
Audit of the Hazardous Waste Management Program of the Department of Health

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

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Submitted by

THE AUDITOR
STATE OF HAWAII

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Foreword

This audit examines Hawaii's waste management programs that are governed primarily by the federal Resource Conservation and Recovery Act (RCRA). The RCRA program include the regulation of hazardous and solid waste and underground storage tanks for hazardous substances and petroleum products. The Department of Health implements these programs under guidance from the U. S. Environmental Protection Agency. We also examined the regulation of infectious waste by the Department of Health.

We wish to express our appreciation for the cooperation extended to us by the officials and staff of the Department of Health and the U. S. Environmental Protection Agency.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The State Auditor initiated this audit to assess implementation of the waste management regulatory programs of the Department of Health (DOH). These programs include regulation of hazardous and solid waste, infectious waste, and underground storage tanks for hazardous substances and petroleum products. This audit was performed pursuant to Section 23-4, Hawaii Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all state agencies.

Hawaii's Waste Management Programs

The State's waste management programs are governed primarily by the federal Resource Conservation and Recovery Act (RCRA). The federal Environmental Protection Agency (EPA) has the authority to develop waste management programs and adopt relevant regulations. The EPA also issues guidance documents and policy directives to clarify how the regulations are to be implemented. Hawaii's waste management programs are carried out primarily under a joint federal-state arrangement. The policies and requirements for the program are set by the federal government.

We examined the RCRA waste management programs that have been implemented under cooperative agreements between the DOH and the EPA. These programs regulate: hazardous waste and underground storage tanks used for storing hazardous substances and petroleum products. We also examined the (nonhazardous) solid waste program which is also governed by RCRA and the regulation of the disposal of medical wastes. The waste management programs are carried out pursuant to provisions contained in Subtitles C, D, I, and J of RCRA as follows:

- **Subtitle C** establishes a system for controlling *hazardous waste* from generation until disposal. Waste is defined as hazardous if it is ignitable, corrosive, reactive, toxic, or could cause an increase in mortality or illness, and poses a threat to human health or the environment.
- **Subtitle D** establishes a system for controlling *solid (primarily nonhazardous) waste*, such as household and commercial waste.
- **Subtitle I**, established by the 1984 Hazardous and Solid Waste Amendments (HSWA), regulates underground tanks used for storing *hazardous substances and petroleum products*.

- **Subtitle J** was added to RCRA as a two-year demonstration program (since concluded) to track *medical waste* from generation to disposal. Congress has not yet made Subtitle J a permanent, mandatory RCRA program.

These RCRA programs are managed by DOH's Solid and Hazardous Waste Branch, which is part of the Environmental Management Division (see Exhibit 1.1). The Solid and Hazardous Waste Branch is organized into three sections:

- the Office of Solid Waste Management,
- the Hazardous Waste Section, and
- the Underground Storage Tank Section (further subdivided into the Underground Storage Tank and the Leaking Underground Storage Tank Sub-sections).

These programs should not be confused with those established under a companion law, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund") of 1980, which addresses the cleanup of inactive and abandoned hazardous waste sites. CERCLA clean-up efforts in Hawaii, which involve sites at Schofield Barracks and Pearl Harbor Naval Base, were not within the scope of this audit.

Since RCRA may someday include a permanent Subtitle J program for medical waste management, we also audited the DOH's infectious waste management program under Section 321-21, HRS.

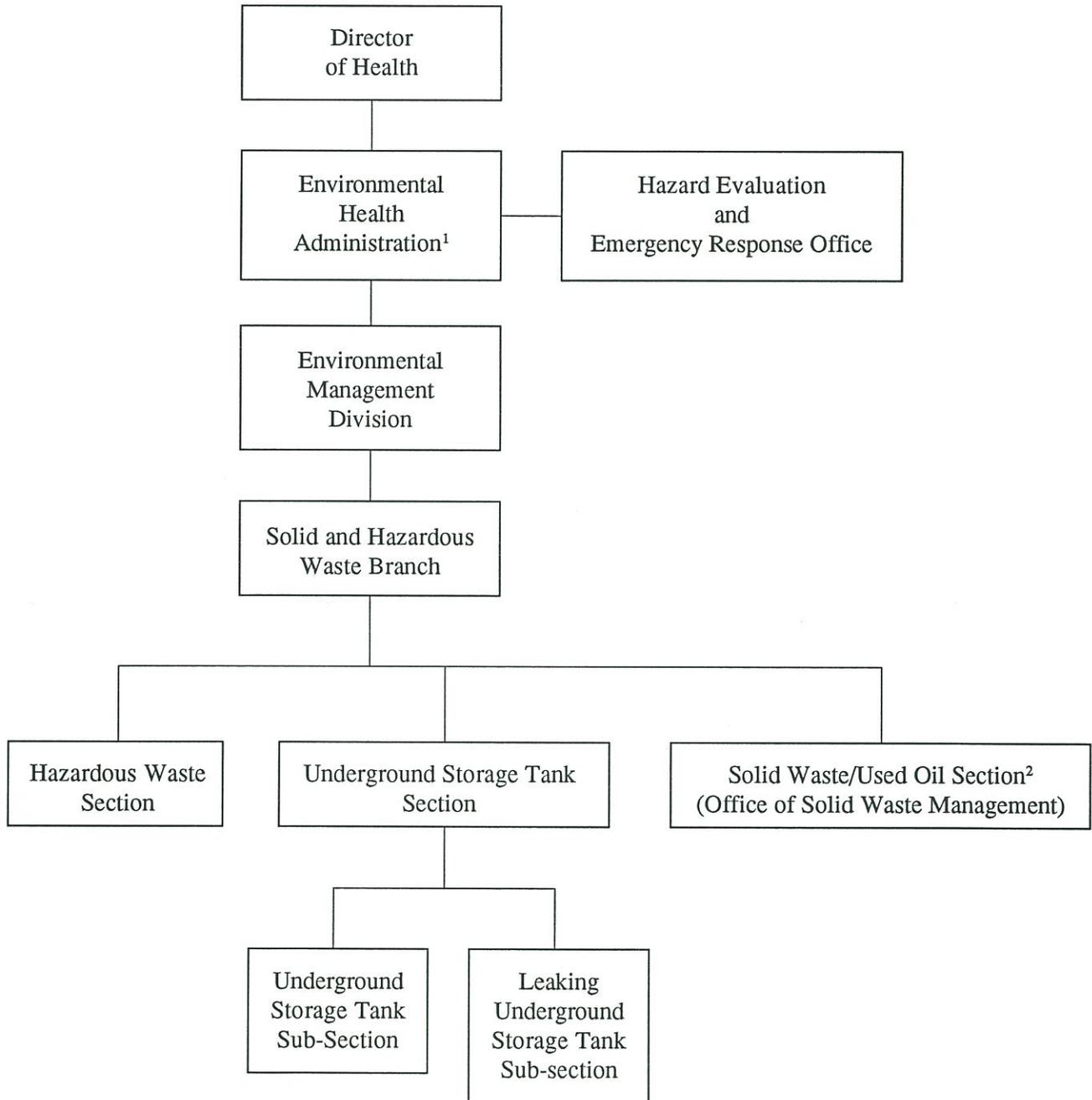
Objectives of the Audit

1. Evaluate Hawaii's level of compliance with the provisions of the federal Resource Conservation and Recovery Act, specifically Subtitles C (Hazardous Waste), D (Solid Waste), and I (Underground Storage Tanks).
2. Evaluate the Department of Health's level of compliance with Chapter 321-21, Hawaii Revised Statutes (infectious wastes; management and disposal).

