



STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII
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Puananionaona Thoene

Vice Chair
Mary Begier

Members
Roy Abe
Stephanie Dunbar-Co
Scott Glenn (*Ex Officio*)
Maka'ala Ka'umoana
I. Robin Kaye
Theresita Kinnaman
Robert Parsons
Ron Terry
Michael Tulang
N. Mahina Tuteur

July 2, 2019 Meeting Minutes
Approved on July 30, 2019

Meeting held on
Tuesday, July 2, 2019, 1:00 – 3:30 PM
No. 1 Capitol Building, Room 410
Executive Office on Aging
250 S. Hotel St., Honolulu, HI 96813

Members Present (11): Puananionaona Thoene (Chairperson); Mary Begier (Vice-Chair); Roy Abe; Scott Glenn (Director, *ex officio*, Office of Environmental Quality Control (OEQC)); Maka'ala Ka'umoana; Robin Kaye; Theresita Kinnaman; Robert Parsons; Ronald Terry; Michael Tulang; Mahina Tuteur

Members Absent: Stephanie Dunbar-Co

Staff Present: Bill Cooper, Deputy Attorney General (AG); Jen Ching, OEQC

Public Present: Gordon Scruton, Jr.; Cindie Ogata

Note: Text in **bold** indicates original text of agenda

1. **Call to order, roll call and quorum, introductions**

With a quorum of eleven members present, Chairperson Thoene called the meeting to order at 1:04 PM.

2. **Review and approval of prior meeting minutes**

Chairperson Thoene announced that the March minutes were approved at the last meeting with amendments and the meeting minutes are now current.

The Council discussed the April, May, and June 2019 minutes and found errors. Chairperson Thoene marked up her draft and would be amending the minutes for transmittal to OEQC.

MOTION: Member Kaye motioned for April minutes to be accepted as amended, and Member Ka'umoana seconded. The Council approved the motion (10-0-1), Member Tuteur abstained.

MOTION: Member Ka'umoana motioned for May minutes to be accepted as amended, and Vice-Chair Begier seconded. The Council approved the motion (11-0-0).

MOTION: Member Tulang motioned for June minutes to be accepted as amended, and Member Ka'umoana seconded. The Council approved the motion (10-0-1), Member Kaye abstained.

3. OEQC Director's Report

Director Glenn reported that moving forward, meeting minutes will try to be drafted by the 23rd of each month.

For OEQC staffing, Mr. Segundo is on vacation. OEQC continues to have only one professional staff member in the office.

In preparation for the implementation of the new rules, OEQC held trainings with Department of Transportation (DOT) and Department of Land and Natural Resources (DLNR) as they are working on their revised lists. DOT would like to have its list concurred with before September. Director Glenn has reached out to the counties to arrange for training in July (ideally, two-day training per county). The training for the City and County of Honolulu Department of Planning and Permitting (DPP) will be in late July. Maui County and Hawai'i County will be scheduled soon, but Kaua'i County has not responded. Director Glenn would appreciate any help from Council members in outreach to counties and other stakeholders. Training on Moloka'i and Lana'i are to be determined.

Ms. Gaskin's contract ended at the end of the fiscal year. She prepared a draft guide for updating exemption list and a draft citizen's guide to HEPA. OEQC is wrapping up the exemption guidance but there are outstanding questions for the Council to complete the guidance.

The following updates are still required:

- Include an introduction describing what is contained in the document (background, overview, how to prepare an exemption list).
- Clarify process for agencies without exemption lists.
- Clarify that concurrence is encouraged but not required.
- Pending the Council direction:
 - Clarify that agencies with recent lists only need to reorganize their lists, while agencies with old lists need to update their lists.
 - Add guidance for emergency exemption provisions.
 - Clarify the process to declare an exemption.

July 30th is the Governor's rules signing. Hopefully, everyone can attend. The Council is currently not planning to have committee meetings that day but may want to have the Exemption Committee meet for exemption lists from agencies or allocate sufficient time for agencies wanting to get their list concurred.

The next Council meeting after July 30 is September 3, after the new rules take effect and before the submittal deadline for the September 8 bulletin, but before publication of the first list of exemption notices (September 8). August 23 is the first publication after new rules take effect.

OEQC is developing the detailed schedule for the July 30th rules signing. Member Kaye and Vice-Chair Begier suggested inviting legislators to the ceremony.

