

**CHAPTER 342J**  
**HAZARDOUS WASTE**

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

Environmental response law, see chapter 128D.

Hawaii emergency planning and community right-to-know act, see chapter 128E.

Transportation of hazardous materials, see §§286-221 to 227.

## **Law Journals and Reviews**

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

Enforcement of Environmental Laws in Hawai'i. 16 UH L. Rev. 85.

## **"PART I. PREAMBLE**

**[§342J-1] Legislative policy; program priorities.** The legislature finds that hazardous waste must be managed in a manner that protects the health, safety, and welfare of the citizens of the State and protects and conserves the State's natural resources and environment. Accordingly, the hazardous waste management program of this State shall be a preventive as well as a regulatory program that gives priority to:

- (1) The provision of technical assistance to generators to ensure the safe and proper handling of hazardous waste;
- (2) The establishment of a public education program to promote awareness of what constitutes hazardous waste and the dangers of improper disposal of hazardous waste;
- (3) The promotion of hazardous waste minimization, reduction, recycling, exchange, and treatment as the preferred methods of managing hazardous waste, with disposal to be used only as a last resort when all other hazardous waste management methods are ineffective or unavailable; and
- (4) The coordination of hazardous waste management efforts among the counties of this State, taking into consideration the unique differences and needs of each county. [L 1989, c 212, pt of §5]

## **"PART II. DEFINITIONS AND GENERAL PROVISIONS**

**§342J-2 Definitions.** As used in this chapter, unless the context otherwise requires:

"Any state" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"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 or the director's authorized agent.

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

"Financial responsibility" means a trust fund, surety bond, insurance, corporate guarantee, or letter of credit provided by owners or operators of hazardous waste treatment, storage, and disposal facilities to assure proper closure, post closure, corrective action, and compensation for injuries to people or damage to property.

"Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this chapter.

"Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in a serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial existing or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hazardous waste broker" means any person who:

- (1) Acts as an intermediary between:
  - (A) A generator and a transporter; or
  - (B) A generator and a person who treats, stores, or disposes of hazardous waste; or
  - (C) A generator and another broker; and
- (2) Performs one or more of the following:
  - (A) Mixes hazardous wastes of different United States Department of Transportation shipping descriptions by placing them into a single container or tank as defined in 40 Code of Federal Regulations Part 260 (provided that a

broker who mixes hazardous waste must comply with all statutory and regulatory provisions applicable to generators);

- (B) Packages or repackages hazardous waste;
- (C) Labels, marks, or manifests hazardous waste;
- (D) Performs waste characterization of hazardous waste; or
- (E) Arranges the storage, treatment, transportation, disposal, or recycling of hazardous waste for a fee based upon the completion of the transaction.

"Hazardous waste management" means the systematic control over the generation, collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

"Hazardous waste management facility" or "facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

"Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels, motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds and day user recreation areas).

"Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of treatment, storage, or disposal.

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

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

"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 for the owner or operator of a proposed or existing hazardous waste management facility to engage in the treatment, storage, or disposal of hazardous waste. A permit authorizes the owner or operator to treat, store, or dispose of hazardous waste in a manner or amount, or to do any act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department.

"Person" means any individual, partnership, firm, joint stock company, association, public or private corporation,

federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity.

"Pollution" means hazardous waste pollution.

"RCRA" means the Resource Conservation and Recovery Act, as amended, 42 United States Code §§6901 to 6991i.

"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 material in domestic sewage, irrigation return flows, or industrial discharges which are subject to permit under chapter 342D.

"Storage" means the containment of hazardous waste, temporarily or for a period of years, in a manner which does not constitute disposal.

"Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, water, or pipeline.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or render it nonhazardous, less hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. This term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous. [L 1989, c 212, pt of §5; am L 1990, c 298, §9; am L 1991, c 259, §§3, 4; am L 1994, c 267, §3; am L 1995, c 180, §24]

#### **Note**

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

" **[§342J-3] 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 §5]

" **§342J-4 Powers; rulemaking; appointment of hearings officers.** (a) The director may make, amend, and repeal state

rules which govern the management of hazardous waste and which control and prohibit hazardous waste pollution. 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 §5; am L 1991, c 259, §5; am L 2000, c 253, §150]

" **§342J-5 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The director may require that applications for such permits shall be accompanied by plans, specifications, and information as the director deems necessary for the director to determine whether the proposed or existing hazardous waste management facility will be in compliance with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that the applicant and facility have complied with the provisions of this chapter. Each permit shall be reviewed five years after the date of issuance and shall be modified as necessary to assure that the facility and permittee continue to comply with applicable provisions of this chapter. Nothing in this subsection shall preclude the director from reviewing and modifying a permit at any time during its term. Each permit issued under this section shall contain such terms and conditions as the director determines are necessary to protect human health or the environment.

The director 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 term or 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 circumstance that necessitates a modification, suspension, or revocation of the permit; or
- (4) Such is in the public interest.

Public notice shall be given of proposed decisions respecting permit issuance, reissuance, denial, revocation, suspension, substantial modification to a permit requested by a

permittee, and modifications to a permit initiated by the director. The director may hold a public hearing before issuing a final decision respecting a permit issuance, reissuance, denial, revocation, suspension, request by a permittee to substantially modify a permit, and any modification to a permit initiated by the director if the director determines that such a public hearing is in the public interest. The permit notice and public hearing requirements in this section shall not apply to used oil permits as provided for in section 342J-54.

(d) No applicant for a modification or reissuance of a permit shall be held in violation of this chapter during the pendency of the applicant's application so long as the applicant acts consistently and the facility is in compliance with the permit previously granted. [L 1989, c 212, pt of §5; am L 1991, c 259, §6; am L 2000, c 3, §1]

" **§342J-6 Furnishing of information and entry and inspection of premises.** (a) For purposes of enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste shall, upon request of any duly authorized representative of the director, furnish information relating to such wastes and permit such representative at all reasonable times to have access to, and to copy all records relating to such wastes.

(b) For purposes of enforcing the provisions of this chapter the authorized representative may:

- (1) Enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;
- (2) Inspect and obtain samples of any such wastes and samples of any containers or labeling for such wastes; and
- (3) Obtain any other information for purposes of determining compliance with the provisions of this chapter, including financial information.

Each such inspection shall be commenced and completed with reasonable promptness. [L 1989, c 212, pt of §5; am L 1991, c 259, §7]

" **[§342J-6.5] Notification.** (a) Not later than forty-five days after June 18, 1993, any person generating or transporting, or owning or operating a facility for treatment, storage, or disposal of, any substance listed as hazardous waste or identified by its characteristics as hazardous waste under 40 Code of Federal Regulations Part 261, shall file with the



department a notification stating the location and general description of the activity and the type and amount of hazardous waste handled or generated by the person.

(b) Not later than forty-five days after the adoption pursuant to this chapter of any rule that lists or identifies by characteristics any substance as hazardous waste, any person generating or transporting the substance, or owning or operating a facility for treatment, storage, or disposal of the substance, shall file with the department a notification stating the location and general description of the activity and the type and amount of hazardous waste handled or generated by the person.

This subsection shall not apply to activities or hazardous waste as to which notification has been made in compliance with subsection (a).

(c) Any person required by this section to provide notification to the department shall also advise the department, by January 31 of each year following initial notification, of the following changes:

- (1) Location of business;
  - (2) Name of business;
  - (3) Mailing address;
  - (4) Name of person who owns the facility at which hazardous waste is handled or generated;
  - (5) Change of status from small quantity to large quantity generator; and
  - (6) Change of status from large quantity to small quantity generator.
- (d) This section shall not apply to:
- (1) Generators of less than one hundred kilograms of hazardous waste per month; or
  - (2) Any other person exempted from the notification requirements of this section pursuant to rules adopted by the department. [L 1993, c 267, §1]

#### **Revision Note**

"June 18, 1993" substituted for "the effective date of this section".

