

## Small Business Regulatory Review Board

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### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

May 20, 2021

- 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
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- Jonathan Shick
- James (Kimo) Lee
- Mark Ritchie

**ABSENT MEMBERS:**

- Garth Yamanaka, 2<sup>nd</sup>  
Vice Chair
- William Lydgate
- Taryn Rodighiero

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn  
Alison Kato

II. **APPROVAL OF April 15, 2021 MINUTES**

Mr. Lee motioned to accept the April 15, 2021 meeting minutes as presented. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

Chair Cundiff welcomed the Board's newly assigned deputy attorney general Ms. Alison Kato; the Board is looking forward to working with Ms. Kato.

III. **OLD BUSINESS** – After Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 219, Parking for Persons with Disabilities, promulgated by Department of Health (DOH)

Discussion leader Mr. Nakamoto stated that these rules are after public hearing, and asked Mr. Bryan Mick, Program & Policy Development Unit Staff Coordinator from DOH's Disability and Communication Access Board, to provide a brief overview of the key points and any relevant information from the public hearing, which was held on April 8, 2021.

Mr. Mick reminded the members that the four changes having an impact on small businesses were: 1) exempting parking spaces reserved for people with disabilities in employee parking facilities from the signage requirements where such parking spaces are assigned to specific employees with disabilities; 2) exempting temporary parking spaces reserved for persons with disabilities or temporary access aisles from the "striping"

requirements; 3) posting a “No Parking in Access Aisle” sign to identify the access aisle in parking lots with four or less parking spaces; and 4) creating a new parking permit due to the possibility of less revenue from the loss of parking expenses as well as the installation of signage should there be no signs in the parking area.

Prior to the hearing, DOH reached out to the Chamber of Commerce of Hawaii and Retail Merchants Association by providing them with a copy of the hearing notice and a summary of the proposed amendments that would affect small businesses.

Nine people attended the public hearing; three testifiers at the hearing were in support of the rule changes and two written testimonies in support were received after the hearing. Chair Cundiff expressed appreciation from this Board for the work that was performed by DOH with regards to the outreach of the stakeholders.

Mr. Nakamoto motioned to forward the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 56 Nonpoint Source Pollution Control, promulgated by DOH

Discussion leader Mr. Nakamoto thanked Mr. Matthew Kurano, Environmental Health Specialist at DOH’s Clean Water Branch, for attending today’s meeting and asked that he provide an overview of the rule changes and what had occurred at the public hearing.

Mr. Kurano stated that the proposed rules are to control water pollution for nonindustrial sources and to ensure that Hawaii’s waters are adequately protected from all sources of water pollution, including NPS (nonpoint source) pollution.

He reminded the members that prior to the public hearing this Board requested that DOH attempt to work closely with the stakeholders. The public notice was publicized in December 2020 and a hearing was held on February 1, 2021. In between these dates, DOH informally reached out to a variety of stakeholders - the University of Hawaii agricultural services, active community participants, and the NGO (non-governmental organizations) community, which includes law firms that represent plaintiffs with alleged violations.

At the public hearing, eight parties consisting of individuals as well as organizations, provided testimonies supporting the amendments; however, some of the testifiers requested clarification to parts of the rules. While this resulted in no substantive changes to the rules, it prompted DOH to include language to some of the sections to help clarify and describe definitions and rationale for the changes.

Chair Cundiff noted that the information provided to this Board is extremely thorough and thought-out. Mr. Kurano responded that educating the stakeholders for compliance assistance is beneficial in the long run as the rules are meant for perpetuity.

Mr. Nakamoto motioned to forward the proposed amendments to the Governor for adoption. Dr. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS – Before Public Hearing**

##### **A. Discussion and Action on the Proposed Amendments to HAR Title 11 Chapter 55, Water Pollution Control, as follows, promulgated by DOH**

- a. Appendix B, Multi-Sector General Permit (MSGP)
- b. Appendix E, Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
- c. Appendix F, Authorizing Discharges of Hydrotesting Water
- d. Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering
- e. Appendix K, Small Municipal Separate Storm Sewer Systems

Discussion leader Mr. Nakamoto explained that one of the changes connected to these proposals is a new expiration date; he requested that DOH representatives provide additional changes to the rules.

