

ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF HAWAII

MEETING MINUTES

Wednesday, November 24, 2021

9:04 a.m. to 12:03 p.m.

West Hawai'i Civic Center (Kailua-Kona), and Zoom

Commissioners present:

Georjean Adams, Chair
Rick Gaffney, Vice Chair
John Burns
Melissa Cardwell
Dee Fulton
Carrie Hoopii
Lee McIntosh
Jon Olson
Elyse Robinson

County staff present:

Ramzi Mansour, Director
Gene Quiamas, Acting Deputy Chief, Environmental Compliance Specialist, SWD
Christopher Laude, Civil Engineer V, WWD
Peter Sur, Secretary
Keyra Wong, Deputy Corporation Counsel

Others present:

Steve Holmes, Nancy Cook Lauer, Michelle Sorenson, Jerome Warren, others.

1. CALL TO ORDER

Chair Adams opened with a roll call and called the meeting to order at 9:04 a.m.

2. APPROVAL OF MINUTES FOR MEETING ON MARCH 24, 2021

Motion and second: Commissioner Olson moved to approve the minutes, and Vice Chair Gaffney seconded the motion.

Discussion: Commissioner McIntosh requested the following change to be made on page 13, paragraph 2, to read as follows: "And whether you go forward or back in, you are going to have to back [~~in~~] up, unless you drive in sideways."

Restatement of motion and second: Commissioner Olson moved to approve the minutes, as amended, to which Vice Chair Gaffney seconded. No further discussion.

Vote: The motion was approved as presented by roll call vote. Ayes: 7 (Adams, Burns, Cardwell, McIntosh, Olson, Robinson); Nays 0; Absent 2 (Fulton, Hoopii). Motion carried.

3. STATEMENT FROM THE CHAIR

Chair Adams welcomed Deputy Corporation Counsel Keyra Wong, stepping in for Sinclair Salas-Ferguson, who is out on paternity leave. We can maybe talk later about the new rules for next year about Zooming meetings and having a place for people to attend in person, she said.

4. PUBLIC STATEMENTS ON ITEMS ON THE AGENDA

Jerome Warren: I'm Jerome Warren. You have my written testimony. I am testifying on agenda item 7-b(i), the Nā'ālehu sewer. The EPA enforcement division came to Nā'ālehu on November 22. They looked at the sewer connection on one property, and at the gang cesspool on the first lane. The six enforcement people talked with me and some of my neighbors. Prior to the visit, they fined the County \$28,500 for the County's Pāhala sewer because the timeline for compliance was not met. This Commission continues to ignore the EPA's gang cesspool closure mandate on County-owned sewers in Ka'ū. Thankfully, the newspaper is keeping a closer eye on this boondoggle. You must realize that there is no pot of gold at the end of their recycling rainbow. The question is, how much more money will the County need to pay in fines before these County gang cesspools are fixed up? They don't need to be replaced, they just need to be modified. Please keep in mind, cars with gasoline engines have catalytic converters in front of their mufflers. This improves air quality. Septic tanks in front of the Ka'ū gang cesspools will improve air quality. All else is folly. Mahalo.

5. UNFINISHED BUSINESS

- a. Status report on 2021 EMC Priorities – Each lead commissioner to provide *brief* report on assigned priorities (priorities are listed in the March 2021 meeting minutes).
Note: This will be the final discussion on 2021 priorities.

Chair Adams reported that she is still trying to track the life cycle assessment contract the Recycling Program is working with a contractor on. Unfortunately, the Recycling Program staff have had family emergencies and staffing shortfalls are resulting. We are trying to nail the data set that the contractor is going to use. It is progressing and it has not gone away. Chair Adams also said she had listened to the recent TEDx meeting. It was a lot of inspirational talks. We have a Mayor who cares about sustainability and the circular economy. We have an open interest in the things we might recommend. There was a lot about the values of this island and community, and protecting the land and the ocean as well as having kuleana for everything we do. It was an inspiring day, and she looks forward to future activities in that regard.

Commissioner Robinson said she is looking at our educational pathways at our local universities to help students get ready for the requirements of positions open at DEM. HCC does not offer any civil engineering degrees, but she is still discussing with the Dean of the University of

Hawai'i at Hilo College of Agriculture, Forestry, and Natural Resource Management, Bruce Mathews, about the option there for education as well as the requirement needed to be in the work force before being hired for certain DEM positions. But we are still talking.

Vice Chair Gaffney said the sewerage of Honokōhau Small Boat Harbor is proceeding. \$2.2 million has been released for the planning and hopefully that will take us into the bid process. It is not enough money to do the job, but it is enough to get it designed and move it forward. We have a strong commitment from the Department of Land and Natural Resources to get that done.

Chair Adams explained that these were the priorities that we set at the beginning of the year, that were personal efforts we each were trying to make to keep things moving along outside the meetings. Because this is our last meeting of the year, we will pick this back up in January and see if you find them to be of value, and whether you would like to keep working on them, or if you want to revise them, or move on, she said.

- b. Status report on action items from previous meeting
 - i. Continued review of solid waste funding options¹ and recommendations, if any, to DEM and the Council.

This is a continuation of the discussion in the October 2021 meeting, Chair Adams said. A request was made to continue talking about the solid waste funding options paper that we looked at last time. She had added in the comments that were made at the time. If anyone had made additional thoughts, and if there is a reason to put together some specific recommendations to DEM or the Council, we can consider them. Were there specific things Commissioners wanted to talk about?

Commissioner McIntosh said he wasn't sure if it would fall under the enterprise fund category, but if the County had set aside a certain percentage (such as the 2 percent of property tax collections that goes toward the Public Access, Open Space, and Natural Resources Preservation Fund) of funding for the operations of the wastewater and solid waste divisions, that might be another alternative to consider.

Director Mansour was asked about how the funding amounts for Solid Waste Division are decided. The Director said the Finance Department gives instructions on preparing the budget, starting with a "status quo" budget. What you do is go around the numbers regarding salaries, wages, and expenses, and everything we have done this year, and we have to maintain the same bottom-line dollar figure. That does not consider inflation or any other contractual obligation. Once we do that, we determine the shortage. You cannot stay status quo without adding inflation and the contractual obligations. Currently we are about \$1.5 million short, so that means our services are going to be impacted. So we have to do a supplement. We have to fill out certain forms and justify why we cannot stay status quo, or we need to offset the additional contractual obligations and inflation. Usually the Solid Waste Fund receives a certain

¹ Solid waste funding options: <http://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=1&id=113227>

percentage of the General Fund. It's not set, it is based on what will get approved through the Finance Department and the Mayor's Office. There is some talk of trying to get us some kind of tax subsidy to get us into the wastewater, but this requires some legal understanding. Could we subsidize rate users with tax money, or does it have to follow certain criteria? Currently we are basing it on the rate users. Last year we had \$1.8 million added to the entire budget from the General Fund (for wastewater).

Commissioner McIntosh clarified that he was talking about setting aside something similar to the PONC fund, but for wastewater. Director Mansour asked to be sent more information so he could look into it deeper. Commissioner Cardwell recalled that it required a charter amendment to be approved by voters.² She asked if it would be something the County needed to vote on.

Commissioner McIntosh said charter amendments need to be approved by voters while regular ordinances do not.

Chair Adams said one of the items at the tail end of this writeup was to explore how we can work with the Regenerative Agriculture, Water, Energy, and Environmental Management Committee of the County Council. She talked with Council Member Tim Richards about how he and the Commission could work together to help out the Council, whether there are some mutual priorities. He thought that would be a good idea, and the way we would proceed would be he and his Vice Chair (Council Member Holeka Inaba), along with Chair Adams and Vice Chair Gaffney, would continue talking about how we can focus on things that can work. We would then go back to our respective Committee or Commission and talk about specific recommendations we can make to the Council. He also was talking about maybe we could bring in someone from Finance, and Director Mansour, and talk with them as well, to get some more information about how to proceed.

