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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HAWAII 96801-3378

Facility file
MAY 13 2010

CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

In reply, please refer to:
EMD/SHWB

May 13, 2010

S0529JR

CERTIFIED MAIL NO. 7009 2250 0004 4923 0416
RETURN RECEIPT REQUESTED

Mr. Joe Whelan, General Manager
Waste Management of Hawaii, Inc.
92-460 Farrington Highway
Kapolei, Hawaii 96707

CERTIFIED MAIL NO. 7009 2250 0004 4923 0423
RETURN RECEIPT REQUESTED

Mr. Timothy Steinberger, Director
Department of Environmental Services
City and County of Honolulu
1000 Uluohia Street
Kapolei, Hawaii 96707

Dear Messrs. Whelan and Steinberger:

SUBJECT: NOTICE AND FINDING OF VIOLATION/ORDER

Under Hawaii Revised Statutes (HRS) Section 342H-7, we are issuing the enclosed Notice and Finding of Violation and Order (NFVO) for the implementation of corrective actions regarding state solid waste noncompliance issues and payment of a penalty.

Under HRS Section 342H-7, any order shall become final, and the penalty imposed due and payable twenty (20) calendar days after the NFVO is served, unless you request a hearing in writing, no later than twenty (20) calendar days after the NFVO is served. The request for a hearing shall be in accordance with the requirements listed in the NFVO. Furthermore, if the penalty is not paid to the Department of Health within thirty (30) calendar days after it becomes due and payable, the Director may institute a civil lawsuit to recover the penalty.

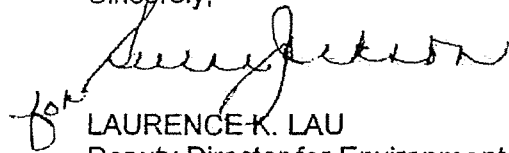
Codes

EXHIBIT K66 at 1

Mr. Joe Whelan
Mr. Timothy Steinberger
May 13, 2010
Page 2

Please direct all inquiries concerning this matter, with the exception of the request for hearing, to Steven Y.K. Chang, Chief, Solid and Hazardous Waste Branch, Department of Health, 919 Ala Moana Boulevard, Room 212, Honolulu, Hawaii 96814.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurence K. Lau". The signature is written in a cursive style with a large initial "L".

LAURENCE K. LAU
Deputy Director for Environmental Health

Enclosures

c: Kathleen Ho, Deputy Attorney General (with enclosures)

IN THE DEPARTMENT OF HEALTH
STATE OF HAWAII

DEPARTMENT OF HEALTH, STATE OF HAWAII,)	DOCKET NO. 10-SHW-SWS-002
)	
COMPLAINANT,)	
)	
vs.)	
)	
WASTE MANAGEMENT OF HAWAII, INC. AND CITY and COUNTY OF HONOLULU;)	NOTICE AND FINDING OF VIOLATION
)	
RESPONDENTS.)	

NOTICE AND FINDING OF VIOLATION

A. INTRODUCTION

1. This is an administrative enforcement action instituted pursuant to §342H-7 of the Hawaii Revised Statutes ("HRS"), and the Department of Health's Solid Waste Management Control Rules, Chapter 11-58.1, Hawaii Administrative Rules ("HAR"). Complainant is the Department of Health ("DOH"). RESPONDENTS are Waste Management of Hawaii, Inc. (WMH) and City and County of Honolulu ("RESPONDENTS").

2. At all times pertinent hereto, RESPONDENTS owned, operated, controlled, or managed a solid waste disposal facility at the Waimanalo Gulch Sanitary Landfill ("facility") located at 92-460 Farrington Highway, Kapolei, Hawaii.

3. On the basis of information obtained during the course of investigation, the DOH Solid Waste Section ("SWS") has determined that RESPONDENTS have violated HRS 342H, HAR 11-58.1, and RESPONDENTS' solid waste management permit. In partial summary, the RESPONDENTS built part of the west berm higher than permitted, built final cover under the west berm of lower quality than permitted, and failed to notify DOH for about 2 ½ years.

