with law, may enter and inspect any facility, building, or place to investigate an actual or suspected source of solid waste pollution, to ascertain compliance or noncompliance with this chapter or any rule or standard adopted by the department pursuant to this chapter, any permit or variance issued by the department pursuant to this chapter, and to make reasonable tests in connection therewith. No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of solid waste pollution shall be disclosed by the official or employee except as it relates directly to solid waste pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment. [L 1989, c 212, pt of §4]

" **§342H-7 Enforcement.** (a) If the director determines that any person has violated or is violating any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit issued pursuant to this chapter, the director may do any one or more of the following:

- (1) *[Paragraph effective until December 31, 2016. For paragraph effective January 1, 2017, see below.]* Issue an order assessing an administrative penalty for any past or current violation;
- (1) *[Paragraph effective January 1, 2017. For paragraph effective until December 31, 2016, see above.]* Issue an order assessing an administrative penalty for any past or current violation; provided that if all attempts of service of process upon the person who has been or is in violation are unsuccessful by personal delivery and by certified, registered, or express mail, notice may be given via a posting on a searchable government website and a sign conspicuously posted on the property, if appropriate;

- (2) Require compliance immediately or within a specified time; and
- (3) Commence a civil action in the circuit environmental court in the circuit in which the violation occurred or the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties, or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a permit issued under this chapter, and shall state with reasonable specificity the nature of the violation. Any administrative penalties assessed in the order shall be in accordance with section 342H-10.

(c) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(d) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or disposals involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or disposals.

(e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to collect the administrative penalty which shall be a government realization.

In any proceeding to collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

(f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties. [L 1989, c 212, pt of §4; am L 1990, c 298, §8; am L 1992, c 245, §5; am L 1995, c 180, §20; am L 2014, c 218, §8; am L 2016, c 45, §2]

" **§342H-8 Emergency powers; procedures.** (a)

Notwithstanding any other law to the contrary, if the governor or the director determines that an imminent peril to the public health and safety is or will be caused by the disposal of solid waste or any combination of discharges of other waste that requires immediate action, the governor or the director, without a public hearing, may order any person causing or contributing to the disposal of solid waste or discharge of other waste to immediately reduce or stop the disposal or discharge, and may take any and all other actions as may be necessary. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office. [L 1989, c 212, pt of §4; am L 1995, c 201, §3]

Cross References

Environmental response law, see chapter 128D.

" **§342H-9 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate

offense. Any action taken in environmental court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance or inspection by any duly authorized officer or employee of the department of any building, place, or vehicle which the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken in environmental court to impose or collect the penalty provided for in this subsection shall be considered a civil action. [L 1989, c 212, pt of §4; am L 1991, c 157, §15; am L 1995, c 180, §21; am L 2014, c 218, §8]

" **§342H-10 Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section 342H-9(a) and (b).

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

- (1) The nature and history of the violation and of any prior violations;
- (2) The economic benefit, if any, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action;
- (4) Good faith efforts to comply; and
- (5) Any other matters that justice may require.

(c) It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary shall be on the violator. [L 1989, c 212, pt of §4; am L 1995, c 180, §22]

" **§342H-10.5 Disposition of collected fines and penalties.**

Except as otherwise provided in this section, fines and penalties collected under sections 342H-9 and 342H-10 shall be deposited into the environmental response revolving fund established by section 128D-2. Where a county individually, or the State and a county jointly, initiates and conducts an investigation resulting in the imposition and collection of a fine or penalty, pursuant to section 342H-30(c), the fine or penalty shall be distributed as follows:

- (1) One half to the department of the county whose officers or employees initiated and conducted the investigation; and

- (2) One half to the environmental response revolving fund established in section 128D-2. [L 1991, c 157, §4; am L 1994, c 210, §4]

" **§342H-11 Injunctive and other relief.** The director may institute a civil action in any environmental court of competent jurisdiction for injunctive and other relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance, to impose and collect civil penalties, to collect administrative penalties, or to obtain other relief. The environmental court shall have power to grant relief in accordance with the Hawaii rules of civil procedure. [L 1989, c 212, pt of §4; am L 1995, c 180, §23; am L: 2014, c 218, §8]

Rules of Court

Injunctions, see HRCF rule 65.

