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2 A P P E A R A N C E S

3 Docket No. SP09-403 SUP Waimanalo Gulch Status Report

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5 For the City and County
6 Department of Environmental Services:

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Deputy Corporation Counsel
TIM STEINBERGER,
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11 Department of Planning and Permitting:

12

RAYMOND YOUNG

13

Intervenor Colleen Hanabusa: RICHARD N. WURDEMAN, ESQ.

14

Ko Olina Community Association

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Senator Maile Shimabukuro: WYETH MATSUBARA, ESQ.
BENJAMIN MATSUBARA, ESQ.

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Also Present: ABBEY MAYER, KOCA representative

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SP09-403 Status Report

CHAIRMAN DEVENS: All right. We're back on the record. Next item on the agenda is Docket No. SP09-403. This is a status report on a Special Use Permit allowing for the expansion and continued operation of the Waimanalo Gulch Sanitary Landfill, on a limited basis and with conditions that was approved by the Commission on October 22, 2009.

Before we get started can we have the parties note their appearances please.

MS. VIOLA: Good afternoon. Deputy Corporation Counsel Dana Viola. Also present is Deputy Corporation Counsel Sharon Blanchard. And I have the Director of the Environmental Services, Tim Steinberger.

CHAIRMAN DEVENS: Good afternoon to you.

MR. YOUNG: Good afternoon, Chairman Devens. This is Raymond Young from the Department of Planning and Permitting.

CHAIRMAN DEVENS: Good afternoon to you.

MR. WURDEMAN: Good afternoon. Richard N. Wurdeman with Intervenor Colleen Hanabusa who's present.

CHAIRMAN DEVENS: Good afternoon.

1 MR. W. MATSUBARA: Good afternoon, Chair
2 Devens, Commissioners. Wyeth Matsubara, Ben Matsubara
3 on behalf of Ko Olina Community Association, Senator
4 Maile Shimabukuro. With me as representative of KOCA
5 is Abbey Mayer.

6 CHAIRMAN DEVENS: Good afternoon to you
7 all. I believe we did get the substitution of counsel
8 from your office, Mr. Matsubara. Mr. Wurdeman, I
9 understand that you are making an appearance for the
10 Intervenor in this case.

11 MR. WURDEMAN: Yes, that is correct.

12 CHAIRMAN DEVENS: I'd like to make a
13 disclosure if I may. I do know Mr. Wurdeman. He has
14 done some work with the union that I'm affiliated
15 which is SHOPO. Obviously SHOPO is not involved in
16 this matter in any way, but I make that disclosure and
17 ask the parties if they have any concerns or
18 objections they can raise them at this time. (pause)
19 Hearing none we'll proceed.

20 We asked for this status, informational
21 meeting for the following: In light of the recent
22 discharges of the municipal solid waste into the ocean
23 from the Waimanalo Gulch Sanitary Landfill, the
24 Commission requested the Department of Environmental
25 Services appear before the Commission to provide a

1 status report regarding the circumstances surrounding
2 the recent discharges and what steps are being taken
3 to prevent any reoccurrence.

4 The Commission also requested that the
5 Department provide an update regarding the status of
6 the City's efforts to identify and develop alternative
7 sites to replace or supplement Waimanalo Gulch
8 Sanitary Landfill as required by Condition 4 of the
9 Commission's October 22, 2009 Decision and Order in
10 this matter.

11 In addition, the Commission requested
12 that the Department take this opportunity to update
13 the Department of Environmental Services July 28, 2010
14 report regarding compliance with the 16 conditions
15 contained in the Commission's Decision and Order.

16 On January 31st, 2011 the Commission
17 received e-mail correspondence from Doug and Sherrill
18 Sleeter regarding the Waimanalo Landfill.

19 On February 1st, 2011 the Commission
20 received Notice and Appearance of Counsel advising
21 that Matsubara-Kotake would appear as counsel for
22 Intervenors Ko Olina Community Association and Maile
23 Shimabukuro.

24 On February 2nd, 2011 the Commission
25 received written correspondence via email from a

1 William and Sara Barnes. In addition, today the
2 Commission has received a letter dated February 2nd,
3 2011 from Director Steinberger which enclosed a status
4 report as requested. In addition, also filed today
5 was Ko Olina Community Association and Maile
6 Shimabukuro's report on the impacts regarding the
7 discharges from Waimanalo Gulch Sanitary Landfill.

8 Did the parties get a copy of the two
9 filings that were submitted today? Looks like
10 everyone -- sorry, you did not receive it?

11 MR. YOUNG: Was it handed out today or
12 was it delivered?

13 CHAIRMAN DEVENS: It was filed today.
14 We just got it a few minutes ago.

15 MR. YOUNG: We didn't.

16 CHAIRMAN DEVENS: We'll get a copy to
17 you. The procedure today will be to allow the
18 Department of Environmental Services to present its
19 status report, then allow the parties the opportunity
20 to offer brief comments and then allow for public
21 testimony on these matters.

22 At this point we'll have the
23 Environmental Services go first.

24 MR. STEINBERGER: Thank you. To answer
25 the first two points we've asked our contractor Waste

1 Management Hawaii. They are contracted by the City
2 and County of Honolulu to operate the landfill. And
3 then the second two issues, the City will respond to.
4 So if I may I'd like to let Waste Management, Mr. Joe
5 Whelan respond to those.

6 CHAIRMAN DEVENS: We're going to have to
7 swear you in first, sir.

8 JOE WHELAN,
9 being first duly sworn to tell the truth, was examined
10 and testified as follows:

11 THE WITNESS: I do.

12 CHAIRMAN DEVENS: State your name and
13 address, please.

14 THE WITNESS: My name is Joe Whelan, 44-
15 051 Kainui Place Kaneohe, Hawai'i.

16 CHAIRMAN DEVENS: Go ahead, sir.

17 THE WITNESS: My name is Joe Whelan.
18 I'm the general manager of Waste Management of Hawaii.
19 We operate three landfills in the state, one here,
20 one on the Big Island and one on the island of Kaua'i.
21 What I'd like to do initially is just briefly go over
22 the map behind me and show you the features of the
23 landfill. And then I'll explain what happened
24 throughout the various storms. Everybody hear me
25 okay?

1 This is the landfill itself, the older
2 portion. And of course the area up here is the area
3 that was just granted the expansion in 2009. When you
4 look at this map it's from 2008. So there's a fair
5 amount of this gulch right here that now has a blue
6 tone to it because that's where the excavation is
7 ongoing.

8 By way of features on the map you'll see
9 here is the ash monofil. All of ash that's generated
10 from the H-Power plant goes to Waimanalo Gulch. It's
11 disposed of here in the monofil.

12 This area here is the existing or older
13 portion of the landfill that commenced operations I
14 believe around 1989.

15 The area right here is the expansion
16 from 2003 which are noted as the E cells. The
17 property boundary goes up here and then comes, follows
18 back down the ridgeline here.

19 CHAIRMAN DEVENS: Mr. Whelan, I
20 apologize for interrupting. We're familiar with the
21 background. We just want to know what happened. We
22 want to know how this thing happened.

23 THE WITNESS: Okay. The watershed that
24 feeds the Waimanalo Gulch Landfill is up in this area.
25 The long-term plan has always been to divert water

1 that comes from here through this gulch currently
2 through the landfill to around this landfill.

3 And how that diversion was going to take
4 place is that along here there's a diversion berm that
5 is under construction. It's about 14 or 16 feet high
6 and goes from one side of the canyon to the other.

7 What it is designed to do is divert
8 water across here to an open box culvert that runs
9 1500 feet or so. It will then dump into 7-foot
10 diameter Fiberglas piping which goes along the
11 ridgeline here and down into this existing concrete
12 channel diverting all of the stormwater around the
13 active portion of the landfill.

14 That construction period began in, I
15 believe, November of 2009 and is under construction as
16 we speak. Any other questions on the actual landfill
17 itself?

18 CHAIRMAN DEVENS: No. You know, we're
19 trying to get to find --

20 THE WITNESS: Right.

21 CHAIRMAN DEVENS: -- out -- what this
22 Commission knows is basically what we've heard in the
23 media. And I can tell now personally it's been very
24 disturbing to hear what happened. Of course we don't
25 have all the facts.

1 THE WITNESS: Right.

2 CHAIRMAN DEVENS: And we're just trying
3 to find out what happened and the extent of the spill.

4 THE WITNESS: The first storm occurred
5 on December 19th, according to the Palehua rain gauge.
6 We got around 7.9 inches of rain in about 13 hours.
7 Stormwater from that area flowed into the new
8 expansion area and inundated cell 6.

9 As I just mentioned the long-term
10 stormwater diversion channel at that time was several
11 weeks away from being functionally complete. Which
12 means that it wouldn't be complete from a contract
13 standpoint, but it would, in fact, have diverted the
14 majority of the water around the landfill and out into
15 our existing sedimentation basin.

16 At that time after the first storm,
17 because of the fact that water had ponded on top of
18 cell 6, we then created a dam, if you will, or a berm
19 on the south side of that cell 6 in order to keep that
20 water from becoming a catastrophic event and leaving
21 the site.

22 At that time we also brought in
23 additional pumps, fortified all of our ditches. We
24 reinforced the existing 36-inch diversion berm and
25 diversion piping that were installed to handle

1 stormwater that fell in the cell 6 area during the
2 time of construction of the long-term stormwater
3 diversion channel.

4 On December 27 we received another major
5 storm where we got just under 4 inches of rain in 4
6 hours. At that time we then, again the cell 6 area
7 filled again with water. We reinforced the temporary
8 berm that we constructed before, used the existing
9 pumps, reinforced all of our diversion structures
10 again.

11 The last storm, which was the major one,
12 happened on the evening of January 12th into
13 January 13 where we received 10.7 inches of rain in a
14 24-hour period which was 7 and-a-half inches of rain
15 in about 6 hours. The sheer volume of that amount of
16 water again went in and filled up the area of cell 6
17 and caused that water to then go through the
18 sedimentation basin and off site.

19 As far as our cleanup efforts: Once we
20 realized that the storm was that magnitude on the day
21 of the storm, the 13th, we and the City had a meeting,
22 teleconference meeting with the Department of Health,
23 explained the problems. At that time we then began
24 assembling a team to start performing sampling as well
25 as putting some warning out, warning signs at our

1 drainage outlet which ultimately turned into
2 additional signs going in a north and south direction
3 at the Ko Olina Resort.

4 We first discovered municipal solid
5 waste including some amounts of medical waste had
6 escaped the landfill later Thursday evening. At that
7 time then we began cleaning up that waste onsite at
8 the same time they were performing the initial
9 sampling event as well as noticing the beaches.

10 The following day, Friday, we then went
11 down to our outfall and cleaned up what we could at
12 the outfall. Since that day, which was the 13th-- or
13 14th, we dispatched cleanup crews every day through
14 Friday the 21st. Where as we were notified that there
15 was any type of waste that was found on a particular
16 beach, then we would send a crew out there to clean up
17 whatever we found on the beaches.

18 We did coordinate with other agencies,
19 with DOH. EPA arrived on the site on Saturday two
20 days after the storm and were there for approximately
21 five days. We worked well with the City Department of
22 Health. We've had multiple meetings over that time to
23 coordinate the cleanup effort.

24 The new stormwater diversion system that
25 would have prevented the majority of this water from

1 inundating the facility, as I mentioned, is about two
2 weeks away from being functionally complete. Had it
3 been completed it would have taken most of the waste
4 around, most of the stormwater around the landfill and
5 not through it.

6 This diversion system is an
7 approximately \$15 million project. So it's not
8 something that lends itself to be done in a very short
9 time. As I mentioned, we began construction
10 activities in November of 2009. And that project is
11 still underway. After completion of the entire
12 project obviously the system will be much better
13 suited to handle any future rainwater storms.

14 Currently we are in the process of
15 pumping out our sedimentation basin and cleaning it
16 out to put it back to the condition that it was prior
17 to the initial storm.

18 We've also evacuated all of the water
19 from the cell 6 area so that in the event that there's
20 a storm that occurs prior to completing this new
21 long-term diversion system, we'll at a minimum have
22 storage capacity that is intended to keep any
23 stormwater from again flowing off of the site. At
24 this time I'll take some questions.

25 CHAIRMAN DEVENS: Commissioners? I had

1 one question. You know, on the Planning Commission's
2 findings of fact and conclusions that we had approved,
3 finding of fact 74 addresses the drainage that was
4 required to have been in place. Was there a violation
5 of that condition in this case?

6 THE WITNESS: I don't believe there is.
7 The company and the City --

8 CHAIRMAN DEVENS: You have medical waste
9 washing out into the ocean as far as Nanakuli/
10 Wai'anae and there was no problems with the drainage?

11 THE WITNESS: The company began
12 constructing of the long-term drainage plan. Within
13 about 30 to 40 days of the time that we received our
14 approvals, our regulatory approvals to do so, we were
15 not allowed to begin construction of that long-term
16 system until we had the actual permitted approvals to
17 do so.

18 CHAIRMAN DEVENS: So as you're
19 constructing I mean what precautions were taken?
20 Obviously not enough because this happened.

21 THE WITNESS: The actual operating
22 permit that we have in there has provisions for this
23 type of a storm. And there was -- there was
24 definitely a risk during this construction period.
25 But we were not allowed to do any preconstruction of

1 the stormwater diversion berm until we had the
2 appropriate regulatory approvals.

3 CHAIRMAN DEVENS: So how much discharge
4 was there? I'm not clear on what the volume was. We
5 have photographs that have been submitted by Ko Olina
6 which shows quite a bit. But what was the actual
7 discharge volume? And what exactly was discharged
8 other than syringes and what we've seen on the news?

9 THE WITNESS: Most of what was
10 discharged was municipal solid waste, which is the
11 majority of what goes into the landfill. It did have
12 some sterilized medical waste mixed in with it.

13 As a function of our daily operations
14 medical waste and/or any other type of special waste
15 is mixed into the landfill, the residential waste that
16 comes in. And then every day that's covered.

17 In this particular case as the
18 stormwater washed through there, it washed some of
19 that cover off and took amount of municipal waste with
20 it that just happened to contain some sterilized
21 medical waste.

22 CHAIRMAN DEVENS: How much?

23 THE WITNESS: We don't have any way of
24 knowing how much waste actually left the site. The
25 main part of the storm occurred around 1 or so I

1 believe on the morning of the 13th. So by the time
2 our employees arrived at 4 or 5 there was quite a bit
3 of water already on the site.

4 CHAIRMAN DEVENS: I read somewhere where
5 someone had made the statement that this was like a
6 hundred year rain. I really found that hard to
7 believe because no one else was saying that. I
8 remember a few years ago when we had the 30 days and
9 30 nights of rain, that didn't even approach a 50-year
10 storm. Was there anything unusual about this rain
11 that contributed to this problem?

12 THE WITNESS: The idea of a hundred year
13 storm, it really depends on the intensity of the
14 storm. In that I believe in this case on the third
15 storm, which was the major one, there was 10 point
16 something inches in 24 hours, but 7.6 of that fell
17 within a six or seven hour period. So it's the
18 intensity of the storm that's the critical portion
19 that causes the amount of damage rather than the
20 actual amount of rainfall that could be over a longer
21 period.

22 CHAIRMAN DEVENS: So going back to my
23 prior question. Do you have an idea of what the total
24 volume of discharge was? I know you can't quantify
25 the medical waste. But how about the total volume?

1 How much actually went down to the ocean onto Ko
2 Olina's property and down to Nanakuli side?

3 THE WITNESS: We can't quantify that.
4 What we do know is that --

5 CHAIRMAN DEVENS: Did you know how much
6 was in that cell that busted open?

7 THE WITNESS: The amount -- the area
8 where the water came through washed off the top of a
9 part of a cell but we can't estimate how big that is.
10 Once the water left that spot, which was on the
11 northern or uphill end of the cell, it then flooded
12 out the rest of the cell.

13 One key thing to remember in this case
14 this was the third flooding of that particular cell.
15 And each time that happened, as I mentioned earlier,
16 the construction at this site, which is a canyon
17 construction, involves forming the sides of the canyon
18 which then creates a huge amount of rock and soil.
19 That rock is then processed and reused in the bottom
20 to form the areas where the liner goes.

21 So each time that we had a rainfall that
22 washed down through there, washed all of this material
23 off of the sides and the bottom and literally covered
24 up the top of the waste cell. So we know that the
25 entire cell wasn't affected by this storm because it

1 was already under 10 feet of water and had probably 10
2 or 15 feet of sedimentation and soil that had been
3 deposited on top of that cell by the first couple of
4 storms.

5 So only the area in the one section of
6 the cell that was actually in the higher area that was
7 above the waterline was actually affected. That's why
8 it's difficult for us to determine how much was
9 actually removed.

10 When you look at that part of the cell
11 what you see is there's some loose material at the top.
12 Certainly all the floatable material, plastic bags and
13 bottles and things like that, are the pieces that
14 would go first.

