

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

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In the Matter of the) FILE NO. 2008/SUP-2 (RY)
Application of) AND 86/SUP-5
)
DEPARTMENT OF ENVIRONMENTAL)
SERVICES, CITY AND COUNTY)
OF HONOLULU)
)
For a New Special Use)
Permit to supersede)
Existing Special Use Permit)
to allow a 92.5-acre)
Expansion and Time Extension)
For Waimanalo Gulch Sanitary)
Landfill, Waimanalo Gulch,)
Oahu, Hawaii, Tax Map Key)
Nos. (1)9-2-003:072 and 073)

ORIGINAL

2009 AUG 11 P 4:48
LAND USE COMMISSION
STATE OF HAWAII

TRANSCRIPT OF HEARING

held on Wednesday, July 1, 2009, at 9:05 a.m., at the First
Floor Committee Meeting Room, Kapolei Hale, 1000 Uluohia
Street, Kapolei, Hawaii,

APPEARANCES: KARIN L. HOLMA, ESQ.
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GARY Y. TAKEUCHI, ESQ.
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Deputies Corporation Counsel
City and County of Honolulu
Honolulu, Hawaii 96813

EXHIBIT K9
2622

EXHIBIT 53

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1 COMMITTEE MEMBERS PRESENT:

2

3

4 James C. Pacopac
5 Kerry M. Komatsubara
6 Vicki Gaynor
7 Rodney Kim
8 Andrew M. Jamila, Junior
9 Beadie K. Dawson
10 Harold J. Dias, Junior

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1 WEDNESDAY, JULY 1, 2009

9:05 A.M.

2 -oo0oo-

3 MS. HOLMA: Good morning, everyone. This is day
4 number three of the contested case hearing.

5 Counsel can make appearances, please.

6 MR. TAKEUCHI: Good morning.

7 Gary Takeuchi, Deputy Corporation Counsel, for the
8 applicant, Department of Environmental Services, City and
9 County of Honolulu. And with me is Deputy Corporation Counsel
10 Jesse Souki.

11 MS. HANABUSA: Good morning.

12 Colleen Hanabusa on behalf of myself and Ko Olina
13 Community Association representative Maile Shimabukuru.
14 With me is Ken Williams, representative of the Ko Olina
15 Community Association.

16 MS. HOLMA: Good morning.

17 For the record, we had a discussion this morning off
18 the record about counsel Hanabusa's motion to dismiss
19 application that was filed on June 29th, 2009.

20 By agreement of the parties, the city will submit
21 its opposition by the close of business on Monday, July 6th,
22 2009; and, thereafter, there will be argument as part of this
23 contested case hearing.

24 Anything further, procedurally, counsel?

25 MR. TAKEUCHI: No.

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1 MS. HANABUSA: No.

2 MS. HOLMA: And, if I can remember from day two,
3 Mr. Whelan what is on the hot seat.

4 Mr. Takeuchi, had you completed your
5 cross-examination of Mr. Whelan?

6 MR. TAKEUCHI: Yes, I believe I had.

7 MS. HOLMA: Okay.

8 Welcome back. Thank you for coming back.

9 THE WITNESS: Good morning.

10 MS. HOLMA: I remind you that you are still under
11 oath.

12 THE WITNESS: Yes, I am.

13 MS. HOLMA: Counsel, your witness.

14 MS. HANABUSA: Thank you.

15 Mr. Whelan, can you hear me?

16 THE WITNESS: Yes.

17 JOSEPH R. WHELAN,
18 recalled as a witness, having been previously duly sworn to
19 tell the truth, the whole truth, and nothing but the truth,
20 was examined and further testified as follows:

21 DIRECT EXAMINATION

22 BY MS. HANABUSA:

23 Q. As part of your testimony on direct, you mentioned that
24 you were familiar with the Honouliuli area. Can you tell me
25 the basis of your familiarity with the Honouliuli area?

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1 existing area, as well as the hash marks back in this area,
2 towards the rear of the facility.

3 Q. So it is -- and that, the hash marked area, plus the dark
4 lined area that goes back on the Farrington Highway end, is
5 really the whole 200 acres, or whatever it is?

6 A. Yes.

7 Q. So the water, or the west side storm water system that
8 you are talking about, water management system, would be
9 where?

10 A. It would be located from this area here, across the top
11 of this ridge, and go down this way, along the west side.

12 Q. So, the west side that is going near the -- what
13 Mr. Chang is saying in his letter is that, even if this SUP is
14 denied, he's requesting that the water management system be
15 permitted as to the west -- I guess as to the outside of the
16 permitted area.

17 So, would that be on the outside of the west side of
18 all the solid line there?

19 A. Yes, it would be located along the inside of the hash
20 line, but outside of this area, along this area here, along
21 this ridge.

22 Q. And where would it end, this storm management -- water
23 management system? Where would it dump into whatever?

24 A. It proceeds along the west side, and ends up coming into
25 part of the existing drainage swail down here, which will be

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1 modified. And then ends up in this area here at the front of
2 the site.

3 Q. Would it be into, like, a sump area, or is it going to go
4 into just a storm drain of some sort?

5 A. At this time I believe the conceptual design is that it
6 will bypass the sedimentation basin.

7 Q. It will bypass the sedimentation basin, is that what you
8 said?

9 A. That is my understanding.

10 Q. So if it bypasses the sedimentation basin, then where is
11 that water going to go?

12 A. Ultimately it will discharge to the Pacific Ocean.

13 Q. What the commissioners may not be aware of is that there
14 are pipes, are there not, that go under the -- sort of like
15 under Farrington Highway, from Waimanalo Gulch, and it
16 actually discharges next to Paradise Cove in front of Kailani
17 Hale.

18 Is that where you anticipate that the water would
19 discharge --

20 A. As I mentioned, this is a conceptual design at this
21 point, but it is my understanding that it will discharge in
22 that area, yes.

23 Q. It would discharge in that area?

24 A. Yes.

25 Q. Would you need a water quality permit for that?

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1 A. No, because the water that is -- will be channeled
2 through that system is run on from above the facility, in
3 undisturbed areas.

4 Q. If this SUP is granted, and you begin to actually expand
5 the landfill, is it anticipated that the storm water, or the
6 water runoff that we are talking about, would still be outside
7 of the landfill operation?

8 A. Your question is a little confusing, in that the storm --
9 the new storm water channel would be outside of the landfill
10 footprint, where waste would be, but inside the requested SUP.

11 Q. So, I guess, if I am understanding that correctly, then,
12 you anticipate taking the water off of the -- for lack of a
13 better description, the highest part of the land -- of the
14 potential landfill operation, SUP area, but not after it
15 touches the actual expanded landfill area; is that correct?

16 A. No.

17 The west side area that you are speaking of, the
18 drainage improvements, are solely intended to capture storm
19 water that falls on areas that are not within the confines of
20 the landfill, and divert them around the landfill.

21 Q. So, for the water that falls on to the landfill, can you
22 explain how that water is then captured and treated
23 differently from this water management system?

24 A. That water will continue to go through the existing
25 drainage system at the facility. Some minor modifications

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1 will take place, but I don't know the exact details of that,
2 but that water will continue to go through the sedimentation
3 basin.