Scope and Methodology

We focused on the DOH's compliance with the RCRA provisions for hazardous waste and underground storage tanks as specified by memoranda of understanding or other agreements with the EPA as well as solid waste. We reviewed permitting procedures, compliance

Exhibit 1.1
Organization Chart
Department of Health, Solid and Hazardous Waste Branch



1. The Administration is currently undergoing a reorganization.
2. The Office of Solid Waste Management reports to the Solid and Hazardous Waste Branch for budget purposes. It reports to the Environmental Management Division for operational purposes.

monitoring, and enforcement actions. We also examined the DOH's regulation of the handling, transporting, and disposing of infectious medical wastes.

Where appropriate, we reviewed the DOH's compliance with Hawaii statutes that are related to federal RCRA legislation, specifically Chapters: 342G (Integrated Solid Waste Management), 342H (Solid Waste Pollution), 342J (Hazardous Waste), and 342L (Underground Storage Tanks).

We also examined and sampled the DOH's records, files, databases, and quarterly and annual reports on its permitting, inspecting, monitoring, investigating, and enforcing activities. We interviewed appropriate personnel in the department, EPA Region IX, as well as other federal government, state government, and commercial sectors affected by the RCRA program.

Our work was performed from January 1993 through November 1993 in accordance with generally accepted government auditing standards.

Chapter 2

Management of Hawaii's Waste Management Programs

In this chapter we examine the management by the Department of Health (DOH) of the State's waste management regulatory programs. These are governed primarily by the federal Resource Conservation and Recovery Act (RCRA). We identified a number of serious problems relating to these programs and recommend needed improvements. We look to DOH to focus attention on inadequacies in the current programs and to take the lead in addressing the needed improvements.

Summary of Findings

1. Hawaii's RCRA programs and staff have not received adequate support from the executive branch. This disregard for the State's waste management programs is shortsighted and could have serious environmental and financial consequences.
2. Hawaii is still not authorized by the federal Environmental Protection Agency (EPA) to manage its hazardous waste and underground storage tank RCRA programs. If Hawaii does not achieve EPA authorization for those programs and EPA approval for its solid waste program, Hawaii's taxpayers may incur millions of dollars in unnecessary costs.
3. The DOH has few management controls to guide and direct its RCRA programs.

Hawaii's RCRA Programs Are Poorly Supported

The purpose of Hawaii's RCRA programs is to protect the public and the environment from the dangers of improperly disposed wastes and leaking underground storage tanks. The programs have not received the support necessary, however, to ensure adequate protection. The executive branch has not planned adequately for financing the programs. Poor budget planning appears to have contributed to staff shortages that have adversely affected the programs. In addition, little support has been given to developing staff expertise in this technical field.

Poor budget planning has left programs at risk

Poor budget planning had left Hawaii's waste management programs at risk of losing both state and federal funds.

No general funds requested

The executive branch did not request any general funds for the Solid and Hazardous Waste Branch for FY1994-95. General funds for the waste management programs were deleted from the executive budget. The executive branch proposed to replace the general funds with a package of user fees and special funds. These funds and fees were based on a policy of having polluters pay the costs of regulation. The proposed fees included a registration fee for hazardous waste handlers and a surcharge to be collected from all solid waste disposal facilities based on tonnage of waste disposed.

The executive branch assumed that the Legislature would support the special funds. However, the funds did not meet the legislative criterion for special funds that requires direct link between benefits and charges. The Legislature's rejection of the majority of the department's proposed special funds left the programs without any funds for FY1994-95.

The DOH had not planned for any alternative or interim funding. When the Legislature did not authorize the majority of the special funds the DOH had proposed, the DOH then lobbied for general funds. The Legislature did, eventually, appropriate \$3.9 million for the DOH environmental management programs which include the waste management regulatory programs.

Federal funds jeopardized

Federal funding for Hawaii's RCRA programs is contingent on the commitment of state funding for these programs. The EPA currently matches each state budgeted dollar with 1.4 federal dollars. The receipt of federal funds was jeopardized when the executive budget contained no request for funds for waste management programs, and EPA could not be assured of a state match. Even if the Legislature had approved all the requests for special funds, those funds may not have provided adequate assurance of a state match. This is because it could take a minimum of two years for the funds to become operational.

We find that the approach used by the executive branch and DOH was fiscally unsound, particularly at a time when the DOH is seeking authority from the EPA to run Hawaii's RCRA programs. This ill-considered budget approach appears to have demoralized branch staff who became unsure of the permanency of their state-funded positions. Some experienced branch staff, including the chief of the Solid and Hazardous Waste Branch, left shortly after the budget action was taken.

Staff needs access to EPA training

DOH staff are general scientists who must monitor and work with specialists from the regulated community. To develop their knowledge and to maintain their expert status in legal proceedings, branch staff need continuous training and development. Staff members have been further demoralized by what they perceive as the DOH's lack of support for specialized training. This makes it difficult for the DOH to attract and retain qualified staff.

Staff of the Solid and Hazardous Waste Branch have had limited opportunity to attend workshops and conferences sponsored by the EPA. Branch staff need specialized training. We understand the EPA regional administrator recently expressed concern to the governor about Hawaii's lack of participation in EPA training programs. The DOH subsequently loosened travel restrictions. To the extent possible, the DOH should help and encourage staff to take advantage of training opportunities.

Over one-third of branch positions are vacant

The Solid and Hazardous Waste Branch can ill afford to lose positions in any of its sections. During the course of our fieldwork, we found that the branch had 10 vacant positions out of a total of 24 general fund authorized positions. These unfilled positions included the coordinator for the Underground Storage Tank Section, the branch's only geologist, and all three positions in the section responsible for reducing the volume of solid waste going to disposal.

The impact of staff vacancies is particularly severe for the Underground Storage Tank Section. Between 1991 and July 1993, the Section lost six out of nine professional staff, including the section coordinator. This leaves Hawaii with very little field presence and oversight of intact and leaking underground petroleum tanks. EPA Region IX, the federal office responsible for oversight of Hawaii's hazardous waste programs, informed us that even without the indicated staff departures and shortages, "Hawaii's program could only address the most immediate crisis."

Other difficulties and uncertainties have added to the vacancy problem for the solid waste program. First, the executive branch eliminated funding for three positions that the 1991 Legislature had granted to the Solid and Hazardous Waste Branch to carry out the State's waste reduction goals. This was because the three positions had remained vacant. The positions remained unfilled, however, because they were awaiting classification by the Department of Personnel Services. Then, based on this executive action, the 1993 Legislature deleted the positions from the branch's authorized staffing. Due to these actions and uncertainties, the coordinator of the Office of Solid Waste Management has indicated that attainment of the State's solid waste reduction goals is "not very likely."