15 And in this case the same way with the
16 plastic, sterilized plastic syringes that were
17 predominantly what was found on the beach, those are
18 all fairly floatable so they would have been washed
19 out more quickly than another type of waste, say,
20 chairs or other things that would have been in the
21 cell at that time.

22 CHAIRMAN DEVENS: So when did the first
23 discharge occur?

24 THE WITNESS: The first discharge?

25 CHAIRMAN DEVENS: Yeah. When did it

1 first start flowing out of the --

2 THE WITNESS: Sometime during the night.
3 We don't know that.

4 CHAIRMAN DEVENS: On what day?

5 THE WITNESS: On the 13th. When the big
6 storm hit it happened during the night. We don't know
7 when it started. As soon as we saw the conditions at
8 the site at that time, our first concern is for the
9 safety of our employees because it was a pretty strong
10 event.

11 The contractor has been working around
12 the clock just to get back in there to redo the damage
13 from the first two storms and now this third one.

14 CHAIRMAN DEVENS: So on the 13th at
15 about what time did you first get notice that
16 something was going wrong?

17 THE WITNESS: Well, as soon as we
18 arrived at the site.

19 CHAIRMAN DEVENS: Which is about what
20 time?

21 THE WITNESS: Probably, I think my first
22 employees arrived there around 5:00 or so in the
23 morning. Then shortly after that management was there
24 probably by 6:30 or so. At that time we assessed the
25 upper portions of the canyon because we were concerned

1 about our employees as well as any catastrophic events
2 as far as -- if you'll recall I had mentioned that at
3 the time of the first storm we actually built a
4 temporary dam so that any water that was impounded in
5 the cell 6 area would not leave the site.

6 If it had left the site it would have
7 ran down the back side of the HECO power plant and
8 into the ocean which would have been an uncontrolled
9 discharge.

10 Once the company realized that our
11 equipment as well as our employees were safe, then at
12 that time we began taking evasive actions to keep any
13 uncontrolled discharges from occurring. And then at
14 some point after that is when we realized now we have
15 water that is actually -- and waste material that is
16 discharging.

17 CHAIRMAN DEVENS: At what time was that
18 determination made?

19 THE WITNESS: I would say it was
20 sometime in the afternoon. We did meet with --

21 CHAIRMAN DEVENS: At about what time?

22 THE WITNESS: I don't have an exact
23 time.

24 CHAIRMAN DEVENS: Once you realized that
25 medical discharge had escaped the dump, what, if any,

1 warning was given to the community, the folks at Ko
2 Olina, the folks down on the Leeward coast? What, if
3 any, warnings did your company take to at least warn
4 the people that we may have syringes out there, we may
5 have blood components floating around in the water?

6 THE WITNESS: We met with the Department
7 of Health at noon on the day --

8 CHAIRMAN DEVENS: I'm not talking about
9 the Department of Health. I'm talking about the
10 community at large. What efforts did your company
11 make to give at least some warning to the community
12 that there was this danger out there?

13 THE WITNESS: Once we decided -- or we
14 didn't -- once collectively the decision was made to
15 put warning signs up at the beach or at the outfall
16 area was our main concern because that's where
17 material would have left the site -- then we assembled
18 those signs from one of the departments at the City
19 and we put those up at around 4 or 5:00 that
20 afternoon.

21 We didn't realize or find out that there
22 was medical waste involved in it until around that
23 same time, 4:00 or 5:00 in the afternoon because we
24 were dealing with huge amount of water that was
25 leaving the site.

1 Once we realized that there was medical
2 waste in there we had already put up warning signs
3 saying that there's potentially contaminated material
4 that is leaving the site. We also started a sampling
5 program at that time.

6 Then the next day we had a crew down at
7 our outfall because by that time we realized that
8 there was some sterilized medical waste that had gone
9 off of the site. And we began cleaning that up.

10 The evening of the storm on the 12th we
11 also began a cleanup on own site at the same time they
12 were doing the sampling and putting the warning signs
13 up to make sure that whatever was on our site wouldn't
14 continue to go off site and further impact our
15 neighbors.

16 CHAIRMAN DEVENS: Okay. Commissioner
17 Lezy, you had a question?

18 COMMISSIONER LEZY: Thank you, Chair.
19 Good afternoon. Thank you for your testimony. I want
20 to see if I can understand kind of the chronology of
21 some of the events and the actions that were taken by
22 Waste Management in response to those events.

23 You've testified three storms.
24 Obviously the final storm of the three was the one
25 that apparently put the cell over the top as far as

1 the discharge was concerned. You were aware or your
2 company was aware by the time of the second discharge
3 that the cell was retaining water, correct? It was
4 flooding and retaining water.

5 THE WITNESS: Yes.

6 COMMISSIONER LEZY: When did that occur?
7 When were you aware as of the second storm that that
8 problem existed?

9 THE WITNESS: Once the first storm hit,
10 the cell was inundated with water. At that time is
11 when we built the additional berm. When the second
12 cell was -- I mean the second storm came it added more
13 water on top of what was already there. So at that
14 time we reinforced that berm so that it would hold
15 more water. Then prior --

16 COMMISSIONER LEZY: When was that?

17 THE WITNESS: Actually after the first
18 storm then --

19 COMMISSIONER LEZY: The second storm and
20 the reinforcement, when did that occur?

21 THE WITNESS: On the 27th.

22 COMMISSIONER LEZY: So that was
23 approximately two weeks prior to the event, the storm
24 event that caused the discharge, correct?

25 THE WITNESS: Yes.

1 COMMISSIONER LEZY: During that time
2 period what sort of evaluation, if any, was performed
3 by your company to determine the risk of: Well, if
4 there's a further storm, if we have a similar type of
5 a storm, is there a possibility that the cell, the
6 berm's been built could fail or the cell could end up
7 discharging waste?

8 THE WITNESS: Yes. That's why we built
9 the berm in the first place. At the time of the first
10 cell there was no berm there -- or the first storm.
11 And the water came up from probably a foot of
12 overtopping the existing containment area.

13 COMMISSIONER LEZY: I understand that.
14 But what I'm asking you is you have provided us with a
15 chronology of events. And it sounds like in each
16 instance it was kind of dodging a bullet. The first
17 time it flooded and fortunately there was no
18 discharge.

19 The second time it flooded and there had
20 been some sort of work done to build a berm to
21 strengthen the cell to avoid a discharge. I assume
22 that's the key, right?

23 THE WITNESS: Yes.

24 COMMISSIONER LEZY: You then get to the
25 third event. More rain, more water and there's an

1 actual discharge. So what I'm wondering is what sort
2 of an evaluation was done in order to quantify what
3 the risk was that there would be a discharge if there
4 was more rain and more water ended up in the cell?

5 *Joe Whelan* THE WITNESS: Well, in the first place
6 we would have no, no forewarning that a storm of the
7 third magnitude would be coming. The requirements
8 that we go under are for 24-hour storms. And that's
9 what the site is designed for.

10 In this particular case the actual
11 long-term diversion, even though the requirements were
12 for 24-hour storm, it was actually -- the
13 specifications were for a hundred-year storm. The
14 problem was it just wasn't completed at that time.

15 COMMISSIONER LEZY: I'm talking about
16 the steps that you folks actually did take. You
17 actually undertook efforts --

18 THE WITNESS: Right.

19 COMMISSIONER LEZY: -- to avoid what
20 happened. What I'm trying to find out is how you
21 reached the decision to do what you did and why there
22 was an obvious shortcoming in what was done.

23 THE WITNESS: Just to back up a little.
24 Once -- I would say back in October prior to the rainy
25 season we doubled the shifts so that that long-term

1 diversion would be complete. It just wasn't.

2 COMMISSIONER LEZY: I understand. I'm
3 not particularly interested in the long-term diversion
4 project. What I'm interested in is the efforts that
5 you folks took once you had the first event.

6 THE WITNESS: Right.

7 COMMISSIONER LEZY: After you had the
8 second event and then you had the third event, what
9 was done in between the second and the third event to
10 evaluate: Jeez, we just dodged a big one here? What
11 do we need to do to make sure that if it rains more
12 since obviously the cell was retaining water at that
13 point --

14 THE WITNESS: Right.

15 COMMISSIONER LEZY: -- what do we need
16 to do to make sure that there is no potential for
17 discharge?

18 What was done to evaluate that and
19 address it?

20 THE WITNESS: There is a 36-inch drain
21 line that by design runs underneath this new cell
22 that's part of the expansion. During the first storm,
23 that overtopped and was silted in due to the amount of
24 material that came down.

25 After that we went out and evaluated why

1 that happened. And we cleared the area and built a
2 berm up above it to try to stop any water that would
3 be coming down.

4 At the same time we also built a --
5 right in front of it we built a very large structure
6 out of boulders that would act as a velocity changer,
7 if you will, where when the water came down the canyon
8 it would hit this pile of boulders and cause it to
9 divert around to where this inlet was.

10 At the same time then we also reinforced
11 at that area another berm that we had constructed in
12 the first storm to make sure that we had a little dam
13 behind that so that it would never get into the cell
14 in the first place.

15 All of that failed because of the
16 magnitude of that storm.

17 COMMISSIONER LEZY: So are you telling
18 me, then, that there could have been an evaluation
19 done based on the magnitude of the storm that actually
20 did occur, that would have allowed you to address
21 problems and to have avoided this event?

22 THE WITNESS: No. I'm not saying that.
23 I'm saying that after the first storm we took evasive
24 actions on the available 36-inch outlet that we had
25 that was designed to handle this water because it had

1 failed the first time. And we -- our contractor went
2 back in there and beefed up that area to keep that
3 from happening a second time.

4 COMMISSIONER LEZY: So do I understand
5 you to say, then, at least in your company's
6 estimation that this event was unavoidable?

7 THE WITNESS: Yes.

8 COMMISSIONER LEZY: With regard to this
9 permanent diversion project, as part of the planning
10 for that were any of the particular cells within the
11 landfill identified as being at risk for flooding in
12 this type of event?

13 THE WITNESS: It wasn't an actual
14 identification of the cells. However, our operating
15 permit contemplated that during the construction of
16 this long-term diversion system there could be periods
17 when there would be either no means to convey the
18 stormwater around the existing landfill cells; or that
19 a storm could cause stormwater to overflow into the
20 cell 6 area, which it did in this case, which would
21 allow, then, that water to flow out from the active
22 area of the cell.

23 COMMISSIONER LEZY: So there was an
24 acknowledgment prior to any of these storms that cell
25 6 was particularly at risk for this type of an event?

1 THE WITNESS: There was an
2 acknowledgment in our permit that stated until this
3 long-term diversion is completed there could be some
4 risk, yes.

5 COMMISSIONER LEZY: Was there some
6 particular reason why then cell 6 didn't simply stop
7 accepting MSW during the time period that the
8 long-term diversion project was being finished?

9 THE WITNESS: Cell 6 is the only area of
10 the landfill that has capacity at this point. And
11 after the first storm no more waste went into the cell
12 6.

13 COMMISSIONER LEZY: It couldn't, right?
14 It was flooded with water.

15 THE WITNESS: Right, yes. But that was
16 after the first storm. So from a practical standpoint
17 there was no waste that could have gone into the cell
18 6 area.

19 COMMISSIONER LEZY: My last question to
20 you is: Do you have any understanding or personal
21 knowledge as to why medical waste sterilized or
22 otherwise is it not incinerated?

23 THE WITNESS: I believe the rules for
24 incineration were changed several years ago. But
25 that's not my area of expertise. I know that at the

1 site we have -- medical waste is considered a special
2 waste where it has to be pre-characterized under
3 record of federal standards. And that's what we do.
4 That's our standard practice.

5 COMMISSIONER LEZY: And what does that
6 mean?

7 THE WITNESS: It means that a generator
8 of medical waste has to fill out characterization
9 forms and get that waste stream approved both by
10 federal regulations and by the terms of our permit.
11 And then they certify on each load that comes into the
12 site that it has, in fact, been rendered
13 noninfectious.

14 Most of the companies use autoclaving,
15 but I'm not sure whether that's the requirement or any
16 method that allows them to make that statement is
17 acceptable. All of the sterilization process is
18 overseen by the Department of Health.

19 COMMISSIONER LEZY: All right. Thank
20 you.

21 CHAIRMAN DEVENS: Any other questions
22 from the Commission? One thing you answered in
23 response to Commissioner Lezy was that this was
24 unavoidable. I have a real hard time believing that
25 this was unavoidable.

1 What it sounds like to me is that you
2 folks went ahead with this construction, did not take
3 any proper preventive measures and just hoped it
4 wasn't going to rain. And when it did you folks were
5 caught with your pants down. And this is what
6 happened. Isn't that really what happened in this
7 case?

8 THE WITNESS: No, I wouldn't
9 characterize it that way at all in that this --

10 CHAIRMAN DEVENS: I know you wouldn't
11 characterize it that way. Isn't that really what
12 happened, though, in this case? There were no
13 preventive measures in place while this construction
14 was going on. It rained. And it wasn't an unusual
15 rain by any standard. And we have this massive
16 discharge. And there was just a lack of urgency, in
17 my mind, with the public not knowing the extent of the
18 discharge and what was actually contained in that
19 discharge.

20 I was shocked when I heard that there
21 were needles on the beach at Ko Olina, down in
22 Nanakuli flowing down to Wai'anae. I was also shocked
23 to see that people were picking that up with their
24 bare hands and in slippers. And yet there were no
25 warnings out there to the community warning about

1 those dangers. What's the response to that?

2 THE WITNESS: I believe, as I mentioned,
3 whenever we had a call, which we did, from any beaches
4 along the western side of the Leeward Coast, we
5 dispatched a team to go out there. And we didn't just
6 pick up medical waste. We picked up any storm debris
7 that we saw except for tree limbs or wood or that kind
8 of thing. But everything else we picked up. And we
9 continued to go every day to those same beaches until
10 we no longer saw the waste material.

11 We established a hotline, I believe it
12 was on Sunday, that people could call in, which they
13 did. And as soon as we got a call on our hotline or
14 from any other source we would dispatch a team to go
15 out there and check it out.

16 We also talked to lifeguards at the
17 various beaches that had lifeguards. And we continued
18 doing that for several days after we last saw any type
19 of medical waste.

20 As far as the actual storm itself, this
21 long-term diversion plan was proposed over 10 years
22 ago. We're just in a position now, or as of 2009,
23 where we could actually go out and begin the
24 construction on it. We can't do that unless we have
25 the appropriate permits.

1 CHAIRMAN DEVENS: And I understand that.
2 But over the last 10 years couldn't you have thought
3 of what the preventive measures were going to be while
4 the construction was going on instead of leaving
5 everything open the way it was? I just can't believe
6 that no preventive measures could have been taken to
7 avoid this. I don't buy that this was unavoidable. I
8 hear what you're saying, but it doesn't make any sense
9 to me.

10 You know, this was a very tough decision
11 for this Commission to have extended the permit. The
12 parties were here. It was a difficult decision that
13 this Commission had to wrestle with. The very fears
14 that the community raised before this Commission were
15 realized by this spill. And then it comes back to us
16 as a Commission because we passed it.

17 And that's the reason why we wanted this
18 informational meeting because we need to know what
19 happened. There's conditions that we approved. I see
20 finding, Condition 74 it talks about drainage. And
21 this was a drainage problem from what you're
22 describing to us. And I still don't understand, you
23 know, why this wasn't prevented.

24 You know, I see Mr. Williams on TV; he's
25 obviously distressed. He didn't get the call from you

1 folks. He's worried about his community. He's
2 worried about his employees. They're out there
3 picking up the waste. Obviously there was a lack of
4 communication to at least warn people like him who was
5 here opposing this but expressed these very fears and
6 then look what happens. I mean what happened out
7 there?

8 THE WITNESS: That's what I've attempted
9 to explain to you.

10 CHAIRMAN DEVENS: I hear you, but it's
11 not making any sense to me.

12 THE WITNESS: We put warning signs up on
13 the day of the storm. As a matter of fact while we
14 putting the warning signs up the City had instructions
15 to, I believe, double or triple the amount of them.

16 So as we learned more about the extent
17 of any waste material, whether it's medical waste or
18 not, that left the site, we believe we took
19 appropriate actions to make sure that people knew,
20 first of all, what was going on.

21 Remember this was also at a time where
22 the entire island had an advisory notice put out each
23 day by the local weather stations warning people not
24 to go in the water because it was a major storm, not
25 just at the landfill but around the island itself.

1 CHAIRMAN DEVENS: Well, you know,
2 putting up warning signs and telling someone that
3 there may be needles sticking in the sand to me are
4 two different, radically different types of warnings
5 in my mind.

6 Let me ask the parties if they have any
7 questions for the witness since he was put under oath.
8 Ko Olina, you folks have any questions for this
9 witness?

