

ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF HAWAII

MEETING MINUTES

Wednesday, June 22, 2022

9:05 a.m. to 11:16 a.m.; and

APPENDIX: Post-Termination Presentation Minutes

11:16 a.m. to 12:00 p.m.

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

View recording: <https://youtu.be/HQiFtzMOUpI>

Commissioners present:

Georjean Adams, Chair

Rick Gaffney, Vice Chair

Dee Fulton

Lee McIntosh

Jon Olson

County staff present:

Ramzi Mansour, Director

Sanne Berrig, Recycling Specialist

Peter Sur, Secretary

Keyra Wong, Deputy Corporation Counsel

Wendy Baez, Legislative Assistant, Council District 8

Others present:

Nancy Cook Lauer

I. CALL TO ORDER (0:00)

Chair Adams called the meeting to order at 9:05 a.m.

II. APPROVAL OF MINUTES

1. April 27, 2022 – Executive meeting (related to the Kai Ala Partners LLC appeal)
Deferred to next meeting.

2. May 25, 2022 – Volume I – Regular meeting agenda¹ (2:54)

Motion, Second, and Vote: Vice Chair Gaffney made a motion to approve the minutes of the meeting of May 25, 2022 as presented, to which Commissioner Olson seconded. Ayes 5 (Adams, Gaffney, Fulton, McIntosh, Olson); Absent 3 (Burns, Cardwell, Robinson). Motion passes.

¹ II.2: May 25, 2022 minutes, Vol. 1: <http://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=1&id=116509>

3. May 25, 2022 – Volume II – Kai Ala Partners LLC appeal – Adoption of Findings of Fact, Conclusions of Law, and Order²

Deferred to next meeting.

4. May 25, 2022 – Executive meeting (related to the Kai Ala Partners LLC appeal)

Deferred to next meeting.

III. STATEMENT FROM THE CHAIR (4:37)

Happy summer, Chair Adams said. She hopes everyone is ready to participate in discussions, and will give a majority of the time to DEM to allow them to catch us up on what the Department has been doing and is planning on doing.

IV. PUBLIC STATEMENTS ON ITEMS ON THE AGENDA

No testimony.

V. UNFINISHED BUSINESS

1. Status report on 2022 EMC Commissioner Priorities – Each commissioner may provide a *brief* update, if applicable. (6:30)

Vice Chair Gaffney gave a report on the sewerage of Honokōhau Small Boat Harbor. We managed to convince the Department of Land and Natural Resources and ultimately Sen. Dru Kanuha of the need to do this, and Sen. Kanuha was able to get the funds to do it. However, we've run into several political barriers, which at this point have stopped the process completely. One of those barriers should be familiar to the other commissioners, and that is that effectively, there's no way to get the sewage from Honokōhau Harbor to the wastewater treatment plant seven-tenths of a mile away. The County is diligently working on that, but the North Kona sewer pump station had run into a wall with the DLNR's State Historic Preservation Division not moving forward quickly, which is what they're famous for, and we did manage to get the DLNR to ask SHPD to put it up front and make it happen, and they moved it up as a result of that. However, then the Division of Boating and Ocean Recreation head at DLNR decided that because the ability to connect was not imminent, that he did not want to proceed with going to bid for the planning portion of the Honokōhau project, even though the money is there. So the best-laid plans can often be waylaid by bureaucrats and practical considerations. We thought it was a slam dunk when we got the money, but apparently that's not the case. Vice Chair Gaffney knows that Director Mansour considers the North Kona pump station a priority because that will also handle the waste from Ulu Wini, and it's essential moving forward. However, the State doesn't necessarily see it that way, and the state bureaucrats are looking at, why are we spending \$10 million to sewer Honokōhau if there's no place to send the sewage? So that's a rather long update and an unfortunate situation, but it's the kind of thing that we run into all the time, he said.

Chair Adams asked if EMC can help with anything.

² II.3: May 25, 2022 minutes, Vol. 2: <http://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=1&id=116510>

Vice Chair Gaffney said we should probably talk about writing a letter to the Chair of the DLNR and express the importance of this project moving forward, and our disappointment that the department has basically stood in the way of progress.

Chair Adams asked the Vice Chair to draft such a letter and put it on the agenda for next month, to which the Vice Chair agreed.

Commissioner Olson said the issue goes back to basically one of the major reasons that this Commission was created, because of the State's refusal to deal with the wastewater issue there. And there were various iterations of plans of creating a park area with the wetlands that would absorb it, that would have been closer to the state park. At this point, there doesn't seem to be any fear from the State for some reason that EPA is going to come and step on them about this issue because they're not going to allow this to go on forever. He is certain from the environmental side we are certainly watching this and we certainly will make the appropriate noises if it doesn't continue, being that the funds are there to do it. So your various council people should be made aware of that. Maybe we could get some of them and our state representatives to get them going on this because this has been going on as long as this body has existed.

Chair Adams said perhaps Commissioner Olson could add in or contribute to the Vice Chair's letter emphasizing some of the history of this all, but it would be fair to say we'd look at a letter that goes to DLNR and the County Council.

As well as the Mayor and our federal representatives too, Commissioner Olson said. Because again, at one point we had federal dollars to deal with this. They completely ignored it. And he is not quite certain who the entities were that had kept it from moving forward, but they're out there and they've been successful.

Chair Adams said we will have that on the agenda for next meeting.

Deputy Corporation Counsel Keyra Wong said it would be more appropriate if we draft it for the DEM Director to forward on to those various entities because it's in the Charter and the County Code that we advise the Director. And if we work together with the Director and he's okay with putting his name on that letter, we can have it sent from the Department. But yes, we can agendaize it for next meeting, she said. And if Vice Chair Gaffney wants to bring a draft to that meeting, that would be great. She doesn't know if it's four different letters or the same letter to different entities, but either way, if we have a draft at the next meeting, we can expedite and work with the Director. She also offered to review the letter prior to the next meeting.

2. Discuss EMC developing priority topics for the expected new Public Education & Information Specialist.³ (14:38)

³ V.2: Topics for Public Info/Ed Spec. <http://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=1&id=116547>

Chair Adams said the next item is priority topics for what we hope is going to be a position filled for the public education information specialist at DEM. And we had talked about that before at the last meeting. She shared her screen to display items that she had compiled (see Footnote 3) out of the Integrated Solid Waste Management Plan, and then down at the bottom were her own comments regarding wastewater treatment. If there are some other issues that you would like to see as a high priority, and from the Integrated Solar Waste Management Plan, it would be coming up with a long term or at a least three-year dedicated education social marketing program for landfill diversion, specifically the “pyramid” of Reduce, Reuse, Recycle, and out of which would flow some of these other items. In general, as we were looking at from last meeting, there is education that we want to push out to various stakeholders, not just the public, but also our business community, and tourists, the visitor community, and also the idea of being more transparent, letting the public know what DEM is up to, particularly in the wastewater area, but also about the transfer stations and the services that we provide, just what's going on. There's too much concern that it's a black box out there. So there needs to be a way for ongoing transparency, communication, just on what DEM is doing. Her hope is that we would have something that we could forward to DEM.

Vice Chair Gaffney said there should be a public education process with regard to cesspools. The public needs to be reminded that by state law that cesspools are supposed to be removed by 2050 and they need to be educated on appropriate options. And that needs to keep being said over and over again over time. For the 2050 deadline, people need to be reminded that that exists. And the other thing that the public education campaign can do is remind people that, for instance, if the law changes and it has to be done when you sell a house, for instance, so that people aren't caught unaware if the laws with regard to cesspools change, and also aware of what the alternatives are. Right now, the State is basically saying septic, period. And that raises a whole series of questions, because that's going to potentially dramatically increase the amount of waste being delivered to the wastewater treatment plants in the form of septage pump outs.

On that point, Chair Adams asked Director Mansour to discuss some of the State bills being passed regarding cesspools.

That is House Bill 1806, Director Mansour said.⁴ This requires cesspools in the State to be upgraded or converted to a wastewater system approved by the Director of Health before January 1, 2050. When we say a deadline of 2050, usually people have the tendency to wait until the last minute. Our intent is to do it way before 2050. The cesspool conversion working group has been meeting biweekly on this issue. DOH already issued a report on their website. It details the entire state's cesspools and the challenges and priorities of areas, and people could access it, on the DOH website.

Chair Adams said another area of concern is about the coordinated messages that you need to have with DEM, DOH and DLNR, whoever else is doing things that impact the public around the

⁴ Act 87: https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=1806&year=2022

environment. It's about how to make sure that coordinated messages are going out. If people are used to coming to the DEM website, for example, you need to have the links over to where DOH has information just to make sure everybody can get the information as seamlessly as possible.

Commissioner Olson asked if there has been any movement on alternate treatments that could be legally used. There are a lot of different systems out there, but they've never been able to get State approval. Has there been any movement on that?