Lack of Support Can Have Serious Consequences

The failure to support Hawaii's waste management programs can have severe environmental and financial consequences. Protecting Hawaii's environment is essential not only for Hawaii's people but also for Hawaii's primary industry—tourism. Efforts to remediate environmental damages can be prohibitively expensive. Inadequate enforcement will leave Hawaii vulnerable to the high costs of environmental damage.

Groundwater can become contaminated

Hawaii's volcanic and highly permeable soils make its aquifers (natural groundwater reservoirs) vulnerable to contamination from leaking underground storage tanks.¹ This is of particular concern since these aquifers are the principal source of municipal water supplies throughout Hawaii. Even though certain coastal areas are protected by a relatively impervious geologic layer, referred to as cap rock, contaminants can migrate to the ocean to disrupt recreational and other uses.

Protection of the state's drinking water, as well as its lakes, streams, bays, and shore waters, is essential. As of April 1993, DOH was aware that 2,616,878 gallons of regulated substances had been released into the ground by 528 leaking underground tanks. The State also estimates that 1,012,163 gallons of substances from these leaking tanks have contaminated the surrounding groundwater.² The DOH believes the reported leaks are a minimum and that actual contamination is likely higher.

Fumes from leaking tanks have also created other emergencies that have endangered businesses. In two separate incidents, fumes spreading from tanks have required that neighboring businesses be evacuated. Hawaii is fortunate that more serious emergencies resulting from leaking tanks have not yet occurred.

In the face of these threats, oversight of leaking tanks is minimal, at best. In the first four months of 1993, the DOH was notified of an average of three new leaking tanks per week. At any one time, the three remaining staff members in the Leaking Underground Storage Tank Sub-section can focus their attention on only about 40 of the 528 reported leaking sites.

Remediation of contaminated drinking water supply would be costly

The current cost of the RCRA programs is low when compared with the cost of remediating a drinking water supply should contamination occur. The State's share of the FY1990-91 through FY1992-93 budgets for RCRA programs was \$1.3 million. The federal share was \$1.9 million.³ The minimal costs of these programs are justified when compared to the relatively high costs to state residents if more drinking water sources should become contaminated.

The high cost of cleaning contaminated resources is exemplified by the \$2.5 million the Mililani Town developers paid to construct four treatment plants to remove pesticide and solvent contamination. In addition, the annual cost for the carbon used in the treatment plants is \$154,000. The Honolulu Board of Water Supply may eventually install an air stripper at a cost of another \$2.3 million to remove an additional contaminant.⁴ Therefore, the actual and future costs to remediate only one contaminated drinking water source may cost more than 11 years of the State's budget share for the entire Solid and Hazardous Waste Branch.

State liability is also a concern

The State incurs potential legal costs if it does not have effective RCRA programs. For example, during our fieldwork DOH was a party to several lawsuits by developers claiming that they were hindered in developing their properties because of inefficient DOH regulatory and permitting programs. At the conclusion of our fieldwork, the potential monetary cost to the State had not yet been determined.

Lack of Authorized Status for RCRA Programs Has Serious Consequences

The RCRA legislation intended each state to develop and run its own hazardous waste and underground storage tank programs by becoming "authorized." DOH has had a consistent policy that it would seek authorization, but Hawaii has not achieved authorized status for these RCRA programs. The process for state authorization is complicated. It involves the submission of a final draft of the administrative rules, a multi-year program narrative, and a transmittal letter from the state attorney general stating that the State's statutes and rules are sufficient to comply with federal rules.

A state must apply for authorized status separately for the hazardous waste (Subtitle C) and underground storage tank (Subtitle I) programs. It may also apply for approval for its solid waste program. The chief benefit of achieving authorized or approved status is the flexibility the state gains in determining program priorities; otherwise, the EPA dictates priorities based on national needs. In addition, without authorization, the State must rely heavily upon the EPA's enforcement of federal regulations. As we discuss in the next chapter, this reliance has resulted in weak and fragmented enforcement in Hawaii.

Currently, Hawaii's RCRA programs for hazardous waste and underground storage tanks are governed by memoranda of understanding between the department and the EPA Region IX office in San Francisco. These agreements do not allow Hawaii to have its own enforcement program or to develop criteria that would be particularly appropriate for this state.

Under the memoranda, the DOH is the “implementing agent” for EPA Region IX in carrying out or initiating most of the RCRA provisions in Hawaii. If the State fails to comply with and/or renew these memoranda, the Hawaii RCRA program would revert to direct federal management by EPA Region IX.

Hawaii is one of only five states not authorized for Subtitle C hazardous waste

As of July 1990, Hawaii was one of only five states lacking “authorized” status for its Subtitle C hazardous waste program. The DOH had developed administrative rules for Subtitle C that were undergoing review by the attorney general at the time of our fieldwork. These rules must then be scheduled for public hearing and approved by the governor before being submitted to the EPA for a review and response process. The DOH, the attorney general, and the governor should give high priority to reviewing and signing the hazardous waste rules so that any rules adopted will be current with federal law. The EPA’s review and response process may take up to another year or longer.

Even if Hawaii works expeditiously to adopt rules, the earliest Hawaii can become an authorized state is mid-1995, if the EPA completes the review and response process within one year.

Federal Subtitle D requirements for solid waste can be costly

Receiving EPA approval for the Subtitle D solid waste program can save the counties money. New EPA landfill construction design standards require all landfills constructed in Hawaii on or after October 9, 1993, to comply with the new requirements. These requirements can be waived if the EPA approves the State to run its own solid waste program.⁵ For example, to meet the federal requirements, the counties would have to import, at additional cost, a landfill liner clay not available locally. If Hawaii were an approved Subtitle D state, it could adopt economical standards that would be more suitable to local conditions.

Hawaii taxpayers could pay millions of dollars unnecessarily if the State is not approved for its solid waste program. The DOH estimates that meeting the new EPA landfill requirements alone could result in over \$15 million in additional costs over the next three years.⁶

For example, DOH consultants estimate that costs for the new West Kona Landfill will be \$535,000 per acre to meet the new federal design standards, but only \$230,000 per acre for a state-approved alternative—a savings of \$305,000 per acre. Similarly, estimated federal design costs for the Kekaha Landfill would be \$295,000 per acre, while the state-approved alternative would be \$130,000 per acre—a savings of \$165,000 per acre.⁷

In order to save the counties and taxpayers unnecessary costs, it is important that the governor give high priority to reviewing the administrative rules for solid waste. As of October 1993, the DOH was undertaking final review of the rules before submitting them to the governor for approval. EPA approval of state authority for the solid waste program is dependent upon initial state approval of these rules.

Authorization for Subtitle I underground storage tank program is important

EPA authorization is particularly important for the underground storage tank program. Until the State promulgates administrative rules and receives EPA authorization, the EPA remains the main authority for enforcement. The EPA has intended, however, for the states to enforce their own programs. The EPA itself does little to monitor or enforce regulations for underground storage tanks or leaking tanks.