That will happen, and we will hopefully set up a meeting between us in the next couple of weeks, Chair Adams said. In addition, she submitted a personal comment, and Council Member Richards also made a comment when the Council was looking at a County surcharge on the Transient Accommodations Tax, to see whether there could be a percentage designation going to the County agencies that are having to deal with the population doubling as a result of tourists. And that got shot down in Council, but Council Member Richards is still looking at ways to be able to direct and sequester some of that money. So that is not the end of this story, but it is a way to dedicate some funds, specifically, that would go toward solid waste and wastewater.

In Minnesota, Chair Adams said, voters approved a constitutional amendment called the Legacy Act. It is a tax that generates a fair amount of money, of which one-third is dedicated to preserving the environment. Another third would go to cultural events, and the final portion would go toward environmental management with a specific focus on protecting the more than

² County Charter, Article X, Section 10-15, 10-16 approved via Prop. 1 (2010), Prop. 6 (2020), Prop. 10 (2020)

10,000 lakes in Minnesota. It was an amendment to the Minnesota State Constitution that took 10 years to get passed, but it had a lot of public support. Whether that is something to look forward for in the State of Hawai'i is something worth sounding out. One concern is that O'ahu would take all the money, and we and the other Neighbor Islands would get a piddle like we usually do.

Commissioner Olson noted the comments about a fixed fee at the point of sale. He commented that he agreed all these bullet points are very valid, but none of this going to spring full-bore out of the ground. You will need to start with a minimum amount of funding to identify what the actual costs are. And you have some money to do that with, so it grows on its own, based upon the information that you garner. It's just going to be an ongoing process because what comes in, we have a lot of difficulty controlling. It's going to have to be a process that is ongoing in terms of what the actual fees would be. But as it is now, we don't have a budget to even start it. Where would the money come from to even get this off the ground? The fee may need to be changed based on the actual cost to dispose of something.

Chair Adams said one thought is you put a dime on everything.

Commissioner Olson said this is where you have to start, and you could loosely tie it to the denomination of the total sale. But we would need a funding stream to make this thing grow. It would grow to cover the actual cost of disposing whatever it is we are taking in.

The County surcharge on the TAT also has some issues with being set up, Chair Adams. So there may be other learnings available to us from different activities. But it is a little bit of a different beast, and something she can talk about with Vice Chair Gaffney and Council Members Richards and Inaba, and start investigating what kind of ideas they might have to begin investigating how that might work.

Director Mansour said that we must fund the Solid Waste Division programs. When the Solid Waste Fund was created, the intent was just to build the facilities and handle solid waste. Now it has grown to cover recycling, reduction, and diversion programs. So the idea is we have moved so far away from the main intent of that program. So what are the legal options that we have outside of taxes? Could we use the administrative rules to set collection fees or Pay as You Throw? Is that legal? What other legal maneuvering could we do to subsidize this type of program, because it is already part of the taxes?

Commissioner Olson said the first thing we want to get away from is calling it a tax. It is a disposal fee.

Director Mansour agreed. Most of the people who call us are under the impression we pay taxes for solid waste. A portion of the real property tax does go to offset the solid waste program. Therefore, we need to get a clear direction. When you go to the post office, you have to pay the fees to mail your package. It's a service. If we get clear legal direction from our

Counsel so we can start focusing on the avenues we need to take. Otherwise, if we change avenues and come back later and find out we cannot do it legally, it will be a waste of effort.

Chair Adams noted that Director Mansour had already checked with Corporation Counsel to some extent. Was it a formal request? We should make a formal request to have Corporation Counsel tell us what the options are legally for collecting monies directed toward solid waste.

DCC Wong said that can be a request that Director Mansour could make to his designated Deputy Corporation Counsel, in conjunction with someone from Finance, to work in collaboration on exploring those avenues or what options would be out there. But that would that be more appropriate for DEM's deputy corporation counsel to explore.

Director Mansour said we could follow up with the request, and the Commission could make a request as well. We could make a request. Finance took the lead on it, but he doesn't know if it really went anywhere. So, we will follow up with Finance Department also to find out.

Motion and second: Commissioner Olson made a motion, to which Vice Chair Gaffney seconded, to have the Director explore the legal options of collecting for solid waste beyond the current methodology.

Discussion: Director Mansour encouraged commissioners to use their own Counsel in advising the Department. You could make a request to your counsel, separate from the Department's counsel, and you can come back with advice to the Department and the County.

DCC Wong said it might be more appropriate for the Department to explore. Because the Commission is advising the Department, this discussion is sufficient to direct the Director to pursue that avenue. She did not know that this body would need to make a formal request in writing to accomplish that.

Commissioner Cardwell said that it is our role to advise the Department, but if we are unclear about the legal avenues of collecting fees, then we can't really advise the Department on that. So it seems like it's a bit of a puzzle figuring out what are the avenues that are available to collecting these fees, because she does think the PAYT program is brilliant. And yes, there is a fee, but people would be paying this fee and they would be getting a huge thing in return, which is not having to wait in line at the transfer station to dump their garbage. And it's almost this issue of breaking a bad habit. We are in this bad habit where we've gotten used to not having to pay to dispose of our trash. But that comes at a huge cost, and the cost being there is trash all over the roadside. Driving from Kalapana to Hilo, there is trash everywhere, so there is a huge benefit to this program. But if we do not know the legal avenues to collecting these fees, then there is nothing we can advise the department. So we have to figure out, what are those avenues? How do we start a program like this? How do we start collecting money so that we can implement something like this that is going to be a lot more effective, and a lot more efficient?

Chair Adams said we still need legal counsel. And who asks the legal counsel is the issue. She recommended the Director to contact his DCC and she would check with EMC's DCC. The two of you figure out who's going to write up, what are the options, and what's legal, and what is not, she said.

DCC Wong recommended Director Mansour to follow up with the Finance Department to see where that is, and she would loop in with DCC Malia Kekai, and we can discuss out we move forward on this issue. But she has received the request, she said.

Withdrawal of Motion: Commissioner Olson withdraws his motion.

Chair Adams agreed. We will get back to you and let you know what the next step would be. We will see how we want to formalize getting an actual opinion written, she said.

Commissioner Fulton said we always strive for progressive fees or taxes. But she really likes the idea of a PAYT or earmarking the TAT. When she lived on the mainland, she was drawn to islands even then. And she was made several visits to the Cayman Islands. Grand Cayman is a small island with a small population, but there is very little poverty on Grand Cayman. Why is that? Because they tax the heck out of their visitors, she said. And we have a situation here with so many issues on our island, obviously beyond the scope of our Commission. But we deal with wastewater and solid waste, and we have serious problems in both divisions. Now, if we can draw a metaphor, if somebody has a home and their toilets are broken, that's not the time to invite visitors in, she said. You want to get that fixed; you want to take care of this issue. Here on this island, our toilets have been broken for a long time and we just kind of stuck our heads in the sand and ignored it. But if we are going to invite people in when our toilets are broken, then we must ask those people to help us make the repairs. In other words, we really need to take advantage of the fact that we are a very attractive tourist destination. And that means raising taxes on tourists. She is not really a huge fan of capitalism, but there is a phrase about charging what the market can bear. The people that come here have disposable income to come to Hawai'i. And that is a good reason to tap into the TAT.

Chair Adams reiterated what she heard listening to the Council meeting. The request was made to dedicate the TAT to certain things. While environmental protection was not one of the areas, because there was more focus on parks, but at this stage, we may need to go to your individual Council Members to do some lobbying. They might have one more reading on the bill.³ So there is still an opportunity. Again, if the Commission would like, we could send in our own comment on the TAT to the Council, and voice an opinion. Not sure where you want to take it, she said. She was talking to her Council Member, and others can do that.