" **[§342H-12] Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit environmental court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by [an] environmental court of competent jurisdiction. [L 1989, c 212, pt of §4; am L 2014, c 218, §8]

" **[§342H-13] Fees.** The director may establish reasonable fees for the issuance of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances (not including court costs or other costs associated with any formal enforcement action). The fees shall be deposited to the credit of the general fund. [L 1989, c 212, pt of §4]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[§342H-14] Public records; confidential information; penalties.** Solid waste management permit applications and reports on the disposal or management of solid waste submitted

to the department shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section 342H-6 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000. [L 1989, c 212, pt of §4]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" [§342H-15] Nonliability of department personnel.

Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section 342H-14. [L 1989, c 212, pt of §4]

" [§342H-16] Other action not barred. No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter. [L 1989, c 212, pt of §4]

" [§342H-17] Enforcement by state and county authorities. All state and county health authorities and police officers shall enforce this chapter and the rules, orders, and permits of the department. [L 1989, c 212, pt of §4]

" [§342H-18] Other powers of department not affected. The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law. [L 1989, c 212, pt of §4]

" §342H-19 Effect of laws, ordinances, and rules. (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Except as provided in section 342H-30(c), any county may adopt ordinances and rules governing any matter relating to solid waste management that is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to solid waste management shall be void and of no effect as to any matter regulated by a rule of the department upon its adoption. [L 1989, c 212, pt of §4; am L 1994, c 210, §5]

" **[§342H-20] Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter or pursuant to the conditions of a permit issued under this chapter shall in the discretion of the court receive priority in the courts of the State. [L 1989, c 212, pt of §4]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[§342H-21] Unauthorized removal of recyclable materials.** No person, other than an authorized agent of the State or a county, commercial waste generator, or private recycling system, shall knowingly remove any paper, glass, cardboard, plastic, used motor oil, ferrous metal, aluminum, or other recyclable materials that have been segregated from solid waste and placed at designated collection sites for the purposes of collection and recycling. [L 1992, c 81, §1]

"PART II. SOLID WASTE CONTROL

§342H-30 Prohibition; civil. (a) No person, including any public body, shall engage in the operation of an open dump.

(b) No person, including any public body, shall operate a solid waste management system without first securing approval in writing from the director.

(c) No person, including any public body, shall discard, dispose of, deposit, discharge, or dump solid waste, or by contract or otherwise arrange directly or indirectly for the disposal of solid waste in an amount equal to or greater than one cubic yard in volume anywhere other than a permitted solid waste management system without the prior written approval of the director. Each day of violation shall constitute a separate offense. This prohibition shall not be deemed to supersede any other disposal prohibitions established under federal, state, or county law, regulation, rule, or ordinance. [L 1989, c 212, pt of §4; am L 1994, c 210, §6; am L 1997, c 268, §3; am L 1998, c

226, §2; am L 2004, c 143, §2 and c 145, §2; am L 2005, c 105, §2]

" **§342H-31 Rules; specific.** The director may establish by rule the criteria for siting design, construction, financial responsibility, manifest, and operation of solid waste management systems. [L 1989, c 212, pt of §4; am L 1998, c 226, §3]

" **§342H-32 Plans and reports.** The director may require complete and detailed plans or reports on existing solid waste management systems and of any proposed addition to, modification of, or alteration of any such systems that contain the information requested by the director in the form prescribed by the director. The plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner. [L 1989, c 212, pt of §4; am L 1998, c 226, §4]

" **[§342H-33] Appointment of masters.** The director may appoint a master or masters to conduct investigations and hearings. [L 1989, c 212, pt of §4]