" **§342J-7 Enforcement.** (a) If the director determines that any person has violated or is violating any provisions of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit issued pursuant to this chapter or section 3005 of RCRA, 42 United States Code section 6925, the director may do one or more of the following:

- (1) Issue an order assessing an administrative penalty for any past or current violation;
- (2) Require compliance immediately or within a specified time; or
- (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 any permit issued under section 3005 of RCRA, 42 United States Code section 6925, by the administrator of the United States Environmental Protection Agency, or issued under section 342J-5 or 342J-54 by the director, and shall state with reasonable specificity the nature of the violation. Any administrative penalties assessed in the order shall be in accordance with section 342J-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 §5; am L 1990, c 298, §10; am L 1991, c 259, §8; am L 1995, c 180, §25; am L 1996, c 82, §21 am L 2014, c 218, §8]

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

Notwithstanding any other law to the contrary, if the governor or the director determines that the past or present handling, storage, treatment, transportation, or disposal of any hazardous waste or hazardous waste constituent may present an imminent and substantial endangerment to health or the environment, the governor or the director, without a public hearing, may secure or order such relief as may be necessary to abate the danger or threat. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director. The governor or the director may also institute a civil action in any environmental court of competent jurisdiction to secure such relief as may be necessary to abate the danger or threat.

(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 §5; am L 1991, c 259, §9; am L 1995, c 201, §4; am L 2014, c 218, §8]

#### **Cross References**

Environmental response law, see chapter 128D.

" **§342J-9 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$25,000 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 representative of the director, or fails to provide information requested by the representative under section 342J-6 or 342J-55 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.

(c) Any person who knowingly:

- (1) Transports any hazardous waste to a storage, treatment, or disposal facility that does not have a permit pursuant to section 342J-5 to treat, store, or dispose of that particular hazardous waste;
- (2) Treats, stores, or disposes of hazardous waste without first having a permit pursuant to section 342J-5, or who violates any term or condition of a permit or variance issued pursuant to this chapter;
- (3) Transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil or used oil fuel in violation of any rules adopted pursuant to this chapter relating to used oil or used oil fuel;
- (4) Makes a false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used, for purposes of compliance with this chapter, including compliance with any rules adopted pursuant to this chapter relating to used oil or used oil fuel; or
- (5) Abandons or causes to be abandoned any hazardous waste, used oil, or used oil fuel;

shall be subject to criminal penalties. Violations of paragraphs (3) and (4) are misdemeanor offenses. In addition to any other sentence, a person who violates paragraph (3) or (4) may be ordered to pay a fine not to exceed \$25,000 for each day of each violation.

Violations of paragraphs (1), (2), and (5) are class C felonies. In addition to any other sentence, a person who

violates paragraph (1), (2), or (5) may be ordered to pay a fine not to exceed \$25,000 for each day of each violation.

For purposes of this subsection, "abandon" means the act of deserting or leaving behind a hazardous waste, used oil, or used oil fuel. [L 1989, c 212, pt of §5; am L 1990, c 298, §11; am L 1991, c 157, §16 and c 259, §10; am L 1995, c 180, §26; am L 1996, c 82, §3; am L 1997, c 147, §3; am L 2001, c 21, §1; am L 2014, c 218, §8]

" **§342J-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 342J-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 §5; am L 1995, c 180, §27]

" **[§342J-10.5] Disposition of collected fines and penalties.** Fines and penalties collected under sections 342J-9 and 342J-10 shall be deposited into the environmental response revolving fund established by section 128D-2. [L 1991, c 157, §5]

" **[§342J-10.6] Guarantors.** (a) In a case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any [environmental court] cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this chapter or rules adopted pursuant to this chapter may be asserted directly against the guarantor providing evidence of financial responsibility. In the case of any action pursuant to this section, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator by the claimant and which would have been available

to the guarantor if an action had been brought against the guarantor by the owner or operator.

(b) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter or rules adopted pursuant to this chapter. Nothing in this section shall be construed to limit any other statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith either in negotiations or in failing to negotiate the settlement of any claim. Nothing in this section shall be construed to diminish the liability of any person under chapter 128D or other applicable law.

