

The Regents of the University of California

COMPLIANCE AND AUDIT COMMITTEE

January 23, 2020

The Compliance and Audit Committee met on the above date at the UCSF–Mission Bay Conference Center, San Francisco.

Members Present: Regents Anguiano, Butler, Cohen, Elliott, Makarechian, Park, Sures, Um, and Weddle; Advisory member Bhavnani; Chancellors Christ, Gillman, Hawgood, Larive, and Yang; Staff Advisor Klimow

In attendance: Secretary and Chief of Staff Shaw, General Counsel Robinson, Chief Compliance and Audit Officer Bustamante, Executive Vice President and Chief Operating Officer Nava, Vice Presidents Brown and Leasure, Acting Vice President Lloyd, and Recording Secretary Johns

The meeting convened at 10:25 a.m. with Committee Chair Elliott presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of November 13, 2019 were approved.

2. **UNIVERSITY OF CALIFORNIA HERBICIDE TASK FORCE REPORT AND RECOMMENDATIONS**

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Executive Director of Environment, Health and Safety Ken Smith reported that the UC Herbicide Task Force had completed and submitted its report, which contained 11 recommendations. The Task Force had reached consensus on all but one of its recommendations; in that instance, two Task Force members expressed a minority opinion. This concerned the question of which entity should be considered the authoritative body for toxicological and risk information on pesticides. President Napolitano had reviewed the report, consulted with the chancellors and the Task Force members, and accepted all the recommendations. UC staff would now implement them. The key recommendation was for the creation of a systemwide Integrated Pest Management (IPM) policy.

Jim Farrar, Director of the UC Agriculture and Natural Resources (ANR) statewide IPM program, explained that the mission of this program is to translate UC science into practical information and tools that all Californians can use to manage pests, while protecting human health, the environment, and the economy. An IPM plan consists of accurate pest identification, integration of tactics to prevent pest problems, monitoring of pest populations and pest damage, selection and use of controls that are effective and pose the

lowest risk, and evaluation of the results of pest control activities. Pesticides are part of IPM plans, but are used based on pest monitoring data. If pesticides are used, the specific pesticide selected and the manner of application are chosen to pose the lowest risk possible.

Mr. Smith then commented that the Task Force had found that, at present, there was no systemwide coordination or communication about UC's pesticide use. To address this, the Task Force principally recommended the creation of a systemwide IPM policy. The policy in turn would require that UC create a Systemwide Pesticide Oversight Committee and that each UC location establish its own IPM committee. The policy would apply not only to herbicides but to all pesticides. The policy would require that UC locations use a written IPM approach. The Task Force recommended that UC record all pesticide use systemwide. To accomplish this, the recommendation calls for the development of a systemwide pesticide use authorization software. This software would enable UC to verify the qualification, training, and personal protective equipment of applicators. It would allow UC to provide pre-use notifications to communities that are affected and to perform the required post-use reporting. The software would also allow UC to document its use trends in pesticide application across all UC locations, and much more efficiently than at present.

The Systemwide Pesticide Oversight Committee would maintain a list of high-hazard pesticides. This "red" category would be determined with reference to State, federal, and international authorities. The Systemwide Pesticide Oversight Committee would also be responsible for providing systemwide coordination and guidance to local IPM committees. Each IPM committee would be responsible for reviewing and, if justified, for approving the use of high-hazard pesticides in the red category, including glyphosate and many other pesticides, except for research uses exempted by the policy. The local IPM committee would have to weigh the overall risks presented by the pest against the potential risks of the pest control method selected. If a chemical pesticide were chosen, the local committee would have to approve this based on a strong justification of necessity and the lack of alternative solutions. Mr. Smith anticipated that clear guidance to local IPM committees would be provided in policy. The Task Force envisioned that the Systemwide Pesticide Oversight Committee would divide pesticides into three categories of high, medium, and low hazard. The highest red category, already mentioned, would require stricter oversight and justification for use.

Ultimately, the enactment of these recommendations would represent a paradigm shift for authorizing pesticide use at UC. Currently, the decision as to when, where, and how to apply pesticides, and which pesticide to use, was generally left to one individual, the applicator applying the pesticide. In the future, under these recommendations, use of the high-hazard, red category of pesticides would only be possible when reviewed and approved by the local IPM committee.

Mr. Smith then compared the current state of pesticide use at UC with the future planned state. Currently there was a suspension of only glyphosate, but in the future there would be a prohibition on the use of glyphosate and other highly toxic pesticides. Glyphosate use was currently allowed if reviewed and permitted by the Herbicide Task Force; in the future this use would have to be approved by the local IPM committee. Currently, there were four

categorical exemptions: for research, fuel load management, native habitat restoration, and agriculture. In the future, there would be only one categorical exemption, for research. The research exemption would include most of UC's agricultural uses of pesticides, since these agricultural uses are primarily in the context of research. The Task Force did not envision the research exemption only for wet laboratory research. The policy would require that each location follow the IPM practices. The University would go beyond State law in requiring that all of its pesticide applicators become State-certified. Currently, the State permits an individual to apply pesticides if he or she works under the direct supervision of someone who is certified. The Task Force felt it important that all UC applicators obtain this certification.

