

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

October 17, 2007

No. 1 Capitol District Building – Conference Room 410

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:32 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Sharon L. Pang
- Michael Yee
- Dorvin Leis
- Donald Dymond
- Richard Schnitzler
- Charles Au
- Bruce Bucky

ABSENT MEMBERS:

Peter Yukimura

STAFF:

DBEDT

Dori Palcovich

Steve Bretschneider

Ilene Deutsch

Office of the Attorney General

Margaret Ahn

GUESTS:

Anna Fernandez, Remedial Project Manager, Hazard Evaluation & Emergency Response, Department of Health (DOH)

Sharon Leonida, Hazard Evaluation & Emergency Response, DOH

Beryl L. Ekomoto, Hazard Evaluation & Emergency Response, DOH

Clifford Inn, Boating Safety Education Program Specialist, Department of Land and Natural Resources (DLNR)

Lawrence Lau, Deputy Director, Office of Environmental Health Administration, DOH

Joanna Seto, Section Supervisor, Clean Water Branch, DOH

Melissa M. Langley, Member, Common Ground Hawaii Coalition

Noa Napoleon, Member, Common Ground Hawaii Coalition

Garry Kaaihue, Member, Common Ground Hawaii Coalition

Caswell Ross, Veteran Services' Coordinator, Office of Veterans' Services, Department of Defense (DOD)

Mark Moses, Director, Office of Veterans' Services, DOD

Edward Underwood, Administrator, Division of Boating & Ocean Recreation (DOBOR), DLNR

Michael Jones, Assistant District Manager, DOBOR, DLNR

Kevin Yim, Boating Staff Officer, DOBOR, DLNR

Charlene Tamanaha, Executive Officer, Board of Electricians and Plumbers, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs (DCCA)

Paul Yuen, Legal Branch Supervising Attorney, Insurance Division, DCCA

Lauren Willson, Planner, Office of Solid Waste Management, DOH

Mayami Bendinel, Planner, Solid & Hazardous Waste Branch, DOH

Karl Motoyama, Coordinator, Office of Solid Waste Management, DOH

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the September 19, 2007 Board meeting were approved as presented.

III. OLD BUSINESS

- A. Review and discussion of post public hearing statement of HAR Chapter 11-452, "Interim Guidelines and Procedures for Decontamination and Cleanup of Illegal Clandestine Laboratory Methamphetamine Manufacturing Sites" (DOH) – Ms. Anna Fernandez, Remedial Project Manager and Environmental Health Specialist of DOH's Office of Hazard Evaluation & Emergency Response, explained that the public hearing was held in Oahu on September 12, 2007, and in Maui, Kauai, and Hilo, Hawaii via videoconferencing. One person attended the hearing and four written comments were received from the State Narcotics Division, the Federal Drug Enforcement Administration (DEA), the Honolulu Fire Department (HFD) and an

independent environmental consultant. She stated that the DEA, HFD and independent consultant requested a few changes to the rules for clarification of the requirements and a more generalized format required for certain reporting due to the sensitivity of a criminal investigation for this type of site. DOH acknowledged that these requested adjustments would be made to reflect the DEA's suggestions. There were no changes requested that would affect small business. Mr. Schnitzler recommended that the proposed rules proceed to the Governor for adoption; the Board unanimously agreed.

- B. Review and discussion of post public hearing statement of HAR Chapter 11-55, "Water Pollution Control"** (DOH) – Mr. Lawrence Lau, Deputy Director of DOH's Environmental Health Administration explained the proposed changes to the rules and that the changes were driven by the Federal Environmental Protection Agency. He stated that four comments were made at the public hearing. He also stated that when the statement was sent to the Governor on October 9th she signed off on the rules. Mr. Yee stated that even though the rules have already been adopted, he would have recommended that the rules proceed to the Governor for adoption; the Board unanimously agreed.

Mr. Lau also proposed to the members that HAR Chapter 11-55-38, entitled "Historic and Burial Sites Review" be presented to public hearing for repeal. The purpose of the changes is to repeal the language in the rules that currently require all National Pollutant Discharge Elimination System permits to send to the State Historic Preservation Division. This is regardless of the potential impact on cultural, historic, architectural or archaeological sites. Upon review, Mr. Yee recommended that the proposed repeal proceed to public hearing. In addition, the Board unanimously approved that after the public hearing, the repeal proceed to the Governor for adoption; the Board unanimously approved both recommendations.

