

A Bill for an Act Relating to Environmental Quality.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **“CHAPTER AIR POLLUTION**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

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

“Air pollution” means the presence in the outdoor air of substances in quantities and for durations which endanger human health or welfare, plant or animal life, or property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such areas of the State as are affected thereby, but excludes all aspects of employer-employee relationships as to health and safety hazards. These substances include, but are not limited to smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, particulate matter, or any combination of these.

“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.

“Emission” means the act of releasing or discharging air pollutants into the ambient air from any source.

“Fugitive dust” means uncontrolled emission of solid airborne particulate matter from any source other than combustion.

“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 discharge waste, or to construct, modify, or operate any air pollution source. A permit authorizes the grantee to cause, emit, or discharge waste or air pollution 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, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

“Pollution” means air pollution.

“Variance” means special written authorization from the director to cause, emit, or discharge waste or air pollution in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules adopted under this chapter.

“Waste” means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substances, including radioactive substances, whether treated or not, which may pollute or tend to pollute the atmosphere of this State.

§ -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.

**§ -3 Duties, rules, powers, 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 air pollution in the State. In the discharge of this duty the director may make, amend, and repeal state rules controlling and prohibiting air 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 chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

**§ -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 such permits shall be accompanied by plans, specifications, and such other information as 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 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; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; 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 director shall ensure that the public receive notice of each application for a major source permit to control air pollution. The director may hold a public hearing before ruling on an application for a permit to control air pollution if the director determines such public hearing to be in the public interest.

(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.

§ -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 air quality standards established pursuant to this chapter.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the emission or discharge of pollutant in excess of applicable standards. 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 discharge of air pollution occurring or proposed to occur by the granting of the variance is in the public interest as defined in section -4;
- (2) The emission or discharge 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 air 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 air pollution involved.
- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform air or discharge sampling and report the results of such sampling to the department.

(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 emission or discharge 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 public participation requirements listed below.

- (1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed emission, discharge, or other proposed activity. Procedures for the circulation of public notices shall include at least the following:
  - (A) Notice shall be circulated within the geographical areas of the proposed emission, discharge, or other proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
  - (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 emission, discharge, or other activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);
  - (D) A short description of the location of each emission or discharge indicating whether such emission or discharge 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.
- (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 emission, discharge, or other proposed activity, or other appropriate area, at the discretion of the director.
- (5) The director shall hold a public hearing when revising the state implementation plan required by the Federal Clean Air Act, and the amendments thereto, and the regulations promulgated thereunder.

§ -6 **Inspection of premises.** The director, in accordance with law, may enter and inspect any building or place to investigate an actual or suspected source of air pollution, to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, or any permit or other approval granted 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 air pollution shall be disclosed by the official or employee except as it relates directly to air 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.

§ -7 **Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May 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.
- (3) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with this chapter, any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that the person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in

writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) 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.

(e) 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 discharges 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 discharges.

(f) 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 recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) 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.

**§ -8 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by discharge of waste or any combination of discharges of waste, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop such discharge or emission or the director may take any and all other actions as may be necessary. Such 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.

**§ -9 Penalties.** (a) Violation of the vehicular smoke emission rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this

violation shall be not less than \$25 nor more than \$2,500 for each separate offense. Each day of violation shall constitute a separate offense.

(b) Violation of the open burning control rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by any duly authorized police officer or employee of the department. The fine for this violation shall not exceed \$10,000 for each separate offense. Each day of violation shall constitute a separate offense.

(c) Any person who violates this chapter, any rule adopted pursuant to this chapter, other than vehicular smoke emission control and open burning control rules, 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 violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular smoke emission and open burning rules, shall be considered a civil action.

(d) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -10 Citation.** Any person who commits a violation of the vehicular smoke emission rules and open burning control rules adopted by the department pursuant to this chapter may be issued a summons or citation for such violation by any person authorized to enforce such rules, hereinafter referred to as enforcement officer. The summons or citation shall be printed in the form hereinafter described, warning such person to appear and answer to the charge against the person at a certain place and at a time within seven days after the issuance of such summons or citation.

The summons or citation shall be designed to provide for all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution of the original and any other copies.

Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

In the event any person fails to comply with a summons or citation issued to such person, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest. Failure to comply with a summons or citation is a misdemeanor.

**§ -11 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted pursuant to this chapter, the director is authorized to impose by order the penalties specified in section -9(c). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such request, the civil penalty was imposed, and that the penalty remains unpaid.

§ **-12 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive 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. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

§ **-13 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 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 a court of competent jurisdiction.

§ **-14 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.

§ **-15 Public records; confidential information; penalties.** Air pollution permit applications and reports on air pollution emissions 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 -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.

§ **-16 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 -15.

§ **-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.

§ **-18 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.

§ **-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.

§ **-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 air pollution control which is not governed by a rule of the department adopted



pursuant to this chapter; provided that any county ordinance or rule relating to air pollution control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

§ -21 **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.

## PART II. AIR POLLUTION CONTROL

§ -30 **Prohibition.** No person, including any public body, shall engage in any activity which causes air pollution without first securing approval in writing from the director.

§ -31 **Powers and duties; specific.** The director may:

- (1) Establish ambient air quality standards for the State as a whole or for any part thereof;
- (2) Establish by rule the control of open burning, fugitive dust, and visible emissions;
- (3) Establish by rule the control of vehicular smoke emission and require the installation, use, and proper maintenance of air pollution control equipment for motor vehicles;
- (4) Establish and carry out a program of inspection and testing of all modes of transportation except aircraft, to enforce compliance with applicable emission limitations when necessary and practicable, and to control or limit the operation of motor vehicular and other modes of transportation when the director finds pursuant to standards established by rules such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollution or when such control is necessary to meet applicable ambient air quality standards.
- (5) Establish by rule other specific areas for control of air pollution, thereby allowing for varying conditions.

§ -32 **Permits; requirement.** The director may require private persons or agencies or governmental agencies engaged or desiring to engage in operations which result or may result in air pollution to secure a permit prior to installation or operation or continued operation. The director shall refuse to issue the permit unless it appears that the operations would be in compliance with the rules of the department and the state ambient air quality standards. The director may also require the persons or agencies to submit plans and file reports containing information relating to location, size of outlet, height of outlet, rate incurred at emission and composition of discharge and such other matters relative to air pollution as the department shall prescribe to be filed.

§ -33 **Recordkeeping and monitoring requirements.** The director may require the owner or operator of any emission source to:

- (1) Establish and maintain such records;
- (2) Make such reports;
- (3) Install, use, and maintain such monitoring equipment or methods;
- (4) Sample such emission; and
- (5) Provide such other information as the department may require.

§ -34 **Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints on air pollution, hold hearings in connection with air pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of air pollution; and
- (2) Appoint a master or masters to conduct investigations and hearings.

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

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, hazards or means to monitor or abate sources of air pollution;
- (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 air pollution; and
- (3) Conduct and supervise statewide educational and training programs on air pollution prevention, control, and abatement, including the preparation and distribution of information relating to air pollution."

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER WATER POLLUTION**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

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

"Coastal waters" means all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters, and salt waters that are subject to the ebb and flow of the tide.

"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.

"Drainage ditch" means that facility used to carry storm runoff only.

"Effluent" means any substance discharged into state waters, publicly owned treatment works, or sewerage systems, including, but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

"Effluent sources" include, but are not limited to, sewage outfalls, refuse systems and plants, water systems and plants, industrial plants, and contributors to publicly owned treatment works or sewerage systems.