Mr. Smith presented a timeline for implementation of the recommendations. An important first task would be to provide training to UC applicators so that they can qualify and pass an examination for State certification or licensure. The University hoped to enact the policy on IPM by fall 2020.

Regent Butler asked who the University's applicators were in demographic terms. Mr. Smith responded that these employees come from a number of different departments; they might be staff in groundskeeping, gardening, or housing services. Most UC herbicide applications are carried out in an outdoor environment, but since this policy would also cover pesticides, this could include applications inside buildings.

Regent Butler asked about the general length of service of these employees. Mr. Smith responded that he did not know this.

Regent Butler commented that there might be groundskeeping employees who had worked for the University for ten to 15 years who might not easily obtain State certification. She stressed that she did not wish to change any standard, but expressed concern about the possible displacement of employees who have worked at UC for a long time but who might not have a natural proclivity for testing to demonstrate their competence.

Committee Chair Elliott asked if the training would be for employees applying pesticides in the red, high-hazard category. He anticipated that the University would aim to use fewer of these pesticides and more of those in the lower-hazard, yellow and green categories. He asked if application of these lower-hazard pesticides would not require this training. Mr. Smith responded that all pesticides in California must be applied, in the University's case, by an individual with certain qualifications and State licensure. This individual is allowed to supervise others who are not trained to apply that pesticide. The concern of the Task Force was that an appropriate degree of supervision might not always have been in place. To address this, instead of creating a separate training program for these individuals, it would be feasible to use existing ANR training and preparation programs for pesticide applicators to train UC employees to ensure that they can obtain State licensure. This would be the case for any pesticides, whether of low or high toxicity.

Regent Butler clarified her concern. No doubt the University would provide this training, but her concern was that State testing might not be the fairest way to demonstrate

competence. If the University moved to a requirement that all applicators pass a State test, this might displace some employees who are not best able to demonstrate their competence through State testing. If these employees were represented by a union, creating this mandate might cause difficulties. Acting Vice President Lloyd responded that these would be represented employees. There was union representation on the Task Force, and any terms or agreements affecting working conditions would have to be bargained.

Regent Butler asked about the fact that pesticide use would be approved only by the local IPM committee. This seemed something of a contradiction, since the University was making an effort to establish a systemwide policy. She asked how the University would ensure that it was tracking and monitoring these exceptions in a way consistent with systemwide policy. Mr. Smith responded that the pesticide use authorization software would be intended to record all pesticide uses at UC, whether applied by UC employees directly or by a vendor on behalf of the University. By tracking all pesticide uses, UC would see which red category pesticides had been approved. The Task Force anticipated that the Systemwide Pesticide Oversight Committee, as part of its oversight role, would periodically review these uses to ensure that there had not been divergence from policy or that one location was not using a much higher amount of red category pesticides than others. Because the University was moving from the suspension of one pesticide to a complete ban on a whole family of pesticides, the Task Force felt that the ultimate decision about use of one of these pesticides would be best weighed by a local IPM committee, which would be more aware of the concerns of that location and the unique risks that a pest might be presenting.

Committee Chair Elliott asked if a decision by a local IPM committee meant a decision about a specific use, in a specific case, for a specific time period. Mr. Smith responded in the affirmative. These decisions would be time-bound, location-bound, and limited to a specific pest and pesticide. Senior Counsel Barton Lounsbury added that the systemwide policy would set stringent criteria for the local IPM committees. Not all authority would be devolved to the local level. Compliance with the systemwide policy would be tracked with the new software.

Committee Chair Elliott recalled that there had been a member of the Task Force with what the Compliance and Audit Committee felt was a conflict of interest. This situation had been remedied. He asked if there would be a requirement that local IPM committees avoid such conflicts of interest. Mr. Lounsbury stated that this was an important point and one that should be considered for inclusion in the systemwide policy. Committee Chair Elliott asked the University to do so, and to ensure that there were no individuals with conflicts of interest on the campus IPM committees.

Regent Weddle referred to concerns expressed by speakers during the public comment period about membership of the systemwide and local IPM committees, specifically that these committees include public health experts and students. Mr. Smith responded that one of the recommendations was that the existing Herbicide Task Force serve as the inaugural systemwide committee. The Task Force was a representative group with members with expertise in public health, weed science, IPM, and environmental health and safety. This

inaugural committee would be charged with creating the policy. The Task Force had not discussed in detail the future membership of the systemwide and local committees, but held the view that committee members should be a diverse group of experts.

Regent Um asked if the classification of pesticides by hazard level into red, yellow, and green categories was a new procedure proposed by the Task Force. Mr. Lounsbury responded that, while this classification was new for the University, there were existing models for it in California and the nation. As the Task Force recommended, UC would likely at first adopt the model used by the City and County of San Francisco. This model featured the red, yellow, and green categories. This model was based on State, federal, and international toxicology authorities. UC would refer to these same sources of authority.