4 Q. Mr. Whelan, one of the issues was about leachate, and the
5 accumulation of leachate in the south area. And I understand
6 that you were not there, but you are familiar with that
7 allegation in the notice of violation; correct?

8 A. Yes.

9 Q. Can you, because of your years of experience in the
10 landfill business, tell me what is leachate?

11 A. Leachate is rain water that falls on open landfill cells.

12 Q. And how is it normally collected?

13 A. Normally, as leachate encounters decomposing waste, it is
14 collected in sumps at the bottom of the individual landfill
15 cells.

16 At that point, then, it is collected -- usually
17 brought to the surface and stored in above-ground tanks, and
18 then there's various forms of disposal, it's either off-site
19 disposal, on-site treatment, different things.

20 Q. In my, I guess, unprofessional description of leachate, I
21 usually describe it as, if you could imagine the landfill as
22 coffee grounds, and the water hitting the coffee grounds, what
23 you are actually doing is, you are letting it -- "percolate"
24 may not be the right word, but letting it drip through the
25 landfill, and then you are collecting that water on the

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1 bottom, and that's really the leachate; is that correct? To
2 simplify the description?

3 A. Yes.

4 Q. So, if it's on the bottom of a landfill cell, how do you
5 then transport that leachate, or how does that leachate then
6 get transported into a sump pump area, or settlement basin of
7 some sort?

8 A. The bottom of the individual landfill cells is
9 contoured -- of course, it has a plastic liner system, it's
10 contoured towards a specific area called the sump. And within
11 that sump is a permanent riser that contains a pump, which
12 then pumps it in a hard pipe up to the surface, where it is
13 then pumped into a tank.

14 Q. Do you know why, in the notice of violations, the
15 leachate was found, in certain particular sump area, at a
16 level of about 30 feet? Do you know what happened there?

17 A. From my recollection of viewing the notice of violation,
18 I don't see any numbers that say 30 feet. I'm not familiar
19 with that.

20 Q. Well, let me put it to you this way, then:

21 Isn't the permitted level only four feet, in your
22 permit?

23 A. No, the way the regulations are set up is that an
24 individual sump could be any level, it just depends on how
25 deep it happens to be.

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1 Q. So what are the levels of your sump?

2 A. I believe one of them is seven feet, one may be four or
3 five feet. There's no regulation about leachate within the
4 sump itself. That's the area where the material is retained
5 until it's pumped.

6 Q. But the notice of violation said that Waste Management
7 had exceeded the level permitted; isn't that correct? Isn't
8 that why there was notice of violation?

9 A. Yes, I believe it did.

10 Q. And the settlement of that particular notice of violation
11 resulted in what action from Waste Management?

12 A. Well, as I mentioned in the settlement agreement, there
13 were additional requirements that we will do monitoring, that
14 we will do additional pumping from the leachate collection
15 systems.

16 And it is my recollection that one of the sumps, the
17 four V sumps was in fact damaged, and that we would repair
18 that. And that was repaired on September, 2007.

19 Q. And you were already there -- were you already there in
20 September of 2007?

21 A. No.

22 Q. So when the sump is -- strike that.

23 How often do you measure the level of the leachate
24 in your sump area?

25 A. I believe currently we measure them weekly.

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1 Q. Weekly?

2 A. But usually it's on a monthly basis.

3 Q. And if the sump measurement exceeds the permitted amount,
4 then what is it that you do to reduce it down to the permitted
5 level?

6 A. We would increase our pumping rates, assuming that the --

7 Q. I'm sorry, your pumping what?

8 A. The pumping rates, the amount, the frequency and the
9 amount that was removed.

10 Q. So when you pump the leachate out of the sumps
11 themselves, then what happens to that material?

12 A. It's stored in above-ground tanks, and then, in our
13 particular case, those tanks are then emptied and then taken
14 to an off site waste water treatment facility for treatment
15 and disposal.

16 Q. So, we understood from the last proceeding that when it
17 was to be disposed of, for the most part it was sent to the
18 Waianae sewage treatment plant; is that correct?

19 A. That's correct.

20 Q. And then it is treated as sewage there?

21 A. No, it's treated as leachate. It wouldn't be treated as
22 sewage. It's mixed in with their system, and treated under
23 the auspices of their own permit.

24 They are required to have an operating permit just
25 like we are.

1 Q. So, do you know if they have a separate methodology of
2 treating leachate? Or do they just put it into their sewage
3 treatment facility and then process it with the sewage?

4 A. I have not been to the facility. I don't know what their
5 procedure is.

6 Q. So, once you pump it out, and once it actually leaves the
7 job site, then it goes to Waianae sewage treatment, and it's
8 treated -- (inaudible); is that right?

9 A. They have an approval procedure just like we do, under
10 the auspices of their permit. So our leachate has to be
11 preapproved by them, and match all the requirements of their
12 own permit.

13 They then treat the waste, or any waste that comes
14 in, and I believe they have some sort of a discharge permit,
15 but I am not familiar with the intricacies of their permit.

16 Q. Mr. Whelan, the Waianae sewage treatment plant is owned
17 by the City and County of Honolulu?

18 A. To my knowledge, yes.

19 Q. And it is operated by the City and County of Honolulu?

20 A. I am not sure by whom it's operated.

21 Q. One of the other violations -- and one that still remains
22 outstanding, and that's the EPA violation. Are you familiar
23 with those violations?

24 A. In general terms. Again, I was not at the facility at
25 that time.

1 Q. Isn't it true that the EPA violation still remains
2 unresolved?

3 A. In 200- -- early 2006, I believe that EPA alleged
4 violations for non-reporting, or inaccurate reporting of
5 certain monitoring.

6 Also, there was an alleged violation for the
7 installation, or timely installation of a methane gas recovery
8 system. Both of those issues were resolved by August of 2005.

9 At this time, we are still negotiating and working
10 closely with the EPA due to some elevated temperatures that
11 are in the landfill.

12 There are probably two dozen other landfills across
13 the country that have elevated temperatures. Our landfill
14 just happens to be one of them, and we have been working with
15 EPA, and the Department of Health, for several years to
16 address the issue.

17 We have hired the -- probably the top experts in the
18 country on elevated temperatures in landfills, and have
19 determined that there is no fire or subsurface combustion
20 going on at the landfill.

21 And have actually requested from the EPA a
22 demonstration -- or provided them a demonstration to that
23 effect.

24 So we expect shortly that that particular part of it
25 will be resolved, and then that -- we will will turn it into a

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1 settlement agreement.

2 Q. I thought you said that you believed it was resolved
3 August of 2005; is that correct?

4 A. Yes.

5 Q. There's an EPA news release which was part of the -- if
6 you want to check it out, it's before you in Volume Two, and
7 it is in the second -- appendix B, the EPA environmental news
8 release dated April 5, 2006, and it's citing Waimanalo Gulch
9 for the clean air violations.

10 It does mention that you installed something seven
11 years late, in October of 2005; however, you got cited in
12 April of 2006; is that correct?