B. JURISDICTION

4. HRS §342H-7 authorizes DOH to issue orders assessing a penalty for any past or current violation of HRS chapter 342H, the rules adopted thereunder, or any term or

condition of a permit issued pursuant to the chapter, and to require compliance immediately or within a specified time.

5. Each RESPONDENT is a "person" as defined in HRS §342H-1.
6. At all relevant times pertinent hereto, RESPONDENTS held a Solid Waste Management Permit ("permit"), Permit Number LF-0054-02, which was modified on February 20, 2008 and expired on April 30, 2008.
7. A solid waste management permit application was submitted on September 21, 2007 to renew existing permit LF-0054-02.
8. HRS §342H-4(e) states, "No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application provided that the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof."

C. STATEMENT OF FACTS

COUNT I

(Failure to Construct the Final Cover and West Berm in accordance with Design Specifications)

9. Paragraphs 1 through 8 above are incorporated herein by this reference as if they were set forth here in their entirety.
10. On April 17, 2006, DOH received from WMH, *Cell E4 and West Berm Design Report* and prepared by GeoSyntec Consultants, Inc.
11. On December 2006, DOH received from WMH, *Project Manual Cell E4 and West Berm (Remainder) Construction* dated December 2006, prepared by GeoSyntec Consultants, Inc. (Project Manual)
12. The Project Manual identifies Richard Von Pein, P.E. and Paul Burns, P.E. as contacts for Waste Management of Hawaii, Inc.
13. The geosynthetic clay liner and final cover design beneath the west berm as presented in the documents listed under Paragraphs 10 and 11 above are the same. The design final grades for the west berm in the area of MSW Cell 8 is presented in Figure 4 of the document referenced in Paragraph 10 above.
14. Solid Waste Management Permit Number LF-0054-02, Part II - Special Conditions, Section B., Item 12 provides:

The permittee(s) shall sequence and construct the West Berm in accordance with the construction drawings included in the Project manual Cell E4 and West berm (Remainder) Construction dated December 2006, prepared by GeoSyntec Consultants, Inc., or approved subsequent submissions.

15. On February 3, 2010, DOH received from WMH, *Construction Quality Assurance Report for West Berm Construction (Interim)*, dated February 2010 and prepared by AECOM Technical Services, Inc. (CQA Report). According to Table 2-1 of the report, the construction started April 20, 2006 and completed May 11, 2007.

16. The CQA Report contained an e-mail from Dr. Hari D. Sharma, Ph.D., P.E. and Principal for GeoSyntec Consultants to Mr. Jesse Frey, P.E., dated May 11, 2007, discussing berm stability. The email was copied to rvonpein@wm.com; pburns@wm.com; FSettepani@GeoSyntec.com; and APadovani@GeoSyntec.com. Dr. Sharma stated "A review of the test results that you provided us indicates that the GCL used (Bentofix NSL vs NWL) does not meet the design specifications. This is because different types of GCLs have been used instead of the GCL that should have met the specifications."

17. Dr. Hari D. Sharma summarized and concluded in the May 7, 2007 e-mail as follows:

- "1. As designed, using the specified material properties, by Geosyntec, the cover underneath the West Berm has a factor of safety of about 1.5.*
- 2. As constructed (using the tested site material properties for Phase I, II, and III of the cap, please note that the material delivered and used are of lower quality), the final cover underneath the berm has a factor of safety **significantly lower** than the generally accepted factor of safety of 1.5.*
- 3. In order to bring back to a factor of safety of at least 1.5, we suggest a fix by adding a toe berm. We still need to grade it but we have determined its dimensions; we will grade it once WM agrees with this fix.*

Given these circumstances, the option proposed by GBI, of adding more soil on top of the existing west berm, is not recommended. It will make matters worse.

