

ORIGINAL

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Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

To delete Condition No. 14 of Special
Use Permit No. 2008/SUP-2 (also
referred to as Land Use Commission
Docket No. SP09-403) which states as
follows:

"14. Municipal solid waste shall be
allowed at the WGSL up to July 31,
2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGSL after July 31, 2012."

FILE NO. 2008/SUP-2

INTERVENTORS' REQUEST FOR
ISSUANCE OF A SUBPOENA
DUCES TECUM TO THE
CUSTODIAN OF RECORDS OF
WASTE MANAGEMENT OF
HAWAII, INC.

SUBPONEA DUCES TECUM

[RE: CUSTODIAN OF RECORDS
OF WASTE MANAGEMENT OF
HAWAII, INC.]

EXHIBITS A-B

CERTIFICATE OF SERVICE

Contested Case:
Beginning December 7, 2011

RECEIVED

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DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

EXHIBIT K164

**INTERVENTORS' REQUEST FOR ISSUANCE OF A SUBPOENA DUCES
TECUM TO THE CUSTODIAN OF RECORDS OF WASTE
MANAGEMENT OF HAWAII, INC.**


Pursuant to Honolulu Planning Commission Rule § 2-69, Intervenors Ko Olina Community Association and Maile Shimabukuro hereby request that an authorized representative of the Honolulu Planning Commission issue a subpoena duces tecum to the custodian of records of Waste Management of Hawaii, Inc. to require the custodian of records to appear at 9:00 a.m. at the January 11, 2012 hearing in this matter, produce documents for inspection and copying, and testify as to the contents of the documents produced.

The documents sought to be produced are those relating to the fabrication of gas and/or air monitoring at the Waimanalo Gulch Sanitary Landfill (the "Landfill"). These documents and the related testimony by the custodian of records are believed to be material and relevant to the issues involved in this matter, including the risk of harm that the Landfill poses to public health, safety, and welfare.

Intervenors respectfully request that the subpoena attached hereto be issued by an authorized representative of the Honolulu Planning Commission.

DATED: Honolulu, Hawai'i, January 8, 2012.

CADES SCHUTTE
A Limited Liability Law Partnership



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SUBPOENA DUCES TECUM

[RE: CUSTODIAN OF RECORDS
OF WASTE MANAGEMENT OF
HAWAII, INC.]

EXHIBITS A-B

Contested Case:

Beginning December 7, 2011

SUBPOENA DUCES TECUM

THE CITY AND COUNTY OF HONOLULU TO:

ANY OFFICER AUTHORIZED BY LAW TO SERVE SUBPOENAS IN THE STATE OF HAWAII, YOU ARE COMMANDED to subpoena the individual named below:

CUSTODIAN OF RECORDS OF
WASTE MANAGEMENT OF HAWAII, INC.
92-460 Farrington Highway
Kapolei, Hawai'i 96707

WITNESS, YOU ARE COMMANDED to appear at the date, time, and place indicated below to testify as a witness on behalf of Intervenors Ko Olina Community Association and Maile Shimabukuro.

WITNESS, YOU ARE FURTHER COMMANDED to bring with you, and permit inspection and copying of, all documents related to the fabricated wellhead monitoring readings at the Waimanalo Gulch Sanitary Landfill taken in 2010 and 2011, as disclosed in Exhibits A and B hereto, including but not limited to: all documents containing or evidencing fabricated readings; all investigation reports related to the fabricated readings; all assessment documents related to the fabricated readings; all government notices, citations, and/or orders related the fabricated readings; all correspondence with the City and County of Honolulu and/or any other governmental agency or body related to the fabricated readings; and all documents related to remedial actions taken to address the fabricated readings.

Date: January 11, 2012

Time: 9:00 a.m.

Place: Mission Memorial Hearings Room
Mission Memorial Building
550 South King Street
Honolulu, Hawai'i

DATED: Honolulu, Hawai'i, January 6, 2012.


Gayle Pingree

AUTHORIZED REPRESENTATIVE
PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

SEP - 0 2011



WASTE MANAGEMENT

92-460 Farrington Hwy.
Kapolei, HI 96707
(808) 668-2985
(808) 668-1366 Fax

By Email & USPS Certified Mail

August 18, 2011

John Brock
Air Enforcement Office
U.S. Environmental Protection Agency,
Region IX
75 Hawthorne Street
San Francisco, CA 94105
E-mail: Brock.John@epamail.epa.gov

Ronald Ho
Clean Air Branch
Hawaii Department of Health
919 Ala Moana Blvd., Suite 203
Honolulu, Hawaii 96814
E-mail: Ronald.ho@doh.hawaii.gov

RE: Waimanalo Gulch Municipal Solid Waste Landfill
Missed Reading Notification
Covered Source Permit No. 0489-01-C

As requested, this letter provides independent notification of the information previously reported in the semi-annual Report dated August 30, 2011.

