

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

July 16, 2020

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walsh
- William Lydgate
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Jonathan Shick

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. APPROVAL OF JUNE 18, 2020 MINUTES

Mr. Ritchie made a motion to accept the June 18, 2020 meeting minutes, as amended. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS - After Public Hearing

- A. Discussion and Action on the Amendments and the Small Business Statement After Public Hearing of HAR Title 13 Chapter 146-6, Fees, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader and Vice Chair Albitz explained that the post public hearing rule changes reflect an increase in fees at state parks. While most people were in support of the increases, some wanted to increase the fees even higher, which was not done.

Mr. Curt Cottrell, Administrator at DLNR's Division of State Parks, stated that COVID-19 has changed the context and dynamics of tourism and the visitors attending Hawaii's state parks. The public hearing was the first "remote" hearing in the State, which turned out to be very successful.

Comments made at the public hearing were as expected with no negative feedback. Thirteen testifiers attended and five testifiers submitted written testimonies, all of which approved the proposed fee increases. Mr. Cottrell confirmed that State Parks cannot egregiously increase the admittance fees to visitors at a sufficiently higher rate than to residents.

Chair Cundiff reminded the members that at the pre-public hearing meeting with this Board, State Parks provided a very detailed presentation. He expressed that this was a long process and due to the detailed information, as well as DLNR engaging stakeholders, the rule-making process went through quite seamless. Mr. Cottrell agreed but expressed the challenges currently being experienced from COVID-19; he appreciated this Board's review of the proposed rules.

Vice Chair Albitz made a motion to move the proposed amendments to the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on the following proposals to Title 11, promulgated by Department of Health (DOH)

1. New HAR Chapter 53, Section 401, Water Quality Certifications

Chair Cundiff expressed that the information provided by DOH is excellently summarized, thoroughly laid out, informative, and easy to follow considering the extensive volume of information. Discussion leader Mr. Nakamoto affirmed that the DOH team did a great job with the presentation of the proposed rules, which are all pre-public hearing. He recently met with the DOH team members to discuss the proposals.

Mr. Alec Wong, Manager at DOH's Clean Water Branch, summarized the proposed new rule section by explaining that the proposal is not new as it is currently part of Chapter 54. The proposal reorganizes and streamlines the rules to be consistent with the minimum federal requirements. Overall, these rules are expected to be positive regarding the economic impact to the State as the rules will reduce the cost of preparing applications for certifications.

Mr. Nakamoto made a motion to move the proposed new rule section to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

2. Amendments to HAR Chapter 54, Water Quality Standards

Mr. Alec Wong summarized the proposal, which entails conforming the State's water quality standards to the minimum federal requirements by updating Hawaii's existing numeric human health water quality standards with the latest criteria recommended by EPA (Environmental Protection Agency). One of the main reasons for maintaining regular updates to the rules is to continue receiving federal grant funding from EPA.

Forty new toxic chemical pollutants will be added to the toxic chemical pollutants list per the current EPA Human Health Criteria Table. Mr. Darryl Lum, Clean Water Branch's Engineering Section Supervisor, acknowledged the new chemical pollutants and explained that when a new standard is incorporated into a permit, the rules allow for a period of time where the standards become the "back-drops" to the permits. Thus, the rules then provide for an opportunity, when businesses that have new requirements imposed upon them, to allow for time to adapt to and comply with the changes.

The proposed amendments will largely impact twenty major permittees/businesses; these are mostly the wastewater sewer plants but the militaries and municipalities are also included. There are no foreseeable impacts to the small business community. GCA (General Contractors Association) members and others were approached on these rules.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

3. Amendments to HAR Chapter 55, Water Pollution Control

Mr. Wong explained that the changes to this chapter incorporate provisions from Chapter 54. The rules are intended to improve upon and clarify the permitting procedures and are expected to be more transparent for small businesses. Many of the changes are based on stakeholders' comments and concerns which will help expedite the permitting process and procedures when a discharge occurs.

Mr. Lum stated that prior to the public hearings, there is a mailing list of businesses that are interested in receiving information on the rule changes. Recently, an email blast was sent out to all those on the list including permittees and the counties.

Regarding who the dischargers are, Mr. Lum explained that dischargers are described as those releasing pollutants into the State waters. They include wastewater treatment plants, Hawaiian Electric power generating stations, refineries and other industrial-type discharging businesses. However, most of the permittees are from construction-related businesses; two to four permit applications a day are received from these types of companies.

Mr. Lum further explained that pollution for regulatory purposes is broken out into industrial and non-industrial businesses. The permits given to these businesses are considered "pro-active" tools. This means that permits are given first and then subsequently a business may comply by either not polluting or polluting to a level where it would impact a community whereby it would be mandated by DOH to cease discharging.