There are a lot of innovative designs that have been presented, Director Mansour said, but they have to be State-approved. There is the Aerobic Treatment Unit that is being utilized for properties near shorelines. That is an option. Septic tank with leach field versus septic tank with seepage pit could be an option. The layer cake option has not been technically approved in the state, but Sina Pruder from DOH-Wastewater Branch will be willing to work with us as we move forward on different alternatives, he said.

Chair Adams asked if the time is ripe to put on the July meeting agenda a general review of the cesspool situation, especially as it affects DEM.

Director Mansour said we could get more updates, but these cesspool conversions are State-driven because they are the ones who issue the permit for septic tanks. Our goal is to make sure that we could maximize the wastewater connection to a treatment plant rather than septic tanks, because it defeats the purpose. He would rather put the infrastructure money into extending the sewer collection line versus putting septic tank to 100-plus homes. So these are the type of things that he doesn't know how we're going to control it, because individual homes are going to end up seeking permits from the Department of Health, but maybe through the public education officer that we're going to have, maybe we could get communities together and figure out the cost of these septic tanks to their communities, and offset that cost with an expansion of the sewer collection infrastructure, rather than every individual going on his or her own and try to put in a septic system. It's going to be challenging, but we need to start. He knows that 2050 is to some people down the corner and to some people more than 30 years to go, but say, "I still got 30 years to go." But more planning is recommended. We need to think of it. We need to outline the areas and maybe create public meetings to give the people options, maybe as a County, even though it's driven by the State. But we need to get involved.

Chair Adams said she would like to come up with a potential topic to run by the Director, possibly for the July meeting agenda.

Commissioner Olson said that particularly out where he lives, there are thousands of small lots, 8,500 square-foot lots sitting around there that are yet to be built on, and some kind of notification to the owners of those properties that this is coming down the pipe to them, figuratively and literally, to give them a heads up. Again, if people are just flipping these lots, they're not going to be particularly interested in what the outcome is. But those of us who live

there are very concerned with the outcome. So, there should be some way to get them into the loop where they have to deal with the issue as it unfolds.

Director Mansour said the good thing is that the State does not approve any more cesspools, and that has been on the books for a while. So if these lots being flipped and if somebody wants to build a house on it, DOH is going to require a septic tank if they're not near a sewer collection system. So to some extent that's kind of controlled, and overseen by Ms. Pruder's branch. But for some of the big subdivisions that come to our attention for review and comments, we usually comment on these large subdivisions to connect to a treatment plant, because not having large subdivisions connect is environmentally unacceptable, unless they design and construct their own treatment plant, which is a mandate by the Department of Health. If somebody has a lot or a parcel that in your area, if they intend to develop, he hopes that Ms. Pruder's group is overseeing that.

Vice Chair Gaffney asked about the timeline for the public information officer coming on board.

We added it in the FY 22-23 budget, Director Mansour said. We're going to try to advertise the position once the budget is effective. So it's the recruitment process. Within our department, our human resources specialist will be leaving our Department to go to Parks and Recreation. The recruitment process for HR within our department is a priority for us as well. We're looking at – it depends on the recruitment. It could be, if we could find somebody that applies to the position, it could be within three to six months from the date the budget is executed. So sometime mid-2023 probably, he or she should be out there running, doing the public meetings and what have you.

Chair Adams asked to be notified when that is out and we can circulate it to people we know that we think might be good to consider for the slot. She said there would be multiple priorities that DEM is going to deal with, and a time for the person to get oriented and ready to do things.

3. Proposed Components of an Integrated Wastewater Master Plan.⁵ (33:10)

Chair Adams said we had a fair amount of discussion on this last time with the idea of not dictating what this master plan is going to look like and contain, but just talking about the kinds of elements that we think what should be in here. Chair Adams understands that DEM is still finalizing their set of vision, mission goals, statements, and certainly those would be the kinds of things we'd want to add in. She put some verbiage in from the last discussion we had. If there are chunks missing, items you think you want to have (speak up). Again, this was not intended to have all the details, but just the big parts that we thought were critical, like having long-term plans and what it's going to look like and how you're going to get there for facilities, but also looking at how are you going to finance it, what approaches we are going to take. We've already put in comments to try to look at the enterprise fund idea. The comments in red were added as a result of the discussion from the last meeting. And the comment about DBOOT (design, build, own, operate, transfer) was an input the Vice Chair gave the Chair shortly

⁵ V.3: Integrated Wastewater Master Plan Components Draft 2
<http://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=1&id=116511>

thereafter about how to ease into it in terms of transferring ownership and allowing private business to get more involved in things, instead of having the County be the one that has to manage and operate everything. So the main issue is, are there some big components that are missing from this outline? And the idea would be to pass it on to DEM, and say, “see if you're hitting these areas as you develop this plan” that's already partly under way in four different areas, as the Director described last time.

Vice Chair Gaffney wanted to highlight that if there is a huge number of septic systems installed on this island, then the Department also needs to be able to receive the septage that's pumped out of those septic tanks and deal with it. So there needs to be recognition that there will be individual additional businesses, additional truckloads of septage brought to the wastewater treatment plants on a regular basis. So they need to be able to receive it appropriately, manage it. And then we also need to realize that this is going to substantially increase the amount of liquid waste septage that is delivered to the wastewater treatment plants that they then have to convert. It's a huge issue, particularly now that the State's only solution to cesspools appears to be septic systems. He wants to be sure that we're reminding the County that this is a big deal. We're talking about huge volume. On the plus side, it's also an opportunity to support small businesses generally. All the septic haulers today are small businesses, so there'll be an opportunity for new small businesses as a result of this. But they need to be supported by the system when they deliver. He asked that a comment be added to the document to say, “Wastewater treatment plants need to be prepared to receive that increase volume.”

Director Mansour said it would also a good idea to make sure of that as we change the County Code. Septage is more concentrated than your normal wastewater because the liquid, the effluent, get leached through the leach field. So the stuff that gets pumped out and comes to our septage receiver is very concentrated. Our intent is as we change the code, we need to start charging by concentration of these organic matters that comes to our facility because it's harder to treat. Currently, we charge a minimal amount for septage. So the amount, like the Vice Chair said, will increase, but as the amount get increased, the charges should be looked at and based on concentration (organic loading) rather than gallons. We've taken biodiesel residuals to our facility as well now, and that's very high concentrated effluent for industrial/commercial. We need to also make our code more stringent as we move forward.

Commissioner Fulton said that as we discuss the impacts of hauling raw sewage to the wastewater treatment plants and the increased need for demand on the plants, her concern is that we get the regulatory way paved for onsite private treatment systems like the Cinderella incineration toilets⁶ or things like that, that are going to avoid the need for all the hauling and an additional demand on the plants. She is not saying Cinderella toilets are the way to go, but we should be prepared regulatory-wise to pave the way for options that present themselves that could be done at the private property.

⁶ Cinderella incineration toilets: <https://www.cinderellaeco.com/>

Director Mansour said part of that option is already addressed in the DOH cesspool conversion group's report. He knows that WAI, which is funded by the Bill and Melinda Gates Foundation, had recommended that for homes that are living off the grid. But if you have a home within a subdivision, it could be challenging. But it's the Department of Health that will have to approve these types of options.

Hopefully we can discuss that and at the next meeting the ins and outs and the jurisdictional challenges and what DOH activities have been, which is not under our Charter, Chair Adams said. We always need to be looking at how it impacts DEM and whether we want to try to expand the scope of DEM. And if the Director finds things in here that he does not feel comfortable doing without Council support, we would be more than happy to go to Council as well and tell them why we're making these recommendations, she said.

4. Recommended areas for EMC focus on new code/rule changes. See Hawai'i County Code on sewerage⁷, solid waste⁸, and DEM admin rules⁹ (45:57)
 1. 2019 proposed DEM Article III, Rule 20 re sewer laterals¹⁰ (46:24)

Chair Adams said in 2019 DEM proposed to put in a new Rule 20 on sewer monitoring and she didn't know what happened since then.

Director Mansour said we are going through the pretreatment program under the Administrative Order on Consent. Our staff are looking at revising chapter 21. He doesn't know if they ever shared the draft with the Commission, because it went to our Deputy Corporation Counsel for review, but we need to get the green light from them to share it with you so you all can start providing comments before it gets published and before it goes to County Council. Our intent is to capture as much as we can from service laterals, to how we could enforce connections, to how we could enforce and implement pretreatment prior to discharge to our collection system, change the code, for example, what we talked about today based on organic loading, rather than gallons delivered to the treatment plant. He will check with Chris Laude and our staff to see where he's at with DCC Malia Kekai and so we could share with you.

Chair Adams encouraged the Director to do that because she will be keeping it on the agenda for next time.

Vice Chair Gaffney asked whether DEM has the legal authority to inspect laterals.

Not private laterals, Director Mansour said. We have the legal authority to do the laterals within the county right of way.