10 MR. W. MATSUBARA: Chair, going to
11 Commissioner Lezy's concerns regarding the first what
12 they call a storm. I'm looking at the investigative
13 report by the Clean Water Branch. It was attached as
14 KOCA's exhibits. And it refers to an investigation
15 done in response to that first storm.

16 And Commissioner Lezy, with all due
17 respect, stated they were luckily fortunately
18 dodge-able, and there was no discharge. But I noticed
19 in this report, I know it's not final, but it does say
20 that there was a discharge of water. And that was
21 done in response to the accumulation of water in this
22 cell.

23 Now, I can understand maybe there may be
24 situations where rainfalls may come and you can do
25 only certain things. But what this report indicates

1 is that this was a response by your department, a
2 decision made by your department to remove water from
3 this cell, not stormwater, but remove water from a
4 cell and put that into the storm drain.

5 So my concern would be, you know, we're
6 talking about stormwater entering cells here. But now
7 there's actually a conscious decision made to remove
8 water, whether it may be infected or not I don't know.
9 And I'm sure there will be further investigation to
10 determine that.

11 But this is just from the first storm
12 that we had assumed was a dodge of the bullet. So the
13 concern would be what -- not only what methods or what
14 protocols are you establishing to prevent rainfall but
15 after the rainfall is in these cells what
16 accommodations or what are you doing to also ensure
17 that the removal of this water into the ocean in that
18 area was appropriate?

19 THE WITNESS: Just to back up a little
20 bit. No water from within the cells themselves was
21 discharged. What we're talking about is stormwater
22 that had accumulated on top of the cells, in this case
23 cell 6, one cell.

24 And as I mentioned as the first storm,
25 second and third storm progressed it deposited more

1 and more and silt on top of the cell which further
2 isolated it from the water sitting on top. We're not
3 talking about water that was actually in the cell
4 itself during cell operations.

5 Concerning the pumping or not, until the
6 report was filed we were cooperating with the
7 Department. However I'm not going to comment on that
8 because, as you mentioned, the Department has an
9 investigation that's ongoing.

10 MR. W. MATSUBARA: Are you aware of this
11 investigative report compiled by the Department of
12 Health Clean Water Branch?

13 THE WITNESS: I'm aware of it. I
14 haven't read the entire thing. But I know that it's
15 out there, yes.

16 MR. W. MATSUBARA: I'm not making
17 accusations. They are. They're making accusations
18 that the water that was discharged was leachate and it
19 did contain MSW.

20 THE WITNESS: We don't believe that.
21 That's, like I said, that's something that's under
22 investigation. And I can't really comment on what
23 their Department has planned or what the ultimate
24 outcome of that investigation is.

25 MR. W. MATSUBARA: Thank you.

1 CHAIRMAN DEVENS: Mr. Wurdeman, did you
2 have any questions of this witness?

3 MR. WURDEMAN: Yes, Mr. Chairman. You
4 know, this investigation that Mr. Matsubara is just
5 referring to, you're saying that none of this is true?
6 You're saying the Department of Health alleged were
7 clear violations of the conditions that were imposed
8 by this Commission by the City and County of Honolulu
9 and Wastewater Management (sic) are you denying all of
10 these allegations in the state of Hawai'i Health
11 Department report?

12 THE WITNESS: No, I'm not denying or
13 admitting them. I'm merely stating that because this
14 is an investigation that is ongoing I believe the
15 Department made that statement. It would not be
16 prudent for me to comment on it at all.

17 MR. WURDEMAN: And, Mr. Chair, I'm
18 referring to Exhibit 5 of Ko Olina's packet here. The
19 Chairman asked you earlier during the questioning
20 about Condition No. 74 and asked you point blank if
21 that had been violated. And you said, "No." But you
22 referenced the January rainfall and discharge,
23 correct?

24 THE WITNESS: I don't have a copy nor am
25 I familiar with Condition 74 is. So if you want me to

1 comment on that you'll have to read it to me.

2 CHAIRMAN DEVENS: I have it. Do you
3 want me to read it?

4 MR. WURDEMAN: If you could,
5 Mr. Chairman.

6 CHAIRMAN DEVENS: Sure.

7 MR. WURDEMAN: I'd appreciate it.

8 CHAIRMAN DEVENS: 74 reads as follows
9 "Drainage for the property is intended to capture
10 stormwater and divert it around the landfill if it
11 originates offsite, surface runoff or into the
12 existing sedimentation basin if it originates onsite
13 surface runoff. The sedimentation basin is designed
14 to allow stormwater to settle so that dissolved solids
15 that come off the landfill can settle out in that
16 basin.

17 "The water's eventually discharged to
18 the ocean subject to state of Hawai'i Department of
19 Health permitting requirements under the National
20 Pollution Discharge Elimination System. A third-party
21 company takes samples to ensure compliance with
22 certain discharge limits. In addition, DOH inspects
23 Waste Management's ditches and slopes."

24 THE WITNESS: And what is that from?

25 CHAIRMAN DEVENS: Yes?

1 MS. VIOLA: If I may point out
2 Condition No. 74 is a finding of fact.

3 CHAIRMAN DEVENS: Correct.

4 MS. VIOLA: It's not a conclusion of
5 law, so it's not necessarily a condition that was put
6 upon the parties in the compliance requirement. It's
7 a finding of fact, not necessarily a conclusion. So
8 I'm not sure -- I mean in terms of -- well, I have
9 some questions relating to this. But in terms of a
10 requirement it's a finding not a conclusion.

11 CHAIRMAN DEVENS: Right. You're
12 correct.

13 MR. WURDEMAN: So the finding of fact
14 was, Mr. Chair, what was adopted by this Commission
15 and what was required of them to comply with, correct?

16 CHAIRMAN DEVENS: That's my
17 understanding. That's correct.

18 MR. WURDEMAN: Also the paragraph 75
19 while we have the document out, if we could reference
20 that as well.

21 CHAIRMAN DEVENS: I don't have that one
22 with me, I'm sorry.

23 MR. WURDEMAN: Okay. It reads,
24 "Leachate does not come into contact with stormwater.
25 The stormwater, surface water system is separate from

1 the leachate collection system."

2 The January rainfall that the Chair had
3 asked you about previously, does that violate
4 paragraph 75 as I have just read? Was there any
5 leachate coming into contact with stormwater as
6 indicated in this paragraph?

7 THE WITNESS: I wouldn't want to
8 reference whether as indicated in the paragraph. But
9 it is our understanding that leachate, which is inside
10 of the cells, was not affected by this storm.

11 MR. WURDEMAN: Was that situation of
12 leachate and stormwater coming into contact with each
13 other present during the December rainfalls that were
14 the subject of the state of Hawai'i Health Department
15 investigation?

16 THE WITNESS: As I earlier testified I
17 haven't read the entire investigation. And it's still
18 ongoing. But my understanding is that at no time
19 through any of these storms did leachate that was in
20 the cells contact stormwater that was on top of the
21 cells.

22 We have a system in place which is an
23 automatic system that pumps out leachate from all of
24 the cells. And that leachate is taken to the
25 wastewater treatment plant for appropriate treatment

1 and disposal under their own permits.

2 So stormwater is discharged routinely
3 from the site under our NPDES Stormwater Discharge
4 Permit.

5 MR. WURDEMAN: How about this statement
6 in the Health Department investigation where it reads
7 that, "There's clear evidence that leachate was
8 purposefully discharged into the landfill's stormwater
9 drainage system"? Are you familiar with that
10 reference?

11 THE WITNESS: I'm not familiar with that
12 reference, no.

13 MR. WURDEMAN: Would you admit or deny
14 that allegation?

15 THE WITNESS: I would not because this
16 is still under investigation.

17 MR. WURDEMAN: Well, that's what the
18 investigators are alleging.

19 THE WITNESS: That may be true.

20 MR. WURDEMAN: You're aware of the
21 situation out at Waimanalo Gulch, correct?

22 THE WITNESS: I am aware of the
23 situation. And I've just testified that we do not
24 have leachate that is in our cells that is pumped off
25 as stormwater. We have a separate system for that.

1 MR. WURDEMAN: It also says in this
2 report by the Health Department, "In conclusion it
3 appears that the landfill owners and operators,
4 including the City and County of Honolulu and Waste
5 Management, violated Hawai'i water pollution rules and
6 regulations by discharging water pollutants to state
7 waters without authorization."

8 Are you familiar with that reference in
9 the Health Department report?

10 THE WITNESS: As I've stated before I
11 have not read the entire report, no.

12 MR. WURDEMAN: You're not familiar with
13 that reference having been made? That's a pretty
14 strong conclusion. As you sit here today you're not
15 familiar with that reference?

16 THE WITNESS: As I mentioned I haven't
17 completed a review of that report. And the contents
18 of that report, as I understand today, is still under
19 investigation.

20 MR. WURDEMAN: So you have no idea
21 whether the investigators ever came to that conclusion
22 as you sit here today?

23 THE WITNESS: I don't know what they
24 came to conclude because as I mentioned I haven't
25 finished my review of that report.

1 MR. WURDEMAN: Well, it's three pages.
2 I mean how long did it take you to review the report?
3 We're not talking about a hundred-page document.
4 We're talking about a 3-page investigative report.
5 What did you do, read the first page and stop after a
6 couple minutes? What are we talking about here?

7 THE WITNESS: I already testified that I
8 was aware of the report, but I have not completed my
9 review of it.

10 MR. WURDEMAN: Going back to paragraph
11 74 that the Chair read to you aloud. There was a
12 sentence in there: "A third-party company takes
13 samples to ensure compliance with certain discharge
14 limits."

15 A third-party company. Was a third
16 company party involved in taking samples to ensure
17 compliance in either December or in January of this
18 year?

19 THE WITNESS: There was a third-party
20 company who obtained samples on the day of the storm.

21 MR. WURDEMAN: Which storm are we
22 referring to?

23 THE WITNESS: The major storm on the
24 13th.

25 MR. WURDEMAN: What about in December,

1 was a third-party company involved?

2 THE WITNESS: I don't recall if there
3 was or not.

4 MR. WURDEMAN: You don't recall?

5 THE WITNESS: I don't recall, no. I
6 know that there was in this one because we had an
7 actual discharge.

8 MR. WURDEMAN: You have Health
9 Department investigators out there. They're coming to
10 these strong conclusions about intentional acts in
11 their report. And there's requirements of you to have
12 third-party companies take these samples to ensure
13 compliance. And you made no efforts to ensure whether
14 or not that was done in just, what, six weeks ago.
15 You don't even know whether or not that was done.

16 THE WITNESS: We have an NPDES discharge
17 permit with certain requirements that come along with
18 our operating permit. We comply with the terms of
19 those permits.

20 In the case of the larger storm, the
21 last one, because we had such a volume of water,
22 stormwater leaving the site, we on our own took an
23 additional set of samples.

24 MR. WURDEMAN: Okay. But you don't know
25 if a third-party company did, correct?

1 THE WITNESS: A third-party company took
2 those on our behalf, yes.

3 MR. WURDEMAN: What company was that?

4 THE WITNESS: I can't tell you that. It
5 was a third-party company.

6 MR. WURDEMAN: So that was for both
7 January and December that was done?

8 THE WITNESS: No. That's what I just
9 stated. We did that at the last storm but I don't
10 know if we did at the first two.

11 MR. WURDEMAN: So January it was done
12 but you don't recall the name of the company.

13 THE WITNESS: I recall the name of the
14 company. I'm just not willing to give that to you
15 because it's a contractor that works for us. We don't
16 routinely give out --

17 MR. WURDEMAN: What privilege are you
18 asserting to not provide that name?

19 THE WITNESS: I'm not an attorney so I'm
20 not gonna answer that question.

21 MR. WURDEMAN: Mr. Chair, I'd ask that
22 the witness be --

23 CHAIRMAN DEVENS: Sir, you're under oath
24 before this Commission. I don't hear you asserting
25 any type of privilege, and I'm not aware of any

1 privilege that would apply. If you want to consult
2 with the City attorneys we'll give you that time to do
3 so. Ms. Viola, do you want to take a short break and
4 allow him to consult? Why don't we take a 2-minute
5 break.

6 (Recess was held.)

7 CHAIRMAN DEVENS: We're back on the
8 record. Before we took a short break, Mr. Whelan, we
9 gave you an opportunity to consult with your
10 representatives. Do you have a response to
11 Mr. Wurdeman's last questions?

12 THE WITNESS: I do. And thank you for
13 allowing us to have a few moments to clarify.

14 CHAIRMAN DEVENS: Sure.

15 THE WITNESS: On the advice of counsel I
16 will give you the name of the contractor. It was
17 AECOM, A-E-C-O-M.

18 MR. WURDEMAN: And that was in January,
19 correct?

20 THE WITNESS: Yes.

21 MR. WURDEMAN: December was AECOM under
22 contract with your company?

23 THE WITNESS: Were they under contract
24 with us?

25 MR. WURDEMAN: Yes.

1 THE WITNESS: Yes.

2 MR. WURDEMAN: Did they take samples?

3 THE WITNESS: I testified already I'm
4 not sure if they did or not.

5 MR. WURDEMAN: Who in your company would
6 know that?

7 THE WITNESS: Our environmental manager
8 would most likely know that.

9 MR. WURDEMAN: Who's that?

10 THE WITNESS: Justine Lodick. (phonetic
11 spelling)

12 MR. WURDEMAN: Now, you entered into an
13 agreement just recently with the EPA, correct? EPA
14 has been involved?

15 THE WITNESS: Yes.

16 MR. WURDEMAN: And you entered into --
17 your company entered into an agreement on or about
18 January 25th, 2011 with the EPA on what you should be
19 doing to resolve this issue?

20 THE WITNESS: Yes, we did.

21 MR. WURDEMAN: And do you recall if in
22 entering into that agreement if a Mr. Robert Longal
23 (phonetic spelling) -- who's Mr. Robert Longal?

24 THE WITNESS: He is, he's in management
25 at Waste Management out of our LA market group office.

1 MR. WURDEMAN: And he has authority to
2 enter into agreements on behalf of Waste Management
3 Hawaii?

4 THE WITNESS: He would.

5 MR. WURDEMAN: He would.

6 THE WITNESS: I don't recall his exact
7 title but, yes.

8 MR. WURDEMAN: Okay. And did you have a
9 chance to read that agreement that Mr. Longal entered
10 into with the EPA?

11 THE WITNESS: I did.

12 MR. WURDEMAN: You did?

13 THE WITNESS: Yes.

14 MR. WURDEMAN: You're intimately
15 familiar with what's required of you in --

16 THE WITNESS: I'm familiar with what's
17 in there.

18 MR. WURDEMAN: And it's set forth in
19 this agreement, correct?

20 THE WITNESS: It is.

21 MR. WURDEMAN: I'm talking about the one
22 signed January 25th, 2011 signed by Mr. Longal and
23 also representative of the US EPA, correct?

24 THE WITNESS: That is correct, yes.

25 MR. WURDEMAN: And are you familiar with

1 a provision in that agreement in which it states, "The
2 conditions described in the findings of fact above
3 constitute an actual or threatened release of a
4 hazardous substance from the facility," and then they
5 reference varies provisions under CIRCLA, "and may
6 present an eminent and substantial endangerment to the
7 public health or welfare or the environment in
8 accordance with section 106A of CIRCLA 42 USC 9606A."
9 Are you familiar with that?

10 THE WITNESS: I am familiar with that.
11 And I believe the term "hazardous substances" refers
12 to municipal solid waste and/or medical waste.

13 MR. WURDEMAN: Okay. And you admitted
14 to that, correct?

15 THE WITNESS: I'm admitting that I know
16 what's in the order.

17 MR. WURDEMAN: Your company admitted to
18 that, what I just read, that provision.

19 THE WITNESS: We signed the order. We
20 did sign the order.

21 MR. WURDEMAN: I'm sorry I only have one
22 copy, Mr. Chairman. I could provide additional
23 copies, but if I could make a copy of this EPA
24 agreement as part of the record I'd appreciate it.

25 CHAIRMAN DEVENS: Sure. We'll have

1 Mr. Hakoda make the copies and have it attached.

2 MR. WURDEMAN: Now, there was some kind
3 of deadline -- and prior to today I was getting a lot
4 of my information from the media as well as was the
5 Commission apparently -- but was there some sort of
6 deadline as far as meeting certain regulations that
7 the EPA had set forth that was set forth yesterday? I
8 think that was referenced.

9 THE WITNESS: The intent of the
10 administrative order on consent, and the key word is
11 "on consent" is because when EPA arrived at the site
12 on Saturday, January the 15th, two days after the
13 storm we were already -- the City and Waste Management
14 were in the middle or the midst of our plan for both
15 containing and correcting anything that happened on
16 site as a result of the storm in addition to our
17 activities as far as cleaning up any material that had
18 left the site.