³ Bill No. 81, Draft 2, passed final reading of the Council on December 8, 2021, and was approved as Ordinance No. 21-89, effective December 10, 2021.

Commissioner Robinson suggested waiting to hear back from the Finance Department or Corporation Counsel about the legality of a TAT carve-out before we make a request. Let's look at all our information first, she said.

It may be a question of timing, Chair Adams said.

Director Mansour said the Commission could also invite someone from the Finance Department and get a rundown of what you can do and not do when it comes to taxes, because they the experts. They represent accounting. So rather than us trying to kind of go around in circles, trying to speculate what we could do and not do, the Commission could invite subject-matter experts to give some heads up on what's going on.

Chair Adams said that sounded like a really good idea, but unfortunately our next meeting is not until January. So we need to check on the schedule for the Council relative to the TAT bill, which has its own limitations on what the County can do versus the State, and all this other stuff that she doesn't really know enough about.

Commissioner Cardwell said it would be a good idea to voice something in regard to the County TAT surcharge. The worst-case scenario is that they just say no, we are not going to do that. It makes sense to her that visitors do contribute to our solid waste. It's close to a million people a year who visit Hawai'i Island, which is pretty considerable. So if we're collecting that money, why not allocate some of that to deal with the solid waste that's generated by people coming and visiting? It just makes sense. And if there's a time frame that we're working in here, that's the thing to pay attention to. If there's going to be another reading, she would like to know when that's happening.

Commissioner McIntosh did not think we would get anywhere with the TAT. Essentially, all the Legislature did was they repealed the statute giving TAT to the counties, and they said, if you want it, go pass it yourself. So if the County passes the TAT bill, all it's going to do is restore money that they lost when the state rescinded their portion. So there's nothing to go around or fight over. And that's probably why everything was pretty much shut down during the Council meetings.

Chair Adams noted that basically, it is replacing money that was already money that was in people's budget to begin with.

Commissioner Cardwell clarified that the money might have been in the budget, but the money wasn't in the budget to go toward solid waste. We won't know unless we ask if there can be money that can be taken from the TAT and diverted to deal with the solid waste.

Chair Adams said that from her viewing of the Council meeting, Council Member Tim Richards had moved to dedicate some funds to our parks, which the tourists go to in hordes and that was shot down. No can do. So let me find out and I will get back to people on what the timing is and when it's ripe for us to put the plug in, but she is not overly optimistic.

- i. Status report from the Barriers to Private Recyclers permitted interaction group.

Chair Adams noted that this Permitted Interaction Group was set up in the previous meeting with herself and Commissioners Cardwell and Hoopii. We have begun contacting people. She has been formatting kind of a tracker sheet to keep track of who is doing what with whom, and what the problems are, and what the barriers are. So we are in the beginning stages of that and we'll continue proceeding. If you've got some ideas on who we should contact that you think we might have missed, let us know, she said.

Vice Chair Gaffney asked the Chair to go through the list of people to whom she is talking, who are providing the input on what their issues are.

While not all of them have been contacted, Chair Adams said, the companies include Mr. K's, and there is some follow-up that she believes Commissioner Hoopii is going to do. The others are: Atlas Recycling; Business Services Hawai'i; Big Island Scrap Metal; Hawaiian Earth Recycling; Compost Hawai'i, Pacific Biodiesel, Reuse Hawai'i, Habitat for Humanity, and the thrift stores that are running the reuse centers. She is still trying to figure out whether we want to tackle some of the big box stores that are doing some collection like batteries and CFLs: Target, Walmart, and Home Depot, and maybe towing companies. And there is one category she is calling "plastic recyclers to be." We don't have any that are really doing anything except for some art activities going on. She has been contacted by a company called Resynergi that wants to do pyrolysis of mixed plastic. So that's our list right now. And if you've got some other ideas, shoot their contacts to us that we can try to find out. We're basically trying to keep the scope to, what are the barriers presented by County and State regulations and operations and policies, and not we're going to do a marketing plan for you, but we want to know when have you run into the wall that falls under our purview as a Commission to make recommendations for change to DEM or the Council?

Commissioner Hoopii said she reached out to Mr. K's and Atlas Recycling via email, and she plans on visiting them in person next week to get a face-to-face meeting and a contact, and see how we can move forward.

- ii. Review latest proposed language on DEM Rule No. 9-17 regarding trailers at transfer stations.^{4 5}

Chair Adams said she hoped commissioners have had a chance to look at the draft rule, and share any concerns or comments. She asked the Director if the last version provided to the Council is what is going to be proposed as a change to the rule.

⁴ Comm. 402.3 – Proposed amendment:
<http://records.hawaiiicounty.gov/weblink/DocView.aspx?dbid=0&id=1026059>

⁵ Comm. 402.5 – Estimated timeline:
<http://records.hawaiiicounty.gov/weblink/DocView.aspx?dbid=0&id=1026662>

Director Mansour said that is correct. During the last Council meeting we went over the initial language. We have stated that it is going to go out for public notices. We did receive the Commissioners' comments. There are certain things that also we're going to wait after the public hearing to see if there's additional language or comments that we may receive. It may impact the current language, so we can do one modification prior to publication.

We can start having the public hearings around mid-January. Chair Adams opened the discussion to see if the Commission would be able formal public comments at this meeting, as the next scheduled meeting date is late January.

Responding to the Commission's comments, Director Mansour said safety is our No. 1 concern. And the trailer that was utilized for the safety purpose of maneuvering at the site was 6 by 9 feet. I know some of your comments say it's five by ten or what have you but there's certain comments that we can entertain, and safety is going to trump other comments, but he welcomed the discussion, he said.

Commissioner Robinson mentioned a concern raised during the last meeting about banning trailers at the transfer stations, leading to illegal dumping with people who don't have the ability to load greenwaste, construction waste, or whatever into their cars. Is it possible that we could look at allowing trailers on certain days of the week that are not as trafficked, to address the safety issue of having too many cars and trailers? Because the other concern about having your personnel be responsible to let people know, no more trailers, is the same output as letting the public know trailers are allowed (on certain days), because there are still people who can use the transfer station, which can address the problem of illegal dumping.

Director Mansour said the intent was addressed during the Council meeting to allow possibly one day, Wednesday, of the week for trailers only, and it's only going to be covering five sites. Currently, it's going to be four because Wai'ōhinu Transfer Station is still under construction. So we're not talking allowing trailers to all sites. He just wants to make this clear to everybody. There are only four sites that we looked into, and we're going to do some minor modifications to allow trailers to come in once a week for greenwaste, for white goods, and for garbage. We targeted the facilities open seven days a week, so hopefully people will continue to act responsibly by keeping our 'āina beautiful, will not do any illegal dumping, and hopefully they could arrange their waste for the next day because they still have six days to use that facility. So one day for trailers should not trigger more illegal dumping. Signs and notifications will be posted at the facilities.

Commissioner Robinson asked whether there will be four stations now, not five. Four stations will allow trailers one day a week and every other station will have no trailers at all.

The Director said that is correct.

So, would allowing trailers one day a week at the four stations, versus all the stations allowing trailers now, lead to illegal dumping on those other locations, Commissioner Robinson asked.