4. Hawai'i Administrative Rules (HAR) Chapter 11-200.1, Section 8 Applicability of Chapter 343, HRS, to Agency Actions; Subchapter 8 Exempt Actions, List, and Notice Requirements; and Section 32 Retroactivity:

For agency exemption lists that already have Council concurrence, they are grandfathered in and the 7 years to do another Council concurrence starts from adoption of the rules on August 9. Member Terry said that the question that was brought up is to whether an agency that has a past concurrence, but not received concurrence under the new rules, use Part One (*de minimis*) in the rules and questioned their obligation for submitting it to OEQC for publication.

Member Terry expressed his view that based on language of rules, the concurrence process and the Council's role are for the convenience and reassurance of agencies. It is still the agency's exemption list, and the concurrence gives them comfort that the Council and the public have reviewed and commented on it. It is not practical to have all agencies to have new lists as soon as new rules in effect as it takes 60 to 90 days to go through process and the Council can only process two or three at a time. Agencies have seven years to update lists. He plans to send letters to all agencies about the briefing process, what is expected with new lists, and encourage updating sooner rather than later. It is in the best interest of the agencies to start and go through the process.

a. Applicability of HAR 11-200.1-16(a)(1) to agency exemption lists that have a concurrence before the adoption of HAR Chapter 11-200.1 but are yet to receive a concurrence following the adoption of HAR Chapter 11-200.1.

MOTION FROM LAST MEETING: Member Terry withdraws the motion. Member Parsons withdrew his second.

MOTION (NEW): Member Terry motioned that it is the Council's interpretation that agencies are able to use exemptions from Part One or Part Two as defined in the rules in HAR 11-200.1-16(a)(1), without creating a new exemption list or having Council concurrence on it. Vice-Chair Begier seconded.

Discussion: Member Terry mentioned that the appropriate administrative rules should be cited in the written version of the motion. Director Glenn mentioned that OEQC expects agencies to submit a list of exemption notices, whether they have an exemption list or not, to the OEQC on the submittal deadline for the 8th publication. The core concern is that agencies will have to follow Part Two, but do they also have the benefit of the *de minimis* provisions in Part One? On a mechanical level, the agency will be documenting an exemption notice, but it will be from the 1996 category, so it will be from the grandfathered list and not from the new rules/categories. This should not preclude agencies from doing exemptions. One potential result is that the agency decides not to use a list at all and submit list of individual exemption notices independent of a list. The goal of the list is to build public confidence and have input from the public. Member Terry reminded the Council that it had decided not to have interim transition rules and just use common sense to bridge from old rules to new rules.

After discussion, the Council approved the motion (11-0-0).

b. Structure of exemptions lists into Part 1 and Part 2 pursuant to HAR 11-200.1-16 and in consideration of the provisions of HAR 11-200.1-8(c) for emergencies.

Director Glenn proposed this topic as an outcome from consultations he conducted with State agencies on the new rules. The question for the Council to consider is having a Part Three for emergencies that are imminent or high-risk danger or should those items be included in Part One and Part Two.

Discussion: Member Terry would like to see a Part Three to make it clear as to what is and is not an emergency. Governor-declared emergencies are not subject to HRS Chapter 343. Member Ka'aumoana also would like a Part Three. She commented that this is not going to stop any agency from acting in an emergency, but if the action has long-term impacts, the agency should be able to describe the impact that occurred. She mentioned two reasons: 1) the agency should learn from it and perhaps have a different approach and 2) to reassure the public that the agency was cognizant. Chairperson Thoene also supported having three parts.

Director Glenn's recommendation is to make a Part Three for emergencies because it reflects that HAR 11-200.1-8(c) has a different process. This will allow agencies to do after-the-fact exemption notices for emergencies and publish them in the subsequent 8th bulletin.

MOTION: Director Glenn motioned that it is the Council's interpretation that an agency is able to create a subsection of its exemption list that identifies emergency actions pursuant to HAR 11-200.1-8(c) and recommends such a subsection be identified as 'Part Three'. Member Parsons seconded.

