



STATE OF HAWAII
ENVIRONMENTAL COUNCIL
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SHANNON MEARS
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ENVIRONMENTAL COUNCIL MEETING MINUTES
Department of Health, Kinau Hale, 1st floor Boardroom
1250 Punchbowl Street, Honolulu, Hawai'i 96813
October 17, 2013
2-4 PM

Members Present: Scott Glenn (Chair) Charles Prentiss (Vice-Chair), Malia Akutagawa, Mark Ambler, David Atkin, Shannon Mears, John Richards, Mary Steiner, Iris Terashima, Glenn Teves, Genevieve Salmonson (OEQC Interim Director)

Members Absent: Paul Chang, Koalani Kaulukukui, Azita Quon, Marjorie Ziegler

Counsel Present: Edward Bohlen, Department of the Attorney General

OEQC Staff Present: Genevieve Hilliard, Susan Faulk

Other Attendants: Gary Gill (Deputy Director of Environmental Health Administration), Gary Hooser (Kaua'i County Council), Margaret Wille (Hawai'i County Council), Dayva Keolanui (Aide to Senator Ruderman), Sophie Cocke (Honolulu Civil Beat)

1. Call to Order

Chair Glenn called the meeting to order at 2:11 PM with quorum of 11 members.

2. Introductions/Attendance

All present members and guests introduced themselves.

3. Approval of Minutes

- Motion for approval by Ms. Steiner, seconded by Ms. Salmonson, and September 19, 2013 minutes approved by all Environmental Council (EC) members present.
- Note made that the July 18, 2013 meeting minutes have not been reviewed yet and will be done at the next scheduled council meeting.
- Retreat Notes from August 6, 2013 will also be revised with minor corrections. Motion made by Mr. Mears, seconded by Ms. Salmonson, and Retreat Notes approved by all EC members present.

4. Chair's Report

- Chair Glenn thanked Vice-Chair Prentiss for a sterling job chairing the September 19, 2013 EC meeting.
- Mr. Ambler, chair of the Information & Outreach Committee, was thanked for having done a great job with the committee and the EC's Facebook website. It was noted that there were more than 150 comments generated from the GMO post.

- Outreach/Workshops –
 - Chair Glenn reported giving a presentation on the Chapter 343 process to a UH Law School class.
 - Graywater Workshop – The Chair attended a workshop on amending the State Building Plumbing Code for addressing graywater issues and water efficiency. The EC may be petitioned to address this issue in a future Annual Report.
- Investigative Committee – Ms. Steiner to chair new investigative committee regarding the budget.
- Dropbox – The Council has set up a dropbox folder to store meeting agendas/minutes, working files for committees, research documents, correspondence, documents to share with public, etc.

5. OEQC Interim Director Report

- The requested OEQC supplemental budget was adjusted down from \$350,000 to \$150,000 by the Department of Budget & Finance (B&F), with possible further cuts to this requested amount in the future.
- The Fees Bill was resubmitted for consideration during next year’s legislative session.
- Comment made of greater attendance at The Green Industries Permitting Training Workshop held on October 15, 2013 due to the front-page announcement on The Environmental Notice and Facebook.
- Graywater Workshop – Mission to develop the definition for graywater and non-potable water, develop guidelines for nonpotable water and uses, and recommend its legislation and development. Possible future Annual Report topic regarding the reuse of nonpotable water.
- Special Session – Date not set for confirmation hearing; EC members will be notified of the set date and time.
- SharePoint Access – Currently obtaining passwords from EC members to be able to access SharePoint.
- Molasses Spill – The request for a State agency speaker was tabled by EC members to await federal EPA findings.
- Question previously rose during the September 19th EC meeting as to whether the EC budget is required to be under the OEQC budget – the Department of Health (DOH) had placed the EC budget under OEQC’s budget, but when asked about having separate budgets, the DOH said no. The EC would like to now know if placing the EC budget under the OEQC budget was determined by DOH or B&F. Director Salmonson agreed to report back on this.