13 A. Yes. And that was my testimony, that the findings of the
14 NOV were actually corrected by August of 2005; however, it was
15 followed by a notice of violation from the EPA.

16 Q. So that there's no confusion, the notice of violation is
17 not resolved as of today, is it?

18 A. Yes, and in my testimony that's what I indicated, that we
19 are working with EPA to resolve the temperature issues.

20 Q. So this happened in April, 2006, and if you go to the
21 back portions of the appendix B, you see the notice of filing
22 notice violations were dated April 4, 2006.

23 So, can you tell me why it's -- more than three
24 years have passed and it's still not resolved?

25 A. As I stated earlier, I didn't arrive at this facility, so

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1 I really don't have any background information other than to
2 state that, myself and a team of third-party experts have been
3 working on this issue with EPA.

4 Q. Well, can you tell us, from November, 2007, when you were
5 on site, what have you done to attempt to resolve this issue
6 with the EPA -- almost two years that you have been on the
7 job, what have you done to move this along, and why is it
8 still not resolved?

9 A. As I mentioned, the only issue that is remaining is the
10 fact that there are elevated temperatures within the landfill.
11 We have been working for the last two years on supplying
12 various reports to EPA, which they then review, just like the
13 Department of Health would for any other matter.

14 They provide us with comments. We then respond to
15 those comments with either another study, or a follow-up
16 study. We meet with them -- we probably met with them two or
17 three times in person in that time period. So...

18 Q. So, from your experience, Mr. Whelan, when you are
19 talking about elevated levels, I assume it has to hit a
20 certain temperature before the EPA becomes concerned enough to
21 issue a notice of violations? Can you tell us what that
22 temperature level is?

23 A. I don't believe that the notice of violation was issued
24 because of elevated temperature. I believe it was issued
25 because of the failure to install a landfill gas collection

EXHIBIT K9

1 system.

2 Q. Do you know why -- since you have been there now for over
3 two years, why it took seven years -- over seven years to
4 comply with this requirement, by Waste Management?

5 A. As I mentioned, the actual alleged violations were
6 corrected by August of 2005. And we have been working with
7 the EPA since that time to address the temperature issue.

8 Q. Now, you have been with Waste Management, according to
9 your CV, since about 2003; is that correct?

10 A. Yes, it is.

11 Q. And, I understand your continued reference to August,
12 2005, but the EPA says that it was supposed to be installed
13 seven years earlier, and you are seven years late in that
14 installation.

15 Do you know why Waste Management was seven years
16 late in installing this gas collection control system?

17 A. No, I do not.

18 Q. Can you tell us what the gas collection and control
19 system, which you said was installed in August of 2005, what
20 exactly does it do?

21 A. The gas collection system is a system of individual
22 wells, it's a dynamic system in that, as the landfill grows,
23 so does the number of wells.

24 I believe currently we have about 40 wells at the
25 site. Those are vertical wells that are drilled down through

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1 the waste material. They have slotted pipe for some various
2 length of that.

3 They are all then connected to what's called a
4 header system, which is a series of solid wall piping, that
5 then is connected to an on-site gas collection flare.

6 That system is then put under a vacuum, and a vacuum
7 is maintained on it, which then allows any methane gas that is
8 formed from the decomposition of the waste material to be
9 collected into that system, and it is then put under positive
10 pressure at the flare, and burned off under a Department of
11 Health issued air quality permit.

12 Q. So, can you tell us whether or not the lack of the gas
13 collection and control system somehow contributes to the high
14 temperatures within the landfill itself?

15 A. No.

16 Q. No, you cannot? Or no, it does not?

17 A. No, I cannot. That's something that is still being
18 resolved.

19 Q. And it says in this EPA news release that, since 1996 is
20 when Waste Management was required -- or the County of Hawaii
21 landfill, as well, and Waimanalo Gulch -- to install this, and
22 it has failed to do so. Are you familiar with that?

23 A. No, I am not. I stated that I was not here at the time.

24 Q. So I think your prior testimony was that the landfill, in
25 violations that the EPA originally cited Waimanalo Gulch for,

EXHIBIT K9

1 was not for the high temperatures, that somehow, the high
2 temperatures is now the issue. Am I hearing you correctly?

3 A. It is my recollection that, when the wells were
4 installed, the gas collection system was installed, that there
5 was some high temperatures that were detected at that time.

6 Q. In your experience, Mr. Whelan, what is the cause of the
7 high temperatures within the landfill?

8 A. I wouldn't have any expertise in that area.

9 Q. Well, it seems to me that if you are having high
10 temperatures, is it a fair assumption to make that something
11 may be burning, or smoldering in the landfill?

12 A. Not necessarily. That's why we would do extensive
13 studies -- which we have. Those studies have confirmed that
14 there is no subsurface fire or combustion of any kind.

15 Q. So, in your studies, first of all, can you tell us who is
16 conducting -- or who are conducting the studies that you are
17 referring to that Waste Management has engaged in at Waimanalo
18 Gulch?

19 A. Dr. Morton Barlaz from the University of North Carolina;
20 various individuals from Geosyntec; and various individuals
21 from within Waste Management.

22 There are other outside consultants, I believe, that
23 were brought in for some minor things, but I don't recall who
24 they are.

25 Q. Can you spell Dr. Barlaz's last name, please?

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1 A. B-A-R-L-A-Z. There may be a "T" on the end of it, but
2 I'm not sure.

3 Q. B-A-R-L-A --

4 A. L-A-Z.

5 Q. Barlaz, is that right?

6 A. Yes.

7 Q. And have you personally worked with Dr. Morton Barlaz at
8 Waimanalo Gulch?

9 A. Yes. He has visited the site during my tenure there for
10 this project.

11 Q. In the studies that have been conducted, how are they
12 able to rule out that there is no subsurface fires, or any
13 kind of smoldering?

14 A. There were a series of borings that were done throughout
15 the landfill. There were also some studies done on the liner
16 itself, as well as studies done on, just, the chemical
17 combinations or reactions that could have occurred at the
18 facility.

19 Q. I assume, Mr. Whelan, that in the process of doing these
20 studies, that Waste Management and/or yourself could ask your
21 expert, Dr. Barlaz, what could possibly be causing this. Have
22 you asked that question?

23 A. I have personally not asked the question, but I'm sure
24 that the question has been asked by other team members.

25 Q. Can you tell me why you have not personally asked that

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1 covered it with a certain amount of clay, and cover material,
2 then you've eliminated the oxygen, which is a major component
3 of a fire.

4 Q. Okay, I just wanted to ensure that there is preventive
5 measures that you take every day, at the close of the day, and
6 the community can feel safe in that.

7 Thank you.

8 A. Mm-hmm.

9 MS. DAWSON: I have a couple questions.

10 EXAMINATION

11 BY MS. DAWSON:

12 Q. Mr. Whelen, you indicated earlier that your storm water
13 management system includes directing storm waters into a
14 drain, and that this drain running along the west side of the
15 landfill, it then goes into -- I'm not sure what it was. Did
16 it go into a sediment basin?

17 A. Yes, ma'am.

18 Q. But I think you had another statement that indicated that
19 when leachate is directed towards the drainage system, is it
20 directed into the same drainage system?