19 EPA, as I mentioned, arrived that
20 Saturday. They spent the rest of the day there. They
21 were there all day Sunday from probably 9 until 7:00
22 that night, and were back again Monday until probably
23 1 or 2:00.

24 The result of that was this order that
25 you're referring to. However, all of the terms that

1 were in the order were already being undertaken at the
2 time that the order was signed.

3 To answer your specific question, there
4 was a set of deliverables that were due yesterday and
5 those deliverables were, in fact, sent in to the
6 department yesterday.

7 MR. WURDEMAN: What do you mean by that?

8 THE WITNESS: You asked me if there were
9 deliverables that were due yesterday according to the
10 terms of the order. And my answer is yes they were
11 due and they were delivered.

12 MR. WURDEMAN: So what specifically was
13 delivered? That's my question.

14 THE WITNESS: There were five or six
15 work plans and reports, status reports that were in
16 there that were delivered. I probably can't recall
17 all of them. I know there was one that was a work
18 plan to restore the sedimentation basin to the level
19 or the efficiency status that it was before the first
20 storm.

21 There was one on the hydraulic head in
22 cell 6. I believe we were supposed to submit the
23 facility health and safety plan. I can't recall the
24 names of the other ones. I think there was a
25 documentation of what we had done for the beach

1 cleanup. There was several other statements in there,
2 but I don't recall exactly all of them. I believe
3 there were six or seven altogether.

4 MR. WURDEMAN: Let me go back to the
5 allegations of that State Health Department
6 investigation that you apparently didn't fully review
7 yet.

8 MS. VIOLA: Chairman?

9 CHAIRMAN DEVENS: Yes. Go ahead.

10 MS. VIOLA: I just wanted to note that
11 this is an investigation that's ongoing. And the
12 State actually -- the City has not received a copy of
13 this from the Department of Health yet. There's no
14 indication to us that they are in the process of
15 finalizing any kind of enforcement action.

16 So in deference to the Department of
17 Health who's not here to answer these questions, I
18 think it's premature for counsel to be asking
19 questions of the potential respondent if they do end
20 up doing an enforcement action.

21 At this point we don't have the final
22 report, the final document or final enforcement action
23 from the agency. So to ask him any questions in terms
24 of him interpreting a document that's not finalized I
25 think would be supposition at best.

1 And at this point he's correct in
2 stating that he doesn't -- to protect himself because
3 there may be potential litigation that he should not
4 be answering questions trying to predict what the
5 Department of Health is thinking in its report.

6 CHAIRMAN DEVENS: Yes, I certainly can
7 appreciate your statements. What I understood
8 Mr. Wurdeman to be asking was just generally whether
9 or not he agreed as to whether or not these
10 allegations are true or not. And if that's something
11 he doesn't know or doesn't have the answer to he can
12 answer that way.

13 MS. VIOLA: And I would object in the
14 sense that this may be potential enforcement action.
15 At this point for him to deny or admit is premature.
16 So I would object to any kind of admission or
17 acknowledgment in regards to anything that's in that
18 report that again the city has never seen before up to
19 this point.

20 CHAIRMAN DEVENS: And he can answer that
21 way if that's the way he wants to handle that
22 question. What I understood Mr. Wurdeman to do is
23 just trying to figure out if any of this information
24 or allegations contained in the report were true or
25 not based on whatever knowledge this witness may have.

1 But your points are well taken.

2 MS. HIRAHARA: Chair, if I may? My name
3 is Lisa Hirahara and I represent Waste Management.
4 And I have advised my client not to answer these
5 questions because it is an ongoing investigation. And
6 we haven't even gone through it yet.

7 So I would just like to -- it hasn't
8 been authenticated. DOH is not here to authenticate
9 the report. And my client has been instructed not to
10 answer.

11 CHAIRMAN DEVENS: What's the basis of
12 not answering?

13 MS. HIRAHARA: It's a pending
14 investigation.

15 CHAIRMAN DEVENS: Right. But we're also
16 looking into it right now as well as a Commission
17 because this matter did come before us. And we're
18 trying to seek answers.

19 MS. HIRAHARA: This particular matter
20 was not on your agenda.

21 CHAIRMAN DEVENS: It was to get
22 information and he was offered as a witness. And he's
23 given testimony under oath trying to explain what
24 happened. We're just trying to get to the bottom of
25 all this.

1 MS. HIRAHARA: That's fine, but I object
2 on the Waste Management's behalf.

3 CHAIRMAN DEVENS: Mr. Wurdeman.

4 MR. WURDEMAN: What makes you believe
5 that this is an ongoing investigation? Is there
6 something in the document that says this is a
7 preliminary report, not a final report?

8 THE WITNESS: I told you I hadn't
9 completed a review of the document.

10 MR. WURDEMAN: Would you like me to show
11 you a copy of the document? And you can show me
12 where --

13 THE WITNESS: Not necessarily. I still
14 wouldn't comment on it because, as both counsel has
15 already stated, it's something -- that document is
16 under investigation or the situation is under
17 investigation and that's a preliminary document. We
18 don't know what the Department of Health is doing in
19 their investigation.

20 MR. WURDEMAN: Well, it says
21 "Investigation report." It's three pages. It's
22 signed off by members of the Health Department on
23 January 4, 2011 for date of investigation
24 December 23rd, 2010. Is there anything that you
25 recall in your review, preliminary review of this

1 report, that this isn't their final report?

2 THE WITNESS: As I mentioned I haven't
3 reviewed the report. But I'm not gonna comment on it
4 because I do know from general -- the consensus if not
5 anywhere else but here that there is an ongoing
6 investigation.

7 MR. WURDEMAN: What leads you to believe
8 that this isn't a final -- I mean they signed off on
9 it. It doesn't say this was a preliminary draft.

10 THE WITNESS: I don't know what's in
11 there.

12 MR. WURDEMAN: Do they say that the
13 investigation is ongoing? What makes you think that
14 this isn't a final report from the Health Department
15 of violations in December of 2010?

16 THE WITNESS: I'm not going to comment
17 on what's in that or why I would think a certain way.
18 I haven't reviewed that. I've explained that to you
19 several times. I don't know what's in there. Why
20 would I comment on what's in there when --

21 MR. WURDEMAN: May I approach the
22 witness, Mr. Chair?

23 CHAIRMAN DEVENS: Yeah. Mr. Wurdeman,
24 if you don't mind me just asking the witness: What
25 would be the end result of this investigation? Would

1 it result in civil fines or something else?

2 THE WITNESS: I don't think we know that
3 at this time.

4 CHAIRMAN DEVENS: If it should be a
5 violation sustained the allegation --

6 THE WITNESS: If could be some --

7 CHAIRMAN DEVENS: Hold on, let me get
8 the question out because the court reporter's going to
9 get angry at us in a little while. What would be the
10 end result if the violations are sustained? Is it a
11 civil fine that you're looking at? Or is it something
12 else?

13 THE WITNESS: It be could be civil. It
14 could be other. I'm not an attorney so --

15 CHAIRMAN DEVENS: Does it involve any
16 criminal action?

17 THE WITNESS: I don't know that. I'm
18 not an attorney.

19 CHAIRMAN DEVENS: You don't have to be
20 an attorney to know if something's criminal or not.
21 Has anyone told you that there's criminal implications
22 from this investigation?

23 THE WITNESS: No one has told me that.

24 COMMISSIONER CONTRADES: Excuse me,
25 Mr. Chairman. The counsel has already told him not to

1 answer. I mean he said I don't how many times he's
2 not gonna answer. Why are we continuing this? I
3 don't get it. He said he's not going to answer.
4 She's told him not to answer. If she was my counsel
5 and told me not to answer I wouldn't answer. So why
6 are we continuing? He's not going to say anything!
7 It's ridiculous!

8 MR. WURDEMAN: With all due respect,
9 Mr. Contrades, usually if there's a reason not to
10 answer there must be some legal basis for asserting
11 that.

12 COMMISSIONER CONTRADES: I'm not a
13 judge. I'm not in court. Okay? I mean I have never
14 in my life, and I've been on this Commission six
15 years, ever had such a situation. This is not
16 someplace we're gonna hang somebody.

17 I'm terribly insulted by what you're
18 doing. I really am. Because I would never treat a
19 man like that. He said, "I cannot answer." She told
20 him not to. She told him not to. Why would he
21 answer? I wouldn't answer. If somebody tells me not
22 to, they're my representatives, I'm not going to stay
23 anything more.

24 And why don't you ask her, who is
25 representing him, why she doesn't want him to answer

1 if that's what you need? But the continuance of this
2 is wasting my time. That's how I feel. It's wasting
3 my time. And I'm insulted by the way you're treating
4 this man.

5 MR. WURDEMAN: You know what? With all
6 due respect, Mr. Contrades, I think the community of
7 the Leeward Coast is insulted by what happened to
8 them.

9 COMMISSIONER CONTRADES: I'm sure they
10 are. I'm sure they are.

11 MR. WURDEMAN: And we have -- we have --
12 as Intervenors we have an obligation to get to the
13 root of this.

14 COMMISSIONER CONTRADES: But not to
15 continuously badger somebody. You don't have that
16 obligation.

17 MR. WURDEMAN: I have an obligation to
18 represent --

19 COMMISSIONER CONTRADES: He already
20 said, "I'm not going to answer." Why do you continue
21 asking him the same questions?

22 CHAIRMAN DEVENS: Tommy, let me just --
23 I was just trying to establish what the bases are. I
24 think we're ready to move on.

25 COMMISSIONER CONTRADES: Thank you.

1 MR. WURDEMAN: I'll defer to the Chair
2 on this matter. I'd like to make some concluding
3 remarks, however. I do believe that it is clear from
4 the investigative report of the State Health
5 Department as attached as Exhibit 5 as well as the EPA
6 report that they admitted to previously, that there
7 are clear violations of 74 and 75 that we discussed.

8 MS. VIOLA: (off mic) Excuse me. Is
9 this testimony?

10 MR. WURDEMAN: I'm just making a
11 concluding remark and I'll be done.

12 MS. VIOLA: It appears to be testimony
13 and conclusive.

14 CHAIRMAN DEVENS: If you can kind of
15 wrap it up, Mr. Wurdeman. I was going to give the
16 director if he had another person that you folks were
17 going to call to give further explanations. Is that
18 the plan?

19 MS. VIOLA: And I apologize but I would
20 like to ask a few questions of Mr. Whelan first.

21 CHAIRMAN DEVENS: Of course.

22 MR. WURDEMAN: I'll hold off on my
23 comments.

24 CHAIRMAN DEVENS: But there was also
25 going to be one more witness you were going to call?

1 MS. VIOLA: Yes.

2 CHAIRMAN DEVENS: Fine. Is that all the
3 questions you have, Mr. Wurdeman?

4 MR. WURDEMAN: At this time, yes.

5 CHAIRMAN DEVENS: Planning, did you want
6 to ask any questions, sir?

7 MR. YOUNG: No.

8 CHAIRMAN DEVENS: Ms. Viola, you want to
9 ask some follow-up questions?

10 MS. VIOLA: Thank you. Mr. Whelan,
11 could you tell the Committee what is the normal
12 rainfall for the entire year that Waimanalo Gulch
13 experiences?

14 THE WITNESS: Yes. We normally receive
15 19 inches or thereabouts of rain per year. This
16 particular set of three storms deposited 22 inches of
17 rain in just over three weeks.

18 MS. VIOLA: So would you characterize
19 that as an unprecedented storm in its intensity?

20 THE WITNESS: I would definitely say
21 it's unprecedented both in the volume and the short
22 amount of time. And I also mentioned in my earlier
23 testimony that the final storm, which was the larger
24 one, dropped 7.6 inches of rain in about six hours
25 time. So as I mentioned the intensity is the one that

1 causes the most amount of damage.

2 MS. VIOLA: So Chair Devens had asked
3 you to compare it to the 40 days -- I know a few years
4 ago we had 40 days of rain. How would you compare it
5 to that?

6 THE WITNESS: This would be much more
7 devastating because if you had a 40-day period where
8 it never stopped raining, but the intensity of the
9 rain was such that the existing infrastructure or
10 roadways or ditches or anywhere else on the island
11 would have been able to handle that.

12 In this particular case we had an area
13 that was closes to two miles square, I believe, in the
14 upper watershed dropping rain that came down through
15 the landfill which, again, this is a gulch which means
16 that it has very high sides on both sides.

17 So you had a very large watershed that
18 came through a very limited amount of spatial area in
19 a very, very short time. And that total amount of
20 rainwater was enough to overcome the design that was
21 approved for that location.

22 MS. VIOLA: And at all times during the
23 storms, all three storms, had the drainage that was in
24 place, was that as required by the permit or your
25 permit with DOH?

1 THE WITNESS: Yes. We are required to
2 maintain 24-hour, 5-year storm and that's what the
3 landfill is designed for.

4 MS. VIOLA: So at the time of the storms
5 and during the expansion you had the drainage that was
6 required by the permit.

7 THE WITNESS: Yes.

8 MS. VIOLA: Are you aware of any test
9 results from any of the tests of the stormwater that
10 was released?

11 THE WITNESS: Yes. I believe I
12 testified that the water was tested on the day of the
13 release.

14 MS. VIOLA: Right. Are you aware of the
15 results of those tests?

16 THE WITNESS: I am, yes.

17 MS. VIOLA: And what were the results?

18 THE WITNESS: The results came back. It
19 stated, and I believe they were in a press release
20 that was issued by the Department of Health at that
21 time, that stated that while the water results testing
22 that was done not only on site but in the area at our
23 offsite outlet that they were within the realm of what
24 you would expect to see during a major storm around
25 the island.

1 And as I testified earlier there was a
2 significant brownout around the island or a brown
3 advisory for several days after this storm.

4 MS. VIOLA: And Chair Devens also asked
5 you about an estimate of the total waste that was
6 discharged. And I heard that you said that you
7 couldn't quantify that. But could you tell the
8 Committee how many bags you did collect in your clean
9 up?

10 THE WITNESS: Yes. We collected during
11 the week-long process approximately 55 or so 40-gallon
12 trash bags full of waste. And out of that we probably
13 had a gallon to a gallon and-a-half or so of
14 sterilized medical waste. The majority obviously of
15 what we picked up at all of the beaches was material,
16 MSW storm material.

17 MS. VIOLA: Finally, in your dealings
18 with EPA throughout the negotiations that you
19 mentioned, did EPA indicate to you at any time their
20 impression of your cleanup efforts?

21 THE WITNESS: Yes they did actually.
22 During the course of their time with us both of their
23 inspectors as they were exiting the site made a point
24 of telling not only the City but Waste Management
25 representatives that we had done a good job in

1 assessing what needed to be done both with onsite
2 restoration of the site as well as our beach cleanup.

3 The intention -- and they further stated
4 that the intention of the administrative order was to
5 document what we had done and to formalize our plans
6 as we move forward to continue with our restoration
7 activities.

8 In addition to that I had an e-mail over
9 the weekend from a lady from EPA congratulating us on
10 the job that we had done during the cleanup
11 activities.

12 MS. VIOLA: No further questions.

13 CHAIRMAN DEVENS: Mr. Whelan, can I ask
14 you a quick question and we'll move on to the
15 Director's next witness. Are there preventative
16 measures that are being put into place now? I assume
17 the construction is still ongoing?

18 THE WITNESS: Yes. As far as the
19 diversion that we spoke of earlier, back in October we
20 had increased the number of shifts to try to get it
21 finished before the rainy season.

22 The contractor, though, was in the field
23 the day after the storm doing double shifts, again to
24 try to get this thing back in place as soon as
25 possible. And I believe that the current date is

1 about 10 days from now that it will be functionally
2 complete, which would mean that in the event of
3 another storm of this magnitude the amount of water
4 from the watershed above us would go around the active
5 landfill and not through it.

6 CHAIRMAN DEVENS: Commissioners have any
7 further questions for this witness? Commissioner
8 Heller.

9 COMMISSIONER HELLER: Just wanted to
10 follow up on one point. In response to a question
11 from counsel, you indicated that you were in
12 compliance at all times during the whole period of the
13 three storms with the requirements of your permits.

14 THE WITNESS: Yes.

15 COMMISSIONER HELLER: Now, just want to
16 make sure I understand. With respect to that berm
17 that was under construction but not yet finished, are
18 you saying that you were in compliance while it was
19 in its unfinished state? Or that you would be in
20 compliance once it's finished?

21 THE WITNESS: We were in compliance
22 while it was being constructed per the terms of our
23 permit. And just a point of clarification. We're
24 speaking about the diversion drainage swale that will
25 take the water around the landfill.

1 The actual berm or dam that I referenced
2 is only -- it's not in our permit -- it's only
3 something that we did as a preventive method after we
4 saw the results of the first storm and while it was
5 actually still raining. We were concerned that there
6 would be an uncontrolled release. So at that time
7 then we constructed a berm to keep that water on site.

