



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in OPPOSITION to SB2418
RELATED TO TOXIC CHEMICALS**

SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR ANGUS L. K. MCKELVEY, CHAIR
SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Hearing Date: 2/13/2024

Room Number: 225

- 1 **Fiscal Implications:** N/A
- 2 **Department Testimony:** The Department of Health (Department) respectfully opposes this
3 measure, which proposes procedural requirements for the Department's use of Environmental
4 Action Levels (EALs) "or substantively similar triggering mechanisms"¹ that are unnecessary
5 and could interfere with performance of the Department's mission to protect human health and
6 the environment. The preamble of this bill contains numerous incorrect assertions about the
7 Department's procedures for establishing and updating EALs and the way in which they are
8 utilized. DOH's existing process is protective of public health and the environment precisely
9 because it incorporates current, well-documented science as it becomes available. The
10 Department's guidance documents, which include DOH's EALs, are published and are available
11 for continuous public review and comment. The EALs are used as a comparative tool and
12 inform DOH's risk-based approach to regulatory oversight and remediation, a flexible regulatory
13 approach that is essential to many core functions of DOH's environmental programs. DOH's
14 EALs are arrived at via robust scientific scrutiny and should not be dictated by public opinion.

¹ Page 3 lines 6 to 7

1 The measure’s preamble makes the claim that changes to EALs have, “from time to time,
2 lacked scientific justification,”² but does not provide a single example or evidence for this claim.
3 In truth, Hawaii has some of the most comprehensive, scientifically sound, and protective EALs
4 in the country. The scientific justification of the EALs is clearly presented in *Evaluation of*
5 *Environmental Hazards at Sites with Contaminated Soil and Groundwater – Hawaii Edition* and
6 associated technical memoranda and other documents published by the Department. The
7 Department’s EALs are set based on toxicity factors for various chemicals found in United States
8 Environmental Protection Agency (EPA) guidance and EPA’s Regional Screening Levels
9 (RSLs).³ The Department closely follows the approaches EPA uses to develop the RSLs.
10 However, contrary to the assertion made in this measure at page 2, lines 1-4, many of Hawaii
11 EALs are more conservative and protective than the RSLs due to their incorporation of state-
12 specific concerns, such as an increased focus on the protection of groundwater and aquatic
13 habitats. Periodic updates to the EALs primarily reflect updates to chemical-specific toxicity
14 factors published by EPA based on the availability of new scientific studies and analyses.

15 This measure also makes the claim that the Department updates EALs “without public
16 notice and without publication of the scientific justification” for changes.⁴ Updates to the
17 Department’s EALs are documented in publicly available appendices to the Department
18 publication *Evaluation of Environmental Hazards at Sites with Contaminated Soil and*
19 *Groundwater – Hawaii Edition*, and significant changes are proposed in technical memoranda
20 open to public comment before official changes are made. For example, a technical
21 memorandum open to public comment with attached interim guidance on EALs for per- and
22 polyfluoroalkyl substances (PFASs) is currently posted on the Department’s website.⁵ The
23 interim guidance provides a detailed explanation of the scientific justification for the proposed
24 EALs, lists eleven primary sources consulted regarding human toxicity factors for PFAS
25 chemicals, and includes over six pages of references.⁶ Moreover, as the Department does
26 whenever there are major change to the EALs, we have planned a public webinar regarding these

² Page 2 lines 1 to 2

³ <https://www.epa.gov/risk/regional-screening-levels-rsls>

⁴ Page 1 lines 14 to 15

⁵ <https://health.hawaii.gov/heer/guidance/ehe-and-eals/#ehe6>

⁶ See section 4.1 Human Toxicity beginning on page 8 and Section 11.0 References beginning on page 31 at <https://health.hawaii.gov/heer/files/2024/01/Hawaii-PFAS-EALs-HIDOH-Public-Review-Draft-January-2024.pdf>

1 proposed updates. While proposed major changes are *specifically* open to public review and
2 comment, the *Evaluation of Environmental Hazards at Sites with Contaminated Soil and*
3 *Groundwater – Hawaii Edition* is in fact open for public comment *at all times*. An open
4 invitation for “comments, edits, etc.” is issued in the front matter of “Volume 1.”⁷ Comments on
5 the EALs are welcome and encouraged and Department staff are available for meetings with
6 interested parties at any time. Department staff routinely meet with environmental experts in the
7 EPA and other federal agencies, other state and international environmental protection agencies,
8 and experts in the private sector to discuss necessary updates to EAL guidance documents.