We don't allow trailers now, Director Mansour said. So the idea is since April 2021 we stopped taking trailers and we cannot change that human behavior. But he hopes people do not act irresponsibly by doing something illegal. We haven't seen it. We've had no trailers at the sites since April. We haven't seen any changes, but they will continue functioning the way they've been functioning since April. What we have been saying to Council members since our last meeting, the last few meetings, is safety is number one. We have two safety reports that were done on these sites and determined that there are safety issues, especially the other sites. But they were able to focus on these five sites with minor modifications, a traffic plan, staff training, one day a week just for trailers to be able to maneuver a bigger site than the others. So with a traffic plan on hand, we figure we could accommodate the public. But like he said, it's going to be up to further analysis as we do. That's what the proposed rule says. If we feel that safety is still an issue after we do that, we're going to cease those operations again. So, the idea is we're going to try it. We're going to do some recommendations, and if it works, that's good for everybody. If it becomes another safety hazard, we need to rethink it. We cannot control people's behavior, but he hopes they act responsibly.

Commissioner Burns said those are all fair comments because he shares the concerns. Obviously, when you restrict times or places that people can dump waste, you always run that risk of increasing illegal activity. But it's also important to think on all ends of the spectrum. And if you look at the distribution of people and how they're going to behave with the landfills, it's still a small portion on those extremes that are likely going to be breaking the rules and dumping illegally, because they can't bring a trailer for certain size or multiple trailers a day. He does think it's a good way to go about these rule changes by making it and then seeing what the outcome is before being too concerned and changing a lot of things and adjusting until we know it does indeed, in fact, result in that. Sometimes the best approach is to hope that people will act responsibly. And from a distribution perspective, most will. And time will tell if it really is a problem or not. But he does think the efforts are worth trying.

Vice Chair Gaffney asked why the Waimea Transfer Station seems to be included in the list of those that are not safe for trailers. It's a circular transfer station that trailers can drive in forward and drive out forward with no backing involved.

Director Mansour said while it is one of the largest sites, when the Safety and Risk Management Team took its trailer in, the other traffic coming in became a hazard. He went there himself to watch the traffic, and saw a white Tesla come in, and it reversed toward the chute, and this truck came in and cut it right off, and both drivers got out and tried to fight. At this point, that kind of gives you an idea. He was just standing there, and within 15-20 minutes, he witnessed with his own eyes almost a fistfight between a Tesla driver and a truck driver. So it gives you an idea that with these vehicles, you create the potential. So imagine the trailers, because the way the chutes are designed, and the way you have to come in and reverse back in. And some people are just not patient enough to wait for the next vehicle. That's why with traffic control and just only allowing the trailers, maybe we could control that.

Vice Chair Gaffney asked if modification would be required so that the Waimea Transfer Station would work.

Detouring signage, and a traffic plan for these sites, at minimum, the Director said. We don't probably need to do construction modification. It's more about the training and the traffic plan, detouring cones, and these type of modifications for these four sites.

Commissioner Robinson asked if there have been any accidents or any safety issues that have happened at the other locations that will not allow trailers.

There definitely have been near misses, he said.

Chair Adams shared her screen to show the proposed rule. DEM did two safety reviews and came back with saying the only locations that are going to work are these four, plus Wai'ōhinu. They will designate which locations will allow trailers based on their safety studies. And that was the four or five in the future sites. They've got to be registered trailers and no reversing, and the director will notify the public. And we have made comments to notify them everywhere, signage and whatnot. So, this is a simplified version that will be proposed in the next couple of weeks, sometime in January.

This is different from what we saw before, Chair Adams continued. They simplified it. They used to have that the Mayor and Corporation Counsel had to sign off on which locations, and they took that out to allow the director to decide which ones work. And there was some other detail in there about the public notification and that was simplified.

Vice Chair Gaffney asked about the prohibition on transfer station users reversing trailers toward the chute. He did not understand how they can use the greenwaste chute at the Kealakehe Transfer Station without reversing the trailer to the chute.

Director Mansour said part of it is we allow trailers only so they could come in without reversing, because there is no other traffic. So technically they could have the whole area to themselves. They are probably going to walk around the trailer to dispose of that waste into the chute. But that's the intent. If we don't allow additional traffic, it will be easier to control rather than reversing.

Commissioner Robinson asked what guidelines were used to determine what is considered safe and unsafe? Was it Department of Transportation rules? Where is the line between being safe and being unsafe?

Director Mansour said the Safety and Risk Management Team is composed of qualified and certified safety officers for multiple departments, including DEM's. So we relied on the safety officers that did the investigation research. They looked at the design and the return radius of these vehicles. So, there's a lot that goes into these type of report. There are design parameters that we must adhere to.

When you drive in, Director Mansour said, you must have enough space to be able to turn the vehicle. So that's just like when you drive on the roadway and make a right turn, that's what we call it, the return radius. If you have a sharp return or a small return, you're going to get in a car accident or you are not going to be able to turn. So, everybody has rules, standards, that we have to call.

Did we use the Hawai'i Department of Transportation guidelines, Commissioner Robinson asked. Yes, and roadway and street radii return rate guidelines, Director Mansour said.

Commissioner Robinson asked if Commissioners could see the report.⁶ (See link in the footnote below).

Commissioner McIntosh said the comments he made during the last time still stand. He understood some of the reasons why they insisted on keeping some of the wording, because instead of backing up, they want you to just kind of turn in. And that would be a lot more difficult in some areas. The main problem is that they don't want trailers to back in, so that's making it very difficult. They're going to pass what they want to pass.

Commissioner Burns said as someone who uses boats on trailers often, he cannot see the logic in not reversing, because if you're driving straight in, you're reversing out. And so the individuals are going to have to reverse and navigate and move the trailer one way or another. He does not understand necessarily why or how you're going to avoid issues with people not being able to operate a trailer well, by having them pull in directly and then reverse out, versus reverse in and pull out.

Director Mansour agreed that you have qualified people and not qualified people, and DEM is not in the business of trying to isolate who could drive in a huge trailer. There are a few that could come in like a champion, and you have you the other 80 percent of the people that use trailers. They put a trailer on an actual car rather than a truck or SUV. So we as a Department cannot ignore that. He understands there are a few that could come in with no problem.

Commissioner Burns said that is completely reasonable. He sees more the rationale for just not having trailers than allowing them be unable to reverse because if they pull in straight, they're going to reverse. They're going to have to reverse it out.

Director Mansour clarified it was more about having trailers pulling through than driving straight in.

⁶ Report of the Safety and Risk Management Team dated March 29, 2021: <http://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=0&id=1015524>

That might just be something that gets people, Commissioner Burns said. It may just be a change of language of simply saying transfer station users can only pull through a determined loop or something.

We're going to have people on site directing traffic with a traffic plan and detouring, Director Mansour said. So rather than complicate it in the administrative rules, it will be on site, per site, how the detour and the traffic plan is going to work. Therefore, you don't want to go too much in detail on the administrative rules, but site by site will be controlled by traffic cones and controls.

That's the way they do it on O'ahu with the pull-through transfer stations, Commissioner Olson said.

Vice Chair Gaffney commented on the Kealakehe Transfer Station greenwaste chute. He could not see how a truck or car pulling a trailer can make a 90-degree turn and end up parallel to that chute in order to be able to offload their greenwaste. It doesn't matter which way you enter, that chute has a straight-line fence immediately adjacent to it, which is going to require a 90 degree turn one way or the other. Trailers don't do that. They're going to be standing off eight to 10 feet away from the chute, which is going to create a huge mess, potentially for the staff at the Kealakehe Transfer Station.

Director Mansour said that is the reason we are doing it. The idea is we can work on the traffic control, maybe re-alternate the chutes, maybe where the green chute is now, is not the right spot for it. So, if it doesn't work, then we may not allow trailers for that site, he said. That's the whole reason we're doing the admin rules, to look at these modifications and continue looking at it from the safety and practicality aspects. And if your concern is there's no way we could do it even if we could move the green chute to different places and alternate between the chutes, then you're right, he said. Then that's probably going to be difficult, and that site will be taken away. But that will give us the option.

