

**HAWAII STATE EMERGENCY RESPONSE COMMISSION
TECHNICAL SUBCOMMITTEE MEETING #2
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM NO. 2 (SECOND FLOOR)
MONDAY, 21 NOVEMBER 1988, 9:00 A.M.**

AGENDA

Special Workshop - to assist Technical Subcommittee members, HSERC, in understanding various regulations, jurisdictions and other legal specifics pertaining to DOH, DOSH, DOT, U.S.C.G., DLNR, DOA, and Fire Department.

| | | |
|-------------|------|---|
| 9:00-9:05 | I. | Introductory Remarks |
| 9:05 | II. | Summary presentations |
| 9:05-9:30 | | Department of Health (DOH) |
| 9:30-10:00 | | Department of Occupational Safety and Health (DOSH) |
| 10:00-10:30 | | Department of Transportation (DOT) |
| 10:30-10:45 | | United States Coast Guard (U.S.C.G.) |
| 10:45-11:00 | | B - R - E - A - K |
| 11:00-11:15 | | Department of Land and Natural Resources (DLNR) |
| 11:15-11:30 | | Department of Agriculture (DOA) |
| 11:30-11:45 | | Honolulu Fire Department |
| 11:45-12:45 | III. | Questions and Answers |
| 12:45 | IV. | Next Meeting Date |
| 1:00 | V. | Adjournment |

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File:

MEETING SUMMARY

**HAWAII STATE EMERGENCY RESPONSE COMMISSION (HSERC)
TECHNICAL SUBCOMMITTEE MEETING #2**

**Hawaii State Capitol
Senate Conference Room 2, Second Floor
21 November 1988, 9.00 a.m.**

Members Attending:

**Samir Araman, Ph.D., HEER Department of Health (DOH)
Hal Barks, DOSH/DLIR
Tom Bello, Hawaii Fire Department
John Bowen, University of Hawaii-Hilo
Tom Brown, State Civil Defense
Carter Davis, Honolulu Fire Department
Doug Erway, State Civil Defense
Wendell Hatada, Hawaii Civil Defense
Leroy Hokoana, Maui Fire Department
Clifford Ikeda, Kauai Civil Defense
Mark Ingoglia, HEER-DOH
Arlene Kabei, Hazardous Waste Program, DOH
Thomas Kam, Department of Land and Natural Resources (DLNR)
Kenneth Keane, U.S. Coast Guard
Gerald Kinro, Department of Agriculture
Alejandro Lomosad, Kauai Fire Department
Harold Matsuura, Hawaii DOH
Premlata Menon, Ph.D., HEER DOH
Sel Menor, Maui Civil Defense
Ralph Moore, Department of Transportation
David H. Nakagawa, Maui DOH
Joe Reed, Oahu Civil Defense
Paul Takamiya, Oahu Civil Defense
Clyde Takekuma, Kauai DOH**

1. The meeting was called to order by Mark Ingoglia, Coordinator, HSERC Subcommittee. He offered remarks and introduced Samir Araman, Ph.D, new staff member of HEER Program.

2. Officials from DOH, DOSH, DOT, USCG, DLNR and Honolulu Fire Department presented brief summaries of their regulations, appropriate jurisdictions and legal authority. M. Ingoglia summarized the Hawaii Environmental Emergency Response Act of 1988, Act 148, SLH 1988; noted that current procedures for issuing administrative orders to any responsible party to take actions to protect public health and the environment from release of hazardous substances, is cumbersome indicating the need to develop a more timely method. He further noted that DOH has requested contracting exemption from the Governor so that funds can be expeditiously appropriated from the revolving fund (\$150,000 currently allocated with the passage of Act 148 SLH 1988) for hazardous substance remedial actions.

A. Kabei, Hazardous Waste Program (HWP) Manager noted that the program keep regulatory in nature and responsible for overseeing the treatment, storage and disposal of hazardous waste, and underground storage tanks (UST) as per RCRA guidelines. She indicated that inspite of the availability of federal revolving funds, DOH is unable to appropriate funds to handle LUST situations due to the lack of

lack of administrative rules which are currently being drafted. In addition to setting up procedures to prioritize leaking sites, the HWP has on several occasions been called upon to respond to leaks in underground storage tanks.

3. H. Barks summarized, Hawaii Occupational Safety and Health Law, Chapter 396, HRS applicable to public and private sectors. The structure and make up of Hawaii standards are similar to Federal Occupational Safety and Health Act of 1970 (OSHA ACT), Public Law 91-596. The DOSH Program has jurisdiction over all workers in Hawaii, except those in maritime employment and federal employees and has the right of entry with penalty for advance warning. The OSHA adopted (November 24, 1988) ~~final~~ standards for hazardous waste and emergency response as mandated by Section 126 (e) of the SARA Right-to-Know Act, 1986. DOSH's role in emergency response activities is to ensure the worker safety and health. DOSH provides air monitoring and analytical assistance and its computer accesses all OSHA and NIOSH data on chemical and hazardous substances.

4. Ralph Moore summarized the hazardous materials transportation rules in Hawaii and noted that DOT followed HRS 286-191, related to placarding of vehicles, and little else. In 1986, the State adopted the code of Federal Regulations, title 49, Hazardous Materials Transportation Regulations.

5. Lt. Commander Keane USCG gave a presentation on the Federal Response Mechanism. The National Contingency Plan, based on the maintenance of comprehensive regional contingency plans under the statutory authority of the Federal Water Pollution Control Act (FWPCA) presently known as the Clean Water Act (CWA) and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) as amended by SARA. The CWA provides a fund for oil spill clean up which is administered by CG while CERCLA provides a fund administered by EPA for hazardous materials clean up. In the event of an oil spill or hazardous materials release, the CG On-Scene Coordinator has the sole responsibility to determine the threat to public health and welfare, authorize the expenditure of federal funds and to ensure that necessary response actions are performed. He also determines when removal is complete and authorizes termination of operation.
6. Thomas Kam informed the committee that there are no specific existing laws connected with hazardous material that the DLNR follows. DLNR enforces HRS 174 C. He also noted there is however, a need for development of standard operating procedures for hazardous materials removal on State lands.
7. Gerald Kinro summarized the Federal Insecticide Fungicide and Rotenticide Act (FIFRA) followed by the DOA in addition to the Hawaii Pesticide Law. He noted that under FIFRA the

label is a legal document which applicators have to follow correctly. The DOA have people who conduct inspections to ensure compliance.

8. Carter Davis of the Honolulu Fire Department summarized the Uniform Fire Code, 1985, for the hazardous materials. He expressed that amendments under the ordinance 8824 Bill No. 197 deleted the portions of the USC that dealt with hazardous materials except for flammable liquids and combustible liquids and compressed gases. The amendments, however, do require any facility that uses or stores hazardous materials to submit a hazardous materials disclosure form. The main reason for the deletion was due to the lack of expertise and personnel to enforce those sections of the code; however, as personnel and expertise become available the situation will improve.
9. The next meeting was set for December 19, 1988 and M. Ingoglia asked all the members to present their training needs in hazardous materials.
10. The meeting was adjourned at 12:30 p.m.

HAWAII STATE EMERGENCY RESPONSE COMMISSION
 TECHNICAL SUBCOMMITTEE MEETING #2
 HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM NO. 2 (SECOND FLOOR)
 MONDAY, 21 NOVEMBER 1988, 9:00 A.M.

SIGN-IN SHEET

| NAME | ADDRESS | PHONE NUMBER |
|------------------------------------|--------------------------------------|--------------|
| Harold W. Barks | DOSH | 548-4155 |
| PD/GT PP ALEJANDRO LOMOSAD | K.F.D. (Kauai) | 245-4721 |
| PD/GT PP IKEDA Clifford | CD (Kauai) | 245-4001 |
| Ralph MOORE | STATE DOT | 548-3188 |
| KENNETH KEANE | U.S. COAST GUARD | 541-2068 |
| PD, GT, PP WENDELL HATADA | HAWAII COUNTY C.D. | 935 0031 |
| Tom BROWN | STATE CD | 734-2161 |
| Clyde Takekuma | DOH - Kauai | 245-4323 |
| DAVID H NAKAGAWA | DOH - MAUI | 244-4255 |
| PD Tom Bello | Hawaii County Fire Dept. | 935-2978 |
| ARLENE KABEL | DOH - HWP | 548-2270 |
| GT PP JOHN BOWEN | Univ Hawaii - Hilo | 935-2885 |
| PD/PP - PELBERIO MENOR | Maui Civil Defense | 202-9921 |
| Gerald Kinro | Hi. Dept. of Agr. | 548-7124 |
| Paul K. Takamiya | Maui Civ Def Agency | 527-5489 |
| Samir F. Araman | Hi Dept. of Hdbk | 548-2078 |
| JOE REED. | Maui Civil Defense | 523-4121 |
| Thomas Kam | DLNR | 548 7541 |
| DOUG ERWAY | STATE CIVIL DEFENSE ^(EBO) | 734-2161 |
| Harold Matsumura | DOH - Hawaii | 9617275 |
| Leroy L Hokoena | Maui Fire | 244 6250 |
| Pierre Gynan | DOM | 548-5832 |
| PD PP Plans. CARRIE DAVIS | HALL FIRE | 422-0822 |

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801
29 October 1987

In reply, please refer to:
File:
HSERCM

MEMORANDUM

TO: Members of the Hawaii State Emergency Response
Commission (HSERC)

FROM: John C. Lewin, M.D.
Chairman and Director of Health

SUBJECT: Tuesday, 17 November 1987 HSERC Meeting at 2:00 p.m.
Department of Health Board Room

Please find the following items attached for your use at the
upcoming HSERC meeting:

1. Agenda
2. Summary of the previous meeting
3. Lists of proposed local emergency planning
committee (LEPC) membership for each of the four
local emergency planning districts and federal LEPC
membership guidelines
4. Draft bill to establish a Hawaii Environmental
Emergency Response Fund

State progress under Title III will be discussed at the
meeting. State and local authorities continue to receive
information from regulated facilities as required under the Act.

A state emergency response training program is now underway
through a cooperative effort of the Department of Health, State
Civil Defense and county fire departments. Updates on these
activities will be provided at the meeting.

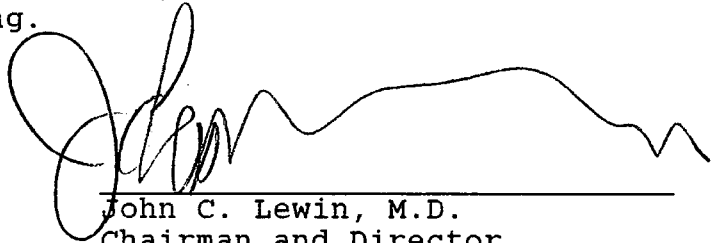
In addition, the HSERC must appoint members of the local
emergency planning districts. The attached lists were developed
by the counties with the assistance of the Department of
Health. A copy of federal guidelines for LEPC membership is
attached to the proposed LEPC membership lists. Please review
these lists and contact Mark Ingoglia, State Emergency Response
Program Coordinator at 548-2076 if you have any questions or
concerns regarding the proposed constituency of the committees.

State Emergency Response Commission
29 October 1987
Page 2

We plan on approving these lists, with amendments, if necessary, and notifying the individuals of their appointment immediately after the meeting.

Also enclosed is a draft bill to establish an Environmental Emergency Response Fund. Please review the bill and bring your concerns and comments for discussion at the meeting. Please note any specific comments on the draft in red ink and provide these marked up copies to us at the meeting for our review and consideration.

I look forward to seeing you or your designated representative at the meeting.

A handwritten signature in black ink, appearing to read 'John C. Lewin', written over a horizontal line.

John C. Lewin, M.D.
Chairman and Director
of Health

1

United States
Environmental Protection
Agency

United States
Environmental Protection
Agency

Office of
Public Affairs (A-107)
Washington DC 20460

Revised May 1985



The Federal Insecticide, Fungicide, and Rodenticide Act as Amended

U

Public Law 92-516, 92nd Congress, H.R. 10729, October 21, 1972 as amended by Public Law 94-140, 94th Congress, H.R. 8841, November 28, 1975 and Public Law 95-396, 95th Congress, S. 1678, September 30, 1978.

An Act

86 STAT. 973-999

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

Be it enacted by the Senate and House Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Environmental Pesticide Control Act of 1972."

Amendments to Federal Insecticide, Fungicide, and Rodenticide Act

Sec. 2. The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) is amended to read as follows:

Federal
Environmental
Pesticide
Control Act
of 1972.

61 Stat. 163;
78 Stat. 190.

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) *Short Title* — This Act may be cited as the 'Federal Insecticide, Fungicide, and Rodenticide Act'.

(b) *Table of Contents* —

P.L. 95-396;

92 Stat. 838.

"Section 1. Short title and table of contents.

"(a) Short title.

"(b) Table of contents.

"Sec. 2. Definitions.

"(a) Active ingredient.

"(b) Administrator.

"(c) Adulterated.

"(d) Animal.

"(e) Certified applicator, etc.

"(1) Certified applicator.

"(2) Private applicator.

"(3) Commercial applicator.

"(4) Under the direct supervision of a certified applicator.

"(f) Defoliant.

"(g) Desiccant.

"(h) Device.

"(i) District court.

"(j) Environment.

"(k) Fungus.

"(l) Imminent hazard.

"(m) Inert ingredient.

"(n) Ingredient statement.

"(o) Insect.

"(p) Label and labeling.

"(1) Label.

"(2) Labeling.

"(q) Misbranded.

"(r) Nematode.

"(s) Person.

"(t) Pest.

"(u) Pesticide.

"(v) Plant regulator.

"(w) Producer and produce.

"(x) Protect health and the environment.

"(y) Registrant.

"(z) Registration.

"(aa) State.

"(bb) Unreasonable adverse effects on the environment.

"(cc) Weed.

"(dd) Establishment.

"(ee) To use any registered pesticide in a manner inconsistent with its labeling.

"Sec. 3. Registration of pesticides.

"(a) Requirement.

"(b) Exemptions.

"(c) Procedure for registration.

"(1) Statement required.

"(2) Data in support of registration.

"(3) Time for acting with respect to application.

"(4) Notice of application.

"(5) Approval of registration.

"(6) Denial of registration.

"(7) Registration under special circumstances.

"(8) Interim administrative review.

"(d) Classification of pesticides.

"(1) Classification for general use, restricted use, or both.

"(2) Change in classification.

"(3) Change in classification from restricted use to general use.

"(e) Products with same formulation and claims.

"(f) Miscellaneous.

"(1) Effect of change of labeling or formulation.

"(2) Registration not a defense.

"(3) Authority to consult other Federal agencies.

"(g) Reregistration of pesticides.

"Sec. 4. Use of restricted use pesticides; certified applicators.

"(a) Certification procedure.

"(1) Federal certification.

"(2) State certification.

"(b) State plans.

"(c) Instruction in integrated pest management techniques.

"Sec. 5. Experimental use permits.

"(a) Issuance.

"(b) Temporary tolerance level.

"(c) Use under permit.

"(d) Studies.

"(e) Revocation.

"(f) State issuance of permits.

"(g) Exemption for agricultural research agencies.

"Sec. 6. Administrative review; suspension.

"(a) Cancellation after five years.

"(1) Procedure.

"(2) Information.

"(b) Cancellation and change in classification.

"(c) Suspension.

"(1) Order.

"(2) Expedite hearing.

"(3) Emergency order.

"(4) Judicial review.

"(d) Public hearings and scientific review.

"(e) Conditional registration.

"(f) Judicial review.

"Sec. 7. Registration of establishments.

"(a) Requirements.

"(b) Registration.

"(c) Information required.

"(d) Confidential records and information.

"Sec. 8. Books and records.

"(a) Requirement.

"(b) Inspection.

"Sec. 9. Inspection of establishments, etc.

"(a) In general.

"(b) Warrants.

- “(c) Enforcement.
 - “(1) Certification of facts to Attorney General.
 - “(2) Notice not required.
 - “(3) Warning notices.
- “Sec. 10. Protection of trade secrets and other information.
 - “(a) In general.
 - “(b) Disclosure.
 - “(c) Disputes.
 - “(d) Limitations.
 - “(e) Disclosure to contractors.
 - “(f) Penalty for disclosure by Federal employees.
 - “(g) Disclosure to foreign and multinational pesticide producers.
- “Sec. 11. Standards applicable to pesticide applicators.
 - “(a) In general.
 - “(b) Separate standards.
- “Sec. 12. Unlawful acts.
 - “(a) In general.
 - “(b) Exemptions.
- “Sec. 13. Stop sale, use, removal, and seizure.
 - “(a) Stop sale, etc., orders.
 - “(b) Seizure.
 - “(c) Disposition after condemnation.
 - “(d) Court costs, etc.
- “Sec. 14. Penalties.
 - “(a) Civil penalties.
 - “(1) In general.
 - “(2) Private applicator.
 - “(3) Hearing.
 - “(4) Determination of penalty.
 - “(5) References to Attorney General.
 - “(b) Criminal penalties.
 - “(1) In general.
 - “(2) Private applicator.
 - “(3) Disclosure of information.
 - “(4) Acts of officers, agents, etc.
- “Sec. 15. Indemnities.
 - “(a) Requirement.
 - “(b) Amount of payment.
 - “(1) In general.
 - “(2) Special rule.
- “Sec. 16. Administrative procedure; judicial review.
 - “(a) District court review.
 - “(b) Review by Court of Appeals.
 - “(c) Jurisdiction of district courts.
 - “(d) Notice of judgments.
- “Sec. 17. Imports and exports.
 - “(a) Pesticides and devices intended for export.
 - “(b) Cancellation notices furnished to foreign governments.
 - “(c) Importation of pesticides and devices.
 - “(d) Cooperation in international efforts.
 - “(e) Regulations.
- “Sec. 18. Exemption of Federal agencies.
- “Sec. 19. Disposal and transportation.
 - “(a) Procedures.
 - “(b) Advice to Secretary of Transportation.
 - “(c) Provisions for unused quantities.
- “Sec. 20. Research and monitoring.
 - “(a) Research.
 - “(b) National monitoring plan.
 - “(c) Monitoring.
- “Sec. 21. Solicitation of comments; notice of public hearings.
- “Sec. 22. Delegation and cooperation.
 - “(a) Delegation.
 - “(b) Cooperation.
- “Sec. 23. State cooperation, aid, and training.
 - “(a) Cooperative agreements.
 - “(b) Contracts for training.
 - “(c) Information and education.
- “Sec. 24. Authority of States.
- “Sec. 25. Authority of Administrator.
 - “(a) (1) Regulations.
 - “(2) Procedure.
 - “(3) Congressional committees.
 - “(b) Exemption of pesticides.
 - “(c) Other authority.
 - “(d) Scientific advisory panel.
- “Sec. 26. State primary enforcement responsibility.
- “Sec. 27. Failure by the State to assure enforcement of State pesticide use regulations.
- “Sec. 28. Identification of pests; cooperation with Department of Agriculture's program.
- “Sec. 29. Annual report.
- “Sec. 30. Severability.
- “Sec. 31. Authorization for appropriations.”.

“SEC. 2. DEFINITIONS.

- “For purposes of this Act—
- “(a) *Active Ingredient*.—The term ‘active ingredient’ means—
 - “(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;
 - “(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;
 - “(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and
 - “(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.
- “(b) *Administrator*.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.
- “(c) *Adulterated*.—The term ‘adulterated’ applies to any pesticide if:
 - “(1) its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold;
 - “(2) any substance has been substituted wholly or in part for the pesticide; or
 - “(3) any valuable constituent of the pesticide has been wholly or in part abstracted.
- “(d) *Animal*.—The term ‘animal’ means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and the shellfish.
- “(c) *Certified Applicator, Etc.*—
 - “(1) *Certified applicator*.—The term ‘certified applicator’ means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use. Any applicator who holds or applies registered pesticides, or use dilutions of registered pesticides consistent with section 2(ee) of this Act, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides under this Act.
 - “(2) *Private applicator*.—The term ‘private applicator’ means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.
 - “(3) *Commercial applicator*.—The term ‘commercial applicator’ means an applicator (whether or not he is private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).
 - “(4) *Under the direct supervision of a certified applicator*.—Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.
 - “(f) *Defoliant*.—The term ‘defoliant’ means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.
 - “(g) *Desiccant*.—The term ‘desiccant’ means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.
 - “(h) *Device*.—The term ‘device’ means any instrument or contrivance

(other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"(i) *District Court*.—The term 'district court' means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

"(j) *Environment*.—The term 'environment' includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

"(k) *Fungus*.—The term 'fungus' means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

"(l) *Imminent Hazard*.—The term 'imminent hazard' means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under Public Law 91-135.

"(m) *Inert Ingredient*.—The term 'inert ingredient' means an ingredient which is not active.

"(n) *Ingredient Statement*.—The term 'ingredient statement' means a statement which contains—

"(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and

"(2) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

"(o) *Insect*.—The term 'insect' means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

"(p) *Label and Labeling*.—

"(1) *Label*.—The term 'label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

"(2) *Labeling*.—The term 'labeling' means all labels and all other written, printed, or graphic matter—

"(A) accompanying the pesticide or device at any time; or

"(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

"(q) *Misbranded*.—

"(1) A pesticide is misbranded if—

"(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

"(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25(c)(3);

"(C) it is an imitation of, or is offered for sale under the name of, another pesticide;

"(D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced;

"(E) any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

"(F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment;

"(G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment; or

"(H) in the case of a pesticide not registered in accordance with section 3 of this Act and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the following: 'Not Registered for Use in the United States of America'.

"(2) A pesticide is misbranded if—

"(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if:

"(i) the size of form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

"(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

"(B) the labeling does not contain a statement of the use classification under which the product is registered;

"(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

"(i) the name and address of the producer, registrant, or person for whom produced;

"(ii) the name, brand, or trademark under which the pesticide is sold;

"(iii) the net weight or measure of the content; *Provided*, That the Administrator may permit reasonable variations; and

"(iv) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification; and

"(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this Act—

"(i) the skull and crossbones;

“(ii) the word ‘poison’ prominently in red on a background of distinctly contrasting color; and

“(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

“(r) *Nematode*.—The term ‘nematode’ means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

“(s) *Person*.—The term ‘person’ means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

“(t) *Pest*.—The term ‘pest’ means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

“(u) *Pesticide*.—The term ‘pesticide’ means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant: *Provided*, That the term ‘pesticide’ shall not include any article (1)(a) that is a ‘new animal drug’ within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), or (b) that has been determined by the Secretary of Health, Education, and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing an article covered by clause (1) of this proviso.”

“(v) *Plant Regulator*.—The term ‘plant regulator’ means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term ‘plant regulator’ shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are non-toxic, nonpoisonous in the undiluted packaged concentration.

“(w) *Producer and Produce*.—The term ‘producer’ means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. The term ‘produce’ means to manufacture, prepare, compound, propagate, or process any pesticide or device, or active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being included in the definition of ‘producer’ for the purposes of this Act.”

“(x) *Protect Health and the Environment*.—The terms ‘protect health and the environment’ and ‘protection of health and the environment’ mean protection against any unreasonable adverse effects on the environment.

“(y) *Registrant*.—The term ‘registrant’ means a person who has registered any pesticide pursuant to the provisions of this Act.

“(z) *Registration*.—The term ‘registration’ includes reregistration.

“(aa) *State*.—The term ‘State’ means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

“(bb) *Unreasonable Adverse Effects on the Environment*.—The term ‘unreasonable adverse effects on the environment’ means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

“(cc) *Weed*.—The term ‘weed’ means any plant which grows where not wanted.

“(dd) *Establishment*.—The term ‘establishment’ means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

“(ee) *To Use Any Registered Pesticide in a Manner Inconsistent With Its Labeling*.—The term ‘to use any registered pesticide in a manner inconsistent with its labeling’ means to use any registered pesticide in a manner not permitted by the labeling: *Provided*, That the term shall not include (1) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling, (2) applying a pesticide against any target pest not specified on the labeling, unless the Administrator has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling after the Administrator has determined that the use of the pesticide against other pests would cause an unreasonable adverse effect on the environment, (3) employing any method of application not prohibited by the labeling, or (4) mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling: *Provided further*, That the term also shall not include any use of a pesticide in conformance with section 5, 18, or 24 of this Act, or any use of a pesticide in a manner that the Administrator determines to be consistent with the purposes of this Act: *And provided further*, That after March 31, 1979, the term shall not include the use of a pesticide for agricultural or forestry purposes at a dilution less than label dosage unless before or after that date the Administrator issues a regulation or advisory opinion consistent with the study provided for in section 27(b) of the Federal Pesticide Act of 1978, which regulation or advisory opinion specifically requires the use of definite amounts of dilution.

“SEC. 3. REGISTRATION OF PESTICIDES.

“(a) *Requirement*.—Except as otherwise provided by this Act, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) delivery or offer to deliver, to any person any pesticide which is not registered with the Administrator.

“(b) *Exemptions*.—A pesticide which is not registered with the Administrator may be transferred if—

“(1) the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or

“(2) the transfer is pursuant to and in accordance with the requirements of an experimental use permit.

“(c) *Procedure for Registration*.—

(1) *Statement required*.—Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—

“(A) the name and address of the applicant and of any other person whose name will appear on the labeling;

“(B) the name of the pesticide;

“(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use;

“(D) except as otherwise provided in subsection (c)(2)(D) of this section, if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, or alternatively a citation to data that appears in the public literature or that previously had been submitted to the Administrator and that

Note:

Section 2(b) of the Federal Pesticide Act of 1978 provides, The amendment to section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act made by this section shall apply with respect to all applications for registration approved after September 30, 1978.

the Administrator may consider in accordance with the following provisions:

"(i) with respect to pesticides containing active ingredients that are initially registered under this Act after September 30, 1978, data submitted to support the application for the original registration of the pesticide, or an application for an amendment adding any new use to the registration and that pertains solely to such new use, shall not, without the written permission of the original data submitter, be considered by the Administrator to support an application by another person during a period of ten years following the date the Administrator first registers the pesticides: Provided, That such permission shall not be required in the case of defensive data;

"(ii) except as otherwise provided in subparagraph (D)(i) of this paragraph, with respect to data submitted after December 31, 1969, by an applicant or registrant to support an application for registration, experimental use permit, or amendment adding a new use to an existing registration, to support or maintain in effect an existing registration, or for reregistration, the Administrator may, without the permission of the original data submitter, consider any such item of data in support of an application by any other person (hereinafter in this subparagraph referred to as the 'applicant') within the fifteen-year period following the date the data were originally submitted only if the applicant has made an offer to compensate the original data submitter and submitted such offer to the Administrator accompanied by evidence of delivery to the original data submitter of the offer. The terms and amount of compensation may be fixed by agreement between the original data submitter and the applicant, or, failing such agreement, binding arbitration under this subparagraph. If, at the end of ninety days after the date of delivery to the original data submitter of the offer to compensate, the original data submitter and the applicant have neither agreed on the amount and terms of compensation nor on a procedure for reaching an agreement on the amount and terms of compensation, either person may initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of the Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings, and the findings and determination of the arbitrator shall be final and conclusive, and no official or court of the United States shall have power or jurisdiction to review any such findings and determination, except for fraud, misrepresentation, or other misconduct by one of the parties to the arbitration or the arbitrator where there is a verified complaint with supporting affidavits attesting to specific instances of such fraud, misrepresentation, or other misconduct. The parties to the arbitration shall share equally in the payment of the fee and expenses of the arbitrator. If the Administrator determines that an original data submitter has failed to participate in a procedure for reaching an agreement or in an arbitration proceeding as required by this subparagraph, or failed to comply with the terms of an agreement or arbitration decision concerning compensation under this subparagraph, the original data submitter shall forfeit the right to compensation for the use of the data in support of the application. Notwithstanding any other provision of this Act, if the Administrator determines that an applicant has failed to participate in a procedure for reaching an agreement or in an arbitration proceeding as required by this subparagraph, or failed to comply with the terms of an agreement or arbitration decision concerning compensation under this subparagraph, the

Exclusive
use of data

Compensation.

Arbitration.

Administrator shall deny the application or cancel the registration of the pesticide in support of which the data were used without further hearing. Before the Administrator takes action under either of the preceding two sentences, the Administrator shall furnish to the affected person, by certified mail, notice of intent to take actions and allow fifteen days from the date of delivery of the notice for the affected person to respond. If a registration is denied or canceled under this subparagraph, the Administrator may make such order as the Administrator deems appropriate concerning the continued sale and use of existing stocks of such pesticide. Registration action by the Administrator shall not be delayed pending the fixing of compensation;

"(iii) after expiration of any period of exclusive use and any period for which compensation is required for the use of an item of data under subparagraphs (D)(i) and (D)(ii) of this paragraph, the Administrator may consider such item of data in support of an application by any other applicant without the permission of the original data submitter and without an offer having been received to compensate the original data submitter for the use of such item of data;

"(E) the complete formula of the pesticide; and

"(F) a request that the pesticide be classified for general use, for restricted use, or for both.

"(2) (A) *Data in support of registration.*—The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If thereafter he requires any additional kind of information under subparagraph (B) of this paragraph, he shall permit sufficient time for applicants to obtain such additional information. The Administrator, in establishing standards for data requirements for the registration of pesticides with respect to minor uses, shall make such standards commensurate with the anticipated extent of use, pattern of use, and the level and degree of potential exposure of man and the environment to the pesticide. In the development of these standards, the Administrator shall consider the economic factors of potential national volume of use, extent of distribution, and the impact of the cost of meeting the requirements on the incentives for any potential registrant to undertake the development of the required data. Except as provided by section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.

"(B) *Additional data to support existing registrations.*—

"(i) If the Administrator determines that additional data are required to maintain in effect an existing registration of a pesticide, the Administrator shall notify all existing registrants of the pesticide to which the determination relates and provide a list of such registrants to any interested person.

"(ii) Each registrant of such pesticide shall provide evidence within ninety days after receipt of notification that it is taking appropriate steps to secure the additional data that are required. Two or more registrants may agree to develop jointly, or to share in the cost of developing, such data if they agree and advise the Administrator of their intent within ninety days after notification. Any registrant who agrees to share in the cost of producing the data shall be entitled to examine and rely upon such data in support of maintenance of such registration.

P.L. 95-396,
92 Stat. 824.

7 USC 136h.

P.L. 95-396
92 Stat. 822.

Notification.

Joint data
development.

“(iii) If, at the end of sixty days after advising the Administrator of their agreement to develop jointly, or share in the cost of developing, data, the registrants have not further agreed on the terms of the data development arrangement or on a procedure for reaching such agreement, any of such registrants may initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of the Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings, and the findings and determination of the arbitrator shall be final and conclusive, and no official or court of the United States shall have power or jurisdiction to review any such findings and determination, except for fraud, misrepresentation, or other misconduct by one of the parties to the arbitration or the arbitrator where there is a verified complaint with supporting affidavits attesting to specific instances of such fraud, misrepresentation, or other misconduct. All parties to the arbitration shall share equally in the payment of the fee and expenses of the arbitrator.

“(iv) Notwithstanding any other provision of this Act, if the Administrator determines that a registrant, within the time required by the Administrator, has failed to take appropriate steps to secure the data required under this subparagraph, to participate in a procedure for reaching agreement concerning a joint data development arrangement under this subparagraph or in an arbitration proceeding as required by this subparagraph, or to comply with the terms of an agreement or arbitration decision concerning a joint data development arrangement under this subparagraph, the Administrator may issue a notice of intent to suspend such registrant's registration of the pesticide for which additional data is required. The Administrator may include in the notice of intent to suspend such provisions as the Administrator deems appropriate concerning the continued sale and use of existing stocks of such pesticide. Any suspension proposed under this subparagraph shall become final and effective at the end of thirty days from receipt by the registrant of the notice of intent to suspend, unless during that time a request for hearing is made by a person adversely affected by the notice or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the notice of intent to suspend. If a hearing is requested, a hearing shall be conducted under section 6(d) of this Act: Provided, That the only matters for resolution at that hearing shall be whether the registrant has failed to take the action that served as the basis for the notice of intent to suspend the registration of the pesticide for which additional data is required, and whether the Administrator's determination with respect to the disposition of existing stocks is consistent with this Act. If a hearing is held, a decision after completion of such hearing shall be final. Notwithstanding any other provision of this Act, a hearing shall be held and a determination made within seventy-five days after receipt of a request for such hearing. Any registration suspended under this subparagraph shall be reinstated by the Administrator if the Administrator determines that the registrant has complied fully with the requirements that served as a basis for the suspension of the registration.

“(v) Any data submitted under this subparagraph shall be subject to the provisions of subsection (c)(1)(D) of this section. Whenever such data are submitted jointly by two or more registrants, an agent shall be agreed on at the time of the joint submission to handle any subsequent data compensation matters for the joint submitters of such data.”

“(C) *Simplified procedures.*—Within nine months after date of enactment of this subparagraph, the Administrator shall by regulation, prescribe simplified procedures for the registration of pesticides, which shall include the provisions of subparagraph (D) of this paragraph.

“(D) *Exemption.*—No applicant for registration of a pesticide who proposes to purchase a registered pesticide from another producer in order to formulate such purchased pesticide into an end-use product shall be required to—

“(i) submit or cite data pertaining to the safety of such purchased product; or

“(ii) offer to pay reasonable compensation otherwise required by paragraph (1)(D) of this subsection for the use of any such data.”

“(3) *Time for acting with respect to application.*—The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the Act in accordance with paragraph (6).

“(4) *Notice of application.*—The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs (1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

“(5) *Approval of registration.*—The Administrator shall register a pesticide if he determines that, when considered with any restrictions imposed under subsection (d)—

“(A) its composition is such as to warrant the proposed claims for it;

“(B) its labeling and other material required to be submitted comply with the requirements of this Act;

“(C) it will perform its intended function without unreasonable adverse effects on the environment; and

“(D) when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides meet the requirements of this paragraph, one should not be registered in preference to the other. In considering an application for the registration of a pesticide, the Administrator may waive data requirements pertaining to efficacy, in which event the Administrator may register the pesticide without determining that the pesticide's composition is such as to warrant proposed claims of efficacy. If a pesticide is found to be efficacious by any State under section 24(c) of this Act, a presumption is established that the Administrator shall waive data requirements pertaining to efficacy for use of the pesticide in such State.

“(6) *Denial of registration.*—If the Administrator determines that the requirements of paragraph (5) for registration are not satisfied, he shall notify the applicant for registration of his determination and of his reasons (including the factual basis) therefor, and that, unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator may refuse to register the pesticide. Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefor. The Administrator shall promptly publish in the Federal Register notice of such denial of registration and

the reasons therefor. Upon such notification, the applicant for registration or other interested person with the concurrence of the applicant shall have the same remedies as provided for in section 6.

“(7) *Registration under special circumstances.*—Notwithstanding the provisions of subsection (c)(5) of this section—

“(A) The Administrator may conditionally register or amend the registration of a pesticide if the Administrator determines that (i) the pesticide and proposed use are identical or substantially similar to any currently registered pesticide and use thereof, or differ only in ways that would not significantly increase the risk of unreasonable adverse effects on the environment, and (ii) approving the registration or amendment in the manner proposed by the applicant would not significantly increase the risk of any unreasonable adverse effect on the environment. An applicant seeking conditional registration or amended registration under this subparagraph shall submit such data as would be required to obtain registration of a similar pesticide under subsection (c)(5) of this section: Provided, That, if the applicant is unable to submit an item of data because it has not yet been generated, the Administrator may register or amend the registration of the pesticide under such conditions as will require the submission of such data not later than the time such data are required to be submitted with respect to similar pesticides already registered under this Act.

“(B) The Administrator may conditionally amend the registration of a pesticide to permit additional uses of such pesticide notwithstanding that data concerning the pesticide may be insufficient to support an unconditional amendment, if the Administrator determines that (i) the applicant has submitted satisfactory data pertaining to the proposed additional use, and (ii) amending the registration in the manner proposed by the applicant would not significantly increase the risk of any unreasonable adverse effect on the environment. Notwithstanding the foregoing provisions of this subparagraph, no registration of a pesticide may be amended to permit an additional use of such pesticide if the Administrator has issued a notice stating that such pesticide, or any ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human dietary exposure enumerated in regulations issued under this Act, and during the pendency of any risk-benefit evaluation initiated by such notice, if (i) the additional use of such pesticide involves a major food or feed crop, or (ii) the additional use of such pesticide involves a minor food or feed crop and the Administrator determines, with the concurrence of the Secretary of Agriculture, there is available an effective alternative pesticide that does not meet or exceed such risk criteria. An applicant seeking amended registration under this subparagraph shall submit such data as would be required to obtain registration of a similar pesticide under subsection (c)(5) of this section: Provided, That, if the applicant is unable to submit an item of data (other than data pertaining to the proposed additional use) because it has not yet been generated, the Administrator may amend the registration under such conditions as will require the submission of such data not later than the time such data are required to be submitted with respect to similar pesticides already registered under this Act.

“(C) The Administrator may conditionally register a pesticide containing an active ingredient not contained in any currently registered pesticide for a period reasonably sufficient for the generation and submission of required data (which are lacking because a period reasonably sufficient for generation of the data has not elapsed since the Administrator first imposed the data requirement) on the condition that by the end of such period the Administrator receives such data and the data do not meet or exceed risk criteria enumerated in regulations issued under this Act, and on such other

conditions as the Administrator may prescribe: Provided, That a conditional registration under this subparagraph shall be granted only if the Administrator determines that use of the pesticide during such period will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

“(8) *Interim administrative review.*—Notwithstanding any other provision of this Act, the Administrator may not initiate a public interim administrative review process to develop a risk-benefit evaluation of the ingredients of a pesticide or any of its uses prior to initiating a formal action to cancel, suspend, or deny registration of such pesticide, required under this Act, unless such interim administrative process is based on a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or to the environment. Notice of the definition of the terms ‘validated test’ and ‘other significant evidence’ as used herein shall be published by the Administrator in the Federal Register.”

“(d) *Classification of Pesticides.*—

“(1) *Classification for general use, restricted use, or both.*—

“(A) As a part of the registration of a pesticide the Administrator shall classify it as being for general use or for restricted use, provided that if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for restricted use, he shall classify it for both general use and restricted use. Pesticide uses may be classified by regulation on the initial classification, and registered pesticides may be classified prior to reregistration. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses: *Provided, however,* That the Administrator may require that its packaging and labeling for restricted uses shall be clearly distinguishable from its packaging and labeling for general uses.

“(B) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies, for general use.

“(C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use:

“(i) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that the acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

“(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause unreasonable adverse effects on the environment, the pesticide shall be applied for any use to which the determination

applies only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may provide by regulation. Any such regulation shall be reviewable in the appropriate court of appeals upon petition of a person adversely affected filed within 60 days of the publication of the regulation in final form.

“(2) *Change in classification.*—If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent unreasonable adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least forty-five days before making the change and shall publish the proposed change in the Federal Register. The registrant, or other interested person with the concurrence of the registrant, may seek relief from such determination under section 6(b).

“(3) *Change in classification from restricted use to general use.*—The registrant of any pesticide with one or more uses classified for restricted use may petition the Administrator to change any such classification from restricted to general use. Such petition shall set out the basis for the registrant’s position that restricted use classification is unnecessary because classification of the pesticide for general use would not cause unreasonable adverse effects on the environment. The Administrator, within sixty days after receiving such petition, shall notify the registrant whether the petition has been granted or denied. Any denial shall contain an explanation therefor and any such denial shall be subject to judicial review under section 16 of this Act.

“(c) *Products With Same Formulation and Claims.*—Products which have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added to the registration by supplemental statements.

“(f) *Miscellaneous.*—

“(1) *Effect of change of labeling or formulation.*—If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this Act.

“(2) *Registration not a defense.*—In no event shall registration of an article be construed as a defense for the commission of any offense under this Act: *Provided*, That as long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the pesticide, its labeling and packaging comply with the registration provisions of the Act.

“(3) *Authority to consult other Federal agencies.*—In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.

“(g) *Reregistration of Pesticides.*—The Administrator shall accomplish the reregistration of all pesticides in the most expeditious manner practicable: *Provided*, That, to the extent appropriate, any pesticide that results in a postharvest residue in or on food or feed crops shall be given priority in the reregistration process.

“SEC. 4. USE OF RESTRICTED USE PESTICIDES; CERTIFIED APPLICATORS.

“(a) *Certification Procedure.*—

“(1) *Federal certification.*—In any State for which a State plan for applicator certification has not been approved by the Administrator, the Administrator, in consultation with the Governor of such State, shall conduct a program for the certification of applicators of pesticides: *Provided*, That such program shall conform to the requirements imposed upon the States under the provisions of subsection (a)(2) of this section

and shall not require private applicators to take any examination to establish competency in the use of pesticides. Prior to the implementation of the program, the Administrator shall publish in the Federal Register for review and comment a summary of the Federal plan for applicator certification and shall make generally available within the State copies of the plan. The Administrator shall hold public hearings at one or more locations within the State if so requested by the Governor of such State during the thirty days following publication of the Federal Register notice inviting comment on the Federal plan. The hearings shall be held within thirty days following receipt of the request from the Governor. In any State in which the Administrator conducts a certification program, the Administrator may require any person engaging in the commercial application, sale, offering for sale, holding for sale, or distribution of any pesticide one or more uses of which have been classified for restricted use to maintain such records and submit such reports concerning the commercial application, sale, or distribution of such pesticide as the Administrator may by regulation prescribe. Subject to paragraph (2), the Administrator shall prescribe standards for the certification of applicators of pesticides. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by such individual’s certification: *Provided, however*, That the certification standard for a private applicator shall, under a State plan submitted for approval, be deemed fulfilled by his completing a certification form. The Administrator shall further assure that such form contains adequate information and affirmations to carry out the intent of this Act, and may include in the form an affirmation that the private applicator has completed a training program approved by the Administrator so long as the program does not require the private applicator to take, pursuant to requirement prescribed by the Administrator, any examination to establish competency in the use of the pesticide. The Administrator may require any pesticide dealer participating in a certification program to be licensed under a State licensing program approved by him.

“(2) *State certification.*—If any State, at any time, desires to certify applicators of pesticides, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—

“(A) designates a State agency as the agency responsible for administering the plan throughout the State;

“(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

“(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

“(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

“(E) contains satisfactory assurances that State standards for the certification of applicators of pesticides conform with those standards prescribed by the Administrator under paragraph (1).

Any State certification program under this section shall be maintained in accordance with the State plan approved under this section.

“(b) *State Plans.*—If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify applicators of pesticides with respect to such State. Whenever the Administrator determines that a State is not administering the certification program in accordance with the plan approved under this section, he shall so notify the State and provide for a hearing at the request of the State, and, if appropriate corrective action is

Publication in
Federal Register.

7 USC 136d;
P.L. 95-396;
92 Stat. 827.

7 USC 136n.

P.L. 95-396;
92 Stat. 827.

7 USC 136b

P.L. 95-396;
92 Stat. 827.

not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such plan.

"(c) *Instruction in Integrated Pest Management Techniques.*—Standards prescribed by the Administrator for the certification of applicators of pesticides under subsection (a), and the State plans submitted to the Administrator under subsection (a) and (b), shall include provisions for making instructional materials concerning integrated pest management techniques available to individuals at their request in accordance with the provisions of section 23(c) of this Act, but such plans may not require that any individual receive instruction concerning such techniques or be shown to be competent with respect to the use of such techniques. The Administrator and States implementing such plans shall provide that all interested individuals are notified of the availability of such instructional materials."

"SEC. 5. EXPERIMENTAL USE PERMITS.

"(a) *Issuance.*—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator shall review the application. After completion of the review, but not later than one hundred and twenty days after receipt of the application and all required supporting data, the Administrator shall either issue the permit or notify the applicant of the Administrator's determination not to issue the permit and the reasons therefor. The applicant may correct the application or request a waiver of the conditions for such permit within thirty days of receipt by the applicant of such notification. The Administrator may issue an experimental use permit only if the Administrator determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3 of this Act. An application for an experimental use permit may be filed at any time.

"(b) *Temporary Tolerance Level.*—If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

"(c) *Use Under Permit.*—Use of a pesticide under an experimental use permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

"(d) *Studies.*—When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause unreasonable adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

"(e) *Revocation.*—The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

"(f) *State Issuance of Permits.*—Notwithstanding the foregoing provisions of this section, the Administrator shall, under such terms and conditions as he may by regulations prescribe, authorize any State to issue an experimental use permit for a pesticide. All provisions of section 4 relating to State plans shall apply with equal force to a State plan for the issuance of experimental use permits under this section.

"(g) *Exemption for Agricultural Research Agencies.*—Notwithstanding the foregoing provisions of this section, the Administrator may issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution which applies for such permit. Each permit shall not exceed more than a one-year period or such other specific time as the Administrator may prescribe. Such permit shall be issued under such terms and conditions restricting the use of the pesticide as the Administrator

may require: *Provided*, That such pesticide may be used only by such research agency or educational institution for purposes of experimentation."

"SEC. 6. ADMINISTRATIVE REVIEW; SUSPENSION.

"(a) *Cancellation After Five Years.*—

"(1) *Procedure.*—The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date of its registration (or at the end of any five-year period thereafter) unless the registrant, or other interested person with the concurrence of the registrant, before the end of such period, requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect: *Provided*, That the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is canceled under this subsection or subsection (b) to such extent, under such conditions, and for such uses as he may specify if he determines that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment. The Administrator shall publish in the Federal Register, at least 30 days prior to the expiration of such five-year period, notice that the registration will be canceled if the registrant or other interested person with the concurrence of the registrant does not request that the registration be continued in effect.

"(2) *Information.*—If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

"(b) *Cancellation and Change in Classification.*—If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act or when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment, the Administrator may issue a notice of his intent either—

"(1) to cancel its registration or to change its classification together with the reasons (including the factual basis) for his action, or

"(2) to hold a hearing to determine whether or not its registration should be canceled or its classification changed.

Such notice shall be sent to the registrant and made public. In determining whether to issue any such notice, the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days prior to sending such notice to the registrant or making public such notice, whichever occurs first, the Administrator shall provide the Secretary of Agriculture with a copy of such notice and an analysis of such impact on the agricultural economy. If the Secretary comments in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator shall publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator may notify the registrant and make public the notice at any time after such 30-day period notwithstanding the foregoing 60-day time requirement. The time requirements imposed by the preceding 3 sentences may be waived or modified to the extent agreed upon by the Administrator and the Secretary. Notwithstanding any other provision of this subsection (b) and section 25(d), in the event that the Administrator determines that suspension of a pesticide registration is necessary to prevent an imminent hazard to human health, then upon such a finding the Administrator may waive the requirement of notice to and consultation with the Secretary of Agriculture pursuant to subsection (b) and of submission to the Scientific Ad-

visory Panel pursuant to section 25(d) and proceed in accordance with subsection (c). The proposed action shall become final and effective at the end of 30 days from receipt by the registrant, or publication, of a notice issued under paragraph (1), whichever occurs later, unless within that time either (i) the registrant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the notice. In the event a hearing is held pursuant to such a request or to the Administrator's determination under paragraph (2), a decision pertaining to registration or classification issued after completion of such hearing shall be final.

In taking any final action under this subsection, the Administrator shall consider restricting a pesticide's use or uses as an alternative to cancellation and shall fully explain the reasons for these restrictions, and shall include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and he shall publish in the Federal Register an analysis of such impact.

"(c) Suspension.—

"(1) Order.—If the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless the Administrator has issued or at the same time issues notice of his intention to cancel the registration or change the classification of the pesticide.

Except as provided in paragraph (3), the Administration shall notify the registrant prior to issuing any suspension order. Such notice shall include findings pertaining to the question of 'imminent hazard'. The registrant shall then have an opportunity, in accordance with the provisions of paragraph (2), for an expedited hearing before the Agency on the question of whether an imminent hazard exists.

"(2) Expedite hearing.—If no request for a hearing is submitted to the Agency within five days of the registrant's receipt of the notification provided for by paragraph (1), the suspension order may be issued and shall take effect and shall not be reviewable by a court. If a hearing is requested, it shall commence within five days of the receipt of the request for such hearing unless the registrant and the Agency agree that it shall commence at a later time. The hearing shall be held in accordance with the provisions of subchapter II of title 5 of the United States Code, except that the presiding officer need not be a certified hearing examiner. The presiding officer shall have ten days from the conclusion of the presentation of evidence to submit recommended findings and conclusions to the Administrator, who shall then have seven days to render a final order on the issue of suspension.

"(3) Emergency order.—Whenever the Administrator determines that an emergency exists that does not permit him to hold a hearing before suspending, he may issue a suspension order in advance of notification to the registrant. In that case, paragraph (2) shall apply except that (i) the order of suspension shall be in effect pending the expeditious completion of the remedies provided by that paragraph and the issuance of a final order on suspension, and (ii) no party other than the registrant and the Agency shall participate except that any person adversely affected may file briefs within the time allotted by the Agency's rules. Any person so filing briefs shall be considered a party to such proceeding for the purpose of section 16(b).

"(4) Judicial review.—A final order on the question of suspension following a hearing shall be reviewable in accordance with Section 16 of this Act, notwithstanding the fact that any related cancellation proceedings have not been completed. Petitions to review orders on the issue of suspension shall be advanced on the docket of the courts of appeals. Any order of suspension entered prior to a hearing before the Administrator shall be subject to immediate review in an action by the registrant or other interested person with the concurrence of the

registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. The effect of any order of the court will be only to stay the effectiveness of the suspension order, pending the Administrator's final decision with respect to cancellation or change in classification. This action may be maintained simultaneously with any administrative review proceeding under this section. The commencement of proceedings under this paragraph shall not operate as a stay of order, unless ordered by the court.

"(d) Public Hearings and Scientific Review.—In the event a hearing is requested pursuant to subsection (b) or determined upon by the Administrator pursuant to subsection (b), such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the objections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpoena to compel testimony or production of documents from any person. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness. On contest, the subpoena may be enforced by an appropriate United States district court in accordance with the principles stated herein. Upon the request of any party to a public hearing and when in the Hearing Examiner's judgment it is necessary or desirable, the Hearing Examiner shall at any time before the hearing record is closed refer to a Committee of the National Academy of Sciences the relevant questions of scientific fact involved in the public hearing. No member of any committee of the National Academy of Sciences established to carry out the functions of this section shall have a financial or other conflict of interest with respect to any matter considered by such committee. The Committee of the National Academy of Sciences shall report in writing to the Hearing Examiner within 60 days after such referral on these questions of scientific fact. The report shall be made public and shall be considered as part of the hearing record. The Administrator shall enter into appropriate arrangements with the National Academy of Sciences to assure an objective and competent scientific review of the questions presented to Committees of the Academy and to provide such other scientific advisory services as may be required by the Administrator for carrying out the purposes of this Act. As soon as practicable after completion of the hearing (including the report of the Academy) but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or shall issue an order either canceling the registration, changing the classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantial evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

"(c) Conditional Registration.—

"(1) The Administrator shall issue a notice of intent to cancel a registration issued under section 3(c)(7) of this Act if (A) the Administrator, at any time during the period provided for satisfaction of any condition imposed, determines that the registrant has failed to initiate and pursue appropriate action toward fulfilling any condition imposed, or (B) at the end of the period provided for satisfaction of any condition imposed, that condition has not been met: *Provided*, That the Administrator may permit the continued sale and use of existing stocks of a pesticide whose conditional registration has been canceled under this subsection to such extent, under such conditions, and for such uses as the Administrator may specify if the Administrator determines that such sale or use is not inconsistent with the purposes of this Act and will

P.L. 95-396;
92 Stat. 828.

P.L. 94-140;
89 Stat. 751.

80 Stat. 381;
81 Stat. 54;
5 USC 551.

7 USC 136n.

Subpoena

28 USC

Report

P.L. 95-

92 Stat.

Notice

7 USC 1

not have unreasonable adverse effects on the environment.

"(2) A cancellation proposed under this subsection shall become final and effective at the end of thirty days from receipt by the registrant of the notice of intent to cancel unless during that time a request for hearing is made by a person adversely affected by the notice. If a hearing is requested, a hearing shall be conducted under subsection (d) of this section: *Provided*, That the only matters for resolution at that hearing shall be whether the registrant has initiated and pursued appropriate action to comply with the condition or conditions within the time provided or whether the condition or conditions have been satisfied within the time provided, and whether the Administrator's determination with respect to the disposition of existing stocks is consistent with this Act. A decision after completion of such hearing shall be final. Notwithstanding any other provision of this section, a hearing shall be held and a determination made within seventy-five days after receipt of a request for such hearing.

"(f) *Judicial Review.*—Final orders of the Administrator under this section shall be subject to judicial review pursuant to section 16.

7 USC 136n.

7 USC 136e

"SEC. 7. REGISTRATION OF ESTABLISHMENTS.

"(a) *Requirement.*—No person shall produce any pesticide subject to this Act or active ingredient used in producing a pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

"(b) *Registration.*—Whenever the Administrator receives an application under subsection (a), he shall register the establishment and assign it an establishment number.

"(c) *Information Required.*—

"(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides—

"(A) which he is currently producing;

"(B) which he has produced during the past year; and

"(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

"(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 13, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

"(d) *Confidential Records and Information.*—Any information submitted to the Administrator pursuant to subsection (c) other than the names of the pesticides or active ingredients used in producing pesticides produced, sold, or distributed at an establishment shall be considered confidential and shall be subject to the provisions of section 10.

92 Stat. 829.

7 USC 136h.

7 USC 136f

"SEC. 8. BOOKS AND RECORDS.

"(a) *Requirements.*—The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this Act. No records required under this subsection shall extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

Regulations.

"(b) *Inspection.*—For the purposes of enforcing the provisions of this Act, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this Act, shall, upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy: (1) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; or (2) in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device. Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

Before undertaking an inspection under this subsection, the officer or employee must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness.

P.L. 95-3
92 Stat. 8

"SEC. 9. INSPECTION OF ESTABLISHMENTS, ETC.

7 USC 13

"(a) *In General.*—For purposes of enforcing the provisions of this Act, officers or employees duly designated by the Administrator are authorized to enter at reasonable times, any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

"(b) *Warrants.*—For purposes of enforcing the provisions of this Act and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this Act have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

"(1) entry for the purpose of this section;

"(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any pesticide or device found in the establishment which is adulterated, misbranded, not registered (in the case of a pesticide) or otherwise in violation of this Act and in the event of the inability of any person to produce records containing such information, all other records and in-

formation relating to such delivery, movement, or holding of the pesticide or device; and

“(3) the seizure of any pesticide or device which is in violation of this Act.

“(c) *Enforcement.*—

“(1) *Certification of facts to attorney general.*—The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this Act. If it shall appear from any such examination that they fail to comply with the requirements of this Act, the Administrator shall cause notice to be given to the person against whom criminal or civil proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this Act have been violated by such person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 14(b) or a civil proceeding under section 14(a), when the Administrator determines that such action will be sufficient to effectuate the purposes of this Act.

“(2) *Notice not required.*—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

“(3) *Warning notices.*—Nothing in this Act shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

“SEC. 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.

“(a) *In General.*—In submitting data required by this Act, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information and (2) submit such marked materials separately from other material required to be submitted under this Act.

“(b) *Disclosure.*—Notwithstanding any other provision of this Act, and subject to the limitations in subsections (d) and (e) of this section the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act, information relating to formulas of products acquired by authorization of this Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

“(c) *Disputes.*—If the Administrator proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (b), he shall notify the applicant or registrant, in writing, by certified mail. The Administrator shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate district court for a declaratory judgment as to whether such information is subject to protection under subsection (b).

“(d) *Limitations.*—

“(1) All information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a

registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide on any organism or the behavior of such pesticide in the environment, including, but not limited to, data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil, and studies on persistence, translocation and fate in the environment, and metabolism, shall be available for disclosure to the public: *Provided*, That the use of such data for any registration purpose shall be governed by section 3 of this Act: *Provided further*, That this paragraph does not authorize the disclosure of any information that—

“(A) discloses manufacturing or quality control processes,

“(B) discloses the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide, or

“(C) discloses the identity or percentage quantity of any deliberately added inert ingredient of a pesticide, unless the Administrator has first determined that disclosure is necessary to protect against an unreasonable risk of injury to health or the environment.

“(2) Information concerning production, distribution, sale, or inventories of a pesticide that is otherwise entitled to confidential treatment under subsection (b) of this section may be publicly disclosed in connection with a public proceeding to determine whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment, if the Administrator determines that such disclosure is necessary in the public interest.

“(3) If the Administrator proposes to disclose information described in clause (A), (B), or (C) of paragraph (1) or in paragraph (2) of this subsection, the Administrator shall notify by certified mail the submitter of such information of the intent to release such information. The Administrator may not release such information, without the submitter's consent, until thirty days after the submitter has been furnished such notice: *Provided*, That where the Administrator finds that disclosure of information described in clause (A), (B), (C) of paragraph (1) of this subsection is necessary to avoid or lessen an imminent and substantial risk of injury to the public health, the Administrator may set such shorter period of notice (but not less than ten days) and such method of notice as the Administrator finds appropriate. During such period the data submitter may institute an action in an appropriate district court to enjoin or limit the proposed disclosure. The court shall give expedited consideration to any such action. The court may enjoin disclosure, or limit the disclosure or the parties to whom disclosure shall be made, to the extent that—

“(A) in the case of information described in clause (A), (B), or (C) of paragraph (1) of this subsection, the proposed disclosure is not required to protect against an unreasonable risk of injury to health or the environment; or

“(B) in the case of information described in paragraph (2) of this subsection, the public interest in availability of the information in the public proceeding does not outweigh the interests in preserving the confidentiality of the information.

“(e) *Disclosure to Contractors.*—Information otherwise protected from disclosure to the public subsection (b) of this section may be disclosed to contractors with the United States and employees of such contractors if, in the opinion of the Administrator, such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States for the performance of work in connection with this Act and under such conditions as the Administrator may specify. The Administrator shall require as a condition to the disclosure of information under this subsection that the person receiving it take such security precautions respecting the information as the Administrator shall by regulation prescribe.

“(f) *Penalty for disclosure by Federal Employees.*—

7 USC 136a.

7 USC 136d.

7 USC 136a.

P.L. 95-396;
92 Stat. 831.

P.L. 95-396;
92 Stat. 831.

P.L. 95-396;
92 Stat. 830.

Information
availability
to public.

"(1) Any officer or employee of the United States or former officer or employee of the United States who, by virtue of such employment or official position, has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (b) of this section, and who, knowing that disclosure of such material is prohibited by such subsection, willfully discloses the material in any manner to any person not entitled to receive it, shall be fined not more than \$10,000 or imprisoned for not more than one year, or both. Section 1905 of title 18 of the United States Code shall not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported or otherwise obtained under this Act. Nothing in this Act shall preempt any civil remedy under State or Federal law for wrongful disclosure of trade secrets.

"(2) For the purposes of this section, any contractor with the United States who is furnished information as authorized by subsection (c) of this section, or any employee of any such contractor, shall be considered to be an employee of the United States.

"(g) Disclosure to Foreign and Multinational Pesticide Producers.—

"(1) The Administrator shall not knowingly disclose information submitted by an applicant or registrant under this Act to any employee or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in addition to the United States or to any other person who intends to deliver such data to such foreign or multinational business or entity unless the applicant or registrant has consented to such disclosure. The Administrator shall require an affirmation from any person who intends to inspect data that such person does not seek access to the data for purposes of delivering it or offering it for sale to any such business or entity or its agents or employees and will not purposefully deliver or negligently cause the data to be delivered to such business or entity or its agents or employees. Notwithstanding any other provision of this subsection, the Administrator may disclose information to any person in connection with a public proceeding under law or regulation, subject to restrictions on the availability of information contained elsewhere in this Act, which information is relevant to the determination by the Administrator with respect to whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment.

"(2) The Administrator shall maintain records of the names of persons to whom data are disclosed under this subsection and the persons or organizations they represent and shall inform the applicant or registrant of the names and affiliation of such persons.

"(3) Section 1001 of title 18 of the United States Code shall apply to any affirmation made under paragraph (1) of this subsection.

"SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS.

"(a) *In General.*—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private applicator to maintain any records or file any reports or other documents.

"(b) *Separate Standards.*—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators.

"SEC. 12. UNLAWFUL ACTS.

"(a) *In General.*—

"(1) Except as provided by subsection (b), it shall be unlawful for

any person in any State to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—

"(A) any pesticide which is not registered under section 3, except as provided by section 6(a)(1);

"(B) any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3;

"(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3;

"(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5);

"(E) any pesticide which is adulterated or misbranded; or

"(F) any device which is misbranded.

"(2) It shall be unlawful for any person—

"(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act;

"(B) to refuse to keep any records required pursuant to section 8, or to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 9;

"(C) to give a guaranty or undertaking provided for in subsection (b) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name and address, the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

"(D) to use for his own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this Act which is confidential under this Act;

"(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a produce registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;

"(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder; *Provided*, That it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator;

"(G) to use any registered pesticide in a manner inconsistent with its labeling;

"(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

"(I) to violate any order issued under section 13;

"(J) to violate any suspension order issued under section 6;

"(K) to violate any cancellation of registration of a pesticide under section 6, except as provided by section 6(a)(1);

"(L) who is a producer to violate any of the provisions of section 7;

"(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to section 8, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this act;

"(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act;

"(O) to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of this Act; or

"(P) to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test.

"(b) *Exemptions.*—The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—

"(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased or received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this Act;

"(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

"(3) any public official while engaged in the performance of his official duties;

"(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

"(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

"SEC. 13. STOP SALE, USE, REMOVAL, AND SEIZURE.

"(a) *Stop Sale, Etc., Orders.*—Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide has been canceled by a final order or has been suspended, the Administrator may issue a written or printed 'stop sale, use, or removal' order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

"(b) *Seizure.*—Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported from a foreign country, shall be liable to be proceeded against in any district court in the district

where it is found and seized for confiscation by a process in rem for condemnation if—

"(1) in the case of a pesticide—

"(A) it is adulterated or misbranded;

"(B) it is not registered pursuant to the provisions of section 3;

"(C) its labeling fails to bear the information required by this Act;

"(D) it is not colored or discolored and such coloring or discoloring is required under this Act; or

"(E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

"(2) in the case of a device, it is misbranded; or

"(3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this Act and as directed by the labeling, it nevertheless causes unreasonable adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

"(c) *Disposition After Condemnation.*—If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this Act or the laws of the jurisdiction in which it is sold; *Provided*, That upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws of any jurisdiction in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

"(d) *Court Costs, Etc.*—When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

"SEC. 14. PENALTIES.

