

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

May 11, 2004

No. 1 CAPITOL DISTRICT BUILDING ROOM 410

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

#### MEMBERS PRESENT:

- Lynne Woods
- David Rietow
- Joyce Edwards
- Brian Zinn
- Dorvin Leis
- Robert Speers, Ph.D.
- Jeanette Chang
- Edward MacDowell
- Phyllis Shea
- Al Inoue

#### ABSENT MEMBERS:

Denise Walker

#### STAFF:

##### DBEDT:

Thomas Smyth  
Dori Palcovich  
Shawn Pelley

##### Office of the Attorney General

John Chang

**GUESTS:** Valerie Yin, Planner, Department of Health (DOH)  
Tom Rack, Hearing Officer, DOH  
Daniel Dinell, Executive Director, Hawaii Community Development Authority (HCDA)  
Stephen Miyamoto, Project Engineer, HCDA  
Steven Chang, Project Manager, Solid and Hazardous Waste Branch, DOH  
Lane Otsu, Planner, Solid & Hazardous Waste Branch, DOH  
Lene Ichinotsubo, Environmental Engineer, Solid and Hazardous Waste Branch, DOH  
Tim Lyons, Executive Vice President, Hawaii Business League  
Ron Gallegos, President, RCA Coalition of Care Homes

### WORKING LUNCH AS THE MEETING PROGRESSED

**II. APPROVAL OF MINUTES:** Minutes of the April 13, 2004 meeting were approved as presented.

**III. DISCUSSION OF CONFLICTS OF INTEREST** – Chair Woods explained that the Board is covered under the standards of “conflict of interest,” and so, when the Board reviews an administrative rule with which one of the members is a provider of that particular group, it is strongly urged that the members recuse themselves from participating in voting on that rule. Attorney Chang also stated that if a rule directly pertains to potential conflict, the member should first notify the Board and then recuse himself or herself from voting. Dr. Speers indicated that when he first became a Board member, he researched the conflict of interest topic with both the Hawaii Ethics Commission and the Attorney General’s office. The response he received was that when a member’s specific business is the only entity that is affected by the rule, the member must recuse themselves. But if the topic discussion is industry-wide, then members need not recuse themselves. The rationale is that if members have to recuse themselves from a discussion, it would defeat the entire purpose of the Board’s objectives. As this is a very serious issue, it was determined that written clarification was needed. Chair Woods will contact the Hawaii Ethics Commission and report back to members next month.

**IV. PUBLIC COMMENTARY** – The Board unanimously voted to add HAR Chapter 11.100.1, “Adult Residential Care Homes,” to the agenda and to hear testimony from Mr. Tim Lyons, Executive Vice President, Hawaii Business League. Mr. Lyons expressed concerns regarding Director of Health Chiyome Fukino’s response to the Board’s proposed recommendations to the rules, and clarified the specific concerns of each respective section. Dr. Speers recommended that the Board send a letter

to Governor Lingle relaying that the Board does not support the rules in their current form but would like to see the changes that have been submitted to DOH on behalf of the industry representatives. Further, until the Board sees evidence that those changes have been made, the Board is unwilling to approve the rules for adoption. Mr. Zinn further recommended that the letter outline specific reasons for the recommendations. The Board unanimously agreed.

## V. OLD BUSINESS:

- A. Review and discussion of post public hearing statement from HAR Chapter 15-20, "Subchapter 10 Improvement District 11" (HCDA) – Mr. Dan Dinnell introduced himself as the new Executive Director of HCDA, and opened the floor for questions. A series of questions and answers ensued that entailed HCDA's assessment methods, alternative methods, and the testimony heard at the public hearing. Mr. Dinnell indicated that HCDA was using a two-step process whereby HCDA Board will approve the preliminary rules, and then submit them to the Governor for approval. Approval of the subject rules is currently required in order for HCDA to proceed to a competitive bidding process. Chair Woods recommended that a memorandum be sent to Governor Lingle indicating that before the Board submits final comments, they would need to review the recommendations of the HCDA Board, (on or around June or July), regarding the proposed assessment formula and any suggested alternatives, as well as review testimony from the second public hearing. The Board unanimously agreed.
- B. Update, review and discussion of proposed HAR Chapter 11-1, "Rules of Practice and Procedure" (DOH) – Mr. Tom Rack, Hearing Officer, DOH, indicated that minor changes were made on the small business impact statement from the last board meeting. He explained that modifying the rules was well overdue due to the need to address existing "gaps." Dr. Speers reiterated from last month that he requested the department incorporate some of the rights of the Small Business Bill of Rights. Mr. Rack explained that while the Bill of Rights was reviewed, in order to provide fairness to all the parties, it would be difficult for the department to single out a particular group, and indicated that there are some practical problems, such as the 30-day hearing requirement. Under "Contested Cases" in Chapter 91, the parties have to be given a minimum of 15 days notice before a hearing. According to Mr. Rack, to have a hearing done within 30 days is impractical, as well as unfair and a disadvantage to the respondents. Ms. Yin stated that the fairness issues within the process are much different because the proposed rules address how contested case hearings are to be conducted, not what occurs before the hearings. Thus, these rules address what a department will be doing after an alleged violation.