21 A. No. The leachate never comes in contact with storm
22 water. Leachate -- the actual landfill cell is lined with a
23 60 mill HDPE liner.

24 Q. Yes.

25 A. As leachate is formed, from rainfall falling on the

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1 exposed waste on a particular day, it percolates, or migrates,
2 to the bottom, and is collected in a leachate sump, and then,
3 through a series of piping and tanks that's pumped to a tank
4 that is above the ground.

5 Q. Pumped to a tank?

6 A. To a tank.

7 Q. But not to the same --

8 A. Correct.

9 Q. -- sedimentation pool?

10 A. No, it's pumped directly to a tank, and then from that
11 tank it's pumped into a tanker truck and hauled off site to
12 the waste water treatment plant.

13 On the other hand, the drainage system that you're
14 speaking of is a series of above-ground ditches, just like you
15 would have in a subdivision, that actually carry rain water
16 away from the site, and it goes into a sedimentation basin in
17 order so that any silt, or that type of material, stays in
18 there and isn't discharged.

19 Q. And at what point is that water taken out of the
20 sedimentation pool or tank?

21 A. The sedimentation basin is designed to allow the water to
22 settle in there so that any dissolved solids, or solid soil,
23 that comes off of the landfill, or off the roads, or what have
24 you, would settle out in that basin.

25 And then that water actually is discharged through

1 our NPDES discharge permit into the ocean.

2 Q. What is an NPDES?

3 A. It's NPDES. It's a national pollution discharge
4 elimination system. It's just an federal system that's
5 overseen by the state, which monitors discharges from
6 industrial complexes like ours.

7 Q. Do you monitor the discharge that comes from the
8 sedimentation area that is discharged into the ocean? Do you
9 monitor -- does Waste Management monitor that?

10 A. Yes, we have a third-party company who comes out and
11 takes samples, and then we have to meet certain discharge
12 limits.

13 We also have inspections from the department of --
14 the water department, under DOH, to make sure that our ditches
15 and our slopes and all are okay.

16 Q. And what are your findings, in terms of sediment that is
17 discharged into the ocean?

18 A. We are not discharging sediment. That falls out in the
19 sediment basin.

20 Q. Completely?

21 A. I couldn't say completely. That's, by design, it's
22 supposed to take that out. We have not had issues where
23 sediment is discharging, that I'm aware of.

24 Q. Well, it must be pretty close to complete, because if you
25 are monitoring it, and you haven't -- you're not finding any

EXHIBIT K9

2700

1 Could you raise your right hand.

2 Do you solemnly swear or affirm that the testimony
3 you are about to give shall be the truth, the whole truth, and
4 nothing but the truth?

5 THE WITNESS: I do.

6 MS. HOLMA: Thank you.

7 RICHARD VON PEIN,
8 called as a witness, having been duly sworn to tell the truth,
9 the whole truth, and nothing but the truth, was examined and
10 further testified as follows:

11 DIRECT EXAMINATION

12 BY MR. TAKEUCHI:

13 Q. Thank you.

14 Mr. Von Pein, would you please state your name and
15 business address for the record.

16 A. Richard Von Pein. I am located at 61-75 South Front
17 Road, Livermore, California.

18 Q. And what is your current occupation?

19 A. I am an engineer.

20 Q. And how long have you been an engineer?

21 A. 36 years.

22 Q. Could you briefly describe your educational background,
23 please?

24 A. I have a Bachelor's in geology, and a Masters in civil
25 engineering, from Arizona State.

EXHIBIT K9
2710

1 Q. And will the expansion area also feature any kind of gas
2 collection system?

3 A. The gas collection -- the requirement is that we have to
4 have gas collection system at any -- when we reach final
5 grades, within two years of reaching final grades, or within
6 five years of placing waste. And those would be in any areas
7 where we have MSW.

8 Q. So you will be constructing a gas collection system at
9 the expansion area consistent with those requirements?

10 A. We had actually added a gas collection system
11 approximately every year, and we will continue to do that
12 through the life of the landfill, until we meet those
13 requirements.

14 Q. Okay.

15 So you discussed, briefly, the leachate systems, the
16 storm water collection systems, and just to reiterate this
17 point, which you may have heard Mr. Whelan talk about, what is
18 the difference between leachate and storm water, and the way
19 they are handled?

20 A. The storm water is any water that's going across the
21 surface of the ground, and we call it surface run-off. That
22 water is sent to this -- either this area right here, or if
23 it's running from off site would be routed around the pond.

24 Leachate is any water that has contacted the waste,
25 in any way touched the waste. That water is all directed to

1 the leachate collection system, and ultimately taken to the
2 POTW.

3 Q. Okay.

4 And so these two systems are completely separate
5 from one another?

6 A. They are completely separate. We are very careful to
7 avoid having any water that's contacted the site get into the
8 surface water system.

9 Q. Now, is the --

10 MR. TAKEUCHI: Excuse me, strike that.

11 BY MR. TAKEUCHI:

12 Q. The ground water in this area where the landfill is
13 located, is that monitored for, say, leachate contamination?

14 A. Yes, it is.

15 We have down gradient wells that are monitored to
16 determine if there is any leachate or other contaminants
17 entering the ground water system.

18 MR. TAKEUCHI: If I could just have a moment?

19 MS. HOLMA: Should we just take our break for lunch
20 at this time?

21 MR. TAKEUCHI: All right, thank you.

22 MS. HOLMA: All right, we will resume at 1:00.

23 (The lunch recess was taken at 11:53 a.m.)

24 - - -

25

1 design.

2 Q. Thank you.

3 MR. TAKEUCHI: That's all I have.

4 MS. HOLMA: Thank you.

5 Any follow-up?

6 RECROSS-EXAMINATION

7 BY MS. HANABUSA:

8 Q. Mr. Von Pein, let me just clarify something that I
9 thought you answered earlier, but, I think I asked you whether
10 the leachate would affect the safety factor in any way, the
11 calculation of the safety factor. Do you recall what your
12 response was to that?

13 A. I actually am not sure you asked me that. I believe you
14 might have asked Dr. Sharma that question.

15 Q. Okay.

16 Let me ask you that question, then: Does the
17 leachate affect the safety factor?

18 A. It does not affect the stability -- it will reduce the
19 factor of safety. It does not have -- in this case, it did
20 not have an impact on the -- it did not have a measurable
21 impact on the stability of the landfill.

22 Q. But when you said it would reduce the factor of safety,
23 what do you mean?

24 A. Well, when we first found the leachate in the landfill,
25 at levels above prescriptive standards, we did a quick check

EXHIBIT K9

2792

1 where we put the leachate -- half the thickness of the
2 landfill, which I believe is about 75 feet, to see if that
3 would reduce the factor of safety in the landfill below 1.0,
4 and it did not.

5 I don't remember exactly what it was, it was
6 above -- it was in the 1.4, 1.3 range, at 75 foot thickness.
7 We know for a fact that the leachate never got anywhere close
8 to that.

9 It was a worst-case scenario. It was a "what if."
10 We do a lot of those during the design. What if we are wrong
11 about a certain number?

