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

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

CONTESTED CASE HEARING

Ewa-State Special Use Permit Amendment Application -
2008\SUP-2 (RY) Waimanalo Gulch Sanitary Landfill

Taken at Mission Memorial Conference Room,
Mission Memorial Building, 550 South King Street,
Honolulu, Hawaii 96813, commencing at 9:00 a.m., on
January 11, 2012, pursuant to Notice.

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BEFORE: SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii

APPEARANCES:

Planning Commission:

- GAYLE PINGREE, Chairwoman
- BEADIE K. DAWSON, Member
- CORD D. ANDERSEN, Member
- DANIEL S.M. YOUNG, Member
- JAMES C. PACOPAC, Member
- ARTHUR B. TOLENTINO, Member

For the Planning Commission:

WINSTON K.Q. WONG, ESQ.
 Deputy Corporation Counsel
 Department of the Corporation Counsel
 530 South King Street, Room 110
 Honolulu, Hawaii 96813

1 Appearances (continued):

2 For the City and County of Honolulu, Department of
3 Environmental Services:

4 DANA MIE OSHIRO VIOLA, ESQ.

5 ROBERT BRIAN BLACK, ESQ.

6 Deputies Corporation Counsel

7 City and County of Honolulu

8 530 South King Street, Room 110

9 Honolulu, Hawaii 96813

10

11 For Ko Olina Community Association and Senator Maile
12 Shimabukuro:

13 CALVERT GRAHAM CHIPCHASE, IV, ESQ.

14 CHRISTOPHER T. GOODIN, ESQ.

15 Cades Schutte

16 1000 Bishop Street, Suite 1200

17 Honolulu, Hawaii 96813

18

19 For Schnitzer Steel Hawaii Corp.:

20 IAN L. SANDISON, ESQ.

21 ARSIMA A. MULLER, ESQ.

22 Carlsmith Ball LLP

23 ASB Tower, Suite 2200

24 1001 Bishop Street

25 Honolulu, Hawaii 96813

I N D E X

WITNESS: TIMOTHY STEINBERGER

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1 CONTESTED CASE HEARING

2 CHAIRWOMAN PINGREE: Good morning and
3 Happy New Year. Today, of course, is January 11th,
4 2012 and we're here for the contested case hearing
5 Ewa-State Special Use Permit Amendment Application -
6 2008/SUP-2(RY) Waimanalo Gulch Sanitary Landfill.

7 Just from a procedural issue, applicant,
8 ENV, will present its case first and then of course
9 Schnitzer and KOCA will go after. Questioning of
10 witnesses will follow the same order.

11 Any objections?

12 MR. SANDISON: Do you want appearances?

13 CHAIRWOMAN PINGREE: I'm sorry?

14 MR. SANDISON: Appearances? Do you want
15 to do our appearances?

16 CHAIRWOMAN PINGREE: If you would kindly
17 just identify who you are and who you represent.

18 MS. VIOLA: Deputy Corporation Counsel
19 Dana Viola and Brian Black on behalf of the
20 Department of Environmental Services.

21 MR. SANDISON: Ian Sandison representing
22 Schnitzer Steel Hawaii Corp., and I have with me
23 Arsima Muller.

24 MR. CHIPCHASE: Cal Chipchase and Chris
25 Goodin for intervenors, the Ko Olina Community

1 Association and Senator Maile Shimabukuro, and with
2 me here today is also Ken Williams for the
3 association.

4 CHAIRWOMAN PINGREE: Thank you. Shall we
5 proceed?

6 MS. VIOLA: I believe there's one item
7 that was -- just as a procedural matter, I believe
8 that we had determined in a prehearing conference
9 that we would do a ten-minute summary of the written
10 submissions for the direct testimony, and I'll be
11 doing the -- if it's okay with the commission as
12 well as the other parties, I'll be doing the ten-
13 minute summary for my witnesses.

14 MR. SANDISON: I have no objection.

15 CHAIRWOMAN PINGREE: Any problems?

16 MR. CHIPCHASE: I'm sorry? Counsel will
17 be doing the ten-minute summary? I understood the
18 witness would be providing the summary. I think
19 that's more appropriate than counsel testifying on
20 the record.

21 CHAIRWOMAN PINGREE: Is there a witness
22 able to perform the ten-minute summary?

23 MS. VIOLA: If I may take a short recess,
24 I will discuss that with my witness.

25 CHAIRWOMAN PINGREE: Surely.

1 (Discussion off the record.)

2 CHAIRWOMAN PINGREE: Back on the record.

3 MS. VIOLA: Thank you. In response to Mr.
4 Chipchase's comments, I just want to add that I will
5 not be testifying. I thought the purpose of the
6 summary would essentially be to ensure the
7 ten-minute streamlining of the direct testimony and
8 I would just essentially be summarizing what is
9 contained in the direct testimony that's already
10 been submitted. So I wouldn't be testifying, but if
11 it's the commission's preference that the witness do
12 the summary, then I would abide by what the
13 commission --

14 CHAIRWOMAN PINGREE: If this is not
15 testimony, then this is fine.

16 MS. VIOLA: Okay. Thank you.

17 Essentially, what Mr. Steinberger is going
18 to be testifying to is, as you've all already read
19 through his testimony, is that the bottom line is
20 that we need a landfill and that there are wastes
21 that cannot be otherwise disposed of, cannot be
22 burned, cannot be shipped, cannot be recycled, and a
23 particular concern is the waste stream for sewage
24 sludge, and also, we need the landfill as a backup
25 as a contingency for emergency situations, emergency

1 disasters, natural disasters, as well as to account
2 for any shutdown at H-POWER, both planned and
3 unanticipated.

4 But despite the need for the landfill, the
5 City has made great efforts in diverting waste from
6 the landfill, municipal solid waste from the
7 landfill. Right now, the City is fourth in the
8 nation in diverting municipal solid waste from our
9 landfill. We are essentially leading in the country
10 as far as diversion, as well as we've moved toward
11 and we're continuing to move toward greater
12 diversion. With the expansion of the H-POWER
13 facility, the third boiler is going to take an
14 additional 300,000 tons of municipal solid waste and
15 will further divert additional waste from the
16 landfill.

17 We've also made great strides in our
18 recycling, and we now have statewide curbside and
19 there's approximately 170,000 homes that are being
20 serviced by curbside recycling and we also have
21 accomplished or have entered into a contract with a
22 facility to recycle green waste, food waste and
23 sewage sludge, again diverting additional waste
24 stream from the landfill.

25 But despite all these efforts, we still

1 need a landfill, because there are still wastes that
2 cannot be, again, burned, shipped or recycled.
3 There's still waste that has to be land-filled, and
4 therefore, we cannot condone a deadline of July
5 31st, 2012, because essentially there will be no
6 place for these wastes to go.

7 Again, if the landfill is shut down to
8 municipal solid waste as of July 31st, 2012, this
9 will threaten the health of the public and the
10 environment, because there will be no alternative
11 disposal method for particular waste streams, in
12 particular sewage sludge.

13 MS. DAWSON: Counsel, in your summary
14 which you're doing right now, please include
15 whatever -- some of the information that you have in
16 terms of the site selection status. You can't just
17 say that there's going to be no place to put waste
18 accumulation. You have to give us some idea and --
19 even if it means at a later time we're going to have
20 testimony from the site selection chairman, whatever
21 that body is. We need to know that.

22 MS. VIOLA: Right. Mr. Steinberger will
23 be testifying on the site selection commission and
24 the progress. The Department of Environmental
25 Services has essentially not been wholly involved

1 with the site selection committee. The
2 administration wanted to leave the committee
3 somewhat independent so that they could essentially
4 come up with a recommendation independent of the
5 administration. But pursuant to the publications
6 that have been submitted by the -- have gone public
7 and are on the City's website that the commission
8 has provided, the commission is making progress with
9 their site selection recommendation. They're taking
10 additional time because essentially they want to
11 produce a reasonable and reliable product. They
12 want to make the best recommendation --

13 CHAIRWOMAN PINGREE: Thank you. We'll
14 proceed with the -- let's finish up.

15 MS. VIOLA: Essentially, in summary, the
16 site selection commission is continuing to do their
17 job, they're continuing to strive toward making a
18 recommendation fully as soon as February of this --
19 next month, February 20th. Thank you.

20 CHAIRWOMAN PINGREE: Thank you.

21 Mr. Sandison?

22 MS. VIOLA: I understand that my witness
23 would then testify.

24 MR. CHIPCHASE: Subject to
25 cross-examination, Chair, is my understanding, not

1 testimony.

2 MS. VIOLA: Right.

3 CHAIRWOMAN PINGREE: Any other opening
4 statements?

5 MS. VIOLA: I understood we did our
6 opening statements --

7 CHAIRWOMAN PINGREE: I'm sorry -- the
8 ten-minute summary.

9 Okay. Call your witness. Thank you.

10 MS. VIOLA: Thank you. Timothy
11 Steinberger.

12 MR. SANDISON: If it's all right, I'll
13 start with the cross.

14 CHAIRWOMAN PINGREE: Let me swear the
15 witness in.

16

17

TIMOTHY STEINBERGER,

18 called as a witness, being first duly sworn to tell
19 the truth, the whole truth, nothing but the truth,
20 was examined and deposed as follows:

21

22 CHAIRWOMAN PINGREE: As mentioned
23 previously, the order will be, on the cross,
24 Schnitzer and KOCA.

25

MR. SANDISON: Thank you.

E X A M I N A T I O N

1
2 BY MR. SANDISON:

3 Q. Good morning, Mr. Steinberger. I have one
4 question for you. Is either Waimanalo Gulch or
5 H-POWER permitted to accept scrap metal?

6 A. No. We do not accept scrap metal at
7 either of those facilities, although at H-POWER
8 scrap metal comes in in the form of trash and is
9 separated and then it's sent to recyclers.

10 MR. SANDISON: Thank you. I have no
11 further questions.

12 MR. CHIPCHASE: Chair, just one point of
13 clarification, if I might -- it's my understanding
14 that nothing Ms. Viola said was evidence. Is that
15 right?

16 CHAIRWOMAN PINGREE: Correct.

17 MR. CHIPCHASE: If you'd indulge me, I'd
18 like to switch places with Ms. Viola so it's easier
19 to hand the witness exhibits.

20 CHAIRWOMAN PINGREE: That's fine.

21 MR. CHIPCHASE: Thank you.
22
23
24
25

E X A M I N A T I O N

1
2 BY MR. CHIPCHASE:

3 Q. Thank you. Good morning, Mr. Steinberger.

4 A. Good morning, Counsel.

5 Q. My name is Cal Chipchase. I represent the
6 Ko Olina Community Association and Senator Maile
7 Shimabukuro.

8 I understand you are the director of the
9 Department of Environmental Services.

10 A. That is correct.

11 Q. What does the director do?

12 A. The director is responsible for the
13 administrative oversight of the Department of
14 Environmental Services. The department is engaged
15 in both wastewater systems, solid waste, and on a
16 smaller issue, the storm water quality issues.

17 Q. In performing those functions or being
18 able to perform those functions, does the director
19 need to be knowledgeable about solid waste
20 management?

21 A. The director needs to have an overall view
22 of what goes on in solid waste management, that's
23 correct.

24 Q. So that would include landfill operations?

25 A. That would include, yes, the landfill

1 side. We oversee the landfill.

2 Q. As well as alternatives to landfill?

3 A. As well as investigation of alternatives
4 to landfill, that's correct.

5 Q. And you've been the director since 2009?

6 A. That is correct.

7 Q. You were also the director a period before
8 that?

9 A. From 2001 to 2002.

10 Q. Who was the director from 2003 to 2009?

11 A. Well, the director from 2002 to 2004 was
12 Mr. Frank Doyle. The director from 2005 to 2009 was
13 Mr. Eric Takemura.

14 Q. Do you know Mr. Doyle's background?

15 A. Mr. Doyle is a civil engineer. He has
16 been with the City for many years, of which I'm not
17 sure of the exact number of years. He started out
18 with the Department of Public Works prior to the
19 1998 reorganization, and at that time he was the
20 division chief for refuse.

21 Q. Let me make sure I've got that chronology
22 right. Mr. Doyle served in various capacities; one,
23 which was the chief of the refuse division --

24 A. That was his longest-standing position,
25 that is correct.

1 Q. For a time he was also the assistant
2 director for the Department of Environmental
3 Services?

4 A. For a short time, he was the assistant
5 director of the Department of Environmental
6 Services.

7 Q. And then for this two- or three-year
8 period he was the director?

9 A. For about -- I think it was a little less
10 than two years.

11 Q. I see. Thank you.

12 MR. CHIPCHASE: Chair, at this time I
13 would move to admit all of KOCA's exhibits, one
14 through 161.

15 CHAIRWOMAN PINGREE: That's fine. Thank
16 you.

17 I'm sorry. Any objection?

18 MR. SANDISON: No objection. Just
19 procedurally, can we also move to admit the hearing
20 -- the court reporter's transcript of the October
21 5th, 2011 public hearing so the public testimony is
22 also made a part of the administrative record?

23 CHAIRWOMAN PINGREE: That's fine with me.

24 MS. VIOLA: The City would have an
25 objection to entering all the exhibits. The City

1 would not object to entry of the exhibits that are
2 referenced in the written testimony of KOCA and
3 Shimabukuro's witnesses. However, the City does not
4 feel that there's proper foundation laid for other
5 exhibits that are contained in the exhibit list, so
6 we would object to entry of all the exhibits.

7 MR. CHIPCHASE: Chair, the rules of
8 evidence don't apply. This is a contested case
9 proceeding. I believe that the commission is
10 entitled to have a complete record. If Ms. Viola
11 has a specific document that she does not believe is
12 authentic, I'm happy to take that up, but short of
13 that, the documents should come in.

14 CHAIRWOMAN PINGREE: Is there a document
15 in question, any specific document?

16 MS. VIOLA: I would object that he hasn't
17 established the relevance of those documents. While
18 the rules of evidence don't apply, essentially they
19 would have to assert that the documents that they
20 are submitting as evidence would be relevant to this
21 proceeding and not repetitive -- as well as not
22 repetitive, and that he hasn't established at this
23 point. Essentially, the City -- we haven't even had
24 a chance -- the commission hasn't had a chance to
25 consider the exhibits at this point.

1 CHAIRWOMAN PINGREE: The exhibits --
2 pardon me. I have to apologize. I have a cold, so
3 I'm struggling. The particular exhibits -- what I'm
4 trying to do is get a handle on what exhibits in
5 particular that you're objecting to. You have not
6 seen the exhibits?

7 MS. VIOLA: No, no. I have seen the
8 exhibits. There are essentially only a handful of
9 exhibits that are actually referenced in the
10 testimony. Most of the exhibits are not
11 specifically referenced in the written testimony,
12 so --

13 CHAIRWOMAN PINGREE: Excuse me, Dana.
14 Were these exhibits part of the exhibit
15 listing?

16 MS. VIOLA: Yes.

17 MR. CHIPCHASE: Yes.

18 CHAIRWOMAN PINGREE: Then I think it
19 should be admitted, if it was part of the listing.
20 You had the opportunity to review the exhibits?

21 MS. VIOLA: Yes.

22 CHAIRWOMAN PINGREE: Then I'm going to
23 admit.

24 BY MR. CHIPCHASE:

25 Q. Mr. Steinberger, I'd like to show you a

1 document marked Exhibit K-15, if I could. Mr.
2 Steinberger, K-15 is the Land Use Commission order
3 adopting the City and County of Honolulu Planning
4 Commission's findings of fact, conclusions of law
5 and decision and order with modifications. Do you
6 see that?

7 A. Yes, I do see this.

8 Q. If you would turn to condition four of the
9 order, please.

10 A. Yes.

11 MS. VIOLA: I'm sorry. Mr. Chipchase,
12 what exhibit was that?

13 MR. CHIPCHASE: K-15.

14 BY MR. CHIPCHASE:

15 Q. If I could direct you to just the first
16 two sentences of K-15. The Land Use Commission's
17 2009 decision and order, it states: On or about
18 November 1, 2010, the applicant shall begin to
19 identify and develop one or more new landfill sites
20 that shall either replace or supplement the WGSL.

21 Do you see that?

22 A. I do see that.

23 Q. You understand the WGSL to be the
24 Waimanalo Gulch Sanitary Landfill?

25 A. Yes, I do.

1 Q. Then the next sentence says: The
2 applicant's efforts to identify and develop such
3 sites shall be performed with reasonable diligence.

4 Do you see that part of the second
5 sentence?

6 A. Yes, I do.

7 Q. So do you understand the applicant to be
8 the ENV?

9 A. Yes.

10 Q. So your department?

11 A. Yes. That would be the City and County,
12 that's correct.

13 Q. If I could turn you to condition 14 on
14 page eight of K-15. Just one sentence: Municipal
15 solid waste shall be allowed at the WGSL up to July
16 31, 2012 provided that only ash and residue from
17 H-POWER shall be allowed at the WGSL after July 31,
18 2012.

19 Do you see that?

20 A. Yes, I do.

21 Q. Now if I could point you to Exhibit K-161.
22 Mr. Steinberger, the document I've handed you,
23 Exhibit K-61, appears to be the ENV's application
24 for modification of its special use permit for the
25 Waimanalo Gulch Sanitary Landfill.

- 1 A. Right. Are you identifying K-61 or K-161?
- 2 Q. K-161, right. Thank you.
- 3 A. Yes.
- 4 Q. So turn, if you would, for me to page 21
- 5 of the letter that accompanies the application. I'm
- 6 sorry. Page 21 of the letter.
- 7 A. Oh. The letter. I'm sorry.
- 8 Q. Upper left-hand corner.
- 9 A. Okay. Yes.
- 10 Q. I think we're all on the same page now.
- 11 A. Yes, we are.
- 12 Q. Mr. Steinberger, is that your signature?
- 13 A. That is my signature.
- 14 Q. So this is your letter in support of the
- 15 ENV's application?
- 16 A. That is correct.
- 17 Q. And you directed it to David Tanoue, the
- 18 director of the Department of Planning and
- 19 Permitting?
- 20 A. That is correct.
- 21 Q. If you would look for me now at page two
- 22 of the letter, and if I could direct you to the
- 23 second full paragraph of this June 28, 2011 letter
- 24 from you to Director Tanoue, the paragraph begins:
- 25 Applicant -- that would be the ENV; correct?

1 A. That's correct, the City and County of
2 Honolulu.

3 Q. -- specifically requests that the Planning
4 Commission modify the LUC's order adopting the City
5 and County of Honolulu Planning Commission's
6 findings of fact, conclusions of law and decision
7 and order with modifications dated October 22, 2009
8 by deleting the July 31, 2012 deadline to cease
9 disposal of municipal solid waste at WGSJ as set
10 forth in condition 14 of said order.

11 Do you see that?

12 A. Yes, I do.

13 Q. So that's what you asked for in this
14 application, was to delete that condition 14 that we
15 just looked at in the Land Use Commission's order?

16 A. That's correct.

17 Q. So the Land Use Commission's decision and
18 order came out on October 22nd, 2009.

19 A. Correct.

20 Q. You filed this application on June 28th,
21 2011.

22 A. Yes.

23 Q. Why weren't you in the Planning Commission
24 on October 23rd, 2009 seeking to delete this
25 condition?

1 A. Well, we started the process shortly after
2 the LUC decision. And I think everybody is aware
3 that -- it was quite public that we had indicated we
4 would be appealing that decision. One of the
5 reasons that -- outside of just the time it takes us
6 to process applicants and paperwork through our
7 system, we also were looking to see what type of
8 advances we would be having in the area of our
9 recycling program, our H-POWER expansion and other
10 diversion activities that we were attempting to
11 undertake. So we felt that it would be more
12 appropriate at that time to wait for a period of
13 time so that at least when we came before the
14 Planning Commission we could say that yes, the City
15 and County is making every effort to minimize the
16 amount of waste going to the Waimanalo Gulch
17 Sanitary Landfill.