8 COMMISSIONER HELLER: Okay. I apologize
9 if I got the terminology wrong. The swale that was
10 under construction --

11 THE WITNESS: Yes.

12 COMMISSIONER HELLER: -- you're saying
13 that while it was under construction but not yet
14 completed you were at that point in compliance with
15 your permits.

16 THE WITNESS: We were. That actual
17 language was written into the permit.

18 COMMISSIONER HELLER: So, in other
19 words, operating without the protection fully in place
20 is still in compliance with the permits.

21 THE WITNESS: Yes.

22 COMMISSIONER HELLER: Thank you.

23 CHAIRMAN DEVENS: Any other questions?

24 COMMISSIONER TEVES: I have a question.

25 CHAIRMAN DEVENS: Go ahead,

1 Commissioner Teves.

2 COMMISSIONER TEVES: Thank you,
3 Mr. Chairman. Mr. Whelan, how long has Waste
4 Management been operating the Waimanalo Landfill?

5 THE WITNESS: Since the beginning of the
6 site. I believe the landfill opened in 1989. And
7 we've been the contractor since then.

8 COMMISSIONER TEVES: Okay. And how
9 often does this medical waste wash down to the beach?

10 THE WITNESS: To my knowledge we've
11 never had a release of any solid waste from the site.
12 Certainly I don't believe there's been ever a case
13 where medical waste has gone off the site.

14 COMMISSIONER TEVES: So this would be
15 the first time.

16 THE WITNESS: Yes.

17 COMMISSIONER TEVES: Except for the
18 hundred year storm.

19 THE WITNESS: Yes.

20 COMMISSIONER TEVES: This is the first
21 time with medical waste.

22 THE WITNESS: Yes.

23 COMMISSIONER TEVES: And no other time?

24 THE WITNESS: Not to my knowledge no.
25 We did canvass employees internally to try to

1 determine that. And there was no evidence to show
2 that that ever happened before.

3 COMMISSIONER TEVES: Thank you.

4 THE WITNESS: You're welcome.

5 CHAIRMAN DEVENS: Commissioner
6 Contrades.

7 COMMISSIONER CONTRADES: I have finally
8 found this investigation report from the Department of
9 Health Clean Water Branch. I don't know who I'm
10 supposed to ask this question to because it doesn't
11 state who it was sent to or where it was supposed to
12 go to. But it is correct. It's only three pages
13 long.

14 And I just wanted to read for the
15 record. It says on Page 3 "In conclusion, it appears
16 that the landfill owners and operators including the
17 CCH and Wastewater Management violated Hawai'i water
18 pollution rules and regulations by discharging water
19 pollutants to state waters without authorization.

20 "Further enforcement actions *may* be
21 required to ensure remediation of the violation. At
22 this time the DOH/CWB will pursue enforcement action
23 in the form of a Notice of *Apparent* Violation and
24 requests for information. Further escalating the
25 enforcement action may also be forthcoming as updated

1 information regarding this case is received."

2 I'm not an attorney. But if somebody
3 read that to me I'd be very careful of what I said.

4 Another point I'd like to make to
5 everybody here: The reason we have this hearing is
6 because this Commission, upon reading all of that
7 stuff that went on in the newspapers and all the
8 accidents that happened, we were very concerned
9 because we were the ones that was involved in the
10 approval of giving them the opportunity to stay open
11 to 2012.

12 And we did this because we also are
13 concerned. But I'm also concerned in treating people
14 fairly. I don't know where this came from. I don't
15 know who it was addressed to. I don't know how
16 anybody got it. And I only received it today. But
17 this doesn't say anything to me as far as: Yes, they
18 did something wrong.

19 There is an ongoing investigation. I
20 would like to know what happened also. But I think we
21 should treat people fairly here. That's all I have to
22 say.

23 CHAIRMAN DEVENS: Any other questions?
24 Director, you want to move to your next witness?

25 MR. STEINBERGER: Yes.

1 CHAIRMAN DEVENS: Mr. Whelan, thank you
2 for coming down. We appreciate it.

3 THE WITNESS: Thank you for your
4 hospitality.

5 MR. STEINBERGER: Mr. Chair, we have a
6 short summary that we put on a PowerPoint because we
7 wanted to go over the 16 conditions. So for members
8 that are sitting here outside of the Commission so
9 they could actually see the wording of the 16
10 conditions.

11 We thought it would be prudent if we
12 were able to project that up on the wall so people
13 could see. If you can just bear with us for a couple
14 of minutes.

15 CHAIRMAN DEVENS: Of course.

16 MR. STEINBERGER: Or perhaps if you'd
17 like to take a short recess.

18 CHAIRMAN DEVENS: Yes, why don't we take
19 a short break and we'll reconvene when you're ready.

20 (Recess was held. 3:30)

21 CHAIRMAN DEVENS: We're going to go back
22 on the record. Director, if you're going to be
23 narrating I've been advised we still have to put you
24 under oath.

25 MR. STEINBERGER: Yes, that's fine.

1 xx

2 TIM STEINBERGER,
3 being first duly sworn to tell the truth, was examined
4 and testified as follows:

5 THE WITNESS: I do.

6 CHAIRMAN DEVENS: And if you could just
7 state your name for the record.

8 THE WITNESS: For the record my name's
9 Tim Steinberger. I'm the director of the Department
10 of Environmental Services for the City and County of
11 Honolulu.

12 CHAIRMAN DEVENS: Thank you very much.

13 MR. STEINBERGER: First off I'd like to
14 thank the Commission for inviting us here today. As I
15 had discussion with Mr. Davidson shortly after the
16 event at the Waimanalo Gulch I felt it would be
17 appropriate that we come in and give an update to this
18 Commission. And then shortly after we received this
19 left from you.

20 Today I'm here to address the items that
21 have to deal with the movement towards selecting an
22 alternative to replace or supplement the Waimanalo
23 Gulch Sanitary Landfill which was from Condition 4 of
24 the 16 conditions. And then also just to go through
25 all of the 16 conditions to present to you the status.

1 You did receive from us a report. It's
2 an update of our annual report in which we did, we
3 have provided written in there as well.

4 So if I may, first off just very quickly
5 this is some information that this Commission probably
6 knows more than it really wants to know about.

7 But as you know the landfill began
8 operation in about 1989 and our operator is Waste
9 Management Hawaii. It does operate under a permit
10 issued by the Department of Health.

11 Primarily we receive MSW, the bulk of it
12 being bulky type trash, also ash and residue from
13 H-Power. Right now we're seeing about 400,000 tons
14 annually coming into the landfill.

15 This is just a quick breakdown of what
16 the landfill sees. Again, in MSW the number that we
17 are operating at now's about 163,000 tons annually.
18 This is a -- oh, incidentally, that FY06 is incorrect.
19 It should be fiscal year 10. This has been quite a
20 bit of a drop from the last data that you saw. I
21 believe it was more around 650 tons a day. As you can
22 the islandwide recycling has taken quite a bite out of
23 the amount of MSW that's going into the landfill.

24 So if I may go into where we are right
25 now as far as the selection process. We have gone

1 through, and this occurred back in, starting back
2 about, I'm going to say last summer 2010 -- we did
3 start identifying potential members to sit on the
4 committee which is going to be tasked with finding an
5 alternate or a supplemental site for Waimanalo Gulch.
6 That committee process went through an identification
7 utilizing the consultant that we had put on board
8 earlier. And also our staff provided input as well as
9 some other people from throughout the city.

10 That list went over to the Mayor's
11 office in about October of 2010. The approval of the
12 list came back to us. And at that time we sent out
13 letters of invitation to those people. So they had
14 not been contacted up until about December 20, 21st
15 timeframe, asking them if they could participate.

16 We were looking for a committee of about
17 12 people. And specifically when we were looking at
18 who would qualify for this type of a position we were
19 looking at two areas. First, we wanted individuals
20 that had a background in community involvement, and
21 they could bring to the table an understanding of
22 issues and concerns that would be important from a
23 community's point of view.

24 Second was to ensure that the majority
25 of the committee members could understand the

1 technical issues and the complexities involved in
2 siting a new landfill, including but not limited to
3 the environmental and legal issues.

4 The first committee that was established
5 back in, I believe it was 2003 was made up about 16
6 committee members. And many of those people did not
7 have a very good technical background. So in the end
8 they had to establish a technical advisory group
9 utilizing the consultant and other sub-consultants to
10 provide information to the members, which just added
11 sometime to the overall process.

12 So at this time we were looking more for
13 a diverse group of people that already had substantial
14 knowledge in various issues.

15 The present committee is designed to
16 balance the committee and technical needs again to
17 provide more meaningful discussion at the table before
18 any recommendation goes over to the mayor.

19 This is the list of Advisory Committee
20 members. As you can see there's quite a few notable
21 people in there that have a fairly strong background
22 in environmental issues, as well as people who are
23 known to be very active in the community. Bruce
24 Anderson, who served as the former director, actually
25 Deputy Director for Department of Health. Also David

1 Arakawa who's now an Executive Director with the Land
2 Use Research LURF. Thomas Arizumi, he recently
3 retired from the Department of Health. He was in the
4 Environmental Management Division.

5 David Cooper. He's with the Hana Group.
6 It's an infrastructure support services. He also has
7 knowledge of the Leeward area.

8 John DeSoto, former councilmember. He's
9 been very active in the Leeward community.

10 John Goody. He actually was with the
11 military for some years. He's now working with Belt
12 Collins as an environmental planner.

13 Joe Lapilio. Again he's an urban and
14 environmental planner. He's got a pretty good
15 knowledge of the Wai'anae Coast issues in the
16 community.

17 Tesha Malama. She's with HCDA. And
18 she's a Director with that Kalaeloa group that's doing
19 the development out on that side of the island.

20 Janice Marsters. At the time I believe
21 she was one of the directors of the local Sierra Club
22 I'm not sure if she still sits on that board or if
23 she's just at this time associated with them. But she
24 is also an environmental geologist with quite a bit of
25 background in dealing with these types of issues.

1 Richard Poirier. He used to be with
2 State Planning, knows Coastal Zone Management quite
3 well.

4 Chuck Prentiss. He used to be the
5 executive secretary for the Planning Commission for
6 the City and County.

7 And then George West. He's a retired
8 Ameron executive.

9 So these people were 12 people that were
10 selected out of the many people that were invited.
11 Not everybody could commit as much time that was
12 required. We were looking at seven meetings with this
13 committee. So it is quite a bit of dedication of time
14 and service.

15 And as was indicated at the opening
16 meeting if you're on a jury at least you get paid, but
17 for this group you do not get paid, but you're still
18 sitting in there just as much time as though you were
19 on a jury.

20 This is our advisory committee schedule.
21 We had our first meeting on January 20th. And this
22 was -- an overview was presented. Our next meeting is
23 going to be on February 10th. And this is going to be
24 a tour of the island's waste facilities. This will be
25 both H-Power, Waimanalo Gulch, and we also requested a

1 tour of PVT. And I believe we did get authorization
2 from the PVT manager to bring the committee up there.

3 On March 10th we'll be looking at the
4 engineering report. This will be the first time that
5 the sites that have been identified, potential sites
6 have been identified, will be presented. So we have
7 not even seen those sites yet. That will come on the
8 10th of March from the consultant.

9 Also we'll be presenting the previous
10 landfill sites. And this committee does have the
11 ability and the authority to request additional
12 information. They also may suggest additional sites
13 to be considered and ask the consultant to go through
14 the process again when they went to put this list
15 together for them.

16 On March 31st again there will be
17 request for additional community criteria, consultant
18 description of the process.

19 May 12 review of alternative sites,
20 distribute evaluation sheets and they'll weigh the
21 criteria. This is what they call a double blind type
22 process. They're really looking at establishing a
23 criteria that they feel is important for the siting of
24 the landfill. And once that's established, then it
25 pretty much sets the stage as to what site is the best

1 suited.

2 June 23rd results of the analysis.
3 Reveal sites selected by the committee. And then they
4 will establish what the content of the report that's
5 going to up to the mayor will be.

6 And then on their last meeting,
7 July 21st discuss the draft report, revise for the
8 final and then submit to mayor.

9 Now, this schedule is, the schedule that
10 we've put together, it may be longer. So right now
11 we're looking at this report going in towards the end
12 of July. But given that some of the issues that may
13 occur or perhaps not every member of the committee may
14 be able to meet all the time, it may extend as late as
15 August or early September. So that's where we are on
16 this.

17 As far as the previous sites these were
18 the sites that were shown to the committee back in
19 2003, 2004 timeframe. So these are all of the old
20 sites. I don't know at this point which one of those
21 sites is still available. Some of the sites may have
22 been taken off. I do not know at this time if any new
23 sites have been added on.

24 There was a bit of an issue about a
25 letter that went out -- or two letters that went out.

1 One went to the federal government and one went to the
2 state of Hawai'i, having to do with two sites over
3 towards Waimanalo and Bellows. Those two sites
4 actually appeared in the 2003/2004 timeframe. And
5 similar letters were sent out to the federal
6 government and the state asking if those sites could
7 be placed on the consideration list. At that time
8 both the federal government and the state replied
9 that, no, they could not be placed on there.

10 The reason we ask that permission is
11 because the county does not have the authority to
12 condemn federal or state land.

13 Now, just before I go into the
14 conditions. When the Order came out from the Land Use
15 Commission in 2009 as far as Condition 4, we had
16 already put money into the budget in the fiscal year
17 10 budget which went through approval in March, April,
18 May timeframe of 2009 to procure, so we could secure a
19 consultant to start doing the work, the preliminary
20 work that is needed before you can present something
21 to a committee.

22 So the motivation behind going forward
23 at that time was because of the County's Integrated
24 Solid Waste Management Plan had already identified the
25 need to start the process because the process is quite

1 long.

2 'Cause once you actually select the site
3 it's then going forward beyond that and getting the
4 site and getting the permits for the site and then
5 constructing the site. So we knew at that time that
6 it was going to be a timely process. So that's why in
7 2009 we already started the process.

8 And the condition under Condition 4 I
9 believe it said that we had to start the process in
10 November of 2010. We actually got a head start on it
11 by one year.

12 If I may, is there any questions on this
13 before I move on? Or you want me to --

14 CHAIRMAN DEVENS: You can finish your
15 presentation and we'll call for questions.

16 MR. STEINBERGER: Okay. As far as the
17 16 conditions: Condition 1 which is, "The Applicant
18 shall obtain all necessary approvals for the
19 Department of Health, Department of Transportation
20 Commission, Water Resource Management" --

21 MS. ERICKSON: Could you please slow
22 down.

23 THE WITNESS: I'm sorry.

24 CHAIRMAN DEVENS: Yes, we've got the
25 court reporter.

1 THE WITNESS: Slower? I'll start over.
2 "The Applicant shall obtain all necessary approvals
3 from the State Department of Health, Department of
4 Transportation, Commission on Water Resource
5 Management and Board of Water Supply for all onsite
6 and offsite improvements involving access, storm
7 drainage, leachate control, water, well construction
8 and wastewater disposal."

9 At this time all of those applicable
10 permits and approvals have been obtained.

11 CHAIRMAN DEVENS: If I can suggest
12 instead of having to read each condition, because we
13 have the conditions and they are part of the record --

14 MR. STEINBERGER: Yes, yes.

15 CHAIRMAN DEVENS: -- I think the record
16 will be clear enough if you just want to say this is
17 the condition. Just say Condition 2 and whatever the
18 status you want to report.

19 MR. STEINBERGER: That would be fine.

20 CHAIRMAN DEVENS: That works for you.

21 MR. STEINBERGER: That'd work for me
22 just fine. Thank you, Chair. Condition No. 2. This
23 has to do with dust control. The dust control
24 measures and management plan have been provided as
25 part of the solid waste management plan. And that was

1 issued by the Department of Health.

2 Condition No. 3, which has to do with
3 the indemnity, so noted.

4 Condition No. 4, I just went through so
5 I'll go straight to Condition No. 5.

6 Condition No. 5 again looking at
7 alternative technologies. I'll give you an update
8 where we are on this right now. We were able to
9 successfully move forward and award a contract for the
10 construction of the third boiler out at H-Power.

11 What this does is it provides us with an
12 additional 300,000 tons annually of processing
13 municipal solid waste. It also allows us to increase
14 our power generation by an additional 32 megawatts.
15 So at that time we'll be looking at putting somewhere
16 in the neighborhood of about 80 megawatts onto the
17 grid.

18 For sludge reuse, a contract has been
19 issued. The contract is not just sludge reuse. It
20 also indicates, involves green waste and food waste
21 and sludge. So that contract is issued and the
22 contractor is now preparing an EIS. That is scheduled
23 to come online in 2012 as well.

24 For the materials recycling, we
25 completed the final phase of the curbside rollout. We

1 also came out with an RFP for looking at possibilities
2 of reusing the ash that's produced at H-Power as well
3 as the fly ash at H-Power. Unfortunately we did not
4 get any respondents to those RFPs.