12 We'll check it and see -- I wouldn't say outrageous,
13 but some extreme case, and that's what we did at that point,
14 to see if the leachate could cause the landfill to be
15 unstable, and we found that it did not.

16 Q. Thank you.

17 On Exhibit A-32, what Mr. Takeuchi offered this for
18 was to say that it was originally part of the -- this is the,
19 basically, the 14.9 acre expansion. And he's talking about
20 the western soil berm and the southern soil berm, which is the
21 E-1 --

22 A. That's correct.

23 Q. Now, my understanding is, the western -- what we are
24 calling the western soil berm, or the western berm, is not
25 constructed of soil, it's constructed of rock; isn't that

EXHIBIT K9

DIRECT EXAMINATION

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BY MR. TAKEUCHI:

Q. Thank you.

Good afternoon. Would you please state your name, place of employment, and business address for the record.

A. My name is Frank Doyle. I am employed by the City and County of Honolulu, Chief of Division of Refuse. And I work right here in this building, at 1000 Uluohia Street, Kapolei, Hawaii.

Q. Would you please briefly describe your educational, professional background?

A. I have a bachelor's degree from the Pennsylvania Military College, in Chester, Pennsylvania, and a master's degree from the University of Hawaii, which I got in 1976.

Q. And what were those degrees in? What fields?

A. Both of them were in civil engineering, and concentrating on environmental in my masters.

Q. And can you briefly describe your professional background?

A. On the mainland, after graduation, I worked primarily for chemical companies, building chemical plants throughout the United States and Mexico.

And I moved here in 1970 and went to work for a consulting firm, and worked for them for seven years, then came to the city, and I have been here ever since.

EXHIBIT K9

2797

1 These are the same type of technology that was
2 proposed by people for Honolulu. It's the same type of
3 technology that's being proposed today, in -- you may have
4 heard of Port Saint Lucy, Florida.

5 They started out at the 300,000, 400,000 tons a
6 year, down to about 200 to 300 -- 200 to 300 -- I'm sorry, let
7 me back up.

8 It was 3,000 to 4,000 tons per day. It's now up to
9 200 to 300 tons per day, and I am not sure anything's
10 happening.

11 So what are we going to do? We are going out in a
12 demonstration RFP, to see what we can do. And the way we
13 structure these things is so that there's no real cost to the
14 city.

15 We will provide the land, which we have, at the back
16 side of H-Power, and people can come in and tell us what they
17 want to do, and go through an RFP process, for them to
18 finance, design, construct and operate for a ten-year period
19 whatever they propose. And then we structure the RFP to see
20 what's the best value to the city. We are going to do that.

21 Where it's all going to lead to, I'm not sure.
22 Hopefully it will show us that perhaps these technologies can
23 be more efficient in producing energy than some of the other
24 technologies that we have today. Or less environmental
25 concerns than perhaps we have today. Maybe even less disposal

EXHIBIT K9

2815

1 of materials in landfills than we have today.

2 So we are going forward with that, and that's coming
3 out in July.

4 I think, when we look at it, if we were to say where
5 else in the country do we have this ability to reduce -- or,
6 "divert," let me just -- divert, 20... 80 percent of our waste
7 from landfill, there aren't going to be that many cities that
8 are gonna match up with us.

9 We tried to see some statistics of what might be in
10 other cities, and while I don't have for other cities, I can
11 tell you that, statewide, the best thing we could find was 29
12 percent material -- in other words, 29 percent of the material
13 being landfilled in Massachusetts was the lowest.

14 If we can achieve 20 we are going to be lower. So,
15 I mean, we are there. We may not be the best in diversion,
16 but we certainly are significantly reducing our waste at the
17 landfill, and that's what we want to do.

18 Q. Thank you.

19 One piece I didn't hear you mention was any kind of
20 public education effort, or community outreach programs.

21 Do you have anything with regard to those kinds of
22 efforts?

23 A. I think probably one of the best ways we -- we get a lot
24 of hits is our web site. We have a new web site, it's called
25 opala.org, and it's got a wealth of information on it. It's

EXHIBIT K9

2816

1 Q. When did it change from Public Works to Environmental
2 Services?

3 A. It changed about the second term of the Harris
4 administration.

5 Q. Now, this decision and order, condition number ten, is
6 that, within five years of the date of the special use permit,
7 whichever occurs later, but not beyond May 1, 2008, the --
8 (inaudible) -- acre property shall be restricted from
9 accepting any additional waste material, and be closed in
10 accordance with the -- (inaudible).

11 A. Yes, that's correct.

12 Q. And this permit actually granted a 21 acre expansion,
13 which basically is 14.9 acres of landfill space; correct?

14 A. Correct.

15 Q. Now, my recollection is that it was the position of the
16 City and County of Honolulu at that time that the landfill
17 would close on May 1, 2008; is that also correct?

18 A. That's correct.

19 Q. So this was not a condition which was imposed by the
20 planning commission, it was something that, as I recall, the
21 city basically came forward and said, this is what's going to
22 happen?

23 A. That's correct.

24 Q. And I believe it was you who put forth that position for
25 the City and County of Honolulu?

EXHIBIT K9

2829

1 A. To the Land Use Commission, that's correct.

2 Q. And, in fact, if you look at A-17, that is the decision
3 of June 9th, '03, before the Land Use Commission, regarding
4 the addition of -- I think the 21 acres, and also the
5 condition in the Land Use Commission decision, on Page --

6 A. Small numbers on there --

7 Q. I think it's Page 9, condition 12.

8 A. Yeah.

9 Q. And, again, it's the same restriction, on May 1, 200- --

10 A. That's correct.

11 Q. And that was the position of the city that you presented
12 to the Land Use Commission?

13 A. That's correct, on behalf of the administration.

14 Q. And that was the Harris administration at that time?

15 A. That's correct.

16 Q. And I think you heard the testimony of Mr. Von Pein, when
17 he said that he recalls that the original request that --
18 well, the original, I guess, expansion that he worked on, in
19 1999, was for 15 years?

20 A. That's correct.

21 Q. And was my recollection correct? Was it for 60 acres at
22 that time? 60 additional acres at that time?

23 A. I don't recall, but it was for, definitely, greater
24 property.

25 Q. Do you know if it would be what is being requested here,

EXHIBIT K9

1 in terms of the 37 acres --

2 A. Probably pretty close.

3 Q. Pretty close?

4 A. Uh-huh.

5 Q. And, though that was what the original -- I think the
6 draft supplemental EIS addressed, and that was the original
7 intent of the city, something happened that made the city
8 change its mind and go to a five-year closure; is that
9 correct?

10 A. Yes, it was.

11 Q. So, do you know why you -- I assume it was you, because
12 you were the head of ENV at that time -- that you changed your
13 application, or submitted the final application for only the
14 five years, versus the original 15-year expansion?

15 A. That was the decision of the mayor.

16 Q. And, if you would flip to Exhibit A-24 -- do you see
17 A-24?

18 A. Uh-huh.

19 Q. And that's the decision -- findings of fact, decision and
20 order, dated March 14, 2008, by the Land Use Commission. And,
21 basically, this is the decision that permitted an 18-month
22 extension; is that correct?