Please review this information and let us know the decision. If all parties agree, we can plan to provide you with this toe berm grading plan next week. Again, please do not add more fill on top of the existing western berm

18. The CQA Report contained an email from "FSettepani@Geosyntec.com to JFrey@wm.com, dated January 22, 2010, subject: Waimanalo: Results from Waimanalo Stability Analyses, As stated below, a portion of the West Berm would need to be modified. Initially, the interim West Berm will be buttressed by the stockpile. As the West Berm is raised, a factor of safety of 1.5 will need to be maintained."

19. On February 11, 2010, Mr. Thomas Miyashiro, P.E. of the Hawaii Department of Health, called WMH and spoke with Mr. Jesse Frey, Market Area Engineer for WMH for clarification on the CQA Report prepared by AECOM for the west berm construction

submitted in February 2010. Mr. Miyashiro had called to question the e-mail by Dr. Sharma in the CQA Report. When Mr. Miyashiro called the WMH office, Dr. Sharma, Mr. Von Pein and other Waste Management personnel were having a meeting on the west berm stability analyses for a new buttress to the south of the constructed berm.

20. On February 24, 2010, Geosyntec Consultants submitted to Mr. Rick Von Pein, P.E. of Waste Management, Inc., a report *RE: Waimanalo Gulch Landfill – Buttress for West Berm* and also submitted a copy to DOH for Mr. Tom Miyashiro, P.E. The report stated that:

Geosyntec has evaluated slope stability for a north-south section that runs through the landfill and the west berm. The HDOH asked WM for clarification on a portion of the Construction Quality Assurance (CQA) report recently prepared by AECOM (formerly Earthtech) for the West Berm constructed in 2006 and 2007 that was submitted by WM in early February 2010. The analyses presented herein were performed because the as-built strengths for a portion of the final cover below the west berm were lower than the strengths specified in the technical specification for the project¹.

¹ *Geosyntec Consultants, Inc., "Project Manual: Cell E4 and West Berm (Remainder) Construction: Contract Documents, Technical Specifications, Construction Quality Assurance (CQA) Manual, and Construction Drawings, Waimanalo Gulch Landfill, Ewa Beach, Oahu, Hawaii," prepared for Waste Management of Hawaii, Inc.; project WL0770; December 2006.*

21. On July 31, 2008, WMH submitted the Annual Operating Report, Waimanalo Gulch Sanitary Landfill, July 1, 2007 - June 30, 2008. Figure 6 of the report, Isopach between 2008 Topography (flown 5-9-2008) & Master Plan Final Grades, shows that part of the west berm on MSW Cell 8 was up to 30 feet higher than design grades.

22. On August 3, 2009, WMH submitted the Annual Operating Report, Waimanalo Gulch Sanitary Landfill, July 1, 2008 - June 30, 2009, dated July 31, 2009. Figure 6 of the report, Isopach between 2009 Topography (flown 3-16-2009) & Master Plan Final Grades, shows that part of the west berm on MSW Cell 8 was up to 32 feet higher than design grades.

23. On March 12, 2010, GeoSyntec Consultants submitted to Mr. Rick Von Pein, P.E. of Waste Management, Inc., a report *RE: Waimanalo Gulch Landfill – Clarification for West Berm Construction* and also submitted a copy to DOH for Mr. Tom Miyashiro, P.E., dated March 15, 2010. The report stated that: *In June 2009, WM submitted a figure showing isopachs over the West Berm to the HDOH. This figure showed that the West Berm had been constructed to grades higher than design. The HDOH inquired if the West Berm Buttress Letter Report, submitted to the HDOH on 18 February 2010, addressed these higher West Berm grades. WM and GeoSyntec confirmed and explained that the West Berm Buttress report did address the higher West Berm grades.*

24. Since the issuance of Solid Waste Management Permit Number LF-0054-02, through the completion of the west berm construction as currently permitted, the DOH did not approve any west berm designs changes subsequent to the *Project Manual Cell E4 and West Berm (Remainder) Construction* dated December 2006, prepared by GeoSyntec Consultants, Inc.