- C. Review and discussion of post public hearing statement of HAR Chapter 4-158, "Non-Agricultural Park Lands Program Rules"** (DOA) – Chair Woods reviewed DOA's proposed rules after public hearing. Mr. Schnitzler indicated that no new issues were presented since the Board first reviewed the proposal. Upon review, Mr. Schnitzler recommended that the rules proceed to the Governor for adoption; the Board unanimously agreed.
- D. Review and discussion of post public hearing statement of HAR Chapter 16-80, "Electricians and Plumbers"** (DCCA) – Ms. Charlene Tamanaha, Executive Officer, Board of Electricians and Plumbers from DCCA, explained that no written testimony was received at the public hearing; oral testimony was positive. The testimony confirmed that the amendments were primarily housekeeping measures and supported the revisions. The revisions clarify the degree of supervision a license (electrician or plumber) is to provide an unlicensed person and defines project site as a location where electrical or plumbing work is being performed. Upon review, Vice Chair Pang recommended that the proposed rules proceed to the Governor for adoption; the Board unanimously agreed.

IV. NEW BUSINESS

- A. Review and discussion of HAR Chapter 13-233 "Motor Vehicle and Parking Rules"** (DLNR) – Messrs. Clifford Inn, Edward Underwood, Michael Jones, and Kevin Yim spoke to the members about the proposed set of rules. Mr. Inn explained that parking fees at State harbor facilities have not been adjusted since the management of state-owned recreational harbors was transferred to DLNR in 1994. He explained that the proposed rules will allow DOBOR to raise parking fees to a level commensurate with County rates, standardize its parking rules and provide DOBOR with the ability to adjust rates in the future as needs dictate.

Second Vice Chair requested that the DLNR representatives address information regarding "user conflict." Mr. Underwood explained that the current user conflicts come down to between the vessel owners that currently board in the Ala Wai Harbor and the recreational users. The Ala Wai Harbor has historically been used by the recreational users, surfers and canoe paddlers, who in essence have take ownership of the area. There is also a conflict with commercial activities taking place within the State's small harbors where the commercial vehicles are parking their cars and conducting commercial activities along with construction workers parking their cars and going to other sites where they are working. Mr. Underwood also noted that there are people sleeping in the harbor and problems with drinking and drug use. He explained that DOBOR has secluded an area where there will be no parking fees and mentioned that one of the businesses that will be impacted by these rules is the Hawaii Yacht Club. Even so, Hawaii Yacht Club is in support of the proposed rules because currently it does not have parking for their guests.

Members from the Common Ground Hawaii Coalition, Ms. Melissa McLangley and Messrs. Noa Napoleon and Garry Kaaihue, testified against the proposed rules and distributed to the members' written testimony. The members explained that the proposed rules are flawed because the rule change process masks the underlying problem at the Harbor which has long been the lack of effective enforcement. The Coalition believes that DLNR officials have not taken even minimal steps to curb misuse by the hotel employees and construction workers who will often fill the harbor parking lot with their vehicles before 8:00 a.m. The members believe that calling for a rule change to generate revenue and to control the parking is extreme. Each testifier provided specific reasons and concerns regarding the enactment of these rules. The users have requested from DOBOR that it post signs at the entrance of the harbor that would designate an area of the harbor to ocean recreational users. They believe that such a sign would put pressure on the hotels to work in good faith with those recreational users. The members noted that they would be in support of the rule changes if the rules were not so restrictive and did not include DLNR hiring a private company to collect parking fees.