"(a) *Civil Penalties.*—

"(1) *In General.*—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

"(2) *Private Applicator.*—Any private applicator or other person not included in paragraph (1) who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense; *Provided*, That any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than

\$1,000 for each subsequent offense.

"(3) *Hearing.*—No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged.

"(4) *Determination of Penalty.*—In determining the amount of the penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Whenever the Administrator finds that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Administrator may issue a warning in lieu of assessing a penalty."

"(5) *References to Attorney General.*—In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

"(b) *Criminal Penalties.*—

"(1) *In General.*—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than \$25,000, or imprisoned for not more than one year, or both.

"(2) *Private applicator.*—Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than \$1,000, or imprisoned for not more than 30 days, or both.

"(3) *Disclosure of information.*—Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, shall be fined not more than \$10,000, or imprisoned for not more than three years, or both.

"(4) *Acts of officers, agents, etc.*—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

"SEC. 15. INDEMNITIES.

"(a) *Requirement.*—If—

"(1) the Administrator notifies a registrant that he has suspended the registration of a pesticide because such action is necessary to prevent an imminent hazard;

"(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

"(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration. The Administrator shall make an indemnity payment to such person, unless the Administrator finds that such person (i) had knowledge of facts which, in themselves, would have shown that such pesticide did not meet the requirements of section 3(c)(5) for registration, and (ii) continued thereafter to produce such pesticide without giving timely notice of such facts to the Administrator.

"(b) *Amount of Payment.*—

"(1) *In General.*—The amount of the indemnity payment under

subsection (a) to any person shall be determined on the basis of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a)(1); except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a)(1).

"(2) *Special rule.*—Notwithstanding any other provision of his Act, the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner.

"SEC. 16. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW.

"(a) *District Court Review.*—Except as is otherwise provided in this Act, Agency refusals to cancel or suspend registrations or change classifications not following a hearing and other final Agency actions not committed to Agency discretion by law are judicially reviewable in the district courts.

"(b) *Review by Court of Appeals.*—In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any person who will be adversely affected by such order and who had been a party to the proceedings may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.

"(c) *Jurisdiction of District Courts.*—The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this Act.

"(d) *Notice of Judgments.*—The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

"SEC. 17. IMPORTS AND EXPORTS.

"(a) *Pesticides and Devices Intended for Export.*—Notwithstanding any other provision of this Act, no pesticide or device or active ingredient used in

Section 18 (b) of the Federal Pesticide Act of 1978 provides, The amendment [to Section 17(a)] made by subsection (a)(1) of this section shall become effective March 29, 1979.

producing a pesticide intended solely for export to any foreign country shall be deemed in violation of this Act—

“(1) when prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices and active ingredients used in producing pesticides shall be subject to sections 2(p), 2(q)(1) (A), (C), (D), (E), (G), and (H), 2(q)(2) (A), (B), (C) (i) and (iii), and (D), 7, and 8 of this Act; and

“(2) in the case of any pesticide other than a pesticide registered under section 3 or sold under section 6(a)(1) of this Act, if, prior to export, the foreign purchaser has signed a statement acknowledging that the purchaser understands that such pesticide is not registered for use in the United States and cannot be sold in the United States under this Act. A copy of that statement shall be transmitted to an appropriate official of the government of the importing country.

“(b) *Cancellation Notices Furnished to Foreign Governments.*—Whenever a registration, or a cancellation or suspension of the registration of a pesticide becomes effective, or ceases to be effective, the Administrator shall transmit through the State Department notification thereof to the governments of other countries and to appropriate international agencies. Such notification shall, upon request, include all information related to the cancellation or suspension of the registration of the pesticide and information concerning other pesticides that are registered under section 3 of this Act and that could be used in lieu of such pesticide.

“(c) *Importation of Pesticides and Devices.*—The Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon his request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions set forth in this Act, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any pesticide or device refused delivery which shall not be exported by the consignee within 90 days from the date of notice of such refusal under such regulations as the Secretary of Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such pesticide or device pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such pesticide or device, together with the duty thereon, and on refusal to return such pesticide or device for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further*, That all charges for storage, cartage, and labor on pesticides or devices which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

“(d) *Cooperation in International Efforts.*—The Administrator shall in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

“(e) *Regulations.*—The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of subsection (c) of this section.

“SEC. 18. EXEMPTION OF FEDERAL AGENCIES.

“The Administrator may, at his discretion, exempt any Federal or State

agency from any provision of this Act if he determines that emergency conditions exist which require such exemption.

“The Administrator, in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination.”

“SEC. 19. DISPOSAL AND TRANSPORTATION.

“(a) *Procedures.*—The Administrator shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 6(c) if requested by the owner of the pesticide.

“(b) *Advice to Secretary of Transportation.*—The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act (49 U.S.C. 1657), the Transportation of Explosives Act (18 U.S.C. 831-835), the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, 1472 II), and the Hazardous Cargo Act (46 U.S.C. 170, 375, 416).

“(c) *Provisions for unused quantities.*—Notification of cancellation of any pesticide shall include specific provisions for the disposal of the unused quantities of such pesticide.

“SEC. 20. RESEARCH AND MONITORING.

“(a) *Research.*—The Administrator shall undertake research, including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this Act, and he shall conduct research into integrated pest management in coordination with the Secretary of Agriculture. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.

“(b) *National Monitoring Plan.*—The Administrator shall formulate and periodically revise, in cooperation with other Federal, State, or local agencies, a national plan for monitoring pesticides.

“(c) *Monitoring.*—The Administrator shall undertake such monitoring activities, including, but not limited to, monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. The Administrator shall establish procedures for the monitoring of man and animals and their environment for incidental pesticide exposure, including, but not limited to, the quantification of incidental human and environmental pesticide pollution and the secular trends thereof, and identification of the sources of contamination and their relationship to human and environmental effects. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.

“SEC. 21. SOLICITATION OF COMMENTS; NOTICE OF PUBLIC HEARINGS.

“(a) The Administrator, before publishing regulations under this Act, shall solicit the views of the Secretary of Agriculture in accordance with the procedure described in section 25(a).

“(b) In addition to any other authority relating to public hearings and

7 USC 136, 136e, 136f.

7 USC 136a, 136d.

P.L. 95-396;
92 Stat. 833.

Notification.

P.L. 94-140;
89 Stat. 754.

7 USC 136g

Regulations.

7 USC 136d.

80 Stat. 944;
74 Stat. 808;
79 Stat. 286;
72 Stat. 775;
85 Stat. 481.
Contract
Authority.

P.L. 95-396;
92 Stat. 833.

7 USC 136e

P.L. 95-396;
92 Stat. 834.

P.L. 95-396;
92 Stat. 834.

7 USC 136e

P.L. 94-140;
89 Stat. 752;

7 USC 136e.

7 USC 136g

solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

“(c) In connection with all public hearings under this Act the Administrator shall publish timely notice of such hearings in the Federal Register.

Publications in
Federal Register.

7 USC 1364

“SEC. 22. DELEGATION AND COOPERATION.

“(a) *Delegation.*—All authority vested in the Administrator by virtue of the provisions of this Act may with like force and effect be executed by such employees of the Environmental Protection Agency as the Administrator may designate for the purpose.

“(b) *Cooperation.*—The Administrator shall cooperate with the Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

7 USC 1364

“SEC. 23. STATE COOPERATION, AID, AND TRAINING.

“(a) *Cooperative Agreements.*—The Administrator may enter into cooperative agreements with States and Indian tribes—

“(1) to delegate to any State or Indian tribe the authority to cooperate in the enforcement of this Act through the use of its personnel or facilities, to train personnel of the State or Indian tribe to cooperate in the enforcement of this Act, and to assist States and Indian tribes in implementing cooperative enforcement programs through grants-in-aid; and

“(2) to assist States in developing and administering State programs, and Indian tribes that enter into cooperative agreements, to train and certify applicators consistent with the standards the Administrator prescribes.

Effective with the fiscal year beginning October 1, 1978, there are authorized to be appropriated annually such funds as may be necessary for the Administrator to provide through cooperative agreements an amount equal to 50 percent of the anticipated cost to each State or Indian tribe, as agreed to under such cooperative agreements, of conducting training and certification programs during such fiscal year. If funds sufficient to pay 50 percent of the costs for any year are not appropriated, the share of each State and Indian tribe shall be reduced in a like proportion in allocating available funds.

“(b) *Contracts for Training.*—In addition, the Administrator may enter into contracts with Federal, State, or Indian tribal agencies for the purpose of encouraging the training of certified applicators.

“(c) *Information and Education.*—The Administrator shall, in cooperation with the Secretary of Agriculture, use the services of the cooperative State extension services to inform and educate pesticide users about accepted uses and other regulations made under this Act.

7 USC 1364

“SEC. 24. AUTHORITY OF STATES.

“(a) A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act.

P.L. 95-396;
92 Stat. 835.

“(b) Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this Act.

“(c)(1) A State may provide registration for additional uses of federally registered pesticides formulated for distribution and use within that State to meet special local needs in accord with the purposes of this Act and if registration for such use has not previously been denied, disapproved, or cancelled by the Administrator. Such registration shall be deemed registration under section 3 for all purposes of this Act, but shall authorize distribution and use only within such State.

7 USC 1364.

“(2) A registration issued by a State under this subsection shall not be effective for more than ninety days if disapproved by the Administrator within that period. Prior to disapproval, the Administrator shall, except as provided in paragraph (3) of this subsection, advise the State of the Administrator's intention to disapprove and the reasons therefor, and provide the State time to respond. The Administrator shall not prohibit or disapprove a registration issued by a State under this subsection (A) on the basis of lack of essentiality of a pesticide or (B) except as provided in paragraph (3) of this subsection, if its composition and use patterns are similar to those of a federally registered pesticide.

“(3) In no instance may a State issue a registration for a food or feed use unless there exists a tolerance or exemption under the Federal Food, Drug, and Cosmetic Act that permits the residues of the pesticide on the food or feed. If the Administrator determines that a registration issued by a State is inconsistent with the Federal Food, Drug, and Cosmetic Act, or the use of a pesticide under a registration issued by a State constitutes an imminent hazard, the Administrator may immediately disapprove the registration.

21 USC 301.

“(4) If the Administrator finds, in accordance with standards set forth in regulations issued under section 25 of this Act, that a State is not capable of exercising adequate controls to assure that State registration under this section will be in accord with the purposes of this act or has failed to exercise adequate controls, the Administrator may suspend the authority of the State to register pesticides until such time as the Administrator is satisfied that the State can and will exercise adequate controls. Prior to any such suspension, the Administrator shall advise the State of the Administrator's intention to suspend and the reasons therefor and provide the State time to respond.”

7 USC 1364.

“SEC. 25. AUTHORITY OF ADMINISTRATOR.

7 USC 1364

“(a)(1) *Regulations.*—The Administrator is authorized in accordance with the procedure described in paragraph (2), to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides and differences in environmental risk and the appropriate data for evaluating such risk between agricultural and nonagricultural pesticides.

P.L. 94-140;
89 Stat. 751.

(2) *Procedure.*—

“(A) *Proposed regulations.*—At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such regulation within 30 days after receiving it, the Administrator shall publish in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Ad-

P.L. 140-
89 Stat. 752.

Publications in
Federal Register.

P.L. 95-396;
92 Stat. 836.

ministrator regarding the regulation within 30 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register any time after such 30-day period notwithstanding the foregoing 60-day time requirement.

"(B) *Final regulations.*—At least 30 days prior to signing any regulation in final form for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such final regulation within 15 days after receiving it, the Administrator shall publish in the Federal Register (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 15 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register at any time after such 15-day period notwithstanding the foregoing 30-day time requirement.

In taking any final action under this subsection, the Administrator shall include among those factors to be taken into account the effect of the regulation on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and the Administrator shall publish in the Federal Register an analysis of such effect.

"(C) *Time requirements.*—The time requirements imposed by subparagraphs (A) and (B) may be waived or modified to the extent agreed upon by the Administrator and the Secretary.

"(D) *Publication in the federal register.*—The Administrator shall, simultaneously with any notification to the Secretary of Agriculture under this paragraph prior to the issuance of any proposed or final regulation, publish such notification in the Federal Register."

"(3) *Congressional Committees.*—At such time as the Administrator is required under paragraph (2) of this subsection to provide the Secretary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, he shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate."

"(b) *Exemption of Pesticides.*—The Administrator may exempt from the requirements of this Act by regulation any pesticide which he determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

"(c) *Other Authority.*—The Administrator, after notice and opportunity for hearing, is authorized—

"(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment;

"(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man;

"(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601)) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act;

"(4) to specify those classes of devices which shall be subject to any provision of paragraph 2(q)(1) or section 7 of this Act upon his deter-

mination that application of such provision is necessary to effectuate the purposes of this Act;

"(5) to prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment; and

"(6) to determine and establish suitable names to be used in the ingredient statement.

"(d) *Scientific Advisory Panel.*—The Administrator shall submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 6(b) and of the proposed and final form of regulations issued under section 25(a) within the same time periods as provided for the comments of the Secretary of Agriculture under such sections. The time requirements for notices of intent and proposed and final forms of regulation may not be modified or waived unless in addition to meeting the requirements of section 6(b) or 25(a), as applicable, the advisory panel has failed to comment on the proposed action within the prescribed time period or has agreed to the modification or waiver. The Administrator shall also solicit from the advisory panel comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of scientific analyses made by personnel of the Environmental Protection Agency that lead to decisions by the Administrator in carrying out the provisions of this Act. The comments, evaluations, and recommendations of the advisory panel and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The Chairman of the advisory panel, after consultation with the Administrator, may create temporary subpanels on specific projects to assist the full advisory panel in expediting and preparing its evaluations, comments, and recommendations. The panel referred to in this subsection shall consist of seven members appointed by the Administrator from a list of 12 nominees, six nominated by the National Institutes of Health, and six by the National Science Foundation. The Administrator may require such information from the nominees to the advisory panel as he deems necessary, and he shall publish in the Federal Register the name, address, and professional affiliations of each nominee. Each member of the panel shall receive per diem compensation at a rate not in excess of that fixed for GS-18 of the General Schedule as may be determined by the Administrator, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this subsection. In order to assure the objectivity of the advisory panel, the Administrator shall promulgate regulations regarding conflicts of interest with respect to the members of the panel. The advisory panel established under this subsection shall terminate September 30, 1981. In performing the functions assigned by this Act, the panel shall consult and coordinate its activities with the Science Advisory Board established under the Environmental Research, Development, and Demonstration Authorization Act of 1978.

"SEC. 26. STATE PRIMARY ENFORCEMENT RESPONSIBILITY.

"(a) For the purposes of this Act, a State shall have primary enforcement responsibility for pesticide use violations during any period for which the Administrator determines that such State—

"(1) has adopted adequate pesticide use laws and regulations; *Provided*, That the Administrator may not require a State to have pesticide use laws that are more stringent than this Act;

"(2) has adopted and is implementing adequate procedures for the enforcement of such State laws and regulations; and

Publication in
Federal Register.

P.L. 95-396;
92 Stat. 836.

Publication in
Federal Register.

P.L. 94-140;
89 Stat. 753.

84 Stat. 1670.
15 USC 1471 note.

7 USC 136e.

P.L. 94-140;
89 Stat. 753.

7 USC 136d.
7 USC 136e.

P.L. 95-396;
92 Stat. 836.

Publication in
Federal Register.

Members.

Publication in
Federal Register.

Compensation
5 USC 5332 ne

P.L. 94-140;
89 Stat. 754.

Regulations.

P.L. 95-396; 9

Advisory panel
Termination.

42 USC 4365.

7 USC 136e-1

P.L. 95-396;
92 Stat. 836.

“(3) will keep such records and make such reports showing compliance with paragraphs (1) and (2) of this subsection as the Administrator may require by regulation.”

7 USC 136a

“(b) Notwithstanding the provisions of subsection (a) of this section, any State that enters into a cooperative agreement with the Administrator under section 23 of this Act for the enforcement of pesticide use restrictions shall have the primary enforcement responsibility for pesticide use violations. Any State that has a plan approved by the Administrator in accordance with the requirements of section 4 of this Act that the Administrator determines meets the criteria set out in subsection (a) of this section shall have the primary enforcement responsibility for pesticide use violations. The Administrator shall make such determinations with respect to State plans under Section 4 of this Act in effect on September 30, 1978 not later than March 31, 1979.”

7 USC 136b

“(c) the Administrator shall have primary enforcement responsibility for those States that do not have primary enforcement responsibility under this Act. Notwithstanding the provisions of section 2(e) (1) of this Act, during any period when the Administrator has such enforcement responsibility, section 8(b) of this Act shall apply to the books and records of commercial applicators and to any applicator who holds or applies pesticides, or use dilutions of pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and section 9(a) of this Act shall apply to the establishment or other place where pesticides or devices are held for application by such persons with respect to pesticides or devices held for such application.”

7 USC 136

7 USC 136f

7 USC 136g

7 USC 136w-2

“SEC. 27. FAILURE BY THE STATE TO ASSURE ENFORCEMENT OF STATE PESTICIDE USE REGULATIONS.

P.L. 95-396;
92 Stat. 837.

“(a) Upon receipt of any complaint or other information alleging or indicating a significant violation of the pesticide use provisions of this Act, the Administrator shall refer the matter to the appropriate State officials for their investigation of the matter consistent with the requirements of this Act. If, within thirty days, the State has not commenced appropriate enforcement action, the Administrator may act upon the complaint or information to the extent authorized under this Act.”

“(b) Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out (or cannot carry out due to the lack of adequate legal authority) such responsibility, the Administrator shall notify the State. Such notice shall specify those aspects of the administration of the State program that are determined to be inadequate. The State shall have ninety days after receipt of the notice to correct any deficiencies. If after that time the Administrator determines that the State program remains inadequate, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.”

7 USC 136w-1

“(c) Neither section 26 of this Act nor this section shall limit the authority of the Administrator to enforce this Act, where the Administrator determines that emergency conditions exist that require immediate action on the part of the Administrator and the State authority is unwilling or unable adequately to respond to the emergency.”

7 USC 136w-3

“SEC. 28. IDENTIFICATION OF PESTS; COOPERATION WITH DEPARTMENT OF AGRICULTURE'S PROGRAM.

P.L. 95-396;
92 Stat. 838.

“The Administrator, in coordination with the Secretary of Agriculture, shall identify those pests that must be brought under control. The Administrator shall also coordinate and cooperate with the Secretary of

Agriculture's research and implementation programs to develop and improve the safe use and effectiveness of chemical, biological, and alternative methods to combat and control pests that reduce the quality and economical production and distribution of agricultural products to domestic and foreign consumers.

“SEC. 29. ANNUAL REPORT.

7 U:

“The Administrator shall submit an annual report to Congress before February 16 of each year and the first report shall be due February 15, 1979. The report shall include the total number of applications for conditional registration under section 3(c)(7)(B) and 3(c)(7)(C) of this Act that were filed during the immediately preceding fiscal year, and, with respect to those applications approved, the Administrator shall report the Administrator's findings in each case, the conditions imposed and any modification of such conditions in each case, and the quantities produced of such pesticides.”

P.L.
92 S

7 U:

“SEC. 30. SEVERABILITY.

7 U:

“If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act are severable.”

“SEC. 31. AUTHORIZATION FOR APPROPRIATIONS.

7 U:

“There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1975, shall be the sums hereafter provided by law.”

“There are hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1975, and ending September 30, 1976, the sum of \$47,868,000 and for the period beginning October 1, 1976, and ending September 30, 1977, the sum of \$46,636,000, and for the period beginning October 1, 1977, and ending September 30, 1978, the sum of \$54,500,000, and for the period beginning October 1, 1978, and ending September 30, 1979, such sums as may be necessary, but not in excess of \$70,000,000”.

P.L.
89 S

P.L.
92 S

Amendments to Other Acts

Sec. 3. of P.L. 92-516 (1972) states, The following Acts are amended by striking out the terms “economic poisons” and “an economic poison” wherever they appear and inserting in lieu thereof “pesticides” and “a pesticide” respectively:

(1) The Federal Hazardous Substances Act, as amended (15 U.S.C. 1261 et seq.);

74 S:

(2) The Poison Prevention Packaging Act, as amended (15 U.S.C. 1471 et seq.); and

84 S:

(3) The Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.).

52 S:

Effective Dates of Provisions of Act

Sec. 4 of P.L. 92-516 (1972), as amended, states, (a) Except as otherwise provided in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, and as otherwise provided by this section, the amendments made by this Act shall take effect at the close of the date of the enactment of this Act, provided if regulations are necessary for the implementation of any provision that becomes effective on the date of enactment, such regulations shall be promulgated and shall become effective within 90 days from the date of enactment of this Act.

(b) The provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations thereunder as such existed prior to the enactment of this Act shall remain in effect until superseded by the amendments made by this Act and regulations thereunder.

(c)(1) Two years after the enactment of this Act the Administrator shall have promulgated regulations providing for the registration and classification of pesticides under the provisions of this Act and thereafter shall register all new applications under such provisions.

(2) Any requirements that a pesticide be registered for use only by a certified applicator shall not be effective until five years from the date of enactment of this Act.

(3) A period of five years from date of enactment shall be provided for certification of applicators.

(A) One year after the enactment of this Act the Administrator shall have prescribed the standards for the certification of applicators.

(B) Each State desiring to certify applicators shall submit a State plan to the Administrator for the purpose provided by section 4(b).

(C) As promptly as possible but in no event more than one year after submission of a State plan, the Administrator shall approve the State plan or disapprove it and indicate the reasons for disapproval. Consideration of plans resubmitted by States shall be expedited.

(4) One year after the enactment of this Act the Administrator shall have promulgated and shall make effective regulations relating to the registration of establishments, permits for experimental use, and the keeping of books and records under the provisions of this Act.

(d) No person shall be subject to any criminal or civil penalty imposed by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, for any act (or failure to act) occurring before the expiration of 60 days after the Administrator has published effective regulations in the Federal Register and taken such other action as may be necessary to permit compliance with the provisions under which the penalty is to be imposed.

(e) For purposes of determining any criminal or civil penalty or liability to any third person in respect of any act or omission occurring before the expiration of the periods referred to in this section, the Federal Insecticide, Fungicide, and Rodenticide Act shall be treated as continuing in effect as if this Act had not been enacted.

Legislative History

Public Law 92-516
92nd Congress, H. R. 10729
October 21, 1972

HOUSE REPORTS: No. 92-511 (Comm. on Agriculture) and No. 92-1540 (Comm. of Conference).
SENATE REPORTS: No. 92-838 (Comm. on Agriculture and Forestry) and No. 92-970 (Comm. on Commerce).

Savings provision
61 Stat. 163
7 USC 135 note.

P.L. 94-140;
89 Stat. 752.

P.L. 94-140;
89 Stat. 753.

P.L. 95-396;
92 Stat. 842.

CONGRESSIONAL RECORD

Vol. 117 (1971): Nov. 8, 9, considered and passed House.
Vol. 118 (1972): Sept. 26, considered and passed Senate, amended Oct. 5; Senate agreed to conference report.
Oct. 12, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 8, No. 44 (1972): Oct. 21, Presidential statement.

Public Law 94-140
94th Congress, H. R. 8241
November 28, 1975

HOUSE REPORTS: No. 94-497 (Comm. on Agriculture) and NO. 94-668 (Comm. of Conference).

SENATE REPORT No. 94-452 (Comm. on Agriculture and Forestry).

CONGRESSIONAL RECORD: Vol. 121 (1975).

Sept. 26, Oct. 3, 9, considered and passed House.

Nov. 12, considered and passed Senate, amended.

Nov. 18, House agreed to conference report.

Nov. 19, Senate agreed to conference report.

Public Law 95-396
95th Congress, S. 1678
September 30, 1978

HOUSE REPORTS: No. 95-343 and No. 95-343, Pt. 2, (Comm. on Agriculture) both accompanying H.R. 7073 and No. 95-1560 (Comm. of Conference).

SENATE REPORTS: No. 95-334 (Comm. on Agriculture, Nutrition and Forestry) and 95-1188 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 123 (1977): July 29, considered and passed Senate.

Sept. 22, Oct. 31, considered and passed House, amended, in lieu of H.R. 7073.

Vol. 124 (1978): Sept. 18, Senate agreed to conference report.

Sept. 19, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 14, No. 40: Oct. 2, 1978; Presidential statement.

The following is Section 27(a) of P.L. 95-396, the "Federal Pesticide Act of 1978", but is not an amendment to FIFRA.

Studies

Sec. 27. (a) The Administrator of the Environmental Protection Agency shall perform a study examining the feasibility of assessing and collecting fees from persons applying to register, or amend the registration of, pesticides to cover the costs incurred by the Environmental Protection Agency in processing such applications under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act. The Administrator shall complete this study and submit a report setting forth the findings of the study and recommendations for the implementation of these findings to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture, not later than June 30, 1979.

(b) The Administrator, in cooperation with the Secretary of Agriculture, and after consultation with appropriate State officials, shall review available scientific information dealing with issues involved in the methods of pesticide application, including, but not limited to, the advisability of ultra-low-volume methods of application, and shall recommend to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture such changes as the Administrator may deem necessary in existing law relative to provisions of the Act pertaining to the use of a registered pesticide in a manner inconsistent with its labeling. The report shall be submitted as soon as practicable, but not later than March 31, 1979.

(c) The Administrator shall submit an updated study examining the problems of minor uses of pesticides not specifically permitted by labeling. The Administrator shall complete this study and submit a report setting forth the findings of the study and recommendations for the implementation of these findings to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture, not later than June 30, 1979.

7 USC 13 note.

Report to congress committee

Report to congress committee

Public Law 96-539
96th Congress

An Act

Dec. 17, 1980
[H.R. 7018]

To extend the Federal Insecticide, Fungicide, and Rodenticide Act until September 30, 1981, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federal
Insecticide,
Fungicide, and
Rodenticide
Act,
amendment.
7 USC 136w.

SCIENTIFIC ADVISORY PANEL

SECTION 1. Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) inserting immediately after the fifth sentence the following new sentences: "The subpanels may be composed of scientists other than members of the advisory panel, as deemed necessary for the purpose of evaluating scientific studies relied upon by the Administrator with respect to proposed action. Such additional scientists shall be selected by the advisory panel."; and

(2) adding at the end thereof the following sentence: "Whenever the Administrator exercises authority under section 6(c) of this Act to immediately suspend the registration of any pesticide to prevent an imminent hazard, the Administrator shall promptly submit to the advisory panel for comment, as to the impact on health and the environment, the action taken to suspend the registration of such pesticide."

7 USC 136d.

PEER REVIEW

SEC. 2. (a) Section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by adding at the end thereof the following new subsection (e):

"(e) PEER REVIEW.—The Administrator shall, by written procedures, provide for peer review with respect to the design, protocols, and conduct of major scientific studies conducted under this Act by the Environmental Protection Agency or by any other Federal agency, any State or political subdivision thereof, or any institution or individual under grant, contract, or cooperative agreement from or with the Environmental Protection Agency. In such procedures, the Administrator shall also provide for peer review, using the advisory panel established under subsection (d) of this section or appropriate experts appointed by the Administrator from a current list of nominees maintained by such panel, with respect to the results of any such scientific studies relied upon by the Administrator with respect to actions the Administrator may take relating to the change in classification, suspension, or cancellation of a pesticide: *Provided*, That whenever the Administrator determines that circumstances do not permit the peer review of the results of any such scientific study prior to the Administrator's exercising authority under section 6(c) of this Act to immediately suspend the registration of any pesticide to prevent an imminent hazard, the Administrator shall promptly thereafter provide for the conduct of peer review as provided in this sentence. The evaluations and relevant documentation constituting the peer review that relate to the proposed scientific studies and the results of the completed scientific studies shall be included in the submission for comment forwarded by the Administrator to the advisory panel as provided in subsection (d). As used in this subsection, the term 'peer review' shall mean an independent evaluation by scientific experts, either within or outside the Environmental Protection Agency, in the appropriate disciplines."

7 USC 136w.

7 USC 136d.

Comments.

"Peer review."
Publication in
Federal
Register.

7 USC 136w note.

(b) The provisions of this section shall become effective upon publication in the Federal Register of final procedures for peer review as provided in this section, but in no event shall such provisions become effective later than one year after the date of enactment of this Act.

7 USC 136y.

SEC. 3. Section 31 of the Federal Insecticide, Fungicide, and Rodenticide Act, is amended by adding at the end thereof the following new

sentence: "There are hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1979, and ending September 30, 1980, such sums as may be necessary, but not in excess of \$72,160,000, and for the period beginning October 1, 1980, and ending September 30, 1981, such sums as may be necessary, but not in excess of \$77,500,000."

CONGRESSIONAL REVIEW

SEC. 4. Section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by adding at the end thereof the following new paragraph (4):

7 USC 136w.

"(4) RULE AND REGULATION REVIEW.—

"(A) CONGRESSIONAL REVIEW.—Notwithstanding any other provision of this Act, simultaneously with promulgation of any rule or regulation under this Act, the Administrator shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subparagraph (B), the rule or regulation shall not become effective, if within 90 calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: That Congress disapproves the rule or regulation promulgated by the Administrator of the Environmental Protection Agency dealing with the matter of _____, which rule or regulation was transmitted to Congress on _____, the blank spaces therein being appropriately filled.

Transmittal.

"(B) EFFECTIVE DATE.—If at the end of 60 calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation, and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such 60 calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than 90 calendar days of continuous session of Congress after its promulgation unless disapproved as provided in subparagraph (A).

"(C) For the purposes of subparagraphs (A) and (B) of this paragraph—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 60 and 90 calendar days of continuous session of Congress.

"(D) EFFECT OF CONGRESSIONAL INACTION.—Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such rule.

"(E) JUDICIAL REVIEW.—

"(i) Any interested party, including any person who participated in the rulemaking involved, may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this paragraph. The district court immediately shall certify all questions of the constitutionality of this paragraph to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

"(ii) Notwithstanding any other provision of law, any decision on a matter certified under clause (i) of this subparagraph shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought not later than 20 days after the decision of the court of appeals.

"(iii) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under clause (i) of this subparagraph."

Approved December 17, 1980.

LEGISLATIVE HISTORY

HOUSE REPORTS: No. 96-1020 (Comm. on Agriculture) and No. 96-1480 (Comm. of Conference).
SENATE REPORT No. 96-764 accompanying S. 2587 (Comm. on Agriculture, Nutrition, and Forestry).
CONGRESSIONAL RECORD, Vol. 126 (1980):
June 17, considered and failed of passage in House.
June 24, considered and passed House.
July 24, S. 2587 passed Senate; passage vacated and H.R. 7018, amended, passed in lieu.
Dec. 1, Senate agreed to conference report.
Dec. 4, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 51:
Dec. 17, Presidential statement.

97 STAT. 1379

PUBLIC LAW 98-201—DEC. 2, 1983

Public Law 98-201
98th Congress

An Act

Dec. 2, 1983
(H.R. 2785)

To amend the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act relating to the scientific advisory panel and to extend the authorization for appropriations for such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SCIENTIFIC ADVISORY PANEL

SECTION 1. Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by—

(1) amending the fourth sentence to read as follows: "The comments, evaluations, and recommendations of the advisory panel submitted under this subsection and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections.";

(2) striking out the eighth sentence and inserting in lieu thereof the following: "The panel referred to in this subsection shall consist of 7 members appointed by the Administrator from a list of 12 nominees, 6 nominated by the National Institutes of Health and 6 by the National Science Foundation, utilizing a system of staggered terms of appointment. Members of the panel shall be selected on the basis of their professional qualifications to assess the effects of the impact of pesticides on health and the environment. To the extent feasible to insure multidisciplinary representation, the panel membership shall include representation from the disciplines of toxicology, pathology, environmental biology, and related sciences. If a vacancy occurs on the panel due to expiration of a term, resignation, or any other reason, each replacement shall be selected by the Administrator from a group of 4 nominees, 2 submitted by each of the nominating entities named in this subsection. The Administrator may extend the term of a panel member until the new member is appointed to fill the vacancy. If a vacancy occurs due to resignation, or reason other than expiration of a term, the Administrator shall appoint a member to serve during the unexpired term utilizing the nomination process set forth in this subsection. Should the list of nominees provided under this subsection be unsatisfactory, the Administrator may request an additional set of nominees from the nominating entities.";

(3) striking out in the third from the last sentence "September 30, 1981" and inserting in lieu thereof "September 30, 1987".

EXTENSION OF THE AUTHORIZATION FOR APPROPRIATIONS

SEC. 2. Section 31 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136y) is amended by adding at the end thereof a new sentence as follows: "There are hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1983, and ending September 30, 1984, such sums as may be necessary, but not in excess of \$64,200,000."

Approved December 2, 1983.

LEGISLATIVE HISTORY—H.R. 2785

HOUSE REPORT No. 98-104 (Comm. on Agriculture).
CONGRESSIONAL RECORD, Vol. 129 (1983):
May 17, considered and passed House.
Nov. 18, considered and passed Senate.

97 STAT. 1380

1

HAZARDOUS MATERIALS AUTHORITY UNDER THE DEPARTMENT OF HEALTH (DOH) HAZARD EVALUATION AND EMERGENCY RESPONSE PROGRAM

Act 148, SLH 1988 (not as yet codified), Hawaii Environmental Emergency Response Act of 1988 authorizes DOH to:

- 1. Issue an administrative order to any responsible party or parties to take actions to protect public health and environment from release of a hazardous substance. *Consequences? why -- federal forum all at-site*
- 2. Study and investigate the existence, source, nature and extent of risk to public health or environment from the release of a hazardous substance.
- 3. Perform or contract for removal or remedial actions to reduce risk to public health or the environment from the release of a hazardous substance.
- 4. Pay all costs of hazardous substance removal actions from revolving fund. *150,000 Ex. for emergency contract*
- 5. Request Attorney General to recover any costs incurred by State, from liable (responsible) party, for removal or remedial actions. Recovered funds (up to treble damages) are placed back in fund.
- 6. Establish rules to define Hazardous Materials.

Hazardous substances at minimum are those defined under 40 CFR 117 and 302 and 49 CFR 171 and 172. There is \$150,000 currently in fund.

S.B. NO.

3204
S.D. 2
H.D. 2

ENVIRONMENTAL EMERGENCY RESPONSE

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

"Department" means the department of health.

"Director" means the director of health.

"Fund" means the environmental emergency response revolving fund.

"Hazardous substance" means any substance or mixture of substances, including but not limited to feedstock materials, products, or wastes, which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may:

- (1) Cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial present or potential hazard to human health, to property, or to the environment when improperly stored, transported, released, or otherwise managed.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous substance into the environment; but does not include any of the following:

S.B. NO.

- 1 (1) Any release which results in exposure of persons solely
2 within a workplace, with respect to a claim which such
3 exposed persons may assert against their employer;
4 (2) Emissions from the engine exhaust of a motor vehicle,
5 rolling stock, aircraft, or vessel; or
6 (3) Release of source, byproduct, or special nuclear
7 material from a nuclear incident, as those terms are
8 defined in the Atomic Energy Act of 1954 (42 U.S.C.
9 §2011), if such release is subject to requirements with
0 respect to financial protection established by the
Nuclear Regulatory Commission under 42 U.S.C. §2210.

12 "Remedy" means those actions consistent with permanent
13 correction taken instead of or in addition to removal actions in
14 the event of a release or threatened release of a hazardous
15 substance into the environment, to prevent or minimize the
16 release of hazardous substances so that they do not migrate to
17 cause substantial danger to present or future public health or
18 welfare of the environment.

- 19 (1) The term includes, but is not limited to, such actions
20 at the location of the release as storage, confinement,
21 perimeter protection using dikes, trenches, or ditches,
22 clay cover, neutralization, cleanup of released
hazardous substances or contaminated materials,

S.B. NO.

1 recycling or reuse, diversion, destruction, segregation
2 of reactive wastes, dredging or excavations, repair or
3 replacement of leaking containers, collection of
4 leachate and runoff, onsite treatment or incineration,
5 provision of alternative water supplies, and any
6 monitoring reasonably required to assure that such
7 actions protect the public health and welfare and the
8 environment.

9 (2) The term includes the costs of permanent relocation of
10 residents and businesses and community facilities where
11 the director determines that, alone or in combination
12 with other measures, such relocation is more cost-
13 effective than and environmentally preferable to the
14 transportation, storage, treatment, destruction, or
15 secure disposition offsite of hazardous substances, or
16 may otherwise be necessary to protect the public health
17 or welfare.

18 (3) The term does not include the offsite transport of
19 hazardous substances, or the storage, treatment,
20 destruction, or secure disposition offsite of such
21 hazardous substances or contaminated materials unless
22 the director determines that such actions are more
cost-effective than other remedial actions; will create

S.B. NO.

3204
S.D. 2
H.D. 2

1 new capacity to manage hazardous substances in addition
2 to those located at the affected facility; or are
3 necessary to protect public health or welfare of the
4 environment from a present or potential risk which may
5 be created by further exposure to the continued
6 presence of such substances or materials.

7 "Remove" means the cleanup of released hazardous substances
8 from the environment, such actions as may be necessary to take in
9 the event of the threat of release of hazardous substances into
10 the environment, such actions as may be necessary to monitor,
11 assess, and evaluate the release or threat of release of
12 hazardous substances, the disposal of removed material, or the
13 taking of such other actions as may be necessary to prevent,
14 minimize, or mitigate damage to the public health or welfare or
15 to the environment, which may otherwise result from a release or
16 threat of release. The term includes, in addition, without being
17 limited to, security fencing or other measures to limit access,
18 provision of alternative water supplies, temporary evacuation and
19 housing of threatened individuals not otherwise provided for, and
20 any emergency assistance.

21 **§ -2 Environmental emergency response revolving fund.**

22 (a) There is created an environmental emergency response
23 revolving fund within the department which shall consist of

S.B. NO.

1 moneys appropriated to the fund by the legislature, moneys paid
2 to the fund as a result of departmental compliance proceedings,
3 moneys paid to the fund pursuant to court-ordered awards or
4 judgments, moneys paid to the fund in court-approved or out-of-
5 court settlements, and moneys allotted to the fund from other
6 sources.

7 (b) Moneys from the fund shall be expended by the
8 department for emergency response actions consistent with this
9 chapter.

10 § -3 Reportable quantities, duty to report. (a) The
11 director shall adopt rules pursuant to chapter 91 designating as
12 hazardous substances such elements, compounds, mixtures,
13 solutions, substances, and wastes which, when released into the
14 environment, may present substantial danger to the public or the
15 environment, and shall adopt rules establishing the quantities of
16 such hazardous substances which, when released, shall be reported
17 pursuant to this chapter. The director, as a minimum, shall
18 adopt hazardous substances and reportable quantities as
19 designated by the U.S. Environmental Protection Agency pursuant
20 to parts 117 and 302 of Title 40 of the Code of Federal
21 Regulations, and by the U.S. Department of Transportation
22 pursuant to parts 171 and 172 of Title 49 of the Code of Federal
23 Regulations. The designated quantity released of any hazardous

S.B. NO.

1 substance shall be a reportable quantity, regardless of the
2 medium into which the hazardous substance is released.

3 (b) Any person who fails to report a hazardous substance
4 release to the department within twenty-four hours of knowledge
5 of the release shall be subject to a fine in an amount not to
6 exceed \$10,000 for each day of failure to report.

7 § -4 Response authorities; uses of fund. (a) Whenever
8 the director determines that there may be an imminent or
9 substantial endangerment to the public health or welfare or to
10 the environment, because of a release or a threatened release of
11 a hazardous substance, the director may:

- 12 (1) Issue an administrative order to any responsible party
13 or parties to take appropriate removal or remedial
14 action necessary to protect the public health and
15 safety and the environment;
- 16 (2) Undertake those investigations, monitoring, surveys,
17 testing, and other information gathering necessary to
18 identify the existence, source, nature, and extent of
19 the hazardous substances involved and the extent of
20 danger to the public health or environment;
- 21 (3) Perform any necessary removal actions so as to abate
any immediate danger to the public and the environment;
and

S.B. NO.

1 (4) Contract the services of appropriate organizations to
2 perform the actions set forth in paragraphs (2) and
3 (3).

4 (b) Moneys in the fund may be expended by the director for
5 any of the following purposes:

6 (1) Payment of all costs of removal actions incurred by the
7 State or the counties in response to a release or
8 threatened release of a hazardous substance; or

9 (2) Payment for the State's share of a removal or remedial
10 action pursuant to section 104(c) (3) of the
11 Comprehensive Environmental Response, Compensation, and
12 Liability Act of 1980 (42 U.S.C. §9604(c) (3)).

13 (c) No response actions taken pursuant to this chapter by
14 the department shall duplicate federal response actions.

15 **§ -5 Recovery of costs.** (a) Any costs incurred and
16 payable from the fund shall be recovered by the attorney general,
17 upon the request of the department, from the liable person or
18 persons. The amount of any costs which may be recovered pursuant
19 to this section for a remedial or removal action paid from the
20 fund shall include the amount paid from the fund and legal
21 interest.

22 (b) Moneys recovered by the attorney general pursuant to
23 this section shall be deposited into the account of the fund.

S.B. NO.

1 § -6 Liability. (a) Notwithstanding any other provision
2 or rule of law, and subject only to the defenses set forth in
3 subsection (b):

- 4 (1) The owner or operator or both of a facility;
- 5 (2) Any person who at the time of disposal of any hazardous
6 substance owned or operated any facility at which such
7 hazardous substances were disposed of;
- 8 (3) Any person who by contract, agreement, or otherwise
9 arranged for disposal or treatment, or arranged with a
10 transporter for transport for disposal or treatment, of
11 hazardous substances owned or possessed by such person,
12 by any other party or entity, at any facility owned or
13 operated by another party or entity and containing such
14 hazardous substances; or
- 15 (4) Any person who accepts or accepted any hazardous
16 substances for transport to disposal or treatment
17 facilities or sites selected by such person, from which
18 there is a release, or a threatened release, which
19 causes the incurrence of response costs of a hazardous
20 substance;

21 shall be liable for all costs of removal or remedial action
22 incurred by the State, any other necessary costs of response
23 incurred by any other person consistent with this chapter, and

S.B. NO.

1 damages for injury to, destruction of, or loss of natural
2 resources, including the reasonable costs of assessing such
3 injury, destruction, or loss resulting from such release.

4 (b) There shall be no liability under subsection (a) for a
5 defendant otherwise liable who can establish by a preponderance
6 of the evidence that the release or threat of release of
7 hazardous substance and the damages resulting therefrom were
8 caused solely by:

- 9 (1) Any unanticipated grave natural disaster or other
10 natural phenomenon of an exceptional, inevitable and
11 irresistible character, the effect of which could not
12 have been prevented or avoided by the exercise of due
13 care or foresight;
- 14 (2) An act of war;
- 15 (3) An act or omission of a third party other than an
16 employee or agent of the defendant, or than one whose
17 act or omission occurs in connection with a contractual
18 relationship, existing directly or indirectly, with the
19 defendant, if the defendant establishes by a
20 preponderance of the evidence that due care was
21 exercised with respect to the hazardous substance
22 concerned, taking into consideration the
23 characteristics of such hazardous substance, in light

S.B. NO.

1 of all relevant facts and circumstances; and
2 precautions were taken against foreseeable acts or
3 omissions of any such third party and the consequences
4 that could foreseeably result from such acts or
5 omissions; or

6 (4) Any combination of the foregoing paragraphs.

7 (c) No person shall be liable under this chapter for
8 damages as a result of actions taken or omitted in the course of
9 rendering care, assistance, or advice in accordance with this
10 chapter or at the direction of an on-scene coordinator, with
11 respect to an incident creating a danger to public health or
12 welfare or the environment as a result of any release of a
13 hazardous substance or the threat thereof. This subsection shall
14 not preclude liability for damages as the result of gross
15 negligence or intentional misconduct on the part of such person.

16 (d) No indemnification, hold harmless, or similar agreement
17 or conveyances shall be effective to transfer from the owner or
18 operator of any vessel or facility or from any person who may be
19 liable for a release or threat of release under this section, to
20 any other person, the liability imposed under this section.
21 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

S.B. NO.

1 a cause of action that an owner or operator or any other person
2 subject to liability under this section, or a guarantor, has or
3 would have, by reason of subrogation or otherwise against any
4 person.

5 (e) Any person who is liable for a release, or threat of a
6 release, of hazardous substances and who fails, without
7 sufficient cause, as determined by the director, to properly
8 provide removal or remedial action pursuant to an administrative
9 order issued by the director, shall be liable to the department
10 for punitive damage up to three times the amount of any costs
11 incurred by the fund pursuant to this chapter as a result of the
12 failure to perform the actions specified in the order.

13 § -7 State contingency plan. (a) The department shall
14 adopt, by rules, the criteria for the selection and for the
15 priority ranking of sites pursuant to subsection (b) for removal
16 and remedial action under this chapter, and shall adopt criteria
17 for the ranking of sites in order of priority. The criteria
18 shall take into account the pertinent factors relating to the
19 public health and the environment, which shall include, but are
20 not limited to, potential hazards to public health and the
21 environment, the risk of fire or explosion, toxic hazards, the
22 extent to which the deferral of remedial action will result, or
23 is likely to result, in a rapid increase in cost or in a hazard

S.B. NO.

3204
S.D. 2
H.D. 2

1 to human health and the environment. The criteria may include a
2 minimum hazard threshold below which sites shall not be listed
3 pursuant to this section.

4 (b) The department shall publish and revise, at least
5 annually, a listing of the sites subject to this chapter. The
6 sites shall be categorized and placed on one of the following
7 lists:

8 (1) A list of the hazardous substance release sites for
9 which the department has identified a responsible
10 party, and the responsible party is in compliance, as
11 determined by the department, with an order issued, or
12 an enforceable agreement entered into.

13 (2) A list of the hazardous substance release sites for
14 which all of the following apply:

15 (A) The department has not been able to identify a
16 responsible party or the responsible party is not
17 in compliance, as determined by the department,
18 with an order issued or an enforceable agreement
19 entered into;

20 (B) The nature and extent of the hazardous substance
21 release at the site has not been adequately
22 characterized by the responsible party or the
23 department.

S.B. NO.

1 (c) Funds appropriated to the department for removal action
2 shall be expended in conformance with the priority ranking of
3 sites, as established on the list of sites specified in
4 subsection (b), except that funds appropriated for removal action
5 may be expended without conforming to the priority ranking if any
6 of the following apply:

7 (1) The funds are necessary to monitor removal actions
8 conducted by private parties at sites listed pursuant
9 to subsection (b) (1);

10 (2) State funds are necessary for the State's share of a
11 removal or remedial action pursuant to section
12 104(c) (3) of the Comprehensive Environmental Response,
13 Compensation, and Liability Act of 1980 (42 U.S.C.
14 §9604(c) (3));

15 (3) The funds are used to assess, evaluate, and
16 characterize the nature and extent of a hazardous
17 substance release on sites listed pursuant to this
18 section; or

19 (4) The director determines that immediate removal action
20 at a site is necessary because there may be an imminent
21 and substantial endangerment to the public health or
the environment."

SECTION 3. There is appropriated out of the general

S.B. NO.

1 revenues of the State of Hawaii the sum of \$150,000, or so much
2 thereof as may be necessary for fiscal year 1988-1989, to be paid
3 into the environmental emergency response revolving fund created
4 by this Act.

5 SECTION 4. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$50,000, or so much
7 thereof as may be necessary for fiscal year 1988-1989, to enable
8 the department of health to employ one full-time staff member to
9 provide the planning, engineering, clerical, and field
investigatory support necessary to implement the program
established by this Act.

12 SECTION 5. All sums appropriated by this Act shall be
13 expended by the department of health.

14 SECTION 6. This Act shall take effect on July 1, 1988.

15
16
17 Approved by the
Governor on

JUN 21 1988



TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8 DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

**CHAPTER 99 HAZARDOUS WASTE OPERATIONS AND
EMERGENCY RESPONSE**

| | |
|-----------|---|
| §12-99-1 | Purpose |
| §12-99-2 | Scope and application |
| §12-99-3 | Definitions |
| §12-99-4 | General requirements for a safety and health program |
| §12-99-5 | Site characterization and analysis |
| §12-99-6 | Site control |
| §12-99-7 | Training |
| §12-99-8 | Medical surveillance |
| §12-99-9 | Engineering controls, work practices, and personal protective equipment for employee protection |
| §12-99-10 | Monitoring |
| §12-99-11 | Informational programs |
| §12-99-12 | Handling drums and containers |
| §12-99-13 | Decontamination |
| §12-99-14 | Emergency response |
| §12-99-15 | Illumination |
| §12-99-16 | Facilities for employee sanitation at temporary workplaces |
| §12-99-17 | Certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA) |
| §12-99-18 | New technology programs |
| §12-99-19 | Appendices |

§12-99-1 Purpose. This chapter shall cover hazardous waste clean-up operations at emergency response sites and those sites designated by state or local governments. It will also cover the hazardous waste operations, such as: storage, disposal, or treatment of hazardous waste. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-2 Scope and application. (a) Scope. This chapter covers employers and employees engaged in the following operations:

- (1) Hazardous substance response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. 9601 et seq) (CERCLA), including initial investigations at CERCLA sites before the presence or absence of hazardous substances has been ascertained;
- (2) Major corrective actions taken in clean-up operations under the Resource Conservation and Recovery Act of 1976 as amended (42 U.S.C. 6901 et seq) (RCRA);
- (3) Hazardous waste operations sites that have been designated for clean-up by state or local governmental authorities;
- (4) Operations involving hazardous waste storage, disposal, and treatment facilities regulated under 40 CFR Parts 264 and 265

- pursuant to RCRA, except for small quantity generators and those employers with less than 90 days accumulation of hazardous wastes as defined in 40 CFR 262.34; and
- (5) Emergency response operations for releases or substantial threats of releases of hazardous substances without regard to the location of the hazard.
- (b) Application.
- (1) All requirements of Parts 1, 2, 3, and 8, of title 12 Hawaii Occupational Safety and Health Administrative Rules and Standards, apply pursuant to their terms to hazardous waste operations whether covered by this chapter or not. In addition, the provisions of this chapter apply to operations covered by this chapter. If there is a conflict or overlap, the provision more protective of employee safety and health shall apply.
 - (2) All sections of this chapter, except section 12-99-17, apply to operations involving hazardous substances conducted under CERCLA, major corrective actions taken in clean-up operations under RCRA, and hazardous waste operations that have been designated for clean-up by state or local governmental authorities.
 - (3) Only the requirements of sections 12-99-14 and 12-99-17 apply to those operations involving hazardous waste storage, disposal, and treatment facilities regulated under 40 CFR Parts 264 and 265. Small quantity generators and those employers with less than 90 days accumulation of hazardous wastes as defined in 40 CFR 262.34 are exempt from the regulations of this chapter.
 - (4) Section 12-99-14 applies to all emergency response operations for releases of, or substantial threats of releases of, hazardous substances including those sites identified in paragraphs (1) through (3) above. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-3 Definitions. As used in this chapter:

"Buddy system" means a system of organizing employees into work groups in such a manner that each employee of the work group is designated to observe the activities of at least one other employee in the work group. The purpose of the buddy system is to provide rapid assistance to employees in the event of an emergency.

"Decontamination" means the removal of hazardous substances from employees and their equipment to preclude the occurrence of foreseeable adverse health effects.

"Emergency response" means a coordinated response effort by employees from outside the immediate release area or by outside responders (i.e., mutual aid groups, local fire departments, etc.) to an occurrence which results, or is likely to result, in an uncontrolled release of a hazardous substance. Responses to incidental releases that can be absorbed, neutralized, or otherwise controlled at the time of release by employees in the immediate release area are not considered to be emergency responses within the scope of this chapter. Responses to releases of hazardous substances where the concentration of hazardous substance is below the established permissible exposure levels are not considered to be emergency responses.

"Established permissible exposure level" means the inhalation or dermal permissible exposure level (PEL) specified in section 12-202-4.01, or if none is specified, the exposure limits in "NIOSH Recommendations for Occupational Health Standards" dated September 1986 incorporated by reference, or if neither of the above is specified, the standards specified by the American Conference of Governmental Industrial Hygienists in its publication "Threshold Limit Values and Biological Exposure Indices for 1986-87" dated 1987 incorporated by reference, or if none of the above is specified, a limit based upon a published study or manufacturers' safety data sheet brought to the employer's attention. The two documents incorporated by reference are available for purchase from the following:

NIOSH, Publications Dissemination
 Division of Standards Development and
 Technology Transfer
 National Institute for Occupational
 Safety and Health
 4676 Columbia Parkway
 Cincinnati, OH 45226
 (513) 841-4287

American Conference of Governmental
 Industrial Hygienists
 6500 Glenway Ave., Building D-7
 Cincinnati, OH, 45211-4438
 (513) 661-7881

and are available for inspection and copying at the OSHA Docket Office, Docket No. S-760, Room N--3671, 200 Constitution Ave., N.W., Washington, DC 20210.

"Facility" means:

- (1) 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, storage container, motor vehicle, rolling stock, or aircraft; or
- (2) Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located, but does not include any consumer product in consumer use or any vessel.

"Hazardous materials (HAZMAT) team" means an organized group of employees, designated by the employer, who are knowledgeable and specifically trained and skilled to:

- (1) Handle and control leaking containers or vessels;
- (2) Use and select special chemical protective clothing; and
- (3) Perform other duties associated with accidental releases of hazardous substances. The team members perform responses to releases of hazardous substances for the purpose of control or stabilization of the release. A HAZMAT team is not a fire brigade (see section 12-63-3) nor is a typical fire brigade a HAZMAT team. A HAZMAT team, however, may be a separate component of a fire brigade.

"Hazardous substance" means any substance designated or listed under (1) through (4) below, exposure to which results or may result in adverse effects on the health or safety of employees:

- (1) Any substance defined under section 101(14) of CERCLA;

- (2) Any biological agent and other disease-causing agent as defined in section 101(33) of CERCLA;
- (3) Any substance listed by the U.S. Department of Transportation and regulated as hazardous materials under 49 CFR 172.101 and appendices; and
- (4) Hazardous waste.

"Hazardous waste" means:

- (1) A waste or combination of wastes as defined in 40 CFR 261.3; or
- (2) Those substances defined in 49 CFR 171.8.

"Hazardous waste operation" means any operation involving employee exposure to hazardous wastes, hazardous substances, or any combination of hazardous wastes and hazardous substances.

"Hazardous waste site" or "site" means any facility or location within the scope of this chapter at which hazardous waste operations take place.

"Health hazard" means a chemical, mixture of chemicals, or a pathogen for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principals that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Further definition of the terms used above can be found in appendix A to chapter 12-203.

"IDLH" or "Immediately dangerous to life or health" means any atmospheric condition that poses an immediate threat to life, or which is likely to result in acute or immediate severe health effects. This includes oxygen deficiency conditions.

"Immediate severe health effects" means any acute clinical sign or symptom of a serious, exposure-related reaction revealed within 72 hours after exposure to a hazardous substance.

"Oxygen deficiency" means that concentration of oxygen by volume below which air supplying respiratory protection must be provided. It exists in atmospheres where the percentage of oxygen by volume is less than 19.5 per cent oxygen.

"Permissible exposure level (PEL)" means the inhalation or dermal permissible exposure level specified in section 12-202-4.01.

"Post emergency response" means that portion of an emergency response performed after the immediate threat of a release has been stabilized or eliminated and clean-up of the site has begun. If post emergency response is performed by an employer's own employees as a continuation of initial emergency response, it is considered to be part of the initial response and not post emergency response.

"Qualified person" means a person with specific training, knowledge, and experience in the area for which the person has responsibility.

"Site safety and health officer" means the individual located on a hazardous waste site who is responsible to the employer and has the authority and knowledge necessary to implement the site safety and health plan and verify compliance with applicable safety and health requirements.

"Small quantity generator" means a generator of hazardous wastes which in any calendar month generates no more than 1000 kilograms (2210 pounds) of hazardous waste in that month. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-4 General requirements for a safety and health program.

(a) General. Employers shall develop and implement a written safety and health program for their employees involved in hazardous waste operations. The program shall be designed to identify, evaluate, and control safety and health hazards and provide for emergency response for hazardous waste operations. The program shall incorporate separate chapters as follows:

- (1) Organizational structure chapter;
- (2) Comprehensive workplan chapter; and
- (3) Site-specific safety and health plan chapter.

(b) Organizational structure chapter.

(1) The organizational structure chapter shall establish the specific chain of command and specify the overall responsibilities of supervisors and employees. It shall include, at a minimum, the following elements:

- (A) A general supervisor who has the responsibility and authority to direct all hazardous waste operations;
- (B) A site safety and health supervisor who has the responsibility and authority to develop and implement the site safety and health plan and verify compliance;
- (C) All other personnel needed for hazardous waste site operations and emergency response and their general functions and responsibilities; and
- (D) The lines of authority, responsibility, and communication.

(2) The organizational structure shall be reviewed and updated as necessary to reflect the current status of waste site operations.

(3) The original organizational structure plan and any changes to the overall organizational structure shall be made available to all affected employees.

(c) Comprehensive workplan chapter. The comprehensive workplan chapter shall address the tasks and objectives of site operations and the logistics and resources required to reach those tasks and objectives. The comprehensive workplan shall:

- (1) Address anticipated clean-up activities as well as normal operating procedures;
- (2) Define work tasks and objectives and identify the methods for accomplishing those tasks and objectives;
- (3) Establish personnel requirements for implementing the plan;
- (4) Provide for the implementation of the training required in section 12-99-7;
- (5) Provide for the implementation of the informational programs required in section 12-99-11; and
- (6) Provide for the implementation of the medical surveillance program described in section 12-99-8.

(d) Site-specific safety and health plan chapter. The site safety and health plan, which is part of the overall safety and health program, shall be available on the site for inspection by employees, their designated representatives, and the director; it shall address the safety and health hazards of each phase of site operation; and it shall include the requirements and procedures for employee protection.

(1) The site safety and health plan, as a minimum, shall address the following:

- (A) Names of key personnel and alternates responsible for site safety and health, including a site safety and health supervisor;

- (B) A safety and health risk or hazard analysis for each site task and operation found in the workplan;
 - (C) Employee training assignments to ensure compliance with section 12-99-7;
 - (D) Personal protective equipment (PPE) to be used by employees for each of the site tasks and operations being conducted as required by the PPE program in section 12-99-9(e);
 - (E) Medical surveillance requirements in accordance with the program in section 12-99-8;
 - (F) Frequency and types of air monitoring, personnel monitoring, and environmental sampling techniques and instrumentation to be used including methods of maintenance and calibration of monitoring and sampling equipment to be used;
 - (G) Site control measures in accordance with the site control program required in section 12-99-6;
 - (H) Decontamination procedures in accordance with section 12-99-13;
 - (I) An emergency response plan meeting the requirements of section 12-99-14(a) for safe and effective responses to emergencies, including the necessary PPE and other equipment;
 - (J) Confined space entry procedures; and
 - (K) When major spills may be anticipated due to the type of work involved, a spill containment program meeting the requirements of section 12-99-12 shall be included.
- (2) Pre-entry briefings shall be held prior to initiating any site activity and at such other times as necessary to ensure that employees are apprised of the site safety and health plan and that this plan is being followed.
 - (3) Inspections shall be conducted by the site safety and health supervisor or, in the absence of that individual, another individual acting on behalf of the employer as necessary to determine the effectiveness of the site safety and health plan. Any deficiencies in the effectiveness of the site safety and health plan shall be corrected by the employer.
- (e) Site excavation. Site excavations created during initial site preparation or during hazardous waste operations shall be shored or sloped as appropriate to prevent accidental collapse in accordance with chapter 12-132.
 - (f) Contractors and sub-contractors.
 - (1) An employer who retains contractor or sub-contractor services for work in hazardous waste operations shall inform those contractors, sub-contractors, or their representatives of any potential fire, explosion, health, safety, or other hazards of the hazardous waste operation that have been identified by the employer including the employer's information program.
 - (2) The safety and health program required in subsection (a) above shall be made available to any subcontractor or its representative who will be involved with the hazardous waste operation and employees, their designated representatives, and the director.
- [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-5 Site characterization and analysis. (a) Hazardous waste sites shall be evaluated in accordance with this section to identify specific site hazards and to determine the appropriate safety and health control procedures needed to protect employees from the identified hazards.

(b) A preliminary evaluation of a site's characteristics shall be performed prior to site entry by a qualified person to aid in the selection of appropriate employee protection methods. Immediately after initial site entry, a more detailed evaluation of the site's specific characteristics shall be performed by a qualified person in order to further identify existing site hazards and to further aid in the selection of the appropriate engineering controls and personal protective equipment for the tasks to be performed.

(c) All suspected conditions that may pose inhalation or skin absorption hazards that are immediately dangerous to life or health (IDLH) or other conditions that may cause death or serious harm shall be identified during the preliminary survey and evaluated during the detailed survey. Examples of such hazards include, but are not limited to, confined space entry, potentially explosive or flammable situations, visible vapor clouds, or areas where biological indicators such as dead animals or vegetation are located.

(d) The following information, to the extent available, shall be obtained by the employer prior to allowing employees to enter a site:

- (1) Location and approximate size of the site;
- (2) Description of the response activity and the job task to be performed;
- (3) Duration of the planned employee activity;
- (4) Site topography;
- (5) Site accessibility by air and roads;
- (6) Pathways for hazardous substance dispersion;
- (7) Present status and capabilities of emergency response teams that would provide assistance to hazardous waste clean-up site employees at the time of an emergency; and
- (8) Hazardous substances and health hazards involved or expected at the site and their chemical and physical properties.

