

**[CHAPTER 128E]  
HAWAII EMERGENCY PLANNING AND COMMUNITY  
RIGHT-TO-KNOW ACT**

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**[§128E-1] Definitions.** As used in this chapter, unless the context otherwise requires:

"Administrator" means the administrator of the United States Environmental Protection Agency.

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

"Commission" means the Hawaii state emergency response commission.

"Committee" means the local emergency planning committee within each county responsible for preparing hazardous material plans and performing other functions under the Emergency Planning and Community Right-to-Know Act of 1986 and [this chapter].

"County agency" means a county or any officer or agency thereof.

"Department" means the department of health.

"Director" means the director of health.

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

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

"Extremely hazardous substance" means any substance listed in Appendix A of 40 Code of Federal Regulations Part 355, as amended, or as defined by rules adopted by the commission.

"Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor carrier, rolling stock, aircraft, site, or area where a hazardous substance or pollutant or contaminant has been deposited, stored, disposed of, or placed, or otherwise comes to be located. The term does not include any consumer product in consumer use.

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

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

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

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

- (1) Any release that results in the exposure of persons solely within a workplace, with respect to claims that these persons may assert against their employer;
- (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
- (3) Release of a source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq., if this release is subject to requirements with respect to financial

protection established by the Nuclear Regulatory Commission under 42 U.S.C. §2210;

- (4) Any release resulting from the normal application of fertilizer;
- (5) Any release resulting from the legal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended; or
- (6) Any release from sewerage systems collecting and conducting primarily domestic wastewater.

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

"Threshold planning quantity" means the threshold planning quantity for an "extremely hazardous substance" as defined in 40 Code of Federal Regulations Part 355.

"Toxic chemical" means a substance appearing on the list of chemicals described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, as set forth in 40 Code of Federal Regulations Part 372. [L 1993, c 300, pt of §1]

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**§128E-2 Designation and functions of the Hawaii state emergency response commission.** (a) There is created the Hawaii state emergency response commission, which shall be placed within the department for administrative purposes and carry out the requirements of this chapter.

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

- (1) The director of health;
- (2) The chairperson of the board of agriculture;
- (3) The adjutant general;
- (4) The director of labor and industrial relations;
- (5) The chairperson of the board of land and natural resources;
- (6) The director of the office of environmental quality control;
- (7) The director of business, economic development, and tourism;
- (8) The director of transportation;
- (9) The dean of the University of Hawaii school of public health or the dean of the University of Hawaii school of medicine, as determined by the governor;
- (10) The director of the environmental center of the University of Hawaii;
- (11) One representative from each committee designated by the mayor of each respective county; and
- (12) Other persons appointed by the governor to meet the minimum requirements of the Emergency Planning and Community Right-to-Know Act of 1986.

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

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

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

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

- (g) The commission shall:
- (1) Carry out the duties and responsibilities of a state emergency response commission as specified in the Emergency Planning and Community Right-to-Know Act of 1986;
  - (2) Develop state contingency plans relating to the implementation of this chapter;
  - (3) Supervise, coordinate, and provide staff support to the committees for the implementation of this chapter and the Emergency Planning and Community Right-to-Know Act of 1986;
  - (4) Develop a public information, education, and participation program for the public and facility owners covering the

requirements of this chapter, and the interpretation of the chemical information collected pursuant to this chapter and the risks that these chemicals pose to the public health and environment;

- (5) Appoint the members of the committees;
- (6) Develop a state chemical inventory form to be used in lieu of the federal Tier II form and chemical list requirements; and
- (7) Do all other things necessary for the implementation of this chapter and the requirements of the Emergency Planning and Community Right-to-Know Act of 1986. [L 1993, c 300, pt of §1; am L 2002, c 60, §2]

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**[\$128E-3] Powers; rulemaking; appointment of hearing officers.** (a)

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

(b) In addition to other specific powers provided in this chapter, the commission may appoint, without regard to chapter 76, hearing officers to conduct public participation activities, including public hearings and public information meetings. [L 1993, c 300, pt of §1; am L 2000, c 253, §150.

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**[\$128E-4] Establishment of emergency planning districts.** Each county is designated as an emergency planning district for the purposes of this chapter; provided that the department shall be responsible for Kalawao county. [L 1993, c 300, pt of §1]

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**[\$128E-5] Establishment and functions of local emergency planning committees.** (a) A minimum of one local emergency planning committee shall be established in each county. The committee shall be subject to the requirements of this chapter and section 303 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11003.

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

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

- (1) Elected state and county officials;
- (2) Law enforcement, first aid, health, environmental, hospital, and transportation personnel;
- (3) Firefighting personnel;
- (4) Civil defense and emergency management personnel;
- (5) Broadcast and print media personnel;
- (6) Community groups not affiliated with emergency service groups;
- (7) Owners and operators of facilities subject to the requirements of the Emergency Planning and Community Right-to-Know Act of 1986; and
- (8) Other groups recommended by the mayor and appointed by the commission.

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

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

(f) Each committee shall:

- (1) Adopt bylaws and other administrative procedures to carry out the duties, requirements, and responsibilities set forth in this chapter, and as required by the commission and the Emergency Planning and Community Right-to-Know Act of 1986;
- (2) Take appropriate actions to ensure the preparation, implementation, and annual update and review of the local emergency response plan required by this chapter and the Emergency Planning and Community Right-to-Know Act of 1986. The local emergency response plans shall include, but not be limited to, the following:

- (A) Identification of each facility subject to the requirements of section 303 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11003 and within the emergency planning district; identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances; and identification of additional facilities contributing or subjected to additional risk due to their proximity to

- facilities subject to the requirements of this section, such as hospitals or natural gas facilities;
- (B) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel in responding to any release of these substances;
  - (C) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan;
  - (D) Procedures providing reliable, effective, and timely notification by facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and the public, that a release has occurred, consistent with the notification requirements of this chapter and section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11004;
  - (E) Methods for determining the occurrence of a release, and the area or population likely to be affected by the release;
  - (F) A description of emergency equipment and facilities in the county and at each facility in the county subject to the requirements of this section, and the identification of the persons responsible for the equipment and facilities;
  - (G) Evacuation plans, including provisions for precautionary evacuation and alternate traffic routes;
  - (H) Training programs, including schedules for training of local emergency response and medical personnel; and
  - (I) Methods and schedules for exercising the emergency plan;
- (3) Request additional information from the facilities, if necessary, to develop emergency response plans;
  - (4) Submit local emergency response plans to the commission for review, and to other affected agencies upon request;
  - (5) Report to the commission on alleged violations of this chapter;
  - (6) Prepare reports, recommendations, and other information related to the implementation of this chapter, as requested by the commission;
  - (7) Have the primary responsibility for receiving, processing, and managing hazardous chemical information forms and data, trade secrets, and public information requests pursuant to this chapter;
  - (8) Accept and deposit into the state treasury any grants, gifts, or other funds received for the purpose of carrying out this chapter; and
  - (9) Evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and make recommendations with respect to additional resources that may be required and the means for providing these additional resources.
- (g) The administrative and operational expenses of a committee may be paid by the State. [L 1993, c 300, pt of §1]

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**§128E-6 Reporting requirements.** (a) The owner or operator of a facility in the State that stores, uses, or manufactures any hazardous substance shall comply with the following requirements:

- (1) Each owner or operator of a facility in the State shall comply with the emergency planning and notification requirements of sections 302 and 303 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 United States Code sections 11002 and 11003, if an extremely hazardous substance is present at the facility in an amount in excess of the threshold planning quantity established for the substance;
- (2) Each owner or operator of a facility in this State that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, as amended, 15 United States Code section 651 et seq., and regulations promulgated under that Act, for:
  - (A) All hazardous substances, except for extremely hazardous substances, present at the facility in amounts not less than ten thousand pounds; and
  - (B) All extremely hazardous substances present at the facility in amounts not less than five hundred pounds, or the threshold planning quantity for that substance, whichever is less,

shall comply with the following reporting requirements:

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

The documents required in clauses (i) through (iv) shall be submitted by March 1 of each year to the commission, the respective committee, and the respective fire department;

- (3) Each owner or operator of a facility in this State that is subject to Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 United States Code section 11023, shall comply with the toxic chemical release form requirements of Section 323 of the Emergency Planning and Community Right-to-Know Act of 1986 by July 1 of each year; and
- (4) Each owner or operator of a facility in this State covered under Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 United States Code section 11004, shall comply with the notification requirements of Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, and section 128E-7, if a release of an extremely hazardous substance occurs from the facility.

(b) The commission shall adopt rules in accordance with chapter 91 establishing the specific information required on the state chemical

inventory form. The chemical inventory form shall facilitate ease in complying with the requirements of [this chapter] by consolidating the necessary information into one form. The chemical inventory form may include, but is not limited to:

- (1) The chemical name;
- (2) Quantity stored on the site;
- (3) Hazardous components;
- (4) Health and physical hazards; and
- (5) Storage information. [L 1993, c 300, pt of §1; am L 2008, c 87, §2]

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**[\$128E-7] Emergency notification requirements.** The commission shall adopt rules in accordance with chapter 91 establishing the contents of hazardous substance release reports. The rules shall address, but are not limited to, the following:

- (1) The quantities of designated hazardous substances that are deemed reportable pursuant to this chapter when released;
- (2) The specific periods of time within which these quantities are deemed reportable pursuant to this chapter after being released;
- (3) The agencies to which reports of releases must be made; and
- (4) The format in which the release is to be reported. [L 1993, c 300, pt of §1]

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**§128E-8 Funds for operation.** (a) The department shall establish an account, to be called the local emergency response planning committees account, within the environmental response revolving fund pursuant to section 128D-2, for the purpose of administration and oversight of this chapter.

(b) All moneys to meet the general operating needs and expenses of the emergency planning and community right-to-know program of the department shall be allocated by the legislature through appropriations out of the state general fund and the environmental response revolving fund; provided that the appropriations from the environmental response revolving fund shall not exceed the amount of moneys collected from the filing fees assessed in section 128E-9. The department shall include in its budgetary request for each upcoming fiscal period the amounts necessary to effectuate the purposes of this chapter.

(c) The department of health, with the assistance of the department of budget and finance and department of accounting and general services, shall prepare a report for the legislature concerning the amount of moneys collected during the preceding fiscal year, the amount of moneys collected to date during the current fiscal year, and the amount of moneys to be collected during the upcoming fiscal year, pursuant to sections 128E-9 and 128E-11. The department shall submit the foregoing report to the legislature not less than twenty days prior to the convening of each regular session of the legislature. [L 1993, c 300, pt of §1; am L 1997, c 260, §4]

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**§128E-9 Filing fees.** Facilities that are required to report according to section 128E-6(a)(2), shall remit \$100 with each submission of chemical inventory forms or Tier II forms to the commission by March 1 of each year. All moneys collected by the department pursuant to this section shall be deposited in the state treasury and accrue to the credit of the environmental response revolving fund established in section 128D-2. [L 1993, c 300, pt of §1; am L 1997, c 260, §5]

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**[\$128E-10] Immunity from civil liability.** (a) No employee, representative, or agent of a state or county agency, or persons requested by a state or county agency to engage in any emergency service or response activities involving a hazardous material release at a facility or transportation accident site, shall be liable for the death of or any injury to persons, or the loss of or damage to property, resulting from that hazardous material release, except for any acts or omissions that constitute wilful misconduct.

(b) No commission or committee member shall be liable for the death of or any injury to persons, the loss of or damage to property, or any civil damages, resulting from any act or omission arising out of the performance of the functions, duties, and responsibilities of the commission or a committee, except for acts or omissions that constitute wilful misconduct. [L 1993, c 300, pt of §1]

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**[\$128E-11] Penalties and fines.** (a) Any person who violates any of the emergency reporting, planning, or notification requirements of section 128E-6 or 128E-7, or fails to pay the fees required by section 128E-9, shall be subject to a civil penalty of not less than \$1,000 but not more than \$25,000 for each separate offense. Each day of each violation shall constitute a separate offense.

(b) Any person who:

- (1) Knowingly fails to report the release of a hazardous substance or extremely hazardous substance, as required by section 128E-7, shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$1,000 but not more than \$25,000 for each separate offense, or imprisoned for not more than one year, or both. For the purposes of this paragraph, each day of each violation shall constitute a separate offense; or
- (2) Intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of the department, a hazardous materials response team, or a committee attempting to perform the duties and functions set forth in section 128E-5, shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$5,000 but not more than \$25,000 for each separate offense, or be imprisoned for not more than one year, or both.

(c) All moneys collected under this section shall be deposited in the state treasury and accrue to the credit of the state general fund. [L 1993, c 300, pt of §1]

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**[\$128E-12] Enforcement.** If the commission determines that any person has violated or is violating this chapter, or any rule adopted pursuant to this chapter, the commission:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which the facility shall submit the required reports, forms, and notifications;
  - (2) May require the alleged violator or violators to appear before the commission for a hearing at a time and place specified in the notice or to be set later, and to answer the charges complained of; and
  - (3) May impose penalties as provided in section 128E-11 by sending a written notice describing the violation, either by certified mail or personal service, to the alleged violator or violators.
- [L 1993, c 300, pt of §1]

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**[\$128E-13] Relationship to other laws.** (a) This chapter shall be read in conjunction with the federal statutes and regulations providing for the identification, labeling, and reporting of information concerning hazardous material releases, and any other health and safety provisions relating to hazardous materials, and is intended to supplement federal statutes and regulations in the interest of protecting the health and safety of the citizens of the State.

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

(c) This chapter shall preempt any ordinances passed or adopted by any county that are effective on, before, or after June 21, 1993, to the extent that these ordinances conflict or are inconsistent with the provisions of this chapter. [L 1993, c 300, pt of §1]

#### **Revision Note**

"June 21, 1993" substituted for "the effective date of this chapter".

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