9 This measure is based on the premise that “there are currently no procedural requirements
10 or standards to establish EALs.”⁹ The Department’s procedures to develop and update EALs are
11 clearly described in the supporting technical document “Volume 1: User’s Guide” of *Evaluation*
12 *of Environmental Hazards at Sites with Contaminated Soil and Groundwater – Hawaii Edition*.¹⁰
13 “Volume 2: Background Documentation for the Development of Tier 1 Environmental Action
14 Levels” provides detailed information on methods used to derive the EALs and associated EPA
15 and other references. The Department currently sets and modifies EALs for the purpose of
16 protecting human health and the environment, based on scientific and documented procedures.
17 The formal chapter 91 requirements proposed by this measure are unnecessary and could hamper
18 the Department’s ability to rapidly update EALs when new toxicity information becomes
19 available or when circumstances arise that are different from those assumed during the
20 development of the EALs, such as in an environmental emergency. A petition process could

⁷ Page 2 of this PDF (page not numbered): <https://health.hawaii.gov/heer/files/2019/11/Volume-1-HDOH-2017.pdf>

⁸ For example: Federal agencies including EPA, Army Corps of Engineers, Department of Energy, US Geological Survey, Agency for Toxic Substances and Disease Registry, National Institute of Environmental Health Sciences, National Library of Medicine, National Oceanic and Atmospheric Administration, and Oak Ridge National Laboratories; international agencies including Australia Cooperative Research Centre for Contamination Assessment and Remediation of the Environment, Canadian Council of Ministers of the Environment, Chinese Academy of Sciences, Danish Ministry of Environment, Denmark Environmental Protection Agency, European Chemical Agency, Ontario Ministry of Environment, and Netherlands National Institute for Public Health and the Environment; state agencies including California Environmental Protection Agency, Indiana Department of Environmental Management, Massachusetts Department of Environmental Protection, Michigan Department of Environmental Quality, Minnesota Department of Health, New Jersey Department of Health, Oregon Department of Environmental Quality, Texas Commission on Environmental Quality, Vermont Department of Environmental Conservation, Washington Department of Ecology, and Wisconsin Department of Health Services; and others including the Interstate Technical and Regulatory Council.

⁹ Page 1 lines 10 to 11

¹⁰ <https://health.hawaii.gov/heer/files/2019/11/Volume-1-HDOH-2017.pdf>

1 result in intentional or unintentional manipulation of EALs by industry, political, or other
2 interests in a manner that is not adequately protective of human health and the environment. The
3 procedural requirements this measure proposes to place on DOH would negatively impact
4 DOH's ability to protect public health and environment and, for this reason, we respectfully
5 request that it be held.

6 **Offered Amendments:** None.

7 Thank you for the opportunity to testify.

**BOARD OF WATER SUPPLY
KA 'OIHANA WAI
CITY AND COUNTY OF HONOLULU**

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February 13, 2024

The Honorable Angus McKelvey, Chair
and Members
Senate Committee on Government Operations

The Honorable Mike Gabbard, Chair
and Members
Senate Committee on Agriculture and Environment
Hawaii State Capitol, Room 225
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair McKelvey, Chair Gabbard and Members:

Subject: Senate Bill 2418: Relating to Toxic Chemicals

The Honolulu Board of Water Supply (BWS) supports the intent of Senate Bill (SB) 2418.

Stakeholders and the public have a right to know all relevant information about environmental toxins and should have the opportunity to provide feedback when a state agency establishes new or revises existing environmental action levels, thresholds, or regulatory standards. During this process, state agencies should explain in a public forum the science and rationale that clearly demonstrates the proposed new action level or the raising or lowering of an existing one is protective of human health and the environment. Scientific expertise abounds in the community, and we encourage state agencies to include this resource in the standards-making process.

Thank you for the opportunity to testify supporting the intent of SB 2418.

