

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

October 21, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:07 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- William Lydgate
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch
- Garth Yamanaka
- James (Kimo) Lee

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Margaret Ahn

II. APPROVAL OF September 16, 2021 MINUTES

Mr. Ritchie made a motion to accept the September 16, 2021 meeting minutes, as amended. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS – Before Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 55, Water Pollution Control, promulgated by Department of Health (DOH), as follows:

- 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 and Vice Chair Albitz stated that this proposal represents appendices under Chapter 55 which covers NPDES General Permits. No major small business impact appears to exist as the 170 agencies that have these general permits are government agencies; she added that most small businesses are sheltered organizations and able to receive an exemption.

Mr. Darryl Lum, Engineering Section Supervisor at DOH's Clean Water Branch, explained that the purpose of the NPDES general permits is to control requirements of those agencies that may potentially be causing pollutants in state waters. In February 2021, an early outreach process to all the stakeholders and various organizations was conducted.

In August 2021, a Zoom public hearing was held with a total of 20 persons participating. While no one provided testimony at the hearing, three sets of specific comments totaling 20 were received by DOH, all of which were from government agencies regarding the general permit. No other comments were received from small businesses or from the public.

Fifteen of the 20 comments were in support of Appendix B and 5 were in support of Appendix K. Only one of the comments represented a change in the original proposed rules; this change will increase the deadline in submitting a document for the Appendix B general permit from 90 days to 180 days.

Both Chair Cundiff and Vice Chair Albitz commented on the comprehensive summary from the public hearing and feedback from of the public.

Vice Chair Albitz motioned to move the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 13 Chapter 256, Ocean Recreation Management Rules and Areas, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader Ms. Rodighiero explained that the rule amendments regulate the number of entities in the waters of Kahalu'u Bay on the Big Island. Eight limited permits are to be created on a shift basis – four permits allowed in the morning and four in the afternoon. The public hearing had several attendees with 20 testifying and 48 providing written comments.

Mr. Edward Underwood, Administrator at DLNR's Division of Boating and Ocean Recreation (DOBOR), noted that Ms. Rodighiero explained the public hearing well and confirmed that DOBOR was allowing for either 4 full-time or 8 half-time permits. Based on comments at the public hearing, the language in the rules will be amended and proposed to include "non-motorized" vessels to cover all forms of surfing.

Ms. Rodighiero motioned to move the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 16 Chapter 171 Subchapter 3, Miscellaneous Insurance Rules, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader Ms. Rodighiero explained that the proposed amendments are to clarify terms and duration of licenses and also to update how fees are processed; i.e., an electronic process.

Ms. Eunice Park, Staff Attorney for DCCA's Insurance Division, confirmed that the rule changes were mostly for streamlining the conducting of business with a potential cost savings due to less time managing the insurance processing. The public hearing was held in August 2021; no one attended, and no testimony was received. As a result, no changes were made to the rules after the public hearing.

Ms. Park noted that based on past rule changes at the Insurance Division, it is quite common to not receive testimonies or attendance at the public hearings. For this particular rule amendment, only one inquiry came in.

Ms. Rodighiero motioned to move the proposed amendments to the Governor for adoption. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on the Proposed Amendments to Rules and Regulations of the Liquor Control Commission of the County of Kauai, promulgated by the Department of Liquor Control – County of Kauai

Discussion leader Mr. Lydgate explained that the proposed pre-public hearing rule changes will bring the rules up-to-date.

Director Leo Sandoval from the County of Kauai - Department of Liquor Control confirmed that the existing rules are quite antiquated and had not kept up with current technology. Thus, digital notarizing and processing on-line applications are now included in the rules. Due to these updates, there will be a financial impact to small business; for example, under Section 2.12(b)(4), an increase in direct wine shipments by wineries is being imposed to \$180 from \$48 annually. However, this fee increase is expected to be passed onto the direct shippers, which are mostly from the mainland.

Under Section 4.8.5, a new \$45 processing fee will be assessed for changes to existing trade names; however, this does not happen very often and is considered a modest fee. Other proposed fee increases are not expected to be passed onto small businesses; for example, a \$10 cost for safety classes will be imposed onto employees.

In regard to stakeholder outreach, Director Sandoval indicated that he personally reached out to the licensees and has posted the entire proposed changes on the Kauai Department of Liquor Control's website. In addition, town hall meetings are held with an open invitation to all those that might be impacted by the proposed changes.