"Individual wastewater system" means a facility which disposes of treated or untreated domestic wastewater generated from dwelling units or other sources generating domestic wastewater of similar volume and strength such as: (1) developments of a density not greater than one dwelling unit per 5,000 square feet of ultimate development; (2) developments with buildings other than dwellings but involving the generation of domestic wastewater at a rate of less than 400 gallons per day per 5,000 square feet of ultimate development; or (3) multifamily dwelling units developed and constructed pursuant to section 46-15.1 and chapters 356, 359 and 201E, subject to the approval of the director. Individual wastewater systems include, but are not limited to, cesspools, septic tanks, and household aerobic units.

"Industrial user" means a source of water pollutants into a publicly owned treatment works from any nondomestic source regulated under section 307(b), (c), or (d) of the Federal Water Pollution Control Act.

"New source" means any source of water pollution the construction of which is commenced after the adoption of rules prescribing a standard of performance which will be applicable to such source.

"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 discharge waste or to construct, modify, or operate any water pollution source. A permit authorizes the grantee to cause or discharge waste or water pollution 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, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Pollution" means water pollution.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

"Standard of performance" means a standard for the control of the discharge of water pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of water pollutants.

"State waters" means all waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a water pollution control system are excluded.

"Treatment works" means any plant or other facility used for the purpose of controlling water pollution.

"Variance" means special written authorization from the director to cause or discharge waste or water pollution in a manner or in an amount in excess of applicable standards, or to do an act that deviates 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 waters of this State.

"Wastewater" means any liquid waste, whether treated or not, and whether animal, mineral, or vegetable including agricultural, industrial, and thermal wastes.

"Water pollutant" means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.

"Water pollution" means:

- (1) Such contamination or other alteration of the physical, chemical, or biological properties of any state waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any state waters,

as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, rec-

reational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards, or standards of performance for new sources adopted by the department.

§ **-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.

§ **-3 Board membership.** Notwithstanding any law to the contrary, no individual, board, or body of this State which grants permits required under this chapter shall be or include, as a member, any person who receives or has during the previous two years received, a significant portion of the person's income directly or indirectly from permit holders or applicants for a permit; provided that for the purposes of this section, no agency, board, or body of the State shall be considered a permit holder or applicant for a permit.

§ **-4 Duties; rules.** In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate water pollution in the State. In the discharge of this duty, the director may 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.

§ **-5 Rules; specific.** The director may establish by rule, water quality standards, effluent standards, treatment and pretreatment standards, and standards of performance for specific areas and types of discharges in the control of water pollution, thereby allowing for varying local conditions.

§ **-6 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 such permits shall be accompanied by plans, specifications, and such other information as 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 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; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or

- (4) Such is in the public interest.

The director shall ensure that the public receive notice of each application for a permit to control water pollution. The director may hold a public hearing before ruling on an application for a permit to control water pollution if the director determines such public hearing to be 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) 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 so long as the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as part thereof.

**§ -7 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 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 water quality standards established pursuant to this chapter.

(c) Whenever an application is approved, the department shall issue a variance authorizing the discharge of water pollutant in excess of applicable standards. 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 discharge of waste occurring or proposed to occur by the granting of the variance is in the public interest as defined in section -6;
- (2) The discharge occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the rules or standards 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 water 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 water pollution involved.

- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform discharge or effluent sampling and report the results of such sampling to the department.

(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 discharge 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) Notwithstanding any provision in this section, no variance shall be granted or renewed pursuant to this chapter with respect to any discharge of water pollutants or wastes that is in violation of the requirements of the Federal Water Pollution Control Act and the amendments thereto.

(i) Any application for a variance, submitted pursuant to this chapter, shall be subject to the public participation requirements listed below.

- (1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge or other proposed activity. Procedures for the circulation of public notices shall include at least the following:
  - (A) Notice shall be circulated within the geographical areas of the proposed discharge or other proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
  - (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 discharge or other activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);

- (D) A short description of the location of each discharge indicating whether such discharge 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) of this subsection 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.
- (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 discharge or other proposed activity, or other appropriate area, at the discretion of the director.

**§ -8 Inspection of premises.** (a) The director, in accordance with law may enter and inspect any building or place to investigate an actual or suspected source of water pollution, to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, or any permit or other approval granted by the department pursuant to this chapter, and to make reasonable tests in connection therewith.

(b) The director may require any permittee or holder of a variance or person subject to pretreatment requirements to permit the director or the director's authorized representative upon the presentation of the director's or representative's credentials:

- (1) To enter upon permittee's or variance holder's premises or premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are required to be kept under the terms and conditions of the permit or variance or pretreatment requirements;
- (2) To inspect any monitoring equipment or method required in the permit or variance or by pretreatment requirements; and
- (3) To sample any discharge of water pollutants or effluent.

(c) 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 water pollution shall be disclosed by the official or employee except as it relates directly to water 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.

**§ -9 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May 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.

- (3) May impose penalties as provided in section -30 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section -30 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that the person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) 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.

(e) 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 discharges 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 discharges.



## ACT 212

(f) 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 recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) 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.

**§ -10 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by the discharge of waste or any combination of discharges of waste which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop such discharge or the director may take any and all other actions as may be necessary. Such 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.

**§ -11 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive 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. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

**§ -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 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 a court of competent jurisdiction.

**§ -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.

**§ -14 Public records; confidential information; penalties.** Reports submitted to the department on discharges of waste 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 -8 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.

§ **-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 -14.

§ **-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.

§ **-17 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.

§ **-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.

§ **-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) Any county may adopt ordinances and rules governing any matter relating to water pollution control which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to water pollution control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof except as provided in subsection (c).

(c) Any county desiring to administer its own laws, ordinances, and rules on the design, construction, and operation of sewerage and treatment facilities may submit to the director a full and complete description of the program it proposes to establish and administer under county law. In addition, the county shall submit a statement from its corporation counsel or county attorney that the laws of the county provide adequate authority and the standards are equal to or more stringent than the standards of the department to carry out the described program. The director shall approve each such submitted program unless the director determines that either adequate authority does not exist or the proposed standards are less stringent than those of the department.

§ **-20 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.

## PART II. PENALTIES

§ **-30 Civil penalties.** (a) Any person who violates this chapter or any rule shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken 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 and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$5,000. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

§ **-31 Administrative penalties.** 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 - 30. Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator. In any judicial proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

**§ -32 Negligent violations.** Any person who:

- (1) Negligently violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition or in a permit issued under this chapter or any requirement imposed in a pretreatment program under this chapter; or
- (2) Negligently introduces into a sewerage system or into a publicly owned treatment works any water pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under this chapter;

shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than two years, or by both.

**§ -33 Knowing violations.** Any person who:

- (1) Knowingly violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit issued under this chapter or any requirement imposed in a pretreatment program; or
- (2) Knowingly introduces into a sewerage system or into a publicly owned treatment works any water pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under this chapter;

shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than six years, or by both.

**§ -34 Knowing endangerment.** (a) Any person who knowingly violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit issued under this chapter, and who knows at that time that the violation places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than fifteen years, or both.

(b) A person which is an organization, upon conviction of violating this section, shall be subject to a fine of not more than \$1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under

this section, the maximum punishment shall be doubled with respect to both fine and imprisonment.