" **[§342H-34] Consultation and advice.** The director may consult with and advise any person engaged or intending to be engaged in the management of solid waste. [L 1989, c 212, pt of §4]

" **§342H-35 Research, educational, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the sources of solid waste, effects, and hazards of pollution associated with solid waste management systems;
- (2) With the approval of the governor, cooperate with, and receive money from the federal government or any political subdivision of the State, or from private sources for the study and control of solid waste pollution; and
- (3) Conduct and supervise state educational and training programs on solid waste management systems, including the preparation and distribution of information relating to solid waste pollution. [L 1989, c 212, pt of §4; am L 1998, c 226, §5]

" **§342H-36 Recycling for agricultural purposes; encouraged.** The director shall encourage the recycling of solid wastes,

including animal wastes and selected non-hazardous industrial wastes, and the composting of animal manures and by-products for agricultural and horticultural purposes. The use of treated sludge effluent for fertilizer and other agricultural purposes shall also be encouraged. Composting of agricultural secondary organic resources under approved methods shall also be encouraged. [L 1989, c 212, pt of §4; am L 1993, c 281, §4]

" **[§342H-36.5] Leaf blower debris.** (a) It shall be unlawful for any person to use or operate a leaf blower in such a manner as to blow, dispel, or make airborne dust, leaves, grass cuttings, paper, trash, or any other type of unattached debris or material, beyond the boundaries of the parcel of property being cleaned, unless the consent of the adjoining owner or person in possession of the adjoining property is obtained.

(b) It shall be unlawful for any person to use or operate a leaf blower in such a way as to blow leaves, dirt, and other debris onto the public rights-of-way or onto private property not owned, leased, or controlled by the leaf blower operator or the employer or contractor of the leaf blower operator and to allow the debris to remain there in excess of thirty minutes.

(c) For purposes of this section:

"Leaf blower" shall have the same meaning as defined in section 342F-30.8.

"Parcel" means a legal lot of record. Contiguous parcels owned by the same individual or entity shall be considered one parcel for purposes of this section. [L 2010, c 206, §2]

" **§342H-37 Felony disposal of solid waste.** (a) A person commits the offense of felony disposal of solid waste if the person:

- (1) Knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste in an amount equal to or greater than ten cubic yards in volume anywhere other than a permitted solid waste management system without the written approval of the director;
- (2) After having been sentenced under this section or section 342H-39 on two separate and prior occasions, knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste in an amount equal to or greater than one cubic yard in volume anywhere other than a permitted

solid waste management system without the written approval of the director; or

- (3) Knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste anywhere other than a permitted solid waste management system without the written approval of the director for which the expense of recovering, removing, restoring, and lawfully disposing of the solid waste exceeds \$1,500.

(b) This section shall not supersede any other disposal prohibitions established under federal, state, or county law, ordinance, regulation, or rule.

(c) Felony disposal of solid waste is a class C felony for which a maximum fine of \$50,000 for each separate offense may be imposed. [L 2004, c 143, pt of §1; am L 2005, c 105, §3]

" **[§342H-38] Felony disposal of solid waste; deferred prosecution agreement.** First time offenses for persons cited with felony disposal of solid waste may enter into a deferred prosecution agreement. Persons failing to meet all of the terms of a deferred prosecution agreement shall be subject to prosecution under this section.

For the purposes of this section, a deferred prosecution agreement shall mean an agreement offered by the prosecutor, in the prosecutor's discretion, to the person cited that would defer prosecution during the statute of limitations period, subject to renewed prosecution if the defendant violates the conditions of the agreement. The agreement, if one is offered, shall contain provisions reasonably calculated to deter future violations. No person shall be offered a deferred prosecution agreement under this section more than once. If all terms of the agreement are met, all records of the person's arrest, indictment, or plea shall be cleared. Entering into a deferred prosecution agreement shall not be considered an admission of guilt. [L 2004, c 143, pt of §1]

" **[§342H-39] Petty misdemeanor disposal of solid waste.** (a) A person commits the offense of petty misdemeanor disposal of solid waste if the person knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste in an amount equal to or greater than one cubic yard in volume and less than ten cubic yards in volume, anywhere other than a permitted solid waste management system without the written approval of the director.

