Message

From: Wilson, Adam [wilson.adam@epa.gov]
Sent: 5/24/2019 10:38:44 AM
To: Rhodes, Julia [Rhodes.Julia@epa.gov]
Subject: FW: EPA/HDOA Resolution Agreement
Attachments: 2019.05.23 (REVISED - CLEAN) EPA HDOA Informal Resolution Agreement 44RNO-16-R9.docx; 2019.05.23 (REVISED REDLINE) EPA HDOA Informal Resolution Agreement 44RNO-16-R9.docx

FYI

From: Dorka, Lilian
Sent: Thursday, May 23, 2019 6:46 PM
To: Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Wilson, Adam <wilson.adam@epa.gov>
Subject: FW: EPA/HDOA Resolution Agreement

FYI

Lilian Sotolongo Dorka, Director
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From: Dorka, Lilian
Sent: Thursday, May 23, 2019 6:46 PM
To: 'Yee, Bryan C' <bryan.c.yee@hawaii.gov>
Subject: RE: EPA/HDOA Resolution Agreement

Hello Bryan – here is the revised agreement as I stated earlier (clean and redlined). I am authorized to finalize and sign this agreement with these edits. Please let me know if you have any questions and whether you would like to discuss. I am off tomorrow, Friday but can certainly give you a call from home. Thanks in advance for your assistance on this!

Lilian

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From: Dorka, Lilian
Sent: Thursday, May 23, 2019 9:11 AM
To: 'Yee, Bryan C' <bryan.c.yee@hawaii.gov>
Subject: RE: EPA/HDOA Resolution Agreement
Importance: High

Hello Bryan, hope you're doing well. I wanted to let you know that I have not sent you a final of the Agreement because my principal has a couple more edits he would like for us to make. The edits are primarily to the General Section (Section IV) and a general statement at the beginning of Section III, to make clear that EPA does not intend to monitor HDOA's compliance with your own state legislation or with FIFRA moving forward, as you have already committed to carrying out those obligations, and to make clear the steps we do intend to monitor. I am working on this now and hope to have a revised draft for you to review today.

Thanks and so sorry for the additional revisions. Lilian

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From: Dorka, Lilian
Sent: Tuesday, May 21, 2019 9:49 AM
To: Yee, Bryan C <bryan.c.yee@hawaii.gov>
Subject: RE: EPA/HDOA Resolution Agreement

Hi Bryan – the attached should reflect all the changes. Can you confirm please? I am waiting to hear back from my principal this morning to confirm the new E4 paragraph is good but I expect it will be. After that I hope to send the doc t you in final and signed by me by tomorrow. Thanks again for your help! Lilian

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From: Yee, Bryan C <bryan.c.yee@hawaii.gov>
Sent: Friday, May 17, 2019 8:23 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Subject: RE: EPA/HDOA Resolution Agreement

Lilian,

1. HDOA is in agreement with your proposal below on paragraph D.6. Thank you very much.
2. With respect to paragraph E.4, I suggest the following:

"HDOA will develop and implement a protocol for notifying the general public and members of the agricultural community of the pending prohibition of all pesticides containing chlorpyrifos as an active ingredient pursuant to section 149A-31(7), Hawaii Revised Statutes. [~~HDOA will establish a collection and disposal method for pesticide products containing chlorpyrifos.~~]"

3. The language in the first sentence references the statutory requirement. I propose deleting the second sentence because HDOA does not have a collection and disposal method at this time, does not have the funds to create one at this time, and because the collection and disposal would not be needed until January 1, 2023

anyway. So, if unchanged this would be an open requirement for approximately four years. Let us know what you think.

Thanks,

Bryan.

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Friday, May 17, 2019 6:24 AM
To: Yee, Bryan C <bryan.c.yee@hawaii.gov>
Subject: RE: EPA/HDOA Resolution Agreement
Importance: High

Hello Bryan, I am trying to stick as close to the language bellow that you sent me yesterday while trying to fix the language of the last two sentences a bit. How about the following:

> What you sent back yesterday:
>
> [~~Within one (1) year of the signing of this Agreement,~~] HDOA will request the Environmental Mediation Center, or other similarly neutral entity, to conduct further analysis and review of the efficacy of the Good Neighbor Program. HDOA will request the reviewing entity to assess the success or failure of the program, offer suggestions for improving the program, and identify ways in which current agricultural pesticide best management practices can be incorporated into the Good Neighbor Program. HDOA will request that [~~post~~] any resulting report be initiated within one year. The report will be posted on HDOA's website [~~upon receipt of the report~~].
>
> With my modification:
>
> HDOA will request the Environmental Mediation Center, or other similarly neutral entity, to conduct further analysis and review of the efficacy of the Good Neighbor Program. HDOA will request the reviewing entity to assess the success or failure of the program, offer suggestions for improving the program, and identify ways in which current agricultural pesticide best management practices can be incorporated into the Good Neighbor Program. HDOA will initiate this request for further analysis and review within one year. ~~HDOA will request that~~ [~~post~~] Any resulting report ~~be initiated within one year. The report~~ will be posted on HDOA's website.

Also, I have one other issue to discuss with you – a request regarding E4. May I call you at 9:30 your time (3:30 mine)?