(c) For the purpose of this section, in determining whether a defendant who is an individual knew that the individual's conduct placed another person in imminent danger of death or serious bodily injury:

- (1) The person is responsible only for actual awareness or actual belief that the person possessed; and
- (2) Knowledge possessed by a person other than the defendant but not by the defendant may not be attributed to the defendant; except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(d) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

- (1) An occupation, a business, or a profession; or
- (2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent; and such defense may be established under this section by a preponderance of the evidence.

(e) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such terms includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(f) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

§ -35 **False statements.** Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both.

§ -36 **Treatment of single operational upset.** For the purpose of this part, a single operational upset which leads to simultaneous violations of more than one water pollutant parameter shall be treated as a single violation.

§ -37 **Responsible corporate officer as "person".** For the purpose of this chapter, the term "person" means, in addition to the definition contained in section -1, any responsible corporate officer.

§ -38 **Hazardous substance defined.** For the purpose of this part, the term "hazardous substance" means:

- (1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (FWPCA);

- (2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980;
- (3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);
- (4) Any toxic pollutant listed under section 307(a) of the FWPCA; and
- (5) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

### PART III. WATER POLLUTION CONTROL

**§ -50 Prohibition.** (a) No person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters except as in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.

(b) No person, including any public body, shall knowingly establish, extend, or alter any system of drainage, sewage, or water supply, or undertake any project in sewage outfall areas where there may be a possibility of alteration of currents depended upon for dilution without first securing approval in writing from the director.

(c) No person, including any industrial user, shall discharge any water pollutant or effluent into a publicly owned treatment works or sewerage system in violation of:

- (1) A pretreatment standard established by the department or the publicly owned treatment works; or
- (2) A pretreatment condition in a permit issued by the department or a publicly owned treatment works.

**§ -51 Affirmative duty to report discharges.** (a) Any person who has caused an unlawful discharge under section -50(a) has an affirmative duty to report the incident to the director within twenty-four hours of the discharge.

(b) Upon notification, the department may investigate the incident or report and may assess the adequacy of the corrective action taken by the person responsible for the discharge. If the department finds that the corrective actions taken are inadequate to protect the environment or the public health or safety, the department may prescribe additional actions to be taken and the time in which such actions must be taken.

(c) Any person who fails to report an unlawful discharge or who fails to execute corrective actions as prescribed by the department shall be subject to a fine for each day in which the violation occurs in an amount necessary for the cleanup expenses, but in no event shall such fine exceed \$10,000 for each day of violation. Legal interest shall accrue from the first day of violation.

**§ -52 Testing of water and aquatic and other life.** The director may test any water and aquatic and other life that has been subjected to an oil spill or any other form of water pollution and assess the environmental effects of the pollution, including its effects on:

- (1) The quality of the receiving water; and
- (2) Aquatic and other life.

If the department determines that the effects are such that it would be hazardous to consume the aquatic or other life, the department shall immediately notify the

public of that hazard through the news media and by posting warning signs in the areas where the water and shoreline contain aquatic or other life that would be hazardous to consume.

§ -53 **Certifying agency.** The director may act as a certifying agency, as defined in 40 C.F.R. 121.1(e) (1985).

§ -54 **Treatment works; construction grants; advances; state revolving fund.** (a) The director may make grants or loans to any state or county agency of state funds as authorized and appropriated by the legislature for the construction of necessary treatment works and for other projects intended for wastewater reclamation or waste management by other than conventional means to prevent or to control the discharge of untreated or inadequately treated sewage or other waste into any state waters. The director shall coordinate the granting of state funds with available federal funds for the same purpose. No grant or loan shall be made for any project unless:

- (1) The project conforms with the state water pollution control plan;
- (2) The project is certified by the director as entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs; and
- (3) In the case of treatment work, the application for the grant or loan contains reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction.

(b) If the federal funds are not immediately available, the director may advance the federal share of the planning and design cost to the county or state agency, subject to the following provisions:

- (1) The director shall enter into a contract with the applicant specifying the conditions of the advance; and
- (2) The advances made by the State to the county or state agency shall be reimbursed to the State immediately upon the receipt from the federal government of the advanced funds or within one year after the completion of project construction.

(c) There is established in the state treasury a fund to be known as the water pollution control revolving fund solely for the purpose of receiving federal and state funds to provide financial assistance to governmental agencies for the planning, design, and construction of treatment works owned by a governmental agency in accordance with Title VI of the Water Quality Act of 1987, Public Law 100-4, and implementation of management programs established under sections 319 and 320 of the Water Quality Act of 1987; provided that:

- (1) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants which shall be deposited into the revolving fund;
- (2) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to loans, loan guarantees, and bond guarantees;
- (3) The revolving fund shall be established, maintained, and credited with loan repayments and the fund balance shall be available in perpetuity for its stated purpose;
- (4) The director may make and condition loans from the fund as required by state or federal law. Such loans shall:
  - (A) Be made at or below market interest rates;

- (B) Require annual payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made; and
- (C) Be fully amortized not later than twenty years after project completion;
- (5) The director shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for appropriate accounting periods of payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period;
- (6) The director may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance in conformance with Title VI of the Water Quality Act of 1987;
- (7) No loan from the revolving fund shall be made unless the loan recipient establishes a dedicated source of revenue for the repayment of such loans; and
- (8) The director may adopt rules pursuant to chapter 91 necessary for the purposes of this section, including but not limited to, penalties for default of loan repayments.

§ -55 **Recordkeeping and monitoring requirements.** The director may require:

- (1) Complete and detailed plans or reports, on existing works, systems, or plants, and of any proposed addition to, modification of, or alteration of any such works, system, or plant which contains the information requested by the director in the form prescribed by the director. Such plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner; and
- (2) The owner or operator of any effluent source or any discharger of effluent to:
  - (A) Establish and maintain records;
  - (B) Make reports;
  - (C) Install, use, and maintain monitoring equipment or methods;
  - (D) Sample effluent and state waters; and
  - (E) Provide such other information as the department may require.

§ -56 **Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints of water pollution, hold hearings in connection with water pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of water pollution; and
- (2) Appoint a master or masters to conduct investigations and hearings.

§ -57 **Public participation activities; appointment of hearings officers.** The director may appoint, without regard to chapters 76 and 77, hearings officers to conduct public participation activities, including public hearings and public informational meetings.

§ -58 **Consultation and advice.** The director may consult with and advise:

- (1) Any person engaged or intending to be engaged in any business or undertaking whose waste, sewage, or drainage is polluting or may tend to pollute state waters; and

- (2) Persons intending to alter or to extend any system of drainage, sewage, or water supply.

§ -59 **Research, educational, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of water pollution, the quality of the receiving water and the means to monitor the quality of water, or to effect the proper disposal of sewage, drainage, and waste;
- (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 water pollution; and
- (3) Conduct and supervise state educational and training programs on water pollution prevention, control, and abatement, including the preparation and distribution of information relating to water pollution.

§ -60 **Annual reports.** The director may publish annual reports on the quality of the state waters, which annual report shall include, but not be limited to:

- (1) A description of sampling programs and quality control methods procedures;
- (2) Statistical analysis and interpretation of the data on an annual basis by specific points (monitoring stations);
- (3) Discussion of the results of these analyses to the extent that the implications can be understood by the general public;
- (4) Recommendations for the modification of the water quality monitoring program to enhance its effectiveness for maintaining high standards of water quality in the State; and
- (5) A note of any significant changes in the quality of state waters."