Very truly yours,



ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer



Environmental Caucus of The Democratic Party of Hawai'i

February 13, 2024

To: Senate Committee on Agriculture and Environment
Hon. Mike Gabbard, Chair
Hon. Herbert "Tim" Richards, III, Vice Chair

Senate Committee on Government Operations
Hon. Angus L.K. McKelvey, Chair
Hon. Mike Gabbard, Vice Chair

Re: SB 2418 relating to TOXIC CHEMICALS.

Hearing: Tuesday, February 13, 2024, 3:00 p.m., Room 225 & videoconference

Position: Strong support

Aloha, Chairs Gabbard and McKelvey, Vice Chairs Richards and Gabbard, and Members of the Committee on Agriculture and Environment and Committee on Government Operations:

The Environmental Caucus of the Democratic Party of Hawai'i, which has over 7,500 active members statewide, strongly supports SB 2418.

SB 2418 requires state agencies that monitor environmental toxins and pollutants to establish environmental action levels (EALs) to ensure the preservation of a safe environment. It prohibits modifications to EALs unless certain procedural requirements are met. It allows any State resident to petition for modifications to an established EAL.

When the Hawaii Department of Health (DOH) intends to increase its EALs, holding a public hearing would serve several important purposes. (1) Public hearings provide transparency and accountability. It provides an opportunity for the DOH to communicate openly with the community and residents, stakeholders, and experts can voice their concerns, ask questions, and seek clarification. In this way, transparency ensures that decisions are made with the necessary public input. (2) EAL changes can directly impact residents, businesses, and the environment. Public hearings allow affected individuals to express their views, share experiences, and provide valuable insight. This community engagement would foster a sense of ownership and collaboration. (3) Public hearings gather much needed diverse perspectives and hearing form experts, scientists, and community members will help the DOH make well-informed decisions and ensures that EAL adjustments consider a broad range of factors. (4) EAL changes affect human health, water quality, and ecosystems. Thus, public hearings would allow the DOH to assess potential impacts and address any unintended consequences and it would give residents the ability to share information about the health effects that they have personally experienced. (5) Public hearings fulfill legal requirements for transparency and public participation and

demonstrate that the DOH is following due process and considering public input. (5) Disagreements or concerns can arise during EAL adjustments and public hearings would provide a platform to address these conflicts, find common ground, and help to build consensus. (6) The DOH is a public agency funded by taxpayers. Public hearings ensure that decisions align with the best interests of the community.

Public hearings are essential for democratic decision-making, community involvement, and ensuring that EAL adjustments are well-founded and responsive to the needs of the public.

In addition, it is important that Hawaii residents have the right to petition the DOH for any modifications to established DOH EALs for several reasons. (1) Residents have firsthand knowledge of local conditions and potential health risks; petitioning would allow residents to advocate for protective EALs that align with the community's well-being. (2) EALs affect everyone living near contaminated sites; therefore, the residents' voices would ensure that the DOH EALs consider local context, including sensitive ecosystems and cultural practices. (3) Residents can also provide scientific evidence or personal experiences related to health effects and petitions would bolster the case for evidence-based EAL adjustments. (4) Petitions would hold the DOH accountable and transparency ensures that EAL changes are made with public input and are well-founded. (5) Residents will contribute to sustainable practices by advocating for protective EALs as EAL modifications impact Hawaii's unique environment. (6) EALs affect emergency response facilities, schools, and neighborhoods and residents' petitions will support resilient infrastructure. (7) Petitions fulfill legal requirements for public participation as they demonstrate that EAL adjustments are made with community input.

Petitions empower residents to shape EALs, protect health and safeguard Hawaii's environment.

I also serve as an elected member of the Community Representation Initiative (CRI). The CRI was formed under the authority of the 2023 EPA Consent Order with the U.S. Department of the Navy and the Defense Logistics Agency to allow transparency between the community and the EPA, Navy, and DLA.

As a CRI member, I see where the DOH EALs on TPH-G and TPH-O is set at 266 ppb yet I see evidence of residents suffering from Red Hill jet fuel poisoning from the Navy water lines at 50 ppb – 75 ppb. These discrepancies allow the Navy and DLA to argue that their rapid water tests are returning within the DOH's EALs which causes the Navy and DLA to "ignore" any form of remediation or further investigation while residents suffer body rashes and other symptoms associated with fuel ingestion by mouth and by skin. This is inappropriate as the system lacks a mechanism in which residents can seek redress or in which the DOH can be made to move toward enforcement for public health and the health of the environment. The residents remain powerless while suffering for the last two to three years since the November 2021 release of jet fuel from Red Hill.