Chair Woods questioned whether informal hearings were held by the department and whether the members of the Coalition attended the meetings; it was indicated that there were many hearings and the members attended all of them. Chair Woods explained that she understands the Coalition's issues, however, the rules need to get out to public hearing. She further explained that this Board reviews the rules for business impact and if there was a huge business impact the Board could very well send them back to the department to redraft the rules. If there is not a large business impact, which is currently the case, the Board needs to recommend to the Governor that the department go out to formal public hearing for these rules. She noted that this is the Coalition's next platform to bring their issues to the public hearing, and instructed them to pay close attention to the public hearing notices in the local newspapers. When the public hearing is completed, the rules will come back to this Board so the members can see if there is any business impact that perhaps was missed. Chair Woods also explained that it is very often that this Board hears from the public. It is also very good that the members heard from the Coalition and knows of its concerns. She encouraged them to keep going in the direction they're headed. Mr. Schnitzler recommended that the proposed rules proceed to public hearing; the Board unanimously agreed.

Chair Woods noted that upon hearing from the testifiers regarding parking issues, a trend was beginning to develop. This trend fits closely to the other issue harbors that this Board has been dealing with. Mr. Yee suggested that the changes may be closer to administrative policies rather than a State agency directive. Mr. Bretschneider explained that Honolulu is so far behind in regards to improving upon the State's infrastructure, to a large degree, many people have gotten a free ride for a long-time. Now that the State is attempting to change that, there is an over-reaction to the changes. Chair Woods asked that Mr. Bretschneider keep the Board posted on any changes he may hear regarding the State harbors and parking issues.

- B. Review and discussion of HAR Chapter 11-282, "Deposit Beverage Container Recycling"** (DOH) – Mr. Karl Motoyama, Coordinator and Ms. Lauren Willson, Planner at DOH's Office of Office of Solid Waste Management, explained that certain small businesses would be affected by these rules. They include businesses that operate redemption centers, retail stores, and distribution services. This is because they may be issued field citations if they are not in compliance with all deposit beverage container program requirements. Thus, this may have a negative financial impact on some businesses in the short term, but in the long term it will assist them to avoid more costly administrative penalties.

The proposed rules will make redemption centers, dealers, and distributors more accountable for their compliance with the requirements of the deposit beverage container program. Mr. Motoyama, explained that seeing immediate results for violations will also allow owners and operators to correct the problems and avoid a formal administrative action. Under the proposed rules, businesses always have the option of requesting an administrative hearing if they dispute the violations in question. It was noted that owners and operators that currently ignore compliance assistance and initial enforcement efforts (i.e. warning letters) will be more likely to take corrective action when there is an immediate financial incentive. This will help to level the playing field among competing businesses by allowing smaller businesses to avoid or substantially reduce the costs, e.g., legal, administrative, etc., for extended negotiation, settlement and/or litigation. It was also noted that the proposed rules will increase consumer confidence in the program as a whole, which will result in increased recycling and therefore will economically benefit businesses that operate redemption and/or recycling services. Upon much discussion, Mr. Yee recommended that the proposed rules proceed to public hearing; the Board unanimously concurred.