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## "CHAPTER NOISE POLLUTION

### PART I. DEFINITIONS AND GENERAL PROVISIONS

§ -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.

"Excessive noise" means the presence of sound as measured by standard testing devices as established by the noise rules adopted by the department of a volume or in quantities and for durations which endangers human health, welfare or safety, animal life, or property or which unreasonably interferes with the comfortable enjoyment of life and property in the State or in such areas of the State as are affected thereby.

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

"Off-hour roadwork" means any roadway construction between the hours of 6pm and 7am, which would require a variance from the committee on noise rules in the department of health.



"Permit" means written authorization from the director to construct, modify, or operate any excessive noise source. A permit authorizes the grantee to cause or emit excessive noise 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, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Pollution" means excessive noise.

"Variance" means special written authorization from the director to cause or emit excessive noise in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules adopted under this chapter.

"Vehicle" means any device in, upon, or by which any person or property is or may be transported or drawn, including boats and ships.

**§ -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.

**§ -3 Duties, rules, powers, 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 noise pollution in the State. In the discharge of this duty, the director may make, amend, and repeal state rules controlling and prohibiting noise 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 chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

**§ -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 such permits shall be accompanied by plans, specifications, and such other information as 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 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; or

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

The director shall ensure that the public receive notice of each application for a permit to control water or hazardous waste pollution. The director may hold a public hearing before ruling on an application for a permit to control water or hazardous waste pollution if the director determines such public hearing to be 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 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.

**§ -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 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 noise level standards established pursuant to this chapter.

(c) Whenever an application is approved, the department shall issue a variance authorizing the emission of noise in excess of applicable standards. 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 emission occurring or proposed to occur by the granting of the variance is in the public interest as defined in section -4;
- (2) The emission occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the rules or standards 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 excessive noise 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 excessive noise involved.
- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform noise sampling and report the results of such sampling to the department.
- (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 emission 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 public participation requirements listed below.
  - (1) Public notices of every completed application for a variance, except an application for off-hour road work, shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed emission. Procedures for the circulation of public notices shall include at least the following:
    - (A) Notice shall be circulated within the geographical areas of the proposed emission; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
    - (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 emission described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);
  - (D) A short description of the location of each emission indicating whether such emission 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.
- (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 emission or other appropriate area, at the discretion of the director.

**§ -6 Inspection of premises.** The director, in accordance with law, may enter and inspect any building or place to investigate an actual or suspected source of excessive noise, to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, or any permit or other approval 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 excessive noise shall be disclosed by the official or employee except as it relates directly to excessive noise 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.

**§ -7 Enforcement.** (a) If the director determines that any person is violating this chapter, violating any rule adopted pursuant to this chapter, or violating any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May 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.
- (3) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or the conditions of a permit or variance issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that the person has violated the provisions of an accepted schedule, has violated an order issued under this section, or has continued to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless no 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.

(e) 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 discharges 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 discharges.

(f) 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 recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) 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.

**§ -8 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by excessive noise, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the excessive noise to immediately reduce or stop such emission, or the director may take any and all other actions as may be necessary. Such 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.

**§ -9 Penalties.** (a) Violation of the vehicular noise control rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this violation shall be not less than \$25 nor more than \$2,500 for each separate offense. Each day of violation shall constitute a separate offense.

(b) Any person who violates this chapter, any rule adopted pursuant to this chapter, other than vehicular noise control rules, or any permit or variance issued pursuant to this chapter, shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular noise control rules, shall be considered a civil action.

(c) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -10 Citation.** Any person who commits a violation of the noise control rules adopted by the department pursuant to this chapter may be issued a summons or citation for such violation by any person authorized to enforce such rules, hereinafter referred to as enforcement officer. The summons or citation shall be printed in the form hereinafter described, warning such person to appear and answer to the charge against the person at a certain place and at a time within seven days after the issuance of such summons or citation.

The summons or citation shall be designed to provide for all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution of the original and any other copies.

Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

In the event any person fails to comply with a summons or citation issued to such person, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest. Failure to comply with a summons or citation is a misdemeanor.

§ **-11 Administrative penalties.** 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 -9(b). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

§ **-12 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive 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. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

§ **-13 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 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 a court of competent jurisdiction.

§ **-14 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.

§ **-15 Public records; confidential information; penalties.** Reports submitted to the department on the emission of excessive noise 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 -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.

§ **-16 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 -15.

§ **-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.

§ -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.

§ -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.

§ -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 excessive noise control which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to excessive noise control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

§ -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.

## PART II. NOISE CONTROL

§ -30 **Prohibition.** No person, including any public body, shall engage in activity which produces excessive noise without first securing approval in writing from the director[.]; provided that this section shall not apply to any school activity which is approved by school authorities. For purposes of this section, "school activity" means a public or private school function for students up through the twelfth grade which is approved by the school principal or an authorized representative. These activities shall be limited to the hours of 7:00 a.m. to 10:00 p.m.<sup>1</sup>

§ -31 **Rules; specific.** The director may establish by rule:

- (1) The control of vehicular noise; and
- (2) Other specific areas for control of excessive noise, thereby allowing for varying conditions.

§ -32 **Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints of excessive noise, hold hearings in connection with excessive noise, and institute legal proceedings in the name of the State for the prevention, control, or abatement of excessive noise; and
- (2) Appoint a master or masters to conduct investigations and hearings.

§ -33 **Research, educational, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of excessive noise and the means whereby noise may be monitored, controlled, or abated;
- (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 excessive noise; and
- (3) Conduct or commission and supervise state educational and training programs on noise prevention, control, and abatement, including the preparation and distribution of information relating to excessive noise and its effect on people."



SECTION 4. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **“CHAPTER SOLID WASTE POLLUTION**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

§ -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.

“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 disposal system or any component of any solid waste disposal system. A permit authorizes the grantee to construct, modify, and operate any solid waste disposal 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.

“Pollution” means solid waste pollution.

“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.

“Solid waste” means garbage, refuse, and other discarded materials, including solid, liquid, semi-solid, 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.

“Solid waste disposal system” means a system for the storage, 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.

§ -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.

§ -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 chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

§ -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 such permits shall be accompanied by plans, specifications, and such other information as 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 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; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (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.

The director shall ensure that the public receive notice of each application for a permit to control water or hazardous waste pollution. The director may hold a public hearing before ruling on an application for a permit to control water or hazardous waste pollution if the director determines such public hearing to be 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, 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.

**§ -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 -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.
- (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 public participation requirements listed below.

(1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed disposal or other proposed activity. Procedures for the circulation of public notices shall include at least the following:

(A) Notice shall be circulated within the geographical areas of the proposed disposal or other proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;

(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 such 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) of this subsection 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.

- (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.

§ -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.

§ -7 **Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May 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.
- (3) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.

- (4) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that the person has violated an accepted schedule, an order issued pursuant to this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) 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.

(e) 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.

(f) 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 recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) 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.

**§ -8 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by a discharge of solid waste or any combination of discharges of waste, which requires immediate action, the director, with the approval of the governor and without 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 such disposal or the director may take any and all other actions as may be necessary. Such 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.

§ -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 violation shall constitute a separate offense. Any action taken 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 and 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 to impose or collect the penalty provided for in this subsection shall be considered a civil action.

§ -10 **Administrative penalties.** 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 -9(a). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

§ -11 **Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive 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. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

§ -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 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 a court of competent jurisdiction.