6. Standing Committee Reports

Review of committee assignments done by Chair Glenn:

- Information & Outreach: Mark Ambler (Chair), Glenn Teves, Malia Akutagawa, Mary Steiner & Iris Terashima (5 members/3 needed for quorum).
- Exemption: David Atkin (Chair), Chuck Prentiss, Paul Chang, John Richards, Mark Ambler & Marjorie Ziegler (6 members/4 needed for quorum).
- Legislative: Mary Steiner (Chair), Paul Chang, Scott Glenn & Shannon Mears [*resigned as of 10/17/13*] (3 members/2 needed for quorum).
- Rules: Scott Glenn (Chair), Genny Salmonson, Koalani Kaulukukui, Shannon Mears & David Atkin (5 members/3 needed for quorum).
- Annual Report: Scott Glenn (Chair), Mary Steiner, Marjorie Ziegler & Azita Quon (4 members/3 needed for quorum).

Mr. Bohlen noted that even-numbered committees bump up the quorum number by one and suggested moving people around to have odd-numbered committees for quorum purposes. Chair Glenn would like to see how the committees work out and if it becomes an issue, then action will be taken at that point.

Note: The Council agreed to reorder the agenda so that agenda item 6a (Information & Outreach Committee) was discussed last.

b. Exemption Committee

Committee chair reported no meeting this month. DLNR submitted an application for an exemption change which is pending.

c. Legislative Committee

- Mr. Mears resigned from the committee, effective 10/17/13.
- Plan to meet with Senator Gabbard and staff on changes to Chapter 343 that regard beneficial actions.
- Suggestion for the I&O Committee to give more input to the Legislative Committee.
- EC resolution approved in unanimous vote by all members in attendance to allow Chair Glenn or designee to be the spokesperson for the EC during the 2014 Legislative Session.
- Investigative Committee established to meet with individual EC committees and assess budgets needs to present to the legislature for monies separate from OEQC. Members: Mary Steiner (Chair), Iris Terashima, Genny Salmonson, Scott Glenn & Shannon Mears (3 people needed for quorum).

d. Rules Committee

- Timeline Reassessment – Complete revised draft in December 2013/early January 2014 when the Rules Committee will vote on whether or not to pass the Rules package out to the EC.
- Goal - Rules package to be placed on the February 2014 EC meeting agenda to begin discussion at the Council level, working with the deputy attorney general.
- Goal - Rules package vote to be taken in May after a couple of months on the EC meeting agenda. The EC was also made aware of the fact that 2014 will be a re-election year for the governor, and the EC will need to work with his office in order to be able to enact these into the administrative rules.
- Joint Exemption-Rules Committee meeting – To be scheduled to review the recommendations from the Exemption Committee on how to improve and clarify the exemption process and the rules, and discuss the language.

e. Annual Report Committee

- GPI Study – HPU & UH professors are moving forward with the GPI study, focusing on the social and economic components. Numerous agencies/groups are interested in this study including, but not limited to the Office of Planning (OP), Department of Land & Natural Resources (DLNR), and the Hawai'i Green Growth initiative with Audrey Newman who is also entrusted in contributing to the Annual Report and trying to figure out what role the initiative might have in it. Ms. Salmonson also mentioned that the newly appointed statewide sustainability coordinator for the governor's office, Jackie Thiel, is interested in the Annual Report.
- Target dates:
November 2013 – Completion of professors' report by end of month.
December 2013 – Completion of all reviews, comments, and revisions by the Annual Report Committee by end of month.

January 2014 – Council to vote on accepting the report by January 15th in order to reproduce and distribute the report by January 31st according to statutory requirements.

- Ms. Steiner thanked Ms. Salmonson for approval of \$1000 for the graphic artist service.
- Ms. Steiner also asked all committee chairs for their reports and all EC members for their bios for the Annual Report.

a. Information & Outreach (I&O) Committee

The I&O Committee brought forward eight motions for the Council to consider and vote on. The Council agreed to review and vote on the eight motions individually and then collectively as a package.

Preamble to Motion – To fulfill HRS 341-6, the EC is the liaison between the director of the Environmental Health Administration (EHA) and the general public to solicit information, comments, complaints, recommendations, and advice through public hearings or any other means to address the GMO issue.

