

BOARD OF WATER SUPPLY of the COUNTY OF KAUA'I

SPECIAL BOARD MEETING

**Second Floor, Microbiology Lab Bldg
Kaua'i County Department of Water
4398 Pua Loke Street, Lihu'e, Kaua'i, Hawai'i 96766**

TUESDAY, AUGUST 28, 2012

8:00 a.m.

Or soon thereafter

- A. CALL TO ORDER
- B. ROLL CALL
- C. ACCEPTANCE OF AGENDA
- D. NEW BUSINESS
 - 1. Board Approval to join as class member in the class action case: City of Greenville v. Syngenta Crop Protection, Inc., and Syngenta AG, Case No. 3:10-cv-00188- JPG-PMF regarding Atrazine in the water.
- E. ADJOURNMENT

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

August 28, 2012

Re: Board Approval to join as class member in the class action case: City of Greenville v. Syngenta Crop Protection, Inc., and Syngenta AG, Case No. 3:10-cv-00188- JPG-PMF regarding Atrazine in the water

RECOMMENDATION: It is recommended that the Board submit a claim in the subject lawsuit and apply for and accept settlement funds.

FUNDING:

No funding is required. Approval is requested to submit for and accept funds anticipated to be in the \$5,000 - \$10,000 range.

BACKGROUND:

About Atrazine:

Atrazine is a compound that was used extensively in the cultivation of sugar cane on Kauai and it has been detected in some of the Department's ground water sources. The levels detected were well below the MCL (3 ppb) set by the EPA under the SDWA.

The attached Table No. 1 – Historic Record of Atrazine Detections lists the detections from the year 2000 till the present. This data was collected under the Phase II, V monitoring requirement. Samples were collected every three years at each source.

Our last detection of atrazine was in 2004 at the Garlinghouse Tunnel in Lihue. The most likely reason the atrazine detections have ceased is because sugar cane is no longer heavily cultivated on Kauai. As stated earlier, the amounts of atrazine found in our sources were far below the MCL of 3 ppb. Attached is additional information on atrazine as provided by the EPA.

Summary of Class Action Settlement:

The Department has become aware of the class action lawsuit, City of Greenville, Illinois, et al. v. Syngenta, in which the Department may qualify for settlement funds. The Department may qualify since historical records show traces of the compound atrazine in finished water.

The lawsuit claims that Syngenta knew atrazine would enter drinking water supplies and requests that Syngenta pay the cost to remove it. Syngenta denies it did anything wrong. The Court did not decide which side was right, but both sides agreed to the settlement to resolve the case.

Syngenta agreed to create \$105 million fund to be divided among all Class Members after paying court-approved attorneys' fees and costs and expenses. The Department's share of the fund will depend on: the concentration, frequency and how long ago atrazine was detected in the water; the size of the population we serve; and the number of valid claims submitted.

The Court will hold a hearing in this case on October 22, 2012 to consider approving the settlement. If the settlement is approved, it will release Syngenta and others from all claims that were asserted or could have been asserted in the litigation for the next ten years. The Department does not have to appear at the hearing.

Legal Implications:

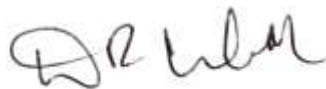
If the Board agrees to become a class member in the above stated case, the Board will also be releasing all claims that were brought or could have been brought in this lawsuit against Syngenta and other such entities. In addition, all of the orders issued from Court will apply to the Board and legally bind the Board. Essentially, the Board will be barred from suing, continuing to sue, or becoming a party of any other lawsuit regarding the presence of atrazine in the drinking water or water sources for the next 10 years. This does not bar the Board from being able to bring any claim that arises from future point source contamination.

If the Board does nothing, the Board will receive no payment and will not be able to start, continue, or be a part of any other lawsuit against Syngenta and other Released Parties about the legal issues in this case.