23 A. I believe so, yes.

24 Q. And your position with the city at that time is the same
25 position you are holding now?

1 Q. You made a comment about the fact that the solid waste
2 management plan, you are going to begin a new plan -- was it
3 next year? Did I hear you correctly?

4 A. Yes.

5 Actually, we have money in the budget for initiating
6 a study for a secondary landfill.

7 Q. Is that like going through and doing another solid waste
8 management plan, or is this a separate plan?

9 A. No, it's going through another five-year plan.

10 Of course, it takes time to do this, so it's not all
11 going to be done in 2010. The bulk of it will probably be
12 done in 2011.

13 Q. And that's for what time period? The next five years?

14 A. The next five years after our submittal to the Department
15 of Health, which was in June of this year.

16 Q. So --

17 A. Or, June of last year, I'm sorry.

18 Q. So it would be 2008 to -- is the plan that's been
19 approved from 2008 to 2013?

20 A. Well, let's just say the plan will be approved this year,
21 or submitted formally to the Department of Health this year,
22 and then we'll go from there for the next five years.

23 Q. So this solid waste plan that has been accepted is a plan
24 for the past?

25 A. It covered a period of the past, yes.

EXHIBIT K9

2847

1 Q. And it expired --

2 A. You have to remember, it's a 25-year plan, so it looks at
3 what you have been doing over the 25-year period.

4 Q. Can you tell me in what neighborhood board jurisdiction
5 the landfill is located?

6 A. Makakilo or Nanakuli...

7 Q. I will represent to you that, when I lived in Kaiulani,
8 which is right below your landfill, that that jurisdiction is
9 the Makakilo neighborhood board.

10 So, do you know how they slice the landfill?

11 A. No, I don't.

12 Q. Okay.

13 The community benefit advisory committee, one of the
14 criticisms that I've heard expressed is the fact that a lot of
15 the -- I guess, the impact of the benefits went to the Waianae
16 Coast, and I had heard comments from others saying that the
17 landfill is really in the Makakilo, Honokai Hale, Ko Olina
18 area, but they don't get the community benefits. Have you
19 ever heard that complaint?

20 A. No, but I really am not involved in who gets what.

21 Q. Who determines who gets what?

22 A. I think that's done by another department. Community
23 Services, perhaps, and Parks. But not ENV.

24 Q. You made an interesting comment about plasma arc, and I
25 know that we have seen plasma arc as an alternative come out

EXHIBIT K9

1 almost always consistently.

2 So you are saying now you're going out with a
3 demonstration RFP. Wasn't there something similar to that
4 done in the past?

5 A. Yes, there was.

6 Q. And when was that?

7 A. That was around 2002, I believe, roughly.

8 Q. What happened to that effort?

9 A. Well, the conclusion to that was that it wasn't going to
10 be cheaper than H-Power, and it wasn't going to necessarily
11 provide us the benefits that they were saying it was going to.

12 It was using, actually, Coke and other materials to
13 keep the fires going in this plasma arc, and at that time we
14 just didn't feel that we should go forward with it.

15 And I think that position was fairly correct in
16 light of what's happened in other communities today.

17 Q. The demonstration RFP, is that intended to actually let a
18 company build a facility to show what, for example, plasma arc
19 can do?

20 A. Yes.

21 In the last three years, let's say, we must have
22 received at least 25 people coming in and saying they want to
23 do this or that. Some of them come in and you never see 'em
24 again. And some of them appear to be somewhat plausible.

25 The city of -- Los Angeles County has been in the

EXHIBIT K9

1 Q. Does the City and County pay --

2 A. The city pays at H-Power; it does not pay at the
3 landfill.

4 Q. So what is it that you pay at the H-Power right now, in
5 terms of tipping fee?

6 A. Approximately \$45 a ton.

7 Q. Does a private entity pay the same tipping fee --

8 A. They pay more.

9 Q. They pay more?

10 A. They pay more.

11 Q. Do they pay the same tipping fee for the landfill as they
12 do for H-Power?

13 A. Yes, they do.

14 Q. And do you know what that tipping fee is?

15 A. I think it's approximately \$81 a ton.

16 Q. I thought it went up?

17 A. It has gone up recently, but you may be thinking about
18 the addition of the 12 percent surcharge, and the money that
19 goes to the state, which gets it to about \$92.

20 Q. \$92? That's the figure I was thinking about.

21 A. Okay.

22 Q. So, a private -- somebody who picks up my rubbish that I
23 have to pay separate for would be charging -- well, would be
24 charging probably a premium, but they would have to pay \$92?

25 A. Correct.

EXHIBIT K9

2852

1 Q. And does the city collect all of the \$92, and then writes
2 the check to the state, and whoever else, the surcharge?

3 A. Yes.

4 Q. So I think we have the testimony from Mr. Whelan that,
5 actually, he gets \$16 and some-odd cents from the city, for a
6 ton?

7 A. Per ton.

8 Q. Per ton?

9 A. Uh-huh.

10 Q. So the differential of between \$81 and \$16-plus change,
11 goes to whom?

12 A. The city.

13 Q. The city.

14 And it's the same tipping fee for H-Power, so would
15 it be \$81 minus the \$45 a ton?

16 A. No, no, no. \$45 is what we pay, okay, but our operations
17 are not \$45 a ton.

18 Q. Okay.

19 So, I just want to know how much money the city
20 makes off of a tipping fee paid with rubbish that goes to
21 H-Power.

22 A. It's a little bit more complicated than that, okay? We
23 are just about concluding our debt service at H-power, which
24 is kind of nice, it's like paying off your house, so you don't
25 have to pay the bank anymore.

EXHIBIT K9

2853

1 But you have debt service to be paid, you have a
2 contract to be paid, you have some city staff to be paid.

3 If you look at the two, I would say, just in very
4 general terms, out of \$81 that we see, we probably have an
5 operational cost of \$60 to \$65, so there's a difference --

6 Q. Do you lose money at H-Power?

7 A. If you consider the city tip fee, but, no, we don't lose
8 money at H-Power because our electrical energy sales offset,
9 pretty much, the debt service, as well as some of the others.

10 We have been putting about -- roughly \$5 million,
11 depending upon the barrel of oil price, per year, into
12 revenue, and sometimes it can be substantially more.

13 Q. Is that revenue from H-Power, or is that revenue totally,
14 from all the landfill operations?

15 A. No, it's revenue from H-Power.

16 Q. Just from H-Power?

17 A. And, like I say, it could be more.

18 Q. Do you know how much you are putting into the city budget
19 from Waimanalo Gulch? The difference between your \$81 and
20 your \$16?

21 A. Well, you know, the \$16 is \$1 per ton figure that's a
22 straight per-ton figure. We also have to pay for excavation,
23 we have to pay for liner.

24 When you roll all of that around, you get to a
25 higher number.

EXHIBIT K9

2854

1 I think, probably, cost versus revenues, from there,
2 from what we pay them, is maybe about \$2 million. And then we
3 start eating into that \$2 million in sessions like this, and
4 other administrative fees.

5 Q. So, when you say it's \$2 million, so you're saying that
6 the cost of expanding Waimanalo Gulch is going to be that
7 great, because of excavation and liner costs?