(b) Petty misdemeanor disposal of solid waste is punishable by:

- (1) A fine of not more than \$25,000 for each separate offense;
- (2) Not more than thirty days imprisonment for each offense; or
- (3) Revocation or suspension by court order of any contractor's license or any applicable certificate of authorization from the public utilities commission.

Each day of violation shall constitute a separate offense.

(c) Each fine collected for a violation of this section shall be distributed to the authorized agency that enforced the prohibition under which the fine was imposed.

(d) This section shall not apply to solid waste consisting solely of green waste. For the purposes of this section, "green waste" means solid waste that consists solely of leaves, grass clippings, garden and yard wastes, tree trunks, holiday trees, tree trimmings, and prunings, or any combination thereof. [L 2005, c 105, §1]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

"[PART III.] PLASTIC CONTAINER CODING

[\$342H-41] Definitions. As used in this part, unless the context otherwise requires:

"Label" means a molded imprint or raised symbol on or near the bottom of a plastic product.

"Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.

"Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure and has a capacity of sixteen fluid ounces or more, but less than five gallons.

"Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more, but less than five gallons. [L 1990, c 318, pt of §1]

Revision Note

"Part" substituted for "chapter".

Cross References

Plastic connecting devices prohibition, see §339-22.

" **[§342H-42] Prohibition.** On or after January 1, 1992, no person shall manufacture, distribute, sell, or expose for sale in this State any plastic bottle or rigid plastic container unless the product has a label indicating the plastic resin used to produce the plastic bottle or rigid plastic container. The label shall consist of a number placed within a triangle of arrows and letters placed below the triangle. The triangle shall be equilateral, formed by three arrows curved at their midpoints and depicting a clockwise path around the code number. The numbers and letters used shall be as follows:

- (1) For polyethylene terephthalate, the letters "PETE" and the number 1;
- (2) For high density polyethylene, the letters "HDPE" and the number 2;
- (3) For vinyl, the letter "V" and the number 3;
- (4) For low density polyethylene, the letters "LDPE" and the number 4;
- (5) For polypropylene, the letters "PP" and the number 5;
- (6) For polystyrene, the letters "PS" and the number 6;
and
- (7) For any other, the letters "OTHER" and the number 7.
[L 1990, c 318, pt of §1]

"[PART IV.] MUNICIPAL SOLID WASTE LANDFILL CRITERIA

[§342H-51] Definitions. Unless otherwise explicitly stated, the definitions provided in section 342H-1 shall control the meaning of the terms used in this part. As used in this part, unless the context otherwise requires:

"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

"Existing municipal solid waste landfill unit" means any municipal solid waste landfill unit that is receiving solid waste on October 9, 1993.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and

motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from electric power generation, water treatment, and the manufacture of the following products: fertilizers and agricultural chemicals; food and related products and byproducts; inorganic chemicals; iron and steel; leather and leather products; nonferrous metals; organic chemicals; plastics and resins; pulp and paper products; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textiles; and transportation equipment. This term does not include mining waste or oil and gas waste.

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

"Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives household waste and is not a land application unit, surface impoundment, injection well, or waste pile. A municipal solid waste landfill unit also may receive other types of waste regulated under Subtitle D of RCRA, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A municipal solid waste landfill unit may be a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion.

"New municipal solid waste landfill unit" means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

"Operator" means the person responsible for the overall operation of a facility or part of a facility.

"Owner" means the person who owns a facility or part of a facility.