State assumption of the program would strengthen enforcement and provide other advantages. Currently, owners and operators of new tanks submit their plans to various state and county authorities, but not to the Underground Storage Tank Section. With authorized status, the State could require all new tank installation plans to be reviewed by DOH as part of the permitting process. The DOH could then ensure that all tanks are planned and built with proper materials and include leak detection systems.

State assumption of the program would also help the DOH to maximize its limited resources. The DOH would have greater flexibility to apply more stringent requirements in areas at greatest risk.

The DOH Lacks Management Controls

The DOH has not ensured orderly and efficient management of Hawaii's waste management programs. It has not initiated the appropriate management controls for effective and efficient operations. For example, Hawaii's RCRA programs do not have policies and procedures that would enable them to track waste generators and to ensure compliance.

Central tracking system is lacking

At the branch level, we found no central tracking system for enforcement actions against waste generating facilities. This makes it difficult to determine the enforcement status of specific cases. In some cases, the files had no information on the status of pending cases or on settlements. Although an EPA database contains the dates when the EPA issued enforcement orders in response to complaints, the database does not contain subsequent actions such as proposed and final penalties. This makes it difficult to determine which cases have reached settlement.

Landfill permit controls are weak

The Office of Solid Waste Management does not have standardized procedures for tracking landfill permit applicants. We found that the office's permit logbook contained inconsistent and incomplete information. In addition, we found that the office did not have a central file to track whether facilities had the appropriate permits. For example, the office was not aware of one county landfill that had been operating without the required renewal permit since January 1992. The office reports that a new computerized permit database is currently being developed, and it hopes to have the new system on-line by early 1994.

Recommendations

1. The governor and the director of health should support the RCRA programs by:
 - a. Giving high priority to achieving authorized status from the Environmental Protection Agency for Hawaii's Subtitle C, hazardous waste; Subtitle I, underground storage tanks; and approval for Subtitle D, solid waste.
 - b. Developing and submitting a budget that will ensure continuity of funding for the program. Any decision to support the programs through special funds should be carefully planned and analyzed.
2. The Department of Health should:
 - a. Fill vacant positions with technically qualified staff and give technical staff the opportunity to participate in free training programs sponsored by the Environmental Protection Agency.
 - b. Request the Legislature to restore positions that have been deleted. In addition, the Department of Health should continue to work with the Department of Personnel Services to streamline the classification process for positions authorized by the Legislature.
 - c. Develop policy and procedure manuals for the hazardous waste and solid waste programs so that compliance and enforcement actions can be tracked and monitored.

Chapter 3

Implementation of Waste Management Programs

In this chapter we examine the implementation and enforcement by the Department of Health (DOH) of the following RCRA programs: the Subtitle C hazardous waste program, the Subtitle D solid waste program, and the Subtitle I underground storage tank program. We also examine the DOH's implementation of infectious waste management under Section 321-21, Hawaii Revised Statutes.

Summary of Findings

1. The Department of Health's enforcement of regulations for hazardous waste handlers in Hawaii is weak, inconsistent, and long delayed. Many handlers appear to be escaping regulation and engaging in repeated violations.
2. It is unlikely that DOH will be able to achieve the State's solid waste reduction goal of 25 percent by January 1, 1995.
3. Although leaking underground storage tanks pose a significant environmental risk, the DOH's regulation of them is minimal and relatively meaningless.
4. The effectiveness of DOH's regulation of infectious waste spills is uncertain.

DOH Enforcement of the Hazardous Waste Program Is Weak

Hazardous waste generators and facilities are not adequately identified

The DOH's Subtitle C hazardous waste program is weakened by: (1) its limited information on waste generators and treatment storage and disposal facilities, and (2) the division of enforcement responsibilities between the DOH and the Environmental Protection Agency (EPA).

The DOH does not have accurate information on the nature and number of the members of the regulated community in Hawaii. This limits its ability to enforce the regulatory program since effective regulation begins by identifying those who need to be regulated. Large and small quantity generators handling over 100 kilograms of hazardous waste per month are required to have an identification number. A large quantity generator generates over 1,000 kilograms of hazardous waste per month, and a small quantity generator generates between 100 to 1,000 kilograms per month. The EPA relies on generators to report themselves.

Until recently, hazardous waste generators; transporters; and treatment, storage, disposal facilities (TSDFs) were identified only when they applied for an identification number from the EPA. As a result, the EPA's database of hazardous waste handlers in Hawaii is incomplete and inaccurate. It lists 111 treatment facilities and large quantity generators when the actual number is closer to 50.¹ The DOH believes this inconsistency arises from some small quantity generators identifying themselves improperly as large quantity generators. In addition, the DOH believes many small quantity generators remain unidentified.

For example, a major local airline had been handling hazardous waste for at least three years. It had not, however, notified the EPA of its status as a generator until 1992. Furthermore, the airline had used another generator's EPA identification number when transporting hazardous waste. This airline was discovered as not having an identification number only after a complaint was received about improperly stored hazardous waste drums on its property.

To address this problem, the Legislature passed a bill in 1993 requiring all treatment facilities and large and small generators to notify the DOH of their activities. The DOH is currently aware of 5 treatment facilities, 32 large quantity generators, and 551 small quantity generators. It estimates there are at least another 200 small quantity generators that remain unidentified.

Probable illegal disposal

The DOH estimates that approximately 200 unidentified facilities either recycle 100 percent of their hazardous chemicals or dispose of them by using unacceptable methods. Illegal disposals are likely because of: the high costs of proper disposal (an average of \$1,000 for a 55-gallon drum), a lack of information, and weak enforcement.² Waste management firms estimate widespread illegal disposal (usually between 30 to 50 percent) by small quantity generators.³ These estimates are alarming since small quantity generators represent a significant portion of Hawaii's generator community.

In other states, improper disposal of hazardous wastes in municipal landfills, vacant lots, and sewer systems has contaminated the environment. In Cape Cod, Massachusetts, for example, the groundwater is tainted with hazardous chemicals that are also entering its coastal waters. In New York State, over 500 residents of the Love Canal area were relocated by the state when chemical leachates from a nearby chemical waste disposal site led to environmental and physical harm to residents.

Substantial noncompliance

The DOH has attempted to identify generators by targeting different industries or facilities located in specific Hawaii industrial areas. This practice has uncovered many violations. During fiscal years 1990-91 and 1991-92, the DOH cited 20 of 57 generators and transporters for one or more violations.

Several state facilities have also been found to be in violation. In FY1991-92, the DOH inspected its own facilities as well as those of the Departments of Agriculture, Education, Defense, Public Safety, and Transportation. Of the 31 facilities inspected, the DOH found 13 (42 percent) in violation and sent warning letters to 5.

Enforcement is divided

Because responsibility for enforcement is divided between the DOH and the EPA, delays and inconsistencies have resulted. Until the DOH achieves authorized status, it must work under its Memorandum of Understanding with the EPA. The memorandum gives the EPA “full and ultimate responsibility for the administration and enforcement of the Federal Hazardous Waste Management Program.”⁴ The State’s role is generally limited to the identification and follow-up of violations. The DOH reports on its investigations and inspections to the EPA. The EPA then reviews these inspection reports and takes enforcement actions.