5 We also had an RFP for looking at
6 dealing with the residue that is generated. This is
7 this kind of grainy material that comes out. And that
8 one too we did not have any respondents.

9 There was also an RFP out for a
10 demonstration project. We are looking for somebody
11 who we would provide the land to and they would build
12 their facility. And we would pay them so much per ton
13 to process MSW in what has been defined as an
14 alternative project for such things as plasma arc, or
15 pyrolysis or one of these.

16 We had a lot of people, contractors show
17 up at our meetings, but we didn't have anybody who --
18 an actual developer willing to step forward and build
19 one.

20 As far as the offisland shipping, we
21 awarded that contract. There was an environmental
22 assessment that was prepared by the USDA which would
23 allow it to be shipped to the Roosevelt landfill in
24 Washington. This was challenged by the Yakima Indian
25 Nation. And at a later date it was also challenged by

1 the Friends of the Columbia River. And as such the
2 contractor was unable to perform in his contract.

3 The end result was that the EA was
4 withdrawn as well as the permit was withdrawn from the
5 contractor. And to this date the various
6 non-government organizations continue to solidify in
7 closing the entire West Coast to shipping. So right
8 now Oregon and Washington is closed. But the last one
9 that we heard was that they were not -- they were
10 going to continue to pursue shutting down the whole
11 West Coast. And I haven't heard anything more in that
12 respect for probably six or seven months. So I don't
13 know if they're still actively pursuing it or not.

14 As you all know the facility was
15 severely damaged by fire as well as some of the
16 equipment. The facility itself has been deemed
17 unusable. They believe it to be a risk.

18 The last time I talked to Department of
19 Planning and Permitting, they said they were most
20 likely going to issue a condemnation on that
21 particular building because they felt it was unsafe.

22 So as it is now the HWS Hawaii Waste
23 Shipping was unable to ship any of the material out.
24 What we ended up doing with them, and this is mostly
25 'cause they came in and represented that they were

1 bankrupt and they had no more money, and the investors
2 would put no more money into the facility. We came to
3 an agreement that if they would take their bundles of
4 MSW, and there were some 20,000 tons at the time. And
5 it was well publicized. I think the news media did
6 such a good job of publicizing it I don't have to go
7 in to much detail on this.

8 But the agreement was that they would
9 break the bales apart. They would separate everything
10 that was combustibile out and they would take it up to
11 H-Power. And that material that could not be burned
12 would then go to Waimanalo Gulch. The whole idea was
13 to stay in the spirit of the original contract award
14 which was to minimize the burden on the gulch from
15 MSW.

16 What was delivered to the shipping
17 company was mostly bulky trash that we pick up along
18 the curbside as well as convenience center waste,
19 which is material that homeowners bring in generally
20 on the weekends. So that was the nature of what they
21 were dealing with.

22 So they did manage to separate and
23 dispose of the bulk of it, some 13,000 tons. It's my
24 understanding they have about 7,000 tons still
25 remaining and they're unable to process at this time

1 because they do not have what the Department of Health
2 requires, which is an environmentally enclosed area.

3 So right now they're on hold. So nothing
4 has been processed. But hopefully they'll come to
5 some resolution with DOH and they'll get this cleared
6 up.

7 Condition No. 6. The subsequent reports
8 will be submitted on June 1st of each year.

9 Condition No. 7, which is the closure
10 sequence. The closure sequence "A" will be completed
11 and the final cover will be applied by December 31st,
12 2012.

13 Condition No. 8, which has to do with the
14 timeframe. The Solid Waste Management permit that's
15 been issued by the Department of Health requires that
16 the landfill operations be confined to 7:00 a.m. to
17 4:30 p.m. In the event that there is an extended
18 outage of H-Power and the need arises, we would
19 petition the Department of Health to extend those
20 hours during that period of time.

21 Condition No. 9, the coordination with
22 Hawaiian Electric will be done. Again, to ensure that
23 the landfill construction and the operations are
24 adequately separate from the overhead lines.

25 Condition No. 10. This is the Honolulu

1 Ordinance 21-5.680. We were advised by the Department
2 of Planning and Permitting that since the property is
3 property that's designated for public use that this
4 particular ordinance does not apply to Waimanalo
5 Gulch.

6 Condition No. 11 so noted.

7 And Condition No. 12 also so noted.

8 Condition No. 13. The respective
9 notifications will be made prior to determination of
10 the use of the property as a landfill.

11 Condition No. 14. This is the provision
12 that the municipal solid waste shall be allowed at
13 Waimanalo Gulch up to July 31st, 2012. The date
14 restriction on the acceptance of MSW at Waimanalo
15 Gulch was appealed to the Circuit Court of the First
16 Circuit. On August 3, 2010 the court denied ENV's
17 request to strike Condition 14.

18 ENV timely appealed to the Intermediate
19 Circuit Court of Appeals that portion of the decision
20 which affirmed the July 31st, 2012 date and for the
21 acceptance of MSW at the landfill. And this case is
22 still currently pending at ICA.

23 Condition No. 15. This is having to do
24 with the Honolulu City Council and the City
25 Administration reporting to the public every three

1 months. On August 3rd, 2010 the Circuit Court of the
2 First Circuit issued its order modifying this
3 condition by substituting the Department of
4 Environmental Services for the City Council and the
5 City Administration.

6 That order was not appealed. The status
7 of the efforts of the Environmental Services in regard
8 to the continued use of Waimanalo Gulch Sanitary
9 Landfill, including any funding arrangements that are
10 being considered by the City Council and the City
11 Administration, are reported to the public during
12 public hearings. And these are conducted every three
13 months.

14 Which leads us into Condition 16. For
15 Condition 16, again, I won't repeat what I just said
16 earlier, but the Circuit Court did take the City
17 Council out of it and designate Environmental
18 Services.

19 As of the date of this report we've had
20 four public hearings. And they have been held at
21 Kapolei Hale, the first one being on July 21st, 2010.
22 The second one April 21st, 2010. The third one
23 July 21st, 2010 and another one on October 19, 2010.
24 So these, again, they were all held out at Kapolei
25 Hale.

1 The first meeting, the one in
2 January 21st, was held about 2:00 in the afternoon.
3 It was determined that perhaps that was too early
4 because we had nobody show up for that meeting from
5 the public. So the time was changed to be later in
6 the afternoon so that it would allow people to get
7 home from work. And if they so wished to attend they
8 could.

9 It was also brought up that we should
10 probably be finding ways to encourage more people to
11 show up at these meetings. So what we did was we
12 shifted it to Honolulu Hale to make it a more central
13 location. And the reason we did that is because we
14 sent out a request to the Neighborhood Commission to
15 notify all the Neighborhood Boards of these meetings
16 that were coming up. So this way we could expand the
17 base of people that perhaps would show up at these
18 meetings.

19 At this meeting on January 18th we had
20 one person from the public again attend. So we've
21 been averaging about one person from the public per
22 meeting. And I do have to back up a little because on
23 the July 21st meeting the person who showed up was
24 actually a person who was marketing a product as
25 opposed to wanting to listen what was going on with

1 the landfill. And that's where we are at this point.
2 So I'm open to questions.

3 CHAIRMAN DEVENS: Thank you very much.
4 Also thank you for taking the time to be here, present
5 us to with that information. Commissioners, any for
6 Director Steinberger? Commissioner Contrades.

7 COMMISSIONER CONTRADES: This may sound
8 like a little bit of a crazy question considering
9 you're a professional and I'm not. But I have this
10 question that's been bothering me for a long time.
11 The boilers can handle how much municipal waste?

12 MR. STEINBERGER: Well, the current
13 facility right now at H-Power can handle a little over
14 600,000 tons a year. So right now we are pushing just
15 about between 600,000 to 610,000 tons a year through
16 that facility. The contract is more in the
17 neighborhood of about 560,000.

18 So that kind of boils down to we're
19 putting in about 2,000 to about 2500 tons daily
20 through the H-Power facility. We generate a little
21 over 50 megawatts. And I believe about 3 or 4
22 megawatts are used for internal running of the
23 facility and the rest goes on the grid.

24 COMMISSIONER CONTRADES: So when the new
25 boiler comes on how much more will it be taking?

1 MR. STEINBERGER: We will be putting an
2 additional 300,000 tons annually into -- so we'll be
3 at a total of 900,000 tons. That's if we continue
4 running the first two boilers at the 600,000 tons. So
5 we'll be up to about 900,000 tons at that point with
6 an additional generator set which gives us an
7 additional 32 megawatts. So at that time we'll
8 probably be putting out close to 80 megawatts on the
9 grid.

10 COMMISSIONER CONTRADES: And how much
11 municipal waste does the City and County have total?

12 MR. STEINBERGER: The total amount that
13 the -- actually it's been dropping and part of that is
14 because of the recycling program. But the City has
15 been generating about 3,000 tons a day in MSW.

16 COMMISSIONER CONTRADES: So isn't there
17 a way that you guys could do it so that all of the
18 municipal waste goes down to your boilers down here?

19 MR. STEINBERGER: You know, that would
20 be great if we could. The only problem is there's a
21 few things that we always have to deal with. Not
22 everything can be combusted and converted into power.
23 There's also several items out there that you cannot
24 take to the H-Power such as dead animals, for
25 instance. Those you can't run through.

1 Other items such as -- if you drive
2 around and you'll see what's on the street side,
3 toilets and bathtubs and old sinks and these type of
4 things, these just do not combust. So they would not
5 be going in there.

6 The other item that we end up is a lot
7 of material like shattered glass, little bits of glass
8 and sand and rocks and these type of things. So those
9 are, you know, a lot of the items that just cannot go
10 in there.

11 COMMISSIONER CONTRADES: So how much of
12 that is generated per year that you cannot burn and
13 you must bury?

14 MR. STEINBERGER: Well, right now based
15 off of what's coming through the current boiler you'll
16 notice we're seeing about 250 tons a day of residue,
17 of material that can't be burned that goes from
18 H-Power on up.

19 The total loading right now to Waimanalo
20 Gulch on an annual basis is about 163-, 164,000 tons
21 annually. So it's way down. It's about, like I said,
22 from what we showed on the graph it's about 400 to
23 about 450 tons a day coming into Waimanalo Gulch.
24 Years ago it used to be closer to 1300 tons a day.

25 COMMISSIONER CONTRADES: Thank you.

1 CHAIRMAN DEVENS: Commissioner Lezy.

2 COMMISSIONER LEZY: Thank you, Chair.

3 Good afternoon, Director Steinberger. Thanks for your
4 testimony. Just one follow-up question. On the site
5 selection committee, the Department of Environmental
6 Services at this point has no idea what the potential
7 sites are?

8 MR. STEINBERGER: Well, let's say that,
9 you know, we are overseeing the consultant contract.
10 I as a political appointee do not. We established a
11 fire wall between this committee and anybody on the --
12 as far as the mayor's office and such so as not to
13 influence the decision of this committee. The only
14 appearance I've had at the committee was that first
15 meeting to welcome everybody. And I believe the
16 Managing Director was also there. And then at that
17 time we left.

18 COMMISSIONER LEZY: All right. Thank
19 you. I'll pose the question that I posed to
20 Mr. Whelan to you. And that is: Why is it the
21 medical waste isn't incinerated at H-Power?

22 MR. STEINBERGER: At this time I'm going
23 to have to give you my best thought on that. And I
24 believe it's because Covanta, who's the operator of
25 the facility, does not want to take that type of

1 material in. But again I would have to verify that.

2 COMMISSIONER LEZY: Okay. Thank you.
3 Then the last question I have for you, and it's a
4 little bit of a sandbag, but I think that I read
5 recently in the newspaper that Mayor Carlisle
6 mentioned at some event that he attended that it's the
7 intent of the City and County to come back and request
8 for a further extension of the operating life of
9 Waimanalo Gulch. And I appreciate that Environmental
10 Services is appealing the Circuit Court's refusal to
11 strike Condition 14.

12 Can you tell us today, though, if, in
13 fact, you fail to prevail on that appeal if it is the
14 intent of the City and County to come back and ask for
15 the date restriction to be extended?

16 MR. STEINBERGER: Yes. I can affirm
17 that.

18 COMMISSIONER LEZY: Do you know when the
19 City and County intends to file its request to modify
20 that condition?

21 MR. STEINBERGER: Well, it was our
22 original intent to actually go to the Planning
23 Commission basically starting this process over again
24 in January of this year, the past month. However,
25 with the change in administration and several events

1 that have occurred that have been rather distracting,
2 we were not able to start that process.

3 So we're hoping to be back with the
4 Planning Commission February but certainly no later
5 than March of this year.

6 COMMISSIONER LEZY: All right. Thank
7 you very much.

8 CHAIRMAN DEVENS: Any other questions?
9 Commissioner Jencks.

10 COMMISSIONER JENCKS: Mr. Steinberger,
11 thank you for being here today. A couple questions on
12 the berm that Mr. Whelan talked about. It's on the
13 mauka side of the main facility. Do you know when the
14 permits were applied for to construct that berm?

15 MR. STEINBERGER: You're speaking of the
16 west berm, the stabilization berm?

17 COMMISSIONER JENCKS: Yes.

18 MR. STEINBERGER: No, I don't have that
19 information. That would be better requested of
20 Mr. Whelan.

21 COMMISSIONER JENCKS: But the permits
22 would have been processed by the City and County, the
23 grading permits and those permits?

24 MR. STEINBERGER: Well, those permits
25 would have been -- yes, they would have been processed

1 by the Department of Planning and Permitting, that's
2 correct.

3 COMMISSIONER JENCKS: Does anybody from
4 the City and County know when those permits were
5 applied for and how long it took to get those permits
6 issued?

7 MS. VIOLA: I don't have that
8 information right now but we could get that for you.

9 COMMISSIONER JENCKS: I'd like to know.
10 I'm just curious. It sounds to me as though if that
11 facility had been constructed, permitted and
12 constructed on a timely basis maybe we wouldn't be
13 sitting here today.

14 MR. STEINBERGER: Okay. If I may
15 clarify, you're asking about the west berm. Or I'm
16 believing what you're asking about is the west berm.
17 But I think what you're really asking about is the
18 water diversion ditch.

19 COMMISSIONER JENCKS: That's correct.

20 MR. STEINBERGER: That allows us to
21 collect the offsite water. And it's my understanding
22 that as soon as Waste Management received their permit
23 to move forward and be able to go back into that area
24 they at that point applied for those permits.

25 COMMISSIONER JENCKS: But we don't know

1 today what the permitting process time took to get
2 those permits.

3 MR. STEINBERGER: I would not be able to
4 answer that. Again, I think that perhaps Waste
5 Management would be the one who could best answer.

6 COMMISSIONER JENCKS: I'd like to know
7 what those dates were. Thank you.

8 CHAIRMAN DEVENS: Any other questions?
9 Director, I had a quick question if I may on the
10 written status report that you submitted to us today.
11 On Page 5 you make a reference or represent that only
12 "a small amount", and those are the words in the
13 report, "small amount of sterilized medical waste was
14 discharged."

15 Again, if I heard Mr. Whelan's testimony
16 correctly, and I hope I'm not misrepresenting what he
17 said, I thought he said they could not really
18 determining the amount or volume of waste that came
19 out of that cell that broke loose.

20 MR. STEINBERGER: And I heard the same
21 thing as far as the total volume of MSW. I think that
22 perhaps the better term in that report should be "The
23 medical waste that was recovered by Waste Management".

24 Again, I believe that when Waste
25 Management went out they had requested that everybody

1 who found medical waste to call them and they would
2 come pick it up. And I believe that came down to what
3 they actually recovered.

4 CHAIRMAN DEVENS: And on the same page
5 there's a statement referring to how much medical or
6 -- strike that -- "There was a recovery of two
7 syringes and a vial. And that was the most medical
8 waste that Waste Management found on any beach on any
9 day."

10 Is that any one day or is it over the
11 whole entire period up to now that is all that's been
12 recovered as far as syringes and vials?

13 The reason why I'm asking this is if I
14 look at the evidentiary photographs submitted by Ko
15 Olina, one photograph alone has more than a handful of
16 syringes in a bucket.

17 I'm just wondering how am I supposed to
18 be reading that or we as a Commission should be
19 interpreting this.

20 MR. STEINBERGER: Well, you know, I
21 think what they were indicating was by location as
22 opposed to not the total stretch of beach. But again
23 I think that it's best answered by Waste Management.

24 I can tell you what the City did from
25 this their side. The lifeguards were notified. The

1 Department of Parks was notified. There was sweeps
2 done at the beach. They actually came out with
3 prisoners also and did a walk through of the City
4 beaches looking for material. And that material was
5 to have been turned back over to Waste Management.

6 And I believe that one of the requests
7 from EPA was that Waste Management segregate all of
8 the medical waste from all the other material that
9 they had picked up. But again perhaps that's best
10 answered by Waste Management.