18 Q. At this time, in October 2009, you already
19 were working on the third boiler for H-POWER?

20 A. We were working on the design for the
21 third boiler, that's correct.

22 Q. Were you also working on the in-vessel
23 conversion system for green waste, biosolids and
24 food waste?

25 A. I believe the timeline was that we were in

1 the process of preparing four requests for
2 proposals. One of those happened to be the green
3 waste, food waste, sludge components. The other two
4 was beneficial reuse of the bottom ash and fly ash,
5 the residue from H-POWER, and also, the last one was
6 for companies to come and demonstrate that their
7 alternative technologies did indeed do what they
8 claimed that they did do.

9 Q. So at the time the LUC order came out, did
10 you believe that you could meet the deadline?

11 A. The July 12th deadline?

12 Q. July 31.

13 A. No. I'm sorry. The July 31st? No. And
14 we did state that.

15 Q. In fact, you appealed that condition?

16 A. That is correct.

17 Q. And that appeal is currently pending
18 before the Hawaii Supreme Court?

19 A. That is correct.

20 Q. You understand the court is going to hold
21 argument on your appeal next month?

22 A. That's my understanding.

23 Q. What happens if the court reverses the
24 Land Use Commission's order modifying the Planning
25 Commission's decision?

1 A. As far as condition 14?

2 Q. Yes.

3 MS. VIOLA: Objection. Calls for a legal
4 opinion.

5 MR. CHIPCHASE: Not really. I'd just like
6 to know his understanding of what would happen in
7 this proceeding that they've initiated if the court
8 reverses.

9 CHAIRWOMAN PINGREE: Go ahead.

10 MS. VIOLA: Objection. Attorney-client
11 privilege.

12 MR. CHIPCHASE: I'm not asking him to
13 reveal that.

14 CHAIRWOMAN PINGREE: Please answer the
15 question.

16 A. Can you perhaps restate your question?
17 Because essentially you're asking for a legal
18 opinion from me, and I'm not a lawyer, so --

19 BY MR. CHIPCHASE:

20 Q. No, no, no. I know you're the director of
21 the Department of Environmental Services, and it's
22 the Department of Environmental Services that has
23 appealed condition 14 to the Hawaii Supreme Court
24 and that has filed this application to modify
25 condition 14; right?

1 A. Correct.

2 Q. So I'm just asking for your understanding
3 as the director of the department whether you
4 understand what will happen to condition 14 if the
5 Hawaii Supreme Court reverses the Land Use
6 Commission?

7 A. I assume that -- again, I assume that
8 condition 14 would then be deleted from that
9 condition of the order.

10 Q. So then --

11 A. -- which would allow us, obviously, more
12 time to deal with our --

13 Q. I did not mean to cut you off. I'm sorry.
14 So if the Hawaii Supreme Court deletes
15 condition 14, what is your understanding of what
16 will happen to this proceeding to modify condition
17 14?

18 A. I do not have an opinion on that.

19 Q. Mr. Steinberger, if I could turn you now
20 to Exhibit A-22. Mr. Steinberger, A-22 appears to
21 be a portion of the integrated solid waste
22 management plan dated October 2008 prepared for the
23 City and County of Honolulu. Do you see that?

24 A. That's correct.

25 Q. What is the City's integrated solid waste

1 management plan?

2 A. The City's overall management plan for
3 solid waste is what I would like to represent as the
4 waste triangle. It's a combination of utilizing MSW
5 as a biomass to convert to energy; also, for
6 beneficial reuse of mixed recyclables and green
7 waste, and then on a lesser scale, the landfill as a
8 backup to those activities.

9 Q. When you say triangle, you mean the entire
10 management of the waste stream?

11 A. That's correct.

12 Q. And so is the plan effectively the City's
13 guide or blueprint for that management?

14 A. Actually, this triangle approach is used
15 in the industry and you'll probably -- if you've
16 been involved in the industry, you would not be
17 unfamiliar with it. It is also utilized as a
18 guidance through the EPA solid waste management as
19 far as the balance between waste energy, recycling
20 and landfill.

21 Q. I guess what I'm trying to understand is
22 this triangle set out in the integrated solid waste
23 management plan, does that set up the City's
24 framework for waste management?

25 A. I would say yes, it sets up our framework

1 and our guidance.

2 Q. Mr. Steinberger, I'd like you to take a
3 look at the declaration you submitted in this case.
4 I have a copy for you.

5 Mr. Steinberger, is the document I handed
6 you a copy of the declaration you submitted in this
7 case?

8 A. Yes, it is.

9 Q. I should ask, did you write your
10 declaration?

11 A. It was a combination of assistance from
12 corporation counsel and my input, as well.

13 Q. Would you consider yourself to be a
14 primary author of the declaration?

15 A. I'd consider myself to be a co-author.

16 Q. Fair enough. If I could turn you to
17 paragraph 15 of your declaration. It's on page
18 five.

19 A. Yes.

20 Q. The first sentence of that paragraph is:
21 WGSJ began operating in 1987.

22 Do you see that?

23 A. Yes, I see that.

24 Q. Were you with the City at the time?

25 A. No, I was not.

1 Q. Would it surprise you to learn that the
2 Waimanalo Gulch Sanitary Landfill actually began
3 operating in 1989?

4 A. You know, I'd have to see the exact
5 documents associated with what they would define as
6 operation or was it substantial operation or full
7 operation. That, I would have to see those
8 documents. Like I said, at the time I was not with
9 the City.

10 Q. I understand. Exhibit K-93.

11 Mr. Steinberger, I've handed you a copy of
12 Exhibit K-93, which I believe is a status report
13 from the City. Would you take a look at it and
14 confirm my understanding?

15 MR. SANDISON: Is this a complete copy?

16 MR. CHIPCHASE: (Nods.)

17 A. Yes. This looks like the copy.

18 BY MR. CHIPCHASE:

19 Q. Would you look at page two of the status
20 report? If I could direct your attention to the
21 first sentence of page two, the introduction. The
22 Waimanalo Gulch Sanitary Landfill, WGSL, is an
23 active municipal solid waste landfill which began
24 operations in 1989. Do you see that?

25 A. I see that.

1 Q. Do you have any reason to doubt the status
2 report?

3 A. No, I don't.

4 Q. So this part of your declaration is
5 inaccurate?

6 A. It may be referring to when the
7 construction began at Waimanalo Gulch.

8 Q. If I could then take you to paragraph 16,
9 the next paragraph. This paragraph is talking about
10 the 2003 proceedings -- I'm sorry. I'll give you a
11 chance to get that. Do you have it?

12 A. Yes.

13 Q. Paragraph 16 of your declaration, as I
14 understand it, is dealing with the 2003 proceedings
15 before the Planning Commission regarding the Special
16 Use Permit for the landfill. Is that --

17 A. Yes.

18 Q. Then if you could look at the second
19 sentence of that declaration, you say: At that time
20 based on WGSL's then-existing capacity, the City
21 anticipated that the landfill would close in
22 expansion was projected to extend the life of the
23 landfill by only five years. So the Planning
24 Commission recommended that ENV submit an
25 alternative landfill site or sites to the City

1 Council by December 31, 2003 and close WGSL no later
2 than May 1, 2008.

3 Do you see that?

4 A. Yes, I do.

5 Q. I'm sorry. I didn't follow this sentence.
6 What were you trying to say here?

7 A. I believe the word "in" should be "and,"
8 a-n-d.

9 Q. So with that correction, Mr. Steinberger,
10 am I reading the paragraph correctly if I say that
11 it was the capacity of the landfill that drove the
12 request for a five-year -- the imposition of a five-
13 year closure deadline?

14 A. I believe it was, you know, during the
15 2003 -- and again, I have to apologize because I
16 wasn't with the department at that time. I believe
17 that the expansion was basically to coincide with
18 the permit date or the permit time frame that you
19 have, which they're usually issued every five years.

20 Q. I'm sorry. Which permit is usually issued
21 every five years?

22 A. The municipal solid waste permit.

23 Q. This was the period during which Frank
24 Doyle was the director?

25 A. That is correct.

1 Q. If I could now hand you -- hang on to your
2 declaration. We'll come back to it. But if I could
3 hand you Exhibit K-85 --

4 Mr. Steinberger, K-85 is a transcript of
5 proceedings before the Land Use Commission. Do you
6 see that?

7 A. Yes, I see that.

8 Q. If I could turn you to page 77 of this
9 transcript -- I'm sorry. Let's turn to page 96 of
10 the transcript. This is in 2003, and on the request
11 for extension that we just looked at in paragraph 16
12 of your declaration, you see line 17 identified as
13 Mr. Doyle?

14 A. Yes.

15 Q. That's Mr. Frank Doyle, and he testified:
16 I got that corrected. It's five years, not five
17 acres, and it was -- we originally thought that we
18 would have this landfill operate for another 15
19 years, and then as part of our discussions with the
20 community and in trying to take a look at their
21 concerns, it was reduced to a five-year operation.

22 And the next -- Commissioner Catalani
23 asked: Is that five years based upon a timeline to
24 establish a new site? Mr. Doyle says: Yes, it does
25 take that into consideration.

1 Do you see that?

2 A. Yes, I do.

3 Q. So in fact, it was a compromise with the
4 community that drove the five-year deadline and not
5 the solid waste management permit; isn't that right?

6 A. By this testimony, I would assume that was
7 correct at the time.

8 MR. SANDISON: May I make a -- generally,
9 could we ask that we have complete copies of the
10 documents provided that are excerpts at this point
11 so that we can review them further? That would hold
12 for all the exhibits previously, the prior report
13 was undated and so --

14 CHAIRWOMAN PINGREE: Surely.

15 MR. CHIPCHASE: If I may just interject.
16 That's fine, but the prior report was as produced to
17 us, so that's the copy that exists. The excerpts,
18 by agreement of counsel, we had decided that we
19 could submit excerpts of any exhibit that was
20 voluminous so as to save copying time and space and
21 that if there was any particular exhibit that
22 counsel wanted a complete copy of, I was glad to
23 provide it. So this is first time I've had such a
24 request and I'm glad to honor it.

25 CHAIRWOMAN PINGREE: Thank you.

1 BY MR. CHIPCHASE:

2 Q. If I could take you to paragraph 50 of
3 your declaration --

4 A. Yes.

5 Q. Paragraph 50 of your declaration -- and
6 I'll just read it for you -- is: The City is adding
7 a third boiler at H-POWER which will increase the
8 capacity of the facility to 900,000 tons per year.

9 Do you see that?

10 A. Yes, I do.

11 Q. This is that third burner we talked about?

12 A. Yes.

13 Q. If I could continue -- The amount of waste
14 diverted from the landfill and recycled energy will
15 increase substantially.

16 Do you see that?

17 A. Yes, I do.

18 Q. Then the final line is: The third boiler
19 is scheduled to be fully operational in January
20 2013.

21 A. Correct.

22 Q. If you would now take a look at paragraph
23 89 of your declaration. The first line of that
24 paragraph: By 2012, when H-POWER's third boiler is
25 expected to be fully operational, the City

1 anticipates that about 80 percent of the island's
2 waste stream will be diverted from landfill
3 disposal.

4 Do you see that?

5 A. Yes, I do.

6 Q. Paragraph 50 says 2013. Paragraph 89 says
7 2012. Which one is correct?

8 A. The 2013 date, again, because we've been
9 criticized for utilizing target dates -- target
10 dates, of course, are just that. It's a target that
11 moves -- instead of coming in with a firm date
12 saying it will absolutely be by November of 2012, we
13 took it to the end of 2012, beginning of 2013.
14 Currently, the schedule is indicating that we'll be
15 operational by fall of 2012. So that is -- again,
16 that is the target date that we hope to be
17 operational by.

18 Q. Okay. So is paragraph 89, then, referring
19 to the target date and paragraph 50 referring to
20 what you believe to be a more realistic date?

21 A. I would say that the paragraph 50 is a
22 date that we expect to be fully operational, and
23 2012 is the date that right now my schedule shows
24 that we should be operational. Again, that would be
25 fall of 2012.

1 Q. You mentioned criticism for missing target
2 dates. It's my understanding that originally the
3 boiler was scheduled to be fully operational by July
4 2012. Is that right?

5 A. That's correct. Actually, in the contract
6 we had put an early completion bonus if they were --
7 had the facility being tested by the end of 2011,
8 which they did not make.

9 Q. So you kept the bonus?

10 A. The bonus is still in the contract, yes.

11 Q. Do you understand or are you aware that
12 the anticipated completion of the facility, the
13 boiler, in July 2012 is what led the Land Use
14 Commission to select July 31, 2012 as the closing
15 date for the landfill?

16 A. I believe that was -- that target date was
17 taken into the consideration by the Land Use
18 Commission.

19 Q. Mr. Steinberger, I'd like to hand you a
20 copy of Exhibit K-35, which is a status report on
21 reducing and/or continuing the use of Waimanalo
22 Gulch Sanitary Landfill public hearing dated July
23 18th, 2011. Do you see that?

24 A. Yes, I do.

25 Q. If you'd look at paragraph 3 of that

1 report, on the second page, it says H-POWER
2 expansion -- number A, 3A --

3 A. Yes.

4 Q. H-POWER expansion project is approximately
5 50 percent completed and is on schedule.

6 Do you see that?

7 A. Correct.

8 Q. So you were on schedule on July 18, 2011.
9 What happened to push you back?

10 A. The vertical structure went up very
11 rapidly. When they got into the pulling of wires
12 and the electrical infrastructure part, there was
13 issues with fall-off of manpower and also just other
14 complications as far as getting inter-connect
15 agreements in with Hawaiian Electric, such as when
16 you're taking one side off, if you can get power to
17 the other side. So it kind of pushed things back.

18 Q. Have those problems been resolved?

19 A. Yes. They finally have been resolved.

20 Q. So you're confident that January 13 as a
21 fully operational date is reliable?

22 A. I feel that's a reliable date.

23 Q. I'm sorry. I said January 13th. I meant
24 January 2013.

25 A. Yes. Thank you.

1 Q. If I could direct you to paragraph 41 of
2 your declaration. Paragraph 41 of your declaration,
3 the first sentence is: Once the City selects a site
4 or sites as acknowledged in both the 2009 Planning
5 Commission decision and the 2009 LUC decision, it
6 will take more than seven years to acquire, permit,
7 design and construct the new landfill site or sites.

8 Do you see that?

9 A. Yes, I do.

10 Q. So are you saying more than seven years
11 after the site selection process is completed?

12 A. Once you identify the site, obviously, you
13 have to start moving forward with funding to -- if
14 it's not a City-owned facility, if it's not City-
15 owned property, then you have to move forward to get
16 the funding to condemn and acquire the site. You
17 also have to go -- repeat the same process that
18 we've been repeating since 2004 as far as the
19 expansion goes. So just given the history of this
20 proceeding for a site that we currently own that has
21 taken up to seven years now, I think this is a safe
22 statement.

23 There's other issues. You have to move in
24 to the selected site and do your geotechnical
25 investigation. Perhaps the site that has been

1 identified is not the best site. You may have to go
2 and then move to a separate site and then start the
3 process again. So it's not a real cut and dried,
4 you know, Here's the site and this is where it's
5 going to be. Not only does it have to meet the
6 community values; it also has to meet the physical
7 values, as well.

8 Q. So you believe that once a site is
9 identified, that process that you've described will
10 take more than seven years?

11 A. Yes. I would say that's a very safe
12 assumption.

13 Q. Take a look at Exhibit K-12. Mr.
14 Steinberger, Exhibit K-12 is the findings of fact,
15 conclusions of law and decision and order of the
16 Honolulu Planning Commission on file number 2008/
17 SUP-2 and 86/SUP-5. Do you see that?

18 A. Yes, I do.

19 Q. Looking just briefly, again, at your
20 declaration on page 15, paragraph 41, that we saw,
21 at the end of your sentence you cite the 2009
22 Planning Commission decision, paragraphs 33 and 34.
23 Do you see that?

24 A. Yes.

25 Q. That's the decision we have here.

1 A. Right.

2 Q. Let's take a look at paragraphs 33 and 34.
3 So in paragraph 33, Mr. Doyle again, Frank Doyle,
4 testified that the applicant will begin in 2010
5 efforts to identify and develop a new landfill site
6 to supplement WGSL. Do you see that?

7 A. Yes, I do.

8 Q. Then the next paragraph there, at 34, Mr.
9 Doyle also testified that it would take more than
10 seven years to identify and develop a new site.

11 Do you see that?

12 A. Yes, I do.

13 Q. So Mr. Doyle is keying the seven years off
14 of the beginning of the identification process,
15 isn't he?

16 A. I believe, yes.

17 Q. So is Mr. Doyle wrong?

18 A. No, I don't -- I don't think that's
19 inconsistent with what I said earlier.

20 Q. So we would measure, then, the seven years
21 from 2010?

22 A. Just from -- just the fact of identifying
23 doesn't mean that the site has been done. Once the
24 site has been identified, there is a process
25 involved.

1 Q. I understand that. As I understood your
2 testimony -- if I was wrong, then my mistake -- that
3 after you identify the site, it will still take more
4 than seven years. Mr. Doyle is saying that
5 including identification will take seven years.

6 A. And that would be Mr. Doyle's opinion.

7 Q. And he was the director of ENV?

8 A. Yes.

9 Q. And he was the assistant director of ENV?

10 A. Yes.

11 Q. And he was the chief of the refuse
12 division?

13 A. Yes.

14 Q. If I could take you now to paragraph 45 of
15 your declaration, let me just paint 45 with a broad
16 brush and correct me -- jump in if I get it wrong.

17 A. Okay.

18 Q. In paragraph 45, you are talking about the
19 total waste generated on Oahu and then different
20 components of that waste?

21 A. That's correct.

22 Q. So if I could just look at the first
23 sentence: In calendar year 2010, approximately
24 1,214,904 tons of waste was generated on Oahu. Do
25 you see that?

1 A. Yes, I do.

2 Q. And then if I look down at the fourth
3 sentence, beginning FY '09, in FY '09 the landfill
4 received approximately 233,065 tons of MSW and in FY
5 '10, some 178,512 tons of MSW. Do you see that?

6 A. Yes, I do.

7 Q. FY, is that a fiscal year reference?

8 A. Fiscal year, yes.

9 Q. I'm sorry. If I missed it, then it's on
10 me. I looked through the documents and I couldn't
11 find a document that set out the waste generation in
12 fiscal years, only in calendar years.

13 A. This is actually generated by our solid
14 waste division, and they tend to internally go by
15 fiscal years.

16 Q. Who uses the calendar year figure?

17 A. You know, when you're not dealing with a
18 budget or appropriation of a budget and projected
19 payments that you have to make, then typically
20 you'll find planners and such going to a calendar
21 year versus a fiscal year.

22 Q. So would using calendar year references in
23 our discussions be perfectly acceptable?

24 A. That would be acceptable, and it's
25 probably not a lot different from the fiscal year.

1 It's still a 12-month operating period.

2 Q. If I could direct you to Exhibit A-27.
3 A-27 appears to me to be a chart or a table --
4 chart, I guess -- a graph, I suppose, is a better
5 way to put it -- a graph of municipal solid waste
6 stream on Oahu.

7 Do you see that?

8 A. Yes, I do.

9 Q. Is this a graph that you would have
10 prepared or your office would have prepared?

11 A. The office would have prepared this graph.

12 Q. So the graph shows the generation of waste
13 and the different components of the waste stream in
14 calendar years 2006, 2007, 2008, 2009 and 2010?

15 A. Yes.

16 Q. Can we just focus on 2010, and help me to
17 understand the chart. The H-POWER section, do you
18 see that?

19 A. Yes.

20 Q. Down in the accompanying table
21 accompanying the graph, for 2010 it shows H-POWER
22 waste to energy MSW 418,095 tons. Do you see that?