If the lateral is physically located in the county right of way, do you have the right to inspect it, Vice Chair Gaffney asked. Yes, the Director replied.

⁷ V.4: HCC Chapter 21 <https://www.hawaiicounty.gov/home/showpublisheddocument?id=46>

⁸ V.4: HCC Chapter 20 <https://www.hawaiicounty.gov/home/showpublisheddocument?id=301310>

⁹ V.4: DEM Admin Rules <https://records.hawaiicounty.gov/weblink/1/doc/109446/Page1.aspx>

¹⁰ V.4.1: Prop. Rule No. 20 <https://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=1&id=115746&cr=1>

The Vice Chair asked if DEM can inspect a lateral on private property.

We can, but when we do this smoke testing and we visualize, and we could observe the smoke coming out of a private property, we could put that property owner on notice, the Director said.

Does state law not provide for the ability to inspect the laterals, the Vice Chair asked.

You inspect them when they are first constructed, but once it's constructed, that's part of the code too, the Director said. Usually, the lateral is owned by the property owner from the property line from the house all the way to the main. Unfortunately, here in Hawai'i, especially on the Big Island, we have the lateral from the main to the County right-of-way owned by the County, and from the County right of way to the house owned by the property owner. But it's the same flow coming in. A good example we have that sewer spill two weeks ago on Sunday down Kuakini Highway where at the lateral was the spill before even it met at the main trunk line. Usually the County should be in charge of the flow as volume to all constituents, not for each property owner, because we don't have the funding to go and start fixing every lateral within private property or within the County right of way, because it gets so expensive. So the idea is the cumulative flow that comes to the trunk line, technically it should be a County responsibility. From that lateral to the house or to the business it should be the owner's responsibility because that's its own flow. A good example is of a laundromat when all that stuff get washed, the linen get washed into the lateral and clogs our sewer. But where it clogs it into the lateral, that should be his responsibility. They should be able to have some type of system to trap all these debris before it goes to the sewer. But it ends up costing the County money to just start going to laterals if the homeowner or the business owner is not responsible to take care of his or her own laterals. But that's some of the challenge that's maybe something in the code we need to start revising and think about. It will be good to have your input as a commission on that as well.

It was included in the proposed 2019 proposed change, Chair Adams said. And it's why she has been wondering whatever happened to it. So if you weaved it into the pretreatment thing, that's an appropriate way to go through for us to go through and look at.

Director Mansour said the challenge is, does the county DEM need to be responsible from the lateral, from the point of connection at the main, to the right of way, or just the main only, and the lateral should be the owner's responsibility from his house or business to the trunk to the main?

Chair Adams said, yes, if it's your lateral and it is an individual property owner, you've got to pay to get it fixed. The issue is, hopefully you're not waiting until after you've got a spill or a clog to identify that there's some way to periodically make sure everybody is inspecting their pipes. We're going through that in our homeowner association right now. Just make sure that everything's working.

Commissioner Fulton said it was new information to her that the spill on Kuakini Highway was created by an issue with the privately owned portion of the lateral. Is that correct?

Well, it's a bit complicated, Director Mansour said. There were two sewer line mains. It took us a while to rebuild what was going on. You have the shopping center, you have the Kona Brewing Co., and somehow, back when they put the lateral, they demolished a manhole and they left the 8-inch sewer line uncapped, and they buried it. So eventually we have a diversion box. It was overflowing, going hydraulically the other direction. Since the 8-inch line was not uncapped when they put that personal private lateral, it ended up causing the spill because hydraulically, it was going the other direction. But, yeah, it's a combo. Most of the stuff that creates clogs to laterals or sewer mains is either tree roots from a landscaped area that's within a private property or the usage of a business, such as laundromats, restaurant fat and grease. We have so much fat and grease in that line, we couldn't even clean it in one day. It took us four days just to clear that fat and grease within that line.

Commissioner Fulton asked when the public incurs expenses related to failure to maintain a private lateral, whether there is any recourse against the owner of the lateral, or is the public just soaking up the cost of negligence by private individuals and businesses?

That's why we're doing the pretreatment now. All businesses need to have a pretreatment program, and that's what we're working on as we speak.

Commissioner Fulton said that is not answering her question, which is, historically, has the County been soaking up the costs of issues created by private obstructions in privately held laterals.

Director Mansour said he did not know what's been done in the past, but he would imagine yes, the County has been absorbing that cost to his knowledge. That's what's happening. Our responsibility as a County needs to stay within the main trunk line, not the laterals.

Commissioner Fulton said we have a really bad situation because we live on an island where there's earthquakes and tidal forces and corroding pipes and lots of problems with laterals, but there's no incentive to actually get anything done because, A) Nobody's checking because you're saying we don't have the money to be conducting smoke testing and B) if anything happens, so what, County is going to suck it up, County is going to pay for it. So that truly is a serious problem.

That's why as we look in the code, we need to strengthen that, Director Mansour said, and if we need to adjust our rate user fee to cover the cost. His question to the Division Chief was, are we collecting enough money in the rate user fees to pay for these sewer lateral and sewer clogging? And the answer is no. So that money is coming out of our operations fund, and it's not being collected as part of the Operations and Maintenance for the rate user fees. So we need to adjust that because it doesn't make sense that we incur a cost that we're not even collecting for.

Chair Adams said one of the issues she had to discuss about new business is to talk about enforcement of DEM rules. And maybe we can come back to that because when you've got to have the rules that say, here is who is responsible for what, and then you've got to have an enforcement mechanism to follow up and make sure that the responsible party pays.

Commissioner Olson asked the Director what authority or reach on this subject does the State Department of Health have in regard to individual sewer laterals. If you are part of the system that causes a spill, is there not some consequence on the State level for doing that?

Director Mansour said the state looks at a municipality to report any sewer spill at a certain number of gallons that caused the spill. The State does not monitor any individual lateral. They look at municipal waste treatment plants. A good example, you have the Puakō subdivisions where you got cesspools and septic tanks that directly go to the shoreline, to the beach, and the State understands it's an issue. They could ask the property owner to get a better system, maybe with an aerobic treatment unit or with a better system that takes away the leach fields that they have. But it's a challenge. They probably have more difficulties to enforce these than we do, in a sense, because they have 88,000 to deal with. Even on the federal level, they go after municipalities and businesses. If it's one house, unless you have a gang cesspool or you have a treatment plant, then you're right. Resorts fall under the federal rules. But individual homes do not unless they have their own treatment plant.

2. Residential sewer fee rule changes. E.g., charge by capacity of the property's connections to county sewer mains, regardless of actual use, and eliminate the concept of "unoccupied unit." (1:02:31)

Chair Adams said this discussion is about how we charge for residential sewer fees, and how DEM rules should be changed to make it clearer and more sense to cover the cost of handling residential sewage. One of the comments that was made before was, we should look at the volume that's being sent to the public wastewater treatment plant rather than the number of connections or pipes. So did anybody have any specific language or approach to discuss?

Commissioner McIntosh said the only thing he saw with the capacity problem or volume is that they use your water bill to measure that. The problem with that is if you have a drip system or irrigation, that you have all this water, they're going to be charging you for sewage and it's going in the ground and not into the sewer. That's one problem he sees, unless they have a way of measuring it without how much water intake you bring in.

Chair Adams asked the Director to clarify that for residential, it's just the fact that you have a hookup and the number of hookups you've got to the public sewer for commercial, it is based on water use. So there's a split there. And for her own homeowner association, we have separate meters for irrigation water and use by the apartments. So there are ways to deal with the difference depending on how you meter it. But in a home, you've got one meter and it does everything that you've got. If they were to be charged, they'd be charged for sprinkling water

that does not wind up in the sewer. So a technical question she had is, can you meter how much goes into a sewer from each lateral? Seems like that would be tough. Can you do that?

No, you can't, Director Mansour said. It would be complicated and expensive to try to put a meter on a sewer because your sewer is not your standard water where you can meter it because it's periodic and not continuous. So it's hard to meter. That's why you do it based on the number of capita per house and usually it goes back. She is correct about the commercial properties. DEM charges on a per gallon use after a flat rate. Our intent is to follow the same thing for residential use. We should set a flat rate that covers the operations and maintenance, the actual cost to maintain the sewer line, to maintain the facilities, and then charge additional fees based on the volume of water used. Because if you have a situation where you have a house that uses more than others, you're right. We are only charging that flat rate of \$40-plus per month. With the help of the Commission, we need to navigate through it as we do the code change. It makes sense to have a flat rate like what Honolulu is doing based on the water bill.

Chair Adams asked how many laterals are plugged into the public sewers. Director Mansour said the Department knows.

Chair Adams said that she was thinking one can calculate what the maximum average flow might be. If the flow was going at the maximum rate the whole time, would be some large number and if it's an empty lot with a pipe it's a smaller number, and you figure out where you go in between. The flat fee is calculated based on the typical home and the typical flow. But she was wondering if you could count the connections to the county sewer pipe and charge on that basis.