(c) For the purpose of this section, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this chapter or rules adopted pursuant to this chapter. [L 1991, c 259, pt of §1; am L 2014, c 218, §8]

" **§342J-10.7 REPEALED.** L 1991, c 259, §19.

" **§342J-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:

- (1) Address any release of hazardous waste or any hazardous waste constituent pursuant to section 342J-36;
- (2) Prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit adopted pursuant to this chapter, without the necessity of a prior revocation of the permit; and
- (3) Impose and collect civil penalties, to collect administrative penalties, and 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 §5; am L 1991, c 259, §11; am L 1995, c 180, §28; am L 2014, c 218, §8]

### **Rules of Court**

Injunctions, see HRCF rule 65.

" **[§342J-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 §5; am L 2014, c 218, §8]

" **§342J-13 Fees.** The director may establish reasonable fees for the issuance of permits to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits (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 §5; am L 1990, c 298, §12]

#### **Note**

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

" **§342J-14 Public records; confidential information; penalties.** (a) For purposes of this chapter, chapter 92F applies to the determination of the types of information that should be made available to members of the public provided that any information that would be required to be disclosed under RCRA and the federal Freedom of Information Act, 5 United States Code §552, if these Acts were applicable, shall be open to the public notwithstanding any provisions to the contrary in chapter 92F. The legislature declares that disclosure of such information which RCRA and the federal Freedom of Information Act require to be disclosed for purposes of this chapter does not constitute an unwarranted invasion of privacy.

(b) Information concerning secret processes or methods of manufacture maintained by an agency pursuant to this chapter shall not be disclosed to the public unless disclosure of such information would be required under applicable provisions of RCRA, 42 United States Code, §§6901 to 6991i and the federal Freedom of Information Act, 5 United States Code §552.

(c) For purposes of this chapter, the department may adopt rules pertaining to both substantive and procedural aspects of information practices which are consistent with RCRA and the federal Freedom of Information Act. These rules shall govern information practices concerning all records maintained by any agency pursuant to this chapter or RCRA and shall supersede any inconsistent rules promulgated pursuant to chapter 92F. [L 1989, c 212, pt of §5; am L 1991, c 259, §12]

" **[\$342J-14.5] Copy fee waiver.** The fee chargeable under section 92-21 may be reduced or waived if the department determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public. [L 1991, c 259, pt of §1]

" **[\$342J-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 342J-14. [L 1989, c 212, pt of §5]

" **§342J-16 Intervention.** Any individual shall have the right to intervene in any civil action to enforce the provisions of this chapter provided the individual has an interest which is, or may be, adversely affected. [L 1989, c 212, pt of §5; am L 1991, c 259, §13]

" **[\$342J-17] 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 §5]

" **[\$342J-18] Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules and orders of the department. [L 1989, c 212, pt of §5]

" **[\$342J-19] 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 §5]

" **[\$342J-20] Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to hazardous waste management which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to hazardous waste management shall be void and of no effect as to



any matter regulated by a rule of the department upon the adoption thereof. [L 1989, c 212, pt of §5]

" **[§342J-21] Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter shall in the discretion of the court receive priority in the courts of the State. [L 1989, c 212, pt of §5]

#### **Note**

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

### **"PART III. HAZARDOUS WASTE CONTROL**

**§342J-30 Prohibition.** (a) No person, including any federal agency, the State, or any of its political subdivisions, shall own, operate, or construct a hazardous waste management facility without first securing a permit issued by the director. In addition, no person shall treat, store or dispose of hazardous waste at an unpermitted hazardous waste management facility, unless otherwise permitted by law.