Discussion: Chairperson Thoene asked how to address the caveat for particularly sensitive environments in light of Part Three. The default approach is to include emergency actions in Part One and Part Two, and emergency actions can be separated out to the end of each part. Council members recognized that agencies might still like to have flexibility in structuring their lists and desire to keep the emergency provisions in their Part 1 and Part 2 sections rather than separating them into a Part Three. The Council was comfortable with the wording of the motion because it gave agencies flexibility in their exemption list structure without requiring them to do it one way or the other.

After discussion, the Council approved the motion (11-0-0).

c. Procedures for obtaining Council concurrence for an exemption list that is being restructured versus an exemption list that is being restructured and updated.

Director Glenn explained that Council concurrence is not required for agencies to issue exemptions, but it is meant to provide a way for agencies to work with the public and the Council on what is appropriate. The seven years concurrence in the rules is meant to be a touch base to get an update. The requirement to get concurrence is not an approval; it is just to show that there is some dialogue and public participation.

Director Glenn gave an overview of the concurrence process. The process is not required by law or in statute. This is an informal process and cannot be the only way for agencies to do it. The main question is whether the Council sees value in a different set of steps for reorganizing current content versus adding or deleting content to an existing exemption list.

Discussion: Member Terry would like to see an expedited process for agencies just reorganizing the list into Part One or Part Two and either the committee or Council assesses it. Chairperson Thoene is in favor of an expedited process especially for agencies that updated within the last two years and are just restructuring. But depending on which agency submits, if it is new or old and how long, what the impact on environment is, perhaps an update is needed. Member Ka'auomoana suggested having an expedited process but does not want to lose the involvement of the public or Exemption Committee. Director Glenn mentioned that the notice is published twice a month and exemptions are published every 30 days, same as the Environmental Assessment comment period. He recommends the Council not to be arbitrary with each agency and have parameters to determine if the agency must go through the process. Ms. Ogata mentioned that it would be good to have the concurrence list on the OEQC website, so the public can see when the last concurrence was done and recommended improvements that OEQC could make to its website. Director Glenn agreed to look into them.

MOTION: Member Terry motioned that the Council approve an expedited process for reorganization of exemption lists that are not older than seven years or are being updated for content, that would involve both the Exemption Committee and Council review at some point, with details to be worked out by the OEQC and Exemption Committee Chair. Member Kaye seconded. The Council approved the motion (11-0-0).

5. Information & Outreach

Committee Chair Abe commented that he is trying to distribute information from the invasive species and sea birds presentations. Dan Dennison from DLNR put the videos on their website. He recommends that the links be published in the Notice and on the OEQC website. Committee Chair Abe will send information to Director Glenn for publication.

The Committee intends to make a list of conferences, including a budget, and sources of funding that the Council could consider participating in on an annual basis. The Hawai'i Congress of Planning Officials Conference should be considered.

6. Annual Report Committee update

Committee Chair Parsons wants the Council to consider a draft list of questions that Mr. Segundo compiled that will go out to six state agencies. He would like each agency to identify a liaison and send the questionnaire via SurveyMonkey. This would require someone to make the survey. Committee Chair Parsons would like to have the SurveyMonkey be an agenda item for the July 30th meeting. Chairperson Thoene asked that OEQC include the questions on the email reminder to the Council.

A discussion ensued and Chairperson Thoene expressed some concern using SurveyMonkey such as confidentiality, length of survey, and likelihood of responses. Committee Chair Parsons commented that the questions could be tailored to individual departments and open to suggestions by the departments. Ms. Ogata suggested have a meeting with the departments to get the best and quickest feedback. Member Abe pointed out that there is a hierarchy of who can speak on behalf the agency. Chairperson Thoene asked that the members come up with some ideas for discussion at the next meeting. Committee Chair Parsons said that Julie Yang and Riley Fujisaki from the House Finance Committee attended the Annual Report meeting today and they would be willing to provide suggestions.

7. Committee Assignments

Vice-Chair Begier mentioned to remove Charles Prentiss' name from the letterhead.

8. Correspondence Received

Director Glenn shared the Mānoa Neighborhood Board letter regarding the Ala Wai Flood Mitigation Project. He commented that this letter is premature in that no Final EIS has been published under HEPA and is only informational for the Council at this point.

9. Next Meeting: Tuesday, July 30, 2019, at about 1:00 PM, pending confirmation of the time for Governor to sign the rules.

10. Public Forum

None.

11. Adjournment

The meeting ended at 3:31 PM.