



August 11, 2017

Norman Ahu  
Administrator  
Hawaii Occupational Safety and Health  
830 Punchbowl Street, Suite 425  
Honolulu, HI 96813

Dear Mr. Ahu,


Hawaii State Occupational Safety and Health (HIOSH) contacted OSHA regarding HIOSH's Field Operations Manual (FOM) and an intra-state Memorandum of Agreement. The FOM states that HIOSH is prohibited from issuing any citations related to pesticide use, unless it enters into an "OSHA approved Memorandum of Agreement (MOA)" with the state Department of Agriculture. See Hawaii FOM, p. 10-4. HIOSH has signed such an MOA with the state Department of Agriculture. The MOA was most recently renewed in 2013.

OSHA's State Plan regulations provide that State Plan changes, such as the MOA, can be implemented under state law and do not require prior approval by OSHA. Rather, OSHA reviews the changes subsequent to their issuance by the State Plan. If OSHA rejects a State Plan change, then the change would be excluded from the State Plan. See 29 CFR 1953.3(a):

(a) *Effectiveness of State plan changes under State law.* . . . . A State with an approved plan may modify or supplement the requirements contained in its plan, and may implement such requirements under State law, without prior approval of the plan change by Federal OSHA. Changes to approved State plans are subject to subsequent OSHA review. If OSHA finds reason to reject a State plan change, and this determination is upheld after an adjudicatory proceeding, the plan change would then be excluded from the State's Federally-approved plan.

See also, *Florida Citrus Packers v. California*, 545 F. Supp. 216 (N.D.Cal. 1982); *Shell Oil Co. v. U.S. Dep. of Labor*, 106 F. Supp.2d 15, 18-19 (D.D.C. 2000). If the State Plan change is not rejected, the State Plan can continue to enforce the change. The MOA between HIOSH and the Hawaii Department of Agriculture was renewed in 2013 and OSHA Region IX has not rejected it. Therefore, the MOA has been in effect with OSHA's acceptance and acquiesce.

Sincerely,

  
BARBARA YEE GOTO  
Regional Administrator

17 AUG 14 PM 01:27 DLH/HOSM

MEMORANDUM OF AGREEMENT BETWEEN THE HAWAII DEPARTMENT OF  
AGRICULTURE AND THE HAWAII DEPARTMENT OF LABOR AND INDUSTRIAL  
RELATIONS WITH RESPECT TO THE PROTECTION OF EMPLOYEES FROM THE  
HAZARDS OF PESTICIDES

PURPOSE

The purpose of this Agreement is to establish greater cooperation and coordination between the Hawaii Department of Agriculture ("DOA") and the Hawaii Department of Labor and Industrial Relations ("DLIR") and to identify the roles and responsibilities of each agency for the protection of employees from pesticide hazards.

BACKGROUND

Law and Regulations Relating to Employees

The Hawaii Occupational Safety and Health Law and Standards have employee protection measures for all employers who handle and use pesticides. These include respiratory protection standards (Title 29 Code of Federal Regulations ("CFR") §1910.134) and hazard communication standards (29 CFR §1910.1200).

Pursuant to federal law, pesticide labels and labeling incorporate protective measures for agricultural workers entering pesticide treated areas, agricultural workers and pesticide handlers, and non-agricultural commercial employees handling and using pesticides. Federal law and Hawaii Revised Statutes (HRS) Chapter 149A ("Hawaii Pesticides Law") prohibit use of any pesticide in a manner inconsistent with its label.

Agricultural Workers

In August 1992, the United States Environmental Protection Agency ("EPA") promulgated new standards to protect agricultural workers against pesticide hazards (40 CFR Parts 156 and 170). These worker protection standards, which are incorporated into agricultural pesticide labels, include restricted entry provisions,

posting and notification requirements, training, decontamination, and labeling requirements for protective equipment. They also include hazard communication requirements regarding agricultural workers.

The Hawaii Pesticides Law at section 149A-31(1), HRS, requires compliance with all pesticide label and labeling directions, including the use of personal protective equipment and restricted entry to pesticide treated areas.

#### Non-Agricultural Commercial Pesticide Users

Chapter 396, Hawaii Revised Statutes (“Hawaii Occupational Safety and Health Law”) and HAR Title 12, Subtitles 1, 2, 3 and 8 establish occupational safety and health standards to protect all workers in the State of Hawaii, including employees of non-agricultural commercial pesticide users.