Requiring state agencies that monitor environmental toxins and pollutants to establish environmental action levels (EALs) ensures the preservation of a safe environment. Prohibiting modifications to EALs unless certain procedural requirements are met, ensures that public notice, discussion, collaboration, and transparency are met before any increases in the EALs can take place. This measure also allows any State resident to petition for modifications to an established

EAL, these are all significant steps necessary in safeguarding Hawaii's unique environment and the well-being of its residents.

Thank you for the opportunity to testify on this very important measure.

Melodie Adyja legislativepriorities@gmail.com

Co-Chair,

Environmental Caucus of the
Democratic Party of Hawai'i



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P.O. Box 23404
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968233

February 11, 2024

TO: Chairs Gabbard & McKelveyi and Members of the AEN/GVO Committees

RE: SB 2418 Related to Toxic Chemicals

Support for hearing on February 13

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support the intent of this bill as it would require state agencies that monitor environmental toxins and pollutants to establish environmental action levels (EALs) to ensure the preservation of a safe environment. It would prohibit modifications to EALs unless certain procedural requirements are met and allow any State resident to petition for modifications to an established EAL. These safeguards will better protect our environment and therefore health. We expect there will be enabling amendments to specify HRS chapters to be amended

Thank you for your favorable consideration.

Sincerely,

John Bickel, President

SB-2418

Submitted on: 2/6/2024 6:40:58 PM

Testimony for AEN on 2/13/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

In order to protect the health of everyone in Hawai'i we need strong regulations regarding toxic chemicals. Please support this important bill. Mahalo.

SB-2418

Submitted on: 2/10/2024 10:00:33 AM

Testimony for AEN on 2/13/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacqueline S. Ambrose	Individual	Support	Written Testimony Only

Comments:

Aloha,

RELATED TO TOXIC CHEMICALS.

Requires state agencies that monitor environmental toxins and pollutants to establish environmental action levels (EALs) to ensure the preservation of a safe environment. Prohibits modifications to EALs unless certain procedural requirements are met. Allows any State resident to petition for modifications to an established EAL

SB-2418

Submitted on: 2/10/2024 11:14:24 PM

Testimony for AEN on 2/13/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sherry Pollack	Individual	Support	Written Testimony Only

Comments:

I strongly support SB2418.

The public has a right to know all relevant information about environmental toxins, and it is the responsibility of state agencies charged with monitoring and remediating environmental toxins to ensure that the public receives all relevant information about the presence of environmental toxins in a timely manner.

To that end, SB2418 would establish procedural and substantive requirements for the establishment and revisions of environmental action levels by state agencies.

Please pass this important measure.

SB-2418

Submitted on: 2/12/2024 11:34:29 PM

Testimony for AEN on 2/13/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Susan Pcola_Davis	Individual	Oppose	Written Testimony Only

Comments:

This is the "draft" of a bill that needs more work. For instance,

1. There are are procedural requirements or standards to establish EALs for various toxins that are monitored, or to revise, upward or downward. EALs for toxins and pollutants that are known and have nationally established EALs. Not so for JET FUEL!
2. EALs have been raised by state agencies. DOH raised EALs in 2017 for Petroleum Hydrocarbons and Total Petroleum Hydrocarbons (TPH) i.e. JET FUEL AT RED HILL
3. Throughiut the Red Hill Leak DISASTER and ongoing the DOH used site specific EALs. Starting with 309, then 211 finally 200 during the initial spill and sampling.
4. Current EAL for TPH is 266 ug/l. Any findings lower than that means the water is safe EVEN IF IT IS 265 ug/l.
5. This has been done without clear publication of the scientific justification.
6. Exactky how would a resident of the State petition an agency that has established EALs or similar triggering mechanism for modification of one or more EALs or similar triggering mechanisms? It is doubtful the public could effect a change.
7. These actions and continued negligence by the DOH pose serious health risks to the environment and the human population of this State and must be based on the severity of risks to human health and the environment, as well as the probability of adverse effects.

808-387-3961