(e) Personal protective equipment (PPE) shall be provided and used during initial site entry in accordance with the following requirements;

- (1) Based upon the results of the preliminary site evaluation, an ensemble of PPE shall be selected and used during initial site entry which will provide protection to a level of exposure below established permissible exposure levels for known or suspected hazardous substances and health hazards, and which will provide protection against other known and suspected hazards identified during the preliminary site evaluation;
- (2) If positive-pressure self-contained breathing apparatus is not used as part of the entry ensemble during an initial site entry, then an escape self-contained breathing apparatus of at least 5 minutes duration shall be carried by employees or kept available at their immediate work station;
- (3) If the preliminary site evaluation does not produce sufficient information to identify the hazards or suspected hazards of the site, an ensemble providing protection equivalent to Level 3 PPE shall be provided as minimum protection; and direct reading instruments shall be used as appropriate for identifying IDLH conditions; and

- (4) Once the hazards of the site have been identified, the appropriate PPE shall be selected and used in accordance with section 12-99-9.
- (f) The following monitoring shall be conducted during initial site entry when the site evaluation produces information that shows the potential for ionizing radiation or IDLH conditions, or when the site information is not sufficient to reasonably eliminate these possible conditions:
 - (1) Monitoring for hazardous levels of ionizing radiation;
 - (2) Monitoring the air with appropriate test equipment for IDLH and other conditions that may cause death or serious harm (combustible or explosive atmospheres, oxygen deficiency, toxic substances); and
 - (3) Visually observing for signs of actual or potential IDLH or other dangerous conditions.
- (g) Once the presence and concentrations of specific hazardous substances and health hazards have been established, the risks associated with these substances shall be identified. Employees who will be working on the site shall be informed of any risks that have been identified. In situations covered by chapter 12-203, training required by that chapter need not be duplicated.

Note: Risks to consider include, but are not limited to potential:

 - (1) Exposures exceeding the appropriate established (PELs), Threshold Limit Values (TLVs), or Recommended Exposure Limits (RELs), etc;
 - (2) IDLH concentrations;
 - (3) Skin absorption and irritation sources;
 - (4) Eye irritation sources; or
 - (5) Explosion sensitivity and flammability ranges.
- (h) Any information concerning the chemical, physical, and toxicologic properties of each substance known or expected to be present on site that is available to the employer and relevant to the duties an employee is expected to perform shall be made available to the affected employees prior to the commencement of their work activities.
- (i) An ongoing air monitoring program in accordance with section 12-99-10 shall be implemented after site characterization has determined the site is safe for the start-up of operations. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-6 Site control. (a) Appropriate site control procedures shall be implemented before clean-up work begins to control employee exposure to hazardous substances.

(b) A site control program for protecting employees, which is part of the employer's safety and health program required in section 12-99-4, shall be developed during the planning stages of a hazardous waste operation clean-up and modified as necessary as new information becomes available.

(c) The site control program shall, as a minimum, include: a site map; site work zones; the use of a "buddy system"; site communications; the standard operating procedures or safe work practices; and identification of the nearest medical assistance. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-7 Training. (a) Initial or review training meeting the requirements of this section shall be provided to employees before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety hazards, or health hazards.

(b) All employees (such as but not limited to equipment operators and general laborers) who may be exposed to hazardous substances, health hazards, or safety hazards shall be thoroughly trained in the following:

- (1) Names of personnel and alternates responsible for site safety and health;
- (2) Safety, health, and other hazards present on the site;
- (3) Use of personal protective equipment;
- (4) Work practices by which the employee can minimize risks from hazards;
- (5) Safe use of engineering controls and equipment on the site;
- (6) Medical surveillance requirements including recognition of symptoms and signs which might indicate overexposure to hazards; and
- (7) The contents of the site safety and health plan set forth in section 12-99-4(d)(1).

(c) All employees shall at the time of job assignment receive a minimum of 40 hours of initial instruction off the site and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor. Workers who may be exposed to unique or special hazards shall be provided additional training. The level of training provided shall be consistent with the employee's job function and responsibilities.

(d) On-site management and supervisors directly responsible for, or who supervise employees engaged in, hazardous waste operations shall receive training as provided in subsections (b) and (c) above, and at least eight additional hours of specialized training at the time of job assignment on such topics as, but not limited to, the employer's safety and health program and the associated employee training program, personal protective equipment program, spill containment program, and health hazard monitoring techniques.

(e) Trainers shall be qualified to instruct employees about the subject matter that is being presented in training.

Note: Trainers can show their qualifications by having the knowledge or training equivalent to a level of training higher than the level they are presenting. This may be shown by academic degrees, training courses completed, or work experience.

(f) Employees shall not be permitted to participate in field activities until they have been trained to a level required by their job function and responsibility.

(g) Employees and supervisors that have received and successfully completed the training and field experience specified in subsections (b) through (d) above shall be certified by their instructor as having completed the necessary training. A written certificate shall be given to each person so certified. Any person who has not been so certified or who has not met the requirements of subsection (j) below shall be prohibited from engaging in hazardous waste operations.

(h) Employees who are assigned to respond to hazardous emergency situations at hazardous waste clean-up sites that may expose them to hazardous substances shall be trained in how to respond to expected emergencies.

(i) Employees specified in subsection (b) above, and managers and supervisors specified in subsection (d) above, shall receive eight hours of refresher training annually on the items specified in subsections (b) and (f) above and other relevant topics.

(j) Employers who can show that an employee's work experience and training has resulted in initial training equivalent to that training required in subsections (b) through (f) above shall not be required to provide the initial training requirements of those subsections. Equivalent training includes the training that existing employees might have already received from actual site work experience. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-8 Medical surveillance. (a) Medical surveillance shall be provided in accordance with this section for employees exposed or potentially exposed to hazardous substances or health hazards or who wear respirators.

(b) Employees covered. A medical surveillance program, which is part of the employer's safety and health program required in sections 12-99-4, 12-99-14, or 12-99-17, shall be instituted by the employer for:

- (1) All employees who are or may be exposed to hazardous substances or health hazards at or above the established PELs for these substances, without regard to the use of respirators, for 30 days or more a year;
- (2) All employees who wear a respirator for 30 days or more a year or as required by section 12-64-6;
- (3) All employees who are injured due to overexposure from an emergency incident involving hazardous substances or health hazards.

(c) Frequency of medical examinations and consultations. Medical examinations and consultations shall be made available by the employer to each employee covered under subsection (b) above.

- (1) For employees covered under subsections (b)(1) and (b)(2) above:
 - (A) Prior to assignment;
 - (B) At least once every twelve months for each employee covered;
 - (C) At termination of employment or reassignment to an area where the employee would not be covered if the employee has not had an examination within the last six months;
 - (D) As soon as possible upon notification by an employee that the employee has developed signs or symptoms indicating possible overexposure to hazardous substances or health hazards or that the employee has been exposed above the established PELs in an emergency situation; or
 - (E) At more frequent times, if the examining physician determines that an increased frequency of examination is medically necessary.
- (2) For employees covered under subsection (b)(3) above and for all employees who may have been exposed during an emergency incident to hazardous substances at concentrations above the established PELs without the necessary PPE being used:
 - (A) As soon as possible following the emergency incident; and
 - (B) Additional times, if the examining physician determines that follow-up examinations or consultations are medically necessary.

- (d) Content of medical examinations and consultations.
- (1) Medical examinations required by subsection (c) above shall include a medical and work history (or updated history if one is in the employee's file) with special emphasis on symptoms related to the handling of hazardous substances and health hazards, and to fitness for duty including the ability to wear any required PPE under conditions (i.e., temperature extremes) that may be expected at the work site.
- (2) The content of medical examinations or consultations made available to employees pursuant to this section shall be determined by the examining physician.
- (e) Examination by a physician and costs. All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.
- (f) Information provided to the physician. The employer shall provide one copy of this chapter and its appendices to the examining physician, and in addition the following to each employee.
 - (1) A description of the employee's duties as they relate to the employee's exposures.
 - (2) The employee's exposure levels or anticipated exposure levels.
 - (3) A description of any PPE used or to be used.
 - (4) Information from previous medical examinations of the employee which is not readily available to the examining physician.
 - (5) Information required by section 12-64-6.
- (g) Physician's written opinion.
 - (1) The employer shall obtain and furnish the employee with a copy of a written opinion from the examining physician containing the following:
 - (A) The results of the medical examination and tests if requested by the employee;
 - (B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from work in hazardous waste operations or emergency response, or from respirators use as required by section 12-64-6;
 - (C) The physician's recommended limitations upon the employee's assigned work; and
 - (D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.
 - (2) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposure.
- (h) Recordkeeping.
 - (1) An accurate record of the medical surveillance required by this section shall be retained. This record shall be retained for the period specified and meet the criteria of section 12-202-3.
 - (2) The record required in paragraph (1) above shall include at least the following information:
 - (A) The name and social security number of the employee;
 - (B) Physicians' written opinions, recommended limitations, and results of examinations and tests;

- (C) Any employee medical complaints related to exposure to hazardous substances; and
- (D) A copy of the information provided to the examining physician by the employer, with the exception of this chapter and its appendices. [Eff. NOV 24 1988]
(Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-9 Engineering controls, work practices, and personal protective equipment for employee protection. (a) Engineering controls, work practices, PPE, or a combination of these shall be implemented in accordance with this section to protect employees from exposure to hazardous substances and health hazards.

(b) Engineering controls, work practices, and PPE for substances regulated in section 12-202-4.01.

- (1) Engineering controls and work practices shall be instituted to reduce and maintain employee exposure to or below the PELs for substances regulated by section 12-202-4.01, except to the extent that such controls and practices are not feasible.

Note: Engineering controls which may be feasible include the use of pressurized cabs or control booths on equipment, or the use of remotely operated material handling equipment. Work practices which may be feasible are removing all non-essential employees from potential exposure during opening of drums, wetting down dusty operations, and locating employees upwind of possible hazards.

- (2) Whenever engineering controls and work practices are not feasible, PPE shall be used to reduce and maintain employee exposures to or below the PELs for substances regulated by chapters 12-69, 12-200, 12-201, and 12-202.
- (3) The employer shall not implement a schedule of employee rotation as a means of compliance with permissible dose limits except when there is no other feasible way of complying with the airborne or dermal dose limits for ionizing radiation.

(c) Engineering controls, work practices, and personal protective equipment for substances not regulated in chapter 12-202. An appropriate combination of engineering controls, work practices, and PPE shall be established to reduce and maintain employee exposure to or below appropriate exposure levels for hazardous substances and health hazards not regulated by chapters 12-69, 12-200, 12-201, and 12-202, taking into account the established exposure levels.

- (d) PPE selection.
 - (1) PPE shall be selected and used which will protect employees from the hazards and potential hazards they are likely to encounter as identified during the site characterization and analysis.
 - (2) PPE selection shall be based on an evaluation of the performance characteristics of the PPE relative to the requirements and limitations of the site, the task-specific conditions and duration, and the hazards and potential hazards identified at the site.
 - (3) Positive-pressure self-contained breathing apparatus, or positive-pressure air-line respirators equipped with an escape air supply, shall be used in IDLH conditions.

- (4) Totally-encapsulating chemical protective suits (protection equivalent to Level A protection as specified in appendix B) shall be used in conditions where skin absorption of a hazardous substance may result in an IDLH situation.
- (5) The level of protection provided by PPE selection shall be increased when additional information on site conditions show that increased protection is necessary to reduce employee exposures below established PELs for hazardous substances and health hazards. (See appendix B for guidance on selecting PPE ensembles.)

Note: The level of employee protection provided may be decreased when additional information or site conditions show that decreased protection will not result in increased hazardous exposures to employees.

- (6) PPE shall be selected and used to meet the requirements of chapter 12-64, and additional requirements specified in this chapter.
 - (e) Totally-encapsulating chemical protective suits.
 - (1) Totally-encapsulating suit materials used for Level A protection shall protect employees from the particular hazards which are identified during site characterization and analysis.
 - (2) Totally-encapsulating suits shall be capable of maintaining positive air pressure. (See appendix A.)
 - (3) Totally-encapsulating suits shall be capable of preventing inward test gas leakage of more than 0.5 per cent. (See appendix A.)
 - (f) PPE program. A written PPE program, which is part of the employer's safety and health program required in section 12-99-4 or required in section 12-99-14, shall be established for hazardous waste operations which shall be part of the site-specific safety and health plan. The PPE program shall address the following elements:
 - (1) Site hazards;
 - (2) PPE selection;
 - (3) PPE use;
 - (4) Work mission duration;
 - (5) PPE maintenance and storage;
 - (6) PPE decontamination;
 - (7) PPE training and proper fitting;
 - (8) PPE donning and doffing procedures;
 - (9) PPE inspection;
 - (10) PPE in-use monitoring;
 - (11) Evaluation of the effectiveness of the PPE program; and
 - (12) Limitations during temperature extremes, and other appropriate medical considerations. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-10 Monitoring. (a) Monitoring shall be performed in accordance with this section to ensure proper selection of engineering controls, work practices, and PPE so that employees are not exposed to levels which exceed established PELs for hazardous substances.

(b) Air monitoring shall be used to identify and quantify airborne levels of hazardous substances and health hazards in order to determine the appropriate level of employee protection needed on site.

(c) Upon initial entry, representative air monitoring shall be conducted to identify any IDLH condition, exposure over established PELs, exposure over a radioactive material's dose limits, or other dangerous condition such as the presence of flammable atmospheres or oxygen-deficient environments.

(d) Periodic monitoring shall be conducted when the possibility of an IDLH condition or flammable atmosphere has developed or when there is indication that exposures may have arisen since prior monitoring. These situations occur when:

- (1) Work begins on a different portion of the site;
- (2) Contaminants other than those previously identified are being handled;
- (3) A different type of operation is initiated (e.g., drum opening as opposed to exploratory well drilling);
- (4) Employees are handling leaking drums or containers or working in areas with obvious liquid contamination (e.g., a spill or lagoon); and
- (5) A sufficient reasonable interval has passed so that exposures may have significantly increased.

(e) After hazardous waste clean-up operations commence, the employer shall monitor those employees likely to have the highest exposures to hazardous substances and health hazards above the established PELs by using personal sampling frequently enough to characterize employee exposures. The employer may utilize a representative sampling approach by documenting that the employees and chemicals chosen for monitoring are based on the criteria stated above.

Note: It is not required to monitor employees engaged in site characterization operations covered by section 12-99-5. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-11 Informational programs. Employers shall develop and implement a program, which is part of the employer's safety and health program required in section 12-99-4, to inform employees, contractors, and subcontractors (or their representative) actually engaged in hazardous waste operations of the nature, level, and degree of exposure likely to or a result of participation in such hazardous waste operations. Employees, contractors, and subcontractors working outside of the operations of a site are not covered by this chapter. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-12 Handling drums and containers. (a) General. Hazardous substances and contaminated soils, liquids, and other residues shall be handled, transported, labeled, and disposed of in accordance with this section.

- (1) Drums and containers used during the clean-up shall meet the appropriate DOT, OSHA, DOSH, and EPA regulations for the wastes that they contain.
- (2) When practical, drums and containers shall be inspected and their integrity shall be ensured prior to being moved. Drums or containers that cannot be inspected before being moved because of storage conditions (i.e., buried beneath the earth, stacked

- behind other drums, stacked several tiers high in a pile, etc.) shall be moved to an accessible location and inspected prior to further handling.
- (3) Unlabelled drums and containers shall be considered to contain hazardous substances and handled accordingly until the contents are positively identified and labeled.
 - (4) Site operations shall be organized to minimize the amount of drum or container movement.
 - (5) Prior to movement of drums or containers, all employees exposed to the transfer operation shall be warned of the potential hazards associated with the contents of the drums or containers.
 - (6) U. S. Department of Transportation specified salvage drums or containers and suitable quantities of proper absorbent shall be kept available and used in areas where spills, leaks, or ruptures may occur.
 - (7) Where major spills may occur, a spill containment program, which is part of the employer's safety and health program required in section 12-99-4, shall be implemented to contain and isolate the entire volume of the hazardous substance being transferred.
 - (8) Drums and containers that cannot be moved without rupture, leakage, or spillage shall be emptied into a sound container using a device classified for the material being transferred.
 - (9) A ground-penetrating system or other type of detection system or device shall be used to estimate the location and depth of buried drums or containers.
 - (10) Soil or covering material shall be removed with caution to prevent drum or container rupture.
 - (11) Fire extinguishing equipment meeting the requirements of chapter 12-63 shall be on hand and ready for use to control incipient fires.
- (b) Opening drums and containers. The following procedures shall be followed in areas where drums or containers are being opened:
- (1) Where an airline respirator system is used, connections to the bank of air cylinders shall be protected from contamination and the entire system shall be protected from physical damage;
 - (2) Employees not actually involved in opening drums or containers shall be kept a safe distance from the drums or containers being opened;
 - (3) If employees must work near or adjacent to drums or containers being opened, a suitable shield that does not interfere with the work operation shall be placed between the employee and the drums or containers being opened to protect the employee in case of accidental explosion;
 - (4) Controls for drum or container opening equipment, monitoring equipment, and fire suppression equipment shall be located behind the explosion-resistant barrier;
 - (5) When there is a reasonable possibility of flammable atmospheres being present, material handling equipment and hand tools shall be of the type to prevent sources of ignition;
 - (6) Drums and containers shall be opened in such a manner that excess interior pressure will be safely relieved. If pressure cannot be relieved from a remote location, appropriate shielding shall be placed between the employee and the drums or containers to reduce the risk of employee injury; and

(7) Employees shall not stand upon or work from drums or containers.

(c) Material handling equipment. Material handling equipment used to transfer drums and containers shall be selected, positioned, and operated to minimize sources of ignition related to the equipment from igniting vapors released from ruptured drums or containers.

(d) Radioactive wastes. Drums and containers containing radioactive wastes shall not be handled until such time as their hazard to employees is properly assessed.

(e) Shock sensitive wastes. As a minimum, the following special precautions shall be taken when drums and containers containing or suspected of containing shock-sensitive wastes are handled.

(1) All non-essential employees shall be evacuated from the area of transfer.

(2) Material handling equipment shall be provided with explosive containment devices or protective shields to protect equipment operators from exploding containers.

(3) An employee alarm system capable of being perceived above surrounding light and noise conditions shall be used to signal the commencement and completion of explosive waste handling activities.

(4) Continuous communications (i.e., portable radios, hand signals, telephones, as appropriate) shall be maintained between the employee-in-charge of the immediate handling area and the site safety and health supervisor or command post until such time as the handling operation is completed. Communication equipment or methods that could cause shock sensitive materials to explode shall not be used.

(5) Drums and containers under pressure, as evidenced by bulging or swelling, shall not be moved until such time as the cause for excess pressure is determined and appropriate containment procedures have been implemented to protect employees from explosive relief of the drum.

(6) Drums and containers containing packaged laboratory wastes shall be considered to contain shock-sensitive or explosive materials until they have been characterized.

Caution: Shipping of shock sensitive wastes may be prohibited under the U. S. Department of Transportation regulations. Employers and their shippers should refer to 49 CFR 173.21 and 173.50.

(f) Laboratory waste packs. In addition to the requirements of section 12-99-12, the following precautions shall be taken, as a minimum, in handling laboratory waste packs (lab packs):

(1) Lab packs shall be opened only when necessary and then only by an individual knowledgeable in the inspection, classification, and segregation of the containers within the pack according to the hazards of the wastes; or

(2) If crystalline material is noted on any container, the contents shall be handled as a shock-sensitive waste until the contents are identified.

(g) Sampling drums and containers. Sampling of containers and drums shall be done in accordance with a sampling procedure which is part of the site safety and health plan developed for and available to employees and others at the specific worksite.

(h) Shipping and transport.

- (1) Drums and containers shall be identified and classified prior to packaging for shipment.
- (2) Drum or container staging areas shall be kept to the minimum number necessary to identify and classify materials safely and prepare them for transport.
- (3) Staging areas shall be provided with adequate access and egress routes.
- (4) Bulking of hazardous wastes shall be permitted only after a thorough characterization of the materials has been completed.
 - (i) Tank and vault procedures.
 - (1) Tanks and vaults containing hazardous substances shall be handled in a manner similar to that for drums and containers, taking into consideration the size of the tank or vault.
 - (2) Appropriate tank or vault entry procedures meeting section 12-99-4(d)(1)(J) shall be followed whenever employees must enter a tank or vault. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-13 Decontamination. (a) Procedures for all phases of decontamination shall be developed and implemented in accordance with this section.

(b) A decontamination procedure shall be developed, communicated to employees, and implemented before any employees or equipment may enter areas on site where potential for exposure to hazardous substances exists.

(c) Standard operating procedures shall be developed to minimize employee contact with hazardous substances or with equipment that has contacted hazardous substances.

(d) Decontamination shall be performed in geographical areas that will minimize the exposure to uncontaminated employees or equipment.

(e) All employees leaving a contaminated area shall be appropriately decontaminated; all clothing and equipment leaving a contaminated area shall be appropriately disposed of or decontaminated.

(f) Decontamination procedures shall be monitored by the site safety and health supervisor to determine their effectiveness. When such procedures are found to be ineffective, appropriate steps shall be taken to correct any deficiencies.

(g) All equipment and solvents used for decontamination shall be decontaminated or disposed of properly.

(h) Protective clothing and equipment shall be decontaminated, cleaned, laundered, maintained, or replaced as needed to maintain their effectiveness.

(i) Employees whose non-impermeable clothing becomes wetted with hazardous substances shall immediately remove that clothing and proceed to shower. The clothing shall be disposed of or decontaminated before it is removed from the work zone.

(j) Unauthorized employees shall not remove protective clothing or equipment from change rooms.

(k) Commercial laundries or cleaning establishments that decontaminate protective clothing or equipment shall be informed of the potentially harmful effects of exposures to hazardous substances.

(l) Where the decontamination procedure indicates a need for regular showers and change rooms outside of a contaminated area, they shall be

provided in accordance with the requirements of chapter 12-67. If temperature conditions prevent the effective use of water, other effective means for cleansing shall be provided and used. [Eff. NOV 24 1988]
 (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-14 Emergency response. (a) General. Emergency response at hazardous waste operation incidents shall be conducted in accordance with this section.

- (1) Emergency response plan. An emergency response plan shall be developed and implemented by all employers within the scope of this section to handle anticipated emergencies prior to the commencement of hazardous waste operations. The plan shall be in writing and available for inspection and copying by employees, their representatives, and the director. Employers who will evacuate their employees from the workplace when an emergency occurs and who do not permit any of their employees to respond or assist in handling the emergency are exempt from the requirements of this section.
- (2) Elements of an emergency response plan. The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following:
 - (A) Pre-emergency planning;
 - (B) Personnel roles, lines of authority, training, and communication;
 - (C) Emergency recognition and prevention;
 - (D) Safe distances and places of refuge;
 - (E) Site security and control;
 - (F) Evacuation routes and procedures;
 - (G) Decontamination;
 - (H) Emergency medical treatment and first aid;
 - (I) Emergency alerting and response procedures;
 - (J) Critique of response and follow-up; and
 - (K) PPE and emergency equipment.
- (b) Emergency response at hazardous waste clean-up sites.
 - (1) Training.
 - (A) Training for emergency response employees at clean-up operations shall be conducted in accordance with section 12-99-7 for employers covered by section 12-99-2(a)(1) through (3) and in accordance with section 12-99-17(e) for those employers covered by section 12-99-2(a)(4).
 - (B) Employers who can show that an employee's work experience and training has resulted in training equivalent to that training required in subparagraph (A) above shall not be required to provide the initial training requirements of those sections. Equivalent training includes the training that existing employees might have already received from actual site work experience.
 - (2) Procedures for handling emergency incidents.
 - (A) In addition to the elements for the emergency response plan required in subsection (a)(2) above, the following elements shall be included for emergency response plans:
 - (i) Site topography, layout, and prevailing weather conditions; and

- (ii) Procedures for reporting incidents to local, state, and federal governmental agencies.
 - (B) The emergency response plan shall be a separate section of the site safety and health plan.
 - (C) The emergency response plan shall be compatible and integrated with the disaster, fire, or emergency response plans of local, state, and federal agencies.
 - (D) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.
 - (E) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.
 - (F) An employee alarm system shall be installed in accordance with chapter 12-63 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures.
 - (G) Based upon the information available at the time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan.
- (c) Emergency response at sites other than hazardous waste clean-up sites.
- (1) Training. Employers shall provide the training specified by this paragraph for those employees for whom there exists the reasonable possibility of responding to emergencies at sites other than hazardous waste clean-up sites.
 - (A) Emergency response organizations or teams. Employees on emergency response organizations or teams such as fire brigades, fire departments, plant emergency organizations, hazardous materials teams, spill response teams, and similar groups with responsibility for emergency response shall be trained to a level of competence to protect themselves and other employees in the recognition of health and safety hazards, methods to minimize the risk from safety and health hazards, safe use of control equipment, selection and use of appropriate PPE, safe operating procedures to be used at the incident scene, techniques of coordination with other employees to minimize risks, appropriate response to over exposure from health hazards or injury to themselves and other employees, and recognition of subsequent symptoms which may result from over exposures.
 - (i) Competency may be demonstrated by 24 hours of training annually in those areas with training sessions at least monthly or by demonstrations by the employee of competency in those areas at least quarterly.
 - (ii) A certification shall be made of the training or competency; and if certification of competency is made, the employer shall keep a record of the methodology used to demonstrate competency.
 - (iii) An employer of employees for whom the reasonable possibility of responding to emergencies at other than hazardous waste clean-up sites exists need not train all such employees to the degree specified in clause (i)

above if the employer divides the work force such that sufficient employees who have responsibility to control the emergency have the training specified in this paragraph and other employees who may first respond to the incident have sufficient awareness training to recognize that an emergency response situation exists and are instructed in that case to summon the employees who are fully trained and not attempt control activities for which they are not trained.

- (iv) An employer of employees for whom the reasonable possibility exists of responding to emergencies at other than hazardous waste clean-up sites need not train such employees to the degree specified in clause (i) above if arrangements have been made in advance for a fully-trained emergency response team to respond in a reasonable period and employees who may come to the incident first have sufficient awareness training to recognize that an emergency response situation exists and are instructed to call the designated fully-trained emergency response team for assistance.
- (B) Specialist employees. Employees who, in the course of their regular job duties, work with and are trained in the hazards of specific materials covered by this chapter, and who will be called upon to provide technical advice or assistance at a hazardous substance release incident, are exempt from the monthly training sessions required in subparagraph (A) above. They shall, pursuant to subparagraph (A) above however, receive at least 24 hours of training annually or demonstrate competency in the area of their specialization.
- (C) Skilled support personnel. Personnel, not necessarily an employer's own employees, who are needed to perform immediate emergency support work that cannot reasonably be performed in a timely fashion by an employer's own employees, and who will be or may potentially be exposed to the hazards at an emergency response scene, are not required to have the 24 hours of annual training or demonstrate the competency required for the employer's regular employees. However, the senior official cited in paragraph (2) below shall ensure that these personnel are given an initial briefing at the site of the emergency response prior to their participation in that response that shall include instruction in the wearing of appropriate PPE, what chemical hazards are involved, and what duties are to be performed. All appropriate safety and health precautions provided to the employer's own employees shall be used to ensure the safety and health of these personnel.
- (2) Procedures for handling emergency response.
 - (A) The senior official responding to an emergency at other than hazardous waste clean-up sites involving a hazardous substance or health hazard shall establish and become the individual in charge of a site-specific Incident Command System (ICS). All emergency responders and their

communications shall be coordinated and controlled through the individual in charge of the ICS assisted by the senior official present for each employer.

Note: The "senior official" at an off-site emergency response is the most senior official on the site who has the responsibility for controlling the operations at the site. Initially, it is the senior officer on the first-due piece of responding emergency apparatus to arrive on the incident scene. As more senior officers arrive (i.e., fire chief, battalion chief, site coordinator, etc.), the position is passed up the line of authority.

- (B) The individual in charge of the ICS shall identify, to the extent possible, all hazardous substances or conditions present and shall address as appropriate site analysis, use of engineering controls, maximum exposure limits, hazardous substance handling procedures, and use of any new technologies.
- (C) Based on the hazardous substances and conditions present, the individual in charge of the ICS shall implement appropriate emergency operations and ensure that the PPE worn is appropriate for the hazards to be encountered. However, PPE shall meet, at a minimum, the criteria contained in section 12-63-3(e) when worn while performing fire fighting operations beyond the incipient stage.
- (D) Employees engaged in emergency response and exposed to hazardous substances shall wear positive-pressure self-contained breathing apparatus while engaged in emergency response until such time that the individual in charge of the ICS determines through the use of air monitoring that a decreased level of respiratory protection will not result in hazardous exposures to employees.
- (E) The individual in charge of the ICS shall limit the number of emergency response personnel at the emergency site to those who are actively performing emergency operations. However, operations in hazardous areas shall be performed using the buddy system in groups of two or more.
- (F) Back-up personnel shall stand by with equipment ready to provide assistance or rescue. Qualified basic life support personnel, as a minimum, shall also stand by with medical equipment and transportation capability.
- (G) The individual in charge of the ICS shall designate a safety official, who is knowledgeable in the operations being implemented at the emergency response site, with specific responsibility to identify and evaluate hazards and to provide direction with respect to the safety of operations for the emergency at hand.
- (H) When activities are judged by the safety official to be an IDLH condition or to involve an imminent danger condition, the safety official shall have the authority to alter, suspend, or terminate those activities. The safety official shall immediately inform the individual in charge of the ICS of any actions taken to correct these hazards at an emergency scene.

- (I) After emergency operations have terminated, the individual in charge of the ICS shall implement appropriate decontamination procedures.
- (J) When deemed necessary for meeting the tasks at hand, approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet the U. S. Department of Transportation and National Institute for Occupational Safety and Health criteria.
- (d) Hazardous materials teams (HAZMAT).
 - (1) Employees who are members of a HAZMAT team shall be given training in accordance with subsection (c) above that includes the care and use of chemical protective clothing, and procedures to be followed when working on leaking drums, containers, tanks, or bulk transport vehicles.
 - (2) Members of HAZMAT teams shall receive a base line physical exam and have medical surveillance as required in section 12-99-8.
 - (3) Chemical personal protective clothing and equipment to be used by HAZMAT team members shall meet the requirements of section 12-99-9.
- (e) Post-emergency response operations. Upon completion of the emergency response, if it is determined that it is necessary to remove hazardous substances, health hazards, and materials contaminated with them (such as contaminated soil or other elements of the natural environment) from the site of the incident the employer conducting the clean-up shall comply with one of the following:
 - (1) Meet all of the requirements of sections 12-99-4 through 12-99-16; or
 - (2) Where the clean-up is done on plant property using plant or workplace employees, such employees shall have completed the training requirements of the following: chapters 12-64, 12-71, and 12-202; and other appropriate safety and health training made necessary by the tasks that they are expected to be performed. All equipment to be used in the performance of the clean-up work shall be in serviceable condition and shall have been inspected prior to use. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-15 Illumination. Areas accessible to employees shall be lighted in accordance with the requirements of this section. While any work is in progress, all work areas shall be lighted to not less than the minimum illumination intensities listed in table 99-1.

Table 99-1

Minimum Illumination Intensities in Foot-Candles

| Foot-candles | Area or operations |
|--------------|--|
| 5 | General site areas. |
| 3 | Excavation and waste areas, accessways, active storage areas, loading platforms, refueling, and field maintenance areas. |
| 5 | Indoors: warehouses, corridors, hallways, and exitways. |
| 5 | Tunnels, shafts, and general underground work areas. (Exception: Minimum of 10 foot-candles is required at tunnel and shaft heading during drilling, mucking, and scaling. Mine Safety and Health Administration approved cap lights shall be acceptable for use in the tunnel heading.) |
| 10 | General shops (e.g., mechanical and electrical equipment rooms, active storerooms, barracks or living quarters, locker or dressing rooms, dining areas, and indoor toilets and workrooms.) |
| 30 | First aid stations, infirmaries, and offices. |

[Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-16 Facilities for employee sanitation at temporary workplaces.

(a) Potable water.

- (1) An adequate supply of potable water shall be provided on the site.
- (2) Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. The use of a common drinking cup or dipper is prohibited.
- (3) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.
- (4) Where single service cups are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

(b) Nonpotable water.

- (1) Outlets for nonpotable water, such as water for firefighting purposes, shall be identified to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.
- (2) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.
- (c) Toilet facility.
 - (1) Toilets shall be provided for employees according to table 99-2.

Table 99-2

Toilet Facilities

| Number of employees | Minimum number of facilities |
|------------------------------|--|
| 20 or fewer | One |
| More than 20, fewer than 200 | One toilet seat and one urinal per 40 employees. |
| More than 200 | One toilet seat and one urinal per 50 employees. |

- (2) Under temporary field conditions, provisions shall be made to ensure that at least one toilet facility is available.
- (3) Hazardous waste sites not provided with a sanitary sewer shall be provided with the following toilet facilities unless prohibited by local codes:
 - (A) Chemical toilets;
 - (B) Recirculating toilets;
 - (C) Combustion toilets; or
 - (D) Flush toilets.
- (4) The requirements of this section for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.
- (5) Doors entering toilet facilities shall be provided with entrance locks controlled from inside the facility.
- (d) Food handling. All food service facilities and operations for employees shall meet the applicable laws, ordinances, and regulations of the jurisdictions in which they are located.
 - (e) Temporary sleeping quarters. When temporary sleeping quarters are provided, they shall be heated, ventilated, lighted, and meet the requirements of chapter 12-68.
 - (f) Washing facilities. The employer shall provide adequate washing facilities for employees engaged in operations where hazardous substances may be harmful to employees. Such facilities shall be in near proximity to the worksite; in areas where exposures are below established PELs and which

are under the control of the employer; and shall be so equipped as to enable employees to remove hazardous substances for themselves.

(g) Showers and change rooms. When hazardous waste clean-up or removal operations commence on a site and the duration of the work will require six months or greater time to complete, the employer shall provide showers and change rooms for all employees exposed to hazardous substances and health hazards involved in hazardous waste clean-up or removal operations.

- (1) Showers shall be provided and shall meet the requirements of section 12-67-5.
- (2) Change rooms shall be provided and shall meet the requirements of section 12-67-6. Change rooms shall consist of two separate change areas separated by the shower area required in paragraph (1) above. One change area, with an exit leading off the worksite, shall provide employees with a clean area where they can remove, store, and put on street clothing. The second area, with an exit to the worksite, shall provide employees with an area where they can put on, remove, and store work clothing and PPE.
- (3) Showers and change rooms shall be located in areas where exposures are below the established PELs. If this cannot be accomplished, then a ventilation system shall be provided that will supply air that is below the established PELs.
- (4) Employers shall ensure that employees shower at the end of their work shift and when leaving the hazardous waste site.
[Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-17 Certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA). (a) Employers shall develop and implement a written safety and health program for employees involved in hazardous waste operations which shall be available for inspection by employees, their representatives, and the director. The program shall be designed to identify, evaluate, and control safety and health hazards in their facilities for the purpose of employee protection, and provide for emergency response meeting the requirements of section 12-99-14 and it shall address as appropriate site analysis, engineering controls, maximum exposure limits, hazardous waste handling procedures, and uses of new technologies.

(b) Employers shall implement a hazard communication program as part of the employer's safety and program meeting the requirements of chapter 12-203.

Note: The exemptions provided in chapter 12-203 are applicable to this section.

(c) Employers shall implement a medical surveillance program meeting the requirements of section 12-99-8.

(d) Employers shall develop and implement a decontamination procedure in accordance with section 12-99-13.

(e) Employers shall develop and implement a training program.

(1) The program, which is part of the employer's safety and health program for employees involved with hazardous waste operations, shall enable employees to perform their assigned duties and functions in a safe and healthful manner so as not to endanger

themselves or other employees. The initial training shall be for 24 hours, and a refresher training shall be for eight hours annually.

- (2) An employee's previous work experience or training that is equivalent to the initial training required by this section shall be considered as meeting the initial training requirements of this section. Equivalent training includes the training that existing employees might have already received from actual site work experience. Employees who have received the initial training required by this paragraph shall be given a written certificate attesting that they have successfully completed the necessary training.

Note: Employers conducting operations specified in section 12-99-2(b)(3) shall meet the requirements of this section. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-18 New technology programs. (a) The employer shall develop and implement procedures for the introduction of effective new technologies and equipment developed for the improved protection of employees working with hazardous waste clean-up operations, and the same shall be implemented as part of the site safety and health program to ensure that employee protection is being maintained.

(b) New technologies, equipment, or control measures available to the industry, such as the use of foams or other means to suppress the level of air contaminants while excavating the site or for spill control, shall be evaluated by employers or their representatives to determine their effectiveness before implementing their use on a large scale for employee protection. Such evaluations shall be made available to the department upon request. [Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-99-19 Appendices. The following appendices serve as non-mandatory guidelines to assist employees and employers in complying with the appropriate requirements of this chapter. However, section 12-99-9 makes mandatory in certain circumstances the use of Level A and Level B PPE protection.

Appendix A

PERSONAL PROTECTIVE EQUIPMENT TEST METHODS

This appendix sets forth the non-mandatory examples of tests which may be used to evaluate compliance with section 12-99-9(e)(2) and (3). Other tests and other challenge agents may be used to evaluate compliance.

- A. Totally-encapsulating chemical protective suit pressure test.
 1. Scope.
 - a. This practice measures the ability of a gas tight totally-encapsulating chemical protective suit material, seams, and closures to maintain a fixed positive-pressure. The results of this practice allow the gas tight integrity of a total-encapsulating chemical protective suit to be evaluated.

- b. Resistance of the suit materials to permeation, penetration, and degradation by specific hazardous substances is not determined by this test method.
2. Definition of terms.
 - a. "Gas tight" means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.
 - b. "Protective clothing material" means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.
 - c. "Totally-encapsulated chemical protective suit (TECP suit)" means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer by itself or in combination with the wearer's respiratory equipment, gloves, and boots.
3. Summary of test method. The TECP suit is visually inspected and modified for the test. The test apparatus is attached to the suit to permit inflation to the pre-test suit expansion pressure for removal of suit wrinkles and creases. The pressure is lowered to the test pressure and monitored for three minutes. If the pressure drop is excessive, the TECP suit fails the test and is removed from service. The test is repeated after leak location and repair.
4. Required supplies.
 - a. Source of compressed air.
 - b. Test apparatus for suit testing, including a pressure measurement device with a sensitivity of at least 1/4 inch water gauge.
 - c. Vent valve-closure plugs or sealing tape.
 - d. Soapy water solution and soft brush.
 - e. Stop watch or appropriate timing device.
5. Safety precautions. Care shall be taken to provide the correct pressure safety devices required for the source of compressed air used.
6. Test procedure. Prior to each test, the tester shall perform a visual inspection of the suit. Check the suit for seam integrity by visually examining the seams and gently pulling on the seams. Ensure that all air supply lines, fittings, visor, zippers, and valves are secure and show no signs of deterioration.
 - a. Seal off the vent valves along with any other normal inlet or exhaust points (such as umbilical air line fittings or face piece opening) with tape or other appropriate means (caps, plugs, fixture, etc.). Care should be exercised in the sealing process not to damage any of the suit components.
 - b. Close all closure assemblies.
 - c. Prepare the suit for inflation by providing an improvised connection point on the suit for connecting an airline. Attach the pressure test apparatus to the suit to permit suit inflation from a compressed air source equipped with a pressure indicating regulator. The leak tightness of the pressure test apparatus should be tested before and after

each test by closing off the end of the tubing attached to the suit and ensuring a pressure of three inches water gauge for three minutes can be maintained. If a component is removed for the test, that component shall be replaced and a second test conducted with another component removed to permit a complete tests of the ensemble.

- d. The pre-test expansion pressure (A) and the suit test pressure (B) shall be supplied by the suit manufacturer, but in no case shall they be less than: A = three inches water gauge and B = two inches water gauge. The ending suit pressure (C) shall be no less than 80 per cent of the test pressure (B); i.e., the pressure drop shall not exceed 20 per cent of the test pressure (B).
 - e. Inflate the suit until the pressure inside is equal to pressure "A", the pre-test expansion suit pressure. Allow at least one minute to fill out the wrinkles in the suit. Release sufficient air to reduce the suit pressure to pressure "B", the suit test pressure. Begin timing. At the end of three minutes, record the suit pressure as pressure "C" the ending suit pressure. The difference between the suit test pressure and the ending suit test pressure (B-C) shall be defined as the suit pressure drop.
 - f. If the suit pressure drop is more than 30 per cent of the suit test pressure B during the three-minute test period, the suit fails the test and shall be removed from service.
7. Retest procedure.
 - a. If the suit fails the test check for leaks by inflating the suit to pressure A and brushing or wiping the entire suit (including seams, closures, lens gaskets, glove-to-sleeve joints, etc.) with a mild soap and water solution. Observe the suit for the formation of soap bubbles, which is an indication of a leak. Repair all identified leaks.
 - b. Retest the TECP suit as outlined in Test procedure 6.
 8. Report. Each TECP suit tested by this practice shall have the following information recorded:
 - a. Unique identification number, identifying brand name, date of purchase, material of construction, and unique fit features, e.g., special breathing apparatus;
 - b. The actual values for test pressures A, B, and C shall be recorded along with the specific observation times. If the ending pressure (C) is less than 80 per cent of the test pressure (B), the suit shall be identified as failing the test. When possible, the specific leak location shall be identified in the test records. Retest pressure data shall be recorded as an additional test.
 - c. The source of the test apparatus used shall be identified and the sensitivity of the pressure gauge shall be recorded.
 - d. Records shall be kept for each pressure test even if repairs are being made at the test location.

Caution: Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to ensure that the inside and outside of the suit is completely dry before it is put into storage.

B. Totally-encapsulating chemical protective suit qualitative leak test.

1. Scope.
 - a. This practice semi-qualitatively tests gas tight totally-encapsulating chemical protective suit integrity by detecting inward leakage of ammonia vapor. Since no modifications are made to the suit to carry out this test, the results from this practice provide a realistic test for the integrity of the entire suit.
 - b. Resistance of the suit materials to permeation, penetration, and degradation is not determined by this test method.
2. Definition of terms.
 - a. "Gas tight" means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.
 - b. "Intrusion coefficient" means a number expressing the level of protection provided by a gas tight totally-encapsulating chemical protective suit. The intrusion coefficient is calculated by dividing the test room challenge agent concentration by the concentration of challenge agent found inside the suit. The accuracy of the intrusion coefficient is dependent on the challenge agent monitoring methods. The larger the intrusion coefficient the greater the protection provided by the TECP suit.
 - c. "Protective clothing material" means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.
 - d. "Totally-encapsulated chemical protective suit (TECP suit)" means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer by itself or in combination with the wearer's respiratory equipment, gloves, and boots.
3. Summary of recommended practice. The volume of concentrated aqueous ammonia solution (ammonia hydroxide NH_4OH) required to generate the test atmosphere is determined using the directions outlined in 6. a. below. The suit is donned by a person wearing the appropriate respiratory equipment (either a self-contained breathing apparatus or a supplied air respirator) and worn inside the enclosed test room. The concentrated aqueous ammonia solution is taken by the suited individual into the test room and poured into an open plastic pan. A two-minute evaporation period is observed before the test room concentration is measured, using a high range ammonia length of stain detector tube. When the ammonia vapor reaches a concentration of between 1000 and 1200 ppm, the suited individual starts a standardized exercise protocol to stress and flex the suit. After this protocol is completed, the test room concentration is

measured again. The suited individual exits the test room and the stand-by person measures the ammonia concentration inside the suit using a low range ammonia length of stain detector tube or other more sensitive ammonia detector. A stand-by person is required to observe the test individual during the test procedure; aid the person in donning and doffing the TECP suit; and monitor the suit interior. The intrusion coefficient of the suit can be calculated by dividing the average test area concentration by the interior suit concentration. A colorimetric indicator strip of bromophenol blue is placed on the inside of the suit face piece lens so that the suited individual is able to detect a color change and know if the suit has a significant leak. If a color change is observed, the individual shall leave the test room immediately.

4. Required supplies.
 - a. A supply of concentrated aqueous ammonia (58 per cent ammonium hydroxide by weight).
 - b. A supply of bromophenol/blue indicating paper, sensitive to 5-10 ppm ammonia or greater over a two-minute period of exposure.
 - c. A supply of high range (0.5-10 volume per cent) and low range (5-700 ppm) detector tubes for ammonia, and the corresponding sampling pump. More sensitive ammonia detectors can be substituted for the low range detector tubes to improve the sensitivity of this practice.
 - d. A shallow plastic pan (PVC) at least 12 x 14 x 1 inches and a half pint plastic container (PVC) with tightly closing lid.
 - e. A graduated cylinder or other volumetric measuring device of at least 50 milliliters in volume with an accuracy of at least ± 1 milliliters.
5. Safety precautions.
 - a. Concentrated aqueous ammonium hydroxide, NH_4OH , is a corrosive volatile liquid requiring eye, skin, and respiratory protection. The person conducting the test shall review the MSDS for aqueous ammonia.
 - b. Since the established PEL for ammonia is 25 ppm, only persons wearing a self-contained breathing apparatus or a supplied-air respirator shall be in the chamber. Normally only the person wearing the total-encapsulating suit will be inside the chamber. A stand-by person shall have a self-contained breathing apparatus, or a supplied-air respirator available to enter the test area should the suited individual need assistance.
 - c. A method to monitor the suited individual must be used during this test. Visual contact is the simplest but other methods using communication devices are acceptable.
 - d. The test room shall be large enough to allow the exercise protocol to be carried out and then to be ventilated to allow for easy exhaust of the ammonia test atmosphere after the test(s) are completed.
 - e. Individuals shall be medically screened for the use of respiratory protection and checked for allergies to ammonia before participating in this test procedure.

6. Test procedure.
 - a. Measure the test area to the nearest foot and calculate its volume in cubic feet. Multiply the test area volume by 0.2 milliliters of concentrated aqueous ammonia solution per cubic foot of test area volume to determine the approximate volume of concentrated aqueous ammonia required to generate 1000 ppm in the test area. Measure this volume from the supply of concentrated aqueous ammonia and place it into a closed plastic container. Place the container, several high range ammonia detector tubes, and the pump in the clean test pan and locate it near the test area entry door so that the suited individual has easy access to these supplies.
 - b. In a non-contaminated atmosphere, open a pre-sealed ammonia indicator strip and fasten one end of the strip to the inside of the suit face shield lens where it can be seen by the wearer. Moisten the indicator strip with distilled water. Care shall be taken not to contaminate the detector part of the indicator paper by touching it. A small piece of masking tape or equivalent should be used to attach the indicator strip to the interior of the suit face shield. If problems are encountered with this method of attachment, the indicator strip can be attached to the outside of the respirator face piece being used during the test.
 - c. Don the respiratory protective device normally used with the suit, and then don the TECP suit to be tested. Check to be sure all openings which are intended to be sealed (zippers, gloves, etc.) are completely sealed. Do not, however, plug off any venting valves.
 - d. Step into the enclosed test room such as a closet, bathroom, or test booth, equipped with an exhaust fan. No air should be exhausted from the chamber during the test because this will dilute the ammonia challenge concentrations.
 - e. Open the container with the pre-measured volume of concentrated aqueous ammonia within the enclosed test room, and pour the liquid into the empty plastic test pan. Wait two minutes to allow for adequate volatilization of the concentrated aqueous ammonia. A small mixing fan can be used near the evaporation pan to increase the evaporation rate of the ammonia solution.
 - f. After two minutes a determination of the ammonia concentration within the chamber should be made using the high range colorimetric detector tube. A concentration of 1000 ppm ammonia or greater shall be generated before the exercises are started.
 - g. To test the integrity of the suit the following four minute exercise protocol should be followed:
 - i. Raising the arms above the head with at least 15 raising motions completed in one minute;
 - ii. Walking in place for one minute with at least 15 raising motions of each leg in a one-minute period;
 - iii. Touching the toes with at least 10 complete motions of the arms from above the head to touching of the toes in a one-minute period; and

- iv. Knee bends with at least 10 complete standing and squatting motions in a one-minute period.
 - h. If at any time during the test the colorimetric indicating paper should change colors, the test should be stopped and paragraph j. and l. below initiated. (See paragraph 4. b.)
 - i. After completion of the test exercise, the test area concentration should be measured again using the high range colorimetric detector tube.
 - j. Exit the test area.
 - k. The opening created by the suit zipper or other appropriate suit penetration should be used to determine the ammonia concentration in the suit with the low range length of stain detector tube or other ammonia monitor. The internal TECP suit air should be sampled far enough from the enclosed test area to prevent a false ammonia reading.
 - l. After completion of the measurement of the suit interior ammonia concentration, the test is concluded and the suit is doffed and the respirator removed.
 - m. The ventilating fan for the test room should be turned on and allowed to run for enough time to remove the ammonia gas. The fan shall be vented to the outside of the building.
 - n. Any detectable ammonia in the suit interior (five ppm ammonia (NH₃) or more for the length of stain detector tube) indicates that the suit has failed the test. When other ammonia detectors are used a lower level of detection is possible, and it should be specified as the pass or fail criteria.
 - o. By following this test method, an intrusion coefficient of approximately 200 or more can be measured with the suit in a completely operational condition.
7. Retest procedures.
- a. If the suit fails this test, check for leaks by following the pressure test in section A above.
 - b. Retest the TECP suit as outlined in the test procedure 6. above.
8. Report.
- a. Each gas tight, totally-encapsulating chemical protective suit tested by this practice shall have the following information recorded.
 - i. Unique identification number, identifying brand name, date of purchase, material of construction, and unique suit features; e.g., special breathing apparatus.
 - ii. General description of test room used for test.
 - iii. Brand name and purchase date of ammonia detector strips and color change data.
 - iv. Brand name, sampling range, and expiration date of the length of stain ammonia detector tubes. The brand name and model of the sampling pump should also be recorded. If another type of ammonia detector is used, it should be identified along with its minimum detection limit for ammonia.
 - v. Actual test results shall list the two test area concentrations, their average, the interior suit

concentration, and the calculated intrusion coefficient. Retest data shall be recorded as an additional test.

- b. The evaluation of the data shall be specified as "suit passed" or "suit failed", and the date of the test. Any detectable ammonia (five ppm or greater for the length of stain detector tube) in the suit interior indicates the suit has failed this test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass fail criteria.

Caution: Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to ensure that the inside and outside of the suit is completely dry before it is put into storage.
[Eff. **NOV 24 1988**] (Auth: HRS §396-4) (Imp: HRS §396-4)

Appendix B

GENERAL DESCRIPTION AND DISCUSSION OF THE LEVELS OF PROTECTION AND PROTECTIVE GEAR

This appendix sets forth information about personal protective equipment (PPE) protection levels which may be used to assist employers in complying with the PPE requirements of this chapter.

PPE must be selected which will protect employees from the specified hazards which they are likely to encounter during their work on-site.

Selection of the appropriate PPE is a complex process which must take into consideration a variety of factors. Key factors involved in this process are identification of the hazards, or suspected hazards; their routes of potential hazard to employees (inhalation, skin absorption, ingestion, and eye or skin contact); and the performance of the PPE materials (and seams) in providing a barrier to these hazards. The amount of protection provided by PPE is material-hazard specific. That is, protective equipment materials will protect well against some hazardous substances and poorly, or not at all, against others. In many instances, protective equipment materials cannot be found which will provide continuous protection from the particular hazardous substance. In these cases, the breakthrough time of the protective material should exceed the work durations, or the exposure after breakthrough must not pose a hazardous level.

Other factors in this selection process to be considered are matching the PPE to the employee's work requirements and task-specific conditions. The durability of PPE materials, such as tear strength and seam strength, must be considered in relation to the employee's tasks. The effects of PPE in relation to heat stress and task duration are a factor in selecting and using PPE. In some cases, layers of PPE may be necessary to provide sufficient protection or to protect expensive PPE inner garments, suits, or equipment.

The more that is known about the hazards at the site, the easier the job of PPE selection becomes. As more information about the hazards and conditions at the site becomes available, the site supervisor can make decisions to up-grade or down-grade the level of PPE protection to match the tasks at hand.

The following are guidelines which an employer can use to begin the selection of the appropriate PPE. As noted above, the site information may suggest the use of combinations of PPE selected from the different protection levels (i.e., A, B, C, or D) as being more suitable to the hazards of the work. It should be cautioned that the listing below does not fully address the performance of the specific PPE material in relation to the specific hazards at the job site, and that PPE selection, evaluation, and re-selection is an ongoing process until sufficient information about the hazards and PPE performance is obtained.

Part A. Personal protective equipment is divided into four categories based on the degree of protection afforded. (See Part B of this appendix for further explanation of Levels A, B, C, and D hazards.)

- I. Level A. To be selected when the greatest level of skin, respirator, and eye protection is required. The following constitute Level A equipment, which shall be used as appropriate.
 1. Pressure-demand, full facepiece self-contained breathing apparatus (SCBA), or pressure-demand supplied-air respirator with escape SCBA, approved by the National Institute for Occupational Safety and Health (NIOSH).
 2. Totally-encapsulating chemical-protective suit.
 3. Coveralls.*
 4. Long underwear.*
 5. Gloves, outer, chemical-resistant.
 6. Gloves, inner, chemical-resistant.
 7. Boots, chemical-resistant, steel toe and shank.
 8. Hard hat (under suit).*
 9. Disposable protective suit, gloves and boots (depending on suit construction, may be worn over totally-encapsulating suit).
 10. Two-way radios (worn inside encapsulating suit).

*Optional, as applicable.
- II. Level B. The highest level of respiratory protection is necessary, but a lesser level of skin protection is needed.

The following constitute Level B equipment; it shall be used as appropriate.

 1. Pressure-demand, full facepiece self-contained breathing apparatus (SCBA), or pressure-demand supplied-air respirator with escape SCBA (NIOSH approved).
 2. Hooded chemical-resistant clothing (overalls and long-sleeved jacket; coveralls; one or two-piece chemical-splash suit; disposable chemical-resistant overalls).
 3. Coveralls.*
 4. Gloves, outer, chemical-resistant.
 5. Gloves, inner, chemical-resistant.
 6. Boots, outer, chemical-resistant steel toe and shank.
 7. Boot-covers, outer, chemical-resistant (disposable).*
 8. Hard hat.
 9. Two-way radios (worn inside encapsulating suit).
 10. Face shield.*

*Optional, as applicable.
- III. Level C. The concentration(s) and type(s) of airborne substance(s) is known and the criteria for using air-purifying respirators are met.

The following constitute Level C equipment; it shall be used as appropriate.

1. Full-face or half-mask, air-purifying respirators (NIOSH approved).
2. Hooded chemical-resistant clothing (overalls; two-piece chemical-splash suit; disposable chemical-resistant overalls).
3. Coveralls.*
4. Gloves, outer, chemical-resistant.
5. Gloves, inner, chemical-resistant.
6. Boots (outer), chemical-resistant steel toe and shank.*
7. Boot-covers, outer, chemical-resistant (disposable).*
8. Hard hat.
9. Escape mask.*
10. Two-way radios (worn under outside protective clothing).
11. Face shield.*

*Optional, as applicable.

- IV. Level D. A work uniform affording minimal protection, used for nuisance contamination only.

The following constitute Level D equipment; it shall be used as appropriate:

1. Coveralls.
2. Gloves.*
3. Boots/shoes, chemical-resistant steel toe and shank.
4. Boots, outer, chemical-resistant (disposable).*
5. Safety glasses or chemical splash goggles.*
6. Hard hat.
7. Escape mask.*
8. Face shield.*

*Optional, as applicable.

Part B. The types of hazards for which levels A, B, C, and D protection are appropriate and are described in this part.

- I. Level A protection shall be used when:
 - A. The hazardous substance has been identified and requires the highest level of protection for skin, eyes, and the respiratory system based on either the measured (or potential for) high concentration of atmospheric vapors, gases, or particulates; or the site operations and work functions involve a high potential for splash, immersion, or exposure to unexpected vapors, gases, or particulates of materials that are harmful to skin or capable of being absorbed through the intact skin;
 - B. Substances with a high degree of hazard to the skin are known or suspected to be present, and skin contact is possible; or
 - C. Operations must be conducted in confined, poorly ventilated areas, and the absence of conditions requiring Level A have not yet been determined.
- II. Level B protection shall be used when:
 - A. The type and atmospheric concentration of substances have been identified and require a high level of respiratory protection, but less skin protection;

Note: This involves atmospheres with IDLH concentrations of specific substances that do not represent a severe skin hazard; or that do not meet the criteria for use of air-purifying respirators.

- B. The atmosphere contains less than 19.5 per cent oxygen; or
 - C. The presence of incompletely identified vapors or gases is indicated by a direct-reading organic vapor detection instrument, but vapors and gases are not suspected of containing high levels of chemicals harmful to skin or capable of being absorbed through the intact skin.
- III. Level C protection shall be used when:
- A. The atmospheric contaminants, liquid splashes, or other direct contact will not adversely affect or be absorbed through any exposed skin;
 - B. The types of air contaminants have been identified, concentrations measured, and an air-purifying respirator is available that can remove the contaminants; and
 - C. All criteria for the use of air-purifying respirators are met.
- IV. Level D protection shall be used when:
- A. The atmosphere contains no known hazard; and
 - B. Work functions preclude splashes, immersion, or the potential for unexpected inhalation of or contact with hazardous levels of any chemicals.

Note: As stated before, combinations of PPE other than those described for Levels A, B, C, and D protection may be more appropriate and shall be used to provide the proper level of protection.

[Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

Appendix C COMPLIANCE GUIDELINES

- A. Occupational Safety and Health Program. Each hazardous waste site clean-up effort will require an occupational safety and health program headed by the site coordinator or the employer's representative. The program will be designed for the protection of employees at the site. The purpose of the program will need to be developed before work begins on the site and implemented as work proceeds. The program is to facilitate coordination and communication among personnel responsible for the various activities which will take place at the site. It will provide the overall means for planning and implementing the needed safety and health training and job orientation of employees who will be working at the site. The program will provide the means for identifying and controlling worksite hazards and the means for monitoring program effectiveness. The program will need to cover the responsibilities and authority of the site coordinator or the employer's manager on the site for the safety and health of employees at the site, and the relationships with contractors or support services as to what each employer's safety and health responsibilities are for their employees on the site. Each contractor on the site needs to have their own safety and health program so structured that it will smoothly interface with the program of the site coordinator.

Also those employers involved with treating, storing, or disposal of hazardous waste as covered in section 12-99-17 must have implemented a safety and health plan for their employees. This program is to include the hazard communication program required in section 12-99-17(a) and the training required in section 12-99-17(e) as parts of the employers comprehensive overall safety and health program. This program is to be in writing.

Each site or workplace safety and health program will need to include the following: policy statements of the line of authority and accountability for implementing the program, the objectives of the program, and the role of the site safety and health supervisor or manager and staff; means or methods for the development of procedures for identifying and controlling workplace hazards at the site; means or methods for the development and communication to employees of the various plans, work rules, standard operating procedures, and practices that pertain to individual employees and supervisors; means for the training of supervisors and employees to develop the needed skills and knowledge to perform their work in a safe and healthful manner; means to anticipate and prepare for emergency situations; and means for obtaining information feedback to aid in evaluating the program and for improving the effectiveness of the program. The management and employees should be trying continually to improve the effectiveness of the program thereby enhancing the protection being afforded those working on the site.

Accidents on the site or workplace should be investigated to provide information on how such occurrences can be avoided in the future. When injuries or illnesses occur on the site or workplace, they will need to be investigated to determine what needs to be done to prevent this incident from occurring again. Such information will need to be used as feedback on the effectiveness of the program and the information turned into positive steps to prevent any reoccurrence. Receipt of employee suggestions or complaints relating to safety and health issues involved with site or workplace activities is also a feedback mechanism that can be used effectively to improve the program and may serve in part as an evaluative tool(s).

B. Training. The employer is encouraged to utilize those training programs that have been recognized by the National Institute of Environmental Health Sciences through its training grants program. These training and educational programs are being developed for employees who work directly with hazardous substances. For further information about these programs contact: National Institute of Environmental Health Sciences, P. O. Box 12233, Research Triangle Park, NC 27709.

The training programs for employees subject to the requirements of section 12-99-7 are expected to address: the safety and health hazards employees should expect to find on sites; what control measures or techniques are effective for those hazards; what monitoring procedures are effective in characterizing exposure levels; what makes an effective employer's safety and health program; what a site safety and health plan should include; and employee's responsibilities under DOSH and other regulations. Supervisors will need training in their responsibilities under the safety and health program and its subject areas such as the spill containment program, the PPE program, the medical surveillance program, the emergency response plan, and other areas.

Training programs for emergency service organizations are available from the U. S. National Fire Academy, Emmitsburg, MD and the various state fire training schools. The International Society of Fire Service Instructors, Ashland, MA is another resource.

The training programs for employees covered by the requirements of section 12-99-14(c) are expected to address: the need for and use of PPE including respirators; the decontamination procedures to be used; preplanning

activities for hazardous substance incidents including the emergency response plan; company standard operating procedures for hazardous substance emergency responses; the use of the incident command system and other subjects. Hands-on training should be stressed whenever possible. Critiques done after an incident which include any evaluation of what worked and what did not and how can we do better the next time may be counted as training time.

For hazardous materials teams, the training will need to address the care, use, and testing of chemical protective clothing including totally encapsulating suits, the medical surveillance program, the standard operating procedures for the use of plugging and patching equipment, and other subject areas.

Officers and leaders who may be expected to be in charge at an incident will need to be fully knowledgeable of their company's incident command system. They will need to know where and how to obtain additional assistance and be familiar with the local district's emergency response plan.

Technical, medical, or environmental experts that work with hazardous materials in their regular jobs, who may be sent to the incident scene by the shipper, manufacturer, or governmental agency to advise and assist the person in charge of the incident, need not have monthly training sessions; however, they will be required to have the 24 hours of training on an annual basis. Their training must include the care and use of PPE including respirators; knowledge of the incident command system; and those areas needed to keep them current in their respective field as it relates to safety and health involving specific hazardous substances.

Those employees who work for public works departments or special equipment operators who operate bulldozers, sand trucks, backhoes, etc., who may be called to the incident scene to provide emergency support assistance, will need at least a safety and health briefing before entering the area of potential or actual exposure. These specially skilled persons, who have not been a part of the emergency plan and do not meet the required training hours, must be made aware of the hazards they face and be provided all necessary protective clothing and equipment required for their tasks. If respirators are to be worn, the specially skilled person shall be trained in accordance with section 12-64-6 before proceeding into the hazardous area to do their assigned job.