8 A. Oh, we probably pay out about \$8 million a year.

9 Q. Okay.

10 Now, Mr. Doyle, you said that there's an average of
11 about 289,000 tons that go into landfill in a given year;
12 correct?

13 A. Say 300,000.

14 Q. Okay, that's easier.

15 How many tons would be paid for with a tipping
16 fee -- because you don't pay, the city doesn't pay; correct?

17 A. Right.

18 Q. Do you have any idea what percentage that is, of the
19 300,000?

20 A. I would say it's 50 percent, but I think it's a little
21 bit more for the commercial side.

22 Q. Okay. So you think it's maybe --

23 A. I would say 60 percent.

24 Q. 60 percent. Say about 180,000, that's about 60 percent.

25 So, of that amount, you charge \$81 a ton, correct?

EXHIBIT K9

2855

1 A. Uh-huh.

2 Q. And out of that you pay Waste Management, right off the
3 top, \$16-plus for that ton; correct?

4 A. Uh-huh.

5 Q. And you really don't have major excavation and/or liner
6 costs at this particular point in time, because it's been all
7 paid for?

8 A. Well, we have done some of it in previous years, sure.
9 But I am just taking a number and trying to spread a number
10 over the years, as the -- of the \$8 million figure.

11 Q. And, isn't it also true, that if you expand Waimanalo
12 Gulch, that you are anticipating paying the excavation cost to
13 Waste Management?

14 A. Yes.

15 Q. And isn't it true that that's also determined by
16 contract, as to how much you pay them?

17 A. Correct.

18 Q. And, at one time, in the 1999 contract, I think their
19 excavation fees that they were entitled to was like \$4 a cubic
20 yard, or something like that.

21 Do you know what it is now?

22 A. I don't know exactly, but I can tell you it's gone up.

23 Q. It's gone up?

24 Do you know what it's going to cost you?

25 A. When we look at all of the costs, rolled into everything,

EXHIBIT K9

1 our average cost is about \$30 a ton.

2 Q. So that's your cost at Waimanalo Gulch?

3 A. That's what the city sees in its billing.

4 Q. Okay.

5 So, in essence, what you are saying is, it's not
6 \$16, it's \$30 a ton?

7 A. Yes, because of things like liner, excavation, and
8 everything else that goes into it.

9 Q. So that's about, approximately -- you are making \$50 a
10 ton, and you are going to -- because that's \$81 minus \$30, so
11 say you make \$50 a ton. And wouldn't we be correct in
12 multiplying \$50 a ton times about 180,000, which is 60
13 percent -- (inaudible)?

14 A. What do you get?

15 Q. I don't know. I don't have a calculator .

16 A. Well, my consultants tell me that I get about \$10
17 million.

18 I think one of things you don't have there, Senator,
19 is, we also pay for the ash disposal.

20 Q. To Waimanalo Gulch.

21 And they said that the reduced weight is \$14, or
22 something like that?

23 A. Well, that's still good money.

24 Q. Well, you could operate it yourself. Have you looked at
25 that?

1 A. I think what you really need to do is what we are doing,
2 and that's have -- despite the NOV's, a very professional
3 group of people operating our landfills.

4 Waste Management is -- I don't know how many they
5 are operating, but I do know that the depth of their operation
6 is substantial, and it's represented by the people that have
7 been here, and I think that we are doing the right thing with
8 our contract with them.

9 Q. You said despite the NOV's; correct?

10 A. I said despite the NOV's, that's correct.

11 Q. So, if your \$10 million is correct, and you are making a
12 \$15 million profit, from H-Power, as well as --

13 A. Now, I don't want you to hold me to those numbers,
14 because I told you there are variations --

15 Q. I understand.

16 A. -- but you are absolutely correct in saying our
17 operations provide us with money.

18 But what do we do with that money? We offset some
19 of our other operations so that we don't have to raise taxes
20 and bring in more money from the general fund. Because we are
21 subsidized for other operations out of the general fund,
22 including our collection operations, some more recycling
23 operations, our transfer operations.

24 So it's a total business that we attempt to run.

25 Q. I understand that.

EXHIBIT K9

2858

1 questions.

2 MS. HOLMA: Commissioners, any questions for
3 Mr. Doyle?

4 MS. GAYNOR: I have some questions.

5 EXAMINATION

6 BY MS. GAYNOR:

7 Q. Mr. Doyle, I am wondering if you can just tell us -- you
8 know, since back in the eighties, when Waimanalo was
9 identified and permitted as, I guess, Oahu's only landfill
10 then, right?

11 A. No, actually, at that time we were still operating our
12 Kalaheo landfill on the other side of the island.

13 Q. And how much time did we continue to have --

14 A. About a year and a half, roughly, because we had to make
15 the transition.

16 Q. So how long did it take to identify Waimanalo, and permit
17 it, and get it operational?

18 A. Well, we went in there in '87. Took about two-and-a-half
19 years. It's easier to start new sometimes than to add on.

20 Q. Well, Ewa was a different place than it is now.

21 A. That's true.

22 Q. Can you tell us -- we are hearing a lot, and reading a
23 lot, so, can you tell us a little bit more about this
24 discussion, and this promise that was made to the region back
25 in 2003, that the landfill was going to cease to operate in

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1 2008?

2 A. Yeah.

3 We were before the planning commission, and it was
4 our intention -- it was the intention of the division at that
5 time, and the department, that we would go for the 15-year
6 extension, which was basically the rest of the landfill that
7 we are looking at today, excluding the part that we got,
8 those 21 acres. And that's what we would have done.

9 There was a lot of discussion at that time, from the
10 community, as well as whatever, to the mayor, and based on
11 whatever his inputs were giving him, and where he decided to
12 go, it was his decision, which I conveyed, that we would only
13 go for a five-year extension.

14 Q. Okay, so --

15 A. So, after that, we did that, and we were instructed at
16 that time as to -- under the conditions of the LUC decision,
17 that we were to go out and find a new landfill. And that that
18 was supposed to be done by the council by a certain date.

19 We weren't able to do it by that certain date, and
20 we went back in and got an extension for about six months, so
21 the county could make their decision.

22 What happened was, when the mayor made that
23 decision, he also, because we were told to go find a new
24 landfill, established the blue ribbon committee. And the blue
25 ribbon committee looked at, has it in their report, a lot of

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1 You know, we consider, well, hauling it over
2 mountains to someplace else may not be as good as what we
3 have, but -- maybe.

4 We can only look, okay.

5 A lot of this is going to be going over what we did
6 for Waimanalo Gulch way back in the seventies. Some of the
7 same sites are now gone because they have been taken over by,
8 actually, developments, in some areas.

9 But we'll look, again, at every nook and cranny that
10 we can. I mean, everybody knows that there are big holes in
11 the ground in different locations.

12 Some of them are beyond Waimanalo Gulch, out towards
13 the windward side, the windward coast. Some of them are over
14 here in Kapaa. Some of them might not be available, like
15 Kapaa, for a certain period of time.