25. RESPONDENTS failed to construct the west berm in accordance with *Project Manual Cell E4 and West Berm (Remainder) Construction* dated December 2006, prepared by GeoSyntec Consultants, Inc., in violation of Solid Waste Management Permit Number LF-0054-02, Part II - Special Conditions, Section B., Item 12.

COUNT II

(Failure to Notify the DOH of Noncompliance Regarding the Construction of the West Berm)

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.

27. Solid Waste Management Permit Number LF-0054-02, Part I - Standard Conditions, Item 10 provides:

Noncompliance Notification Requirements. If, for any reason, the permittee(s) does not comply with, or will be unable to comply with, any condition or limitation specified in the permit, the permittee(s) shall notify the department verbally within twenty-four (24) hours followed by a written report within seven (7) calendar days (three (3) calendar days for waste disposal facilities, such as landfills and incinerators) of the verbal notification. The written report shall be completed and submitted by an Environmental Compliance Officer or other responsible official and contain the following information:

- a. description and cause of noncompliance;*
- b. period of noncompliance, including exact dates and times; and, if not corrected, the anticipated duration that the noncompliance is expected to continue;*
- c. steps that will be taken to correct the area of noncompliance;*
- d. steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance, including an implementation schedule; and*
- e. other information or monitoring as required by the department.*

28. Based on the May 11, 2007 email from Dr. Hari D. Sharma, Ph.D., P.E. and Principal for GeoSyntec Consultants to Mr. Jesse Frey, P.E., with copies to rvonpein@wm.com; pburns@wm.com; FSettepani@GeoSyntec.com; and APadovani@GeoSyntec.com, and the submitted annual reports, Waste Management of Hawaii, Inc., was aware that the west berm was not constructed in accordance with design specifications as early as 2007.

29. RESPONDENTS failed to notify DOH of the non-compliant west berm construction in accordance with Solid Waste Management Permit Number LF-0054-02, Part I - Standard Conditions, Item 10.

COUNT III

(Failure to submit interim status reports for the construction of each stage of the western stability berm)

30. Paragraphs 1 through 29 above are incorporated herein by this reference as if they were set forth here in their entirety.

31. Solid Waste Management Permit Number LF-0054-02, Part II - Special Conditions, Section B, Item 13 provides:

The permittee(s) shall submit interim status reports within (30) days after completing construction of each stage of the western stability berm and a Western Berm Completion report within thirty (30) days after completing construction of the entire stability berm. The reports shall be prepared by a professional engineer registered in the State of Hawaii. The reports shall be specify the following:

- a. *Date of completion;*
- b. *Identification of the stability berm/sequencing plan stage that was completed, if applicable;*
- c. *Identification and description of materials, including testing results, of materials used in the construction of the stability berm;*
- d. *As-built drawings or statement that the berm was constructed in accordance with the Construction Quality Assurance Report for Ash Toe Berm and E-1 Berm Construction, prepared by Earth Tech, Inc., dated September 2007;*
- e. *Survey drawings of the completed area;*
- f. *Description of any deviations from the original plan, reason for deviation, and engineering evaluation of the proposed change; and*
- g. *Certification that the berm was constructed in accordance with the engineering design and serves the stability requirements as proposed and approved.*

32. On February 3, 2010, DOH received from WMH, the CQA Report. According to Table 2-1 of the report, the construction started April 20, 2006 and completed May 11, 2007.

Table 2-1: Construction Completion Schedule

Task	Start Date	Completion Date
Berm Bypass Pipe Placement	04/20/2006	04/28/2006
Phase I Final Cover Geosynthetics Installation	05/07/2006	05/11/2006
Phase II Final Cover Geosynthetics Installation	11/11/2006	11/21/2006
Phase III Final Cover Geosynthetics Installation	04/28/2007	05/01/2007
Berm Fill Placement	05/19/2006	05/11/2007