11 CHAIRMAN DEVENS: I appreciate that.
12 Let me see if the parties have any questions for you.
13 Mr. Matsubara.

14 MR. W. MATSUBARA: Just briefly, Chair
15 Devens. Thank you. Director Steinberger, thank you
16 very much for the update and the status report. I
17 just want to follow up. It was very comprehensive.

18 But Page 11 Condition No. 10 there's two
19 parts, you addressed the first part. And I just
20 wanted to confirm the second section of Condition 10.

21 I'm not alluding that you purposely did
22 it. I know you had a lot to cover in a short period
23 of time. But there is a second part to Condition No.
24 10. And that relates to "...any and all applicable
25 rules and regulations of the State Department of

1 Health that WGS� will be in compliance with the
2 requirements."

3 MR. STEINBERGER: Correct.

4 MR. W. MATSUBARA: I just wanted to
5 confirm. And today you were present when there were
6 certain comments made regarding possible Department of
7 Health investigations. Has your Department on its own
8 intending to ensure that the operation is complying
9 with the Department of Health?

10 MR. STEINBERGER: Well, the Department
11 receives copies of the permits that are issued to
12 Waste Management. And it is the -- we have a project
13 manager that oversees the contract. And as part of
14 their management, obviously they would request or
15 inquire with Waste Management as to the compliance.

16 We have not received or the Waste
17 Management has not received any type of violations
18 that were associated with this particular incident.
19 So at this time I would say that they have been
20 compliant.

21 MR. W. MATSUBARA: I understand that,
22 that you have not received anything. But based on
23 today's testimony there's some possibility that there
24 may be some allegations. Has your Department made a
25 determination going forward to do your own independent

1 looking into the matter? I'm not asking -- all I'm
2 asking is do you intend to do it or something? I'm
3 just asking.

4 MR. STEINBERGER: If I may just clarify.
5 You're asking if we are going to conduct our own
6 independent investigation on this?

7 MR. W. MATSUBARA: Correct. Regarding
8 compliance with the Department of Health regulations.

9 MR. STEINBERGER: Well, at this time
10 we're deferring to the Department of Health.

11 MR. W. MATSUBARA: Okay.

12 CHAIRMAN DEVENS: Is that all,
13 Mr. Matsubara?

14 MR. W. MATSUBARA: Yes.

15 CHAIRMAN DEVENS: Mr. Wurdeman, did you
16 have any questions for this witness?

17 MR. WURDEMAN: Yes, Mr. Chairman. Good
18 afternoon, sir. Could I ask who performed the EIS's
19 to date for the City and Waste Management out at
20 Waimanalo Gulch?

21 MR. STEINBERGER: The EIS I believe was
22 prepared by R.M. Towill Corporation.

23 MR. WURDEMAN: Okay. And I'm looking
24 at -- and they performed, what, at least a couple of
25 the last EIS's that were done?

1 MR. STEINBERGER: Well, that I cannot
2 answer for sure because I do not have that information
3 in front of me.

4 MR. WURDEMAN: Do you know if they
5 conducted the last EIS that was performed?

6 MR. STEINBERGER: I only know that they
7 conducted the EIS that was relevant to this latest
8 expansion.

9 MR. WURDEMAN: Okay. And I'm looking at
10 the status report that was prepared by your
11 department. On Page 2 it indicates, I guess on
12 June 25, this is current status, the first paragraph?

13 MR. STEINBERGER: Okay, yes.

14 MR. WURDEMAN: It says, "On June 25,
15 2010 the City contracted consultant R.M. Towill Corp.
16 to facilitate the landfill site selection process..."
17 Do you see that?

18 MR. STEINBERGER: Yes, I do.

19 MR. WURDEMAN: Do you see a conflict at
20 all between R.M. Towill serving as a facilitator in
21 the selection process of the landfill sites and being
22 the same entity or company that did this last relevant
23 EIS?

24 MR. STEINBERGER: Ah, no, I don't really
25 see a conflict on that. It's not unusual for when you

1 hire a consultant that when you're looking for a
2 facilitator to assist a committee, that that is part
3 of their contract.

4 MR. WURDEMAN: That's all I have for the
5 witness.

6 CHAIRMAN DEVENS: Dawn, did you have any
7 questions?

8 MS. TAKEUCHI-APUNA: No questions.

9 CHAIRMAN DEVENS: Anything else you want
10 to ask, Ms. Viola? Okay. Commissioners, anything
11 else of this witness? We appreciate it very much that
12 you took the time to prepare the report and give us
13 the update today.

14 MR. STEINBERGER: Thank you very much,
15 Chair.

16 CHAIRMAN DEVENS: Do the parties want to
17 add anything else, add any comments or anything else?
18 Otherwise we're going to move into public testimony.
19 If you want to add anything to the record you can do
20 it at this time. Mr. Matsubara, did you want to --

21 MR. W. MATSUBARA: Thank you for the
22 opportunity and the Chair and for the Commission for
23 coming forward and asking for a status.

24 CHAIRMAN DEVENS: Thank you for coming
25 today. Mr. Wurdeman, did you want to add anything?

1 MR. WURDEMAN: Yes. Thank you also to
2 the Chair and the Commission members. I know this is
3 a very sensitive topic for all, not only for you in
4 making your difficult decisions, but also for the
5 community that has to deal with what it had to deal
6 with this last month.

7 I would just respectfully -- I'm not
8 sure where the Commission intends to go with this
9 discussion today. But I would respectfully ask that
10 the Commission consider what appears to be some very
11 clear violations not only in January, that the Chair
12 and other Commission members had raised, but also
13 December.

14 And certainly if it's helpful for the
15 Commission to request further information from the
16 State Department of Health in its decision-making
17 process, that's certainly something that all of us
18 would respectfully request the Commission to consider
19 doing.

20 But it is a very serious concern and not
21 only -- I just recently learned that not only did all
22 this medical waste go out on the beaches of the
23 Leeward Coast as many in this room had learned, but
24 that there were these violations apparently that had
25 been ongoing even prior to that date. And this wasn't

1 just a one-time too much rain in a 24-hour period.
2 This seems to be a problem that had been ongoing from
3 December.

4 MS. VIOLA: Excuse me. I object to
5 that. That was not discussed, so I don't think it's
6 appropriate for him to draw conclusions from
7 violations that were not discussed in today's hearing.

8 CHAIRMAN DEVENS: I understand. He's
9 just making statements for the record. We're not
10 going to be making any kind of decision here today.
11 It was more for informational and to get the point of
12 view from the City and Waste Management, which we
13 sincerely appreciate. But I'm just asking for any
14 other comments that they want to make for the record.
15 You'll be able to respond if you need to.

16 MR. WURDEMAN: Thank you.

17 CHAIRMAN DEVENS: I'm sorry,
18 Mr. Wurdeman.

19 MR. WURDEMAN: And that's all I ask of
20 the Commission, to take into account all these
21 different issues that have arisen today, many of which
22 we're only learning about for the first time. And I'm
23 confident that you will take the appropriate action.

24 CHAIRMAN DEVENS: Let me reassure you
25 Mr. Wurdeman, that this Commission, we take our

1 obligation to the public very seriously. We have some
2 oversight responsibilities. And we were very
3 distressed as everyone else was when we found out what
4 happened. And that was the catalyst for asking what
5 happened.

6 And I think we have more information
7 today. I think there's still many questions that
8 aren't answered. But I do want to assure you and the
9 public that we definitely take this seriously. It's
10 very distressing to all of us on this Commission to
11 have heard and seen what we did in the media. We do
12 appreciate your being here today and we do appreciate
13 your comments.

14 MR. WURDEMAN: Thank you, sir.

15 CHAIRMAN DEVENS: Ms. Viola, do you want
16 to add anything more?

17 MS. VIOLA: Just briefly. I also want
18 to thank the Chair and the Commissioners for having
19 this hearing today. And I would just first of all
20 object to any characterization there's been any
21 establishment of clear violations here today for the
22 record.

23 The City's position is that this was an
24 unprecedented storm or a series of unprecedented
25 storms that severely impacted the landfill. And that,

1 as testified today, Waste Management at all times they
2 were compliant the drainage permit requirements as
3 dictated by the DOH. And that essentially this was
4 unavoidable. They were faced with a rainfall that
5 they couldn't anticipate or they couldn't prepare for.

6 If we were to require all landfills to
7 construct in anticipation of any possible occurrence,
8 any possible rainfall, flooding, any kind of
9 catastrophic event, then we'd never have any
10 construction. We wouldn't have working facilities.

11 So I think that's what happened in this
12 present case. It was unfortunates, of course, that
13 there was a release of medical waste, but it wasn't
14 due to any mismanagement on the part of Waste
15 Management of the City. Thank you.

16 CHAIRMAN DEVENS: Just to reassure you
17 we're definitely not making any such finding at least
18 as of this time. But I also want to emphasize that we
19 have a real concern for the Leeward community when
20 things happen out there. They have this dump in their
21 backyard. There was a lot of pretty strong feelings
22 expressed to this Commission about shutting it down
23 and we passed on it. It's still within our
24 jurisdiction.

25 So that was another primary reason why

1 we wanted to at least try and get more information so
2 the public knows that we are concerned about it. We
3 do worry about that community. 'Cause they always
4 seem to be getting the short end of the stick in my
5 opinion. That's my personal opinion.

6 But we do appreciate you coming, the
7 Director for taking the time. We know you have your
8 hands full. We do appreciate the steps that you're
9 taking to try and rectify the situation. We're just
10 hopeful that it does not happen again. I know no one
11 wanted it to happen. But just hoping that it does not
12 happen again and that we are taking the steps to avoid
13 that. I see Ken in the audience. Ken, if you want to
14 add anything?

15 MR. WILLIAMS: No, appreciate it,
16 Chair. Thank you.

17 MR. STEINBERGER: Chair?

18 CHAIRMAN DEVENS: Yes.

19 MR. STEINBERGER: We do have, if the
20 Committee is interested, if this Commission is
21 interested, we do have copies of the packet that was
22 handed out to the selection committee. So if you all
23 were interested we can provide the copies.

24 CHAIRMAN DEVENS: We would appreciate
25 that. Can we provide copies to the other parties as

1 well?

2 MR. STEINBERGER: Yes. Well, we have
3 enough --

4 CHAIRMAN DEVENS: We'll make them.

5 MR. STEINBERGER: We'll just leave it
6 with Riley, maybe?

7 CHAIRMAN DEVENS: We'll make sure the
8 parties also get a copy. Thank you very much. Holly,
9 you want to take a short break? We have public
10 witnesses. Okay.

11 (Recess was held. 4:20)

12 CHAIRMAN DEVENS: (4:30) We're going to
13 go back on the record and take public testimony at
14 this time. I believe we have about 10 witnesses that
15 have signed up. If there's anyone out there that
16 wants to give public testimony, please let us know.
17 Dan, you want to call the first witness.

18 MR. DAVIDSON: Sure. And let me inform
19 the testifiers due to the lateness of the hour and the
20 fact that the air conditioning has been turned off,
21 we're going to limit public testimony to 2 minutes
22 each.

23 This is a status report. And certainly
24 there will be other opportunities in the future. So I
25 appreciate everybody's understanding of that. First

1 testifier is Greg Nichols followed by Chuck Krause.

2 UNIDENTIFIED SPEAKER: I believe Greg
3 Nichols had to leave.

4 MR. DAVIDSON: Chuck Krause, go ahead.
5 Followed by Edwin Arellano. Sorry.

6 CHAIRMAN DEVENS: Chuck, can we swear
7 you in first?

8 CHUCK KRAUSE,
9 being first duly sworn to tell the truth testified as
10 follows:

11 THE WITNESS: Yes.

12 CHAIRMAN DEVENS: Your name and address,
13 please.

14 THE WITNESS: My name is Charles or
15 Chuck Krause, 92-1498 Ali'inui Drive in Kapolei.

16 CHAIRMAN DEVENS: Go ahead. You have
17 two minutes.

18 THE WITNESS: Okay. I'm here today
19 because I do have some concerns as not only a resident
20 but as a business operator on the West Shore. I'm the
21 general manager of Ko Olina Marina so I've seen some
22 of the repercussions of the out-spill, especially for
23 and, in particular, to my boat operators. So I'm here
24 to pose a couple questions and/or comments to the
25 Commission and to the general manager of the landfill.

1 One would be: Is Waste Management
2 preparing to establish any sort of a relief fund for
3 the businesses that have been financially affected
4 from this out-spill? Because I can tell you that two
5 of our major boat companies have lost thousands of
6 dollars as a result of this. And when an incident
7 like this happens, in most cases there's some sort of
8 relief fund for those who can prove that they do have
9 financial loss.

10 Also, I just returned from the 2011 Boat
11 Show in Seattle. And I was absolutely amazed. I had
12 a booth there for Ko Olina and for Ko Olina Marina. I
13 was amazed at how far-reaching this bad news has
14 spread. When you're spending 10, 12 hour days in a
15 booth representing one of the most beautiful places in
16 the world to have people continually coming up and
17 say, "Aren't your beaches contaminated with medical
18 waste? What was that all about?"

19 I would then ask again: Is Waste
20 Management prepared to participate in any public
21 relations effort to help us reestablish the reputation
22 that not only Ko Olina but the west side of O'ahu has
23 maintained for years and years and years as having
24 some of the nicest beaches in the world? If the
25 general manager --

1 MR. DAVIDSON: 30 seconds, sir.

2 THE WITNESS: Okay -- if the general
3 manager and the counsel have classified this out-spill
4 from the third storm as unavoidable, I don't know how
5 this Commission in good faith can permit the continued
6 use of the landfill at this particular site. If we
7 can't guarantee that this isn't going to happen, then
8 obviously another site has to be chosen to avoid
9 what's just happened to the West Coast of O'ahu.
10 Thank you.

11 CHAIRMAN DEVENS: Thank you for your
12 testimony. Parties have any questions for this
13 witness? Hearing none, Commissioners? None. Thank
14 you very much for taking the time to be here today.
15 Next witness.

16 MR. DAVIDSON: Edwin followed by Charles
17 Leonard.

18 EDWIN ARELLANO,
19 being first duly sworn to tell the truth testified as
20 follows:

21 THE WITNESS: Yes.

22 CHAIRMAN DEVENS: Name and address.

23 THE WITNESS: Edwin Arellano, 1084
24 Pu'uwai Street, Honolulu, Hawai'i 96819.

25 CHAIRMAN DEVENS: Go ahead.

1 THE WITNESS: I'm here on behalf of
2 Hawaii Biowaste. And I'm here to voice some concerns
3 about not having an open landfill. The reason is we
4 process about 4-tons of regulated medical waste and
5 foreign waste at our facility. If we do not have any
6 open landfill at this point we cannot receive any more
7 and process them. So it is a concern.

8 I can honestly say that in two days
9 without pickup at the hospitals and dialysis clinics
10 they were overflowed. So that is my main concern at
11 this point. There is no place for us to discharge any
12 treated waste.

13 CHAIRMAN DEVENS: Thank you very much.
14 Any questions for this witness? Hearing none,
15 Commissioners? Commissioner Lezy.

16 COMMISSIONER LEZY: I'm going to ask you
17 the same question, Mr. Arellano, I asked two other
18 witnesses today. And that is, do you know why medical
19 waste is not incinerated on this island?

20 THE WITNESS: That I'm not sure why it's
21 not accepted at H-Power. But I believe the concerns
22 are maybe needle sticks. As they go through conveyor
23 belts they tend to stick, any sharp material.

24 At our facility we process pathological
25 and chemo waste through high temperature process which

1 is similar to incineration, which is pyrolysis.
2 That's about 30 percent of the waste that we receive
3 from our facility it goes through that process. But
4 for H-Power I believe that's probably one of their
5 concern. I'm not sure. Because we did ask them
6 before but it's not, it's one of those waste they
7 don't accept at this point.

8 COMMISSIONER LEZY: Okay. Thank you.

9 CHAIRMAN DEVENS: Any other questions?
10 Hearing none, thank you for being here. Next witness.

11 MR. DAVIDSON: Charles Leonard followed
12 by Lee Mansfield.

13 CHARLES LEONARD,
14 being first duly sworn to tell the truth testified as
15 follows:

16 THE WITNESS: I do.

17 CHAIRMAN DEVENS: Please state your name
18 and address.

19 THE WITNESS: My name is Charles
20 Leonard. I live at 1910 Ala Moana Boulevard unit 19C.
21 I'm president of Rolloffs Hawaii. Been in the
22 industry 30 years at the executive level of two major
23 corporations for 20 years overseeing landfills,
24 developed landfill projects, so I have a very clear
25 understanding of this issue.

1 But one thing I haven't seen is the kind
2 of impacts over the past three months with trucks
3 waiting in line because of the closure of not only
4 Waimanalo Gulch but H-Power and the timing of such
5 which created 3-hour waits at Waimanalo when H-Power
6 was closed and then we're still -- I was out there
7 yesterday -- we're still incurring 3-hour waits at
8 H-Power because of this issue. So the domino effect
9 is devastating.