16 Certainly, that's a -- Kapaa quarry is a big barn,
17 with a big hole, so, logically, you'd think about that.

18 So we will look, we will talk, we will ask, we will
19 start this process again in 2010.

20 Q. So, next year, you guys will start looking for a
21 secondary -- I mean you will start studying the possibility of
22 a secondary landfill, and what type of materials it would
23 take, and where it might be?

24 A. Yes. And maybe it's going to be more than one location.

25 MS. GAYNOR: Okay.

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EXAMINATION

1

2 BY MR. JAMILA:

3 Q. Aloha, Frank.

4 This has been long and drawn out. This is like
5 the -- since I have been on this commission, the second time
6 we have had to take this circle of testifying up.

7 And when you sit here, Frank, and you feel the pain
8 from the community that they are looking for answers, and they
9 are thinking, maybe the city dropped the ball at certain
10 points, because, I guess, they didn't move forward to find a
11 designated spot, and then, sitting here on this side of the
12 table, watching the community say, you know, the city didn't
13 keep their end up, as far as looking for technology, looking
14 for alternate stuff, whether it be shipping the rubbish off
15 island to the mainland, or wherever, and just sitting here,
16 friend, you feel the pain of the community who has their share
17 of that feelings.

18 And I guess my \$64,000 question would be, Frank, if
19 this doesn't pass, Frank, where's the rubbish going to go?

20 A. That's more than a \$64,000 question.

21 Q. Frank, I live in Waimanalo. I always thought Kokohead
22 Crater --

23 A. Oh, now we know where you are going...

24 (Laughter.)

25 A. Okay, realistically, Kokohead Crater is a park dedicated

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1 come to the Land Use Commission, having come from your end of
2 the table, of the department, who is responsible for making
3 the study, the review of -- to come up with a decision, we're
4 going to ask for A, B or C, who does that? Who has the staff
5 that does that? Is that you alone?

6 A. No. We do that usually with the assistance of
7 consultants.

8 Q. So, is that R.M. Towill?

9 A. That's R.M. Towill.

10 The first one was Stanley Shimabukuro, when we did
11 our first one.

12 Q. So it's really not your department, then, it's an outside
13 consultant who pretty much makes the decision for you?

14 A. No, no, no, absolutely positive not. We hire outside
15 consultants to assist us in our decisions, to assist us in the
16 work that needs to be done, where the expertise may not be
17 available in the department.

18 But we use consultants extensively, both in waste
19 water and in solid waste, and they will go through, as
20 Mr. Taketa did, in putting together an environmental impact
21 statement. They will present an alternative analysis. They
22 will do all of this.

23 In our review, if we see something that's not
24 correct, then that's taken into consideration and changed.
25 But they prepare the necessary report, if you will.

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1 In the case of the landfill, it's part of the EIS
2 analysis that comes out, which one -- you might prefer, for
3 whatever reasons, and what would be the alternatives to that.
4 That's all part of the FEIS.

5 The ultimate decision as to whether a project is to
6 go, or not to go, is on recommendation of the department, made
7 by the administration. And that's carried on from planning up
8 to final design.

9 Q. So, while it's a recommendation of the department, it's
10 really the consultants who guide that recommendation, for the
11 most part. I don't know what the costs are, but I'm sure they
12 are considerable, but the consultants that you have named are
13 all pretty reputable, solid consultants.

14 So, knowing that, it seems like something is missing
15 when, from 1987, with the assistance of the best expertise
16 that you could get, you are continually coming back with new
17 requests, with extensions, with promises that you are going to
18 conclude at a certain time, and it's like there's always
19 another -- I don't want to say "excuse," but another rationale
20 for extending on and on.

21 I mean, this is a long time, 1987 to today, and so
22 the frustration that Andy talks about -- or that all of us
23 perceive, in the community, is very, very real, whether it's
24 the frustration of Nanakuli, or whether it's the frustration
25 of Ko Olina folks, or Kapolei folks, or whomever.

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1 We, as commissioners, see all of that, but we don't
2 quite understand why it is that, with all the expertise that
3 you have available to you, that you are not able to come up
4 with something that you can stick to.

5 And it does make me wonder, do you ever worry about
6 liability for people who have relied on promises that you have
7 made, and perhaps will hold you accountable for it in some
8 way, either politically, or in the courts or something?
9 Somewhere along the line, after this length of time, there's
10 going to have to be some accountability for this.

11 Do you have any comment on that?

12 A. Yes, I do.

13 If we had gotten where we were going to be in 2002,
14 we wouldn't be sitting here today. That's just one thing. We
15 were going for 15 years or more, and it was the same as we're
16 here today.

17 I would like to express my frustration with why we
18 didn't do that at this time, but I shall not, okay? But we
19 wouldn't be here today, okay?

20 But we are, and it's a matter of the way business is
21 sometimes done. I'm not saying that's the best way, but
22 you're here because of decisions that are made, and sometimes
23 promises that are not able to be kept, because even if one
24 person wanted to stop, when you start and you look around as
25 to what the alternatives are, it brings you back to Waimanalo

EXHIBIT K9

1 Honestly, I don't really believe, back then, there were -- or
2 are. So, try again, that's the process.

3 Q. Well, does --

4 A. But -- excuse me.

5 The ultimate goal is a realistic goal of 80 percent
6 diversion. We are putting a lot of money on the table today
7 to have 80 percent diversion. Where is most of the
8 landfilling activities going to be, and what are you going to
9 see? We are not in the front anymore, we are kind of in the
10 back. I hope that helps out.

11 But I really think that, yeah, barring the NOV's,
12 that this group of waste management professionals is going to
13 do a good job for this community, and they have the talent to
14 do that.

15 I'm sorry that it is where it is, for those people
16 that are there, but it's the whole island that we have to take
17 care of, and the processes all what they are, and we do our
18 due diligence in trying to come up with alternatives.

19 Q. I think you have answered my question of why it has taken
20 30 years to make a decision that can stick.

21 A. Yeah.

22 Q. And, hopefully, if everybody works on this together, we
23 can come to that.

24 MS. DAWSON: Thank you.

25 MS. HOLMA: Thank you very much, Mr. Doyle.

EXHIBIT K9

C E R T I F I C A T E

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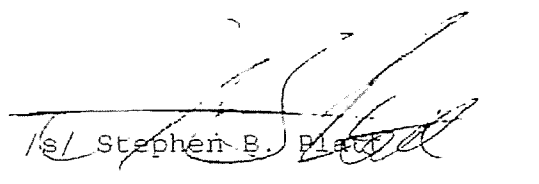
CITY AND COUNTY OF HONOLULU)

I, Stephen B. Platt, Certified Shorthand Reporter
State of Hawaii, do hereby certify:

That on Wednesday, July 1, 2009, at 9:05 a.m., the
foregoing Hearing was taken down by me in machine shorthand
and was thereafter reduced to typewriting by me; that the
foregoing represents, to the best of my ability, a true and
correct transcript of the proceedings had in the foregoing
matter.

I further certify that I am not an attorney for any of the
parties hereto, nor in any way concerned with the cause.

Dated this 7th day of July, 2009, in Honolulu, Hawaii.



/s/ Stephen B. Platt

STEPHEN B. PLATT CSR NO. 248

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