Commissioner Cardwell asked if anyone knew what percentage of greenwaste is dropped off via a trailer. She did not know whether all these limitations around trailers is going to affect our greenwaste program, and people simply won't bring it to the transfer stations. She was wondering how often trailers are used to dump green waste.

Commissioner Olson said having looked at this before, when he did the design for the Kea'au Transfer Station, most of the greenwaste is residential. In other words, the commercial guys, they keep it, they're composting. It's a resource. They're not going to give it away. You're talking about properties of 2 acres and less generally. And if you have more land than that, then you got more than enough room to have your own composting pile. It's the small lot subdivisions that create the problem, and they're the ones that have a land use issue because they don't have available land around them to set up another transfer station, he said. There are not more than two or three transfer stations on the island today that were not transfer

stations or dump sites 50 years ago. So, we continue to just reuse that same land over and over again for this purpose, and it hasn't kept up with population or anything else.

Chair Adams moved to close the conversation because she was not hearing a consensus on any comments that the Commission would provide to the Department at this time. If commissioners have comments during the public comment period, you may submit them as your own. And we can consider this again at our January meeting, but we will be up against the deadline. There was quite a vociferous conversation at the Council around this, and as the Director and Corporation Counsel kept repeating, safety is No. 1. We cannot knowingly cause the potential for harm by unsafe, 50-year-old, hardly designed at all, locations. Yes, we need to improve the transfer stations in many ways. But guess what? That takes money.

iii. Discussion of innovative funding for wastewater management

Chair Adams said wastewater's money needs are much larger than for solid waste. There was a resolution⁷ from the Council to the Hawai'i State Association of Counties to request including as a priority a look at innovative funding for wastewater because we've all got that problem. Everybody in the United States has that problem, and probably the world. If we have any great ideas that the Commission can further provide to the Department and the Council, let us know and we can talk about it. We have already sent three different letters that among other things have supported going for an enterprise fund and looking at energy savings performance contracting. So there are several things that we have done at a high level, and specific to Kealakehe Wastewater Treatment Plant, looking at resource management rather than waste management recycling. But they have been at a high level. And if there are some specific things that we should be looking at, speak up.

Vice Chair Gaffney said he has not seen any response from the Council regarding those recommendations, particularly the enterprise fund. It just seems so obvious and opportune. And yet it seems like one of the many recommendations that we forward up that nothing ever happens. Does anybody know whether anything has been done to pursue that issue?

Director Mansour said he has not heard of anything new, and he asked if commissioners could follow up to find out what is the status.

Chair Adams said she and the Vice Chair could include that in their discussions with Council Members Tim Richards and Holeka Inaba.

Vice Chair Gaffney said that is one of the reasons he was so enthusiastic about it being able to have those meetings, because he regularly requests things of the Council and then never get any response. And if our ideas aren't being pursued, then we're wasting a lot of our time.

Chair Adams said she has heard mention of the enterprise fund concept at Council discussions in passing. Council Member Rebecca Villegas has commented on it, but she does not know that

⁷ Resolution No. 239-21, Draft 2, adopted October 20, 2021.

any specific action has been taken, and that is fair game for our early discussions with Council Member Richards. One thing that we might want to consider for next year would be bringing in former Honolulu Council Member Steven Holmes, who has a plethora of recommendations on the ways he's done things in Honolulu. And we might just want to share some brainstorming with him. But again, the next step once we back one of the recommendations is, "so what?" It just goes into the black hole at Council and the Department because they've got no money to even study what they could possibly do, similar to Commissioner Olson's point about having some kind of disposal fee at the point of sale. You need people to work it up.

c. EMC meeting schedule for 2022 & Commissioner availability

During the October meeting the Commission voted to move its meetings to the fourth Thursday of every month except for Thanksgiving (and no meeting in December). However, Commissioner Cardwell had issues with attending on Thursdays, and Commissioner Burns had issues with Wednesdays.

Commissioner Cardwell confirmed Thursday is the one day she is not available.

Chair Adams said maybe we go back to sticking with the fourth Wednesday except for February and March, which conflict with Council meeting days, and switch them to Thursday or the third Thursday.

Commissioner Burns said Tuesdays work for him too. It's fine if it's Wednesdays, although he will always have a conflict, but he will work around it as best he can.

Commissioner McIntosh said it would work better for him to have the November meeting on the third Wednesday rather than the day before Thanksgiving, to which Commissioner Fulton concurred.

Motion and second: Vice Chair Gaffney made a motion, to which Commissioner Cardwell seconded, to set the following meeting schedule in 2022: Fourth Wednesday of the month for January, April, May, June, July, August, September, October. Third Wednesday of the month for February, March, November. No meeting in December.

Discussion: Chair Adams offered apologies to Commissioner Burns.

Vote: The motion was approved 9-0.

6. NEW BUSINESS

a. Discussion and recommendation, if any, on whether certain recyclable wastes should be prohibited from landfilling.

Chair Adams said these are just "starter thoughts," and the Commission can pick them up again in the next year. First, we should look at banning the landfilling of certain materials. It's an approach that many other municipalities take to encourage recycling. You can't put it in the land, you are supposed to be recycling it. The biggest hurdle for us is you've got to actually be

able to provide people with the ability to recycle. And then enforcement is not easy. For example, we could have an ordinance saying you will not put green waste in the landfill, period, you will recycle it. It is not illegal to throw electronics in the landfill in the County of Hawai'i. Should it be? And there are those of you will be thinking, we've got to keep plastics out of the landfill. Again, very difficult to pursue, and also not really our biggest source of waste in the landfill. Construction and demolition waste, I wish we had a better way, she said. We've got one outfit, Reuse Hawai'i down in Kona and then we've got the Habitat for Humanity ReStores that will take construction and demolition waste. That's a lot of volume that is currently going into the landfill. So there are some ways around that. At any rate, that's the topic that she was thinking about starting to consider.

Commissioner Robinson liked the intent to minimize what's being dumped, but without a solution or a place for what we're banning to go, she does not think we should pursue that. She did not know that electronics were not officially banned at the site. She does not throw batteries or computers in the trash can, but there is a place for them. So if we're going to pursue something like plastic or other construction materials, there should be another avenue, another solution for the public to dispose of that waste.

Commissioner Cardwell agreed with Commissioner Robinson and liked the idea of banning things from going into the landfill. The East Hawai'i Sanitary Landfill is already full, but as Commissioner Robinson said, if people don't have a place to bring those other things, then it's going to end up being illegally dumped. And currently, other than HI-5 plastic, only No. 1 and No. 2 plastic can be recycled. Shipman takes No. 2 and Atlas Recycling takes No. 1, but it's really inconvenient unless you live near Kea'au, because people from Kona are not going to drive all the way to Kea'au to recycle their No. 2 plastic. So she did not think it is a good idea to ban those things from the landfill without a convenient place for people to bring them.

Chair Adams reiterated this discussion is just to begin thinking through it. It would be for specific items that yes, we do indeed have in place an alternative for people to recycle it, but it would be part and parcel of increasing the amount of reuse and recycle capabilities on the island.

Commissioner Olson stated again that in the last 50 years, we have created a grand total of three new waste sites for the island, and the population has tripled in that time. In his own district of Puna, when he first showed up here, there were almost 9,000 of us, and as of the recent Census, we are now over 58,000. And those are just the ones that got counted. And we have absolutely no new waste disposal sites. We have rehabilitated a couple of them, but they're the same old site, and of course, only one of them is actually located in such a way that really serves the community.

Chair Adams said the transfer stations are "collection sites," not disposal sites. We have one disposal site and that is the West Hawai'i Sanitary Landfill. She was talking about things you actually bury permanently in the ground. And she agrees we have challenges in the collection of waste, whether it's a transfer stations or private. That's why we've got this whole Permitted

Interaction Group going on, looking for barriers for private collection and processing of recyclables.

Commissioner McIntosh said he does not think we are even prepared or ready to start talking about banning certain materials, because we can't even divert what we're trying to collect right now. If you throw stuff in a black trash bag, nobody knows what's in that black trash bag. He has seen people just toss big, huge tires in the chutes They're not supposed to, and he tells them and points to the sign. They say, "Oh, we didn't know." Yeah, right. But it almost comes down to the County that should take the trash and somehow diverting and changing it to where it needs to go. Unless you are just kind of have tons of (bins) set up where people can put stuff as they're going down the line or something. Our bins for collecting cardboard boxes, they are always almost always full. And so when they are full, it just goes in a trash can. It's premature to start talking about banning items when we're not even really set up to collect them regularly.

Commissioner Robinson asked about piloting a collection site. As Commissioner Cardwell was saying, Atlas Recycling is here and Mr. K's is on this side. We could test a site, maybe in West Hawai'i to collect certain types of plastics, No. 1 and No. 2, over a course of time, which diverts it out of the chutes, which could be brought back in bulk to those businesses that will divert the plastic.

Chair Adams said it's a thought, and also a cost to set up additional collection, and needs to be justified and paid for. The Chair said she just wanted to get the Commission something to think about.

b. Discussion and recommendation, if any, on scrap metal recycling practices and procedures.

Chair Adams said that in the last meeting, Acting Solid Waste Division Chief Michael Kaha said that they were spending half a million dollars collecting scrap metal at the transfer stations, having to collect it and haul it. And they take it either to Big Island Scrap Metal on the West side and to Business Services Hawai'i on the east side. And the County doesn't get any money from it. It is just given out for free, and the companies do their scrap metal thing. It's another example of, if we let people know that here are places that will take scrap metal, Mr. K's, Atlas, as well as these other county-contracted companies, at least for bulky scrap metal, it doesn't go down a trash chute, and here is another place to take it. Another thought, she said, and it would free up half a million dollars if the County wasn't involved in it, would be if people were going and taking advantage of the private operations, which our PIG is going to try to contact and see what gets in the way. But again, it's a big island. Two locations, one on each side, why bother? She asked if others had any thoughts or comments.

Commissioner McIntosh said they would need to have satellite collection sites. If we are not going to drop scrap metal off at the dump, they need to have sites set up around the island, and that's going to cost them money. And that's why they want you to bring it to their storefront. So it might not work out because he is not going to drive 3 hours, essentially, to drop off scrap metal.

Chair Adams said one of the things we are looking at in the life cycle assessment study is, does it make sense from a life cycle standpoint to drive across the island to go dispose of some recyclable material? Is that really a net benefit? The Chair would like to move along, but at the same time would ask Commissioners to think outside the box about whether we could throw up some legitimate “good barriers” as long as we provide alternatives, and there are some specific materials that might warrant that kind of response.

Commissioner Robinson asked whether the Permitted Interaction Group committee could consider what challenges the recyclers are having through permitting processes with regard to commercial space. If they have to rezone from Agricultural to Commercial what challenges do they have there. But there are a lot of other things.

Not just DEM requirements, but other zoning requirements, other things, Chair Adams said. And we were looking more or at least hope to look at more broadly, County regulations and processes that are just a pain and prevent activity.

Vice Chair Gaffney had another question to add to the list. There are a number of large companies on this island that are metal fabricators. For instance, one of them just replaced all the railings at the Hilton Waikoloa. So his question for the metal recyclers is, do they already have relationships with the large metal fabrication companies on the island? And are they receiving their scrap, or what’s happening with it? Because it’s possible that some of those fabricators are also doing direct recycling, particularly the ones that are using high grade aluminum and stainless steel.

7. REPORTS/CORRESPONDENCE

a. Legislative update

Director Mansour said a public-private partnership would allow Wastewater Division to have the options and flexibility of getting some private funding. Hilo Wastewater Treatment Plant is our top priority when it comes to the facility, he said. And we had been meeting with elected officials to address certain concerns about partnering with the private sectors or privatization of certain facilities, because the County does not have the funding. Even if the County finds the funding to rebuild Hilo WWTP, the big challenge is, how are you going to find the funding to maintain your investment? So there is a challenge. We could get grants and loans and rebuild, but it is still a challenge. How are we going to keep protecting that investment so we don’t fall in the same predicament that we have been falling in for the last 30, 40 years? That is one of our top priorities. Council Member Heather Kimball was leading that with the Hawaii State Association of Counties.

Chair Adams asked whether there any other legislative issues that we should be aware of, to which Director Mansour mentioned extended producer liability legislation that will be advanced by Sen. Laura Acasio and Rep. Nicole Lowen.

- b. Requests for updates: The commissioners have requested informational updates on the following:
 - i. Nā'ālehu & Pāhala Large Capacity Cesspool closure status

Director Mansour said there are good improvements moving forward. The Department has withdrawn the Finding of No Significant Impact for the aerated lagoon based on the prior Environmental Assessment. So currently we are negotiating with the EPA on moving forward with a new EA. Unfortunately, the process here doesn't allow for a supplement. You have to call it a new EA. So we're going to be sending a notification to all people involved within the community to give them a heads up what the next step is going to be. We look forward to a new relationship with our constituents from a public education point of view. We will be having the constituents involved in the process-making as we move forward. So there's good positive moves out of this. And despite the \$28,500 violation, the overall savings outweigh the violation to move forward. Hopefully we'll get better design, and a better system.

Commissioner McIntosh asked to clarify that the fine was so that you could essentially change the design. Because earlier he thought that essentially the EPA gave you a set date. As long as everything was done by that date, you didn't have to meet milestones, they wouldn't fine you. So he was just a little surprised that the County was fined for the violation.

Director Mansour said that was no surprise because the current AOC already stipulated the fines in it. Unfortunately, it was negotiated when the AOC was issued and signed. So the stipulated fine was part of the current AOC. And the reason that we got the stipulated fine was because we submitted a design-build outside the lagoon, but unfortunately, that EA did not consider any other option beside lagoons. Therefore, that's why we got the fine, because the new design did not go through Department of Health, given the time limitation and the design of the lagoon was not acceptable to us. Therefore, we have to go through the process, and we have to go through the stipulated fines. Moving forward, things are going to be smoother, he hopes.

Commissioner McIntosh asked if the Director felt there will be more fines, or if that should be the only one we should encounter as long as everything proceeds smoothly.

Director Mansour said that with the Department being transparent with EPA and everybody else involved, and the Department of Health, he hopes we do not see any more, but he cannot be the judge. We are doing our own due diligence to start negotiating the new agreement with EPA, and we'll see how that goes, he said.

Chair Adams summarized: We knew we'd take the hit on being delayed on plans that we sent through, but we did not want to stick with a bad idea had we gone ahead and said, all right, we're going to build lagoons because then we won't get a penalty. But building lagoons is stupid and didn't make much sense. Is that a fair characterization?

Director Mansour said that was fair. We could have ended up having these major green swamps on 14 acres. That's why we did not recommend moving forward with it.

ii. Pretreatment Administrative Order on Consent introduction and status

Director Mansour said the pretreatment AOC has been signed and is in the final approval stages with the Department of Health. So we have a two-year window to implement this. It is going to impact our businesses around the island, from dentist clinics to restaurants to industrial and commercial entities. The idea is we need to monitor what these businesses are disposing into the wastewater system prior to just letting it flow within our sewer system. So, wastewater needs to be pretreated before it flows into the treatment plant. We need to implement that. We're going to submit for additional staffing and additional budget items for this year just to support that program as we move forward.

Chair Adams said her understanding of pretreatment standards is that we should have a need to make sure that there aren't any commercial operations that are going to knock out the bugs we have in our current wastewater treatment systems. So, if somebody is putting slugs of heavy metals, or acid, or too many nutrients that overwhelm our systems, they are going to need to do some treatment at the site before they let it go down the drain to our treatment works. She does not know that we have on this island significant issues around that. We don't have heavy industry here. So, it may not be the end of the world, but it takes working through it all and understanding what we've got and whether or not our wastewater treatment plants can handle the stuff they're getting. That's assuming we have working wastewater treatment plants at all.

Director Mansour agreed. Any discharge to our facility, if it's toxic, will become toxic to our friendly bugs that could do the treatment at the plant. We're going to keep them healthy. We are going to keep them active, and any substance such as dental mercury going into the system could impact our treatment. High metals and high acids could change the bugs' behavior. Fats, oils, and grease (FOG) from restaurants will impact and create a maintenance nightmare into the sewer system. All of that is part of that pretreatment program. The AOC has timelines, and within two to three years it should be implemented County-wide.

And this is standard stuff elsewhere, Chair Adams said. The technologies to do pretreatment exist. The problems are well known.

This law was in existence in the late 1980s, so we were supposed to be in compliance 30 years ago, Director Mansour said. It is also tied to the amount of flow that wastewater treatment generates. The threshold was 5 million gallons per day. So if it's a county or city or that reduces 5 million more gallon per day of wastewater, they have to implement that pretreatment program. So County-wide here we exceeded the 5 MGD flow for many years, but now we are catching up.

Chair Adams said it is another issue the Commission need to keep track of. Let's make sure that our constituents, the people in our districts that are going to be affected by it, understand the why and the what for, and how to ease the pain. But it's a necessary pain.

iii. Rule amendments regarding authority to inspect and repair private laterals⁸

Chair Adams said the last request for updates dealt with an initially proposed rule to deal with private laterals, and requiring the inspection and correction of said laterals. It's been an issue that has been raised before at the Commission. There was a proposed rule 20 that is in the docket that dealt with that. But for whatever reason, before your time, this part of the proposed DEM rules, Rule 20, was tabled. It's sitting as reserved in the DEM rules. She would like to know why and what the status is and whether or not they're likely to be reinstated, whether as the specifics that was proposed back then or something similar.

Director Mansour said we just talked about pretreatment. Pretreatment will allow us, as we modify the Code, to include certain requirements, because the reason when we first started that Code changed for Chapter 20 and 21, and he took the liberty to withdraw that because it did not make sense at the time. That was presented to them for our acceptance. There is so much work that we need to do, he said.

Commissioner Fulton shared her screen to display the proposed Rule 20. This is something that has been porpoising within this committee for the last few years. This is what she considers very low hanging fruit. This is a rule that's already been implemented on O'ahu with great success. Of course, there is a recognition that with any implementation of a rule, there needs to be enforcement, and that takes man-hours. But what it calls for in a nutshell, is inspection of privately held laterals and the authority to enforce repairs of fractured laterals that may be leaking sewage into our beloved bays.

Chair Adams scrolled through the proposed rule. There was the authority for the County to be able to go in and look at the laterals, see whether there were problems, and that the owners of those laterals had to fix them. There was a requirement for a corrective action plan. And one of the complaints that have been made is that all their stuff is coming from the lateral, and we don't have authority to look at them. So that was the purpose of this proposal, Chair Adams said. If the Director felt it had too many shortcomings to be able to begin to implement it, what are you doing to fix those issues, and when are we likely to see a new proposal to change it? Because it seems like this is a worthy thing to have on the books.

Director Mansour said this is one of our high priorities. Fortunately, we were able to hire an engineer that came from the City and County of Honolulu, who was dealing with the same issues in O'ahu. He is working on the Code, he is working on the pretreatment, and he actually brought up the HRS already allowed us to do that. So he's writing and strengthening the language that pertains to the Code. So we've been fortunate that once again, having

⁸ Proposed rule: <http://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=1&id=113220>

Christopher Laude on board, who was the assistant division chief for the City and County of Honolulu, understanding the subject matters and the compliance aspect of it. We are working on it. And given all these AOCs coming into the play, we just want to make sure we have a good code going out that covers the requirements within the AOCs that would be given.

Commissioner Fulton said this is an issue we have been aware of and something for which we have campaigning for a long time, and this language was basically templated from O'ahu, and it's functional language. It's just a little frustrating to hear, oh, well, we're going to tweak it. We're going to make it perfect and beautiful when we just want to get something to work with to begin with, we can always come back later and tweak it if you think it's not functioning as you would like it to, she said. But let's just get it going because we have issues. She sent the Director an email personally inquiring, why did we have such a horrendous spike in Enterococcus bacteria in Kailua Bay, a place where hundreds of people recreate. Leaking sewer must be on that rule-out list for what caused that pollution. So, it's not an issue to be taken lightly. And she would like to see action on this faster rather than slower. And her suggestion is to implement the language it's drafted. It's ready. Come back and tweak it later.

Director Mansour acknowledged receiving Commissioner Fulton's email and responding to it. He asked Mr. Laude to introduce himself.

Mr. Laude said he served as the assistant chief for environmental quality at the City and County of Honolulu. One of the things that he was responsible there for was the pretreatment program. The pretreatment program requires that we modify the County Code to include provisions required by the national pretreatment program. And there is a section on private laterals in there. So this will be part of that revision, which will be coming out shortly. So as far as the CCH's lateral program is concerned, there are a couple of glaring problems with it.

One is that we have to give a 30-day notice to go on people's property. So that was unworkable for us. He proposed changing that. But structurally, it's going to be identical. There'll be some minor tweaks in there. And again, it's part of this pretreatment program. It's a requirement, so it's going to be done. And it's one of the first steps in establishing the program. It's going to happen within the next couple of months.

Commissioner Fulton and Mr. Laude then engaged in a five-minute discussion about water quality testing procedures, causes of high bacteria counts in seawater, the significance of an elevated Enterococci count, the importance of tracking the source of the bacteria, and public health responses, including beach closures.

Chair Adams said it appears the Department was working on a revision to the Code that would cover the issue of private laterals as well as the pretreatment requirements. And she heard it would be a couple of months, and so this Commission would want to see the proposals and be able to comment early on if we can.

d. Other Solid Waste Division Projects and Updates

(No further discussion)

e. Other Wastewater Division Projects and Updates

Commissioner Fulton said she had a question about the status of the Hale Hālāwai Force Main replacement. And it is evidently in such disrepair that the project is to replace it. So we will be talking about that. Of course, what goes through her mind is, wow. If that force main is in bad shape, could there have been a spurt (in bacteria)?

Vice Chair Gaffney said there was a recurrence the high Enterococci count in the Kailua Bay area. There has not been a rain or a high surf incident. One of the things that we are aware of, those of us who use those waters regularly, is that there is a confluence of laterals and very old sewer pipes. Some of the oldest sewer pipes in Kona are the ones that run immediately adjacent to that little beach and then come up against another pumping system in the area in front of the King Kamehameha Hotel. It's always of great concern because most of us who swim there do so for health purposes, so we don't want to be swimming in foul water. And there have been leaks in that area that the County did take care of fairly recently by lining those pipes. But that doesn't mean that something else hasn't opened up, especially with additional tourists coming into town. The King Kamehameha Hotel went from dead empty to nearly full very quickly, so that lateral is a point of suspicion. The recurrences really don't have any other logical finger to point at them. And he hopes the County can make the effort to double check and make sure that those ancient steel pipes, ductile pipes, in fact, haven't broken again or haven't broken a seal between the pipes to cause this and recurring potential health issues for people that are using those waters.