If the Board excludes itself, then the Board receives no payment but maintains the ability to bring or continue a lawsuit against Syngenta and other entities regarding the claims made in this lawsuit.

Because the DOW has never had actionable levels of atrazine in the water and because the DOW has had no detectable atrazine levels in several years, the Deputy County Attorney believes that joining in the class settlement will be the most beneficial course of action for the Board.

Respectfully submitted,



David R. Craddick, P.E., C.E.M.
Manager and Chief Engineer

Attachments: Atrazine Background
 Table No. 1 – Historic Record of Atrazine Detections

Atrazine Background Information from the EPA

Interpreting the Atrazine Drinking Water Monitoring Data

An EPA level of concern is specific to a particular issue (human health, for example) and an exposure period. For example, a long-term (or chronic) level of exposure would be associated with an exposure over many months or years, whereas an intermediate level of exposure would be looking at potential health effects over a three-month period. Through the atrazine monitoring programs in place, EPA can evaluate all these potential exposures.

Atrazine potential risk and how it is evaluated

Change in hormone levels is the most sensitive health effect observed in an extensive battery of atrazine toxicity tests. In other words, if the Agency's standard is protective of hormonal effects, it will protect against all other effects that occur at higher levels. The Agency's 2003 risk assessment supporting the re-registration of atrazine incorporates standard safety factors to ensure protection of public health, as well as an additional safety factor to ensure further protection for children.

As a result, EPA's risk assessment includes a 300-fold margin of safety to help ensure that an exposure will not affect hormone levels, and a 1000-fold margin of safety to help protect against long-term or chronic effects. In other words, the exposure that the Agency allows is at least 300 to 1000 times more protective than the level where the Agency saw no adverse effects in the most sensitive animal species tested. EPA applies these additional safety factors as a precaution to protect the public health of all consumers in the United States.

Based on this risk analysis, the Agency determined that concentrations of atrazine and its degradates in raw water below an average of 37.5 ppb over a 90-day period ensures protection of pregnant women and all others, and concentrations of atrazine in finished water that do not exceed 3 ppb as an annual average to protect consumers from longer term chronic effects. The following paragraphs describe the short-, intermediate-, and long-term exposure levels that EPA has evaluated and found to be protective of human health.

Short-term exposure - Based on the Agency's screening-level assessment conducted for the Atrazine Interim Reregistration Eligibility Decision (IREED) from 2003, one-day concentrations less than the Drinking Water Level of Concern (DWLOC) of 298 ppb do not exceed the Agency's level of concern for acute effects. In other words, occasional readings of atrazine that are below 298 ppb in water treated by municipalities do not pose a risk to human health.

Intermediate-term exposure - The Office of Pesticide Programs' level of concern for drinking water is an intermediate level of exposure where the level is exceeded if, in a 90-day rolling average, the concentration exceeds 37.5 ppb for atrazine and its degradates in raw water. After seven years of monitoring, although some amount of atrazine may be detected in community water systems, none of the CWS in the monitoring program have exceeded the 37.5 ppb level of concern as a 90-day rolling average in raw water. This suggests that the more stringent restrictions and use practices required by the Agency in 2003 are working to reduce the amount of atrazine reaching water bodies, thereby protecting public health. If any CWS were to exceed

this level twice within a five-year period, EPA would prohibit atrazine use in the watershed associated with the CWS.

Long-term exposure - Under the [Safe Drinking Water Act \(SDWA\)](#), the atrazine Maximum Contaminant Level (MCL) is intended to prevent longer-term, or chronic, health concerns from occurring even after years of exposure and is calculated against a running average from four quarterly samples. An occasional peak concentration above 3 ppb is, therefore, not cause for concern. Rather, a long-term, consistent value above a yearly average of 3 ppb would be of concern. The MCL is designed to protect all population subgroups.