23 A. Yes, I do.

24 Q. Is that the total tonnage that entered the
25 H-POWER facilities in 2010?

1 A. I would assume that based off of the scale
2 records, that would have been the tonnage of MSW
3 that was processed through H-POWER.

4 Now, does that include residue? I would
5 suspect that it does not. Residue is a non-burnable
6 component of MSW, and that's probably why it is
7 identified as a separate line item.

8 Q. And you're jumping ahead of me, but your
9 timing is great. The next line in the table is
10 H-POWER ash and residue.

11 A. Yes.

12 Q. So under the same year, calendar year
13 2010, 179,946 tons?

14 A. Correct.

15 Q. So that is the material that came out of
16 H-POWER after the waste was converted to energy?

17 A. That would be inclusive of the material
18 after having been converted to energy, plus the
19 material that was screened out early on in the
20 system that is not combustible, and that's what we
21 call residue.

22 Q. So 418,095 tons goes into H-POWER, 179,946
23 tons in ash and residue comes back out?

24 A. No. Actually, the total amount that
25 crosses the scale would be the sum of those two,

1 that crosses the scale. What is actually burned and
2 converted into energy would be the 418,000 tons.
3 The amount that ends up as ash, which is actually a
4 component -- you know, you do get a significant
5 reduction in weight when you do combust it -- would
6 come out as this 179,000 tons. So the 418,000 tons
7 was what was actually burned through H-POWER.

8 Q. Right. So just to make sure that I
9 followed you -- 418,000 and change is burned.
10 179,000 comes back out --

11 A. Comes out.

12 Q. -- and is disposed of --

13 A. Right.

14 Q. -- in the landfill?

15 A. Correct.

16 Q. If I could direct you to paragraph 14 of
17 your declaration --

18 (Discussion off the record.)

19 CHAIRWOMAN PINGREE: If it's a good time
20 for you, why don't we go ahead and take a ten-minute
21 break and we'll resume back at 10:20.

22 (Break taken.)

23 CHAIRWOMAN PINGREE: We're back on the
24 record. The witness is still under oath. Please
25 proceed, Mr. Chipchase.

1 MR. CHIPCHASE: Thank you, Chair.

2 BY MR. CHIPCHASE:

3 Q. Mr. Steinberger, if I could pick up and
4 have you look at paragraph 32 of your declaration,
5 I'm just confused about one small point.

6 A. Yes.

7 Q. Paragraph 32 says: The City contracted
8 with R. M. Towill Corporation in June 2011 to assist
9 the committee with this process.

10 Let me pause the reading there. Does that
11 mean the site selection process?

12 A. That means the process of the going
13 through the advisory committee on site selection,
14 yes, to provide that technical support.

15 Q. When did the site selection committee
16 begin meeting?

17 A. I believe they began meeting -- I want to
18 say in January of 2011.

19 Q. Why did the City wait until June 2011 to
20 contract with the technical consultant?

21 A. You know, I can't really give you an
22 answer on that, as to what the actual mechanism was,
23 as to whether or not it was to extend an existing
24 contract or if it was indeed to start a fresh one.

25 Q. Same thing -- I'm just confused about one

1 point. If you could go to paragraph 14 for me.
2 In Paragraph 14, you're talking here about the
3 integrated solid waste management plan that we
4 looked at earlier.

5 A. Yes.

6 Q. If I could jump down to the -- I think
7 it's the third sentence. It says: As the island's
8 only landfill, WGSL is a critical component of the
9 ISWMP.

10 Do you see that?

11 A. Yes, I do.

12 Q. But Waimanalo Gulch isn't the only
13 permitted landfill, is it?

14 A. It's the only municipal permitted
15 landfill.

16 Q. Municipal solid waste permitted landfill?

17 A. That's correct.

18 Q. But there is another landfill, a private
19 landfill?

20 A. There is a private landfill, that is
21 correct.

22 Q. And it is able to accept, among other
23 things, C and D waste?

24 A. I believe that it's restricted to
25 construction and demolition debris.

1 Q. Go back to A-22. Mr. Steinberger, this
2 document, A-22, is that solid waste management plan
3 we talked about earlier and you talk about here in
4 paragraph 14; right?

5 A. Yes.

6 Q. So if you look to page eight of the
7 executive summary, at the top of that page it says
8 Landfill Disposal Existing. Do you see that?

9 A. Yes, I do.

10 Q. If I could take you down to the second
11 paragraph of that. It says that a private landfill,
12 PVT, is located in Nanakuli and is permitted to
13 accept only C and D waste and petroleum-contaminated
14 soils. Do you see that?

15 A. Yes, I do.

16 Q. That's the private landfill we talked
17 about?

18 A. Yes.

19 Q. So it's permitted both to accept C and D,
20 construction and demolition waste, and
21 petroleum-contaminated soils.

22 A. According to this plan, yes.

23 Q. Do you have any reason to doubt this plan?

24 A. No, unless the Department of Health
25 disputes it.

1 Q. If you would for me, take a look at
2 paragraph 17 of your declaration. In this paragraph
3 you're talking about the 2003 LUC decision; right?

4 A. Right.

5 Q. In the second sentence you say: The LUC
6 decision also required the City Council to select a
7 new site for a landfill with the assistance of the
8 blue ribbon site selection committee by June 1,
9 2004.

10 Do you see that?

11 A. Yes, I do.

12 Q. Mr. Steinberger, I've handed you a copy of
13 Exhibit K-2. Is this the decision you're referring
14 to?

15 A. Yes, I believe it is.

16 Q. Take a look at page seven, if you would
17 for me, item number one. Do you have it now?

18 A. Yes, I do.

19 Q. So in this paragraph, paragraph number one
20 of the order, it says: The blue ribbon site
21 selection committee shall make its recommendation
22 for a new landfill site to the City Council by
23 December 1, 2003. The City Council shall select a
24 new site by June 1, 2004. If a new site is not
25 selected by June 1, 2004, the Special Use Permit

1 shall immediately expire.

2 Do you see that?

3 A. Yes, I do.

4 Q. So those three sentences, new landfill
5 site, new site, new site; right?

6 A. Yes.

7 Q. If we look a little earlier in the order,
8 on page three -- one more page -- under the
9 paragraph with the title Conformance with Special
10 Use Permit Criteria; do you see that?

11 A. Yes, I do.

12 Q. Look down for me at the second sentence of
13 that paragraph. It says: An amendment clarifying
14 this motion was then made and seconded to amend the
15 date to December 1, 2003, by which the blue ribbon
16 landfill site selection committee is to recommend
17 the new landfill site and to further specify that if
18 the City Council fails to select a new site by June
19 1, 2004, the Special Use Permit would immediately
20 expire.

21 Do you see that?

22 A. Yes, I do.

23 Q. Again, referencing a new landfill site;
24 right?

25 A. Right.

1 Q. Look forward for me in the order section
2 to item 15. Item 15: The City and County of
3 Honolulu shall select a new landfill site. The
4 recommendation for a new site shall be forwarded to
5 the Planning Commission and the City Council no
6 later than December 1, 2003.

7 Do you see that?

8 A. Yes, I do.

9 Q. And the City, in fact, formed a blue
10 ribbon site selection committee, didn't it?

11 A. Yes, they did.

12 Q. And the site selection committee made
13 recommendations; right?

14 A. That is my understanding.

15 Q. In fact, they came up with a new site or
16 new sites?

17 A. I believe they listed five sites.

18 Q. And none of those sites included Waimanalo
19 Gulch?

20 A. According to the documents I've seen, that
21 is correct.

22 Q. But the City Council disregarded the site
23 selection committee's recommendations, didn't they?

24 A. It's my understanding that the City
25 Council went back to the LUC and asked if Waimanalo

1 Gulch could be put on the list. And again, it's my
2 understanding -- because I wasn't here at the time
3 -- that the Land Use Commission said, You may
4 consider any site that you wish. And that was the
5 reason that -- and I think that was during their
6 request for extension of time.

7 Q. Going back to the City Council -- I think
8 you said that the blue ribbon site selection
9 committee, your understanding, none of the sites it
10 identified included Waimanalo Gulch.

11 A. That's my understanding. Again, as I
12 understand from at the time -- I have to reiterate I
13 was not with the department.

14 Q. Understood.

15 A. But from what I understood was that there
16 was issues about the landfill advisory committee,
17 some technical issues as to decision-making process,
18 and in fact, I believe, several members on the last
19 meeting resigned at that point and walked out. So I
20 believe when it went to City Council, that it had
21 already been determined that the selection process
22 from the advisory committee was invalid.

23 Q. So that's what I'm getting at. The City
24 Council didn't follow the recommendations made by
25 the blue ribbon site selection committee?

1 A. And again, I believe the reason for that
2 was because the decision or the opinion from -- I'm
3 not sure where it came from; Ethics Commission or
4 wherever -- was that the sunshine issue had been
5 violated, and therefore, the document was not valid.

6 Q. I understand. Just so the record is clear
7 and I'm not testifying -- the City Council didn't
8 follow the recommendations of the blue ribbon site
9 selection committee?

10 A. And I would say that the City Council does
11 what the City Council does, of course.

12 Q. But is that a yes, I'm right?

13 A. Well, I'm going to have to say that since
14 it wasn't in that list of sites that came over in
15 the report, that that would be correct.

16 Q. So instead, the City Council selected
17 Waimanalo Gulch as the new landfill site?

18 A. That is correct.

19 Q. If we could then jump to Exhibit K-12. If
20 you would look at page -- I'm sorry. Exhibit K-12,
21 again, is the Planning Commission's findings of fact
22 and conclusions of law from 2009; right?

23 A. Yes.

24 Q. If you'd look to page 25, item one -- so
25 item one says, first sentence: On or before

1 November 1, 2010, the applicant shall begin to
2 identify and develop one or more new landfill sites
3 that shall either replace or supplement WGS�.

4 Do you see that?

5 A. Yes, I do.

6 Q. If we could look at Exhibit K-15 -- K-15,
7 again, is the LUC's order adopting those findings
8 and conclusions we just looked at; right?

9 A. Yes.

10 Q. If you'd look at item six -- I'm sorry --
11 item four on page six, the item states: On or
12 before November 1, 2010, the applicant shall begin
13 to identify and develop one or more new landfill
14 sites that shall either replace or supplement WGS�.

15 Do you see that?

16 A. Yes, I do.

17 Q. So these later orders add the line: That
18 shall either replace or supplement WGS�; right?

19 A. Yes.

20 Q. So it sort of removes the wiggle room the
21 City had on the -- thought it had on the prior
22 order; right?

23 A. I guess if you can define wiggle room --

24 Q. Well, removes the option of reflecting
25 Waimanalo Gulch as the new site.

1 A. I guess you could say that.

2 Q. So turning back to your declaration,
3 paragraph 25 --

4 CHAIRWOMAN PINGREE: Mr. Chipchase, for
5 the record, I just want to make sure when you refer
6 to declaration -- it's written direct testimony.

7 MR. CHIPCHASE: Yes. I'm sorry. Very
8 good, Chair. Thank you for the clarification.

9 BY MR. CHIPCHASE:

10 Q. We were looking at paragraph 25 of your
11 written direct testimony. Paragraph 25 acknowledges
12 the Planning Commission imposed several conditions
13 on the existing permit and identifies one of those
14 conditions as the condition that we just looked at;
15 On or before November 1, 2010, begin to identify and
16 develop one or more new landfill sites that shall
17 either replace or supplement WGS�.

18 Do you see that?

19 A. Yes, I do.

20 Q. Did the ENV meet the November 1 deadline
21 to begin to identify and develop one or more new
22 landfill sites that shall either replace or
23 supplement the WGS�?

24 A. Well, we began with the appropriation of
25 funds in order to start the process of identifying

1 the available sites. So that was in the fiscal year
2 '11 budget, which actually is July 1st -- it comes
3 into effect on July 1st of 2010. We actually have
4 to submit that budget to the City Council in March
5 of 2010. So yes, in that respect, we did go out and
6 we did appropriate the money prior to that deadline.

7 Q. Other than appropriating the money for the
8 site selection commission for the November 1, 2010
9 deadline, what else did the ENV do to begin to
10 develop one or more new landfill sites before
11 November 2010?

12 A. ENV, we began to draft the scope of
13 services that would be required and also to set up
14 the framework for the committee, and that was done
15 in-house.

16 Q. I believe you testified earlier that the
17 site selection committee first met in January 2011.

18 A. That's correct.

19 Q. So about 14 months after the LUC directed
20 ENV to begin to identify and develop new sites, the
21 landfill selection committee finally met for the
22 first time?

23 A. Yes. The committee met. However, the
24 process had begun earlier than that.

25 Q. If we look at paragraph 33 of your

1 declaration, you reference landfill advisory
2 committee. This is the committee we were talking
3 about that was formed to assist with the selection
4 process?

5 A. Yes.

6 Q. You say: To date, the landfill advisory
7 committee has held meetings on January 20, February
8 10, March 10 and March 31, May 12, June 23rd and
9 July 21, 2011.

10 A. Yes.

11 Q. Do you see that?

12 A. Yes.

13 Q. I think your written direct testimony is
14 dated December 13, 2011. So is it right that
15 between July 21, 2011 and December 13, 2011, the
16 advisory committee has not met?

17 A. I believe that is correct.

18 Q. Have you attended all of the meetings of
19 the advisory committee?

20 A. No, I have not. The only meeting that I
21 attended was the initial meeting, and the reason
22 behind that was because the administration feels
23 that they do not want to have any type of influence
24 from any elected official or an appointee. This is
25 to be conducted strictly by an advisory committee,

1 without being steered in any one direction.

2 Q. So after -- I think you said you attended
3 the first meeting.

4 A. Yes. We attended the kickoff meeting to
5 welcome everybody and thank them for their
6 attendance. Once the meeting got under way, it was
7 attended by the managing director, Douglas Chin, and
8 also I was in attendance, and after we opened the
9 meeting with a few statements, then we left.

10 Q. I see. So you didn't stay for the entire
11 first meeting?

12 A. No, I did not.

13 Q. Other than your brief appearance and
14 statements at the first meeting, you don't have
15 firsthand knowledge of what has transpired during
16 these meetings?

17 A. Only through the minutes that are posted
18 on our website and also through some discussions
19 that we've had during the course of the process with
20 staff.

21 Q. That was my next question. Does ENV staff
22 attend the meetings?

23 A. Yes, they do.

24 Q. Do you know whether ENV intends to present
25 a member of the staff who's actually attended the

1 meetings to describe what has transpired during
2 them?

3 A. No. We do not have that on the agenda.

4 Q. Do you know whether the ENV intends to
5 bring a member of the site selection committee
6 before the Planning Commission to describe what has
7 gone on in the meetings?

8 A. I'd have to defer to corporation counsel
9 on that and --

10 THE WITNESS: Dana?

11 BY MR. CHIPCHASE:

12 Q. If you don't know, you don't know.

13 A. Okay.

14 Q. That's completely acceptable. And R. M.
15 Towill has been a consultant, at least from the
16 contract date. Do you know whether ENV intends to
17 bring a member of R. M. Towill, a representative of
18 R. M. Towill before the Planning Commission to
19 describe the process?

20 A. Again, I'd have to defer to corporation
21 counsel on that.

22 Q. If I could hand you Exhibit K-27 --
23 you'd mentioned group memories that come out of the
24 landfill site selection committee. This appears to
25 be meeting number one group memory, so is this a

1 group memory from the meeting that you briefly
2 attended?

3 A. Yes.

4 Q. Would you look at page two of this group
5 memory? Bullet number two there at the top says:
6 The planned landfill -- I take it that means the new
7 site to be selected.

8 A. Uh-huh.

9 Q. I'm sorry. You have to say yes or no.

10 A. Yes. I'm sorry.

11 Q. The planned landfill will be designed to
12 accept municipal solid waste, ash and residue and
13 construction and demolition debris waste.

14 Do you see that?

15 A. Yes, I do.

16 Q. Whose decision was it to search for a site
17 that could accept all those forms of waste?

18 A. The C and D waste was a request from the
19 City Council during discussions, I believe, in 2010
20 over the fate of the Nanakuli B site. So that's
21 where that came from.

22 The other is if you're looking at indeed a
23 replacement site, then you want to be able to
24 accommodate all your waste that's generated in the
25 county.

1 Q. Let's talk a little bit about C and D.
2 Currently, C and D can be accepted at the PVT site;
3 right?

4 A. That is correct.

5 Q. C and D waste is also highly recyclable;
6 isn't that right?

7 A. I'm not familiar with C and D waste, so I
8 couldn't really opine on that.

9 Q. Do you understand that when the site
10 selection process was going on in 2003, the blue
11 ribbon site selection committee that had been formed
12 to find a new site in 2003 was not required to look
13 for a site that could also accept C and D waste?

14 A. Yes, I understand that.

15 Q. Whose decision was it to search for a site
16 that could also accept ash from H-POWER?

17 A. Again, if this is a long-term replacement
18 site, you'd want to be able to accommodate all of
19 the waste that is generated, which would include
20 residue, which would include ash, which would
21 include MSW, municipal solid waste.

22 Q. Was that an ENV requirement or did that --

23 A. Yes, that was one of our requirements.

24 Q. A landfill that can accept ash has to be
25 located a certain distance from the H-POWER boilers;

1 right?

2 A. Well, there's a -- the further away that
3 you have to drive, I believe, there is a cost issue
4 for trucking.

5 Q. So the existing Waimanalo Gulch landfill
6 site is located a reasonable distance from the
7 burners?

8 A. Yes, it is.

9 Q. So you understand that even after July 31,
10 2012, the existing site will be able to continue to
11 accept ash from those burners; right?

12 A. Yes.

13 Q. So in adding ash as a requirement to the
14 new site, it makes it more difficult to find a new
15 site to replace the existing one; right?

16 A. As far as the financial constraints with
17 additional cost on trucking, that certainly is a
18 factor, yes.

19 Q. It's a difficulty you didn't have to
20 consider, because the existing site will continue to
21 accept ash?

22 A. It will continue to accept ash. At the
23 same time, to develop a monofill within an existing
24 site is not that difficult of an accomplishment.

25 Q. I'd like to go back, if we could, to K-85,

1 which was the transcript of proceedings before the
2 Land Use Commission in 2003. Do you have that?

3 A. You just handed it to me, yes.

4 Q. If we could look at page 95 -- looking at
5 the testimony of Frank Doyle, I'd just like to
6 direct you to lines six through eight.

7 Mr. Doyle testified: We have asked for a
8 five-year extension because that's the time that we
9 believe it's going to take in order for us to
10 establish a new landfill.

11 Do you see that?

12 A. Yes, I do.

13 Q. And then if I could get you to turn to
14 page 100, I'd take you down to line ten. Do you see
15 that?

16 A. Yes.

17 Q. Commission Catalani asked: My last
18 question relates to it looks like the Makakilo-
19 Kapolei Neighborhood Board is, I guess, in his
20 words, conceded to a two-year time extension. Was
21 that time frame discussed with them or where does
22 that number come from?

23 Mr. Doyle responds: Well, everybody would
24 like to see it close earlier.

25 Do you see that?

1 A. Yes, I do.

2 Q. Commissioner Catalani continues: Right.

3 Mr. Doyle answers: Our concern with that is the
4 time it takes in order for us to move to actually
5 get a new landfill established, because we do have
6 to establish a new landfill. As you can see, the
7 work on this particular project started in 1999. We
8 think the time that's necessary for us to get there
9 is at least three, probably four years, just to get
10 ourselves up and operational on that landfill site.

11 Do you see that?

12 A. Yes, I do.

13 Q. We're talking about three, possibly four
14 years from -- this was 2003. Right?

15 A. Correct.

16 Q. If I could take you back to your
17 declaration for a moment. Look at paragraph 77. I
18 just want to make sure I understand this correctly.
19 In paragraph 77 you say: Upon entering into a
20 contract to ship Hawaii waste to Washington and
21 Oregon -- and let me pause there.

