

ACT 300

H.B. NO. 1653

A Bill for an Act Relating to the Environment.

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

PART I

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

**“CHAPTER  
HAWAII EMERGENCY PLANNING AND COMMUNITY  
RIGHT-TO-KNOW ACT**

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

“Administrator” means the Administrator of the United States Environmental Protection Agency.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. §§9601-9675.

“Commission” means the Hawaii state emergency response commission.

“Committee” means the local emergency planning committee within each county responsible for preparing hazardous material plans and performing other functions under EPCRA and HEPCRA.

“County agency” means a county or any officer or agency thereof.

“Department” means the department of health.

“Director” means the director of health.

“EPCRA” means the Emergency Planning and Community Right-to-Know Act of 1986, as amended, 42 U.S.C. §§11001-11050.

“Environment” means any waters, including surface water, ground water, or drinking water; any land surface or any subsurface strata; or any ambient air, within the State or under the jurisdiction of the State.

“Extremely hazardous substance” means any substance listed in Appendix A of 40 C.F.R. 355, as amended, or as defined by rules adopted by the commission.

“Facility” means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor carrier,

rolling stock, aircraft, site, or area where a hazardous substance or pollutant or contaminant has been deposited, stored, disposed of, or placed, or otherwise comes to be located. The term does not include any consumer product in consumer use.

"Hazardous material" or "hazardous substance" means any hazardous substance as defined in chapter 128D.

"HEPCRA" means the Hawaii Emergency Planning and Community Right-to-Know Act.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state, county, commission, or, to the extent the United States or an interstate body is subject to this chapter, the United States or the interstate body.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous substance, or pollutant or contaminant into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance, or pollutant or contaminant. The term does not include:

- (1) Any release that results in the exposure of persons solely within a workplace, with respect to claims that these persons may assert against their employer;
- (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
- (3) Release of a source, by product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq., if this release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 U.S.C. §2210;
- (4) Any release resulting from the normal application of fertilizer;
- (5) Any release resulting from the legal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended; or
- (6) Any release from sewerage systems collecting and conducting primarily domestic wastewater.

"Reportable quantity" means the quantity of a hazardous material stated on the various lists of hazardous substances as defined in chapter 128D.

"Threshold planning quantity" means the threshold planning quantity for an "extremely hazardous substance" as defined in 40 C.F.R. Part 355.

"Toxic chemical" means a substance appearing on the list of chemicals described in section 313 of EPCRA, as set forth in 40 C.F.R. Part 372.

**§ -2 Designation and functions of the Hawaii state emergency response commission.** (a) There is created the Hawaii state emergency response commission, which shall be placed within the department for administrative purposes and carry out the requirements of this chapter.

(b) The commission shall consist of the following members, who shall be appointed by the governor as provided in section 26-34:

- (1) The director of health;
- (2) The chairperson of the board of agriculture;
- (3) The adjutant general;
- (4) The director of labor and industrial relations;
- (5) The chairperson of the board of land and natural resources;
- (6) The director of the office of environmental quality control;
- (7) The director of business, economic development, and tourism;
- (8) The director of transportation;

- (9) The dean of the University of Hawaii school of public health;
- (10) The director of the environmental center of the University of Hawaii;
- (11) One representative from each committee designated by the mayor of each respective county; and
- (12) Other persons appointed by the governor to meet the minimum requirements of EPCRA.

(c) A state officer who serves as a member of the commission may designate, in writing, another person to act in place of the officer. The designated person shall have all the powers of a commission member.

(d) The director shall be the chairperson of the commission. A vice-chairperson shall be designated by the chairperson to serve in the chairperson's absence. The chairperson or the vice-chairperson may assign, delegate, or transfer tasks, duties, and responsibilities to members of the commission.

(e) Commission members shall serve without compensation, but shall be reimbursed for actual and necessary expenses, including travel expenses, incurred in carrying out their duties.

(f) Commission and committee support personnel shall be supervised and administered by the chairperson as the primary agent responsible for performing the functions and duties of the commission. The department shall employ such professional, technical, administrative, and other staff personnel as may be deemed necessary to carry out the purposes of this chapter.

(g) The commission shall:

- (1) Carry out the duties and responsibilities of a state emergency response commission as specified in EPCRA;
- (2) Develop state contingency plans relating to the implementation of this chapter;
- (3) Supervise, coordinate, and provide staff support to the committees for the implementation of this chapter and EPCRA;
- (4) Develop a public information, education, and participation program for the public and facility owners covering the requirements of this chapter, and the interpretation of the chemical information collected pursuant to this chapter and the risks that these chemicals pose to the public health and environment;
- (5) Appoint the members of the committees;
- (6) Develop a state chemical inventory form to be used in lieu of the federal Tier II form and chemical list requirements; and
- (7) Do all other things necessary for the implementation of this chapter and the requirements of EPCRA.