Mr. Darryl Lum, Supervisor at DOH's Clean Water Branch Engineering Section, explained that the biggest change to Appendix B, MSGP, is that Hawaii is switching to and following the EPA's approach for handling storm water discharge. The prior industrial storm water permit was handled in such a way that the storm water was hard to assess compliance. The EPA now requires numerous measures with benchmark monitoring and corrective actions, which is believed to be a more effective method and approach to protecting the state's water quality; also, commentary received from the outreach efforts of stakeholders regarding this approach was positive.

The biggest change for Appendix E, Authorizing Discharges of Once Through Cooling Water Less than One (1) Million Gallons Per Day, allows for field test kits for chlorine testing. This will help resolve an issue with the chlorine testing times. Currently, federal regulations require 15 minutes which means that when a sample of water is taken it will need to be prepared and go through the chain of custody to the lab within 15 minutes. Thus, the proposed field test kits will help ease the present time crunch to comply with the rules.

The biggest change for Appendix F, Authorizing Discharges of Hydrotesting Water and for Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering is to the affluent limitations. This is expected to simplify compliance requirements and help the dischargers with their on-site personnel when there are no online narrative requirements so that someone on-site will immediately see there is a problem and will not have to wait for the samples to come back from the laboratories. This change will also help to make things much simpler for enforcement personnel in terms of reporting requirements.

The biggest change for Appendix K, Small Municipal Separate Storm Sewer Systems, which came about because of a federal court case, requires the permitting agencies to follow a two-step process. The first process is comprehensive and includes all the permit requirements. The second is a two-step process whereby requirements must be done

through public notice. Mr. Lum added that stakeholder outreach was held for this proposal a number of years ago and everyone preferred the two-step process.

Mr. Alex Wong, Program Manager, added that every five years DOH's Clean Water Branch will come back to this Board for approval, which is meant to streamline the overall processes. Chair Cundiff commented that the fact sheets provided by DOH outlining the reasons and rationale for the changes were very helpful.

Mr. Lee motioned to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

## **V. LEGISLATIVE MATTERS**

### **A. Discussion on the following Legislative Matters**

#### **a. Senate Bill 1034, SD1, HD2, CD1**

This measure authorizes boards to use interactive conference technology to remotely conduct meetings under the State's open meetings law. It also amends the requirements for public notices of board meetings and for in-person board meetings held by interactive conference technology.

Chair Cundiff explained that this measure was tracked throughout the legislative process and passed. In summary, it will allow this Board to use interactive technology, such as Zoom, to conduct board meetings. While the changes allow board members to be present at meetings through interactive conference technology, the location is not needed to be disclosed on the agenda nor is it required to be made available to the meetings' attendees.

While the Governor has yet to sign this measure, it does not take effect until January 1, 2022. Therefore, this Board will continue to conduct its monthly meetings as it has been for the remaining of the year under the presumption that the Governor's proclamations will continue to suspend the Sunshine Law.

## **VI. ADMINISTRATIVE MATTERS**

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

#### **a. Discussion of a proposed digital orientation manual for the board**

Chair Cundiff reminded the members that DBEDT staff emailed to the board members a link with four sections depicting a draft of the Board's proposed digital orientation manual. He appreciated staff for putting this together and noted that it is an incredible resource for new members coming on board through the orientation process as well as serving as a great tool for existing board members. Mr. Ritchie concurred and stated that this manual would be a model for other boards and commissions.

Once finalized, the manual will be added to the Board's website under the Member page, which would also be available to the public. A discussion about whether or not to include the members' resumes ensued. DBEDT staff offered to provide an edited bio/summary of each board member for their review and approval.

Mr. Ritchie motioned to accept the proposed digital orientation manual provided that resumes of the members may, instead, include short bios. Dr. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

b. Update on the Board's Budget

There is currently nothing new to share on the Board's 2022 budget.

**VII. NEXT MEETING** - Thursday, June 17, 2021 at 10:00 a.m.

**VIII. ADJOURNMENT** – Mr. Shick motioned to adjourn the meeting and Vice Chair Albitz seconded the motion; the meeting adjourned at 10:54 a.m.