(b) Any person who:

- (1) Owns or operates a facility required to have a permit under this section which was in existence on November 19, 1980, or was in existence on the effective date of statutory or regulatory changes under RCRA that were made prior to the effective date of the first rules adopted under this chapter, and that rendered the facility subject to the requirement to have an RCRA permit, or is in existence on the effective date of statutory or regulatory changes under this chapter that are made after the effective date of the first rules adopted under this chapter and that render the facility subject to the requirement to have a permit under this section;
- (2) Has complied with the requirements of section 3010(a) of RCRA, 42 United States Code §6930(a), or section 342J-6.5; and
- (3) Has made an application for a permit under section 3005 of RCRA, 42 United States Code §6925, or section 342J-5;

shall be treated as having been issued a permit until final administrative disposition of an application has been made unless the director proves that final administrative disposition of the application has not been made because of the failure of the applicant to furnish information reasonably required or

requested in order to process that application. The facilities shall be deemed to have interim status. This subsection shall not apply to any facility which has been previously denied a permit under section 3005 of RCRA, 42 United States Code §6925 or section 342J-5 or if authority to operate the facility under section 3005 of RCRA, 42 United States Code §6925 or this section has been previously terminated.

(c) The director shall have the authority to publish schedules for the submission of permit applications and other information reasonably required and or requested in order to process that application. Failure to comply with such schedules shall be a basis for automatic termination of interim status. [L 1989, c 212, pt of §5; am L 1991, c 259, §14; am L 1992, c 154, §1; am L 1993, c 267, §2]

" **[§342J-31] Duties; rules.** In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate hazardous waste pollution in this State. In the discharge of this duty the director may:

- (1) Adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules;
- (2) Administer and enforce this chapter, rules implementing this chapter, and orders and permits issued pursuant to this chapter;
- (3) Establish by rule a list of hazardous wastes and a set of characteristics for identifying hazardous wastes;
- (4) Prohibit land disposal of specified hazardous wastes;
- (5) Inventory sites and locations in the State where hazardous wastes have been stored or disposed of at any time; and
- (6) Promote industrial practices that minimize, recycle, reduce, avoid, or eliminate generation of hazardous waste. [L 1989, c 212, pt of §5]

" **[§342J-32] Standards for generators.** The director may establish by rule standards applicable to generators of hazardous waste identified under this chapter including, but not limited to, requirements regarding:

- (1) Obtaining an identification number;
- (2) Requiring a solid waste generator to determine whether the waste that that person has generated is hazardous waste;
- (3) Using appropriate containers for hazardous waste;

- (4) Packaging, labeling, marking, and placarding practices;
- (5) Transporting and international shipping of hazardous waste;
- (6) Developing a manifest system to track movements of hazardous wastes to designated facilities; and
- (7) Submitting reports and recordkeeping practices. [L 1989, c 212, pt of §5]

" **[\$342J-33] Standards for transporters.** The director may establish by rule standards applicable to transporters of hazardous waste identified or listed under this chapter including, but not limited to, requirements regarding:

- (1) Obtaining an identification number;
- (2) Labeling practices;
- (3) Transporting hazardous waste;
- (4) Requiring action, including cleanup, if hazardous waste is discharged in transit;
- (5) Using the manifest properly; and
- (6) Submitting reports and recordkeeping practices. [L 1989, c 212, pt of §5]

#### **Cross References**

Transportation of hazardous materials, see §§286-221 to 227.

" **[\$342J-34] Standards for treatment, storage, or disposal facilities.** The director may establish by rules standards applicable to owners and operators of facilities for treatment, storage, or disposal of hazardous waste, identified or listed under this chapter, including but not limited to, requirements regarding:

- (1) Obtaining an identification number;
- (2) Inspection, monitoring, submitting reports, and recordkeeping practices;
- (3) Using the manifest properly;
- (4) Designing, constructing, and locating of hazardous waste management facilities;
- (5) Developing contingency plans to minimize unanticipated damage from treatment, storage, or disposal of hazardous waste;
- (6) Maintaining and operating hazardous waste management facilities;
- (7) Determining qualifications as to ownership, continuity of operation, training for personnel, closure and post-closure requirements, and financial

responsibility (including financial responsibility for corrective action); and

- (8) Issuing permits for hazardous waste management facilities. [L 1989, c 212, pt of §5]

" **§342J-34.5 Standards for persons who deal with fuel.** The director may establish, by rule, standards applicable to persons who generate, transport, treat, store, dispose of, process, re-refine, burn (including burning for purposes of energy recovery), recycle, distribute, market, or otherwise handle any:

- (1) Fuel from any hazardous waste; or
- (2) Fuel from any hazardous waste and any other material; or
- (3) Fuel which otherwise contains any hazardous waste. [L 1991, c 259, pt of §1; am L 1996, c 82, §4]

" **§342J-34.6 Brokers; notification; and identification numbers.** (a) Not later than forty-five days after July 1, 1994, any person who acts as a hazardous waste broker, with respect to any substance listed as hazardous waste or identified by its characteristics as hazardous waste under 40 Code of Federal Regulations Part 261, shall apply to the department for an identification number and shall file with the department a notification stating the location and general description of the hazardous waste handling activity of the broker.

(b) Not later than forty-five days after the adoption of any rule pursuant to this chapter that lists or identifies by characteristics any substance as hazardous waste, any person who acts as a hazardous waste broker with respect to such substance shall apply to the department for an identification number and shall file with the department a notification stating the location and general description of the hazardous waste handling activity of the broker. This subsection shall not apply to activities or hazardous waste as to which notification has been made in compliance with subsection (a).

(c) Each hazardous waste broker shall be issued only one identification number.

(d) Any person required by this section to provide notification to the department shall advise the department of the following information, including any which may have changed during the prior year:

- (1) Location of each business;
- (2) Name of business;
- (3) Mailing address of each business;
- (4) Name of person who operates the facility at which hazardous waste is handled;

- (5) Name of owner of the facility at which hazardous waste is handled;
- (6) Name of owner of land at which hazardous waste is handled; and
- (7) A copy of a notice sent by the broker to the facility owner, or owner's agent, of the facility or land used by the broker as the broker's principal place of business. The notice shall be mailed by certified mail to the owner, or owner's agent, and shall describe the broker's hazardous waste handling activities.

(e) This section shall not apply to owners or operators of hazardous waste treatment, storage, or disposal facilities. [L 1994, c 267, §2; am L 2001, c 8, §1]

" **[§342J-35] Other rules.** The director may adopt other rules which are necessary to obtain and maintain authorization under the federal program. [L 1989, c 212, pt of §5]

" **§342J-36 Hazardous waste releases.** (a) Whenever the director determines that there has been a release of hazardous waste or of a hazardous waste constituent into the environment from a facility handling hazardous wastes, the director may:

- (1) Require the facility or site to undertake corrective action or such other response action as the director deems necessary to protect human health or the environment; and
- (2) Require that corrective action be taken beyond the facility boundary where necessary to protect human health or the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the director that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action.

(b) Whenever the director determines that there is or has been a release of hazardous waste or of a hazardous waste constituent into the environment from a hazardous waste management facility or site, the director may issue an order requiring corrective action to protect human health or the environment, or the director may commence a civil action for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties, or other relief. For purposes of enforcement, failure to comply with an order issued pursuant to this chapter shall constitute a violation of a requirement of this chapter.

(c) Any person to whom the order is issued may be required to submit to the director within thirty days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(d) If the director determines that the owner or operator is not able to conduct corrective action in a satisfactory manner, the director may dictate the conduct of such activity, the cost of which shall remain the responsibility of the owner or operator.

(e) Each permit issued by the director under this chapter shall require corrective action for all releases of hazardous waste or any hazardous waste constituent into the environment from the facility seeking the permit. Permits may contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit), and shall contain assurances of financial responsibility for completing such corrective action.

(f) If the action that results in a release otherwise constitutes a violation of this chapter, nothing in this section shall be construed to preclude the director from taking appropriate action under other provisions of this chapter.

(g) Public notice shall be given for proposed decisions on a final remedy. [L 1989, c 212, pt of §5; am L 1990, c 298, §13; am L 1991, c 259, §15; am L 1995, c 180, §29]

### **Cross References**

Environmental response law, see chapter 128D.

Hawaii emergency planning and community right-to-know act, see chapter 128E.