Director Mansour said the sewer laterals are supposed to be serving one individual parcel. Here, the way it's been happening is, one lateral that could provide the whole subdivision, which is kind of insane to have a 4-inch lateral providing sewer service to a whole subdivision or commercial business.

Chair Adams said there's only so much water that can go through the pipe.

That's true, the Director said. That's why each property and each lot should have its own lateral. A good example is, when we had that spill on Kuakini Highway, there's one lateral serving the entire Kona Brewing Co. And let's say if there's a clog or a problem, now you're going to shut off the lateral for all the businesses within that shopping center, rather than deal with the area that caused the clog. It's insane because they have one lateral that supports the entire shopping center, which is crazy. It should be a different lateral for each business. That way at least we don't get in the middle of a legal dispute between business owners. Both businesses will deny causing the clogging, so who's going to fix it? That's the challenge. He does not know what it would take to change it. But we need to stop looking at doing things differently. This is not your standard practice where you have multiple businesses on one 4-inch lateral, but unfortunately, we have it all over the island.

We started with the issue of residential, Chair Adams said. Commercial is a whole another bucket of worms.

Commissioner Fulton asked DCC Keyra Wong whether she would investigate state law regarding inspection of laterals, particularly regarding the public trust doctrine. She has spoken with other people who are of the impression that under the public trust doctrine, there is no County law needed to empower the county to inspect the laterals.

DCC Wong asked the Commissioner to follow up with an email to her outlining what she needs.

Director Mansour said the challenge is right of entry. The Department is working with DCC Malia Kekai currently on Pāhala and Nā'ālehu as well, regarding to what extent the government could get into private property. We have it in their deeds when we took over the system from C. Brewer. But the issue is still about the County getting into private property without the right efficiency, because I cannot just come to your house and say, I'm going to walk to your backyard and say, well, I'm going to inspect your lateral. You're going to kick me out or you're going to call the police. So the right of entry is the challenge. As a government, we cannot just wander around into people's properties.

Commissioner Fulton said she was talking about a video inspection, rather than physically taking a pipe to actually inspect it.

Director Mansour said the camera is a different challenge because you have to go through their clean out, to run the camera through their clean out. Sometimes we do that from our side of the cleanout, but we could go to a certain extent, and we do that from an inspection point of view through the camera. That's totally different. We do it through our cleanout currently. But the idea is to go to, if they have breakage in the lateral, that's the whole concern about rainwater inflow and infiltration coming through the lateral to our system. You cannot see that unless you do inspection on the lateral.

Commissioner Fulton asked if one could run a camera through the clean out without stepping foot onto the private property.

Currently, our devices allow us to peek into the lateral that come into our main because you could direct the camera's head to look into the lateral, Director Mansour said. But we cannot shoot it all the way to the lateral because let's say that lateral is 100 feet to the property. So, when you bring your plumber in, the plumber is going to open your cleanout, and will run a 2-inch camera into your cleanout, all the way to the main. But that's going to happen on the property, not from the street.

Commissioner Olson asked if there is something under the federal Clean Water Act that covers DEM's ability to look to see whether someone is polluting the environment.

When it comes to private laterals, it's a different game, Director Mansour said. Government cannot just wander around into people's properties. It's the homeowner's responsibility.

The federal government has a much longer reach, Commissioner Olson said.

That is still encroaching onto people's privacy, Director Mansour said. It doesn't matter if it's Federal, State, or County government. Federal agents cannot just wander onto your property. They have to have a court order.

Chair Adams said there are DOH regulations, there's Hawai'i County regulations, State regulations, codes, and rules, DEM and federal rules. And everybody uses different terminology and holy moly, it would be a real job to try to write this. She is more than curious on how DEM is proceeding with the pretreatment regulations and how we could clarify who's got to do what and when. But it's not a simple thing. And a lot of surrogate work has been done traditionally. We'll make some assumptions and come up with this flat fee in terms of the residential. Just because you can't manage all the variations that are going on, you aren't going to have the County going around finding out how many toilets everybody's got and how many people they've got on a real time basis. It's just not going to happen. And as the Director was saying, it's not so easy to measure the volume of sewage going into the county pipes. So you're coming up with some sort of substitute that's at least somewhat straightforward to administer as a regulatory agency. And what we were hearing when we had our appeal hearing was the language is just kind of confusing, garbled. Are there some things that we could make clearer? And there's talk about lots and units and dwellings and buildings, and it's sliced and diced differently depending on which part of which regulation you're looking at. So the issue was more, okay, does anybody have a straightforward fix for what are you responsible for as a resident? How much should you have to pay and how can DEM administer it to cover their costs? We're paying their costs right now because the County is sucking up more charges than they ought to be. So that was the topic, not a simple one to fix.

Commissioner McIntosh suggested that the County could assess a charge equivalent to the maximum number of units a parcel is allowed to have. If a parcel is allowed to have two units, then they would be allowed to charge the flat fee for residential for up to two units. And then that would help clear some confusion, basing the charge on how many houses a property is allowed to have. If your property is Ag-5a, but it's 20 acres, that means you can subdivide it into four five-acre lots. So you can have potentially up to four homes on that TMK.

And those homes could have however many toilets, Chair Adams asked.

Yeah, it doesn't matter, Commissioner McIntosh said. You're just basing it on units. So if they have two homes, they're allowed to have two homes and they have two connections. If they only have one home, and they're only allowed one home, then it doesn't matter how many outbuildings they have, DEM only charges one connection.

Chair Adams said she was coming at it from the other direction of looking up the sewer pipe, going, how many connections, pipes, laterals, are connected to this property, and how big are they? And just calculate a range, an average, max, about the number of units that could be on there. And I don't know, she said. Again, there's the issue of fairness. I've got farmland, ag land, and I've got one building and I'm being charged for five. Is that fair?

Actual buildings, you're just charging them flat for five, Commissioner McIntosh said.

That's what we do now during our inspection, Director Mansour said. A good example is the situation that we just went through (the Kai Ala Partners LLC) appeal, that building was converted from a water shack to a building and the building division issued a permit. That's why we did the inspection. And the inspector determined the plumbing constituted a standalone building. So you're right, if you have one parcel where you end up pulling permits to put another structure, it will be pretty much defined by the building code, and that's when the inspector goes in there and then inspects it. That's how they define it to be chargeable units. So the concept usually in most of the entities they use what we call ESFD, which is equivalent single family dwelling charges, and they assume it based on 2.8 capita per house, which is about 280 gallons per day. So if you charge each house one ESFD, that charge becomes your fixed amount. And if you have an 'ohana house or an additional building that you went and got a permit for, then that become another ESFD. So that particular process could be charged two ESFDs versus one individual ESFD, because it's not based on the number of fixtures, because we don't do it. For commercial, usually you calculate the flow based on fixtures, toilets, or number of occupancies, especially if you have a restaurant or hairdresser or car wash where they end up using a lot of water into their system, and there's different ways of doing it. But we need to revise the code to either set it up based on ESFDs, number of gallons estimated for each entity, or based on commercial/industrial, could be based on occupancy flat rates that constitute that business. It's challenging. It's not an easy thing. We're never going to be fair because every situation, especially here, is different. There's a lot of unpermitted structures within one parcel, and it's hard for us to have staff to go around and inspect and visualize what's on the property. The only way for us to do it during the Building Division issuance of a permit, that's how we get notified to go there and inspect the property because there's a permit that was issued.

And that may be some of the clarification that we could recommend, Chair Adams said. What is your trigger for establishing the flat fee? And if it happens to be a building permit of a certain kind, then that should trigger and that's it. And we put that in the regulations and not go through these convoluted definitions that people can argue about forever.

Vice Chair Gaffney said he wanted to remind everyone that there are a lot of houses that are converted after the fact to support multiple residences. He knows of one in his neighborhood, for instance, that was built in the 1980s. It has been converted, and it now has five apartments in it. So it has five bathrooms and five kitchenettes for five different individual renters in a single-family home. So their volume is clearly a lot larger than the other single-family homes around it. And by the way, they're using a cesspool, so effectively they have a gang cesspool. And this is becoming a huge problem on O'ahu with the cost of housing going so high that

multiple families are moving into houses that were built as a single family home. So the original building permit and the original construction doesn't have anything to do with the amount of volume that's coming out of those houses after the fact. But there's been stories in the paper on O'ahu about these monster homes that are being built with 10 bedrooms and 10 bathrooms. And he doesn't know how the City and County of Honolulu is handling that, but clearly it's an issue because the same kinds of housing costs are affecting our community, and that's resulting in more people living in homes that were originally built for a small family.