"RCRA" means the federal Resource Conservation and Recovery Act, as amended, 42 United States Code, §§6901 to 6991i. [L 1992, c 245, pt of §1]

" **[§342H-52] Prohibition.** No person, including any federal agency, the State, or any county, shall construct, operate, modify, expand, or close a municipal solid waste landfill unit, or any component of a municipal solid waste landfill unit, without first obtaining a permit from the director. All permits for municipal solid waste landfill units shall be subject to such terms and conditions as the director determines are

necessary to protect human health or the environment. [L 1992, c 245, pt of §1]

" **[§342H-53] Applicability and requirements.** (a) The provisions of this part do not apply to municipal solid waste landfill units that do not receive wastes after October 9, 1991.

(b) Municipal solid waste landfill units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are exempt from the requirements of this part except the final cover requirement prescribed by rules adopted pursuant to this part. The final cover shall be installed within six months of the last receipt of wastes. Owners and operators of municipal solid waste landfill units subject to this subsection that fail to complete cover installation within six months from the date of the last receipt of wastes shall be subject to all the requirements of this part, and rules adopted pursuant to this part, subject to such exemptions as may be provided by those rules.

(c) The provisions of this part apply to owners and operators of new municipal solid waste landfill units, existing municipal solid waste landfill units, and lateral expansions, except as otherwise provided in this part or otherwise exempted by rules adopted pursuant to this part.

(d) Following closure of a municipal solid waste landfill unit, or a component of a municipal solid waste landfill unit, the owner or operator of the unit shall conduct post-closure care for a period of thirty years. The director may increase the length of the post-closure care period if the director determines that the lengthened period is necessary to protect human health and the environment. The director may decrease the length of the post-closure care period if the owner or operator of the closed municipal solid waste landfill unit demonstrates to the satisfaction of the director that the reduced period is sufficient to protect human health and the environment.

(e) Owners and operators of municipal solid waste landfill units that receive waste on or after October 9, 1993, shall comply with the financial assurance criteria that the director shall establish by rules adopted pursuant to this part. Such rules shall be effective no later than April 9, 1994.

(f) Municipal solid waste landfill units containing sewage sludge shall comply with the provisions of this part and the rules adopted pursuant to this part.

(g) In addition to compliance with the provisions of this part and rules adopted pursuant to this part, owners and operators of a municipal solid waste landfill unit shall comply with any other applicable state and federal law. [L 1992, c 245, pt of §1]

" **[\$342H-54] Public participation.** The director may adopt rules providing for public participation in the process of reviewing applications for permits, permit renewals, permit modifications, selection of corrective action remedies, and related matters. Such rules may require applicants and permittees to be responsible for the publication of notices, making documents and relevant information available to the public for public review and comment and conducting public hearings. The rules may also include public participation provisions similar to any promulgated by the United States Environmental Protection Agency for municipal solid waste landfill permit programs. Public notices shall be given of the director's final determination on permit applications, renewals, modifications, and selection of corrective action remedies. A public hearing may be held before the director rules on a permit application, renewal, modification, or selection of corrective action remedies if the director determines that a public hearing would be in the public interest. [L 1992, c 245, pt of §1]

" **[\$342H-55] Rules; specific.** The director may establish by rule the criteria, standards, and requirements relating to the location, design, construction, operation, maintenance, expansion, closure, and post-closure care of municipal solid waste landfill units. In addition, the director may establish by rule assessment monitoring, ground-water monitoring, ground-water protection, landfill gas monitoring, landfill gas collection, detection monitoring, corrective measure, remedial action, preventive action, response action, manifest, recordkeeping, notification, public meeting, deed notation, and financial assurance requirements, standards, or criteria for municipal solid waste landfill units. [L 1992, c 245, pt of §1]

" **[\$342H-56] Other powers.** In addition to any other power or duty prescribed by law or this part, the director may establish by rule a municipal solid waste landfill program that meets or exceeds the standards, criteria, and requirements set forth in the federal municipal solid waste landfill regulations, 40 C.F.R. Part 258. [L 1992, c 245, pt of §1]

" **[\$342H-57] Intervention.** Any person shall have the right to intervene in any civil action to enforce the provisions of this part if the person has an interest that is, or may be, adversely affected. [L 1992, c 245, pt of §1]