Delays in enforcement

We found that the DOH Hazardous Waste Section conducted the inspections required by the EPA in a timely manner, but the EPA’s enforcement actions were sometimes slow. In reviewing files for 44 hazardous waste facilities, we found that the EPA took an average of 1.5 years to resolve 6 of 11 formal cases. Five ongoing cases began at least two years ago.

Inconsistent enforcement

The EPA does not always follow the DOH’s recommendations for the issuance of “Complaint and Orders to High Priority Violators” (a complaint and order is the most severe administrative action and can result in fines or the removal of permits). Also, the DOH files did not always contain the EPA’s formal, written responses to DOH inspections or a copy of the EPA’s formal complaint and order. This makes it difficult for the DOH to track enforcement actions.

Repeated violations

Repeated violations indicate poor DOH enforcement and widespread noncompliance within the regulated community. Our review of DOH files shows 8 of 44 generators and 5 of 10 treatment facilities were cited for repeated violations. For the five treatment facilities that were repeat violators, we found the EPA had issued only two complaint and orders. The facility of one of the repeat violators was described by the DOH as being “not operated and maintained to minimize the possibility of releases of hazardous waste.” Nevertheless, the EPA increased the facility’s permitted storage capacity of hazardous waste by an additional 52,520 gallons in 1990. Later, in 1991, the same facility was issued a formal complaint and order.

The DOH also contributes to weak enforcement. Its quarterly reports to the EPA on compliance are based solely on self reporting by each facility. Reports by violators that they are back in compliance are suspect and often inaccurate. The same facilities were often cited for the same violations the following year. In addition, 25 percent of the transporter and generator files we examined had no documentation on whether a facility had returned to compliance.

To strengthen enforcement of Hawaii’s hazardous waste management program, top priority must be given to achieving EPA authorized status. Only when this is accomplished can the DOH control enforcement and be held accountable for its performance. In carrying out enforcement responsibilities, DOH should also increase the number of inspections and improve management of its enforcement program. Finally, DOH should begin to plan now for the staff and resources it will need when it becomes authorized. Once authorized, the State will become fully responsible for enforcement, and it should be ready to assume this responsibility.

Solid Waste Reduction Goals Are Not Achievable

Under Chapter 342G, HRS, the Legislature has established solid waste reduction goals for Hawaii of 25 percent by January 1, 1995, and 50 percent by January 1, 2000. The goals are to be achieved through source reduction, recycling, and bioconversion.⁵ Each county is required to submit to the Office of Solid Waste Management an integrated solid waste management plan that is consistent with the requirements of the law. Each county is responsible for developing and implementing its waste reduction and diversion programs.

Solid waste reduction is only about 10 percent

The DOH estimates that current statewide waste reduction is about 6 percent, excluding metals (automobiles, white goods, and scrap steel), and about 11 percent including metals. It estimates that solid waste reduction in 1995 will be below the 25 percent goal.

Although the DOH's 1993 report to the Legislature contained waste reduction data from the counties, the report did not include meaningful analysis that would inform the Legislature that waste reduction goals will not be met. Rather, the DOH reported to the Legislature that waste diversion for the four counties is 178,000 tons out of 1,783,900 tons generated. This calculates to be about 10 percent.

The DOH reports that obstacles to meeting the goals include small volumes of recyclable materials, limited marketing potential, lack of in-state manufacturing capacity, cost of transportation, limited availability of suitably priced and zoned land, and staffing uncertainties.

The DOH should give better information to the Legislature about what is actually being achieved in waste reduction under current conditions, and what additional actions are needed to achieve the 25 percent goal set for 1995.

DOH Has No Meaningful Program For Regulating Underground Storage Tanks

Underground storage tanks are used for a wide variety of purposes. Large petroleum companies, mid-size marketers, small "mom and pop" service stations, and convenience stores own storage tanks. Military facilities, state and local government agencies, auto dealerships, contractors, and utility companies also have underground storage tanks. The military has 40 tanks on Oahu alone, with capacities ranging from 400,000 gallons to 12 million gallons.⁶ In May 1993, Hawaii had 3,428 petroleum and 24 hazardous substance tanks located at 1,675 facilities.⁷ In addition, an undetermined number of tanks are abandoned, closed, or discovered unexpectedly when land redevelopment occurs. The large number and wide variety of facilities make regulation an especially challenging task.

RCRA Subtitle I is the regulatory program for underground storage tanks. Most of the tanks contain petroleum products. The program authorizes the EPA and states with EPA agreements to clean up releases from leaking tanks or to require tank owners and operators to do so. The State also established a Capital Loan Revolving Fund to assist in the clean-up of leaking tanks by providing loans to tank owners and operators.

The DOH's regulation of these tanks is minimal. As discussed in Chapter 2, underground petroleum storage tanks in Hawaii have leaked over 2.6 million gallons of hazardous substances into the ground—over one million gallons of which have contaminated Hawaii's groundwaters.⁸

DOH has no meaningful field presence

The DOH does not have sufficient staff to maintain a meaningful field presence. To be effective, the program must detect ongoing releases and prevent future releases. Regular field inspections must be made. The DOH started inspecting approximately 12 to 20 facilities per month in September 1992. This schedule of inspections may cease with the high staff vacancy rate that has been occurring in the Underground Storage Tank Section.

The DOH has inspected only 94 of the 1,600 tanks in Hawaii required to have leak detection equipment. In sampling underground storage tanks files, we found that less than half of the owners and operators of Hawaii's underground storage tanks had submitted the required documents certifying that they had leak detection equipment. A 1992 review of Hawaii's underground storage tank program by the EPA stated: "Owners and operators still are often not in compliance with the preventative requirements."⁹

DOH does not regularly inspect leaking underground storage tanks

The DOH does not have enough staff to regularly inspect leaking tank sites or to be present when tanks are being pulled from the ground. The DOH's staff rarely visit even the priority sites. According to the EPA, Hawaii does less monitoring of leaking tank sites than any other state in Region IX.¹⁰

Only 25 percent of the DOH's 40 priority leaking sites had been visited by project staff. Staff monitoring of leaking tank sites consists primarily of a review of documents submitted by the owners/operators. These documents may not be accurate. Owners could face costs of hundreds of thousands of dollars to remediate a contaminated site if they were to report the true extent of site contamination. In the current, difficult economic times, owners and operators are likely to downplay the seriousness of their site's contamination, particularly since there is little oversight by the DOH.

Clean-up efforts are poorly monitored

The branch readily acknowledges its inability to oversee leaking tank sites. When notified of a leaking tank, the DOH issues a standard letter to the owner or operator stating: "Due to staffing, we cannot assign a project officer to your case at this time."¹¹ In the absence of effective oversight, there are reports that some owners and operators with leaking tanks have halted their clean-up efforts.

Only 49 percent of Hawaii's petroleum-contaminated sites are being cleaned up—far behind the national clean-up rate of 70 percent.¹² According to the EPA, the discrepancy between the number of leaks reported and the number of clean-ups initiated shows a lack of compliance by Hawaii's tank owners and operators.