- C. Review and discussion of HAR Chapter 7-31, "Services to Veterans," and HAR Chapter 7-32, "Hawaii State Veterans Cemetery Rules of Practice and Procedure" (DoD) – Mr. Mark Moses, Director of DOD's Office of Veteran's Services explained that ten percent of the population in the State of Hawaii is a veteran; family members would include another thirty percent of the population. The changes to "Services to Veterans," which enacts Act 100, SLH 2007, require the Office of Veterans' Services at the request of a survivor or interested party of a deceased World War II Filipino veteran, to make payments director to a mortuary or crematory for funeral and burial services, and for the transportation of the veteran's remains to the Philippines upon submission of an itemized unpaid invoice. Changes to "Hawaii State Veterans Cemetery Rules of Practice and Procedure," were previously presented to this Board. Mr. Moses explained the difference between a burial vault or burial liner and a casket. A vault or liner is an enclosure that surrounds or is placed over a coffin containing human remains, which is buried in the ground. A casket serves as the inner enclosure of a deceased person; the vault/liner serves as the outer enclosure. The changes to this chapter will provide additional descriptive language to the visitors, clarify the fee structure and insert references to burial vaults and clarify duties of contractors for disinterment. After a series of questions and answers, Mr. Au recommended that the proposed amendments proceed to public hearing; the Board unanimously agreed.
- D. Review and discussion of HAR Chapter 16-171, "Miscellaneous Insurance Rules" (DCCA) – Mr. Paul Yuen, Supervising Attorney for DCCA's Insurance Division, explained the proposed changes reflect Subchapters 2, 5 and 6. Subchapter 2 reflects changes that have reinstated health insurance rate regulations. The authorization reference statutes have been updated and more information is given explaining when insurers are not required to disclose proprietary information. Subchapter 5 is new and provides new mortality tables for life insurers to use when determining insurance premiums. He explained that the tables provide new mortality in reference to whether an individual is a smoker versus non-smoker. Subchapter 6 is new and prohibits dishonest and predatory sales practices by insurers and producers to members of the United States armed forces. This change was made in reference to the scandals brought out in the media a few years ago where practices existed when new recruits were sold life insurance by the sergeants and the sergeants receive a kick-back. Vice Chair Pang recommended that the proposed rules proceed to public hearing; the Board unanimously agreed.
- V. **ANNUAL PLAN – Update on the following Projects:**
- A. Speakers' Bureau – Chair Woods updated the members as to what presentations have been made, to date. Chair Woods made a presentation to the Aiea Pearl City Business Association and to the County of Maui. At the Maui County presentation, she met with the County's Economic Coordinator. Chair Woods explained there is a sign-up process for doing presentations. Hastings and Pleadwell has proposed several suggestions including speaking at a number of the Rotary Clubs. Mr. Bretschneider mentioned that he is member of Honolulu Sunset Rotary which is held on Thursday nights at the Waikiki Yacht Club.
- Chair Woods indicated that the power point presentation is being revised, as the members' photographs are being inserted on the presentation. Once the power point is finalized, Ms. Palcovich will email it to all the members.
- B. Agency Letters/201M-7 Project – The members discussed the meetings they attended with the directors of the different agencies; the meetings were well received. The following meetings have not yet been scheduled, Budget and Finance with Mr. Dymond, Hawaiian Home Lands with Mr. Au, Department of Human Resource Development with Mr. Bucky, Department of Human Services with Vice Chair Pang, Department of Taxation with Mr. Au, Department of Transportation with Mr. Bucky and University of Hawaii with Mr. Leis. Additionally, a representative from the Department of Education indicated that there are no rules in that impact small business.
- C. Legislative Project – Chair Woods explained that she had to postpone her meeting with Senator Sam Slom. The meeting will be rescheduled and will focus on RegAlert legislation, promoting the Small Business Bill of Rights brochure as well as other Board matters.
- D. Regulatory Alert Project – Chair Woods explained that she and Ms. Palcovich have been researching some of the other states that have a regulatory alert system. She noted that the Lieutenant Governor's Office has been contacted about this project and are very interested in it. It is Chair Woods' vision to use the system for serious alerts by the small business community regarding administrative rules. She may look to the legislature for funding of the system.

- VI. REPORT FROM CHAIR AND BOARD MEMBERS** – Chair Woods explained that this Board received its first “complaint” from the Ombudsman’s Office. Mattson and the tugboat and vessel pilots approached the Ombudsman’s Office regarding the Department of Transportation’s “Vessel and Harbor Control” rules this Board reviewed in June 2006. The public hearing was scheduled for October 16, 2007, but it was postponed because it was determined that the rules that this Board reviewed and the rules that were being presented at the public hearing were significantly different. In any case, the rules will be coming back to this Board for review before proceeding again to public hearing.

Chair Woods stated that Ms. Jeanette Chang did not want to become a member of this Board again at the present time. Therefore, unless Ms. Chang completes the appropriate application and submits it to the Governor’s office, this Board will not officially nominate Ms. Chang as a member.

- VII. REPORT FROM COMMITTEES** – Nothing was discussed.

- VIII. ANNOUNCEMENTS** – Chair Woods announced that Ms. Deutsch’s temporary position is nearing an end so that this will be her last meeting. The members thanked Ms. Deutsch and wished her well.

- IX. NEXT MEETING:** Wed., November 14, 2007, No 1 Capitol Building, 250 South Hotel Street, Conference Room 410.

- X. ADJOURNMENT** – Chair Woods adjourned the meeting at 1:24 p.m.