The Hawaii Pesticides Law at section 149A-31(1), HRS, requires compliance with all pesticide label and labeling directions, including protective measures applicable to employees of non-agricultural commercial pesticide users, such as the use of personal protective equipment and restricted entry to pesticide treated areas.

#### DEFINITIONS

The definitions in the Hawaii Pesticides Law, the Hawaii Occupational Safety and Health Law, the Hawaii Administrative Rules implementing these statutes, and Title 7 United States Code, Chapter 136, and its implementing regulations in 40 CFR Parts 150-180 apply to this Agreement.

#### AGENCIES AND THEIR ROLES

DOA’s Pesticides Branch administers and enforces the Hawaii Pesticides Law, the federal Worker Protection Standard, where applicable, and pesticide regulations in the

State. DLIR's Occupational Safety and Health Division ("HIOSH) enforces regulations that protect employees from safety and health hazards. Neither HIOSH nor DOA has the regulatory capability or resources to implement a program that includes both existing Occupational Health Standards and requirements under the Hawaii Pesticides Law to protect employees using pesticides or entering areas treated with pesticides. In order to facilitate the process and to clarify their respective roles and responsibilities in these areas, HIOSH and DOA agree as follows:

### DUTIES

This section identifies the roles of HIOSH and DOA's Pesticides Branch solely in regulating employees using pesticides and entering into areas treated with pesticides. This Agreement does not cover other areas of regulatory responsibility which may be enforced at the discretion of the respective agencies.

1. DOA shall enforce all employee safety provisions referenced on pesticide labels or labeling.
2. During inspections of facilities subject to the Hawaii Occupational Safety and Health Law, DOA may also enforce provisions of the EPA's Worker Protection Standard, where applicable, which includes hazard communication requirements dealing with agricultural employees and pesticides (40 CFR Part 170).
3. HIOSH shall enforce its Hazard Communication Standard (29 CFR §1910.1200) and Respiratory Protection Standard (29 CFR §1910.134).
4. Personal Protective Equipment:

- a. DOA will enforce pesticide label requirements regarding personal protective equipment.
  - b. HIOSH shall enforce worker safety standards and rules regarding the maintenance of personal protective equipment and the maintenance of a respirator program per 29 CFR §1910.134 for all hazardous chemicals, including pesticides, except where DOA has enforcement authority under pesticide labeling requirements.
5. Field Sanitation:
- a. DOA shall enforce 40 CFR §§170.150 and 170.250 dealing with pesticide decontamination facilities and supplies.
  - b. HIOSH shall enforce 29 CFR §1910.141 dealing with potable water and restrooms.
6. Training:
- DOA will enforce pesticide training requirements for agricultural employees (pesticide handlers and workers).

REFERRALS

HIOSH and DOA will both respond to complaints and conduct inspections according to their respective protocols and refer cases to each other, as appropriate, where serious injury or illness occurs or may occur because of safety and health deficiencies. Referrals shall include the following information:

- 1. Employer's name, address, and phone number, including cell phone number, if applicable.
- 2. Date of visit.

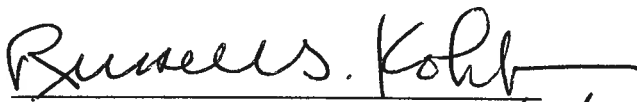
3. Suspected violation.
4. Affected party's name(s), and contact information, if available.
5. Product or equipment involved, if available.

The referring agency may request the results of a referral investigation, which the investigating agency shall provide.

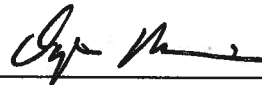
DOA and HIOSH shall report to each other all cases of work-related illness, injury, or death resulting from pesticides, and the results of any referrals.

DURATION

This Agreement shall commence on February 1, 2013 and shall be valid until modified or rescinded. This Agreement may be modified by written agreement of the parties or rescinded by either party 30 days after written notification of intention to withdraw from this Agreement.

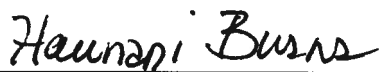


(Signature and Date) 1/24/13  
 Russell S. Kokubun, Chairperson  
 Board of Agriculture



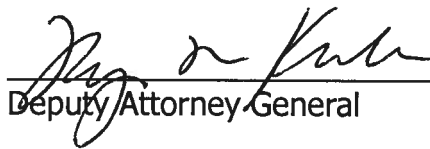
(Signature and Date)  
 Dwight Takamine, Director  
 Department of Labor and  
 Industrial Relations

APPROVED AS TO FORM



Deputy Attorney General

APPROVED AS TO FORM



Deputy Attorney General