#### **" [§342J-37] Complaints; hearings; appointment of masters.**

The director may:

- (1) Receive or initiate complaints, hold hearings, and institute legal proceedings in the name of the State for prevention, control, or abatement of hazardous waste pollution; and
- (2) Appoint a master or masters to conduct investigations and hearings. [L 1989, c 212, pt of §5]

**" [§342J-38] Public participation activities; appointment of hearings officers.** 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 §5; am L 2000, c 253, §150]

" **[\$342J-39] Research programs.** The director may initiate, conduct, and support research, demonstration projects, and investigation, as the department's resources may allow, and coordinate state agency research programs pertaining to hazardous waste management. [L 1989, c 212, pt of §5]

" **[\$342J-40] Receipt of funds for study and control of hazardous waste.** The director may cooperate with and receive money, with the approval of the governor, from the federal government, any political subdivision of the State, or from private sources for the study and control of hazardous waste. [L 1989, c 212, pt of §5]

" **[\$342J-41] Technical assistance to generators.** (a) The department shall establish a technical assistance program for generators of hazardous waste in the State. The program shall be designed to assist generators in obtaining information concerning hazardous waste management:

- (1) To identify and apply methods of reducing the generation of hazardous wastes;
- (2) To facilitate improved management of hazardous waste and compliance with the department's requirements; and
- (3) For other similar purposes.

The program shall emphasize assistance to the smaller businesses and small quantity generators that have limited technical and financial resources for obtaining information, assessing hazardous waste management methods, and developing and applying hazardous waste reduction techniques. Information and techniques developed under this program shall be made available to all generators in the State.

(b) The assistance program shall include at least the following elements:

- (1) Outreach programs, including on-site consultation at locations where hazardous waste is generated, seminars, workshops, training programs, and other similar activities designed to assist generators in evaluating their hazardous waste generation and management practices, identifying opportunities for waste reduction and improved management, and identifying subjects that require additional information and research;
- (2) A program to assemble, catalog, and disseminate information about hazardous waste reduction and management methods, available commercial waste management facilities and consultant services, and regulatory programs;

- (3) Evaluation and interpretation of information needed by generators to improve their management of hazardous waste; and
- (4) Informational and technical research to identify alternative technical solutions that can be applied by specific generators to reduce the generation of hazardous waste.

(c) The program shall be coordinated with other public and private programs that provide management and technical assistance to smaller businesses and small quantity generators, including any program operated by a public or private educational institution. [L 1989, c 212, pt of §5]

" **[§342J-42] Public education program.** The department shall develop and implement a public education program, the objectives of which shall be to:

- (1) Develop increased public awareness of and interest in environmentally sound hazardous waste management methods;
- (2) Encourage better informed decisions on hazardous waste management issues by businesses, industries, local governments, and the public; and
- (3) Disseminate practical information concerning methods in which households, other institutions, and organizations can improve the management of hazardous waste. [L 1989, c 212, pt of §5]

#### "[PART IV.] USED OIL AND USED OIL FUEL

**[§342J-51] Definitions.** Except as expressly defined in this part, terms that are defined in section 342J-2 have the same meanings when used in this part.

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

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the handling of used oil or used oil fuel.

"Generator" means any person, by site, whose act or process produces used oil or used oil fuel or whose act first causes used oil or used oil fuel to become subject to regulation.

"Operator" means the person responsible for the overall operation of a facility as defined in this section.



"Owner" means the person who owns a facility or part of a facility as defined in this section.

"Permit" means written authorization from the director for a person to engage in the handling of used oil or used oil fuel.

"Pollution" means pollution by mismanagement or mishandling of used oil or used oil fuel.

"Specification fuel" means recycled oil which meets specific standards that are set by the director. These standards, at a minimum, shall comply with those set by the federal Environmental Protection Agency for specification fuel.

"Storage" means the containment of used oil or used oil fuel, temporarily or for a period of time, in a manner which does not constitute disposal.

"Transporter" means any person who transports used oil or used oil fuel, any person who collects used oil or used oil fuel from more than one generator and transports the collected used oil or used oil fuel, and owners and operators of used oil or used oil fuel transfer facilities.

"Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any used oil or used oil fuel.