§ -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.

§ -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 -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.

§ -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 -14.

§ -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.

§ -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.

§ -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.

§ -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) Any county may adopt ordinances and rules governing any matter relating to solid 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 solid waste management shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

§ -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.

## PART II. SOLID WASTE CONTROL

§ -30 **Prohibition.** (a) No person, including any public body, shall engage in the operation of an open dump, without first securing approval in writing from the director.

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

§ -31 **Rules; specific.** The director may establish by rule the criteria for siting design, construction, financial responsibility, manifest, and operation of solid waste treatment, storage, transport, and disposal systems.

§ -32 **Plans and reports.** The director may require complete and detailed plans or reports on existing solid waste disposal systems and of any proposed addition to, modification of, or alteration of any such systems which 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.

§ -33 **Appointment of masters.** The director may appoint a master or masters to conduct investigations and hearings.

§ -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.

§ -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 disposal 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 disposal systems, including the preparation and distribution of information relating to solid waste pollution.

§ -36 **Solid waste recycling for agricultural purposes; encouraged.** The director shall encourage the recycling of solid wastes, including animal wastes and industrial wastes, for agricultural purposes. The use of treated sludge effluent for fertilizer and other agricultural purposes shall also be encouraged."

SECTION 5. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## "CHAPTER HAZARDOUS WASTE

### PART I. PREAMBLE

§ -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.

## PART II. DEFINITIONS AND GENERAL PROVISIONS

§ -2 **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 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 groundwaters.

“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 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” 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).

“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, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Pollution" means hazardous waste pollution.

"Solid waste" means garbage, refuse, and other discarded materials, including solid, liquid, semi-solid, 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.

"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.

§ -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.

§ -4 **Powers; rule-making; appointment of hearings officers.** (a) The director may make, amend, and repeal state rules controlling and prohibiting 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 chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

§ -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 department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed or existing 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 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; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted hazardous waste management activity; or
- (4) Such is in the public interest.

The director shall ensure that the public receives notice of each application for a permit to control hazardous waste pollution. The director may hold a public hearing before ruling on an application for a permit to control hazardous waste pollution if the director determines such a public hearing to be 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.

(d) 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 so long as the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.

**§ -6 Entry and inspection of premises.** The director, in accordance with law, may enter and inspect any building or place for the purposes of:

- (1) Investigating an actual or suspected source of hazardous waste pollution;
- (2) Monitoring for compliance or noncompliance with this chapter, any rule or standard adopted by the department, any permit, or any other approval granted by the department;
- (3) Conducting reasonable tests;
- (4) Taking samples; or
- (5) Copying records.

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 hazardous waste pollution shall be disclosed by the official or employee except as it relates directly to hazardous 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.

**§ -7 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or violating any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May 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.

- (3) May impose penalties as provided in section -10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section -10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that the person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) 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.

(e) 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.

(f) 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 recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) 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.

**§ -8 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by disposal of hazardous waste or any combination of disposals of hazardous waste, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the disposal of hazardous waste to immediately reduce or stop such disposal or the director may take any and all other actions as may be necessary. Such 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.

**§ -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 violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who knowingly:

- (1) Transports any hazardous waste to a storage, treatment, or disposal facility which does not have a permit pursuant to section -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 -5; or
- (3) 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, shall be subject to criminal penalties of not more than \$25,000 for each day of violation, or imprisonment, not to exceed one year, or both. If the conviction is for a violation committed after a first conviction, criminal punishment shall be by a fine of not more than \$50,000 for each day of violation, or by imprisonment for not more than two years, or both.

(c) Any person who denies, obstructs, or hampers the entrance and 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 \$10,000 for each separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

§ -10 **Administrative penalties.** 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 -9(a). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

§ -11 **Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance adopted pursuant to this chapter, without the necessity of a prior revocation of the permit or variance. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

§ -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 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 a court of competent jurisdiction.

§ -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.

§ -14 **Public records; confidential information; penalties.** Reports submitted to the department on hazardous waste management 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 -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.

§ -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 -14.

§ -16 **Intervention.** Subject to the approval of the court, 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.

§ -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.

§ -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.

§ -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.

§ -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.

§ -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.

### PART III. HAZARDOUS WASTE CONTROL

§ -30 **Prohibition.** 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.

§ -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.

§ -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.

§ -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.

§ -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.

§ -35 **Other rules.** The director may adopt other rules which are necessary to obtain and maintain authorization under the federal program.

§ -36 **Hazardous waste releases.** (a) The director may issue an order requiring the owner or operator of a hazardous waste management facility or site to monitor, test, analyze, and report, with respect to a site, in order to ascertain the nature and extent of any release of hazardous waste or hazardous waste constituent.

(b) 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.

(c) If the director determines that the owner or operator is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the director may dictate the conduct of responsibility of the owner or operator.

(d) Whenever the director determines that there is or has been a release of hazardous waste or 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 environment, or the director may commence a civil action for appropriate relief, including a temporary or permanent injunction.

**§ -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.

**§ -38 Public participation activities; appointment of hearings officers.**

The director may appoint, without regard to chapters 76 and 77, hearings officers to conduct public participation activities, including public hearings and public informational meetings.

**§ -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.

**§ -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.

**§ -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.

§ -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."

SECTION 6. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER UNDERGROUND STORAGE TANKS**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

§ -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.

"Guarantor" means any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.

"Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner" means:

- (1) In the case of an underground storage tank in use or brought into use on or after May 19, 1986, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and
- (2) In the case of an underground storage tank in use before May 19, 1986, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

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

"Permit" means written authorization from the director to install or operate an underground storage tank. A permit authorizes the owner or operator to install and operate an underground storage tank in a manner, 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 an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the State, or a political subdivision of the State, the United States government, or any other legal entity.

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

"Regulated substance" means element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. The term includes:

- (1) Any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act); or
- (2) Petroleum; and
- (3) Any other substance as designated by the department.

"Release" includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.

"Underground storage tank" means any one or combination of tanks (including pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent or more beneath the surface of the ground. Exemptions from this definition and rules adopted under this chapter include:

- (1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (2) Tank used for storing heating oil for consumptive use on the premises where stored;
- (3) Septic tank;
- (4) Pipeline facility (including gathering lines) regulated under:
  - (A) The Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended;
  - (B) The Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;
- (5) Surface impoundment, pit, pond, or lagoon;
- (6) Storm water or wastewater collection system;
- (7) Flow-through process tank;
- (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; and
- (9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

"Variance" means special written authorization from the director to own, install, or operate an underground storage tank in a manner deviating from applicable standards, or to do an act that deviates from the requirements of rules adopted under this chapter.

**§ -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.

**§ -3 Powers; rule-making; appointment of hearings officers.** (a) The director may make, amend, and repeal state rules controlling and regulating underground storage tanks. 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 chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

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

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as 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 this to be protective of public health and the environment, provided that the permit may be subject to conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not to exceed five years if the director determines this to be protective of public health and the environment. 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; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a release or threatened release of regulated substances that the department deems to pose an imminent and substantial risk to public health and the environment.

(d) 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 so long as the applicant acts in compliance with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.

§ -5 **Variances allowed.** Provisions under this chapter deemed more stringent than the federal rules established under Subtitle I of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, may be varied by the department, when the variance results in an equivalent degree of public health and environmental protection and does not present a greater danger to public health and the environment.