Loan fund is not effective

In 1991, Act 267 established a Capital Loan Revolving Fund within the Department of Business, Economic Development, and Tourism (DBEDT). The fund was to receive underground storage tank fees that would be paid by tank operators. The resulting revenues would then provide funding for loans for businesses to replace, upgrade, close, take remedial action, and clean up releases from their underground storage tanks. The fund was also intended to finance the costs of educating tank owners and operators and identifying state lands where bioremediation of contaminated soils might be carried out. Loans would be given to tank owners who would otherwise be unable to meet the December 31, 1993, federal deadline for leak liability insurance (or other evidence of financial responsibility). Authorization for the fund is scheduled to expire on January 1, 1994.

Small businesses own many of the older underground tanks. These tanks need costly upgrades before owners can qualify for liability insurance. Banks, real estate firms, and insurance companies are reluctant to finance businesses with such indefinite liabilities. The resources from the loan fund, however, are insufficient to meet the need. It has not been able to help the many small independent service station operators, who operate on small profit margins, to upgrade their tanks. Consequently, many small businesses face going out of business when the deadline for completing tank upgrades takes place at the end of 1993.

As of June 1993, only one loan for \$140,000 had been made from the underground storage tank fund. The remaining loan fund balance of \$493,722 was only enough for three more similar sized loans. Even if underground storage tank annual fees were doubled, the fund could still only support six or seven similar loans.

Effectiveness of Infectious Waste Regulation is Uncertain

In 1989, the Legislature required the DOH to adopt rules for the management and disposal of infectious wastes that are generated by hospitals, clinics, other health care facilities, doctors' offices, dentists' offices, research laboratories, and veterinary clinics. The administrative rules, adopted in 1990, set minimum requirements for the management, treatment, transport, storage, and disposal of infectious waste.

Since the rules are based upon the premise of voluntary compliance, the DOH is unable to determine the effectiveness of its current regulation. In addition the DOH's record of infectious waste spills is inadequate and does not give the DOH the information needed to determine whether voluntary compliance is effective.

Regulation is based on voluntary compliance

The rules governing infectious waste management and disposal ask for voluntary compliance by the regulated community. They do not require the DOH to monitor and inspect the regulated community. Enforcement is split between the DOH's Medical Facilities Branch and its Office of Solid Waste Management. The Medical Facilities Branch monitors licensed facilities, which constitute a small segment of infectious waste generators. The Office of Solid Waste Management is responsible for monitoring all other generators of infectious waste.

The Medical Facilities Branch does some monitoring of licensed medical facilities for proper infectious waste disposal during its licensing procedure, but the DOH generally administers the rules on an exception basis. Investigations are usually conducted only when the DOH receives complaints from the public, or when it receives reports of infectious waste spills.

The reliance upon voluntary compliance makes it difficult to determine the level of compliance by the regulated community. Given the numbers of those who generate infectious waste, it would be difficult for the Office of Solid Waste Management to enforce compliance. For example, individuals administering prescribed drugs in their homes are considered generators of infectious waste.

Data are incomplete

Data on infectious waste spills are fragmented and incomplete. The standard operating procedure for responding to reports of infectious waste spills is for all reports of infectious waste outside of the Medical Facilities Branch to be reported to the DOH Hazard Evaluation and Emergency Response Office (HEER). HEER is also required to maintain records of all its activities relating to infectious waste spills. However, HEER records are incomplete since it does not respond to all spills of infectious waste. The counties and other agencies that respond are not required to notify the office of some of these spills.

In our review of HEER's records, we found the number of reported infectious waste spills increased from 13 incidents between 1989 and 1991 to an average of one per week during 1992 and the first two months of 1993.¹³ Due to incomplete data, the DOH is unable to determine if this increase resulted from increased public awareness, a

breakdown in voluntary compliance on the part of some members of the regulated community, or an increase in improper disposal by illegal drug users.

In order for the DOH to determine the effectiveness of current infectious waste regulations, it should institute an infectious waste spill threshold and require all agencies responding to infectious waste spills to report any spills above that threshold to HEER.

Recommendations

1. Pending the receipt of state authorization from the Environmental Protection Agency (EPA), the Department of Health should improve enforcement of its hazardous waste program by:
 - a. conducting timely follow-up inspections of facilities found to be in violation;
 - b. making on-site inspections of all facilities found to be in violation before reporting to the EPA that these facilities have returned to compliance; and
 - c. planning now for how it will assume responsibility for enforcement once the State becomes authorized.
2. The Department of Health should inform the Legislature of what is being achieved in solid waste reduction under current conditions. It should also develop strategies for meeting the 25 percent reduction goal and notify the Legislature of the resources needed to achieve the goal.
3. The Department of Health should develop and submit to the Legislature an action plan that would give the department a meaningful field presence for monitoring and enforcing regulation of underground storage tanks. The plan should include the resources needed, including staff, and a time frame for accomplishing goals.
4. The underground storage tank special account in the Department of Business, Economic Development, and Tourism's Capital Loan Revolving Fund should be permitted to sunset as scheduled on January 1, 1994, with the balance lapsing to the General Fund.
5. The Department of Health should amend its administrative rules for infectious waste to include a threshold for reporting infectious waste spills and a requirement that the counties and other responding agencies report all such spills to the department's Hazard Evaluation and Emergency Response Office.

Notes

Chapter 2

1. Department of Health Solid and Hazardous Waste Branch, *Priority Ranking System Manual*, pp. 2-8.
2. Department of Health Leaking Underground Storage Tank Database "PRSDATA."
3. Federal Standard Form 269 and EPA Form 5700-20A.
4. Hawaii, Department of Health, *Hawaii Groundwater Quality Protection Strategy*, Honolulu, March 12, 1990, p. vii-3.
5. 40 *Code of Federal Regulations*, Parts 257 and 258, Vol. 56, No. 196.
6. Memorandum to Dr. Bruce Anderson, Deputy Director, Department of Health, from John Harder, Coordinator, Office of Solid Waste Management, Subject: Solid Waste Management Fund; Glass Recovery Fund, March 11, 1993.
7. Estimated costs of landfills meeting federal design and State approved alternatives as presented to the Senate Ways and Means Committee on March 1, 1993 by John Harder, Coordinator, Office of Solid Waste Management. Estimates are derived from Harding Lawson Associates.

Chapter 3

1. U.S., *Environmental Protection Agency, RCRA Orientation Manual*, EPA Publication No. EPA/530-SW-90-036, Washington, U.S. Office of Ombudsman, 1990, pp. III-17-18. (A large quantity generator generates over 1,000 kilograms of hazardous waste per month, while a small quantity generator generates between 100 and 1000 kilograms per month. Conditionally exempt small quantity generators that generate less than 100 kilograms per month are not required to notify either the EPA or the State of their activity.)
2. Seymour Schwartz and Wendy Pratt, *Hazardous Waste from Small Quantity Generators*, Washington, D.C., Island Press, 1990, p. 22.
3. *Ibid.*, p. 13.

