



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

September 16, 2014

Dr. Linda M. Rosen
Director of Health
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

Dear Dr. Rosen:

Re: Proposed Changes to Department of Health Administrative Rules Title 11,
Chapter 62, Wastewater Systems

This letter is in response to the Department of Health's (DOH) Notice of Public Hearing on Changes to Hawaii Administrative Rules (HAR), Title 11, Chapter 62, Entitled "Wastewater Systems".

The changes include, among other things, a prohibition on the installation of new cesspools and requires sewer connections or upgrades of existing cesspools to a septic tank within 180 days after the sale of a property.

The DOH's Rationale relies on its general authority in Hawaii Revised Statutes sections 321-11 and 342D-4 to adopt rules that it deems necessary for public health and safety and specifically states that "[i]n order to protect public health and the environment, new cesspools should be prohibited, and existing cesspools should be gradually phased out through mandatory upgrading to sewer or septic systems whenever property is sold." In its Rationale, the DOH does not mention or cite any federal mandate or Environmental Protection Agency requirement that would compel the DOH to come into compliance with and thus necessitate this abrupt and untimely notice to affected residents.

Interestingly, under the proposed changes to the HAR, DOH only provides 180 days for landowners to comply. This fails to take into account any issues which landowners may run into with their respective county for things such as permits or whether landowners will be allowed to connect to the county sewer line within that 180-day time frame, if such connection is even feasible.

In addition, in its Rationale for the Proposed Changes, DOH notes that there are "approximately 90,000 cesspools currently in the State, with nearly 50,000 located on the Big Island, almost 14,000 on Kauai, over 12,000 on Maui, over 11,000 on Oahu, and over 1,400 on Molokai." However, the DOH is only holding one public hearing and the hearing is in urban Oahu, the county and the area with the least number of cesspools. While DOH is allowing for video conferencing of the public hearing on Kauai, Hawaii Island, and Maui, I do not feel this will allow genuine public participation by those that will be primarily impacted by the changes to the HAR. In addition, Molokai, which has over 1,400 cesspools, has been completely excluded by not being provided the opportunity to even participate via video conferencing. The proposed changes will impose costs on private landowners without providing a meaningful opportunity to engage in this discussion with the DOH. All consequences of this policy change need to be examined.

In addition, the cesspool issue is not new and DOH has had more than ample time to work with affected landowners to address this issue. It is unfortunate that DOH has chosen to pursue changing its administrative rules without seeking meaningful input from the landowners and communities most affected.

At the very least, I request that DOH hold public hearings in each county and on the island of Molokai so that the landowners and communities most affected by DOH's actions will have the opportunity to personally engage with the DOH on this longstanding issue.

Sincerely,



Rosalyn H. Baker
Senator, 6th District