Definitions/Points Discussed – Pesticides, agriculture, herbicides (glyphosate, atrazine, 2,4-D), Environmental Action Level (EAL), Environmental Hazard Evaluation (EHE), Environmental Hazard Mitigation Plan (EHMP), symbiotic (zoox) algae, coral reefs, marine ecosystem, Department of Agriculture (DOA), etc.

Motions presented to the EC to suggest recommendations to OEQC:

- 1) ***The Environmental Council recommends the HDOA immediately raise fees on pesticide product licenses to cover the anticipated state costs of increased regulatory efforts. Further recommend the fees vary according to the amount or quantity of pesticide to be sold, offered for sale, or distributed.***

EC comments:

- Per Mr. Teves, small farmers will not be affected as much as larger ones as the fees will be based upon the amount of pesticides sold.
- Per Mr. Ambler, the fees are administered to manufacturers and distributors, and not the public, although the fee may be passed down through economics to the public.
- Comment made for concern that people of the state would be on the hook to pay for any negative impact of pesticides, but comment also made that the company that actually causes the harm will foot the bill.
- Mr. Bohlen and Mr. Richards suggested language to clarify who is paying the fee and the rationale behind the motion. Mr. Richards stated the agricultural industry would be affected negatively, and pesticides, in general, have not been proven to be harmful across the board.
- Chair Glenn felt that the language was straightforward as there are existing fees to obtain pesticide product licenses and that the fees should vary according to the amount or quality of substance. It is not attributing blame and it is not introducing something new, it is just saying that there is an increased regulatory effort on pesticide management and the fees are insufficient and should be raised.
- Mr. Gill stated that fees in other states were higher. Fees will go into the General Fund.
- Mr. Teves feels there needs to be studies on how much of a concentration is in the land/soil, in the ocean, and in the air.
- It was felt important to find out from the DOA how much is in the fund? How much does DOA collect?

- In comparison with an organic farmer, they pay \$500/year to be certified plus for each test before and after.
- Do the fees apply to anyone with imports or anyone who sells it?

Public comments:

- Margaret Wille: Keep fees so they are proportional and have no set thresholds as companies will tend to try to stay under the threshold to avoid the fee, and having no thresholds/cutoff points are better when writing laws.
- Gary Hooser: Hawai'i's fee is \$110/year, Washington State \$195/year, and California \$750/year, so Hawai'i's rate is really low. The research shows that, because of the nature of the funds, the registration fund goes to many other people before it gets to the consumer so it has a relatively very small effect on the end product when it comes out.

Vote on revised motion:

The Environmental Council recommends the HDOA immediately initiate rule changes to raise fees on pesticide product licenses to cover the anticipated state costs of increased regulatory efforts. Further recommend the fees vary according to the amount or quantity of pesticide to be sold, offered for sale, or distributed.

All members present were in favor of motion 1 as revised. Four (4) EC members were not present for this vote.

- 2) ***The Environmental Council recommends the HDOA make an unreasonable adverse effect determination on use of glyphosate, atrazine, and 2,4-D that results in contaminated runoff due to toxicity to nontarget organisms.***

EC comments:

- The intent of this motion is not that anyone who uses glyphosate, atrazine, or 2,4-D is causing an unreasonable adverse effect, the intent is that if you are using it in the manner that results in contaminated runoff that gets to nontarget organisms and actually adds toxicity to them, then that is an unreasonable adverse effect.
- Ms. Terashima felt that the term "runoff" should be taken off as it tends to be related to water, whereas it can impact anything, water, soil, or air.
- Question rose as to what is an acceptable amount?
- Toxicity levels studied...environmental action levels. Inhalation or dermal exposure? Offsite migration? Impacts?
- Per Mr. Ambler in the statutes, the DOA can determine what is an unreasonable adverse effect on the environment.
- Another statute allows them to prohibit acts that use any pesticide in a manner that would cause an unreasonable effect on the environment.
- Another statute allows them to cancel or suspend pesticide uses that have an unreasonable effect on the environment.
- So it enables the DOA to execute certain powers based on this. Yes, it gives them regulatory muscle.

Public comments:

Overall enables the DOA to enforce if they find unreasonable adverse effects.

Vote on revised motion:

The Environmental Council recommends the HDOA make an unreasonable adverse effect determination on use of glyphosate, atrazine, and 2,4-D that results in offsite migration due to toxicity to nontarget organisms.