IN THE DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH, STATE OF HAWAII,)	DOCKET NO. 10-SHW-SWS-002
)	Waimanalo Gulch Sanitary Landfill
)	
COMPLAINANT,)	
)	
vs.)	ORDER
)	
WASTE MANAGEMENT OF HAWAII, INC. AND CITY AND COUNTY OF HONOLULU)	
)	
)	
RESPONDENTS)	

ORDER

Pursuant to chapter 342H, Hawaii Revised Statutes, the Department of Health's Solid Waste Management Control rules, and the attached Notice and Finding of Violation made this day in Docket No. 10-SHW-SWS-002, Waste Management of Hawaii, Inc. and City and County of Honolulu, hereinafter "RESPONDENTS," are hereby ordered to:

1. The RESPONDENTS shall construct the toe buttress to the western berm in accordance with Sheet 25 of *Construction Drawings, Cells E5 through E8, Waimanalo Gulch Landfill, Ewa Beach, Oahu, Hawaii*, dated January 2010, revision 3 dated March 16, 2010. Construction shall commence within 30 days of this order becoming final, and shall be completed within 6 months of this order becoming final.
2. Send to the Director of Health, within ten (10) days after this order becomes final, a certified check payable to the State of Hawaii in the amount of four hundred twenty-four thousand dollars (\$424,000).

The provisions of this NFVO shall become final unless, within twenty (20) days after receipt, you submit a written request for a hearing, along with a copy of the NFVO to:

Hearings Officer
c/o Director of Health
Department of Health
1250 Punchbowl St., Third Floor
Honolulu, Hawaii 96813

Your written request for hearing, along with the NFVO, must be filed with the Hearings Office within the twenty (20) day period. You may file the hearing request in person at the Director's office, during regular business hours, or may mail the same to the above address within the allotted time. Failure to timely file the hearing request and related documents may result in a denial of your hearing request.

If a hearing is properly requested, a pre-hearing conference will be set by the Hearings Officer and you will be notified of the date, time, and place of the pre-hearing conference.

The hearing will be conducted in accordance with Chapter 91 of the HRS and Title 11, Chapter 1 of the HAR. If you have special needs due to a disability and these needs will aid you in participating in the hearing or pre-hearing conference, please contact the Hearings Officer at (808) 586-4409 (voice) or through the Telecommunications Relay Service (711), at least ten (10) working days before the hearing or pre-hearing conference.

At the hearing, the parties may present relevant evidence and argument on the issues raised by this case. The parties may also examine and cross-examine witnesses and present exhibits.

Parties may be represented by legal counsel at their own expense. An individual may appear on his/her own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation, or trust, or association may represent the corporation, trust, or association.

After such hearing, the Order shall be affirmed, modified or rescinded by the Director or Hearings Officer.

The written request for a hearing, along with the related documents and pleadings in this case shall be directed to:

Hearings Officer
c/o Director of Health
Department of Health
1250 Punchbowl Street, Third Floor
Honolulu, HI 96813

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Mr. Timothy Steinberger, Director Department of Environmental Services City and County of Honolulu 1000 Uluohia Street Kapolei, Hawaii 96707		B. Received by (Printed Name) <i>D. Fukumoto</i>	C. Date of Delivery <i>5/19/10</i>
2. Article Number <i>(Transfer from service label)</i>		D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	
		7009 2250 0004 4923 0423	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Mr. Joe Whelan, General Manager Waste Management of Hawaii, Inc. 92-460 Farrington Highway Kapolei, Hawaii 96707		B. Received by (Printed Name) <i>CASSIA SIMEROZ</i>	C. Date of Delivery <i>5/19/10</i>
2. Article Number <i>(Transfer from service label)</i>		D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	
		7009 2250 0004 4923 0416	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

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PS Form 3800, August 2008 See FIM for instructions	

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Sent To Mr. Timothy Steinberger, Director Department of Environmental Services Street, Apt. No. or PO Box No. City and County of Honolulu City, State, ZIP+4® 1000 Uluohia Street Kapolei, Hawaii 96707	
PS Form 3800, August 2008 See FIM for instructions	