- C. Decontamination. Decontamination procedures shall be tailored to the specific hazards of the site and will vary in complexity and number of steps, depending on the level of hazard and the employee's exposure to the hazard. Decontamination procedures and PPE decontamination methods will vary depending upon the specific substance, since one procedure or method will not work for all substances. Evaluation of decontamination methods and procedures shall be performed, as necessary, to ensure that employees are not exposed to hazards by re-using PPE. References in appendix D may be used for guidance in establishing an effective decontamination program.
- D. Emergency response plans. States, along with designated districts within the states, will be developing or have developed emergency response plans. These state and district plans are to be utilized in the emergency response plans called for in this chapter. Each employer needs to ensure that this emergency response plan is compatible with the local plan. In addition, the Chemical Manufacturers' Association (CMA) is another helpful resource in formulating an effective emergency response plan. Also the current Emergency Response

Guidebook from the U. S. Department of Transportation, CMA's CHEMTREC, and the Fire Service Emergency Management Handbook should be used as resources. [Eff. NOV 24 1988] (Auth: HRS S396-4) (Imp: HRS S396-4)

Appendix D REFERENCES

The following references may be consulted for further information at the DOSH library:

1. OSHA Instruction DFO CPL 2.70 - January 29, 1986, Special Emphasis Program: Hazardous Waste Sites.
2. OSHA Instruction DFO CPL 2-2.37A - January 29, 1986, Technical Assistance and Guidelines for Superfund and Other Hazardous Waste Site Activities.
3. OSHA Instruction DTS CPL 2.74 - January 29, 1986, Hazardous Waste Activity Form, OSHA 175.
4. Hazardous Waste Inspections Reference Manual, U. S. Department of Labor, Occupational Safety and Health Administration, 1986.
5. Memorandum of Understanding Among the National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration, the United States Coast Guard, and the United States Environmental Protection Agency, Guidance for Worker Protection During Hazardous Waste Site Investigations and Clean-up and Hazardous Substance Emergencies. December 18, 1980.
6. National Priorities List, 1st Edition, October 1984; U. S. Environmental Protection Agency, Revised periodically.
7. The Decontamination of Response Personnel, Field Standard Operating Procedures (F.S.O.P.) 7; U. S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, December 1984.
8. Preparation of a Site Safety Plan, Field Standard Operating Procedures (F.S.O.P.) 9; U. S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, April 1985.
9. Standard Operating Safety Guidelines; U. S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, Environmental Response Team; November 1984.
10. Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), U. S. Coast Guard (USCG), and Environmental Protection Agency (EPA); October 1985.
11. Protecting Health and Safety at Hazardous Waste Sites: An Overview, U. S. Environmental Protection Agency, EPA/625/9-85/006; September 1985.
12. Hazardous Waste Sites and Hazardous Substance Emergencies, NIOSH Worker Bulletin, U. S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; December 1982.

13. Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide; U. S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; October 1984.
14. Fire Service Emergency Management Handbook, International Association of Fire Chiefs Foundation, Sterling, VA 22170, January 1985.
15. Emergency Response Guidebook, U. S. Department of Transportation, Washington, DC, 1983.
16. Report to the Congress on Hazardous Materials Training, Planning and Preparedness, Federal Emergency Management Agency, Washington, DC, July 1986.
17. Fire Command, Alan V. Brunacini, National Fire Protection, Quincy, MA 02269, 1985.
18. Incident Command System, Fire Protection Publications, Oklahoma State University, Stillwater, OK 74078, 1983.
19. Site Emergency Response Planning, Chemical Manufacturers Association, Washington, DC 20037, 1986.
[Eff. NOV 24 1988] (Auth: HRS §396-4) (Imp: HRS §396-4)

Division of Occupational Safety and Health
Department of Labor and Industrial Relations

Hawaii State Emergency Response Commission
Technical Subcommittee

The Division of Occupational Safety and Health (DOSH) administers and enforces the provisions of the Hawaii Occupational Safety and Health Law (Law), chapter 396, HRS, applicable to public and private sectors.

Background: The Law has as its source the Industrial Safety Law, chapter 96, RLH 1955, and the federal Occupational Safety and Health Act of 1970 (OSHAct), Public Law 91-596, which provide for the adoption of standards to assure so far as possible every working man and woman in the State safe and healthful working conditions.

Jurisdiction: The DOSH program has jurisdiction over all workers in Hawaii, except those in maritime employment and federal employees, and has right of entry with penalty for advance warning.

Program status: The Occupational Safety and Health Administration (OSHA) adopted interim final standards for hazardous waste operations and emergency response as mandated by section 126(e) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 and upon agreement with the U.S. Environmental Protection Agency, U.S. Coast Guard, and National Institute for Occupational Safety and Health, that OSHA has the lead in providing for the safety and health of workers at hazardous waste sites. The Department of Labor and Industrial Relations adopted identical standards applicable in Hawaii with DOSH enforcement. These standards are at chapter 99 of the Hawaii Occupational Safety and Health Standards (cited as section 12-99) and will be effective in November, 1988.

DOSH's role in emergency response: In addition to enforcement activities that should not unnecessarily hinder remedial actions while at the same time ensure that worker safety and health is not compromised, DOSH provides technical assistance as needed; such as plan coordination and implementation, air monitoring, and analytical assistance. DOSH has computer access to all OSHA and NIOSH data on substances.

Chapter 396 - H.R.S.

Occupational Safety and Health Law

[amended in 1987]

| | <u>Page</u> |
|--|-------------|
| Section 1. Short Title | 1 |
| Section 2. Findings and Purpose | 1 |
| Section 3. Definitions | 1 |
| Section 4. Powers and Duties of Department | 2 |
| Section 5. Repealed | |
| Section 5.5. Repealed | |
| Section 6. Employer Responsibility | 6 |
| Section 7. Toxic Materials | 6 |
| Section 8. Employee Responsibility and Rights | 7 |
| Section 9. Explosives | 8 |
| Section 10. Violations and Penalties | 9 |
| Section 11. Review | 11 |
| Section 12. Judicial Review | 12 |
| Section 13. Trade Secrets | 12 |
| Section 14. Evidence | 12 |
| Section 15. Exception to Liability | 12 |
| Section 16. Exception for Federal Jurisdiction | 13 |

EFF. April 12, 1980

CHAPTER 396

OCCUPATIONAL SAFETY AND HEALTH LAW

SECTION 1. Short Title. This chapter shall be known as the Hawaii Occupational Safety and Health Law.

SECTION 2. Findings and purpose. Through years of research and study, Congress has found that the number of industrial accidents that take place in the United States can be reduced if certain minimum standards are established and enforced.

Congress has also found that personal injuries and illnesses arising out of work situations imposed a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments. The overall congressional findings would definitely be applicable to Hawaii. There is a need to assure so far as possible, every working man and woman in the State safe and healthful working conditions. This legislation is also designed to permit and encourage employer and employee efforts to reduce injury and disease arising out of employment, and to stimulate them to institute new programs and to perfect existing programs for providing safe and healthful working environments.

SECTION 3. Definitions. When used in this chapter:

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations or his designee.

"Appeals board" means the labor and industrial relations appeals board.

"Employer" means:

- (1) The State and every state agency;
- (2) Each county and all public and quasi-public corporations and public agencies therein;
- (3) Every person which has any natural person in service;
- (4) The legal representative of any deceased employer;
- (5) Every person having direction, management, control, or custody of any employment, place of employment, or any employee.

"Employee" means every natural person who is required or directed or permitted or suffered by any employer to engage in any employment, or to go to work or be at any time in any place of employment.

"Employee of the State" includes officers and employees of the department of labor and industrial relations, and persons acting in behalf of the department in an official capacity, whether temporarily or with or without compensation.

"Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on.

"Employment" includes the carrying on of any trade, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged to work for hire except domestic service in or about a private home.

"Safe" and "safety" as applied to an employment or place of employment mean such freedom from danger to employees as the nature of the employment reasonably permits.

"Safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.

"Manufacturer" means, for the purpose of the section concerning explosives, any person who is engaged in the manufacture of explosives or who otherwise produces any explosive.

"Occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"Dealer" means, for the purpose of the section concerning explosives, any person, not a manufacturer, engaged in the business of buying and selling explosives.

SECTION 4. Powers and duties of department. (a) Administration. The department shall be responsible for administering occupational safety and health standards throughout the State.

- (1) The department shall prescribe and enforce rules and regulations under chapter 91 as may be necessary for carrying out the purposes and provisions of this chapter. The department shall make such reports to the Secretary of Labor in such form and containing such information as the Secretary shall from time to time require pursuant to federal law.
- (2) The department shall adopt, amend, or repeal occupational safety and health standards in the manner prescribed by rules and regulations adopted hereunder. Emergency temporary standards may be promulgated without conforming to chapter 91 and without hearings to take immediate effect upon publication of a notice of such emergency temporary standard in a newspaper of general circulation in the State of Hawaii or upon such other date as may be specified in the notice. An emergency temporary standard may be adopted if the director determines:
 - (A) That employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and
 - (B) That such emergency standard is necessary to protect employees from such danger.

Said emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures set forth in chapter 91, but in any case shall be effective no longer than six months;

- (3) Variances from occupational safety and health standards promulgated under this chapter may be granted upon application of an employer or employers. Application for variances must correspond to procedures set forth in the rules and regulations of this chapter. The director may issue an order for variance if he determines that the proponent of the variance has demonstrated that the conditions, practices, means, methods, operations or processes used or proposed to be used by the employer will provide employment and places of employment to his employees

which are as safe and healthful as those which would prevail if he complied with the standard. The employer shall also notify his employees upon each application for variance and said employees shall be given an opportunity to request and participate in hearings or other proceedings relating to applications for variance. No inference of admission of violation of a standard shall be made against the employer by reason of his application for variance;

- (4) The department may, upon the application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order. Any person affected by an order may petition the department for an extension of time, which may be granted if the department finds it necessary.
- (b) Inspection and investigation.
 - (1) Authorized representatives of the director shall have the right to enter without delay any place of employment during regular working hours and at other reasonable times;
 - (2) The department shall inspect places of employment and machines, devices, apparatus, and equipment for the purpose of insuring adequate protection to the life, safety and health of workers;
 - (3) The department shall inspect construction activities for the purpose of protecting the health and safety of employees and the general public. A construction activity includes any activity related to the erection, construction, alteration, demolition or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and any other construction project or facility;
 - (4) The department may investigate the cause of all industrial injuries resulting in disability or death which occur in any employment, or place of employment, and may make reasonable orders and recommendations with respect to the cause of the injuries;
 - (5) The department shall have the right to question privately any employer, owner, operator, agent or employee in investigation, enforcement and inspection activities;
 - (6) There shall be a prohibition against advance notice of inspection except that written exception may be expressly authorized by the director in his discretion and pursuant to the rules and regulations promulgated under this chapter. Those inspections requiring advance notice for preparation or for other purposes of inspection as further defined in the rules and regulations promulgated under this chapter shall not be included in the prohibition against advance notice.
 - (7) An employee of the State acting within the scope of his office, employment, or authority under this chapter shall not be liable in or made a party to any civil action growing out of the administration or enforcement of this chapter.
- (c) Education and training.
 - (1) The department may disseminate through exhibitions, moving pictures, lectures, pamphlets, and any other method of publicity, information to employers, employees and the general public regarding the causes and prevention of industrial accidents and injuries.

- (2) Where appropriate, the department shall undertake programs in training and consultation with employers and employees as a means of encouraging voluntary compliance.
- (d) Enforcement.
 - (1) Whenever right of entry or inspection is refused to an authorized representative of the director, the department may apply to the circuit court of the circuit where such place of employment exists for a search warrant providing on its face that the willful interference with its lawful execution may be punished as a contempt of court.
 - (2) Whenever the department finds that any employment or place of employment or the operation of any machine, device, apparatus, or equipment is not safe, or that any practice, means, method, operation, or process employed or used in connection therewith is unsafe or does not afford adequate protection to the life, safety and health of employees in the employment, the department shall make a citation or an order relative thereto which is necessary to render the employment or place of employment safe and protect the life and safety of employees therein and deliver the same to the employer. The department may in the citation or order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided and used as are reasonably required to render the employment or place of employment safe. The employer shall obey and observe all citations or safety orders and post said citation or order at or near the place where the violation, referred to in the citation or order, occurred.
 - (3) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means, method, operation, or process employed or used, is in an unsafe condition or is not properly guarded or dangerously placed, the use thereof may be prohibited by the department, and a citation or order to that effect shall be posted prominently in the working place. The citation or order shall be removed:
 - (A) When a determination has been made by the department that the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety devices are provided for; and
 - (B) By an authorized representative of the department.
 - (4) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means, method, operation, or process employed or used constitutes an imminent hazard to the life or safety of any person, the department may apply to the circuit court of the circuit in which such place of employment, machine, device, apparatus, or equipment is situated or such practice, means, method, operation, or process is employed for an injunction restraining the use or operation thereof until the use or operation is made safe. The application to the circuit court accompanied by an affidavit showing that the use or operation exists in violation of a standard, rule, regulation, citation or order of the department and

constitutes an imminent hazard to the life or safety of any employee, and accompanied by a copy of the standard, rule, regulation, citation or order applicable thereto, shall warrant, in the discretion of the court, the immediate granting of a temporary restraining order. If the department arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure or a representative of said employee may bring an action against the department in the circuit court of the circuit in which the imminent hazard is alleged to exist for a writ of mandamus to compel the department to seek such an order and for such further relief as may be appropriate. No bond shall be required from the department as a prerequisite to the granting of a restraining order.

- (5) The director and his authorized agents shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining or causing to be examined witnesses as are possessed by a court, and may take depositions and certify to official acts. The circuit court of any circuit upon application by the director shall have power to enforce by proper proceedings the attendance and testimony of any witness so subpoenaed. Subpoena and witness fees and mileage in such cases shall be the same as in criminal cases in the circuit courts. Necessary expenses of or in connection with any such hearings or investigations shall be payable from the funds appropriated for expenses of administration of the department.

No person shall be excused from attending or testifying or producing material, books, paper, correspondence, memoranda, and other records before the director or in obedience to subpoena on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty of forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary, or otherwise, except that such individuals so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

- (6) Where a condition or practice in a place of employment could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to: (A) immediately inform the employees and employers of such hazard by meeting, posted notice, or otherwise; (B) take steps to obtain immediate abatement of the hazard by the employer and where appropriate to initiate necessary legal proceedings to require such abatement.
- (7) The department may prosecute, defend and maintain actions in the name of the department for the enforcement of the provisions of this chapter, including the enforcement of any order issued by it, the appeal of any administrative or court decision, and other actions necessary to enforce this chapter.

SECTION 6 Employer responsibility: Safe place of employment; safety devices and safeguards. (a) Every employer shall furnish to each of his employees employment and a place of employment which are safe as well as free from recognized hazards. No employer shall require or direct or permit or suffer any employee to go or be in any employment or place of employment which is not free from recognized hazards that are causing or likely to cause death or serious physical harm to employees or which does not comply with occupational safety and health standards, rules, regulations, citations, or orders made pursuant to this chapter except for the specific purpose of abating said hazard.

(b) Every employer shall furnish and use safety devices, and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe.

(c) No employer shall construct or cause to be constructed any place of employment that is not safe, and no employer shall occupy or maintain any unsafe place of employment.

(d) Every employer shall make such reports as the Secretary of Labor may require pursuant to PL 91-596 Section 8(c).

(e) Each employer shall make, keep and preserve and make available to the department such records regarding his activities relating to this chapter as the department may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses.

The department shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on work related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(f) All employers shall be required to post prominently in the working place all posters and information provided by the department for posting as well as notices informing employees of their rights and obligations under this chapter.

SECTION 7. Toxic materials. (a) The department shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured as prescribed under the rules and regulations.

(b) All employers shall prominently post information regarding hazards in his workplace including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure, and where appropriate, medical examination at no cost to employees with the results of such medical examinations being furnished only to appropriate state officials, and if the employee so requests, to his own physician. Where possible, said information shall additionally be posted or labeled on or near said hazard. Where suitable protective equipment is available, all employers shall provide information concerning their availability and use to the affected employees including control or technological procedures with respect to such hazards including monitoring or measuring exposure.

(c) No employee shall be permitted regular exposure to any substance which may materially impair his health or functional capacity.

(d) All employers shall provide prompt information to employees when they have been or are being exposed to toxic materials and harmful physical agents in concentrations or at levels in excess of those prescribed in the applicable safety and health standards. This information may be fulfilled by:

- (1) Observation by employees of the monitoring or measuring of such materials or agents;
- (2) Employee access to the records of such monitoring or measuring after notice of exposure, and explanation of said monitoring or measuring procedures where necessary;
- (3) In addition to the above, information shall be provided to the employees of corrective action being taken.

SECTION 8. Employee responsibility and rights. (a) Employee compliance. Each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued under this chapter which are applicable to his own actions and conduct.

(b) Complaints to the department. Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(c) Opportunity for employees to participate in inspections. At the time and place of inspections under section 396-4(b)(2), (3), and (4), an opportunity shall be provided for employees and their representatives to bring possible violations to the attention of the authorized representative of the director conducting said inspection in order to aid inspections. This requirement may be fulfilled by allowing a representative of the employees and a representative of the employer to accompany the director's authorized representative during the physical inspection of the workplace, or in absence of the employees' representative, there shall be a consultation with a reasonable number of employees.

(d) Notice of nonaction to employees. The department shall notify the employees when the department decides not to take compliance action as a result of violations alleged by any employee or any representative of the employees. This notice shall state the decision not to take compliance action, the reasons therefor, and the procedures for informal review of such decision.

(e) Discharge or discrimination against employee for exercising rights prohibited.

(1) No person shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reasons of:

- (A) His failure or refusal to operate or handle any machine, device, apparatus, or equipment which is in any unsafe condition; or
- (B) His failure or refusal to engage in unsafe practices in violation of this chapter or of any standard, rule, regulation, citation or order issued under the authority of this chapter; or
- (C) His failure or refusal to operate or handle any machine, device, apparatus, or equipment in violation of this chapter or of any standard, rule, regulation, citation or order issued under the authority of this chapter; or

- (D) His filing a complaint, having instituted or causing to be instituted any proceeding under or related to this chapter, or his intent to testify in any such proceedings, or otherwise acting to exercise rights under this chapter for himself or others.
- (2) Upon discretion of the director or request, names of complainants may be withheld from the employer.
- (3) Within thirty days of the alleged act of discrimination, the employee shall file a complaint with the department setting forth the circumstances thereof.
- (4) The director shall investigate said complaint and if he finds discrimination in violation of this chapter, he shall order the employer to provide necessary relief to the employee. This relief may include rehiring, reinstatement to former job with back pay and restoration of seniority.
- (f) Except for those complainants alleging violations under subsection (e) above, names of all complainants and witnesses shall be withheld from the employer unless prior permission is given by the complainant or witness to release his name.

SECTION 9. Explosives. (a) Permits and certificates. No person shall manufacture or deal in explosives unless he has obtained a permit therefor and no person shall use explosives unless he has first obtained a certificate of fitness. A certificate of fitness shall only be issued to an individual and shall set forth his competency and provide for his positive identification. Certificates of fitness may be limited as to types or kinds of explosives or to the use of explosives for specific purposes.

(b) Manufacturer's reports; dealer's record and report. Manufacturers shall file a report with the director at the end of each calendar month giving in the report the names of all purchasers and the amount and description of all explosives sold or delivered and such other information as the director may require.

(c) Storage. No person shall have, store, keep, or possess explosives, or suffer them to remain in any building or upon any premises, unless the same are in a magazine complying with rules and regulations of the department governing the classes, type of construction, and capacity of magazines, the quantities and types or kinds of explosives which may be kept in the several classes of magazines, the location of permanent magazines, the safety precautions to be taken therein, and the places where movable magazines shall be kept and the duration of such keeping.

(d) Transportation. No person shall transport or cause any explosive to be transported except in compliance with rules and regulations of the department and without first having secured a permit from the director.

(e) Sale of; permits for purchase. No dealer shall sell or deliver explosives to any person who does not hold a certificate of fitness and a permit for the purchase thereof secured from the director or his authorized subordinates; and no dealer shall sell or deliver explosives except for the types or kinds and in the quantities as prescribed by, and in compliance with all the terms and conditions contained in the permit.

(f) Unlawful use or possession. It shall be unlawful for any person to use any explosives unless he has a certificate of fitness or is using the explosives under the immediate supervision and direction of a holder of the certificate. It shall be unlawful for any person, other than a manufacturer or

dealer, to have any explosives in his possession unless he has a permit therefor, or unless he has the explosives in his possession under the direction and for the purposes of a holder of the certificate.

Any person who violates this section shall be subject to arrest and upon conviction, shall be fined not more than \$1,000 or imprisoned not more than one year, or both, provided that an employer or an employee acting within the scope of employment shall not be deemed to be in violation of this section.

(g) Revocation of permits and certificates. Any permit or certificate of fitness issued under this section may be revoked or suspended by the director on any ground specified in the rules and regulations promulgated under this chapter, or for any violation of this section.

(h) National emergency. Any permit or certificate issued under this section may, during any time of national emergency or crisis, be suspended or canceled by the director, and all explosives in the possession or control of any person may be purchased or seized and held in possession by or on the order of the governor until such time as the national emergency or crisis has passed, or until such time as the owner thereof and the government of the United States or the government of the State may agree upon some other disposition of the explosives. A national emergency or crisis shall be deemed to exist when such has been so determined under section 134-34.

(i) Exceptions. This section shall not apply to the armed forces of the United States or employees of the United States who are authorized by the United States to handle explosives.

SECTION 10. Violations and penalties. (a) Any employer who violates this chapter, or any occupational safety and health standard promulgated hereunder or any rule or regulation issued under the authority of this chapter, or who violates or fails to comply with any citation, notice or order made under or by virtue of this chapter or under or by virtue of any rule or regulation of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguards, notice or warning required by this chapter or any rule or regulation of the department may be assessed a civil penalty as specified in this chapter.

(b) Any employer who has received an order or citation for a serious violation of any standard, rule, or regulation promulgated pursuant to this chapter, shall be assessed a civil penalty of not more than \$1,000 for each such violation.

(c) Any employer who has received an order or citation for a violation of any standard, rule or regulation promulgated pursuant to this chapter, and such violation is specifically determined not to be of a serious nature may be assessed a civil penalty of up to \$1,000 for each such violation.

(d) Each day a violation continues shall constitute a separate violation except that during an abatement period only, no additional penalty shall be levied against the employer.

(e) Any employer who violates any of the posting requirements, as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to \$1,000 for each violation.

(f) Any employer who willfully or repeatedly violates this chapter, any standard, rule, regulation, citation or order issued under the authority of this chapter, shall be assessed a civil penalty of not more than \$10,000 for each violation.

(g) Any employer who willfully or repeatedly violates any standard, rule, regulation, citation or order issued under authority of this chapter and that violation caused death to an employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year or by both. Failure to correct a violation for which an order or citation of arrest has been issued shall be evidence of willful conduct.

(h) Any employer who has received an order for violation under section 396-8(e) may be assessed a civil penalty of not more than \$1,000 for each violation.

(i) Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the director or his designees shall, upon conviction be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

(j) The director shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For the purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Civil penalties owed under this chapter shall be paid to the department and may be recovered in a civil action in the name of the department and the State of Hawaii and brought in the district or circuit court for the circuit where the violation is alleged to have occurred or where the employer has its principal office.

(m) Notice of violation. When an alleged violation of any provision of this chapter or any standard, rule, regulation, or order made thereunder has occurred, the department shall promptly issue a written citation, order or notice thereof to the employer who shall be required to post said citation, order or notice. Said citation, order or notice thereof shall include the abatement requirements and within a reasonable time the employer shall be advised of the proposed sanctions, including proposed penalties. Whenever reference is made to posting of any citation, order, notice, petition, decision or any other type of document issued by the director under this chapter and rules and regulations made pursuant to this chapter, the employer shall post copies of the said document at the work site involved or affected and at the place or places where notices to the employees involved are normally posted. Where posting starts the time for notice of action to or for appeal by employees under this chapter and rules and regulations made under this chapter, the document shall be posted by the employer upon receipt or on the next business day following receipt.

(n) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(o) Criminal offenses committed against any employee of the State acting within the scope of the employee's office, or employment, or authority under this chapter shall be subject to the penalties set forth in the Hawaii Penal Code provided that:

- (1) Ten years shall be added to the maximum term of imprisonment (unless life imprisonment is imposed) and \$10,000 shall be added to the maximum fine imposed for conviction under a Class A felony;
- (2) Five years shall be added to the maximum term of imprisonment and \$5,000 shall be added to the maximum fine imposed for conviction under a Class B felony;
- (3) Three years shall be added to the maximum term of imprisonment and \$1,000 shall be added to the maximum fine for conviction under a Class C felony;
- (4) One year shall be added to the maximum term of imprisonment and \$500 shall be added to the maximum fine for conviction for a misdemeanor;
- (5) The maximum term of imprisonment and maximum fines prescribed for misdemeanors under the Hawaii Penal Code shall apply to convictions for a petty misdemeanor.

SECTION 11. Review. Any citation, proposed penalty or order of the director shall be final and conclusive against the employer unless the employer files with the director a written notice of contest of the citation, the abatement period stated in the citation, the proposed penalty, or order within twenty days after receipt of such citation, proposed penalty or order.

The employer may petition the director for modification of the abatement requirements in a citation. The employer shall file said petition no later than the close of the next business day following the date on which abatement is required or under exceptional circumstances and for good cause shown at a later date. The petition for modification may be filed after the twenty day period for contesting the citation has expired where the initial abatement period stated in the citation expires after the twenty day period for filing a notice of contest has run.

The director shall issue an order either affirming or modifying the abatement requirement. The director may issue an order modifying the abatement requirement upon a showing by the employer of a good faith effort to comply with the abatement requirements of a citation and that abatement has not been completed because of factors beyond his reasonable control.

Any employee or representative of employees may file a written notice of contest of the initial abatement period stated in a citation or order with the director alleging that the period of time fixed for abatement is unreasonable, provided such notice is filed within twenty days after the citation or order has been posted. Any employee or representative of employees may also file a written notice of contest of any order granting modification of the abatement period. Such notice shall be filed within ten days of the posting of the order.

Any employee or representative of employees may file a notice of contest of an order of the director denying a complaint of discrimination filed by an employee pursuant to section 396-8(e), provided that in each case such notice is filed within twenty days after the receipt of such order by the employee.

Any employee or representative of employees may file a notice of contest of an order granting an employer's application for a variance under

section 396-4(a)(3), provided such notice is filed within twenty days after the posting of a final order or decision of the director.

The director shall advise the appeals board of a notice of contest upon receiving any such notice.

The appeals board shall afford an opportunity for a hearing on any notice of contest. Such hearings before the appeals board shall be de novo except where rules and regulations require a prior formal hearing at the department level, the proceedings of which are required to be transcribed, in which case review before the appeals board shall be confined to the record only.

The appeals board may affirm, modify or vacate the citation, the abatement requirement therein, the proposed penalty or order or continue the matter upon such terms and conditions as may be deemed necessary, or remand the case to the director with instructions for further proceedings or direct such other relief as may be appropriate.

The affected employees or representatives of affected employees shall be provided an opportunity to participate as parties to hearings under this section.

SECTION 12. Judicial review. Except where an order has already become final for failure to contest, the decision and order of the appeals board shall be final and conclusive unless the director or any party to the proceedings before the appeals board obtains a review thereof in the manner provided in chapter 91 by instituting proceedings in the circuit court of the circuit in which the place of employment, machine, device, apparatus, or equipment is situated or such practice, means, method, operation, or process is employed. The hearing on review shall be on the record and the department shall be deemed a party to any such proceedings. The court shall give precedence to such proceedings over all other civil cases.

SECTION 13. Trade Secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director concerned with carrying out this chapter or when relevant in any proceeding under this chapter. In such proceeding the director, the appeals board, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

SECTION 14. Evidence. No record or determination of any administrative proceeding under this chapter or any statement or report of any kind obtained, received, or prepared in connection with the administration or enforcement of this chapter shall be admitted or used whether as evidence, or as discovery, in any civil action growing out of any matter mentioned in the record, determination, statement or report other than an action for enforcement or review under this chapter.

SECTION 15. Exception to Liability. Any employee who is required by the regulations under this chapter to be trained and certified in first-aid, and consequently renders first-aid care as provided by this chapter, shall not be

liable for any civil damages resulting from his acts or omissions, except for such damages as may result from his gross negligence or wanton acts or omissions.

SECTION 16. Exception for Federal Jurisdiction. Nothing in this chapter shall apply to working conditions of employees with respect to which any federal agency exercises statutory authority to prescribe and enforce standards or regulations affecting occupational safety and health.

HAZARDOUS MATERIALS TRANSITING HONOLULU HARBORS
(January 1 - February 15, 1986)

| <u>HAZARD CLASS NUMBER</u> | <u>HAZARDOUS MATERIALS CLASSIFICATION</u> | <u>GROSS WEIGHT IN POUNDS</u> |
|----------------------------|--|-------------------------------|
| 1 | EXPLOSIVES | |
| | Class A | 1,000 |
| | Class B | 511 |
| | Class C | 15,162 |
| | Blasting Agent | 179,900 |
| 2 | GASES (Compressed, liquified or dissolved under pressure) | |
| | Flammable | 74,935 |
| | Nonflammable | 523,428 |
| 3 | FLAMMABLE LIQUIDS | 1,993,141 |
| 4 | FLAMMABLE SOLIDS/SUBSTANCES | 199,056 |
| 5 | OXIDIZING SUBSTANCES | 165,296 |
| 6 | POISONOUS AND INFECTIOUS SUBSTANCES | 170,388 |
| 7 | RADIOACTIVE | 265 |
| 8 | CORROSIVE | 762,764 |
| 9 | MISCELLANEOUS DANGEROUS SUBSTANCES | |
| | ORM - A | 22,429 |
| | ORM - B | 4,040 |
| | ORM - C | 1,153,412 |
| | ORM - E | 46,722 |

NRT-1

Hazardous Materials Emergency Planning Guide

March 1987



NATIONAL RESPONSE TEAM

(Replaces proposed Hazardous Materials Emergency Planning Guide dated November 1986)

2. Selecting and Organizing the Planning Team

2.1 Introduction

This chapter discusses the selection and organization of the team members who will coordinate hazardous materials planning. The guidance stresses that successful planning requires community involvement throughout the process. Enlisting the cooperation of all parties directly concerned with hazardous materials will improve planning, make the plan more likely to be used, and maximize the likelihood of an effective response at the time of an emergency. **Experience shows that plans are not used if they are prepared by only one person or one agency. Emergency response requires trust, coordination, and cooperation among responders who need to know who is responsible for what activities, and who is**

capable of performing what activities. This knowledge is gained only through personal interaction. Working together in developing and updating plans is a major opportunity for cooperative interaction among responders.

(As indicated in Section 1.4.1, Title III of SARA requires Governors to appoint a State emergency response commission that will designate emergency planning districts and appoint local emergency planning committees for each district. The State commission might follow the guidance in this chapter when appointing planning committees.)

2.2 The Planning Team

Hazardous materials planning should grow out of a process coordinated by a team. The team is the best vehicle for incorporating the expertise of a variety of sources into the planning process and for producing an accurate and complete document. The team approach also encourages a planning process that reflects the consensus of the entire community. Some individual communities and/or areas that include several communities have formed hazardous materials advisory councils (HMACs). HMACs, where they exist, are an excellent resource for the planning team.

2.2.1 Forming the Planning Team

In selecting the members of a team that will bear overall responsibility for hazardous materials planning, four considerations are most important:

- The members of the group must **have the ability, commitment, authority, and resources** to get the job done;
- The group must possess, or have ready access to, a **wide range of expertise** relating to the community, its industrial facilities and transportation systems, and the mechanics of

emergency response and response planning;

- The members of the group must **agree on their purpose and be able to work cooperatively** with one another; and
- The group must **be representative of all elements of the community** with a substantial interest in reducing the risks posed by hazardous materials.

A comprehensive list of potential team members is presented in Exhibit 2.

In those communities receiving FEMA funds, paid staff may already be in place for emergency operations planning and other emergency management tasks. This staff should be an obvious resource for hazardous materials planning. FEMA has two training courses for the person assigned as the planning team leader and for team members -- Introduction to Emergency Management, and Emergency Planning. Another course, Hazardous Materials Contingency Planning, is an inter-agency "train-the-trainer" course presented cooperatively by EPA, FEMA, and other NRT agencies. Course materials and the schedule of offerings are available through State emergency management agencies.

2.2.2 Respect for All Legitimate Interests

While many individuals have a common interest in reducing the risks posed by hazardous materials, their differing economic, political, and social perspectives may cause them to favor different means of promoting safety. For example, people who live near a facility with hazardous materials are likely to be greatly concerned about avoiding any threat to their lives, and are likely to be less intensely concerned about the costs of developing accident prevention and response measures

than some of the other groups involved. Others in the community are likely to be more sensitive to the costs involved, and may be anxious to avoid expenditures for unnecessarily elaborate prevention and response measures. Also, facility managers may be reluctant for proprietary reasons to disclose materials and processes beyond what is required by law.

There may also be differing views among the agencies and organizations with emergency response functions about the roles they should play in case of an incident. The local fire department, police department, emergency management agency, and public health agency are all likely to have some responsibilities in responding to an incident. However, each of these organizations might envision a very different set of responsibilities for their respective agencies for planning or for management on scene.

In organizing the community to address the problems associated with hazardous materials, it is important to bear in mind that **all affected parties have a legitimate interest in the choices among planning alternatives.** Therefore, strong efforts should be made to ensure that all groups with an interest in the planning process are included.

Some interest groups in the community have well-defined political identities and representation, but others may not. Government agencies, private industry, environmental groups, and trade unions at the facilities are all likely to have ready institutional access to an emergency planning process. Nearby residents, however, may lack an effective vehicle for institutional representation. Organizations that may be available to represent the residents' interests include neighborhood associations, church organizations, and *ad hoc* organizations formed especially to deal with the risks posed by the presence of specific hazardous materials in a neighborhood.

Exhibit 2

POTENTIAL MEMBERS OF AN EMERGENCY PLANNING TEAM

Part A: Experience shows that the following individuals, groups, and agencies should participate in order for a successful plan to be developed:

- *Mayor/city manager (or representative)
- *County executive (or representative)/board of supervisors
- *State elected officials (or representative)
- *Fire department (paid and volunteer)
- *Police department
- *Emergency management or civil defense agency
- *Environmental agency (e.g., air and/or water pollution control agency)
- *Health department
- *Hospitals, emergency medical service, veterinarians, medical community
- *Transportation agency (e.g., DOT, port authority, transit authority, bus company, truck or rail companies)
- *Industry (e.g., chemical and transportation)
Coast Guard/EPA representative (e.g., agency response program personnel)
Technical experts (e.g., chemist, engineer)
- *Community group representative
- *Public information representative (e.g., local radio, TV, press)

Part B: Other groups/agencies that can be included in the planning process, depending on the community's individual priorities:

- Agriculture agency
- Indian tribes within or adjacent to the affected jurisdiction
- Public works (e.g., waste disposal, water, sanitation, and roads)
- Planning department
- Other agencies (e.g., welfare, parks, and utilities)
- Municipal/county legal counsel
- Workers in local facilities
- Labor union representatives (e.g., chemical and transportation, industrial health units)
- Local business community
- Representatives from volunteer organizations (e.g., Red Cross)
- Public interest and citizens groups, environmental organizations, and representatives of affected neighborhoods
- Schools or school districts
- Key representatives from bordering cities and counties
- State representatives (Governor, legislator's office, State agencies)
- Federal agency representatives (e.g., FEMA, DOT/RSPA, ATSDR, OSHA)

*Required by Title III of SARA

2.2.3 Special Importance of Local Governments

For several reasons, local governments have a critical role to play in the development of emergency preparedness. First, local governments bear major responsibilities for protecting public health and safety; local police and fire departments, for example, often have the lead responsibility for the initial response to incidents involving hazardous materials. Second, one of the functions of local government is to mediate and resolve the sometimes competing ideas of different interest groups. Third, local governments have the resources to gather necessary planning data. Finally, local governments generally have the legislative authority to raise funds for equipment and personnel required for emergency response. Support from the executive and legislative branches is essential to successful planning. Appropriate government leaders must give adequate authority to those responsible for emergency planning.

2.2.4 Local Industry Involvement

Because fixed facility owners and operators are concerned about public health and safety in the event of an accidental release of a hazardous material, and because many facility employees have technical expertise that will be helpful to the planning team, the team should include one or more facility representatives. Title

III of SARA requires facility owners or operators to notify the emergency planning committee of a facility representative who will participate in the emergency planning process as a facility emergency coordinator. In planning districts that include several fixed facilities, one or more representative facility emergency coordinators could be active members of the planning team. The planning team could consult with the other facility emergency coordinators and/or assign them to task forces or committees (see Section 2.3.2). Title III of SARA also requires facilities to submit to the local emergency planning committee any information needed to develop the plan.

2.2.5 Size of Planning Team

For the planning team to function effectively, its size should be limited to a workable number. In communities with many interested parties, it will be necessary to select from among them carefully so as to ensure fair and comprehensive representation. Some individuals may feel left out of the planning process. This can be offset by providing these individuals access to the process through the various approaches noted in the following sections, such as membership on a task force or advisory council. In addition, all interested parties should have an opportunity for input during the review process.

2.3 Organizing the Planning Process

After the planning team members have been identified, a team leader must be chosen and procedures for managing the planning process must be established.

2.3.1 Selecting a Team Leader

A community initiating a hazardous materials emergency planning process may choose to appoint an individual to facilitate and lead the effort, or may appoint a planning team and have the group decide who

will lead the effort. Either approach can be used. It is essential to establish clear responsibility and authority for the project. The chief executive (or whoever initiates the process) should determine which course is better suited to local circumstances. (The emergency planning committee required by Title III of SARA is to select its own chairperson). Regardless of how the team leader is selected, it is his or her primary responsibility to over-

5

[CHAPTER 174C] STATE WATER CODE

PART I. ADMINISTRATIVE STRUCTURE

SECTION

- 174C-1 SHORT TITLE
- 174C-2 DECLARATION OF POLICY
- 174C-3 DEFINITIONS
- 174C-4 SCOPE
- 174C-5 GENERAL POWERS AND DUTIES
- 174C-6 DEPUTY TO THE CHAIRPERSON OF THE COMMISSION FOR WATER RESOURCE MANAGEMENT
- 174C-7 COMMISSION ON WATER RESOURCE MANAGEMENT
- 174C-8 ADOPTION OF RULES CONCERNING WATER RESOURCES BY THE COMMISSION
- 174C-9 PROCEEDINGS BEFORE THE COMMISSION CONCERNING WATER RESOURCES
- 174C-10 DISPUTE RESOLUTION
- 174C-11 HEARINGS OFFICERS
- 174C-12 JUDICIAL REVIEW OF RULES AND ORDERS OF THE COMMISSION CONCERNING THE WATER CODE
- 174C-13 CITIZEN COMPLAINTS
- 174C-14 ACQUISITION OF REAL PROPERTY
- 174C-15 PENALTIES AND COMMON LAW REMEDIES
- 174C-16 SEVERABILITY

PART II. REPORTS OF WATER USE

- 174C-26 FILING OF DECLARATION
- 174C-27 ISSUANCE OF CERTIFICATE

PART III. HAWAII WATER PLAN

- 174C-31 HAWAII WATER PLAN
- 174C-32 COORDINATION

PART IV. REGULATION OF WATER USE

- 174C-41 DESIGNATION OF WATER MANAGEMENT AREA
- 174C-42 NOTICE; PUBLIC HEARING REQUIRED
- 174C-43 INVESTIGATIONS REQUIRED
- 174C-44 GROUND WATER CRITERIA FOR DESIGNATION
- 174C-45 SURFACE WATER CRITERIA FOR DESIGNATION
- 174C-46 FINDINGS OF FACT; DECISION OF COMMISSION
- 174C-47 MODIFYING AND RESCINDING DESIGNATED AREAS
- 174C-48 PERMITS REQUIRED
- 174C-49 CONDITIONS FOR A PERMIT
- 174C-50 EXISTING USES
- 174C-51 APPLICATION FOR A PERMIT
- 174C-52 NOTICE

- 174C-53 PERMIT ISSUANCE
- 174C-54 COMPETING APPLICATIONS
- 174C-55 DURATION OF PERMITS
- 174C-56 REVIEW OF PERMITS
- 174C-57 MODIFICATION OF PERMIT TERMS
- 174C-58 REVOCATION OF PERMITS
- 174C-59 TRANSFER OF PERMIT
- 174C-60 CONTESTED CASES
- 174C-61 FEES
- 174C-62 DECLARATION OF WATER SHORTAGE
- 174C-63 APPURTENANT RIGHTS

PART V. WATER QUALITY

- 174C-66 JURISDICTION OVER WATER QUALITY
- 174C-67 EXCHANGE OF INFORMATION
- 174C-68 WATER QUALITY PLAN

PART VI. INSTREAM USES OF WATER

- 174C-71 PROTECTION OF INSTREAM USES

PART VII. WELLS

- 174C-81 DEFINITIONS
- 174C-82 POWERS AND DUTIES OF THE COMMISSION
- 174C-83 REGISTRATION OF ALL EXISTING WELLS
- 174C-84 PERMITS FOR WELL CONSTRUCTION AND PUMP INSTALLATION
- 174C-85 WELL COMPLETION REPORT
- 174C-86 WELL CONSTRUCTION AND PUMP INSTALLATION STANDARDS
- 174C-87 ABANDONMENT OF WELLS

PART VIII. STREAM DIVERSION WORKS

- 174C-91 DEFINITION
- 174C-92 REGISTRATION OF EXISTING STREAM DIVERSION WORKS
- 174C-93 PERMITS FOR CONSTRUCTION OR ALTERATION
- 174C-94 COMPLETION REPORT
- 174C-95 ABANDONMENT

PART IX. NATIVE HAWAIIAN WATER RIGHTS

- 174C-101 NATIVE HAWAIIAN WATER RIGHTS

Note

New chapters on "Irrigation water development" and "Irrigation and water utilization pro-
 effective July 1, 1989, see L 1987, c 306, §§1 and 2.
 Conflict of laws, see L 1987, c 45, §8.

PART I. ADMINISTRATIVE STRUCTURE

[§174C-1] Short title. This chapter shall be known and may be cited as the State Water Code. [L 1987, c 45, pt of §2]

[§174C-2] Declaration of policy. (a) It is recognized that the waters of the State are held for the benefit of the citizens of the State. It is declared that the people of the State are beneficiaries and have a right to have the waters protected for their use.

(b) There is a need for a program of comprehensive water resources planning to address the problems of supply and conservation of water. The state water use and protection plan, with such future amendments, supplements, and additions as may be necessary, is accepted as the guide for developing and implementing this policy.

(c) The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.

(d) The state water code shall be liberally interpreted to protect and improve the quality of waters of the State and to provide that no substance be discharged into such waters without first receiving the necessary treatment or other corrective action. The people of Hawaii have a substantial interest in the prevention, abatement, and control of both new and existing water pollution and in the maintenance of high standards of water quality.

(e) The state water code shall be liberally interpreted and applied in a manner which conforms with intentions and plans of the counties in terms of land use planning. [L 1987, c 45, pt of §2]

Note

Establishment of state water code review commission. see L 1987, c 45, §5.

[§174C-3] Definitions. As used in this chapter, unless the context otherwise requires:

“Authorized planned use” means the use or projected use of water by a development that has received the proper state land use designation and county development plan/community plan approvals.

“Board” means the board of land and natural resources.

“Chairperson” means the chairperson of the commission on water resource management.

“Change in use” means any modification or change in water use from or to domestic, municipal, military, agriculture (including agricultural processing), or industrial uses.

“Channel alteration” means: (1) to obstruct, diminish, destroy, modify, or relocate a stream channel; (2) to change the direction of flow of water in a stream channel; (3) to place any material or structures in a stream channel; and (4) to remove any material or structures from a stream channel.

“Commission” means the commission on water resource management.

“Continuous flowing water” means a sufficient flow of water that could provide for migration and movement of fish, and includes those reaches of streams which, in their natural state, normally go dry seasonally at the location of the proposed alteration.

“Department” means the department of land and natural resources.

“Domestic use” means any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation.

“Emergency” means the absence of a sufficient quantity and quality of water in any area whether designated or not which threatens the public health, safety, and welfare as determined by the commission.

“Ground water” means any water found beneath the surface of the earth, whether in perched supply, dike-confined, flowing, or percolating in underground channels or streams, under artesian pressure or not, or otherwise.

“Hydrologic unit” means a surface drainage area or a ground water basin or a combination of the two.

“Impoundment” means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth’s surface and having a discernible shoreline.

“Instream flow standard” means a quantity or flow of water or depth of water which is required to be present at a specific location in a stream system at certain specified times of the year to protect fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses.

“Instream use” means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

- (1) Maintenance of fish and wildlife habitats;
- (2) Outdoor recreational activities;

SEE
OR
CAW

- (3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;
- (4) Aesthetic values such as waterfalls and scenic waterways;
- (5) Navigation;
- (6) Instream hydropower generation;
- (7) Maintenance of water quality;
- (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
- (9) The protection of traditional and customary Hawaiian rights.

"Interim instream flow standard" means a temporary instream flow standard of immediate applicability, adopted by the commission without the necessity of a public hearing, and terminating upon the establishment of an instream flow standard.

"Municipal use" means the domestic, industrial, and commercial use of water through public services available to persons of a county for the promotion and protection of their health, comfort, and safety, for the protection of property from fire, and for the purposes listed under the term "domestic use".

"Noninstream use" means the use of stream water that is diverted or removed from its stream channel and includes the use of stream water outside of the channel for domestic, agricultural, and industrial purposes.

"Nonregulated use" means any use of water which is exempted from regulation by the provisions of this code.

"Person" means any and all persons, natural or artificial, including an individual, firm, association, organization, partnership, business trust, corporation, company, the United States of America, the State of Hawaii, and all political subdivisions, municipalities, and public agencies thereof.

"Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest.

"Stream" means any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed or channel have been dredged or improved does not prevent the watercourse from being a stream.

"Stream channel" means a natural or artificial watercourse with a definite bed and banks which periodically or continuously contains flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past.

"Stream diversion" means the act of removing water from a stream into a channel, pipeline, or other conduit.

"Stream reach" means a segment of a stream channel having a defined upstream and downstream point.

“Stream system” means the aggregate of water features comprising or associated with a stream, including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary.

“Surface water” means both contained surface water—that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters subject to state jurisdiction—and diffused surface water—that is, water occurring upon the surface of the ground other than in contained waterbodies. Water from natural springs is surface water when it exits from the spring onto the earth’s surface.

“Sustainable yield” means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source as determined by the commission.

“Time of withdrawal or diversion” means, in view of the nature, manner, and purposes of a reasonable and beneficial use of water, the most accurate method of describing the time when the water is withdrawn or diverted, including description in terms of hours, days, weeks, months, or physical, operational, or other conditions.

“Water” or “waters of the State” means any and all water on or beneath the surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground.

“Water management area” means a geographic area which has been designated pursuant to section 174C-41 as requiring management of the ground or surface water resource, or both.

“Watercourse” means a stream and any canal, ditch, or other artificial watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted.

“Water source” means a place within or from which water is or may be developed, including but not limited to: (1) generally, an area such as a watershed defined by topographic boundaries, or a definitive ground water body; and (2) specifically, a particular stream, other surface water body, spring, tunnel, or well or related combination thereof.

“Well” means an artificial excavation or opening into the ground, or an artificial enlargement of a natural opening by which ground water is drawn or is or may be used or can be made to be usable to supply reasonable and beneficial uses within the State. [L 1987, c 45, pt of §2]

[§174C-4] **Scope.** (a) All waters of the State are subject to regulation under the provisions of this chapter unless specifically exempted. No provision of this chapter shall apply to coastal waters. Nothing in this chapter to the contrary shall restrict the planning or zoning power of any county under chapter 46.

(b) No state or county government agency may enforce any statute, rule, or order affecting the waters of the State controlled under the provisions of this chapter, whether enacted or promulgated before or after July 1, 1987, inconsistent with the provisions of this chapter. Nothing in this chapter to the contrary shall restrict the power of any county to plan or zone as provided in chapter 46.

(c) No state or county government agency or other person having the power of eminent domain or condemnation under the laws of the State, may exercise the power with respect to condemning property if the condemnation will materially affect water resources in the State, without the written permission of the commission.

(d) No right, title, or interest in the use of any water resources of the State can be acquired by prescription. [L 1987, c 45, pt of §2]

Note

Interpretation of county function, see L 1987, c 45, §6.

Revision Note

"July 1, 1987" substituted for "the effective date of this chapter".

[§174C-5] General powers and duties. The general administration of the state water code shall rest with the commission on water resource management. In addition to its other powers and duties, the commission:

- (1) Shall carry out topographic surveys, research, and investigations into all aspects of water use and water quality.
- (2) Shall designate water management areas for regulation under this chapter where the commission, after the research and investigations mentioned in paragraph (1), shall consult with the appropriate county council and county water agency, and after public hearing and published notice, finds that the water resources of the areas are being threatened by existing or proposed withdrawals of water.
- (3) Shall establish an instream use protection program designed to protect, enhance, and reestablish, where practicable, beneficial instream uses of water in the State.
- (4) May contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons.
- (5) May enter, after obtaining the consent of the property owner, at all reasonable times upon any property other than dwelling places for the purposes of conducting investigations and studies, or enforcing any of the provisions of this code, being liable, however, for actual damage done. If consent cannot be obtained, reasonable notice shall be given prior to entry.

- (6) Shall cooperate with federal agencies, other state agencies, county or other local governmental organizations, and all other public and private agencies created for the purpose of utilizing and conserving the waters of the State, and assist such organizations and agencies in coordinating the use of their facilities and participate in the exchange of ideas, knowledge, and data with such organizations and agencies. For this purpose the commission shall maintain an advisory staff of experts.
- (7) Shall prepare, publish, and issue such printed pamphlets and bulletins as the commission deems necessary for the dissemination of information to the public concerning its activities.
- (8) May appoint and remove agents and employees including hearing officers, specialists, and consultants necessary to carry out the purposes of this chapter and may be engaged by the commission without regard to the requirements of chapters 76 and 77 and section 78-1.
- (9) May acquire, lease, and dispose of such real and personal property as may be necessary in the performance of its functions, including the acquisition of real property for the purpose of conserving and protecting water and water related resources as provided in section 174C-14.
- (10) Shall identify, by continuing study, those areas of the State where salt water intrusion is a threat to fresh water resources and report its findings to the appropriate county mayor and council and the public.
- (11) Shall provide such coordination, cooperation, or approval necessary to the effectuation of any plan or project of the federal government in connection with or concerning the waters of the State. The commission shall approve or disapprove such federal plans or projects on behalf of the State. No other agency or department of the State shall assume the duties delegated to the commission under this paragraph, except that the department of health shall continue to exercise such powers vested in it with respect to water quality, and except that the department of planning and economic development shall continue to carry out its duties and responsibilities under chapter 205A.
- (12) Plan and coordinate programs for the development, conservation, protection, control, and regulation of water resources based upon the best available information, and in cooperation with federal agencies, other state agencies, county or other local governmental organizations, and other public and private agencies created for the utilization and conservation of water.
- (13) Shall catalog and maintain an inventory of all water uses and water resources. [L 1987, c 45, pt of §2]

Note

"Department of planning and economic development" referred to in paragraph (11) should probably read "department of business and economic development". See L 1987, c 336, §15.

[§174C-6] Deputy to the chairperson of the commission for water resource management. (a) There shall be a first deputy to the chairperson of the commission for water resource management ("deputy for water resource management") who shall be in addition to any other first deputy to the chairperson as the chairperson of the board of land and natural resources. The deputy shall have experience in the area of water resources and shall be appointed by the chairperson with the approval of a majority of the commission.

(b) The duties of the deputy for water resource management shall be to administer and implement, under the direction of the commission, the state water code and all rules, and other directives promulgated in accordance therewith by the commission. Nothing in this provision shall be construed as limiting the authority of the commission as to matters regarding water resources.

(c) The position of deputy for water resource management is not subject to chapters 76 and 77.

(d) The salary of the deputy for water resource management shall be as provided in section 26-53 for first deputies or first assistants to the head of any department. [L 1987, c 45, pt of §2]

[§174C-7] Commission on water resource management. (a) There is established within the department a commission on water resource management consisting of six members which shall have exclusive jurisdiction and final authority in all matters relating to implementation and administration of the state water code, except as otherwise specifically provided in this chapter.

(b) Four members shall be appointed by the governor subject to confirmation by the senate, in a manner prescribed in subsection (d). Each member shall have substantial experience in the area of water resource management. The chairperson of the board of land and natural resources shall be the chairperson of the commission. The director of health shall serve as an ex officio voting member.

(c) The members of the commission shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(d) In appointing a member to the commission, the governor shall select from a list submitted by a nominating-committee. The nominating committee shall be composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. The committee shall solicit applications and send to the governor the names of at least three individuals for each open position.

(e) Except as otherwise provided in this chapter, the commission shall be subject to sections 26-34, 26-35, and 26-36. [L 1987, c 45, pt of §2]

[§174C-8] Adoption of rules concerning water resources by the commission. The commission shall adopt and enforce such rules as may be necessary or convenient to administer this chapter. The initial set of rules, subject to later amendment, revisions, or additions, shall be adopted no later than two years after July 1, 1987. Rules shall be adopted in conformity with chapter 91. [L 1987, c 45, pt of §2]

Revision Note

"July 1, 1987" substituted for "the effective date of this chapter".

[§174C-9] Proceedings before the commission concerning water resources. All proceedings before the commission concerning the enforcement or application of any provision of this chapter or any rule adopted pursuant thereto, or the issuance, modification, or revocation of any permit or license under this code by the commission, shall be conducted in accordance with chapter 91. Hearings regarding particular water resources shall be conducted on the island where those water resources are located. [L 1987, c 45, pt of §2]

[§174C-10] Dispute resolution. The commission shall have jurisdiction statewide to hear any dispute regarding water resource protection, water permits, or constitutionally protected water interests, or where there is insufficient water to meet competing needs for water, whether or not the area involved has been designated as a water management area under this chapter. The final decision on any matter shall be made by the commission. [L 1987, c 45, pt of §2]

[§174C-11] Hearings officers. (a) The chairperson may appoint hearings officers, not subject to chapters 76 and 77, to hear and reach a preliminary decision on any matter concerning the implementation or administration of the state water code which the commission may refer to the hearings officers by rule or otherwise.

(b) In assigning matters to hearings officers, the chairperson shall make the assignments in a manner which ensures that hearings officers will develop familiarity and expertise with given geographic areas.

(c) In conducting a hearing on any matter referred by the commission, a hearings officer shall solicit and consider the views of the appropriate county officials responsible for planning, economic development, and resource management and such other county officials and others as the commission shall direct. Any affected county agency shall be admitted as a party upon request.

(d) Each hearings officer is deemed to be an agent of the commission with all powers associated with such designation.

(e) In order to facilitate dispute resolution, the commission may employ mediation methods where practicable including the use of masters.

(f) The commission shall adjudicate disputes where there is insufficient water to meet competing needs. [L 1987, c 45, pt of §2]

[§174C-12] Judicial review of rules and orders of the commission concerning the water code. Judicial review of rules and orders of the commission under this chapter shall be governed by chapter 91. Trial de novo is not allowed on review of commission actions under this chapter. [L 1987, c 45, pt of §2]

[§174C-13] Citizen complaints. The commission shall adopt, pursuant to chapter 91, procedural rules for the processing of citizen complaints including the right of appeal to the commission. If any person files a complaint with the commission that any other person is wasting or polluting water or is making a diversion, withdrawal, impoundment, consumptive use of waters or any other activity occurring within or outside of a water management area, not expressly exempted under this code, without a permit where one is required, the commission shall cause an investigation to be made, take appropriate action, and notify the complainant thereof. [L 1987, c 45, pt of §2]

[§174C-14] Acquisition of real property. (a) The legislature declares it to be necessary for the public health and welfare that water and water related resources be conserved and protected. The acquisition of real property for this objective shall constitute a public purpose for which public funds may be expended.

(b) The commission may acquire real property and easements by purchase, gift, devise, lease, eminent domain, or otherwise for flood control, water management, or water and water-related resource conservation.

(c) Land, water areas, and related resources which may be acquired for this purpose include, but are not limited to, streams and other watercourses, parks and recreation areas, beaches, submerged lands, and other open areas, as well as necessary access sites and rights-of-way.

(d) This section does not limit the exercise of similar powers delegated by statute to any state or local government agency. This section is not intended to limit, in any way, the powers of the commission in regards to the acquisition of real property under any other statute. [L 1987, c 45, pt of §2]

[§174C-15] Penalties and common law remedies. (a) The commission may enforce its rules and orders adopted pursuant to this chapter by suit for injunction or for damages or both.

(b) Any person who violates any provision of this chapter may be subject to a fine imposed by the commission. Such fine shall not exceed \$1,000. For a continuing offense, each day during which the offense is committed is a separate violation.

(c) No provision of this chapter shall bar the right of any injured person to seek other legal or equitable relief against a violator of this chapter. [L 1987, c 45, pt of §2]

[§174C-16] Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, this invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 1987, c 45, pt of §2]

PART II. REPORTS OF WATER USE

[§174C-26] Filing of declaration. (a) Any person making a use of water in any area of the State shall file a declaration of the person's use with the commission within one year from the effective date of rules adopted to implement this chapter.

(b) When the commission requires filing of declarations by rules, it shall cause notice of the rule to be given by publication in a newspaper of statewide circulation for filings in the city and county of Honolulu and by publication in a newspaper of areawide or countywide circulation and in a newspaper of statewide circulation for filings in counties other than the city and county of Honolulu. The commission shall also cause notice of the rules to be given by mail to any person required to file of whom the commission has or could readily obtain knowledge or who has requested mailed notice to be given when the commission adopts rules requiring the filing of declarations.

(c) The declarations shall be in such form and contain such information as the commission by rule prescribes, including the quantity of water used, the purpose or manner of the use, the time of taking the water, and the point of withdrawal or diversion of the water. Each declaration shall contain a statement, signed and sworn to by the person required to file the declaration, or by some other person duly authorized in the person's behalf, to the effect that the contents thereof are true to the best of the person's knowledge and belief.

(d) If no declaration is filed, the commission, in its discretion, may conclusively determine the extent of the uses required of declaration.

(e) The commission shall act upon a declaration within six months after its filing. [L 1987, c 45, pt of §2]

[§174C-27] Issuance of certificate. (a) When a declaration has been filed in accordance with this section and the commission has determined that the use declared is a reasonable, beneficial use, the commission shall issue a certificate describing the use. The certificate shall be deemed to constitute a description of the use declared. With respect to certificates for water use, the confirmed usage shall be recognized by the commission in resolving claims relating to existing water rights and uses including appurtenant rights, riparian and correlative use.

(b) The commission shall hold a hearing upon the request of any person adversely affected by the certification or the refusal to certify any water use.

(c) Whenever a certified use of water is terminated, the owner of the certificate shall file a report with the commission, providing all information prescribed in the rules of the commission. [L 1987, c 45, pt of §2]

PART III. HAWAII WATER PLAN

[§174C-31] Hawaii water plan. (a) The Hawaii water plan shall consist of four parts: (1) a water resource protection plan which shall be prepared by the water resources commission; (2) water use and development plans for each county which shall be prepared by each separate county and adopted by ordinance, setting forth the allocation of water to land use in that county; (3) a state water project plan which shall be prepared by the agency which has jurisdiction over such projects in conjunction with other state agencies; and (4) a water quality plan which shall be prepared by the department of health.

(b) All water use and development plans shall be prepared in a manner consistent with the following conditions:

- (1) Each water use and development plan shall be consistent with the water resource protection and quality plan.
- (2) Each water use and development plan and the state water projects plan shall be consistent with the respective county land use plans and policies including general plan and zoning as determined by each respective county.
- (3) The water use and development plan for each county shall also be consistent with the state land use classification and policies.
- (4) The cost to develop the initial water use and development plan for each county shall be funded by the State in an amount not exceeding \$150,000 per county.
- (5) The cost of maintaining the water use and development plan shall be borne by the counties; state water capital improvement funds appropriated to the counties shall be deemed to satisfy Article VIII, section 5 of the State Constitution.
- (6) Each county in order to be eligible for state appropriations for county water projects must have developed an acceptable water use and development plan within the time frame established by this chapter.

(c) To prepare the water resources protection and quality plan, the commission shall: study and inventory the existing water resources of the State and the means and methods of conserving and augmenting such water resources; review existing and contemplated needs and uses of water including state and county land use plans and policies and study their effect on the environment, procreation of

fish and wildlife, and water quality; study the quantity and quality of water needed for existing and contemplated uses, including irrigation, power development, geothermal power, and municipal uses; and study such other related matters as drainage, reclamation, flood hazards, floodplain zoning, dam safety, and selection of reservoir sites, as they relate to the protection, conservation, quantity, and quality of water.

The water resource protection plan shall include, but not be limited to:

- (1) Nature and occurrence of water resources in the State;
- (2) Hydrologic units and their characteristics, including the quantity and quality of available resource, requirements for beneficial instream uses and environmental protection, desirable uses worthy of preservation by permit, and undesirable uses for which permits may be denied;
- (3) Existing and contemplated uses of water, as identified in the water use and development plans of the State and the counties, their impact on the resource, and their consistency with objectives and policies established in the water resource protection quality plan;
- (4) Programs to conserve, augment, and protect the water resource; and
- (5) Other elements necessary or desirable for inclusion in the plan.

Thereafter, the commission in coordination with the counties and the department of health shall formulate an integrated coordinated program for the protection, conservation, and management of the waters in each county based on the above studies. This program, with such amendments, supplements, and additions as may be necessary, shall be known as the water resource protection and quality plan.