**§ -3 Powers; rulemaking; appointment of hearing officers.** (a) The commission may adopt rules in accordance with chapter 91 to implement this chapter. The rules shall include, but not be limited to, requirements for reporting releases. Any person heard at a public hearing on the adoption of any rule shall be given written notice of the action taken by the commission with respect to the rule.

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

**§ -4 Establishment of emergency planning districts.** Each county is designated as an emergency planning district for the purposes of this chapter; provided that the department shall be responsible for Kalawao county.

**§ -5 Establishment and functions of local emergency planning committees.** (a) A minimum of one local emergency planning committee shall be established in each county. The committee shall be subject to the requirements of this chapter and section 303 of EPCRA, 42 U.S.C. §11003.

(b) The members of a committee shall be appointed by the commission, based upon the recommendations of the respective mayor of a county. The list of recommended persons shall contain at least one person from each of the groups listed in subsection (c). The commission may reject any recommendation made by the mayor of a county and appoint persons who did not receive a recommendation from the mayor.

(c) A committee shall be composed of at least one person from each of the following groups:

- (1) Elected state and county officials;
- (2) Law enforcement, first aid, health, environmental, hospital, and transportation personnel;
- (3) Firefighting personnel;
- (4) Civil defense and emergency management personnel;
- (5) Broadcast and print media personnel;
- (6) Community groups not affiliated with emergency service groups;
- (7) Owners and operators of facilities subject to the requirements of EPCRA; and
- (8) Other groups recommended by the mayor and appointed by the commission.

(d) Not more than sixty days after the occurrence of a vacancy, the commission, based upon the recommendations of the mayor, shall appoint a successor member to the committee, unless the requirements of subsection (c) have been fulfilled.

(e) Upon the failure of the mayor of a county to submit a list of nominees to the commission not more than forty-five days after notice of a vacancy, the commission shall make the appointment on its own initiative unless the requirements of subsection (c) have been fulfilled.

(f) Each committee shall:

- (1) Adopt bylaws and other administrative procedures to carry out the duties, requirements, and responsibilities set forth in this chapter, and as required by the commission and EPCRA;
- (2) Take appropriate actions to ensure the preparation, implementation, and annual update and review of the local emergency response plan required by this chapter and EPCRA. The local emergency response plans shall include, but not be limited to, the following:
  - (A) Identification of each facility subject to the requirements of section 303 of EPCRA, 42 U.S.C. §11003 and within the emergency planning district; identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances; and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this section, such as hospitals or natural gas facilities;
  - (B) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel in responding to any release of these substances;
  - (C) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan;

- (D) Procedures providing reliable, effective, and timely notification by facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and the public, that a release has occurred, consistent with the notification requirements of this chapter and section 304 of EPCRA, 42 U.S.C. §11004;
- (E) Methods for determining the occurrence of a release, and the area or population likely to be affected by the release;
- (F) A description of emergency equipment and facilities in the county and at each facility in the county subject to the requirements of this section, and the identification of the persons responsible for the equipment and facilities;
- (G) Evacuation plans, including provisions for precautionary evacuation and alternate traffic routes;
- (H) Training programs, including schedules for training of local emergency response and medical personnel; and
- (I) Methods and schedules for exercising the emergency plan;
- (3) Request additional information from the facilities, if necessary, to develop emergency response plans;
- (4) Submit local emergency response plans to the commission for review, and to other affected agencies upon request;
- (5) Report to the commission on alleged violations of this chapter;
- (6) Prepare reports, recommendations, and other information related to the implementation of this chapter, as requested by the commission;
- (7) Have the primary responsibility for receiving, processing, and managing hazardous chemical information forms and data, trade secrets, and public information requests pursuant to this chapter;
- (8) Accept and deposit into the state treasury any grants, gifts, or other funds received for the purpose of carrying out this chapter; and
- (9) Evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and make recommendations with respect to additional resources that may be required and the means for providing these additional resources.
- (g) The administrative and operational expenses of a committee may be paid by the State.

**§ -6 Reporting requirements.** (a) The owner or operator of a facility in the State that stores, uses, or manufactures any hazardous substance shall comply with the following requirements:

- (1) Each owner or operator of a facility in the State shall comply with the emergency planning and notification requirements of sections 302 and 303 of EPCRA, 42 U.S.C. §§11002 and 11003, if an extremely hazardous substance is present at the facility in an amount in excess of the threshold planning quantity established for the substance;
- (2) Each owner or operator of a facility in this State that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, as amended, 15 U.S.C. §651 et seq., and regulations promulgated under that Act, for all hazardous substances present at the facility in amounts not less than 10,000 pounds, and extremely hazardous substances present at the facility in amounts not less than 500 pounds, or the threshold planning quantity for that substance, whichever is less, shall comply with the following reporting requirements:

- (A) Complete a chemical list by March 1 of each year and submit material safety data sheets not more than thirty days after a request;
- (B) Complete the state chemical inventory form by March 1 of each year; provided that a Tier II list shall be used until a state form is available;
- (C) Submit facility diagrams and location area maps by March 1 of each year, and update the maps annually as needed; and
- (D) Upon request, submit emergency response plans required under state or federal law.