Director Mansour said that's a good point. This is where Planning Department and Building Division need to strengthen their code. Commissioner McIntosh is correct. When you have a zoning within a 10,000 square foot lot, you should be able to build one house and that's it. So if you end up getting another two permits to build 'ohana houses within a 10,000 square foot lot, that becomes a zoning violation. And a lot of people end up building things probably without a permit. And that's a challenge to the Building Division of how to monitor that as well. But as far as our Department is in your scenario, if we inspect that and you got five different units, we charge for five different connections. Because it's not one house. Now you have five different rentals. From a wastewater perspective, we have five different structures contributing to our treatment.

And that, again, is triggered by a permit application, Chair Adams said, if they are complying with those regulations. It was why she was trying to think of, can you come from the other direction in the wastewater treatment plant and say how much stuff could come from this pipe that's on this TMK? And that's the basis for your charge. And if somebody wants a variance from you because they only have one toilet and one bedroom, then they could ask for a reduction in the fee. We aren't going to solve it together here at this time, but the Chair wanted to raise the issue. It's easy to say, well, just fix the code. Well, it is incredibly difficult to just fix the code because it's not just one place you got to fix it. You got to fix it all these other places, and you've got to figure out a way that you can actually administer the thing, because you can get the information without incredible cost.

3. Wastewater pretreatment code draft proposal status

See the discussion on V.4.1, pages 8-11.

4. Littering code changes (1:31:30)

Chair Adams asked if there are any changes to the County Code around the issue of littering. The issue right now is that DEM has requirements to secure the loads that are coming to the transfer stations and to the landfill, except that people don't, and stuff flies out of the back of their truck and makes a mess. It has been said in more than one place that the unsecured load issue is the primary reason for why there's litter everywhere. There are also the scofflaws who throw their beer bottles out the window as they're driving along the road, but they aren't the majority of the volume. So we have it in the code, in the DEM regulations, and in the County Code. So littering is regulated, but enforcement needs to be done. Had it on the list for public

education and communication. The Police Department just put a statement¹¹ on their website. If you go and look at that, they're reminding people that it is against the law to litter and you need to secure your loads. That only goes so far, but that was good. And so she wanted people to be aware of that. There was really useful testimony submitted. Unfortunately, the individual wasn't able to come to the meeting today. But if there are some things that you think we need to do to change the issue, add to the regulations, short of our new business item, which will be how DEM enforces things.

Commissioner Gaffney asked if we could get the Police Department to detail for us how many people have been cited for an uncovered load in the last year, two years, five years, to get some idea of whether or not they're actually doing any enforcement whatsoever.

Chair Adams said she was trying to recall if there was any data in the testimony. She could certainly pass that question along. They do not give it a priority, and they are not there to catch people. Police would have to be behind the truck to stop a violator and give a ticket.

There are a number of unenforced laws on this island, the Vice Chair said. One of the classic ones is truck tires that extend outside of the fenders. And if you ask the Police Department, you'll find that they very rarely cite that, even though it's very obvious as are our uncovered loads. And there are regular speed traps on the Queen Ka'ahumanu Highway that are on the way to the Kealakehe Transfer Station. So it would be logical to further ask the Police Department, all right, when you guys are out there doing the speed trap, if they see an uncovered load, will they cite it? Because his observation would be that a lot of the "littering," which is resulting from waste blowing out of trucks, could be prevented if there were regular citations and the community would be made aware that if you have an uncovered load, you might get a ticket. Most people think that they're never going to get a ticket, so why bother.

Chair Adams said she could see about asking that question. There was also some additional communication that the testifier had shared with us by the Police Department, but her recollection is that they admitted it was not a high priority for them. But she would also like to bring this back up when we get to new business on how DEM enforces their requirements, because it's the police right now that have to enforce it. Just like with the abandoned vehicles, the police are the ones that give this out, even though DEM regulations are the ones that specify the requirements.

Commissioner Olson said that where he is in Puna, we have asked the police to weigh in a little more on this because it becomes serious. Given the location of the transfer stations relative to the population, the density of the population, we have a problem. Highway 130 is being severely impacted by trash that gets loose, and so is Pāhoa. So coming down as this moves on, he is looking forward to getting additional facilities put within these large subdivisions that we have that are basically totally unserved.

¹¹ <https://www.hawaiipolice.com/6-21-22-police-remind-public-about-penalties-for-uncovered-truck-loads>

So noted, Chair Adams said. We also have the Department of Transportation who've got their people running around. She recommended commissioners read the testimony.

5. Bill No. 167 – Amends Chapter 14 of the Hawai'i County Code 1983 (2016 Edition, as amended) by adding a new article relating to prohibition of non-mineral sunscreen.¹² (Amended to Draft 2 with the contents of Comm. 771.1¹³ and approved by the Council on second reading on June 15, 2022). (1:39:16)

Bill 167 was passed the previous week by the County Council, Chair Adams said. The bill restricts the sale of nonmineral sunscreens, and it is not specifically a DEM-based requirement since it's sunscreen used on people's bodies, which isn't the purview of DEM. However, the Council did put DEM as the one responsible for enforcing the requirement. Chair Adams admits that she was not in favor of this particular bill for several reasons, but one of the reasons was putting the requirement for enforcement on DEM with the understanding that, wink wink, they won't have to do anything. The retailers, especially the big retailers, will comply with the law anyway, and it'll be another one of those on the books but not enforced regulations that bothers her. And so it's appropriate for us to ask what can DEM do in the enforcement arena. In the example of littering, when an unsecured truck goes to a transfer station and stuff is falling out of the back of the truck, DEM says they can do nothing. The people who are staffing the transfer stations are not able to give citations. It has to be a police citation. The idea in the case of Bill 167 that DEM is going to go around to retailers and collect illegal sunscreens, they don't have the staff, we're not giving any money to enforce this thing. So just what is the status of DEM enforcement, and is it real, and is it fair to put requirements on the Department?

Commissioner Fulton interjected to say there were so many testifiers in favor of Bill 167 that the County Council had to reduce the time allowed for testimony from three minutes to two minutes. As far as costs are concerned, part of the cost that DEM doesn't have to worry about is actually going around and inspecting in the stores because you're going to have a force of citizens that are educated and impassioned about this topic. They do not want these toxic substances in our ocean, and they're aware of the toxic consequences to our bodies of using petrochemical sunscreens. So, that part of the DEM job is going to be easy because you're going to have a force of non-deputized citizens that are going to be promptly calling Mr. Mansour's office to report when they see forbidden sunscreens on the shelves of stores.

Chair Adams said her point is having to deal with those calls and trucking out to the retailers and collecting the illegal material and disposing of it as being a function of DEM. But the law passed. The mayor still has the opportunity to do something if he chooses, but the concern that she is bringing up is the capability of DEM to enforce this requirement.

Vice Chair Gaffney agreed with what Commissioner Fulton said. There's an impassioned educated group of people who supported this process, and now it's law. And there is actually a

¹² V.5: Bill No. 167 (Draft 1): <http://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=0&id=1034782>

¹³ V.5: Adopted amendment to Bill No. 167:

<http://records.hawaiicounty.gov/weblink/DocView.aspx?dbid=0&id=1037616>

fairly simple way that this can be dealt with, and he has seen this done on a national basis. If there is a website that DEM maintains where people can report and send photos from their phone of illegal products on the shelves at a specific location, DEM can have a prewritten letter that goes out to those places, those stores saying it was reported to us on a given date and with photographs showing that you are currently carrying these illegal products in your store, please remove them immediately. That particular campaign on another subject worked very well nationally. It basically took marlin off the menu nationwide. Secondly, most of the stores are not going to have product to throw away because they'll return it to the manufacturers. That's what the stores do. The wholesalers take it back and send it back to the manufacturers for credit. So there's a very simple solution to supporting this bill, and it's important that we support its premise as opposed to trying to find a workaround to stand in the way of supporting its premise.

Commissioner McIntosh said it still comes down to someone having to monitor that website and send out the letter. DEM still doesn't have the personnel to do that. So that's just more money they're going to be asking for in the next budget. And we already have transfer stations that need attendants. They're only working part of the week. He doesn't think it was a good idea.

Vice Chair Gaffney said the national campaign that he described earlier was handled by a nonprofit group. So any burden on DEM could be picked up by a nonprofit that wants to see this supported. And there are several large nonprofits on the island and statewide who might pick that up. So there are ways that this can be supported. And it's also important to know that it is a DEM function in the sense that when endocrine disruptors are dumped into the waste stream and then end up in the ocean, that's a serious issue for all of us on this island. And that's effectively what's happening with these oxybenzone-containing chemicals, which pass through the human body in 15 minutes and end up in the waste stream. So it is a waste issue.

Director Mansour said he is looking forward to working with Council Members Holeka Inaba and Rebecca Villegas on trying to do the administrative rules. We submitted a proposed cost. Sanne Berrig could talk more about it because she was working with Maui County on how they were setting up their section. And we did project about just for the public education itself. He looks forward to the meeting so we could narrow down how we could do it efficiently. It's going to take some resources, and we have got to monitor it. Finance Department requested a cost projection from our department, and our business manager submitted it, but the bill was passed after the budget was approved. So we're going to monitor it. We're going to work with council members and see how we best could accomplish that. People may get frustrated if they give us a call and we cannot respond. But he likes what the Vice Chair has suggested. Maybe we put out a letter that is pre-written. That's a good idea as well.

