

GOV. MSG. NO. 1109

EXECUTIVE CHAMBERS

DAVID Y. IGE GOVERNOR

APR 2 1 2022

The Honorable Ronald D. Kouchi, President and Members of the Senate Thirty-First State Legislature State Capitol, Room 409 Honolulu, Hawai'i 96813 The Honorable Scott K. Saiki, Speaker and Members of the House of Representatives Thirty-First State Legislature State Capitol, Room 431 Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on

APR 2 1 2022 , the following bill was signed into law:

HB2147 HD1

RELATING TO MUNICIPAL SOLID WASTE LANDFILL PERMITS. ACT 009

Sincerely,

And

DAVID Y. IGE Governor, State of Hawai'i

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Approved by the Governor APR 2 1 2022

ACT 009

HOUSE OF REPRESENTATIVES THIRTY-FIRST LEGISLATURE, 2022 STATE OF HAWAII

H.B. NO. ²¹⁴⁷ H.D. 1

A BILL FOR AN ACT

RELATING TO MUNICIPAL SOLID WASTE LANDFILL PERMITS.

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

1 SECTION 1. Act 73, Session Laws of Hawaii 2020, deleted 2 the phrase, "any federal agency," from the entities included in 3 the term "person" under section 342H-52, Hawaii Revised 4 Statutes, in defining "person." The legislative intent, as described in Standing Committee Report No. 1273-20, was for 5 "[m]aking inapplicable to federal agencies the prohibition on 6 7 construction, operation, modification, expansion, or closure of 8 a municipal solid waste landfill unit without first obtaining a permit from the Director of Health". However, section 342H-1, 9 Hawaii Revised Statutes, defines "person" to mean "any 10 11 individual, partnership, firm, association, public or private 12 corporation, federal agency, the State or any of its political 13 subdivisions, trust, estate, or any other legal entity". Thus, at a minimum, there is a conflict between the plain language of 14 15 the law and the intent.

16 More importantly, as confirmed by the United States17 Environmental Protection Agency in a letter signed April 19,

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2021, "the removal of the [Hawaii Department of Health's] 1 2 authority to issue permits to federal agency municipal solid 3 waste landfills appears to place the State in non-compliance 4 with the Resource Conservation and Recovery Act, section 4005(c) codified in 42 United States Code, section 6945, Code of Federal 5 6 Regulations section 239.6(e), which require that states adopt 7 and implement permit programs that assure each solid waste 8 management facility within their state obtains a permit and 9 complies with the applicable criteria".

10 As stated in title 40 Code of Federal Regulations section 239.13, "Criteria and procedures for withdrawal of determination 11 12 of adequacy", states, "(a) The Regional Administrator [of the U.S. Environmental Protection Agency] may initiate withdrawal of 13 14 a determination of adequacy when the Regional Administrator has 15 reason to believe that: (1) A state no longer has an adequate 16 permit program; or (2) The state no longer has adequate 17 authority to administer and enforce an approved program in 18 accordance with this part."

19 The removal of the Department of Health's authority to
20 permit federal municipal solid waste landfills not only removes
21 regulatory oversight of the design, construction, and operation

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of federal municipal solid waste landfills, but creates the loss 1 2 of an approved municipal solid waste landfill permit program in accordance with federal regulations. The loss of a federal 3 approved program will deny other municipal solid waste landfills 4 in the State, which are currently all owned by the counties, the 5 6 ability to design, operate, close, and monitor their landfills using alternative designs or methods to the federal standards 7 8 that could be more suitable for local site conditions and more 9 cost-effective. For example, federal prescribed liner systems 10 require a minimum of two feet of soil with a maximum hydraulic conductivity of 0.0000001 cm/s. However, soil with this type of 11 permeability on the island of Hawaii is nearly impossible to 12 13 find on-island. A geosynthetic alternative to this soil could 14 be utilized to meet this design standard, but this option would 15 not be permissible without a state-approved permit program. The purpose of this Act is to reinstate the department of 16

health's authority to permit federal municipal solid waste
landfills by restoring "any federal agency" to the entities
included in the term "person" in section 342H-52(a), Hawaii
Revised Statutes.

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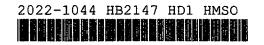
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1	SECTION 2. Section 342H-52, Hawaii Revised Statutes, is
2	amended by amending subsection (a) to read as follows:
3	"(a) No person, including any federal agency, the State, or
4	any county, shall construct, operate, modify, expand, or close a
5	municipal solid waste landfill unit, or any component of a
6	municipal solid waste landfill unit, without first obtaining a
7	permit from the director. All permits for municipal solid waste
8	landfill units shall be subject to any terms and conditions that
9	the director determines are necessary to protect human health or
10	the environment."
11	SECTION 3. New statutory material is underscored.
12	SECTION 4. This Act shall take effect upon its approval.
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APPROVED this 21 day of April , 2022

Arrid Ylage

GOVERNOR OF THE STATE OF HAWAII



HB No. 2147, HD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: March 3, 2022 Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.

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Scott K. Saiki Speaker House of Representatives

Wil. Ihte

Brian L. Takeshita Chief Clerk House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: **APR 0 8 2022** Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the

Senate of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.

Ronald D. Kouchi

President of the Senate

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Carol T. Taniguchi Clerk of the Senate