



STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII
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Chairperson
Puananionaona Thoene

Vice Chair
Mary Begier

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

September 3, 2019, Meeting Minutes
Approved on October 1, 2019

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

Members Present (12): Puananionaona Thoene (Chairperson); Mary Begier (Vice-Chair); Roy Abe; Stephanie Dunbar-Co; Scott Glenn (Director, *ex officio*, Office of Environmental Quality Control [OEQC]); Maka'ala Ka'auomoana; Robin Kaye; Theresita Kinnaman; Robert Parsons; Ronald Terry; Michael Tulang; Mahina Tuteur

Members Absent: None

Staff Present: Edward G. Bohlen, Deputy Attorney General (AG); Leslie Segundo, OEQC

Public Present: Faith Caplan and Rosemary Barayuga, State Department of Transportation (DOT)

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

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

With a quorum of eleven members, Chairperson Thoene convened the meeting at 1:06 PM. Member Parsons joined the meeting at 1:09 PM for a quorum of twelve members.

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

MOTION: Member Begier moved, and Member Ka'auomoana seconded, that the Council approves the draft minutes for July 30, 2019. A brief discussion ensued, and no changes were offered. Chairperson Thoene called for the question, and the Council unanimously approved the motion (12-0-0).

3. **OEQC Director's Report**

- There was a brief discussion on a Civil Beat article on air travel emissions co-written by the Department of Land and Natural Resources (DLNR), the Department of Transportation (DOT), the Office of Environmental Quality Control (OEQC), and the Climate Change Commission that addressed Hawai'i's actions on such emissions.

- Director Glenn reported that the Planner V was out of the office.
- With respect to Council appointments, Director Glenn reported the number of Council members is decreasing due to attrition. He reported that he had passed on the Council's request for two new members; one with cultural experience, and another with agency experience. The Director asked that Council members encourage potential applicants to apply through the State's Boards and Commissions website.
- With respect to transitioning to new administrative rules, Director Glenn reported that he has been conducting training with various state and county agencies as well as private stakeholders. He noted that the County of Maui has scheduled training at the Hawai'i Congress of Planning Officials (HCPO) the following Friday. He also noted that he would be travelling to a meeting of the U.S. Climate Alliance, as well as training for the County of Hawaii and the U.S. Government on Hawai'i island. Director Glenn reached out to the U.S. Navy for training. He noted that the deputy attorneys-general have reached out to schedule a training. Member Ka'auomoana suggested having the large law firms attend. Legal practitioners have attended presentations to the Hawai'i State Bar Association (HSBA), the American Planning Association (APA), and development-oriented groups.
- Director Glenn asked the Council to direct questions to him about how the rules impact processes and operations; other than that, he directed the Council to contact the professional staff (the Planner III and the Environmental Health Specialist III) for questions concerning how the rules affect projects.
- Director Glenn noted that the OEQC SharePoint site is being updated to reflect the new rules. There is a new EA-EIS library for documents on or after August 9, 2019. EA-EIS documents before August 9, 2019, will go into the 1996-2019 library (grandfathered under the 1996 rules); or the pre-1996 archive. "Lists of Exemption Notices" has been added as a new library. To date, nothing has been set up for scoping meeting recordings, but Director Glenn plans to do that when the OEQC gets its first EIS under the new rules.
- Director Glenn also noted that the periodic bulletin (*The Environmental Notice*) is being updated to indicate what actions have been grandfathered under the old rules. The issue of September 8, 2019, issue will feature lists of exemption notices by department. The last page of the bulletin will include updated definitions.
- Director Glenn reported that the OEQC is updating its websites and formulating guidance (especially pertaining to updating and reorganizing exemption lists).
- Director Glenn reported that a new unofficial compilation of statute and rules is currently in progress. The OEQC plans to move on to the Citizen's Guide and OEQC Guidebook when that is completed. OEQC plans to prepare guidance on sea level rise as requested by the State Climate Commission. He noted that as a matter of policy, OEQC focuses on process guidance rather than subject matter guidance. Member Ka'auomoana requested that Director Glenn get feedback on the above materials from non-profit organizations. Director Glenn responded that he did some training with Earthjustice and other organizations.