22 It's my understanding that for a period
23 the ENV contemplated shipping some of our waste to a
24 disposal site in Washington and Oregon. Is that
25 right?

1 A. That's correct.

2 Q. So this paragraph references that effort?

3 A. Yes, it does.

4 Q. So continuing on, it says: Hawaii Waste
5 Systems, Inc., HWS -- now, was that the vendor that
6 you had contracted with to ship waste?

7 A. Yes. That was the low bid from the RFP
8 that was issued. That was Hawaii Waste Systems,
9 Incorporated.

10 Q. And then to conclude that part of the
11 sentence, it says: Hawaii Waste Systems, Inc. was
12 unable to obtain the necessary permits.

13 Do you see that?

14 A. Yes, I do.

15 Q. Did the ENV or the City enter into a
16 contract with Hawaii Waste Systems before Hawaii
17 Waste Systems had the necessary permits?

18 A. Yes, we did.

19 Q. Take a look at paragraph 89 of your
20 declaration. We looked at this earlier. Paragraph
21 89 says: By 2012, when H-POWER'S third boiler is
22 expected to be fully operational, the City
23 anticipates that about 80 percent of the island's
24 waste stream will be diverted from landfill
25 disposal.

1 Do you see that?

2 A. Yes, I do.

3 Q. This is the boiler that when it's on line
4 the total capacity for burnable waste is 900,000
5 tons; right?

6 A. Correct.

7 Q. And this third boiler is known as a mass
8 burn unit?

9 A. It is designated as what is called a mass
10 burn unit, as opposed to what we currently have is
11 what is known as an RDF or refuse derived fuel,
12 which takes a lot of pre-preparation.

13 Q. Could you describe the differences for us?

14 A. Yes. For the existing system at H-POWER,
15 this facility was put in back in the '80s, again,
16 and this -- at the time, you had to pre-prepare your
17 MSW so that it could be accommodated in a burn unit.
18 In other words, it had to go through and be
19 separated, it had to be shredded. You had to
20 separate all of your non-burnable materials out of
21 the unit prior to going to the boiler.

22 So it came in through what we call a
23 tipping floor, so all of the raw MSW comes in
24 through a tipping floor. It goes through a
25 processing unit which develops RDF, refuse derived

1 fuel. The refuse derived fuel goes into what we
2 call a holding barn and the material, the residue,
3 is taken off to another location, as well as the
4 recycled material is also separated at that point.
5 The reason being is because the way that it is fed
6 into the existing boiler, it drops through and it
7 combusts as it floats down through the boiler unit.

8 The new unit does not take all of that
9 pre-preparation. You can actually take larger
10 pieces of material -- typically, what we would find
11 in our bulky trash -- and go directly into the mass
12 burn unit. The technology on mass burn units have
13 improved drastically over the years. They used to
14 only be used for incineration, but now because of
15 the technology improvements and getting a better,
16 cleaner burn, you can now use it for waste-to-energy
17 conversion.

18 Q. So when you're talking about this pre-
19 processing, does that include less worker
20 interaction with the rubbish before it gets burned?

21 A. Yes. It would probably require less as
22 far as the development of the RDF. As far as the
23 separation of recyclable goods, such as your metals
24 and your glass and that type of component, that
25 still requires hands-on type of effort.

1 Q. Okay. So you're still going to pull the
2 recyclable materials out of the waste stream.

3 A. We'll still be pulling recyclable
4 materials out of the waste stream.

5 Q. But otherwise, less pre-processing, less
6 worker handling of the stuff that's going to be
7 burned?

8 A. Yes. That is the intent.

9 Q. So once the boiler is on line, the third
10 boiler is on line and we're diverting about 80
11 percent of the refuse from the landfill, what is the
12 remaining 20 percent that's going to be landfill?

13 A. I believe if you go back in the testimony,
14 you'll see what I call special waste, and these are
15 materials -- a lot of these materials are just not
16 combustible materials, and as such, that material
17 would still be focused for landfill disposal until
18 we can find some other method to deal with it.

19 Q. Do you have a paragraph for me you can
20 point me to?

21 A. Yes. That would be paragraph eight.

22 Q. So these are the materials that even with
23 the third boiler will not be able to be burned?

24 A. Right. We're not targeting these
25 materials to go to the third -- into the H-POWER

1 facility, that's correct.

2 Q. All of these materials will then go into
3 Waimanalo Gulch?

4 A. Currently, that's where they are going.
5 Again, unless we can find some other means of
6 dealing with those materials, we would continue
7 taking those to a landfill.

8 Q. Let's look at the second item on the list,
9 which is sewage sludge.

10 A. Yes.

11 Q. So sewage sludge currently goes to the
12 landfill?

13 A. About 65 percent of the island's generated
14 sewage sludge goes to the landfill. The rest of it
15 is reused.

16 Q. Sewage sludge can be incinerated; right?

17 A. Sewage sludge can be incinerated. It
18 depends on what state it is and what the BTU value
19 as to whether or not it makes sense to incinerate.

20 Q. In fact, incinerating sewage sludge is an
21 established disposal method, isn't it?

22 A. Again, it's an incineration process and
23 there are facilities that do incinerate. For the
24 most part, a greater number of municipalities
25 continue to utilize anaerobic digestion and some of

1 them -- it's getting more popular now for land
2 application as fertilizer, because that is the model
3 that is being suggested by the EPA, and that's
4 partially why we are going in that direction, as
5 well. So yes, some municipalities are utilizing it.

6 Q. If I could turn you to A-33 for a moment.

7 A-33 is a document prepared by AECOM titled
8 Alternative Technologies for the Treatment and
9 Minimization of Sewage Sludge, dated November 2011.
10 Do you see that?

11 A. Yes, I do.

12 Q. It was prepared for the Department of
13 Environmental Services; right?

14 A. That is correct.

15 Q. So if you would just turn for me to item
16 3.9. It's on page 19. We're on page 19, item 3.9.
17 Do you have that?

18 A. Yes, I do.

19 Q. It's entitled Incineration Offsite at
20 H-POWER.

21 A. Yes. That's right.

22 Q. So this is dealing -- this document is
23 dealing with sewage sludge; right?

24 A. Yes.

25 Q. The first line of paragraph 3.9 is:

1 Incineration is considered a well-established
2 technology.

3 A. Yes.

4 Q. Do you see that? But you referenced
5 another technology, a direction that you were going
6 in. Did you mean the in-vessel conversion
7 facilities?

8 A. Yes, I was.

9 Q. Would you tell us about that facility?

10 A. This facility is being constructed --
11 actually, they're still in the permit process and I
12 believe they'll be coming before this commission
13 within the next few months. It is a facility that's
14 being planned for central Oahu area, Wahiawa, I
15 believe, to be specific, and it is a facility that
16 currently is dealing in some green waste composting.

17 But the answer in response to the -- they
18 were the only respondent to the RFP, and this will
19 include adding the biosolids that are generated at
20 our treatment plants, with the exception of Waianae
21 treatment plant, because the salt content is so high
22 in the sludge that it would be detrimental to being
23 able to process or put it into compost for use. And
24 it's basically a polishing unit. It would take the
25 anaerobically-digested sludge and then convert it to

1 -- or raise it up to what we call a class A
2 bio-solid, which is highest and best use according
3 to the Department of Health and EPA. So that's the
4 intent.

5 And obviously, we're looking at, in our
6 next step, to start tapping into the residential
7 food waste. Right now, the food waste is going into
8 the gray bin, and some of you may even put it down
9 your garbage disposal. But right now in the gray
10 bin, obviously, it's going to H-POWER. However,
11 we're looking at tapping into that and putting it so
12 that it can be included into the green bin waste,
13 which would then be taken up to that facility.

14 Q. So if I understood that summary correctly,
15 the new in-vessel facility will be able to handle
16 all the remaining sewage sludge that isn't currently
17 diverted, except for one facility.

18 A. Waianae. Also, Hawaii Kai, which is a
19 privately-owned facility. They take all of their
20 biosolids up to the landfill. That's their only
21 means of disposal.

22 This term sewage sludge also includes what
23 we call screenings, and screenings is that debris
24 that is collected at the very front end of the
25 treatment plant that you do not want to interfere in

1 the biological process through the treatment plant.
2 So those screenings really have no value. They're
3 kind of like H-POWER residue. It's grit.

4 Q. Is there any reason that the Hawaii Kai
5 facility would not be able to utilize the in-vessel
6 conversion facility?

7 A. That would be a decision by Hawaii
8 American Water Company.

9 Q. So other than the Waianae plant and the
10 Hawaii Kai plant, all of the sewage sludge should be
11 dealt with through the in-vessel conversion
12 facility?

13 A. That is the intent.

14 Q. When is the facility targeted to be on
15 line?

16 A. We just received a request for an
17 extension out into 2013 from the --

18 Q. Did you grant the request for extension?

19 A. I believe we did.

20 Q. So by sometime in 2013, this facility
21 should be fully operational?

22 A. That is, again, the target date.

23 Q. And so in addition to that, ENV is working
24 with H-POWER'S operator, which I understand to be
25 Covanta --

1 A. Yes.

2 Q. -- to be able to burn any remaining sewage
3 sludge.

4 A. We are looking at it as an option. Again,
5 we were a little bit concerned after our January
6 event that we had nowhere to go with sludge, and we
7 certainly don't want to end up in that situation
8 again. So we're looking as a backup at being able
9 to utilize the new, third boiler as a means for
10 incinerating and converting that bio-solid into
11 energy.

12 Q. So if the will was there, if the will was
13 there, you could eliminate sewage sludge in the
14 landfill?

15 A. We could eliminate biosolids in the
16 landfill if -- again, if the RFP and the contractor
17 manages to meet all of the regulatory requirements
18 that are established by the Department of Health.

19 Keep in mind that this is a highly-
20 regulated business, wastewater is, and the
21 Department of Health is very picky about what they
22 allow to go out, because they have some very,
23 obviously, strict concerns about public health.

24 Q. Let's go back to that list you had on
25 paragraph eight of your declaration. We talked

1 about sewage sludge. If you go down the list for me
2 and -- to inorganic filter cake. What's inorganic
3 filter cake?

4 A. You know, I can't give you an exact
5 definition of what the inorganic filter cake is.
6 It's an item that shows up on the list of special
7 wastes.

8 Q. And then the last item on that list is
9 treated medical waste. Do you see that?

10 A. Yes.

11 Q. How much medical waste goes into the
12 landfill annually?

13 A. That exact number, I don't have.

14 Q. Mr. Steinberger, I'm going to hand you
15 what we intended to identify as a rebuttal exhibit,
16 and if this refreshes your recollection, that's fine
17 with me, and then I would offer it into evidence, as
18 well.

19 Do you recognize that cover page as being
20 from the integrated solid waste management plan?

21 A. Yes.

22 Q. On the second page of that section eight,
23 do you recognize this as also being from that plan?

24 A. Yes.

25 Q. Are you able to identify the gross tonnage

1 of medical waste that goes into the landfill from
2 this document?

3 A. Well, it would be difficult to say,
4 because I'm not sure who Hawaii Biomedical utilizes
5 as their hauler, if it would fall under Honolulu
6 Disposal or they would fall under Rolloffs Hawaii or
7 if they'd fall under other haulers.

8 Q. Do you see the description of the waste on
9 the right-hand side?

10 A. Yes.

11 Q. Do you see Rolloffs Hawaii?

12 A. I see it.

13 Q. So it identifies as medical waste 10,000
14 tons --

15 A. Yes.

16 Q. -- of medical waste annually going into
17 the landfill; right?

18 A. Yes.

19 Q. That medical waste could be burned, too,
20 couldn't it?

21 A. The medical waste could be burned, it
22 could be combusted. Again, there's an issue that
23 the workers -- or Covanta has with running medical
24 waste through the RDF facility, and as far as
25 whether or not it is combusted at the source and

1 otherwise, Hawaii Medical Biowaste, that is their
2 decision, whether they incinerate or not. I believe
3 right now they meet the regulations by sterilizing
4 and then they take it up to the landfill. But yes,
5 it could be combusted as long as it doesn't impact
6 the air permit for H-POWER.

7 Q. So if we look back at paragraph eight at
8 the list of things that really aren't combustible,
9 we can identify, you know, materials -- separate
10 from water, such as car and equipment washing, off-
11 site specifications and outdated products,
12 underground storage tanks, resins, petroleum, diesel
13 fuel, used oil debris, gasoline and jet fuels,
14 sandblast grit, bag house dust, dried paint, perhaps
15 inorganic filter cake -- we don't know what that is
16 -- treated utility poles and empty containers.
17 That's really what is non-combustible? Is that your
18 testimony?

19 A. That would be what we're saying that we
20 would not accept at H-POWER, yes.

21 Q. What percentage of municipal solid waste
22 are those items that I listed? How many tons of
23 those specific items that I went through are going
24 into the landfill?

25 A. You know, I'd have to get the breakdown of

1 that exact amount. However, I can tell you that
2 recently the amount of MSW going to the landfill has
3 drastically decreased. We're operating anywhere
4 from between 300 to 500 tons a day, as opposed to at
5 one time we were as high as 900 to a thousand tons a
6 day.

7 Q. That's right. And so I guess just looking
8 at these specific items, though, it would seem to me
9 that they would comprise a relatively small
10 percentage of MSW. Would you agree with that?

11 A. I would say it's probably a small
12 percentage. But again, I would have to see the
13 breakdown sheet.

14 Q. I understand. So when H-POWER's third
15 boiler is on line and when the in-vessel conversion
16 system is on line, the City is close to not needing
17 a general purpose municipal solid waste landfill,
18 isn't it?

19 A. We are slowly working our way out of the
20 landfill business as far as MSW goes.

21 Q. In fact, if the in-vessel conversion
22 facility comes on line in 2013, by the end of 2013,
23 with the in-vessel conversion system and H-POWER,
24 you're close to not needing a general purpose
25 municipal solid waste landfill, aren't you?

1 A. Well, with the exception of certain items
2 that, again, are identified in this list.

3 Q. Sure.

4 A. And keep in mind that when you drive
5 around, I'm sure you see the bulky trash that's put
6 out on the curb. You see a large number of toilets.
7 You see a large number of sinks, other items that
8 really have no recycle value to them, and they're
9 certainly not combustible. So that material would
10 still end up having to be placed somewhere in the
11 system. We also have to look at screenings from
12 wastewater treatment plants, as well.

13 And we also deal -- we handle the
14 military's wastewater systems. Their screenings
15 is taken up there as well, along with Hawaii Kai and
16 of course the county.

17 Q. Sure. But if you are down to 20 percent
18 of the waste after H-POWER is on line and we know we
19 can burn sludge and we know we can burn medical
20 waste and you take those out of the waste stream,
21 you're down to these other things. You have very
22 little need, once the in-vessel conversion system is
23 on line, for a general purpose municipal solid waste
24 landfill, don't you?

25 A. Well, I wouldn't go so far as to say that.

1 If I may just deviate a little bit -- the metric
2 that the country uses is San Francisco. San
3 Francisco is considered to have a very successful,
4 well-aged program, and actually, they are number one
5 in the country for diversion rate. They're at 78
6 percent. Currently, they truck their waste over to
7 either Livermore and more recently they're trying to
8 develop a landfill in Yuba County to handle that
9 additional 12 percent that they're not able to
10 account for -- 22 percent they're not able to
11 account for.

12 So even San Francisco, that has a very
13 mature program, still has that need for a landfill.

14 Q. But you're going to beat them. You're
15 going to beat them just with the third boiler;
16 right?

17 A. I would certainly like to.

18 Q. Then when you get the conversion facility,
19 the in-vessel conversion facility, you're even going
20 higher.

21 A. Well, that's all combined in with that 80
22 percent diversion rate.

23 Q. Let's look back at paragraph 89 then. By
24 2012, when H-POWER's third boiler is expected to be
25 fully operational, the City anticipates that about

1 80 percent of the island's waste stream will be
2 diverted from landfill disposal.

3 A. That's correct.

4 Q. And you don't expect the in-vessel
5 conversion facility to be on line until 2013?

6 A. As of -- yes. As of recently, that is
7 right.

8 Q. So we're going to do even better, aren't
9 we?

10 A. No. As I'm saying, the overall program
11 between the green waste, mixed recyclables, H-POWER
12 and the dealing with the City's biosolids, that all
13 makes up that 80 percent.

14 Q. So then this statement is not accurate?

15 A. Well, at -- you know, like I said, they
16 recently came in and asked for an extension of time
17 to 2013. Originally, it was targeted for 2012.
18 Again, it's a target.

19 Q. Let's look back at paragraph 71 of your
20 declaration. If you'd look at the portion of 71 --
21 I'll give you a chance to get there. 71 starts on
22 page 22 and goes over to page 23. If you'd look
23 down at the second full sentence on page 23,
24 paragraph 71 of your testimony, I should say, the
25 approximately 15,000 tons per year of biosolids from

1 all other wastewater treatment plants on Oahu -- all
2 other wastewater treatment plants on Oahu that
3 presently go to Waimanalo Gulch Sanitary Landfill
4 hopefully will be diverted from the landfill to the
5 anticipated in-vessel conversion facility to be
6 completed in 2013 for the processing of green and
7 food waste.

8 So when you wrote the declaration, you
9 knew that you were still looking at a 2013 date for
10 the in-vessel conversion facility; right?

11 A. Yes. Like I said, that's -- recently,
12 they came in with the request for that extension.

13 Q. Sure. And according to this sentence,
14 approximately 15,000 tons from all wastewater
15 treatment plants are expected to go into that
16 conversion facility; right?

17 A. Well, those facilities, those POTWs that
18 were identified -- I'm sorry. POTW stands for
19 publicly-owned treatment works -- that were
20 identified in the RFP.

21 Q. I'd like you to take a look at paragraph
22 18 of your declaration. Paragraph 18 deals with
23 that 2003, 2004 site selection process we talked
24 about; right?

25 A. Yes.

1 Q. So if you'd look down at, oh, the third
2 sentence, it says the City Council concluded that --
3 and among other things, item five on the next page,
4 the landfill operator is committed to addressing
5 community concerns. Do you see that?

6 A. Yes, I do.

7 Q. So this was in 2004; right?

8 A. Yes.

9 Q. Have the community concerns been
10 addressed?

11 A. I think that is an issue of opinion from
12 numerous people.

13 Q. What's your opinion?

14 A. I believe that the landfill operator has
15 been making his best effort to address community
16 concerns. Obviously, there's some concerns that
17 will never be satisfied.

18 Q. What do you mean some concerns that will
19 never be satisfied?

20 A. Just the mere fact that the landfill is
21 located where it is located, I don't think that
22 concern could be addressed by the landfill operator.

23 Q. Look at Exhibit K-59 for me. Exhibit K-59
24 is dated January 31, 2006. Do you see that?

25 A. Yes, I do.

1 Q. So this is a couple years after the
2 commitment to address the community's concerns we
3 just looked at.

4 A. Yes.

5 Q. Do you understand this is a notice of
6 violation --

7 A. Yes, I do.

8 Q. -- issued by the Department of Health?

9 A. Yes.

10 Q. It's directed toward Waste Management of
11 Hawaii and the Department of Environmental Services?

12 A. Yes.

13 Q. In fact, this is an 18-count notice of
14 violation, isn't it?

15 A. I believe that is correct.

16 Q. If we look at pages 23 and 24, count 13,
17 we're dealing with asbestos; right?

18 A. Yes.

19 Q. Asbestos is a legitimate community
20 concern, isn't it?

21 A. Yes.

22 Q. If you look down at paragraph 167, it
23 says: As of July 27, 2005, WMH, Waste Management
24 Hawaii -- is that right?

25 A. Yes.

1 Q. -- does not have records to provide to DOH
2 showing disposal locations for the asbestos waste
3 disposed at the landfill. Do you see that?

4 A. Yes, I do.

5 Q. Look at page 28 of the notice of
6 violation. It deals with a failure to minimize free
7 litter generation at the landfill; right?

8 A. Yes. I see that.

9 Q. The free litter, that's the litter that's
10 blowing up and around and into the air and off the
11 landfill site potentially?

12 A. Yes.

13 Q. If you look down at paragraph 193, on
14 February 17, 2005, DOH visited the facility and from
15 the top of MSW saw, one, a large accumulation of
16 brown litter --

17 A. Blown.

18 Q. Blown litter. You're quite right.

19 -- was observed on the permanent perimeter
20 litter fence and portable screens. Do you see that?

21 A. Yes.

22 Q. And then I'll just pick another one, 197.
23 The facility failed to deploy or relocate portable
24 litter fences downwind as the active work force area
25 moves on 17 occasions from January 28 to May 1,

1 2005.

2 Do you see that?

3 A. Yes.

4 Q. Let's look at paragraph 205. Respondents
5 -- so Waste Management Hawaii and ENV -- failed to
6 implement its litter control program effectively due
7 to either lack or improper placement of litter
8 fences and documentation of litter control efforts
9 which has resulted in violation of the facility's
10 special permit conditions.

11 Do you see that?

12 A. Yes.

13 Q. Let's look down at the next count, count
14 18. Failure to monitor explosive gases and maintain
15 monitoring records.

16 What are the explosive gases associated
17 with the landfill?

18 A. The anaerobic process generates methane.

19 Q. Methane is a combustible gas?

20 A. It is a combustible gas.

21 Q. Look now at paragraph 212. Respondents
22 failed to monitor for explosive gases in 2003 and
23 2004 in violation of 11-58.1-15D special conditions
24 three, item 11, and special conditions 3A, item
25 seven, general conditions one, item nine, and the

1 facility's operating plan.

2 Do you see that?

3 A. Yes, I do.

4 Q. Let's look at Exhibit K-60. This
5 document, Exhibit K-60, is dated April 5th, 2006,
6 from the U.S. Environmental Protection Agency. Do
7 you see that?

8 A. Yes, I do.

9 Q. This is another notice of violation, isn't
10 it?

11 A. Correct.

12 Q. This is directed toward Waste Management
13 of Hawaii, Inc. and the Department of Environmental
14 Services; right?

15 A. Yes.

16 Q. If you would turn for me to the -- let's
17 go with paragraph 14. It says: WMH, Waste
18 Management Hawaii, or CCH, City and County of
19 Honolulu, was required to either submit a design
20 plan to the EPA within one year of June 9th, 1996 or
21 perform tier two measurements that show MMOC
22 emissions.

23 Do you know what those are?

24 A. No. I'm not familiar with that anacronym,
25 but it may have something to do with organic

1 carbons. But I'd really have to verify that
2 anacronym.

3 Q. Look down at the next paragraph, paragraph
4 15. WMH and CCH failed to submit a design plan to
5 the EPA.

6 Do you see that?

7 A. Yes, I do.

8 Q. Next paragraph, 16, WMH and CCH failed to
9 submit tier two results to the EPA.

10 Do you see that?

11 A. Yes, I do.

12 Q. Let's go to paragraph 21. It says: On
13 August 1, 2005, full operation of GCCS for the
14 landfill began. What is a GCCS?

15 A. Gas collection system.

16 Q. So full operation of a gas collection
17 system for the landfill began on August 1, 2005;
18 correct?

19 A. Correct.

20 Q. However, the gas collection system has not
21 complied with -- and even as of the date of this
22 order does not comply with the design and operation
23 requirements of 40CFR section 60.75 2B2.

24 Do you see that?

25 A. Yes, I do.

1 Q. Next sentence, paragraph 21: Therefore,
2 WMH and CCH have been in violation and are
3 considered to be in violation until WMH and/or CCH
4 establish continuous compliance with 40CFR section
5 60.75 2B2.

6 Do you see that?

7 A. Yes, I do.

8 Q. Let's go a little later in 2006. Take a
9 look at Exhibit K-1 -- I'm sorry -- K-101.
10 Exhibit K-101 is a letter dated October 25th, 2006.
11 Do you see that?

12 A. Yes, I do.

13 Q. It's from the State of Hawaii Department
14 of Health; is that right?

15 A. Yes.

16 Q. And it's directed toward Waste Management
17 of Hawaii and the Department of Environmental
18 Services; right?

19 A. Yes.

20 Q. This is a warning letter; right?

21 A. Yes.

22 Q. Among the warnings issued by the
23 Department of Health on October 25th, 2006 is item
24 five. If you'd turn to page two of the letter, the
25 first sentence says: The permitted upper storm

1 water pond and eastern storm water diversion ditch
2 has not been constructed. Do you see that?

3 A. Yes.

4 Q. ENV received another warning letter in
5 2007. Take a look at Exhibit K-125. Exhibit K-125
6 is a letter dated May 3rd, 2007. Do you see that?

7 A. Yes, I do.

8 Q. It's from the Department of Health, again;
9 isn't it?

10 A. Yes.

11 Q. This time it's to, again, Waste Management
12 of Hawaii, Inc. and the Department of Environmental
13 Services; right?

14 A. Yes.

15 Q. So if we look at page two of the letter,
16 the Department of Health lists a number of potential
17 violations. Number one, the facility continues to
18 violate special conditions three, item nine, by
19 exceeding permitting grades on the placement of ash
20 and MSW. Do you see that?

21 A. Yes.

22 Q. Then look at the next item. MSW cell 4B
23 sump remains inaccessible and thus leachate
24 monitoring has not been conducted. Do you see that?

25 A. Yes.

1 Q. -- in violation of special condition
2 three, item 6 and general condition one, items 9B
3 and 9C. Do you see that?

4 A. Yes.

5 Q. Then the third one -- inadequate soil
6 cover was observed on the top deck and side slopes
7 of the east, west and north areas of MSW cell 11,
8 including part of MSW cell ten top deck area. Do
9 you see that?

10 A. Yes.

11 Q. Take a look at Exhibit K-66. Exhibit K-66
12 is dated May 13, 2010. It's from the Department of
13 Health, State of Hawaii. Do you see that?

14 A. Yes.

15 Q. This is to Waste Management Hawaii, Inc.
16 and the Department of Environmental Services; right?

17 A. Yes.

18 Q. And this is a notice of violation; right?

19 A. Yes.

20 Q. If we look at the notice of violation --
21 turn to item 36 under the findings section. After
22 listing a number of violations in this order, the
23 Department of Health finds, at paragraph 36,
24 respondents are therefore subject to provisions of
25 sections 342H-7, enforcement; 342H-9, penalties;

1 342H-10, administrative penalties; 342H-11,
2 injunctive relief, HRS, including penalties not to
3 exceed \$10,000 for each day of each violation.

4 Do you see that?

5 A. Yes, I do.

6 Q. Mr. Steinberger, in 2011 it came to light
7 that the person at Waste Management Hawaii
8 responsible for monitoring wellhead gas had been
9 fabricating wellhead gas monitoring records; right?

10 A. That's correct.

11 Q. In fact, he'd been fabricating wellhead
12 gas monitoring records from mid 2010 through August
13 2011; isn't that right?

14 A. Well, they did know for certain because he
15 admitted that he had not been taking the readings
16 from early 2011 until the time they dismissed him.
17 As far as the extended time into 2010, I believe
18 that it was the -- their decision not to consider
19 that data to be reliable, mainly as a -- just as a
20 safety issue as far as is it reliable information or
21 is it not reliable information.

22 Q. So you talk about this in paragraph 82 of
23 your declaration -- if you'd turn to that -- in the
24 last sentence of that paragraph we've been talking
25 about, this employee -- the employee failed to

1 collect actual data from mid 2010 to August 2011.

2 Do you see that?

3 A. Yes.

4 Q. Why is collecting gas data important?

5 A. One of the issues that -- during the gas
6 collection process is they identify the internal
7 temperature of the landfill, and we do know that
8 Waimanalo Gulch, as well as the Maui landfill and a
9 couple of landfills in Florida, have experienced
10 high internal temperatures and it has not been the
11 result of combustion. It's some type of a process
12 that is not really well understood. So these
13 monitoring of the temperatures is important to us
14 and to Waste Management, obviously, because you want
15 to make sure that that temperature does not reach a
16 certain point to where it actually impacts the liner
17 within the landfill.

18 Q. In addition to impacting the liner,
19 there's a danger of a subsurface fire; isn't there?

20 A. They were not able to identify that there
21 was a subsurface fire. Actually, we participated in
22 a study with Waste Management. We each put in about
23 \$600,000 and there was extensive investigation of
24 the landfill site that was done, and they actually
25 identified that it was not an internal fire.

1 An internal fire can only occur when there
2 is oxygen in the system.

3 Q. I understand, but one of the reasons you
4 monitor subsurface wellhead gas is because of a
5 concern for subsurface fire; right?

6 A. That is correct. That is a process that's
7 done across the United States.

8 Q. So for this period of time -- I mean, we
9 got lucky; there was no subsurface fire that
10 apparently you've been able to determine. But for
11 this period of time, we would not have known, we
12 would not have been able to monitor those gas
13 records, we did not know what they were; right?

14 A. Well, the high temperatures actually
15 preceded this time.

16 Q. I understand that. But if we use
17 subsurface gas monitoring because of a concern for
18 fire and the records were fabricated for a year,
19 during this year --

20 A. I think it's incorrect to say that we were
21 monitoring because of concern for fire. We were
22 monitoring it because of -- we wanted to make sure
23 that that temperature was not increasing, because of
24 -- you have concerns about liner integrity.

25 Q. So is it your testimony that liner

1 integrity is the only reason you monitor wellhead
2 gas?

3 A. No. There's other requirements, I
4 believe, that DOH sets forth.

5 Q. Such as?

6 A. -- having to do with the air permit.

7 They want to know what the constituents of
8 the gas are. And that's all contained in the --
9 usually in that annual report that goes in to DOH.

10 Q. Failure to monitor wellhead gas is a
11 violation of both regulation and the operating
12 permit; right?

13 A. I believe it is required under the permit.

14 Q. So these violations we've gone over, those
15 aren't the only violations that have happened at the
16 Waimanalo Gulch Sanitary Landfill since 2004, are
17 they?

18 A. Well, to my knowledge, over the 22 years
19 that the landfill has been operating, there's been
20 four violations.

21 Q. Let's look at another, then. Paragraph 79
22 of your declaration -- or your testimony, I should
23 say -- you reference -- you say in December 2010 and
24 January 2011, WGSJ was hit by a series of heavy
25 rains that resulted in the flooding of areas within

1 WGSJ including the active cell where MSW was being
2 disposed.

3 Do you see that?

4 A. Yes, I do.

5 Q. The rains in December, the level of
6 rainfall in December was well below the levels
7 evaluated in the current environmental impact
8 statement for the landfill, wasn't it?

9 A. That, I'm not aware of. I would have to
10 go back to the EIS and refer to that.

11 CHAIRWOMAN PINGREE: Counsel, we need to
12 take a break.

13 MR. CHIPCHASE: You're quite right, Chair.
14 Do you want to just break for lunch?

15 CHAIRWOMAN PINGREE: We'd like to do that
16 and resume at 1:15.

17 MR. CHIPCHASE: Okay.

18 CHAIRWOMAN PINGREE: Thank you.

19 (Lunch recess.)

20 CHAIRWOMAN PINGREE: We're back on the
21 record. Mr. Steinberger, you're still under oath.

22 THE WITNESS: Yes.

23 MR. CHIPCHASE: Thank you, Chair. Before
24 we have move on or resume the cross, Chair, I had
25 shown Mr. Steinberger a page from the solid waste

1 management plan that he had acknowledged was
2 authentic. I have copies for counsel and at this
3 time I'd move to admit it as K-162.

4 CHAIRWOMAN PINGREE: That's fine.

5 MS. VIOLA: Counsel, is this any different
6 from the solid waste management plans already in
7 evidence?

8 MR. CHIPCHASE: Yes. You have the
9 executive summary as an exhibit, and this is a page
10 that was not included in that executive summary but
11 is part of the plan.

12 MS. VIOLA: Okay. Thank you.

13 CHAIRWOMAN PINGREE: Thank you.

14 BY MR. CHIPCHASE:

15 Q. Mr. Steinberger, when we left off, we were
16 talking about the rainfall in December, and I
17 believe you said you'd need to see -- you didn't
18 know off the top of your head how much rain came
19 down or what was considered in the EIS and you'd
20 need to look at that.

21 A. I believe the statement you made was the
22 rainfall that occurred on the site was not
23 consistent with what was identified in the EIS.

24 Q. It was below, I think was my -- was less
25 than identified as expected amounts under the

1 environmental impact statement.

2 A. Okay.

3 Q. All right. Well, let me look at this
4 first. I'm going to hand you a copy of Exhibit
5 K-97. Mr. Steinberger, I've handed you a copy of
6 Exhibit K-97. Do you see that? It's a letter dated
7 May 2nd, 2011.

8 A. Yes.

9 Q. If you'd turn to the inspection report
10 included with K-97 -- let me help you. If you'd
11 look at the first page of that inspection report,
12 down there in the background section. Do you see
13 that?

14 A. Yes, I do.

15 Q. It identifies December 19, December 27,
16 and January 13. Do you see that?

17 A. Yes.

18 Q. If you look at the first two rainfall
19 events accompanying those dates, December 19th it
20 says events of five inches, 2.5 inches. Do you see
21 that?

22 A. Yes, I do.

23 Q. Then for the third event it's 11 inches?

24 A. Eleven inches, yes.

25 Q. Then I'd like you to look at Exhibit K-49

1 for me. Mr. Steinberger, Exhibit K-49 is a letter
2 dated December 15th from Waste Management Hawaii.
3 Do you see that?

4 A. Yes.

5 Q. -- to the Department of Health Solid and
6 Hazardous Waste Branch; right?

7 A. Yes.

8 Q. If you look at the second page of the
9 document, it's entitled Incident Alert Form. Do you
10 see that?

11 A. Yes, I do.

12 Q. What is an incident alert form?

13 A. You know, this is the first time I've seen
14 an incident alert form, so I can't really state
15 that.

16 Q. I see. Do you know who Justin Lottig is?

17 A. Justin Lottig is an engineer, on-site
18 engineer for Waste Management.

19 Q. If you look down at the incident
20 description and response action section of this
21 incident alert form, it says on Friday, December
22 10th, the Waimanalo Gulch Sanitary Landfill received
23 approximately two inches of rain. Do you see that?

24 A. Yes, I do.

25 Q. Now, I'd like you to look at an excerpt

1 from the environmental impact statement for the
2 expansion. This is a rebuttal exhibit that hasn't
3 been marked yet. I'd like you to take a look at
4 that excerpt and particularly look down at the
5 section on page 438 -- under section 4.6.1 titled
6 Drainage Control Systems. Do you see that?

7 A. Yes.

8 Q. If you look down at the second full
9 paragraph on page 438, it says: The landfill storm
10 water management system is designed and constructed
11 to manage runoff from a 25-year, 24-hour storm.
12 Runoff is collected in a system of surface ditches,
13 channels, pipes and ponds.

14 Do you see that?

15 A. Yes, I do.

16 MS. VIOLA: Counsel, can I get a copy?

17 MR. CHIPCHASE: Yes, you can.

18 BY MR. CHIPCHASE:

19 Q. If you look down at the design criteria
20 section, the second full sentence is: The 24-hour,
21 25-year storm at WGSJ is 9.2 inches, based on
22 information presented by the State of Hawaii in 1984
23 and is used as the basis to evaluate the performance
24 of the sedimentation detention pond and estimate
25 runoff for the landfill grading plan.

1 Do you see that?

2 A. Yes, I do.

3 Q. The events that we looked at, the incident
4 report form and the other reports of flooding, with
5 one exception, involved less than 9.2 inches of
6 rain, didn't they?

7 CHAIRWOMAN PINGREE: Counsel, I'm sorry to
8 interrupt you, but we have someone taking pictures.

9 UNIDENTIFIED FEMALE: Is that a problem?

10 CHAIRWOMAN PINGREE: Yes. Please refrain.

11 UNIDENTIFIED FEMALE: Is there a reason
12 why I'm not allowed to take pictures? I'm a
13 reporter.

14 CHAIRWOMAN PINGREE: You're a reporter?
15 It is distracting because of the flashing coming
16 through.

17 UNIDENTIFIED FEMALE: Okay.

18 CHAIRWOMAN PINGREE: Thank you.

19 BY MR. CHIPCHASE:

20 Q. I'm sorry. Mr. Steinberger, I'll repeat
21 my question. With one exception, the flooding
22 incidents or the rainfall incidents that we looked
23 at in K-49 and the other documents involved events
24 that were less than 9.2 inches of rainfall; isn't
25 that right?

1 A. That is correct. However, if you look at
2 the Department of Health report, it indicates that
3 the rainfall fell over a 2.5-hour period of time, as
4 opposed to a 24-hour period of time, so that's kind
5 of matching apples to oranges on that.

6 Q. Right. So then if we look down at K-50,
7 we have another incident alert form, contact name
8 Justin Lottig. Do you see that?

9 A. Yes, I do.

10 Q. This one is dated 12/19/10. Do you see
11 that?

12 A. Yes.

13 Q. Down in the incident description response
14 action: On Sunday, December 19th, 2010, the
15 Waimanalo Gulch Sanitary Landfill received
16 approximately five inches of rain in a short period
17 of time. Do you see that?

18 A. Yes, I do.

19 Q. Again, that's less than the 9.2 inches
20 referenced in the EIS. But as I understand your
21 testimony, the incidents are different.

22 A. You can't compare the 24-hour storm to a
23 two-hour storm or a four-hour storm.

24 Q. So to your knowledge, does the
25 environmental impact statement address five inches

1 or 2.5 inches in a short period of time?

2 A. I believe the standard for design for
3 landfills is based off of a 25-year, 24-hour storm
4 event. When the landfill is completed in its
5 construction, at that point that collection system,
6 the storm water collection system is expected to
7 manage a 24-hour, 25-year storm.

8 Q. And that's the 9.2 inches over 24 hours?

9 A. That's the 9.2 inches over 24 hours.

10 Q. Right. So my question is whether, to your
11 knowledge, the environmental impact statement
12 addresses the possibility of these other rainfall
13 totals in a shorter period of time, the ones we saw
14 on the 10th and the 11th and the 19th and the 23rd.
15 Does the environmental impact statement address the
16 potential of that kind of rainfall?

17 A. I believe the environmental impact
18 statement addresses the requirements for landfills.

19 Q. To your knowledge, it does not address
20 these other potential rainfalls?

21 A. It does not specifically spell those out,
22 no, it does not.

23 Q. If you'd look down again at K-50 -- do you
24 still have that?

25 A. Yes.

1 Q. That's the incident alert form dated
2 5/19/10 from Mr. Lottig. If you'd look at the third
3 sentence of the description for me, it says: The
4 temporary storm drain that's supposed to transfer
5 water from up canyon under the site became plugged
6 and forced the water to the -- over the top of the
7 temporary retention structure and the water flowed
8 into cell E6.

9 Do you see that?

10 A. Yes, I do.

11 Q. The cell E6 is one of the landfill cells?

12 A. Yes. That's correct.

13 Q. -- to deposit MSW in?

14 A. That's correct.

15 Q. Mr. Lottig goes on: In an effort
16 to prevent damage to the E6 pumping control panel
17 and generator from the rising water, both items were
18 removed from the cell.

19 Next, two sentences down: A contractor
20 placed eight-inch pumps in the surface water to
21 begin removing the storm water accumulation from the
22 top of and the side of cell E6 and this water is
23 currently being treated as all other storm water on
24 site and discharged in the seventh pond. Do you see
25 that?

1 A. Yes, I do.

2 Q. So even though this flowed into E6, cell
3 E6, the water was pumped out and treated as storm
4 water?

5 A. Under the solid waste permit for the
6 landfill, this -- the possibility of a storm event
7 was addressed by the Department of Health. One of
8 the conditions in there was to minimize ponding of
9 water on top of active cells, and so part of Waste
10 Management -- their control in order minimize
11 ponding of water was to allow this water to be
12 transferred over to a large depression area that was
13 at the makai side of E6, which was outside of an
14 active cell. It is not an active cell. So that was
15 where a great portion of that water ended up.

16 Now, Waste Management notified the
17 Department of Health on the morning of the 19th -- I
18 believe it was Monday -- that indeed they were going
19 to be pumping water from that depression area where
20 that water accumulated into the drainage system and
21 into the retention basin. So DOH was notified of
22 that issue, and as Waste Management indicated, that
23 was part of their storm water management plan.

24 Q. But in fact, the Department of Health
25 directed Waste Management to stop treating waste

1 that had been in cell E6 with ordinary storm water?

2 A. Actually, yes. I believe on Thursday,
3 when -- on the second visit from the Department of
4 Health to the site, they told Waste Management to
5 stop pumping from the depressed area outside of the
6 cell and it had to be tankered to a treatment plant.

7 Q. Because some of that water had been pumped
8 from cell E6?

9 A. I think it's because it had run over cell
10 E6.

11 Q. Which was an active landfill cell?

12 A. It was a -- that portion was an active
13 cell. You would have to have seen the site to
14 understand how the water from E6 ended up into the
15 pond area outside of E6.

16 Q. So if we look at the follow-up
17 investigation from the Department of Health Clean
18 Water Branch -- I'll refer to Exhibit K-52 -- Mr.
19 Steinberger, you have Exhibit K-52, which is an
20 investigation report, Department of Health, Clean
21 Water Branch, dated 12/23/10. Do you see that?

22 A. Yes, I do.

23 Q. And if you look at the first paragraph
24 under the complaint background description, second
25 sentence, it says: The inspection was conducted in

1 response to notification that the landfill was
2 discharging storm water contaminated with leachate
3 to the landfill's detention basin, the Pacific
4 Ocean.

5 Do you see that?

6 A. I do see that.

7 Q. If you look down at the findings
8 description, item one: On December 23rd, 2010, the
9 DOH-CWB was notified by the DOH Solid and Hazardous
10 Waste Branch that the landfill was discharging
11 leachate into state waters.

12 Do you see that?

13 A. I do see that.

14 Q. Discharging leachate into state waters is
15 a violation of the regulatory structure governing
16 landfills; isn't it?

17 A. As far as discharging of the leachate into
18 state waters, I believe you would probably have to
19 consider that to be a violation of the Clean Water
20 Act, yes. Now, the question is: Was it truly
21 leachate?

22 Q. What did the EPA determine?

23 A. Well, the EPA does not really have a --
24 has not really taken that position that the storm
25 water that came in contact with MSW is leachate.

1 What they say is they consider it to be a
2 contaminated water. That comes under, I believe,
3 RCRA, but not necessarily the Clean Water Act.

4 The permit actually says that storm water
5 that comes in contact with solid waste is to be
6 treated as leachate. It's not defined as leachate.
7 Leachate is defined in state statutes as water that
8 has percolated over time through MSW that has been
9 placed into the cell and then accumulates at the
10 bottom of the cell, and then that is removed by the
11 leachate pumping system.

12 So there is a little bit of, I guess, room
13 for discussion with regulatory agencies on the --
14 some of the terminology that was used during this
15 investigative report, and also, additional reports
16 where they actually identified it as wastewater,
17 which indeed it was not wastewater.

18 Q. Let's look at page three of this report,
19 down under item 14. Do you see the sentence that
20 begins, In conclusion?

21 A. Yes.

22 Q. In conclusion, it appears that the
23 landfill owners and operators, including the CCH and
24 Waste Management, violated Hawaii water pollution
25 rules and regulations by discharging water

1 pollutants to state waters without authorization.

2 Do you see that?

3 A. I do see that.

4 Q. So whatever technical differences you may
5 have with the terminology, they found a violation of
6 state water pollution rules.

7 A. Well, again, I think the important word
8 here is, It appears, in the statement.

9 Q. Let's take a look at Exhibit K-55. Mr.
10 Steinberger, Exhibit K-55 is an email from you to
11 Gary Gill, Steven Chang and Joann Aceto (phonetic),
12 and it attaches a letter; is that right?

13 A. Yes.

14 Q. And the letter and the email are both
15 dated January 12, 2011.

16 A. Yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. So your letter is in response to the
20 Department of Health's request that the ENV issue
21 warning signs notifying the public of the discharge
22 into state waters; right?

23 A. Yes.

24 Q. And you didn't want to issue the discharge
25 -- you felt it wasn't called for?

1 A. Well, first off, they were asking for us
2 to post signs that said potentially contaminated
3 water, of which we don't have signs of that nature.
4 Our signs that we post have to deal with sewage
5 spills, and this is clearly not a sewage spill.

6 The second item was that the Department of
7 Health had already issued what's called a brown
8 water advisory, and a brown water advisory means
9 that there's been a significant amount of non-point
10 source pollution running into the ocean. So I
11 believe at that time the entire southern coast was
12 designated as under a brown water advisory. So they
13 had already issued such a warning to the public
14 prior to this time.

15 Q. Okay. So the Clean Water Branch wanted
16 you to issue warnings. You had technical reasons
17 for not doing it?

18 A. Yes.

19 Q. Let's look at Exhibit K-123. Mr.
20 Steinberger, Exhibit K-123 is a letter from the
21 United States Environmental Protection Agency. Do
22 you see that?

23 A. Yes, I do.

24 Q. If you look at the second page, it's
25 signed November 29, 2011. Do you see that?

1 A. Yes, I do.

2 Q. It's directed toward yourself for the
3 Department of Environmental Services and to Waste
4 Management of Hawaii; right?

5 A. Yes.

6 Q. This order addresses and discusses those
7 events that we've gone through with rainfall and the
8 discharges in December and an additional event in
9 January 2011; right?

10 A. Yes.

11 Q. So if you would look down at paragraph 21
12 of this order -- do you have that? Paragraph 21 of
13 the order says: Respondents have failed to comply
14 with the requirements of the Hawaii Industrial
15 Activities General Permit, the notice of coverage
16 and its SWPCP in that on at least three occasions
17 associated with storm events in December 2010 and
18 January 2011, respondent failed to prevent runoff of
19 surface water that had contacted waste, failed to
20 control erosion to prevent loss of cover or washout
21 of refuse slopes, failed to properly manage
22 leachate, failed to adequately retain and remove
23 silt from surface water before it was discharged
24 from the site.

25 Do you see that?

1 A. I do.

2 Q. Look at the very next paragraph.

3 Discharges from WGSL associated with these storm
4 events -- these storm events that we've been talking
5 about -- have failed to comply with effluent
6 limitations established in the notice of coverage
7 and water quality standards established in HAR
8 Section 11-54-4. This noncompliance includes, but
9 is not limited to, effluent limitations for iron,
10 zinc and pH. This noncompliance also includes, but
11 is not necessarily limited to, water quality
12 standards requiring protection of recreational uses
13 of Hawaii's waters and prohibiting the presence of
14 substances attributable to domestic, industrial and
15 other controllable sources of pollution.

16 Do you see that?

17 A. Yes, I do.

18 Q. The very next paragraph: As to certain
19 constituents, respondents have failed to analyze
20 effluent samples associated with these discharges
21 consistent with the requirements of HAR section 11
22 55, appendix A, standard condition 14D. The
23 constituents at issue include but are not
24 necessarily limited to BOD5 and chromium.

25 Do you see that?

1 A. Yes.

2 Q. Then if we turn to your description of
3 these events in your testimony, paragraph eight, you
4 write: WMH, Waste Management of Hawaii, contends
5 that the flooding of the cell and the resultant
6 release of MSW was not due to any operational error
7 on the part of WMH but was due to the sheer force
8 and magnitude of the storms.

9 Do you see that?

10 A. Yes, I do.

11 Q. Do you agree with that statement?

12 A. I believe that that is -- based off of
13 what I saw up there, I'd say that is probably a
14 correct statement. But again, it's subject to
15 discussion. This is an issue that is still -- that
16 is new and we can't speak a lot about it because it
17 is still -- has not been resolved yet.

18 Q. The next sentence: WMH asserts that at
19 all times it was acting in compliance with the WGSL
20 permit, which allows for simultaneous construction
21 of the cell in the western surface water drainage
22 system.

23 Do you see that?

24 A. Yes, I do.

25 Q. Do you agree with Waste Management's

1 position?

2 A. I agree with Waste Management's position
3 on that.

4 Q. The next sentence: Waste Management of
5 Hawaii asserts that it exercised best management
6 practices in responding to the storms because it
7 believes its actions avoided the flooding of the
8 neighboring Kahe Power Plant owned by Hawaiian
9 Electric Company.

10 Do you see that?

11 A. Yes, I do.

12 Q. Do you agree with that statement?

13 A. I agree that they did use the best
14 management practices that they had available to them
15 at the time in order to keep the storm water on
16 site.

17 Q. Do you know why the City has not
18 identified a member of Waste Management Hawaii to
19 explain its actions to the Planning Commission
20 surrounding the December and January flooding
21 events?

22 A. As I said, right now, because of the
23 action that came out from the U.S. EPA, and this is
24 an issue that is obviously going to have to go
25 through discussion and some type of settlement or

1 resolution, I believe that Waste Management felt
2 that it was not in their best interest to disclose
3 information that is already undergoing through a
4 notice of violation.

5 Q. So Waste Management doesn't want to make
6 public statements about the events?

7 A. Not at this time.

8 Q. I'd like to just go back to one part of
9 the landfill history, if we could. You know, we've
10 talked about the applications for permit changes or
11 expansions in 2003 and again in 2007 and now today.

12 Do you understand that when the ENV sought
13 an expansion of the landfill in 2003, by the time it
14 made it to the Land Use Commission, the landfill was
15 very near to running out of capacity? Do you know
16 that?

17 A. No. I was not aware of that.

18 Q. Take a look at K-85. This is a document
19 we've looked at before. It's the transcript of
20 proceedings before the Land Use Commission in 2003,
21 and I'd like you to turn to page 101, if you would.
22 Would you look down at line 11 for me?

23 A. Yes.

24 Q. Commissioner Roehrig asks: When is the
25 landfill at Waimanalo Gulch going to be used up?

1 Do you see that?

2 A. Yes, I do.

3 Q. Frank Doyle answers: Our consultant --
4 our operator, rather, estimates we have until about
5 the end of May.

6 Do you see that?

7 A. Yes.

8 Q. You understand that May of the very year
9 they were in; right?

10 A. I would assume, since the year was not
11 designated as something outside of the year that
12 this was taken.

13 Q. Take a look at Exhibit K-155. Exhibit
14 K-155 is the Land Use Commission's findings and
15 conclusions with respect to the ENV's request to
16 extend the landfill from March 13, 2003 from -- I'm
17 sorry -- the closure ordered on May 1, 2008 to May
18 1, 2010 or until the landfill reaches capacity.

19 Do you see that?

20 A. Yes.

21 Q. If you would turn to paragraph 25 of the
22 order -- if you look at paragraph 25, on March 7th,
23 2008, the LUC resumed its meeting on the application
24 in conference room 405, Leopapa A, Kamehameha
25 Building in Honolulu, Hawaii. Do you see that?

1 A. Yes.

2 Q. So on March 7th, 2008, the LUC is still
3 holding hearings on the application when the closure
4 date is May 1, 2008; right?

5 A. Yes.

6 Q. When the City came before the Land Use
7 Commission to request the next extension of time,
8 again, hearings were still being held months before
9 the newer closure deadline; right?

10 A. Correct.

11 Q. Now, here we are again before the Planning
12 Commission now and we are months before the closure
13 deadline; right?

14 A. Correct.

15 Q. Do you recall testifying before the Land
16 Use Commission in February of this year?

17 A. Yes. Actually, it was an informational
18 meeting, if I --

19 Q. Fair enough. I appreciate the
20 clarification. You recall an informational meeting
21 before the Land Use Commission?

22 A. Yes. I believe we requested the
23 informational meeting.

24 Q. Do you recall that you advised the Land
25 Use Commission that you intended to pursue a

1 modification of the SUP by January or February, but
2 certainly no later than March 2011?

3 A. That was my intent, yes.

4 Q. But you didn't file until June 28th?

5 A. Again, that was -- at that time, our
6 intent was to come in by those dates.

7 Q. Take a look at Exhibit A-4 for me. Mr.
8 Steinberger, is A-4 the current solid waste
9 management permit for the Waimanalo landfill?

10 A. Yes, it is.

11 Q. Would you take a look at page nine, part
12 two, section A-1 of the permit? Mr. Steinberger,
13 we're on page nine, part two, section A-1. Do you
14 see that?

15 A. Yes.

16 Q. This is describing the duration of the
17 permit; right?

18 A. Yes.

19 Q. So the facility may accept municipal solid
20 waste, MSW, and ash for disposal at the MSW landfill
21 site -- landfill, and ash monofill until the date
22 specified in the associated Special Use Permit, SUP,
23 or until the landfill monofill reaches its permitted
24 capacity, whichever comes first.

25 Do you see that?

1 A. Yes, I do.

2 Q. So the expiration of the permit is tied in
3 part to the SUP, the permit that we're looking at
4 right now; right?

5 A. Yes.

6 Q. So as currently written, that SUP expires
7 as to MSW on July 31, 2012; right?

8 A. As currently -- yes, according to the LUC
9 decision, yes.

10 Q. Has Waste Management applied to modify
11 this permit to continue operation beyond July 31,
12 2012 for MSW?

13 A. Not to my knowledge.

14 Q. If we look at page seven, item 13, part
15 one, standard conditions, number 13 -- do you see
16 that?

17 A. Yes.

18 Q. Should the permittee decide to modify the
19 permit or continue operation of the solid waste
20 facility beyond the expiration date of the permit,
21 the permittee shall submit a complete permit
22 modification or renewal application at least 180
23 days -- one year for municipal solid waste landfills
24 -- prior to the modification of the date of the
25 permit expiration.

1 Do you see that?

2 A. Yes.

3 Q. But to your knowledge, no request has been
4 made?

5 A. To my knowledge, no request has been made.
6 However, I do note that the expiration date on this
7 permit is June 3rd, 2015.

8 Q. Well, let's look at special condition A-1
9 again.

10 A. Which page?

11 Q. Page nine. As we discussed, according to
12 this condition, the solid waste management permit is
13 only good so long as the SUP allows the operator to
14 accept municipal solid waste; right?

15 A. Yes.

16 Q. So time and again the City has waited
17 until the deadline was close before coming and
18 applying for the extension, and they've done that
19 again this time. Doesn't it seem like the City is
20 constantly trying to put the Planning Commission or
21 the Land Use Commission's back up against the wall
22 and force them into granting another extension?

23 A. No. Actually, we're not attempting to do
24 that at all. What you are not recognizing is that
25 there's a lot of work that goes in to putting these

1 applications together and getting all this
2 supporting data together.

3 I'd note that as we went through some of
4 these items that you were asking me to confirm, that
5 you did not go further on in some of the sentences,
6 such as the one where Mr. Doyle came back and said,
7 We didn't intend to come here at the last minute,
8 we've been trying to do this since 1999.

9 So no, we don't want to put the commission
10 or -- this Planning Commission or the Land Use
11 Commission into a bind like this, and that's why we
12 were trying to move as quickly as we could to get
13 this before the commission prior to this date. But
14 as things turned out, it was this date.

15 Q. So it just sort of has worked out that way
16 in '03, in '08 and '09 and '12?

17 A. I can only speak for, you know, this last
18 go-around, because again, I've only been here since
19 2009. However, I did note in the testimonies, when
20 I was looking over the testimonies from Mr. Doyle on
21 some of the items that you had submitted for me to
22 verify, that as you went on in the testimony, there
23 was actually clarification that this process had
24 actually started earlier and that now here we are at
25 the last minute.

1 It's certainly not the City's desire to
2 wait until the last minute. Now, there are certain
3 things that we have been able to achieve during this
4 time that I think is of value to the Planning
5 Commission to know as far as what we have done since
6 2008, 2009 for additional waste diversion from the
7 landfill and I think that's very valuable
8 information that is not -- you have not identified
9 under any of your exhibits. But it certainly is
10 valuable information.

11 And I think having this hearing at this
12 time, we're able to state factually that we have
13 recycling in place. We're now completely across the
14 island on the recycling. We brought in those last
15 28,000 homes last year. So, you know, H-POWER is
16 moving forward and should be completed and
17 operational very soon. These are things that we're
18 not just speculating on now. These are real facts.
19 So there's a value.

20 And again, I don't want to -- you know,
21 yes, we're six months away and I'm not comfortable
22 coming at the last minute, and I wouldn't consider
23 six months last minute, but it puts me on the edge
24 of my comfort zone as far as moving on this.

25 Q. So I guess I was just trying to understand

1 that -- to the extent you know, all the times that
2 the City has put the LUC and the Planning Commission
3 in exactly the same position, it's just worked out
4 that way; right?

5 A. Correct. That's what it appears to me
6 from looking at the documents.

7 MR. CHIPCHASE: No further questions.

8 CHAIRWOMAN PINGREE: Thank you. Ms.
9 Viola?

10 MS. VIOLA: Thank you.

11

12 E X A M I N A T I O N

13 BY MS. VIOLA:

14 Q. Mr. Steinberger, Mr. Chipchase asked you
15 about events that occurred in 2003 relating to the
16 Planning Commission --

17 CHAIRWOMAN PINGREE: Dana, can you bring
18 the mic a little closer to you?

19 MS. VIOLA: Sure.

20 CHAIRWOMAN PINGREE: Thank you so much.

21 BY MS. VIOLA:

22 Q. Mr. Chipchase asked you questions related
23 to the 2003 proceeding before the Land Use
24 Commission and the Planning Commission relating to
25 the deadline that the City had applied for on the

1 landfill.

2 A. Yes.

3 Q. Could you clarify what you understood to
4 have occurred in the 2003 proceeding relating to the
5 promises by the City to cease operations of the
6 landfill?

7 A. I'll reiterate this again. I think we
8 covered this one time before. In 2003, the list of
9 sites for the landfill, new landfill, were sent over
10 to the City Council as was required by the LUC. The
11 City Council, after reviewing it and understanding
12 that there were technical and ethical problems
13 associated with the committee that made these
14 determinations, realized that now the -- as the City
15 Council has numerously stated to me, the burden was
16 on their back.

17 They went back to the Land Use Commission,
18 because they noted that Waimanalo Gulch was not on
19 the list of sites, and they asked the Land Use
20 Commission whether or not Waimanalo Gulch could be
21 considered as a site. And as I stated earlier, the
22 -- the Land Use Commission said, You can consider
23 any site you so desire.

24 Given that the City already owned the
25 property and given that the Waimanalo Gulch portion

1 of it was already being utilized as a landfill, the
2 City Council felt that it was in the best interest
3 of the City and County of Honolulu, based on budget
4 and based on operations, to go ahead and keep the
5 landfill at Waimanalo Gulch, and so that was the
6 determination as to where the new site was going to
7 be; the new site was actually to be at Waimanalo
8 Gulch, as determined by the City Council.

9 So the City Council, of course, controls
10 the funding, so if we don't have the council's
11 support on the site, then they do not fund the site.
12 Simple as that.

13 Q. So let me show you what is marked as --
14 let me show you what's marked as Exhibit A-11.

15 MS. VIOLA: We're really far away.

16 CHAIRWOMAN PINGREE: Do you want to switch
17 seats?

18 (Discussion off the record.)

19 MS. VIOLA: I'm showing the witness what
20 is marked as Exhibit A-11.

21 BY MS. VIOLA:

22 Q. Do you recognize that document?

23 A. Yes. This is the resolution from the
24 council that designates Waimanalo Gulch as the new
25 landfill site.

1 Q. What did the council determine? What were
2 the findings of the council to justify that
3 conclusion?

4 A. Their findings were that the site
5 currently has over 15 years of capacity, with
6 further expansion and capacity can be further
7 extended should the City be successful in reducing
8 the amount of waste currently entering the landfill
9 through recycling and the use of new technologies;
10 the City already owns the property and the
11 infrastructure is already in place, making the site
12 the most economical and least expensive to develop
13 and maintain as a landfill. Other sites will
14 require a large capital outlay by the City to
15 acquire the land through condemnation and to develop
16 and construct the site and require the supporting
17 infrastructure. A landfill management contract is
18 already in place for 15 years. This is the only
19 site where the cost and revenues for a landfill are
20 known factors and the current landfill operator is
21 committed to implementing necessary improvements to
22 landfill operations to address community concerns
23 regarding visual impact, odors, airborne waste,
24 litter and dust control.

25 Q. Did the resolution also -- did it also

1 instruct the City to act in relation to diversion?

2 A. Yes. On the second page it says: Be it
3 resolved by the Council, City and County of
4 Honolulu, that the City must employ sustainability
5 concepts in the handling of its municipal solid
6 waste so that the maximum recyclable materials,
7 energy and alternative products are extracted before
8 any waste is placed in our landfills.

9 Q. So as a result of this resolution, what
10 were the City's actions?

11 A. We moved forward with adopting the
12 curbside recycling throughout the county, and we
13 started that project starting with east Honolulu,
14 Mililani, Kailua, and moved westward, and we
15 finished the last roll-out in -- actually, it was
16 2010, for the last 28,000 locations where we stop
17 and provide the recycling. That was the first one.

18 The second one was, of course, we began
19 the expansion of the H-POWER facility to accommodate
20 an additional 300,000 tons of combustible municipal
21 solid waste.

22 We also went out with four RFPs. The
23 first RFP was for the green waste, sludge and food
24 waste composting or reuse type of project; re-use of
25 bottom ash and fly ash from off the H-POWER

1 facility; re-use of residue from H-POWER; and then,
2 of course, the other item was to have companies come
3 in and demonstrate any alternative technology that
4 they felt was going -- would take us off into the
5 future for dealing with either MSW or special
6 wastes.

7 Q. So what were the responses to the RFPs?

8 A. We had one response, which was to the
9 green waste, food waste. The other three RFPs we
10 had no responses to, even though we extended the
11 submittal date.

12 Q. So what did you do in response to the one
13 that did respond?

14 A. We issued the contract.

15 Q. What was the contract for?

16 A. The contract was for, again, the recycling
17 of green waste, food waste and sludge, or biosolids.
18 The method that the contractor proposed is what's
19 called in-vessel bio-conversion, which means it's a
20 covered operation, and the product would be a class
21 A compost.

22 Q. Just to clarify, the intent of that
23 contract was to divert sludge from the landfill?

24 A. It was to continue diverting green waste.
25 It was also to divert sludge, that is correct.

1 Q. Those are responses in relation to the
2 diversion efforts by the City. What were the City's
3 actions in regard to the selection of the new
4 landfill site being the Waimanalo Gulch Sanitary
5 Landfill?

6 A. Which year would you be referring to?

7 Q. I'm sorry?

8 A. Would you repeat the question?

9 Q. I'm sorry. As a result of the resolution
10 by the council in 2004, in which they selected the,
11 quote, unquote, new landfill site, the Waimanalo
12 Gulch Sanitary Landfill, what were the City's
13 actions in relation to the landfill at that point?

14 A. At that time, the City began a process of
15 an EIS and also the application for expansion of the
16 Waimanalo Gulch.

17 Q. Mr. Chipchase indicated that in two
18 thousand -- I believe 2007, the City went back to
19 the Planning Commission, I believe, to ask for an
20 extension for capacity. Was that the only reason
21 the City went back to the Planning Commission to
22 amend the SUP?

23 A. You know, you put me at a bit of a
24 disadvantage -- I'm sorry -- since I wasn't here in
25 2007.

1 Q. Let me get the -- relate it to your
2 testimony.

3 A. Okay.

4 Q. Please refer to paragraph 19 of your
5 declaration.

6 A. Yes. I see it.

7 Q. Does that refresh your recollection?

8 A. Yes. Again, it relates to being able to
9 have additional time to move forward with the
10 expansion of Waimanalo Gulch pursuant to the City
11 Council resolution.

12 Q. So is it correct to state that at least in
13 part the City was going back to the Planning
14 Commission so they could get additional time to
15 conduct the Environmental Impact Statement and to
16 allow them to get the expansion?

17 A. Yes. I think that was the intent.

18 Q. Mr. Chipchase also asked you -- did
19 extensive questioning on the status of our diversion
20 efforts, specifically H-POWER. Let's start with
21 H-POWER.

22 A. Okay.

23 Q. The projected -- at least the target date
24 that you indicated was 2012 for the final operation
25 or fully operational capacity for H-POWER, and that

1 date has since changed to 2013.

2 A. Well, let me correct you. I still have
3 this desire that we meet this fall 2012 date. The
4 2013, of course, takes you to the beginning of the
5 next calendar year, which is kind of a safe date,
6 but we're certainly pushing for fall of 2012 for it
7 to be operational.

8 Q. Mr. Chipchase indicated that the Land Use
9 Commission in their decision in two thousand -- I
10 guess 2009, I believe, that the Land Use Commission
11 essentially relied on that target date of July 2012
12 to establish the deadline for MSW. Was that the
13 only factor that the Land Use Commission relied upon
14 to determine the deadline?

15 A. You know, I'm not really sure exactly what
16 the basis of the July 31st date was. However, it
17 had been represented that, you know, as I indicated
18 to Counselor Chipchase, that we had put an early
19 completion dated for H-POWER with a bonus of 2011,
20 and then since -- by that time we were realizing
21 that it was probably going to be difficult to meet
22 that 2011 date. So again, a safe date at that time
23 was -- April, I believe, was what the timeline was
24 of 2012.

25 So now if the LUC made their decision

1 based on that and also a host of other issues, such
2 as potential shipping and those type of issues, I'm
3 not sure what the basis was.

4 Q. Did the Land Use Commission make findings
5 as to other factors that essentially would impact
6 the extension of the use of the landfill?

7 A. Did they weigh in other factors?

8 Q. Yes.

9 A. Would you be referring to the shipping
10 issue?

11 Q. Let me be more specific. Did the Land Use
12 Commission make findings relating to how long it
13 would take to construct another landfill?

14 A. I think it was represented to the Land Use
15 Commission that the minimum time would be seven
16 years, and so, interestingly enough, the Land Use
17 Commission gave us two and a half years, and what
18 the reasoning was, I'm not really sure why they made
19 that decision.

20 Q. Let me go back to that issue regarding the
21 year indication. Mr. Chipchase pointed out that
22 there was some difference between what Frank Doyle
23 indicated would be a seven year deadline or more
24 than seven years to select and construct, et cetera,
25 a landfill, as opposed to your definition, which --

1 or your interpretation, which was that it would take
2 seven years -- more than seven years after the
3 selection of land to construct -- design and
4 construct a landfill.

5 Do you consider those two positions to be
6 at odds?

7 A. No. I think that basically, you know, the
8 selection of the site or the designation of the site
9 is one issue. Whether or not that site is the
10 appropriate site is another issue. So, you know, in
11 order to include that, you know, the appropriateness
12 of the site, it probably would fall outside of the
13 original identification of the site.

14 Now, if the site that has been identified
15 is engineering-wise not the appropriate site and you
16 have to start -- go to another site on the list,
17 then you have to go back again and add additional
18 time to that period.

19 Q. Would you agree that both indications
20 time-wise, for Mr. Doyle and for yourself, it's not
21 a short period of time?

22 A. It's not a short period of time.

23 Q. So essentially, the point made by both
24 yourself and Mr. Doyle was that it's going to take
25 some time to get another landfill up and running.

1 A. Yes.

2 Q. Another finding by the Land Use Commission
3 -- did the Land Use Commission make any findings
4 relating to waste that could be -- could otherwise
5 not be diverted from the landfill?

6 A. Findings to --

7 Q. Findings relating to what waste could be
8 taken at the landfill.

9 A. The Land Use Commission?

10 Q. Yes.

11 A. Can you be more specific?

12 Q. Let me give you the Land Use Commission's
13 decision.

14 A. Okay.

15 MS. VIOLA: I'm handing the witness the
16 exhibit marked A-19. I'm sorry. Hold on. I'm
17 directing him to -- it looks like page -- is it page
18 five -- page five of the Land Use Commission
19 decision and what starts with, Hereby orders.

20 CHAIRWOMAN PINGREE: Page five, you said,
21 Dana?

22 MS. VIOLA: Yes.

23 BY MS. VIOLA:

24 Q. What does it say in that paragraph?

25 A. Under -- this is the beginning of the

1 findings of fact?

2 Q. Yes.

3 A. Number one, applicant shall obtain all --

4 Q. Right after, Hereby orders, what does it
5 say?

6 A. Hereby orders that LUC shall adopt the
7 Planning Commission's findings of fact, conclusions
8 of law and decision and order as its own findings of
9 fact, conclusions of law and decision and order
10 subject to the following conditions.

11 Q. Then I'm going to show you what has been
12 marked as Exhibit A-18. This would be the findings
13 of fact, conclusions of law and decision and order
14 before the Planning Commission. I apologize. Just
15 a moment. Let me just ask if you remember.

16 Did the Planning Commission make findings
17 regarding waste streams that could be handled by the
18 landfill?

19 Did the Planning Commission state that
20 there were wastes that could not be otherwise
21 disposed of except at the landfill?

22 A. Did the Planning Commission acknowledge
23 that there was waste that --

24 Q. Yes.

25 A. -- could not be --

1 I do believe they did.

2 Q. In adopting the findings of the Planning
3 Commission, did the Land Use likely make that
4 finding?

5 A. I believe by the adoption of that, yes,
6 they did.

7 Q. The Land Use Commission also found that it
8 would take seven or more years to develop a landfill
9 and that currently there was essentially waste that
10 had to be disposed of at the landfill?

11 A. Yes.

12 Q. Despite that finding, they imposed a
13 deadline for what date?

14 A. July 31st, 2012.

15 Q. We talked a lot about H-POWER being able
16 to essentially take a lot of waste streams that
17 otherwise you haven't been able to handle up to this
18 point, and hopefully fall of 2012, but perhaps 2013,
19 that includes sludge.

20 What efforts has the City made in
21 essentially moving toward H-POWER burning sludge?

22 A. Well, what we've done is we've already
23 initiated the design for the H-POWER new boiler to
24 be able to accommodate loading of biosolids, so that
25 design is about 60 percent complete now.

1 We were hoping to marry this particular
2 ability in with the construction that's going on
3 now, but it appears that since this is outside of
4 the original scope of the construction project and
5 also outside of the EIS, we'll probably have to do
6 an environmental assessment, and that's being
7 reviewed now by our corporation counsel. So we do
8 have contingency money in the existing contract for
9 doing this.

10 Now, as to whether or not the -- we can
11 get an EA done, and moving forward on this under the
12 same contract is a question that we still have to
13 deal with and it has to fall, like I said, within
14 the procurement laws of the state. So we will have
15 to design, because an EA is not required for design,
16 but an EA may be required for the construction.

17 Q. But in the best possible world, if you are
18 able to handle sludge or burn sludge perhaps as
19 early as fall of 2012, would that essentially do
20 away with the need for a landfill?

21 A. No, it will not.

22 Q. Why not?

23 A. Because the landfill, you know, serves as
24 your backup. That's your fail-safe. You have to
25 keep in mind that H-POWER is a large mechanical

1 unit, and just like your automobile, you have to
2 stop it every so often and put it in the shop and
3 change the oil and whatever. The same occurs with
4 the H-POWER facility. Every so often you have to
5 stop the facility. You have to go in and make the
6 necessary maintenance and repairs to keep the
7 facility operational, and during those outages --
8 and they are usually scheduled outages -- some of
9 them can be as long as two weeks and then some of
10 them are as short as five days. During that time
11 that MSW has to go somewhere and that somewhere is
12 the landfill.

13 So basically, that is why we could not do
14 away with the landfill simply because we have an
15 expanded H-POWER facility.

16 Q. Would you say that's the same in relation
17 to the green waste, food waste on your in-vessel
18 bio-solid conversion?

19 A. Yes, that would be the same. All
20 recyclers generate a residue. It's a material
21 that's not recyclable. In the case of food waste,
22 currently we have two large food waste recyclers.
23 One is called Eco-Feed, and I believe Island
24 Commodities is the other one. They generate a --
25 they are the ones who actually collect a lot of the

1 restaurant waste throughout the City. You see their
2 trucks driving down the road. They have green bins
3 in the back and they have -- the food waste that
4 they can recycle, they recycle, and that which they
5 can't has to be taken to the landfill. So it's a
6 residue material.

7 Another area that creates a residue is our
8 metal recyclers. Metal recyclers, they are in the
9 business of recycling metal, and there is a residue
10 that's associated with that operation. In this
11 case, this would be -- the largest metal recycler
12 right now is Schnitzer Steel, and they handle all of
13 the derelict cars, abandoned cars, and cars that,
14 you know, just nothing can be done with. It also
15 handles all of the white goods that you see people
16 putting out on the curbside, such as washing
17 machines and refrigerators and those types of items.
18 When they run it through their processing, they end
19 up with non-metals, and since the bulk of it is in
20 the form of automobiles that goes through Schnitzer
21 Steel, the residual is called automobile shredder
22 waste or residue. I think you've seen the
23 abbreviation ASR. That material is not suitable to
24 be processed at H-POWER.

25 As a matter of fact, they've found

1 problems with ASR in a lot of their incineration
2 facilities in Japan, and for the same reason; that
3 it burns extremely hot, it releases pollutants that
4 are very difficult to deal with under their air
5 permits, and also the gases tend to be very
6 corrosive, which increases the maintenance down-time
7 for those facilities, so that material goes up to
8 the landfill.

9 Now, I understand that Waste Management
10 looked into the possibility of using ASR as daily
11 cover, but because of the lightweight material
12 that's associated with ASR and their desire to keep
13 blown material down, they do not use it as a daily
14 cover. Instead, it is placed in with the other
15 municipal solid waste and then covered with six to
16 eight inches of soil.

17 Q. Even if H-POWER were to accept ASR,
18 would ASR be -- essentially, would it be disposed of
19 as MSW or special waste?

20 A. If H-POWER was able to deal with ASR?

21 Q. Uh-huh.

22 A. Well, again, because of the issues having
23 to do with the air permit and releases of gas and
24 the corrosiveness, that would be a theoretical type,
25 so if we're able to burn it, it would come out as an

1 ash.

2 Q. But would it be -- at the intake stage
3 would it be characterized as MSW or as ASR -- I
4 mean, special waste?

5 A. It would probably be characterized as
6 special.

7 Q. What distinction does that carry in terms
8 of cost?

9 A. Generally, the special wastes have an
10 additional cost on top of it.

11 Q. So when we're talking about diversion and
12 Mr. Chipchase was throwing out the numbers that
13 essentially ENV has projected, in the best possible
14 scenario 80 percent diversion from the landfill, but
15 there still is 20 percent of MSW that needs to still
16 -- including special waste that still has to go to
17 the landfill.

18 Does that include H-POWER shutdown time?

19 A. I would like it to. Let me put it that
20 way. The 80 percent is kind of a goal. I would
21 certainly like it to include that. Again, you know,
22 our desire is to minimize use of that land.

23 Q. But even if we move to a very minimal
24 percentage, even lower than 20 percent, in that
25 scenario at what point would we not need a landfill?

1 A. I can't really speculate that we would
2 have a time in the future that we would be
3 completely landfill-free.

4 Q. Why not?

5 A. Simply because there's materials that, you
6 know, have no value to it as far as energy
7 generation or as being able to be composted or be
8 able to be reused. Even recycled products
9 themselves create a residual that has no value.
10 That's why there's a residual that has to be
11 disposed of.

12 Q. What about as a backup?

13 A. As a backup?

14 Q. Right. As a backup to H-POWER or in cases
15 of emergency?

16 A. Well, obviously, in the event of a natural
17 disaster, the landfill is the key issue.

18 Q. Why?

19 A. Well, because you have to do something
20 with your disaster debris and the plan right now for
21 disaster debris is you locate large areas to
22 stockpile it, you separate green waste from
23 recyclables from non-recyclables and that material
24 that you can do nothing with obviously has to go up
25 to the landfill. The other material you feed into

1 the waste stream to the maximum extent that you can,
2 unless your stockpile starts creating a nuisance.
3 Then at that point you'd probably have to take it up
4 to the landfill to be covered. So that's just one
5 issue.

6 The other item is, again, recyclers depend
7 on that landfill. They depend on being able --
8 their operations require that they have some type of
9 a backup. Not every system is a hundred percent
10 safe as far as it goes in operations. And so that
11 need is always going to be there.

12 Now, I fall back on San Francisco as being
13 a metric that a lot of people in this country use.
14 They're at 78 percent, number one in the country,
15 but still they're dealing with 22 percent of their
16 waste going to a landfill, and they feel that they
17 are doing the best that they can at this point.

18 Q. But you indicated that San Francisco is
19 looking to site a landfill in Yuba City.

20 A. That's my understanding, is that there's
21 discussion of -- actually, San Francisco had --
22 everything is completely privatized. It's a company
23 called Recology that deals with all of their solid
24 waste. San Francisco itself, I'm not sure what the
25 agency does. However, Recology has been looking at

1 Yuba County as a future site for disposal of San
2 Francisco's solid waste.

3 On the other hand, places like King
4 County, Seattle, ship about 40 some odd -- 45
5 percent or so of their waste over into Oregon to a
6 landfill. So even cities that boast of being very
7 green still have a very high rate of MSW and waste
8 going into landfills; it's just not going into
9 landfills in their state.

10 Q. Does ENV have concerns about any of the
11 waste from the tsunami in Japan hitting Hawaii?

12 A. Yes. Actually, we have some serious
13 concerns about it. We know that there's a very
14 large debris field. We have been fortunate in that
15 it is following the Japan current and is now
16 currently north of Midway, making its way to the
17 West Coast. However, the model projects that that
18 waste is going to be circling back to Hawaii, more
19 on the south side, and that we will most likely have
20 to be dealing with that waste as it comes ashore as
21 early as 2013.

22 Q. What is the projected amount that the City
23 may be dealing with at that time?

24 A. You know, I don't have those exact
25 numbers, and the reason being is they're not sure

1 how much of it is going to end up being deposited on
2 the West Coast shores and how much is going to
3 actually end up here, but it is in the thousands of
4 tons.

5 Q. What would happen if it does wash ashore
6 in Hawaii?

7 A. Again, unfortunately, we'd have to be
8 somewhat reactive to this and we'd have to collect
9 and dispose of it. And we would try using the same
10 type of approach as with the disaster management
11 plan, where we would separate what we can that can
12 be recycled and separate what can be burned and then
13 that which cannot would probably end up having to go
14 to the landfill.

15 CHAIRWOMAN PINGREE: Counsel, we're going
16 to ask for a short break.

17 (Discussion off the record.)

18 (Break taken.)