The information described in subparagraphs (A) through (D) shall be submitted to the commission, the respective committee, and the fire department upon request by the same;

- (3) Each owner or operator of a facility in this State that is subject to section 313 of EPCRA, 42 U.S.C. §11023, shall comply with the toxic chemical release form requirements of section 323 of EPCRA by July 1 of each year; and
- (4) Each owner or operator of a facility in this State covered under section 304 of EPCRA, 42 U.S.C. §11004, shall comply with the notification requirements of section 304 of EPCRA, and section -7, if a release of an extremely hazardous substance occurs from the facility.

(b) The commission shall adopt rules in accordance with chapter 91 establishing the specific information required on the state chemical inventory form. The chemical inventory form shall facilitate ease in complying with the requirements of HEPCRA by consolidating the necessary information into one form. The chemical inventory form may include, but is not limited to:

- (1) The chemical name;
- (2) Quantity stored on the site;
- (3) Hazardous components;
- (4) Health and physical hazards; and
- (5) Storage information.

§ -7 **Emergency notification requirements.** The commission shall adopt rules in accordance with chapter 91 establishing the contents of hazardous substance release reports. The rules shall address, but are not limited to, the following:

- (1) The quantities of designated hazardous substances that are deemed reportable pursuant to this chapter when released;
- (2) The specific periods of time within which these quantities are deemed reportable pursuant to this chapter after being released;
- (3) The agencies to which reports of releases must be made; and
- (4) The format in which the release is to be reported.

§ -8 **Funds for operation.** (a) All moneys to meet the general operating needs and expenses of the emergency planning and community right-to-know program of the department shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this chapter.

(b) The department of health, with the assistance of the department of budget and finance and department of accounting and general services, shall prepare a report for the legislature concerning the amount of moneys collected during the preceding fiscal year, the amount of moneys collected to date during the current fiscal year, and the amount of moneys to be collected during the upcoming fiscal year, pursuant to sections -9 and -11, and accruing to the credit of the state

general fund. The department shall submit the foregoing report to the legislature not less than twenty days prior to the convening of each regular session of the legislature.

**§ -9 Filing fees.** Facilities that are required to report according to section -6(a)(2), shall remit \$100 with each submission of chemical inventory forms or Tier II forms to the commission by March 1 of each year. All moneys collected by the department pursuant to this section shall be deposited in the state treasury and accrue to the credit of the state general fund.

**§ -10 Immunity from civil liability.** (a) No employee, representative, or agent of a state or county agency, or persons requested by a state or county agency to engage in any emergency service or response activities involving a hazardous material release at a facility or transportation accident site, shall be liable for the death of or any injury to persons, or the loss of or damage to property, resulting from that hazardous material release, except for any acts or omissions that constitute wilful misconduct.

(b) No commission or committee member shall be liable for the death of or any injury to persons, the loss of or damage to property, or any civil damages, resulting from any act or omission arising out of the performance of the functions, duties, and responsibilities of the commission or a committee, except for acts or omissions that constitute wilful misconduct.

**§ -11 Penalties and fines.** (a) Any person who violates any of the emergency reporting, planning, or notification requirements of sections -6 or -7, or fails to pay the fees required by section -9, shall be subject to a civil penalty of not less than \$1,000 but not more than \$25,000 for each separate offense. Each day of each violation shall constitute a separate offense.

(b) Any person who:

- (1) Knowingly fails to report the release of a hazardous substance or extremely hazardous substance, as required by section -7, shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$1,000 but not more than \$25,000 for each separate offense, or imprisoned for not more than one year, or both. For the purposes of this paragraph, each day of each violation shall constitute a separate offense; or
- (2) Intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of the department, a hazardous materials response team, or a committee attempting to perform the duties and functions set forth in section -5, shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$5,000 but not more than \$25,000 for each separate offense, or be imprisoned for not more than one year, or both.

(c) All moneys collected under this section shall be deposited in the state treasury and accrue to the credit of the state general fund.