Table No. 1 – Historic Record of Atrazine Detections

WATER SYSTEM ID	WATER SYSTEM	FACILITY NAME	FACILITY NUMBER	ANALYTE NAME	COLLECTED ON	CONCENTRATION	UNIT OF MEASURE	MCL	UNIT OF MEASURE
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL CHLORINATOR	TP070	ATRAZINE	11/15/2000	0.059	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL CHLORINATOR	TP070	ATRAZINE	5/23/2001	< 0.050000000	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL CHLORINATOR	TP070	ATRAZINE	5/25/2004	0.056	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL CHLORINATOR	TP070	ATRAZINE	3/28/2005	< 0.050000000	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	11/15/2000	0.078	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	12/26/2000	0.063	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	3/14/2001	0.055	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	5/23/2001	0.078	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	6/4/2001	0.074	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	10/17/2001	0.05	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	2/21/2002	0.12	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	5/20/2002	0.12	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	7/23/2002	0.11	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	10/31/2002	0.19	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA C	WL033	ATRAZINE	11/24/2003	0.081	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA G	WL035	ATRAZINE	11/15/2000	< 0.050000000	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA G	WL035	ATRAZINE	5/23/2001	0.081	UG/L	3	UG/L
HI0000400	LIHUE-KAPAA	KILOHANA G	WL035	ATRAZINE	6/4/2001	< 0.050000000	UG/L	3	UG/L

Historic Record of Atrazine Detections

SYSTEM ID	SYSTEM	FACILITY	ANALYTE	DATE	UNITS	VALUE	LAB
HI0000400	LIHUE-KAPAA	KILOHANA G	ATRAZINE	7/10/1996	UG/L	0.070	DOH
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL	ATRAZINE	7/10/1996	UG/L	0.080	DOH
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL	ATRAZINE	8/22/1996	UG/L	0.110	DOH
HI0000400	LIHUE-KAPAA	KILOHANA G	ATRAZINE	9/11/1996	UG/L	0.090	DOH
HI0000400	LIHUE-KAPAA	KILOHANA G	ATRAZINE	10/16/1996	UG/L	0.050	DOH
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL	ATRAZINE	2/19/1997	UG/L	0.070	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C+G COMP	ATRAZINE	7/15/1998	UG/L	0.080	MWH
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL	ATRAZINE	7/15/1998	UG/L	0.060	MWH
HI0000400	LIHUE-KAPAA	KILOHANA C+G COMP	ATRAZINE	10/7/1998	UG/L	0.090	MWH
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL	ATRAZINE	10/7/1998	UG/L	0.050	DOH
HI0000400	LIHUE-KAPAA	KILOHANA G	ATRAZINE	10/7/1998	UG/L	0.080	DOH
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL	ATRAZINE	11/15/2000	UG/L	0.059	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	11/15/2000	UG/L	0.078	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	12/26/2000	UG/L	0.063	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	3/14/2001	UG/L	0.055	DOH
HI0000400	LIHUE-KAPAA	KILOHANA G	ATRAZINE	5/23/2001	UG/L	0.081	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	5/23/2001	UG/L	0.078	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	6/4/2001	UG/L	0.074	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	10/17/2001	UG/L	0.050	DOH
HI0000404	HANAPEPE-ELEELE	HANAPEPE A+B COMP	ATRAZINE	12/26/2001	UG/L	0.100	MWH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	2/21/2002	UG/L	0.120	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	5/20/2002	UG/L	0.120	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	7/23/2002	UG/L	0.110	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	10/31/2002	UG/L	0.190	DOH
HI0000400	LIHUE-KAPAA	KILOHANA C	ATRAZINE	11/24/2003	UG/L	0.081	DOH
HI0000400	LIHUE-KAPAA	GARLINGHOUSE TUNNEL	ATRAZINE	5/25/2004	UG/L	0.056	DOH

Table No. 1a- Historic Record of Atrazine Detections

Received for the Record August 28, 2012 Special Board Meeting