4. "Memorandum of Understanding Between the United States Environmental Protection Agency, Region 9 and the Hawaii State Department of Health," September 1988.
5. Section 342G-3, HRS.
6. Ibid.
7. "Underground Storage Tank Database Summary Statistics Report," May 14, 1993.
8. Hawaii, Department of Health Leaking Underground Storage Tank Database, "PRSDATA."
9. *End of Year Review, Hawaii DOH UST/LUST Program, (Draft)*, EPA, 1992.
10. Interview with Russ Beckwith, EPA Region IX Hawaii UST Program Officer, April 27, 1993.
11. Our review of the chronological files of the Solid and Hazardous Waste Branch found the DOH generally issues a standard Release Response Letter stating that due to resource constraints, the department must prioritize its review of UST releases and cannot assign a project officer to respond to a reported UST release at the current time.
12. U.S. Environmental Protection Agency, The Office of Underground Storage Tanks, *Report to the House Appropriations Committee on the LUST Program*, January 1993, and EPA, Office of Underground Storage Tanks, "FY93 Quarterly Activities Report" for Hawaii.
13. Compiled from Hazardous Emergency Evaluation Response Office Spills Logs 1991-1993.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Health on December 17, 1993. A copy of the transmittal letter to the department is included as Attachment 1. The response of the department is included as Attachment 2.

The Department responded that it essentially concurs with many of the findings of the report. It is concerned, however, with our format which it says highlights criticisms in bold letters. It says that this may have the unintended result of being misleading and create confusion.

The department says that it has been and is actively pursuing achieving authorization of the hazardous waste and underground storage tank programs. It intends to create temporary, federally funded positions to address the shortfall in positions and is pursuing a streamlining procedure with the Department of Personnel Services for the classification of positions and reorganization. The department will also attempt to conduct more follow-up inspections of facilities cited with violations and improve its documentation and filing system on follow-ups. The department says it is committed to working with the Legislature to establish and attain goals for solid waste diversion programs. It reports that it has made significant progress on this through working cooperatively with the counties. DOH is also developing an action plan to improve monitoring and enforcement of the underground storage tank program.

The department does not agree that the special fund should be permitted to sunset. It says that it is unclear about what we mean about infectious waste spills. We wish to clarify that we believe that the DOH should amend its administrative rules for infectious waste to include a threshold for reporting infectious waste spills. We agree with the department that no major changes should be made at this time. In addition, the department suggested, and we have made, certain changes to clarify the differences in the various RCRA programs.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

December 17, 1993

COPY

The Honorable John C. Lewin
Director of Health
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

Dear Dr. Lewin:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Audit of the Hazardous Waste Management Program of the Department of Health*. We ask that you telephone us by Tuesday, December 21, 1993, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Monday, January 3, 1994.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marion M. Higa".

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR OF HAWAII



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

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File:

January 4, 1994

RECEIVED

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OFF. OF THE AUDITOR
STATE OF HAWAII

TO: Ms. Marion M. Higa, State Auditor
Department of Legislative Auditor

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

SUBJECT: AUDIT OF THE HAZARDOUS WASTE MANAGEMENT PROGRAM

We appreciate the opportunity to comment on the above report. Prior to stating our specific comments to your recommendations, we would like to make the following general observations.

For a long time prior to this report, the Department has maintained that many of its permitting, monitoring and enforcement activities are resource driven throughout all of its environmental protection functions. That is to say, it is crucial that we receive adequate support from the other branches of government to enable us to fulfill our mandate to protect the environment of the State of Hawaii. This report correctly points out that most of the shortcomings cited are a direct result of lack of resources and to that extent, the Department essentially concurs with many of the findings of the report.

However, it does require a thorough reading of the report to ascertain that conclusion. The Department is concerned and wishes to go on record as noting that the practice of the Office of the Legislative Auditor in formatting the report in the manner of highlighting the criticisms in bold letters and not appearing to highlight the underlying reasons for the existing problems, may have the unintended result of being misleading and creating confusion, particularly in light of the possibility that the media may choose to focus on one particular highlighted point.

The Department further notes that the authors of the report appear to be unclear as to the differences between the various RCRA programs, in that program approval under Subtitle D is considerably different than Subtitle C authorization. The State's Solid Waste Program, which has responsibility for Subtitle D compliance, is not involved in any "cooperative agreement" with EPA, receive no funds or other support from EPA, and does not require EPA authorization to manage its own program. Further, EPA does not have a regulatory program which provides oversight to solid waste activities. While the State's Solid Waste Program has applied for EPA "approval", such action was primarily undertaken to provide local flexibility in meeting federal standards and to reduce the costs of compliance to the counties.

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State Auditor
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Further, the audit fails to acknowledge efforts previously commenced and in progress during the audit period. The passage of the Integrated Solid Waste Management Act and the creation of the Office of Solid Waste Management represented a milestone in the commitment by this State to genuinely undertake efforts to change waste management directions. However, as with virtually all new programs, there is always an additional time factor involved before a program come into fruition and begins to demonstrate the intended results.

While the statewide diversion rate is still below the 1995 goal of 25%, and the counties are trying hard to reach that goal, the Office of Solid Waste Management definitely feels that significant overall progress has been made and that with additional support, such as the various measures proposed during the recent Environmental Summit, the State will in fact meet its diversion goals by the year 2000. Additionally, many efforts in this area have been initiated by the counties and the private sector in the past two years and while there may yet be a lack of data at this time to reflect the waste diversion which has occurred, there will certainly be a dramatic increase in the next year and the year after as these programs become fully operational and as the data becomes more available.

Having stated the above, we now offer the following specific comments on the recommendations made in the report:

Chapter 2. Management of Waste Management Regulatory Programs

Recommendation No. 1

- a. The Department has been and is actively pursuing achieving authorization of the hazardous waste and underground storage tank (UST) programs.

Hazardous Waste, RCRA Subtitle C

The DOH has been diligently working with EPA to submit an application for delegation by June 30, 1994. To date, the following milestones have been accomplished:

1. Draft rules are completed.
2. Public notice of rules will be made by late January 1994.
3. Statewide public hearings will be conducted beginning March 1, 1994.

The DOH anticipates authorization within one year of submission of our application.

Underground Storage Tank, RCRA Subtitle I

The DOH submitted draft rules to EPA for review in July 1993. The remainder of federal fiscal year 1994, will be devoted to preparing an application to EPA.

Solid Waste, RCRA Subtitle D

The State's Solid Waste program (which has responsibility for Subtitle D compliance) is not involved in any "cooperative agreement" with EPA and receives no funds or other support. We would expect that if Subtitle J is made an official RCRA program, it would probably be structured in a similar manner. The Solid Waste Office does not require EPA authorization to manage its own program. Rather, we are applying for EPA "approval" primarily to provide local flexibility in meeting Federal standards and to reduce the costs of compliance to the counties. In fact, EPA does not have a regulatory program which provides oversight to solid waste activities.

The Office's application for EPA approval was sent to Region IX in Oct 1993 and has been accepted for conditional review. Final review and approval is awaiting promulgation of our revised Solid Waste Management Rules which are now on the Governors desk awaiting signature.

- b. The supplemental budget request to the 1994 State legislature will include a request for additional positions for the solid waste program. Funding for these positions will be derived from a special fund.

The budget request did not include any additional funding for the hazardous waste or underground storage tank programs. The Solid and Hazardous Waste Branch (SHWB) will submit a request for additional funds in the next biennium budget request. The request will be for additional staff and resources to demonstrate enforcement capability in both the hazardous waste and underground storage tank programs. Demonstration of enforcement capability is a critical element for obtaining authorization from EPA.

