EARTHJUSTICE

September 14, 2016

By email and certified mail

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Re: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, 40 C.F.R. Part 7, and 7 C.F.R. Part 15

Dear Acting Director Dorka, Assistant Secretary Leonard, and Deputy Chief Neal:

The Moms On a Mission Hui (The MOM Hui) and Pōʻai Wai Ola/West Kauaʻi Watershed Alliance (Pōʻai Wai Ola), collectively, "community groups," by and through their counsel Earthjustice, call upon the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) and the U.S. Department of Agriculture (USDA) Office of the Assistant Secretary for Civil Rights (OASCR) to investigate and ensure the policies, programs, and activities of the Hawaiʻi Department of Agriculture (HDOA) and the Hawaiʻi Agribusiness Development Corporation (ADC) comply with Title VI of the Civil Rights Act of 1964 and EPA and USDA's implementing regulations, 50 C.F.R. Part 7 and 7 C.F.R. Part 15, respectively.

HDOA and ADC are failing to comply with Title VI and implementing regulations because their actions and failures to act have an unjustified disproportionate and adverse effect on Native Hawaiians in West Kauaʻi and on Molokaʻi. Community groups request that OCR and OASCR promptly and thoroughly investigate the allegations set forth in this complaint and

take all actions necessary to ensure that the agencies comply fully with the law and provide equal protection for the people of Hawaiʻi.

I. PARTIES

A. Complainants

The MOM Hui is a grassroots group of forward-thinking mothers who advocate for protecting the health, safety, and well-being of all children, present and future. The MOM Hui was created on Molokaʻi and has since expanded to Kauaʻi, Oʻahu, and Maui. The MOM Hui's primary concerns are food and health, with a specific focus on seed production and experimentation, and the correlative increases in pesticide use. The MOM Hui's members and their children are directly affected by heavy pesticide application to seed crops on Molokaʻi. The MOM Hui also engages in educational and fundraising activities to promote healthy living and bring awareness to genetically engineered seed companies' impact on communities. The MOM Hui campaigned for the passage of a moratorium on genetically engineered crop production in Maui County and Kauaʻi County and is involved in a lawsuit defending the moratorium. *See* Declaration of Mercy Ritte ¶ 2-8 (attached as Ex. 1) (Ritte decl.); Declaration of Malia Chun ¶ 3-8 (attached as Ex. 2) (Chun decl.).

Pōʻai Wai Ola is a community-based organization established by Waimea watershed residents, farmers, and users, including Native Hawaiian cultural practitioners, to address water issues affecting West Kauaʻi. Pōʻai Wai Ola members live, work, recreate, and practice their culture near large-scale pesticide spraying operations, and rely on, use, or seek to use the Waimea watershed and surrounding areas for a host of public trust uses including, but not limited to, fishing, agriculture, recreation, research and education, aesthetic enjoyment, spiritual practices, and the exercise of Native Hawaiian cultural rights and values. In a separate proceeding involving ADC and the Kekaha Agricultural Association's diversion of the Waimea River and its headwaters, Pōʻai Wai Ola has petitioned the Hawaiʻi Commission on Water Resource Management to restore these waters and cease water waste.

B. Recipients

HDOA is an agency of the State of Hawaiʻi charged with implementing and enforcing federal and state pesticides laws, among other responsibilities. Haw. Rev. Stat. (H.R.S.) § 26-16. HDOA's duties include licensing pesticides, *id.* pt. II, regulating pesticide use, *id.* pt. III, and investigating and resolving pesticide use complaints, Haw. Admin. R. (H.A.R.) § 4-1-37.

ADC is a state agency placed within HDOA, *id.* § 163D-3, charged with "mak[ing] optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawaii," *id.* § 163D-1. ADC manages state agricultural lands, including approximately 12,500 acres on the Mānā Plain in West Kauaʻi. *Id.* § 163D-4. ADC also operates

a 40-mile drainage ditch system that runs through these lands and populated areas before draining into the ocean.

II. JURISDICTION

Title VI of the Civil Rights Act of 1964 provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. As explained below, both HDOA and ADC are a "program or activity" covered by Title VI and receive federal assistance from EPA and USDA. This complaint is timely and satisfies all other jurisdictional requirements.

A. HDOA and ADC are Programs or Activities Covered by Title VI.

A "program or activity" includes "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended federal financial assistance." 42 U.S.C. § 2000d-4a. If any part of an entity receives federal funds, the whole entity is covered by Title VI. *Ass'n of Mex.-Am. Educ. v. California*, 195 F.3d 465, 474-75 (9th Cir. 1999), *rev'd in part on other grounds*, 231 F.3d 572 (9th Cir. 2000) (en banc).

HDOA is a department, agency, and instrumentality of the State of Hawai'i, H.R.S. § 26-16, and ADC is an agency and instrumentality of the state placed within HDOA, *id.* § 163D-3. Therefore, both HDOA and ADC's operations must comply with Title VI.

B. HDOA and ADC Receive EPA and USDA Assistance.

EPA and USDA regulations define "recipient" to include any instrumentality of a state or state agency to which "Federal financial assistance is extended, directly or through another recipient." 40 C.F.R. § 7.25; 7 C.F.R. § 15.2. As of August 15, 2016, EPA and USDA had awarded HDOA $783,290 in federal funds for the fiscal year 2016, and more than $20.2 million in federal funds since 2008.[1]

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[1] *See* USASpending.gov, https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=809935257 (last visited Aug. 15, 2016) (showing EPA and USDA awards to HDOA (DUNS No. 809935257) for the years 2008 to the present); USASpending.gov, https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=809935267&FiscalYear=2009 (last visited Aug. 15, 2016) (showing USDA awards to HDOA (DUNS No. 809935267) for the year 2009).

Tbl. 1. EPA and USDA Funding to HDOA

Year	EPA Funding	USDA Funding	Combined Total
2016	$513,450	$269,840	$783,290
2015	$184,213	$1,071,755	$1,255,968
2014	$375,325	$1,851,810	$2,227,135
2013	$397,925	$799,752	$1,197,677
2012	$258,325	$1,132,440	$1,390,765
2011	$308,125	$3,066,353	$3,374,478
2010	$414,125	$3,308,664	$3,722,789
2009	$349,725	$4,564,558	$4,914,283
2008	$308,125	$1,108,412	$1,416,537
Total	**$2,863,213**	**$16,375,569**	**$20,282,922**

C. The Complaint Is Timely.

EPA and USDA regulations generally require Title VI complaints to be filed within 180 calendar days of the alleged discriminatory act, but OCR and OASCR may waive these time limits. 40 C.F.R. § 7.120(b)(2); 7 C.F.R. § 15.6. In addition, OCR and OASCR have ongoing authority to review recipients' programs and activities for Title VI compliance. 40 C.F.R. § 7.115(a); 7 C.F.R. § 15.5(a). This complaint is timely because the discriminatory acts described herein are ongoing or within OCR and OASCR's investigatory authorities.

D. The Complaint Meets Other Jurisdictional Criteria.

This complaint satisfies all other jurisdictional requirements because it is in writing, describes the alleged discriminatory acts and is filed by an authorized representative with OCR and OASCR. 40 C.F.R. § 7.120; 7 C.F.R. § 15.6.

III. FACTUAL BACKGROUND

For centuries, the Native Hawaiian food system was rooted in the ahupuaʻa land management system, which organized natural resource use and access around land divisions that generally followed watershed boundaries from mauka (inland) to makai (sea). This system allowed optimal use of resources and ecosystem services over short distances, and many generations to survive and thrive.

Captain Cook's arrival to Hawaiʻi in 1778 ushered in a new era of agriculture focused on pesticide-intensive plantation crops for export, such as sugar and pineapple. This use depleted the soil, polluted water sources, and contributed to the decline of Hawaiʻi's food self-sufficiency.

As the plantation era declined in Hawai'i, seed crops grown for breeding rather than food increased. In 1966, seed firms planted 5 acres of test corn on Moloka'i, and by 1969, they had expanded winter seed corn operations to about 500 acres on Moloka'i, Maui, and Kaua'i. In the 1990s, the industry transitioned to genetically engineered crops, which now comprise the vast majority of seed crops in Hawai'i. Today, there are approximately 23,728 acres of genetically engineered seed crops on the islands of Kaua'i, Moloka'i, Maui, and O'ahu.

Hawai'i's seed corn cultivation is particularly chemical-intensive because corn requires more agrochemicals than other crops, seed corn requires still more chemical treatment because it is more susceptible to environmental stress and pests, and Hawai'i soils are not well-suited for corn to begin with. Moreover, many varieties of seed corn are now being developed specifically to resist the effects of particular pesticides, which are applied to these varieties during testing and production. Thus, it is no surprise that "there are likely an average of 30 or more spray operations most days of the year on Kaua'i."[2]

Although chemical and pesticide use poses health risks to communities throughout Hawai'i, seed operations are particularly pesticide-intensive, and are largely concentrated in West Kaua'i and Moloka'i, which have proportionately larger Native Hawaiian populations. For example, West Side communities from Kekaha to Hanapepe have among the greatest proportions of Native Hawaiians on the island, and the lion's share of Kaua'i's seed production. Moloka'i—where 2,342 acres of seed crops grow right in the center of the island—has more than three times the statewide percentage of Native Hawaiians and more than four times the statewide percentage of pure Native Hawaiians.

Pesticide companies have thus far successfully fought a county ordinance designed to require more transparency and protective measures for pesticide use. Regardless of this ordinance, HDOA and ADC have affirmative duties to ensure their programs and activities involving pesticides do not have discriminatory effects on people of color, including Native Hawaiians. HDOA and ADC are failing to fulfill these duties.

IV. LEGAL FRAMEWORK

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating against individuals on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Title VI directs federal agencies granting federal assistance to issue regulations to achieve the statutory objectives. *Id.* § 2000d-1.

Acceptance of EPA or USDA assistance creates an obligation to comply with the agencies' respective Title VI regulations. 40 C.F.R. § 7.80(a)(1); 7 C.F.R. § 15.4(a)(1). EPA and

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[2] Hawai'i Center for Food Safety, Pesticides in Paradise, Hawai'i's Health & Environment at Risk (May 2015) at 30 (CFS Report).

USDA's Title VI regulations contain a general prohibition against discrimination, 40 C.F.R. § 7.30, 7 C.F.R. § 15.3(a), as well as more specific prohibitions, 40 C.F.R. § 7.35, 7 C.F.R. § 15.3(b). These regulations prohibit programs or activities that have either a discriminatory purpose or a discriminatory effect.

> Under EPA regulations:
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> (b) *A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination* because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.
>
> (c) *A recipient shall not choose a site or location of a facility that has the purpose or effect of* excluding individuals from, denying them the benefits of, or *subjecting them to discrimination* under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

40 C.F.R. § 7.35 (emphases added).

> USDA's regulations provide:
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> (2) *A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided* under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, *may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination* because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.
>
> (3) *In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination* under any of its programs or activities to which the regulations in this part apply, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and the regulations in this part.

7 C.F.R. § 15.3 (emphases added).

V. DISCRIMINATORY ACTS

HDOA and ADC's discriminatory actions and failures to act include both HDOA and ADC's lack of a Title VI program; HDOA's failure to limit pesticide registration; HDOA's failure to require or implement protective buffer zones between pesticide use and communities; HDOA's failure to adequately enforce federal and state pesticide laws; ADC's leasing or licensing of lands without protecting communities from pesticides; and ADC's refusal to obtain a permit under the Clean Water Act for its drainage ditch system.

A. HDOA and ADC Lack Title VI Programs.

HDOA and ADC are violating Title VI because both agencies lack a Title VI compliance program. Their acceptance of federal assistance created an obligation to implement a Title VI compliance program:

> In accepting this assistance agreement, the recipient acknowledges it has an *affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral*. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.[3]

On March 23, 2016, Earthjustice submitted public records requests to HDOA and ADC seeking materials documenting any Title VI compliance program they may have.[4] On March 30, 2016, ADC responded to the public records request as follows:

> [ADC] *does not have any Title VI compliance programs*, and therefore has no document responsive to this request.[5]

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[3] EPA General Terms and Conditions Effective March 29, 2016, ¶ 26.c.iii (emphasis added).

[4] Request to Access a Government Record from Paul Achitoff, Earthjustice, to State of Haw. Dep't of Agric., Mar. 23, 2016 (attached as Ex. 3); Request to Access a Government Record from Paul Achitoff, Earthjustice, to State of Haw. Agribus. Dev. Corp., Mar. 23, 2016 (attached as Ex. 4).

[5] Letter from James Nakatani, State of Haw. Agribus. Dev. Corp. to Paul Achitoff, Earthjustice, Mar. 30, 2016 (emphasis added) (attached as Ex. 5).

On April 27, 2016, HDOA responded to the request by acknowledging it "does not have a document specifically described as HDOA Title VI program."[6] Instead, it provided its "Discrimination/Harassment-Free Workplace Policy"[7] and its "Limited English Proficiency Plan,"[8] and mentioned a "standard contract provision requiring all contractors to comply with local, State, and federal laws or with the standard grant provision similarly requiring compliance with all federal laws."[9] These standard documents do not establish a Title VI program.

Because HDOA and ADC lack a Title VI program to ensure that the agencies' actions "do not involve discriminatory treatment and do not have discriminatory effects"[10] on communities of color, including Native Hawaiians, the agencies are violating Title VI and the terms of the agencies' funding.

B. HDOA Has Failed to Limit Registration of Harmful Pesticides.

HDOA is violating Title VI by failing to place protective limits on pesticide registration, and thereby discriminating against Native Hawaiians. Under the Hawai'i Pesticides Law, H.R.S. Chapter 149A, "[a]ny pesticide which is received, used, sold, offered for sale, or distributed within this State shall be licensed by the board [of agriculture]." H.R.S. § 149A-13. HDOA may refuse to license a pesticide if the proposed use would "result in unreasonable adverse effects on the environment." *Id.* § 149A-14(a). To protect health and the environment, HDOA may cancel a pesticide license after determining that continued use of the pesticide would "result in unreasonable adverse effects on the environment." *Id.* § 149A-14(b). While cancellation proceedings are pending, HDOA may suspend a pesticide license "to prevent an imminent hazard." *Id.* § 149A-14(c). Pesticide licenses are otherwise valid for three years. H.A.R. § 4-66-35(b).

HDOA has failed to place *any* limits on pesticide registration, despite discriminatory adverse effects on health and the environment. For example, on January 20, 2016, 10 fieldworkers for Syngenta Seeds, Inc. were exposed to pesticides and taken to Kaua'i Veterans

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[6] Email from Bryan Yee, State of Haw. Dep't of Agric, to Paul Achitoff, Earthjustice, Apr. 27, 2016 (attached as Ex. 6).

[7] State of Haw. Dep't of Human Res. Dev., Policies and Procedures, Discrimination/Harassment-Free Workplace Policy, Policy No. 601.001, eff. Oct. 15, 2013 (attached as Ex. 7).

[8] State of Haw. Dep't of Agric., Department of Agriculture Limited English Proficiency Plan, July 1, 2013 (attached as Ex. 8).

[9] Email from Bryan Yee, State of Haw. Dep't of Agric, to Paul Achitoff, Earthjustice, Apr. 27, 2016.

[10] EPA General Terms and Conditions Effective March 29, 2016, ¶ 26.c.iii.

Memorial Hospital.[11] The fieldworkers walked onto a field that had been sprayed with the neurotoxic organophosphate pesticide chlorpyrifos.[12] In 2006 and 2008, children and schoolteachers of Waimea Canyon Middle School, near more of Syngenta's agricultural fields, were taken to the hospital suffering symptoms of pesticide exposure.[13] During the 2006 incident, 60 children and at least 2 teachers experienced headache, dizziness, nausea, or vomiting.[14] At least 10 children were treated at an emergency room, several were put on a nebulizer to relieve respiratory distress, and one was given an anti-vomiting medication intravenously. Air samples collected at the school—an investigation not undertaken until years after these events—revealed the presence of chlorpyrifos, metolachlor and bifenthrin.[15] Despite these incidents, HDOA has not limited registration of dangerous pesticides such as chlorpyrifos in any way, and therefore is violating Title VI.

C. HDOA Has Failed to Require Protective Buffer Zones Between Pesticide Use and Communities.

HDOA is violating Title VI by failing to require, implement, and ensure protective buffer zones for pesticides to prevent discriminatory effects on Native Hawaiians. With respect to all pesticides—both general use pesticides (GUPs) and restricted use pesticides (RUPs)—H.R.S. Chapter 149A authorizes HDOA to promulgate rules "[t]o establish limitations and conditions for the application of pesticides by aircraft, power rigs, mist blowers, and other equipment," and "[t]o establish, as necessary, specific standards and guidelines which specify those conditions which constitute unreasonable adverse effects on the environment," among other things. H.R.S. § 149A-33.

With respect to RUPs, HDOA may promulgate rules "establish[ing] fees, procedures, conditions, and standards to certify persons for the use of restricted use pesticides under section 4 of FIFRA." *Id.* § 149A-33. RUPs are classified as such if it they are "determined to be a health hazard," "can be reasonably anticipated to result in contamination of groundwater or significant reductions in nontarget organisms, or fatality to members of endangered species," have certain levels of toxicity, or are categorized as RUPs under federal law. H.A.R. § 4-66-32(b).

Although pesticide applications on Kaua'i and Moloka'i occur dangerously close to schools, residential areas, and surface waters, HDOA does not require protective buffer zones in

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[11] Pesticide Use by Large Agribusiness on Kaua'i, Findings and Recommendations of The Joint Fact Finding Study Group (May 25, 2016) at 87 (JFF Report).

[12] *Id.*

[13] *Id.* at 80-81.

[14] *See* Declaration of Howard Hurst ¶ 6, *Syngenta Seeds v. Cnty. of Kaua'i*, No. 1:14-cv-00014 (BMK) (D. Haw. Feb. 17, 2014) (attached as Ex. 9).

[15] JFF Report at 81.

its regulation of pesticides. In fact, HDOA has actively opposed proposed state legislation to require protective buffer zones. Some pesticide users in Hawai'i claim to use buffer zones for RUPs, but these zones are voluntary, unenforceable, and in any event inadequate to protect public health and safety. For example, the voluntary "Kaua'i Good Neighbor Program" establishes a mere 100-foot buffer zone between areas treated with RUPs and schools, medical facilities, and residential properties.[16] Yet, among the nation's top 25 largest agricultural production counties, buffer zones between RUP application and schools are at least 200 feet, and some are 5,280 feet (1 mile).[17] Fresno County, California, requires a buffer zone of 660 (1/8 mile) for all pesticides when school is in session.[18] In these counties, buffer zones for bees range from 100 feet to 4.5 miles (23,760 feet).[19] By failing to require, implement, and enforce *any* buffer zones whatsoever between pesticide application and Native Hawaiian communities, HDOA is violating Title VI.

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[16] Kaua'i Agricultural Good Neighbor Program: Voluntary Standards and Guidelines for RUP Use Reporting and Buffer Zones (Nov. 12, 2013).

[17] JFF Report at 232-34.

[18] *Id.* at 232.

[19] *Id.* at 232-34.

Fig. 1. Proximity of Schools to RUPs on Kaua'i (Source: CFS Report)

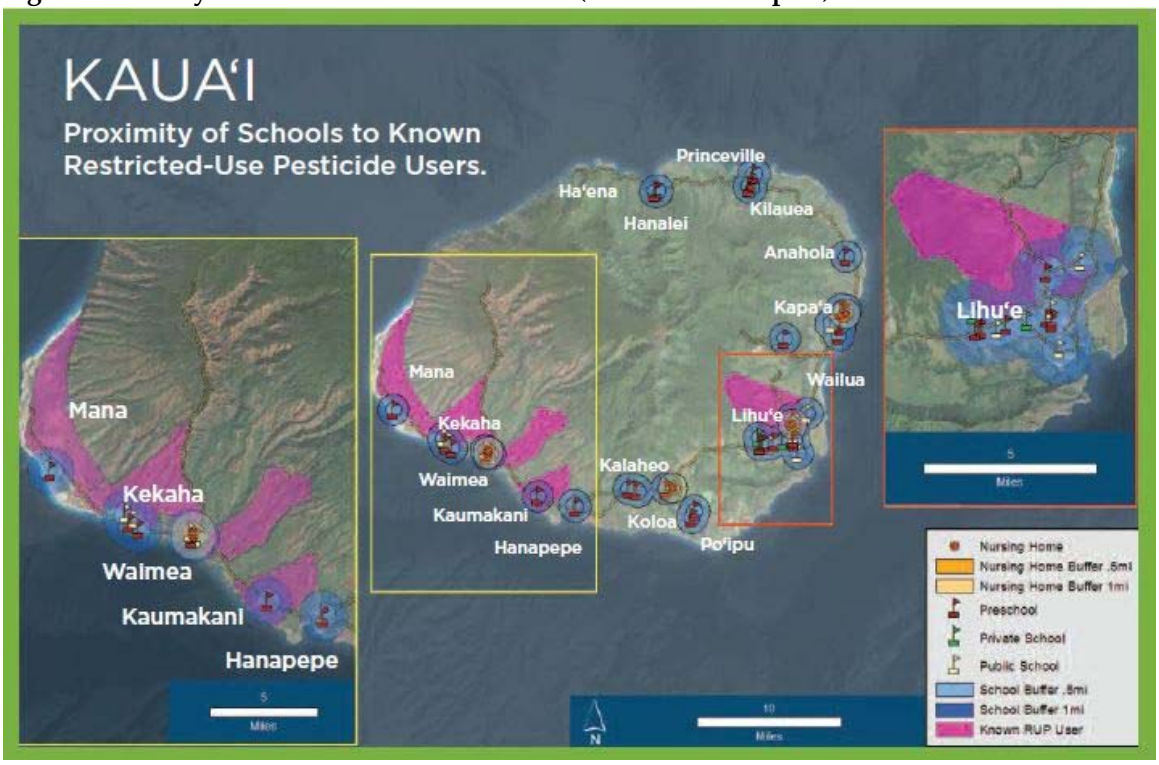
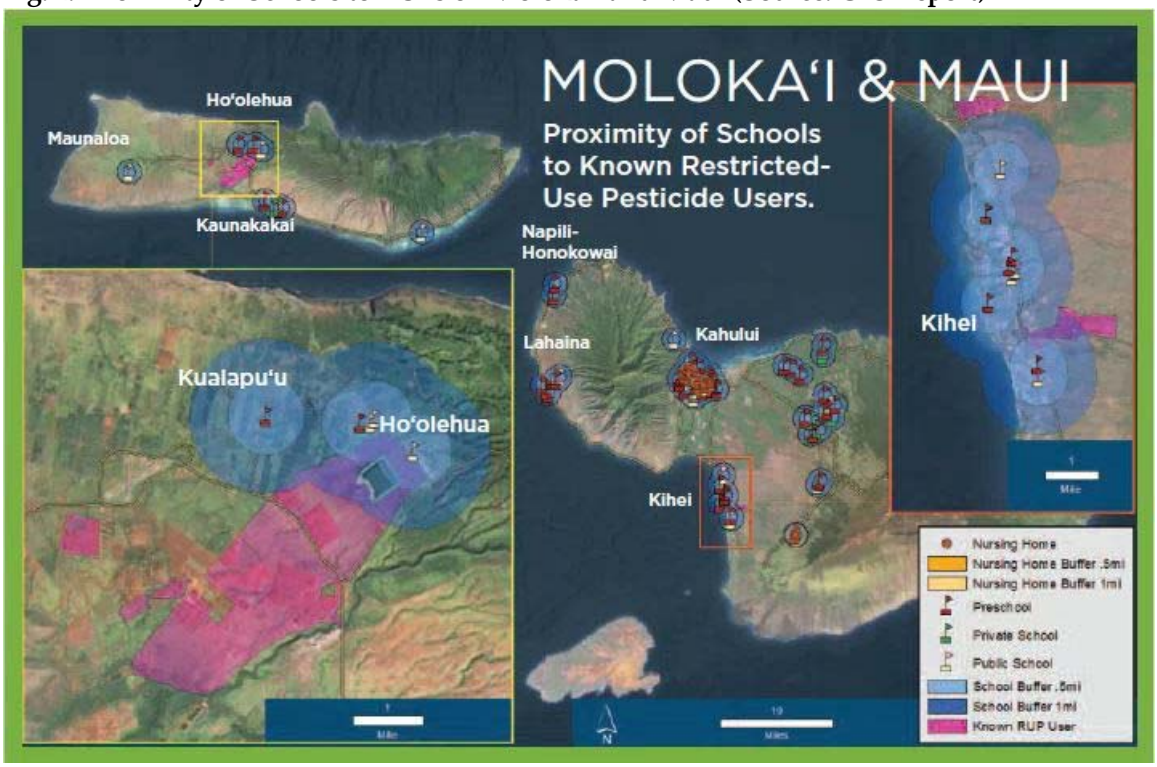


Fig. 2. Proximity of Schools to RUPs on Moloka'i and Maui (Source: CFS Report)



D. HDOA Is Failing To Enforce Federal and State Pesticides Laws.

HDOA is violating Title VI by failing to enforce the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which disproportionately harms Native Hawaiians. FIFRA regulates pesticide distribution and use to prevent unreasonable adverse effects on the environment. 7 U.S.C. § 136a. Under 7 U.S.C. § 136w-1, the EPA Administrator may delegate primary enforcement responsibility for pesticide use violations. HDOA has primary authority to enforce FIFRA and the Hawai'i Pesticides Law, H.R.S. Chapter 149A. Accordingly, HDOA must implement adequate procedures to enforce these laws. 7 U.S.C. §§ 136w-1, -2.

HDOA is failing to enforce pesticide use violations under FIFRA and the Hawai'i Pesticides Law. HDOA has had a backlog of investigation files that has been increasing every year, with very few complaints resulting in enforcement actions, referred to the EPA, or addressed in any meaningful way.

EPA has repeatedly warned HDOA that its enforcement efforts are inadequate. EPA's 2012 performance review of HDOA recommended that HDOA hire an additional case development officer to assist with case file review.[20] EPA's 2013 review expressed significant concern regarding HDOA's backlog and decrease in enforcement activity, and recommended HDOA find ways to address them.[21] EPA's 2014 review noted that HDOA "continue[d] to have significant concerns with the backlog of inspection files to be processed, and the resulting lack of enforcement actions issued, as well as the lack of inspections forwarded to EPA for review/enforcement."[22] EPA's 2015 review revealed that there were approximately 700 inspection files in need of review, some dating back to 2008.[23] Some cases eventually referred to EPA that would have qualified for enforcement action were closed because the statute of limitations had expired.[24] EPA further noted the declining quality of the few inspections and reports HDOA had managed to produce and recommended improvement in that area, as well.[25] EPA also observed a significant increase in the number of pesticide-related complaints HDOA had received from individuals and groups throughout Hawai'i, focusing primarily on the

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[20] U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2012 End-of-Year Review, Pesticide Performance Partnership Grant at 7 (attached as Ex. 10).

[21] U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2013 Draft End-of-Year Review, Pesticide Performance Partnership Grant at 3 (attached as Ex. 11).

[22] U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2014 End-of-Year Review, Pesticide Performance Partnership Grant at 9 (attached as Ex. 12).

[23] U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2015 Final End-of-Year Review, Pesticide Performance Partnership Grant at 7 (attached as Ex. 13).

[24] *Id*.

[25] *Id*. at 4.

misuse of pesticides by large agrochemical companies.[26] By failing to adequately enforce federal and state pesticides laws, HDOA is violating Title VI.

E. ADC Is Leasing or Licensing State Lands Without Protecting Communities From Pesticides.

ADC is violating Title VI by leasing or licensing state lands in a manner that fails to protect nearby communities, including Native Hawaiians, from heavy pesticide use. The Hawai'i legislature created ADC in 1994 in the wake of the decline of the sugar and pineapple industries, for the purpose of "creat[ing] a vehicle and process to make optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawaii." H.R.S. § 163D-1. To further that goal, ADC has the power to "sell, assign, exchange, transfer, convey, lease, or otherwise dispose of" real property, *id.* § 163D-4(7), and adopt rules to carry out its powers and duties, *id.* § 163D-4(4).

ADC has failed to adopt or implement *any* limits on its leasing and licensing program to protect health and the environment from heavy pesticide use. Instead, ADC leases or licenses the majority (64%)[27] of the thousands of acres it manages in West Kaua'i to pesticide-intensive seed companies, without any meaningful restrictions. By failing to adopt or implement measures to limit leasing or licensing to pesticide-intensive operations or prevent resulting harm to nearby communities, ADC is violating Title VI.

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[26] *Id*. at 3.

[27] JFF Report at 165.

Fig. 3. ADC Kekaha Map License Agreements (Source: JFF Report)

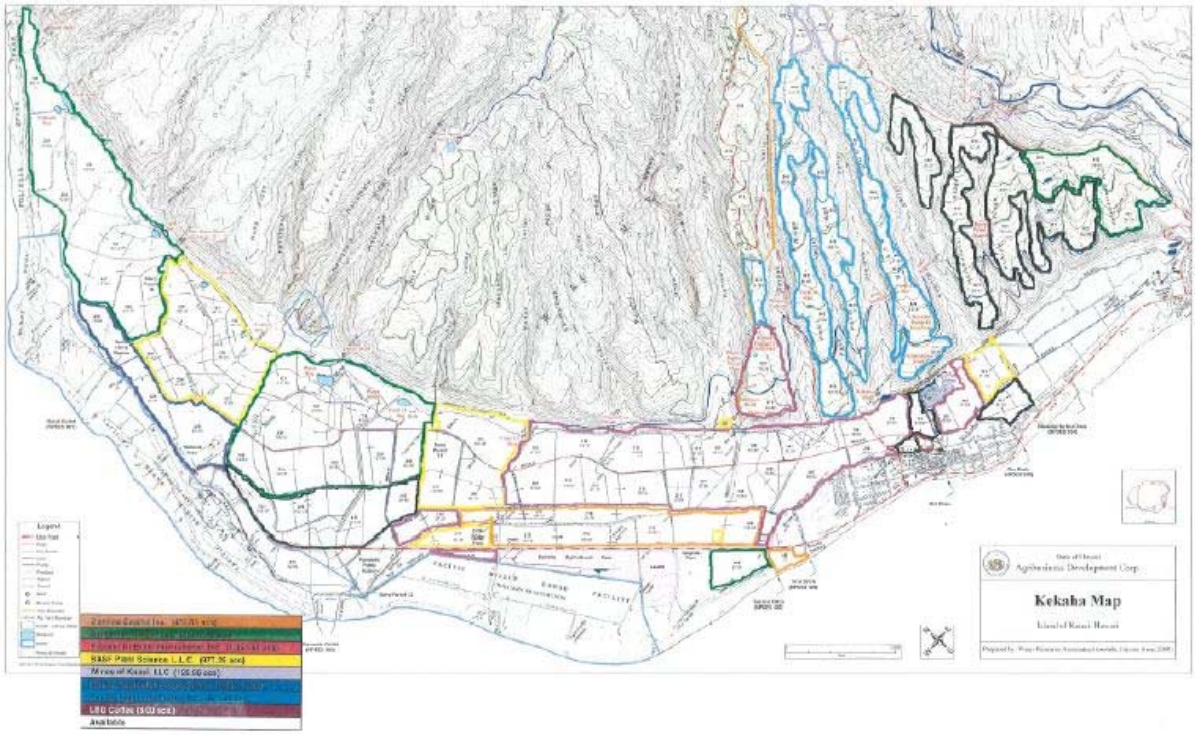
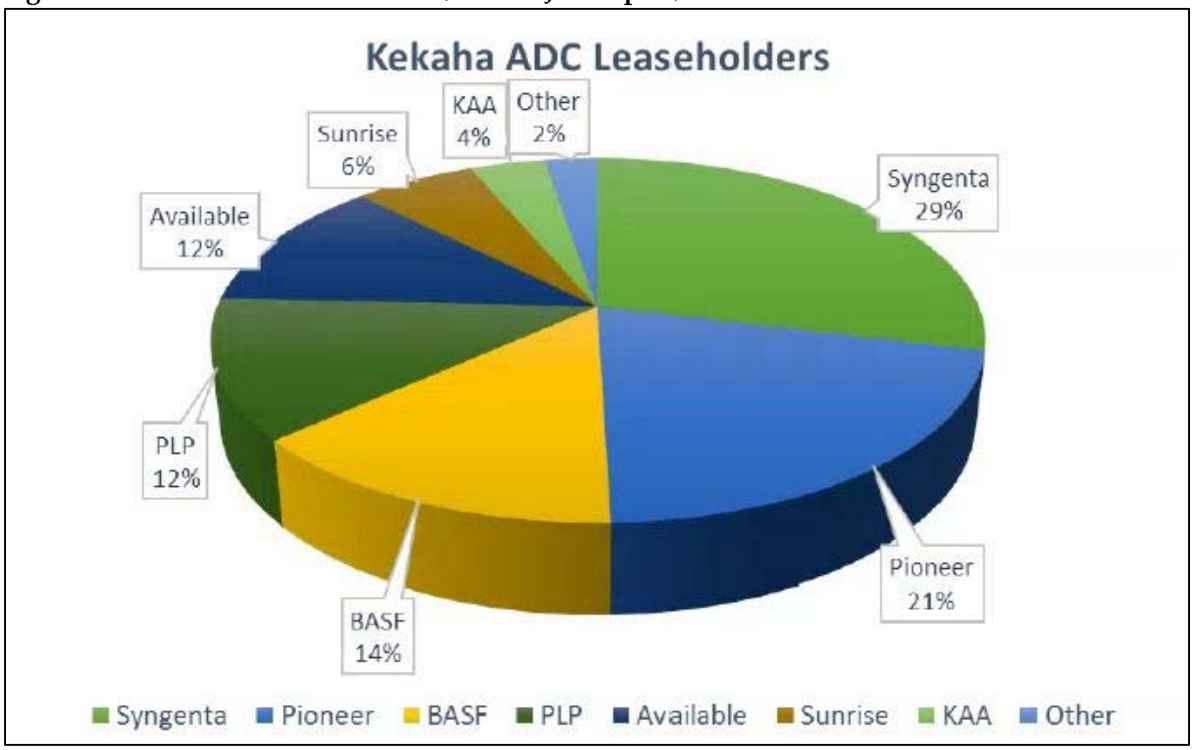


Fig. 4. Kekaha ADC Licenseholders (Source: JFF Report)



F. ADC is Refusing to Comply With the Clean Water Act.

ADC is violating Title VI by discharging pollutants without the requisite National Pollutant Discharge Elimination System (NPDES) permit, to the detriment of Native Hawaiians in West Kaua'i. The federal Clean Water Act prohibits the discharge of pollutants into jurisdictional waters in the absence of an NPDES permit. 33 U.S.C. §§ 1311(a), 1362, 1342.

ADC operates a drainage ditch system on the Mānā Plain, located on the West Side of Kaua'i. The drainage ditch system includes 40 miles of canals, 2 pumping stations, and 7 drainage ditch outfalls. In addition to genetically engineered seed crop fields, the Pacific Missile Range Facility, Sunrise Capital Shrimp Farm, Kekaha Landfill, former Kekaha Sugar Mill, Waimea Wastewater Treatment Plant, and Kaua'i Raceway Park occupy Mānā Plain lands drained by the ditch system.

For decades, that State of Hawai'i Department of Health (HDOH) regulated ADC's discharges from the drainage ditch system under an NPDES permit, until August 3, 2015, when ADC withdrew its NPDES permit renewal application.[28] Now, millions of gallons of drainage waters containing toxic pollutants flow through the system and populated areas, and into the nearshore ocean waters, without any regulation or monitoring. HDOH's and HDOA's testing has shown the presence of harmful pesticides including atrazine, chlorpyrifos, glyphosate, and metolachlor in the drainage ditches, in addition to many other pollutants.

These unregulated and unmonitored discharges are of particular concern since Native Hawaiians gather limu and fish in these areas. The open ditches are not fenced off or marked with warning signs to prevent children from playing in them. The outfalls funnel polluted waters into areas popular for fishing surfing, swimming, and boating. ADC's unpermitted drainage ditch system in the heart of Kekaha and the surrounding recreational areas has a discriminatory effect on Native Hawaiians and therefore violates Title VI.

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[28] Email from James Nakatani, State of Haw. Agribus. Dev. Corp. to Alec Wong, State of Haw. Dep't of Health, Aug. 3, 2015 (attached as Ex. 14).

Fig. 5. Mānā Plain Drainage Ditch System and Pump Stations
(Source: Final Environmental Assessment Mānā Plain Wetland Restoration Project)

VI. DISCRIMINATORY ADVERSE IMPACTS

Pesticide use generally, and specifically use of RUPs, adversely affects Native Hawaiian communities on Kaua'i and Moloka'i.

A. Pesticide Use on Kaua'i and Moloka'i

Kaua'i and Moloka'i are subjected to heavy pesticide use. On Kaua'i, active ingredient applications of RUPs and GUPs combined exceed 80,000 pounds annually,[29] and on most days, there are at least 30 pesticide spray operations.[30]

Adverse health effects from pesticide exposure are well-documented. Proximity to agricultural fields and maternal exposure to pesticides during pregnancy have been associated with central nervous system anomalies, oral cleft, and limb defects.[31] Pesticides have been strongly linked with asthma diagnosis in children under the age of five years of age,[32] and also linked with leukemia and an increased risk of brain tumors.[33] Men exposed to pesticides from fruits and vegetables have been found to have lower sperm counts than those who consume an organic diet.[34] Exposure to organophosphates such as chlorpyrifos during pregnancy is associated with decreases in IQ, increases in pervasive developmental disorders, attention deficit disorders, preterm birth, decreases in birth weight, and intrauterine retardation.[35]

On Kaua'i and Moloka'i, pesticide drift and windblown dust present problems for community members located near agricultural fields. A 2003 USGS survey observed that pesticides become attached to wind-blown dust.[36] Extremely fine dust can penetrate the lungs and cause bronchitis.[37] In West Kaua'i, physicians encounter "almost daily reports of respiratory symptoms in patients that have no history of these respiratory illnesses," nose bleeds in children, recurring dermatitis, "metallic taste" in patients' mouths, and high levels of infertility and gout.[38] *See also* Chun decl. ¶ 4-5. Residents of Moloka'i have experienced the same symptoms. *See* Ritte decl. ¶ 2-3.

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[29] CFS Report at 32.
[30] *Id.* at 30.
[31] JFF Report at 243.
[32] *Id.* at 243.
[33] *Id.* at 244.
[34] *Id.* at 246.
[35] *Id.* at 242-43.
[36] CFS Report at 39.
[37] *Id.*
[38] *Id.*

B. RUP Use on Kaua'i and Moloka'i

Large agrochemical and other companies apply RUPs heavily on Kaua'i and Moloka'i, to the great detriment of nearby communities and their members. On Kaua'i from 2010 to 2012, RUP applications involved 22 RUPs containing 18 active ingredients and amounted to about 20,801 pounds of active ingredients annually.[39] The Joint Fact Finding Study Group estimated that from December 2013 to July 2015, Kaua'i's five major agricultural pesticide users—BASF Plant Science, Dow AgroScience, DuPont Pioneer, Syngenta, and Kaua'i Coffee Co., LLC[40]—applied 23 RUPs containing 15,072 pounds of 15 active ingredients.[41] RUP use data for these five companies is available through the "Kaua'i Agricultural Good Neighbor Program."[42]

Moloka'i is also subjected to high pesticide use. From 2013 to 2015, Monsanto applied around 10,050 pounds of 24 RUPs containing 17 active ingredients on Moloka'i and Maui.[43] Although Monsanto reports only aggregate numbers for its RUP use on both islands, pesticide-intensive seed crop acreage on Moloka'i (2,342 acres) is more than triple that on Maui (754 acres), which is much larger and has a much lower proportion of Native Hawaiians.[44] Dow Chemical, the only other agrochemical company with operations on Moloka'i, does not report its pesticide use for the island.[45] Although pesticide users apply many types of RUPs on Kaua'i and Moloka'i, some of the most heavily used and toxic RUPs include chlorpyrifos, atrazine, metolachlor, bifenthrin, and paraquat dichloride, discussed below.

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[39] *Id.* at 32.

[40] According to Kaua'i Coffee Co., LLC's voluntary reporting through the Good Neighbor Program, the only RUP the company applies is paraquat dichloride.

[41] JFF Report at 23.

[42] Kaua'i Agricultural Good Neighbor Program, Aggregate usage of Restricted Use Pesticides as reported through the Kaua'i Good Neighbor Program, https://data.hawaii.gov/Health/Kaua-i-Agricultural-Good-Neighbor-Program-RUP-Use-/9pud-c8q5 (last visited Aug. 16, 2016) (Kaua'i GNP).

This data does not account for all RUP use or *any* GUP use on Kaua'i.

[43] Monsanto Hawaii, 2013 Annual Report Maui County Memorandum of Understanding at 17-18 (2013 Monsanto Report); Monsanto Hawaii, 2014 Annual Report Maui County Memorandum of Understanding at 26 (2014 Monsanto Report); Monsanto Hawai'i, 2015 Annual Report Maui County Memorandum of Understanding at 25 (2015 Monsanto Report).

Monsanto's reported pesticide use was converted to pounds by multiplying the gallons used by the pounds of active ingredient per gallon, according to EPA's pesticide labels.

[44] State of Haw. Dep't of Agric., Statewide Agricultural Land Use Baseline 2015 at 47 (2015 Ag. Baseline).

[45] CFS Report at 19.

1. Chlorpyrifos

Chlorpyrifos is an organophosphate pesticide commonly used on corn fields that can over stimulate the nervous system, causing nausea, dizziness, confusion, respiratory paralysis, and death.[46] It is also a developmental neurotoxicant, exposure to which can cause structural abnormalities and persistent neurobehavioral deficits.[47] Studies have shown that juveniles are more susceptible to organophosphate toxicity than adults.[48] For children ages three to five, chlorpyrifos exposure may be associated with birth defects, autism, developmental delay, and attention deficit disorders.[49] Early life exposure to organophosphates including chlorpyrifos has been associated with higher levels of respiratory symptoms and exercise-induced coughing, consistent with possible asthma.[50] Children exposed to high levels of chlorpyrifos are more likely to suffer from attention deficit hyperactivity disorder and pervasive developmental disorder problems at three years of age.[51] A California study showed a 60% increase in autism in the children of mothers who lived slightly less than one mile from areas sprayed with organophosphates and chlorpyrifos.[52] EPA is currently considering revoking all chlorpyrifos tolerances because of its health risks.[53]

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[46] U.S. Environmental Protection Agency, Related Topics: Ingredients Used in Pesticide Products, Chlorpyrifos, https://www.epa.gov/ingredients-used-pesticide-products/chlorpyrifos (last visited Aug. 16, 2016).

[47] Philippe Grandjean & Philip J. Landrigan, Neurobehavioural effects of developmental toxicity, The Lancet, Feb. 14, 2014, http://www.thelancet.com/journals/laneur/article/PIIS1474-4422%2813%2970278-3/fulltext (last visited Aug. 16, 2016).

[48] Jie Zhang et al., Neonatal chlorpyrifos exposure induces loss of dopaminergic neurons in young adult rats, Toxicology 336, July 26, 2015, http://www.sciencedirect.com/science/article/pii/S0300483X15300196 (last visited Aug. 16, 2016).

[49] JFF Report at 60.

[50] Rachel Raanan et al., Early-life Exposure to Organophosphate Pesticides and Pediatric Respiratory Symptoms in the CHAMACOS Cohort, Environmental Health Perspectives 123:2, Feb. 2015, http://ehp.niehs.nih.gov/1408235/#tab1 (last visited Aug. 19, 2016).

[51] Virginia A. Rauh et al., Impact of Prenatal Chlorpyrifos Exposure on Neurodevelopment in the First 3 Years of Life Among Inner-City Children, Pediatrics 118:6, Dec. 2006.

[52] Janie F. Shelton et al., Neurodevelopmental Disorders and Prenatal Residential Proximity to Agricultural Pesticides: The CHARGE Study, Environmental Health Perspectives 122:10, Oct. 2014, http://ehp.niehs.nih.gov/1307044/ (last visited Aug. 16, 2016)

[53] U.S. Environmental Protection Agency, Related Topics: Ingredients Used in Pesticide Products, Revised Human Health Risk Assessment on Chlorpyrifos, https://www.epa.gov/ingredients-used-pesticide-products/revised-human-health-risk-assessment-chlorpyrifos#risk assessment (last visited Aug. 16, 2016).

From December 2013 to June 2016, agrochemical companies applied more than 3,700 pounds of chlorpyrifos on Kaua'i,[54] and from 2013 to 2015, Monsanto applied more than 1,900 pounds of the same on Moloka'i and Maui.[55] In West Kaua'i, chlorpyrifos has been detected in the air near Waimea Canyon Middle School and near Kekaha and Waimea and in drainage ditches.[56] In addition, testing studies found chlorpyrifos at 90 ng/m^3 using a drift catcher 1,500 feet from the nearest agrochemical company field.[57] The Joint Fact Finding Study Group found that the rate of chlorpyrifos application on Kaua'i is 2.93 times the rate on the continental United States.[58] Reported chlorpyrifos application rates on Kaua'i are 2.5 lb. of active ingredient per acre per season for Cobalt Advanced and 3 lb. of active ingredient per acre per season for Lorsban Advanced.[59]

2. Atrazine

Atrazine is a "highly potent" endocrine disruptor that is mobile and persists in the environment after its use.[60] It causes adverse reproductive effects even at concentrations as low as 0.1 ppb.[61] Atrazine can cause reproductive difficulties and cardiovascular problems in humans. 40 C.F.R. Pt. 141, Subpt. O, App. A; H.A.R. § 11-20 App. A. According to the U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry (ATSDR), atrazine exposure in animals during pregnancy causes reduced fetus survival.[62] Maternal exposure to surface water atrazine is associated with fetal gastroschisis.[63] Atrazine has been shown to decrease egg production and cause gonad abnormalities in fish.[64] ATSDR warns that "[i]n areas of high atrazine use, individuals should avoid swimming in or drinking from contaminated water sources and may desire to have personal well water tested for the presence of atrazine," and that "[c]hildren should avoid playing in soils near uncontrolled hazardous

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[54] Kaua'i GNP.

[55] 2013 Monsanto Report at 17; 2014 Report at 25; 2015 Monsanto Report at 26.

[56] JFF Report at 193-94.

[57] *Id.* at 40.

[58] *Id.* at 29.

[59] *Id.* at 175, 177.

[60] *Id.* at 192.

[61] *Id.*

[62] Agency for Toxic Substances & Disease Registry, Public Health Statement for Atrazine, CAS#: 1912-24-9, Sept. 2003, *available at*, http://www.atsdr.cdc.gov/phs/phs.asp?id=336&tid=59 (Atrazine Public Health Statement).

[63] Sarah A. Waller et al., Agricultural-related chemical exposures, season of conception, and risk of gastroschisis in Washington State, American Journal of Obstetrics and Gynecology 203:183, Aug. 2010.

[64] Donald E. Tillitt et al. Atrazine reduces reproduction in fathead minnow (Pimephales promelas), Aquatic Toxicology 99:2, Aug. 2010.

waste sites where atrazine may have been discarded."[65] In 2004, the European Union banned products containing atrazine, concluding that the levels of atrazine would "have an unacceptable effect on groundwater."[66]

From December 2013 to June 2016, agrochemical companies applied more than 2,500 pounds of atrazine on Kaua'i,[67] and from 2013 to 2015, Monsanto applied more than 1,440 pounds of the same on Moloka'i and Maui.[68] For 2014 to 2015, 99.8% of the state's atrazine sales occurred in Kaua'i and Maui counties.[69] In West Kaua'i, atrazine was detected in the drinking water at Waimea Canyon Middle School, and in irrigation water and surface water in amounts that exceed aquatic life benchmarks.[70] A recent EPA assessment of atrazine acknowledged that "atrazine is expected to leach to ground water and move to surface water through runoff and spray drift."[71]

3. Metolachlor

Studies have associated metolachlor with reduced cell growth,[72] and it has been classified by the EPA as a class C carcinogen.[73] From December 2013 to June 2016, agrochemical companies applied more than 7,400 pounds of metolachlor on Kaua'i,[74] and from 2013 to 2015, Monsanto more than 2,100 pounds of the same on Moloka'i and Maui.[75] For 2014 to 2015, 83.1%

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[65] Atrazine Public Health Statement at 2.

[66] 2004/248/EC: Commission Decision of 10 March 2004 concerning the non-inclusion of atrazine in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance, *available at* http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004D0248.

[67] Kaua'i GNP.

[68] 2013 Monsanto Report at 17; 2014 Monsanto Report at 25; 2015 Monsanto Report at 26.

[69] State of Hawai'i Department of Agriculture, Summary of Restricted Use Pesticides Sold in 2014 (2014 RUP Sales); State of Hawai'i Department of Agriculture, Summary of Restricted Use Pesticides Sold in 2015 (2015 RUP Sales).

[70] JFF Report at 193.

[71] U.S. Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Refined Ecological Risk Assessment for Atrazine, Apr. 12, 2016.

[72] S. Echeverrigaray et al., Isolation and characterization of Metolachlor-resistant mutants of Saccharomyces cerevisiae, World Journal of Microbiology and Biotechnology 15:6, Dec. 1999; Dana M. Lowry et al., Mechanism of metolachlor action due to alterations in cell cycle progression, Cell Biology and Toxicology 29:4, Aug. 2013.

[73] U.S. National Library of Medicine, Toxnet Toxicology Data Network, Metolachlor, https://toxnet.nlm.nih.gov/cgi-bin/sis/search/a?dbs+hsdb:@term+@DOCNO+6706 (last visited Aug. 17, 2016).

[74] Kaua'i GNP.

[75] Monsanto 2013 Report at 17; Monsanto 2014 Report at 25; Monsanto 2015 Report at 26.

of the state's metolachlor sales occurred in Kaua'i and Maui counties.[76] In West Kaua'i, metolachlor was detected in the air near Waimea Canyon Middle School,[77] and has been found in surface water near Kīkīa'ola Boat Harbor at rates that exceed EPA's aquatic life benchmarks.[78]

4. Bifenthrin

EPA has classified bifenthrin as a class C carcinogen.[79] From July 2014 to March 2016, BASF Plant Science applied 0.887 pounds of bifenthrin on Kaua'i.[80] The Joint Fact Finding Study Group found that the rate per acre of bifenthrin application on Kaua'i is 5.36 times the rate in the continental United States.[81] The same study found that, based on EPA analysis, bifenthrin has a high potential for volatilization (vaporization), which increases the chance of pesticide drift in the air.[82] Bifenthrin has been detected in the air near Waimea Canyon Middle School.[83]

5. Paraquat Dichloride

From January 2014 to June 2016, major pesticide users applied more than 2,500 pounds of paraquat dichloride on Kaua'i,[84] and from 2013 to 2015, Monsanto applied more than 310 pounds of the same on Moloka'i and Maui.[85] The European Union has banned paraquat dichloride since 2007.[86] According to EPA, paraquat dichloride is highly toxic to humans, and is

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[76] 2014 RUP Sales; 2015 RUP Sales.

[77] JFF Report at 193-94.

[78] *Id.* at 194.

[79] U.S. National Library of Medicine, Toxnet Toxicology Data Network, Bifenthrin, https://toxnet.nlm.nih.gov/cgi-bin/sis/search/a?dbs+hsdb:@term+@DOCNO+6568 (last visited Aug. 17, 2016).

[80] Kauai GNP.

[81] JFF Report at 29.

[82] *Id.* at 39.

[83] *Id.* at 193.

[84] Kaua'i GNP.

[85] 2014 Monsanto Report at 17; 2014 Monsanto Report at 25; 2015 Monsanto Report at 26.

[86] European Union, The Court of First Instance Annuls the Directive Authorising Paraquat as an Active Plant Protection Substance, July 11, 2007.

corrosive to the skin and eyes.[87] A 2011 National Institute of Health study demonstrated an association between paraquat dichloride use and Parkinson's disease in farm workers.[88]

VII. DISPROPORTIONALITY

HDOA and ADC's discriminatory actions and inactions with respect to pesticides and the resulting adverse impacts disproportionally harm Native Hawaiians in West Kaua'i and on Moloka'i. The majority of the state's pesticide-intensive production occurs in these particular regions, which are also home to large populations of Native Hawaiians. Kaua'i bears the burden of more than half of the state's seed production (56% or 13,299 of 23,728 acres), and the great majority (78.1%) of this production is found on the West Side in the Kekaha-Waimea (5,455 acres) and Kaumakani-Hanapepe (4,932 acres) regions.[89] The Native Hawaiian populations in the Kekaha-Waimea (37.2%) and Kaumakani-Hanapepe (28.8%) regions are proportionally the second and third largest on the island and significantly exceed the island-wide (23.9%) and statewide (21.3%) percentages.[90] In the Kekaha-Waimea region, the percentage of pure Native Hawaiians (12.4%) exceeds the island-wide percentage (7.4%) and more than doubles the statewide percentage (5.9%).[91] By contrast, the white alone populations in the Kaumakani-Hanapepe (14.8%) and Kekaha-Waimea (19.8%) regions are proportionally the first and third smallest on the island and are significantly less than the island-wide (33.1%) and statewide (24.7%) percentages.[92] The seed fields in West Kaua'i surround the Hawaiian Home Lands of Kekaha and border the Hawaiian Home Lands of Hanapepe as well as the largest tract of Hawaiian Home Lands on the island, Waimea.[93]

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[87] U.S. Environmental Protection Agency, Paraquat Dichloride, https://www.epa.gov/ingredients-used-pesticide-products/paraquat-dichloride (last visited Aug. 16, 2016).