Thereafter, each county shall prepare a water use and development plan and the appropriate state agency shall prepare the state water projects plan. Each county water use and development plan shall include but not be limited to:

- (1) Status of water and related land development including an inventory of existing water uses for domestic, municipal, and industrial users, agriculture, aquaculture, hydropower development, drainage, reuse, reclamation, recharge, and resulting problems and constraints;
 - (2) Future land uses and related water needs; and
 - (3) Regional plans for water developments including recommended and alternative plans, costs, adequacy of plans, and relationship to water resource protection and quality plan.
- (d) The Hawaii water plan shall be directed toward the achievement of the following objectives:
- (1) The attainment of maximum reasonable-beneficial use of water for such purposes as those referred to in subsection (a);
 - (2) The proper conservation and development of the waters of the State;
 - (3) The control of the waters of the State for such public purposes as navigation, drainage, sanitation, and flood control;
 - (4) The attainment of adequate water quality as expressed in the state water protection and quality plan; and
 - (5) The implementation of the water resources policies expressed in section 174C-2.

(e) The Hawaii water plan shall divide each county into sections which shall each conform as nearly as practicable to a hydrologic unit. The board shall describe and inventory:

- (1) All water resources and systems in each hydrologic unit;
- (2) All presently exercised uses;
- (3) The quantity of water not presently used within that hydrologic unit; and
- (4) Potential threats to water resources, both current and future.

(f) Within each hydrologic unit the commission shall establish the following:

- (1) An instream use and protection program for the surface watercourses in the area.
- (2) Sustainable yield. The sustainable yield shall be determined by the commission using the best information available and shall be reviewed periodically. Where appropriate the sustainable yield may be determined to reflect seasonal variation.

(g) The commission shall condition permits under part IV of this chapter in such a manner as to protect instream flows and maintain sustainable yields of groundwater established under this section.

(h) The commission shall give careful consideration to the requirements of public recreation, the protection of the environment, and the procreation of fish and wildlife. The commission may prohibit or restrict other future uses on certain designated streams which may be inconsistent with these objectives.

(i) The commission may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the commission may deny a permit under the provisions of part IV.

(j) The commission may also designate certain uses in connection with a particular source of supply which, because of the nature of the activity or amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in any action pursuant to sections 174C-50(h) and 174C-54.

(k) The commission may add to the Hawaii water plan any other information, directions, or objectives it feels necessary or desirable for the guidance of the counties in the administration and enforcement of this chapter.

(l) In formulating or revising the plans, each county and the commission shall consult with and carefully evaluate the recommendations of concerned federal, state, and county agencies.

(m) The commission shall not adopt, approve, or modify any portion of the Hawaii water plan which affects a county or any portion thereof without first holding a public hearing on the matter on the island on which the water resources are located. At least ninety days in advance of such hearing, the commission shall notify the affected county and shall give notice of such hearing by publication within the affected region and statewide.

Each county shall update and modify its water use and development plans as necessary to maintain consistency with its zoning and land use policies. [L 1987, c 45, pt of §2]

[§174C-32] Coordination. (a) Respective portions of the water resource protection and quality plan, and the water use and development plans of each county, shall be developed together to achieve maximum coordination.

(b) The development of the Hawaii water plan or any portion thereof shall proceed in coordination with and with attention to the Hawaii state plan described in chapter 226.

(c) The Hawaii water plan and its constituent parts, except for the water quality plan, shall be adopted by the commission not later than three years from July 1, 1987. The commission shall receive the water quality plan from the department of health and incorporate this part in the Hawaii water plan. [L 1987, c 45, pt of §2]

Revision Note

"July 1, 1987" substituted for "the effective date of this chapter".

PART IV. REGULATION OF WATER USE

[§174C-41] Designation of water management area. (a) When it can be reasonably determined, after conducting scientific investigations and research, that the water resources in an area may be threatened by existing or proposed withdrawals or diversions of water, the commission shall designate the area for the purpose of establishing administrative control over the withdrawals and diversions of ground and surface waters in the area to ensure reasonable-beneficial use of the water resources in the public interest.

(b) The designation of a water management area by the commission may be initiated upon recommendation by the chairperson or by written petition. It shall be the duty of the chairperson to make recommendations when it is desirable or necessary to designate an area and there is factual data for a decision by the commission. The chairperson, after consultation with the appropriate county mayor and county water board, shall act upon the petition by making a recommendation for or against the proposed designation to the commission within sixty days after receipt of the petition or such additional time as may be reasonably necessary to determine that there is factual data to warrant the proposed designation.

(c) Designated ground water areas established under chapter 177, the Ground Water Use Act, and remaining in effect on July 1, 1987, shall continue as water management areas: [L 1987, c 45, pt of §2]

Revision Note

"On July 1, 1987" substituted for "at the effective date of this chapter".

[\S174C-42] Notice; public hearing required. When a recommendation for designation of a water management area has been accepted, the commission shall hold a public hearing at a location in the vicinity of the area proposed for designation and publish a notice of the hearing setting forth: a description of the land area proposed to be designated in terms of appropriate legal subdivisions and tax map keys; the purpose of the public hearing; and the time, date, and place of the public hearing where written or oral testimony may be submitted and heard. The notice shall be published once each week for three successive weeks in a countywide newspaper of general circulation in the appropriate county and the last publication shall be not less than ten days nor more than thirty days before the date set for the hearing. Publication of the notice of public hearing shall be considered as sufficient notice to all landowners and water users who might be affected by the proposed designation. [L 1987, c 45, pt of \S2]

[\S174C-43] Investigations required. Before any proposed water management area is designated by the commission, the chairperson may conduct, cooperate with the appropriate federal or county water agency in conducting, or administer contracts for the conduct of, any scientific investigation or study deemed necessary for the commission to make a decision to designate a water management area.

In connection with such investigation or study, the chairperson from time to time may require reports from water users as to the amount of water being withdrawn and as to the manner and extent of the beneficial use. Such reports shall be made on forms furnished by the department. [L 1987, c 45, pt of \S2]

[\S174C-44] Ground water criteria for designation. In designating an area for water use regulation, the commission shall consider the following:

- (1) Whether an increase in water use or authorized planned use may cause the maximum rate of withdrawal from the ground water source to reach ninety per cent of the sustainable yield of the proposed water management area;
- (2) There is an actual or threatened water quality degradation as determined by the department of health;
- (3) Whether regulation is necessary to preserve the diminishing ground water supply for future needs, as evidenced by excessively declining ground water levels;
- (4) Whether the rates, times, spatial patterns, or depths of existing withdrawals of ground water are endangering the stability or optimum development of the ground water body due to upcoming or encroachment of salt water;
- (5) Whether the chloride contents of existing wells are increasing to levels which materially reduce the value of their existing uses;

- (6) Whether excessive preventable waste of water is occurring;
- (7) Serious disputes respecting the use of ground water resources are occurring; or
- (8) Whether water development projects that have received any federal, state, or county approval may result, in the opinion of the commission, in one of the above conditions.

Notwithstanding an imminent designation of a water management area conditioned on a rise in the rate of ground water withdrawal to a level of ninety per cent of the area's sustainable yield, the commission, when such level reaches the eighty per cent level of the sustainable yield, may invite the participation of water users in the affected area to an informational hearing for the purposes of assessing the ground water situation and devising mitigative measures. [L 1987, c 45, pt of §2]

[§174C-45] Surface water criteria for designation. In designating an area for water use regulation, the commission shall consider the following:

- (1) Whether regulation is necessary to preserve the diminishing surface water supply for future needs, as evidenced by excessively declining surface water levels, not related to rainfall variations, or increasing or proposed diversions of surface waters to levels which may detrimentally affect existing instream uses or prior existing off stream uses;
- (2) Whether the diversions of stream waters are reducing the capacity of the stream to assimilate pollutants to an extent which adversely affects public health or existing instream uses; or
- (3) Serious disputes respecting the use of surface water resources are occurring. [L 1987, c 45, pt of §2]

[§174C-46] Findings of fact; decision of commission. After public hearing and any investigations deemed necessary have been completed, the chairperson, after consultation with the appropriate county council and county water board, shall make a recommendation to the commission for decision. If the commission decides to designate a water management area, it shall cause a notice of its decision to be published in a newspaper of general circulation in the appropriate county and when so published its decision shall be final unless judicially appealed. [L 1987, c 45, pt of §2]

[§174C-47] Modifying and rescinding designated areas. The modification of the boundaries or the rescinding of existing water management areas by the commission may be initiated by the chairperson or by a petition to the commission by any person with proper standing. The procedure for modifying the boundaries of an existing water management area or for rescinding an existing water management area shall be substantially similar to that for the designation of a water management area. [L 1987, c 45, pt of §2]

[§174C-48] Permits required. (a) No person shall make any withdrawal, diversion, impoundment, or consumptive use of water in any designated water management area without first obtaining a permit from the commission. However, no permit shall be required for domestic consumption of water by individual users, and no permit shall be required for the use of a catchment system to gather water. An existing use in newly designated areas may be continued until such time as the commission has acted upon the application subject to compliance with section 174C-51.

(b) In its regulation of water resources in designated water management areas, the commission shall delegate to the county boards of water supply the authority to allocate the use of water for municipal purposes, subject to the limits of water supply allocated to the county boards of water supply in their role as water purveyors. [L 1987, c 45, pt of §2]

[§174C-49] Conditions for a permit. (a) To obtain a permit pursuant to this part, the applicant shall establish that the proposed use of water:

- (1) Can be accommodated with the available water source;
- (2) Is a reasonable-beneficial use as defined in section 174C-3;
- (3) Will not interfere with any existing legal use of water;
- (4) Is consistent with the public interest;
- (5) Is consistent with state and county general plans and land use designations; and
- (6) Is consistent with county land use plans and policies.

(b) Within sixty days after receipt of a notice of a permit application, the county shall inform the commission if the proposed use is inconsistent with county land use plans and policies.

(c) The common law of the State to the contrary notwithstanding, the commission shall allow the holder of a use permit to transport and use surface or ground water beyond overlying land or outside the watershed from which it is taken if the commission determines that such transport and use are consistent with the public interest and the general plans and land use policies of the State and counties.

(d) The commission, by rule, may reserve water in such locations and quantities and for such seasons of the year as in its judgment may be necessary. Such reservations shall be subject to periodic review and revision in the light of changed conditions; provided that all presently existing legal uses of water shall be protected. [L 1987, c 45, pt of §2]

[§174C-50] Existing uses. (a) All existing uses of water in a designated water management area, except those exempted from regulation by this chapter, may be continued after July 1, 1987, only with a permit issued in accordance with sections 174C-51, 174C-52, and 174C-53(b).

(b) After publication as provided in section 174C-52, the commission shall issue a permit for the continuation of a use in existence on July 1, 1987, if the criteria in subsection (a) are met and the existing use is reasonable and beneficial.

Whether the existing use is a reasonable-beneficial use and is allowable under the common law of the State shall be determined by the commission after a hearing; provided that the commission may make such a determination without a hearing, if the quantity of water applied for does not exceed an amount per month established by rule or if the quantity of water applied for exceeds an amount per month established by rule, but no objection to the application is filed by any person having standing to file an objection. In determining whether an application does not exceed the amount per month established by rule, the commission shall consider an average of water use over the three-month period immediately preceding the filing of the application.

(c) An application for a permit to continue an existing use must be made within a period of one year from the effective date of designation. Except for appurtenant rights, failure to apply within this period creates a presumption of abandonment of the use, and the user, if the user desires to revive the use, must apply for a permit under section 174C-51. If the commission determines that there is just cause for the failure to file, it may allow a late filing. However, the commission may not allow a late filing more than five years after the effective date of rules implementing this chapter. The commission shall send two notices, one of which shall be by registered mail, to existing users to file for an application for a permit to continue an existing use.

(d) An application shall be acted upon by the commission within ninety calendar days of an application not requiring a hearing, or within one hundred eighty calendar days of an application requiring a hearing. The time periods prescribed in this subsection shall not be deemed to run for any period in which an application is not complete in all material respects in the judgment of the board.

(e) The commission shall issue an interim permit; provided that the existing use meets the conditions of subsection (b). The commission shall also issue an interim permit for an estimated, initial allocation of water if the quantity of water consumed under the existing use is not immediately verifiable, but the existing use otherwise meets the conditions of subsection (b) for a permit or an interim permit. An interim permit is valid for such time period specified therein. The commission may issue successive interim permits of limited duration. Interim permits are subject to revocation under section 174C-58. Whenever interim permits are to be issued, the time periods specified in subsection (d) apply to the issuance or nonissuance of interim permits.

(f) A permit to continue an existing use shall be for a quantity of water not exceeding that quantity being consumed under the existing use. The quantity being

consumed shall be determined and verified by the best available means not unduly burdensome on the applicant, as determined by the commission. The commission may prescribe the installation of metering or gauging devices, and, if so prescribed, such metering or gauging devices shall be in place and operational for at least one year before a determination is made as to the quantity of water being consumed in an existing use and a final permit is issued.

(g) If an interim permit is issued pending verification of the actual quantity of water being consumed under the existing use, a final determination of that quantity shall be made within five years of the filing of the application to continue the existing use. In the final determination, the commission may increase or reduce the amount initially granted the permittee.

(h) Two or more existing uses of water are deemed to be competing when they draw water from the same hydrologically controllable area and the aggregate quantity of water consumed by the users exceeds the appropriate sustainable yield or instream flow standards established pursuant to law for the area. If applications are made to continue existing uses which are competing and the uses otherwise meet the requirements of subsection (b), the commission shall hold a hearing to determine the quantity of water that may be consumed and the conditions to be imposed on each existing use.

(i) A permit user of water with a continuous reduced water usage shall be given priority to reobtain its permitted level of water usage over any other application; provided that the use remains the same and is reasonable and beneficial and water is available. [L 1987, c 45, pt of §2]

Revision Note

"July 1, 1987" substituted for "the effective date of this chapter".

[\$174C-51] Application for a permit. All permit applications filed under this part shall contain the following:

- (1) The name and address of the applicant and landowner; provided that:
 - (A) In the event the applicant is an association, organization, partnership, trust, corporation, or any other legal entity doing business in Hawaii, the address of its principal place of business shall be stated in the application; and
 - (B) In the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit;
- (2) The date of application;
- (3) The water source of the water supply;
- (4) The quantity of water requested;

- (5) The use of the water and any limitations thereon;
- (6) The location of the use of water;
- (7) The location of the well or point of diversion; and
- (8) Such other relevant information that the commission may request from time to time.

The commission in its discretion may allow a person to apply for several related withdrawals in the same application for a water permit. [L 1987, c 45, pt of §2]

[§174C-52] Notice. (a) Upon receipt of the application, the commission shall cause a notice thereof to be published in a newspaper having general circulation within the affected area. The notice shall be published at least once a week for two consecutive weeks. In addition, the commission shall cause a copy of such notice to be sent to any person who has filed a written request for notification of any pending applications affecting a particular designated area and to the mayor and the water board of the affected county. This notification shall be sent by regular mail before the date of last publication. The commission shall also make available to the public, upon request, a monthly bulletin of all pending applications.

(b) The notice and the monthly bulletin shall contain the name and address of the applicant; the date of filing; the date set for a hearing, if any; the source of the water supply; the quantity of water applied for; the use to be made of the water and any limitations thereon; the place of the use; and the location of the well point or diversion.

(c) The notice shall state that written objections to the proposed permit may be filed with the commission by a specified date. The commission shall establish by rules the time limits within which objections must be filed. The commission, at its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses. Each applicant shall be notified by the commission of the objections filed to an application. [L 1987, c 45, pt of §2]

[§174C-53] Permit issuance. (a) The commission shall determine, after a hearing, if required, whether the conditions set forth in section 174C-49(a) have been established; provided that the commission may make such determination without a hearing if the quantity of water applied for does not exceed an average amount per month to be established by rule or if the quantity of water applied for exceeds an average amount per month to be established by rule, but no objection to the application is filed by any person having standing to file an objection.

(b) In acting upon any application, the commission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application. The commission shall adopt rules governing the filing of objections and the persons having standing to file objections.

(c) An application shall be acted upon within ninety calendar days of an application not requiring a hearing, or within one hundred eighty calendar days of an application requiring a hearing. The time periods prescribed in this section shall not be deemed to run for any period in which an application is not complete in all material respects, in the judgment of the commission.

(d) As a condition for the issuance of a permit the commission may require the permittee to install meters, gauges, or other appropriate measuring devices. [L 1987, c 45, pt of §2]

[§174C-54] Competing applications. If two or more applications which otherwise comply with section 174C-49 are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, the commission shall first, seek to allocate water in such a manner as to accommodate both applications if possible; second, if mutual sharing is not possible, then the commission shall approve that application which best serves the public interest. [L 1987, c 45, pt of §2]

[§174C-55] Duration of permits. Each permit for water use in a designated water management area shall be valid until the designation of the water management area is rescinded, unless revoked as provided in section 174C-58 or modified as provided in section 174C-57. [L 1987, c 45, pt of §2]

[§174C-56] Review of permits. At least once every twenty years, the commission shall conduct a comprehensive study of all permits issued under this chapter to determine whether the conditions on such permits are being complied with. The commission shall prepare a formal report to the legislature which shall be available to the public. [L 1987, c 45, pt of §2]

[§174C-57] Modification of permit terms. (a) A permittee may seek modification of any term of a permit. A permittee who seeks to change the use of water subject to the permit, whether or not such change in use is of a material nature, or to change the place of use of the water or to use a greater quantity of water than allowed under the permit or to make any change in respect to the water which may have a material effect upon any person or upon the water resource, shall make application pursuant to section 174C-51 in respect to such a change. Modification of one aspect or condition of a permit may be conditioned on the permittee's acceptance of changes in other aspects of the permit.

(b) All permit modification applications shall be treated as initial permit applications and be subject to sections 174C-51 to 174C-56; except that if the proposed modification involves an increase in the quantity of water not exceeding an average amount per month to be established by rule, the commission, at its discretion, may approve the proposed modification without a hearing provided that the permittee establishes that:

- (1) A change in conditions has resulted in the water allowed under the permit becoming inadequate for the permittee's needs; or
 - (2) The proposed modification would result in a more efficient utilization of water than is possible under the existing permit.
- (c) County agencies are exempt from the requirements of this section except where the modification involves a change in the quantity of water to be used or where the new use would adversely affect the quality of the water or quantity of use of another permittee. [L 1987, c 45, pt of §2]

[§174C-58] Revocation of permits. After a hearing, the commission may suspend or revoke a permit for:

- (1) Any materially false statement in the application for the water permit, a modification of a permit term, or any materially false statement in any report or statement of fact required of the user pursuant to this part.
- (2) Any wilful violation of any condition of the permit.
- (3) Any violation of any provision of this chapter.
- (4) Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more. The commission may permanently revoke the permit as to the amount of water not in use unless the user can prove that the user's nonuse was due to extreme hardship caused by factors beyond the user's control. The commission and the permittee may enter into a written agreement that, for reasons satisfactory to the commission, any period of nonuse may not apply towards the four-year revocation period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section 174C-62 shall not apply towards the four-year period of forfeiture.

The commission may cancel a permit, permanently and in whole, with the written consent of the permittee. [L 1987, c 45, pt of §2]

[§174C-59] Transfer of permit. A permit may be transferred, in whole or in part, from the permittee to another, if:

- (1) The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of the use, remain the same; and
- (2) The commission is informed of the transfer within ninety days.

Failure to inform the department of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer which involves a change in any condition of the permit, including a change in use covered in section 174C-57, is also invalid and constitutes a ground for revocation. [L 1987, c 45, pt of §2]

[§174C-60] Contested cases. Chapter 91 shall apply except where it conflicts with this chapter. In such a case, this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, any contested case hearing under this section shall be appealed upon the record directly to the supreme court for final decision. [L 1987, c 45, pt of §2]

[§174C-61] Fees. The commission shall promulgate a schedule of application and permit fees. The fees shall be used to defray the administrative costs of the permit systems established under this chapter. A public agency shall not be subject to the payment of any fees. [L 1987, c 45, pt of §2]

[§174C-62] Declaration of water shortage. (a) The commission shall formulate a plan for implementation during periods of water shortage. As a part of the plan, the commission shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.

(b) The commission, by rule, may declare that a water shortage exists within all or part of an area when insufficient water is available to meet the requirements of the permit system or when conditions are such as to require a temporary reduction in total water use within the area to protect water resources from serious harm. The commission shall publish a set of criteria for determining when a water shortage exists.

(c) In accordance with the plan adopted under subsection (a), the commission may impose such restrictions on one or more classes of permits as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

(d) A declaration of water shortage and any measures adopted pursuant thereto may be rescinded by rule by the commission.

(e) When a water shortage is declared, the commission shall cause a notice thereof to be published in a prominent place in a newspaper of general circulation throughout the area. The notice shall be published each day for the first week of the shortage and once a week thereafter until the declaration is rescinded. Publication of such notice shall serve as notice to all water users in the area of the condition of water shortage.

(f) The commission shall cause each permittee in the area to be notified by regular mail of any change in the conditions of the permittee's permit, any suspension thereof, or of any other restriction on the use of water for the duration of the water shortage.

(g) If an emergency condition arises due to a water shortage within any area, whether within or outside of a water management area, and if the commission finds that the restrictions imposed under subsection (c) are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or

a public water supply, or recreational, municipal, agricultural, or other reasonable uses, the commission may issue orders reciting the existence of such an emergency and requiring that such actions as the commission deems necessary to meet the emergency be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the area. Any party to whom an emergency order is directed may challenge such an order but shall immediately comply with the order, pending disposition of the party's challenge. The commission shall give precedence to a hearing on such challenge over all other pending matters. [L 1987, c 45, pt of §2]

[§174C-63] Appurtenant rights. Appurtenant rights are preserved. Nothing in this part shall be construed to deny the exercise of an appurtenant right by the holder thereof at any time. A permit for water use based on an existing appurtenant right shall be issued upon application. Such permit shall be subject to sections 174C-26 and 174C-27 and 174C-58 to 174C-62. [L 1987, c 45, pt of §2]

PART V. WATER QUALITY

[§174C-66] Jurisdiction over water quality. The department of health shall exercise the powers and duties vested in it for the administration of the State's water quality control program as provided by law. [L 1987, c 45, pt of §2]

[§174C-67] Exchange of information. (a) The department of health shall submit to the commission such information as the commission shall require as prescribed in its rules, provided it does not jeopardize any pending or ongoing enforcement action.

(b) The commission shall submit to the department of health such information as the department shall require, for the performance of its water quality functions. [L 1987, c 45, pt of §2]

[§174C-68] Water quality plan. (a) The department of health shall formulate a state water quality plan for all existing and potential sources of drinking water and that plan shall become part of the Hawaii water plan described in part III. Requirements for the plan shall be governed by chapters 340E and 342. The state water quality plan shall include water quality criteria for the designation of ground water areas and surface water sources pursuant to section 174C-44.

(b) The state water quality plan shall be periodically reviewed and revised by the department of health as needed.

(c) In formulating or revising the state water quality plan, the department of health shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies, particularly county water supply agencies.

(d) The department of health may ban the importation into this State of any substances which the department reasonably believes may present a danger to the water quality of this State. [L 1987, c 45, pt of §2]

PART VI. INSTREAM USES OF WATER

[§174C-71] Protection of instream uses. The commission shall establish and administer a statewide instream use protection program. In carrying out this part, the commission shall cooperate with the United States government or any of its agencies, other state agencies, and the county governments and any of their agencies. In the performance of its duties the commission shall:

- (1) Establish instream flow standards on a stream-by-stream basis whenever necessary to protect the public interest in waters of the State;
 - (A) The commission, on its own motion, may determine that the public interest in the waters of the State requires the establishment of an instream flow standard for streams;
 - (B) In acting upon the establishment of instream flow standards, the commission shall set forth in writing its conclusion that the public interest does or does not require, as is appropriate, an instream flow standard to be set for the stream, the reasons therefor, and the findings supporting the reasons;
 - (C) Each instream flow standard shall describe the flows necessary to protect the public interest in the particular stream. Flows shall be expressed in terms of variable flows of water necessary to protect adequately fishery, wildlife, recreational, aesthetic, scenic, or other beneficial instream uses in the stream in light of existing and potential water developments including the economic impact of restriction of such use;
 - (D) Establishment or modification of an instream flow standard shall be initiated by the commission by providing notice of its intention to set an instream flow standard in a newspaper of general circulation published in the vicinity of the stream in question, to the mayor of the appropriate county, and to persons who have previously requested such notice in writing;
 - (E) After giving notice of its intention to set an instream flow standard, the commission or other agencies in participation with the commission shall investigate the stream. During the process of this investigation, the commission shall consult with and consider the recommendations of the department of health, the United States Fish and Wildlife Service, the mayor of the county in which the stream is located, and other agencies having interest in or information on the stream, and may consult with and consider the recommendations of persons having interest in or information on the stream. In formulating the proposed standard, the commission shall weigh the importance of the present or potential instream

- values with the importance of the present or potential uses of water from the stream for noninstream purposes, including the economic impact of restriction of such uses. In order to avoid or minimize the impact on existing uses of preserving, enhancing, or restoring instream values, the commission shall consider physical solutions, including water exchanges, modifications of project operations, changes in points of diversion, changes in time and rate of diversion, uses of water from alternative sources, or any other solution:
- (F) Before adoption of an instream flow standard or modification of an established instream flow standard, the commission shall give notice and hold a hearing on its proposed standard or modification;
- (2) Establish interim instream flow standards;
- (A) Any person with the proper standing may petition the commission to adopt an interim instream flow standard for streams in order to protect the public interest pending the establishment of a permanent instream flow standard;
 - (B) Any interim instream flow standard adopted under this section shall terminate upon the establishment of a permanent instream flow standard for the stream on which the interim standards were adopted;
 - (C) A petition to adopt an interim instream flow standard under this section shall set forth data and information concerning the need to protect and conserve beneficial instream uses of water and any other relevant and reasonable information required by the commission;
 - (D) In considering a petition to adopt an interim instream flow standard, the commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses;
 - (E) The commission shall grant or reject a petition to adopt an interim instream flow standard under this section within one hundred eighty days of the date the petition is filed. The one hundred eighty days may be extended a maximum of one hundred eighty days at the request of the petitioner and subject to the approval of the commission;
 - (F) Interim instream flow standards may be adopted on a stream-by-stream basis or may consist of a general instream flow standard applicable to all streams within a specified area;
- (3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;

- (A) The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit;
 - (B) Projects which have commenced construction or projects reviewed and approved by the appropriate federal, state, or county agency prior to July 1, 1987, shall not be affected by this part;
 - (C) The commission shall establish guidelines for processing and considering applications for stream channel alterations consistent with section 174C-93;
 - (D) The commission shall require filing fees by users to accompany each application for stream channel alteration;
- (4) Establish an instream flow program to protect, enhance, and reestablish, where practicable, beneficial instream uses of water. The commission shall conduct investigations and collect instream flow data including fishing, wildlife, aesthetic, recreational, water quality, and ecological information and basic streamflow characteristics necessary for determining instream flow requirements.

The commission shall implement its instream flow standards when disposing of water from state watersheds, including that removed by wells or tunnels where they may affect stream flow, and when regulating use of lands and waters within the state conservation district, including water development. [L 1987, c 45, pt of §2]

Note

Adoption of interim instream flow standards, see L 1987, c 45, §4.

Revision Note

"July 1, 1987" substituted for "the effective date of this chapter".

PART VII. WELLS

[§174C-81] Definitions. As used in this part, unless the context otherwise requires, the terms:

"Abandoned well" means any well that has been permanently discontinued. Any well shall be deemed abandoned which is in such a state of disrepair that continued use for the purpose of obtaining ground water is impractical.

"Installation of pumps and pumping equipment" means the procedure employed in the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrance to the well, and establishing seals and repairs to existing installations.

"Pump installation contractor" means any person, firm, or corporation which is in the business of installing or repairing pumps and pumping equipment.

"Pumps and pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water. It includes seals, tanks, fittings, and controls.

"Repairs" means any change, replacement, or other alteration of any well, pump, or pumping equipment which requires a breaking or opening of the well seal.

"Well" shall be as defined in section 174C-3.

"Well construction" means the producing of any well, including the construction, alteration, or repair thereof, but excluding the installation of pumps and pumping equipment.

"Well driller" means any person, firm, or corporation which constructs, alters, or repairs wells.

"Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the other terminal. [L 1987, c 45, pt of §2]

[§174C-82] **Powers and duties of the commission.** In addition to its other powers and duties, the commission shall:

- (1) Require registration of all existing wells, as provided in section 174C-83;
- (2) Require permits for well construction and for installation of pumps and pumping equipment as provided in section 174C-84;
- (3) Require well completion reports, as provided in section 174C-85;
- (4) Develop well construction and installation standards for pumps and pumping equipment, as provided in section 174C-86; and
- (5) Adopt, modify, and enforce all rules and orders necessary to carry out this part. [L 1987, c 45, pt of §2]

[§174C-83] **Registration of all existing wells.** Any person owning or operating any well shall register the well with the commission. Registration shall be

on the forms provided by the commission. The registration report shall include such information as prescribed by the commission, including the water use permit number; the location of the well; the diameter of the well; the maximum capacity of the well; the name of the well driller who constructed the well; and the name of the pump installation contractor who installed the pump and pumping equipment.

The commission may deny the issuance of a water use permit under part IV, until such time as the applicant registers all wells which the applicant owns or operates. [L 1987, c 45, pt of §2]

[§174C-84] Permits for well construction and pump installation. (a) No well construction and no installation of pumps and pumping equipment shall commence without appropriate permit from the commission. An application for a permit for well construction shall be required for all areas of the State including water management areas and shall be made by the well driller who will construct the well. An application for a permit for installation of a pump and pumping equipment shall be made by the pump installation contractor who will install the pump and pumping equipment.

(b) Every application shall contain such data prescribed by the commission, including the applicant's name; the applicant's license number; the name and address of the person who will control and operate the well; in water management areas, the water use permit number; the location of the well; the proposed depth and method of well construction; the size and expected capacity of the well; and a description of the pump and pumping equipment to be installed.

(c) The commission may issue a permit only if the proposed construction complies with all applicable laws, rules, and standards. Before acting on any application, the commission shall cause the application to be reviewed by the department of health for compliance with their rules and standards concerning, among other things, the appropriateness of the well location.

(d) Every permit shall direct the well driller and pump installation contractor to file a well completion report, as provided in section 174C-85. The permit shall be prominently displayed at the site of the well at all times until the well construction or the pump and pumping equipment installation is completed.

(e) The holder of a permit for well construction, with the approval of the commission, may change the location of the well before construction is completed. An application to change the location shall describe the location, the proposed depth and method of construction, and the size and expected capacity of the new well. It shall also describe the manner of sealing or plugging the incomplete and abandoned well. The commission shall cause all such applications to be reviewed by the department of health for compliance with their rules and standards concerning, among other things, the appropriateness of the location of the well. The commission may issue an amended permit if it determines that the proposed new well location

will serve the same use as the original well and draw upon the same supply of water and will not be contrary to any applicable law, rule, order, or regulation, and that the incomplete and abandoned well will be sealed or plugged in a manner to prevent waste of water and damage to the water supply and to protect the public from harm.

(f) Any applicant whose application is rejected may obtain a hearing before the commission by filing within thirty days of the mailing of the notice of rejection a written petition requesting such a hearing. The hearing shall be conducted pursuant to part I.

(g) The commission may suspend or revoke a permit, after notice and hearing, on any of the following grounds:

- (1) Material misstatement or misrepresentation in the application for a permit;
- (2) Failure to comply with the provisions set forth in the permit;
- (3) Wilful disregard or violation of any provision of this part or any rule adopted pursuant thereto; or
- (4) Material change of circumstances or conditions existing at the time the permit was issued. [L 1987, c 45, pt of §2]

[§174C-85] Well completion report. Within thirty days after the completion of the well, the well driller and pump installation contractor shall file with the commission a written report containing such information prescribed by the commission, including, as appropriate: the depth, thickness, and character of the different strata penetrated and the location of water-bearing strata; the date of completion of the well; the length, size, and weight of the casing and a description of the placement of the casing; the size of the drilled hole; where the well is sealed off; the type of seal; the number of cubic feet per second or gallons per minute of flow from the well; the pressure in pounds per square inch, if a flowing well, and the static water level and water temperature, if a nonflowing well; and a chemical analysis of a water sample drawn from the well. [L 1987, c 45, pt of §2]

[§174C-86] Well construction and pump installation standards. (a) The commission shall adopt minimum standards for the construction of wells and the installation of pumps and pumping equipment. The standards shall be such as to ensure the safe and sanitary maintenance and operation of wells, the prevention of waste, and the prevention of contamination of the waters. The minimum standards for well construction shall include the criteria for well location and the procedures for grouting, sealing, capping, and plugging wells. They shall also provide for the installation of devices to measure the amount of ground water being withdrawn from the wells. The minimum standards for the installation of pumps and pumping equipment shall include the required equipment characteristics and construction.

(b) If any well construction or pump installation standard is violated and as a consequence ground water is wasted or any well is contaminated, the commission, after giving notice of the defect to the owner of the land on which the well is located and giving such owner a reasonable time to correct the defect, may itself correct the defect and charge the land owner for the cost of such correction. Such cost constitutes a lien on the land until paid. The lien may be foreclosed in any court of competent jurisdiction, and in such foreclosure suit, the court shall allow the commission reasonable attorney's fees. [L 1987, c 45, pt of §2]

[§174C-87] Abandonment of wells. When a well is abandoned, the owner shall fill and seal the well in a manner approved by the commission. Before abandonment, the owner shall file with the commission a report showing the owner's name and address; the water use permit number, if any; the name and address of the well driller who will be employed to perform the work required for abandonment; the reason for abandonment; a description of the work to be performed to effect the abandonment; and such other information as the board may require. [L 1987, c 45, pt of §2]

PART VIII. STREAM DIVERSION WORKS

[§174C-91] Definition. In this part:
"Stream diversion works" means any artificial or natural structure emplaced within the stream for the purpose of diverting stream water. [L 1987, c 45, pt of §2]

[§174C-92] Registration of existing stream diversion works. Any person owning or operating a stream diversion works within or outside of a water management area shall register such work with the commission. Registration shall be on the forms provided by the commission. Reporting requirements on the registration forms shall be reasonable. [L 1987, c 45, pt of §2]

[§174C-93] Permits for construction or alteration. No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a permit from the commission. The commission may impose such reasonable conditions as are necessary to assure that the construction or alteration of such stream diversion works will not be inconsistent with the general plan and land use policies of the State and the affected county. Nothing in this section shall be construed to be inconsistent with part IV.

A person proposing to construct or alter a stream diversion work shall apply to the commission for a permit authorizing such construction or alteration. The application shall contain the following:

- (1) Name and address of the applicant;
- (2) Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land;
- (3) Location of the work;
- (4) Engineering drawings showing the detailed plans of construction;
- (5) Detailed specifications of construction;
- (6) Name and address of the person who prepared the plans and specifications for construction;
- (7) Name and address of the person who will construct the proposed work;
- (8) General purpose of the proposed work; and
- (9) Such other information as the commission may require. [L 1987, c 45, pt of §2]

[§174C-94] Completion report. Within thirty days after the completion of construction or alteration of any stream diversion work, the permittee shall file a written statement of completion with the commission. The commission shall designate the form of such statement and such information as it shall require. [L 1987, c 45, pt of §2]

[§174C-95] Abandonment. Any owner of any stream diversion work wishing to abandon or remove such work shall first obtain a permit to do so from the commission. [L 1987, c 45, pt of §2]

PART IX. NATIVE HAWAIIAN WATER RIGHTS

[§174C-101] Native Hawaiian water rights. (a) Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapter 175, relating to the Molokai irrigation system.

(b) No provision of this chapter shall diminish or extinguish trust revenues derived from existing water licenses unless compensation is made.

(c) Traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own kuleana and the gathering of hihiwai, opae, o'opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.

(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter. [L 1987, c 45, pt of §2]

Note

Chapter 175, referred to in text, is repealed on July 1, 1989.

①

(Extract from Hawaii Revised Statutes, as amended by Act 126, 1975; Act 104, 1977; Act 88, 1979; Act 232, 1980; Act 33, 1981; Act 131 and Act 243, 1985; Act 282 and Act 339, 1986; Act 167 and Act 310, 1987)

State of Hawaii
Department of Agriculture
Division of Plant Industry

CHAPTER 149A

HAWAII PESTICIDES LAW

PART I. GENERAL PROVISIONS

§149A-1 Short Title. This chapter may be cited as the "Hawaii Pesticides Law."

§149A-2 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Active ingredient" means:

- (1) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;
- (2) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;
- (3) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and
- (4) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissues.

"Adulterated" means any pesticide if its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

"Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

"Board" means board of agriculture.

"Certified pesticide applicator" means any individual who is certified under §149A-33(1) as authorized to use or supervise the use of any pesticide which is classified for restricted use.

"Chairperson" means chairperson of the board of agriculture.

"Commercial pesticide applicator" means any certified pesticide applicator, whether or not the applicator is a private pesticide applicator, with respect to some uses, who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by §149A-2(28).

"Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, causing or without causing abscission.

"Department" means department of agriculture.

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

"Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any form of plant or animal life (other than man and other than bacteria, viruses, or other microorganisms on or living in man or other animals); but not including equipment used for application of pesticides when sold separately therefrom.

"Environment" includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

"Fungi" means all nonchlorophyll-bearing thallophytes including rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or living in man or other animals and those on or in processed foods, beverages, or pharmaceuticals.

"General use pesticide" means a pesticide other than one designated as restricted pesticide.

"Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for a cancellation proceeding would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to

the survival of a species declared endangered by the Secretary of the Interior under the Endangered Species Act.

"Inert ingredient" means an ingredient which is not an active ingredient.

"Ingredient statement" means:

- (1) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and
- (2) In case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

"Insect" means invertebrate animals belonging to the class insecta, including beetles, bugs, bees, flies, and other allied classes of arthropods, including spiders, mites, ticks, centipedes, and wood lice.

"Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

"Labeling" means all labels and other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the EPA, the United States Departments of Agriculture and the Interior, the United States Department of Health and Human Services, state experiment stations, state agriculture colleges, or other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

"License" means the process of being allowed to register a pesticide product pursuant to provisions of this chapter.

"Licensee" means a person who has been licensed to register a product pursuant to provisions of this chapter.

"Misbranded" includes any of the following:

- (1) The labeling of the pesticide or device bears any statement, design, or graphic representation relative thereto or to its ingredients or functions which is false or misleading in any particular;
- (2) The pesticide is contained in a package or other container or wrapping which does not conform to the standards established by federal law;

- (3) The pesticide is an imitation or is offered for sale under the name of another pesticide;
- (4) The label does not bear the federal registration number assigned to each establishment in which it was produced;
- (5) Any word, statement, or other information required by or under authority of the federal law to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (6) The labeling accompanying the pesticide does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under FIFRA are adequate to protect health and the environment;
- (7) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under federal law, is adequate to protect health and the environment;
- (8) The label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this section if:
 - (A) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and
 - (B) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the department;
- (9) The labeling does not contain a statement of the use classification under which the product is registered;

- (10) There is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:
- (A) The name and address of the producer, registrant, or person for whom produced;
 - (B) The name, brand, or trademark under which the pesticide is sold;
 - (C) The net weight or measure of the content; provided that the EPA Administrator may permit reasonable variations; and
 - (D) When required by federal regulations to effectuate the purposes of this law, the registration number assigned to the pesticide under federal law and the use classification; and
- (11) The pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this law:
- (A) The skull and crossbones;
 - (B) The word "poison" prominently in red on a background of distinctly contrasting color; and
 - (C) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

"Nematode" means invertebrate animals of the phylum nemathelminthes and the class nematoda, including unsegmented roundworms with elongated fusiform or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts.

"Non-restricted use pesticide" means a pesticide other than one designated as restricted use pesticide.

"Person" means any individual, firm, corporation, association, or partnership or any organized group of persons whether incorporated or not.

"Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or any other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which the board declares to be a pest.

"Pesticide" means:

- (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
- (2) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

"Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or maturation or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"Private pesticide applicator" means a certified pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer if applied without compensation other than trading of personal services between producers of agricultural commodities on the property of another person.

"Producer" means any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device.
"Produce" means to manufacture, prepare, compound, propagate, or process any pesticide or device.

"Protect health and the environment" or "protection of health and the environment" means protection against unreasonable adverse effects on the environment.

"Restricted use pesticide" means:

- (1) A pesticide or pesticide use classified by the Administrator, EPA, for use by certified applicators or competent persons under their direct supervision and so designated on its label; or
- (2) A pesticide or pesticide use classified by the board for use by certified applicators or competent persons under their direct supervision.

"Registrant" means the person registering or licensing any pesticide pursuant to this chapter.

"Sell or distribute" means to distribute, solicit, sell, offer for sale, hold for sale, transport, or deliver for transportation in intrastate commerce or between points within the State through any point outside the State.

"Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied.

"Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

"Weed" means any plant which grows where not wanted.

§149A-3 Delegation of duties. All authority vested in the board or chairperson by virtue of this chapter may with like force and effect be exercised by those employees of the department as the board or chairperson may from time to time designate for the purpose.

§149A-4 Effect of chapter on department of health. Nothing in this chapter shall be construed to amend or alter the functions, duties, and powers of the department of health relative to chapters 321, 322, 328 and 330.

PART II. PESTICIDE LICENSING AND SALE

§149A-11 Prohibited acts. (a) Except as otherwise exempted in §149A-12, it shall be unlawful for any person to distribute, solicit, sell, offer for sale, hold for sale, transport, deliver for transportation, or receive and having so received, deliver or offer to deliver to any person in intrastate commerce or between points within this State through any point outside this State any of the following:

- (1) Any pesticide which is not licensed pursuant to §149A-13, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its licensing, or if the composition of a pesticide differs from its composition as represented in connection with its licensing; provided that in the discretion of the department, a change in the labeling or formula of a pesticide may be made within a licensing period without requiring an additional licensing of the product.

- (2) Any pesticide unless it is in the licensee's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing information pursuant to §149A-15.
 - (3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in §149A-19, unless the label bears, in addition to any other matter required by this chapter:
 - (A) A symbol of the skull and crossbones;
 - (B) The word "POISON" prominently, in red, on a background of distinctly contrasting color; and
 - (C) A statement of emergency medical treatment or an antidote when appropriate for the pesticide.
 - (4) Pesticides containing any of the ingredients commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, or barium fluosilicate, unless they have been distinctly colored or discolored, or any other white powder pesticide which the board requires to be distinctly colored or discolored after investigation of and after a public hearing on the necessity for and feasibility of coloring or discoloring the pesticide for the protection of the public health, unless it has been so colored or discolored pursuant to §149A-16.
 - (5) Any pesticide or device which is adulterated or misbranded as defined in §149A-2.
 - (6) Any pesticide or device that is an imitation of another pesticide or device.
 - (7) Any restricted use pesticide unless the person has a permit issued in accordance with §149A-17.
 - (8) Any restricted use pesticide to persons other than a certified pesticide applicator or any uncertified personnel under the certified pesticide applicator's supervision, or a licensed dealer, wholesaler, or retailer.
- (b) It shall be unlawful to:

- (1) Detach, alter, deface, or destroy, in whole or in part, any label or alter any labeling of a pesticide unless it is approved by the department to correct an improper label or labeling under section 24(c), FIFRA.
- (2) Add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter.
- (3) Use for a person's own advantage or to reveal any information relative to formulas of products acquired in the administration of this chapter, to persons other than to the chairperson or proper officials or employees of the State or the federal government; to the courts of this State or the federal government in response to a subpoena; to physicians; or, in emergencies, to pharmacists and other qualified persons for use in the preparation of antidotes.
- (4) For any pesticide dealer, wholesaler, or retailer to expose or to offer for sale or to solicit or receive orders for the sale of restricted use pesticides unless the dealer, wholesaler, or retailer has applied for and has obtained a license from the department.
- (5) For any pesticide dealer, wholesaler, or retailer to expose or to offer for sale or to solicit or receive orders for the sale of restricted use pesticides to any person other than a certified pesticide applicator.
- (6) For any pesticide dealer, wholesaler, or retailer to make any verbal or written claim or representation relating to any pesticide product that is inconsistent with the specific pesticide product label.

§149A-12 Exemptions. (a) The prohibitions of §149A-11(a) shall not apply to:

- (1) Any carrier while lawfully engaged in transporting a pesticide within this State, if the carrier, upon request of the chairperson or the chairperson's duly designated officer or employee, permits the officer or employee to copy all records showing the transactions in and movement of the pesticide or device;
- (2) Public officials of the State and the federal government engaged in the performance of their official duties in administering state or federal pesticide law or rule;

- (3) The manufacturer or shipper of a pesticide intended only for experimental use:
 - (A) By or under the supervision of an agency of the State or of the federal government authorized by law to conduct research in the field of pesticides;
 - (B) If the pesticide is not sold and if the container is plainly and conspicuously marked "For Experimental Use Only -- Not to be Sold" together with the manufacturer's name and address;
- (4) Any person who establishes a guaranty signed by, and containing the name and address of, the licensee or person residing in the United States from whom the person purchased or received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully licensed at the time of sale and delivery to the person and it complies with the other requirements of FIFRA. In this case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of FIFRA; and
- (5) Any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to that pesticide and that use or possession.

(b) No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

§149A-13 Procedure for licensing pesticides. (a) Any pesticide which is received, used, sold, offered for sale, or distributed within this State shall be licensed by the board. Any pesticide product which has been sold in this State but for which the license is not renewed can be used by the purchaser. However, the product cannot be sold, resold, or distributed within the State before its license is renewed. The licensee shall file with the department a statement including:

- (1) The name and address of the licensee and the name and address of the person whose name will appear on the label, if other than the licensee;
- (2) The name of the pesticide;
- (3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including directions for use; and

- (4) If requested by the department, a full description of the tests made and the results thereof upon which the claims are based.
- (b) The licensee shall pay a minimum fee of \$10 for each year, or fraction thereof, that the pesticide is licensed, provided that the minimum annual fee for a restricted use pesticide shall be \$30. Licensing fees may be increased from time to time by rules and may vary according to the amount or quantity of pesticide to be sold, offered for sale, or distributed. The term of the license shall be for a period of three years, beginning January 1, 1982, expiring on December 31, 1984, and on December 31 of each third year thereafter. In case of renewal of license, a statement shall be required only with respect to information which is different from that furnished when the pesticide was licensed or last relicensed. All fees collected shall be deposited in the general fund of the State.
- (c) When a licensee discontinues the distribution of a pesticide which has been licensed in this State, the licensee will be required to continue licensing of this pesticide until no more remains on the retailer's shelves, or for three years after written notice to the department of the date of discontinuance; provided that the continued sale is not specifically prohibited by the department or the EPA.
- (d) The department, whenever it deems necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide. If it appears to the department that the composition of the pesticide is complete as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of §149A-15, the department shall license the pesticide.
- (e) Notwithstanding any other provision of this chapter, licensing of a pesticide is not required in the case of a pesticide shipped from one plant within this State to another plant within this State when both plants are operated by the same person.

§149A-14 Refusal, cancellation, or suspension of the license.

- (a) The department may refuse to license a pesticide when it has been determined that:
- (1) The pesticide or its labeling does not comply with this chapter or the rules adopted under this chapter; or
 - (2) The licensee fails to comply with the licensing procedures set forth by rules; or

- (3) The claims, representations, or other statements on the label are false or misleading; or
- (4) The proposed use would result in unreasonable adverse effect on the environment.

(b) To protect the health and environment, the department may, after hearing, cancel the license of a pesticide. This cancellation shall be made after the department has determined that the continued use of the pesticide would result in unreasonable adverse effects on the environment.

(c) If the department determines that action is necessary to prevent an imminent hazard during the time required for cancellation proceedings, the department may suspend the license of a pesticide immediately. The suspension order shall be in effect until the department issues its final order either cancelling or denying the cancellation of the license.

(d) The licensee shall be entitled to contest under chapter 91, the determinations of the department relative to refusing, cancelling, or suspending a pesticide license.

§149A-15 Labeling requirements. (a) Each container of pesticides shall bear or have attached in a conspicuous place, a plainly written or printed label in the English language providing the following information:

- (1) Name, brand, or trade mark under which the pesticide is sold or distributed;
- (2) Ingredient statement as specified by rules;
- (3) Direction for use which if complied with will adequately protect the health and environment;
- (4) Warning or caution statement as specified by rules;
- (5) Name and address of the manufacturer, registrant, or person for whom manufactured;
- (6) Weight or measure of content;
- (7) The EPA registration and establishment numbers; and
- (8) Any other labeling requirement as prescribed under FIFRA.

§149A-16 Coloration of certain pesticides. (a) Pesticides known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, or barium fluosilicate shall be distinctly colored as specified by rule.

(b) The department, may, require the coloration of other pesticides that it determines to be necessary to protect the health and environment.

§149A-17 Sales, permit, and record. In addition to licensing requirements applicable to pesticides, every person who sells or distributes restricted use pesticides shall obtain an annual permit from the department. Conditions, procedures, and fees for the permit shall conform to the rules adopted under this section.

All persons permitted to sell restricted use pesticides shall keep records of the individual sales of these pesticides. Records shall be kept at the principal place of business of the permittee for a period specified by the rules and shall be available to the department on request.

§149A-18 Denial, suspension, or revocation of permit. The department may deny issuance of a permit to sell a restricted use pesticide for reasonable cause. Any permit issued pursuant to rules adopted under §149A-17 may be suspended or revoked by the department, after due hearing, for violation of any condition of the permit or of any law or rule pertaining to the sale of pesticides.

Any order made by the department for the suspension or revocation of a permit shall be in writing and shall set forth the reasons for the suspension or revocation.

The action of the department in suspending or in revoking a permit may be reviewed in the manner provided by chapter 91.

§149A-19 Determination; rules; uniformity. (a) The board, after having afforded interested and affected parties an opportunity to be heard and, in instances in which human health is affected, after consultation with the director of health, shall make and adopt rules:

- (1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

- (2) To determine the pesticides which are highly toxic to man; to designate pesticides as restricted use or non-restricted use; and to establish a system of control over the distribution and use of certain pesticides and devices purchased by the consuming public;
- (3) To determine standards of coloring for pesticides, and to subject pesticides to the requirements of §149A-16;
- (4) To establish procedures, conditions, and fees for the issuance of licenses for sale of restricted use pesticides;
- (5) To establish fees for the licensing of pesticides within the limitations of §149A-13(b);
- (6) To establish procedures for the licensing of pesticides;
- (7) To establish procedures for the registration of pesticides under provisions of section 24(c), FIFRA;
- (8) To establish procedures for the disposal of pesticides; and
- (9) To establish procedures to issue experimental use permits under provisions of section 5 of FIFRA.

(b) The board, after public hearing, shall make and adopt appropriate rules for carrying out this chapter, including rules providing for the collection and examination of samples of pesticides or devices.

(c) The board, after public hearing, shall adopt rules applicable to and in conformity with the primary standards established by this chapter or as prescribed by FIFRA with respect to pesticides.

§149A-20 Seizures; "stop-sale" and "removal from sale" orders. (a) Any pesticide or device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of this chapter, may be seized. Any pesticide product or device seized hereunder shall, after entry of decree, be disposed of by destruction or sale as the court directs and the proceeds, if the pesticide product or device is sold, less legal costs, shall be paid to the general fund of the State; provided that the pesticide product or device shall not be sold contrary to this chapter; and provided that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide product or device shall not be disposed of unlawfully, the court may direct the pesticide product or device to be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(b) The chairperson or the chairperson's authorized agent may issue and enforce a written or printed "stop-sale" or "removal from sale" order to withhold from sale any pesticide or device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of this chapter.

§149A-21 Enforcement. (a) If it appears that a pesticide or device fails to comply with this chapter, the department may refer the facts with a copy of the results of the analysis or the examination of the pesticide product or device to the appropriate governmental agency for prosecution. A warning notice shall be issued before prosecution proceedings are initiated.

(b) The governmental agency to which any violation is reported may cause appropriate proceedings to be instituted in the appropriate court without delay if so warranted.

(c) The department shall, by publication in such manner as it may prescribe, give notice of all judgements entered in actions instituted under this chapter.

§149A-22 Authority. The board shall have authority to adopt rules, as necessary, consistent with section 5(f) and section 24(c) of FIFRA, to develop and implement state programs for registration of pesticides for special local needs and issuance of experimental use permits.

§149A-23 Cooperation. The department may cooperate or enter into agreements with any other agency of the State or any agency of the federal government for the purpose of carrying out this chapter and securing uniformity of rules.

PART III. PESTICIDE USE

§149A-31 Prohibited acts. No person shall:

- (1) Use any pesticide in a manner inconsistent with its label, except that it shall not be unlawful to:
 - (A) Apply a pesticide at any dosage, concentration, or frequency less than that specified on the label or labeling; provided that the efficacy of the pesticide is maintained and further provided that, when a pesticide is applied by a commercial applicator, the deviation from the label recommendations must be with the consent of the purchaser of the pesticide application services;

- (B) Apply a pesticide against any target pest not specified in the labeling if the application is to a crop, animal, or site specified on the label or labeling; provided that the label or labeling does not specifically prohibit the use on pests other than those listed on the label or labeling;
 - (C) Employ any method of application not prohibited by the labeling;
 - (D) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the label or labeling; or
 - (E) Use in a manner determined by rule not to be an unlawful act;
- (2) Use, store, transport, or discard any pesticide or pesticide container in any manner which would have unreasonable adverse effects on the environment;
 - (3) Use or apply restricted use pesticides unless the person is a certified pesticide applicator or under the direct supervision of a certified pesticide applicator with a valid certificate issued pursuant to rules adopted under §149A-33(1);
 - (4) Use or apply pesticides in any manner that has been suspended, canceled, or restricted pursuant to §149A-32.5;
 - (5) Falsify any record or report required to be made or maintained by rules adopted pursuant to this chapter; or
 - (6) Fill with water, through a hose, pipe or other similar transmission system, any tank, implement, apparatus, or equipment used to disperse pesticides, unless the tank, implement, apparatus, equipment, hose, pipe or other similar transmission system is equipped with an air gap or a reduced-pressure principle backflow device meeting the requirements under section 340E-2 and the rules adopted thereunder.

§149A-32.5 Cancellation or suspension of pesticide uses.
Notwithstanding any law, rule, or executive order to the contrary, the chairperson of the board of agriculture, in consultation with the advisory committee on pesticides and also with the approval of the director of health, shall suspend, cancel, or restrict the use of certain pesticides or specific uses of certain pesticides when the usage is determined to have unreasonable adverse effects on the

environment. In addition to other circumstances which may require a determination as to whether unreasonable adverse effects exist, a determination shall be made:

- (1) When residues of the pesticides are detected in drinking water; or
- (2) When a use under special local needs registration involves a pesticide for which any use has been suspended or canceled by the EPA.

§149A-33 Rules. The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, and including but not limited to the following:

- (1) To establish fees, procedures, conditions, and standards to certify persons for the use of restricted use pesticides under section 4 of FIFRA;
- (2) To establish limitations and conditions for the application of pesticides by aircraft, power rigs, mist blowers, and other equipment;
- (3) To establish, as necessary, specific standards and guidelines which specify those conditions which constitute unreasonable adverse effects on the environment;
- (4) To establish, as necessary, record keeping requirements for pesticide use by applicators; and
- (5) To establish, as necessary, procedures for the issuance of guidelines to specify those conditions that constitute use of a pesticide in a manner inconsistent with its label.

§149A-34 Denial, suspension, or revocation of certificate. The department may deny issuance of a certificate for reasonable cause. Any certificate issued pursuant to rules adopted under §149A-33(1) may be suspended or revoked by the department, after hearing, for violation of any condition of the certificate or of any law or rule pertaining to the use of any restricted use pesticide. Any order made by the department for the suspension or revocation of a certificate shall be in writing and shall set forth the reasons for the suspension or revocation. The action of the department in suspending or revoking a certificate may be reviewed in the manner provided by chapter 91.

§149A-35 Cooperation. The department is authorized and empowered to cooperate with and enter into agreements with any

agency of the State, the federal government, or any other agency for the purpose of carrying out this chapter. The University of Hawaii cooperative extension service and other educational agencies shall provide educational programs aimed at assisting users and prospective users of pesticides and shall solicit the aid of the department in providing technical assistance and advice on the authorized use of pesticides.

§149A-36 Authority to inspect. The department or any authorized representative or employee of the department may enter upon any public or private property, according to law at any reasonable time to examine and inspect application methods and equipment, to examine and collect samples of plants, soil, and other materials, and to perform any other duty for the purpose of carrying out and effectuating the purposes of this chapter.

§149A-37 Exemptions. Exemption from this chapter may be granted by the department to the University of Hawaii and other state and federal agencies for experimental or research work directed toward obtaining knowledge of the characteristics and proper usage of unspecified or experimental pesticides. Research and experimental work conducted by private agencies with adequate research facilities may also be similarly exempted upon approval by the department. Approval must be in writing stating the specific exemptions and conditions.

PART IV. VIOLATIONS, WARNING NOTICE, AND PENALTIES

§149A-41 Violations, warning notice, and penalties. (a) Warning notice. Any person who violates this chapter or any rule issued under this section may upon the first violation be issued a written warning notice citing the specific violation and necessary corrective action.

(b) Civil penalties.

- (1) In general, any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this chapter may be assessed a civil penalty by the board of not more than \$5,000 for each offense.
- (2) Any private applicator or other person not included in paragraph (1) who violates any provision of this chapter subsequent to receiving a written warning from the department or following a citation for a prior violation may be assessed a civil penalty by the board of not more than \$1,000 for each offense.

- (3) No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on the specific charge in the county of the residence of the person charged. In determining the amount of penalty, the board shall consider the appropriateness of the penalty to the size of the business of the person charged, the effect on the person's ability to continue business, and the gravity of the violation.
 - (4) In case of inability to collect the civil penalty or failure of any person to pay all or such portion of the civil penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover the amount by action in the appropriate court.
- (c) Criminal penalties.
- (1) In general, any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this chapter shall be guilty of a misdemeanor and shall on conviction be fined not more than \$25,000, or imprisoned for not more than one year, or both.
 - (2) Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this chapter shall be guilty of a misdemeanor and shall on conviction be fined not more than \$1,000, or imprisoned for not more than one year, or both.
 - (3) Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, shall be fined not more than \$10,000, or imprisoned for not more than three years, or both.
- (d) Liabilities.

When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

PART V. ADVISORY COMMITTEE

§149A-51 Advisory committee. There shall be an advisory committee on pesticides composed of but not limited to the chair-

person, or the chairperson's designated representative, who shall head the committee and one representative each from the department of health, department of land and natural resources, University of Hawaii college of tropical agriculture and human resources, sugar industry, pineapple industry, Hawaii Farm Bureau Federation, pesticide industry, structural pest control industry, an environmental organization, a citizen group, and one at-large public member. Members of the advisory committee shall be appointed by the governor from a list of persons recommended by the respective agencies and industries in accordance with section 26-34. The committee shall advise and assist the department in developing or revising laws and rules to carry out and effectuate the purposes of this chapter and in advising the department in pesticide problems.

§149A-52 Severability. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected.

§149A-53 Applicability of chapter 91. The board shall, in the administration of this chapter, conform to the provisions of chapter 91.

(6)

TITLE 4 DEPARTMENT OF AGRICULTURE
SUBTITLE 6 DIVISION OF PLANT INDUSTRY
CHAPTER 66
PESTICIDES

- §4-66-1 Objectives
- §4-66-2 Definitions
- §4-66-3 Administration, enforcement and penalty
- §4-66-4 Contents of the pesticide label; generally
- §4-66-5 Label; name, brand, or trademark
- §4-66-6 Label; name and address of producer, registrant or person for whom produced
- §4-66-7 Label; net weight or measure of contents
- §4-66-8 Label; product registration number
- §4-66-9 Label; producing establishment registration number
- §4-66-10 Label; ingredient statement; generally
- §4-66-11 Label; position of ingredient statement
- §4-66-12 Label; names to be used in ingredient statement
- §4-66-13 Label; statements of percentages
- §4-66-14 Label; accuracy of stated percentages
- §4-66-15 Label; deterioration
- §4-66-16 Label; inert ingredients
- §4-66-17 Label; warnings and precautionary statements; generally
- §4-66-18 Label; required front panel statements
- §4-66-19 Label; other required warnings and precautionary statements
- §4-66-20 Label; directions for use; generally
- §4-66-21 Label; placement of directions for use
- §4-66-22 Label; exceptions to requirement for directions for use
- §4-66-23 Label; contents of directions for use
- §4-66-24 Label; statement of use classification; generally
- §4-66-25 Label; general use classification
- §4-66-26 Label; restricted use classification
- §4-66-27 Label; prominence and legibility
- §4-66-28 Label; language to be used
- §4-66-29 Label; placement
- §4-66-30 Label; false or misleading statements
- §4-66-31 Label; final printed form
- §4-66-32 Restricted use pesticides
- §4-66-33 Pesticide licensing; exceptions

§4-66-34 Applications for licensing
 §4-66-35 Pesticide licensing; effective date
 §4-66-36 Pesticide licenses; corrections
 §4-66-37 Special local need (SLN) registration
 §4-66-38 Special local need; unreasonable adverse effects
 §4-66-39 Special local need; label, packaging and coloration requirements
 §4-66-40 Special local need; classification
 §4-66-41 Special local need; notification and submission of data to Environmental Protection Agency
 §4-66-42 Coloration
 §4-66-43 Enforcement
 §4-66-44 Notice of judgement
 §4-66-45 Experimental use permits; generally
 §4-66-46 Experimental use permits; prohibitions
 §4-66-47 Experimental use permits; exceptions
 §4-66-48 Experimental use permits; provisions for issuance
 §4-66-49 Experimental use permits; restrictions
 §4-66-50 Experimental use permits; reports
 §4-66-51 Experimental use permits; monitoring and revocation
 §4-66-52 Restricted use pesticide dealer
 §4-66-53 Dealer's records and reports
 §4-66-54 Storage, display, and sale of pesticides
 §4-66-55 Disposal of pesticides and empty pesticide containers
 §4-66-56 Certification of applicators
 §4-66-57 General standards for certification of commercial applicators
 §4-66-58 Specific standards for certification of commercial applicators
 §4-66-59 Standards for certification of private applicators
 §4-66-60 Certification procedures
 §4-66-61 Conditions on the use of restricted pesticides
 §4-66-62 Commercial applicator recordkeeping
 §4-66-63 Single purchase certification
 §4-66-64 Conditions and limitations on pesticide application and sale
 §4-66-65 Posting of signs
 §4-66-66 Fees
 §4-66-67 Severability

Historical Note: This chapter is based substantially upon Regulation 1 entitled "Pesticide Regulation" of the division of plant industry, department of agriculture.

