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WATANABE ING LLP  
A Limited Liability Partnership

WRAY H. KONDO #2036-0  
DAVID S. TAGA #9046-0  
First Hawaiian Center  
999 Bishop Street, 23<sup>rd</sup> Floor  
Honolulu, Hawaii 96813  
Phone: 808-544-8300  
Fax: 808-544-8399  
E-mail: wkondo@wik.com

Attorneys for Non-Party  
WASTE MANAGEMENT OF HAWAII, INC.

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

WASTE MANAGEMENT OF HAWAII,  
INC.'S RESPONSE AND OBJECTIONS TO  
SUBPOENA DUCES TECUM; EXHIBIT “1”;  
CERTIFICATE OF SERVICE

**WASTE MANAGEMENT OF HAWAII, INC.'S  
RESPONSE AND OBJECTIONS TO SUBPOENA DUCES TECUM**

Waste Management of Hawaii, Inc. (“Waste Management”), by and through its attorneys,  
WATANABE ING LLP, hereby responds and objects to the “Subpoena Duces Tecum [Re:  
Custodian of Records of Waste Management of Hawaii, Inc.]” (the “Subpoena”) filed by

**EXHIBIT K165**

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Intervenors KO OLINA COMMUNITY ASSOCIATION and MAILE SHIMABUKURO (“Intervenors”) and signed by Gayle Pingree, Chairperson of the Planning Commission of the City and County of Honolulu on January 6, 2012. The Subpoena was served on Waste Management’s authorized Agent, The Corporation Company, Inc. on January 10, 2012 and Waste Management was notified of Subpoena in the afternoon on January 11, 2012, which also was the return day of the Subpoena.

The Subpoena commands Waste Management’s custodian of records to appear at 9:00 am on January 11, 2012 and further commands Waste Management as follows:

“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 to 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.”

Waste Management responds as follows:

**I. Intervenors Already Have Most of the Discoverable Documents That are Described in the Subpoena**

Waste Management represents that for the most part the requested documents, as identified below, are already in the possession of the Intervenors and other parties in the pending

proceeding involving the Application filed on June 28, 2011 by the DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU (“ENV”).

1. The Subpoena seeks documents and information that the Intervenors already have in their possession as evidenced by the Exhibit Lists submitted by Intervenors, and the following identified Exhibits and/or are more readily obtainable from sources other than Waste Management, including, but not limited to, the Applicant ENV.

2. Specifically, the Intervenors currently possess the relevant, pertinent, non-confidential, non-privileged information relating to the wellhead monitoring readings at the Waimanalo Gulch Sanitary Landfill taken in 2010 and 2011 as requested in the Subpoena, as identified in items 3 – 6 below:

3. EIL 2009 through 2011 Waimanalo Gulch Sanitary Landfill, Monthly Perimeter Gas Monitoring Letter Reports prepared for Waste Management which Dwight Miller of Parametrix relied on as a reference in preparing Intervenors’ Exhibit 146.

4. Intervenors Exhibit K-157 listed in Intervenors’ December 20, 2011 Second Amended Exhibit List, the wellhead monitoring issue is described and explained in the August 30, 2011 letter from Timothy E. Steinberger, Director of Applicant ENV to Ronald Ho of the Clean Air Branch, Department of Health, State of Hawaii and John Brock of the EPA and the attached August 29, 2011 Semi-Annual Report January 1, 2011 through June 30, 2011 prepared by Environmental Information Logistics (“EIL”) relating to Waimanalo Gulch Sanitary Landfill, Covered Source Permit No. 0489-01-C.

5. Intervenors Exhibit K-158 listed in Intervenors’ December 20, 2011 Second Amended Exhibit List, the wellhead monitoring issue is further described and explained in the August 18 [ sic ], 2011 letter from Justin Lottig, Environmental protection Manager of Waste

Management to John Brock of the EPA and Ronald Ho of the Clean Air Branch, Department of Health, State of Hawaii. Note that Intervenor Exhibit K-158 refers to the Semi-Annual Report dated August 30, 2011 and was actually submitted on September 2, 2011. Waste Management represents that the date of Intervenor Exhibit K-158 should be September 2, 2011.

6. Intervenor Exhibit K-160 listed in Intervenor's January 5, 2012 Third Amended Exhibit List, the September 28 2011 Landfill Gas Extraction Assessment prepared by EIL relating to relating to Waimanalo Gulch Sanitary Landfill. This Assessment was undertaken to investigate the fabricated wellhead monitoring readings which is the subject of the Subpoena. Significantly, the conclusion states, in part, as follows:

**There is no evidence of adverse changes in the condition of the wellfield. In particular, there is no evidence of any SOE [ subsurface oxidation event ], no smoke, no odor, no localized subsidence adjacent to any well. Therefore, despite the absence of some data during the time period in question, the available data shows no wild swings and no adverse changes in the condition of the wellfield. In particular, there is no evidence of an SOE or even conditions that would present a risk of an SOE. Further, the data indicates, even if the manual data was included in any evaluation, it would not significantly alter any of the conclusions or materially skew the data.**

Intervenor Exhibit K-160 at 32. [Bracketed material added]

7. In response to the Subpoena, Waste Management submits attached Exhibit 1, which is the October 3, 2011 letter of Joseph R. Whelan General Manager of Waste Management sent to Timothy Steinberger, Director of Applicant ENV relating to the Landfill Gas Management System Investigation Report and which transmitted Intervenor Exhibit K-160.



8. In response to the Subpoena, Waste Management represents that it is not aware of any government notices, citations, and/or orders related to the fabricated readings.

9. In response to the Subpoena, Waste Management represents it is not aware of any other correspondence with the City and County of Honolulu and/or any other governmental agency or body related to the fabricated readings.

10. In response to the Subpoena, Waste Management submits attached Exhibit 1, which describes the remedial actions taken to address the fabricated readings.

**II. Waste Management of Hawaii Objects to the Subpoena to the Extent It Seeks Irrelevant and Privileged Documents**

Waste Management objects to the Subpoena on the following grounds:

1. The Subpoena seeks documents that are protected by the attorney-client privilege and/or work product doctrine.

2. The Subpoena seeks documents that contain highly confidential and proprietary, commercial and other highly sensitive business information.

3. The Subpoena is vague, overly broad, and seeks documents that are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of relevant information.

4. The wellhead monitoring readings are irrelevant to the sole issue in this proceeding -- whether to delete Condition No. 14 of Special Use Permit No. 2008/SUP-2, which provides that municipal solid waste shall be allowed at the Waimanalo Gulch Sanitary Landfill up to July 31, 2012.

5. In seeking the documents described in the Subpoena, the Intervenor impermissibly seek to broaden the scope of and unduly delay this proceeding.

6. The Subpoena is oppressive and unduly burdensome in scope because it is vague, overly broad, and seeks documents that are privileged and/or are neither relevant to the subject matter of this Planning Commission proceeding, nor reasonably calculated to lead to the discovery of relevant information and has resulted in undue time and expense to Waste Management in responding to the Subpoena.

7. For these reasons, Waste Management respectfully objects to any further production of documents described in the Subpoena.

DATED: Honolulu, Hawaii, January 20, 2012.



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WRAY H. KONDO  
DAVID S. TAGA  
Attorneys for Non Party  
WASTE MANAGEMENT HAWAII, INC.





WASTE MANAGEMENT

October 3, 2011

Mr. Tim Steinberger, Director  
Department of Environmental Services  
City & County of Honolulu  
1000 Uluohia St., Suite 212  
Kapolei, HI 96707

RE: **Landfill Gas Management System Investigation Report**  
**Contract No. C-48689**  
**Waimanalo Gulch Sanitary Landfill**

WASTE MANAGEMENT

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

Dear Mr. Steinberger:

As you know, in August, Waste Management of Hawaii, Inc. (WMH) discovered and reported that a large amount of landfill gas data that had purportedly been collected and reported to us by our former landfill gas technician had not in fact been collected. Instead, the data had been fabricated and manually entered into Waste Management's Landfill Gas Management System (LGMS). Based on interviews conducted during the investigation, we learned that the failure to collect data and the fabrication of replacement data began in mid-2010 and continued until August 2011 when the failure was investigated and identified. The failure to collect data and the manual entry of fabricated data into LGMS database is a clear violation of the company's written policy and procedures.

WMH deeply regrets the failure of this one employee to do his job and the unfortunate damage it caused to the credibility of the rest of WMH's hardworking landfill staff. We have implemented a number of procedures to prevent any future recurrences of this problem. First, the landfill gas technician no longer works for WMH and we are actively seeking to hire another technician. Second, we have modified our LGMS program to allow users to easily determine whether records are uploaded directly from a monitoring instrument or are manually entered. Third, we have placed restrictions on the ability of the "Technician" level gas technicians to enter data manually as follows:

- **Wells:** Manual entry of primary composition and physical parameters normally measured by the GEM monitoring instrument will not be allowed by users with "Technician" level access. These users will retain the ability to manually enter comments and other gas concentrations not normally measured with a gas emissions monitor (GEM) instrument.
- **Probes:** Manual entry of primary composition and physical parameters normally measured by the GEM will no longer be allowed by users with "Technician" level access. These users will retain the ability to manually enter comments and other gas concentrations not normally measured with a GEM instrument.
- **Sample Ports:** Manual entry of primary composition and energy parameters normally measured by the GEM will no longer be allowed by users with "Technician" level access. These users will retain the ability to manually enter physical parameters, comments, and other gas concentrations.

## EXHIBIT 1

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



Not only has WMH implemented these changes for the Waimanalo Gulch Landfill, Waste Management has implemented these changes throughout the entire company for all of its landfills (over 200 landfills). These changes became effective on September 29<sup>th</sup>.

As a result of the discovery of the fabricated data, WMH also asked its third-party consultant, Environmental Information Logistics, LLC (EIL), to conduct a detailed assessment of (1) the current status of the wellfield and the gas collection and control system (GCCS), and (2) the past status of the wellfield based on data that conservatively excludes all data that was manually entered into LGMS. The purpose of this assessment was to provide reassurance that the fabricated or suspect data had not concealed adverse changes in the wellfield.

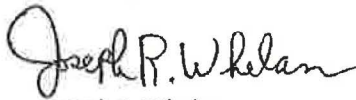
I am attaching a copy of EIL's report – *Landfill Gas Extraction Assessment* (Sep. 28, 2011) – which confirms the following:

- Based on the most recent verified data, there have been no adverse impacts on the wellfield, and the wellfield is acting consistent with WMH's expectations.
- While some gas temperatures have risen over the period in some wells, temperatures have not exceeded expected levels based on the wells' proximity to other wells with similar temperatures and can be explained by changes in fill elevations.
- Carbon monoxide concentrations are historically consistent and do not indicate any condition considered abnormal at the facility.
- Despite the absence of some data during the period in question, the available data shows no large variations and no adverse changes in the condition of the wellfield. Further, the data indicates, even if the manually uploaded data were included in the evaluation, it would not significantly alter any of the conclusions or materially skew the overall monitoring data.

We will continue to review the data from the well field to ensure that it continues to fall within expected and normal operating conditions.

Thank you for your patience regarding this matter. Please contact me at 668-2985 if you have any questions.

Sincerely,



Joseph R. Whelan  
General Manager  
Waste Management of Hawaii

Attachment  
cc: File

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  
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CERTIFICATE OF SERVICE

To delete Condition No. 14 of Special Use  
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the WGS� up to July 31, 2012, provided that  
only ash and residue from H-POWER shall be  
allowed at the WGS� after July 31, 2012.”

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this day a copy of WASTE MANAGEMENT OF  
HAWAII, INC.'S RESPONSE AND OBJECTIONS TO SUBPOENA DUCES TECUM;  
EXHIBIT “1” was duly served on the following persons by means of facsimile and/or U.S. Mail:

CALVERT G. CHIPCASE, ESQ.  
Cades Schutte LLP  
1000 Bishop Street, Suite 1200  
Honolulu, Hawaii 96813

FACSIMILE AND  
U.S. MAIL

Attorneys for Intervenors  
KO OLINA COMMUNITY ASSOCIATION and  
MAILE SHIMABUKURO

ROBERT CARSON GODBEY, ESQ.  
Corporation Counsel  
DANA VIOLA, ESQ.  
ROBERT BRIAN BLACK, ESQ.  
Deputies Corporation Counsel  
City and County of Honolulu  
530 South King Street, Room 110  
Honolulu, Hawaii 96813

FACSIMILE AND  
U.S. MAIL

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


DEPARTMENT OF PLANNING AND PERMITTING      U.S. MAIL  
City and County of Honolulu  
650 South King Street, 7<sup>th</sup> Floor  
Honolulu, Hawaii 96813

IAN L. SANDISON  
DEAN H. ROBB  
TIM LUI-KWAN  
Carlsmith Ball LLP  
1001 Bishop Street, Suite 2200  
Honolulu, Hawaii 96813

FACSIMILE AND  
U.S. MAIL

Attorneys for Petitioner  
SCHNITZER STEEL HAWAII CORP.

DATED: Honolulu, Hawaii, January 20, 2012.

  
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WRAY H. KONDO  
DAVID S. TAGA  
Attorneys for Non Party  
WASTE MANAGEMENT OF HAWAII, INC.