4. Annual Report Committee Update

Committee Chair Parsons reported on the following items:

- The Annual Report (AR) Committee met earlier, and the Chair finished the letter to agencies as well as the list of questions that were narrowed down and revised. Chair Parsons requested that Director Glenn review the distribution list so that a schedule can be formulated that would indicate when the letters are sent along with the Committee's follow-up activities.
- A brief discussion on integrating the Aloha Plus Challenge and Hawai'i Green Growth's efforts complemented the Committee's work. He inquired if there would be any benefit in including into the Annual Report. Chair Parsons noted that Ms. Chelsea Harder from Hawai'i Green Growth attended a committee meeting several months back and that he planned to ask for her participation in the current effort.
- Director Glenn suggested that the Committee schedule a meeting earlier than October to plug in Dashboard information to the proposed questions.
- A brief discussion ensued on including another question on an agency's experience with the revised rules would be premature.
- Chair Parson, noting the resource and time limitations the Council would need to surmount to meet the statutory deadline to submit the Annual Report suggested that the Council send agency letters out by September 17-18 with a suspense date of thirty days (October 15). The Committee would follow-up in two weeks on October 1 and offer to do a phone interview or answer questions.
- The Council considered expanding the scope of interviewees to include county agencies such as the departments of public works, planning, etc., to get more information. Member Ka'auomoana noted that the islands of Kaua'i and Hawai'i have lessons learned from lava and flood responses that tie into each of the proposed questions. Reporting on these lessons would provide a unique opportunity to benefit the Chapter 343, HRS, process.
- Recognized by Chairperson Thoene, Ms. Faith Caplan commented on her prior experience as a member of the Environmental Council. She related that when she served, the Annual Report consisted mainly of an update of databases. She noted that the eventual goal was to obtain data from all state and county agencies and if resources permitted, maybe even the federal agencies.
- Aiming to ensure enough information for the Annual Report, Chairperson Thoene initiated a discussion on the feasibility of having several alternate agencies if the state agencies did not respond. Chair Parsons responded that doing so might entail some difficulty in terms of time and resources as the Committee would need to query the same agencies across all four counties.
- The Council deferred on expanding the number of agencies, the format of the final deliverable, and word-smithing questions to give the Committee a digest of the lessons learned with appropriate examples.

- Director Glenn suggested that the Committee should encourage interviews when the Committee Chair could travel to O'ahu, or if not possible, another AR committee member on-island sit-in for the Committee Chair. He also suggested that the Council allow the Director and Chairperson to finalize the letter. At the recommendation of Deputy Attorney General Bohlen, no motion was necessary, and the Council agreed to allow the Director and Chairperson to work on finalizing the letter.

5. Exemption Committee Update

- Committee Chair Terry noted that the Exemption Committee did not meet today. Chair Terry reported that a letter concerning the exemption list process went out on August 16, 2019.
- Recognized by Chairperson Thoene and noting that DOT Highways Division (and other divisions in DOT) have many projects linked to federal funding and hence, federal requirements. Ms. Caplan inquired whether it would be possible to have a single system that addresses both federal categorical exclusions (CATEX) and exemptions.
- She noted that there are three states where the U.S. Department of Transportation (USDOT) has delegated CATEX determinations to the State. She noted that using Part 1 or Part 2 can be challenging as it seems that the DOT Highways Division could categorize everything that they do in Part 1, unless there is a sensitive environment.
- Committee Chair Terry responded that the premise that Part 1 actions are intended for non-sensitive environments is incorrect. If an action is in a sensitive environment, an exemption is invalid under Part 1 or Part 2. He noted that Part 1 encompasses de minimis actions that would have no potential for environmental impact (direct, indirect and cumulative), such as the purchase of supplies, personnel actions, etc. Part 2 encompasses actions that cannot be Part 1 (such as those involving repair or maintenance). In appropriate circumstances, such actions are exemptible. For example, repairs or maintenance involving the road shoulder could be exemptible, except where the shoulder requires a considerable length (e.g., several miles). He noted that drainage crossings, removing vegetation, changing access points need to be examined on a case-by-case basis. If the action involves a historic site, burials, endangered species in the right-of-way it would be prudent to declare these exempt under Part 2, and not Part 1. Ms. Caplan asked, and Chair Terry responded in the affirmative that a department could have exemption lists organized by division.

6. Information and Outreach Committee Update

Committee Chair Abe reported that video links had been sent to all attendees. He briefly discussed Committee participation in other conferences and presentations. He then discussed with members a potential new topic in solid waste and landfill diversion efforts. Finally, there was a brief discussion on the Maui wastewater injection wells.

7. Rules Committee Update

Director Glenn reported that the Committee had not met as they observe how the new rules are being implemented. He noted that he is monitoring for critical flaws. He noted that questions on interpretation of the rules should be brought directly to the Council.

8. Legislative Committee Update

Committee Chair Robin Kaye noted that the Committee plans to check in with Senator Gabbard and Representative Lowen about Chapter 343, HRS, with the hope that no amendments occur until the rules have been implemented for at least a year. The Committee plans to meet before the start of the next legislative session. The OEQC or Committee may have a legislative briefing in the fall.

9. Next Meeting

The next meeting would be on Tuesday, October 1, 2019. The Information and Outreach Committee will meet at 11 AM. The Annual Report Committee will meet at noon. The Exemption Committee will meet at 10:00 AM (if there is one). Members Kaye, Thoene, and Terry indicated that they would not attend the October meeting. Member Begier indicated that she would not attend the November meeting.

10. Public Forum

There were no comments.

11. Adjournment

The meeting ended at 2:52 PM.