[Eff. 2/22/74; am 12/10/77; R JUL 13 1981]

§4-66-1 Objectives. The objectives of these rules are to implement the requirements of chapter 149A, Hawaii Revised Statutes, which provides for the registration, licensing, certification, record-keeping, usage, and other activities related to the safe and efficacious use of pesticides. [Eff. JUL 13 1981] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-2 Definitions. As used in this chapter:

"Act" means the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes;

"Agricultural commodity" means any plant, or plant product, or animal or animal product, produced by, but not limited to, farmers, ranchers, vineyardists, plant propagators, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons for sale;

"Certification" means the authorization granted by the state or federal government to a person to use, handle, or supervise the use of restricted use pesticides;

"Certification standard" means a requirement for certification;

"Changed use pattern" means a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use;

"Commercial applicator" or "commercial pesticide applicator" means a certified applicator, whether or not a private applicator with respect to some uses, who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by §149A-2(28), Hawaii Revised Statutes;

"Competent" means the state of being able and qualified to perform a particular function in pesticide application, the degree of competence being directly related to the nature of the activity and the associated

responsibility;

"Domestic application" means application of a pesticide directly to humans or pets, or application of a pesticide in, on, or around all structures, vehicles, or areas associated with the household or home life, patient care areas of health related institutions, or areas where children spend time, including but not limited to:

- (1) Gardens, non-commercial greenhouses, yards, patios, houses, pleasure marine craft, mobile homes, campers and recreational vehicles, non-commercial campsites, home swimming pools and kennels;
- (2) Articles, objects, devices or surfaces handled or contacted by humans or pets in all structures, vehicles or areas listed above;
- (3) Patient care areas of nursing homes, mental institutions, hospitals, and convalescent homes; and
- (4) Educational, lounging and recreational areas of preschools, nurseries and day camps;

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et. seq., as amended;

"Finished bait" means an end use product which requires no preparation, mixing or transfer from the original container;

"Front panel" means that portion of the label of a pesticide product that is ordinarily visible to the purchaser under the usual conditions of display for sale;

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus, bacterium, or virus. Fungicides include:

- (1) Products intended for use as seed or plant treatments to destroy or prevent fungus diseases;
- (2) Products intended for use in disinfecting, sanitizing, or sterilizing premises or other inanimate objects to prevent or destroy organisms which cause diseases of man or other animals;
- (3) Products for use in reducing bacterial counts in water or air; and
- (4) Products intended for use as wood preservatives which prevent rot or decay in wood by preventing or destroying organisms which cause decay or rot;

Products not considered fungicides include:

- (1) Products intended for use in preventing or destroying any fungus or virus on or

in living man or other animals and those on or in processed food, beverages or pharmaceuticals (the term processed foods includes processed animal feed and the term pharmaceuticals is intended to include cosmetics); and

- (2) Paints which are treated to protect the paint itself and bear no claim for preventing or destroying fungi after application to any surface;

"Hazard" means a situation where there exists a probability that a given pesticide will cause injury or have an adverse effect on the environment;

"Head" means the head of the division of plant industry, Hawaii department of agriculture, or any officer or employee to whom authority has been duly delegated;

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed including any algae or other aquatic weed, or any plant parts growing where not wanted;

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insect. The term shall not include pharmaceutical products approved by the United States Food and Drug Administration for use, under prescription by a licensed physician on humans or by a licensed veterinarian on animals;

"LC₅₀" means a concentration of a substance, expressed as parts per million parts of medium, that is lethal to fifty per cent of the test population of animals under test conditions acceptable for registration under FIFRA;

"LD₅₀" means a single dermal or oral dose of a substance, expressed as milligrams per kilogram (mg/kg) of body weight, that is lethal to fifty per cent of the test population of animals under test conditions acceptable for registration under FIFRA;

"Licensed sales outlet" means a specific site within the state where a stock of restricted use pesticides are kept for sale and where records of such sale are kept;

"Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes inhabiting soil, water, plants, or plant parts;

"Non-target organisms" means those flora and fauna (including man) that are not intended to be controlled, injured, killed, or detrimentally affected in any way by a pesticide;

"Pesticide" means any substance or mixture of substances intended for preventing, destroying,

repelling, attracting, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. A product shall be deemed to be a pesticide regardless of whether it is intended for use as packaged, or as a dilution or mixture with substances such as carriers or baits. Products not considered pesticides include:

- (1) Deodorants, bleaching agents, and cleaning agents for which no pesticidal claims are made or implied;
- (2) Embalming fluids;
- (3) Building materials which have been treated to protect the material itself against any pest and bear no claims for protection of other surfaces or objects;
- (4) Fabrics which have been treated to protect the fabric itself from insects, fungi, or any other pests;
- (5) Fertilizer and other plant nutrients; and
- (6) Products intended only for use after further processing or manufacturing such as grinding to dust or other operations;

"Qualified pesticides sales manager" means a person in charge of the sale of restricted use pesticides in a licensed sales outlet and who has successfully passed an examination to qualify for that position;

"Reentry" means the action of entering an area or site where a pesticide has been applied;

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating animals belonging to the Order Rodentia of the Class Mammalia such as rats, mice, gophers, rabbits, hares, and closely related species;

"Use" means any act of handling or release of a pesticide, or exposure of man or the environment to a pesticide through acts, including but not limited to:

- (1) Application of a pesticide, including mixing and loading and any required supervisory action in or near the area of application;
- (2) Storage actions for pesticides and pesticide containers; and
- (3) Disposal actions for pesticides and pesticide containers;

"Use pattern" means the manner in which a pesticide is applied and includes the following parameters of pesticide application:

- (1) Target pest;
- (2) Crop or animals treated;
- (3) Application site; and
- (4) Application technique, rate and frequency.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-3 Administration, enforcement, and penalty.
The head may take any action as may be necessary in the administration and enforcement of the act, this rule, and the penalty provisions as provided by law. [Eff. **JUL 13 1981**] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-4 Contents of the pesticide label; generally. Every pesticide product shall bear a label containing the information specified by the act and these rules. The contents of a label shall show clearly and prominently the following:

- (1) The name, brand, or trademark under which the product is sold as prescribed in §4-66-5;
- (2) The name and address of the producer, registrant, or person for whom produced as prescribed in §4-66-6;
- (3) The net contents as prescribed in §4-66-7;
- (4) The product registration number as prescribed in §4-66-8;
- (5) The producing establishment number as prescribed in §4-66-9;
- (6) An ingredient statement as prescribed in §§4-66-10 to 4-66-16;
- (7) Warning or precautionary statements as prescribed in §§4-66-17 to 4-66-19;
- (8) The directions for use as prescribed in §§4-66-20 to 4-66-23; and
- (9) The use classification as prescribed in §§4-66-24 to 4-66-26.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-5 Label; name, brand, or trademark. (a) The name, brand, or trademark under which the pesticide product is sold shall appear on the front panel of the label.

(b) No name, brand, or trademark may appear on the label which:

- (1) Is false or misleading; or
- (2) Has not been approved by the head through registration or licensing.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-6 Label; name and address of producer, registrant, or person for whom produced. An unqualified name and address given on the label shall be considered as the name and address of the producer. If the registrant's name appears on the label and the registrant is not the producer, or if the name of the person for whom the pesticide was produced appears on the label, it shall be qualified by appropriate wording such as "packed for," "distributed by," or "sold by" to show that the name is not that of the producer. [Eff. JUL 13 1981]
(Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10)
(Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-7 Label; net weight or measure of contents.

(a) The net weight or measure of content shall be exclusive of wrappers or other materials and shall be the average content unless explicitly stated as a minimum quantity.

(b) If the pesticide is a liquid, the net content shall be in terms of liquid measure at 68° F. (20° C.) and shall be expressed in conventional american units of fluid ounces, pints, quarts, and gallons.

(c) If the pesticide is solid or semi-solid, viscous or pressurized, or is a mixture of liquid and solid, the net content statement shall be in terms of weight expressed as avoirdupois pounds and ounces.

(d) In all cases, net content shall be stated in terms of the largest suitable units, i.e., "1 pound 10 ounces" rather than "26 ounces".

(e) In addition to the required units specified, net content may be expressed in metric units.

(f) Variation above minimum content or around an average is permissible only to the extent that it represents deviation unavoidable in good manufacturing practice. Variation below a stated minimum is not permitted. In no case shall the average content of the packages in a shipment fall below the stated average content.

[Eff. JUL 13 1981] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-8 Label; product registration number.

The registration number assigned to the pesticide product at the time of registration by the Environmental Protection Agency shall appear on the label,

preceded by the phrase "EPA Registration No.," or the phrase "EPA Reg. No." The registration number shall be set in type of a size and style similar to other print on that part of the label on which it appears and shall run parallel to it.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-9 Label; producing establishment registration number. The producing establishment registration number preceded by the phrase "EPA Est.", of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container. It shall appear on the wrapper or outside container of the package if the EPA establishment registration number on the immediate container cannot be clearly read through the wrapper or container. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-10 Label; ingredient statement; generally.

(a) The label of each pesticide product shall bear a statement which contains the name and percentage by weight of each active ingredient, the total percentage by weight of all inert ingredients; and if the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic calculated as elemental arsenic.

(b) The active ingredients shall be designated by the term "active ingredients" and the inert ingredients by the term "inert ingredients," or the singular forms of these terms when appropriate. Both terms shall be in the same type size, be aligned to the same margin and be equally prominent. The statement "Inert Ingredients, none" is not required for pesticides which contain one hundred per cent active ingredients.

(c) Unless the ingredient statement is a complete analysis of the pesticide, the term "analysis" shall not be used as a heading for the ingredient statement. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-11 Label; position of ingredient statement.

(a) The ingredient statement is normally required on the front panel of the label. If there is an outside container or wrapper through which the ingre-

dient statement cannot be clearly read, the ingredient statement shall also appear on the outside container or wrapper. If the size or form of the package makes it impracticable to place the ingredient statement on the front panel of the label, permission may be granted for the ingredient statement to appear elsewhere.

(b) The text of the ingredient statement shall run parallel with other text on the panel on which it appears, and shall be clearly distinguishable from, and shall not be placed in, the body of other text. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-12 Label; names to be used in ingredient statement. The name used for each ingredient shall be the accepted common name, if there is one, followed by the chemical name. The common name may be used alone only if it is well known. If no common name has been established, the chemical name alone shall be used. In no case shall the use of a trademark or proprietary name be permitted unless such name has been accepted as a common name. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-13 Label; statements of percentages. The percentages of ingredients shall be stated in terms of weight-to-weight. The sum of percentages of the active and inert ingredients shall be one hundred. Percentages shall not be expressed by a range of values such as "22-25%." If the uses of the pesticide product are expressed as weight of active ingredient per unit area, a statement of the weight of active ingredient per unit volume of the pesticide formulation shall also appear in the ingredient statement. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-14 Label; accuracy of stated percentages. The percentages given shall be as precise as possible reflecting good manufacturing practice. If there may be unavoidable variation between manufacturing batches, the value stated for each active ingredient shall be the lowest percentage which may be present. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15,

149A-33, 40 CFR §162.10)

§4-66-15 Label; deterioration. Pesticides which change in chemical composition significantly shall meet the following labeling requirements:

- (1) In cases where it is determined that a pesticide formulation changes chemical composition significantly, the product shall bear the following statement in a prominent position on the label: "not for sale or use after (date)"; and
- (2) The product shall meet all label claims up to the expiration time indicated on the label.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-16 Label; inert ingredients. The head may require the name of any inert ingredient or ingredients to be listed in the ingredient statement if it is determined that such ingredient or ingredients may pose a hazard to man or the environment.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-17 Label; warnings and precautionary statements; generally. Required warnings and precautionary statements concerning the general areas of toxicological hazard including hazard to children, environmental hazard, and physical or chemical hazard fall into two groups: those required on the front panel of the labeling and those which may appear elsewhere.

Specific requirements concerning content, placement, type size, and prominence are given in §§4-66-18 and 4-66-19. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-18 Label; required front panel statements.

(a) With the exception of the child hazard warning statement, the text required on the front panel of the label is determined by the toxicity category of the pesticide. The category is assigned on the basis of the highest hazard shown by any of the following indicators:

Toxicity category I

Oral LD₅₀ Up to and including 50 mg/kg
 Inhalation LC₅₀ Up to and including 0.2 mg/liter
 Dermal LD₅₀ Up to and including 200 mg/kg
 Eye effects Corrosive; corneal opacity not
 reversible within 7 days
 Skin effects Corrosive

Toxicity category II

Oral LD₅₀ From 50 through 500 mg/kg
 Inhalation LC₅₀ From 0.2 through 2 mg/liter
 Dermal LD₅₀ From 200 through 2,000 mg/kg
 Eye effects Corneal opacity reversible
 within 7 days
 Skin effects Severe irritation at 72 hours

Toxicity category III

Oral LD₅₀ From 500 through 5,000 mg/kg
 Inhalation LC₅₀ From 2 through 20 mg/liter
 Dermal LD₅₀ From 2,000 through 20,000 mg/kg
 Eye effects No corneal opacity; irritation
 reversible within 7 days
 Skin effects Moderate irritation at 72 hours

Toxicity Category IV

Oral LD₅₀ Greater than 5,000 mg/kg
 Inhalation LC₅₀ Greater than 20 mg/liter
 Dermal LD₅₀ Greater than 20,000 mg/kg
 Eye effects No irritation
 Skin effects Mild or slight irritation at
 72 hours

(b) Human hazard signal words required for the respective toxicity categories shall be as follows:

- (1) Toxicity Category I. All pesticide products meeting the criteria of toxicity category I shall bear on the front panel, the signal word "danger". In addition, if the product was assigned to toxicity category I on the basis of its oral, inhalation, or dermal toxicity (as distinct from skin and eye localeffects) the word "poison" shall appear in red on a background of distinctly contrasting color and the skull and crossbones shall appear in immediate proximity to the word "poison";
- (2) Toxicity Category II. All pesticide products meeting the criteria of toxicity Category II shall bear on the front panel the signal word "warning";
- (3) Toxicity Category III. All pesticide products meeting the criteria of toxicity Category III shall bear on the front panel the signal word "Caution";
- (4) Toxicity Category IV. All pesticide products meeting the criteria of toxicity Category IV shall bear on the front panel the signal

- word "caution"; and
- (5) Use of any signal word or words associated with a higher toxicity category is not permitted except when the head determines that such labeling is necessary to prevent unreasonable adverse effects on man or the environment. In no case shall more than one human hazard signal word appear on the front panel of a label.
- (c) Every pesticide product label shall bear on the front panel the statement "keep out of reach of children." Only in cases where the likelihood of contact with children during distribution, marketing, storage, or use is demonstrated by the applicant to be extremely remote, or if the nature of the pesticide is such that it is approved for use on infants or small children, may the head waive this requirement.
- (d) Statement of practical treatment required for the respective toxicity categories shall be as follows:
- (1) A statement of practical treatment (first aid or other) shall appear on the front panel of the label of all pesticides falling into toxicity category I on the basis of oral, inhalation or dermal toxicity. The department may, however, permit reasonable variations in the placement of the statement of practical treatment if some reference such as "see statement of practical treatment on back panel" appears on the front panel near the word "poison" and the skull and cross-bones; and
 - (2) For other toxicity categories, the statement of practical treatment is not required on the front panel except as described in (1) above. The applicant may, however, include such a front panel statement at his option. Statements of practical treatment are, however, required elsewhere on the label in accord with §4-66-18 if they do not appear on the front panel.
- (e) All the required front panel warning statements shall be grouped together on the label, and shall appear with sufficient prominence relative to other front panel text and graphic material to make them unlikely to be overlooked under customary conditions of purchase and use. The minimum type size requirement shall be that established under FIFRA. [Eff. JUL 13 1981] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15,

149A-33, 40 CFR §162.10)

§4-66-19. Label; other required warnings and precautionary statements. (a) The warnings and precautionary statements as required below shall appear together on the label under the general heading "precautionary statements" and under appropriate subheadings of "hazard to humans and domestic animals", "environmental hazard", and "physical or chemical hazard".

(b) Where a hazard exists to humans or domestic animals, precautionary statements are required indicating the particular hazard, the route or routes of exposure, and the precautions to be taken to avoid accident, injury, or damage. The precautionary paragraph shall be immediately preceded by the appropriate hazard signal word.

(c) Where a hazard exists to non-target organisms excluding humans and domestic animals, precautionary statements are required stating the nature of the hazard and the appropriate precautions to avoid potential accident, injury, or damage. Examples of the hazard statements and the circumstances under which they are required follow:

- (1) If a pesticide intended for outdoor use contains an active ingredient with a mammalian acute oral LD₅₀ of 100 mg/kg or less, the statement "this pesticide is toxic to wildlife" is required;
- (2) If a pesticide intended for outdoor use contains an active ingredient with a fish acute LC₅₀ of 1 ppm or less, the statement "this pesticide is toxic to fish" is required;
- (3) If a pesticide intended for outdoor use contains an active ingredient with an avian acute oral LD₅₀ of 100 mg/kg or less, or a subacute dietary LC₅₀ of 500 ppm or less, the statement "this pesticide is toxic to wildlife" is required;
- (4) If either accident history or field studies demonstrate that use of the pesticide may result in fatality to birds, fish, or mammals, the statement "this pesticide is extremely toxic to wildlife (fish)." is required;
- (5) For uses involving foliar application to agricultural crops, forests, shade trees, or mosquito abatement treatments, pesticides toxic to pollinating insects shall bear appropriate label cautions; and
- (6) For all outdoor uses other than aquatic applications the label shall bear the caution "keep out of lakes, ponds, or streams. Do

not contaminate water by cleaning of equipment or disposal of wastes".

(d) Warning statements on the flammability or explosive characteristics of the pesticide are required as shall be established under FIFRA.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-20 Label; directions for use; generally. Directions for use shall be stated in terms which can be easily read and understood by the average person likely to use, or to supervise the use of, the pesticide. When followed, directions shall be adequate to protect the public from fraud and from personal injury and to prevent unreasonable adverse effects on the environment. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-21 Label; placement of directions for use. (a) Directions may appear on any portion of the label provided that they are conspicuous enough to be easily read by the user of the pesticide product.

(b) Directions for use may appear on printed or graphic matter which accompanies the pesticide provided that:

- (1) If required by the department, the printed or graphic matter is securely attached to each package of the pesticide, or placed within the outside wrapper or bag;
- (2) The label bears a reference to the directions for use in accompanying leaflets or circulars, such as "see directions in the enclosed circular"; and
- (3) The head determines that it is not necessary for the directions to appear on the label.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-22 Label; exceptions to requirement for directions for use. (a) Detailed directions for use may be omitted from labeling of pesticides which are intended for use only by manufacturers of products other than pesticide products in their regular manufacturing processes, provided that:

- (1) The label clearly shows that the product is intended for use only in manufacturing

processes and specifies the type or types of products involved;

- (2) Adequate information such as technical data sheets or bulletins, is available to the trade specifying the type of product involved and its proper use in manufacturing processes;
- (3) The product shall not come into the hands of the general public except after incorporation into finished products; and
- (4) The head determines that the directions are not necessary to prevent unreasonable adverse effects on man or the environment.

(b) Detailed directions for use may be omitted from the labeling of pesticide products for which sale is limited to physicians, veterinarians, or druggists, provided that:

- (1) The label clearly states that the product is for use only by physicians or veterinarians;
- (2) The head determines that the directions are not necessary to prevent unreasonable adverse effects on man or the environment; and
- (3) The product is also a drug and regulated under the provisions of the Federal Food, Drug and Cosmetic Act.

(c) Detailed directions for use may be omitted from the labeling of pesticide products which are intended for use only by formulators in preparing pesticides for sale to the public provided that:

- (1) There is information readily available to the formulators on the composition, toxicity, methods of use, applicable restrictions or limitations, and effectiveness of the product for pesticide purposes;
- (2) The label clearly states that the product is intended for use only in manufacturing, formulating, mixing, or repackaging for use as a pesticide and specifies the type or types of pesticide products involved;
- (3) The product as finally manufactured, formulated, mixed, or repackaged is registered; and
- (4) The head determines that the directions are not necessary to prevent unreasonable adverse effects on man or the environment.

[Eff. JUL 13 1981] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-23 Label; contents of directions for use. The directions for use shall include the following, under the headings "directions for use":

- (1) The statement of use classification as prescribed in §4-66-24 immediately under the heading "directions for use";
- (2) Immediately below the statement of use classification, the statement "it is a violation of Federal law to use this product in a manner inconsistent with its labeling";
- (3) The site or sites of application, for example, crops, animals, areas, or objects to be treated;
- (4) The target pest or pests associated with each site;
- (5) The dosage rate associated with each site and pest;
- (6) The method of application, including instructions for dilution, if required, and type or types of application apparatus or equipment required;
- (7) The frequency and timing of applications necessary to obtain effective results without causing unreasonable adverse effects on the environment;
- (8) Specific limitations on reentry to areas where the pesticide has been applied, meeting the requirements concerning reentry provided by §4-66-65;
- (9) Specific directions concerning the storage and disposal of the pesticide and its container, meeting the requirements of §§4-66-54 and 4-66-55. These instructions shall be grouped and appear under the heading "storage and disposal." This heading shall be set in type of the same minimum sizes as required for the child hazard warning required under FIFRA;
- (10) Limitations or restrictions on use required to prevent unreasonable adverse effects, such as:
 - (A) Required intervals between application and harvest of food or feed crops;
 - (B) Rotational crop restrictions;
 - (C) Warnings as required against use on certain crops, animals, objects, or in or adjacent to certain areas;
 - (D) For restricted use pesticides, the category or categories of certified applicator or applicators to whom use is restricted unless the department has determined that the product may be used by any certified applicator;

- (E) For restricted use pesticides, a statement that the pesticide may be applied under the direct supervision of a certified applicator who is not physically present at the site of application but nonetheless available to the person applying the pesticide, unless the department has determined that the pesticide may only be applied under the direct supervision of a certified applicator who is physically present; and
- (F) Other pertinent information which the head determines to be necessary for the protection of man and the environment.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-24 Label; statement of use classification; generally. All pesticide products shall bear on their labels a statement of use classification as described in §§4-66-25 and 4-66-26. Any pesticide product for which some uses are classified for general use and others for restricted use shall be separately labeled according to the labeling standards set forth in this section and shall be marketed as separate products with different registration numbers, one bearing directions only for general use or uses and the other bearing directions for restricted use or uses, except that if a product has both restricted use or uses and general use or uses, both of these uses may appear on a product labeled for restricted use. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-25 Label; general use classification. Pesticide products bearing directions for use or uses classified general shall be labeled with the exact words "general classification" immediately below the heading "directions for use". Reference to the general classification that suggests or implies that the general utility of the pesticide extends beyond those purposes and uses contained in the directions for use shall be considered a false or misleading statement under the statutory definitions of misbranding. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

S4-66-26 Label; restricted use classification.
Pesticide products bearing directions for use or uses classified restricted shall bear statements of restricted use classification on the front panel as follows:

- (1) At the top of the front panel of the label, set in type of the same minimum sizes as required for human hazard signal words and appearing with sufficient prominence relative to other text and graphic material on the front panel to make it unlikely to be overlooked under customary conditions of purchase and use, the statement "restricted use pesticide" shall appear; and
- (2) Directly below this statement on the front panel, a summary statement of the terms of restriction imposed as a precondition to registration shall appear. If use is restricted to certified applicators, the following statement is required: "for retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification." If, however, other regulatory restrictions are imposed, the head shall define the appropriate wording for the terms of restriction by rules.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

S4-66-27 Label; prominence and legibility.
(a) All words, statements, graphic representations, designs, or other information required on the labeling by the Act or the rules in this part shall be:

- (1) Clearly legible to a person with normal vision; and
 - (2) Placed with such conspicuousness (as compared with other words, statements, designs, or graphic matter on the labeling) and expressed in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (b) All required label texts shall:
- (1) Be set in six-point or larger type;
 - (2) Appear on a clear contrasting background; and
 - (3) Not be obscured or crowded.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-28 Label; language to be used. All required label or labeling text shall appear in the english language. However, the head may require or the applicant may propose additional text in other languages considered necessary to protect the public. When additional text in another language is necessary, all labeling requirements shall be applied equally to both the english and other language versions of the labeling. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-29 Label; placement. (a) The label shall appear on or be securely attached to the immediate container of the pesticide product. For purposes of this section, and the misbranding provisions of the act, "securely attached" means that a label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. If the immediate container is enclosed within a wrapper or outside container through which the label cannot be clearly read, the label shall also be securely attached to such outside wrapper or container, if it is a part of the package as customarily distributed or sold.

(b) While a pesticide product is in transit, the appropriate parts of the United States Code of Federal Regulations, Title 49 - Transportation concerning the transportation of hazardous materials, and specifically those parts concerning the labeling, marking, and placarding of hazardous materials and the vehicles carrying them, define the basic federal requirements. In addition, when any registered pesticide product is transported in a tank car, tank truck, or other mobile or portable bulk container, a copy of the accepted label shall be attached to the shipping papers, and left with the consignee at the time of delivery.

(c) When pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy of the label or labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-30 Labeling false or misleading statements.
 Pursuant to §149A-2(22), Hawaii Revised Statutes, a pesticide or a device is misbranded if its labeling is false or misleading in any particular including both pesticidal or non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:

- (1) A false or misleading statement concerning the composition of the product;
- (2) A false or misleading statement concerning the effectiveness of the product as a pesticide or device;
- (3) A false or misleading statement about the value of the product for purposes other than as a pesticide or device;
- (4) A false or misleading comparison with other pesticides or devices;
- (5) Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by the Hawaii department of agriculture;
- (6) The name of a pesticide which contains two or more principal active ingredients if the name suggests one or more but not all such principal active ingredients even though the names of the other ingredients are stated elsewhere in the labeling;
- (7) A true statement used in such a way as to give a false or misleading impression to the purchaser;
- (8) Label disclaimers which negate or detract from labeling statements required under the Act and these rules;
- (9) Claims as to the safety of the pesticide or its ingredients, including statements such as "safe", "nonpoisonous", "noninjurious", "harmless", or "nontoxic to humans and pets" with or without a qualifying phrase as "when used as directed"; and
- (10) Non-numerical and comparative statements on the safety of the product, including but not limited to:
 - (A) "Contains all natural ingredients";
 - (B) "Among the least toxic chemicals known";
 - and
 - (C) "Pollution approved".

[Eff. JUL 13 1981] (Auth: HRS §§149A-15, 149A-33,
 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33,
 40 CFR §162.10)

§4-66-31 Label; final printed form. (a) Except as provided in §4-66-31(b), final printed labeling shall be submitted and accepted prior to registration. However, final printed labeling need not be submitted until draft label texts have been provisionally accepted by the department.

(b) Clearly legible reproductions or photo reductions shall be accepted for unusual labels such as those silk-screened directly onto glass or metal containers or large bag or drum labels. The reproductions shall be of microfilm reproduction quality. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-15, 149A-33, 40 CFR §162.10) (Imp: HRS §§149A-15, 149A-33, 40 CFR §162.10)

§4-66-32 Restricted use pesticides. (a) A pesticide or pesticide use classified for restricted use under FIFRA shall be classified as a restricted use pesticide.

(b) Any pesticides or pesticide uses meeting or exceeding the following criteria shall be a candidate for restricted use classification:

- (1) Pesticides in toxicity categories I and II as defined in §4-66-18;
- (2) Pesticides or pesticide uses which are determined to be a health hazard for one or more reasons including but not limited to toxicity, body storage, oncogenicity, mutagenicity, and teratogenicity or other reproductive effects; and
- (3) Pesticides or pesticide uses which can reasonably be anticipated to result in significant population reductions in non-target organisms, or fatal to members of endangered species.

(b) The head may classify a pesticide or pesticide use meeting or exceeding the criteria set forth in §4-66-32(b) for general use if it is determined that measures such as packaging, type of formulation, or method of application eliminate or reduce hazards associated with the pesticide or pesticide use.

(c) The head, in consultation with the advisory committee, shall determine those pesticides or pesticide uses meeting or exceeding the criteria set forth in §4-66-32(b) and submit a list of those pesticides and pesticide uses for approval by the board.

(d) The following pesticides, pesticide formulations, or pesticide products for reasons based on the criteria set forth in §4-66-32(b) are restricted use pesticides:

| <u>Restricted Use Pesticides</u> | <u>Restricted Concentration</u> |
|--|---------------------------------|
| Acrolein (Aqualin, Acrylaldehyde) | All |
| Aldicarb (Temik) | All |
| Aldrin | All |
| Aluminum phosphide (Phostoxin) | All |
| Arsenic compounds, inorganic | All except finished baits |
| Avitrol (4-aminopyridine) | All |
| Azinphos ethyl (ethyl Guthion) | All |
| Azinphos methyl (Guthion) | All |
| BHC (Benzene hexachloride) | All |
| Bomyl (dimethyl 3-hydroxyglutaconate dimethyl phosphate) | All |
| Cadmium compounds | All |
| Carbofuran (Furadan) | All |
| Carbophenothion (Trithion) | All |
| Chlordane | All |
| Chloropicrin | All |
| Copper acetoarsenite (Paris Green) | All |
| Cyanides (Calcium, sodium, liquid hydrogen) | All |
| Cycloheximide (Actidione) | All |
| DBCP (1,2-dibromo-3-chloropropane) | All |
| DDD (TDE) | All |
| DDT | All |
| Demeton (Systox) | All |
| 2,4-Dichlorophenoxyacetic acid and its esters and salts | *All |
| 2(2,4-Dichlorophenoxy) proprionic acid and its esters and salts | *All |
| 1,2-dichloropropane, 1,3-dichloropropane and related C3 compounds (Telone, DD mixture, Vidden D) | All |
| Dicrotophos (Bidrin) | All |
| Dieldrin | All |
| Dinoseb (DNBP) | All |
| Dioxathion (Delnav) | All |
| Diphacinone (Diphacin) | All except finished baits |
| Diquat | All |
| Disulfoton (Di-syston) | All |
| DNOC (4,6-dinitro-o-cresol and salts) | All |
| Endosulfan (Thiodan) | All |
| Endothall and salts | All |
| Endrin | All |
| EPN (O-ethyl O-p-nitrophenyl phenylphosphonothioate) | All |
| Ethion | All |
| Ethoprop (Mocap) | All |
| Ethylene dibromide (EDB) | All |
| Ethylene dichloride | All |

| <u>Restricted Use Pesticides</u> | <u>Restricted Concentration</u> |
|--|---------------------------------|
| Famphur | All |
| Fenamiphos (Nemacur) | All |
| Fensulfothion (Dasanit) | All |
| Fenthion (Baytex) | All |
| Fonophos (Dyfonate) | All |
| Fumarin (3-alpha-acetonylfurfuryl-4-hydroxycoumarin) | All except finished baits |
| Heptachlor | All |
| Lead arsenate | All |
| Lindane | All above 1% |
| Magnesium phosphide | All |
| Mercury compounds | All |
| Methamidophos (Monitor) | All |
| Methomyl (Lannate) | All |
| Methyl bromide | All |
| Mevinphos (Phosdrin) | All |
| Mexacarbate (Zectran) | All |
| Mirex | All |
| Monocrotophos (Azodrin) | All |
| Nicotine | All |
| Nicotine salts | All above 40% |
| Oxamyl (Vydate) | All |
| Paraquat | All above 0.2% cation |
| Parathion | All |
| Phorate (Thimet) | All |
| Pentachlorophenol and salts | All above 5% |
| Phosphamidon (Dimecron) | All |
| Phosphorous (white or yellow) | All |
| Picloram (Tordon) | All |
| Pival (2-pivalyl-1,3-indandione and salts) | All except finished baits |
| PMP (Valone) | All |
| Schradan (OMPA) | All |
| Selenium compounds | All |
| Silvex | All |
| Sodium arsenite | All |
| Sodium chlorate | All without fire retardant |
| Sodium fluoroacetate (1080) | All |
| Strychnine and its salts | All |
| Sulfotepp (0,0,0,0-tetraethyl dithiopyrophosphate) | All |
| Sulfuryl fluoride (Vikane) | All |
| TEPP (Tetraethyl pyrophosphate) | All |
| Terbufos (Counter) | All |
| Temephos (Abate) | All aquatic uses |
| Thallium compounds | All |
| Toxaphene | All |

| <u>Restricted Use Pesticides</u> | <u>Restricted Concentration</u> |
|--|---|
| Tricalcium arsenate | All |
| 2,4,5-Trichlorophenoxyacetic acid and its esters and salts | All |
| Warfarin and salts | All except finished baits |
| Zinc phosphide | All except finished baits for domestic use containing 2% or less. |
| Zinophos (0,0-diethyl 0-2-pyrazinyl phosphorothioate) | All |

* Pesticides marketed in quantities of one quart or less or containing two per cent or less active ingredient in combination with fertilizers may be sold for general use.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-33) (Imp: HRS §§149A-19, 149A-33)

§4-66-33 Pesticide licensing; exceptions. (a) Any manufacturer, packer, seller, distributor, or shipper of a pesticide may apply to license the pesticide.

(b) No person may distribute in the State, any pesticide which is not licensed with the department, except for the following:

- (1) Pesticides transferred between EPA registered establishments operated by the same producer for packaging or for use in producing another pesticide, provided the pesticides are labeled to clearly show their identity and the purpose for which they are being transferred;
- (2) Pesticides distributed under an experimental use permit issued by the head;
- (3) Pesticides transferred for purpose of disposal when marked to show they are for disposal only, and accompanied by sufficient information to identify products and to insure that product can be handled with minimum hazard to man or the environment;
- (4) Pesticides intended solely for export when prepared or packed according to specifications of foreign purchaser;
- (5) Pesticides being distributed under an emergency exemption; and

- (6) Pesticides distributed to research laboratories for the purpose of laboratory or greenhouse tests or limited replicated field trials of less than one-fourth acre to determine toxicity or other properties and from which the producer, researcher, or applicator or any other person conducting the test does not expect to receive any benefit in pest control from its use.

[Eff. JUL 13 1981] (Auth: HRS §§149A-13, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-19, 149A-33)

§4-66-34 Applications for licensing. The following shall apply to licensing:

- (1) Applications shall be filed by applicant or by an agent whom the applicant has designated by a notarized letter;
- (2) Applications shall be made on forms provided by the department and shall contain the following information: name and address of the person whose name shall appear on the label, name and address of the applicant, name of the pesticide as shown on the label, the EPA registration number, the EPA establishment number, and the signature of the applicant;
- (3) Applications shall be submitted at least thirty days before the time when it is desired that licensing take effect;
- (4) Applications shall be accompanied by a number of copies of each label and any other printed or graphic matter which shall be accompanying the pesticide, including all claims, directions for use, and classification as specified by the head; and
- (5) If requested by the head, the applicant shall provide the complete formula of the product including active and inert ingredients and a description of tests and the results thereof on which claims are based, including efficacy, residue, safety, and other supporting data that shows the product shall perform its intended function without unreasonable adverse effects on the environment.

[Eff. JUL 13 1981] (Auth: HRS §§149A-13, 149A-15, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-15, 149A-19, 149A-33)

§4-66-35 Pesticide licensing; effective date.

(a) Licenses shall become effective on the date issued and unless canceled by the head shall continue in effect through the date of expiration.

(b) Effective January 1, 1982, pesticide products are to be licensed for a period of three years at a minimum annual fee of \$15.00 per year, or fraction thereof, that the pesticide product is licensed. All licenses shall expire on December 31 of each third year thereafter.

(c) Provisional licenses may be issued for experimental use permits to cover the duration of the permit.

(d) Any pesticide product licensed under the Act shall not require any further licensing by other persons provided:

- (1) The pesticide product is in the manufacturer's or registrant's original unbroken container;
- (2) The claims made (its directions for use, its use classification and other information contained in its labeling) do not differ from those made in conjunction with the license currently in effect; and
- (3) Any change in the labeling or formula of a licensed pesticide shall be submitted in advance to the head provided:
 - (A) The licensee shall describe the exact change and upon request, shall submit test results to support any change in labeling claims; and
 - (B) After the effective date of any change in labeling or formulas, the pesticide shall be marketed only under the new label or formula, provided, the head may permit a reasonable time for disposition of stocks, if in the opinion of the head, such disposition does not result in any unreasonable adverse effect on man or the environment.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-13, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-19, 149A-33)

§4-66-36 Pesticide licenses; corrections. (a)

The head shall require the licensee to make necessary changes should the labeling claims of the pesticide be unwarranted or if the pesticide and its labeling or other material required to be submitted do not comply with the Act or this rule or when necessary to prevent unreasonable adverse effects on the environment or man.

(b) If the licensee fails to make the necessary corrections within fifteen days upon receipt of the notice, the head may:

- (1) Refuse to license the pesticide;
- (2) Cancel the pesticide license; and
- (3) Change the classification of the pesticide.

(c) Should the head determine that an imminent hazard exists, the head may suspend the license of any use or uses of a pesticide. The licensee shall be notified within twenty four hours of the suspension and given the reasons for the action.

(d) Should the head find that a pesticide or its labeling fails to comply with FIFRA or its regulations, the head shall notify EPA and suggest corrections which would bring it into compliance.

(e) Applicants may request a hearing as provided in §149A-14, Hawaii Revised Statutes.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-13, 149A-14, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-14, 149A-19, 149A-33)

§4-66-37 Special local need (SLN) registration.

(a) The head may register pesticide products for special local needs. All applicants for registration of pesticides to meet special local needs shall submit the following information:

- (1) The name and address of the applicant and any other person whose name shall appear on the labeling or in the directions for use;
- (2) The name of the pesticide product, and if application is for an amendment to a federally registered product, the EPA registration number of that product;
- (3) A copy of proposed labeling, including all claims made for the product as well as directions for its use to meet the special local need, consisting of the complete proposed labeling for a new product, or the proposed supplemental labeling for registration of an additional use of a federally registered product, and the complete formula of the product, if the application is for a new product; and
- (4) Any other information specified by the head which is required to be reviewed prior to registration under this section.

(b) The head shall determine whether there is a special local need for registration in reviewing any application. Situations which the head may consider as not involving a special local need may include, but are not limited to, use to control a pest

problem present on a nationwide basis, and use of a pesticide product registered by other states on an interregional or national basis.

(c) The head shall determine that the product warrants the claims made for it in the registration application.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR §162.17)
(Imp: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR §162.17)

§4-66-38 Special local need; unreasonable adverse effects. (a) Prior to issuing a special local need registration in the following cases, the head shall determine that use of the product for which registration is sought would not cause unreasonable adverse effects on man or the environment, when used in accordance with labeling directions or widespread and commonly recognized practices:

- (1) For the use of a product which has a composition not similar to any federally registered product;
- (2) For the use of a product involving a use pattern not similar to any federally registered use of the same product or of a product with a similar composition; or
- (3) For the use of a product for which other uses of the same product, or of a product with a similar composition have had federal registration denied, disapproved, suspended, or cancelled by the administrator of EPA.

(b) Determination required by §4-66-38(a) shall be based on data and criteria consistent with federal regulations applicable to the type of product or use under consideration.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR §162.17)
(Imp: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR §162.17)

§4-66-39 Special local need; label, packaging and coloration requirements. (a) The head shall review the proposed labeling submitted with the application to determine compliance subject to the following requirements:

- (1) A copy of the final printed labeling shall be reviewed by the head as soon as practicable after a registration is issued in order to verify compliance;
- (2) A new product registered shall be accompanied, at the time of use, by labeling meeting

all applicable criteria of §§4-66-4 to 4-66-31. New product labeling shall also contain a statement identifying "for distribution and use only within the state of Hawaii" and the assigned special local need number.

(3) For a registration of an additional use of a federally registered product, labeling from the federally registered product shall be accompanied at the time of use by supplemental labeling which contains:

- (A) A statement identifying "For distribution and use only within the State of Hawaii";
- (B) Directions for use to meet the special local need which satisfy the criteria of §§4-66-10 to 4-66-31;
- (C) The trade name of the product;
- (D) The name and address of the special local need registrant;
- (E) The EPA registration number of the federally registered product;
- (F) The assigned special local need number;
- (G) A statement requiring a person using the product to comply with all applicable directions, restrictions, and precautions found in the labeling of the federally registered product; and
- (H) A statement prohibiting the use of the product in a manner inconsistent with federal and accompanying supplemental labeling.

(4) If the head classifies for restricted use a product or use registered by the head, which is not required to be classified by §4-66-32, then the head shall require supplemental labeling for the product or use to have additional appropriate precautions, and a statement that the product or use is for restricted use.

(b) All products registered by the head shall meet all appropriate federal packaging standards as well as all appropriate standards for coloration established and contained in §4-66-42. Prior to issuing any registration, the head shall determine that the product conforms to these requirements.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR §162.17)
 (Imp: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR 162.17)

§4-66-40 Special local need; classification.

(a) As part of the registration of any product or use, the head shall classify the product or use consistent with §4-66-32.

(b) A product or use thereof registered by the head shall be classified by the head for restricted use if the product is identical or similar in composition to a federally registered product for which the use has been classified as restricted under federal law or for which a use similar to the registered use has been classified as restricted use under federal law, and the registered product or use meets the criteria for classification as restricted use pesticides under §4-66-32.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR §162.17) (Imp: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR §162.17)

§4-66-41 Special local need; notification and submission of data to the Environmental Protection Agency.

(a) Within ten working days from the date of issuance of amendments or revocation of a registration, the head shall notify EPA in writing, of the action. Notification of registrations, or amendments thereto, shall include the effective date of the registration or amendment, a confidential statement of the formula of any new product, and a copy of the draft labeling reviewed and approved by the head, provided that labeling previously approved by the EPA as part of a federal registration need not be submitted.

(b) Notification of registrations or amendments shall be supplemented by sending to EPA a copy of the final printed labeling approved by the head within forty-five days after the effective date of registration or amendment.

(c) Notification of revocation or registration shall indicate the effective date of revocation, and shall state the reasons for revocation.

(d) Within fifteen working days from receipt of a request from EPA, the head shall submit any data used to determine that unreasonable adverse effects shall not be caused by a registration of a product with a composition not similar to any federally registered product, or an additional use of a federally registered product, or a use of a product with a composition similar to that of a federally registered product, or if registration of other uses of the federally registered product has been denied, suspended, or canceled registration because of health, safety, or environmental concerns.

[Eff. JUL 13 1981] (Auth: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR §162.17) (Imp: HRS §§149A-19, 149A-22, 149A-33, PL 95-396 §24(c), 40 CFR §162.17)

§4-66-42 Coloration. (a) The white pesticides hereinafter named shall be colored in accordance with this section. The Munsell Book of Color shall be used as the color standard. The coloring agent shall produce a uniformly colored agent not subject to a change in color beyond the minimum requirements specified in this rule during ordinary conditions of storage, and shall not cause the product to become ineffective or result in its causing damage when used as directed.

(b) Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, and barium fluosilicate shall be colored any hue, except the yellow-reds and yellows, having a value of not more than 8 and a chroma of not less than 4, or shall be colored to a neutral lightness value not over 7.

(c) Sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than 8 and a chroma of not less than 4, or shall be colored to a neutral lightness value not over 7.

(d) Notwithstanding the provisions of §§4-66-42(b) and 4-66-42(c), the head, after opportunity for hearing, may permit other hues to be used for any particular purpose if the prescribed hues are not feasible for that purpose and if the action shall not be injurious to the public:

- (1) Any pesticide specified in this section which is intended solely for use by a textile manufacturer or commercial laundry, cleaner or dryer as a moth-proofing agent, which would not be suitable for such use if colored and which shall not come into the hands of the public except when incorporated into a fabric, shall be exempt from the requirements of §149A-5(a), Hawaii Revised Statutes, and of this section;
- (2) The pesticide sodium fluoride shall be exempt from the requirements of §149A-16(a), Hawaii Revised Statutes, and of this section, when:
 - (A) It is intended for use as a fungicide solely in the manufacture or processing of rubber, glue, or leather goods;
 - (B) Coloration of said pesticide in accordance with said requirements shall be likely to impart objectionable color

- characteristics to the finished goods;
- (C) Said pesticide shall not be present in the finished goods in sufficient quantities to cause injury to any person; and
 - (D) The pesticide will not come into the hands of the public except after incorporation into the finished goods.
- [Eff. JUL 13 1981] (Auth: HRS §§149-16, 149A-33, 40 CFR §162.13) (Imp: HRS §§149A-16, 149A-33, 40 CFR §162.13)

§4-66-43 Enforcement. (a) The head may enter any place or conveyance where pesticides or devices are manufactured, stored, packed, delivered for transportation, transported, offered for sale or sold, and may inspect and take samples of the pesticides and devices. An unbroken package shall be taken as the official sample where the pesticide is packed in small bottles, or small packages. Where the pesticide is packed in large containers, the official samples shall be a portion taken from one original unopened package in a lot.

(b) Methods of analyzing samples shall be those adopted and published by the Association of Official Analytical Chemists, where applicable, and the other methods as may be necessary to determine whether the product complies with the Act or this rule.

(c) A notice of apparent violation shall include:

- (1) If from an examination or analysis, a pesticide or device appears to be in violation of the Act or this rule, a notice in writing shall be sent to the person against whom proceedings are contemplated, giving that person the opportunity to offer a written explanation. The notice shall state the manner in which the sample failed to meet the requirements of the Act or this rule; and
- (2) Any person may, in addition to this written reply to the notice, file with the head within twenty days of receipt of the notice a written request for a hearing in connection therewith.

(d) The head may issue "stop sale" and "removal from sale" orders to any pesticide or device which violates or fails to comply with the provisions of the Act or this rule, and may place written or printed "stop sale" or "removal from sale" notices on any pesticide or device.

- (1) Upon receipt of the orders, the vendors shall correct the violation and effect full compliance therewith. The articles

shall not hereafter be sold, offered for sale, transferred or disposed of except upon authorization by the head; and

- (2) No person shall remove, deface or tamper with any "stop sale" or "removal from sale" notice.

(e) The head may seize any pesticide or device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of the Act or this rule. No notice or hearing shall be required prior to the seizure of a pesticide or device.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-11, 149A-20, 149A-21, 149A-33) (Imp: HRS §§149A-11, 149A-20, 149A-21, 149A-33)

§4-66-44 Notice of judgement. Publication of judgements of the courts in cases arising under the criminal or seizure provisions of the Act or this rule may be made in the form of notices, circulars, or bulletins as the head may direct.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-21, 149A-33)
(Imp: HRS §§149A-21, 149A-33)

§4-66-45 Experimental use permits; generally. Experimental use permits may be issued for the shipment, delivery or use of a pesticide product which is to be tested further to determine the scope and limitations of its usefulness and the effect of its use on man and the environment. Permits may be issued for products for use in experimental programs under the supervision of applicators certified in research and demonstration pest control and broad scale testing under normal conditions of use. The head may require the information and data concerning the product and the proposed testing program which is deemed necessary to make determinations on the merits of the proposals. [Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172)

§4-66-46 Experimental use permits; prohibitions. No permits shall be issued for any of the following:

- (1) A product containing an active or inert ingredient which is currently subject to an EPA cancellation or suspension of registration order, or which is currently subject to an EPA notice of intent to suspend or cancel registration because of human health, environmental, or efficacy consideration;

except that a permit may be issued for a product for purpose or in a formulation which:

- (A) Is not specifically considered in, or which is not subject to, suspension or cancellation proceedings, after consultation with appropriate EPA officials; or
 - (B) Was specifically considered during the proceedings but not suspended, canceled, or subject to a notice of intent to suspend or cancel.
- (2) A use of a product which has been the subject of a notice of denial of registration under FIFRA; and
- (3) A use of a product which may involve use in or on food or feed other than as authorized in §4-66-47.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172)

§4-66-47 Experimental use permits; exceptions.

No experimental use permit is required for the shipment or use of a substance or mixture of substances being put through laboratory, greenhouse, or limited field trials of less than one-fourth acre, in which the purpose is to determine its value as a pesticide or to determine its toxicity, or other properties, where the tests are being conducted by recognized research personnel and from which the user does not expect to receive any benefit in pest control from its use. These substances or mixture of substances are not considered to be pesticides within the meaning of the act or this rule. [Eff. **JUL 13 1981**]

(Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172)
(Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172)

§4-66-48 Experimental use permit; provisions for issuance. (a) A permit is required for a pesticide intended for experimental use which is not exempt under §4-66-47. If a pesticide is to be tested for a use which is likely to result in a residue on or in food or feed, a permit for experimental use may be issued provided:

- (1) A tolerance or exemption from the requirements of a tolerance has been established under §408 of the Federal Food, Drug and Cosmetic Act; or a regulation established under §409 of the Federal Food, Drug and

- Cosmetic Act; or
- (2) The food or feed product shall be destroyed or used only for laboratory or experimental animals for testing purposes; or
 - (3) Convincing evidence is submitted by the applicant that the proposed use shall not result in residues that would be in excess of that authorized under §408 of the Federal Food, Drug and Cosmetic Act, or a regulation established under §409 of the Federal Food, Drug and Cosmetic Act which would be hazardous to man, other animals, or the environment.

(b) A permit shall be issued only if it is clearly shown in the permit application that the applicant's instructions for use reasonably assure the protection of man and the environment.

(c) All applications for an experimental use permit shall be filed by a qualified person on a form approved by the head. Each application shall contain the following:

- (1) Name and address of the shipper and the consignee and place or places from which the shipment shall be made;
- (2) Proposed date of shipment or proposed shipping period not to exceed one year and quantity to be shipped;
- (3) A statement of the composition of material to be covered by the permit which should apply to a single material or similar formulations of the material;
- (4) The name, address and telephone number and qualification of the person responsible for conducting the test;
- (5) Available data or reference to available data on the analytical method and toxicity of the pesticide;
- (6) The purpose or objective of the proposed testings; a description of the proposed testing program including test parameters; a designation of the pest organism or organisms involved; the amount of pesticide product proposed for use; the crops, fauna, flora, sites, modes, dosage rate and situation of applications on or in which the pesticide is to be used; the number of acres, number structure sites, or number of animals to be treated or included in the area of experimental use; the proposed dates or period or periods during which the testing program is to be conducted and the manner in which supervision of the program shall be accomplished and the

- method of destruction or disposal of treated food or feed;
- (7) A statement that the pesticide is intended for experimental use only;
- (8) Proposed labeling which shall bear:
- (A) The prominent statement "for experimental use only" on the container label and any accompanying circular or other labeling;
 - (B) A warning or caution statement which may be necessary and if complied with is adequate for the protection of those who may handle or be exposed to the experimental formulations;
 - (C) The name and address of the applicant for the permit;
 - (D) The name or designation of the formulation; and
 - (E) If the pesticide is to be sold, a statement of the names and percentages of the principal active ingredients in the product; provided, that, if the shipper shall submit a copy of a valid experimental permit issued under the provisions of FIFRA the accepted labeling related thereto, the head may exempt the shipper from the requirement of submitting a part of the application, the data and information herein specified in this subsection; and
- (9) A statement as to the disposal of any unused portions of the experimental pesticide.
- [Eff. JUL 13 1981] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172)

§4-66-49 Experimental use permit; restrictions.

- (a) The head may limit the quantity of a pesticide covered by a permit to a lesser quantity than requested if available information on effectiveness, toxicity, or other hazards is not sufficient to justify the scope of experimental use proposed in the application, or make other limitations in the permit as may be determined to be necessary for the protection of the public.
- (b) A pesticide shipped or delivered solely for experimental use shall not be offered or advertised for general sale or use.
- (c) Unless revoked by the head, permits shall be effective for a specified period of time, usually one year, depending upon the crop or site to be treated

and the testing program submitted. Permits may be renewed upon request if circumstance warrants.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172)

§4-66-50 Experimental use permits; reports.

The holder of a permit shall submit periodic reports regarding the status of the experimental program. Reports shall be submitted at specified intervals as may be prescribed by the head (but shall report immediately incidents of unreasonable adverse effects from use, or from exposure to pesticides covered by an experimental use permit). These reports shall include the following information:

- (1) Quantity of the pesticide shipped and used during the reporting period;
- (2) Name and address of consignee and ultimate destination and amount of each shipment;
- (3) A summary of data on effectiveness, phytotoxicity, or other pertinent information regarding usefulness obtained during the permit period;
- (4) Any additional data obtained on residue or analytical methods obtained;
- (5) Any additional data obtained on toxicity or adverse effects to man, non-target animals, or the environment;
- (6) Any residue data obtained on the treated crop or site on which determination can be made regarding reentry into the treated area;
- (7) Disposition of unused pesticide; and
- (8) Such other information and data as may be prescribed by the head.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172)

§4-66-51 Experimental use permits; monitoring and revocation.

(a) The head shall monitor the testing program if it is determined necessary for protection of the public health and environment. It shall be the responsibility of the holder of a permit or person supervising the experiment to report immediately incidents or adverse reaction from use of, or exposure to the pesticide covered by an experimental use permit.

(b) The head shall revoke an experimental use permit if it is determined that the terms or conditions are being violated, or that its terms or conditions are

inadequate to avoid unreasonable adverse effects on the environment.

[Eff. JUL 13 1981] (Auth: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172) (Imp: HRS §§149A-19, 149A-22, 149A-33, 40 CFR §172)

§4-66-52 Restricted use pesticide dealer. (a)

Persons who sell a restricted use pesticide shall obtain a license from the department which shall expire on December 31 of each year and shall be renewed on or before January 1 of each year.

(b) Application shall be on a form prescribed by the head and shall include name and address of applicant, location and qualified pesticide sales manager at each sales outlet.

(c) A fee of \$25.00 for the principal sales outlet and \$10.00 for each branch sales outlet shall be assessed.

(d) Any manufacturer, registrant, or distributor who has no sales outlet licensed within this State and who sells or distributes the pesticides directly to the user shall obtain a pesticide dealer license for his principal out-of-state location or outlet.

(e) All sales outlets of restricted use pesticides shall have a qualified pesticides sales manager. The names of the qualified sales managers shall be submitted together with the application for a license for the sales outlet. The head shall be notified forthwith of any change in personnel in this position.

(f) Persons seeking to be a qualified pesticide sales manager shall apply for examination on forms provided by the head. To qualify, an applicant shall pass a written examination at a time and place designated by the head. Examination shall test the applicant's knowledge of pesticide laws and regulations, pesticide hazards, proper usage, safe storage and distribution and disposal methods.

(g) Every licensed pesticide dealer shall be responsible for the acts of all qualified pesticide sales managers and individuals employed in the solicitation, sale and handling of pesticides. The dealer's license or the qualification of the sales manager or both may be suspended or revoked, after hearing for any violation of the Act or this rule whether committed by the dealer, the sales manager or by any other officer, agent, or employee.

[Eff. JUL 13 1981] (Auth: HRS §§149A-11, 149A-17, 149A-19, 149A-33) (Imp: HRS §§149A-11, 149A-17, 149A-19, 149A-33)

§4-66-53 Dealer's records and reports. (a) Licensed dealers shall keep a record of each sale of restricted use pesticides at each sales outlet on forms provided by the head.

(b) Records shall be prepared in duplicate and shall show the name and address of purchaser, date of sale, identity of the formulation or brand sold and quantity, certification number and expiration date of each certification of the purchaser, intended use and selling clerk's signature.

(c) The original copy of the sales record shall be submitted to the head at the end of each month and the duplicate copy shall be kept at the sales outlet where the sales were made for a period of one year.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-17, 149A-19, 149A-33) (Imp: HRS §§149A-17, 149A-19, 149A-33)

§4-66-54 Storage, display, and sale of pesticides.

(a) No pesticide shall be stored, displayed, placed for sale or transported where food and food containers, feed or any other products are likely to become contaminated and may create a hazard or cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects and aquatic life.

(b) Pesticides labeled for lawns, gardens and other outdoor uses shall be offered for sale only in garden supply centers or in other retail outlets that have a separate and distinct section for sale.

(c) Lawn and garden pesticides shall be displayed and sold in a separate section from pesticides formulated and registered for use inside the home.

(d) A prominent sign with legible bold print not less than one-half inch in height to read "pesticide products for garden and lawn or outdoor use only - it is unlawful and may be hazardous to use inside your home" shall be posted in the area where such lawn and garden pesticides are displayed and sold.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-31, 149A-33) (Imp: HRS §§149A-31, 149A-33)

§4-66-55 Disposal of pesticides and empty pesticide containers. (a) Pesticides and empty containers shall not be disposed of so as to create a hazard.

(b) Owners of pesticides and empty containers shall notify or contact the head whenever information or assistance on the proper means of disposal is required.

(c) Reusable empty containers of pesticides shall not be used for purposes other than for refilling or repacking with the same pesticide; however, the head may prescribe and allow uses for other purposes should such containers be properly prepared.

(d) Unusable empty glass or metal restricted use pesticide containers shall be emptied, triple rinsed with an appropriate solvent, punctured or crushed unless otherwise directed by the label or the head.

(e) Pesticide containers shall be disposed of in an approved solid waste land fill or buried in the ground, covered with at least one foot of soil unless otherwise directed by the label or the head.

[Eff. **JUL 13 1981**] (Auth: HRS §§149A-19, 149A-33)
(Imp: HRS §§149A-19, 149A-33)

§4-66-56 Certification of applicators. (a)

Applicators applying restricted use pesticides shall be certified either as a commercial pesticide applicator or private pesticide applicator.

(b) Commercial pesticide applicators shall be further divided into categories and subcategories as follows:

- (1) Category 1 concerns agricultural pest control and includes the following:
 - (A) A plant pest control category which includes persons using or supervising the use of restricted use pesticides in production of agricultural crops, including food not limited to feed grains, soybeans, forages, vegetables, small fruits, and trees and nuts, as well as non-crop agricultural lands;
 - (B) An animal pest control category which includes persons using or supervising the use of restricted use pesticides to control pests on animals including, but not limited to beef and dairy cattle, swine, sheep, horses, goats, poultry and livestock, and to premises on or in which animals are confined; and doctors of veterinary medicine engaged in the business of application for hire, publicly holding themselves out as pesticide applicators or engaged in large scale use of pesticides;
- (2) Category 2 concerns forest pest control and includes persons using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas;
- (3) Category 3 concerns ornamental and turf pest control and includes persons using or super-

- vising the use of restricted use pesticides to control pests of ornamental trees, shrubs, flowers and turf;
- (4) Category 4 concerns seed treatment pest control and includes persons using or supervising the use of restricted use pesticides on seeds;
 - (5) Category 5 concerns aquatic pest control and includes persons using or supervising the use of restricted use pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in S4-66-56(9);
 - (6) Category 6 concerns right-of-way pest control and includes persons using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas;
 - (7) Category 7 concerns industrial, institutional, and structural pest control, for:
 - (A) Fumigation pest control, which includes persons using or supervising the use of restricted use pesticides to control termites and other pests in or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial sites such as warehouses, grain elevators, and any other structures and adjacent area, public or private; and for the protection of stores, processed or manufactured products, excluding commercial applicators in categories 8 and 9;
 - (B) Termite pest control, which includes persons using or supervising the use of restricted use pesticides other than by fumigation to control subterranean and drywood termites in or around human dwellings, institutions such as schools and hospitals, hotels, industrial sites, and any other structures and adjacent area, public or private;
 - (C) General pest control, which includes persons using or supervising the use of restricted use pesticides to control pests in or around food establishments, human dwellings, institutions such as schools, hospitals, industrial sites such as warehouses, grain elevators and any other structures and adjacent area, public or private; and for the protection of stored, processed or manufactured products;

- (D) Institutional pest control, which includes persons using or supervising the use of restricted use pesticides at institutions (e.g., schools, hotels, hospitals, warehouses, industrial sites), construction sites, or establishments (e.g., restaurants, bakeries, fast food outlets) where they are employed;
- (E) Vault fumigation pest control, which includes those individuals using or supervising the use of restricted use pesticides and fumigants in vaults or chambers to control pests in agricultural commodities or structural materials, exclusive of those individuals licensed as pest control operators and certified in category 7a, 7b, or 7c; and
- (F) Home pest control, which includes persons using or supervising the use of restricted use pesticides in or around their principal place of residence;
- (8) Category 8 concerns public health pest control and includes federal, state or other governmental employees using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance;
- (9) Category 9 concerns regulatory pest control and includes state, federal or other governmental employees using or supervising the use of restricted use pesticides in the control of regulated pests;
- (10) Category 10 concerns demonstration and research pest control and includes individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides; and
- (11) Category 11 concerns aerial pest control and includes individuals using or supervising the use of restricted use pesticides applied by aircraft, exclusive of those certified in category 8.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33, 40 CFR §171) (Imp: HRS §149A-33, 40 CFR §171)

§4-66-57 General standards for certification of commercial applicators. (a) Competence in the use and handling of pesticides shall be determined by written examination and as appropriate, upon demonstration based upon standards which meet or exceed those set forth in §§4-66-57(b) and 4-66-58 and approved by the head. The examination shall include knowledge applicable to all commercial categories (core examination) and the other special knowledge specifically applicable to the category (category examination), if any, into which the person is classified and to the pesticide or class of pesticides covered by the requested certification.