"Used oil" means any oil (regardless of whether it is a hazardous waste) that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities. [L 1996, c 82, pt of §1]

" **[§342J-52] Standards for persons who deal with used oil or used oil fuel.** (a) The director may establish, by rule, standards applicable to persons who generate, transport, treat, store, dispose, process, re-refine, burn (including burning for purposes of energy recovery), recycle, distribute, market, or otherwise handle used oil or used oil fuel, regardless of whether the used oil or used oil fuel is a hazardous waste.

(b) No new oil, used oil, or recycled oil shall be discharged or caused or allowed to enter into the sewers, drainage systems, surface or ground waters, watercourse, marine waters, or onto the ground. The prohibition shall not apply to inadvertent, normal discharges from vehicles and equipment, or maintenance and repair activities associated with vehicles; provided that appropriate measures are taken to minimize releases. Appropriate measures include, but are not limited to, use of drip pans, institution of structural catchment systems, use of absorbent materials, and other similar measures. [L 1996, c 82, pt of §1]

" **[\$342J-53] Permit required.** No person shall transport, market, or recycle used oil or used oil fuel without first obtaining a permit from the department. The director may require any person who generates and burns the person's own used oil as specification fuel to notify the department of the person's activity. [L 1996, c 82, pt of §1]

" **§342J-54 Permits; procedures for.** (a) An application for any permit required under this part shall be in a form prescribed by the director.

(b) The department may require that applications for the permits shall be accompanied by plans, specifications, and the other information that it deems necessary in order for it to determine whether the proposed installation, alteration, 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 it will be in the public interest; provided that the permit may be subject to reasonable conditions that 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 it 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 may require a public notice or hearing, or both, for permit issuances, reissuances, denial, revocation, suspension, or substantial modifications to a permit requested by a permittee, or modifications to a permit initiated by the director if the director determines that notice or hearing, or both, are in the public interest.

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 emission; or
- (4) The modification, suspension, or revocation 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 of the proposed action, any

adverse environmental effects which cannot be avoided if the action is 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 the application, shall be deemed a grant of the 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 part 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 1996, c 82, pt of §1; am L 2000, c 3, §2]

" **[\$342J-55] Furnishing of information and entry and inspection of premises.** (a) For purposes of enforcing this part, the rules adopted pursuant to this part, and other applicable provisions of this chapter, any person who generates, transports, treats, stores, disposes of, processes, re-refines, burns (including burning for purposes of energy recovery), recycles, distributes, markets, or otherwise handles or has handled used oil or used oil fuel, upon the request of any duly authorized representative of the director, shall furnish information relating to the used oil or used oil fuel and permit the representative at all reasonable times to have access to, and to copy all records relating to the used oil or used oil fuel.

(b) For purposes of enforcing this part, the rules adopted pursuant to this part, and other applicable provisions of this chapter, the authorized representative may:

- (1) Enter, at reasonable times, any establishment or other place where used oil or used oil fuel is or has been generated, transported from, treated, stored, disposed of, processed, re-refined, burned (including burning for purposes of energy recovery), recycled, distributed, marketed, or otherwise handled;

- (2) Inspect and obtain samples of any used oil or used oil fuel and samples of any containers or labeling for used oil or used oil fuel; and
- (3) Obtain any other information, including financial information, for purposes of determining compliance with this part, the rules adopted pursuant to this part, and other applicable provisions of this chapter.

Each inspection shall be commenced and completed with reasonable promptness. [L 1996, c 82, pt of §1]

" **[§342J-56] Emergency powers; procedures.** (a)

Notwithstanding any other law to the contrary, if the governor or the director determines that the past or present handling of any used oil or used oil fuel may present an imminent and substantial endangerment to health or the environment, the governor or the director, without a public hearing, may secure or order relief that may be necessary to abate the danger or threat. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director. The governor or the director may also institute a civil action in any environmental court of competent jurisdiction to secure any relief that may be necessary to abate the danger or threat.

(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 the declaration, if the power is conferred by statute or constitutional provision, or inheres in the office. [L 1996, c 82, pt of §1; am L 2014, c 218, §8]