Message

From: Grisier, Mary [Grisier.Mary@epa.gov]
Sent: 5/13/2019 8:58:44 PM
To: TenBrook, Patti [TenBrook.Patti@epa.gov]
Subject: FW: EPA/HDOA Resolution Agreement
Attachments: EPA Informal Resolution Agreement. rev.pdf

Well, this call was not what we thought it was!

Ex. 5 Deliberative Process (DP)

Mary

From: Garnett, Desean
Sent: Monday, May 13, 2019 1:19 PM
To: Grisier, Mary <Grisier.Mary@epa.gov>
Subject: FW: EPA/HDOA Resolution Agreement

Desean Garnett
U.S. EPA Region 9
Attorney-Advisor
(415) 972-3046

From: Yee, Bryan C <bryan.c.yee@hawaii.gov>
Sent: Sunday, May 12, 2019 4:13 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Waihee-Polk, Jennifer D <jennifer.d.waihee-polk@hawaii.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Wilson, Adam <wilson.adam@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>
Subject: RE: EPA/HDOA Resolution Agreement

Thank you for all your work and patience on this matter. We met with the new chair for the Hawaii Department of Agriculture (HDOA) and believe we are very close to full agreement. We are asking that the following changes be made to the Informal Resolution Agreement:

1. Paragraph D.1. Please substitute the term "participating" for "large." We don't believe large agribusinesses should be singled out, as information from smaller agribusiness operations is also important.

2. Paragraph D.6. We are requesting that this paragraph be deleted. Although this might be something we do moving forward, we have concerns about including this requirement in the Agreement at this time.

3. Paragraph D7. This paragraph should be deleted. We have significant concerns about advocating for pre-notification contacts. The Good Neighbor Program is a voluntary program, and is reliant upon the willingness of businesses to participate. HDOA cannot in good faith advocate for pre-notification contact when to do so would significantly discourage businesses from participating, resulting in major damage to the program.

4. Paragraph E.3. Please including the phrase "a method to request hard copies of" in the first line. Unfortunately, our website will not accommodate the large maps required by this condition. But we will provide hard copies to anyone who asks, and will post on the website how one can ask for hard copies.

5. Paragraph E.4. Please substitute the phrase "prohibition of all pesticides containing" for the phrase "revocation of all tolerances and cancellation of all registrations for", and add "as an active ingredient" at the end of the first sentence. We believe this will more accurately reflect state law, as state law does not reference tolerances or registrations, and does contain the phrase "as an active ingredient."

6. Paragraph F.1. We request that the deadline be changed from three (3) to four (4) months. Although we will make every effort to comply as soon as possible and have already posted Notices of Non-Discrimination" on our website and agendas, we are asking for the additional month to ensure that we can comply with all the other terms of this condition.

7. Paragraph IV.D. We ask to add the phrase "to the EPA" to clarify to whom the reports are being sent.

This is a complete list of our concerns and requests. If you are in agreement with the proposed changes, we are prepared to sign. If you have concerns, we would welcome a meeting. We will arrange for the HDOA chair to also attend.

A copy of the document with HDOA's requested handwritten revisions is attached. I will talk with you on Monday.

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Friday, May 10, 2019 3:13 AM
To: Yee, Bryan C <bryan.c.yee@hawaii.gov>
Cc: Waihee-Polk, Jennifer D <jennifer.d.waihee-polk@hawaii.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Wilson, Adam <wilson.adam@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>
Subject: Re: EPA/HDOA Resolution Agreement

Thank you Bryan. Perhaps we can have an initial conversation on Monday and then schedule one with the Director later in the week. I look forward to receiving your markup of the agreement so that we can discuss specifics on Monday. Thanks, Lilian

Sent from my iPhone

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
US EPA
202-564-9649 - Office
202-695-9888 - Cell

On May 9, 2019, at 9:54 PM, Yee, Bryan C <bryan.c.yee@hawaii.gov> wrote:

> DOA has some concerns with the informal resolution agreement, and I hope to send the suggested changes with a brief explanation to you this week. I can talk with you on Monday at 10:00 a.m. (HST) which is 4:00 p.m. your time to talk about those changes. I think it would be helpful to have the DOA chair on the line, but don't think she is available on Monday.
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> ---
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> **From:** Dorka, Lilian <Dorka.Lilian@epa.gov>
> **Sent:** Thursday, May 9, 2019 3:47 PM
> **To:** Prescott-Tate, Delanie D <delanie.d.prescott-tate@hawaii.gov>
> **Cc:** Covington, Jeryl <Covington.Jeryl@epa.gov>; Shimabukuro-Geiser, Phyllis <Phyllis.Shimabukuro-Geiser@hawaii.gov>; Nakamura, Gayle M <Gayle.M.Nakamura@hawaii.gov>; McHugh, John <john.mchugh@hawaii.gov>; Yee, Bryan C <bryan.c.yee@hawaii.gov>; Waihee-Polk, Jennifer D <jennifer.d.waihee-polk@hawaii.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt

<Temple.Kurt@epa.gov>; Wilson, Adam <wilson.adam@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>
Subject: Re: EPA/HDOA Resolution Agreement

Thanks Delanie. Hello Bryan, I would appreciate a conversation with you as soon as possible. On behalf of EPA, I need to understand better this situation and the status of this resolution so that I can brief my principles.

I will be back in the office on Monday. Would you be available then? I can be available after 3:00 pm EST (9:00 your time). Please feel free to include whom ever at HDOA you think would be appropriate. Thanks very much. Lilian

Sent from my iPhone

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
US EPA
202-564-9649 - Office
202-695-9888 - Cell

On May 9, 2019, at 8:17 PM, Prescott-Tate, Delanie D <delanie.d.prescott-tate@hawaii.gov> wrote:

> <image001.gif>
> Good afternoon all,
>
> As you may recall a final version of the Earthjustice EPA/HDOA resolution agreement was circulated for review on April 16, 2019. This agreement was the result of negotiations between HDOA and EPA that has taken place over the last several years. The draft resolution agreements leading up to this final version were provided to HDOA and each commitment received approval from the prior administration. I have attempted to facilitate the closing of negotiations with EPA through this final resolution agreement.
>
> HDOA has not responded to my inquiries regarding the status of this negotiated agreement. Accordingly, I have turned this matter over to Supervising Deputy Attorney General Bryan Yee available at (808) 586-1501 [byran.c.yee@hawaii.gov], and Deputy Attorney General Jennifer Waihee-Polk available at (808) 586-1192 [Jennifer.d.waihee-polk@hawaii.gov].
>
> The email from EPA attempting to schedule a conference call with HDOA will be forwarded to HDOA for further action.
>
> Thank you for your cooperation!!!
>
> Delanie

Deputy Attorney General Delanie D. Prescott-Tate
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