

JAN 26 2022

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" section 342H-52, Hawaii Revised Statutes, in
4 defining "person." The legislative intent, as described in
5 Standing Committee Report Number 1273-20, was for "Making
6 inapplicable to federal agencies the prohibition on
7 construction, operation, modification, expansion, or closure of
8 a municipal solid waste landfill unit without first obtaining a
9 permit from the Director of Health." However, section 342H-1,
10 HRS, defines "person" to mean "any individual, partnership,
11 firm, association, public or private corporation, federal
12 agency, the State or any of its political subdivisions, trust,
13 estate, or any other legal entity." Thus, at a minimum, there
14 is a conflict between the plain language of the law and the
15 intent.

16 More importantly, as confirmed by the U.S. Environmental
17 Protection Agency in a letter signed April 19, 2021, "the
18 removal of the [Hawaii Department of Health's] authority to

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

9 40 Code of Federal Regulations section 239.13, "Criteria
10 and procedures for withdrawal of determination of adequacy,"
11 states, "(a) The Regional Administrator [of the U.S.
12 Environmental Protection Agency] may initiate withdrawal of a
13 determination of adequacy when the Regional Administrator has
14 reason to believe that: (1) A state no longer has an adequate
15 permit program; or (2) The state no longer has adequate
16 authority to administer and enforce an approved program in
17 accordance with this part."

18 The removal of the Department of Health's authority to
19 permit federal municipal solid waste (MSW) landfills, not only
20 removes regulatory oversight on the design, construction and
21 operation of federal MSW landfills, but creates the loss of an
22 approved MSW landfill permit program in accordance with 40 Code

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1 of Federal Regulation, section 239. The loss of a federal
2 approved program will deny other MSW landfills in the state,
3 which are currently all owned by the counties, the ability to
4 design, operate, close, and monitor their landfills using
5 alternative designs or methods to the federal standards that
6 could be more suitable for local site conditions and more cost-
7 effective. For example, federal prescribed liner systems
8 require a minimum of 2-feet of soil with a maximum hydraulic
9 conductivity of 10^{-7} cm/s. However, soil with this type of
10 permeability on the island of Hawaii is nearly impossible to
11 find on-island. A geosynthetic alternative to this soil could
12 be utilized to meet this design standard, but this option would
13 not be permissible without a state approved permit program.

14 The purpose of this Act is to restore "any federal agency"
15 to the entities included in the term "person" in section 342H-
16 52(a), Hawaii Revised Statutes.

17 SECTION 2. Subsection 342H-52(a), Hawaii Revised Statutes,
18 is amended to read as follows:

19 **"§342H-52 Prohibitions; buffer zones.** (a) No person,
20 including any federal agency, the State, or any county, shall
21 construct, operate, modify, expand, or close a municipal solid
22 waste landfill unit, or any component of a municipal solid waste

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1 landfill unit, without first obtaining a permit from the
2 director. All permits for municipal solid waste landfill units
3 shall be subject to any terms and conditions that the director
4 determines are necessary to protect human health or the
5 environment."

6 SECTION 3. New statutory material is underscored.

7 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

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Report Title:

Municipal Solid Waste Landfills; Permits

Description:

Clarifies that federal municipal solid waste landfills are subject to Department of Health permitting.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

SB. NO. 3115

DEPARTMENT: HTH

TITLE: A BILL FOR AN ACT RELATING TO MUNICIPAL SOLID WASTE LANDFILL PERMITS.

PURPOSE: To reinstate the Department of Health's (DOH's) authority to permit federal municipal solid waste (MSW) landfills.

MEANS: Amend Section 342H-52(a), Hawaii Revised Statutes

JUSTIFICATION: The amendments proposed in this measure are designed to preserve DOH's state program authority pursuant to the Resource Conservation and Recovery Act (RCRA) [42 U.S.C. section 6941, et. seq.] and its permitting authority over MSW landfills owned and operated by the federal government. Without state program authorization, DOH will be unable to permit facilities with alternative liner and cover designs and groundwater monitoring programs that may be better suited to local site conditions than analogous federal standards. Currently, there is only one federal MSW landfill in Hawaii, located at Marine Corps Base Hawaii in Kaneohe. Without this bill, and with the loss of program authorization, DOH will be unable to permit this facility and other MSL facilities will have to adhere to federal standards rather than more appropriate, site-specific state requirements.

Impact on the public: Without this bill, DOH's inability to allow more cost-effective alternative designs will likely increase the construction and operation costs to the counties, the owners and operators of the majority of the MSW landfills. This will in turn affect county budgets and their

taxpayers. Any public concerns regarding the construction and operation of federal MSW landfills will be directed to the US Environmental Protection Agency (EPA) Region IX in San Francisco, as DOH will no longer have solid waste related authority over the facility.

Impact on the department and other agencies:

If the amendments proposed by this measure are not made, the state's regulatory and permitting program over non-federal MSW landfills will remain, however, the owners and operators will need to also comply with federal requirements. Without the state's ability to approve alternative designs as a state approved program under the EPA, the landfill owners and operators will have no choice but to comply with federally-prescribed designs. Restoring DOH's flexibility to impose site-specific requirements, as this bill seeks to do, will ensure that operational, closure and post-closure requirements for MSW landfills remain optimally protective of human health and the environment.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH 840

OTHER AFFECTED
AGENCIES: County Governments as Owners and/or
Operators of Municipal Solid Waste
Landfills.

EFFECTIVE DATE: Upon Approval.