Chair Woods deferred recommendations on these rules until next month so the Board can thoroughly review the new small business impact statement. In addition, Dr. Speers will provide names and addresses of individuals to Ms. Palcovich so she may invite them to the next meeting to discuss experiences and concerns with the proposed rules. Vice Chair Rietow will also be considering inviting individuals that have an interest in these rules; Mr. Smyth indicated that testimony from neighbor islands can be received via telephone conference.

- C. Review and discussion of small business responses to proposed HAR Chapter 11-98.1, "Special Treatment Facilities" (DOH) – Dr. Speers explained the purpose of the rules, and described exactly what a special treatment facility (STF) is. He also explained the standard types of care providers within these STF's, and that most of the STF's in Hawaii were small business operators. He indicated that the industry's concern is that the rules will greatly increase the costs of these businesses' operations. Letters were previously sent to the providers from DOH's list of STF's; to date, six responses were received. Dr. Speers recommended that the affected businesses be invited to a focus group meeting in order to abstract the industry's main concerns, and that would ultimately determine the business' economic impact resulting from the rules. It was suggested that the impacted businesses will also be invited to attend the next Board meeting. The Board unanimously concurred. DOH will be notified of the Board's endeavors.
- D. Update of "Wai' Opae Tidepools Marine Life Conservation District" – Mr. Zinn indicated that it appeared that DLNR was not going to respond to the Board's specific recommendation. Chair Woods informed the Board that a lawsuit is still in process, that and a meeting has been scheduled with Mr. Peter Young, Chairperson, Board of Land and Natural Resources, for June 28, 2004 at 10:30 a.m. Travel approval was given for any inter-island members wishing to

participate. It was noted that a response to the Board's February 6, 2004 letter to the Governor has not been received.

- E. Update on Legislative Items – Mr. Smyth updated the Board on several small business-related bills, including a bill that relates to Section 201M-8 that deals with environmental health and safety issues. Although not yet signed by the Governor, a bill to convert the four positions in the Business Action Center from exempt to permanent civil service was approved during session. Mr. Smyth made reference to the resolution relating to Marine Life Conservation Districts, as well as resolutions on Workers' Compensation Reform, and Precautionary Principal. He also discussed the small business-related bills did not pass during session.
- F. Discussion of proceeding with existing administrative rule review – Chair Woods requested from the Board any suggestions as to the current rule review process; the Board agreed to go forward with the current process.
- G. Review of Administrative Rules by DBEDT in fiscal year 2004, to date – The Board reviewed the listing of rules reviewed; no action was taken.
- H. Assignment of Department Discussion Leaders – Chair Woods announced that Dr. Speers, Vice Chair Rietow and Ms. Walker would be ending their service on the Board as of June 30<sup>th</sup>. Those discussion leader's department assignments will be filled with current and new members. Thus, the following assignments have been made: Mr. Leis - Department of Accounting and General Services and the Office of the Lieutenant Governor; Mr. Zinn - Department of Transportation, Department of Defense, and Department of Land and Natural Resources (DLNR); Mr. Inoue – Back-up for DLNR; Ms. Shea – Department of Taxation and back-up for Department of Human Resources; Chair Woods - Public Utilities Commission, DBEDT, and Office of the Governor; Mr. MacDowell – Department of Hawaii Home Lands and Department of Public Safety, Ms. Chang and Ms. Edwards - Department of Education, and Ms. Chang – Department of Commerce and Consumer Affairs.

