

ACT 82

S.B. NO. 1305

A Bill for an Act Relating to Environmental Protection.

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

SECTION 1. Chapter 342J, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . USED OIL AND USED OIL FUEL

§342J-A Definitions. Except as expressly defined in this part, terms that are defined in section 342J-2 have the same meanings when used in this part.

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any used oil or used oil fuel into or on any land or water so that the used oil, used oil fuel, or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including ground waters.

“Facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the handling of used oil or used oil fuel.

“Generator” means any person, by site, whose act or process produces used oil or used oil fuel or whose act first causes used oil or used oil fuel to become subject to regulation.

“Operator” means the person responsible for the overall operation of a facility as defined in this section.

“Owner” means the person who owns a facility or part of a facility as defined in this section.

“Permit” means written authorization from the director for a person to engage in the handling of used oil or used oil fuel.

“Pollution” means pollution by mismanagement or mishandling of used oil or used oil fuel.

“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.

“Storage” means the containment of used oil or used oil fuel, temporarily or for a period of time, in a manner which does not constitute disposal.

“Transporter” means any person who transports used oil or used oil fuel, any person who collects used oil or used oil fuel from more than one generator and transports the collected used oil or used oil fuel, and owners and operators of used oil or used oil fuel transfer facilities.

“Treatment” means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any used oil or used oil fuel.

“Used oil” means any oil (regardless of whether it is a hazardous waste) that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

§342J-B Standards for persons who deal with used oil or used oil fuel. (a)

The director may establish, by rule, standards applicable to persons who generate, transport, treat, store, dispose, process, re-refine, burn (including burning for pur-

poses of energy recovery), recycle, distribute, market, or otherwise handle used oil or used oil fuel, regardless of whether the used oil or used oil fuel is a hazardous waste.

(b) No new oil, used oil, or recycled oil shall be discharged or caused or allowed to enter into the sewers, drainage systems, surface or ground waters, watercourse, marine waters, or onto the ground. The prohibition shall not apply to inadvertent, normal discharges from vehicles and equipment, or maintenance and repair activities associated with vehicles; provided that appropriate measures are taken to minimize releases. Appropriate measures include, but are not limited to, use of drip pans, institution of structural catchment systems, use of absorbent materials, and other similar measures.

§342J-C Permit required. No person shall transport, market, or recycle used oil or used oil fuel without first obtaining a permit from the department. The director may require any person who generates and burns the person's own used oil as specification fuel to notify the department of the person's activity.

§342J-D Permits; procedures for. (a) An application for any permit required under this part shall be in a form prescribed by the director.

(b) The department may require that applications for the permits shall be accompanied by plans, specifications, and the other information that 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 it will be in the public interest; provided that the permit may be subject to reasonable conditions that 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 it 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;
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts;
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted emission; or
- (4) The modification, suspension, or revocation 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 of the proposed action, any adverse environmental effects which cannot be avoided if the action is 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 the application, shall be deemed a grant of the 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 part 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.

§342J-E Furnishing of information and entry and inspection of premises.

(a) For purposes of enforcing this part, the rules adopted pursuant to this part, and other applicable provisions of this chapter, any person who generates, transports, treats, stores, disposes of, processes, re-refines, burns (including burning for purposes of energy recovery), recycles, distributes, markets, or otherwise handles or has handled used oil or used oil fuel, upon the request of any duly authorized representative of the director, shall furnish information relating to the used oil or used oil fuel and permit the representative at all reasonable times to have access to, and to copy all records relating to the used oil or used oil fuel.

(b) For purposes of enforcing this part, the rules adopted pursuant to this part, and other applicable provisions of this chapter, the authorized representative may:

- (1) Enter, at reasonable times, any establishment or other place where used oil or used oil fuel is or has been generated, transported from, treated, stored, disposed of, processed, re-refined, burned (including burning for purposes of energy recovery), recycled, distributed, marketed, or otherwise handled;
- (2) Inspect and obtain samples of any used oil or used oil fuel and samples of any containers or labeling for used oil or used oil fuel; and
- (3) Obtain any other information, including financial information, for purposes of determining compliance with this part, the rules adopted pursuant to this part, and other applicable provisions of this chapter.

Each inspection shall be commenced and completed with reasonable promptness.

§342J-F Emergency powers; procedures. (a) Notwithstanding any other law to the contrary, if the governor or the director determines that the past or present handling of any used oil or used oil fuel may present an imminent and substantial endangerment to health or the environment, the governor or the director, without a public hearing, may secure or order relief that may be necessary to abate the danger or threat. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director. The governor or the director may also institute a civil action in any court of competent jurisdiction to secure any relief that may be necessary to abate the danger or threat.

(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 the declaration, if the power is conferred by statute or constitutional provision, or inheres in the office."

SECTION 2. Section 342J-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of any permit issued under section 3005 of RCRA, 42 United States Code section 6925, by the Administrator of the United States Environmental Protection Agency, or issued under section 342J-5 or 342J-D by the director, and shall state with reasonable specificity the nature of the violation. Any administrative penalties assessed in the order shall be in accordance with section 342J-10."

SECTION 3. Section 342J-9, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Any person who denies, obstructs, or hampers the entrance or inspection by any duly authorized representative of the director, or fails to provide information requested by the representative under section 342J-6 or 342J-E shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(c) 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 342J-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 342J-5; [or]
- (3) Transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil or used oil fuel in violation of any rules adopted pursuant to this chapter relating to used oil or used oil fuel; or
- [(3)] (4) 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[;], including compliance with any rules adopted pursuant to this chapter relating to used oil or used oil fuel;

shall be subject to criminal penalties of not more than \$25,000 for each day of each 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 each violation, or by imprisonment for not more than two years, or both.”

SECTION 4. Section 342J-34.5, Hawaii Revised Statutes, is amended to read as follows:

“**[[§342J-34.5]] Standards for persons who deal with [hazardous waste] fuel.** The director may establish, by rule, standards applicable to persons who generate, transport, treat, store, dispose[,] of, process, re-refine, burn (including burning for purposes of energy recovery), recycle, distribute, [or] market, or otherwise handle any [fuel which is produced]:

- (1) Fuel from any hazardous waste; or
- (2) Fuel from any hazardous waste [or from] and any other material[.]; or
- (3) Fuel which otherwise contains any hazardous waste.”

SECTION 5. Chapter 342N, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 607-25, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For purposes of this section, the permits or approvals required by law shall include compliance with the requirements for permits or approvals established by chapters 6E, 46, 54, 171, 174C, 180C, 183,¹ 184, 195, 195D, 205, 205A, 266, 342B, 342D, 342F, 342H, 342J, 342L, [342N,] and 343 and ordinances or rules adopted pursuant thereto under chapter 91.”

SECTION 7. 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 342N, Hawaii Revised Statutes, shall remain in effect until they are replaced by rules adopted under the authority of chapter 342J, Hawaii Revised Statutes, or the new part to chapter 342J, Hawaii Revised Statutes, being enacted in this Act. References in the new part of chapter 342J, Hawaii Revised Statutes, to rules shall include rules adopted pursuant to chapter 342N until the rules adopted pursuant to chapter 342N, Hawaii Revised Statutes, are replaced by rules adopted under chapter 342J, Hawaii Revised Statutes, or the new part to chapter 342J, Hawaii Revised Statutes, being enacted in this Act.

SECTION 8. In codifying the new part added to chapter 342J, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections' designations in this Act.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 6, 1996.)

Note

1. Prior to amendment "183C," appeared here.