Ms. Berrig, the Recycling Coordinator, said that personally she is 100 percent in support of this bill. However, when it comes to the Recycling Section – it's just a matter of time. Those are great ideas. The reporting, phone calls, and processing, that does take time. But those are all great ideas. Having something on the website, that could be a good idea, too, but we'll just

have to wait and see what comes down the pike. But personally, she is in support of this. She just wish that she had the staff, even a year-long staff person, because once it's in effect and the education has been out there, then it'll become (achievable, but) this initial year or so is going to be labor intensive.

Commissioner Olson said there will be enough blowback about this that retailers are going to find it difficult to move the product. He is optimistic about it.

Chair Adams said she was looking more at our oversight advisory to DEM and how much time and effort they put into this. It will be, for the most part, self-implementing, but it will be an increased burden on DEM. Find the easiest way you can to deal with it, she said.

VI. NEW BUSINESS

1. Enforcement of DEM rules: Who issues citations for violations, and how? (1:51:38)

We've talked before about the abandoned vehicle issue, Chair Adams said. You're not supposed to put stuff down the drain that's going to kill the bugs in our waste treatment plants or clog up the pipes, but people do anyway. How do you enforce it? Can DEM, for example, at a transfer station, hand out citations for unsecured loads being brought into a transfer station?

We cannot enforce it, Director Mansour said. If somebody comes in with an unsecured load, we take that information, we note it with our staff. If the person does it second time around, I think we only can fine \$25 or something. But we cannot enforce it because we don't have an enforcement section or code enforcement within our Department. It has to go to the Police Department for enforcement. There was a talk about creating a code enforcement section for the County as a whole, because the entire County, from illegal dumping to illegal buildings, maybe that's something the County needs to look at creating. Where are they going to put it? He doesn't know. Many counties have a code enforcement division that goes out there and is supported by the Police Department or the Sheriff and issue and citation. But they will be well-equipped to deal with conflicts, and our staff are not.

Chair Adams said it's kind of a personal bug of hers of writing regulations that you can't enforce, won't enforce. And are there ways that are reasonable they could be enforced? The Vice Chair had an example of automating it through public reporting. The public can also report, take out their phone, take a picture, and get a ticket for using their phone while they're driving along the road watching stuff flying out of somebody's truck. But it sounds like it's both a staffing issue for DEM. Her question for counsel is, are you legally prohibited, or is it a union requirement that you can't issue an actual citation?

DCC Wong said there's definitely some union implications in there because the Police Officers customarily and historically provide that service to the county. It's not impossible, but there's that aspect that you have to explore first. The County would have to consult with the union to establish those parameters because every time the County implements things where an employee's conditions, terms, conditions, wages of employment are affected, the unions have to be consulted. And here where you have overlap of what appears to be DEM having the

authority to enforce but no staff or an enforcement division to do the work, and the police on the other side having that authority to do it, but they aren't able to for many reasons, you have that gap in between. And so while it's not impossible, there's a process that has to happen. DPW has a parking enforcement officer position, that the HPD and DPW established so that it gave parking enforcement officers the authority to issue citations. I don't know if that's something that the DEM might be exploring. DEM also has under the County Code, the polystyrene section that they are also supposed to be enforcing. How is that piece enforced? Because there is a parallel, and if that's not something that they're doing currently because of staffing, then that's just the issue.

Director Mansour said we do issue a notice of violation, but the problem is it still gets ignored. So what do you do, do you go to court? He spoke with Corporation Counsel Elizabeth Strance about it and that's where the idea of creating an enforcement section may work. But we need also to be able to navigate through the process. You send a notice of violation or letter and it gets ignored, then it has to go through the court system and Corporation Counsel now has to take it to court to make sure it gets enforced. And I think that's what we've seen. It's the challenge of transitioning that to become a legal issue that needs to go through either civil court or some type of court system to determine the judgment.

Recycling Coordinator Sanne Berrig asked how she has been addressing the polystyrene ban, said that to her knowledge, there hasn't been any reports of it. Our ban is different from Maui's because you can still go buy polystyrene. So what did happen is she would get emails from people saying, "I just went to so and so and they're still using styrofoam." This is when the ban first passed. We would go out and do a site visit. We'd bring the rules and let them know. And then it was usually like, "Oh, we didn't know about it, we're using these up." But to her knowledge, we haven't had any reports having to do with businesses using it for a long time. But it would be the same thing. A letter would go out, but to her knowledge, it never got to the point of violation because first we would do a site visit and that was usually enough. And then it would go to a letter going out to saying, please don't do this again. If you do, then you will be fined, whatever nominal amount of money. But to her knowledge, we haven't had any violations sent out for a long time with respect to polystyrene.

Presumably that was part of the basis for your costs for enforcing Bill 167, Chair Adams said. There'll be a blip and then it'll probably die off.

Commissioner Olson said in Puna (makai) our problem is level of service. Basically, we have two transfer stations, and they are not serviced by any County road. We have only Highway 130 and that's it. According to the Census, we're now the most densely populated district on the island. So our level of service is rapidly declining because there is a building boom like nothing he has ever seen going on in Puna right now. I'm a child of the 60s, Commissioner Olson said. I've seen building booms, and this matches anything I've ever seen. They are throwing them up left and right, and we're going to have to, on all levels of service from the County, are going to have to pick up the game. And we're going to have to be looking at how we're going to deal with this.

Commissioner McIntosh commented that the majority of the transfer stations are serviced by the highway, at least. The Hilo Transfer Station has a County road by it, but for all the others he has seen you have to access it through the highway. And that's probably one of the reasons why trash litter blows out, because people are driving 50 to 60 miles per hour and trash is flying out. He only has to travel about 100 feet on the highway from his road. So it's not that big of a deal.

Chair Adams asked commissioners to keep thinking about what changes we might want to recommend. The idea of a County code enforcement division is perhaps intriguing. Any time a regulation comes out, there are costs, administrative costs, that DEM also needs to factor in when they're doing things. And when we're recommending or supporting different regulations, we need to be aware of the practical administrative costs for the agency. Regardless of the merit of the intent by the legislators, you still have to deal with the reality, as we well know about our wonderful wastewater treatment plants, they need maintenance and have their own kind of enforcement issues.

TERMINATION OF MEETING: The meeting was terminated at 11:16 a.m. due to loss of quorum. Pursuant to Hawai'i Revised Statutes §92-2.5(d) the remaining members were able to receive the presentation of the Director's Report. No deliberation or decision-making was made outside of quorum. See attached Appendix for the remainder of the proceedings.

APPENDIX

(Post-termination presentation minutes)

VII. REPORTS/CORRESPONDENCE

Director's Informational Report.

1. Legislative update (2:05:14)

Director Mansour said that HB 1806 has become law (Act 87). He will have Ms. Berrig give updates on bills that she has been paying attention to in regard to diversion, composting, and recycling.

Ms. Berrig said she is waiting for the Governor to sign the bills. Currently, the ones that are sitting on his desk are a couple relate to composting, some pertaining to abandoned vehicles. If the e-waste bill (HB 1640) gets signed, manufacturers would have to provide a monthly collection. By October they would have to provide a plan with DOH, and they're supposed to start collections on in January, and that would really create a big benefit to us, she said. So still that's not signed. Another one (HB 1992) permits composting and co-composting operations on ag land under certain conditions. HB 1644 bans the sale and distribution for sale or use of wraps, liners, containing perfluoroalkyl and polyfluoroalkyl substances. One that did pass (Act 12, SB 2998) has to do with the HI-5, but that's more of the finance over auditing with DOH. So that's what she is waiting for. If anyone wants to send good thoughts for the signing of HB 1640, that would be awesome.

If HB 1640 gets passed, DOH has a lot of regulation writing to do first, Chair Adams said.

Yeah, I'm assuming so, Ms. Berrig said. But they have to approve the plan of the manufacturers which she is sure that they are working on now in the event that the Governor signs it, so that manufacturers provide monthly collections for their customers to whom their products are going. Her understanding is that the plan would have to be approved by sometime in October by DOH in order for the program to begin January of next year.

Chair Adams asked whether there are administrative staff demands on DEM.

Because of COVID-19, Ms. Berrig said, our money got cut a few years back, and we're seeing our e-waste budget being a lot smaller than it used to be. Back in April, we put out the press release, but we actually ran out of money in January for the e-waste. We ran out of State funds because we used to get maybe \$170,000 a year. And now we're getting \$99,000 or \$89,000-something. So right now we're trying to come up with a plan. We just did an RFI to create a new program so we don't start a program and then we just have to suspend it through lack of funds. But we're trying to develop it with the knowledge that we may be supported by the manufacturers themselves taking back their e-waste. So we're having to do administrative work on this, regardless of this bill being signed or not. Just our normal administrative contracts.