§ -6 **Variances; procedures for.** (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 fully conform to 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 is approved, the department shall issue a variance authorizing the installation or operation of an underground storage tank in a manner deviating from full compliance with applicable standards. 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 installation or operation of an underground storage tank occurring or proposed to occur by the granting of the variance is protective of public health and the environment;

- (2) The installation or operation of an underground storage tank occurring or proposed to occur does not imminently and substantially endanger human health and the environment or the public's safety; and
  - (3) Compliance with the rules or standards from which variance is sought would produce serious financial hardship to the owner and operator.
- (d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and conditions consistent with the reasons thereof, 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 storage of the regulated substance involved, it shall be only until the necessary means for storage becomes 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 storing the regulated substance involved.
- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the owner and operator to monitor for releases and report the results to the department.

(e) Any variance granted pursuant to this section may be renewed from time to time on previous terms and conditions, subject to modifications, and for periods not exceeding five years at a time; 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 deviation from full compliance with applicable standards 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, including revocation of the variance.

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

- (1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed activity. Procedures for the circulation of public notices shall include at least the following:
  - (A) Notice shall be circulated within the geographical areas of the proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
  - (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 comments 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 and other involved parties including the landowner, facility owner, underground storage tank owner, facility operator, and underground storage tank operator;
  - (C) Brief description of all applicant activities or operations which result in the activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);
  - (D) A short description of the location of each underground storage tank;
  - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) of this subsection and any other means by which interested persons may influence or comment upon those determinations; and
  - (F) Address and phone number of state agency or other location at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents.
- (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 activity, or other appropriate area, at the discretion of the director.

**§ -7 Investigations; inspections; corrective action.** (a) For the purpose of developing or assisting in the development of any rule, conducting any study, taking any corrective action, or enforcing this chapter, any owner or operator of an underground storage tank, upon the request of any duly authorized representative of the department, shall furnish information relating to such tanks, including tank equipment and contents; conduct monitoring or testing; and permit the designated representative at all reasonable times to have access to, and to copy all records relating to such tanks.

(b) For the purpose of developing or assisting in the development of any rule, conducting any study, investigating an actual or suspected release, monitoring for compliance or noncompliance with this chapter, any rule or standard adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, taking corrective action, or enforcing this chapter, any duly authorized representative of the department is authorized:

- (1) To enter at reasonable times any establishment or place;
- (2) To inspect and obtain samples from any person of any regulated substances contained in any underground storage tank;
- (3) To conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater; and
- (4) To take corrective action.

Each inspection shall be commenced and completed with reasonable promptness.

(c) Any records, reports, or information obtained from any persons under this section shall be available to the public except as provided in this subsection.

Upon a showing satisfactory to the department that public disclosure of records, reports, or information, or a particular part thereof, to which the department representative has access under this section would divulge commercial or financial information entitled to protection under state or federal law, the department shall consider such information or a particular portion thereof to be confidential. No confidential information secured pursuant to this section by any official or employee of the department within the scope and cause of the official's or employee's employment in the prevention, control, or abatement of releases from underground storage tanks shall be disclosed by the official or employee with the following exception: the document or information may be disclosed to officers, employees, or authorized representatives of the State or of the United States, including local government entities, who have been charged with carrying out this chapter or Subtitle I of the Resource Conservation and Recovery Act, or when relevant in any proceeding under this chapter.

**§ -8 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May 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.
- (3) May impose penalties as provided in section -10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section -10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.



(c) If the director determines that any person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) 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.

(e) 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 release 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 a 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 release.

(f) 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 recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) 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.

**§ -9 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety and the environment is or will be caused by a release or by the installation or operation of an underground storage tank, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the peril to immediately reduce or stop such release or activity or the director may take any and all other actions as may be necessary. Such 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.

**§ -10 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 tank for each day of violation. Each day of violation shall constitute a separate offense. Any person who fails to comply with an order issued under this chapter within the time specified in the order, shall be fined not more than \$25,000 for each day of continued non-compliance. Any action taken 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 and inspection by any duly authorized officer or employee of the department of any building, place, site, facility, vehicle, or structure that the officer or employee is authorized to enter and inspect shall be fined not more than \$500 per day of denial, obstruction, or hindrance. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -11 Administrative penalties.** 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 -10(a). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

**§ -12 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

**§ -13 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 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 a court of competent jurisdiction.

**§ -14 Fees.** The director may establish reasonable fees for the registration of underground storage tanks, for the issuance, renewal, and modification 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 including inspections and necessary site visits (not including court costs or other costs associated with any formal enforcement action), and for the review, evaluation, and approval of plans submitted regarding corrective action and site visit activities. The fees shall be deposited to the credit of the general fund.

**§ -15 Public records; confidential information; penalties for disclosure.** Reports and records submitted to the department on the ownership, installation, or operation of underground storage tanks shall be made available for in-

spection 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 -7 who knowingly and willfully divulges or discloses 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, upon conviction, be fined not more than \$5,000 or shall be imprisoned not to exceed one year, or both.

§ -16 **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 -15.

§ -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.

§ -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.

§ -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.

§ -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 underground storage tanks which are not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to underground storage tanks shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

§ -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.

§ -22 **Public participation.** The director shall adopt state rules establishing public participation requirements regarding the state enforcement process.

## PART II. UNDERGROUND STORAGE TANK REGULATION

§ -30 **Notification requirements.** (a) The owner of an existing underground storage tank shall notify the department by December 31, 1989, of the existence of such tank and specify the age, size, type, location, and uses of such tank. Notice shall be made on an approved form of notice provided by the department.

(b) The owner of an existing underground tank taken out of operation between January 1, 1974, and May 19, 1986, shall notify the department by December 31, 1989, of the existence of the tank, unless the owner knows the tank subsequently

was removed from the ground. Notices shall include, to the extent known to the owner, at least the following specifications:

- (1) The date the tank was taken out of operation;
- (2) The age of the tank on the date taken out of operation;
- (3) The size, type, and location of the tank; and
- (4) The type and quantity of substances left stored in the tank on the date taken out of operation.

(c) Any owner who brings into use an underground storage tank after May 19, 1986, shall notify the department within thirty days after the installation of the tank, specifying the age, size, type, location, and uses of the tank.

(d) Subsections (a) to (c) shall not apply to tanks for which notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-516, as amended.

(e) The owner of an underground storage tank taken out of operation on or before January 1, 1974, is not required to notify the department.

(f) Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification requirements established under this section.

(g) Beginning on the effective date of this Act and for eighteen months thereafter, any person who deposits regulated substances into an underground storage tank shall notify the owner of such tank of the owners notification requirements established under this section.

**§ -31 Tank permit requirements and transfer of permit.** (a) No person shall install or operate an underground storage tank brought into use after the effective date of the new tank standards established in section -32 unless a permit is obtained from the department and upon payment of a fee.

(b) The department shall prepare a form which provides for the acceptance of the obligations of a transferred permit by any person who is to assume the ownership of an underground storage tank from the previous owner. That person shall complete the form accepting the obligations of the permit and submit the completed form within thirty days after the date of transfer of ownership of the underground storage tank.

**§ -32 New tank standards.** (a) The department shall adopt performance standards under chapter 91 which shall apply to underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.