10 As far as the rain impact, our disposal
11 bill in the month of December went up \$83,000 in one
12 month. Same volume, same number of container yards.
13 So it's water weight. So I can tell you there was
14 significant rainfall during that time.

15 Whether it was a devastating event for
16 them, I'm sure it was, but it's been tremendously
17 devastating to the entire industry. So I don't think
18 everybody realizes the kind of domino effect you're
19 talking about if you're considering even closing this
20 landfill without an option.

21 CHAIRMAN DEVENS: Any questions for this
22 witness? Hearing none, Commissioners? None. Thank
23 you very much.

24 THE WITNESS: Thank you.

25 MR. DAVIDSON: Lee Mansfield followed by

1 Cynthia Rezentes.

2 LEE MANSFIELD

3 being first duly sworn to tell the truth testified as
4 follows:

5 THE WITNESS: I do.

6 CHAIRMAN DEVENS: Give us your name and
7 address, please.

8 THE WITNESS: Lee A. Mansfield, 839
9 Kaipi'i Street, Kailua, Hawai'i. I'm manager of
10 Hawaii American Water. We own and operate the
11 treatment plant that serves the community of Hawai'i
12 Kai. We serve 35,000 residents.

13 I'm here just to stress the importance
14 to us of having an open landfill and a future landfill
15 for the disposal of the sewage sludge we generate at
16 our facility.

17 We generate about 5 to 6 tons of sludge
18 a day. Currently we have stockpiled that sludge in
19 our drying beds. And it's beginning to impact our
20 capacity to process the wastewater sludges. So I
21 appreciate the work the Commission's doing. And again
22 just want to emphasize the importance to us of having
23 a means of disposal. Thank you.

24 CHAIRMAN DEVENS: Any questions for the
25 witness? Hearing none, thank you very much.

1 MR. DAVIDSON: Cynthia Rezentes followed
2 by Patricia Patterson.

3 CYNTHIA REZENTES,
4 being first duly sworn to tell the truth testified as
5 follows:

6 THE WITNESS: Yes, I do.

7 CHAIRMAN DEVENS: You name and address.

8 THE WITNESS: Cynthia Rezentes, 87-149
9 Maipela Street, Wai'anae, 96792. Thank you for having
10 this hearing. I think it's very important that we all
11 had the opportunity to hear what was stated.

12 As you know I've been an opponent of
13 continuing this landfill. One of the things that I
14 would like to share with you is we've heard today that
15 this was unavoidable; nobody could foresee that this
16 kind of storm event would happen in this area of the
17 island.

18 I would like to remind everybody that
19 this is not unprecedented along the Leeward Coast. In
20 1996 we had some massive rains in Makaha Valley that
21 had not been seen before to the point where we had a
22 landslide that ended up in the Towers, the first floor
23 of the Towers in that building.

24 As a child growing up in that area we
25 have had massive storms. So I don't believe that

1 there should have been -- there should not have been
2 foresight that major storms do hit the Wai'anae Coast,
3 whether it's 25-year storms or 100-year storms. And I
4 think that especially with the facility as important
5 as this is if it's going to stay open they need to
6 take the highest level of safety concerns under
7 advisement for the sake of the community.

8 We've been saying that all along. And
9 I'm going to continue saying that because this
10 community, our community was impacted severely by
11 this. Not just the brown water and that runoff and
12 whatever was in the bacteriological content, whether
13 it was enterococcal or choleraform counts that were
14 experienced along there, but the waste also that came
15 down.

16 There should not be, "Well, 25 year
17 storm is good enough." That is not good enough for
18 out there. I'm sorry. Not when you're dealing with
19 this kind of waste. Not when you're dealing with this
20 kind of facility that has the potential of being an
21 extremely... it can... if it's not managed properly we
22 can literally close off that coast if anything happens
23 and it affects that road.

24 There's nothing in my mind that is too
25 great from an engineering standpoint to be able to

1 take into account things which should have been
2 expected, because this is not the first time the
3 Wai'anae Coast has had a hundred-year storm or a
4 50-year storm within the last 10 years.

5 MR. DAVIDSON: Thirty seconds.

6 THE WITNESS: So I would ask, again I
7 really appreciate the fact that you've had this
8 hearing, that you've allowed us to bring some of this
9 information out. And I would encourage you to make
10 sure to help protect our coastline and our folks by
11 putting the conditions on to make sure that we are
12 protected. Thank you.

13 CHAIRMAN DEVENS: Any questions for the
14 witness? Hearing none, thank you for being here.

15 MR. WURDEMAN: Could I ask?

16 CHAIRMAN DEVENS: Yes, Mr. Wurdeman.

17 MR. WURDEMAN: Good afternoon,
18 Ms. Rezentes. You're an engineer, correct?

19 THE WITNESS: Yes, I am.

20 MR. WURDEMAN: You know, in fact I know
21 because I've studied the (inaudible) cause I represent
22 some victims on the North Shore in 2008 during a huge
23 flood. And I know that the Wai'anae Coast was also
24 impacted just two years ago by that same rainfall.
25 Undoubtedly that was a much bigger storm than what

1 happened a month or two ago is my understanding. But
2 thank you for your comment.

3 THE WITNESS: Thank you.

4 CHAIRMAN DEVENS: Thank you very much.

5 MR. DAVIDSON: Patricia Patterson
6 followed by William and Sara Barnes.

7 PATRICIA PATTERSON,
8 being first duly sworn to tell the truth, testified as
9 follows:

10 THE WITNESS: I do.

11 CHAIRMAN DEVENS: Your name and address,
12 please.

13 THE WITNESS: Patricia Patterson
14 otherwise known as Pat, 84-755 Ala Mahiku, Makaha. I
15 don't live at the Towers but the plantation just
16 below. And I'm glad the Towers was there or we would
17 have gotten all those rocks.

18 Several things that I noticed. You
19 know, this landfill was engineered in 1985 for 25-year
20 storm. Why not a hundred years at that time? And
21 nobody mentioned liners today. Some of 'em came out
22 of there. Liners do decompose eventually.

23 And they talk about cell 6 but they also
24 talk about cells within that cell 6. And that was
25 really confusing to me to read about that. And I

1 think that ought to be clarified and named something
2 other than "little cells" or "mini cells".

3 And I wonder how often the Department of
4 Health representatives go and inspect that landfill
5 and whether anyone's on site 24 hours a day. It
6 didn't sound like anyone was there from early in the
7 morning until 5:00 when they came to work. I think
8 that ought to be considered.

9 They talk about a hotline about we could
10 call if we saw something. I don't know how they
11 advertised that. I didn't see anything about a
12 hotline to call.

13 And mainly I want to say to the
14 Commission please don't extend that again, not the
15 limit or the time. But be fair. Have every community
16 in this state take care of their own opala. Don't let
17 that committee select one site. Have them find a site
18 for each of our communities at least on this island.
19 Thank you.

20 CHAIRMAN DEVENS: Any questions for this
21 witness? There are none. Thank you very much for
22 being here.

23 MR. DAVIDSON: William and Sara Barnes.
24 I don't know if each of you is going to speak.

25 MR. BARNES: I will speak for both of us.

1 CHAIRMAN DEVENS: I'll swear you in.

2 WILLIAM and SARA BARNES

3 being first duly sworn to tell the truth testified as
4 follows:

5 MR. BARNES: Yes.

6 MS. BARNES: Yes.

7 CHAIRMAN DEVENS: Please state your name
8 and address whoever's going to speak.

9 MR. BARNES: William and Sara Barnes,
10 92-1001 Ali'inui Drive at Ko Olina. Thanks very much
11 for having this hearing and for the opportunity to
12 speak before you. We are homeowners and residents of
13 Kaiulani which is the closest residential community to
14 the Waimanalo Landfill. It's directly across the
15 Farrington Highway and has suffered from the various
16 failures of the landfill over many years.

17 These include blowing dust and dirt on a
18 frequent basis, toxic runoff and closed beaches and
19 even loose trash in plastic wet bags that blow on
20 windy days.

21 Trucks entering and leaving the landfill
22 are also an additional source of heavy dirt and dust
23 on the property.

24 I've brought along a few photographs
25 just to show the proximity of the landfill to both

1 Kaiulani and the rest of Ko Olina including the new
2 Disney resort and I'll circulate those. The photos
3 demonstrate how close the excavation activities of the
4 landfill are to our homes and to the community.

5 While at once it may have made a great
6 deal of sense to have the landfill in this area 21 or
7 22 years ago when it was a sugarcane field and there
8 was no Kapolei, we have a very different situation
9 today, an opposite situation.

10 What was deemed acceptable 21 years ago
11 I think is not acceptable now. So planning needs to
12 start to think about how in the longer run O'ahu can
13 meet its landfill needs but not do so by putting the
14 landfill immediately adjacent to a sizeable community.

15 Ko Olina is now a multi-million dollar
16 resort as many of you know. And in short previous
17 testimony employment center bringing millions of tax
18 dollars to the city and the state and adding
19 substantially to O'ahu's tourists industry.

20 Next I'd like to just say it's been
21 difficult for us to watch today City representatives
22 defend energetically Waste Management, almost acting
23 as their legal counsel in defense. And at the same
24 time indicate that they do not see themselves as
25 having any responsibility for initiating any testing

1 to be in compliance with the various conditions that
2 this Commission has asked. And instead regarded as a
3 matter that should be handled by the Department of
4 Health at the state level.

5 Curiously enough I have a letter dated
6 January 28th from the governor who responded to a
7 letter that my wife and I wrote to him on the subject
8 of the Gulch in which he said, "As you may know it's
9 managed by the City and County of Honolulu.
10 Appreciate your concerns. However, all decisions
11 directly affecting the landfill or discharge of
12 medical waste are under the jurisdiction of the City
13 and County of Honolulu."

14 Presumably, therefore, we all ought to
15 be able to look to Mr. Steinberger and his colleagues
16 at the City to take proactive efforts to make sure
17 that plenty of testing and plenty of oversight and
18 energetic regulation of this landfill is taking place.

19 MR. DAVIDSON: Sir, 30 seconds.

20 THE WITNESS: Thank you very much. We
21 did not hear that today. But going forward we
22 understand the Mayor's Advisory Committee will base
23 its recommendations on pre-identified selection
24 criteria. Mr. Steinberger has shared some of those
25 criteria on Monday with the City Council. Much

1 depends on making sure the selection criteria defined
2 with sufficient precision, clarity and weighting so
3 that a new alternate or second landfill site can be
4 picked and we do not get a repeat of the situation of
5 some years ago where simply the Waimanalo Gulch was
6 reselected once again. Thank you very much for
7 listening to us today. Appreciate it.

8 CHAIRMAN DEVENS: Did you want to make
9 your pictures part of the record of this proceeding?

10 THE WITNESS: Yes. Could we?

11 CHAIRMAN DEVENS: We will do that, sure.

12 THE WITNESS: Thank you.

13 CHAIRMAN DEVENS: Any questions for this
14 witness? There are none. Thank you very much for
15 being here.

16 MR. DAVIDSON: Clair and Peter van
17 Wingerden.

18 CHAIRMAN DEVENS: If we can first swear
19 you in.

20 CLAIRE AND PETER VAN WINGERDEN
21 being first duly sworn to tell the truth testified as
22 follows:

23 MR. AND MRS. WINGERDEN: We do.

24 CHAIRMAN DEVENS: State your name and
25 address.

1 MS. VAN WINDGERDEN: Claire and Peter
2 Van Wingerden, 92-1001 Ali'inui Drive, Kailani in
3 Kapolei. We too are residents of Kailani at Ko Olina.
4 We live directly below the dump. We look at it every
5 day. And we live directly above the pipe that falls
6 into the water. So we have a very good viewpoint of
7 the spill and its effects. And we are very concerned
8 not just about the environmental impact which is, of
9 course, a major concern and the public health impact.

10 We are also concerned, as one of the
11 other witnesses has said, about the economic impact on
12 the resort and on the people who work there and who
13 live in the area.

14 We would strongly urge that the landfill
15 be closed in 2012 as at one point was planned. We
16 were very disappointed to hear that there would be a
17 plan to appeal that closure. We don't feel that the
18 continuation of the dump can be justified given the
19 proximity to both Ko Olina, which has greatly grown
20 since the landfill was placed there, but also to the
21 entire Wai'anae Coast. Thank you. And thank you very
22 much also for looking into this so deeply. Appreciate
23 it.

24 CHAIRMAN DEVENS: Thank you for being
25 here. Any questions for these witnesses? There are

1 none, thank you very much. Our last witness.

2 MR. DAVIDSON: Alice Greenwood.

3 ALICE GREENWOOD,

4 being first duly sworn to tell the truth testified as
5 follows:

6 THE WITNESS: Yes, I do.

7 CHAIRMAN DEVENS: Your name and address.

8 THE WITNESS: I live at 87-576
9 Kula'auponi, Apartment C-102. I'm part of an
10 organization called Concerned Elders of Wai'anae. Pat
11 is our oldest. She's 8 years old. And I'm the
12 youngest. I'm 6. Sorry. (Laughter)

13 Anyway, our issues has always been about
14 the landfill, yes. We were concerned because of the
15 traffic, the dust, whatever was impacting our
16 community. And we considered Ko Olina as part of that
17 community 'cause it's in the range where we go home
18 to.

19 Anyway here I have a bunch of papers.
20 And I know the landfill started in 1989. And I'm
21 looking at these papers. And it's saying gee,
22 June 4th, 2010 61 pages, page 39 to 41 mentions all
23 about E6, the one we're talking about and we're
24 concerned about.

25 And it tells me that there's supposed to

1 be a berm. And this is by the Department, State of
2 Hawai'i Department of Health and got the names that
3 the people that had testified here on it.

4 And it says that there's going to be --
5 and remember we got a deadline June or July 2012 --
6 over here says, they talk about the west drainage
7 system cell E6.

8 And then the ending part says, "During
9 construction of surface water systems the permittee
10 shall ensure that existing stormwater collection and
11 conveyance are significant to manage 24 hours on
12 25-year storm events."

13 Now this is part of the closage (sic)
14 that they're supposed to be doing. And they got a
15 deadline, 2012. And then all of a sudden I hear about
16 that's June 4, 2010. Saturday December 18 in another
17 report says "E6 last operated 12-inches layer." And
18 that was the last operation of this day. It was
19 covered.

20 "Sunday December 19th heavy rain. The
21 landfill intermediate pump stormwater which
22 accumulated in the landfill E6 cell into the
23 landfill's stormwater drainage system." This is
24 mentioned on Tuesday December 23.

25 Now from June 4th, that's five months to

1 Saturday December 18th -- I mean one month later
2 December 19th. December 23rd we get the ones that you
3 guys read. We got that report.

4 Then December 28 this report says it's
5 already gone to the Pacific Ocean. That's
6 December 23rd. Tuesday December 28 we have another
7 storm. Okay? January 4 that's when this thing is
8 signed, January 4th, stating that "We have a problem
9 here guys." And I was shocked.

10 January 10th we get message that there
11 is medical waste which all was verified in here in
12 these documents. They already have the medical waste
13 in E6.

14 I don't blame us for being worried, not
15 Pat and I. We're only 8 and 6. Can you imagine our
16 children and our grandchildren that's using those
17 beaches? We're lucky we found 'em onshore. What
18 about out in that ocean?

19 You know, I'll put it this way. I was
20 homeless 2007 and '8. I didn't realize when some of
21 the children came up to me and told me they found
22 needles, I thought gee, these guys doing drug things
23 around here.

24 Could that have happened during that
25 timeframe and not let any of us know what was

1 happening? Like I said I'm not concerned about
2 myself. My time is limited. I am very concerned
3 about our children. Please, it's got to be more
4 management than what's going on. If it's too big
5 then, like Pat says, spread it around. Maybe that's
6 the problem. Thank you.

7 CHAIRMAN DEVENS: Alice, I know you've
8 sat through this whole agenda today. And we
9 appreciate your concerns and being involved in the
10 process. We really do.

11 Any questions for this witness? Hearing
12 noun I believe that is the last witness for the day.
13 Thank you very much. Parties want to add anything
14 else for the record before we wrap up? Commissioners?
15 Yes, go ahead.

16 MS. VIOLA: Can we get copies of
17 whatever was submitted?

18 CHAIRMAN DEVENS: Sure. Riley will give
19 you whatever you'll need.

20 MS. VIOLA: Thank you.

21 CHAIRMAN DEVENS: That's it. We'll
22 stand adjourned. Thank you very much for being here.

23

24 (The proceedings were adjourned at 5:00 p.m.)

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C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matter on the 2nd day of February 2011

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print 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.

DATED: This 14th day of February 2011

Holly M. Hackett

HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter