

UNIVERSITY OF HAWAII

Environmental Center

Office of the Director

CLAIMED DEFICIENCIES IN HAWAII AIR POLLUTION CONTROL IMPLEMENTATION PLAN AND PROPOSED FEDERAL REMEDIAL REGULATIONS

Statement for
Environmental Protection Agency
Public Hearing

14 July 1972

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U.H. Environmental Center

Introduction

In my understanding, this hearing is being held pursuant to the provisions in the notice from the EPA Acting Administrator dated 12 June 1972 and published in the Federal Register, Vol. 37, No. 115, Pt. II, p. 11826, 14 June 1972. These provisions relate to proposed amendments to part 52 of Chapter I, Title 40 of the Code of Federal Regulations consisting of federal air quality control regulations proposed for applicability in several states, and specifically, in subpart M (FR37(115)11828), to Hawaii. The grounds for proposing these regulations, according to the 12 June notice, are specific deficiencies in the air pollution control implementation plans of the respective states--deficiencies which were noted in the Federal Register, Vol. 37, No. 105, Pt. III, 31 May 1972, with specific respect to Hawaii is subpart M, p. 10860. The authority of the Administrator to adopt federal air pollution control regulations specific to a state is granted, under Sec. 110(c) of the Clean Air Act if, but only if and to the extent that, the implementation plan of that state is deficient in terms of requirements for such plans in part 51 of Chapter I, Title 40 of the Code of Federal Regulations. Thus only to the extent that the claims of 31 May as to deficiencies in the Hawaii Air Pollution Control Implementation Plan are valid, are there grounds for the adoption of the respective proposed regulations of 14 June.

The 31 May Federal Register listed 6 alleged deficiencies in the Hawaii Plan. Four of these were stated to be deficiencies in legal authority; one to be a deficiency related to compliance schedules, and one to be a deficiency in regulations governing source surveillance.

Claimed deficiencies in legal authority and corresponding proposed federal regulation

Each of the alleged deficiencies in legal authority has been remedied by the passage of Act 100 of the 1972 legislature, approved by the Governor on 22 May 1972. The first claim which related to General Requirements (40 CFR 52.624(a)), was that the State lacked legal authority to make emission data available to the public (as required in 40 CFR 51.10e). This deficiency was remedied by Section 5 of Act 100, which requires that all reports submitted to the department on discharges of waste be made available to the public except as such reports contain confidential information on secret processes. Discharges of waste are defined in Section 1(10) of the Act as inclusive of air pollution emissions. Because this remedy was provided 9 days prior to the publication of proposed federal backup regulations, and almost 8 weeks prior to this hearing, there are no grounds for the adoption of the corresponding proposed federal regulation: "Regulation for public availability of emission data"(40 CFR 52.624(b)).

The remaining three alleged deficiencies in legal authority were also remedied by Act 100 as follows:

<u>Ref. Sec.</u> <u>40 CFR</u>	<u>Deficiency</u>	<u>Pertinent Section</u> <u>in Act 100</u>
52.625(a)	Inadequate authority for emergency abatement	9
52.625(b)	Authority to require emission records and reports limited to certain sources	22(3) (a&b)
52.625(c)	Inadequate authority to require emission monitoring	22(3) (c&d)

No federal regulations corresponding to these three alleged but invalid deficiencies were proposed in the 14 June Federal Register.

Alleged deficiency related to compliance schedules and corresponding proposed federal regulations

The 31 May note on an alleged deficiency related to compliance schedules (40 CFR 52.626) claims that the Hawaii plan does not meet the requirements of Section 51.15(a)(2) of Chapter I, Title 40 of the Code of Federal Regulations in that "the plan does not provide a legally enforceable final date by which all individual source compliance schedules must be negotiated." However, the cited section provides that "Such compliance schedule shall be submitted to the Administrator as early as possible but in no case later than the prescribed date for submittal of the first semiannual report required by [section] 51.7." Section 51.7 sets this date at the end of the first full semiannual period after approval of an implementation plan. Since the Hawaii plan was approved 31 May 1972, the date for submittal of the first semiannual report will be 31 December

1972, and the lack of a date for the completion of negotiations of individual compliance schedules could not be regarded as a deficiency until that date. Hence there are no grounds for the adoption of the corresponding proposed regulation: "Federal compliance schedule" (40 CFR 52.626(b)).

Claimed deficiency in regulations governing source surveillance and corresponding proposed federal regulation

The alleged deficiency in regulations dealing with source emissions is the lack of "legally enforceable procedures for requiring stationary sources to maintain records of, and periodically report to the State on the nature and amount of emissions." The original legal authority in Section 64(4) Part V of Chapter 322 of the Hawaii Revised Statutes for the requirement of monitoring of stationary sources could be invoked only after notice and a hearing. This limitation was removed by Section 22(3) of Act 100(1972).

At present no departmental regulation is clearly identified as that by which this enlarged legal authority is exercised. However, in anticipation of the provision of the authority, subsection 3 of Section X of the Hawaii Plan which discusses the "Source Surveillance System" provides:

"When this authority is obtained, a regulation will be proposed which will require each source to maintain records and submit periodic reports of operation and emissions to the Department on an annual basis. The report form will be the same as [a] previously described registration form and will provide a continuous up-date of emissions information for all sources."

The "Registration Form" referred to is described in Public Health Regulations Chapter 43 Section 2(b)(3) as follows: "Registration shall be made on forms provided for this purpose by the Director and shall include such information as may be necessary to enable the Director to evaluate the nature and extent of emissions." This regulation took effect on 21 March 1972.

Hence, there is actual regulatory authority completely backed by statutory authority to require the monitoring of stationary sources. Since the alleged defect does not exist there are no grounds for the adoption of the corresponding proposed federal "Regulation for source recordkeeping and reporting" (40 CFR 52.627(b)).

Concluding remarks

As demonstrated above, not one of the six deficiencies alleged in the 31 May issue of the Federal Register exist in the Hawaii Air Pollution Control Implementation Plan. Hence there are no grounds for the federal regulations proposed in the 14 June 1972 issue of the Federal Register to remedy these deficiencies which are the focus of this hearing.

The invalidation of the specific deficiencies in the Hawaii Plan and corresponding proposed federal remedies should not be taken to indicate concurrence with the grounds indicated by the EPA Administrator in the 31 May issue of the Federal Register for approval of the Plan in other respects. We have indicated elsewhere our opinion that in many respects the Plan is arbitrary, inequitable, and ineffective. Although we believe that the Environmental Protection Agency is primarily responsible in several ways for its real defects, their discussion appears inappropriate for this hearing.