When a permit is not complied with or the business is polluting without a permit, DOH will invoke enforcement and order corrections. If there is an immediate issue, but it is remediated by the company and subsequently discharge reoccurs, it still may be treated as an acceptable discharge. While this does not always occur, Mr. Lum noted that in the sixteen years he has been with DOH, there was only one time when a business was shut down by DOH. This was because the remediation required was no longer economically viable for that business' type of facility. He also noted that closing of a facility in Hawaii is very rare.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

4. New HAR Chapter 56, Nonpoint Source Pollution Control

Mr. Wong explained that Chapter 56 is new although the state law governing these rules Chapter 342E, HRS, has been in existence for several years. The rules' purpose is to ensure that Hawaii's waters are adequately protected from all sources of water pollution, including NPS (nonpoint source) pollution.

Specifically, Chapter 342 provides the framework for the prevention, abatement and control of new and existing NPS pollution from activities conducted by State agencies; i.e., the departments of land and natural resources and agriculture. It also identifies known NPS water pollution and requires registration, development of a water pollution prevention plan, and implementation of management measures to be used to prevent or abate NPS pollution.

Mr. Lum provided some history to these rules and explained that while NPS is largely from industrial sources, which has been regulated by the federal and state governments since the 1970's, the Clean Water Act expressly requires states and not the federal government to regulate everything else that may be a pollutant that falls outside of NPS. Thus, Chapter 342E requires DOH to comply with the federal mandates and to have adequate authority to deal with water pollution issues that are not standard industrial practices.

Recently, there has been much concern because the major pollutant sources in Hawaii are not necessarily the same pollutants that have been dealt with in the past. For example, every time it rains, brown water advisories are given; this is run-off from some of Hawaii's major landowners. While a lot of good practices have been involuntary, from forestries to marinas and even department of agriculture, there is a need to have some form of formality and standards that all can follow for DOH to feel comfortable with.

The rules are expected to have a minimal direct impact on small businesses because the requirements target major landowners (not lessors of land) and government agencies, all of whom have been approached by DOH. It is recognized that a major effort is required for outreach purposes, particularly on the neighbor islands as many of the larger government agencies own marinas who are required to comply with the rules.

Chair Cundiff and Mr. Nakamoto appreciated all the work that was involved in preparing the proposed rules as well as being proactive in terms of the environment and the community's welfare. Chair Cundiff thanked DOH for its review and thoroughness of the rules and added that while he is confident that DOH will be reaching out to stakeholders he would like to reinforce the proactive outreach via emails, etc.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Discussion and Action on Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS

1. "Discussion Leader Assignments" for Board Members' State and County Agencies' Administrative Rule Review

Chair Cundiff noted that this Board recently received good press and coverage from Kauai's *Garden Isle* newspaper. Good job to board members Will Lydgate and Taryn Rodighiero who were participants in the article.

In regard to the Board's discussion leader assignments, Chair Cundiff noted that it is important to have good representation as well as fairness and equity so that each member is assigned at least one agency or county that they are discussion leader of.

Board members reviewed the proposed discussion leader assignments and agreed to the following:

- Governor's Office
 - Back-up Discussion leader – Vice Chair Albitz
- Office of the Lieutenant Governor
 - Discussion leader – Vice Chair Albitz
 - Back-up Discussion leader – Second Vice Chair Yamanaka
- Department of Education
 - Discussion leader - Ms. Rodighiero
- Department of Hawaiian Home Lands
 - Discussion leader - Mr. Lee
- Department of Land and Natural Resources
 - Discussion leader - Ms. Rodighiero
- Department of Commerce and Consumer Affairs
 - Back-up Discussion Leader – Ms. Rodighiero
- County of Kauai
 - Discussion leader - Mr. Lydgate
- County of Hawaii
 - Discussion leader - Second Vice Chair Yamanaka
- County of Maui
 - Discussion leader - Vice Chair Albitz
 - Back-up Discussion Leader – Mr. Lee

- City & County of Honolulu
 - Discussion leader - Jonathan Shick
 - Back-up Discussion leader – Mr. Nakamoto

Vice Chair Albitz made a motion to accept the proposed changes to the Board’s discussion leader assignments. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

2. Board’s Outreach Opportunities:
a. Draft Letter to Business Organizations

Board members reviewed the outreach draft letter to business organizations for connecting and reconnecting with various organizations. It was agreed that a change in the letter will entail removing “Please let us know if you would be interested in scheduling a meeting” to “We will follow-up with you to see if you would be interested in scheduling a meeting.”

Chair Cundiff reminded the members that a list of business organizations was emailed after the last board meeting. If members are interested in adding to this list, please let staff know. The list will be subsequently emailed to the members.

Ms. Atmospera-Walch made a motion to accept the proposed changes to the draft outreach letter to the business organizations. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

b. PowerPoint Presentation

Board members reviewed slide number 5 in the Power Point presentation, outlining the Board’s “Vision” and “Mission.”

Upon discussion and review, the members agreed to change the Board’s vision to read, “Hawaii is the most business-friendly state in the nation.”

VI. NEXT MEETING - Thursday, August 20, 2020 at 10:00 a.m.

VII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Mr. Nakamoto seconded the motion; the meeting adjourned at 11:56 a.m.