## VI. NEW BUSINESS:

- A. Review and discussion of proposed HAR Chapter 11-58.1 "Solid Waste Management Control" (DOH) – Mr. Steve Chang, Project Manger, Solid & Hazardous Waste Branch, indicated that these rules govern solid waste activity within the State and include the permitting of landfills, solid waste storage facilities, transfer stations that collect waste, recycling facilities, salvage operating facilities, and others. While DOH is in the process of performing a comprehensive review and revision of the rules, the current proposal concentrates on the first step of a major four-step revision process. The current changes include clarifying the definition of construction and demolition waste, amending the definition of recycling drop-off facility, clarifying the filing fee requirement for permit modifications, renewals and transfers, and clarifying the applicable requirements for special waste landfills. A series of questions and answers ensued. Vice Chair Rietow recommended that the Board support the rules to proceed to public hearing. The Board unanimously agreed.
- B. Review and discussion of post public hearing statement on HAR Chapter 8-54, "Teacher Licensing Standards" (DOE) – Chair Woods indicated there was no impact on small business and recommended that the rules proceed to public hearing. The Board unanimously agreed.
- C. Review and discussion of proposed HAR Chapter 19-122, "Rules Relating to the Examination of Applicants for Issuance and Renewal of Motor Vehicle Driver's Licenses and Instruction Permits" (DOT) – Chair Woods indicated that because there is an impact on small business, a small business impact statement should be provided; therefore, the rules will be deferred until the June meeting. DOT and the Hawaii Transportation Association will be asked to provide a list of driver's education businesses so they may be contacted to voice concerns they may have with the rule amendments.
- D. Review and discussion of proposed HAR Chapter 19-139, "Driver Education Program Requirements" (DOT) – Chair Woods indicated that because there is an impact on small business, that a small business impact statement be requested, and that the rules will be deferred until the June meeting.

DOT and the Hawaii Transportation Association will be asked to provide a list of driver's education businesses so they may be contacted to voice any concerns they may have with the rule amendments.

- E. Discussion of stack inspection exemptions by the Clean Air Branch, DOH – Vice Chair Rietow read an article from the newspaper regarding firms that were recently fined by DOH. He deferred further discussion until next month when more information can be obtained.

**VII. REPORTS FROM COMMITTEES** – Nothing was reported.

**VIII. REVIEW OF THE FOLLOWING EXISTING ADMINISTRATIVE RULES**

1. HAR Chapter 13-31, "Molokini Shoal Marine Life Conservation District – Maui" (DLNR) – Mr. Zinn indicated the rules allow for Marine Life Conservation Districts (MLCD's) to exist. He recommended that the Board endorse the fisheries rules outlining the establishment and continuation of MLCD's, and also noted that within the MLCD's, there are concerns regarding the chapters and other departments that affect business operations. .
2. HAR Chapter 4-29, "Dogs, Cats, and Other Carnivores" (DOA) – Vice Chair Rietow recommends and supports the rules, and although some refining is needed, the rules are positive for businesses.
3. HAR Chapter 3-143, "Standards for Coffee" (DOA) – Vice Chair Rietow contacted individual coffee businesses to gather input on the rules, which resulted in bringing forth specific issues that deal with this chapter as well as another chapter relating to roasted coffee. The coffee industry has been working with DOA in an attempt to modify the rules and rectify some of these issues. Vice Chair Rietow supports the ongoing work between DOA and the coffee growers industry to revise the standards.

**IX. REPORTS FROM THE CHAIR** – Chair Woods expressed that she is concerned that some of the agency directors may be ignoring the Board, despite the fact that the Board is legislated and works very hard to meet its objectives. Ms. Chang questioned if the directors are aware of the Board's functions and know for what purpose the Governor is using the Board's recommendations. Chair Woods proposed that in June she will hold a meeting for all department heads and deputy department heads to discuss the Board's functions; an invitation will be extended to the Governor to come to this meeting. It was also discussed that in the near future workshops will be planned for all those state employees that work with administrative rules; these workshops will be held in Oahu and on each neighbor island. She asked that members think about ideas for the workshop and to let Ms. Palcovich know; Chair Woods is intending to present an outline for the workshop at the next Board meeting. Additionally, Ms. Woods noted that an important item the Board will be working on is a new Executive Directive along with the Governor's office.

**IX. REPORTS AND UPDATES FROM BOARD MEMBERS** – Nothing was reported.

**X. POLICIES AND PROCEDURES:**

**XI. ANNOUNCEMENTS:** Nothing was reported.

**XII. NEXT MEETING:** Tuesday, June 8, 2004 at 10:30 a.m.; No. 1 Capitol District Building, Room 410.

**XIII. ADJOURNMENT:** Chair Woods adjourned the meeting at 1:23 p.m.