CHAPTER 342G
INTEGRATED SOLID WASTE MANAGEMENT

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Cross References

Construction projects; recycled glass requirements, see §103D-407.
Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.
Litter control, see chapter 339.
Plastic container coding, see §§342H-41, 42.
Special wastes recycling, see chapter 342I.

Law Journals and Reviews

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PART I. GENERAL PROVISIONS

§342G-1 Definitions. As used in this chapter, unless the context requires otherwise:

"Agricultural solid waste" means the solid waste that results from the rearing of animals and the harvesting of crops and that is normally placed in landfills.

"Backyard composting" means the small-scale composting of organic materials, primarily yard wastes, at the site where these materials are generated.

"Bimetallic can" means any food or beverage container that is composed of steel with a tin coating.

"Bioconversion" means the processing of the organic fraction of the waste stream through biological or chemical means to perform composting or generate products including, but not limited to, fertilizers, feeds, methane, alcohols, tars, and other products. This term includes, but is not limited to, biogassification, acid hydrolysis, pyrolysis, and fermentation. This term does not include any form of incineration or methane gas extraction from a municipal waste landfill.

"Compost" means a relatively stable, decomposed, organic, humus-like material, generated by a composting facility, that is suitable for landscaping or soil amendment purposes.

"Composting" means a process in which organic solid wastes, such as biosolids (sewage sludge), green or yard waste materials, manures, and non-treated wood chips and shavings, are biologically decomposed and stabilized under controlled conditions to produce a stable humus-like mulch or soil amendment. This term includes the processing of organic and non-treated wood waste materials for the generation of wood chips or other materials that can be used as soil amendment, planting mixes, mulches for horticultural and agricultural

applications, landfill cover, and land reclamation. The process of composting under methods approved by the department is a recycling activity. Land application of uncomposted organic solid waste shall not be considered an approved solid waste management activity.

"Coordinator" means the state solid waste management coordinator established within the office of solid waste management in the department of health.

"Corrugated paper" means a paper product fabricated from two layers of kraft linerboard sandwiched around a corrugating medium.

"County coordinator" means the person within each county government whose primary responsibility is the planning and implementation of the county's integrated solid waste management plans and objectives.

"Department" means the department of health.

"Deposit beverage" means beer, ale, or other drink produced by fermenting malt, mixed spirits, mixed wine, tea and coffee drinks regardless of dairy-derived product content, soda, or noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human consumption that is contained in a deposit beverage container.

The term "deposit beverage" excludes the following:

(1) A liquid that is:

(A) A syrup;
(B) In a concentrated form; or
(C) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;

(2) A liquid that is ingested in very small quantities and which is consumed for medicinal purposes only;

(3) A single serving of one ounce or less of a dietary supplement as defined in the Dietary—Supplement Health and Education Act of 1994 (P.L. 103-417);

(4) A liquid that the department finds to be the sole item of a meal or diet;

(5) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;

(6) Products designed to be consumed in a frozen state;

(7) Instant drink powders;

(8) Seafood, meat, or vegetable broths, or soups, but not juices; and

(9) Milk and all other dairy-derived products, except tea and coffee drinks with trace amounts of these products.

"Director" means the director of health.

"Disposal" means the management of solid waste through incineration or landfilling at permitted solid waste facilities.

"Disposal fee" means a fee that may be charged on items that will eventually end up as solid waste with the intent of factoring into the price or use or disposal of the same the eventual cost of managing the goods as wastes.

"Enterprise zone" means an area selected by a county and approved by the governor to be eligible for the enterprise zone program established under chapter 209E.

"Environmental management special fund" means the fund created by section 342G-63.

"Feasibility assessment" means a study that analyzes a specific municipal solid waste collection, storage, processing, or disposal system to assess the likelihood that the system can be successfully implemented, including, but not limited to, an analysis of the prospective market, the projected costs and revenues of the system, the waste stream that the system will rely upon, and various options available to implement the system.

"Ferrous metal" means any iron or steel scrap that has an iron content sufficient for magnetic separation.

"Food waste" means all animal and vegetable solid wastes generated by food facilities and residences that result from the storage, preparation, cooking, or handling of food.

"Green waste" means leaves, garden residues, shrubbery and tree trimmings, grass clippings, and similar material.

"HDPE" means high density polyethylene plastic and containers manufactured from this material.

"Household hazardous waste" means those wastes resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed of, or otherwise managed.

"Incineration" means volume reduction by controlled burning of combustible solid waste.

"Integrated solid waste management" means the use of a variety of waste management practices and processing methods to safely and effectively manage solid waste with the least adverse impact on human health and the environment.

"Landfill" means a land site on which engineering principles are utilized to bury deposits of solid waste without creating a nuisance or hazard to public health or safety.

"Landfilling" means the permitted disposal of solid waste on land in a series of compacted layers and covering the solid waste with soil or other materials.

"Manure" means excrement generated by animals, such as cows, horses, and chickens, held in captivity or used for agricultural production.

"Mixed paper" means discarded paper products that are composed of two or more types of paper, including newspaper, corrugated paper, office paper, computer paper, white paper, and coated paper stock.

"Office" means the office of solid waste management in the department of health.

"Permitted disposal capacity" means the quantity of solid waste, measured either in terms of weight or volume, or both, that can be processed or disposed of at an existing municipal waste disposal facility. This term includes only the weight or volume, or both, of the capacity for which the department has issued a permit. This term does not apply to any facility that the department determines, or has previously determined, has failed or continues to fail to comply with: (1) this chapter, (2) any rules adopted pursuant to this chapter, or (3) any permit conditions.

"PET" means polyethylene terephthalate plastic and containers manufactured from this material.

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

"Petroleum-contaminated soil" means soil that has been contaminated by a release of petroleum to a degree that exceeds levels determined to be acceptable by the director.

"Postconsumer material" means a material that has fulfilled the intent of its original manufacture.

"Processing" means any technology used for the purpose of reducing the volume or weight, or both, of solid wastes, or any technology used to convert part or all of solid wastes for reuse.

"Processing facilities" include, but are not limited to, transfer facilities, recycling facilities, and bioconversion facilities.

"Program" means the particular combination of waste management methods selected by each county and designed to achieve the objectives of the state and county integrated solid waste management plans.

"Recovered material" means material that has been diverted from disposal for the purpose of recycling or bioconversion. This term does not include those materials that are generated and normally reused on-site for manufacturing purposes.

"Recycled content" means the percentage of a good or product composed of postconsumer materials.

"Recycled oil" means any oil produced from used oil that achieves required standards of purity for use as a lubricant or fuel.

"Recycled paper product" means a paper product containing postconsumer material that conforms to the United States Environmental Protection Agency's guidelines for recycled paper.

"Recycling" means the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

"Secondary resources" means postconsumer material collected and processed for feedstock in a manufacturing process.

"Sewage sludge" means residual solids and semisolids resulting from the treatment of wastewater. This term does not include wastewater effluent discharged from wastewater treatment processes.

"Solid waste disposal facility" means any facility which receives solid waste for ultimate disposal through landfilling or incineration. This term does not include facilities utilized for transfer, storage, processing, or remanufacturing for recycling or reuse, or bioconversion.

"Solid waste management" means the entire process, or any part thereof, of storage, collection, transportation, transfer, processing, and disposal of solid wastes by any person engaging in these processes.

"Solid waste or municipal solid waste" means: garbage, refuse, and other residential or commercial discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations; sludge from waste treatment plants and water supply treatment plants; and residues from air pollution control facilities and community activities. This term does not include solid or dissolved materials in domestic sewage or other substances in water sources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants.

"Solid waste reduction facility" or "waste reduction facility" means all contiguous land, including buffer zones, structures, appurtenances, and improvements on the land used for solid waste handling. This term includes a facility used as a transfer station, landfill, incinerator, composting plant, bioconversion site, or recycling site utilized for the reduction, consolidation, conversion, processing, or disposal of solid waste.

"Solid waste stream" means the total flow of solid waste from all waste generators or any segment thereof, that must be processed or disposed of.

"Source reduction" means the design, manufacture, and use of materials to:

(1) Minimize the quantity or toxicity, or both, of the waste produced; and

(2) Reduce the creation of waste either by redesigning products or by otherwise changing societal patterns of consumption, use, or waste generation.

"Special waste" means any solid waste which, because of its source or physical, chemical, or biological characteristics, requires special consideration for its proper processing or disposal, or both. This term includes, but is not limited to, asbestos, used oil, petroleum-contaminated soil, lead acid batteries, municipal waste combustion ash, sewage sludge that is not hazardous waste,

agricultural and farm-generated wastes that are normally placed in landfills, medical wastes, tires, white goods, and derelict vehicles.