2. Budget issues update (2:11:02)

Director Mansour said we got the money that DEM asked for in FY 22-23. Some of the positions, unfortunately, will get us going, but we may be going mid-year. The positions that we did not secure this year include for information analysts, system analysts to assist us with the asset management and the supervisory control and data acquisition (SCADA) system that we're going to be installing for Hilo Wastewater Treatment Plant, and rather than doing deferred maintenance, do proactive maintenance so that software could eliminate the deferred maintenance issues that the entire Department used to deal with so we don't fall in the same predicament. He did not get funded for that, but the Director worked with our Managing Director and Finance Director to trying to see if we could reallocate some of the other positions. It's been negotiated with them and we'll see mid-year if we may go and ask for these two positions, but we'll see if we cannot reallocate any of the current positions we have. That's something we need to go back and ask for.

Chair Adams said if commissioners had a chance to look at the testimony submitted by Jennifer Navarra, she and many others are working on a survey questionnaire that you're all individually welcome to participate in, in order to inform and influence how EPA gives away a lot of money that could come to the County to help with recycling.

Ms. Berrig said it is amazing to be literally working with the EPA. They've had several webinars for infrastructure money and the outreach and education money. The infrastructure money just goes to governments. But of course we can work with nonprofits, et cetera, and contractors. Those grants are only open to governments at \$75 million over five years. They do their presentation and then they ask questions and then they ask for our feedback. And the first meeting that was attended, as it so happened and we didn't plan it, there were representatives and all the different diversion groups, nonprofits, governments from all the islands, and it was like, Hawai'i is in the house. It's like we use this money for reuse and waste reduction, not just recycling, because being so far from market. And so anyway, now they put out, and that's what the survey is about, to back up a little bit, through the different diversion groups. We've been meeting every week or so. It's people from Mr. K's, Zero Waste Hawai'i Island, Volcano Precious Plastics, just different groups on the island. We've been meeting every week or so, and Zero Waste has been leading it just because they have the time more than she does. And having a collaboration is great to reach out and do a quick survey to any diversion stakeholders, which is kind of everyone, but people that take the time and interest and reply to this in order to respond to the RFI. EPA gathered the information through the webinars, the Zoom meetings, but also just to do an RFI. They're asking basic questions and they're asking everyone's opinions on coming back. So we decided to do it in a survey method to engage stakeholders. And then that's with the survey that we started sending it out yesterday, we got approved by everyone that needs to approve it here and then it's gone out. And then we'll get it back and then we'll fill out and do the RFI. It's due on July 21 or 23 or something. It's a lot of money. And what's nice too, is that the EPA is saying whatever the grant RFP looks like now, it can very easily change for next year. They'll take into consideration lessons learned from this year and the information that keeps zipping in. One of the largest things that they are very fully aware of, just to the

webinar Zoom meetings, is everyone's like, we're short-staffed and filling out grant applications. It's like this wicked Catch-22 that happens. So anyway, it's exciting to be working with all the groups and we look forward to getting responses from whoever takes the time. It's a pretty short and sweet survey.

Chair Adams asked Ms. Berrig to summarize the situation on HI-5.

Ms. Berrig said the Certified Redemption Centers (CRCs), are all contracted. We don't run any of them. We put out contracts. Again, when you pay for your beverage, then you pay a little bit of money for the container and you pay a tiny bit of money for the administration of the program. That goes to DOH, and then DOH gives us money every year through grant. So every year we put out for bid the site, and then the different ones that have been managed by different people, they rebid it and say, okay, we'll do this again. So hello COVID. And as you know through every sector in the country, labor shortages are here. And we're seeing a little bit more, or a lot more of it here on the island as our costs, which are already high to begin with for the workers, housing and all that stuff, then we have the fuel, et cetera. So Hilo, Kealakehe, and Volcano, we did not get them back on and then in Waimea, we did not either. But normally the transfer stations that are really close, like in Kealakehe, Waimea and Hilo, those have traditionally been zero-dollar bids. It's a contract and there's responsibilities, but we do not pay the vendors to be there. There was enough money in commodities, in recycling for them to make money. And DOH, to make the best use of the funds that they have, if there was another private recycler, another CRC close by, they would not want to be paying for the sites. The other sites like Volcano and the more remote ones, we pay the vendors every month to be there, to show up. So there were some rumors flying around that at Volcano, there was a lease on it and we had a revenue stream from it. No, there's a lease and the money goes the other way. We paid through the State. We paid them to be there, because Volcano is so remote. We spoke with the vendor and they're like, we can't do it. We were lucky to be able to renegotiate. Their main thing about Volcano was they have other sites around the island that are all open on Saturdays. And Saturday, they can't hire a person just to work one day a week, and then this person, they also pay travel fees. So it just wasn't worth it for them. So we were able to just do an extension on this contract now and hopefully rebid it. So there will be a change. Volcano will be open now on Thursdays starting next month on July 7. For Waimea, there is a CRC maybe 2 miles away from the transfer station. It's not as convenient. However, they could not staff it. And then same thing for Kealakehe. Right before you drive into the transfer station on the right hand side, that's where Atlas Recycling, in the past, they've had it open as well. Now, once the CRC closes at Kealakehe, just before you get to transfer station, just make a right and there's a redemption center there. And then Hilo is Mr. K's, and then I think it's Atlas also. So yeah, it's a struggle. The main thing boils down to labor shortages and then the inflation that we're seeing, it's just all across the board. So I hope that explained. And they did a pretty good job.

At those transfer stations that are not going to have redemption, is that space you can use something, Chair Adams asked.

Hopefully, yes, Ms. Berrig said. We would love to see an expansion of the Reuse Center at Waimea. Also, the challenge with Waimea is that a lot of people, they just drop off their HI-5. They don't want the money, they just don't want to throw it out, which is great. The concern at Waimea especially is it's going to get dropped off and what's going to happen to that? So we're trying to work with the vendor. She has a meeting set up later on. Ms. Berrig would love just to say this is waste diversion space, so it'll remain a waste diversion space. Kealakehe is a little bit different. We might end up using that as an annex also to the Reuse Center. In Hilo, she hopes that things turn around and then we eventually have CRCs back at the transfer stations again because that truly is the most convenient and less fuel driving around to different locations. But the tent at the Hilo, if she can move that over to create more covered space at the Hilo Reuse Center, that would be ideal as well.

That would be a really good deal, Chair Adams said. One of the problems she found, as a user of the Waimea Transfer Station, some of those CRC places are incredibly crowded and scare her the few times she has gone to them. It's something you've got to be aware of, whether they really can cope with the volume that they're going to pick up, assuming people even bother to recycle anymore.

We have a program, Ms. Berrig said, but it's going through the process of reaching out to several nonprofits or putting out basically an RFP to nonprofits to say, do you want to come and collect this? Because again, a lot of people, they don't want to go stand in line for 3 hours to get \$5 or whatever. They just do not want to put it in the bin to be landfilled. So we are definitely looking at other options, she said.

3. Solid Waste Division Projects and Updates (2:24:31)

Ms. Berrig said life cycle assessment is we're rolling along, gathering data. There have been some changes in our programs with different vendors. We're kind of reworking some of the data and at this time we think it should be done and wrapped up by September. Remember, there's a six-month delay between when George Hayducsko left and then just all the delays and stuff and then Ms. Berrig coming on. So that's moving along.

The e-waste program, as Ms. Berrig described, we're changing that. It'll still pretty much be a collection day. The one change that we're hoping to incorporate into the program is that let's say we set up a collection day in Hilo, it would most likely be at Mr. K's since that's the vendor and that's where they are. The hope would be that in Kona we could offer a collection once a month or once every other month where businesses can come and have a place to drop it off for a fee. Mr. K's goes around the island and picks up, she doesn't know how much they're doing that again. It's better for the climate just to have one event where people can go and not have to send trucks driving all around picking it up. We have had a lot of requests for a commercial pickup or a commercial outlet for businesses to bring to dispose of their e-waste. So that's the one change. We just finished the RFI process. Now we're starting to develop the RFP to go out. So that will be a good change. She is hoping that will work.

Nothing is really going on with this drop-off recycling, Ms. Berrig said. The reuse centers were previously discussed with respect to the CRC.

Green waste is still the same, Ms. Berrig said. They're going to be doing some public relations based on how mulch is really great for water conservation for West Hawai'i. Just like mulch for stuff, it helps with water conservation.

Nothing exciting about scrap or tires, or propane tanks, Ms. Berrig said.

Household hazardous waste will be coming back up as per normal in August for Kona and Hilo, she said.