All members present were in favor of motion 2 as revised. Four (4) EC members were not present for this vote.

- 3) ***The Environmental Council recommends HDOH conduct an investigation into the extent of the aquatic or other impacts of pesticide off-site migration in the State of Hawai'i. Recommend that HDOA fund the investigation using the pesticide use revolving fund.***

EC comments:

- Discussion on adverse impacts to nontarget organisms in general, and looking at specific receptors/risk assessment and how to narrow. Mr. Ambler stressed that time is of the essence and that we should not wait too long as the EC is only making recommendations and that there are other agencies making rules.
- Mr. Bohlen stated that more homework needs to be done with more input from the Department of Agriculture (DOA).
- The I&O committee chair was asked to invite a DOA representative to the next EC meeting to aid in rewording language.

Vote:

No vote taken today, further discussion needed.

- 4) ***The Environmental Council recommends HDOH to follow its investigation with site specific regulation following the EHE and EHMP program at sources with identified exceedances.***

EC comments:

- Find exactly what the sources are of a contaminated site and create a plan to keep it from happening in the future.
Q: *Is this expected to be an exceedance downstream from an agricultural plot?*
A: *Yes, in the sediment.*
- Per Mr. Ambler, the Environmental Hazard Evaluation (EHE) is the quickest way to get something done from a contaminated site to a managed site to a cleaned up site considering the issue here and its ongoing impact on aquatic habitat in Hawai'i. Mr. Teves mentioned the current situation with trying to figure out how to clean up heptachlor on Moloka'i.
Q: *Is this cleanup of an agricultural source, an agricultural product?*
A: *Yes.*
- Suggestion made to take out "the EHE" and replace with following "applicable action levels."

Vote:

No vote taken today, further discussion needed.

- 5) ***The Environmental Council recommends HDOA make available to the HDOH any restricted use pesticide information it may not already publish to support the regulatory efforts.***

Motion tabled until next meeting.

- 6) ***The Environmental Council recommends HDOH implement an annual food pesticide residue sampling program which includes glyphosate and infant food product sampling. Recommend the HDOA fully fund the sampling program using pesticide use revolving fund.***

Motion tabled until next meeting.

- 7) ***The Environmental Council recommends that the state and county agencies follow the precautionary principle and uphold the public trust in regulating pesticide use in Hawai'i.***

Motion tabled until next meeting.

- 8) ***The Environmental Council does not by its recommendations intend to preempt regulation at the county level.***

Motion tabled until next meeting.

7. Water Resources Research Center - WRRC

Dave Penn was not present as the WRRC is undergoing reorganization so will not be on the agenda for the next couple of weeks.

8. Public Testimony

Gary Hooser, Kaua'i Council

- Agrochemical operations on state lands specifically should not qualify as traditional agricultural use and should be looked at in terms of an exemption, and I would encourage that to be part of the plan to do an EA at minimum, or an EIS.
- Hope that language is improved as this is not intended to preempt family activities, and each county may have different needs and situations.
- Investigation concept – Do not know what impacts are on environment from intense uses of agricultural products; therefore, there is a very important need to do investigations.

Congratulated the EC on the work being done.

Margaret Wille, Big Island District 9 Council

- The Big Island's focus is on protecting the public with their right to know and not contaminating a neighbor's non-GMO crops, land, and water sources with no further use of open-air GMO crops and plants. As the State defers to the Federal government regarding pesticide studies and regulations, there is a sense of urgency on the local level to take action due to the incredible degradation just since 2009.
- The counties will not be preempted on what they are already doing.
- The Big Island is currently the only island not dominated by biotech.

9. Correspondence Received

No correspondence received.

10. New Business

- Due to numerous references to completed studies, suggestion made to have a common place for members and public to access reference/informational material such as Facebook.
- Next meeting date: Thursday, November 21, 2013 at OEQC, 2-4 PM.
Speaker: Department of Agriculture (I&O Committee to arrange).
Presentation: Hawai'i Green Growth Initiative, Audrey Newman.

11. Adjournment

The Chair thanked everybody for attending and adjourned the meeting at 3:58 PM.