(b) New tank construction standards shall include, but are not limited to the following specifications:

- (1) The tank will prevent releases of the stored regulated substances due to corrosion or structural failure for the operational life of the tank;
- (2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, or steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and
- (3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

**§ -33 Leak detection and record maintenance.** (a) The department shall adopt under chapter 91 standards of performance for maintaining a leak detection system, an inventory control system, and tank testing system, or a comparable system or method designed to identify releases in a manner consistent with the

protection of human health and the environment. In addition, the department shall adopt requirements for owners and operators to maintain records of any such monitoring, leak detection, inventory control, and tank testing system.

(b) The requirements for the leak detection and record maintenance system shall include, but are not limited to:

- (1) Directing the owner or operator of an underground storage tank to keep accurate regulated substance inventory records for the purpose of detecting leaks. Records shall be kept for each tank on each day a regulated substance is added to or withdrawn from the tank and shall include, as a minimum, a record of the amount of stored regulated substance withdrawn and received and the amount of stored regulated substance in the tank.
- (2) Inventory measurements shall be made by gauge or gauge stick or by readout from an automatic monitoring system.
- (3) Inventory records shall be maintained on a regular basis; provided that daily inventory records need not be maintained on those days when a tank is not used if such period does not exceed seven days.
- (4) Losses or gains from each day's inventory period shall be averaged for each five consecutive readings or once a week.
- (5) Records required to be maintained by the owners and operators, pursuant to this section, shall be retained for a minimum of two years.

§ -34 **Reporting of releases.** The department shall adopt under chapter 91 requirements for reporting regarding releases and corrective action taken in response to a release from an underground storage tank.

§ -35 **Corrective action.** The department shall adopt under chapter 91 requirements for taking corrective action in response to a release from an underground storage tank which should include at least the following:

- (1) Requirement that when a leak is found, the substances in the tank be emptied if emptying the substances does not present a greater danger to public health and the environment;
- (2) Requirement for the removal or proper closure of the tank, following the requirements established under section -37, or repair and testing of the tank before placing it back into operation;
- (3) Requirement that the owner and operator of the leaking underground storage tank restore the environment to a condition and quality acceptable to the department; and
- (4) Requirement to conduct public participation activities.

§ -36 **Financial responsibility.** (a) The department shall adopt under chapter 91 requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from operating an underground storage tank. Evidence of financial responsibility may be established by rule by any one, or any combination of the following: insurance, corporate guarantees, surety bond, letter of credit, or qualification as a self insurer, or any other method satisfactory to the department. In prescribing requirements under this subsection, the department may specify policy or other contractual terms, conditions, or defenses which are necessary or acceptable to establish evidence of financial responsibility.

(b) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if jurisdiction in any state or federal 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 subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against 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.

(c) The total liability of a 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 subsection. This subsection does not limit any other state or federal 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 in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other applicable law.

(d) The department may establish the amount of required coverage for particular classes or categories of underground storage tanks containing petroleum, which shall not be less than \$1,000,000 for each occurrence with an appropriate aggregate requirement.

(e) The department may establish amounts lower than the amounts required by subsection (d) for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(f) The department may consider the following factors in establishing the amount of coverage:

- (1) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.
- (2) The likelihood of release from underground storage tanks in the class or category.
- (3) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.
- (4) The availability of methods of financial responsibility in amounts greater than the amount established by this section.
- (5) Such other factors as the department deems pertinent.

(g) The department may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks if the department determines that methods of financial responsibility satisfying the requirements of this section are not generally available for underground storage tanks in that class or category, and

- (1) Steps are being taken to form a risk retention group for such class of tanks; or
- (2) The State is taking steps to establish a fund to be implemented by the department or local agencies and departments for corrective action and compensation for such class of tanks.

The initial suspension by the department pursuant to this subsection may be for a period not to exceed 180 days. A determination to continue suspension may be made with respect to the same class or category at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the department

finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund described in paragraph (2).

§ -37 **Underground storage tank closure requirements.** The department shall adopt under chapter 91 requirements for the closure of underground storage tanks, including the removal and disposal of underground tanks and pipings to prevent future releases of regulated substances into the environment.

### **PART III. DEPARTMENT RESPONSE PROGRAM FOR PETROLEUM RELEASES**

§ -50 **Definitions.** For the purpose of this part:

"Exposure assessment" means a determination regarding the extent of an individual's exposure to, or potential for exposure to, petroleum from a release from an underground storage tank. This assessment shall be based on factors such as the nature and extent of contamination, the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community or communities within the likely pathways of exposure, a comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for such contaminants.

"Facility" means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

"Fund" means the leaking underground storage tank fund.

"Owner" means any person who falls within the definition of owner contained within part I of this chapter who does not participate in the management of an underground storage tank and is otherwise not engaged in petroleum production, refining, and marketing, but holds indicia of ownership primarily to protect a security interest in the tank.

§ -51 **Leaking underground storage tank fund.** (a) The department shall establish a revolving fund within the department which shall consist of moneys appropriated to the fund through federal grants, moneys appropriated to the fund by the legislature, moneys paid to the fund as a result of departmental compliance proceedings, moneys paid to the fund pursuant to court-ordered awards or judgments, moneys paid to the fund in court-approved or out-of-court settlements, and moneys given to the fund from other sources.

(b) Moneys from the fund shall be expended by the department for the sole purpose of corrective action activities in response to petroleum leaks from underground storage tanks in a manner consistent with this chapter.

(c) Moneys in the fund, which were appropriated to the fund through a federal grant and which have been collected by the department as part of its cost recovery efforts pursuant to section -53, may be paid to the federal government when such repayment is required by a condition in the relevant federal grant.

§ -52 **Corrective action.** (a) In the event of a petroleum release from an underground storage tank, which occurs prior to the adoption of rules for corrective action pursuant to section -35, the department may:

- (1) Issue an order requiring the owner or operator of an underground storage tank to undertake corrective action as is necessary to protect human health and the environment and fixing a place and time, not

later than twenty-four hours thereafter, for a hearing to be held before the director; or

- (2) Undertake corrective action itself or by contract as is necessary to protect human health and the environment.

The department shall use moneys from the fund to pay for costs incurred in undertaking or compelling corrective action pursuant to this subsection.

The department shall assign priority in undertaking corrective actions, pursuant to this subsection, to cases in which the department cannot identify, within the time necessary to protect human health and the environment, a solvent owner or operator of the tank, or even if able to identify such a person, has cause to believe that the person cannot or will not properly undertake corrective action.

(b) In the event of a petroleum release from an underground storage tank which occurs after the adoption of rules for corrective action pursuant to section -35, the department may take all actions and issue such orders as are described in subsection (a) which are in conformity with such rules, provided, that, the department may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if the department finds such action to be necessary to protect human health and the environment and one or more of the following conditions exists:

- (1) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is:
  - (A) An owner or operator of the tank;
  - (B) Subject to such corrective action rules; and
  - (C) Capable of carrying out such corrective action properly;
- (2) Prompt action by the department is required to protect human health and the environment;
- (3) Anticipated costs of corrective action at a facility will exceed the amount of financial responsibility coverage required by the department and the class, category, or tanks from which the release occurred necessitate, in the opinion of the director, expenditures from the fund in order to assure effective corrective action; or
- (4) The owner or operator for the tank has failed or refused to comply with a federal order issued pursuant to sections 9003 and 9006 of the Resource Conservation and Recovery Act or with an order issued pursuant to this section or section -8 of this chapter to comply with the corrective action rules.

The department shall assign priority in undertaking corrective actions pursuant to this subsection and in issuing orders requiring owners or operators to undertake corrective actions, to those cases involving releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(c) The department is authorized to issue orders to the owner or operator of an underground storage tank to comply with rules adopted under section -35.

