



1.1 HEER OFFICE LEGAL AUTHORITIES

Although a number of laws may be available to assist in carrying out responsibilities and action, the HEER Office derives authority for the main activities discussed in this TGM from the following statutes or rules:

- Hawai'i Environmental Response Law (HERL) - Hawai'i Revised Statutes (HRS), Chapter 128D;
- Hawai'i State Contingency Plan (Hawai'i SCP) - Hawai'i Administrative Rules (HAR), Title 11, Chapter 451
- Uniform Environmental Covenants Act (UECA) -HRS, Chapter 508C
- Hawai'i Emergency Planning and Community Right-to-Know Act (HEPCRA) - HRS, Chapter 128E

Each of these documents is discussed briefly in the following sections

1.1.1 The Hawai'i Environmental Response Law (HERL), Hawai'i Revised Statutes (HRS) Chapter 128D

The primary state-level enabling legislation for the HEER Office is Chapter 128D, HRS, which is referred to as Hawai'i's Environmental Response Law (HRS 128D). This statute, which became effective in 1990, establishes authority at the state level to respond to releases of hazardous substances. It is fashioned after the 1980 Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), commonly known as the Federal Superfund Law, which grants authority to the United States Environmental Protection Agency (USEPA). The HERL grants certain authority and responsibility to the HDOH to respond to both emergency and non-emergency hazardous substance releases or threats of releases.

A release is defined as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous substance, pollutant, or contaminant into the environment. Certain exclusions from the definition of a release are also identified in HRS 128D-1 (definition of release).

The HERL includes the definition of a hazardous substance, which is a compilation of specific hazardous substances listed in various



federal environmental protection laws such as the Clean Water Act, CERCLA, the Solid Waste Disposal Act, the Clean Air Act, and the Toxic Substances Control Act. However, hazardous substances addressed under HERL also include oil and trichloropropane (this is a major difference from CERCLA). Consequently, the HEER Office is also involved in oil spill prevention planning, preparedness, and response activities as required under the federal Oil Pollution Act (OPA) of 1990.

Part II of the HERL (128D-31 through 128D-41) was adopted through amendments in 1997, and addresses the Voluntary Response Program (VRP). The VRP encourages owners and purchasers to voluntarily investigate and cleanup property that may be contaminated. More detailed information on the VRP is provided in Section 20.3.

1.1.2 Hawai`i State Contingency Plan (Hawai`i SCP), Hawai`i Administrative Rules (HAR) Title 11, Chapter 451

The procedures by which HDOH responds to hazardous substance releases under the HERL is described more fully in a set of administrative rules known as the Hawai`i State Contingency Plan (Hawai`i SCP) (HAR, 1995). These state administrative rules are based upon (but not the same as) the USEPA CERCLA-related administrative rules called the National Contingency Plan (NCP).

Among other things, the Hawai`i SCP explains:

- What hazardous substances are, and when parties are required to report releases of hazardous substances
- The process by which HDOH will oversee investigation and cleanup of releases and select cleanup remedies
- How the public will be kept informed and afforded the opportunity to participate in cleanup decisions

The site discovery, site investigation and site cleanup processes that are described under the Hawai`i SCP rules are described in more detail in Section 2.

1.1.3 The Uniform Environmental Covenants Act (UECA), Hawai'i Revised Statutes Chapter 508C

The UECA (HRS, 508C), enacted in July 2006, provides a statutory framework for imposing certain conditions on environmental response projects. These "institutional controls," as they are called,



are used in situations where it is not feasible or necessary to remove all contamination. The UECA provides a regulatory mechanism for recording institutional controls and requires the creation of a publicly accessible, web-based registry to identify properties utilizing this mechanism.

The UECA creates an “environmental covenant”, which specifies the conditions for a property. The environmental covenant is recorded on the official land records to assure that current and subsequent owners of the property are subject to the conditions until the covenant is amended or terminated. The UECA operates only in conjunction with other environmental laws and does not itself prescribe any cleanup processes or standards. An environmental covenant recorded under UECA is used only as part of an environmental response project. UECA is not limited to use by HDOH. Any two parties can enter into a UECA environmental covenant.

1.1.4 The Hawai`i Emergency Planning and Community Right-to-Know Act, (HEPCRA), Hawai`i Revised Statutes Chapter 128E

The Hawaii Emergency Planning and Community Right-To-Know Act of 1993 (HEPCRA), established planning, reporting, emergency notification, and public information access requirements related to hazardous chemicals (HRS 128E). HEPCRA is modeled after the federal Emergency Planning and Community Right-to-know Act (EPCRA). The act also created the Hawaii State Emergency Response Commission (HSERC), established within the HDOH, as well as Local Emergency Planning Committees (LEPC) located on O`ahu, Maui, Hawai`i, and Kaua`i Islands to implement emergency response planning and related actions.

Under HEPCRA, facilities that have spilled hazardous substances, or that store, use, or release certain chemicals are subject to various reporting requirements. All of this information is made publicly available so that interested parties may become informed about potentially dangerous chemicals in their community. Facilities must report annually (using the Hawai`i Chemical Inventory Form – HCIF – sometimes referred to as Tier II reports) on hazardous substances stored on their premises, if the amounts stored exceed specified threshold planning quantities.



For additional information and guidance relating to hazardous chemicals, emergency planning, and emergency response, see Section 2.3 and Section 20.1.

1.1.5 Authority to Request Site Information

The HERL also grants HDOH the authority to require any person to submit information regarding a hazardous substance release. This authority is contained in Chapter 128D-4(b). Chapter 128D-8, provides authority to enforce orders that are issued by HDOH with penalties up to \$50,000 for each separate violation.

1.1.6 Authority to Conduct Site Inspections and Collect Data

The HERL, Chapter 128D-4 also grants HDOH extensive authority to conduct its own inspections and investigations. HERL Chapter 128D-4(b)(3) requires responsible parties (upon notice) to grant HDOH access to a facility/property at all reasonable times for inspections or to obtain copies of documents/records.

1.1.7 Authority to Require Responsible Party-lead actions

HERL Chapter 128D-4(a)(1) grants HDOH the authority to require that responsible parties investigate and clean up hazardous substance releases. If parties fail to comply with HDOH orders, HDOH may perform the work, sue the parties to recover its costs and impose punitive penalties and legal interest [128D-5(a)]. However, HDOH prefers to work cooperatively with responsible parties to address hazardous substance releases as provided for in HERL Chapter 128D-4(a)(3).

1.1.8 Authority to Conduct State-led Actions

Situations may arise when the party responsible for a hazardous substance release is either unable or unwilling to take appropriate action. In such cases, Chapter 128D-4(a)(4) grants HDOH the authority to conduct state-led response actions. This authority includes any investigation that is necessary, as well as the actual cleanup action. Responsible parties that refuse to cooperate with HDOH are subject to “cost recovery” and may also be required to pay punitive penalties, as discussed in Section 1.1.9.



1.1.9 Authority to Recover Costs

Chapter 128D emphasizes that responsible parties should report and clean up releases of hazardous substances. When responsible parties do not act, HDOH may take action and recover its costs as prescribed in Chapter 128D-5. In addition to recovering its cost, in some cases HDOH may sue the responsible party for punitive fines known as civil penalties for up to three times the cost of investigation and cleanup, or fines of up to \$50,000 for each separate violation 128D-8(a),(b). These severe penalties are designed to encourage voluntary cleanup of releases.