Director Mansour said we are still negotiating the contract with Waste Management Hawai'i. And we got one more meeting coming up. As far as transfer stations are concerned, Glenwood Transfer Station just recently was shut down. Over the last weekend we got one of the trees falling on the structure and it did major damage. So we are working with DLNR on recouping the cost because the tree was supposed to be pruned by them and they couldn't get to it. So they were going to hire a private party to come and do it. The next day the tree fell and damaged the structure. It's Murphy's Law. But yeah, as far as that transfer station goes, our guys are doing a great job keeping the services going. Hopefully we'll continue. As far as the Solid Waste Division Chief, that position is still vacant. We have a great number of candidates that we're going to do interviews at the end of next week. So hopefully we'll be successful in interviewing and selecting the right candidate for the job. But solid waste is good. The staff doing a great job.

4. Wastewater Division Projects and Updates (2:29:45)

Hilo WWTP is moving forward on the design aspect of the project, Director Mansour said. So we're supposed to get the project out on the street, for bidding the end of mid-January 2023. Our goal is to start construction by June of 2023 to do the new headworks and the digesters. Phase 2, we signed the contract. We are in the process of finalizing the contract with the consultant as an amendment to the Phase 1 so they could start doing the design and rehab on the secondary treatment plant and primary clarifiers. So that's moving forward for Hilo WWTP. On Kealahou WWTP, we had signed a contract with our R.M. Towill to look at the headworks and the odor control project and also the installation of the sand filter, try to help us through the process and treatment for that as well. So that's moving forward.

(Project updates are continued to Page 28)

1. Pāhala & Nā'ālehu Administrative Order on Consent (2:31:12)

DEM is finalizing the Administrative Order on Consent renegotiation. From our side, Director Mansour said, we executed the revised AOC, which is a great accomplishment to the County. We came in with different perspectives, costs were very prohibitive for these two communities. So he is glad to partner with EPA. They came along after they saw the site, they understood where we're coming from. So we renegotiated the AOC for exactly what the community

needed. We had a community meeting on March 16 and addressed their concerns and we delivered on the community's concerns. So that's a kudo to everybody who is involved in the process. So now we got new deadlines that we need to start working towards, try to achieve and accomplish. We build our credibility as we move forward. That's going to move as fast as the speed of light. We need to get it going and start the design process and the layout and what have you. So that's good for both communities.

Chair Adams said thanked the Director for the effort he has put in and his willingness to take on that challenge.

It wasn't easy, the Director said. A lot of people told us it's a lost cause, but it was a cause worth taking on. It's an accomplishment. We went from possible stipulated fines to a revised AOC with the revised projections and deadlines and treatment process, which is good. It's a win-win for the entire county. And we don't want to forget the potential major tens of millions of dollars of cost savings to the taxpayers. That by itself, speaks volumes.

(2:34:02) We also have finished one of the innovative projects, Director Mansour said. In 2021 when we started, the Kapu'e Stream Bridge sewer main was a 10-inch diameter 400-foot long ductile iron (DI) pipe suspended along the bridge, and it was leaking right into the stream below it, about 230 feet below it. So how do we stop the leak, and the spill? This line was probably 30, 40 years old. You could see the buildup, the scum buildup inside the pipe over the years was never maintained, never cleaned. So it was a challenge, and it was suspended. It's hard to get to. It's hard to stop the leak. So we took on this project, and definitely outside this is the community that it serves, Pauka'a and Pāpa'ikou. This line was a gravity sewer line along the bridge. We had to come in and do a bypass along the bridge so we could be able to stop the flow from going to that gravity line. And our staff attempted to clean the line because we don't have a ductile iron pipe on the island, so that was a challenge. And to get it from the mainland was going to take at least a year just to get it delivered and ordered and what have you. And you have to build scaffold to get into the bridge to be able to take the old pipe. So we were very creative, the Director said.

We went inside this sewer line, we cleaned it up, and the whole idea is to convert this gravity line to a force main, replace that DI. We instructed staff to figure out, okay, what other material do we have on the island? So the only thing we were able to find is HDPE, which is good enough to use and insert it into this line. So we were debating about between a 6-inch diameter pipe versus 8-inch. And our consultant assisted with that calculation. We came with an 8-inch HDPE pipe. It's fusion welded, and the idea is, let's insert it into that 10-inch DI. The DI becomes the encasement, and the line will go into service without any delays because we have the material on the island. We deployed the bypass of the pipeline with the with the HDPE. You can see it through that PVC pipe. And the PVC pipe comes in and joins in 20-foot joints. So it was very difficult even to use that in the insertion process.

So the idea was, okay, you could see how the line was clogged. So our staff, very creative, they put a root cutter into the device that we inserted into the DI that cleaned the pipe. You could

tell how much scum we removed out of it. It's amazing. It took an effort, but it was challenging. These types of projects take creativity and outside the box thinking. A lot of people doubted the project that ended up being a success. From the top to the stream is about 230 feet deep. So here's what we ended up doing. We end up doing a fusion welded HDPE line, 8-inch diameter, 400 feet long. And you imagine along that bridge, we don't have the land. It just slopes down to the stream. So the challenge is, how are we going to insert this 400 feet segment into a fixed, suspended sewer line without doing any structural damage? And we have to have it on the right angle. We have to make sure that the insertion doesn't create any structural stability.

We started inserting that 8-inch pipe into our old DI, so we could convert it to a force main under pressure instead of gravity. We ended up putting the right valves, the right connection to the sewer line. Look at the holes in this old DI. It was impossible for us to continue leaking everywhere. Our guys tried to stop the leaks. They kind of sealed it on this side, but definitely it was a challenge. This is the end product. So as we were wrapping, we wrapped the old DI to give it a longer lifespan from exposure to weathering and the elements so it becomes a great encasement to our HDPE sewer line system. We wrapped it up. It looks really good. And it's functioning now the way it's designed for. It's creative thinking. You don't see too many projects like this where you could have the option to convert gravity to pressure under a 400-foot suspended in the air sewer line.

It looks like one of those projects they should have on amazing engineering projects, Chair Adams said.

We thought about it, Director Mansour said. We're going to write a technical paper on it and hopefully publish it in the public works magazines because it's very creative and it cost us less than \$1 million to construct. It was challenging but hopefully now we get 100 years-plus because it's a very well-sealed pressure sewer line and encased and protected from the elements for years to come. So I thought I could accomplish with you, the Director said. That's one of the challenges that the Department took on when we first started and now we are delivering on it. It's an amazing project.

Director Mansour concluded by saying he looks forward to their comments on the code changes. He appreciates commissioners for being involved in the process. Our business is not an easy business. We do have a lot of challenges but he has faith in making a lot of different changes we have done so far between the AOC, the Kapu'e Stream Bridge project, and other projects on asset management for wastewater and also for solid waste. It's amazing.

Ali'i Drive, we were able to do the CIPP for the length of the pipe. We had staff complete that on Monday (June 20), the last day they finished it. So hopefully we could see a reduction on the chloride amount going to the sewer line. He asked the Secretary to share a video of where the water inflow and infiltration is coming from.¹⁴ It's amazing. You could see some of the water coming out of the storm drainpipe into the bay during the high tide. He was there, witnessed it,

¹⁴ Kailua Bay drainage: <https://www.youtube.com/shorts/RCSYdPldEmk>

took a video, and would like to share it with the Commission. You could tell the reason you have some of that high coliform numbers, it's really not from sewer, it's coming from the surrounding area, if it's animal feces that get washed to the bay. He took a video of it because when the high tide goes over the sea walls, it ends up washing everything down with it to the water and you could see it. It's amazing. You got cracks in the sea wall that allows the same water to return back carrying these type of contaminants with it. But it's kind of unique. It kind of gives you an idea how we get the contaminants in the bay. There's a lot of activities there. And when that water washes the parking lot and the sidewalk, it does not look good. But Mother Nature takes care of itself. The next day, he went walking there, everybody's swimming. The water looks good. Everything got washed either deep in the ocean or somehow it's gone.

VIII. FUTURE AGENDA ITEMS

a. Follow up on action items determined today. (2:47:38)

Chair Adams asked commissioners to send her topics for upcoming agenda items. She will “clean up” the items discussed under today’s agenda items V.2 and V.3, and send them to DEM, not as official recommendations, but as comments for consideration from EMC. She also said she would see if we can set up a discussion on the Cesspool Conversion Working Group, and maybe get someone from DOH to participate.

b. Other (Commissioners may suggest items to be placed on the next agenda.)

No discussion.

IX. ANNOUNCEMENTS

The next meeting is scheduled for July 27, 2022, at the Puna Conference Room of the Hawai‘i County Building, 25 Aupuni Street, Hilo, and via Zoom. Please contact the Secretary for the Department of Environmental Management or review the agenda posted on the County Calendar within six days of the next meeting.¹⁵

X. ADJOURNMENT (2:48:35)

Chair Adams, Commissioner Olson, and Commissioner McIntosh adjourned at 12:00 p.m.

¹⁵ Hawai‘i County Calendar: <https://www.hawaiicounty.gov/our-county/county-calendar>