(d) Corrective actions undertaken by the department may include the temporary or permanent relocation of residents and the provision of alternative household water supplies.

(e) In connection with the performance of any corrective action the department may undertake an exposure assessment. Corrective action to abate immediate hazards or reduce exposure shall not be delayed in order to complete any exposure assessment. The costs of any such assessment may be deemed to have been incurred in undertaking the corrective action.

(f) Except as provided in this subsection, in order to protect human life, at any facility whose owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established pursuant to section



-36 of this chapter the department shall expend no monies from the fund to clean up releases at such facility pursuant to subsections (a) and (b). At such facilities the department may use the authority provided in this chapter to order corrective action to clean up such releases. However, the department may use monies from the fund to take corrective action if necessary to protect human health at such facilities and shall seek full recovery of the costs of all such actions. Nothing in this subsection shall prevent the department from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

**§ -53 Cost recovery.** (a) Whenever costs have been incurred by the department in the undertaking of corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the federal government or the department for such costs. The liability under this subsection shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

(b) In seeking cost recovery, the department may consider the amount of financial responsibility required to be maintained pursuant to section -36 of this chapter and the factors considered in establishing the amount of financial responsibility pursuant to section -36.

(c) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this section, to any other person, the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section. Nothing in this chapter shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person."

SECTION 7. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER  
USED OIL TRANSPORT, RECYCLING, AND DISPOSAL  
PART I. DEFINITIONS AND GENERAL PROVISIONS**

**§ -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.

"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 discharge waste or to construct, modify, or operate any used oil management system. A permit authorizes the grantee to do any act, 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.

"Recycled oil" means used oil that is reused or prepared for reuse as a petroleum product.

"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.

"Used oil" means a petroleum-based oil which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

"Used oil transporter" means any person who transports more than five hundred gallons of used oil annually.

**§ -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.

**§ -3 Rules; appointment of hearings officers.** (a) The director may make, amend, and repeal state 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.

(b) In addition to other specific powers provided in this chapter, the director may appoint without regard to chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

**§ -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 such permits shall be accompanied by plans, specifications, and such other information as 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 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; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted activity; or
- (4) Such is in the public interest.

The director shall ensure that the public receive notice of each application for a permit to control water or hazardous waste pollution. The director may hold a public hearing before ruling on an application for a permit to control water or hazardous waste pollution if the director determines such public hearing to be 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, 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.

**§ -5 Inspection of premises; examination of records.** The director, in accordance with law, may enter and inspect any building, place, facility, storage tank, or vehicle and examine the records required under this chapter to investigate an actual or suspected source of used oil pollution, to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department, pursuant to this chapter, or any permit or other approval granted by the department, 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 used oil pollution, pursuant to this chapter, shall be disclosed by the official or employee except as it relates directly to the control of used oil 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.

**§ -6 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May 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.
- (3) May impose penalties as provided in section -8 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section -8 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that any person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any conditions of a permit issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) 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.

(e) 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 discharges 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 discharges.

(f) 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 recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) 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.

**§ -7 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by discharge of new, used, or recycled oil or any combination of discharges of waste, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the peril to immediately reduce or stop such discharge or activity or the director may take any and all other actions as may be necessary. Such 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.

**§ -8 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who wilfully or negligently violates this chapter, any rule adopted by the department pursuant to this chapter, or any condition of a permit issued pursuant to this chapter shall be punished by a fine of not more than \$5,000 for each violation or imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction, the violator shall be subject to a fine of not more than \$10,000 for each violation, or by imprisonment for not more than two years, or both.

(c) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any facility, place, storage tank, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -9 Administrative penalties.** 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 - 8(a). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

**§ -10 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent a violation of this

chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, without the necessity of a prior revocation of the permit. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

§ **-11 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 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 a court of competent jurisdiction.

§ **-12 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.

§ **-13 Public records; confidential information; penalties.** Oil management permit applications and reports on the management of used oil 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 -5 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.

§ **-14 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 -13.

§ **-15 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.

§ **-16 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.

§ **-17 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.

§ **-18 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 used oil transport, recycling, and disposal which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to used oil transport, recycling, and disposal shall be void and of

no effect as to any matter regulated by a rule of the department upon the adoption thereof.

§ **-19 Priority in courts.** All actions brought pursuant to this chapter 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.

## PART II. USED OIL CONTROL

§ **-30 Prohibited acts.** (a) No new oil, used oil, or recycled oil shall be discharged into sewers, drainage systems, surface or ground waters, watercourses, or marine waters.

(b) No used oil transporter shall deliver used oil to any person with the knowledge that the oil will be improperly disposed of in violation of this chapter.

(c) No new oil, used oil, or recycled oil shall be discharged onto the ground without prior written approval from the department and the landowner.

(d) No used oil or recycled oil shall be burned as specification fuel without an analysis or other written information documenting that the used oil or recycled oil meets the standards for specification fuel as set forth by the director.

§ **-31 Permit required.** No person shall transport, market, or recycle used oil except specification fuel, without first obtaining a permit from the department. The director may require any person who generates and burns their own used oil as specification fuel to notify the department of their activity.

§ **-32 Used oil transport vehicles; identification required.** The department shall require used oil transporters to identify vehicles used for the transport of used oil.

§ **-33 Recordkeeping, sampling, and testing requirements.** (a) Transporters, marketers, recyclers, and burners of used oil shall keep a copy of each transaction or invoice received.

(b) Any person who sells used oil as specification fuel shall keep a copy of each analysis performed or other written information documenting that the used oil meets the standards for specification fuel as set forth by the director.

(c) The director may require any person who generates and burns the person's own used oil as specification fuel to keep a copy of each analysis performed or other written information documenting that the used oil meets the standards for specification fuel as set forth by the director.

(d) The persons described in subsections (a), (b), and (c) shall be required to maintain records relating to used oil which shall be retained for a period of three years and made available to the director upon request.

(e) Each used oil transporter shall provide a signed voucher to each person surrendering or accepting the used oil when used oil is picked up or delivered and shall keep a record of each voucher.

(f) The department may require persons who generate, transport, market, recycle, or burn used oil or specification fuel or accept used oil for final disposal to conduct sampling and testing and to keep and submit records.

§ **-34 Cooperation with other agencies.** The department shall coordinate its activities and functions under this chapter with the department of business and economic development and other state agencies to avoid duplication in reporting and information gathering."

**SECTION 8.** Chapter 342, Hawaii Revised Statutes, is repealed.

**SECTION 9.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date. Rules that were adopted under the authority of chapter 342 shall remain in effect until they are replaced by rules adopted under the authority of the respective chapters being enacted in this Act. References in the new chapters to rules shall include rules adopted pursuant to chapter 342 until the rules adopted pursuant to chapter 342 are replaced by rules adopted under the respective new chapters.

**SECTION 10.** All acts passed by the legislature during this Regular Session of 1989, whether enacted before or after the effective date of this Act, shall be amended to conform with this Act unless such acts specifically provide that this Act is being amended.

**SECTION 11.** The Department of Health shall submit a progress report to the Legislature on any memorandum of understanding entered into between the Department of Health and the counties on the use of police officers to enforce the "open burning" provision found in section -9(b) of Part I of the new chapter on air pollution created by this Act.

**SECTION 12.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 13.** This Act shall take effect upon its approval.

(Approved June 7, 1989.)

**Note**

1. So in original.