Mr. Laude said we do have a project to repair a section along Ali'i Drive around the bay. So that is from the King Kamehameha Hotel to Gertrude's Jazz Bar, that general area, or maybe down to Huggo's, and that is ongoing. We are in the process of developing a traffic control plan because we are going to have to close one of the lanes. So he is anticipating we'll have the traffic control plan done. And again, we're kind of short staffed here, so he is doing what he can, but we hope to have that done next month so that we can get it to you and to Council so that people understand that, he said. We are going to try to minimize the inconvenience, but there is going to be some inconvenience. And getting back to the recurrence, a lot of times poor communication is a problem in organizations. So, what he does is he checks the DOH website and whenever they post something, he responds to that. And he did not see a second recurrence a few days later. He just saw the one, the high reading. They posted signs and then they took them back down a few days later. He will follow up with them and see, whether there was a reoccurrence or whether it was just a one-time deal.

Chair Adams asked the Director to comment on any other significant projects or updates.

We're working on the budget, he said. There are a lot of challenges for this year's budget because of just the idea of the status quo funding levels. We got positions. We were once part of the Department of Public Works. We split from them probably (about 20) years ago.

Unfortunately, the mentality of our Department is still a division, so we need to go from thinking of it as a division to start building it as a Department from a staffing level. Unfortunately, when we came from DPW as a division, there was no building in that division to become a department. So right now, that's what he has been analyzing from equipment, staffing, resources, tools, that we need to run and function as a Department. You've seen it in the Solid Waste Division when it had people leaving or on family medical leave. We have nobody to temporarily assign into the positions. We had to close sites. It seems we are always reactive rather than proactive when it comes to certain things. So we requested these positions in the budget to allow us to function as a department. As far as projects go, the wastewater is a challenge. We'll be going in front of a committee December 7⁹ to give them a priority list of the Wastewater Division. So you guys could tune in to that presentation coming soon. And then after that, we're going to do another presentation similar to the Wastewater Division, but for the Solid Waste Division. So we're working on that with Council members. We're working with Finance and the Mayor on the budget. We're working with the consultant and the constituents on certain projects. So as you guys see that upcoming presentation, you'll get an idea of all the projects the Department is facing, and the priorities are we setting to these projects, and maybe that will trigger more discussion after these two meetings.

Chair Adams asked the Secretary to provide advance notice of when these presentations are scheduled, and also to send over the slide set so that we can look at it ahead of time.

8. FUTURE AGENDA ITEMS

- a. Follow up on action items determined today.

(No discussion)

- b. Other (Commissioners may suggest items they would like placed on the next agenda.)

Chair Adams asked commissioners to continue to send her items to discuss for future agendas. She would like to hear feedback on whether or not we want to try to line up former Honolulu Council Member Steve Holmes to talk about some of the innovative ways that he has tackled wastewater funding and projects. And we should have something to report out at our next meeting from the Barriers group.

9. ANNOUNCEMENTS

A special meeting will be held beginning at 9 a.m. on Wednesday, December 29, at the Training Room of the Aging and Disability Resource Center, 1055 Kino'ole Street, Hilo, regarding the Kai Ala Partners LLC appeal of the Director's decision to bill two wastewater accounts for TMK (3) 7-5-019:018. If it is necessary to continue the meeting to a second day it will be held at 9 a.m. on Thursday, December 30, at the same location.¹⁰

Chair Adams asked Deputy Corporation Counsel Keyra Wong to explain the process.

⁹ Postponed to RAWEEEM Committee on January 18, 2022.

¹⁰ Special meeting was convened 12/29/21 and recessed to a 1/07/22 remote meeting.

DCC Wong explained that we have the meeting scheduled for December 29 and 30. When we had looked at everybody's dates, she thought it would be better to have two days in case we need two days for the hearing. She wanted it to be consecutive so people don't forget and things are fresh in their mind. Basically it's appeal of the Director's decision. And just generally, I haven't taken a close look at the appeal yet, but the Director has been billing two wastewater accounts for one TMK, and the Appellant or the property owner is appealing that decision. So it comes to this Commission, which will have to decide in favor, reverse or modify the director's decision. The Commission will hear the evidence from the Department and also through the Appellant from any testimony, any documents or exhibits that are produced and admitted into the record. She will prepare a memo under attorney-client privilege to outline the process for the Commission, and to help Chair Adams, as presiding officer, so she will be responsible for swearing in the witnesses, keeping the proceeding moving along, and ruling on evidentiary objections.

However, the decision is the Commission's decision. She did not want to get into too much detail, but we'll have to wait until the parties come before you and give the evidence.

Commissioners cannot do any independent research, and that's going to be a part of her memo. As far as the boundaries go. Because it's an adjudicatory function, you can only base your decision on the evidence that's presented to you at the hearing via the Appellant or the Department, and that would be the director and his decision through his Deputy Corporation Counsel. Chair Adams and DCC Wong have set up a prehearing conference with the parties that will take place in early December, where we will narrow down the issues, produce a scheduling order, set out deadlines for the parties to submit exhibits, witness lists, requests for subpoenas any motions, and we would do that at the beginning of December.

But just generally, Commissioners are not supposed to do any independent investigation. If you have a conflict with the property owner, you should make that known to the Chair, so we can work that out if it might affect quorum or something. Let Chair Adams know and we can work through that. That's all she has for now. She does not recall the EMC actually ever having a contested case hearing, so this will be interesting and then, of course, your decision can be appealed to Third Circuit Court, since the Appellant does have the right to judicial review, she said. So this is just a part of the process.

Generally, all of the commissioners will have a packet of the exhibits that are labeled. So whenever, for example, an exhibit is going to be submitted into evidence, you have it in front of you already. And then what would happen at the hearing is the Secretary will have an envelope of the exhibits for the record.

Vice Chair Gaffney asked for Gaffney on what a conflict of interest looks like. He knows the Appellant. He does not do business with the Appellant, but knows him personally.

Asked if that would impede the Vice Chair's ability to be impartial, the Vice Chair responded, "I don't think so." DCC Wong said they could have an offline discussion, but that's generally what the guidelines are. The acquaintance is "very casual," the Vice Chair said.

DCC Wong said she could mention the disclosure at the pre-hearing conference with the Appellee's counsel and see if that would result in any objection.

Commissioner McIntosh asked whether it will take two days or if it can be concluded in one. DCC Wong said she had asked for it to be two days because we don't know how many witnesses either party intends to call until our pre hearing conference. If it's just going to be one witness for each party, she does not think it should take more than a day, but she is just not sure the intent of either party. So that's why we had set out two days just to be conservative.

The next regular meeting is currently scheduled for [~~Thursday, January 27, 2022, online or at a location to be announced~~] Wednesday, January 26, via Zoom, subject to change with six days' notice (see agenda item 5-c). Please contact the Department of Environmental Management or monitor the website hawaii.zerowaste.org for updates.

Chair Adams said our next regular meeting was scheduled for January 27, which is a Thursday, then we changed our mind and went back to Wednesday, so it's January 26th.

DCC Wong said she would put together and send out guidance about the new Sunshine Law requirements that start on January 1 and having a physical location for people to participate.

The Environmental Management Commission will elect a Chair and a Vice Chair for 2022 at its January meeting.

(No discussion)

10. ADJOURNMENT

Motion, second, and vote: Commissioner Fulton made a motion to adjourn, to which Vice Chair Gaffney seconded, and the motion was adopted. Ayes 7 (Adams, Cardwell, Fulton, Gaffney, McIntosh, Olson, Robinson); Nays 0; Absent 2 (Burns, Hoopii). Meeting adjourned at 12:03 p.m.

Respectfully submitted,

Peter Sur, Secretary