Mr. Lydgate stated that the new, increased fees appear reasonable. Chair Cundiff added that the summary provided by Director Sandoval was appreciated because it was very thorough and concise.

Mr. Lydgate motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to the Board of Water Supply and Regulations Chapter I, Water and Water System Requirements for Developments, Section 1-102 Water System Facilities Charges; and Chapter II, Water Service to Consumers, Section 2-202 Installation of Water Service, promulgated by the Board of Water Supply (BWS), City and County of Honolulu

Discussion leader and Second Vice Chair Shick explained that the rule changes mostly represent a change in the water fees that will help balance out the demand usage and associated fees.

Mr. Ernie Lau, Manager and Chief Engineer for the Honolulu BWS, which is 100 percent self-sufficient, introduced Mr. David Ebersold, Program Manager at CDM Smith and Consultant for BWS, who conducted a presentation on BWSs' water system facility charges.

The presentation is a follow-up to BWS's Water Master Plan, which was presented to this Board a few years ago. The Plan looked ahead 30 years by evaluating the entire water system, identifying necessary improvements and balancing the needs with costs of providing water to customers. The one area that was not discussed at that time was the water system facilities charge, which over the next 30 years, BWS will need to invest in over 800 infrastructure projects island-wide costing more than \$5.3 billion.

Mr. Ebersold explained that BWS's system is quite complex and made up of a tremendous amount of infrastructure in order for water from the water forces to get to the individual service connections; there are 170,000 service connections servicing 145 million gallons of water per day to 1 million people.

The water system facilities charge is a one-time charge based on water capacity. It applies to all new development requiring water from BWS's system with additional capacity needed for existing water service. However, this one-time charge excludes development that has already been paid for and where the water systems have already been installed. Reasons the water system facilities charges are being updated include changes in water patterns and growth needs as well as increased costs. The estimated water system facilities charges shortfall is about \$30 million per year.

BWS's six-year capital improvement program includes new pipeline pumps, reservoirs and water treatment systems. The proposed charge is based on a fixture unit which measures the amount of water that a water-user uses. For non-residential development (i.e., small businesses, commercial facilities, industrial, hotels, parks and schools), the charge is currently \$620.85 for 50-fixture unless or less. If there are more than 50 fixture units then each fixture unit is charged only \$220.29.

The proposed water system facilities charge for non-residential development is a uniform charge per fixture unit of \$370.74. If a small business, which typically is not a big water user, does not have many fixture units, that would result in a huge benefit due to a reduction in the overall fixture charge. For larger water users, such as a medium-sized shopping centers with 250-fixture units, that cost would be more.

Agriculture customers, which are an important group, currently pay 60 percent of their full cost of water service in recognition of the important economic food security value that agriculture provides; this is strongly supported by stakeholders. Therefore, the intent is to keep the same premise and structure for the water system facilities charges so that agriculture customers would remain paying only 60 percent of the actual costs.

Mr. Lau explained that BWS's stakeholder advisory group, which consists of approximately two dozen leaders in the community from all sectors and areas of the island including chambers of commerce and hotel and real estate industries, are all active participants in this group; they have been meeting for five years and has been providing BWS with valuable input. Additional stakeholders such as developers, farmers, and the farming community were also involved in discussions. Elected officials at the county level are currently being contacted for input on the proposal and thirty neighborhood boards will be approached for input and feedback as outreach is still being performed.

The farming community has asked for a delay in water increases for one year; this will be taken up with BWS Board of Directors. It is recognized that the farming community is currently struggling, and it is BWS's intent to help them in any way it can. Mr. Lydgate expressed that the proposed improvements are very much needed, especially in the Honolulu area where it is very critical and where there is a benefit to this investment as well.

Chair Cundiff commended BWS for its outreach efforts while including stakeholder comments in the process as this tends to be extremely advantageous prior to the rules becoming adopted; it also shows that BWS is taking its responsibility seriously. While many of the changes have an effect beyond small business it appears BWS has been provided good solid feedback from various levels of the community. Overall, although supplying a good water system is not easy, BWS is performing very well and very effectively.

Second Vice Chair Shick motioned to move the proposed amendments to public hearing. Mr. Lydgate seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 73, Barbers, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader Ms. Rodighiero explained that the proposed rule changes represent medical clearances for all barber and cosmetologist licensees, which total approximately 11,000. However, during the COVID-19 epidemic and in order to help ease the financial pressure, this medical clearance was removed, although the DCCA boards still have discretion to make any exceptions or requests for medical clearance, if needed.