**§ -12 Enforcement.** If the commission determines that any person has violated or is violating this chapter, or any rule adopted pursuant to this chapter, the commission:

- (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 the facility shall submit the required reports, forms, and notifications;

- (2) May require the alleged violator or violators to appear before the commission for a hearing at a time and place specified in the notice or to be set later, and to answer the charges complained of; and
- (3) May impose penalties as provided in section -11 by sending a written notice describing the violation, either by certified mail or personal service, to the alleged violator or violators.

§ -13 **Relationship to other laws.** (a) This chapter shall be read in conjunction with the federal statutes and regulations providing for the identification, labeling, and reporting of information concerning hazardous material releases, and any other health and safety provisions relating to hazardous materials, and is intended to supplement federal statutes and regulations in the interest of protecting the health and safety of the citizens of the State.

(b) Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other laws of the State.

(c) This chapter shall preempt any ordinances passed or adopted by any county that are effective on, before, or after the effective date of this chapter, to the extent that these ordinances conflict or are inconsistent with the provisions of this chapter."

## PART II

SECTION 2. Chapter 243, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§243- Environmental response tax.** (a) In addition to any other taxes provided by law, subject to the exemptions set forth in section 243-7, there is hereby imposed at times provided in section 128D-2 a state environmental response tax of 5 cents on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user, other than a refiner, of petroleum product. The tax imposed by this subsection shall be paid by the distributor of the petroleum product.

(b) Each distributor subject to the tax imposed by subsection (a), on or before the last day of each calendar month, shall file with the director, on forms prescribed, prepared, and furnished by the director, a return statement of the tax under this section for which the distributor is liable for the preceding month. The form and payment of the tax shall be transmitted to the department of taxation in the appropriate district.

(c) Notwithstanding section 248-8 to the contrary, the environmental response tax collected under this section shall be paid over to the director of finance for deposit into the environmental response revolving fund established by section 128D-2.

(d) Every distributor shall keep in the State and preserve for five years a record in such form as the department of taxation shall prescribe showing the total number of barrels and the fractional part of barrels of petroleum product sold by the distributor during any calendar month. The record shall show such other data and figures relevant to the enforcement and administration of this chapter as the department may require."

SECTION 3. Section 243-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

"'Barrel' means forty-two United States gallons of crude oil or petroleum product.

"Crude oil" means petroleum in an unrefined state or natural state, including condensates and natural gasoline.

"End user" means any person or government entity who acquires petroleum products for their own use and not for resale.

"Petroleum product" means any liquid hydrocarbon at standard temperature and pressure that is the product of the fractionalization, distillation, or other refining or processing of crude oil."

SECTION 4. Section 128D-2, Hawaii Revised Statutes, is amended to read as follows:

**"§128D-2 Environmental response revolving fund.** (a) There is created within the state treasury an environmental response revolving fund [within the department], which shall consist of 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, all interest attributable to investment of money deposited in the fund, moneys generated by the environmental response tax established in section 243-, and moneys allotted to the fund from other sources; provided that when [deposits of fines and penalties pursuant to sections 342B-50, 342D-39, 342F-11.5, 342H-10.5, 342J-10.5, and 342N-9.5 exceed \$3,000,000, that amount of deposited fines and penalties in excess of \$3,000,000 shall be transferred to the general fund.] the total balance of the fund exceeds \$7,000,000, the department of health shall notify the department of taxation of this fact in writing within ten days. The department of taxation then shall notify all distributors liable for collecting the tax imposed by section 243- of this fact in writing, and the imposition of the tax shall be discontinued beginning the first day of the second month following the month in which notice is given to the department of taxation. If the total balance of the fund thereafter declines to less than \$3,000,000, the department of health shall notify the department of taxation which then shall notify all distributors liable for collecting the tax imposed by section 243- of this fact in writing, and the imposition of the tax shall be reinstated beginning the first day of the second month following the month in which notice is given to the department of taxation.

(b) Moneys from the fund shall be expended by the department for response actions, including removal and remedial actions, consistent with this chapter[.]; provided that the revenues generated by the "environmental response tax" and deposited into the environmental response revolving fund:

(1) Shall be used:

(A) For oil spill planning, prevention, preparedness, education, research, training, removal, and remediation; and

(B) For direct support for county used oil recycling programs; and

(2) May also be used to address concerns related to underground storage tanks, including support for the underground storage tank program of the department and funding for the acquisition by the State of a soil remediation site and facility."

SECTION 5. The department of health is authorized to spend out of the environmental response revolving fund of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 1993-1994. A report on the use of these funds shall be made to the 1994 legislature.

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SECTION 6. This part does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

### **PART III**

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval; provided that sections 2, 3, and 4 shall take effect on July 1, 1993, and sections 2 and 3 shall apply to the sale of petroleum products made after June 30, 1993.

(Approved June 21, 1993.)

#### **Note**

1. Edited pursuant to HRS §23G-16.5.