As reported, in early August 2011, Waste Management of Hawaii, Inc. (WMH) identified suspect readings from recent wellhead monitoring and undertook an investigation. On August 26, 2011, the WMH employee admitted that he had failed to take numerous wellhead readings and instead fabricated those readings. WMH has terminated that employee and is undertaking further investigation to determine the scope of noncompliance. Therefore, the values reported for the 6-month average and maximum gauge pressures, oxygen concentrations, and temperatures are based on only the values for those wells and sampling events that were actually measured. The semiannual report does not include data that WMH reasonably suspects or has confirmed is not actual data taken for the wells.

Following completion of our investigation, a copy of our findings will be shared with your office. If you have additional questions please contact me at 808-668-2985.

Respectfully,

Justin H. Lottig
Environmental Protection Manager,
Waste Management of Hawaii Inc.

CC: File
via e-mail
Wayne Hamada - CCH
Joseph Whelan - WMH

From everyday collection to environmental protection, Think Green® Think Waste Management.

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EXHIBIT A

MD 17045

ROBERT CARSON GODBEY, 4685
 Corporation Counsel
 DANA VIOLA, 6095
 ROBERT BRIAN BLACK, 7659
 Deputies Corporation Counsel
 City and County of Honolulu
 Honolulu, Hawaii 96813
 Telephone: 768-5233
 768-5118

Attorneys for Applicant
 DEPARTMENT OF ENVIRONMENTAL SERVICES,
 CITY AND COUNTY OF HONOLULU

DEPT OF PLANNING
 AND PERMITTING
 CITY & COUNTY OF HONOLULU

11 DEC 13 P4:28

RECEIVED

BEFORE THE PLANNING COMMISSION
 OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of)	FILE NO. 2008/SUP-2
)	
DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU)	DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S WRITTEN DIRECT TESTIMONY OF TIMOTHY E. STEINBERGER; CERTIFICATE OF SERVICE
To delete Condition No. 14 of Special Use Permit No. 2008/SUP-2 (also referred to as Land Use Commission Docket No. SP09-403) which states as follows:)	
)	
"14. Municipal solid waste shall be allowed at the WGSL up to July 31, 2012, provided that only ash and residue from H-POWER shall be allowed at the WGSL after July 31, 2012.")	

DEPARTMENT OF ENVIRONMENTAL SERVICES,
 CITY & COUNTY OF HONOLULU'S
WRITTEN DIRECT TESTIMONY OF TIMOTHY E. STEINBERGER

EXHIBIT B

issued a Notice of Violation (“NOV”) concerning the MSW release. EPA did not impose any penalties as part of the NOV and continues to monitor the WGS� operations closely.

3. Irregular Landfill Gas Data.

82. In September 2011, WMH notified the City, EPA, and DOH that it identified significant irregularities with the landfill gas data that had purportedly been collected and recorded by its landfill gas technician at WGS�. Further investigation by WMH revealed that a rogue WMH employee had fabricated some wellhead gas parameter measurements instead of collecting the data through verifiable measurements. The employee failed to collect actual data from mid-2010 until August 2011.

83. As a result of WMH’s initial investigation, WMH hired an environmental consultant to perform a detailed assessment of (1) the current status of the wellfield and gas collection and control system to determine whether the fabricated data has concealed adverse changes in the wellfield, and (2) the past status of the wellfield based on verifiable data. Based upon the detailed assessment, WMH concluded that the wellfield and gas collection control system is performing within the expected range of monitored parameters at the facility and that there is no evidence that the wellfield has undergone any adverse changes in the last two years.

V. WGS� IS NECESSARY FOR PROPER MANAGEMENT OF MUNICIPAL SOLID WASTE

84. The 2009 Planning Commission did not place an expiration date on 2008/SUP-2 or any deadline for the acceptance of waste at WGS� because it recognized the futility of setting unrealistic deadlines for closure. As Planning Commissioner Komatsubara stated, “[S]imply putting on a new closure date to this new SUP will not lead to the closure of the Waimanalo Gulch Sanitary Landfill. . . . [T]he focus should not be on picking a date. The focus should be on how do we get the City to select a new site because you’re not going to close this landfill until

89. By 2012, when HPOWER's third boiler is expected to be fully operational, the City anticipates that about eighty percent (80%) of the island's waste stream will be diverted from landfill disposal. See 2009 Planning Commission Decision, ¶ 101, pg. 20. Twenty percent (20%), however, of O'ahu's waste will still need to be landfilled at WGS�, as certain wastes cannot be recycled or combusted. Id., see also ¶¶ 92, 97, pgs. 18-19. Further, the expanded HPOWER facility will still require the continued availability of WGS� as a permit condition to operate, to ensure proper disposal of MSW that is diverted from HPOWER due to routine maintenance, unanticipated closures or if the amount of waste exceeds the capacity of the facility.

90. A landfill is currently necessary for proper solid waste management to avoid the potential health and safety issues for O'ahu's residents and visitors. Accordingly, because WGS� is the only currently permitted landfill available to serve O'ahu's municipal solid waste needs, it is also the City's best and only viable option for disposal of certain wastes. Requiring the landfill to stop accepting MSW on July 31, 2012, will have immediate and dire consequences for all of O'ahu.

I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, December 13, 2011.


TIMOTHY E. STEIMBERGER