Ms. Jenny Yam, Executive Officer at DCCA's Professional and Vocational Licensing Division, clarified that this proposal is not a permanent requirement for licensure. The only time when this rule provision would take effect is if and when DOH declares an emergency or an epidemic.

Ms. Yam explained that when the COVID-19 crisis began in March 2020, the State of Hawaii was deemed in an emergency whereby the Governor issued a statewide stay-at-home mandate. This emergency was carried over until May 2020 when the state allowed barbershops and beauty salons to reopen.

Subsequently, the statute for medical clearance and the respective rules were suspended by the Governor's 8th to the 21st emergency proclamations, the latter of which expired August 6, 2021. The Governor has since approved emergency rules to be adopted to repeal this mandate for 120 days so that DCCA can go through the regular rule-review process for the "official" repeal.

Ms. Yam further explained that this rule proposal is in front of this Board for consideration of any potential small business impact. However, during the entire time and up until August 6th, there were no concerns or questions from the public or from small business. Also, when the State Boards officially met and reviewed the repeal proposals, there were again no concerns or questions from the public or small business.

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

D. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 78 Cosmetology, promulgated by DCCA

See discussion above in Section IV. C.

Ms. Rodighiero motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

E. Discussion and Action on Proposed New Administrative Rules Title 23, Chapter 5, Establishment and Administration of Right-of-Way Widths and Setback lines for Planned Street and Transit Improvements, promulgated by Department of Transportation Services – City and County of Honolulu

Discussion leader and Second Vice Chair Shick explained that this proposal is mainly administrative in nature and explains how the rules, which relate to set-back lines and right-of-way widths for planned street and transit improvements, are adopted.

Ms. Dreanalee Kalili from the Department of Transportation Services explained that the existing rules were adopted in 1986 and describe which properties are affected by set-backs along both major and minor streets in the City and County of Honolulu. However, currently the only way that a set-back can be modified is through the rule-making process. Thus, in an effort to stream-line the procedure, an administrative process is being established so that rule-making requirements are not needed each time a change in the set-back line requirement occurs.

In preparing the small business impact statement, Ms. Kalili noted that a direct impact to small business was not found as the changes would potentially impact any property owner that is a small business. In any case, in the interest of caution and transparency, the rules are before this Board to ensure that a potential impact to small business was not inadvertently missed.

Second Vice Chair Shick motioned to move the proposal to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

F. Discussion and Action on Proposed New HAR Title 4, Chapter 161.1 Hemp Production, promulgated by Department of Agriculture (DoAg)

Discussion leader Mr. Lydgate explained that the proposed pre-public rule changes reflect processes and procedures of growing industrial hemp in Hawaii along with related fees and penalties for violations.

Mr. Leonard Obaldo, Acting Director at DoAg's Quality Assurance Division, explained that the proposed new rules were mandated by Act 14, Session Laws of Hawaii 2020, which terminated the existing two-year hemp pilot program and legalized the commercial hemp production under the USDA Domestic Hemp Production Program. Essentially, this Program allows hemp growers in Hawaii to be licensed without any fee requirements. Prior to this, Hawaii's DoAg had executed the hemp pilot program which has more than 50 licensed hemp growers.

Although the proposed new rules allow for no application or license fees, imposed duties on the part of DoAg to assist in enforcing restrictions provided no additional financial resources for the added duties. As a result, the rules propose a \$50 per hour inspection fee, which is considered reasonable and imposed by other DoAg divisions for other types of inspections. There is also a violation fee, up to \$10,000, depending on the alleged violation.

Mr. Obaldo added that outreach to existing hemp growers would be performed to determine any impact to the small businesses.

Mr. Lydgate motioned to move the proposed amendments to public hearing and that DoAg's Quality Assurance Division reach out directly to Hawaii hemp licensees prior to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. 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

Chair Cundiff briefly noted that the Phase II taskforce met for the second time in a Zoom call. The taskforce is now awaiting a financial proposal from NIC sometime this month. Once received, the taskforce will comb through it and eventually come back to the Board with a presentation.

VI. NEXT MEETING - Thursday, November 18, 2021 at 10:00 a.m.

VII. ADJOURNMENT – Vice Chair made a motion to adjourn the meeting and Mr. Lydgate seconded the motion; the meeting adjourned at 11:19 p.m.