(b) Commercial applicators shall demonstrate appropriate knowledge based on examples from their particular category or subcategory in each of the following areas:

- (1) An understanding of the general format and terminology of pesticide labels and labeling; an understanding of instructions, warnings, symbols, classification of the product, other information that may appear on the label, and the necessity for following label directions;
- (2) An understanding of pesticide toxicity and hazard to man and common exposure routes; precautions necessary to guard against injury; need for and use of protective clothing and equipment; symptoms of pesticide poisoning; first aid to be followed in pesticide poisoning; and proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers including precaution to be taken to prevent children from having access to pesticides and pesticide containers;
- (3) An understanding of the potential environmental consequences of the use and misuse of restricted use pesticides, for example, the role of such factors as climatic conditions, types of terrain, soil and substrate, and the presence of various non-target organisms;
- (4) The ability to identify pests and a knowledge of the importance of the biology of pests relevant to their areas of operations;
- (5) A knowledge of the characteristics of various kinds of pesticides including types of formulations, compatibility, persistence, toxicity, hazard and residues associated with use;

- (6) A knowledge of the relative importance of pesticides, when they should and should not be used, and the factors which influence their effectiveness;
- (7) A practical knowledge of type, maintenance, use, and calibration of equipment and an understanding of the advantages and limitations of various types of equipment. Additional knowledge of calibration shall be required of applicators using highly specialized equipment such as aircraft;
- (8) A practical understanding of how to apply pesticides in various formulations, such as dusts, wettable powders, emulsions, solutions, and gases, together with a knowledge of application techniques. Because of the potential for greater impact or aerial applications upon the environment, aerial applicators shall demonstrate special knowledge in such areas as drift potential, the effect of pesticide on non-target crops, wildlife and apiaries and human habitation; and techniques and formulations which reduce drift; and
- (9) A knowledge of applicable federal and state laws and regulations.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33, 40 CFR §171) (Imp: HRS §149A-33, 40 CFR §171)

§4-66-58 Specific standards for certification of commercial applicators. Commercial applicators shall demonstrate competence appropriate to their particular category or subcategory of certification as follows:

- (1) For Agricultural pest control:
 - (A) Plant pest control applicators shall demonstrate knowledge of the crops grown and the specific pests on these crops on which they may be using restricted use pesticides. An operational knowledge is needed concerning soil and water problems, pre-harvest intervals, reentry intervals, phytotoxicity, and potentials for environmental contamination, non-target injury and community problems from the use of restricted use pesticides in agricultural areas; and
 - (B) Animal pest control applicators shall demonstrate knowledge of such animals and their associated pests. Special understanding is needed concerning

pesticide toxicity to host animals and the hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment;

- (2) Forest pest control applicators should demonstrate knowledge of the extent and types of forests, forest nurseries, and seed production and pests involved. They should demonstrate special knowledge of the cyclic occurrence of certain pests, population dynamics, and the impact of biotic agents and their vulnerability to pesticide application. Because forest stands frequently include aquatic situations and harbor wildlife, the applicators shall demonstrate knowledge of control methods which will minimize the possibility of secondary problems. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use;
- (3) Ornamental and turf pest control applicators should demonstrate knowledge of problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity, drift, and persistence beyond the intended period of pest control. They shall demonstrate special knowledge of the hazards to humans, pets, and other domestic animals associated with the restricted use pesticides utilized in this category;
- (4) Seed treatment applicators should demonstrate knowledge of types of seeds that require chemical protection against pests and special understanding of factors such as seed coloration and carriers and surface active agents which influence binding and may affect germination. They shall demonstrate knowledge of hazards associated with handling and misuse of treated seeds such as inadvertent introduction of treated seeds into food and feed use channels, as well as proper disposal of unused treated seeds;
- (5) Aquatic pest control applicators should demonstrate special understanding of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. Certified commercial applicators should demonstrate special awareness of the possibility

- of oxygen depletion and an understanding of possible pesticide effects on fishes, birds, beneficial insects, and desirable plants and other organisms which may be present in aquatic environments. They shall demonstrate an understanding of limited area applications;
- (6) Right-of-way pest control applicators should demonstrate specific knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They should demonstrate thorough knowledge of problems of runoff, drift, and excessive foliage destruction and should be able to immediately identify target organisms. They shall demonstrate special knowledge of the nature of herbicides. Aerial applicators doing right-of-way work should demonstrate special knowledge of application equipment, containment of the pesticide within the right-of-way area, and special drift control methods and procedures;
- (7) Industrial, institutional, structural and public health related pest control applicators shall demonstrate special knowledge of a wide variety of pests including their life cycles, as well as types of formulations appropriate for the control and methods of application that avoid contamination of food and habitation and do not cause hazards to children and pets. Specific requirements may vary depending on the subdivisions of this category. Since human exposure is frequently a potential problem, applicators must demonstrate special knowledge of the toxicity of the pesticides used and factors which may constitute a hazard. Because public health related pest control generally involves outdoor applications, applicators in this category shall demonstrate knowledge of environmental conditions particularly related to their subclassification;
- (8) Public health pest control applicators shall demonstrate knowledge of pests of public health importance, vector-disease relationships, and etiology of disease-host relationships. Since a wide variety of pests are involved, these pests must be known and recognized by public health control applicators, and the life cycles and habitats of each thoroughly understood.

These applicators should be familiar with a great variety of environmental conditions ranging from streams to dwellings. They should also be cognizant of such non-chemical control methods as sanitation, waste disposal, and drainage;

- (9) Regulatory pest control applicators shall demonstrate broad general knowledge of applicable laws, safety, regulated pests, pesticides and the impact of restricted use pesticides on the environment. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Applicators shall demonstrate knowledge over and above that required by their immediate duties since emergency measures are frequently required and individual judgements in new situations shall be made; and
- (10) Demonstration pest control applicators are required to meet particularly high standards since their use of pesticides is presumed to be exemplary. Broad knowledge is required of pests and population levels of pest occurring where demonstrations are to be conducted. Included should be basic concepts of ecology, understanding of pesticide-organism interactions; the importance of integrating pesticide use with other methods, and the potential for various secondary problems.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33, 40 CFR §171) (Imp: HRS §149A-33, 40 CFR §171)

§4-66-59 Standards for certification of private applicators. Applicators in the private class shall have an understanding of the label and labeling information, including the name of the pesticide or pesticides; pests to be controlled; when and how to apply; appropriate equipment and techniques; safety precautions; poisoning symptoms and pesticide disposal methods. [Eff. **JUL 13 1981**] (Auth: HRS §149A-33, 40 CFR §171) (Imp: HRS §149A-33, 40 CFR §171)

§4-66-60 Certification procedures. (a) Application for certification as a commercial applicator shall be on forms provided by the head. To qualify, applicant shall pass a written examination with a score of seventy per cent or better at a time and place designated by the head. The examination shall be based on standards contained in §§4-66-57(b) and

4-66-58. If the applicant fails to pass the examination, that applicant is eligible to be reexamined fourteen calendar days after the date of the initial examination.

(b) Application for certification as a private applicator shall be on forms provided by the head. To qualify, the applicant shall pass a written examination with a score of seventy per cent or better at a time and place designated by the head. The examination shall be based on standards contained in §4-66-59. If the applicant fails to pass the examination, that applicant is eligible to be reexamined fourteen calendar days after the date of the initial examination.

(c) Non-readers may be certified to use a specific product as a private applicator by successfully passing an oral examination administered by the head or any party approved by the head. Such training or testing shall incorporate a procedure to determine label comprehension, as specified in §4-66-59.

(d) All certifications issued under this section shall be valid for five years following date of issuance unless revoked. Application for renewal shall be on forms provided by the head. Renewal of certification shall be by reexamination or recertification course approved by the head.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33, 40 CFR §171) (Imp: HRS §149A-33, 40 CFR §171)

§4-66-61 Conditions on the use of restricted pesticides. Any person may apply a restricted use pesticide, provided that:

- (1) The person is under the direct supervision of a certified applicator;
- (2) The person shall be given specific written instructions by the certified applicator for applying the pesticide, safety measures to be taken (including emergency procedures), and contacting the certified applicator at any time during the application; and
- (3) The certified applicator shall be responsible for all violations of the Act and this rule.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33, 40 CFR §171) (Imp: HRS §149A-33, 40 CFR §171)

§4-66-62 Commercial applicator recordkeeping. Commercial applicators shall keep records of restricted use pesticides applied on every job site of their operations. Such records shall be maintained for a period of two years and shall be made available

for inspection to the head during reasonable working hours. Recordkeeping information shall include:

- (1) Brand or common name of pesticide product applied;
- (2) EPA registration number;
- (3) Type of formulation;
- (4) Per cent active ingredient;
- (5) Scientific or common name of target pest;
- (6) Dilution rate;
- (7) Total amount of pesticide used;
- (8) Total area covered;
- (9) Date of application;
- (10) Address or location of treated site;
- (11) Name of certified applicator and his certification number; and
- (12) Any other information that the head deems to be necessary.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33, 40
CFR §171) (Imp: HRS §149A-33, 40 CFR §171)

§4-66-63 Single purchase certification. (a) Certification for the one time purchase of a state restricted use pesticide shall be on forms provided by the head.

(b) To obtain a single purchase certification the applicant shall pass a written examination with a score of seventy per cent or better.

(c) The single purchase certificate shall be valid for a period of ninety days from date of issuance.

(d) State restricted use pesticides available through single purchase certificate shall be determined by the head.

(e) The head shall determine the amount of restricted use pesticide to be purchased per single purchase certification.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-64 Conditions and limitations on pesticide application and sale. (a) No person shall apply a restricted use pesticide by aircraft except by special permit issued by the head and under the following conditions and limitations:

- (1) A written statement shall be filed by an applicant (plantation, farm, ranch) for such permit on forms provided by the head;
- (2) The statement shall include date, name, address and certification number of applicant, purpose of aerial treatment, pesticide formulation, dosage, method of aerial treatment and the proposed number of treatments

- to be made, a sketch or map to indicate general wind directions, proposed site or sites to be treated, surrounding homes, roadways, waterways and crop plantings in the vicinity;
- (3) The head may refuse to issue a special permit if it is determined that the proposed aerial treatment may cause unreasonable adverse effects to the environment or will create a hazard. All refusals shall be in writing and the reasons for refusal stated;
 - (4) A special permit issued under this subsection shall specify the time period for which the special permit is valid. The head may specify and limit a special permit to cover a single, multiple, or continual treatments when conditions are not expected to change or vary during subsequent treatments that are conducted in the same designated area or areas;
 - (5) Any special permit issued under this subsection may be cancelled by the head before its stated expiration date for reasonable cause. Such cancellation shall be in writing and reasons for cancellation stated;
 - (6) The head shall be notified at least three working days in advance of any aerial pesticide treatment except in an emergency situation when a notice of at least twenty-four hours may be given before treatment is made; and
 - (7) The issuance of a special permit to apply a restricted use pesticide by aircraft under this subsection shall not relieve the permittee from the penalty provisions of the act or any litigation for any damage or contamination of crops or plants, animals, man and the environment resulting from the aerial treatment.
- (b) The following provisions shall apply to the operating condition of aircraft, power rigs, mist blowers, and other equipment used to apply pesticides:
- (1) Spray equipment on aircraft shall be leak-proof. Spray nozzles shall be equipped with a device to prevent dribble when spray is turned off;
 - (2) Self-propelled power rigs used for inter-row or broad-cast applications shall be equipped with a pressure control device and a pressure gauge; and
 - (3) Power rigs, mist blowers, and other equipment shall be in good working order with.

no excessive leaks along the pesticide material flow route.

(c) No person shall apply a restricted use pesticide unless certified in the category appropriate to the application or unless under the direct supervision of a certified applicator certified in the appropriate category.

(d) Licensed sales outlets shall sell restricted use pesticides relevant only to the certification category of the certified applicator.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-65 Posting of signs. (a) In an area treated with a highly toxic pesticide, the head may require the posting of appropriate warning signs on roads leading into the treated area and the area itself.

(b) The head may specify wording, letter size, language, and coloring to be used on the signs as well as the number and location of signs deemed necessary to protect against inadvertent trespass by the public. The head shall publish and maintain a list of all pesticides or pesticide uses and reentry intervals for which posting of a warning sign is required.

(c) All warnings and signs required to be posted under regulations promulgated under the provisions of the Federal Environmental Pesticide Control Act or any other federal or state act shall be required under this section and made a part of this rule.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-66 Fees. (a) The department shall set forth and collect fees for the licensing of dealers, licensing of pesticides and certification of applicators as follows:

- (1) A fee of \$15 shall be assessed for each product licensed in the state each calendar year. A licensee who desires to continue to have the license in effect shall submit an application for renewal and \$15 for each pesticide product to be renewed;
- (2) A fee of \$25 shall be assessed annually for the license of each principal sales outlet and a fee of \$10 for each branch sales outlet of restricted use pesticide dealers;
- (3) A fee of \$10 shall be assessed for each examination taken for certification or

examination or course approval for recertification of commercial or private applicators; and

(4) A fee of \$5 will be assessed for the issuance of a duplicate applicator certificate.

(b) Fees shall be waived, with approval of the head, for personnel of state agencies and the University of Hawaii who apply restricted use pesticides for quarantine purposes, public health and forestry pest control, utility and roadway maintenance, and research and demonstration.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-67 Severability. If any section of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected.

[Eff. **JUL 13 1981**] (Auth: HRS §149A-52) (Imp: HRS 149A-52)

**Honolulu Fire Department
Code Enforcement
Hazardous Materials**

The Honolulu Fire Department is maintained by the City and County of Honolulu for the primary purpose of providing its citizens with protection against loss of life and property from fire. For many years, the extinguishment of fires was regarded as the principal motivating force behind the establishment of fire departments. Today, efficient and well organized fire departments realize that as much attention is required to the prevention of fires as it is to its extinguishment. This same analogy holds true with the manufacture, transportation, storage and use of hazardous materials.

chart 132

Currently, the City and County of Honolulu adopted the 1985 Uniform Fire Code with amendments under Ordinance Number 88-24, Bill No. 197. In general, the amendments deleted the portions of the UFC that deal with hazardous materials except for flammable liquids & combustible liquids, compressed gases which includes LPG, and the application of flammable liquids. The amendments do require any facility that uses or stores hazardous materials to submit a hazardous materials disclosure form. The main reason for the deletions was due to the lack of expertise and personnel to enforce those sections of the code. As expertise and personnel increase, these amendments could be changed.

The attached is the authority used by the Honolulu Fire Department for hazardous materials enforcement which include Hawaii State Statutes, Honolulu City Ordinances and Fire Codes.

Sec. 100

LAW ENFORCEMENT

The function of the fire department includes enforcement of laws pertinent to fire safety. Members of the fire department have been delegated a certain measure of police power and authority to enter public and private property to ascertain, correct or protect it from fire hazards. This authority is obtained from two sources:

1. State law.
2. Local ordinances.

STATE LAW - The Hawaii Revised Statutes, 1978, under Chapter 132, "County Fire Chiefs", define the powers, duties and functions of the fire chief of each county and his designated deputies.

LOCAL ORDINANCES - The Revised Ordinance of Honolulu 1978, Chapter 19A, Articles 1 & 2, adopts the State Model Fire Code (Fire Code of the City and County of Honolulu.)

Sec. 101

ADOPTION OF THE STATE MODEL FIRE CODE

HRS Section 132-3 - The state fire council shall, after public hearings pursuant to Chapter 91, adopt prior to July 1, 1979, a state model fire code setting forth minimum requirements relative to the protection of persons and property from fire loss including without limitation: (1) the storage, handling and use of hazardous substances, materials and devices; and (2) the control of conditions hazardous to life or property in the design, use or occupancy of buildings and premises. The state model fire code, insofar as is practicable, shall complement, augment and be consistent in form and language with the building and other codes of the respective counties. Upon adoption by the state fire council, the state model fire code shall be transmitted to the respective county councils which may, by ordinance, either enact its provisions or enact more stringent provisions relating to protection of persons and property against fire loss; provided that the county councils may enact less stringent provisions with the prior written approval of the state fire council. The state fire council shall meet annually to review and amend the state model fire code.

Sec. 102

STATE FIRE COUNCIL; COMPOSITION; FUNCTIONS

HRS Section 132-16 - There is established a state fire council the members of which shall be ex officio the fire chiefs of the counties and the chief of the fire prevention bureau of the city and county of Honolulu. State fire council shall appoint an advisory committee to assist it in carrying out its functions under this chapter. The advisory committee shall include the heads of the various county building departments, a licensed architect recommended by the Hawaii Society of the American Institute of Architects, a licensed electrical engineer and a licensed mechanical engineer recommended by the Consulting Engineers Council of Hawaii, a representative of the Hawaii Rating Bureau, a representative of the Hawaii Firefighters Association, and such other members of the public as the state fire council may determine can best assist it. The state fire council shall elect a chairman from among its members. In addition to adopting a state model fire code pursuant to section 132-3, the state fire council shall serve as a focal point through which all applications to the federal government for federal grant assistance for fire related projects shall be made. The state fire council may advise and assist the county fire departments where appropriate, may prescribe standard procedures and forms relating to inspections, investigations and reporting of fires, may approve plans for cooperation among the county fire departments, and may advise the governor and the legislature with respect to fire prevention and protection, life safety, and any other functions or activities for which the various county fire departments are generally responsible.

Sec. 103

DUTIES OF COUNTY FIRE CHIEFS

HRS Section 132-6. (a) Each county fire chief shall, in person or by officers or members of his fire department designated by him for that purpose, inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violation of any law, ordinance, rule, or order relating to fire hazard or to the prevention of fires.

(b) The inspection shall be made at least once each year within the jurisdiction of the county fire chief, and not less than once in six months within the fire limits or the congested districts subject to conflagration, as the

Sec. 102

STATE FIRE COUNCIL; COMPOSITION; FUNCTIONS

HRS Section 132-16 - There is established a state fire council the members of which shall be ex officio the fire chiefs of the counties and the chief of the fire prevention bureau of the city and county of Honolulu. State fire council shall appoint an advisory committee to assist it in carrying out its functions under this chapter. The advisory committee shall include the heads of the various county building departments, a licensed architect recommended by the Hawaii Society of the American Institute of Architects, a licensed electrical engineer and a licensed mechanical engineer recommended by the Consulting Engineers Council of Hawaii, a representative of the Hawaii Rating Bureau, a representative of the Hawaii Firefighters Association, and such other members of the public as the state fire council may determine can best assist it. The state fire council shall elect a chairman from among its members. In addition to adopting a state model fire code pursuant to section 132-3, the state fire council shall serve as a focal point through which all applications to the federal government for federal grant assistance for fire related projects shall be made. The state fire council may advise and assist the county fire departments where appropriate, may prescribe standard procedures and forms relating to inspections, investigations and reporting of fires, may approve plans for cooperation among the county fire departments, and may advise the governor and the legislature with respect to fire prevention and protection, life safety, and any other functions or activities for which the various county fire departments are generally responsible.

Sec. 103

DUTIES OF COUNTY FIRE CHIEFS

HRS Section 132-6. (a) Each county fire chief shall, in person or by officers or members of his fire department designated by him for that purpose, inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violation of any law, ordinance, rule, or order relating to fire hazard or to the prevention of fires.

(b) The inspection shall be made at least once each year within the jurisdiction of the county fire chief, and not less than once in six months within the fire limits or the congested districts subject to conflagration, as the

county council or other proper legislative body shall designate, and oftener as the county fire chief may determine.

(c) A written report of each inspection shall be kept on file in the office of the county fire chief.

(d) A copy of any report showing a change in the hazard or any violation of law, ordinance, rule or order relating to the fire hazard upon any risk, shall be given by the county fire chief to any rating bureau making written request of him therefor.

(e) Each county fire chief is vested with the power and jurisdiction over, and shall have supervision, of, every building and premises in the county as may be necessary to enforce any law, ordinance, rule, and order relating to protection from fire loss; provided that this provision shall not in any manner limit the jurisdiction or authority which any other county official may have over such building or premises under any other law or ordinance. Whenever as a result of inspection or upon complaint or otherwise the county fire chief determines that a law, ordinance, rule or order relating to protection from fire loss has been violated or that a condition exists which creates an unreasonable risk of fire loss, he shall prepare and serve upon the owner, occupant or other person responsible for the building or premises a written order setting forth the nature of the alleged violation or condition, the law, ordinance, rule or order violated, and the protections, safeguards, or other means or methods required to render the building or premises safe as required by law, ordinance, or rule. The order shall be complied with by the owner or occupant or person responsible for the building or premises within the time therein specified unless a timely appeal is taken pursuant to subsection (f) of this section.

(f) Owner's appeal to county fire appeals board. The owner or occupant may, within five days, appeal from any order made by the county fire chief to the county fire appeals board, which shall, within thirty days and after a hearing pursuant to Chapter 91, review the order and file its decision thereon, modifying, affirming, or revoking the order. Each county shall by ordinance establish a county fire appeals board and shall provide for its composition.

(g) Notwithstanding the provisions of subsection (e) of this section where the county fire chief determines that a clear and immediate risk of fire loss exists, he may after notice to the owner or occupant or other person responsible for the building or premises, and after a hearing pursuant to Chapter 91, order such person to take all actions reasonably necessary to render the building or premises safe from fire loss; provided that no notice or hearing shall be required where the county fire chief determines that the risk of fire loss is sufficiently immediate that delay would be dangerous to the public safety and welfare. If any owner, occupant or other person responsible for the building or premises fails to comply with the order of the county fire chief, the county fire chief may take such action and make such expenditure as may be necessary and if the owner, occupant, or other person responsible neglects or refuses to pay to the county fire chief the expense incurred by him, the county shall have a prior lien on the real property as provided for in section 132-7.

Sec. 104

RIGHT OF ENTRY FOR INSPECTION

HRS Section 132-5 - The county fire chief may at all reasonable hours enter any buildings, structures, or premises within his jurisdiction, except the interior of private dwellings, to make any inspection, investigation, or examination which is authorized to be made under this chapter. The county fire chief may enter any private dwelling whenever he has reason to believe that dangerous conditions creating fire hazard exist in the dwelling. The county fire chief or any member of any fire department may enter any private dwelling when a fire has occurred in the dwelling. It shall be unlawful to obstruct, hinder, or delay any person having the right to make the inspection, investigation, or examination in the performance of duty. The county fire chief shall make an annual inspection of all State or County buildings and shall make a report to the authorities responsible for the maintenance of any building when it is found that a building does not meet minimum standards of fire and safety protection.

Sec. 105

DUTY OF OWNER TO REMOVE FIRE HAZARD

HRS Section 132-7 - If the owner or occupant, to whom the order is directed, fails to comply with the order, or with the order as modified on appeal, and within the time

therein fixed, then the county fire chief may cause the buildings, structures, or premises to be repaired, torn down, demolished, materials removed, and all dangerous conditions remedied, as the case may be, at the expense of the owner or occupant and, if the owner or occupant within thirty days thereafter fails, neglects, or refuses to pay the county fire chief the expense incurred thereby him, the county shall have a prior lien for the expense on the real estate on which the buildings or structures were located, or on the premises involved, by the filing of a notice of lien in the bureau of conveyances or with the assistant registrar of the land court, if the real estate or premises involved is registered in the land court.

Sec. 106

DUTIES OF OWNER GENERALLY

HRS Section 132-8. (a) Every owner or other person having charge of or control over any building, structure, or other premises, in this chapter designated "owner," shall construct, keep, and make the building, structure, or other premises, in this chapter designated "building," reasonably safe from loss of life or injury to persons or property by fire, in this chapter designated "fire loss," in view of the type of construction, the use of the building, and all other pertinent circumstances.

(b) No owner shall permit the occupancy or use of any building which is not reasonably safe from fire loss and no owner shall fail to furnish, provide, and use reasonably adequate protection and safeguards against fire, or fail to adopt and use processes and methods reasonably adequate to render the building safe from fire loss; and no owner or other person shall fail or neglect to do every other thing reasonably necessary to prevent a fire loss in any building under his charge or control.

Sec. 107

WITNESSES; FEES

HRS Section 132-10. The county fire appeals board or the county fire chief shall in all proceedings have the same powers respecting administering oaths; compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the county fire appeals board or the county fire chief or of any subpoena issued by either of them or of the refusal of any witness to testify to any matter regarding which he may be questioned lawfully, any circuit

judge, on application by the county corporation counsel shall compel obedience as in case of disobedience of all requirements of a subpoena issued from a circuit court or a refusal to testify therein. The fees and traveling expenses of witnesses shall be the same as are allowed witnesses in the circuit courts and shall be paid by the appropriate county out of any appropriation or fund available for the expenses of the county fire chief.

Sec. 108 RECORDED ORDER OF COUNTY FIRE CHIEFS AS EVIDENCE

HRS Section 132-11. A duplicate original of every order made by each county fire chief shall be filed in his office and such duplicate original shall be admissible as evidence in any prosecution for the violation of any of its provisions. Unless an appeal has been instituted and is pending, the provisions of any order shall be presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirements of safety from fire loss.

Sec. 109 COURT AID; NOTICES; REHEARINGS; APPEALS; RECORD

HRS Section 132-12. Each county fire chief may invoke the aid of any court of competent jurisdiction to enforce any order or action made or taken by him in pursuance of law.

Sec. 110 VIOLATION AND PENALTY

ROH 1978, Chapter 19A. "UFC Sec. 2.204. Any person, firm or corporation violating any of the provision of this code shall be deemed guilty of a misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provisions of this code is committed, continued or permitted, and upon conviction of any such violation, such person shall be punished by a fine of not more than ~~\$300.00~~ ^{1,000.00} or by imprisonment for not more than ~~90~~ ¹⁴² days, or by both such fine and imprisonment."

HAZARDOUS MATERIALS DISCLOSURE FORM REQUIREMENTS

1. Flammable and Non-Flammable Compressed Gases.

- A. A Hazardous Materials Disclosure Form may be required when any person, firm, or corporation storing, handling, or using any flammable or non-flammable compressed gases when the aggregate amount exceeds 200 cubic feet.

Compressed gases is any mixture or material having in the container either an absolute pressure exceeding 40 pounds per square inch at 70 degrees F, or an absolute pressure exceeding 104 pounds per square inch at 130 degrees F, or both; or any liquid flammable materials having a vapor pressure exceeding 40 pounds per square inch at 100 degrees F.

The fire chief may exempt certain compressed gases from the provisions of this section where it has been demonstrated that the product does not present a potential danger to the public health, safety, or welfare.

2. Hazardous Materials.

- A. A Hazardous Materials Disclosure Form may be required when any person, firm, or corporation storing, handling, or using any hazardous materials when the aggregate amount exceeds the following quantities:
1. More than 200 cubic feet for gases, or
 2. More than 55 gallons of liquids, or
 3. More than 500 pounds of solid materials.
 4. Any amount if highly toxic materials, pyrophoric materials, hypergolic materials, cryogenic or poisonous gases.

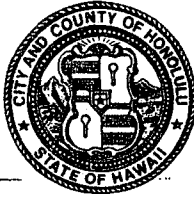
HAZARDOUS MATERIALS shall include such materials as flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hypergolic materials and pyrophoric materials and any substance or mixture of substances which is an irritant, a strong sensitizer or which generates pressure through exposure to heat, decomposition or other means.

This section does not apply to hazardous materials contained solely in consumer products packaged for distribution to, and use by, the general public, or to commercial products used at an establishment solely for janitorial or minor maintenance purposes. Provided these products do not exceed the minimum amounts of Item 2-A.

The fire chief may waive for a specific product the registration requirements of this section in instances where the product has been satisfactorily demonstrated to present no potential danger to the public health, safety, or welfare.

3. Refer to Section 607 for additional information.

MAIL FORM TO:
Honolulu Fire Department
Fire Prevention Bureau
1455 South Beretania Street
Honolulu, Hawaii 96814



HONOLULU FIRE DEPARTMENT
CITY AND COUNTY OF HONOLULU

HAZARDOUS MATERIALS DISCLOSURE FORM

ORIGINAL COPY AMENDED COPY

| | | |
|-----------|-----------------------------------|-----------------|
| 1: | BUSINESS NAME: _____ | PHONE: _____ |
| | STREET ADDRESS: _____ | TMK: _____ |
| | CITY AND STATE: _____ | ZIP CODE: _____ |
| 2: | BUSINESS OWNER(S): _____ | PHONE: _____ |
| | _____ | PHONE: _____ |
| | _____ | PHONE: _____ |
| | MAILING ADDRESS: _____ | |
| | CITY AND STATE: _____ | ZIP CODE: _____ |
| 3: | 24 HOUR EMERGENCY CONTACTS: _____ | PHONE: _____ |
| | _____ | PHONE: _____ |
| | _____ | PHONE: _____ |

I (we) certify that the information in this disclosure form and in the material safety data sheet or its equivalent, is complete and accurate to the best of my knowledge.

AUTHORIZED SIGNATURE(S)

DATE

NOTE

SECTION 19A-1.1 FIRE CODE OF THE CITY AND COUNTY OF HONOLULU, R.O.H., 1978

When requested by the Fire Chief, any person, firm, or corporation storing, handling, or using any hazardous materials or compressed gases as described in Article 74 and Article 80 of the Fire Code of the City and County of Honolulu, shall file a Hazardous Materials Disclosure Form with the Honolulu Fire Department. In addition, a material safety data sheet or equivalent information provided by the manufacturer shall be submitted with the Hazardous Materials Disclosure Form when requested by the Fire Chief for a specific product.

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File:
EPHSD/HEER
NW1-N1

April 4, 1989

MEMORANDUM

To: Members, Hawaii State Emergency Response Commission
(HSERC) and Technical Subcommittee

From: Chairman, Hawaii State Emergency Response Commission

Subject: Hazardous Materials Personal Protection Training

Thank you for your response to attend the U. S. Coast Guard's Hazardous Materials Personal Protection Course (as described in the draft Training Guidelines, Category II). The following topics will be covered during each session:

- * Hazard recognition and evaluation
- * Exposure guidelines and sources of exposure information
- * Levels of protection
- * Protective clothing
- * Air monitoring equipment and techniques
- * Air purifying respirators
- * Self-contained breathing apparatus
- * Site entry and reconnaissance
- * Response organizations
- * Work zones and decon areas

Exercises will include getting in and out of protective clothing, use of air monitoring equipment, decontamination procedures, fit-testing, and use of communication devices. If time permits, the class will go through a hypothetical response scenario at an abandoned chemical storage facility. Please note that the course reviews all levels of personal protection training and is relevant to all persons and supervisors of persons that may be exposed to hazardous and toxic materials during the course of their employment, not just HAZMAT Team Specialist's.

HSERC MEMBERS
April 4, 1989
Page 2

The following people have been accepted to attend the first two Personal Protection classes:

April 17-21 (29 attendees)

| | |
|---|------------------------------------|
| Leo Jones | Department of Transportation (DOT) |
| Alexis Mizukami | DOT |
| Thomas Shiroma | DOT |
| Felix Dela Cruz | DOT |
| Thomas Lopez | DOT |
| Robert Peru | DOT-A/Honolulu Airport |
| Larry Leffler | Marine Patrol Officer |
| Franklin Anama | DOT/Harbors Division |
| Wendell M. Sano | Department of Health/PIEB |
| Lisa Y. L. Chun | DOH/PIEB |
| Daniel H. Hori | DOH/PIEB |
| Terence H. Teruya | DOH/PIEB |
| Francis Bueno | Assist. FC/Honolulu Airport |
| Thomas Souza | Assist. FC/Honolulu Airport |
| Nathan Young | Assist. FC/Honolulu Airport |
| Ronald K. Ohashi <i>sub. - John Todd</i> | State Harbor Patrol |
| Harry Kim | Civil Defense (LEPC Chairman) |
| James T. Brown | State Civil Defense |
| Leonard Clark | Honolulu Harbor |
| John Topliss | DOH/DWP |
| Stuart Yamada | DOH/DWP |
| Joseph Reed | Oahu Civil Defense |
| Steven Ogata | DOA/Pesticides Branch |
| Craig Shigeta | DOA/Pesticides Branch |
| Glenn Sahara | DOA/Pesticides Branch |
| James Anderson | DOA/Pesticides Branch |
| Samir Araman | DOH/HEER |
| David Borgeson | DOH/HEER |
| Gerald Higuchi | DOH/PIEB |

May 1 - 5 (30 attendees)

| | |
|--------------------|-----------------------|
| Richard Dinker | DOA/Pesticides Branch |
| Hector Matsuda | DOA/Pesticides Branch |
| Ed Pickop | DOA/Pesticides Branch |
| Gerald Kinro | DOA/Pesticides Branch |
| Daiwun Lee | DOH/PIEB |
| Shiro Hirata | DOH/PIEB |
| Watson Okubo | DOH/PIEB |
| Edward Pang | DOH/PIEB |
| Benjamin H. K. Lee | Honolulu Harbor |
| Raymond Seid | DOH/HWP |
| Eric Sadoyama | DOH/HWP |

May 1 - 5 (continued)

| | |
|-------------------|-------------------------------------|
| George Komatsu | DOH/Vector Control |
| Linda Bauer | DOH/DWP |
| Ann Zane | DOH/DWP |
| Chauncey Hew | DOH/DWP |
| Alex Ho | Honolulu Department of Public Works |
| Michael Kelly | DPR/Safety Officer |
| Thomas Diggs | Oahu Civil Defense |
| Angel Jardiolin | DTS/EMS Division |
| Harlin Hashimoto | UH/School of Public Health |
| Stanley Ishikawa | DOT/Harbors Division |
| William Eames | DOT/Harbors Division |
| Kenneth Munetake | DOT |
| William Enos, Sr. | DOT |
| Victor Cleaver | DOT |
| Horance Kaapuwai | DOT |
| Ralph Moore | DOT |
| Judy Parish | DOT |
| Leslie Au | DOH/HEER |
| Mark Ingolia | DOH/HEER |

The following agencies/organizations have made requests for future classes:


- Oahu
 - Honolulu International Airport
 - Honolulu Harbor
 - Oahu Civil Defense
 - Department of Health
- Maui
 - Fire Department
 - Department of Transportation
- Kauai
 - Kauai Department of Health
- Hawaii
 - Department of Agriculture

From the results of the survey, it appears that there is sufficient interest for at least two future classes on Oahu. At this point in time classes on the neighbor islands are being considered for Hawaii and Maui; however, before a final decision is made I would like to survey the members one last time. Please indicate your interest by filling out the attached form. We would appreciate a response by May 5. If you have any questions regarding the training please contact Nancy Woo of my staff at 548-6058/59/60.

HSERC MEMBERS
April 4, 1989
Page 4

I would also like to encourage the TSERC review and comment on the draft State of Hawaii Hazardous Materials Training Guidelines. Very few comments were submitted. Perhaps you will all be in a better position to comment after you or your staff have received the training. Another copy is attached for your convenience.

I would like to discuss and finalize the Guidelines at the next TSERC meeting on May 22, 1989, so your input is very important. Please submit your comments by May 15. Thank you for your cooperation.


JOHN C. LEWIN, M.D.

Enclosures 1. Form: 40 Hour Hazardous Materials Personal
Protection Training
2. TSERC Agenda
3. TSERC Meeting Summary

cc: Captain Gordon Piche, Honolulu Marine Safety Office

HAWAII STATE EMERGENCY RESPONSE COMMISSION
TECHNICAL SUBCOMMITTEE MEETING #6
DEPARTMENT OF HEALTH, LIBRARY, FIRST FLOOR
MONDAY, 22 MAY 1989, 9:00 A.M.

AGENDA

- I. Review Meeting Summary from 23 February 1989
- II. Statewide HAZMAT Training Assessment Update-M. Ingoglia
 - Status of Training Guidelines
 - Needs Assessment
 - Alternatives for meeting needs
 - Workshop update
- III. HAZMAT Exercise Update
- IV. Title III Data Management-S. Araman
- V. State HAZMAT Plan Distribution-Draft III
- VI. Establishment of Remedial Response Working Group-N. Woolarkin
- VII. Next Meeting, Date and Time
- VIII. Adjournment

Note: Following the meeting county representatives involved in Title III Data Management will have their first meeting.

REGISTRATION FORM: 40 HOUR HAZARDOUS MATERIALS PERSONAL PROTECTION TRAINING

Please return this form to HEER by May 5, 1989, to the following address:

Hazard Evaluation and Emergency Response
Department of Health
1250 Punchbowl Street, Room 122
Honolulu, Hawaii 96813

Registration Contact:

Name, Title: _____

Address/Telephone:
(Person to be contacted
regarding registration) _____

REGISTRATION INFORMATION ABOUT TRAINEE

Name: _____

Island Located: _____

Title/Agency: _____

Telephone: _____

Brief description of job detailing how the personnel suggested for training may be exposed to hazardous materials

The above would like to attend:

Date: Specify Month: _____

Island: _____

REGISTRATION FORM: 40 HOUR HAZARDOUS MATERIALS PERSONAL PROTECTION TRAINING

Please return this form to HEER by May 5, 1989, to the following address:

Hazard Evaluation and Emergency Response
Department of Health
1250 Punchbowl Street, Room 122
Honolulu, Hawaii 96813

Registration Contact:

Name, Title: _____

Address/Telephone:
(Person to be contacted
regarding registration) _____

REGISTRATION INFORMATION ABOUT TRAINEE

Name: _____

Island Located: _____

Title/Agency: _____

Telephone: _____

Brief description of job detailing how the personnel suggested for training may be exposed to hazardous materials

The above would like to attend:

Date: Specify Month: _____

Island: _____

MEETING SUMMARY

HAWAII STATE EMERGENCY RESPONSE COMMISSION
TECHNICAL SUBCOMMITTEE MEETING #5

Hawaii State Department of Health
Liquor Commission Conference Room, 6th Floor
Thursday, 23 February 1989
9:00 a.m.

Members Attending:

Tom Bello, Hawaii Fire Department
John Bowen, Ph.D., University of Hawaii-Hilo
Tom Brown, State Civil Defense
Daniel Chang, DOH
Carter Davis, Honolulu Fire Department
Doug Erway, State Civil Defense
Harlan Hashimoto, Ph.D., University of Hawaii-Manoa
Leroy Hokoana, Maui Fire Department
Clifford Ikeda, Kauai Civil Defense
Mark Ingoglia, HEER-DOH
Gilbert Kanazawa, US Coast Guard, 14th District
Ken Keane, US Coast Guard, MSO
Harry Kim, Hawaii County Civil Defense
Gerald Kinro, DOA
Alejandro Lomosad, Kauai Fire Department
Harold Matsuura, Hawaii DOH
Premlata Menon, Ph.D., DOH-HEER
Selbero Menor, Maui Civil Defense
David Nakagawa, DOH-Maui
Joe Reed, Oahu Civil Defense
Paul Takamiya, Oahu Civil Defense
Tom Vendetta, C & C of Honolulu

1. The meeting came to order and the summary of the previous meeting was discussed, and accepted.
2. Mark Ingoglia distributed two EPA booklets - "Community Right-to-know and Small Business", September, 1988 and "Chemicals in your Community", September 1988 to the TSERC members. All members were requested to indicate if they

required additional copies for distribution in the community. Copies will be mailed directly to requestors by EPA, Washington.

3. Mr. Ingoglia and Captain Davis presented the first draft of the Hawaii State Hazardous Materials Training Guidelines prepared by the TSERC working group composed of M. Ingoglia, C. Davis, R. Moore, D. Chang and J. Bowen. Mr. Kim noted that although the document describes guidelines, in effect, they set an important precedent and that must be seriously considered. M. Ingoglia noted that category II and III training is already required under OSHA.
4. All members agreed to submit their comments by March 30, 1989 to DOH officials who will edit, compile and incorporate all the comments received and submit the final version to TSERC members for their review. Members expressed the need for subjecting the guidelines to external review. It was agreed that upon review of the TSERC, the guidelines would be submitted to external agencies such as EPA, FEMA and CDC.
5. Mr. Brown inquired about the status of the \$50,000 FEMA HAZMAT training funds. M. Ingoglia noted that approximately \$40,000 in funds had already been expended and plans were to expend it all on first responder HAZMAT training focused at the fire department level.

6. Mr. G. Kanazawa presented a brief summary of the role and jurisdiction of RRT and invited all TSERC members to attend the RRT meeting scheduled to be held on March 1 & 2 at Hilo.
7. Mr. D. Erway presented the schedule of the RRT/EPA Table Top Exercise planned on the island of Hawaii during February 21, and 28.
8. All agreed to meet on April 17, 1989 (Meeting was postponed to May 5, 1989).
9. Meeting was adjourned at 11:00am.

NIOSH/OSHA/USCG/EPA

**Occupational Safety and
Health Guidance Manual
for Hazardous Waste
Site Activities**



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control

National Institute for Occupational Safety and Health

4. Training

Contents

| | |
|--------------------|-----|
| Introduction | 4-1 |
| Training Programs | 4-1 |
| Record of Training | 4-3 |

Introduction

Anyone who enters a hazardous waste site must recognize and understand the potential hazards to health and safety associated with the cleanup of that site. Personnel actively involved in cleanup must be thoroughly familiar with programs and procedures contained in the Site Safety Plan (see Chapter 3, *Planning and Organization*) and must be trained to work safely in contaminated areas. Visitors to a site must receive adequate training on hazard recognition and on the site's Standard Operating Procedures to enable them to conduct their visit safely.

The objectives of training programs for employees involved in hazardous waste site activities are:

- To make workers aware of the potential hazards they may encounter.
- To provide the knowledge and skills necessary to perform the work with minimal risk to worker health and safety.
- To make workers aware of the purpose and limitations of safety equipment.
- To ensure that workers can safely avoid or escape from emergencies.

The level of training provided should be consistent with the worker's job function and responsibilities. The training program should involve both classroom instruction in a wide range of health and safety topics and "hands-on" practice. Hands-on instruction should consist of drills in the field that simulate site activities and conditions. Any training program for work around hazardous substances should also incorporate onsite experience under the direct supervision of trained, experienced personnel.

All training information should be presented in clear, concise language. Particularly important information, such as the Standard Operating Procedures, should be provided in writing. A variety of teaching aids (i.e., films, tapes, slides, etc.) should be used, and lecture sessions should be interspersed with class participation and hands-on training. All employees should also complete refresher training, at least annually, to reemphasize the initial training and to update workers on any new policies or procedures.

Training Programs

Employees should not engage in field activities until they have been trained to a level commensurate with their job function and responsibilities and with the degree of anticipated hazards. Specific recommendations for the areas to be covered in training sessions are given in Table 4-1.



The training program should involve field drills that simulate emergency situations. Here workers wearing Level A personal protective equipment repair a leaking pipe as part of a training exercise.

General site workers, such as equipment operators, general laborers, technicians, and other supervised personnel, should attend training sessions that apply to their individual jobs and responsibilities, as well as training sessions that provide an overview of the site hazards and the means of controlling those hazards. Their training should include classroom instruction in the following subject areas, depending on their individual jobs:

- Site Safety Plan.
- Safe work practices.
- Nature of anticipated hazards.
- Handling emergencies and self-rescue.
- Rules and regulations for vehicle use.
- Safe use of field equipment.
- Handling, storage, and transportation of hazardous materials.
- Employee rights and responsibilities.
- Use, care, and limitations of personal protective clothing and equipment (see *Training* section of Chapter 8).
- Safe sampling techniques.

Table 4-1. Recommended Training by Job Category^a

| TRAINING TOPIC | EMPHASIS OF TRAINING | GENERAL SITE WORKER | ONSITE MANAGE- MENT AND SUPERVISORS | HEALTH AND SAFETY STAFF | VISITORS |
|---|--|---------------------------|--|----------------------------------|----------|
| Biology, Chemistry, and Physics of Hazardous Materials | Chemical and physical properties; chemical reactions; chemical compatibilities. | R | R | R | |
| Toxicology | Dosage, routes of exposure, toxic effects, immediately dangerous to life or health (IDLH) values, permissible exposure limits (PELs), recommended exposure limits (RELs), threshold limit values (TLVs). | R | R | R | |
| Industrial Hygiene | Selection and monitoring of personal protective clothing and equipment. | | R | R | |
| | Calculation of doses and exposure levels; evaluation of hazards; selection of worker health and safety protective measures. | | R | R | |
| Rights and Responsibilities of Workers Under OSHA | Applicable provisions of Title 29 of the Code of Federal Regulations (the OSH Act). | R | R | R | |
| Monitoring Equipment | Functions, capabilities, selection, use, limitations, and maintenance. | R | R | R | |
| Hazard Evaluation | Techniques of sampling and assessment. | | R | R | |
| | Evaluation of field and lab results. | | R | R | |
| | Risk assessment. | | O | R | |
| Site Safety Plan | Safe practices, safety briefings and meetings, Standard Operating Procedures, site safety map. | R | R | R | R |
| Standard Operating Procedures (SOPs) | Hands-on practice. | R | R | R | |
| | Development and compliance. | | R | R | |
| Engineering Controls | The use of barriers, isolation, and distance to minimize hazards. | R | R | R | |
| Personal Protective Clothing and Equipment (PPE) | Assignment, sizing, fit-testing, maintenance, use, limitations, and hands-on training. | R | R | R | R |
| | Selection of PPE. | | O | R | |
| | Ergonomics. | | | R | |
| Medical Program | Medical monitoring, first aid, stress recognition. | R | R | R | |
| | Advanced first aid, cardiopulmonary resuscitation (CPR); emergency drills. | O | R | R | |
| | Design, planning, and implementation. | | | R | |
| Decontamination | Hands-on training using simulated field conditions. | R | R | R | |
| | Design and maintenance. | R | R | R | |
| Legal and Regulatory Aspects | Applicable safety and health regulations (OSHA, EPA, etc.) | O | R | R | |
| Emergencies | Emergency help and self-rescue; emergency drills. | R | R | R | |
| | Response to emergencies; follow-up investigation and documentation. | | R | R | |

^aR = Recommended.

O = Optional.

In addition to classroom instruction, general site workers should engage in actual field activities under the direct supervision of a trained, experienced supervisor.

Some general site workers who may be exposed to unique hazards or who may occasionally supervise others should receive additional training in the following subject areas:

- Site surveillance.
- Site Safety Plan development.
- Use and decontamination of fully encapsulating personal protective clothing and equipment.
- Use of instruments to measure explosivity, radioactivity, etc.
- Safe use of specialized equipment.
- Topics specific to identified site activities.

Onsite management and supervisors, such as Project Team Leaders, who are responsible for directing others, should receive the same training as the general site workers for whom they are responsible, as well as additional training to enhance their ability to provide guidance and make informed decisions. This additional training should include:

- Management of hazardous waste site cleanup operations.
- Management of the site work zones (see Chapter 9, *Site Control*).
- How to communicate with the press and local community.

Health and safety staff with specific responsibilities for health and safety guidance on site should be familiar with the training provided to general site workers and their supervisors, and should receive advanced training in health and safety issues, policies, and techniques.

Visitors to the site (including elected and appointed officials, reporters, senior-level management, and other interested parties) must also receive a briefing on safety. These visitors should not be permitted in the Exclusion Zone (see Chapter 9, *Site Control*) unless they have been trained, fit-tested, and medically approved for respirator use. All other visitors should not enter the Exclusion Zone; rather, they should observe site conditions from the clean area, e.g., using binoculars.

Record of Training

A record of training should be maintained in each employee's personnel file to confirm that every person assigned to a task has had adequate training for that task, and that every employee's training is up-to-date.

HAWAII
EXERCISE DESIGN TEAM ROSTER

STATE CIVIL DEFENSE

1. Douglas K Erway, State Civil Defense, 734-2161

CITY & COUNTY OF HONOLULU

1. Frank Apel, Oahu Civil Defense, 527-5367
2. Lt. Darryl S. Sakai, Honolulu Police Department, 943-3837
3. Sgt. Patrick Fujimoto, Honolulu Police Department, 943-3178
4. Battalion Chief Clement Chun, Honolulu Fire Department, 422-1461
5. Gordon Tanaka, Department of Parks & Recreation, 527-6040
6. Daniel Masuno, Board of Water Supply, 527-5103
7. William Kuhn, Department of Public Works, 523-4830

COUNTY OF KAUAI

1. Inspector Howard Carvalho, Kauai Police Department, 245-9724
2. Captain Anthony Silva, Kauai Fire Department, 332-8916
3. Russell Sugano, Deputy County Engineer, 245-3602
4. Clifford Ikeda, Kauai Civil Defense, 245-4001
5. Danita Aiu, Department of Education, 822-4141

COUNTY OF HAWAII

1. Captain Roland Pacheco, Hawaii Police Department, 961-2262
2. Assistant Chief Don Coloma, Hawaii Fire Department, 935-2978
3. Wendell Hatada, Hawaii Civil Defense, 935-0031

COUNTY OF MAUI

1. Captain Clayton Carvalho, Maui Fire Department, 244-5250
2. Lieutenant George Kahoohanohano, Maui Police Department, 244-6410
3. Kyle Watanabe, Maui Civil Defense, 244-7721

BRIEFING OUTLINE

HAWAII STATE EMERGENCY RESPONSE COMMISSION TECHNICAL SUBCOMMITTEE

- A. Introduction
- B. Civil Defense/FEMA exercise requirements
(slide 1) (handout)
- C. State of Hawaii 5-Year Work Plan
(slide 2) (handout)
- D. Summary of Exercises FY 87 & 88
(slide 3 & 4) (handouts)
- E. Other Organizations' Exercise Requirements
 - 1. Federal Aviation Administration
(DOT, Airports Div.)
(FAR Part 139)
 - 2. Environmental Protection Agency
(2 per state per year)
 - 3. Hospitals
 - 4. Military
 - 5. Others
 - 6. Integration of HAZMAT incidents.
- F. Credit For Actual Events
 - 1. DRQ, Fm 90-2
- G. Reasons For Documentation
 - 1. Historical records
 - 2. Statistical data
 - 3. Federal and state budget justification
 - a. Quantification
- H. Review of upcoming RRT exercise in Hilo/Volcanoes National Park

FY 1989 STATE AND LOCAL EXERCISE REQUIREMENTS

1. Exercises / each jurisdiction:
 - a. 1 full-scale exercise during the 5 yr period.
 - b. 1 functional exercise each year.
2. Scenarios:
 - a. Must be rotated among National Security(NS), Natural (NH) and Technological Hazards(TH).
3. Each jurisdiction must submit to State FEMA FM 95-16(Exercise activities).
4. Actual response to a disaster may be submitted for credit.
(DRQ & 95-16)

5-YEAR (FY 1987-1991) STATE EXERCISE WORK PLAN

STATE OF HAWAII

| COUNTY | TYPE | FY 1987 | FY 1988 | | | FY 1989 | | | FY 1990 | FY 1991 |
|----------|-----------------------------|-----------------------------------|--|-------------|---------------|-------------------|--------|-------|------------------------|----------|
| | | COMPLETED | SCENARIO | SCHD. | COMP. | SCENARIO | SCHD. | COMP. | SCENARIO | SCENARIO |
| STATE | TT FE FE FSE | NS NH (1) | NS (REX B) NH (HURR) | 3 3 | CXL C | NH(Tsunami) | 3 | | (FE)NS | NH |
| KAUAI | TT FE FE FSE | NS NH | NS (REX B) NH (HURR) TH | 3 3 1 | CXL C C | NH(Tsunami) | 3 | | (FE)NS TH | NH |
| HONOLULU | TT FE FE FSE | NS NH NH (1) (2) (3) | NS (REX B) NH (HURR) TH (6) | 3 3 | CXL C C | NH(Tsunami) TH | 3 4 | | (FE)NS | NH TH |
| MAUI | TT FE FE FE FSE | NS NH NH (4) | NS (REX B) NH (HURR) TH & NH (7) | 3 3 | CXL C | NH(Tsunami) TH | 3 2 | | (FE)NS NH (EQ) | NH TH |
| HAWAII | TT FE FE FSE | NS NH NH(5) | NS (REX B) NH (HURR) | 3 3 | CXL C | NH(Tsunami) | 3 | | NH(EQ) (FE)NS TH | NH |

(1) A technological hazard incident (radiological) was included.

(2) CREDIT was granted for an actual event (Oil Spill - TH).

(3) CREDIT was granted for an actual event (High Surf - NH).

(4) CREDIT was granted for an actual event (Flash Flood - NH).

(5) CREDIT was granted for an actual event (Volcano - NH)

(6) FM 96-16 is forwarded for an Oil Spill - TH

(7) Credit was granted for 2 TH's and 1 NH.

(Aloha Airlines accident, Molokai Fires & HAZMAT Explosion)

SUMMARY OF EXERCISES FY 1987

| <u>TYPE</u> | <u>HAZARD</u> | <u>JURISDICTION</u> | <u>#PARTICIPANTS</u> | <u>DATE</u> |
|-------------|---------------|---------------------|----------------------|-------------|
| FSE | Earthquake | State | 404 | 10/86 |
| FSE | Earthquake | C & C Honolulu | 878 | 10/86 |
| FE | Hurricane | State | 35 | 3/87 |
| FE | Hurricane | C & C Honolulu | 93 | 3/87 |
| FE | Hurricane | Maui | 32 | 3/87 |
| FE | Hurricane | Kauai | 55 | 3/87 |
| FE | Hurricane | Hawaii | 27 | 3/87 |
| FE | Hurricane | C & C Honolulu | 27 | 6/87 |
| TT | NSE | Maui | 34 | 6/87 |
| TT | NSE | Kauai | 36 | 6/87 |
| TT | NSE | Hawaii | 25 | 7/87 |
| FSE | Mass Casualty | Kauai | 104 | 9/87 |
| TT | NSE | C & C Hono/State | 60 | 9/87 |

ACTUAL EVENTS

| | | | | |
|-----|-------------|----------------|-----|-------|
| FSE | Volcano | Hawaii | 125 | 11/86 |
| FE | High Surf | C & C Honolulu | 75 | 1/87 |
| FE | Oil Spill | C & C Honolulu | 155 | 1/87 |
| FSE | Flash Flood | Maui | 125 | 5/87 |

SUMMARY OF EXERCISES FY 1988

| <u>TYPE</u> | <u>HAZARD</u> | <u>JURISDICTION</u> | <u>#PARTICIPANTS</u> | <u>DATE</u> |
|-------------|---------------|---------------------|----------------------|-------------|
| FSE | Trans(air) | Maui | 69 | 10/87 |
| FSE | Hazmat | Kauai | 156 | 11/87 |
| FE | Hazmat | C & C Honolulu | 34 | 3/88 |
| FE | Hurricane | State | 103 | 5/88 |
| FE | Hurricane | C & C Honolulu | 90 | 5/88 |
| FE | Hurricane | Maui | 34 | 5/88 |
| FE | Hurricane | Kauai | 50 | 5/88 |
| FE | Hurricane | Hawaii | 114 | 5/88 |
| TT | Earthquake | State | 46 | 6/88 |
| FSE | Hurr/flood | C & C Honolulu | 24 | 7/88 |

ACTUAL EVENTS

| | | | | |
|-----|--------------|----------------|------|------|
| FSE | Flood | C & C Honolulu | 2006 | 1/88 |
| FE | Hazmat | Maui | 12 | 4/88 |
| FE | Air Accident | Maui | 60 | 4/88 |
| FE | Wildfire | Maui | 150 | 5/88 |
| FE | Hurricane | C & C Honolulu | 105 | 8/88 |
| FE | Hurricane | C & C Honolulu | 300 | 9/88 |

128-23 PUBLIC SAFETY AND INTERNAL SECURITY

or has died, and no guardian, or personal representative has been appointed, the State acting through the attorney general, may apply for the appointment of a guardian of the property of the person, or for the appointment of a personal representative. [L 1951, c 268, pt of §2; RL 1955, pt of §359-21; HRS §128-23; am L 1976, c 200, pt of §1; am L 1986, c 339, §5]

[CHAPTER 128D] ENVIRONMENTAL EMERGENCY RESPONSE

SECTION

- 128D-1 DEFINITIONS
- 128D-2 ENVIRONMENTAL EMERGENCY RESPONSE REVOLVING FUND
- 128D-3 REPORTABLE QUANTITIES, DUTY TO REPORT
- 128D-4 RESPONSE AUTHORITIES; USES OF FUND
- 128D-5 RECOVERY OF COSTS
- 128D-6 LIABILITY
- 128D-7 STATE CONTINGENCY PLAN

[§128D-1] **Definitions.** As used in this chapter, unless the context otherwise requires:

“Department” means the department of health.

“Director” means the director of health.

“Fund” means the environmental emergency response revolving fund.

“Hazardous substance” means any substance or mixture of substances, including but not limited to feedstock materials, products, or wastes, which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may:

- (1) Cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial present or potential hazard to human health, to property, or to the environment when improperly stored, transported, released, or otherwise managed.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous substance into the environment; but does not include any of the following:

- (1) Any release which results in exposure of persons solely within a workplace, with respect to a claim which such exposed persons may assert against their employer;
- (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel; or
- (3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. §2011), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 U.S.C. §2210.

“Remedy” means those actions consistent with permanent correction taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare of the environment.

- (1) The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released haz-

ENVIRONMENTAL EMERGENCY RESPONSE 128D-3

ardous substances or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment.

- (2) The term includes the costs of permanent relocation of residents and businesses and community facilities where the director determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare.
- (3) The term does not include the offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the director determines that such actions are more cost-effective than other remedial actions; will create new capacity to manage hazardous substances in addition to those located at the affected facility; or are necessary to protect public health or welfare of the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials.

"Remove" means the cleanup of released hazardous substances from the environment, such actions as may be necessary to take in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, and any emergency assistance. [L 1988, c 148, pt of §2]

[§128D-2] Environmental emergency response revolving fund. (a) There is created an environmental emergency 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, and moneys allotted to the fund from other sources.

(b) Moneys from the fund shall be expended by the department for emergency response actions consistent with this chapter. [L 1988, c 148, pt of §2]

[§128D-3] Reportable quantities, duty to report. (a) The director shall adopt rules pursuant to chapter 91 designating as hazardous substances such elements, compounds, mixtures, solutions, substances, and wastes which, when released into the environment, may present substantial danger to the public or the environment, and shall adopt rules establishing the quantities of such hazardous substances which, when released, shall be reported pursuant to this chapter. The director, as a minimum, shall adopt hazardous substances and reportable quantities as designated by the United States Environmental Protection Agency pursuant to

128D-3 PUBLIC SAFETY AND INTERNAL SECURITY

parts 117 and 302 of Title 40 of the Code of Federal Regulations, and by the United States Department of Transportation pursuant to parts 171 and 172 of Title 49 of the Code of Federal Regulations. The designated quantity released of any hazardous substance shall be a reportable quantity, regardless of the medium into which the hazardous substance is released.

(b) Any person who fails to report a hazardous substance release to the department within twenty-four hours of knowledge of the release shall be subject to a fine in an amount not to exceed \$10,000 for each day of failure to report. [L 1988, c 148, pt of §2]

[§128D-4] Response authorities; uses of fund. (a) Whenever the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance, the director may:

- (1) Issue an administrative order to any responsible party or parties to take appropriate removal or remedial action necessary to protect the public health and safety and the environment;
- (2) Undertake those investigations, monitoring, surveys, testing, and other information gathering necessary to identify the existence, source, nature, and extent of the hazardous substances involved and the extent of danger to the public health or environment;
- (3) Perform any necessary removal actions so as to abate any immediate danger to the public and the environment; and
- (4) Contract the services of appropriate organizations to perform the actions set forth in paragraphs (2) and (3).

(b) Moneys in the fund may be expended by the director for any of the following purposes:

- (1) Payment of all costs of removal actions incurred by the State or the counties in response to a release or threatened release of a hazardous substance; or
 - (2) Payment for the State's share of a removal or remedial action pursuant to section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9604(c)(3)).
- (c) No response actions taken pursuant to this chapter by the department shall duplicate federal response actions. [L 1988, c 148, pt of §2]

[§128D-5] Recovery of costs. (a) Any costs incurred and payable from the fund shall be recovered by the attorney general, upon the request of the department, from the liable person or persons. The amount of any costs which may be recovered pursuant to this section for a remedial or removal action paid from the fund shall include the amount paid from the fund and legal interest.

(b) Moneys recovered by the attorney general pursuant to this section shall be deposited into the account of the fund. [L 1988, c 148, pt of §2]

[§128D-6] Liability. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b):

- (1) The owner or operator or both of a facility;
- (2) Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;
- (3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for dis-

posal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances; or

- (4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release, which causes the incurrence of response costs of a hazardous substance;

shall be liable for all costs of removal or remedial action incurred by the State, any other necessary costs of response incurred by any other person consistent with this chapter, and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such release.

(b) There shall be no liability under subsection (a) for a defendant otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of hazardous substance and the damages resulting therefrom were caused solely by:

- (1) Any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight;
- (2) An act of war;
- (3) An act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant, if the defendant establishes by a preponderance of the evidence that due care was exercised with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances; and precautions were taken against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or
- (4) Any combination of the foregoing paragraphs.

(c) No person shall be liable under this chapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with this chapter or at the direction of an on-scene coordinator, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person.

(d) No indemnification, hold harmless, or similar agreement or conveyances shall be effective to transfer from the owner or operator of any vessel or facility 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.

(e) Any person who is liable for a release, or threat of a release, of hazardous substances and who fails, without sufficient cause, as determined by the director, to properly provide removal or remedial action pursuant to an administrative order issued by the director, shall be liable to the department for punitive damage up to

three times the amount of any costs incurred by the fund pursuant to this chapter as a result of the failure to perform the actions specified in the order. [L 1988, c 148, pt of §2]

[§128D-7] State contingency plan. (a) The department shall adopt, by rules, the criteria for the selection and for the priority ranking of sites pursuant to subsection (b) for removal and remedial action under this chapter, and shall adopt criteria for the ranking of sites in order of priority. The criteria shall take into account the pertinent factors relating to the public health and the environment, which shall include, but are not limited to, potential hazards to public health and the environment, the risk of fire or explosion, toxic hazards, the extent to which the deferral of remedial action will result, or is likely to result, in a rapid increase in cost or in a hazard to human health and the environment. The criteria may include a minimum hazard threshold below which sites shall not be listed pursuant to this section.

(b) The department shall publish and revise, at least annually, a listing of the sites subject to this chapter. The sites shall be categorized and placed on one of the following lists:

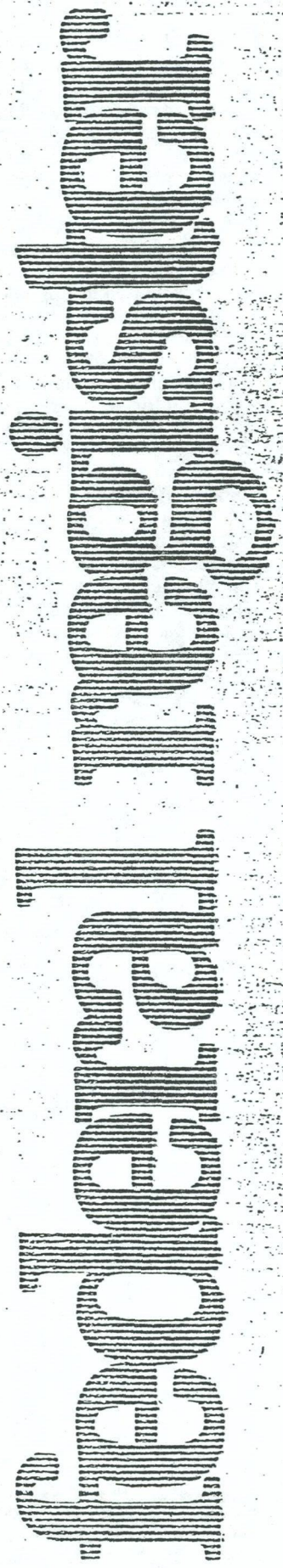
- (1) A list of the hazardous substance release sites for which the department has identified a responsible party, and the responsible party is in compliance, as determined by the department, with an order issued, or an enforceable agreement entered into.
- (2) A list of the hazardous substance release sites for which all of the following apply:
 - (A) The department has not been able to identify a responsible party or the responsible party is not in compliance, as determined by the department, with an order issued or an enforceable agreement entered into;
 - (B) The nature and extent of the hazardous substance release at the site has not been adequately characterized by the responsible party or the department.