[88] Caroline Tanner et al., Rotenon, Paraquat, and Parkinson's Disease, Environmental Health Perspectives 119:6, June 2011, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3114824/ (last visited Aug. 16, 2016).

[89] 2015 Ag. Baseline at 47, 49.

[90] State of Haw. Dep't of Business, Econ. Dev. & Tourism, Native Hawaiian Population by County, Island and Census Tract in the State of Hawai'i: 2010 (Feb. 2012) at 9, 15 (2010 Native Hawaiian Census).

[91] *Id.*

[92] State of Haw. Dep't of Business, Econ. Dev. & Tourism, Population by Major Race Categories Alone or in Combination by County and Census Tract, State of Hawai'i: 2010 (2010 Hawai'i Race Census).

[93] 2010-2014 American Community Survey 2014, Hawaiian Home Land Areas (2014 DHHL ACS).

Seed crops occupy 2,342 acres on Molokaʻi, right in the center of the island near several populated areas, public schools, and preschools.[94] The seed fields border the island's most populated tract of Hawaiian Home Lands, Hoʻolehua-Pālāʻau (pop. 1,327), and the Hawaiian Home Lands tract Kalamaʻula.[95] The majority of Molokaʻi residents are Native Hawaiian.[96] Molokaʻi has the second highest percentage of Native Hawaiians among all of the islands in the state.[97] Molokaʻi's proportion of Native Hawaiians (61.6%) is nearly triple the statewide percentage (21.3%), and the proportion of pure Native Hawaiians (24.7%) is more than quadruple the statewide percentage (5.9%).[98] West Molokaʻi ranks fourth and East Molokaʻi ranks seventh out of all census tracts in the state for percentages of Native Hawaiians (67.8% and 58.1%), and West Molokaʻi ranks ninth for the percentage of pure Native Hawaiians (26.6%).[99] By contrast, the white alone population on Molokaʻi (16.2%) is significantly less than the statewide percentage (24.7%).[100]

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[94] 2015 Ag. Baseline at 47, 67.
[95] 2014 DHHL ACS.
[96] 2010 Native Hawaiian Census at 16.
[97] *Id.* at 6.
[98] *Id.*
[99] *Id.* at 7-8.
[100] 2010 Hawaiʻi Race Census.

Fig. 6. Hawaiian Populations, Hawaiian Home Lands, Seed Production, and Schools on Kaua'i

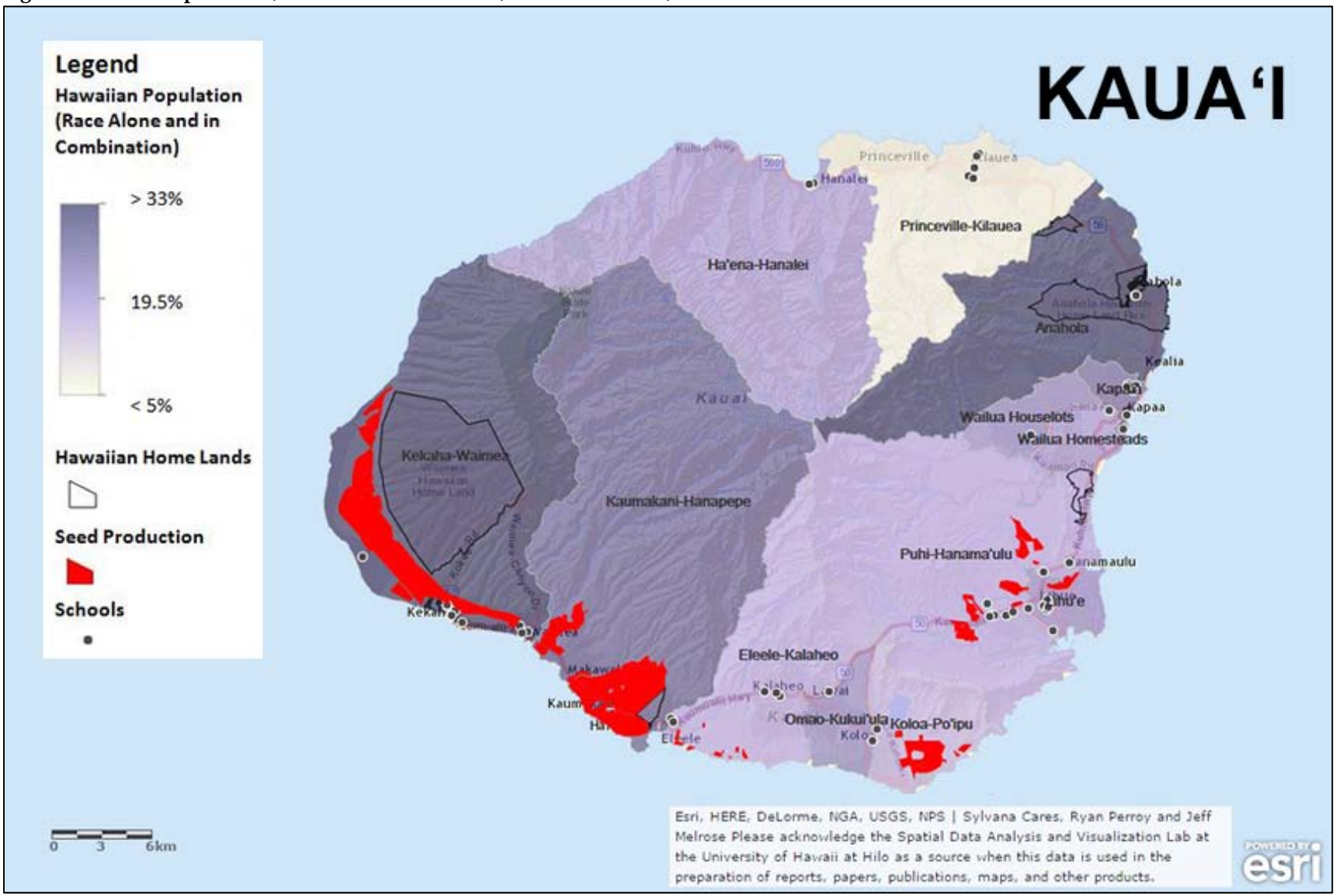
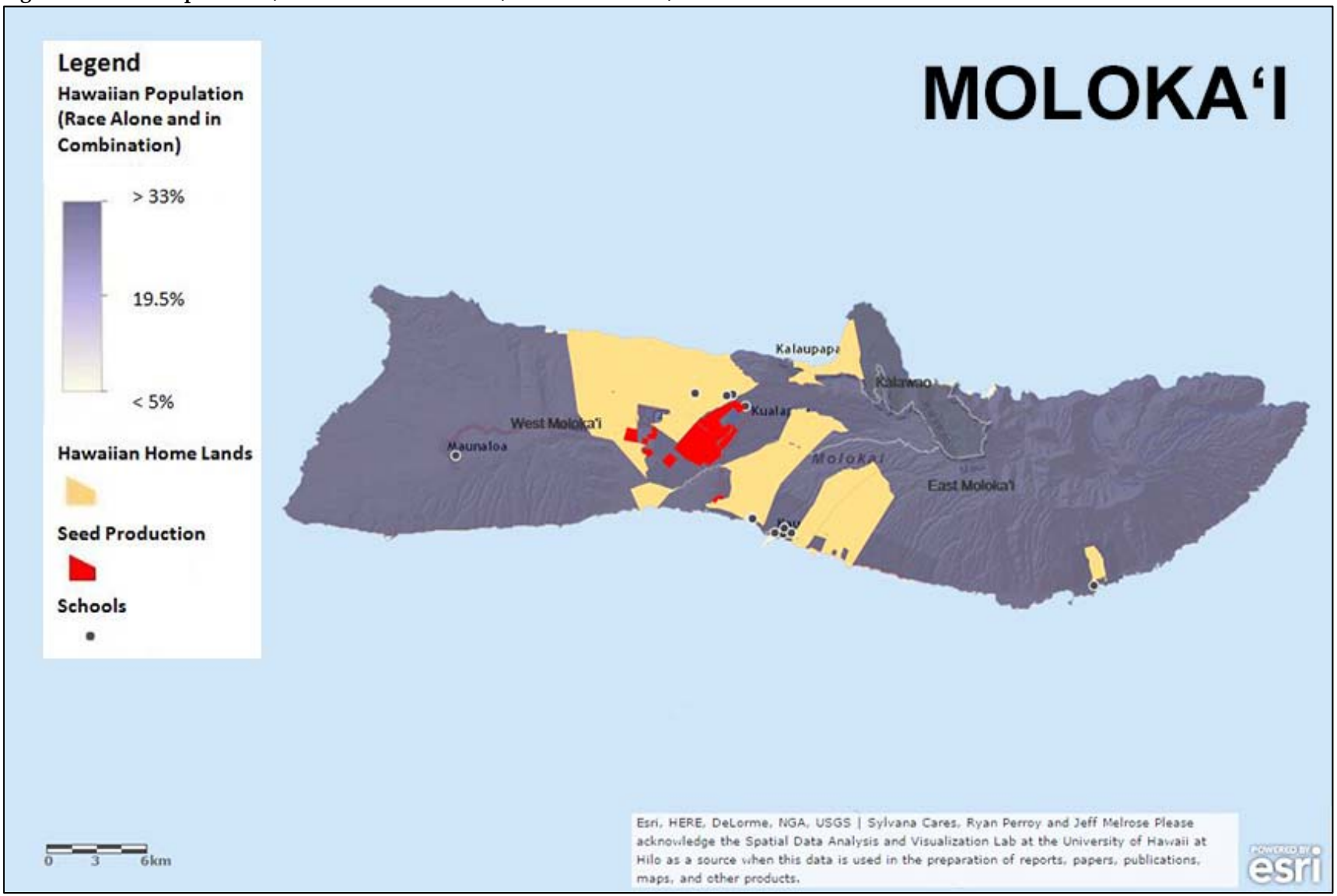


Fig. 7. Hawaiian Populations, Hawaiian Home Lands, Seed Production, and Schools on Moloka‘i



Tbl. 2. Native Hawaiian and White Populations for State, Kaua'i, and Moloka'i, Census Data 2010

State, Island, 2010 census tract	Total population	Native Hawaiian alone	Native Hawaiian alone or in combination	% of Native Hawaiian alone	% of Native Hawaiian alone or in combination	White alone	White in combination	% of White alone	% of White in combination
State	**1,360,301**	**80,337**	**289,970**	**5.9**	**21.3**	**336,599**	**564,323**	**24.7**	**41.5**
Kaua'i	**66,921**	**4,951**	**15,978**	**7.4**	**23.9**	**22,155**	**34,152**	**33.1**	**51.03**
Princeville-Kīlauea	6,484	210	629	3.2	9.7	4,366	5,063	67.3	78.1
Hā'ena-Hanalei	1,344	150	288	11.2	21.4	847	1,034	63.02	76.9
Wailua Houselots	5,047	324	1,154	6.4	22.9	2,387	3,348	47.3	66.3
Wailua Homesteads	3,845	252	816	6.6	21.2	1,496	2,220	38.9	57.7
Kapa'a	8,385	585	2,176	7.0	26.0	2,386	4,145	28.5	49.4
Puhi-Hanamā'ulu	8,740	466	1,700	5.3	19.5	1,513	2,842	17.3	32.5
Līhu'e	5,943	331	1,311	5.6	22.1	1,331	2,389	22.4	40.2
Kōloa-Po'ipū	2,544	151	466	5.9	18.3	937	1,321	36.8	51.9
'Ōma'o-Kukui'ula	3,139	205	723	6.5	23.0	1,195	1,813	38.1	57.8
'Ele'ele-Kalāheo	8,403	317	1,611	3.8	19.2	2,927	4,584	34.8	54.6
Kaumakani-Hanapēpē	3,771	357	1,085	9.5	28.8	557	1,215	14.8	32.2
Kekaha-Waimea	5,561	690	2,069	12.4	37.2	1,101	2,246	19.8	40.4
Anahola	3,715	913	1,950	24.6	52.5	1,112	1,932	29.9	52.0
Moloka'i	**7,345**	**1,811**	**4,527**	**24.7**	**61.6**	**1,192**	**2,924**	**16.2**	**39.8**
East Moloka'i	4,503	1,042	2,616	23.1	58.1	784	1,861	17.4	41.3
West Moloka'i	2,752	732	1,865	26.6	67.8	384	1,030	14	37.4
Kalawao	90	37	46	41.1	51.1	24	33	26.7	36.7

VIII. LESS DISCRIMINATORY ALTERNATIVES

Rather than implementing its programs and activities in a way that disproportionately adversely affects Native Hawaiians, HDOA and ADC have broad powers to instead take the following actions:

- HDOA and ADC could adopt and implement Title VI compliance programs to ensure that the agencies' policies, programs, and activities do not involve discriminatory treatment or have discriminatory effects on the basis of race, color, or national origin;
- HDOA could revoke or suspend pesticide licenses that have unreasonable adverse effects on health and the environment;
- HDOA could implement and enforce mandatory, adequately protective buffer zones between pesticide application and populated or heavily used areas like schools, medical facilities, and commercial areas;
- HDOA could adopt and implement EPA's recommendations to improve enforcement of federal and state pesticides laws;
- ADC could develop and implement criteria for evaluating applications for land licenses or leases to protect nearby communities from heavy pesticide use; and
- ADC could apply for, obtain, and comply with the terms of a valid NPDES permit.

Without implementing these measures, HDOA and ADC's activities and program will continue to disproportionately harm Native Hawaiians in West Kaua'i and on Moloka'i.

IX. RELIEF

Despite HDOA and ADC's obligations and powers under Title VI and state law, the agencies are doing remarkably little to correct this grave injustice. Accordingly, community groups request that EPA and USDA:

- Conduct a thorough Title VI compliance review of HDOA, particularly with respect to its implementation and enforcement of FIFRA and the Hawai'i Pesticides Law;
- Conduct a thorough Title VI compliance review of ADC with respect to its land management program and operation of the Mānā Plain drainage ditch system;
- Require HDOA and ADC to develop detailed inter- and intra-agency Title VI implementation plans that, at minimum, address less discriminatory alternatives and incorporate input from affected populations; and
- Oversee and ensure implementation of such plans on an annual basis.

These actions are necessary to bring HDOA and ADC into full compliance with Title VI.

We welcome the opportunity to meet with you to discuss the concerns and recommendations in this letter.

Sincerely,

Paul H. Achitoff
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Pōʻai Wai Ola/West Kauaʻi Watershed Alliance

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EXHIBITS

Ex. 1 Declaration of Mercy Ritte

Ex. 2 Declaration of Malia Chun

Ex. 3 Request to Access a Government Record from Paul Achitoff, Earthjustice, to State of Haw. Dep't of Agric., Mar. 23, 2016

Ex. 4 Request to Access a Government Record from Paul Achitoff, Earthjustice, to State of Haw. Agribus. Dev. Corp., Mar. 23, 2016

Ex. 5 Letter from James Nakatani, State of Haw. Agribus. Dev. Corp. to Paul Achitoff, Earthjustice, Mar. 30, 2016

Ex. 6 Email from Bryan Yee, State of Haw. Dep't of Agric, to Paul Achitoff, Earthjustice, Apr. 27, 2016

Ex. 7 State of Haw. Dep't of Human Res. Dev., Policies and Procedures, Discrimination/Harassment-Free Workplace Policy, Policy No. 601.001, eff. Oct. 15, 2013

Ex. 8 State of Haw. Dep't of Agric., Department of Agriculture Limited English Proficiency Plan, July 1, 2013

Ex. 9 Declaration of Howard Hurst, *Syngenta Seeds v. Cnty. of Kaua'i*, No. 1:14-cv-00014 (BMK) (D. Haw. Feb. 17, 2014)

Ex. 10 U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2012 End-of-Year Review, Pesticide Performance Partnership Grant

Ex. 11 U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2013 Draft End-of-Year Review, Pesticide Performance Partnership Grant

Ex. 12 U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2014 End-of-Year Review, Pesticide Performance Partnership Grant

Ex. 13 U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2015 Final End-of-Year Review, Pesticide Performance Partnership Grant

Ex. 14 Email from James Nakatani, State of Haw. Agribus. Dev. Corp. to Alec Wong, State of Haw. Dep't of Health, Aug. 3, 2015

DECLARATION OF MERCY RITTE

I, Mercy Kaulanakapuananihemakanamaikeakua Ritte, declare that if called as a witness in this action I would testify of my own personal knowledge as follows:

1. I live in Hoʻolehua, Molokaʻi, with my husband and three children. I have lived on Molokaʻi almost all my life.

2. I first became interested in learning more about Monsanto and its operations on Molokaʻi about five years ago. Beginning in around October 2011, I noticed that Molokaʻi was experiencing very little rainfall. Yet, Monsanto continued to expand and plow the land, leaving much of it exposed to the elements. It was very common to see "dust devils" traveling across the landscape throughout the day. Less common, and baffling to me, was witnessing the largest dust storms ever on Molokaʻi! In early 2012, I remember the kona winds were picking the soil up from the exposed plots, and forming thick clouds of red dust, sending them miles and miles across the land. The dust from these clouds would not only end up on homes and yards, but go through open windows.

3. Shortly after these dust storms, my son, who was about seven months old at the time, awoke very early in the morning unable to breathe properly and was coughing uncontrollably. At first, I didn't know what to make of this

EXHIBIT 1

sickness. My husband and I began to retrace the events leading up to his mysterious cough. During the time of the dust storms we also noticed bright lights coming from the fields very early in the morning (1-2am). Concerned, my husband discovered that the field workers were plowing the fields at night. This pattern of plowing at night, the huge dust storms, and my son's sickness motivated me to research more about the company and its operations.

4. In September 2012, a small group of concerned Moloka‘i moms who had noticed similar problems from Monsanto's growing operations on Moloka‘i first gathered together to try to address them. We began to research what Monsanto was doing and discussed what we found with each other, and learned from others who had been following this issue. This group of moms stepped forward and took immediate action to join the rest of the world and participate in Occupy Monsanto, a week-long demonstration on Moloka‘i.

5. In January 2013, I met and connected with mothers throughout Hawai‘i who had learned what a small group of Moloka‘i moms were doing and who shared the same mission and love for their islands. Motivated by their determination and enthusiasm to make a difference I founded The Moms On a Mission Hui (The MOM Hui), which then emerged also on Kaua‘i, O‘ahu and Maui. The official The MOM Hui was founded in May 2013.

6. The MOM Hui is a grassroots group of forward-thinking mothers who advocate for protecting the health, safety, and well-being of all children, present and future. The MOM Hui is under the fiscal sponsorship of Hawai'i SEED, a 501(c)(3) non-profit organization and coalition of grassroots groups, farmers, and communities from five islands, who are working to educate the public about the risks posed by production of genetically engineered crops and to promote diverse, local, healthy, and ecologically sound food and farming. The MOM Hui's motto is "What We Love, We Will Protect!"

7. The MOM Hui supports:

- Food sovereignty and small-scale, local farmers who uphold natural farming practices and principles that improve soil and plant life, preserve Hawai'i's limited natural resources and enhances the quality of life and health for farmers and consumers;
- Sustainable and viable economic opportunities that provide safe, healthy long-term work for families;
- The right to make informed, confident choices about consumer products;
- The right to live and work in an environment that is non-threatening to the well-being of present and future generations;

- The right of people to define their own food systems and policies, rather than have them forced on them by corporations and marketing establishments.

8. To support its mission, The MOM Hui has engaged in:

- Community Outreach: It has hosted community events featuring documentary films and guest speakers, and informational tables at the Saturday market, and community events (i.e., Hoʻomau).
- Scholarship Program: It established a community-based scholarship program called Hoʻola Hou for Molokaʻi students enrolled in college and seeking a degree in health, environmental studies or organic/sustainable farming. Funds are raised through our annual grassroots benefit concert event and donations from the Tides Foundation.
- Community Marches/Rallies: It has organized and supported such events on Molokaʻi, Maui and Oʻahu to help educate and empower the community.
- Home gardening: Its vision includes collectively growing enough food to feed our community through a CSA (community-supported agriculture) operation, selling vegetable boxes.

- Workshops: It hosted a kiawe flour workshop, with guest experts to inform and inspire the community to learn about new sustainable agricultural products.
- Health Survey Project: It surveyed door-to-door, nearly 300 homes on Molokaʻi to document current health conditions. This effort is ongoing and is extending to other parts of the island.
- Supporting the ballot initiative calling for a moratorium on genetically engineered crop production in Maui County until after an impact study is prepared.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on Molokaʻi on September 02, 2016.

Mercy Ritte

DECLARATION OF MAILA CHUN

1. My name is Malia Chun and I reside on the west side of Kaua'i in the town of Kekaha. I declare that if called as a witness in this action I would testify of my own personal knowledge as follows.

2. I received my B.A.in Hawaiian Studies and Education at the University of Hawai'i at Mänoa in 2000. I have been a Program Coordinator for a cultural enrichment program for Native Hawaiian children at the University of Hawai'i for 16 years.

3. Nine years ago I had the opportunity to build my own home in Kekaha. This is an opportunity that many young families, let alone single mothers such as myself, cannot afford to experience in Hawai'i. I packed my daughters Lei'ohu (13) and La'akea (10) up and we re-located to the opposite end of the island, Kekaha. Kekaha is a rural, close knit community, consisting of many 1st and 2nd generation plantation workers, fishermen, hunters and Ni'ihauians (natives of the island of Ni'ihau). At first, I saw this

EXHIBIT 2

transition as a blessing, an opportunity to raise my children in a safe, community-minded environment, just a block from beautiful white sand beaches and twenty minutes away from Koke'e State Park. Little did I know at the time that in a matter of three years I would be surrounded by test sites for genetically engineered crops, sprayed constantly with toxic chemicals year-round, even at night as we sleep.

4. The only thing that stands between my brand new home and these toxic chemicals is a polluted irrigation ditch. The sad fact is that I live in Hawaiian homesteads, among one of the largest pure Native Hawaiian, native speaking populations in the state of Hawai'i, people who are considered an endangered human race, and we are surrounded by and exposed to restricted use pesticides on a daily basis. What I have learned in the last seven years of being a resident of Kekaha is that the number of people who suffer from physical ailments on the west side of Kaua'i is astounding.

5. About five years ago, I started to notice I was suffering from a shortness of breath, and when I would catch a simple cold it would take me at least three weeks to recover. It was then that my doctor (Dr. Zimmerman) suggested that I may be experiencing an onset of adult asthma. This was around the same time that my daughter started to complain that she was experiencing headaches and occasional bloody noses when she woke up in the morning. When I took my daughter in to the doctor (Dr. Carolan), he couldn't explain what her symptoms may be from. Since then, I have also sought the professional advice of another doctor (Dr. Hackk), and he diagnosed me with adult asthma. Having no prior history of asthma or smoking, being physically active and having a very healthy diet, Dr. Hackk's only explanation was that my adult asthma was "environmental." There was very little I could do to remedy the problem because it was something I was constantly exposed to in my environment. I was advised

to continue to take Albuterol, an inhaler, and when things get really bad, to come in for steroid shots.

6. As a result of these physical ailments that my daughters and I started to experience five years ago and are still suffering from, I have taken it upon myself to educate my family and my community on the dangers of restricted use pesticides, how other countries have been affected through exposure, and how our food system has been compromised by genetically modified foods and by-products. I have been an active voice at protests, rallies, marches and hearings in trying to get bills passed that will protect our community and allow us the basic human rights of knowledge and protection. I have also rallied a group of west side families that have similar concerns. Together we plan educational events for our community and have made it a personal mission to install a food garden in one family's yard per month.

7. I am a member of The Mother on a Mission (MOM) Hui, a group of mothers who, like me, are concerned

about the health effects they and their ʻohana have suffered from the dust and pesticides that drift into their homes and schools from nearby agricultural fields.

8. One of the issues I have been actively engaged in is supporting Bill 2491 passed by Kaua'i County, which would help protect me and my ʻohana by requiring that the companies that spray pesticides near our home disclose what chemicals they are spraying and when they intend to spray it, and by preventing spraying close to my house and neighborhood through buffer zones. Bill 2491is a step in the right direction towards providing our community and my ʻohana with some much needed and deserved answers, and working towards a cleaner, healthier future for our keiki and for Kauaʻi. Although a court declared Bill 2491 preempted by Hawaiʻi law, I am hopeful that ruling will be overturned on appeal. One way or another I hope my ʻohana and I and all of the other people who live near these fields will be given these basic protections.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September __, 2016, at Kekaha, Kaua'i, Hawai'i.

DS

MALIA CHUN

REQUEST TO ACCESS A GOVERNMENT RECORD

This is a model form that may be used by a Requester to provide sufficient information for an agency to process a record request. Although the Requester is not required to use this form or to provide any personal information, the agency needs enough information to contact the Requester with questions about this request or to provide its response. This request may not be processed if the agency has insufficient information or is unable to contact the Requester.

DATE: March 23, 2016

TO: Hawai‘i Department of Agriculture
Agency that Maintains the Government Record

Hawaii Board of Agriculture
Office of the Chairperson
1428 S. King Street
Honolulu, HI 96814
Agency's Contact Information

FROM: Paul Achitoff
Requester's Name or Alias

Earthjustice
850 Richards Street, Suite 400
Honolulu, HI 96813
(808) 599-2436
Requester's Contact Information

_____

AS THE REQUESTER, I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the requested government record will prevent delays in locating the record. Attach additional pages if needed.

Please provide a copy of any written material describing or documenting any Title VI compliance program(s) the Hawai‘i Department of Agriculture has or is implementing to ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral, as described in Title VI of the Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d et seq.

I WOULD LIKE: (Please check one or more of the options below, as applicable)

☐ **To inspect the government record**

X **A copy of the government record:** (Please check only one of the options below.) See the next page for information about fees and costs that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

☐ Pick up at agency (**date and time**):
☐ Mail (address): _____
X E-mail (address): achitoff@earthjustice.org
☐ Fax (toll free and only if available; provide fax number): _____
☐ Other, if available (please specify): _____

EXHIBIT 3

X If the agency maintains the records in a form other than paper, please advise in which **format you would prefer to have the record**.

X Electronic ☐ Audio ☐ Other (please specify):_____

X Check this box **if you are attaching a request for waiver of fees in the public interest** (See waiver information on next page).

FEES FOR PROCESSING PUBLIC RECORD REQUESTS

You may be charged fees for the services that the agency must perform when processing your request for public records, including fees for making photocopies and other lawful fees. **The first $30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over $30 will be charged to you.** Fees are as follows:

Search for a Record	$2.50 for 15 minutes
Review and Segregation of a Record	$5.00 for 15 minutes

Generally, no search, review, and segregation fees may be charged if you are making a request for personal records that are about you.

WAIVER OF FEES IN THE PUBLIC INTEREST

As an alternative to the $30 fee waiver (not in addition to), the agency may waive the first $60 of fees for searching for, reviewing and segregating records when the waiver would serve the public interest. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are

(1) The requested record pertains to the operations or activities of an agency;
(2) The record is not readily available in the public domain; and
(3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

COSTS

The Agency may charge you any other lawful fees and the costs to copy and deliver your personal or public record request.

AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in ***extenuating circumstances,*** the agency must respond within 20 business days from the date of your request. If you have questions about the response time or the records being sought, you should first contact the agency and request to consult with the agency's UIPA contact person.

Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies and a requester must seek records directly from the agency. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at 808-586-1400, oip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

REQUESTER'S RESPONSIBILITIES

You have certain responsibilities under section 2-71-16, Hawaii Administrative Rules, which include making arrangements to inspect and copy records, providing further clarification or description of the requested record as

instructed by the agency's notice, and making a prepayment of fees and costs, if assessed. The rules and additional training materials are available online at **oip.hawaii.gov** or from OIP.

REQUEST FOR WIAVER OF FEES IN THE PUBLIC INTEREST

My name is Paul Achitoff, Managing Attorney for the Mid-Pacific office of Earthjustice. I request a waiver of fees in the public interest pursuant to section 2-71-32, Hawaii Administrative Rules, because:

(1) The requested records pertain to the operations or activities of the State of Hawai‘i Department of Agriculture (“DOA”).

(2) The requested records are not readily available in the public domain because are not available on DOA’s website nor, to my knowledge, in any other publicly-accessible place.

(3) Earthjustice is a non-profit public interest law organization dedicated to defending the right of all people to a healthy environment. Earthjustice has the primary intention and actual ability to widely disseminate the requested information from the government records to the public at large.

REQUEST TO ACCESS A GOVERNMENT RECORD

This is a model form that may be used by a Requester to provide sufficient information for an agency to process a record request. Although the Requester is not required to use this form or to provide any personal information, the agency needs enough information to contact the Requester with questions about this request or to provide its response. This request may not be processed if the agency has insufficient information or is unable to contact the Requester.

DATE: March 23, 2016

TO: Agribusiness Development Corporation
Agency that Maintains the Government Record

State Office Tower
235 S. Beretania St.
Room 205
Honolulu, Hawaii 96813
Agency's Contact Information

FROM: Paul Achitoff
Requester's Name or Alias

Earthjustice
850 Richards Street, Suite 400
Honolulu, HI 96813
(808) 599-2436
Requester's Contact Information

AS THE REQUESTER, I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the requested government record will prevent delays in locating the record. Attach additional pages if needed.

Please provide a copy of any written material describing or documenting any Title VI compliance program(s) the Agribusiness Development Corporation has or is implementing to ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral, as described in Title VI of the Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d et seq.

I WOULD LIKE: (Please check one or more of the options below, as applicable)

☐ **To inspect the government record**

X **A copy of the government record:** (Please check only one of the options below.) See the next page for information about fees and costs that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

☐ Pick up at agency (**date and time**):
☐ Mail (address): _____
X E-mail (address): achitoff@earthjustice.org
☐ Fax (toll free and only if available; provide fax number): _____
☐ Other, if available (please specify): _____

EXHIBIT 4

X If the agency maintains the records in a form other than paper, please advise in which **format you would prefer to have the record**.

X Electronic ☐ Audio ☐ Other (please specify):_____

X Check this box **if you are attaching a request for waiver of fees in the public interest** (See waiver information on next page).

FEES FOR PROCESSING PUBLIC RECORD REQUESTS

You may be charged fees for the services that the agency must perform when processing your request for public records, including fees for making photocopies and other lawful fees. **The first $30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over $30 will be charged to you.** Fees are as follows:

Search for a Record	$2.50 for 15 minutes
Review and Segregation of a Record	$5.00 for 15 minutes

Generally, no search, review, and segregation fees may be charged if you are making a request for personal records that are about you.

WAIVER OF FEES IN THE PUBLIC INTEREST

As an alternative to the $30 fee waiver (not in addition to), the agency may waive the first $60 of fees for searching for, reviewing and segregating records when the waiver would serve the public interest. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are

(1) The requested record pertains to the operations or activities of an agency;
(2) The record is not readily available in the public domain; and
(3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

COSTS

The Agency may charge you any other lawful fees and the costs to copy and deliver your personal or public record request.

AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in ***extenuating circumstances,*** the agency must respond within 20 business days from the date of your request. If you have questions about the response time or the records being sought, you should first contact the agency and request to consult with the agency's UIPA contact person.

Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies and a requester must seek records directly from the agency. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at 808-586-1400, oip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

REQUESTER'S RESPONSIBILITIES

You have certain responsibilities under section 2-71-16, Hawaii Administrative Rules, which include making arrangements to inspect and copy records, providing further clarification or description of the requested record as

instructed by the agency's notice, and making a prepayment of fees and costs, if assessed. The rules and additional training materials are available online at **oip.hawaii.gov** or from OIP.

REQUEST FOR WIAVER OF FEES IN THE PUBLIC INTEREST

My name is Paul Achitoff, Managing Attorney for the Mid-Pacific office of Earthjustice. I request a waiver of fees in the public interest pursuant to section 2-71-32, Hawaii Administrative Rules, because:

(1) The requested records pertain to the operations or activities of the Agribusiness Development Corporation ("ADC").

(2) The requested records are not readily available in the public domain because are not available on ADC's website nor, to my knowledge, in any other publicly-accessible place.

(3) Earthjustice is a non-profit public interest law organization dedicated to defending the right of all people to a healthy environment. Earthjustice has the primary intention and actual ability to widely disseminate the requested information from the government records to the public at large.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor

JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

March 30, 2016

Mr. Paul Achitoff
Earthjustice
850 Richards Street, Suite 400
Honolulu, Hawaii 96813

Dear Mr. Achitoff:

This in response to your Request to Access a Government Record dated March 23, 2016. The Agribusiness Development Corporation (ADC) does not have any Title VI compliance programs, and therefore has no document responsive to this request. If you are thinking of a particular ADC document, please identify the document, and the ADC can search for it further.

If you have any further questions, please call me at 586-0186.

Thank you.

Sincerely,

James J. Nakatani
Executive Director

EXHIBIT 5

Paul Achitoff

From: Yee, Bryan C <bryan.c.yee@hawaii.gov>
Sent: Wednesday, April 27, 2016 5:21 PM
To: Paul Achitoff
Subject: RE: UIPA Request to the Department of Agriculture
Attachments: 0601001 Discrimination Harassment Free Workplace Policy.pdf; hdoa limited english proficiency plan.pdf

The Hawaii Department of Agriculture (HDOA) referred your UIPA request to me for a response. I have attached two documents which HDOA identified may be relevant to your UIPA request. The first is Policy No. 601.001 entitled "Discrimination/Harassment-Free Workplace Policy." The second is the Department of Agriculture's Limited English Proficiency Plan.

HDOA does not have a document specifically described as HDOA Title VI program. So, we have tried our best to identify the documents relevant to your request. Pursuant to our phone call, I have not included copies of the standard contract provision requiring all contractors to comply with local, State, and federal laws or with the standard grant provision similarly requiring compliance with all federal laws.

If you have any questions, feel free to either email me or call me at 586-1180. Thank you.

EXHIBIT 6

STATE OF HAWAII DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT **POLICIES AND PROCEDURES**	POLICY NO. 601.001	NO. of PAGES 7 2 Attachments
	EFF. DATE October 15, 2013	REV.NO./Date N/A
TITLE: **DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY**	APPROVED: Barbara A. Krieg, Director	

I. POLICY

The State and its appointing authorities are committed to promoting and maintaining a productive work environment free of any form of discrimination, harassment and retaliation. The State and its appointing authorities do not tolerate workplace discrimination, harassment or retaliation. The State and its appointing authorities are required to and will take appropriate action when discrimination, harassment or retaliation is based on a person's protected class.

The State and its appointing authorities will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action. Every State employee is responsible for assuring that work in the executive branch is conducted in an atmosphere that respects the dignity of every State employee, and people with whom the State conducts business. State employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment prohibited under this policy. In addition, State employees are expected to avoid retaliation against an individual who makes a complaint, and/or participates in or provides information for an investigation relating to discrimination and/or harassment. A violation of this policy may result in disciplinary action, up to and including termination, in accordance with applicable State laws, rules, policies, and collective bargaining agreements.

The State and its appointing authorities will also make reasonable accommodations, if needed, to the extent required by law, for employees who are disabled, pregnant (including pregnancy-related disabilities), breastfeeding, victims of sexual or domestic abuse, or for bona fide religious purposes. Any employee who believes he/she needs accommodation for any of these reasons should contact his/her manager, Departmental Personnel Officer (or his/her designee), Departmental EEO or Civil Rights Compliance Officer, or the Executive Branch Equal Employment Opportunity Office (587-1162 or eeo@hawaii.gov).

II. PURPOSE

The purpose of this policy is to assure compliance with all federal and State laws and to prevent discrimination, harassment, and retaliation in the workplace.

EXHIBIT 7

This policy is intended to protect all applicants, employees, and individuals providing services to the State on a non-paid basis (e.g. volunteers or interns) from discriminatory or harassing conduct by employees or non-employees and to prevent employees from engaging in discriminatory or harassing conduct directed to any individual (whether employees or non-employees).

III. DEFINITIONS

"Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

"Genetic information" includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e. an individual's family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

"Protected class" means race, color, sex, including gender identity or expression, sexual orientation, condition of pregnancy, act of breastfeeding or expressing milk, religion, national origin, ancestry, age, disability, genetic information, marital or civil union status, arrest and court record (except as permitted by applicable laws), income assignment for child support, national guard absence, uniformed service, veteran status, citizenship (except as permitted by applicable laws), credit history or credit report (unless directly related to a bona fide occupational qualification), domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status, or any other classification protected under applicable state or federal laws.

"Protected class discrimination or harassment" means any unwelcome behavior based on a person's protected class which is sufficiently severe or pervasive and has the purpose or effect of either unreasonably interfering with the person's work performance or creating an intimidating, hostile, or offensive work environment.

"Retaliation" means an adverse action taken or threat of adverse action in response to or in an attempt to prevent an individual from opposing a

discriminatory practice or from participating in an employment discrimination investigation or proceeding.

IV. SCOPE

This policy applies to all employees and applicants in the executive branch under the jurisdiction of the Department of Human Resources Development, whether civil service or exempt employees, full-time or part-time employees, permanent or temporary employees.

V. PROHIBITED CONDUCT

A. It is a violation of this policy to engage in protected class discrimination or harassment.

1. Protected class characteristics may not be used as a basis for taking employment action or making an employment decision that results in a significant change in benefits, or terms and conditions of employment.

2. Harassing or offensive conduct directed at individuals based on protected class characteristics is prohibited under this policy, and includes, but is not limited to:

   a. Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, or brushing against a person's clothing or body, pinching, or hitting;

   b. Sexual advances, requests for sexual favors, repeated and unwanted attempts at a romantic relationship, sexually explicit questions, comments about physical attributes;

   c. Lewd descriptions, sexual jokes, pressure for sexual activity, such as repeated requests for dates, and threats for refusing a sexual advance;

   d. Displays of demeaning, insulting, objects, pictures, or photographs relating to any protected class;

   e. Demeaning, insulting, intimidating, written, recorded, or electronically transmitted messages (such as email, text messages, voicemail, and Internet materials) relating to any protected class;

   f. Derogatory comments, slurs, jokes, profanity, anecdotes, and/or offensive questions based on or directed at any protected class; and/or

g. Any employment action or decision that adversely impacts a protected class of employees or applicants.

B. Retaliation against an individual who makes a complaint, participates in an investigation, or provides information related to any complaint, is prohibited. Retaliation includes, but is not limited to, any adverse action taken or threat of adverse action in response to any of the following actions or any attempt to prevent an individual from taking any of the following actions:

1. Making a complaint of harassment or discrimination;
2. Making a request for reasonable accommodation;
3. Participating in a complaint investigation or proceeding; or
4. Otherwise opposing acts of discrimination.

VI. PROCEDURES

A. REPORTING PROCEDURES

1. The State and its appointing authorities encourage employees to report discrimination, harassment, and/or retaliation, regardless of the identity of the alleged offender or whether the offender is an employee of the executive branch, before it becomes severe or pervasive so that steps may be taken to stop the offending behavior before it rises to the level of unlawful behavior.
2. Conduct that violates the Discrimination/Harassment-Free Workplace Policy should be reported to the employee's manager, the Departmental Personnel Officer (or his/her designee), the Departmental EEO or Civil Rights Compliance Officer, or the Executive Branch Equal Employment Opportunity Office (587-1162 or eeo@hawaii.gov).
3. Anyone who observes or experiences discrimination, harassment or retaliation prohibited under this policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. **Employees are not required, however, to make a complaint to the offender.**
4. A complaint or report may be made either orally or in writing, using the Discrimination Complaint Form (see Attachment A). A complaint or report, whether oral or written, should include:

name of the alleged offender(s), including position and department, if known, a summary of the offensive acts, the dates, times and places of the incidents, the names of witnesses to the events, and copies of documents, if any, that support the complaint or report.

B. CONFIDENTIALITY

The State and its appointing authorities will take appropriate steps to protect the confidentiality of discrimination, harassment and retaliation complaints, investigations, and reports, whether substantiated or unsubstantiated. However, complete confidentiality cannot be guaranteed and information regarding complaints, investigations and reports shall be shared with appropriate individuals and agencies on a "need to know" basis, with due consideration for the safety and security of individuals involved in the investigation.

C. RESPONSIBILITIES

1. Department Responsibilities

a. In alignment with this Discrimination/Harassment-Free Workplace Policy, department or agency heads are responsible for developing and enforcing their own discrimination/harassment free workplace investigation and enforcement processes within their own departments or agencies.

b. Should a conflict exist, this Discrimination/Harassment-Free Workplace Policy shall take precedence over all policies and/or procedures that are developed by the departments or agencies.

c. Departments are responsible for distributing this Discrimination/Harassment-Free Workplace Policy to all of its employees using the Discrimination/Harassment-Free Workplace Policy Acknowledgment Form (see Attachment B).

d. Departments shall forward a copy of any and all complaints of discrimination, harassment or retaliation, whether made internally or to the Equal Employment Opportunity Commission or Hawaii Civil Rights Commission, to designated persons within their department or agency and, in addition, to the Executive Branch Equal Employment Opportunity Office.

e. Departments are responsible for making sure all complaints are investigated promptly. Departments may take appropriate interim action while an investigation is pending, including placing an accused person on leave or temporarily in another position.

f. If the Department finds that an employee violated the Discrimination/Harassment-Free Workplace Policy, the Department will take appropriate corrective action, up to and including termination of the employee, in accordance with applicable State laws, rules, policies, and collective bargaining agreements. If the person found to have violated the policy is not employed by the State or its appointing authorities, other appropriate action shall be taken, including notice to the actual employer.

2. Managers' and Supervisors' Responsibilities

a. Managers and supervisors are responsible for maintaining a workplace free of harassment, discrimination and retaliation. Managers and supervisors who witness or receive reports of offending action shall take immediate and appropriate action to ensure any wrongful behavior ceases, and shall forward all such reports to the designated persons within their department.

b. Managers and supervisors, as assigned within their departments, shall investigate complaints of alleged violations of this Policy in a fair and impartial manner.

3. Employee Responsibilities

a. Employees are expected to conduct themselves appropriately while at work and during work-related functions and refrain from any acts of discrimination, harassment or retaliation.

b. Employees who experience or observe any unlawful harassment, discrimination or retaliation, have a duty and responsibility to report the incident(s) in order to correct and prevent unlawful harassment, discrimination or retaliation.

D. REFERRING COMPLAINTS TO EXTERNAL AGENCIES

1. In addition to the procedures described above, employees may make complaints about discrimination, harassment, or retaliation in the workplace to other appropriate agencies, including but not limited to, the federal Equal Employment Opportunity Commission (www.eeoc.gov) and the Hawai'i Civil Rights Commission (http://labor.hawaii.gov/hcrc).

2. Employees wishing to file complaints with other agencies should contact that agency to obtain information on their specific procedures and should not wait for resolution of a complaint made to the employer. Agencies may have time limitations for filing complaints. For example, complaints of unlawful discriminatory practices must be filed with the Hawai'i Civil Rights Commission no later than one hundred eighty (180) days, or with the Equal Employment Opportunity Commission no later than three hundred (300) days from the date: (1) the alleged unlawful discriminatory act occurred; or (2) the last occurrence in a pattern of ongoing discriminatory conduct.

VII. AUTHORITIES AND REFERENCES

Title VII of the Civil Rights Act of 1964 as amended

The Pregnancy Discrimination Act

The Age Discrimination in Employment Act of 1967

The Equal Pay Act of 1963

Titles I and II of the Americans with Disabilities Act of 1990 as amended

Sections 102 and 103 of the Civil Rights Act of 1991

Sections 503 and 504 of the Rehabilitation Act of 1973

The Genetic Information Nondiscrimination Act of 2008

The Immigration Reform and Control Act of 1986

Chapter 378, Hawaii Revised Statutes

VIII. ATTACHMENTS

Attachment A: Discrimination Complaint Form, HRD Form 613

Attachment B: Discrimination/Harassment-Free Workplace Policy Acknowledgment Form

NEIL ABERCROMBIE
Governor

RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

SCOTT E. ENRIGHT
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

DEPARTMENT OF AGRICULTURE
LIMITED ENGLISH PROFICIENCY PLAN

PURPOSE OF PLAN

Effective immediately, this Department of Agriculture Limited English Proficiency Plan shall be implemented to ensure that the Hawaii Department of Agriculture ("HDOA") provides language accessible services to limited English proficient individuals or organizations accessing, participating or benefiting from services, programs and activities offered by the department in order to meet the requirements of Act 290, SLH 2006, codified into Part II of Chapter 371, HRS, and Presidential Executive Order 13166.

BACKGROUND

Presidential Executive Order 13166, "Improving Access to Services for Persons with Limited English proficiency" was created to ". . . improve access to . . . federally assisted programs and activities for persons, who as a result of national origin, are limited in their English proficiency . . . ." Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI") serves as the basis for Executive Order 13166. Title VI provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Certain divisions of the HDOA receive Federal funding and, by virtue of that funding, Title VI applies to all HDOA's operations. *See* 29 CFR parts 31.1; 31.2(g); and 31.3. Accordingly, HDOA seeks to implement the initiatives set forth in this Limited English Proficiency ("LEP") Plan to meet its obligations under Title VI. The purpose of this LEP Plan is to take reasonable steps to ensure persons with limited English proficiency gain meaningful access to HDOA services and programs.

Hawai`i's population reflects a rich blend of peoples and cultures. According to the 2000 census, almost 290,000 of Hawai`i's 1.2 million people speak a language other than English at home, including over 250,000 persons that speak an Asian or Pacific Island language. For many, English is not their primary language. Many have only a limited ability to read, write, speak or understand English. Language barriers often prohibit many residents from fully participating in our community and undermine efforts to become self-sufficient and productive. This LEP Plan speaks to HDOA's commitment to provide essential and meaningful access to LEP customers.

DEFINITION OF LIMITED ENGLISH PROFICIENT PERSONS/CUSTOMERS

For purposes of this LEP Plan, LEP persons or LEP customers mean individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. Such persons may be eligible to receive language assistance with respect to a particular service, benefit, or encounter.

EXHIBIT 8

RELEVANT FACTORS

In determining how to provide effective and meaningful access to LEP customers, the U.S. Department of Labor has established the following four guidelines (68 FR 32290, 32294 (May 29, 2003)):

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program;

2. The frequency with which LEP persons come into contact with the program;

3. The nature and importance of the program, activity, or service provided by the program to LEP persons; and

4. The resources available to the program and the costs of providing interpretation/translation services.

The touchstone of this four-factor analysis is reasonableness--reasonableness as measured by balancing (1) the size, needs, and the nature of assistance to the LEP population served and (2) HDOA's capacity and available resources.

SUMMARY

This HDOA LEP Plan is comprised of six (6) components:

(1) Designation of Responsibilities;

(2) Development of a reporting system designed to obtain key information about the LEP Customers who use HDOA services;

(3) Compilation of comprehensive multi-lingual listing of HDOA employees;

(4) Notice of interpretation/translation services to qualified LEP customers;

(5) Providing interpretation/translation services for qualified LEP customers;

(6) Seek stakeholders' input; review and revision of the LEP Plan.

Each component will be explained below.

LEP PLAN

I. DESIGNATION OF RESPONSIBILITIES

Chairperson

The Chairperson shall designate a person to serve as the LEP Plan Coordinator.

LEP Plan Coordinator

The LEP Coordinator shall be responsible to:

(1) coordinate, monitor, and evaluate the overall implementation of the LEP Plan;
(2) coordinate responses to any inquires or comments/complaints regarding the LEP Plan and its implementation;
(3) coordinate any revisions and modifications to the LEP Plan, as necessary;
(4) train HDOA division and program managers, by providing the proper background necessary to implement the objectives of the LEP Plan;
(5) coordinate efforts to solicit stakeholders' input aimed at improving the current LEP Plan;
(6) coordinate the compilation of the listing of materials/documents that should be translated from English into a foreign language;
(7) develop a survey form to collect information necessary to enable the department to render meaningful access to its LEP customers and compile the data on a yearly basis and submit an annual report to the Chairperson and Deputy by no later than July 31, 2008 and every year at this date thereafter;
(8) compile listing of multi-lingual listing of HDOA employees who would be willing to provide interpretation/translation services to LEP customers; and
(9) compile listing of interpreters/translators and their costs for program personnel to use in providing services to their LEP customers.

Division Administrators and Program Managers

The Division Administrators and Program Managers shall be responsible to:
(1) identify and determine important materials/documents that should be translated from English into a foreign language;
(2) compile information requested by the LEP Plan Coordinator on multi-lingual HDOA employees and LEP customers;
(3) ensure appropriate program staff have reviewed and been trained on implementing the LEP Plan including the proper background necessary to implement the objectives of the LEP Plan;
(4) inform what LEP interpretation/translation services are available to their customers;
(5) respond to request for oral and written translation services by identifying available internal bi-lingual staff or contacting available interpreter services and record information about oral or written language service provided;
(6) monitor program staff to ensure that the LEP Plan is being implemented; and
(7) notify the LEP Coordinator of any complaints/concerns from customers regarding LEP services provided by the department.

Employees

Each employee is responsible to:
(1) review and assist in the implementation of the LEP Plan;
(2) assist in obtaining interpretation/translation services for LEP customers and record information about oral or written language service provided, if applicable; and
(3) notify division administrator or program manager of any complaints/concerns from customers regarding LEP services provided by the department.

II. DEVELOPMENT OF A REPORTING SYSTEM TO OBTAIN KEY INFORMATION ABOUT THE LEP CUSTOMERS WHO USE HDOA SERVICES

In order to provide meaningful access to LEP customers, HDOA has gathered information about what languages they speak. HDOA will determine what services they use, and the frequency with which they use these services.

In July 2006, the Hawaii Agricultural Statistical Service, a branch of the HDOA, conducted a language study of Hawaii agricultural workers (see attachment A). This study identified the first language of workers and operators (farm/ranch owners) as well as their level of English and math proficiency. These statistics, however, are limited to the types of languages spoken and do not reflect the kinds of HDOA services requested or provided or how frequently such services were used by LEP customers.

The study showed the most prevalent first language among Hawaii agricultural workers is Ilocano at 2,560 or 40 percent of the total estimate of 6,410. The second most prevalent language among Hawaii agricultural workers is English, estimated at 2,280 or 36 percent.

Of those workers whose first language is Ilocano, 2,040 or 80 percent understand written instructions in their first language. Of the same population, 2,270 or 89 percent comprehend English verbal instructions and 1,520 or 59 percent comprehend English written instructions.

Hawaii agricultural operators' first language is predominantly English, at 2,730 or 88 percent of the total estimate of 3,090.

A survey form designed to collect the information necessary to enable us to render meaningful access to LEP customers who use our services was developed. This form will be filled out by all appropriate HDOA employees and collect, among other things, the following information: (1) the kinds of HDOA services requested by LEP customers; and (2) the frequency with which LEP customers use certain HDOA services. The data will be compiled on a yearly basis and an annual report prepared and submitted to the Chairperson and Deputy no later than July 31, 2008 and every year at this date thereafter. HDOA will use this information to develop the appropriate set of services.

III. COMPILATION OF COMPREHENSIVE MULTI-LINGUAL LISTING OF HDOA EMPLOYEES

To effectively service LEP customers, HDOA must ascertain what language skills and resources it may already have available through its employees.

HDOA has compiled information volunteered by HDOA personnel including, among other things, the language or languages that the HDOA employee can speak and/or read, the degree of fluency in those identified languages, and the contact information for that HDOA employee. An employee on this list may be contacted when a LEP customer requesting HDOA services needs language assistance.

HDOA has identify external organizations and individuals that have language capabilities that can be called upon for assistance. In the past, HDOA has worked with Pacific Gateway and University of Hawaii College of Tropical Agriculture and Human Resources (UHCTAHR) as well as individuals throughout the islands with diverse language expertise.

Pursuant to HRS Section 371-33(d), to the extent that HDOA requires additional personnel to provide oral and written language services as determined by the totality of the circumstances and relevant factors in HRS Sections 371-33(a)(1)-(4), HDOA will hire qualified personnel who are bilingual to fill existing, budgeted vacant public contact positions.

IV. NOTICE OF INTERPRETATION/TRANSLATION SERVICES TO LEP CUSTOMERS

A. OFFICE NOTICE

The HDOA employee will inform LEP customers orally, as required when reasoned or recognized, of the availability of an oral interpreter/translator in their primary language. Signage developed by the Office of Language Access and adapted for HDOA, will be posted and invite LEP customers to indicate they are in need of oral language services.

B. REQUESTING WRITTEN TRANSLATION

The HDOA employee will inform LEP customers in person and over the phone, as required when reasoned or recognized, of written translation services available. Should the LEP customer request written translation services, the employee shall notify the Program Manager or Division Administrator who shall respond to the request.

V. PROVIDING INTERPRETATION/TRANSLATION SERVICES FOR LEP CUSTOMERS

A. ORAL INTERPRETATION

If an individual approaches a HDOA employee and appears to be accessing services but has difficulty communicating what he or she needs, the employee shall respond as follows:

(1) When a request for an interpreter is made either orally or in writing, the employee shall determine whether bi-lingual staff in the office or a nearby unit is available who speaks the language being requested. The employee shall record information on the interpreter services provided on Attachment C.
(2) When bilingual staff is not available, the employee shall refer the request to their Program Manager or Division Administrator. The Program Manager or Division Administrator shall contact Pacific Gateway at 845-3918 or the appropriate department personnel of the University of Hawaii, College of Tropical Agriculture and Human Resources (UHCTAHR) specializing in the area of inquiry to request interpreter services. The Program Manager or Division Administrator shall record information on the interpreter services provided on Attachment C. The program or division shall be responsible to cover any cost related to providing the interpreter services.
(3) In the event an individual declines the offer to be provided a free interpreter, the individual should be asked to sign a waiver (Attachment D). The waiver should be kept in the client's file.

B. WRITTEN TRANSLATION

In 2007, the HDOA conducted an internal assessment and contacted the Hawaii Farm Bureau Federation in order to find out the need for interpretation or translation services. The HDOA subsequently compiled a listing of material and documents identified and determined by the division and/or program managers as important and/or believed to be important through the experiences of the program, and needing translation from English into a foreign language.

The HDOA currently has five (5) documents translated into various languages. The HDOA will continue to consult with its Administrators and Managers to determine whether any additional materials need clarification and translation. Written translations of documents are subject to the four-factor analysis and reasonableness. Examples of translated materials are

included as Attachment B. (NOTE: For booklets, only the cover of the respective document is attached)

For LEP groups that meet the 5% threshold but number less than 50, the HDOA will determine whether to provide written notices on important documents notifying the individual of their right to receive competent oral interpretation of written materials in their primary language.

VI. SEEK STAKEHOLDERS' INPUT; REVIEW AND REVISION OF THE LEP PLAN

HDOA will actively seek input from agricultural organizations that have contact with LEP customers.

This LEP Plan shall be reviewed and revised periodically in light of comments from LEP customers, their representatives, interested stakeholders, and HDOA staff.

An updated LEP Plan shall be submitted to the Office of Language Access by July 1, 2013 and every two (2) years thereafter.

CONCLUSION

Through the enactment of this LEP Plan, HDOA, in compliance with the mandate of Title VI, has memorialized the initial steps in providing reasonable and meaningful access to LEP customers that seek HDOA services.

All HDOA divisions and administratively attached agencies shall immediately comply with this LEP plan.

Date: July 1, 2013

Attachments

Attachment A - Language Study of Hawaii Agricultural Workers

Attachment B - Examples of HDOA Translated Materials *

Attachment C - Limited English Proficiency Translation Services Monthly Log

Attachment D – Waiver of Interpreter Services

* For booklets, only the cover of the respective document is attached

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

SYNGENTA SEEDS, *et al.*, *Plaintiffs*, v. COUNTY OF KAUA'I, *Defendant*, and KA MAKANI HO'OPONO, CENTER FOR FOOD SAFETY, PESTICIDE ACTION NETWORK NORTH AMERICA, and SURFRIDER FOUNDATION *Proposed Intervenor-Defendants*.	Case No.: 14-cv-00014-BMK **DECLARATION OF HOWARD HURST IN SUPPORT OF KA MAKANI HO'OPONO, CENTER FOR FOOD SAFETY, PESTICIDE ACTION NETWORK NORTH AMERICA, AND SURFRIDER FOUNDATION'S MOTION TO INTERVENE**

EXHIBIT 9

DECLARATION OF HOWARD HURST

1. I am over the age of 18 and have personal knowledge of the statements in this declaration.

2. I have been a volunteer member with Pesticide Action Network North America ("PANNA") and volunteer project director of the ad hoc coalition Maluhia Group (Hawai'i) since the fall of 2006. Maluhia Group is a coalition of Waimea Canyon Middle School staff, parents and community members concerned with the use of pesticide, and the agriculture of genetically engineered (GE) crops on lands adjacent WCMS campus. Based upon my personal knowledge and experience and based upon my education and profession, I am very concerned about the effects of pesticides on my health, children in my school, and on teachers.

3. I am a teacher in Waimea, Hawai'i 96796. I have been a teacher at Waimea Canyon Middle School for over 17 years. I hold a Master of Science degree in the physiology of learning disabilities from Brooklyn College, graduating magna cum laude. As a Special Education English teacher, I work with children with learning disabilities 10 to 14 years of age. Waimea Canyon Middle School is bounded by Syngenta's genetically engineered seed facility, which includes experimental testing fields next to the school. The distance from the nearest

classroom to agricultural lands applied with pesticides is approximately 100 yards. These agricultural lands are windward of the school.

4. The fields adjacent to and near the school are sprayed with pesticides regularly throughout the year, but especially in fall and winter when school is in session. There are also prevailing coastal winds that move across the fields towards the school daily. Syngenta acknowledged the pesticide sprayed in one incident in 2008 was the insecticide lambda-cyhalothrin, which the European Union considers a "suspected endocrine disruptor." In their study, the University of Hawaii passively sampled and found evidence of the neurotoxicant pesticide chlorpyrifos in 2011 and 2012. Maluhia Group members and I worked with PANNA scientists collecting air samples and found evidence of the chemical ethalfluralin in 2011. Because none of these pesticides are applied at or by the school, all likely drifted away from the Syngenta application sites onto school grounds.

5. Students and staff have regularly reported unsettling, chemical fuel-like smells, coinciding immediately or shortly after pesticides were applied on agricultural lands windward of the school.

6. In November 2006, after school staff including myself witnessed an application of pesticides by Syngenta on the adjacent fields, over 60 students reported to the health room complaining of severe headache, nausea, disorientation, and "flu-like" symptoms. Multiple classes of middle school children

were relocated to the only building with air conditioning in an effort to avoid the noxious fumes. Many students had to return to their classrooms due to space constraints in the Health Room. I did my best to treat my student's itchy eyes, dizziness, and nausea. Teachers, concerned about the number of incidents like this and worried about the health implications for the whole school, contacted Hawaii State Teacher's Association Representative Tom Perry who immediately came to the campus. After witnessing the continuing field operations and experiencing firsthand the symptoms being reported by students and staff, Tom Perry called 911 and the Kauai Fire Department that same day. Ten students were taken to Kauai Veterans Memorial Hospital. Some other teachers filed workers compensation claims and many transferred to different schools or left the island. Of the 36 teachers hired since the first incident at Waimea Canyon Middle School, 23 have left the school. My General Practitioner documented my symptoms of headache, muscle ache, malaise, labored breathing, itchy eyes, nausea, as "possible pesticide poisoning." The Department of Agriculture (DOA) focused the blame on "stink weed" plants, but the symptoms exhibited were consistent with pesticide poisoning and identified on the known applied pesticide labels and Material Safety Data Sheets by a wide spectrum of people, not common allergies among allergy-sufferers.

7. On January 1, 2008, 72 students were documented as having inhaled a noxious odor that resulted in dizziness, headache, malaise, red itchy eyes and nausea, with 12 of the students having severe enough symptoms to be taken to the hospital. After a Freedom of Information request the local newspaper The Garden Island counted numerous other students that weren't included in the officially-documented number. The school's administration called the Kauai Fire Department and soon after, representatives from the Hazardous Materials Assessment and Response Division, Department of Health, DOA, Hawaii State Teachers Association, and the Department of Education were on site. T- Building, the classroom building closest to Syngenta agricultural land, was evacuated and an investigation ensued. Syngenta claims, like it has in other incidents, that the effects were due to the local "stinkweed." Unfortunately, the DOA initially agreed with these claims, but then a follow-up DOA study found that impacts from the benign weed Cleome gynandra or "stinkweed" were insignificant. Similar levels of Cleome gynandra were found at all school control sites as well as WCMS and there were no incidents at these control sites attributed to "stinkweed."

8. After receiving an e-mail from the principal that Syngenta was going to spray a neighboring field with chlorpyrifos in 2008, I joined teachers as we picketed outside the school and, with the assistance of the Hawaii State Teachers Association, successfully forced Syngenta to, at a minimum, cease operations on

field #809, the field closest to school classrooms. The Hawaii State Teachers' Association brought suit and a Kauai court issued a temporary restraining order requiring Syngenta to cease operations on field #809. Following the restraining order (which has since expired), the Teachers Association was able to elicit a voluntary agreement from Syngenta to abandon agricultural operations in field #809 only. Operations continue in all other fields in the area.

9. As a volunteer with PANNA, I have been involved in air quality monitoring for pesticides in the air near our middle school, finding positive results. In January 2011, Maluhia group member, PANNA volunteer and certified Drift Catcher trainer Matthew Snowden actively sampled for and found the herbicide ethalfluralin, a pesticide EPA considers a possible carcinogen, during a 3-day period (1/7/11-1/9/11). The Drift Catcher, which found ethalfluralin, was placed on the property line of the home immediately adjacent to the North edge of the school.

10. The University of Hawai'i's "Air Sampling and Analysis for Pesticide Residues and Odorous Chemicals in and Around Waimea, Kauai," commissioned by the DOA and County of Kaua'i, resulted in positive findings of chlorpyrifos at Waimea Canyon Middle School during three periods over a year: 6/6/11-10/12/11, 10/12/11-2/12/12, and 2/12/12-6/11/12. Due to the flawed nature of this form of passive sampling, the study can only report that chlorpyrifos was detected at all sites tested during each of the three periods (2 indoor sites and 2

outdoor sites). In addition, researchers also used high volume active sampling during the short period 2/10/12-2/18/12, and found chlorpyrifos at levels considered to be unhealthy for children. During the period of time covered by the University of Hawai'i study, there were multiple incidents of illness "spikes" unlike predictable student illness patterns, with symptoms such as itchy eyes, dizziness, nausea, headache which are all indicative of pesticide exposure. Fortunately, there were no evacuations during the time of the study, but this is likely due to altered spray patterns by Syngenta during the study and not spraying the entire week the high-volume sampler was running. Many parents that signed their children out of school during these "spikes" reported that the symptoms dissipated shortly after leaving the drift area (Waimea Canyon Middle School campus).

11. The concerns from the past several years are not limited to Waimea Canyon Middle School. For example, I am personally aware of a similar drift incident at Kekaha School in 2008, approximately 3 miles from Waimea Canyon Middle School. Both schools bookend Syngenta's genetically engineered seed testing lands. DOA reports have consistently failed to adequately test for drift and have been therefore unable to document harm.

12. Syngenta continues agricultural pesticide application operations on fields within one-quarter mile of Waimea Canyon Middle School and "spikes" of

illness symptoms indicative of pesticide exposure (that is, the symptoms are the same as those described in the incidents above) occur on days when there is active field spraying and the winds are from that direction. Although Syngenta has voluntarily ceased operations on field #809—the nearest field—and planted hedgerows, during spray season students and staff continue to experience symptoms indicative of chronic pesticide exposure. There have been no acute incidents since spraying ceased on field #809. Unfortunately, there is no biomonitoring or active air sampling going on to identify the current magnitude of the problem.

13. Through first person knowledge I'm aware that 11 of the 23 teachers leaving the school since the first drift incident have transferred from Waimea Canyon Middle School or left the island altogether due to health concerns associated with the pesticide applications by Syngenta. This represents almost half the staff of the school.

14. Despite the many incidents and evacuations little has changed; Syngenta is still spraying on the West side of Kaua'i. Prior to the passage of Bill 2491, there were no new buffer requirements except for a voluntary decision to stop spraying in a field closest to school classrooms, reached only after pesticide exposure to children and considerable pressure on Syngenta brought by teachers. Students and school staff, including myself, will continue to be injured by these

dangerous pesticides as they drift from neighboring fields, unless new policies are put in place.

15. I consider myself an educator and I have dedicated my life to assisting children in low-income communities. I support PANNA's efforts to defend, on behalf of its members, such as me, this lawsuit seeking to invalidate Bill 2491 (Ordinance 960), which requires the chemical companies, including Syngenta, to warn neighbors, such as me, of pesticide spraying, and disclose the chemicals being sprayed so affected people will not be forced to guess what they have been exposed to, or rely for help on State agencies that have demonstrated an inability or unwillingness to address the problem to protect schoolchildren, or me.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of February, 2014, at Waimea, Hawai'i.

HOWARD HURST

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

FEB 20 2013

VIA E-MAIL

Scott E. Enright
Deputy to the Chairperson
Hawaii Department of Agriculture
1428 South King Street
Honolulu, HI 96814

Dear Mr. Enright:

Enclosed is the Draft End-of-Year Evaluation Report of the FY12 Pesticide Performance Partnership Grant between the Hawaii Department of Agriculture (HDA) and the U.S. Environmental Protection Agency (EPA), Region 9.

The End-of-Year Report is based on the reports and documents that HDA provided to EPA as well as an on-site visit in November, 2012. Our review found that HDA continues to maintain a quality program and the Pesticide Program met all major outputs and projections for FY12. Inspection projections were exceeded, and several large-scale projects were completed, such as the Branch and Laboratory Standard Operating Procedures, and the Pesticide Quality Assurance Project Plan which was drafted and forwarded to EPA. Additional programmatic findings are located within the body of the report.

Please review the enclosed report and provide any comments or additions to Mary Grisier within 30 days. If no comments are received, the report will be considered final.

Sincerely,

Pamela Cooper

Pamela Cooper, Manager
Pesticides Office

Enclosure

Cc: Thomas Matsuda, HDA
Dean Yoshizu, HDA
Vernese Gholson, (MTS-7)
Mary Grisier, (CED-5)

EXHIBIT 10

U.S. Environmental Protection Agency

Hawaii Department of Agriculture

FY2012 End-of-Year Review

Pesticide Performance Partnership Grant

Executive Summary- This report covers workplan activities conducted in FY12, and is based on discussions and review of documents throughout the year and during the end of year visit. Discussions were held during the end of year visit that focused on recent changes to the pesticide program at Hawaii Department of Agriculture (HDA). Recommendations for improvements to inspection procedures can be found within the body of this report. This report covers the first year of a two-year performance partnership grant between Hawaii Department of Agriculture and EPA Region 9. This grant was put into place to ease administrative burdens on HDA and to allow for more long-term planning for the Pesticide program. Databases that track certified applicator education and licensing are in need of updating and integration. FY14 negotiations should include discussions of how this might be accomplished.

I. BACKGROUND

A. General

1. **Project Period:** October 1, 2011 – September 30, 2012.

2. **EPA Assistance Agreement Number:** #BGOOT64412

3. **Review method:** On-site

4. **Review participants:**

EPA: Mary Grisier, Hawaii Pesticide Project Officer Grantee: Thomas Matsuda, Pesticide Program Manager, Avis Onaga, Case Preparation Officer, and Dean Yoshizu, Compliance Officer

5. **Review date(s) and location:** November 8-10, 2012 at the Hawaii Department of Agriculture offices in Honolulu.

B. Scope of Review

The Hawaii Department of Agriculture (HDA) has partial primary enforcement responsibility over pesticide use activities in the State of Hawaii and is the lead state agency for the enforcement of the Hawaii Pesticides Law (Chapter 149A, Hawaii Revised Statutes) and the Hawaii Administrative Rules (Chapter 66, Title 4). There are approximately 1,110,000 acres in farmland, 7,500 farms, 6,400 agricultural workers, 3,800 Agricultural Operators, 1,200 certified applicators, 21 licensed Restricted Use Pesticide (RUP) dealers, 18 pesticide producing establishments, and four licensed aerial applicators in the state of Hawaii. Major crops in Hawaii include seed corn, coffee, papaya, bananas and nursery plants. Average farm size in Hawaii is 150 acres. HDA maintains a database of all pesticides licensed in Hawaii. The HDA Pesticide program consists of approximately 14 individuals over 4 islands performing inspection, education, registration, administrative, and other pesticide program activities.

The Hawaii Pesticide program is supported by both State (general and revolving) and federal (USDA and USEPA) funds. HDA and USEPA Region 9 had one active Performance Partnership Grant (PPG) with pesticide related activities to be carried out in Federal Fiscal Year 2012. The purpose of the PPG is to reduce paperwork and provide administrative relief and flexibility to HDA.

The FY12 end-of-year evaluation was primarily accomplished by reviewing quarterly reports and correspondence received from HDA throughout the year, and an on-site visit by Mary Grisier, project officer for HDA. Information gathered was compared to the outputs and standards in the cooperative agreements to determine if HDA had met its commitments.

II. FINANCIAL

A. Budget Analysis

The following table summarizes funding and expenditures for the FY12 cooperative agreement. In FY12, approximately three FTE were supported by EPA funding (Inspector, Pesticide Specialist, and Chemist).

At the time of this writing, final Financial Status Reports (FSRs) for FY12 were not due and had not been received.

Work Plan Component	EPA Funding	Grantee Funding*	Total Funding
Enforcement	$197,000	$35,055	$232,055
Programs	$ 81,125	$11,603	$ 92,728
C&T	$ 30,000	$30,255	$ 60,255
TOTAL	$308,125	$76,913	$385,038

* State is required to provide 50% match in C&T, 15% (by policy) for other programs.

Re-budgeting –There was no rebudgeting in FY12.

III. GENERAL GRANT ADMINISTRATION

A. Recommended Actions for Grants Office - None

IV. COMPLIANCE AND ENFORCEMENT

A. Grantee Reports

1. Pesticide Enforcement Outcome Measures

HDA reported on the three Office of Enforcement and Compliance Assurance (OECA) measures for pesticide enforcement (Appendix 1). Values reported were:

a. Repeat violator: 8% of actionable inspections included entities receiving an action in the past three years.
b. Verified compliance: 32% of actionable inspections resulted in verified compliance.
c. Cost per actionable inspection: $9,483.56 is the cost per actionable inspection.

Compared to FY11, there were slightly more repeat violators, but also a large increase in the percentage of inspections that resulted in verifiable compliance (up from 11% in FY11). In addition, the cost per actionable inspection decreased from $19,357 to $9,483.56.

2. Summary of 5700-33H reports – attached as Appendix 2.

3. Annual Summary of Inspections and Enforcement Actions

HDA exceeded the number of projected inspections (266 projected, 440 completed). The percentage of all reported inspections (440) that resulted in any enforcement action was 19%, up from 9% in FY11, with agricultural use inspections resulting in the highest percentage of actions of any inspection category (36%) followed by marketplace inspections (28%). Seventy warning letters were issued, and two cases were assessed fines in FY12, versus four in FY11. Eleven inspection files were referred to EPA for enforcement review and possible development in FY12, down from twenty-nine in FY11.

B. Case File and Enforcement Action Evaluation

1. Significant Cases (FIFRA Section 27)

There was one episode referred to HDA as a high level episode in FY12. However, upon further investigation, no link to pesticides was found, and the referral was cancelled. Each island maintains a separate list of all episodes and complaints received. These are recorded and reported to EPA.

2. Routine Inspections – other than Worker Protection

Forty five case files were reviewed. Inspection files were randomly selected from actionable and non-actionable inspections. Inspections selected represented the work of

five different inspectors. Inspections continue to document compliance/non compliance with pesticide laws, and in most cases include necessary evidence such as photographs, labels and invoices. HDA forwards any inspections conducted with a federal credential, or that reveal a federal violation, to EPA. There were no Special Requests issued to HDA during FY12. HDA did not complete any container/containment inspections, as there are no facilities currently identified in Hawaii that meet the necessary criteria. The Pesticide Container/Containment Inspection and Enforcement Accomplishment Report (EPA C/C Form 5700-33H) is included in Appendix 2.

1. Oversight inspections (non-WPS) - none

C. *Compliance Priority – Worker Protection Standard (WPS)*

1. Reports

a) The Pesticide Worker Protection Standard Inspection and Enforcement Accomplishment Report (WPS Form 5700-33H) is included in Appendix 2.

2. Significant WPS Cases (FIFRA Section 27) - none

3. WPS oversight inspections – none

4. WPS case file evaluation

HDA conducted forty one WPS Tier 1 inspections at establishments throughout Hawaii, twenty of which were for-cause. Out of the total number, one civil complaint and three warnings were issued. Inspection files were complete and contained required information. Four Tier 2 inspections were also conducted. Inspections were of high quality and included appropriate documentation.

5. Worker Protection Risk-Based Targeting Strategy

a) Implementation of Risk-Based Targeting Strategy

A WPS targeting strategy was developed in 1994. Targeting was based partly on how many restricted-use pesticides were purchased by growers, as well as how many workers were employed by the establishment. Since that time, agriculture has changed dramatically in Hawaii. The number of large farms with many workers has greatly decreased. Farms are smaller (average farm size is 150 acres) and growers buy smaller quantities of pesticides. Inspectors have found that they can identify establishments that fall under the WPS by conducting typical agricultural use inspections and asking questions related to worker activity during the inspection. They will then return at a later date to conduct a WPS inspection. Larger establishments are inspected approximately every two years.

D. Inspection and Enforcement Support

1. Training

At the time of the EPA visit in November, 2012, HDA conducted an annual pesticide training workshop for all HDA Pesticide Program staff (inspectors, education, and registration staff) and outer Pacific Island pesticide programs. The workshop reflected on the previous year's accomplishments and established priorities and goals for the coming year. Highlights included completion of standard operating procedures for the Branch, completion of the draft QAPP, and involvement of staff in an investigation into illegal pesticide use on basil. Special focus was directed at reviewing the workplan commitments agreed upon between HDA and EPA. The Program Manager stressed the need for staff to focus on repeat violators, making sure that monthly checks are done to identify those locations that require a follow-up visit to ensure compliance. Medical monitoring and respirator fit-testing were provided to inspectors.

At the time of the review, HDA had seven federally-credentialed inspectors. Training records were properly maintained at the Honolulu office, and inspectors had met the commitments outlined in the FIFRA inspector credential authorization agreement. HDA intends to hire an additional inspector to assist with coverage for Oahu, where there is currently only one inspector.

TRAINING	DATE
C&T Exam Development	Oct. 2011
C&T Exam Development	May 2012
WRPM –Cody, WY	May 2012
Intermediate Registration Evaluation Course - VA	July 2012
ASPCRO – Seattle, WA	Aug. 2012
Enforcement PIRT - NC	Sept. 2012
C&T PREP – Davis, CA	Sept. 2012

2. Enforcement Response Policy

The Hawaii Department of Agriculture revised and adopted its Pesticide Enforcement Action and Penalty Assessment Schedule on October 24th, 2006. Review of case files indicates that HDA follows its enforcement response policy. There are several areas where the policy is in need of updating; the Department of Agriculture is currently working to fill positions on the Governor's Pesticide Advisory Committee, which when fully formed, will take up the issue of revision of pesticide regulations in Hawaii.

3. Neutral Inspection Scheme

Applicators that are likely to use more RUPs are inspected more frequently than those that do not. This is based on amounts of RUPs purchased divided by the number of applicators employed by a business. With regard to marketplace inspections, they are conducted primarily based on complaints, rather than through a neutral inspection scheme. This has been discussed during previous reviews as an area for additional focus by HDA. HDA should consider whether these overall approaches to targeting inspections are still appropriate and effective.

4. Inspection and Enforcement Procedures

Discussions were held throughout the year between HI inspection staff and EPA as procedural issues arose. HDA is encouraged to continue to identify those areas that are lacking in the ERP, so that at a future date, changes can be made. HDA has revised the Branch Standard Operating Procedures, which includes neutral inspection procedures. HDA has one case development officer that reviews all files as they come in from the inspection staff. There is a vacant Planner position in the Branch; the Program Manager hopes to fill this vacancy and cross-train the employee on case development.

5. Quality Assurance

HDA staff worked consistently on a revised QAPP during FY12. At the time of this writing, the draft QAPP and associated laboratory documentation, including over 30 standard operating procedures had been submitted and was under review in the Regional Office. During FY12, a second chemist was hired to assist in the Chemical Analysis Laboratory.

6. Special activities/investigations

In cooperation with EPA, HDA is providing ongoing support to outer Pacific island pesticide program staff on import, inspection, enforcement, and certification issues. As in previous years, HDA extended an invitation to outer island inspectors to attend the Inspector Workshop. Attendance at the workshop provides an opportunity for the inspectors to receive medical monitoring exams and respirator fit tests, as well as to participate in discussions with fellow inspectors.

In FY12, it was discovered that several growers of sweet basil had been using a restricted use pesticide (RUP) not labeled for use on basil. This investigation ultimately led to nine different farms suspected of using this RUP. HDA completed thorough inspections at these farms, and is now in the process developing enforcement actions. It is likely that four entities will receive monetary penalties and five will receive warning letters.

E. New Legislation and Regulations

There was no new pesticide-related legislation proposed or passed in FY12.

F. Action Items from Previous Reviews

Recommendation 09-02: HDA should revise and update quality assurance documents in FY10. EPA is available to assist with any questions that HDA or the Chemical Analysis Laboratory may have in these revisions.
Status: HDA worked on the revised QAPP during FY12, and in November provided a draft for EPA review. This recommendation is now closed.

Recommendation 10-01: A narrative end of year report, covering all program areas and due 40 days after the end of the fiscal year should be prepared and forwarded to the Regional Office as soon as possible.
Status: Narratives were included with each quarterly report for FY12. Timely reporting is appreciated. This recommendation is now closed.

Recommendation 10-02: HDA should review their enforcement penalty policy and identify areas that need revision or update.
Status: This was discussed during the end of year review, and it appears that once the Pesticide Advisory Committee takes this issue up, there will be movement in this area. HDA understands where the penalty policy has weaknesses and/or is problematic, and plans to strengthen this and other parts of HI's pesticide rules.

Recommendation 10-03: HDA should develop a neutral scheme for conducting marketplace inspections. One approach would be to select an EPA priority area (such as products that make public health claims) to create a neutral inspection scheme.
Status: This recommendation remains in effect; HDA should review its targeting strategies to ensure that they are still effective.

G. Conclusions and Recommendations for Compliance/Enforcement

HDA continues to maintain a quality enforcement program. HDA continued to re-inspect numerous establishments to assess compliance with the WPS in FY12. HDA is encouraged to revisit and revise its enforcement response policy, and maintain its focus on WPS enforcement. Policies and documents in need of revision and update should be identified and a plan put in place to make the necessary changes. HDA has made progress in addressing the issue of inspection backlog, but the case development officer would benefit from assistance with initial review of inspection files. HDA is planning to address this by hiring a planner in the coming year.

V. PROGRAMS

A. Worker Safety – C&T

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDA had 1696 certified commercial and private applicators at the end of FY12; numbers that have remained unchanged from FY11. HDA updated the State Certification & Training plan, administered exams, and reviewed 154 courses for continuing education units, compared to 210 the previous year. HDA also provided eight presentations to certified applicators during the course of the year, down from twenty-nine the year before. In FY12, assignment changes took place within the education program with the end result being that there is now three staff in the education program at HDA, up from two in FY11. They cover exam administration and consultative visits on Oahu, Maui and Lanai. The island of Hawaii is covered by another employee based in Hilo. Twenty-three courses were monitored by HDA in FY12. Certification reporting in CPARD was completed by HDA in a timely manner.

HDA's databases for certified applicators as well as for tracking continuing education units are cumbersome and not integrated. The program manager for the Education section has ideas for updating and integrating this system, and has consulted with colleagues from other states who have done so. HDA is encouraged to identify the necessary steps towards improving these systems, and to discuss this with EPA during negotiations for FY14.

HDA worked closely with the Cooperative Extension Service (CES), meeting at least twice per year with representatives from CES Pesticide Applicator Training Program, at the University of Hawaii. HDA also meets with the Hawaii Pest Control Board, which reviews and approves applications for new pest control businesses in the state. University personnel travel to each of the neighbor islands to prepare applicators for the certification exam on a yearly basis.

Certification cards issued in Hawaii currently have a photo ID and bar code. Annual C&T Plan Reports for Hawaii and other states are available at: http://cpard.wsu.edu/

3. PART Review Measures - none

4. State/Tribe Feedback - none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY12. HDA should explore ways to integrate tracking systems for education and licensing. Ideas for a possible supplemental project for FY14 should be shared with EPA during upcoming negotiations.

B. Worker Safety - WPS

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDA conducted 67 consultative visits, including 18 WPS-related visits that reached 144 people. Consultative visits are scheduled when a new applicator becomes certified, or, if an applicator has received a notice of warning. A visit may be made to ensure that the applicator has subsequently come into compliance. HDA is also responding to a recent increase in Chinese and Laotian immigrant farmers on Oahu by providing pesticide safety and WPS training at key locations. HDA also provided outreach using the updated How to Comply Manual to agricultural establishments. HDA meets several times per year with the University of Hawaii Cooperative Extension and the Pest Control Board of the Department of Commerce and Consumer Affairs to discuss training and WPS issues.

3. PART Review Measures - none

4. State/Tribe Feedback - none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY12.

C. Water Quality

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities:

HDA continues to review new pesticide products for groundwater and surface water concerns. At the time of this writing, HDA had not yet updated the Pesticides of Interest Tracking System (POINTS) for FY12, so numbers remain the same from FY11. Specifically, HDA has evaluated 47 of 71 Pesticides of Interest (66%), is actively managing 15 of 16 Pesticides of Concern (POC; 94%) and is demonstrating progress for 9 of 15 actively managed POCs (60%). Hawaii continues to use modeling to determine whether new chemicals may have the potential to leach into groundwater. HDA continually reviews pesticide labels to ensure that they include necessary language for protection of ground and surface water. HDA has identified several labels, including rodenticides and termiticides that do not have appropriate water quality protection language. Restricted use pesticide sales records are monitored to identify products that may affect water quality. HDA has discussions with HI Department of Health (DOH) as well as registrants to discuss pesticides of concern for surface and ground water. The HI Department of Health is responsible for implementing the pesticides NPDES permit

program in Hawaii, and is currently working to revise Hawaii Administrative Rules to include these provisions.

3. PART Review Measures - none

4. State/Tribal Concerns - none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY12.

D. Endangered Species

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDA continues to consult and coordinate with other State agencies on Section 18 emergency exemption requests and special local needs registration applications. HDA assigned a staff person to work on endangered species activities during FY12.

3. PART Review Measures - none

4. State/Tribe Feedback – none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY12.

APPENDIX 1

EPA United States Environmental Protection Agency

Pesticide Enforcement Outcome Measure Reporting Form

Grantee Hawaii Department of Agriculture, Pesticides Branch

Fiscal Year 2012

Measure No. 1 - Repeat Violator

A. Total # of Regulated Entities Receiving Enforcement Actions	B. Total # of Entities Receiving Subsequent Enforcement Actions (i.e. subset of column A)	C. Repeat Violator Measure—B/A
75	6	0.08

Measure No. 2 - Complying Actions

D. **Total # of Enforcement Actions Resulting in Verified Compliance:** 24

E. **Total # of Enforcement Actions (from form 5700-33H):** 75

F. **Complying Actions Measure—D/F:** 0.32

Measure No. 3 - Efficiency

G. **Grantee Pesticide Enforcement Funding: $** 488,142.00

H. **EPA Pesticide Enforcement Funding: $** 223,125.00

Base Enforcement	167,000.00
Worker Protection	26,125.00
Enforcement Discretionary	30,000.00
Lab Equipment	0.00

I. **Efficiency Measure—(G+H)/E:** 9,483.56

(Revised 10/2005)

App2

FIFRA/TSCA TRACKING SYSTEM

ENFORCEMENT ACTIONS RESULTING FROM INSPECTIONS

REPORTING METHOD: STATE + COOPERATIVE ACTIVITY

TOTALS FOR Hawaii (HI)

FOR THE PERIOD - FROM: 10/01/2011
TO: 09/30/2012

REPORT DATE: 10/30/12
LAST UPDATE: 10/30/12

ENFORCEMENT ACCOMPLISHMENTS	AGRICULTURE USE	AGRICULTURE FOLLOW UP	NON-AGRICULTR USE	NON-AGRICULTR FOLLOW UP	EXP USE INSPEC	PRODUC ESTABL	MARKET PLACE	IMPORT	EXPORT	CERTIF APPLCR RECORD	RESTRC USE ST	PE DLR	TOTAL
INSPECTIONS	122	49	87	42	1	3	32	5	0	88	11		440
FEDERAL FACILITIES	0	0	1	0	0	0	0	0	0	0	0		1
WORKER PROTECTION	0	0	0	0	0	0	0	0	0	0	0		0
GROUND WATER	0	0	0	0	0	0	0	0	0	0	0		0
ENDANGERED SPECIES	0	0	0	0	0	0	0	0	0	0	0		0
CANCELLATIONS/SUSPENSIONS	0	0	0	0	0	0	0	0	0	0	0		0
SAMPLES PHYSICAL	0	74	0	28	0	0	0	0	0	0	0		102
DOCUMENTARY	0	0	0	0	0	0	32	0	0	0	0		32
CIVIL ACTIONS	2	0	0	0	0	0	3	0	0	0	0		5
CRIMINAL ACTIONS	0	0	0	0	0	0	0	0	0	0	0		0
ADMINISTRATIVE HEARINGS	0	0	0	0	0	0	0	0	0	0	0		0
LIC./CERT. SUSPENSIONS	0	0	0	0	0	0	0	0	0	0	0		0
LIC./CERT. REVOCATIONS	0	0	0	0	0	0	0	0	0	0	0		0
LIC./CERT. COND OR MOD	0	0	0	0	0	0	0	0	0	0	0		0
WARNING LETTERS	42	6	10	11	0	0	1	0	0	0	0		70
STOP SALE, SEIZURE, ETC.	0	0	0	0	0	0	0	0	0	0	0		0
CASES FORWARDED TO EPA	0	0	3	0	0	3	5	0	0	0	0		11
OTHER ENFORCEMENT ACTIONS	0	0	0	0	0	0	0	0	0	0	0		0
TOTAL NUMBER OF ACTIONABLE INSPECTIONS-	44	6	13	11	0	3	9	0	0	0	0		86
PERCENT OF INSPECTIONS- RESULTING IN ACTIONS--	36.1	12.2	14.9	26.2	0.0	100.0	28.1	0.0	0.0	0.0	0.0		19.5
PERCENT OF TOTAL ACTIONS---	51.2	7.0	15.1	12.8	0.0	3.5	10.5	0.0	0.0	0.0	0.0		100.0
NUMBER OF CASES ASSESSED FINES	1	0	0	0	0	0	1	0	0	0	0		2

** NO DATA FOUND FOR QUARTER 1 **

** NO DATA FOUND FOR QUARTER 3 **

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United States
Environmental Protection Agency
Washington, DC 20460

Pesticide Worker Protection Standard Inspection and Enforcement Accomplishment Report

State: Hawaii | Fiscal Year: 2012 | Reporting Period: 10/01/11-09/30/12 | ☑ Total Program Accomplishment

Enforcement Accomplishments This Reporting Year	WPS Tier I Inspection		WPS Tier II Inspection		Total Inspections	*Inspections at Facilities Claiming Family Exemption
	Use	For Cause	Use	For Cause		
Total Inspections Conducted	21	20	4	0	45	0
WPS Enforcement Actions						
Civil Complaints Issued	1	0	0	0	1	
Criminal Complaints Referred	0	0	0	0	0	
Administrative Hearings Conducted	0	0	0	0	0	
Licence/Certification Suspension	0	0	0	0	0	
Number of Warnings Issued	3	0	0	0	3	
Stop-Sale, Use and Removal Order (SSURO)	0	0	0	0	0	
Cases Forwarded to EPA for Action	0	0	0	0	0	
Other Enforcement Actions (e.g. Advisory Letters)	0	0	0	0	0	
Number of Cases Assessed Fines					0	

Violations during WPS Inspections	
WPS Violation Categories	Number of Violations
1. Pesticide Safety Training	4
2. Central Posting	3
3. Notice of Application	3
4. Entry Restrictions	0
5. Personal Protective Equipment	0
6. Mix/Loading, Application Equip & Applications	0
7. Decontamination	2
8. Emergency Assistance	0
9. Information Exchange	0
10. Retaliation	0

EPA WPS Form 5700-33H

* This Column is a subset of the WPS Tier I and WPS Tier II Columns combined to collect data on inspections conducted at facilities claiming the Immediate Family Exemption.

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United States
ENVIRONMENTAL PROTECTION AGENCY
Washington, DC 20460

EPA United States Environmental Protection Agency

Pesticide Container/Containment Inspection and Enforcement Accomplishment Report

State/Tribe: Hawaii | Fiscal Year: Sep 30 2012 | Reporting Period: Forth Quarter | ☐ Total Program Accomplishments | ☐ Workplan Activities Only

Enforcement Accomplishments This Reporting Year	PEI with Containment	Non-PEI Containment	Total
Total Inspections Conducted	0	0	0
Samples Collected — Physical	0	0	0
Documentary	0	0	0
Civil Complaints Issued	0	0	0
Criminal Complaints Referred	0	0	0
Administrative Hearings Conducted	0	0	0
Number of Warnings Issued	0	0	0
Stop-Sale, Use and Removal Order (SSURO)	0	0	0
Cases Forwarded to EPA for Action	0	0	0
Other Enforcement Actions (e.g. Advisory Letters)	0	0	0
Number of Cases Assessed Fines	0	0	0

Container/Containment Violations	
Refillable Containers	
1. Deficient labeling (i.e. cleaning and disposal instructions)	0
2. Deficient container design (valves, openings)	0
3. Producing establishment registration violations	0
4. No contract manufacturing agreement, residue removal instructions, list of acceptable containers	0
5. Deficient management procedures & operation	0
6. Record keeping	0
Containment	
7. Secondary containment & pads – capacity/design	0
8. Secondary containment & pads – site management	0
9. Secondary containment & pads – record keeping	0
Total Violations	0

Reset Form

U.S. Environmental Protection Agency

Hawaii Department of Agriculture

FY2013 Draft End-of-Year Review

Pesticide Performance Partnership Grant

EXHIBIT 11

Executive Summary- This report covers workplan activities conducted in FY13, and is based on discussions and review of documents throughout the year and during the end of year visit. Discussions were held during the end of year visit that focused on recent changes to the pesticide program at Hawaii Department of Agriculture (HDOA). Recommendations for improvements can be found within the body of this report. Recommendations focus primarily on addressing a backlog of inspection files that need review, revising policies, especially the enforcement response policy, and increasing the number of WPS Tier 1 inspections to more closely match previous years' numbers. It should be noted that HDOA had already started to make progress on our recommendations at the time of this writing. This report covers the second year of a three-year performance partnership grant between Hawaii Department of Agriculture and EPA Region 9. This grant was put into place to ease administrative burdens on HDOA and to allow for more long-term planning for the Pesticide program.

I. BACKGROUND

A. General

1. Project Period: October 1, 2012 – September 30, 2013.

2. EPA Assistance Agreement Number: #BGOOT64412 **3. Review method:** On-site

4. Review participants:

EPA: Mary Grisier, Hawaii Pesticide Project Officer Grantee: Thomas Matsuda, Pesticide Program Manager, Avis Onaga, Case Preparation Officer, and Dean Yoshizu, Compliance Officer

5. Review date(s) and location: April 28, 2014-May 1, 2014 at the Hawaii Department of Agriculture offices in Honolulu.

B. Scope of Review

The Hawaii Department of Agriculture (HDOA) has primary enforcement responsibility over pesticide use activities in the State of Hawaii and is the lead state agency for the enforcement of the Hawaii Pesticides Law (Chapter 149A, Hawaii Revised Statutes) and the Hawaii Administrative Rules (Chapter 66, Title 4). There are approximately 1,110,000 acres in farmland, 7,500 farms, 6,400 agricultural workers, 3,800 Agricultural Operators, 1,200 certified applicators, 22 licensed Restricted Use Pesticide (RUP) dealers, 18 pesticide producing establishments, and seven licensed aerial applicators in the state of Hawaii. Major crops in Hawaii include seed corn, coffee, papaya, macadamia and nursery plants. Average farm size in Hawaii is 150 acres. HDOA maintains a database of all pesticides licensed in Hawaii. The HDOA Pesticide program consists of

approximately 14 individuals over 4 islands performing inspection, education, registration, administrative, and other pesticide program activities.

The Hawaii Pesticide program is supported by both State (general and revolving) and federal (USDA and USEPA) funds. HDOA and USEPA Region 9 had one active Performance Partnership Grant (PPG) with pesticide related activities to be carried out in Federal Fiscal Year 2013. The purpose of the PPG is to reduce paperwork and provide administrative relief and flexibility to HDOA.

The FY13 end-of-year evaluation was primarily accomplished by reviewing quarterly reports and correspondence received from HDOA throughout the year, and an on-site visit by Mary Grisier, project officer for HDOA. Information gathered was compared to the outputs and standards in the cooperative agreements to determine if HDOA had met its commitments.

II. FINANCIAL

A. Budget Analysis

The following table summarizes funding and expenditures for the FY13 cooperative agreement. In FY13, approximately three FTE were supported by EPA funding (Inspector, Pesticide Specialist, and Chemist)**.**

Interim Financial Status Reports (FSRs) for FY13 were received and indicated that HI Department of Agriculture was drawing down funds in an appropriate manner, and did not have an excess amount of remaining funds at the end of FY13. It should be noted that the project period extends to September 30, 2014, so HDOA may spend remaining funds up until that date.

Work Plan Component	**EPA Funding**	**Grantee Funding***	**Total Funding**
Enforcement	$212,621	$42,617	$255,238
Programs	$139,704	$26,394	$166,158
C&T	$ 30,000	$34,948	$ 64,948
TOTAL	$382,325	$103,959	$486,284

* State is required to provide 50% match in C&T, 15% (by policy) for other programs.

Re-budgeting –There was no re-budgeting in FY13.

III. GENERAL GRANT ADMINISTRATION

A. *Recommended Actions for Grants Office* - None

IV. COMPLIANCE AND ENFORCEMENT

A. *Grantee Reports*

1. Pesticide Enforcement Outcome Measures

HDOA reported on the three Office of Enforcement and Compliance Assurance (OECA) measures for pesticide enforcement (Appendix 1). Values reported were:

a. Repeat violator: 0% of actionable inspections included entities receiving an action in the past three years.
b. Verified compliance: 74% of actionable inspections resulted in verified compliance.
c. Cost per actionable inspection: $20,279.91 is the cost per actionable inspection.

The cost per actionable inspection increased significantly from $9,483.56 in FY12 to $20,279.91. It should be noted that HDOA has a large backlog of inspection files that have not been processed; the values for the above measures are therefore not reflective of the actual costs.

2. Summary of 5700-33H reports – attached as Appendix 2.

3. Annual Summary of Inspections and Enforcement Actions

HDOA exceeded the number of projected inspections (266 projected, 430 completed). This is approximately 10 fewer inspections conducted than in FY12. Twenty warning letters were issued, down from 70 in the previous year, and three cases were assessed fines in FY13, versus two in FY12. There were no inspection files referred to EPA for enforcement review and possible development in FY13, while there were eleven forwarded in FY12. This is due in large part to an extensive backlog of inspection files to be reviewed and processed by HDOA.

B. Case File and Enforcement Action Evaluation

1. Significant Cases (FIFRA Section 27)

There were no high level episodes referred to HDOA in FY13. Each island maintains a separate list of all episodes and complaints received. These are recorded and reported to EPA.

2. Routine Inspections – other than Worker Protection

Forty inspection files were reviewed. Inspection files were randomly selected from actionable and non-actionable inspections. Inspections selected represented the work of five different inspectors. Inspections continue to document compliance/non compliance

with pesticide laws, and in most cases include necessary evidence such as photographs, labels and invoices. It should be noted that by the time the project officer reviews inspection files, they have been reviewed and errors have been corrected by the HI case developer or the inspector. Discussions with the case developer indicate that inspectors, in general, need to pay closer attention to ensuring that reports are clearly written, grammatical errors are corrected, and that reports are "enforcement ready". While no inspection files were forwarded in FY13, it is a requirement that states forward any inspections conducted with a federal credential, or that reveal a federal violation, to EPA. **Recommendation 13-01**: HDOA must forward inspections to EPA that either 1) were conducted with a Federal credential, or 2) reveal a potential federal violation.

There were no Special Requests issued to HDOA during FY13. HDOA did not complete any container/containment inspections, as there are no facilities currently identified in Hawaii that meet the necessary criteria. The Pesticide Container/Containment Inspection and Enforcement Accomplishment Report (EPA C/C Form 5700-33H) is included in Appendix 3.

1. Oversight inspections (non-WPS) - none

C. Compliance Priority – Worker Protection Standard (WPS)

1. Reports

a) The Pesticide Worker Protection Standard Inspection and Enforcement Accomplishment Report (WPS Form 5700-33H) is included in Appendix 4.

2. Significant WPS Cases (FIFRA Section 27) - none 3. WPS oversight inspections – none 4. WPS case file evaluation

HDOA conducted thirteen neutral-scheme WPS Tier 1 inspections at establishments throughout Hawaii, down from forty in FY12. There were no enforcement actions issued for any Tier 1 inspections conducted in FY13. One Tier 2 inspection was also conducted, down from four the previous year.

Recommendation 13-02: HDOA has seen a downward trend in overall inspection activity in FY13, especially with regard to WPS Tier 1 inspections. HDOA should make every effort to increase the number of WPS Tier 1 inspections in the coming year, in keeping with past practices.

5. Worker Protection Risk-Based Targeting Strategy

a) Implementation of Risk-Based Targeting Strategy

A WPS targeting strategy was developed in 1994. Targeting was based partly on how many restricted-use pesticides were purchased by growers, as well as how many workers were employed by the establishment. Since that time, agriculture has changed dramatically in Hawaii. The number of large farms with many workers has greatly decreased. Farms are smaller (average farm size is 150 acres) and growers buy smaller quantities of pesticides. Inspectors have found that they can identify establishments that fall under the WPS by conducting routine agricultural use inspections and asking questions related to worker activity during the inspection. They will then return at a later date to conduct a WPS inspection. Larger establishments are inspected approximately every two years.

D. Inspection and Enforcement Support

1. Training

HDOA conducts an annual pesticide training workshop for all HDOA Pesticide Program staff (inspectors, education, and registration staff) and outer Pacific Island pesticide programs in November of each year. The workshop also included medical monitoring and respirator fit-testing for inspectors. The project officer attends this workshop, in conjunction with the end of year visit. Due to furloughs, the project officer was unable to travel in November, and did not conduct the end of year review until April, 2014. The workshop, while a valuable source for inspectors to get updates on programs and to network with colleagues, will have a format change for the coming year. There will be more focus on training, including report writing and inspection techniques, as well as field exercises. The workshop will be extended to a full five days. An informal request has been made to EPA to send the enforcement liaison to the workshop to ensure that EPA requirements are fully woven in the workshop.

Recommendation 13-03: HDOA should formally request that EPA send the enforcement liaison to the upcoming November workshop at the HI Department of Agriculture. This will ensure that state inspectors are provided the most up-to-date requirements for their work under the cooperative agreement.

In FY13, HDOA had seven federally-credentialed inspectors. Training records were properly maintained at the Honolulu office, and inspectors had met the commitments outlined in the FIFRA inspector credential authorization agreement. HDOA hired an additional inspector for Oahu during FY13, and her training began immediately by accompanying the senior inspector on Oahu on all types of pesticide inspections. The credential was issued in August, 2014.

Below is a list of training courses attended by HDOA staff in FY13:

TRAINING/MEETING	DATE
ALSTAR/NPIRS Training	10/2012

PREP-Compliance Monitoring	4/2013
PREP – Program Management for New Supervisors	7/2013
North American Chemical Residue Workshop	7/2013
National Pesticide Applicator C&T Workshop	8/2013
PREP – Sr. Executive Lab Mgt.	10/2013

2. Enforcement Response Policy

The Hawaii Department of Agriculture revised and adopted its Pesticide Enforcement Action and Penalty Assessment Schedule on October 24th, 2006. Review of case files indicates that HDOA follows its enforcement response policy, however there are numerous areas where the policy is in need of updating. The Department of Agriculture has nearly completed the task of filling positions on the Governor's Pesticide Advisory Committee, which when fully formed, will take up the issue of revision of pesticide regulations in Hawaii. HDOA is encouraged to continue to identify those areas that are lacking in the ERP, so that at a future date, changes can be made.

3. Neutral Inspection Scheme

Applicators that are likely to use more RUPs are inspected more frequently than those that do not. This is based on amounts of RUPs purchased divided by the number of applicators employed by a business. With regard to marketplace inspections, they are conducted primarily based on complaints, rather than through a neutral inspection scheme. This has been discussed during previous reviews as an area for additional focus by HDOA. HDOA should consider whether these overall approaches to targeting inspections are still appropriate and effective.

4. Inspection and Enforcement Procedures

Discussions were held throughout the year between HI inspection staff and EPA as procedural issues arose. HDOA has revised the Branch Standard Operating Procedures, which includes neutral inspection procedures. HDOA has one case development officer that reviews all files as they come in from the inspection staff. Over the past several years, a backlog of inspection files has been building. The case developer, in addition to working up inspection reports, also responds to numerous information requests from the public. This has begun to take up a large percentage of her time, leaving little time to review and develop cases. The more serious cases that lead to civil complaints are sent to the deputy attorney general's office for review and concurrence. The deputy AG's office also has a backlog of civil cases to review, which results in penalty actions not being issued. Currently, there are at least ten civil complaints in the deputy AG's office awaiting review, dating back to 2012. The Pesticide Program has at least 15 additional

complaints waiting to be submitted. These enforcement-related issues and how to resolve them were the primary focus of the FY13 review. HDOA must take immediate action to reduce the backlog of inspection reports, and to identify long-term solutions to this issue as well as to work with the Deputy Attorney General's office to reduce the backlog of civil actions that have not been issued by that office.

5. Quality Assurance

HDOA staff worked consistently on a revised Quality Assurance Program Plan (QAPP) during FY13, and the QAPP was approved by EPA on February 24, 2014. The Chemical Analysis Laboratory operates a state-of-the-art pesticide residue laboratory for the analysis of a wide range of plant, soil, product and environmental samples in support of enforcement and registration activities. In 2013, the Hawaii Department of Agriculture Laboratory (Lab) participated in the Pesticide Residue Check Sample Program administered by the State of Wisconsin Department of Agriculture. The Lab received soil samples in February 2013 and plant samples in October 2013. The Lab performed well, correctly identifying all pesticides in each of the samples and not reporting any false positive results. They also accurately determined concentrations for 7 of 8 pesticides in soil and 7 of 8 pesticides in plant material. For cyfluthrin and propiconazole, the two pesticides with results outside of acceptable limits, the Lab is working to refine methods.

6. Special Activities

In cooperation with EPA, HDOA is providing ongoing support to outer Pacific island pesticide program staff on import, inspection, enforcement, and certification issues. As in previous years, HDOA extended an invitation to outer island inspectors to attend the Inspector Workshop. Attendance at the workshop provides an opportunity for the inspectors to receive medical monitoring exams and respirator fit tests, as well as to participate in discussions with fellow inspectors and to receive important training.

E. New Legislation and Regulations

Two pesticide-related pieces of State legislation were proposed in FY13.

Act 105 – Rewrites Section 2, Chapter 49A of the HI Revised Statutes	Implements a pesticide use reporting system for restricted use pesticides, to be posted on the HDOA website.(**Proposed**)
HR 100 and HR 129	Requests HI Dept. of Health to establish a taskforce to study the health effects of Atrazine, and report to the legislature by 10/31/13.(**Passed**)

Local Legislation - The County Council of Kauai passed a law requiring large users of restricted use pesticides to disclose what they are using and in what quantities. As of this writing, a Federal judge had struck down this law, citing preemption by the State. The County Council of Hawaii passed a bill restricting open air propagation of genetically modified organisms on Hawaii, continuing a trend by county leaders to seek local control over crops grown and pesticides used.

F. Action Items from Previous Reviews

Recommendation 10-02: HDOA should review their enforcement penalty policy and identify areas that need revision or update.
Status: This was discussed during the end of year review, and during the FY15 cooperative agreement negotiations. HDOA understands where the penalty policy has weaknesses and/or is problematic, and plans to strengthen this and other parts of HI's pesticide rules in the near future. These changes will require a formal change in Hawaii's Pesticide Law.

Recommendation 10-03: HDOA should develop a neutral scheme for conducting marketplace inspections. One approach would be to select an EPA priority area (such as products that make public health claims) to create a neutral inspection scheme. **Status**: This recommendation remains in effect; HDOA should review its targeting strategies to ensure that they are still effective.

G. Conclusions and Recommendations for Compliance/Enforcement

EPA has significant concerns with the backlog of inspection files to be processed, and the resulting lack of enforcement actions issued, as well as the lack of inspections forwarded to EPA for review/enforcement.
Recommendation 13-04: HDOA must identify ways to address the backlog of inspection files, whether through assigning inspection staff to review files or hiring additional case developers. Solutions to the backlog that also exists with cases at the Deputy Attorney General's office must also be identified. (NOTE: At the time of this writing, HDOA had assigned inspection staff to assist in reviewing inspection files, in order to decrease the backlog.)
Recommendation 13-05: HDOA is asked to identify those policies and documents in need of revision and a plan put in place to make the necessary updates. (NOTE: At the time of this writing, several changes had been put in place, including additional personnel to review inspection files, and the AG's office had also hired an assistance to focus on pesticide civil cases.)

V. PROGRAMS

A. Worker Safety – C&T

1. Previous Recommendations - none 2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA had 1106 certified commercial and 375 private applicators at the end of FY13, a total that has decreased by nearly 500 from FY12. HDOA administered exams and reviewed 199 courses for continuing education units, compared to 154 the previous year. HDOA also provided 37 presentations to certified applicators during the course of the year, up from eight the year before. Honolulu staff cover exam administration and consultative visits on Oahu, Kauai, Maui and Molokai. The island of Hawaii is covered by an additional employee based in Hilo. Fifteen courses were monitored by HDOA in FY13, down from 23 in FY12. Certification reporting in CPARD was completed by HDOA in a timely manner.

HDOA's databases for certified applicators as well as for tracking continuing education units are cumbersome and not integrated. The Pesticide Branch is embarking on a project to integrate the Education, Enforcement and Registration programs into one cohesive Integrated Pesticides Information System. This is welcome news, and will ultimately be an important tool for staff once it is operational.

HDOA worked closely with the Cooperative Extension Service (CES), meeting at least twice per year with representatives from CES Pesticide Applicator Training Program, at the University of Hawaii. HDOA also meets with the Hawaii Pest Control Board, which reviews and approves applications for new pest control businesses in the state. University personnel travel to each of the neighbor islands to prepare applicators in core topics for the certification exam on a yearly basis. The University of HI is currently revising the core exam to make the questions more applicable and connected to the study material that applicators use to prepare for the exam.

Certification cards issued in Hawaii currently have a photo ID and bar code. Annual C&T Plan Reports for Hawaii and other states are available at: http://cpard.wsu.edu/

3. PART Review Measures - none 4. State/Tribe Feedback - none 5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY13.

B. Worker Safety - WPS

1. Previous Recommendations - none 2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA conducted 33 consultative visits focused on WPS compliance. Consultative visits are scheduled when a new applicator becomes certified, or, if an applicator has received a notice of warning. A visit may be made to ensure that the applicator has subsequently come into compliance. HDOA is also responding to a recent increase in Chinese and Laotian immigrant farmers on Oahu by providing pesticide safety and WPS training at key locations. HDOA also provided outreach using the updated How to Comply Manual to agricultural establishments. HDOA meets several times per year with the University of Hawaii Cooperative Extension and the Pest Control Board of the Department of Commerce and Consumer Affairs to discuss training and WPS issues. In FY13, HDOA began holding Farmer Resource Workshops, designed as a "one stop shop" for farmers to obtain information on a wide range of topics. Topics range from proper pesticide use, agriculture loans and insurance, to soil conservation and air pollution regulations. These workshops have been held on Oahu, Maui and Kauai, and have been well-received.

In FY13, HDOA received special one-time funding to develop a slideshow which will be translated into several languages (Ilocano, Laotian, Mandarin, Cantonese and Tagalog) to provide workers and handlers with pesticide safety information. At the time of this writing, the slideshow was in the editing phase, and near completion in all languages. HDOA hopes to complete the project by September 30, 2014.

3. PART Review Measures - none 4. State/Tribe Feedback - none 5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY13.

C. *Water Quality*

1. Previous Recommendations - none 2. Accomplishments

a) Work-Plan Commitments & National Program Priorities:

HDOA continues to review new pesticide products for groundwater and surface water concerns. At the end of FY13, the Pesticides of Interest Tracking System (POINTS) had not been updated. Values remained the same as in FY 12; specifically, HDOA has evaluated 47 of 71 Pesticides of Interest (66%), is actively managing 15 of 16 Pesticides of Concern (POC; 94%) and is demonstrating progress for 9 of 15 actively managed POCs (60%). HDOA should update the POINTS system to reflect any changes, especially to indicate any additional pesticides currently under evaluation. Hawaii continues to use modeling to determine whether new chemicals may have the potential to leach into groundwater. Restricted use pesticide sales records are monitored to identify products that may affect water quality. HDOA has discussions with HI Department of Health (DOH) as well as registrants to discuss pesticides of concern for surface and ground water. The HI Department of Health is responsible for implementing the pesticides NPDES permit program in Hawaii.

3. PART Review Measures - none 4. State/Tribal Concerns - none 5. Conclusions and Recommendations

Recommendation 13-06: HDOA should ensure that the POINTS system is updated on a yearly basis, and that progress is made in evaluating pesticides of interest to Hawaii. The POINTS database has been updated, and all negotiated outputs due in FY13 have now been completed.

D. Endangered Species

1. Previous Recommendations - none 2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA continues to consult and coordinate with other State agencies on Section 18 emergency exemption requests and special local needs registration applications.

3. PART Review Measures - none 4. State/Tribe Feedback – none 5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY13.

U.S. Environmental Protection Agency

Hawaii Department of Agriculture

FY2014 Final End-of-Year Review

Pesticide Performance Partnership Grant

EXHIBIT 12

Executive Summary- This report covers workplan activities conducted in FY14, and is based on discussions and review of documents throughout the year and during the end of year visit. Discussions were held during the end of year visit that focused on recent changes to the pesticide program at Hawaii Department of Agriculture (HDOA). Recommendations for improvements can be found within the body of this report. Recommendations focus primarily on reducing a backlog of inspection files (several hundred) that need review. HDOA should also focus on revising the enforcement response policy, and increasing the number of WPS Tier 1 inspections to more closely match numbers in previous years. Highlights include a successful pilot school IPM program initiated at a local elementary school. The pilot is likely to lead to broader implementation of IPM in schools throughout Hawaii. This report covers the final year of a three-year performance partnership grant between Hawaii Department of Agriculture and EPA Region 9. This grant was put into place to ease administrative burdens on HDOA and to allow for more long-term planning for the Pesticide program. Thomas Matsuda completed his second and final year as the regional representative to the State FIFRA Issues Research and Evaluation Group (SFIREG).

I. BACKGROUND

A. General

1. **Project Period:** October 1, 2013 – September 30, 2014.

2. **EPA Assistance Agreement Number:** #BGOOT64412-2

3. **Review method:** On-site

4. **Review participants:**

   EPA: Mary Grisier, Hawaii Pesticide Project Officer Grantee: Thomas Matsuda, Pesticide Program Manager, Avis Onaga, Case Preparation Officer, and Dean Yoshizu, Compliance Officer

5. **Review date(s) and location:** November 17-20, 2014 at the Hawaii Department of Agriculture offices in Honolulu.

B. Scope of Review

The Hawaii Department of Agriculture (HDOA) has primary enforcement responsibility over pesticide use activities in the State of Hawaii and is the lead state agency for the enforcement of the Hawaii Pesticides Law (Chapter 149A, Hawaii Revised Statutes) and the Hawaii Administrative Rules (Chapter 66, Title 4). There are approximately 1,110,000 acres in farmland, 7,500 farms, 6,400 agricultural workers, 3,800 Agricultural Operators, 1,200 certified applicators, 22 licensed Restricted Use Pesticide (RUP) dealers, 18 pesticide producing establishments, and seven licensed aerial applicators in

the state of Hawaii. Major crops in Hawaii include seed corn, coffee, papaya, macadamia and nursery plants. Average farm size in Hawaii is 150 acres. HDOA maintains a database of all pesticides licensed in Hawaii. The HDOA Pesticide program consists of approximately 14 individuals over 4 islands performing inspection, education, registration, administrative, and other pesticide program activities.

The Hawaii Pesticide program is supported by both State (general and revolving) and federal (USDA and USEPA) funds. HDOA and USEPA Region 9 had one active Performance Partnership Grant (PPG) with pesticide related activities to be carried out in Federal Fiscal Year 2014. The purpose of the PPG is to reduce paperwork and provide administrative relief and flexibility to HDOA. FY14 was the third year of a three-year agreement.

The FY14 end-of-year evaluation was primarily accomplished by reviewing quarterly reports and correspondence received from HDOA throughout the year, and an on-site visit by Mary Grisier, project officer for HDOA. Information gathered was compared to the outputs and standards in the cooperative agreements to determine if HDOA had met its commitments.

II. FINANCIAL

A. Budget Analysis

The following table summarizes funding and expenditures for the FY14 cooperative agreement. In FY14, approximately three FTE were supported by EPA funding (Inspector, Pesticide Specialist, and Chemist)**.**

Final Financial Status Reports (FSRs) for FY14 were received and indicated that HI Department of Agriculture drew down funds in an appropriate manner.

Work Plan Component	**EPA Funding**	**Grantee Funding***	**Total Funding**
Enforcement	$186,200	$35,745	$221,945
Programs	$116,125	$20,930	$137,055
C&T	$ 30,000	$30,063	$ 60,063
Supplemental $	$ 94,600	$ 9,945	$104,545
TOTAL	$426,925	$ 96,693	$523,618

* State is required to provide 50% match in C&T, 15% (by policy) for other programs.

Re-budgeting –There was no re-budgeting in FY14.

III. GENERAL GRANT ADMINISTRATION

A. *Recommended Actions for Grants Office* - None

IV. COMPLIANCE AND ENFORCEMENT

A. Grantee Reports

1. Summary of 5700-33H reports – attached as Appendix 1.

2. Annual Summary of Inspections and Enforcement Actions

HDOA exceeded the number of projected inspections (307 projected, 388 completed). This is approximately 42 fewer inspections conducted than in FY13. It should be noted that a senior inspector on the island of Hawaii retired in December, 2013. This is a factor in the inspection shortfall for FY14. HDOA issued one civil complaint in FY14. Forty two warning letters were issued, up from 20 in the previous year, and one case was assessed a fine in FY14, versus three in FY13. There were eight inspection files referred to EPA for enforcement review and possible development in FY14, while there were none forwarded in FY13.

B. Case File and Enforcement Action Evaluation

1. Significant Cases (FIFRA Section 27)

There were three high level episodes referred to HDOA in FY14. For all three of the incidents, violations were found and warning letters were issued. EPA was given proper notification before warning letters were issued. It is interesting to note that two of the incidents involved the improper use of malathion by a private citizen. Over the past several years, this type of misuse has occurred often, leading to legislation being introduced by a senator in the current session to make it a felony to "cause harm to human health or the environment" through use of pesticides. As of this writing, the legislation was still pending.

2. Routine Inspections – other than Worker Protection

Forty inspection files were reviewed during the end of year visit, in addition to files that were sent to EPA for enforcement/review. Inspection files were randomly selected from actionable and non-actionable inspections. Inspections selected represented the work of six different inspectors. Inspections continue to document compliance/non compliance with pesticide laws, and in most cases include necessary evidence such as photographs, labels and invoices. It should be noted that by the time the project officer reviews inspection files, they have been reviewed and errors have been corrected by the HI case developer or the inspector. Discussions with the case developer indicate that inspectors, in general, need to continue to pay closer attention to ensuring that reports are clearly written, grammatical errors are corrected, and that reports are "enforcement ready". HDOA forwarded eight inspection files to EPA during FY14 for review and possible

enforcement action. Eleven additional files were sent in early FY15. These were forwarded to EPA's enforcement division for review.

There were no Special Requests issued to HDOA during FY14. HDOA did not complete any container/containment inspections, as there are no facilities currently identified in Hawaii that meet the necessary criteria. The Pesticide Container/Containment Inspection and Enforcement Accomplishment Report (EPA C/C Form 5700-33H) is included in Appendix 2.

1. Oversight inspections (non-WPS) - none

C. Compliance Priority – Worker Protection Standard (WPS)

1. Reports

a) The Pesticide Worker Protection Standard Inspection and Enforcement Accomplishment Report (WPS Form 5700-33H) is included in Appendix 3.

2. Significant WPS Cases (FIFRA Section 27) - none

3. WPS oversight inspections – none

4. WPS case file evaluation

HDOA conducted five WPS Tier 1 inspections at establishments throughout Hawaii, continuing a trend down from ten in FY 13, and down from forty in FY12. There were no enforcement actions issued for any Tier 1 inspections conducted in FY14. Five Tier 2 inspections were also conducted, up from two the previous year. HDOA needs to increase WPS inspection numbers throughout Hawaii as recommended in FY13. Inspectors should work towards increasing their numbers of both Tier1 and Tier 2 inspections in the current year.

5. Worker Protection Risk-Based Targeting Strategy

a) Implementation of Risk-Based Targeting Strategy

A WPS targeting strategy was developed in 1994. Targeting was based partly on how many restricted-use pesticides were purchased by growers, as well as how many workers were employed by the establishment. Since that time, agriculture has changed dramatically in Hawaii. The number of large farms with many workers has greatly decreased. Farms are smaller (average farm size is 150 acres) and growers buy smaller quantities of pesticides. Inspectors have found that they can identify establishments that fall under the WPS by conducting routine agricultural use inspections and asking questions related to worker activity during the inspection. They will then return at a later

date to conduct a WPS inspection. Larger establishments are inspected approximately every two years.

D. Inspection and Enforcement Support

1. Training

HDOA conducts an annual pesticide training workshop for all HDOA Pesticide Program staff (inspectors, education, and registration staff) and outer Pacific Island pesticide programs in November of each year. The workshop also includes medical monitoring and respirator fit-testing for inspectors. The project officer attends this workshop, in conjunction with the end of year visit. The project officer presented updates from EPA, including revisions to the Worker Protection Standards. The FY14 workshop was designed with training and collaboration in mind. Inspectors spent a full week together, conducting inspections, meeting afterwards to discuss results, and focused on training, report writing and other field exercises.

In FY14, HDOA had six federally-credentialed inspectors. Training records were properly maintained at the Honolulu office, and inspectors had met the commitments outlined in the FIFRA inspector credential authorization agreement. A new inspector was credentialed in August, 2014. It should be noted that the four inspectors, below, need to begin the process to renew their credentials that expire on November 1, 2015. Inspectors should consult EPA's inspector Wiki site at https://wiki.epa.gov/inspector for information on annual refresher requirements for maintaining a federal credential.

Steven Ogata	Credential No. 10093
Lester Chin	Credential No. 10092
Christopher Gerken	Credential No. 10090
Ann Kam	Credential No. 10089

Below is a partial list of training courses attended by HDOA staff in FY14:

TRAINING/MEETING	DATE
Structural PIRT - WA	3/2014
Ag Leadership - DC	4/2014
ALSTAR(Accepted Labels States Tracking and Repository)	4/2014
WRPM - Seattle	5/2014
PIRT for New Inspectors	5/2014
ASPCRO (Structural Conference)	8/2014
ALSTAR/NPIRS Conference	9/2014

2. Enforcement Response Policy

The Hawaii Department of Agriculture revised and adopted its Pesticide Enforcement Action and Penalty Assessment Schedule on October 24th, 2006. Review of case files indicates that HDOA follows its enforcement response policy, however there are numerous areas where the policy is in need of updating. In FY14, The Department of Agriculture completed the task of filling positions on the Governor's Pesticide Advisory Committee, which will take up the issue of revision of pesticide regulations in Hawaii, as well as the enforcement response policy. HDOA is encouraged to continue to identify those areas that are lacking in the ERP, so that at a future date, changes can be made.

3. Neutral Inspection Scheme

Applicators that are likely to use more RUPs are inspected more frequently than those that do not. This is based on amounts of RUPs purchased divided by the number of applicators employed by a business. With regard to marketplace inspections, they are conducted primarily based on complaints, rather than through a neutral inspection scheme. This has been discussed during previous reviews as an area for additional focus by HDOA. HDOA should consider whether these overall approaches to targeting inspections are still appropriate and effective.

4. Inspection and Enforcement Procedures

Discussions were held throughout the year between HI inspection staff and EPA as procedural issues arose. HDOA has revised the Branch Standard Operating Procedures, which includes neutral inspection procedures. HDOA has one case development officer that reviews all files as they come in from the inspection staff. During FY14, HDOA assigned an inspector to assist the case developer in reviewing files. This action was very helpful in working through many files that were old or had no violations. This inspector is currently on maternity leave, but will continue to assist when she returns.
In addition, we reported last year that the more serious cases that lead to civil complaints are sent to the deputy attorney general's office for review and concurrence. The deputy AG's office also has a backlog of civil cases to review, which results in penalty actions not being issued. Currently, there are at least ten civil complaints in the deputy AG's office awaiting review, dating back to 2012. The Pesticide Program has at least 20 additional complaints waiting to be submitted. In early FY14 the Deputy AG's office hired an assistant as well, and while she was very effective, she took another position after only a few months. There are still a large number of civil complaints to be developed at the AG level. Legislation was passed in FY14 to fund an additional case developer for the Pesticides Branch. This position will be filled in FY15.

5. Quality Assurance

HDOA's Pesticide Program QAPP was approved by EPA on February 24, 2014. The Chemical Analysis Laboratory operates a state-of-the-art pesticide residue laboratory for the analysis of a wide range of plant, soil, product and environmental samples in support of enforcement and registration activities. In 2014, the Hawaii Department of Agriculture Laboratory (Lab) participated in the Pesticide Residue Check Sample Program administered by the State of Wisconsin Department of Agriculture. The Lab

received soil samples in March 2014 and plant samples in November 2014. Hawaii's results initially came back high for the organophosphates in soil, but it was discovered that there was a miscalculation in the mass of the soil, so it was easily rectified. Results for the fall sampling program were acceptable.

6. Special Activities

In cooperation with EPA, HDOA is providing ongoing support to outer Pacific island pesticide program staff on import, inspection, enforcement, and certification issues. As in previous years, HDOA extended an invitation to outer island inspectors to attend the Inspector Workshop. Attendance at the workshop provided an opportunity for the inspectors to receive medical monitoring exams and respirator fit tests, as well as to participate in mock inspections with fellow inspectors and to receive important training.

In April 2014, HDOA received approval from Governor Abercrombie to develop an Integrated Pesticides Information System within the Pesticides Branch that will include the enforcement, registration and certification programs, as well as the Chemical Analysis Laboratory. Once implemented, this system will allow staff from all programs to coordinate their activities, and will also provide greater access to pesticide information by the public. A demonstration of progress to date was provided during the inspector workshop in November. Several key staff members are involved in the development of this system.

In FY14, HDOA received laboratory funds in the amount of $41,600 from EPA. These funds are provided to states on a rotating basis, and can be used to update equipment needed for pesticide sampling and analysis. HDOA purchase several pieces of equipment with these funds, including a diode-array detector for the liquid chromatograph; liquid chromatograph chem-station upgrade; geno/grinder plant & animal homogenizer, and a nitrogen generator.

HDOA received one-time funding in FY14 in the amount of $8,000 to develop informational booklets with IPM curriculum to be distributed to elementary-age students. The goal was to ensure that the message of IPM is brought home to parents, using, in some cases, Hawaiian words to ensure understanding among family members. This project was started, but has not yet been completed. HDOA plans to use State funds to complete this project.

E. New Legislation and Regulations

One pesticide-related piece of State legislation was passed in FY14. SB 2110 (SD2 HD1) added four new positions for the Pesticide Branch of HDOA. Those positions will include one case developer and three inspectors (for Kauai, Oahu and Hawaii).

F. Action Items from Previous Reviews

Recommendation 10-02: HDOA should review their enforcement penalty policy and identify areas that need revision or update.

Status: This was discussed during the end of year review, and during the FY15 cooperative agreement negotiations. HDOA understands where the penalty policy has weaknesses and/or is problematic, and plans to strengthen this and other parts of HI's pesticide rules in the near future. These changes will require a formal change in Hawaii's Pesticide Law, and must be initiated by the Advisory Committee on Pesticides.

Recommendation 10-03: HDOA should develop a neutral scheme for conducting marketplace inspections. One approach would be to select an EPA priority area (such as products that make public health claims) to create a neutral inspection scheme.
Status: This recommendation remains in effect; HDOA should review its targeting strategies to ensure that they are still effective.

Recommendation 13-01: HDOA must forward inspections to EPA that either 1) were conducted with a Federal credential, or 2) reveal a potential federal violation.
Status: Eight files were sent to the Regional Office during FY14 for review and possible enforcement. This does not reflect all of the inspections that were conducted with a federal credential or that potentially have federal violations. There remains a large backlog of inspection files. This recommendation remains open.

Recommendation 13-02: HDOA has seen a downward trend in overall inspection activity in FY13, especially with regard to WPS Tier 1 inspections. HDOA should make every effort to increase the number of WPS Tier 1 inspections in the coming year.
Status: A downward trend continues for HDOA, as only five WPS Tier 1 inspections were conducted in FY14.

Recommendation 13-03: HDOA should formally request that EPA send the enforcement liaison to the upcoming November workshop at the HI Department of Agriculture. This will ensure that state inspectors are provided the most up-to-date requirements for their work under the cooperative agreement.
Status: HDOA did request that the enforcement liaison attend the inspector workshop. Unfortunately, the EPA enforcement division was not able to send the liaison to the workshop.

Recommendation 13-04: HDOA must identify ways to address the backlog of inspection files, whether through assigning inspection staff to review files or hiring additional case developers. Solutions to the backlog that also exists with cases at the Deputy Attorney General's office must also be identified. (NOTE: At the time of this writing, HDOA had assigned inspection staff to assist in reviewing inspection files, in order to decrease the backlog.)
Status: Having the additional inspector to help with file review has been very helpful to the case developer. When the inspector returns, she will continue to help out with file reviews. Legislation passed in FY14 will also bring a new case development position to the branch.

Recommendation 13-05: HDOA is asked to identify those policies and documents in need of revision and a plan put in place to make the necessary updates. (NOTE: At the

time of this writing, several changes had been put in place, including additional personnel to review inspection files, and the AG's office had also hired an assistant to focus on pesticide civil cases.)
Status: Unfortunately, the deputy AG's office was not able to retain the assistant, so again there is only one attorney currently working on Pesticide cases in that office.

Recommendation 13-06: HDOA should ensure that the POINTS system is updated on a yearly basis, and that progress is made in evaluating pesticides of interest to Hawaii.
Status: POINTS database had not been updated at the time of this writing. HDOA should ensure that the POINTS database is updated.

F. Conclusions and Recommendations for Compliance/Enforcement

EPA continues to have significant concerns with the backlog of inspection files to be processed, and the resulting lack of enforcement actions issued, as well as the lack of inspections forwarded to EPA for review/enforcement.

V. PROGRAMS

A. Worker Safety – C&T

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA had 1058 certified commercial and 317 private applicators at the end of FY14, a total that has decreased by over 100 from FY13. HDOA administered exams and reviewed 180 courses for continuing education units, compared to 199 the previous year. HDOA also provided 19 presentations to certified applicators during the course of the year, down from 37 the year before. Honolulu staff covered exam administration and consultative visits on Oahu, Kauai, Maui and Molokai. The island of Hawaii is covered by an additional employee based in Hilo. Fourteen courses were monitored by HDOA in FY14. Certification reporting in CPARD was completed by HDOA in a timely manner.

HDOA's databases for certified applicators as well as for tracking continuing education units are cumbersome and not integrated. Once implemented, the Integrated Pesticides Information System will allow the Education staff to manage and review courses, track classes, exam results and credits, as well as produce quarterly reports on all certification and training activities. This database will ultimately be an important and timesaving tool for staff.

HDOA worked closely with the Cooperative Extension Service (CES), meeting at least twice per year with representatives from CES Pesticide Applicator Training Program, at the University of Hawaii. HDOA also meets with the Hawaii Pest Control Board, which

reviews and approves applications for new pest control businesses in the state. University personnel travel to each of the neighbor islands to prepare applicators in core topics for the certification exam on a yearly basis. The University of HI is currently revising the core exam to make the questions more applicable and connected to the study material that applicators use to prepare for the exam.

Certification cards issued in Hawaii currently have a photo ID and bar code. Annual C&T Plan Reports for Hawaii and other states are available at: http://cpard.wsu.edu/

3. PART Review Measures - none

4. State/Tribe Feedback - none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY14.

B. Worker Safety - WPS

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA conducted 18 WPS training sessions, reaching 73 participants. Eight consultative visits were also held, and are scheduled when a new applicator becomes certified, or, if an applicator has received a notice of warning. A visit may be made to ensure that the applicator has subsequently come into compliance. HDOA is also responding to a recent increase in Chinese and Laotian immigrant farmers on Oahu by providing pesticide safety and WPS training at key locations. HDOA also provided outreach using the updated How to Comply Manual to agricultural establishments. HDOA meets several times per year with the University of Hawaii Cooperative Extension and the Pest Control Board of the Department of Commerce and Consumer Affairs to discuss training and WPS issues. In FY14, HDOA held several Farmer Resource Workshops, designed as a "one stop shop" for farmers to obtain information on a wide range of topics. Topics range from proper pesticide use, agriculture loans and insurance, to soil conservation and air pollution regulations. These workshops have been held on Oahu, Hawaii, Maui and Kauai, and have been well-received.

In FY13, HDOA received special one-time funding to develop a slideshow which would be translated into several languages (Ilocano, Laotian, Mandarin, Cantonese and Tagalog) to provide workers and handlers with pesticide safety information. At the time of this writing, the slideshow was in the editing phase, and near completion in all languages. HDOA hopes to complete this project in FY15 using state funds.

The agricultural landscape in Hawaii has changed from the dominance of sugar cane and pineapple plantations to many small farms where ethnically-diverse owners grow a

multitude of minor crops. In FY12, the second highest violation found by HDOA inspectors was application of pesticides to crops not on the label. HDOA received special one-time funding in FY14 in the amount of $45,000 to develop a cross reference of minor crops, including plant identification, synonymous names, related species and crop grouping. The ultimate goal was to assist in locating pesticides registered for use on these crops, if any. Some progress was made on the project, but most of the funding was returned to EPA. HDOA does plan to restart work on the project using state funding.

3. PART Review Measures - none

4. State/Tribe Feedback - none

5. Conclusions and Recommendations

With the exception of the two special projects, all negotiated outputs have been satisfactorily met for FY14.

C. Water Quality

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities:

At the end of FY14, the Pesticides of Interest Tracking System (POINTS) had not been updated, but it was completed in early 2015. HDOA has evaluated 51 of 73 Pesticides of Interest (70%), is actively managing 16 of 17 Pesticides of Concern (POC; 94%) and is demonstrating progress for 10 of managed POCs (63%). HI evaluated several products for ground water concerns during FY14, including EPTC, cyantraniloprole and cyproconazole, for example. HDOA uses modeling to determine whether new chemicals may have the potential to leach into groundwater. Restricted use pesticide sales records are monitored to identify products that may affect water quality. HDOA has discussions with HI Department of Health (DOH) as well as registrants to discuss pesticides of concern for surface and ground water. The HI Department of Health is responsible for implementing the pesticides NPDES permit program in Hawaii.

3. State/Tribal Concerns - none

4. Conclusions and Recommendations

D. Endangered Species

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA continues to consult and coordinate with other State agencies on Section 18 emergency exemption requests and special local needs registration applications. During FY14, an Endangered Species Act (ESA) Section 7 informal consultation was sent to EPA for four pending SLNs for use of rodenticides in agricultural and forest/other island areas.

3. PART Review Measures - none

4. State/Tribe Feedback – none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY14.

U.S. Environmental Protection Agency

Hawaii Department of Agriculture

FY2015 Final End-of-Year Review

Pesticide Performance Partnership Grant

EXHIBIT 13

Executive Summary- This report covers workplan activities conducted in FY15, and is based on discussions and review of documents throughout the year and during the end of year visit. Recommendations for improvements can be found within the body of this report. Recommendations focus primarily on reducing a large backlog of inspection files that need review and possible case development, securing a backup laboratory if state lab equipment breaks down, and improving inspections and report writing. HDOA must also focus on revising the enforcement response policy, and forwarding more inspection files to EPA for review and/or follow-up. This report covers the first year of a multi-year performance partnership grant (PPG) between Hawaii Department of Agriculture and EPA Region 9. This PPG was put into place to ease administrative burdens on HDOA and to allow for more long-term planning for the HDOA Pesticide Program.

I. BACKGROUND

A. General

1. **Project Period:** October 1, 2014 – September 30, 2015.

2. **EPA Assistance Agreement Number:** #BG00T64415-1

3. **Review method:** On-site

4. **Review participants:**

EPA: Mary Grisier, Hawaii Pesticide Project Officer, Scott McWhorter, EPA FIFRA Inspector/Enforcement Liaison

Grantee: Thomas Matsuda, Pesticide Program Manager, Victoria Matsumura, Case Preparation Officer

5. **Review date(s) and location:** November 16-19, 2015 at the Hawaii Department of Agriculture offices in Honolulu.

B. Scope of Review

The Hawaii Department of Agriculture (HDOA) has primary enforcement responsibility over pesticide use activities in the State of Hawaii and is the lead state agency for the enforcement of the Hawaii Pesticides Law (Chapter 149A, Hawaii Revised Statutes) and Hawaii Administrative Rules (Chapter 66, Title 4). There are approximately 1,150,000 acres in farmland, 7,000 farms, 6,400 agricultural workers, 3,800 Agricultural Operators, 1,200 certified applicators, 22 licensed Restricted Use Pesticide (RUP) dealers, 18 pesticide producing establishments, and seven licensed aerial applicators in the state of Hawaii. Major crops in Hawaii include seed corn, coffee, papaya, macadamia and nursery plants. Average farm size in Hawaii is 150 acres. HDOA maintains a database of all pesticides licensed in Hawaii. The HDOA Pesticide program consists of approximately

14 individuals over 4 islands performing inspection, education, registration, administrative, and other pesticide program activities.

The Hawaii Pesticide program is supported by both State (general and revolving) and federal (USDA and USEPA) funds. HDOA and USEPA Region 9 had one active Performance Partnership Grant (PPG) with pesticide related activities to be carried out in Federal Fiscal Year 2015. The purpose of the PPG is to reduce paperwork and provide administrative relief and flexibility to HDOA. FY15 was the first year of a multi-year agreement.

The FY15 end-of-year evaluation was primarily accomplished by reviewing quarterly reports and correspondence received from HDOA throughout the year, and an on-site visit by the project officer and FIFRA inspector from EPA Region 9. Additionally, the inspector conducted oversight inspections with staff from HDOA. Information gathered was compared to the outputs and standards in the cooperative agreements to determine if HDOA had met its commitments.

II. FINANCIAL

A. Budget Analysis

The following table summarizes funding and expenditures for the FY15 cooperative agreement. In FY15, approximately three FTE were supported by EPA funding (Environmental Health Specialists II & III, Chemist)**.**

Federal Financial Reports (FFRs) for FY15 had not been received at the time of this writing.

Work Plan Component	**EPA Funding**	**Grantee Funding***	**Total Funding**
Enforcement	$186,200	$34,672	$220,872
Programs	$116,125	$22,038	$138,163
C&T	$ 30,000	$30,255	$ 60,255
Supplemental $	$ 0	$ 0	$0
TOTAL	$332,325	$ 86,965	$419,290

* State is required to provide 50% match in C&T, 15% (by policy) for other programs.

Re-budgeting –Rebudgeting consisted of a $786.00 rescission on the part of EPA.

III. GENERAL GRANT ADMINISTRATION

A. *Recommended Actions for Grants Office* - None

IV. COMPLIANCE AND ENFORCEMENT

A. Grantee Reports

1. 5700-33H report – attached as Appendix 1.

2. Annual Summary of Inspections and Enforcement Actions

HDOA exceeded the number of projected inspections (311 projected, 314 completed). This is approximately 74 fewer inspections conducted than in FY14. HDOA issued four civil complaints in FY15, up from one in FY14. Forty warning letters were issued, and one case was assessed a fine in FY15. There were eleven inspection files referred to EPA for enforcement review and possible development in FY15, up from eight forwarded in FY14. HDOA should continue to forward cases that, for any reason, may present difficulties for the state to pursue.

B. Case File and Enforcement Action Evaluation

1. Significant Cases (FIFRA Section 27)

There were no formal high level episodes referred to HDOA in FY15. However, HDOA saw a significant increase in pesticide-related complaints from individuals and groups throughout the state. Many of these complaints focused on alleged misuse of pesticides by large seed-corn companies, as well as state and local departments of transportation doing roadside weed control. In addition, some complaints centered on HDOA itself, alleging that HDOA does not adequately enforce state and federal regulations. It should be noted that HDOA follows up on every complaint that is received; with essentially one inspector on each island, this level of follow-up has become nearly impossible to maintain, while also attempting to conduct routine, neutral scheme inspections. HDOA is in the process of hiring additional inspectors for Oahu, Kauai and Hawaii islands, as well as an additional case developer for Oahu. HDOA has initiated discussions with state and local transportation departments to ensure that best management practices are being used when roadside spraying occurs. EPA Region 9 is closely monitoring this situation and is in regular contact with HDOA.

2. Routine Inspections

Oversight Inspections Conducted During End of Year Review
Inspectors should follow all inspection procedures for conducting federal inspections, including presenting valid credential (e.g., in one case, a credential was expired), presenting a written notice of inspection describing the reason(s) for inspection (e.g., in one case, a violation was suspected but not identified) and a signed receipt for samples (e.g., in one case, no receipt was given or was missing from the report). Inspectors

should routinely collect a similar and adequate amount of documentation for all producer establishment inspections, including taking photographs, photo copies for purchases and sales invoices* and production logs*, maintenance and repair logs (a years' worth), manufacturing or repackaging agreements, labels, and all other relevant FIFRA and RCRA (waste manifests) records. Records sampled and collected should show evidence that they were maintained for a minimum of 2 years in most cases. If information that is routinely collected is unavailable at the time of inspection, this information should be requested for a later date to be sent to the state or in some cases be sent directly to EPA).1 If information routinely collected does not exist, it should be fully documented in the report that this information was requested and it does not exist. If it exists but elsewhere, the inspector must still request this information be sent to either the state or EPA (e.g., in one case, the inspector did not collect information or request that it be sent, instead the inspector took a statement that the information exists but is not maintained at the facility. This is not adequate. All of these issues must be addressed to improve inspections.

Recommendation 15-01: Inspectors should review the *2013 FIFRA Inspector's Manual* and ensure that all inspections follow the requirements for document collection, issuance of appropriate forms and that adequate narratives accompany all inspections.

Inspection Reports Reviewed During End of Year Review
Approximately thirty inspection files were reviewed during the end of year visit, in addition to files that were sent to EPA for enforcement/review. Inspection files were randomly selected from actionable and non-actionable inspections. Inspections selected represented the work of five different inspectors. In general, the report narratives tend to be short. If there is nothing to report, the narrative should explain why a thorough investigation did not occur. When narratives are short, they often lack critical information. It is not clear whether inspectors are not disclosing information, or whether they are not documenting all aspects of the inspection. Specifically for Pesticide Establishment Inspections, inspectors should consult the *2013 FIFRA Inspectors' Manual* and contact EPA for assistance to ensure adequate information is being documented. All of these issues must be addressed to improve inspection report writing.

There were no Special Requests issued to HDOA during FY15. HDOA did not complete any container/containment inspections, as there are no facilities currently identified in Hawaii that meet the necessary criteria. The Pesticide Container/Containment Inspection and Enforcement Accomplishment Report (EPA C/C Form 5700-33H) is included in Appendix 2.

C. Compliance Priority – Worker Protection Standard (WPS)

1. Reports

1 *e.g., purchases, sales, or production records might be identified as FIFRA CBI and should be sent directly to the FIFRA Document Control Officer in Region 9.

a) The Pesticide Worker Protection Standard Inspection and Enforcement Accomplishment Report (WPS Form 5700-33H) is included as Appendix 2.

2. Significant WPS Cases (FIFRA Section 27) - none

3. WPS oversight inspections – EPA Inspector McWhorter conducted one oversight inspection of a WPS Tier 1 inspection during the end of year review.

4. WPS case file evaluation

HDOA conducted seventeen WPS Tier 1 inspections at establishments throughout Hawaii, up from five in FY 14. There were no enforcement actions issued for any Tier 1 inspections conducted in FY15. There were no Tier 2 inspections conducted, while there were five the previous year.

5. Worker Protection Risk-Based Targeting Strategy

a) Implementation of Risk-Based Targeting Strategy

A WPS targeting strategy was developed in 1994. Targeting was based partly on how many restricted-use pesticides were purchased by growers, as well as how many workers were employed by the establishment. Since that time, agriculture has changed dramatically in Hawaii. The number of large farms with many workers has greatly decreased. Farms are smaller (average farm size is 150 acres) and growers buy smaller quantities of pesticides. Inspectors have found that they can identify establishments that fall under the WPS by conducting routine agricultural use inspections and asking questions related to worker activity during the inspection. They will then return at a later date to conduct a WPS inspection. Larger establishments are inspected approximately every two years.

D. Inspection and Enforcement Support

1. Training

HDOA conducts semi-annual pesticide training workshops for all HDOA Pesticide Program staff (inspectors, education, and registration staff) and outer Pacific Island pesticide programs in May and November of each year. The workshop in November also includes medical monitoring and respirator fit-testing for inspectors. In 2015, the project officer and the EPA inspector attended the November workshop, in conjunction with the end of year visit. The EPA inspector presented updates from EPA, including enforcement priorities and highlights from the revised worker protection standards. Federal Enforcement priorities for Hawaii include Worker Protection Tier 1 inspections,

Product Integrity (including taking more samples during inspections), and the ongoing compliance monitoring of basil farmers in Hawaii.

In FY15, HDOA had four federally-credentialed inspectors. Training records were properly maintained at the Honolulu office, and inspectors had met the commitments outlined in the FIFRA inspector credential authorization agreement. All four credentials expired on November 1, 2015. As of this writing, EPA is in the process of issuing new credentials.

Below is a partial list of training courses attended by HDOA staff in FY15:

TRAINING/MEETING	DATE
Executive Lab PREP, GA	4/2015
Pollinator PREP, OR	5/2015
FIFRA Pesticide Analyst Workshop, OK	5/2015
Registration PREP, VA	7/2015
C&T PACT Workshop, PA	8/2015
ASPCRO Annual Mtg, FL	8/2015
ALSTAR/NPIRS Conference, NV	9/2015

2. Enforcement Response Policy

The Hawaii Department of Agriculture revised and adopted its Pesticide Enforcement Action and Penalty Assessment Schedule on October 24th, 2006. Review of case files indicates that HDOA follows its enforcement response policy, however there are numerous areas where the policy is in need of updating. In FY14, the Department of Agriculture was able to fill several positions on the Governor's Pesticide Advisory Committee, which has responsibility for revision of pesticide regulations in Hawaii, as well as revising the enforcement response policy. HDOA is encouraged to continue to identify those areas that are lacking in the ERP, so that at a future date, changes can be made.

3. Neutral Inspection Scheme

Applicators that are likely to use more RUPs are inspected more frequently than those that do not. This is based on amounts of RUPs purchased divided by the number of applicators employed by a business. With regard to marketplace inspections, they are conducted primarily based on complaints, rather than through a neutral inspection scheme. This has been discussed during previous reviews as an area for additional focus by HDOA. HDOA should consider whether these overall approaches to targeting inspections are still appropriate and effective.

4. Enforcement Procedures

Since at least 2012, there has been a large backlog of inspection files to be reviewed by enforcement staff. At the time of the end of year review, there were approximately 700 inspection files in need of review, some dating back to 2008. This is a major concern, and has resulted in delays for both state and federal enforcement proceedings. Federal inspection reports should be referred to EPA at least quarterly per the cooperative agreement. Recent receipt of reports for inspections that occurred as early as 2012 were not received until 2015. Many of these cases were referred to EPA for enforcement action but were closed solely based on our statute of limitations. Also since at least 2012, there has been a large number of proposed enforcement actions that remain with the State deputy attorney general (AG) for review and concurrence. This is very concerning given the large number of complaints drafted (i.e., in the hundreds) versus the small amount of enforcement actions taken (i.e., one for a penalty in 2015). Cases must be reviewed and concluded in a timely and appropriate manner. EPA should be alerted when new cases are being forwarded to the AG that are not being reviewed in timely manner. For high priority cases they should be elevated to EPA for review to determine the appropriate enforcement response (e.g., a Notice of Warning might be adequate). For most of FY15, HDOA had two case development officers that reviewed all files as they came in from the inspection staff. In late FY15, a new deputy attorney general was assigned to pesticide cases in Hawaii. By the end of FY15, four civil actions had been reviewed by the deputy, and then issued by HDOA.

Recommendation 15-02: The process for reviewing inspection files, and developing and ultimately issuing civil actions must be improved. Inspection reports that may present difficulties for HDOA should be forwarded to EPA.

5. Quality Assurance

HDOA‘s Pesticide Program Quality Assurance Program Plan (QAPP) was approved by EPA on February 24, 2014. Major components of the QAPP include program responsibilities, sampling design, methods and sample handling. The Chemical Analysis Laboratory (CAL) in Hawaii operates a state-of-the-art pesticide residue laboratory for the analysis of a wide range of plant, soil, product and environmental samples in support of enforcement and registration activities. In FY15, the CAL participated in EPA’s check sample program, running 136 tests on 10 samples provided by EPA. Analysis results were satisfactory for both soil and vegetation samples. In FY15, the CAL developed a list of pesticides to test for residues in Hawaii bees and honey.
It should be noted that the laboratory experienced significant down time of its LC/MS equipment during FY15. Delays in sample analysis can negatively impact the timeliness of enforcement cases, and also create frustration for individuals who believe that they may have been impacted by pesticide drift.

Recommendation 15-03: HDOA should identify a back-up laboratory that can assist with sample analysis should equipment failures occur in the future. EPA has had discussions with HDOA on this issue, and HDOA has initiated contact with the CA Department of Food and Agriculture laboratory.

6. Special Activities

HDOA continues to consult and coordinate with other State agencies on Section 18 emergency exemption requests and special local needs registration applications. Two experimental use permit applications were pending in the fourth quarter.

Outer Pacific Island Support - In cooperation with EPA, HDOA is providing ongoing support to outer Pacific island pesticide program staff on import, inspection, enforcement, and certification issues. As in previous years, HDOA extended an invitation to outer island inspectors to attend the Inspector Workshops. Attendance at the workshops provided an opportunity for the inspectors to receive medical monitoring exams and respirator fit tests, as well as to participate in mock inspections with fellow inspectors and to receive important training.

Kauai Joint Fact Finding Taskforce – In December 2014, a process was begun to examine possible health and environmental impacts associated with the use of pesticides applied to genetically-modified agricultural products. The County of Kauai and the HI Department of Agriculture were partners in the project by providing funding support and collaborating with the state and the consultant throughout the process. A draft of the findings was released in March 2016.

Integrated Pesticides Information System - In April 2014, HDOA received approval from then-Governor Abercrombie to develop an Integrated Pesticides Information System within the Pesticides Branch that will include the enforcement, registration and certification programs, as well as the Chemical Analysis Laboratory. Once implemented, this system will allow staff from all programs to coordinate their activities, and will also provide greater access to pesticide information by the public. A demonstration of progress to date was provided by the contractor during the inspector workshop in November, and great progress has been made in developing this system. Several key staff members are involved in the development of this system, and when completed, it will provide needed coordination between programs within the Pesticides Branch.

Online Reporting of RUP Sales – As a result of Act 105, passed in FY13, HDOA is required to post RUP sales on a monthly basis. The posting provides a summary of all sales, not broken down by purchaser. On April 1, 2015, HDOA posted the sales records by month by County in pounds of active ingredients for all of 2014.

E. New Legislation and Regulations

Eight bills were introduced in the Hawaii Legislature relating to pesticides during FY15, but none were passed.

F. Action Items from Previous Reviews

Recommendation 10-02: HDOA should review their enforcement penalty policy and identify areas that need revision or update.

Status: HDOA has identified elements of the penalty policy that are in need of revision. Revising the penalty policy will require a formal change in Hawaii's Pesticide Law. The current process for revising the policy requires assistance from a pesticide advisory committee, whose members are appointed by the Chairperson. HDOA should make every effort to streamline this process and revise deficiencies in the pesticide penalty policy.

Recommendation 13-01: HDOA must forward inspections to EPA that either 1) were conducted with a Federal credential, or 2) reveal a potential federal violation.
Status: Eleven files were sent to the Regional Office during FY15 for review and possible enforcement. This does not reflect all of the inspections that were conducted with a federal credential or that potentially have federal violations. There remains a large backlog of inspection files. This recommendation remains open.

Recommendation 13-02: HDOA has seen a downward trend in overall inspection activity in FY13, especially with regard to WPS Tier 1 inspections. HDOA should make every effort to increase the number of WPS Tier 1 inspections in the coming year.
Status: HDOA has improved inspection numbers, particularly as it relates to WPS, Seventeen WPS Tier 1 inspections were conducted, up from five in FY14. This recommendation is closed.

Recommendation 13-03: HDOA should formally request that EPA send the enforcement liaison to the upcoming November workshop at the HI Department of Agriculture. This will ensure that state inspectors are provided the most up-to-date requirements for their work under the cooperative agreement.
Status: The EPA inspector was able to attend the FY15 November workshop, and he also participated in oversight inspections with HDOA inspectors. He provided information regarding EPA enforcement priorities and other assistance to inspectors. This recommendation is closed.

Recommendation 13-04: HDOA must identify ways to address the backlog of inspection files, whether through assigning inspection staff to review files or hiring additional case developers. Solutions to the backlog that also exists with cases at the Deputy Attorney General's office must also be identified.
Status: The backlog of inspection files continues to be an issue for HDOA. Steps have been taken to decrease the backlog using a temporary position, as well as having inspectors help review inspection files for actionable violations. In February 2016, the senior case developer retired, leaving one full-time case developer in the Branch. The number of inspection files will continue to grow, however, and HDOA should put every effort into hiring an additional case developer. This recommendation remains open.

Recommendation 13-05: HDOA is asked to identify those policies and documents in need of revision and a plan put in place to make the necessary updates.
Status: In particular, the enforcement penalty policy is in need of revision. This recommendation remains open.

Recommendation 13-06: HDOA should ensure that the POINTS system is updated on a yearly basis, and that progress is made in evaluating pesticides of interest to Hawaii. **Status:** The POINTS database has been updated for FY15. This recommendation is closed.

F. Conclusions and Recommendations for Compliance/Enforcement

EPA continues to have significant concerns with the backlog of inspection files to be processed, and the resulting lack of enforcement actions issued. More inspections should be forwarded to EPA for review/enforcement. HDOA should work with EPA's inspector to make improvements to inspections and report writing. HDOA should ensure that the enforcement penalty policy is revised and strengthened. A backup laboratory should be identified to assist if HDOA's lab equipment has breakdowns.

V. PROGRAMS

A. Worker Safety – C&T

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA had 1092 certified commercial and 297 private applicators at the end of FY15. HDOA administered exams and reviewed 167 courses for continuing education units, compared to 180 the previous year. HDOA also provided 5 presentations to certified applicators during the course of the year, down from 19 the year before. The education program at HDOA lost one staff member during the 3rd quarter of FY15. Honolulu staff covered exam administration and consultative visits on Oahu, Kauai, Maui and Molokai. The island of Hawaii is covered by an additional employee based in Hilo. Fifteen courses were monitored by HDOA in FY15. Certification reporting in CPARD was completed by HDOA in a timely manner.

HDOA's databases for certified applicators as well as for tracking continuing education units are cumbersome and not integrated. Once implemented, the Integrated Pesticides Information System will allow the Education staff to manage and review courses, track classes, exam results and credits, as well as produce quarterly reports on all certification and training activities. This database will ultimately be an important and timesaving tool for staff.

HDOA worked closely with the Cooperative Extension Service (CES), meeting at least twice per year with representatives from CES Pesticide Applicator Training Program, at the University of Hawaii. HDOA also meets with the Hawaii Pest Control Board, which reviews and approves applications for new pest control businesses in the state. University personnel travel to each of the neighbor islands to prepare applicators in core topics for the certification exam on a yearly basis.

Certification cards issued in Hawaii currently have a photo ID and bar code. Annual C&T Plan Reports for Hawaii and other states are available at: http://cpard.wsu.edu/

3. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY15.

B. Worker Safety - WPS

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDOA conducted 17 WPS training sessions, reaching 129 participants. Seven consultative visits were also held; these are scheduled when a new applicator becomes certified, or, if an applicator has received a notice of warning. A visit may be made to ensure that the applicator has subsequently come into compliance. HDOA is also responding to a recent increase in immigrant farmers on Oahu by providing pesticide safety and WPS training at key locations. HDOA also provided outreach using the updated How to Comply Manual to agricultural establishments. HDOA meets several times per year with the University of Hawaii Cooperative Extension and the Pest Control Board of the Department of Commerce and Consumer Affairs to discuss training and WPS issues.

The agricultural landscape in Hawaii has changed from the dominance of sugar cane and pineapple plantations to many small farms where ethnically-diverse owners grow a multitude of minor crops. This has resulted in farmers who are unaware of or unable to understand pesticide product labels, as well as those who may understand but choose not to comply with labels, as seen with several basil farmers in Hawaii. Education staff at HDOA is working on a project to develop visual identification cards for crop/pest identification, which will go online in the future, and will ultimately be available in multiple languages.

3. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY15.

C. Water Quality

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities:

The HDOA Pesticides of Interest Tracking System (POINTS) system was updated for FY15. HDOA has evaluated 53 of 79 Pesticides of Interest (79%), is actively managing

17 of 18 Pesticides of Concern (POC; 94%) and is demonstrating progress for 10 of 17 managed POCs (59%). HDOA evaluated several products for ground water concerns during FY15, including, cyantraniloprole and flupyradifurone. It was determined that both must be licensed as restricted use pesticides. HDOA uses modeling to determine whether new chemicals may have the potential to leach into groundwater. Restricted use pesticide sales records are monitored to identify products that may affect water quality. DOH is responsible for implementing the pesticides NPDES permit program in Hawaii.

3. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY15.

D. Endangered Species

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

No formal reviews were requested in FY15.

3. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY15.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor

JAMES J. NAKATANI
Executive Director

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Phone: (808) 586-0186 Fax: (808) 586-0189

August 3, 2015

VIA EMAIL (alec.wong@doh.hawaii.gov)

Mr. Alec Wong, P.E., Chief
State of Hawaii
Department of Health
Clean Water Branch
P.O. Box 3378
Honolulu, Hawaii 96801-3378

Dear Mr. Wong:

Subject: National Pollutant Discharge Elimination System (NPDES) Permit
Agribusiness Development Corporation
Kekaha, Island of Kauai, Hawaii
Permit No. HI0000086

Thank you for your letter dated July 7, 2015, granting the Agribusiness Development Corporation (ADC) an extension of time within which to either withdraw its permit application or to continue to pursue its NPDES permit renewal. Thank you also to you, Mr. Kawaoka, and the Clean Water Branch staff for meeting with the ADC on July 31, 2015 to discuss ADC's existing permit and anticipated compliance problems, and its nonpoint source pollution options.

After much investigation, the ADC does not anticipate that it will be able to comply with the Water Quality Standards which will be incorporated into a renewed NPDES permit. Accordingly, the ADC would like to withdraw its application to renew Permit No. HI0000086.

The ADC is committed to developing a monitoring and management plan, and incorporating the best management practices possible, to address the nonpoint pollution runoff in Kekaha. As discussed at our recent meeting, in addition to naturally-occurring additions to the ADC's irrigation water, there are a number of stakeholders whose operations are dependent upon the ADC receiving their waters which are then mixed with the ADC's irrigation water before exiting into the ocean. The ADC has already opened discussions with several of these stakeholders concerning the problems associated with this combined runoff. The ADC has also begun its review of several of

EXHIBIT 7
EXHIBIT 14

its tenants' individual soil conservation plans. The ADC would therefore like to be the initial point of contact for the management plan in the area.

The ADC would appreciate any guidance and assistance your office might provide in the development of a management plan that is custom-designed to address the runoff in Kekaha. We will be proposing an agreement, of sorts, between our agencies to delineate exactly how a management plan should be developed, and what it should address and include. Also, as an attached governmental agency, we are interested in pursuing any federal grant for which the ADC might qualify to help defray the costs of such a plan. We look forward to working with you and your staff on this endeavor.

Sincerely,

for

James J. Nakatani
Executive Director

cc: Keith Kawaoka (keith.kawaoka@doh.hawaii.gov)
Marianne Rossio (Marianne.rossio@doh.hawaii.gov)
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