"State plan" means the integrated solid waste management plan developed by the department of health.

"Waste diversion" means to divert waste from the solid waste stream going into waste disposal facilities through recycling or bioconversion programs.

"Waste evaluation" means a review of an establishment's disposal practices to assess how those practices can be improved to reduce waste or recover postconsumer materials.

"Waste reduction" means the reduction of solid waste by weight or volume, or both, through a variety of methods prior to disposal. This term includes source reduction, recycling, and bioconversion. This term does not include incineration and landfilling.

"White goods" means discarded, enamel-coated major appliances, such as washing machines, clothes dryers, hot water heaters, stoves, and refrigerators.

"Wood waste" means solid waste consisting of wood pieces or particles that are generated from: the manufacturing or production of wood products; the harvesting, processing, or storage of raw wood materials; and construction and demolition activities. [L 1991, c 324, pt of §2; am L 1993, c 190, §3, c 281, §§1, 3, and c 312, §4; am L 2002, c 176, §4; am L 2013, c 230, §2]

[§342G-2] Solid waste management priorities. (a) This chapter shall be known and may be cited as the "Hawaii Integrated Solid Waste Management Act".

(b) In implementing this chapter, the department and each county shall consider the following solid waste management practices and processing methods in their order of priority:

(1) Source reduction;

(2) Recycling and bioconversion, including composting; and

(3) Landfilling and incineration.

The respective roles of landfilling and incineration shall be left to each county's discretion.

(c) In implementing this chapter, the department and each county shall consider the minimization of litter and illegal dumping as a design factor in the development of integrated solid waste management programs. [L 1991, c 324, pt of §2]

[§342G-3] Goals. (a) It is the goal of the State to reduce the solid waste stream prior to disposal by:

(1) Twenty-five per cent by January 1, 1995; and

(2) Fifty per cent by January 1, 2000;

through source reduction, recycling, and bioconversion. Where feasible, the office shall establish other state goals for specific commodities, recognizing market considerations.

(b) It is the goal of the State to reduce by not less than twenty-five per cent the amount of office paper generated by all state and county agencies by January 1, 1995, through source reduction. The base year for calculating progress toward this goal shall be total office paper consumption by state and county agencies in 1990.

(c) Nothing in this chapter shall be construed to restrict a county from setting waste reduction goals higher than those of the State. [L 1991, c 324, pt of §2]

PART II. ADMINISTRATION

[§342G-11] Administration. The department shall be responsible for the administration of this chapter. The director may delegate to any person within the department the power and authority vested in this chapter as the director deems reasonable and proper for the effective administration of this chapter; provided that the director shall not delegate the power to adopt rules. [L 1991, c 324, pt of §2]

[§342G-12] Office of solid waste management, establishment. There is established within the department the office of solid waste management. The head of the office shall be known as the state solid waste management coordinator. The coordinator shall be appointed by the director without regard to chapter 76 and shall be compensated at a salary level set by the director. The coordinator shall be included in any benefit program generally applicable to the officers and employees of the State. The coordinator shall hire staff, as may be necessary, with regard to chapter 76. [L 1991, c 324, pt of §2; am L 2000, c 253, §150]

§342G-12.5 Recycling coordinator. There is established a position of assistant to the coordinator of the office of solid waste management to be known as the recycling coordinator. The position may be appointed by the director in accordance with chapter 76. [L 1995, c 229, §2; am L 2000, c 253, §150; am L 2005, c 226, §8; am L 2006, c 300, §9]

§342G-13 Powers and duties of the department. In the execution of the responsibilities provided under this chapter, the department shall:

(1) Establish and administer goals and guidelines as provided for in this chapter;

(2) Adopt rules pursuant to chapter 91 and administer the rules as provided for in this chapter;

(3) Fulfill the office of solid waste management's responsibilities pursuant to this chapter until the establishment of the office;

(4) Serve as the state solid waste management agency for compliance with the federal Resource Conservation and Recovery Act of 1976 (42 United States Code section 6901 et seq.) and any other federal law regarding solid waste; and

(5) Perform other duties as specified in this chapter. [L 1991, c 324, pt of §2; am L 1995, c 229, §3]

[§342G-14] Powers and duties of the office of solid waste management. The office shall:

(1) Promote the development of coordinated statewide solid waste management;

(2) Identify and monitor environmental and public health issues relating to solid waste management;

(3) Promote source reduction, recycling, and bioconversion, including home composting, through the provision of a comprehensive, innovative, and effective statewide public education and awareness program concerning the value of source reduction and recycling, and the way the public can participate in these areas;

(4) Comply with the federal Resource Conservation and Recovery Act of 1976 (42 United States Code section 6901 et seq.) and any other federal law heretofore or hereafter enacted affecting solid waste;

(5) Seek compliance with sections 226-18, 226-52, and 226-103;

(6) Assess the feasibility of employing disposal fees, including fees at the point of introduction or sale of any product that would require eventual disposition as solid waste, as possible funding sources for waste management activities;

(7) Coordinate with the department of land and natural resources to incorporate solid waste management and processing concerns in the department of land and natural resources' land use planning and development efforts;

(8) Coordinate the bioconversion efforts of appropriate agency and county activities, including the provision of technical assistance and the evaluation of bioconversion programs;

(9) Provide waste evaluation services and assistance in developing paper recycling and other materials programs to both the public and private sector, where feasible;

(10) Promote the use of enterprise zones in each county to support source reduction, recycling, and bioconversion-type businesses;

(11) Create and maintain a database to assess the composition of the State's waste stream. If feasible, this database shall contain the information necessary to generate the office's annual report;

(12) Identify and apply for appropriate federal funds to support the programs and activities authorized by this chapter; and

(13) Cooperate with appropriate federal, state, and county agencies in carrying out the office's responsibilities under this chapter. [L 1991, c 324, pt of §2]

§342G-15 Annual report. (a) The coordinator shall prepare and submit an annual report to each county, the director, the governor, and the legislature, twenty days prior to the convening of each regular session of the legislature, describing the activities of the office. The annual report shall provide the information required in this chapter, including, but not limited to:

(1) A summary of the results achieved in meeting the state waste reduction goals, including the amounts of waste disposed of, diverted, and generated in the State, and the progress toward managing waste in consideration of the state solid waste management priorities;

(2) Results achieved in county integrated solid waste management planning and the state plan, with timetables for completion and implementation;

(3) Results achieved in implementing procurement programs, including the amount of recycled goods and materials purchased by the State and counties;

(4) Total paper consumption by state and county agencies and results achieved with the office paper reduction goal;

(5) Results achieved by government agencies in establishing office paper and other materials recovery programs;

(6) Results achieved by state and county agencies in removing barriers to the development of recycling markets and in developing markets and supporting businesses that use recovered materials;

(7) A summary of results achieved by state and county agencies in the provision and execution of the statewide public awareness and education program;

(8) A summary of results achieved by agencies to improve energy efficiency and to reduce reliance on imported fuels in compliance with sections 226-18 and 226-52;

(9) A summary and schedule of the key solid waste management goals and objectives planned for the following year at state and county levels; and

(10) Revenues into and expenditures from the environmental management special fund during the previous fiscal year and projections for revenues and expenditures in the coming fiscal year.

(b) Upon request from the office, the counties shall provide information, to the best of their abilities, to fulfill the requirements outlined in this section. [L 1991, c 324, pt of §2; am L 1993, c 312, §5]

PART III. INTEGRATED SOLID WASTE MANAGEMENT PLANNING

[§342G-21] Establishment of county integrated solid waste management plans. By January 1, 1993, each county shall submit to the office an integrated solid waste management plan that has been formally adopted by the county and that is consistent with the requirements of this chapter. [L 1991, c 324, pt of §2]

[§342G-22] Development of county integrated solid waste management plans. (a) Prior to preparing a plan, each county shall form an advisory committee appointed by the mayor. The county advisory committee may be composed of representatives from citizen organizations, industry, the private solid waste industry operating within the county, the private recycling or scrap material processing industry operating within the county, the county coordinator, and any other persons deemed appropriate by the mayor. The county advisory committee shall review the plan during its preparation, make suggestions, and propose any changes it believes are appropriate.

(b) Prior to formal adoption by the county, the county shall submit the proposed plan to the office for review and comment. The office shall provide its comments to the county within ninety days of receiving the proposed plan. Following the office's review, the county shall make the proposed plan available for public review and comment for a period of not less than sixty days. The county shall hold at least one public hearing on the proposed plan during this period.

(c) Following formal adoption of the plan by the county, the county shall submit the adopted plan to the office for review. The adopted plan shall be accompanied by a document that contains for each comment received from the State or the public, a response detailing how the comment has been addressed in the plan or, if it has not been addressed, the reason for not doing so. [L 1991, c 324, pt of §2]

[§342G-23] State review of county integrated solid waste management plans. (a) Prior to submitting to the office a plan that has been formally adopted by a county, the county and the office may negotiate plan components the county finds infeasible. The public shall be notified of all plan components that are determined to be infeasible.

(b) The office shall review the county-adopted plan and approve, conditionally approve, approve specific elements or components, or disapprove the plan. The office shall have sixty days to render a decision, unless the office gives written notice to the county that additional time is necessary to complete the review.

(c) The office shall approve any county plan or revised plan that demonstrates to its satisfaction that:

(1) The plan is reasonably complete and accurate, and consistent with this chapter and rules adopted under this chapter;

(2) The plan provides for the maximum feasible development and implementation of source reduction, recycling, and bioconversion programs, and demonstrates a feasible schedule, funding source, and amount for doing so;

(3) The plan provides for the disposal of solid waste that is not reduced, recycled, or altered through bioconversion, in a manner that is consistent with the requirements of this chapter; and

(4) The plan accomplishes all of the above in a manner consistent with chapter 226.

(d) To expedite and facilitate the plan development, review, and adoption process, the office, at the request of a county, may participate directly in the county adoption process by attending public hearings and county council sessions.

(e) The department shall notify the public of the approval, conditional approval, approval of specific elements or components, or disapproval of the plan. The director may hold a public hearing on the plan if the director determines that a public hearing is in the public interest. [L 1991, c 324, pt of §2]

§342G-24 Submission schedule for revised integrated solid waste management plans. (a) Each state-approved county plan shall be revised and submitted to the office on the following schedule:

(1) The first revised plan shall be submitted to the office not later than four years after July 1, 1991; and

(2) Subsequent revised plans shall be submitted to the office once every ten years; provided that an interim status report on the implementation of a revised plan shall be submitted five years after every submission of a revised plan to the office.

All revised plans shall be consistent with the requirements of this chapter.

(b) Not less than one hundred and twenty days prior to the submission of a revised plan to the office, the county shall submit a copy of the proposed revision to its county advisory committee for review and comment. All revisions determined by the county advisory committee or the office to be substantial revisions shall be subject to:

(1) At least one county public hearing prior to final submission of the revised plan to the office for review;

(2) Reconsideration and approval by the county advisory committee; and

(3) Review by the office, where the office shall approve, conditionally approve, approve specific elements or components, or disapprove the plan.

In general, any significant changes in policy, program implementation, the identification of facilities necessary to accomplish plan goals, or funding mechanisms, shall be considered substantial revisions. Deadlines for the submittal of substantial revisions shall be pursuant to the schedule outlined in this section.

(c) If neither the county advisory committee nor the office deems any changes to be substantial, then those changes shall be incorporated immediately into the plan. If any member of the public contests a determination of "lack of substantial revision", that person may appeal the determination to the director. The decision of the director shall be final.

(d) The office may require a county to modify and submit to the office an entire plan or specific elements of a plan at a date earlier than the schedule outlined in this section if:

(1) The county, in total, within the county and through access to capacity within another county, has fewer than five years of available permitted disposal capacity, and in the judgment of the office is not making sufficient progress toward developing or gaining access to new capacity; or

(2) The county fails to demonstrate a commitment to meeting the State's waste reduction goals. [L 1991, c 324, pt of §2; am L 2010, c 12, §2]

[§342G-25] Contents of county integrated solid waste management plans. (a) Each county plan and subsequent revision shall include:

(1) A program element; and

(2) A facility capacity and siting element.

A county may include additional elements at its discretion.

(b) The program element shall include at a minimum:

(1) A waste stream assessment component;

(2) A source reduction component;

(3) A recycling and bioconversion component;

(4) An energy-balance component;

(5) A special waste component;

(6) A household hazardous waste component;

(7) A public education and information component;

(8) A landfill and incineration component;

(9) A marketing and procurement of materials component;

(10) A program implementation component; and

(11) A program funding component.

(c) The facility capacity and siting element shall include at a minimum:

(1) An existing capacity and future needs component;

(2) A facility implementation component; and

(3) An enterprise zone component. [L 1991, c 324, pt of §2]

§342G-26 Contents of the program element. (a) The waste stream assessment component shall describe and explain the origin, composition, and weight or volume, or both, of solid waste generated within the county during the year in which the plan is being developed, or during the subsequent years when a revised plan is being developed.

The component shall include data that are reasonably representative of, and that reflect information that considers, seasonal and year-round patterns in waste generation. The data developed in this component of the initial county plan shall serve as the baseline for future measurement of the percentage of waste reduced through source reduction, recycling, and bioconversion programs. For each revised plan, the component shall provide a quantitative estimate of the amount of each type of solid waste that was reduced through recycling and bioconversion during the previous planning period. The

revised plan shall also include an estimate of reduction that has resulted from source reduction efforts, to the extent that the reduction can be quantified.

(b) The source reduction component shall identify and evaluate specific measures for achieving source reduction, including, but not limited to:

(1) Increased efficiency in the use of all materials;

(2) Replacement of disposable materials and products with reusable materials and products; and

(3) Reduced packaging.

(c) The recycling and bioconversion component shall identify and assess:

(1) The level of waste reduction the county is achieving through existing recycling and bioconversion efforts;

(2) The type and amount of solid waste that it is technically and economically feasible to recycle or alter through bioconversion; and

(3) Methods to increase and improve the recycling and bioconversion efforts, including opportunities for backyard composting.

For recycling, the counties shall assess the type and amount of solid waste that it is technically feasible to recycle, giving consideration at a minimum to clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, mixed paper, corrugated paper, HDPE, PET, and green waste.

For bioconversion, the counties shall assess the type and amount of solid waste that it is technically feasible to alter through bioconversion, giving consideration at a minimum to green waste, wood waste, animal manure, sewage sludge, and food wastes.

(d) The energy-balance component shall describe the programs by which the county will investigate or incorporate ways of increasing the energy efficiency of the solid waste management process, including the assessment of energy and fuel-production options such as composting, anaerobic digestion, acid hydrolysis, production of liquid fuels, incineration, or a combination thereof. The energy component shall identify and assess:

(1) The amount of energy input, including, but not limited to, electrical power, gasoline, diesel fuel, coal, natural gas, propane, kerosene, and heating oil, required by the plan for the accomplishment of collection, recycling, composting, bioconversion, waste handling, disposal, and landfilling;

(2) The amount of energy produced from the waste, including electricity, natural gas, hydrogen, and liquid fuels such as ethanol or methanol;

(3) The net energy use or energy production attributable to the solid waste program. Where feasible, this assessment shall include energy used in the original manufacture of these goods. National averages of energy consumed may be incorporated in these estimates; and

(4) Methods by which net energy use may be decreased or net energy or fuels production may be increased.

(e) The special waste component shall describe the existing waste handling and disposal practices for special wastes, including, but not limited to, asbestos, used oil, petroleum-contaminated soil, lead acid batteries, municipal waste combustion ash, sewage sludge that is not hazardous waste, agricultural and farm-generated wastes, medical wastes, tires, white goods, and derelict vehicles. The component shall identify current and proposed programs to ensure the proper handling, reuse, and long-term disposal of special wastes.

(f) The household hazardous waste component shall:

(1) Assess the quantity and type of hazardous wastes generated by residences in the county;

(2) Describe current collection, recycling, and exchange programs, as well as current methods of disposing of household hazardous waste; and

(3) Develop programs for the collection of household hazardous wastes that protect the public and the environment from these substances. The household hazardous wastes collected by the counties shall be disposed of by a state program. A county may petition the director to be exempt from this paragraph if the county demonstrates to the director's satisfaction the adequacy of its current methods of household hazardous waste collection, recycling, exchange, and disposal to protect public health and the environment.

(g) The public education and information component shall describe the programs that the county will use, in coordination with the efforts of the office, to:

(1) Provide comprehensive and sustained public notice of the options for alternate source reduction, recycling, and bioconversion, and for the proper handling of household hazardous and special wastes; and

(2) Distribute information and educational materials regarding general solid waste issues through the media, schools, and community organizations.

(h) The landfill and incineration component shall:

(1) Assess the county's current landfill capacity and ways to extend that capacity;

(2) Assess the availability of land for future landfills;

(3) Estimate the amount of waste currently going into incineration facilities and the remaining available capacity;

(4) Estimate the amount of ash generated at incineration facilities; and

(5) Describe provisions for ash disposal.

(i) The marketing and procurement of materials component shall describe:

(1) Existing county, state, or other markets for materials diverted from the solid waste stream;

(2) Methods to increase access to markets, including the promotion of local uses for materials derived from solid waste; and

(3) Methods to promote the procurement of recycled materials by county agencies.

(j) The program implementation component shall define:

(1) Specific tasks and responsibilities;

(2) Schedules for implementation;

(3) Identification of proposed ordinances, contracts, and other guidelines; and

(4) Methods for evaluating the effectiveness of the county plan.

(k) The program funding component shall:

(1) Provide for each of the components, where applicable, the estimated cost to the county of program implementation; and

(2) Demonstrate the county's economic self-sufficiency in managing solid waste pursuant to the implementation of the approved

plan. This includes the identification of county funding sources that will be used to implement the plan, and other viable sources of funding that have been identified or are anticipated. [L 1991, c 324, pt of §2; am L 1993, c 190, §4]

[§342G-27] Contents of the facility capacity and siting element. (a) The existing capacity and future needs component shall identify existing and future facilities needed by the county for solid waste management.

(b) The facility implementation component shall describe the specific tasks that are necessary to provide for the development or expansion of source reduction, recycling, bioconversion, and disposal facility capacity. The planning, design, funding, staffing, siting, construction, and operation of each proposed solid waste facility shall be addressed.

(c) The enterprise zone component shall describe the county's current and planned actions to establish enterprise zones. [L 1991, c 324, pt of §2]

[§342G-28] Facility permitting. Permitting shall be performed pursuant to chapter 342H. [L 1991, c 324, pt of §2]

[§342G-29] Revisions to the state integrated solid waste management plan. (a) The office shall be responsible for preparing revisions to the state integrated solid waste management plan. The first revision shall be completed within six months of the date that all four initial county plans have been approved by the office. The office shall complete each additional state revised plan within six months of the date that all four county revised plans have been approved by the office.

(b) For each state revised plan, the office shall convene a state integrated solid waste management task force. The office shall involve the task force in the review of the county plans and the development of the state revised plan.

(c) For each state revised plan, the office shall:

(1) Revise and update the material contained in the previous plan or revised plan; and

(2) With comment from the task force, address other issues of statewide concern regarding integrated solid waste management. [L 1991, c 324, pt of §2]

§342G-30 Records. Each operator of a municipal solid waste landfill or incineration facility shall keep records of all deliveries of solid waste to the facility, including, but not limited to, the source of the waste, the kind of waste received, and the weight or volume, or both, of the waste. The records shall be made available to the department and the respective county for inspection, upon request. At the request of a county, the department may exempt a specific facility from this requirement, or may modify this requirement for a specific facility, if the department determines that the cost of compliance is likely to exceed the value of accurate and thorough data. If the department grants an exemption to a facility under this section, the public shall be notified through a statewide public notice. [L 1991, c 324, pt of §2; am L 1998, c 2, §90]

[§342G-31 Guidelines.] The process of county and state integrated solid waste management planning shall be expedited to the greatest degree possible. The department, within six months of July 1, 1991, shall issue guidelines for the development of county plans. The draft guidelines shall be circulated to the counties for review and comment not less than forty-five days before their issuance. [L 1991, c 324, pt of §2]

Revision Note

"July 1, 1991" substituted for "the effective date of this chapter".

PART IV. GOVERNMENTAL COORDINATION

[§342G-41] Goals for recycled product procurement. It shall be the policy of all state and county public agencies to give preference to the purchase of products made from recycled materials, that are themselves recyclable, and that are designed for durability. [L 1991, c 324, pt of §2]

§342G-42 Office responsibilities for recycled products procurement. The office, in coordination with the state procurement office, shall ensure that all state and county purchasing agencies are provided with the information and technical assistance necessary to promote the procurement of goods with recycled-content. [L 1991, c 324, pt of §2; am L 1994, c 186, §5]

[§342G-43] Reporting. (a) Each state agency that conducts its own procurement activities shall annually submit information and data to the office regarding:

(1) The agency's progress in developing procurement programs;

(2) The total amount of paper purchased during the year; and

(3) The amount of recycled goods purchased during the year compared to nonrecycled counterparts.

If an agency is unable to supply this information, the agency shall describe what steps it is taking to obtain this information in the future.

(b) At the request of the office, each county shall provide a similar report. [L 1991, c 324, pt of §2]

[§342G-44] Double-sided copying. Double-sided copying shall be standard operating practice for all state and county agencies, offices, and facilities, as available and appropriate. To increase double-sided copying, each agency in coordination with the department of accounting and general services, each appropriate county entity, and the office, shall establish a schedule for the replacement of single-sided copying machines with double-sided copying machines for all high volume and other targeted machines that may be identified through the conduct of waste evaluations. [L 1991, c 324, pt of §2]

[§342G-45] Establishment of an office paper and other materials recovery program. By January 1, 1992, the department shall initiate an office paper and other materials recovery program for all appropriate offices within the department. By June 30, 1993, all state and county agencies shall establish an office paper and other materials recovery program. [L 1991, c 324, pt of §2]

[§342G-46] Coordination of bioconversion programs. Bioconversion programs shall include:

(1) A variety of program sizes ranging from backyard composting by residents and commercial establishments to full-scale municipal programs; and

(2) A range of technical approaches that adequately demonstrate the types of techniques most appropriate for Hawaii's environment and waste stream. This may include evaluating the feasibility of using compost or other bioconversion products for landfill cover. [L 1991, c 324, pt of §2]

[§342G-47] State agency responsibilities in the promotion of bioconversion. The general responsibilities of state agencies under this chapter include the following:

(1) Departments that procure compost or that can substitute compost for other purchased products shall utilize locally produced compost whenever possible;

(2) The college of tropical agriculture and human resources of the University of Hawaii, in consultation with the department of agriculture and the office, shall evaluate composting and bioconversion methods to determine the methods appropriate to Hawaii's environment and needs. The college shall provide educational outreach to homeowners and farmers on appropriate composting and bioconversion methods;

(3) The department of business, economic development, and tourism shall assist, to the extent possible, in the assessment of bioconversion program alternatives;

(4) The department of health shall evaluate the public health consequences of using compost for specific applications and bioconversion for the processing of municipal solid waste;

(5) The department of land and natural resources shall consider the use of locally produced compost on state lands whenever possible; and

(6) The department of transportation shall use compost in place of, or to supplement, other commercial fertilizers in the department's highway landscape maintenance program. [L 1991, c 324, pt of §2]

[§342G-48] Recycling market development. Databases on solid waste management alternatives and businesses involved in recycling and bioconversion shall be developed and maintained as follows:

(1) Within one year of its establishment, the office shall develop a database on the full range of solid waste management alternatives. This database shall include, but not be limited to, information on technology description, effectiveness, level of use elsewhere, available vendors, and cost. This database shall be offered for the use of the public and private sectors; and

(2) By January 1, 1993, the department of business, economic development, and tourism shall develop a database that identifies businesses involved in recycling and bioconversion. This database shall identify businesses that collect, transport, process, market, reuse, or purchase these goods. [L 1991, c 324, pt of §2]

§342G-49 REPEALED. L Sp 1995, c 2, §5.

[PART V.] SOLID WASTE MANAGEMENT SURCHARGE

§342G-61 Solid waste collection surcharge. Each county may assess residential real property owners in their respective county an annual solid waste collection surcharge based on the partial costs of solid waste collection. Notice of this surcharge shall be included with the notice of assessment required by county ordinance. [L 1993, c 312, pt of §2; am L 2016, c 52, §3]

§342G-62 Solid waste disposal surcharge. (a) There is established a solid waste management surcharge. The solid waste management surcharge shall be 35 cents per ton of solid waste disposed of within the State at permitted or unpermitted solid waste disposal facilities. The surcharge shall be paid by the person or entity doing the disposal. The owner or operator of the facility shall transfer all moneys collected from the surcharge to the department through a quarterly reporting and payment schedule. Estimates of quarterly solid waste disposal shall be submitted prior to the first day of each quarter and the transfer of moneys collected shall occur within thirty days of the end of each quarter.

(b) The surcharge collected pursuant to this section shall be deposited into the environmental management special fund. All interest earned or accrued on moneys deposited in the fund shall become a part of the fund. [L 1993, c 312, pt of §2; am L 1997, c 268, §1]

§342G-63 Establishment of the environmental management special fund. (a) There is created in the state treasury an environmental management special fund. The fund may receive legislative appropriations, grants and gifts.

(b) All moneys collected pursuant to section 342G-62 shall be deposited into the environmental management special fund. All interest earned or accrued on moneys deposited into the fund shall become a part of the fund.

(c) The department shall expend moneys contained in the environmental management special fund to:

(1) Partially fund the operating costs of the program including its regulatory functions and the development of waste reduction and diversion activities as mandated by chapter 342G;

(2) Fund statewide education, demonstration, and market development programs, through direct contract or direct transfer of funds to the counties and the department of business, economic development, and tourism, or under a grant program that may be developed under rules pursuant to chapter 91; and

(3) Provide for annual training for municipal solid waste operators in compliance with 40 Code of Federal Regulations Part 258 and chapter 11-58, Hawaii Administrative Rules. [L 1993, c 312, pt of §2; am L 1996, c 83, §3]

Note

Chapter 11-58, Hawaii Administrative Rules, referred to in text is repealed. For present provisions, see chapter 11-58.1, Hawaii Administrative Rules.

[§342G-64] Administration of the environmental management special fund. (a) The department may adopt rules to administer the environmental management special fund. During the interim period until such rules are established, the department may distribute funding to the counties or the department of business, economic development, and tourism in the form of a contractual agreement pursuant to section 103-22.

(b) The office shall not award any grant or contract under this section to any county that has failed to comply with the conditions set forth in this part and any rules adopted pursuant thereto.

(c) Unexpended or unencumbered grant funds shall revert to the environmental management special fund at the end of the fiscal year following the year in which the funds were granted. [L 1993, c 312, pt of §2]

Note

Section 103-22 referred to in text is repealed. For similar provision, see chapter 103D.

[PART VI. ENFORCEMENT AND PENALTIES]

Revision Note

Part heading added by revisor.

§342G-71 Penalties. Any person who violates any provision of this chapter or any rule adopted pursuant to this chapter shall be fined not more than $10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be made through administrative, civil, or criminal actions. [L 1993, c 312, pt of §3; am L 2002, c 176, §7]

§342G-72 Enforcement. (a) If the director determines that any person has violated or is violating any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a certification or permit issued pursuant to this chapter, the director may do any one or more of the following:

(1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;

(2) Issue an order assessing an administrative penalty for any past or current violation;

(3) Require compliance immediately or within a specified time; and

(4) Commence a civil action in circuit environmental court in which the violation occurred or where the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties, or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a certification or permit issued under this chapter, and shall state with reasonable specificity the nature of the violation.

(c) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(d) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall:

(1) Affirm or modify any penalties imposed or shall modify or affirm the order previously issued; or

(2) Issue an appropriate order or orders for the prevention, abatement, or control of the violation involved, or for the taking of such other corrective action as may be appropriate.

If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation.

(e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to collect the

administrative penalty which shall be a government realization. In any proceeding to collect the administrative penalty imposed, the director need only show that:

(1) Notice was given;

(2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;

(3) The administrative penalty was imposed; and

(4) The penalty remains unpaid.

(f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties. [L 1993, c 312, pt of §3; am L 2002, c 176, §8; am L 2014, c 218, §8]

[PART VII.] GLASS CONTAINER RECOVERY

§342G-81 Definitions. As used in this part, unless the context requires otherwise:

"Deposit glass beverage container" means:

(1) The individual, separate, sealed, glass container used for containing, at the time of import, sixty-eight fluid ounces or less of a beverage; or

(2) The empty, individual, separate glass container that will be filled with sixty-eight fluid ounces or less of a beverage and sealed in this State, so that these glass beverage containers will be subject to part VIII.

"Glass container importer" means any person who is engaged in the manufacture of glass containers within the State or who imports glass containers from outside the State for sale or use within the State. The term includes federal agencies and military distributors, but does not include airlines and shipping companies that merely transport glass containers.

"Glass incentive" means an incentive paid to licensed recyclers for recycling glass containers. Such incentives may be structured to include the costs of collection and processing, and a "buy back" incentive to increase participation by the public and private haulers.

"Glassphalt" means an asphaltic concrete mixture utilizing crushed glass, under controlled gradation conditions, as a substitute for a percentage of the aggregate in the mix.

"Glass recovery program" means a program for glass recovery and reuse for purposes including but not limited to:

(1) Glass container reuse or recycling whereby containers are refilled, processed for shipment out of the State, or crushed into aggregate substitute; and

(2) Use in roadway materials or concrete as provided in this part.

"Import" means to buy, bring, or accept delivery of glass containers from an address, supplier, or any entity outside of the State of Hawaii. [L 1994, c 201, pt of §2; am L 2000, c 128, §2; am L 2002, c 176, §5; am L 2008, c 16, §14]

§342G-82 Advance disposal fee. (a) Every glass container importer shall pay to the department an advance disposal fee. The fee shall be imposed only once on the same glass container and shall not be assessed on drinking glasses, cups, bowls, plates, ashtrays, and similar tempered glass containers. For the period beginning September 1, 1994, the fee shall be one and one-half cents per glass container. Beginning October 1, 2004, the glass advance disposal fee

shall only apply to glass containers that are not glass deposit beverage containers.

(b) The legislature shall have exclusive authority over all matters subject to this chapter.

(c) No county shall impose or collect any assessment or fee on glass containers for the same or similar purpose that is the subject of this chapter. [L 1994, c 201, pt of §2; am L 2002, c 176, §9]

§342G-83 Glass container importers; registration, recordkeeping requirements. (a) By September 1, 1994, all glass container importers operating within the State shall register with the department, using forms prescribed by the department, and shall notify the department of any change in address. After September 1, 1994, any person who desires to conduct business in this State as a glass container importer shall register with the department no later than one month prior to the commencement of the business.

(b) All glass container importers shall maintain records reflecting the manufacture of their glass containers as well as the importation and exportation of products packaged in glass. The records shall identify the type (glass deposit beverage container or non-deposit beverage glass container) and quantity of each type of glass container. The records shall be made available, upon request, for inspection by the department; provided that any proprietary information obtained by the department shall be kept confidential, and shall not be disclosed to any other person except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or

(2) Under an order issued by a court or administrative agency hearing officer. [L 1994, c 201, pt of §2; am L 2000, c 128, §3; am L 2002, c 176, §10]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

§342G-84 Deposit into environmental management special fund; distribution to counties. (a) Revenues generated from the advance disposal fee shall be deposited into a special account in the environmental management fund. Moneys from the special account shall be used to fund county glass recovery programs established in accordance with the requirements under section 342G-86; provided that no moneys shall be made available to a county unless the county has first submitted its formally adopted integrated solid waste management plan to the department for review. In the event of any surplus in the special account, the department shall recommend a reduction in the fee as deemed necessary.

(b) The department shall distribute the moneys contained in the special account to the counties in proportion to the amount of glass imported into each county based on the county's de facto population. The distribution shall be in the form of direct contracts with the department as permitted under chapters 103 and 103D or transfer of funds from the department.

(c) No more than ten per cent, in the aggregate, of the revenue collected in any one year may be used by the department for administrative and educational purposes and to promote glass recovery, recycling, and reuse in Hawaii through research and demonstration projects.

(d) All moneys distributed to the counties under subsection (b), and not used by the counties as specified in section 342G-86, shall be returned to the State for deposit into the environmental management special fund at the end of each annual contract period. [L 1994, c 201, pt of §2; am L 1998, c 253, §1; am L 2002, c 176, §11]

§342G-85 Container inventory report and payment. (a) Payment of the advance glass disposal fee shall be made quarterly based on inventory reports of the glass container importers, except for those importers subject to subsection (c) or (d). All glass container importers shall submit to the department documentation in sufficient detail that identifies the number of glass deposit beverage and glass non-deposit beverage containers manufactured or imported to the State and sold or distributed, by manufacturer or distributor, during the calendar year.

(b) Until September 30, 2004, the amount due from glass container importers less glass containers exported for the calendar year shall be the sum equal to the number of glass containers provided in subsection (a) multiplied by the advance disposal fee specified in section 342G-82. Beginning October 1, 2004, the amount due from glass container importers shall be the sum equal to the number of non-deposit beverage glass containers provided in subsection (a), less non-deposit beverage glass containers exported, and multiplied by the advance disposal fee. Payment shall be made by check or money order payable to the "Department of Health, State of Hawaii". All subsequent inventory reports and payments shall be made not later than the fifteenth day of the month following the end of the previous calendar quarter, except for those importers subject to subsection (d).

(c) Until September 30, 2004, a glass container importer who imports fewer than five thousand glass containers within a one-year period shall be exempt from payment of the fee. Any empty, imported glass container designed to hold not more than two and one-half fluid ounces of a product meant for human consumption shall be exempt from the fee. Beginning October 1, 2004, a glass container importer who imports or manufactures in the State fewer [than] five thousand non-deposit beverage glass containers within a one-year period shall be exempt from payment of the fee.

(d) Until September 30, 2004, a glass container importer who imports five thousand or more glass containers, but less than or equal

to one hundred thousand glass containers, shall be permitted to provide a report and payment of the fee annually, rather than quarterly. Beginning October 1, 2004, a glass container importer who imports or manufactures in the State five thousand or more non-deposit beverage glass containers, but less than or equal to one hundred thousand non-deposit beverage glass containers, shall be permitted to provide a report and payment of the fee annually, rather than quarterly. [L 1994, c 201, pt of §2; am L 1998, c 253, §2; am L 1999, c 108, §1; am L 2002, c 176, §12]

§342G-86 County glass recovery programs; requirements. (a) All county glass recovery programs shall include:

(1) Some form of glass incentive or "buy back" program providing a means of encouraging participation by the public or private collectors; and

(2) The paving of the equivalent of one mile of two lane asphalt roadway as part of a research and demonstration program utilizing glassphalt or glass within any other portion of the pavement section; or any other demonstration project as approved by the department.

(b) In addition, county programs may include but shall not be limited to:

(1) Funding of the collection and processing of glass containers either through existing county agencies or through external contracts for services;

(2) Subsidizing the transportation [of] processed material to off-island markets;

(3) The development of collection facilities or the provision of containers for glass recycling, or the incremental portions of multi-material programs;

(4) Additional research and development programs, including grants to private sector entrepreneurs, especially those activities developing higher value uses for the material; and

(5) Public education and awareness programs focusing on glass recovery, or the incremental portions of multi-material programs. [L 1994, c 201, pt of §2; am L 2002, c 176, §13]

[§342G-87] Contract for administrative services. The department may contract the services of a third party to administer the advance disposal fee program under this part. [L 1994, c 201, pt of §2]

§§342G-88, 89 REPEALED. L 2002, c 176, §§14, 15.

[PART VIII.] DEPOSIT BEVERAGE CONTAINER PROGRAM

Note

L 2004, c 241, §13 provides:

"SECTION 13. Unless modified hereafter pursuant to chapter 91, Hawaii Revised Statutes, the following definition shall supersede the current definition of "recycling drop-off facility" as it appears in title 11, chapter 58.1, Hawaii Administrative Rules:

"Recycling drop-off facility" means a structure or site designated for collection and small scale (low technology) segregation of recyclable materials. The staffed or unstaffed site will receive and temporarily store "dropped-off" recyclable materials."

Sixty-eight-fluid-ounce deposit beverage containers. L 2007, c 285, §§11 and 12 provide:

"SECTION 11. The department of health shall phase-in all requirements affecting the redemption of sixty-eight-fluid-ounce containers, beginning December 1, 2007, as follows; provided that the phase-in shall be completed by March 1, 2008:

(1) From December 1, 2007, distributors of deposit beverage containers may begin marking sixty-eight-fluid-ounce deposit beverage containers as required under section [342G-112(a)], Hawaii Revised Statutes;
(2) From December 1, 2007, until March 1, 2008, a sixty-eight-fluid-ounce deposit beverage container may be redeemed under the deposit beverage container program, without regard to whether the container bears the refund value of the container and the word "Hawaii" or the letters "HI", required by section 342G-112(a), Hawaii Revised Statutes;
(3) Beginning March 1, 2008, every deposit beverage container holding up to sixty-eight fluid ounces and sold in the State shall be marked as required under section 342G-112(a), Hawaii Revised Statutes; and
(4) Beginning March 1, 2008, only deposit beverage containers meeting the requirements of section 342G-112(a), Hawaii Revised Statutes, shall be eligible for redemption.

SECTION 12. (a) The legislature finds that the public interest in protecting the environment takes precedence over the delay in implementation of redemption of sixty-eight-fluid-ounce beverage containers under this Act. The legislature finds that the redemption rate is below the balance of the deposit beverage container deposit special fund.

(b) The department of health shall reimburse a redemption center, from the deposit beverage container deposit special fund, the refund values paid to a redeemer, as defined in section 342G-101, Hawaii Revised Statutes, for sixty-eight-fluid-ounce containers redeemed between December 1, 2007, and March 1, 2008, pursuant to section 11 of this Act; provided that a redemption center shall provide collection reports under section 342G-119, Hawaii Revised Statutes, for the sixty-eight-fluid-ounce beverage containers."

§342G-101 Definitions. As used in this part, unless the context requires otherwise:

"Auditor" means the office of the auditor.

"Commercial passenger vessel" means any domestic or foreign-flagged marine vessel or air carrier used primarily for transporting persons to, from, or within the State. The term does not include:

(1) Marine vessels authorized to carry fewer than fifty passengers; or

(2) Marine vessels for hire that do not provide overnight accommodations for at least fifty passengers, determined with reference to the number of lower berths and based on an average of two persons per cabin.

"Consumer" means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit.

"Dealer" means a person who engages in the sale of beverages in deposit beverage containers to a consumer for off-premises consumption in the State.

"Department" means the department of health.

"Deposit beverage" means beer, ale, or other drink produced by fermenting malt, mixed spirits, mixed wine, tea and coffee drinks regardless of dairy-derived product content, soda, or noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human consumption that is contained in a deposit beverage container.

The term "deposit beverage" excludes the following:

(1) A liquid that is:

- (A) A syrup;
- (B) In a concentrated form; or
- (C) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;

(2) A liquid that is a drug, medical food, or infant formula as defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.);

(3) A single serving of one ounce or less of a dietary supplement as defined in the Dietary Supplement Health and Education Act of 1994 (P.L. 103-417);

(4) A liquid that the department finds to be the sole item of a meal or diet;

(5) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;

(6) Products designed to be consumed in a frozen state;

(7) Instant drink powders;

(8) Seafood, meat, or vegetable broths, or soups, but not juices; and

(9) Milk and all other dairy-derived products, except tea and coffee drinks with trace amounts of these products.

"Deposit beverage container" means the individual, separate, sealed glass, polyethylene terephthalate, high density polyethylene, or metal container less than or equal to sixty-eight fluid ounces, used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in this State.

"Deposit beverage distributor" means a person who is a manufacturer of beverages in deposit beverage containers in this State, or who imports and engages in the sale of filled deposit beverage containers to a dealer or consumer. The term includes federal agencies and military distributors, but does not include airlines and shipping companies that merely transport deposit beverage containers.

"Import" means to buy, bring, or accept delivery of deposit beverage containers from an address, supplier, or any entity outside of the State.

"Importer" means any person who buys, brings, or accepts delivery of deposit beverage containers from outside the State for sale or use within the State.

"On-premises consumption" means the consuming of deposit beverages by a patron immediately and within the area under control of the establishment, including bars, restaurants, passenger ships, and airplanes.

"Patron" means a person who buys a beverage in a deposit beverage container for use or consumption and does not pay the deposit.

"Person" means individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Recycling facility" means all contiguous land and structures and other appurtenances, and improvements on the land used for the collection, separation, recovery, and sale [or] reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

"Redeemer" means a person, other than a dealer or distributor, who demands the refund value in exchange for the empty deposit beverage container.

"Redemption center" means an operation which accepts from consumers and provides the refund value for empty deposit beverage containers intended to be recycled and ensures that the empty deposit beverage containers are properly recycled.

"Redemption rate" means the percentage of deposit beverage containers redeemed over a reporting period. The percentage is calculated by dividing the number of deposit beverage containers redeemed by the number of deposit beverage containers sold and then multiplying that number by one hundred.

"Refillable beverage container" means any deposit beverage container which ordinarily would be returned to the manufacturer to be refilled and resold.

"Reverse vending machine" means a mechanical device, which accepts one or more types of empty deposit beverage containers and issues a redeemable credit slip with a value not less than the container's refund value. The refund value payments shall be aggregated and then paid if more than one container is redeemed in a single transaction. [L 2002, c 176, pt of §2; am L 2004, c 241, §2; am L 2005, c 206, §2; am L 2007, c 285, §2; am L 2013, c 230, §3]

[§342G-101.5] Commercial passenger vessels; exemption. (a) Notwithstanding any other provision of this part, this part shall not apply to a deposit beverage container that is sold or delivered to an entity operating a commercial passenger vessel when the deposit beverage container is intended for use and consumption on the commercial passenger vessel. The entity operating the commercial passenger vessel shall be exempt from this part only if it has a deposit beverage container recycling plan prescribed or approved by the department.

(b) Recycling plans shall be submitted to the department and shall include the name and address of the recycling facility that is accepting the empty deposit beverage containers.

(c) Deposit beverage containers covered under this exemption shall not be redeemed for the refund value or handling fee. [L 2005, c 206, §1]

§342G-102 Deposit beverage container fee. (a) Beginning on October 1, 2002, every deposit beverage distributor shall pay to the department a deposit beverage container fee on each polyethylene terephthalate, high density polyethylene, or metal deposit beverage container manufactured in or imported into the State. The fee shall be imposed only once on the same deposit beverage container. The fee shall be 0.5 cents per deposit beverage container.

(b) Beginning on October 1, 2004, every deposit beverage distributor shall pay to the department a deposit beverage container fee on each deposit beverage container manufactured in or imported into the State. The deposit beverage container fee shall not apply to deposit beverage containers exported for sale outside of the

State. The fee shall be imposed only once on the same deposit beverage container. The fee shall be 1 cent per deposit beverage container.

(c) No county shall impose or collect any assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this chapter.

(d) Beginning January 1, 2005, and every August 1 thereafter, the department shall notify deposit beverage distributors in writing of the amount of the deposit beverage container fee. The effective date of changes to the fee amount shall be September 1. The fee shall be based on the redemption rate calculated annually based on the redemption rate information submitted to the department for the previous period of July 1 through June 30. The fee amount shall be as follows:

(1) If the redemption rate is seventy per cent or less: 1 cent per container; and

(2) If the redemption rate is greater than seventy per cent: 1.5 cents per container.

(e) The director may temporarily suspend an automatic increase of the deposit beverage container fee if, after consultation with the auditor, it is determined that the deposit beverage container deposit special fund contains sufficient funds for the purposes of section 342G-104(b). [L 2002, c 176, pt of §2; am L 2004, c 241, §3; am L 2007, c 285, §3]

§342G-102.5 REPEALED. L 2006, c 231, §2.

[§342G-103] Deposit beverage distributors; registration, recordkeeping requirements. (a) By September 1, 2002, all deposit beverage distributors operating within the State shall register with the department, using forms prescribed by the department, and shall notify the department of any change in address or other information previously submitted. After September 1, 2002, any person who desires to conduct business in the State as a deposit beverage distributor shall register with the department no later than one month prior to the commencement of the business.

(b) All deposit beverage distributors shall maintain records reflecting the manufacture of their beverages in deposit beverage containers as well as the importation and exportation of deposit beverage containers. The records shall be made available, upon request, for inspection by the department; provided that any proprietary information obtained by the department shall be kept confidential and shall not be disclosed to any other person, except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or

(2) Under an order issued by a court or administrative agency hearings officer. [L 2002, c 176, pt of §2]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

§342G-104 Deposit into deposit beverage container deposit special fund; use of funds. (a) There is established in the state treasury the deposit beverage container deposit special fund, into which shall be deposited:

(1) All revenues generated from the deposit beverage container fee as described under sections 342G-102 and 342G-105;

(2) All revenues generated from the deposit beverage container deposit as described under sections 342G-105 and 342G-110; and

(3) All accrued interest from the fund.

(b) Moneys in the deposit beverage container deposit special fund shall be used to reimburse refund values and pay handling fees to redemption centers. The department may also use the money to:

(1) Fund administrative, audit, and compliance activities associated with collection and payment of the deposits and handling fees of the deposit beverage container program;

(2) Conduct recycling education and demonstration projects;

(3) Promote recyclable market development activities;

(4) Support the handling and transportation of the deposit beverage containers to end-markets;

(5) Hire personnel to oversee the implementation of the deposit beverage container program, including permitting and enforcement activities; and

(6) Fund associated office expenses.

(c) Any funds that accumulate in the deposit beverage container deposit special fund shall be retained in the fund unless determined

by the legislature to be in excess. [L 2002, c 176, pt of §2; am L 2004, c 241, §4; am L 2005, c 228, §§3, 6(1); am L 2006, c 231, §2; am L 2009, c 79, §3]

§342G-105 Deposit beverage container inventory report and payment. (a) Payment of the deposit beverage container fee and deposits as described in section 342G-110 shall be made monthly based on inventory reports of the deposit beverage distributors. All deposit beverage distributors shall submit to the department documentation in sufficient detail that identifies the net number of deposit beverage containers sold, donated, or transferred, by container size and type.

(b) The amount due from deposit beverage distributors shall be the net number of deposit beverage containers sold, donated, or transferred multiplied by the sum of the prevailing deposit beverage container fee and the refund value of 5 cents. Payment shall be made by check or money order payable to the "Department of Health, State of Hawaii". All inventory reports and payments shall be made no later than the fifteenth day of the month following the end of the payment period of the previous month. [L 2002, c 176, pt of §2; am L 2007, c 285, §4]

[§342G-106] Contract for administrative services. The department may contract the services of a third party to administer the deposit beverage container program under this part. [L 2002, c 176, pt of §2]

[§342G-107] Management and financial audit. The auditor shall conduct a management and financial audit of the program for fiscal years 2004-2005 and 2005-2006, and for each fiscal year thereafter ending in an even-numbered year. The auditor shall submit the audit report, including the amount of unredeemed refund value and recommendations, to the legislature and the department no later than twenty days prior to the convening of [the] next regular session. The costs incurred by the auditor for the audit shall be reimbursed by the deposit beverage container program special fund. The auditor may contract the audit services of a third party to conduct the audit. [L 2002, c 176, pt of §2]

[§342G-108] Reserved.

[§342G-109] Rules; commencement. The department may adopt rules pursuant to chapter 91 as may be necessary for the purposes of this part. Full implementation of the deposit beverage container deposit program shall commence no later than January 1, 2005. [L 2002, c 176, pt of §2]

[§342G-110] Payment and application of deposits. (a) By January 1, 2005, every deposit beverage container sold in this State shall have a refund value of 5 cents. Each container shall have the refund value clearly indicated on it as provided in section 342G-112.

(b) The refund value is the amount of the deposit required. Once a refund value has been applied to a deposit beverage container, the deposit on that container may not be changed and shall be paid to the State.

(c) The deposit on each filled deposit beverage container shall be paid by the deposit beverage distributor, who manufactures or imports beverages in deposit beverage containers. Payment and reporting of the deposits shall be in accordance with section 342G-105. The deposits shall be deposited into the deposit beverage container deposit special fund as described in section 342G-104.

(d) Deposit beverage distributors who are required under subsection (c) to pay a deposit shall also pay a deposit beverage container fee and register with the State. [L 2002, c 176, pt of §2]

§342G-111 Sales of beverages in deposit beverage containers; distributor report; fee and deposit payment. (a) By January 1, 2005, every deposit beverage distributor who pays a deposit to the department shall charge the dealer or consumer a deposit equal to the refund value for each deposit beverage container sold in Hawaii. The deposit charge may appear as a separate line item on the invoice.

(b) Each dealer shall charge the consumer the deposit beverage container deposit at the point of sale of the beverage, excluding sales for on-premises consumption. The deposit charge may appear as a separate line item on the invoice.

(c) Each deposit beverage distributor shall generate and submit to the department a monthly report on the net number of deposit beverage containers sold, donated, or transferred by container size and type. All information contained in the reports, including confidential commercial and financial information, shall be treated as confidential and protected to the extent allowed by state law.

(d) Payment of the deposit beverage container fee and deposits as described in section 342G-110 shall be made monthly based on reports of the deposit beverage distributors under subsection (c).

(e) Beginning January 1, 2005, a deposit beverage distributor who annually imports or manufactures one hundred thousand or fewer deposit beverage containers may submit reports and payments required under subsections (c) and (d) on a semi-annual basis; provided that the semi-annual report and payment period shall end on June 30 and December 31 of each year.

(f) The amount due from a deposit beverage distributor shall be the net number of deposit beverage containers sold multiplied by the sum of the prevailing deposit beverage container fee and the deposit value of 5 cents. Payment shall be made by check or money order payable to the "Department of Health, State of Hawaii". All reports and payments shall be made no later than the fifteenth day of the month following the end of the previous payment period.

(g) The department may allow dealers to charge customers the refund value beginning November 1, 2004; provided that the deposit beverage containers are clearly marked with the refund value and the deposit beverage distributor has paid the refund value on each container to the department. The dealer shall inform customers that the deposits paid prior to January 1, 2005, shall not be redeemable

until January 1, 2005. [L 2002, c 176, pt of §2; am L 2004, c 241, §5; am L 2007, c 285, §5]

§342G-112 Deposit beverage container requirements. (a) Except as provided in subsection (b), every deposit beverage container sold in the State shall clearly indicate the refund value of the container and the word "Hawaii" or the letters "HI". The names or letters representing the names of other states with comparable deposit legislation may also be included in the indication of refund value. The refund value on every deposit beverage container shall be clearly, prominently, and indelibly marked by painting, printing, scratch embossing, raised letter embossing, or securely affixed stickers and shall be affixed on the top or side of the container in letters at least one-eighth inch in size.

(b) Subsection (a) shall not apply to any type of refillable glass deposit beverage container that has a brand name permanently marked on it and that has the equivalent of a refund value of at least 5 cents, which is paid upon receipt of the container by a dealer or deposit beverage distributor.

(c) Containers that do not meet the definition of a deposit beverage container, as specified in section 342G-101, shall not indicate "Hawaii" or "HI" on the container. [L 2002, c 176, pt of §2; am L 2004, c 241, §6; am L 2007, c 285, §6]

§342G-113 Redemption of empty deposit beverage containers. (a) Except as provided in subsection (b), a dealer shall:

(1) Operate a redemption center by July 1, 2005, and shall accept all types of empty deposit beverage containers with a Hawaii refund value;

(2) Pay to the redeemer the full refund value for all deposit beverage containers that bear a valid Hawaii refund value; and

(3) Ensure each deposit beverage container collected is recycled, and forward documentation necessary to support claims for payment as stated in section 342G-119 or rules adopted under this part.

(b) Subsection (a) shall not apply to any dealer:

(1) Who is located in a high density population area as defined by the director in rules, and within two miles of a certified redemption center that is operated independently of a dealer;

(2) Who is located in a rural area as defined by rule;

(3) Who subcontracts with a certified redemption center to be operated on the dealer's premises;

(4) Whose sales of deposit beverage containers are only via vending machines;

(5) Whose place of business is less than five thousand square feet of interior space;

(6) Who can demonstrate physical or financial hardship, or both, based on specific criteria established by rule; or

(7) Who meets other criteria established by the director.

Notwithstanding paragraphs (1) and (2), the director may allow the placement of redemption centers at greater than prescribed distances to accommodate geographical features while ensuring adequate consumer convenience.

(c) Regardless of the square footage of a dealer's place of business, dealers who are not redemption centers shall post a clear and conspicuous sign at the primary public entrance of the dealer's place of business that specifies the name, address, and hours of operation of the closest redemption center locations.

(d) If there is no redemption center within the two-mile radius of a dealer due to the criteria described in subsection (b), then the respective county and the State shall determine the need for a redemption center in that area. If a redemption center is deemed necessary, then the State, with assistance from the county, shall establish the redemption center with funding from the deposit beverage container deposit special fund.

(e) Businesses that sell deposit beverages for on-premises consumption, such as hotels, bars, and restaurants, shall collect used deposit beverage containers from the patron and either use a certified redemption center for the collection of containers or become a certified redemption center. [L 2002, c 176, pt of §2; am L 2004, c 241, §7; am L 2005, c 206, §3]

§342G-114 Redemption centers. (a) Prior to operation, redemption centers shall be certified by the department.

(b) Applications for certification as a redemption center shall be filed with the department on forms prescribed by the department.

(c) The department, at any time, may review the certification of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center and to the dealers served by the redemption center, the department, after it has afforded the redemption center operator a hearing in accordance with chapter 91, may withdraw the certification of the center if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(d) Redemption centers shall:

(1) Accept all types of empty deposit beverage containers for which a deposit has been paid;

(2) Verify that all containers to be redeemed bear a valid Hawaii refund value;

(3) Pay to the redeemer the full refund value in either cash or a redeemable voucher for all deposit beverage containers, except as provided in section 342G-116;

(4) Ensure each deposit beverage container collected is recycled through a contractual agreement with an out-of-state recycler or an in-state recycling facility permitted by the department; provided that this paragraph shall not apply if the redemption center is operated by a recycler permitted by the department;

(5) Remain open at least thirty hours per week in high density population areas, of which at least five hours shall be on Saturday or Sunday; and

(6) Forward the documentation necessary to support claims for payment as stated in section 342G-119.

(e) Redemption centers' redemption areas shall be maintained in full compliance with applicable laws and with the orders and rules of the department, including permitting requirements, if deemed necessary, under chapter 342H.

(f) The department shall develop procedures to facilitate the exchange of information between deposit beverage container manufacturers, distributors, and retailers and certified redemption centers, including but not limited to universal product code information for reverse vending machine purposes. The procedures developed by the department shall allow for a reasonable time period between the introduction of a new deposit beverage product and the deadline for submitting universal product code information to certified redemption centers operating reverse vending machines. [L 2002, c 176, pt of §2; am L 2004, c 241, §8; am L 2005, c 227, §2; am L 2007, c 285, §7]

§342G-114.5 REPEALED. L 2006, c 231, §2.

§342G-115 Reverse vending machine requirements. Reverse vending machines may be used by redemption centers to satisfy the requirements of section 342G-113. Reverse vending machines shall accept any type of empty deposit beverage container and pay out the full refund value in either cash or a redeemable voucher for those containers that bear a valid Hawaii refund value. If the reverse vending machine is unable to read the barcode then the reverse vending machine shall reject the container. The reverse vending machine shall be routinely serviced to ensure proper operation and continuous acceptance of empty deposit beverage containers and payment of the refund value. [L 2002, c 176,

pt of §2; am L 2004, c 241, §9; am L 2005, c 206, §4; ree L 2007, c 285, §8]

§342G-116 Refusal of refund value payment for a deposit beverage container. Redemption centers shall refuse to pay the refund value on any broken, corroded, or dismembered deposit beverage container, or any deposit beverage container that:

(1) Contains a free-flowing liquid;

(2) Does not properly indicate a refund value;

(3) Contains a significant amount of foreign material; or

(4) Exhibits characteristics of having been previously processed and baled. [L 2002, c 176, pt of §2; am L 2005, c 206, §5; am L 2007, c 285, §9]

§342G-117 Handling fees and refund values for certified redemption centers. (a) The department shall pay to each certified redemption center a handling fee of not less than the prevailing deposit beverage container fee for each deposit beverage container redeemed by a consumer that is:

(1) Transported out-of-state;

(2) Received by an approved in-state company for an approved end use for recycling; or

(3) Received by a department-permitted recycling facility;

provided that the deposit beverage container is physically received by the redemption center.

(b) The department shall evaluate the handling fee at least once per year. If the department changes the amount of the handling fee, the department shall publish notice of the change within thirty days of its determination.

(c) The handling fee shall be paid in addition to the refund value of each empty deposit beverage container. Payments for handling fees shall be based on redemption center reports submitted to the department; provided that there is no discrepancy in the reports. The department may choose to pay the handling fee and refund value on the basis of the total weight of the containers received by material type and the average weight of each container type; provided that the deposit beverage container is physically received by the redemption center.

(d) A handling fee and refund value may only be paid once for each container redeemed by a consumer and claimed by a redemption center in accordance with section 342G-119. [L 2002, c 176, pt of §2; am L 2004, c 241, §10; am L 2007, c 285, §10]

[§342G-118] Reserved.

§342G-119 Redemption center reporting. The department shall pay certified redemption centers handling fees and refund values as described in section 342G-117, based on collection reports submitted by the redemption centers. All redemption centers shall submit to the department the following information on forms prescribed by the department, which information shall include at a minimum:

(1) The number or weight of deposit beverage containers of each material type accepted at the redemption center for the reporting period;

(2) The amount of refunds paid out by material type;

(3) The number or weight of deposit beverage containers of each material type transported out-of-state or to a permitted recycling facility; and

(4) Copies of out-of-state transport and weight receipts or acceptance receipts from permitted recycling facilities. If the redemption center and the recycling facility are the same entity, copies of out-of-state transport and weight receipts, or documentation of end use accepted by the department, shall also be included.

The requests for payment shall be no less than two times per month. [L 2002, c 176, pt of §2; am L 2004, c 241, §11; am L 2005, c 227, §3]

[§342G-120] Recycling facility reporting. Recycling facilities, in addition to any requirements under chapter 342H, shall prepare or maintain the documents involving empty beverage containers, as required by the department. [L 2002, c 176, pt of §2]

[§342G-121] Audit authority. The records of the deposit beverage distributor, dealer, redemption center, and recycling facility shall be made available, upon request, for inspection by the department, a duly authorized agent of the department, or the auditor. Any proprietary information obtained by them shall be kept confidential and shall not be disclosed to any other person, except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or

(2) Under an order issued by a court or administrative agency hearings officer. [L 2002, c 176, pt of §2]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

[§342G-122] Advisory committee. The department shall convene an advisory committee to assist it in developing any rules needed to implement this chapter. The department shall select members of the committee so as to obtain input on the state level as well as assess the impact on each individual county, consumers, recyclers, and the beverage industry. Members of the committee shall be appointed by the director and shall serve at the director's pleasure. A simple majority of the committee members shall constitute a quorum for the purposes of recommending rules and providing input to the director. [L 2002, c 176, pt of §2]

§342G-123 REPEALED. L 2006, c 231, §2.