Regent Um asked if the University was not already subject to this system of pesticide hazard level rankings. Mr. Lounsbury responded that the University currently did not need to follow any pesticide hazard rankings. Various jurisdictions have implemented such rankings voluntarily, and UC would do so voluntarily as well. There were increasing restrictions established by the State and federal government on the use of pesticides and requirements for personal protective equipment, based on the hazards of given pesticides. Currently, there was no system of hazard classification mandated by the State or federal government.

Committee Chair Elliott referred to the earlier statement that the University would be moving from four categorical exemptions to one. Based on the information provided, it seemed more accurate to say that there would be two exemptions, since the “agriculture” exemption would be subsumed under the “research” exemption. It might be appropriate to list agriculture as a separate categorical exemption, in the interest of transparency. He asked about the magnitude of the exemption for agricultural use, and if most pesticide use at UC is in agriculture. Mr. Farrar responded that most UC pesticide use is in agriculture. The reason that research and agriculture had been identified as distinct categorical exemptions before is that some agricultural production activities are not linked to research. Under the new policy, the exemption would apply only in cases where a pesticide is used for research purposes and the University is carrying out experiments or trying to mimic a standard industry practice.

Committee Chair Elliott concluded that some agricultural uses were encompassed in the research category, but not all. This distinction could be made clearer, and there could be more clarity about how much agricultural activity would be included in the research exemption.

3. **REPORT ON INDEPENDENT ASSESSMENT OF AUDIT IMPLEMENTATION STATUS**

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Kurt Sjoberg of Sjoberg Evashenk Consulting recalled that his firm had been engaged to oversee the Office of the President's (UCOP's) implementation of 33 recommendations made by the State Auditor in connection with its audit of UCOP administrative expenditures, to be implemented over three successive years.

Committee Chair Elliott asked if UCOP was behind on implementation of any recommendations, in particular with respect to the April 2020 deadline. Mr. Sjoberg responded that the State Auditor had accepted 18 of the 21 recommendations posed for the first two years and considered three as partially implemented, with additional work remaining to be done. One of these recommendations concerned moving the Regents' approval of the UCOP budget to April, rather than approving the budget in May. There had been discussion of this point. Another recommendation concerned the alignment of UCOP salaries with State salaries. In this case, the Regents and President Napolitano had agreed on UCOP salary processes. The third recommendation was currently being negotiated and related to the presentation of information on UCOP reserves. For all three recommendations, UCOP and Sjoberg Evashenk believed that the work accomplished to date fulfilled the scope and objectives of the State Auditor's recommendations.

Regent Makarechian asked what was left for UCOP to do with regard to budget approval. Mr. Sjoberg responded that the State Auditor's recommendations were to be implemented by late April, and one of the recommendations was that the UCOP budget be approved by then. Committee Chair Elliott remarked that the State Auditor wished UCOP to have its budget approved earlier than the University's current schedule would allow. Regent Makarechian observed that this could only occur if the Regents changed their meeting calendar. Committee Chair Elliott explained that, in the State Auditor's view, approval of the UCOP budget in April would assist the State Legislature. He anticipated that the University would not come to an agreement with the State Auditor on this point.

Regent Makarechian asked what was left to do for the recommendation on UCOP reserves. These had been presented in detail in the prior year budget. Mr. Sjoberg explained that this had to do with whether the detailed presentation is implemented in the future. The State Auditor would decide by April when and if to change the assessment of this recommendation from partially implemented to being fully implemented. There were no further controls that the University could exert on this.

In response to another question by Regent Makarechian, Mr. Sjoberg explained that, beyond these three recommendations, there were 12 due in April 2020. The State Auditor already considered seven of those 12 completed, so five remained to be implemented by April. A number of them related to prior recommendations. Some might never be able to be fulfilled due to the position taken by the State Auditor.

Committee Chair Elliott anticipated that, by the April deadline, UCOP would submit documents and engage in conversations on its progress toward meeting these goals. The State Auditor would make an assessment, and by summer the University should have a better sense of the State Auditor's position. Because of the recommendation regarding

UCOP salaries, the State Auditor might view a number of other recommendations as not being completed.

Regent Makarechian asked if this would become a saga continuing into future years. Committee Chair Elliott responded that there was a finite time frame for the State Auditor's analysis. UCOP and the State Auditor might be able to agree to disagree, or there might be actions UCOP would have to take.

Regent Makarechian asked what the University was seeking from Sjoberg Evashenk from this point forward. Committee Chair Elliott explained that the University was not asking Sjoberg Evashenk to do anything other than what it had done so far, which was to provide its own assessment. When UCOP submits items as completed to the State Auditor, these consultants serve as independent eyes to determine if UCOP has complied with the State Auditor's recommendations. Mr. Sjoberg added that, as a matter of policy, the State Auditor traditionally uses a one-year cycle to determine implementation of a recommendation, with reports by the entity being audited during this period at 60 days, six months, and one year. This audit of UCOP was based on a three-year cycle rather than a one-year cycle. Upon the end of the third year, this would not continue unless someone were to call for another audit.

The meeting adjourned at 11:00 a.m.

Attest:

Secretary and Chief of Staff