

## ACT 268

H.B. NO. 2641

A Bill for an Act Relating to Air Pollution Control.

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

SECTION 1. Section 342B-12, Hawaii Revised Statutes, is amended to read as follows:

**“[§342B-12] Specific powers of the director.** The director may:

- (1) Establish ambient air quality standards for the State as a whole or for any part thereof;
- (2) Establish and administer any permit program;
- (3) Establish by rule the control of open burning, fugitive dust, and visible emissions;
- (4) Establish by rule the control of vehicular smoke emission and require the installation, use, and proper operation and maintenance of air pollution control equipment for motor vehicles;
- (5) Establish and administer 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;
- (6) Establish by rule other specific areas for control of air pollution, thereby allowing for varying conditions;
- (7) Establish standards of performance or rules for existing, new, or modified stationary sources or adopt standards of performance for existing, new, or modified stationary sources as promulgated by the administrator;
- (8) Establish maximum achievable control technology standards or rules for the control of hazardous air pollutants from existing, new, or modified sources or adopt maximum achievable control technology as promulgated by the administrator; [and]
- (9) Establish rules for the prevention of significant deterioration of air quality or adopt prevention of significant deterioration regulations as promulgated by the administrator[.]; and
- (10) Establish rules allowing for environmental permit shields.”

SECTION 2. Section 342B-21, Hawaii Revised Statutes, is amended to read as follows:

**“[§342B-21] Specific functions, duties, and powers of the director.**

The director shall have the functions, duties, and power to:

- (1) Issue permits for a fixed term not to exceed five years;
- (2) [Assure] Ensure compliance by all sources required to have a permit with each applicable standard, regulation, or requirement provided by federal or state statutes or rules;

- (3) [Assure] Ensure that, upon issuance or renewal, permits incorporate emission limitations and other requirements in an applicable state implementation plan;
- (4) Terminate, modify, or revoke and reissue permits for cause;
- (5) Enforce permits, permit fee requirements, and the requirement to obtain a permit including the recovery of civil penalties; [and]
- (6) [Assure] Ensure that permits in effect during the establishment and implementation of this new permit program will continue in effect until the permittee has applied for and obtained a permit under the new program[.]; and
- (7) Issue permits with environmental permit shields pursuant to such rules as the director may adopt."

SECTION 3. Section 342B-33, Hawaii Revised Statutes, is amended to read as follows:

"[**§342B-33**] **Minimum permit conditions.** At a minimum, each permit shall require the permittee to:

- (1) Submit to the director, no less than every six months, the results of any required monitoring and, no less than annually, a compliance certification; and
- (2) Disclose the annual emissions of hazardous air pollutants."

SECTION 4. Section 342B-48, Hawaii Revised Statutes, is amended to read as follows:

"[**§342B-48**] **Administrative penalties.** (a) 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 342B-47.

(b) Factors to be considered in imposing an administrative penalty include:

- (1) [the] The nature and history of the violation and of any prior violations[.];
- (2) The economic benefit to the violator, or anticipated by the violator, resulting from the violation;
- (3) [and the] The opportunity, difficulty, and history of corrective action[.];
- (4) Good faith efforts to comply; and
- (5) Such other matters as justice may require.

(c) It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

(d) In any judicial proceeding to recover the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing has run without such a request;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** This Act shall take effect upon its approval.

(Approved July 1, 1994.)