Recommendation No. 2

- a. Recruitment and retention of technically qualified staff will remain a problem under the current Department of Personal Services (DPS) system. DPS's PRO recruitment office is no longer effective in reducing delays in the hiring of an environmental health specialist (EHS). DPS intends to create a new "direct hire" program to replace the PRO office.

Entry and career level EHS positions are uncompetitive with government and industry salaries. DOH will continue to incur training costs as employees seek better career opportunities. SHWB supervisors and the branch manager are reviewing the current

Environmental Health Specialist (EHS) classification to develop a more competitive recruitment program.

Disparity between programs on career level EHS positions continue to create retention problems. The EHS IV level should be established as a standard career level for all positions.

The SHWB has a total of 30 mainland travel trips for staff training in the federal FY-94 work plans. In addition, several EPA reimbursed training courses are offered in both the hazardous waste and underground storage tank programs. Several training courses provide multiple slots for the State. The DOH generally takes advantage of the subsidized training as long as it can be justified and does not compromise program functions. A recent policy decision requiring executive branch approval of all travel caused delays in processing training requests and ultimately resulted in staff not being able to take full advantage of some training opportunities because final travel arrangements could not be made in a timely manner or where they were too costly. This policy has since been rescinded, which should avoid these problems in the future.

- b. Restoration of deleted positions was not included in the DOH's supplemental budget request. The SHWB intends to create temporary federally funded positions to address the shortfall in positions. In addition, the SHWB will submit a mini-reorganization in order to create the critical supervisor's position in the underground storage tank program.

The DOH is pursuing a streamlining procedure with the Department of Personnel Services for the classification of positions and reorganization request.

- c. The SHWB will be hiring an EPA staff person (intergovernmental personal agreement - IPA) to assist in the development of a State enforcement program for the hazardous waste section. The enforcement program, which should include policies and procedure manuals, can be adapted to the UST program.

The SHWB will be expanding its use of federal hazardous waste and underground storage tank database programs for the management of compliance and enforcement actions.

Chapter 3. Implementation of Waste Management Programs

Recommendation No. 1

The Hazardous Waste Section has been conducting as many inspections as possible with its existing staff of 3 inspectors and will attempt to conduct more follow-up inspections of facilities cited with violations. These follow-up inspections will be

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State Auditor
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conducted subsequent to a facility's required 30 day response and thus will serve as a basis for issuance of a "Return to Compliance" letter.

The Hazardous Waste Section will also track compliance and enforcement of facilities by improving its documentation and filing system to include all correspondences, memos and telephone conversations related to enforcement follow-up. A new compliance database tracking system has recently been initiated by the section to list all facilities that have been inspected since the inception of the program. The database includes dates of inspections, complaints, potential violations cited, enforcement actions, permits and other activities related to a facility. This system should not only improve the compliance/enforcement tracking of facilities but will also make it easier to respond to requests for public records. The federal RCRIS program will continue to serve as the primary database to which the State can integrate information and look into the possibilities of becoming direct implementors.

The selection process for an enforcement IPA (Interpersonal government agreement) is underway and a selection should be made by the end of January.

Recommendation No. 2

The Department is committed to working with the legislature to establish agreed upon priorities for solid waste diversion programs (both internal and external activities) and the funding necessary to attain them. The DOH has consistently supported the need for funding county efforts to divert solid waste from landfills. For example, last year the Department asked the legislature to authorize a tipping fee of \$0.75 per ton to support state and county solid waste management programs; of this, \$0.25 was proposed specifically to support waste diversion programs at the county level. The legislature approved only \$0.25 per ton, the minimum necessary to implement the federal regulatory program. The legislature should be aware that success in the area of waste diversion will require funding in the range of \$5 to \$10 million per year at a minimum, based on testimony and reports submitted by the Office of Solid Waste Management.

The waste reduction goals were never expected to be achieved purely through Solid Waste Program initiatives and will take coordination of numerous state, county and private sector agencies and organizations. A prime reason for the delays in implementing waste reduction programs through DOH or others has been the failure of the legislature to provide requested funds to reach the diversion rates set in Act 324-91. As part of the Act and in successive years, funding to meet the needs of the counties and private sector service providers was requested and in each case denied by the legislature.

Significant progress has been made through cooperative work with the counties. Greenwaste diversion efforts on all Islands has been expedited and should result in 10% additional reduction by the end of 1995.

As mentioned previously the barriers to attaining the legislated goals depends upon much more than personnel and State programs. It is extremely difficult to start from scratch, with little or no infrastructure, and show immediate progress. Even with adequate funding it takes two or three years for diversion programs to mature, and funding legislation was rejected by the legislature in each of the past three sessions. Priorities for waste diversion programs have been thoroughly discussed during the recent environmental summit proceedings and will be proposed to the legislature this year for consideration.

Recommendation No. 3

The DOH will continue to have a minimal presence for monitoring and enforcement in the underground storage tank program until we can effectively recruit and retain qualified personnel. A DOH action plan is being developed that includes the following elements:

Short term

- a. Complete a mini-reorganization to establish the section supervisor position.
- b. Use EPA IPAs to assist with field inspections and review of cleanups.
- c. Use EPA IPAs to assist with the development of State regulations.
- d. Create the following temporary federally funded positions.
 1. Section supervisor (EHS V)
 2. Technical support (Engr V)
 3. Unit leader, LUST (EHS IV)

Long term

These long term recommendations apply to all positions in SHWB.

- a. Update EHS class specifications. Establish EHS IV or V as career status level. Eliminate disparity within the DOH.
- b. Convert temporary positions to permanent state funded positions.
- c. Establish shortage differential pay for EHS positions to ensure competition with federal agencies and private industry.

Recommendation No. 4

Tank registration fees collected pursuant to Section 36.5 of HRS 342L were intended to provide tank owners with financial assistance for the remediation of leaking underground storage tanks. The loan program for tank remediation ended on December 31, 1993.

According to the Attorney General's office, monies in the current capital revolving fund can still be used for the upgrading of tanks. Since the owners and operators paid tank registration fees to the State under the intent that these funds would be available to them, the balance should not lapse into the General Fund.

Recommendation No. 5

It is unclear as to what is meant by "regulation of infectious waste spills". The HEER Office has responsibility in responding to incidents involving releases of potentially infectious wastes outside of licensed medical facilities but no regulatory oversight of generators. The Hospital Medical Facilities Branch insures that licensed medical facilities have plans and procedures in place to manage infectious waste through their inspection and licensure program. There is no established program or resources provided to regulate infectious waste handling at unlicensed facilities (e.g. small clinics and physicians offices). The OSWM has the regulatory authority to insure proper treatment and management of waste generated only after it leaves these facilities.

The Department will review and update its organization of infectious waste management, establishing formal responsibilities and program priorities. These were initially developed through an advisory committee. No major changes should be proposed in the degree of regulatory oversight until such a review is completed. If the review calls for expanded compliance/enforcement and can be justified, then additional resources will be requested from the legislature.