Thanks! Lilian

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From: Dorka, Lilian
Sent: Thursday, May 16, 2019 9:45 PM
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>; Shimabukuro-Geiser, Phyllis <Phyllis.Shimabukuro-Geiser@hawaii.gov>; McHugh, John <john.mchugh@hawaii.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>
Subject: Re: EPA/HDOA Resolution Agreement

Thanks Bryan. The reason I changed the next to last sentence is that it didn't quite fit to just change completed to initiated. So as you have it now it says that any resulting report will be initiated within one year but that did not quite make sense to me. That is, there can't be a resulting report until you initiate the study/ review itself? That sentence used to say that any resulting report would be posted on your website. I thought the understanding we came to is that you would initiate the study ie the request for the review/analysis by this or other group within a year and since we had to define when the clock starts it would be within a year of the agreement? Can you please take another look at the wording of that next to last sentence and whether there is a way to clarify? I will take another look as well. I am not wed to the language I used as long as it's clear what's being initiated when. Thanks so much!
Sent from my iPhone

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On May 16, 2019, at 8:07 PM, Yee, Bryan C <bryan.c.yee@hawaii.gov> wrote:

Hi Lilian,

Thank you very much for sending this to us so quickly. I noticed, however, that the wording you just gave us differs from the wording we agreed to on the phone. We agreed to the original wording, plus two specific changes:
(1) change "prepare a report assessing" to "assess"
(2) Change "completed" to "initiated".

The wording we agreed to on the phone differs from the proposed wording you sent. The differences are noted in a redline-like format as follows:

> [~~Within one (1) year of the signing of this Agreement,~~] HDOA will request the Environmental Mediation Center, or other similarly neutral entity, to conduct further analysis and review of the efficacy of the Good Neighbor Program. HDOA will request the reviewing entity to assess the success or failure of the program, offer suggestions for improving the program, and identify ways in which current agricultural pesticide best management practices can be incorporated into the Good Neighbor Program. HDOA will request that [~~post~~] any resulting report be initiated within one year. The report will be posted on HDOA's website [~~upon receipt of the report~~].

Except for the two changes noted above, the other revisions are to bring the paragraph back to the original wording you had previously signed off on.

Thanks again,

Bryan.

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Thursday, May 16, 2019 12:26 PM
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>; Shimabukuro-Geiser, Phyllis <Phyllis.Shimabukuro-Geiser@hawaii.gov>; McHugh, John <john.mchugh@hawaii.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>
Subject: RE: EPA/HDOA Resolution Agreement

Hello Phyllis and Bryan,

Thank you again for the conversation today and your efforts to work with us on this draft Informal Resolution Agreement. Attached, please find a redlined version reflecting all of the agreed upon edits per our call today. Also, I have provided a clean version for ease of reading. Please let me know if this version comports with your understanding of the edits. Thanks again!

Lilian

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From: Dorka, Lilian
Sent: Wednesday, May 15, 2019 1:10 PM
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>; Shimabukuro-Geiser, Phyllis <Phyllis.Shimabukuro-Geiser@hawaii.gov>; McHugh, John <john.mchugh@hawaii.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>
Subject: RE: EPA/HDOA Resolution Agreement

Thanks again Bryan. We have sent you a meeting invite for Thursday 5/16 at 11:15 HST (5:15 EST). We look forward to speaking with you and Chairperson Shimabukuro-Geiser. Lilian

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From: Yee, Bryan C <bryan.c.yee@hawaii.gov>
Sent: Wednesday, May 15, 2019 1:20 AM
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>; Shimabukuro-Geiser, Phyllis <Phyllis.Shimabukuro-Geiser@hawaii.gov>; McHugh, John <john.mchugh@hawaii.gov>
Subject: RE: EPA/HDOA Resolution Agreement

Thank you very much. Attached are our edits to paragraphs D.6 and D.7. It should reflect just the changes to your latest proposal. HDOA has approved these changes.

Unfortunately, HDOA is not available at 10:00 a.m. HST on Thursday. HDOA is available to discuss on either Thursday at 11:15 a.m. HST (5:15 p.m. your time) or on Friday at 10:00 a.m. HST (4:00 p.m. your time). The HDOA Chair will be present.

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Tuesday, May 14, 2019 12:15 PM
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

Hi Bryan,

Great speaking with you on Monday. As agreed, here are some proposed edits per our conversation for you to consider. Would you be available to discuss on Thursday, 5/16 at 10:00 your time (4:00 your time?) Thanks!

Lilian

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From: Dorka, Lilian
Sent: Monday, May 13, 2019 6:34 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

Thanks Bryan. We are taking a look so we can discuss at 4:00 my time today (10 yours). Lilian

Sent from my iPhone

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On May 12, 2019, at 7:13 PM, Yee, Bryan C <bryan.c.yee@hawaii.gov> wrote:

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

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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.
>
> **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

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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
Department of the Attorney General
Criminal Justice Division
Tobacco Enforcement Unit
425 Queen Street
Honolulu, HI 96813
PH: (808) 586-1203
FAX: (808) 586-0932

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<EPA Informal Resolution Agreement. rev.pdf>