(c) Funds appropriated to the department for removal action shall be expended in conformance with the priority ranking of sites, as established on the list of sites specified in subsection (b), except that funds appropriated for removal action may be expended without conforming to the priority ranking if any of the following apply:

- (1) The funds are necessary to monitor removal actions conducted by private parties at sites listed pursuant to subsection (b)(1);
- (2) State funds are necessary for the State's share of a removal or remedial action pursuant to section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9604(c)(3));
- (3) The funds are used to assess, evaluate, and characterize the nature and extent of a hazardous substance release on sites listed pursuant to this section; or
- (4) The director determines that immediate removal action at a site is necessary because there may be an imminent and substantial endangerment to the public health or the environment. [L 1988, c 148, pt of §2]

12/19/86

Friday
December 19, 1986



Part IV

Department of Labor

**Occupational Safety and Health
Administration**

**29 CFR Part 1910
Hazardous Waste Operations and
Emergency Response; Interim Final Rule**

Paragraph (d)—Site Control.

As part of the employers' site safety and health plan, this paragraph requires the employer to consider site control to minimize potential contamination of employees. Several items need to be considered, such as establishing work zones, so that employees know the hazards in different areas and will keep out of hazardous areas where the employees' presence is not required. Use of a buddy system and good site communications will assist in rescue of employees who become unconscious, trapped or otherwise seriously disabled on site.

Site control is especially important in emergency situations. Paragraph (d) describes the basic components of a program to control the activities and movements of employees and equipment at a hazardous waste site.

Several site control procedures can be implemented to reduce employee exposure to chemical, physical, biological, and safety hazards. The degrees of site control necessary depends on site characteristics, site size, and the surrounding community. The site control program should be established in the planning stages of a project and modified based on new information and site assessments developed during site characterization. The appropriate sequence for implementing these measures should be determined on a site-specific basis. In many cases, it will be necessary to implement several measures simultaneously.

The text used in this paragraph has been adapted from Reference 6. Item 9 of the EPA manual (Order 1440.2) indicates the need for this. In addition Subpart C of 29 CFR Part 1926 provides for regular inspection of job sites so hazards on the site can be controlled.

Paragraph (e)—Training

The interim final rule includes specific provisions for initial and review training of employees before they are permitted to engage in hazardous waste operations that could expose them to safety and health hazards. Both the EPA manual and 29 CFR 1926.21 and 1926.22 referred to in section 126(f) of SARA have training and information requirements. The EPA manual has specific provisions for basic, intermediate and advanced training. It requires 40 hours training for employees managing uncontrolled hazardous waste sites, 24 hours for employees engaged in routine activities and 32 hours for intermediate activities. Additionally, section 126 generally has requirements for extensive training programs. The clear congressional intent

of the interim final rule training provisions is to provide employees with the knowledge and skills necessary to perform hazardous waste clean-up operations with minimal risk to their safety and health.

The provisions for employees include a minimum of 40 hours of initial instruction off the site, and a minimum of 3 days of actual field experience under the direct supervision of a trained and experienced supervisor, at the time of job assignment. This amount of training is specifically directed by Congress for the interim final rule by its reference to the EPA manual which basically requires this amount of training for hazardous waste operators and Congress has specifically imposed these hour and day requirements under section 126(d) of SARA for the proposed final standard. There are slight differences between the EPA manual and section 126(c) of SARA. But they are sufficiently slight so that OSHA believes it appropriate to make the interim final rule consistent with what Congress directs for the proposed final rule so that employers need not make minor modifications to their training programs after two years.

In addition there are often many hazards at a waste site. The employee needs to be trained to recognize the hazards and appropriate work practices to minimize those hazards. The employee also needs to be well trained in the use of respirators and other forms of PPE. Without training those may not be used effectively and will not provide adequate protection. An extensive training program is necessary to achieve these objectives. The paragraph specifies these and the other items needed for effective training to avoid hazards.

Managers and supervisors directly responsible for hazardous waste site operations are to receive the same training as that of employees and at least eight additional hours of specialized training on managing hazardous waste operations. Since these people are responsible for directing others, it is necessary to enhance their ability to provide guidance and to make informed decisions. Both the EPA manual and section 126(e) of SARA direct eight hours of additional training for supervisors and managers.

The provisions also state that employees shall be retrained on an annual basis on relevant matters such as review of health hazards and use of personal protective equipment. Employees at hazardous waste operations face serious health and safety risks. Reminders are needed of this and of work practices to avoid

hazards. Personal protective equipment provides much of their protection. If there is no retraining in the use, care and maintenance of said equipment, such equipment is unlikely to be utilized in a manner to provide adequate protection. The regulation provides for eight hours of annual retraining. The EPA manual for refresher training (item #10) requires this amount of training.

In all areas of training, whether it be for general site employees, on-site supervisors or for the use of specific equipment, the level of training provided needs to be consistent with the worker's job function and responsibilities. The training information should be presented clearly and, as a further safeguard, refresher training should be supplied to reemphasize the initial training and to update employees on any new policies or procedures.

A less detailed training provision is provided for employees working at routine operation on RCRA sites. Those sites will have more stable working conditions and the hazards will be better identified and more carefully controlled. Therefore OSHA believes not as extensive training is needed for those employees for the interim rule. OSHA specifies 24 hours for the required training based on the EPA manual which specifies this as the basic level of training for most routine field activities. OSHA in the proposal document will request comment whether this or a greater amount of training is appropriate for the permanent rule.

Paragraph (f)—Medical Surveillance

The interim final rule both includes specific provisions for baseline and periodic medical examinations. The EPA manual referred to in section 126(e) of SARA has requirements for both initial or baseline and periodic medical examinations. The examinations are to be provided to those routinely exposed to hazardous substances, to those whose duties are physically taxing and those who routinely wear respirators. In addition section 126(b) provides that routine medical examinations are to be provided to workers engaged in hazardous waste operations. Although the language is slightly different, the clear intent is to provide a comprehensive medical surveillance program for employees engaged in hazardous waste operations where it is medically prudent.

The paragraph states medical surveillance is to be provided to employees who have been or are expected to be exposed to hazardous substances or health hazards above established permissible exposure limits

HAWAII
EXERCISE DESIGN TEAM ROSTER

STATE CIVIL DEFENSE

1. Douglas K Erway, State Civil Defense, 734-2161

CITY & COUNTY OF HONOLULU

1. Frank Apel, Oahu Civil Defense, 527-5367
2. Lt. Darryl S. Sakai, Honolulu Police Department, 943-3837
3. Sgt. Patrick Fujimoto, Honolulu Police Department, 943-3178
4. Battalion Chief Clement Chun, Honolulu Fire Department, 422-1461
5. Gordon Tanaka, Department of Parks & Recreation, 527-6040
6. Daniel Masuno, Board of Water Supply, 527-5103
7. William Kuhn, Department of Public Works, 523-4830

COUNTY OF KAUAI

1. Inspector Howard Carvalho, Kauai Police Department, 245-9724
2. Captain Anthony Silva, Kauai Fire Department, 332-8916
3. Russell Sugano, Deputy County Engineer, 245-3602
4. Clifford Ikeda, Kauai Civil Defense, 245-4001
5. Danita Aiu, Department of Education, 822-4141

COUNTY OF HAWAII

1. Captain Roland Pacheco, Hawaii Police Department, 961-2262
2. Assistant Chief Don Coloma, Hawaii Fire Department, 935-2978
3. Wendell Hatada, Hawaii Civil Defense, 935-0031

COUNTY OF MAUI

1. Captain Clayton Carvalho, Maui Fire Department, 244-5250
2. Lieutenant George Kahoohanohano, Maui Police Department, 244-6410
3. Kyle Watanabe, Maui Civil Defense, 244-7721

BRIEFING OUTLINE

HAWAII STATE EMERGENCY RESPONSE COMMISSION TECHNICAL SUBCOMMITTEE

- A. Introduction
- B. Civil Defense/FEMA exercise requirements
(slide 1) (handout)
- C. State of Hawaii 5-Year Work Plan
(slide 2) (handout)
- D. Summary of Exercises FY 87 & 88
(slide 3 & 4) (handouts)
- E. Other Organizations' Exercise Requirements
 - 1. Federal Aviation Administration
(DOT, Airports Div.)
(FAR Part 139)
 - 2. Environmental Protection Agency
(2 per state per year)
 - 3. Hospitals
 - 4. Military
 - 5. Others
 - 6. Integration of HAZMAT incidents.
- F. Credit For Actual Events
 - 1. DRQ, Fm 90-2
- G. Reasons For Documentation
 - 1. Historical records
 - 2. Statistical data
 - 3. Federal and state budget justification
 - a. Quantification
- H. Review of upcoming RRT exercise in Hilo/Volcanoes National Park

FY 1989 STATE AND LOCAL EXERCISE REQUIREMENTS

1. Exercises / each jurisdiction:
 - a. 1 full-scale exercise during the 5 yr period.
 - b. 1 functional exercise each year.
2. Scenarios:
 - a. Must be rotated among National Security(NS), Natural (NH) and Technological Hazards(TH).
3. Each jurisdiction must submit to State FEMA FM 95-16(Exercise activities).
4. Actual response to a disaster may be submitted for credit.
(DRQ & 95-16)

5-YEAR (FY 1987-1991) STATE EXERCISE WORK PLAN

STATE OF HAWAII

| COUNTY | TYPE | FY 1987 | FY 1988 | | | FY 1989 | | | FY 1990 | FY 1991 |
|----------|-----------------------------|-----------------------------------|--|-------------|---------------|-------------------|--------|-------|------------------------|----------|
| | | COMPLETED | SCENARIO | SCHD. | COMP. | SCENARIO | SCHD. | COMP. | SCENARIO | SCENARIO |
| STATE | TT FE FE FSE | NS NH (1) | NS (REX B) NH (HURR) | 3 3 | CXL C | NH(Tsunami) | 3 | | (FE)NS | NH |
| KAUAI | TT FE FE FSE | NS NH | NS (REX B) NH (HURR) TH | 3 3 1 | CXL C C | NH(Tsunami) | 3 | | (FE)NS TH | NH |
| HONOLULU | TT FE FE FSE | NS NH NH (1) (2) (3) | NS (REX B) NH (HURR) TH (6) | 3 3 | CXL C C | NH(Tsunami) TH | 3 4 | | (FE)NS | NH TH |
| MAUI | TT FE FE FE FSE | NS NH NH (4) | NS (REX B) NH (HURR) TH & NH (7) | 3 3 | CXL C | NH(Tsunami) TH | 3 2 | | (FE)NS NH (EQ) | NH TH |
| HAWAII | TT FE FE FSE | NS NH NH(5) | NS (REX B) NH (HURR) | 3 3 | CXL C | NH(Tsunami) | 3 | | NH(EQ) (FE)NS TH | NH |

(1) A technological hazard incident (radiological) was included.

(2) CREDIT was granted for an actual event (Oil Spill - TH).

(3) CREDIT was granted for an actual event (High Surf - NH).

(4) CREDIT was granted for an actual event (Flash Flood - NH).

(5) CREDIT was granted for an actual event (Volcano - NH)

(6) FM 96-16 is forwarded for an Oil Spill - TH

(7) Credit was granted for 2 TH's and 1 NH.

(Aloha Airlines accident, Molokai Fires & HAZMAT Explosion)

SUMMARY OF EXERCISES FY 1987

| <u>TYPE</u> | <u>HAZARD</u> | <u>JURISDICTION</u> | <u>#PARTICIPANTS</u> | <u>DATE</u> |
|-------------|---------------|---------------------|----------------------|-------------|
| FSE | Earthquake | State | 404 | 10/86 |
| FSE | Earthquake | C & C Honolulu | 878 | 10/86 |
| FE | Hurricane | State | 35 | 3/87 |
| FE | Hurricane | C & C Honolulu | 93 | 3/87 |
| FE | Hurricane | Maui | 32 | 3/87 |
| FE | Hurricane | Kauai | 55 | 3/87 |
| FE | Hurricane | Hawaii | 27 | 3/87 |
| FE | Hurricane | C & C Honolulu | 27 | 6/87 |
| TT | NSE | Maui | 34 | 6/87 |
| TT | NSE | Kauai | 36 | 6/87 |
| TT | NSE | Hawaii | 25 | 7/87 |
| FSE | Mass Casualty | Kauai | 104 | 9/87 |
| TT | NSE | C & C Hono/State | 60 | 9/87 |

ACTUAL EVENTS

| | | | | |
|-----|-------------|----------------|-----|-------|
| FSE | Volcano | Hawaii | 125 | 11/86 |
| FE | High Surf | C & C Honolulu | 75 | 1/87 |
| FE | Oil Spill | C & C Honolulu | 155 | 1/87 |
| FSE | Flash Flood | Maui | 125 | 5/87 |

SUMMARY OF EXERCISES FY 1988

| <u>TYPE</u> | <u>HAZARD</u> | <u>JURISDICTION</u> | <u>#PARTICIPANTS</u> | <u>DATE</u> |
|-------------|---------------|---------------------|----------------------|-------------|
| FSE | Trans(air) | Maui | 69 | 10/87 |
| FSE | Hazmat | Kauai | 156 | 11/87 |
| FE | Hazmat | C & C Honolulu | 34 | 3/88 |
| FE | Hurricane | State | 103 | 5/88 |
| FE | Hurricane | C & C Honolulu | 90 | 5/88 |
| FE | Hurricane | Maui | 34 | 5/88 |
| FE | Hurricane | Kauai | 50 | 5/88 |
| FE | Hurricane | Hawaii | 114 | 5/88 |
| TT | Earthquake | State | 46 | 6/88 |
| FSE | Hurr/flood | C & C Honolulu | 24 | 7/88 |

ACTUAL EVENTS

| | | | | |
|-----|--------------|----------------|------|------|
| FSE | Flood | C & C Honolulu | 2006 | 1/88 |
| FE | Hazmat | Maui | 12 | 4/88 |
| FE | Air Accident | Maui | 60 | 4/88 |
| FE | Wildfire | Maui | 150 | 5/88 |
| FE | Hurricane | C & C Honolulu | 105 | 8/88 |
| FE | Hurricane | C & C Honolulu | 300 | 9/88 |

HAWAII STATE AND COUNTY GOVERNMENT

Summary of Results of Hazardous Materials Safety Training Needs

| Agency | Chemical Emerg. | Hazardous Waste | Supv. Trng. | Med. Monitoring | OTJ |
|--|--------------------|--------------------|----------------|--------------------|-----|
| HEALTH | | | | | |
| Emergency Medical Serv. Hazardous Waste Prog. | 11 | 11 | 2 | P | N |
| Asbestos HERA | 0 | 0 | 0 | N/A | N |
| Drinking Waster Prog. | 12 | - | 3 | N | Y |
| Vector Control Prog. | 2 | 2 | 2 | P,C,O,D | Y |
| Envio. Permits Branch | 0 | 0 | 0 | N/A | N |
| Ground Water Prot. Prog. | 3 | 3 | 2 | P,C,O,? | Y |
| Haz. Eval. & Emerg. Resp. | 5 | 5 | 3 | P | Y |
| Pol. Invest. & Enforc. Br. | 12 | 12 | 2 | N | Y |
| Mauï DOH | 2 | 2 | 1 | ? | Y |
| Hawaii DOH | 15 | 15 | 3 | P | Y |
| Kauai DOH | 3 | 3 | 2 | P,C,H,O | Y |
| Labor & Indus. Relat. | | | | | |
| Div. of Occup. Saf. & Hlth. | 9 | 9 | 4 | N | N |
| UH Hawaii-Manoa | - | - | - | P,C,H,O | - |
| Dept. of Agriculture | 14 | 14 | 2 | P,C,H,O | N |
| Dept. of Trans. | | | | | |
| MAUI COUNTY | | | | | |
| Civil Defense | 3 | 3 | 1 | P | Y |
| HONOLULU COUNTY | | | | | |
| Civil Defense | 7 | 7 | 2 | P | Y |
| Fire (1000) | 50 | | | P,C,H,O | |
| KAUAI COUNTY | | | | | |
| Civil Defense | | | | | |
| Fire | | | | | |
| TOTAL | 163 | 101 | 35 | | |

COPY

JUSTIFICATION

DEPARTMENT: Health

TITLE: RELATING TO HAZARDOUS MATERIALS ^{personnel} ~~EMERGENCY RESPONSE~~ TRAINING

PURPOSE: To provide funds to the Department of Health to continue needed training of state and county personnel that must respond to hazardous materials emergencies.

MEANS: Appropriation of funds to be administered by the Department of Health for the training of chemical emergency response personnel.

JUSTIFICATION: The Superfund Amendments and Reauthorization Act (SARA) of 1986 is a Federal Law which requires all levels of government and industry to plan and train for chemical emergencies. The Department of Health has been designated to administer the program to meet this federal legislation. Specific training standards are set forth in the federal legislation for workers exposed to hazardous materials, and the funds for this training have come from the Federal Emergency Management Agency (FEMA). The training needs of the state have not been fully met and will continue indefinitely in order to fully meet the training regulations of Title III, while the funds from FEMA will not continue beyond FY 88. At present, the state lacks sufficient statewide response capability which is fully trained, and in-state hazardous materials training is critical and legally required for the protection of Hawaii public health and safety.

FUNDING: General Funds FY90 \$60,000.00
FY91 \$60,000.00

PPBS PROGRAM
DESIGNATION: HTH 840

OTHER AGENCIES
AFFECTED: State Civil Defense, DLIR, DOA, County Fire & Civil Defense Agencies.

A BILL FOR AN ACT

RELATING TO HAZARDOUS MATERIALS EMERGENCY RESPONSE TRAINING

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Finding and Purpose The legislature finds that Hawaii is vulnerable to the hazards and risks of uncontrolled releases of hazardous materials; due to the increasing use of hazardous materials to support demand for beneficial modern technologies, hazardous materials mishaps on occasion create emergencies that can adversely impact public health and the environment. The legislature finds that the U.S. Congress took direct action to prevent chemical disasters such as the tragedy of the methyl isocyanate incident in Bhopal, India, by passing the Superfund Amendments and Reauthorization Act (SARA) of 1986, referred to as SARA Title III. The legislature finds that this federal law requires all levels of government and industry to plan and train for chemical emergencies, and places clear liability upon those that do not. The legislature finds that in response to the duties placed upon state government under SARA Title III, the Department of Health has been designated by the governor to administer a SARA Title III Program in Hawaii. The legislature further finds that plans have been drafted at both the state and local levels to clarify roles and responsibilities for improved

coordination of chemical emergency response in Hawaii. The legislature finds that Section 126 of SARA instructed the Secretary of Labor "pursuant to Section 6 of the Occupational Safety and Health Act of 1970 to promulgate standards for the health and safety protection of employees engaged in hazardous waste operations," and that on December, 1986, the Department of Labor published an interim final rule in the Code of Federal Regulations at 29 CFR 1910. The legislature finds that the Occupational and Safety Act regulations include specific training standards for workers exposed to hazardous materials; these standards call for a minimum of 40 hours of off-site training plus a minimum of three days of actual field experience. The legislature finds such training standards set forth requirements for the training of workers which are responsible for responding to hazardous emergency situations that may expose workers to toxic substances while carrying out their responsibilities. The legislature further finds that under the administration of the Department of Health, fire department personnel are being trained for chemical emergency response, as well as state and county emergency response managers and planners. The legislature finds that the funds for this training have come from the Federal Emergency Management Agency (FEMA). The legislature further finds that the training needs of the state will continue indefinitely in order to fully meet the

training regulations of Title III, while the funds from FEMA will not continue beyond FY 88. The legislature believes that Hawaii has a crucial need to increase public and professional awareness of hazardous materials (HAZMAT) problems in an effort to increase the public support for solutions. Further, county police and fire department personnel have had limited training for HAZMAT incidents and have extremely limited resources. The legislature believes that, at present, the state lacks sufficient statewide response capability which is fully trained and equipped with the resources to rapidly identify, isolate, and control hazardous materials and safely eliminate the risks posed by them. The legislature believes that instate HAZMAT training is critical and legally required for the protection of Hawaii public health and safety; since each of the counties have emergency HAZMAT response needs, the current state strategy is to develop first responder HAZMAT capability within each of the county fire departments. Thus, the legislature believes a request for training support funds is both timely, since the FEMA funds will no longer be available, and essential, since federal law requires that worker safety training be provided to all persons potentially exposed to hazardous materials including state and county workers.

SECTION 2. There is appropriated out of the general

revenues of the State of Hawaii the sum of \$60,000, or so much thereof as may be necessary for fiscal year 1989-1990 and 1990-1991 for the purposes of this Act.

SECTION 3. The sum appropriated shall be expended by the Department of Health for the purposes of this Act.

SECTION 4. This act shall take effect upon its approval.

INTRODUCED BY: _____

MINIMUM TRAINING REQUIREMENTS

(Note: Rules, once established will determine who does the training, where training is conducted, and the applicable State, Federal and County Laws/Regs)

| RULES | If the Individual is a (an) | then the training applies to | and the duration of initial training is | and refresher tng requirements are |
|-------|--|---|---|--|
| | Haz Mat Response Team Member | the team | 40 hours at: | 4 hours per month at: |
| | Incident Commander | senior fire-fighters senior police officers | 40 hours at: | 4 hours per month at: |
| | Inspector of Haz Materials in Commerce | Motor Carrier Safety Officers U.S. Coast Guard and U.S. FAA Represent avies | 40 hour | 4 hours every six months at: |
| | Highways Hazard Debris Cleanup Personnel | State & County Highway Department members | 8 hours | 4 hours annually |
| | Pesticides or Herbicides Worker | the individual | 40 hours at: | 4 hours per six months at: |
| | On Scene Command & Control Team Member | the team | 24 hours at: | 2 hours per six months |
| | Decontamination Specialist | the individual | 24 hours at: | 4 hours per six months Per Exercise |

MINIMUM TRAINING REQUIREMENTS

(Note: Rules, once established will determine who does the training, where training is conducted, and the applicable State, Federal and County Laws/Regs)

| RULES | If the Individual is a (an) | then the training applies to | and the duration of initial training is | and refresher tng requirements are |
|-------|--|---|---|--|
| | Haz Mat Response Team Member | the team | 40 hours at: | 4 hours per month at: |
| | Incident Commander | senior fire-fighters senior police officers | 40 hours at: | 4 hours per month at: |
| | Inspector of Haz Materials in Commerce | Motor Carrier Safety Officers U.S. Coast Guard and U.S. FAA Represent avies | 40 hour | 4 hours every six months at: |
| | Highways Hazard Debris Cleanup Personnel | State & County Highway Department members | 8 hours | 4 hours annually |
| | Pesticides or Herbicides Worker | the individual | 40 hours at: | 4 hours per six months at: |
| | On Scene Command & Control Team Member | the team | 24 hours at: | 2 hours per six months |
| | Decontamination Specialist | the individual | 24 hours at: | 4 hours per six months Per Exercise |

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File:

December 5, 1988

NASSESS

MEMORANDUM


TO: All TSERC Members

FROM: Coordinator, Hazard Evaluation and Emergency Response Program

SUBJECT: Needs Assessment of Hazardous Waste and Emergency Response Training as Required Under 29 CFR 1910, OSHA

The meeting summary for Hawaii State Emergency Response Commission (HSERC) Technical Subcommittee meeting 1 is enclosed for your review and comments at the next meeting. Draft summary for meeting 2 will be presented in the next meeting. Please find enclosed the agenda for next meeting on 19 December, 1988, 9:00 am, State Capitol, Senate Conference room 3 and a one page survey form. Please complete the survey and forward to reach us by December 12, 1988, so we can compile the results for presentation on the 19th. Thanks.

If there are any question please contact me at 548-2076.


MARK INGOGLIA

Enclosed: Survey Form
TSERC Member List
Meeting Summary
Agenda

JOHN WAIHEE,
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.,
DIRECTOR OF HEALTH

**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File:

**HAWAII STATE EMERGENCY RESPONSE COMMISSION
TECHNICAL SUBCOMMITTEE MEETING #3
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM NO. 3 (SECOND FLOOR)
MONDAY, 19 DECEMBER 1988, 9:00 A.M.**

AGENDA

- I. Introductory Remarks
- II. Review of meeting summaries
- III. Current Training Status
Carter Davis, HFD
John Bowen, UH-Hilo
Doug Erway, State Civil Defense
Mark Ingoglia, DOH
- IV. Results of Training Needs Assessment
- V. Alternatives to Meet Training Needs
- VI. Other Business
- VII. Next Meeting, Date and Time
- VIII. Adjournment

SURVEY FORM

HAWAII STATE AND COUNTY-WIDE ASSESSMENT OF TRAINING NEEDS FOR GOVERNMENTAL AGENCIES TO COMPLY WITH 29 CFR 1910 HAZARDOUS WASTE AND EMERGENCY RESPONSE TRAINING

Please complete the following.

1. Name of Agency and Person Completing Form

Agency Name

Person's Name and Telephone No.

2. Name of Program(s) if this survey is completed only for **particular** program(s) within the agency.

Name of Program(s)

3. Number of personnel that must be trained to meet 29 CFR 1910

_____.

Of the number of personnel reported above, what percentage on an annual basis resign, retire etc. (This will assist in projecting our ongoing training demand beyond the annual 8 hour refresher requirements _____).

4. Of the number of staff you have that need to be trained, how many must be trained to meet the following:

A. Chemical Emergency Response Training (35 hrs.) _____

B. Hazardous Waste Training (40 hrs.) _____

C. Both _____

D. Supervisors training 8 hours additional to 35/40 hours above _____

5. Do you believe your staff will require medical monitoring?

Yes ___ No ___

If yes, please describe what types:

Physicals? Yes ___ No ___

Test: Cholinesterase ___ Heavy Metals ___ Organochlorines ___ Others ___

6. The rules require three days of on-the job training. Can you provide it within your agency or will this be a problem?

Yes ___ No ___

Describe _____

Samir F. Araman
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813
Phone: 548-2076

Tom Bello
Hawaii Fire Department
466 Kinoole Street
Hilo, Hawaii 96720
Phone: 935-2978

Dr. John Bowen
University of Hawaii
P O Box 1115
Hilo, Hawaii 96721-1115

Mr. Harold Barks, Administrator
Occupational Safety & Health Div.
Labor & Industrial Relations
830 Punchbowl Street
Honolulu, Hawaii 96813
Phone: 548-4155

Tom Brown
State Civil Defense
3949 Diamond Head Road
Honolulu, Hawaii 96816
Phone: 734-2161

Dan Chang
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813
Phone: 548-6767

Mr. Carter Davis, Fire Captain
Hazardous Materials Instructor
890 Valkenburgh Street
Honolulu, Hawaii 96818
Phone: 422-1001

Mr. Doug Erway
Department of Defense
3949 Diamond Head Road
Honolulu, Hawaii 96816-4495
Phone: 734-2161

Harlan Hashimoto, Ph.D.
University of Hawaii-School of Public Health
1960 East-West Road
Honolulu, Hawaii 96822
Phone: 948-8037

Fire Chief Leroy Hokoana
Maui Fire Department
21 Kinipopo Street
Wailuku, Hawaii 96793
Phone: 244-5250

Mr. Clifford Ikeda, Kauai LEPC Co-Chairman
Kauai Civil Defense
4444 Rice Street, Room 230
Lihue, Hawaii 96766
Phone: 245-4001

Mark Ingoglia
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813
Phone: 548-2076

Arlene Kabei
Department of Health-HWP
591 Ala Moana Boulevard
Honolulu, Hawaii 96813
Phone: 548-2270

Mr. Thomas Kam
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813
Phone: 548-7541

Kenneth Keane
US Coast Guard Marine Safety Office
433 Ala Moana Boulevard
Honolulu, Hawaii 96813-4909

Mr. Harry Kim, Administrator
Hawaii Civil Defense Agency
34-A Rainbow Drive
Hilo, Hawaii 96720
Phone: 935-0031

Mr. Gerald Kinro
Department of Agriculture
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: 548-7124

Alejandro Lomosad
Kauai Fire Department
4223 Rice Street
Lihue, Hawaii 96766
Phone: 245-4721

Mr. Harold Matsuura
Chief Sanitarian
P O Box 916
Hilo, Hawaii 96721-0916
Phone: 961-7275, 7371

Premlata Menon, Ph.D.
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813
Phone: 548-2076

Mr. Sel Menor, Administrator
Maui Civil Defense
200 South High Street
Wailuku, Hawaii 96793
Phone: 244-7721

Mr. Ralph Moore
Hazardous Materials Specialist
Hawaii Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813
Phone: 548-3188

David H. Nakagawa
Department of Health-Maui
54 High Street
Wailuku, Hawaii 96793
Phone: 244-4255

Mr. Joe Reed, Planner
Oahu Civil Defense
650 S. King Street, Basement
Honolulu, Hawaii 96813
Phone: 523-4121

Mr. Paul Takamiya
Oahu Civil Defense Agency
650 South King Street
Honolulu, Hawaii 96813
Phone 527-5489
Mr. Clyde Takekuma, Chief Santarian
Kauai Environmental Branch
P O Box 671
Lihue, Hawaii 96766
Phone: 245-4323



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File:

MEETING SUMMARY

**HAWAII STATE EMERGENCY RESPONSE COMMISSION (HSERC)
TECHNICAL SUBCOMMITTEE MEETING #1**

**Department of Health Board Room
14 October 1988, 9.00 a.m.**

Members Attending:

Hal Barks, DOSH/DLIR
Tom Bello, Hawaii Fire Department
Tom Brown, State Civil Defense
Carter Davis, Honolulu Fire Department
Neil Gyotoku, Hawaii Civil Defense
Leroy Hokoana, Maui Fire Department
Thomas Kam, Department of Land and Natural Resources (DLNR)
Gerald Kinro, Department of Agriculture
George S. Matsumoto, DLNR
Premlata Menon, Ph.D., Department of Health (DOH)
Sel Menor, Maui Civil Defense
Ralph Moore, Department of Transportation
Joe Reed, Oahu Civil Defense
Paul Takamiya, Oahu Civil Defense
Mark Ingoglia, DOH

1. The meeting was called to order by Mark Ingoglia, Coordinator, HSERC Subcommittee. He noted DOH received comments from United States Coast Guard to include review of state, county and federal HAZMAT enforcement capability in the first draft of State Plan.
2. M. Ingoglia requested Subcommittee members to comment on the first draft of the plan. The meeting was opened for discussion of needs and concerns of federal and county representatives to be addressed in State plan. The state \$150,000 Superfund was discussed. It was noted that currently one has to go through Attorney General's procedure of obtaining bids from contractors in order to use fund. C.

Davis suggested obtaining a retainer (private hazardous material cleanup) for a year in addition to a waiver of bidding process prior to emergency process. M. Ingoglia noted DOH was in process of applying for waiver from Governor. J. Reed, noted HAZMAT issues are currently of great concern and that a mechanism to respond should be accelerated through Legislative processes and drafting administrative rules. R. Moore stressed the need for implementing 49 CFR rules relating to HAZMAT transportation, accident notification and labelling. Further concerns were expressed regarding coordination between DOSH and DOT regarding notification on transport and use of explosives.

3. All the members agreed to meet every third Monday of the month.
4. All members agreed that next meeting will be dedicated to express the need for holding a workshop to foster understanding of the hazardous materials legal authority pertaining to DOH, DOSH, DOT, USCG, DLNR, DOA and Fire Departments.
5. Members from each organization will present a one page written summary on November 21, 1988 relating to their agency's legal authority.
6. The meeting was adjourned at 12:30 p.m.

Respectfully submitted,



MARK INGOGLIA

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File:

HAWAII STATE EMERGENCY RESPONSE COMMISSION
TECHNICAL SUBCOMMITTEE MEETING #3
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM NO. 3 (SECOND FLOOR)
MONDAY, 19 DECEMBER 1988, 9:00 A.M.

AGENDA

- I. Introductory Remarks
- II. Review of meeting summaries
- III. Current Training Status
Carter Davis, HFD
John Bowen, UH-Hilo
Doug Erway, State Civil Defense
Mark Ingoglia, DOH
- IV. Results of Training Needs Assessment
- V. Alternatives to Meet Training Needs
- VI. Other Business
- VII. Next Meeting, Date and Time
- VIII. Adjournment

HAWAII
EXERCISE DESIGN TEAM ROSTER

STATE CIVIL DEFENSE

1. Douglas K Erway, State Civil Defense, 734-2161

CITY & COUNTY OF HONOLULU

1. Frank Apel, Oahu Civil Defense, 527-5367
2. Lt. Darryl S. Sakai, Honolulu Police Department, 943-3837
3. Sgt. Patrick Fujimoto, Honolulu Police Department, 943-3178
4. Battalion Chief Clement Chun, Honolulu Fire Department, 422-1461
5. Gordon Tanaka, Department of Parks & Recreation, 527-6040
6. Daniel Masuno, Board of Water Supply, 527-5103
7. William Kuhn, Department of Public Works, 523-4830

COUNTY OF KAUAI

1. Inspector Howard Carvalho, Kauai Police Department, 245-9724
2. Captain Anthony Silva, Kauai Fire Department, 332-8916
3. Russell Sugano, Deputy County Engineer, 245-3602
4. Clifford Ikeda, Kauai Civil Defense, 245-4001
5. Danita Aiu, Department of Education, 822-4141

COUNTY OF HAWAII

1. Captain Roland Pacheco, Hawaii Police Department, 961-2262
2. Assistant Chief Don Coloma, Hawaii Fire Department, 935-2978
3. Wendell Hatada, Hawaii Civil Defense, 935-0031

COUNTY OF MAUI

1. Captain Clayton Carvalho, Maui Fire Department, 244-5250
2. Lieutenant George Kahoohanohano, Maui Police Department, 244-6410
3. Kyle Watanabe, Maui Civil Defense, 244-7721

Hou.
FD

**Honolulu Fire Department
Code Enforcement
Hazardous Materials**

The Honolulu Fire Department is maintained by the City and County of Honolulu for the primary purpose of providing its citizens with protection against loss of life and property from fire. For many years, the extinguishment of fires was regarded as the principal motivating force behind the establishment of fire departments. Today, efficient and well organized fire departments realize that as much attention is required to the prevention of fires as it is to its extinguishment. This same analogy holds true with the manufacture, transportation, storage and use of hazardous materials.

Currently, the City and County of Honolulu adopted the 1985 Uniform Fire Code with amendments under Ordinance Number 88-24, Bill No. 197. In general, the amendments deleted the portions of the UFC that deal with hazardous materials except for flammable liquids & combustible liquids, compressed gases which includes LPG, and the application of flammable liquids. The amendments do require any facility that uses or stores hazardous materials to submit a hazardous materials disclosure form. The main reason for the deletions was due to the lack of expertise and personnel to enforce those sections of the code. As expertise and personnel increase, these amendments could be changed.

The attached is the authority used by the Honolulu Fire Department for hazardous materials enforcement which include Hawaii State Statutes, Honolulu City Ordinances and Fire Codes.

Sec. 100

LAW ENFORCEMENT

The function of the fire department includes enforcement of laws pertinent to fire safety. Members of the fire department have been delegated a certain measure of police power and authority to enter public and private property to ascertain, correct or protect it from fire hazards. This authority is obtained from two sources:

1. State law.
2. Local ordinances.

STATE LAW - The Hawaii Revised Statutes, 1978, under Chapter 132, "County Fire Chiefs", define the powers, duties and functions of the fire chief of each county and his designated deputies.

LOCAL ORDINANCES - The Revised Ordinance of Honolulu 1978, Chapter 19A, Articles 1 & 2, adopts the State Model Fire Code (Fire Code of the City and County of Honolulu.)

Sec. 101

ADOPTION OF THE STATE MODEL FIRE CODE

HRS Section 132-3 - The state fire council shall, after public hearings pursuant to Chapter 91, adopt prior to July 1, 1979, a state model fire code setting forth minimum requirements relative to the protection of persons and property from fire loss including without limitation: (1) the storage, handling and use of hazardous substances, materials and devices; and (2) the control of conditions hazardous to life or property in the design, use or occupancy of buildings and premises. The state model fire code, insofar as is practicable, shall complement, augment and be consistent in form and language with the building and other codes of the respective counties. Upon adoption by the state fire council, the state model fire code shall be transmitted to the respective county councils which may, by ordinance, either enact its provisions or enact more stringent provisions relating to protection of persons and property against fire loss; provided that the county councils may enact less stringent provisions with the prior written approval of the state fire council. The state fire council shall meet annually to review and amend the state model fire code.

STATE FIRE COUNCIL; COMPOSITION; FUNCTIONS

HRS Section 132-16 - There is established a state fire council the members of which shall be ex officio the fire chiefs of the counties and the chief of the fire prevention bureau of the city and county of Honolulu. State fire council shall appoint an advisory committee to assist it in carrying out its functions under this chapter. The advisory committee shall include the heads of the various county building departments, a licensed architect recommended by the Hawaii Society of the American Institute of Architects, a licensed electrical engineer and a licensed mechanical engineer recommended by the Consulting Engineers Council of Hawaii, a representative of the Hawaii Rating Bureau, a representative of the Hawaii Firefighters Association, and such other members of the public as the state fire council may determine can best assist it. The state fire council shall elect a chairman from among its members. In addition to adopting a state model fire code pursuant to section 132-3, the state fire council shall serve as a focal point through which all applications to the federal government for federal grant assistance for fire related projects shall be made. The state fire council may advise and assist the county fire departments where appropriate, may prescribe standard procedures and forms relating to inspections, investigations and reporting of fires, may approve plans for cooperation among the county fire departments, and may advise the governor and the legislature with respect to fire prevention and protection, life safety, and any other functions or activities for which the various county fire departments are generally responsible.

DUTIES OF COUNTY FIRE CHIEFS

HRS Section 132-6. (a) Each county fire chief shall, in person or by officers or members of his fire department designated by him for that purpose, inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violation of any law, ordinance, rule, or order relating to fire hazard or to the prevention of fires.

(b) The inspection shall be made at least once each year within the jurisdiction of the county fire chief, and not less than once in six months within the fire limits or the congested districts subject to conflagration, as the

county council or other proper legislative body shall designate, and oftener as the county fire chief may determine.

(c) A written report of each inspection shall be kept on file in the office of the county fire chief.

(d) A copy of any report showing a change in the hazard or any violation of law, ordinance, rule or order relating to the fire hazard upon any risk, shall be given by the county fire chief to any rating bureau making written request of him therefor.

(e) Each county fire chief is vested with the power and jurisdiction over, and shall have supervision, of, every building and premises in the county as may be necessary to enforce any law, ordinance, rule, and order relating to protection from fire loss; provided that this provision shall not in any manner limit the jurisdiction or authority which any other county official may have over such building or premises under any other law or ordinance. Whenever as a result of inspection or upon complaint or otherwise the county fire chief determines that a law, ordinance, rule or order relating to protection from fire loss has been violated or that a condition exists which creates an unreasonable risk of fire loss, he shall prepare and serve upon the owner, occupant or other person responsible for the building or premises a written order setting forth the nature of the alleged violation or condition, the law, ordinance, rule or order violated, and the protections, safeguards, or other means or methods required to render the building or premises safe as required by law, ordinance, or rule. The order shall be complied with by the owner or occupant or person responsible for the building or premises within the time therein specified unless a timely appeal is taken pursuant to subsection (f) of this section.

(f) Owner's appeal to county fire appeals board. The owner or occupant may, within five days, appeal from any order made by the county fire chief to the county fire appeals board, which shall, within thirty days and after a hearing pursuant to Chapter 91, review the order and file its decision thereon, modifying, affirming, or revoking the order. Each county shall by ordinance establish a county fire appeals board and shall provide for its composition.

(g) Notwithstanding the provisions of subsection (e) of this section where the county fire chief determines that a clear and immediate risk of fire loss exists, he may after notice to the owner or occupant or other person responsible for the building or premises, and after a hearing pursuant to Chapter 91, order such person to take all actions reasonably necessary to render the building or premises safe from fire loss; provided that no notice or hearing shall be required where the county fire chief determines that the risk of fire loss is sufficiently immediate that delay would be dangerous to the public safety and welfare. If any owner, occupant or other person responsible for the building or premises fails to comply with the order of the county fire chief, the county fire chief may take such action and make such expenditure as may be necessary and if the owner, occupant, or other person responsible neglects or refuses to pay to the county fire chief the expense incurred by him, the county shall have a prior lien on the real property as provided for in section 132-7.

Sec. 104

RIGHT OF ENTRY FOR INSPECTION

HRS Section 132-5 - The county fire chief may at all reasonable hours enter any buildings, structures, or premises within his jurisdiction, except the interior of private dwellings, to make any inspection, investigation, or examination which is authorized to be made under this chapter. The county fire chief may enter any private dwelling whenever he has reason to believe that dangerous conditions creating fire hazard exist in the dwelling. The county fire chief or any member of any fire department may enter any private dwelling when a fire has occurred in the dwelling. It shall be unlawful to obstruct, hinder, or delay any person having the right to make the inspection, investigation, or examination in the performance of duty. The county fire chief shall make an annual inspection of all State or County buildings and shall make a report to the authorities responsible for the maintenance of any building when it is found that a building does not meet minimum standards of fire and safety protection.

Sec. 105

DUTY OF OWNER TO REMOVE FIRE HAZARD

HRS Section 132-7 - If the owner or occupant, to whom the order is directed, fails to comply with the order, or with the order as modified on appeal, and within the time

therein fixed, then the county fire chief may cause the buildings, structures, or premises to be repaired, torn down, demolished, materials removed, and all dangerous conditions remedied, as the case may be, at the expense of the owner or occupant and, if the owner or occupant within thirty days thereafter fails, neglects, or refuses to pay the county fire chief the expense incurred thereby him, the county shall have a prior lien for the expense on the real estate on which the buildings or structures were located, or on the premises involved, by the filing of a notice of lien in the bureau of conveyances or with the assistant registrar of the land court, if the real estate or premises involved is registered in the land court.

Sec. 106

DUTIES OF OWNER GENERALLY

HRS Section 132-8. (a) Every owner or other person having charge of or control over any building, structure, or other premises, in this chapter designated "owner," shall construct, keep, and make the building, structure, or other premises, in this chapter designated "building," reasonably safe from loss of life or injury to persons or property by fire, in this chapter designated "fire loss," in view of the type of construction, the use of the building, and all other pertinent circumstances.

(b) No owner shall permit the occupancy or use of any building which is not reasonably safe from fire loss and no owner shall fail to furnish, provide, and use reasonably adequate protection and safeguards against fire, or fail to adopt and use processes and methods reasonably adequate to render the building safe from fire loss; and no owner or other person shall fail or neglect to do every other thing reasonably necessary to prevent a fire loss in any building under his charge or control.

Sec. 107

WITNESSES; FEES

HRS Section 132-10. The county fire appeals board or the county fire chief shall in all proceedings have the same powers respecting administering oaths; compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the county fire appeals board or the county fire chief or of any subpoena issued by either of them or of the refusal of any witness to testify to any matter regarding which he may be questioned lawfully, any circuit

judge, on application by the county corporation counsel shall compel obedience as in case of disobedience of all requirements of a subpoena issued from a circuit court or a refusal to testify therein. The fees and traveling expenses of witnesses shall be the same as are allowed witnesses in the circuit courts and shall be paid by the appropriate county out of any appropriation or fund available for the expenses of the county fire chief.

Sec. 108

RECORDED ORDER OF COUNTY FIRE CHIEFS AS EVIDENCE

HRS Section 132-11. A duplicate original of every order made by each county fire chief shall be filed in his office and such duplicate original shall be admissible as evidence in any prosecution for the violation of any of its provisions. Unless an appeal has been instituted and is pending, the provisions of any order shall be presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirements of safety from fire loss.

Sec. 109

COURT AID; NOTICES; REHEARINGS; APPEALS; RECORD

HRS Section 132-12. Each county fire chief may invoke the aid of any court of competent jurisdiction to enforce any order or action made or taken by him in pursuance of law.

Sec. 110

VIOLATION AND PENALTY

ROH 1978, Chapter 19A. "UFC Sec. 2.204. Any person, firm or corporation violating any of the provision of this code shall be deemed guilty of a misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provisions of this code is committed, continued or permitted, and upon conviction of any such violation, such person shall be punished by a fine of not more than ~~\$300.00~~ ^{1,200.00} or by imprisonment for not more than ~~90~~ ¹⁴² days, or by both such fine and imprisonment."

HAZARDOUS MATERIALS DISCLOSURE FORM REQUIREMENTS

1. Flammable and Non-Flammable Compressed Gases.

- A. A Hazardous Materials Disclosure Form may be required when any person, firm, or corporation storing, handling, or using any flammable or non-flammable compressed gases when the aggregate amount exceeds 200 cubic feet.

Compressed gases is any mixture or material having in the container either an absolute pressure exceeding 40 pounds per square inch at 70 degrees F, or an absolute pressure exceeding 104 pounds per square inch at 130 degrees F, or both; or any liquid flammable materials having a vapor pressure exceeding 40 pounds per square inch at 100 degrees F.

The fire chief may exempt certain compressed gases from the provisions of this section where it has been demonstrated that the product does not present a potential danger to the public health, safety, or welfare.

2. Hazardous Materials.

- A. A Hazardous Materials Disclosure Form may be required when any person, firm, or corporation storing, handling, or using any hazardous materials when the aggregate amount exceeds the following quantities:

1. More than 200 cubic feet for gases, or
2. More than 55 gallons of liquids, or
3. More than 500 pounds of solid materials.
4. Any amount if highly toxic materials, pyrophoric materials, hypergolic materials, cryogenic or poisonous gases.

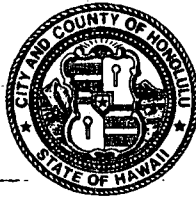
HAZARDOUS MATERIALS shall include such materials as flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, poisonous gases, reactive materials, unstable materials, hypergolic materials and pyrophoric materials and any substance or mixture of substances which is an irritant, a strong sensitizer or which generates pressure through exposure to heat, decomposition or other means.

This section does not apply to hazardous materials contained solely in consumer products packaged for distribution to, and use by, the general public, or to commercial products used at an establishment solely for janitorial or minor maintenance purposes. Provided these products do not exceed the minimum amounts of Item 2-A.

The fire chief may waive for a specific product the registration requirements of this section in instances where the product has been satisfactorily demonstrated to present no potential danger to the public health, safety, or welfare.

3. Refer to Section 607 for additional information.

MAIL FORM TO:
Honolulu Fire Department
Fire Prevention Bureau
1455 South Beretania Street
Honolulu, Hawaii 96814



HONOLULU FIRE DEPARTMENT
CITY AND COUNTY OF HONOLULU

HAZARDOUS MATERIALS DISCLOSURE FORM

ORIGINAL COPY AMENDED COPY

| | | |
|-----------|-----------------------------------|-----------------|
| 1: | BUSINESS NAME: _____ | PHONE: _____ |
| | STREET ADDRESS: _____ | TMK: _____ |
| | CITY AND STATE: _____ | ZIP CODE: _____ |
| 2: | BUSINESS OWNER(S): _____ | PHONE: _____ |
| | _____ | PHONE: _____ |
| | _____ | PHONE: _____ |
| | MAILING ADDRESS: _____ | |
| | CITY AND STATE: _____ | ZIP CODE: _____ |
| 3: | 24 HOUR EMERGENCY CONTACTS: _____ | PHONE: _____ |
| | _____ | PHONE: _____ |
| | _____ | PHONE: _____ |

I (we) certify that the information in this disclosure form and in the material safety data sheet or its equivalent, is complete and accurate to the best of my knowledge.

AUTHORIZED SIGNATURE(S)

DATE

NOTE

SECTION 19A-1.1 FIRE CODE OF THE CITY AND COUNTY OF HONOLULU, R.O.H., 1978

When requested by the Fire Chief, any person, firm, or corporation storing, handling, or using any hazardous materials or compressed gases as described in Article 74 and Article 80 of the Fire Code of the City and County of Honolulu, shall file a Hazardous Materials Disclosure Form with the Honolulu Fire Department. In addition, a material safety data sheet or equivalent information provided by the manufacturer shall be submitted with the Hazardous Materials Disclosure Form when requested by the Fire Chief for a specific product.

HAWAII STATE EMERGENCY RESPONSE COMMISSION
TECHNICAL SUBCOMMITTEE MEETING
DEPARTMENT OF HEALTH KINAU HALE BUILDING
1250 PUNCHBOWL STREET
3RD FLOOR, BOARD ROOM
14 OCTOBER 1988
9:00 A.M.

AGENDA

- I. General introduction of the members of the technical subcommittee
- II. Review and discussion of needs and concerns of federal and county representatives to be addressed in state plan
- III. General review and comment on first draft of State Plan
- IV. Working groups
 1. Planning
 2. Training
 3. Oil Spill Response
- V. Other business
- VI. Next meeting date
- VII. Adjournment

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File:

MEETING SUMMARY

**HAWAII STATE EMERGENCY RESPONSE COMMISSION (HSERC)
TECHNICAL SUBCOMMITTEE MEETING #1**

**Department of Health Board Room
14 October 1988, 9.00 a.m.**

Members Attending:


Hal Barks, DOSH/DLIR
Tom Bello, Hawaii Fire Department
Tom Brown, State Civil Defense
Carter Davis, Honolulu Fire Department
Neil Gyotoku, Hawaii Civil Defense
Leroy Hokoana, Maui Fire Department
Thomas Kam, Department of Land and Natural Resources (DLNR)
Gerald Kinro, Department of Agriculture
George S. Matsumoto, DLNR
Premlata Menon, Ph.D., Department of Health (DOH)
Sel Menor, Maui Civil Defense
Ralph Moore, Department of Transportation
Joe Reed, Oahu Civil Defense
Paul Takamiya, Oahu Civil Defense
Mark Ingoglia, DOH

1. The meeting was called to order by Mark Ingoglia, Coordinator, HSERC Subcommittee. He noted DOH received comments from United States Coast Guard to include review of state, county and federal HAZMAT enforcement capability in the first draft of State Plan.
2. M. Ingoglia requested Subcommittee members to comment on the first draft of the plan. The meeting was opened for discussion of needs and concerns of federal and county representatives to be addressed in State plan. The state \$150,000 Superfund was discussed. It was noted that currently one has to go through Attorney General's procedure of obtaining bids from contractors in order to use fund. C.

Davis suggested obtaining a retainer (private hazardous material cleanup) for a year in addition to a waiver of bidding process prior to emergency process. M. Ingoglia noted DOH was in process of applying for waiver from Governor. J. Reed, noted HAZMAT issues are currently of great concern and that a mechanism to respond should be accelerated through Legislative processes and drafting administrative rules. R. Moore stressed the need for implementing 49 CFR rules relating to HAZMAT transportation, accident notification and labelling. Further concerns were expressed regarding coordination between DOSH and DOT regarding notification on transport and use of explosives.

3. All the members agreed to meet every third Monday of the month.
4. All members agreed that next meeting will be dedicated to express the need for holding a workshop to foster understanding of the hazardous materials legal authority pertaining to DOH, DOSH, DOT, USCG, DLNR, DOA and Fire Departments.
5. Members from each organization will present a one page written summary on November 21, 1988 relating to their agency's legal authority.
6. The meeting was adjourned at 12:30 p.m.

Respectfully submitted,



MARK INGOGLIA

HAWAII STATE EMERGENCY RESPONSE COMMISSION
TECHNICAL SUBCOMMITTEE MEETING
DEPARTMENT OF HEALTH KINAU HALE BUILDING
1250 PUNCHBOWL STREET
3RD FLOOR, BOARD ROOM
14 OCTOBER 1988
9:00 A.M.

| NAME | ADDRESS | PHONE |
|------------------------|---------------------------|----------|
| MARK Ingegria | Kinau Hale | 548-2076 |
| Paul Wilson | Main Civil Defense Agency | 242-9921 |
| LeRoy Hokoana | Mpui Fire | 244-5250 |
| ✓ CARTER DAVIS | Honolulu FIRE | 422-0827 |
| ✓ Donald Kinross | Dept. of Agr. | 548-7124 |
| ✓ Tom Brown | State Civil Defense | 734-2161 |
| Pema Memon | Dept. Health/Kinau Hale | 548-5832 |
| ✓ Hal Barks | DOSH/DLR | 548-4155 |
| ✓ Neil Gyozaka Ggotoku | Hawaii Civil Defense | 935-0031 |
| ✓ Tom Bello | Hawaii County Fire Dept | 935-2978 |
| ✓ George S. Matsumoto | State DNR | 548-1619 |
| ✓ Thomas Kam | " " | 548-7462 |
| ✓ JOE REED | Oahu Civil Defense | 523-4121 |
| ✓ Paul Takamiya | O.C.D.A. | 527-5489 |
| ✓ Ralph Moore | State DOT | 548-2259 |
| | | |
| | | |
| | | |

OCT 26 1988

P. O. Box 1115
Hilo, Hawaii 96721-1115
October 24, 1988

Mr. Mark Ingoglia, Coordinator
Hazard Evaluation and Emergency
Response Program (HEER)
Hawaii State Department of Health
P. O. Box 3378
Honolulu, Hawaii 96801

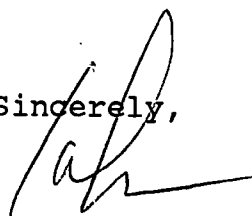
Dear Mark:

Thank you very much for the opportunity to serve on the Technical Sub-Committee of the Hawaii State Emergency Response Commission (HSERC). I am very pleased to have the chance to contribute to the work of this group.

However, I regret that I was unable to attend the first meeting on October 14th. I was in New Jersey serving as the lead instructor for a two-week National Fire Academy field course on Hazardous Materials Tactical Considerations. I most assuredly will attend the next session! Shall I just hold on to the airline coupons that Alvina sent to me until the next meeting?

With very best regards.

Sincerely,



John E. Bowen

STATE EMERGENCY RESPONSE COMMISSION MEETING

Thursday, July 16, 1987

Board Room, 3rd floor
State Department of Health
1260 Punchbowl Street

AGENDA

Welcome and introductory remarks by Dr. John Lewin

Overview of Title III (Bruce Anderson)

New Business:

Organizations that should be represented on the State
Emergency Response Commission *non this for*

Designation of local emergency planning districts.

- Counties Paly Secured by MARV. Concensus: Unanimous
Constituency of local emergency planning committees;

- Make recommendations - unanimous Required by Title III to make Unanimous
Emergency response training needs (Norman Lamb)

- submit recommendations
Establishment of a revolving contingency fund to clean-up
land-based oil spills and hazardous materials spills.

- suggests Committee ? \$ → like Clean Fund Council
Other new business

DOT

Ed Hirata DOT

Fire Chm.,

Armv. DEOC

Local Gov

Paly DLUR

*[DCCA Re+Consum
NDTA)*

Peter's - DVA

*not -
Refine*

Rail DLUR

*T/In
Assoc*

SPH

Red Cross

DBED - CDM



Contingency fund

*Hashimoto
Anderson
DBED Tom
Smith*

MEETING SUMMARY DRAFT

sercmini

Hawaii State Emergency Response Commission Meeting #1
Department of Health Board Room
16 July 1987, 2:00 p.m.

Members Attending:

Tadashi Tojo for Suzanne Peterson, DOA
Major General Alexis Lum, DOD
John C. Lewin, M.D., Chair-DOH
Mario R. Ramil, DLIR
William W. Paty, DLNR
Tom Smyth for Roger Ulveling, DBED
Edward Hirata, DOT
Harlin Hashimoto for Jerold M. Michael, UH-SPH
Steve Murray, ARC
Marvin Miura, OEQC

Others Attending:

Carter Davis, HFD
Bruce Anderson, DOH
Mark Ingoglia, OEQC
Donna Maiava, EMS

1. Meeting was called to order by the Chairperson, Dr. John Lewin, at 2:00 p.m. Introductory remarks were offered by the Chair.
2. Dr. Bruce Anderson, Department of Health Deputy Director for Environmental Health, offered a brief overview of Title III and the duties and responsibilities of the commission.
3. Additional membership for the commission was discussed. It was concluded that, thus far, additional membership should be limited. The issue of including a hospital representative was discussed. The commission concluded that such expertise should be included at the local planning committee level where their concerns can be included in the local emergency plans.

4. Designation of local emergency planning districts was discussed. After review of the issue, the Chair recommended that the county lines serve as

the district perimeters and that the mayors serve as interim district liaisons to the commission. William Paty made a motion to adopt the recommendation and Marvin Miura seconded it. The commission unanimously agreed with the motion.

5. Constituency of local emergency planning districts was discussed. It was agreed that the mayors should handle this issue utilizing Title III minimum membership requirement outlines. The Chairperson indicated that a letter would be sent to all the mayors with background on Title III and a request that committees be formed to address local responsibilities under the Act.

6. Emergency response training needs were discussed. Norman Lamb, State Civil Defense and Carter Davis, Honolulu Fire Department described the Fire Department's efforts to develop an emergency training plan to be reviewed by the Federal Emergency Management Agency. Submittal of this plan is required to obtain Federal training funds. Nationally, \$3.9 million is available. The training proposal material must be forwarded to FEMA by 31 July 1987.

Hawaii State Emergency Response Commission Meeting #1
16 July 1987
Page 3

7. Establishment of a revolving contingency fund to clean up land-based oil spills and hazardous materials spills was discussed by the committee. It was recommended that a revolving fund similar to the Clean Island Council be established. No particular amount was agreed upon. The Chair suggested a subcommittee be formed to review this issue. Bruce Anderson, Harlin Hashimoto, and Tom Smyth agreed to form the subcommittee.

8. The meeting adjourned at 3:40 p.m.

NOTES FOR DR. LEWIN

State Emergency Response Commission Meeting

Thursday, July 16, 1987

2:00 p.m.

Board Room

I. Welcome and Introductory Remarks (Dr. Lewin)

In April, Governor Waihee appointed the Department of Health of the State Emergency Response Commission. This commission has been established to implement Title III of the Federal Superfund Amendments and Reauthorization Act of 1986.

This act was passed to ensure that chemical accidents - such as the tragic one that occurred in Bhopal, India - do not occur in the U.S. We would like to expand on the requirements of Title III to ensure that the state is in a position to respond rapidly and appropriately to oil spills and similar chemical problems.

Title III requires the Department of Health, as the State Emergency Response Commission, to:

- o Designate local emergency planning districts;
- o Appoint local emergency planning committees; and
- o Collect and distribute a significant amount of data on chemical hazards and chemical use within the State.

The state commission is responsible for supervising and coordinating the activities of the local emergency planning committees, for reviewing local emergency plans, and for establishing procedures for receiving and processing requests for information required under Title III.

Funds have been appropriated by the legislature for 3 positions to assist in emergency response planning and other activities related to Title III.

II. Overview of Title III (Bruce Anderson)

In summary, the State commission is responsible for appointing and coordinating the activities of local emergency planning committees, establishing procedures for receiving and processing public requests for information collected, and reviewing local emergency response plans.

III. Organizations that should be represented on the State
Emergency Response Commission.

As of May, 1984, 47 state Governors had established Commissions. Hawaii's State Commission is similar to what the majority of states are establishing.

Most are chaired by a director of an existing state agency;
and

Most consist of representatives from multiple state agencies.

Note: Representatives from Federal Agencies cannot be included on the State Commission.

The size of the commissions varies from state to state. Three states have only one member; the largest has 31 members.

Current Members of the Hawaii State Commission

Edward Hirata, Director
Department of Transportation

* National Defense Transportation Assoc.

* PCCA

John Lewin, M.D., Director
Department of Health

? Honolulu
Fire Department

Major General Alexis Lum, Adjutant General
Department of Defense

* ATR

Marvin Miyura, Director
Office of Environmental Quality Control

State Fire Council?

* ECCA

William Paty, Chairman
Department of Land and Natural Resources

Suzanne Peterson, Chairperson
Board of Agriculture

Mario Ramil, Director
Department of Labor and Industrial Relations

Jerold Michaels, Dr.P.H., Dean
School of Public Health

Steve Murray, Manager
Hawaii State Chapter

Roger Ulveling, Director
Department of Planning and Economic Development

Business

Expanded membership may include members from county government, local government associations (e.g., fire chiefs), specific industries, environmental and other public interest groups, representatives of the academic community, and the general public.

IV. Designation of local emergency planning districts.

Most states have not yet established local planning districts and committees. However, most states are considering the designation of counties as individual planning districts. This is advantageous because of existing political and other formal relationships that exist between the state and counties. In addition, the counties already have emergency management programs in place (e.g., County Civil Defense, Police and Fire Departments).

Recommendation: Establishing counties as emergency planning districts.

V. Constituency of local emergency planning committees.

Most states have not yet established emergency planning committees. The states that intend to designate counties as local planning districts have indicated that they will rely on the judgment of local elected officials in appointing committee members.

Title III states that "Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements ..." of Title III.

The chief principle is that the committees should be broad-based but States may have flexibility in meeting this requirement. For example, one individual may represent several of the organizations required.

Recommendation: Asking the mayor of each county to recommend members for the local planning committee in their county.

VI. Emergency response training needs (Norman Lamb, State Civil Defense)
Respond by August 17th

VII. Establishment of a revolving contingency fund to clean-up hazardous materials spills. *Contact B&F for guidelines*

A revolving contingency fund (at least \$100,000), similar to the Clean Island Council's fund for oil spills, to clean-up hazardous materials spills must be established. These funds would be available for immediate use to facilitate timely clean-up until a responsible party can be identified, which would reimburse the fund.

Recommendation: A committee be established to explore various options.

* Committee Hashimoto, Steve Tom Smith (DPEA)
Tuesday, 25th; same time, same place