19 CHAIRWOMAN PINGREE: Thank you. We're
20 back on the record.

21 Mr. Steinberger, you're still under oath.

22 THE WITNESS: Yes. I didn't lose it
23 outside.

24 CHAIRWOMAN PINGREE: Ms. Viola?

25 MS. VIOLA: I'm referring to Mr.

1 Steinberger's declaration again, and this is pages
2 two and three.

3 BY MS. VIOLA:

4 Q. Mr. Chipchase had asked questions
5 regarding the special wastes that are identified on
6 that list. I wanted to essentially go over some of
7 this with you today to clarify. I know that your
8 testimony was that currently most of these wastes --
9 or all of these wastes are going to the landfill,
10 but the department -- ENV, as I understand it -- has
11 ENV taken additional steps to try to divert these
12 wastes, as well, or to seek to --

13 A. First off, let me clarify. We don't --
14 we're not the only facility that takes all of these
15 wastes.

16 Q. Okay.

17 A. These are wastes that can come to the
18 landfill. Actually, some of this material may be
19 associated with demolition waste, such as oil-
20 contaminated soils, and as long as it passes what we
21 call a paint filter test, it can go to either
22 Waimanalo Gulch or PVT. So even things such as
23 resins or chemical debris, if it's associated with
24 debris from construction, that can also be taken to
25 PVT. So there is some overlap as far as the permit

1 goes.

2 Q. Okay. But what about sandblast grit?

3 A. Again, I'm not real familiar with the PVT
4 permit, but I do know that sandblast grit from Pearl
5 Harbor does come to Waimanalo Gulch.

6 Q. Can sandblast grit go to H-POWER?

7 A. No. Because it's not a combustible
8 material.

9 Q. So you're saying that a lot of these
10 wastes may also go to PVT, but then -- that there's
11 overlap in terms of disposal?

12 A. There is some overlap on some of these
13 materials.

14 Q. And for treated medical waste -- can
15 treated medical waste go to H-POWER?

16 A. You know, treated medical waste --
17 actually, there is some medical waste that does go
18 to H-POWER, and some of the small clinics actually
19 dispose of some of their medical waste.

20 Obviously, there's drugs that people
21 administer to themselves at home, such as diabetics,
22 and those are permitted to be put into the gray bin
23 and they do end up over at the H-POWER. Our
24 requirements for that type of waste, same as with
25 many of the mainland municipalities, are pretty much

1 the same, no sharps. We don't want any sharps,
2 because if anything is handled by a human being,
3 obviously that presents a worker risk.

4 Q. When you say no sharps, no sharps where,
5 what facility?

6 A. H-POWER facility.

7 Q. And that's due to worker safety issues?

8 A. Yes.

9 Q. Are there any other medical wastes that
10 H-POWER will not take?

11 A. You know, if there's a -- I believe things
12 such as body parts they will not take, organs they
13 won't take.

14 You know, medical waste is kind of a very
15 broad item. People think of medical waste as being
16 syringes and vials, but it also includes gloves,
17 gauze, surgical gowns, sheets, mattresses.
18 Obviously, mattresses would not be going to the
19 H-POWER facility because we cannot deal with them at
20 this time. So those type of items, you know, if
21 it's not combustible would not be handled up at
22 H-POWER.

23 Q. Mr. Chipchase also went into a detailed
24 review of the enforcement actions that have been
25 taken against Waste Management as well as the City,

1 in particular the 2006 enforcement action involving
2 an eight-count allegation of various environmental
3 violations.

4 In general -- I know you weren't with the
5 department at this time, but would you take these --
6 what is your reaction to these violations? Do you
7 take these allegations seriously?

8 A. Yes, I do. I take all of these violations
9 and all of these warnings extremely seriously.

10 Q. What would be your response to these types
11 of allegations of violations?

12 A. On these allegations, I certainly want
13 these resolved by Waste Management. I want to know
14 if there's any deficiencies at the landfill that
15 must be taken care of immediately, and I do not want
16 to see repeats of these violations.

17 Q. What is your, I guess, recollection or
18 your knowledge as to how this particular interview
19 was resolved?

20 A. On this 2006? This was -- a settlement
21 agreement was reached, and as I understand it, the
22 Department of Health agreed that if the fine was
23 paid -- and I don't recall what the amount was --
24 that the allegations basically would be dropped, I
25 believe, and could not be held in further

1 proceedings against Waste Management.

2 Q. Let me also ask you a few questions
3 regarding Mr. Chipchase's questions relating to the
4 December 2010 and January 2011 events at the
5 landfill.

6 A. Yes.

7 Q. He pointed you to a statement in your
8 declaration in which you affirmed the actions or
9 responses by Waste Management in response to these
10 storm events. Why do you feel that Waste Management
11 was acting, I guess, in compliance with the law
12 during these events?

13 A. Well, Waste Management operates under the
14 boundaries set forth by their solid waste permit,
15 and when the solid waste permit was issued, it was
16 recognized and accepted by the Department of Health
17 that there would be concurrent construction going
18 on; in other words, the diversion ditch that runs
19 around to capture the flow off of the west side of
20 the landfill, as well as cells E6, E5, and --

21 Q. I'm sorry to interrupt you, but why was
22 there concurrent construction needed?

23 A. Well, because Waste Management had been
24 waiting to get the SUP to be able to access the
25 property in order to finish the design of the

1 diversion. Keep in mind that until you have the
2 SUP, you cannot really access and start doing
3 physical work on those locations. So although they
4 had a design in place that they started back in
5 2006, they did not have all the geotechnical data.
6 By geotechnical data, I mean they have to drill into
7 the rock and see what the foundation looks like.
8 They're putting in 72-inch diameter pipes; will it
9 be able to support the load of these pipes that are
10 filled with water.

11 They did find that indeed they did have to
12 make some modifications to the design in order for
13 the pipes to be properly supported up on the slope.
14 And then they started work -- I believe it was
15 within two months, I believe, they were already
16 mobilized up on site, beginning the construction
17 after the SUP was awarded.

18 Q. Mr. Steinberger, though, why did they need
19 simultaneous construction of that diversion channel
20 and the cell?

21 A. Because during that time, while the
22 process was going on to obtain the SUP, we were
23 running out of capacity in the other cells in the
24 landfill. Thus, we were in a situation where we
25 were having to claim what additional air space there

1 was on existing cells while waiting to be able to
2 get approval to move in to construct the new cell.
3 So it basically became an issue of environment and
4 public health as to whether or not we could continue
5 delivering waste up to the landfill.

6 Q. What was the Department of Health's
7 involvement in this decision-making process?

8 A. As far as their decision, like I said,
9 they recognized that there had been a delay in Waste
10 Management's ability to get up into the site and
11 start construction, and in the permit they actually
12 made provisions that allowed concurrent construction
13 of cell E6 as well as the diversion ditch.

14 Q. Did the Department of Health in this
15 permit recognize any risk in relation to this
16 concurrent construction?

17 A. I believe that, yes, they did recognize
18 that risks could occur, that there was a possibility
19 that a rainstorm could occur that could inundate the
20 system, and that is usually a wise decision to make
21 on this, given that we are in the tropics.

22 Q. So in relation to the permit, did you feel
23 that Waste Management, in their responses to the
24 December 2010 and January '11 storms, that they were
25 acting in compliance with the terms of the permit?

1 A. Yes, I believe so.

2 Q. I just want to ask you a few more
3 questions. You've also testified as to alternative
4 technologies, essentially that we have issued a
5 contract for in-vessel bio-conversion.

6 Were there any other, I guess, options or
7 avenues that the department is looking into?

8 A. Yes. We're -- actually, we have quite a
9 few people coming to the department giving
10 presentations on technologies. Many of them are
11 either conceptual in nature or demonstration in
12 nature. Conceptual means it's still basically being
13 worked out either in a laboratory or on paper.
14 Demonstration means that there's been some type of a
15 smaller facility that has been constructed to
16 demonstrate its ability to process.

17 Perhaps if -- one of the ones that we've
18 heard quite a bit about over the past years is --
19 originally it was called Plasma Arc Technology.
20 Most of the people have abandoned the notion of
21 plasma arc, and I don't want to get into the science
22 of plasma arc, but they went to what's called plasma
23 gasification.

24 And the one particular facility that I've
25 been following for many years has been the facility

1 in Utashinai, Japan. This is the largest facility
2 right now in the world that is a plasma gasification
3 system, and it is designed to -- originally, the
4 design was to accommodate 160 tons of total waste,
5 and the total waste was divided between 80 tons of
6 municipal solid waste and 80 tons of automobile
7 shredder residue. As it turns out, they had decided
8 to design the facility off of another facility that
9 was in Yoshii, Japan which was a 24-ton, and they
10 tried to scale it up. It turned out it didn't work.
11 So at the time I visited the facility, they found
12 that the reactor basin was too big in order for
13 gasification to occur, so they had to start over and
14 pretty much go seat-of-the-pants type of design and
15 experiment.

16 In the end, where they are now, today,
17 they are processing about 220 tons of municipal
18 solid waste and they prefer not to process
19 automobile shredder waste at all, because of the
20 corrosive nature of the ASR.

21 And they were never able to produce the
22 power that they were anticipating they would
23 generate. The synthetic gas which is produced from
24 the process is not as combustibile as they wished it
25 would be. In fact, they abandoned their old -- what

1 we call a reciprocating engine, which is a piston-
2 type engine, and went to a steam turbine, at which
3 they now flare the gas in what they call an after-
4 burner, so you inject some type of a heat or a fire
5 source, a combustion source, to get the gas to burn,
6 and that generates heat and then from that heat they
7 make steam and that steam drives the turbine.

8 Now, the facility requires about -- I
9 believe it's about three and a half megawatts to
10 operate. So that is taken off of this generator and
11 put back in the facility and they only put about 1.5
12 megawatts back onto the grid. So as far as being a
13 good source of energy for the community in Utashinai
14 , it's not a very good system. Again, they've had a
15 lot of problems with it. It's been down a lot and I
16 just learned they're going to be shutting the
17 facility down at the end of this year. So it will
18 no longer be operational.

19 They started the facility -- it was 100
20 million dollars that ended up in excess of \$450
21 million for a 200-ton-a-day MSW facility. It was
22 unfortunate, but that's where it has gone.

23 Some of the other areas that we've been
24 dealing with, and Mr. Chipchase presented one of the
25 items which had to do with biosolids. Biosolids in

1 its raw form has a pretty good heating value. It's
2 about 8,000 BTUs to the ton, so you can produce a
3 couple of kilowatts out of that, and so we have been
4 looking at that. Unfortunately, the EPA is amending
5 their rules regarding the incineration of biosolids
6 and so they're going to make the air rules very,
7 very strict, and so whether or not we can justify
8 the cost of burning -- in other words, can we make
9 it break even without having to raise your sewer
10 fees, which is another area I don't like to do.

11 You know, that's something that we're
12 looking at now. Again, this would be for a facility
13 such as Waianae. Right now, our preferred method is
14 to recycle, and recycle means land application,
15 because that is a true use of a material that is a
16 cheaper use and it also serves a good beneficial use
17 to the agricultural community. So those are a
18 couple of areas.

19 Now, the last one that we had was somebody
20 came in about dealing with plastics. In particular,
21 I'm talking about the non-recyclable plastics. When
22 you look at your containers, you'll have either a
23 one or two. Those are good recyclable plastics.
24 When you look at codes three through seven, those do
25 not have high value on recycling. So we did look at

1 what they had to offer.

2 And there's actually a facility that is in
3 operation where they take these plastics and they
4 convert the plastics into crude oil and the payback
5 on the process is for every one ton of plastic, you
6 get about 100 gallons of crude oil, which sounds
7 interesting, except what do you do with the crude
8 oil? You have to now take it to a refinery and hope
9 that the refinery will find a use or they're able to
10 refine that crude oil. But at 100 gallons a ton,
11 you know, that's not a lot of gallonage compared to
12 what refineries like to deal with on a usual basis.
13 Sustainability-wise, obviously you're using power to
14 extract this oil and then you're using additional
15 power to convert it into a gasoline. So in that
16 respect, I think that technology has a little ways
17 to go yet. I think there's promise in that area,
18 but I think it still has a little ways to go yet.

19 So yeah, we've been looking at these
20 things. On the average, we probably have about one
21 person a month come into the department and present
22 to the department a technology.

23 Q. So the department, if I hear you
24 correctly, is still pursuing other alternatives for
25 landfill diversion.

1 A. Yes. We're looking at every option out
2 there.

3 Q. Mr. Chipchase, in going over the
4 proceedings over the past, had implied that the City
5 is continuing to delay the process by attempting to
6 come in at the last minute and put the commission in
7 the untenable position of having to decide that the
8 deadline is ending. If the department is doing all
9 it is doing to try to divert as much waste from the
10 landfill, what would be the purpose of purposely
11 delaying the proceedings?

12 A. As I indicated to Mr. Chipchase, we have
13 no intention of, you know, coming in on a short
14 time, trying to back the commission up to making a
15 decision. I mean, that's just a simple fact. I
16 don't like being put in that position and I don't
17 like putting other people in that position. So as
18 far as saying that that was our strategy from the
19 beginning is simply an opinion from Mr. Chipchase.

20 Q. Is it the department's position that you
21 want the landfill to be able to essentially dump
22 whatever you want to in the landfill?

23 A. You know what, again -- and I'll say it
24 again, what I would like to see is as much waste
25 diverted from that facility as possible.

1 Q. Even if you have maximum diversion, will
2 there still be a need for a landfill?

3 A. Yes, there would still be a need for a
4 landfill. You have to keep in mind landfills are
5 not something that you can just turn on and off like
6 a light bulb. It's something that has to be -- it's
7 an ongoing operation. You just don't bring a crew
8 up and start land-filling and then just shut down
9 and walk away from it.

10 So in that respect, we went through this
11 discussion back in 2009; can't you just run it on an
12 interim basis, why don't you just run it every two
13 weeks. This was presented by Councilmember Apo, and
14 I think we made our point very clear that that's not
15 something that you just do with a landfill. You
16 have to constantly monitor it. It has to be -- you
17 have to keep an eye on it.

18 Q. Would you say that the ultimate purpose of
19 keeping the landfill is a public protection issue?

20 A. Yes.

21 Q. Why?

22 A. Because we always have to deal with the
23 waste that we have no other option to deal with. We
24 have to be able to have that fail-safe in case
25 something goes wrong with our other methods that

1 we're dealing with waste.

2 MS. VIOLA: No further questions.

3 MR. CHIPCHASE: Mr. Steinberger, I only
4 have a couple of things, and maybe we can do it
5 long-distance if Chris will be my runner.

6 Would you hand Mr. Steinberger Exhibit
7 K-48?

8

9 EXAMINATION

10 BY MR. CHIPCHASE:

11 Q. Mr. Steinberger, I've handed you -- not
12 personally -- Exhibit K-48, which is entitled
13 Settlement Agreement, and I think you'd mentioned
14 the resolution of that 18-count notice of violation
15 that the Department of Health issued in 2006.

16 Do you remember that testimony?

17 A. Yes.

18 Q. This is the settlement agreement. Do you
19 understand that?

20 A. Yes.

21 Q. As I recall, you couldn't remember the
22 exact amount. I wanted to point that out. In item
23 two, do you see 2.445 million dollars?

24 A. Okay.

25 Q. Do you see that?

1 A. I see that.

2 Q. Mr. Steinberger, you can put that aside.
3 You also talked about a back-up, the need for back-
4 up and fail-safes. Do you remember that?

5 A. Yes.

6 Q. So even under the existing Waste
7 Management permit, Waimanalo Gulch is required to
8 have a backup in the event that items can't be land-
9 filled; isn't that right?

10 A. I'm not aware of that paragraph in the
11 permit.

12 Q. Okay.

13 A. You are referring to the Waimanalo Gulch
14 permit; correct?

15 Q. Yes.

16 A. Not the H-POWER permit?

17 Q. Did I say H-POWER?

18 A. No. I was just -- I know that --

19 Q. It's possible.

20 A. -- in the H-POWER permit they have a
21 provision that says you must have an authorized
22 method of disposal.

23 Q. Turn to page 13 for me. I'm sorry. A-4.
24 Quite right. So Mr. Steinberger, A-4, again, is the
25 current permit, correct, for the Waimanalo Gulch

1 landfill?

2 A. A-4?

3 Q. A-4. The document you have, Exhibit A-4,
4 is the current --

5 A. Oh. This is Exhibit A-4? I'm sorry.

6 Q. Yes.

7 A. Yes. Yes. Correct.

8 Q. Would you turn to page 13 of A-4, please?

9 A. Okay.

10 Q. Do you see item 14 on page 13?

11 A. Yes.

12 Q. Alternative waste disposal option -- the
13 permittee shall provide a backup or alternative
14 waste disposal option in the event of an emergency
15 earthquake or other event that may preclude the
16 acceptance and disposal of waste at the landfill.

17 Do you see that?

18 A. Yes, I do.

19 Q. Do you know whether the permittee has an
20 alternative option as specified in condition 14?

21 A. Not that I'm aware of, simply because of
22 the issues of the 21-day closure that we had during
23 the January storms.

24 Q. You're talking about when the landfill was
25 ordered closed --

1 A. Yes.

2 Q. -- following the discharge --

3 A. When actually it was closed. We took that
4 decision to close the landfill, yes.

5 Q. Following the discharge of waste and other
6 materials from the landfill?

7 A. Following the heavy rainfalls, yes, that
8 disrupted the landfill.

9 Q. Mr. Steinberger, I think when we talked
10 earlier and then again in your discussions with Ms.
11 Viola you mentioned that you weren't here between
12 part of 2002 and part of 2009, so you didn't know
13 all of those events. Is that right?

14 A. That's correct.

15 Q. I think one of the events you had
16 referenced during that time period was the
17 application to modify the Land Use Commission's
18 order directing -- in 2003, directing the City to
19 find a new site. I think as part of your discussion
20 you said you believed that the Land Use Commission
21 said you may select any site. Do you recall that?

22 A. Yes, I do recall that.

23 Q. I'm going to show you A-10. Mr.
24 Steinberger, A-10 is the order -- I'll read the
25 title -- Order Granting in Part and Denying in Part

1 Motion to Amend and/or Stay the Decision and Order
2 Approving Amendment to Special Use Permit dated June
3 3, 2003.

4 Do you see that?

5 A. Yes, I do.

6 Q. This is before the Land Use Commission;
7 correct?

8 A. Yes.

9 Q. So is this the order that you were
10 referring to?

11 A. You know, the order that I'm referring to
12 was what I was advised had occurred during that
13 time.

14 Q. I see.

15 A. So I have not actually read this specific
16 order.

17 Q. Let me just point out, then, page four of
18 the order, if you would turn to that. Do you have
19 it?

20 A. Yes, I do.

21 Q. Do you see that the first full paragraph
22 begins with the word Following?

23 A. Yes.

24 Q. And so let me just read that section.

25 Following discussion, the commission clarified that

1 it had jurisdiction only in regard to the
2 applicant's request to extend the site selection
3 deadline for a new landfill from June 1, 2004 to
4 December 1, 2004 and that the applicant's request
5 for clarification as to whether the Waimanalo Gulch
6 Sanitary Landfill is a site that may be considered
7 by the Honolulu City Council was not within the
8 jurisdiction of this commission and therefore would
9 not be considered as part of the commission's
10 deliberations on the motion.

11 Do you see that?

12 A. Yes, I do.

13 Q. So the commission didn't consider that
14 request; right?

15 A. That's apparently what it says here, yes.

16 Q. But again, this is the period when you
17 weren't with the City; right?

18 A. Yes.

19 Q. So during that period, you don't have
20 firsthand knowledge of the events?

21 A. No, I do not.

22 MR. CHIPCHASE: Thank you. No further
23 questions.

24 MS. VIOLA: I just want to actually ask
25 questions, not necessarily in relation to Mr.

1 Chipchase's continued questioning, but in response
2 to the commission's concerns regarding the site
3 selection commission. I'm sorry that I didn't
4 address this earlier.

5

6 EXAMINATION

7 BY MS. VIOLA:

8 Q. Mr. Chipchase had asked you questions
9 regarding the site selection commission.

10 A. Yes.

11 Q. And you stated that you had minimal
12 contact with the site selection commission process
13 because of the administration's desires about the
14 committee independence.

15 A. That is correct.

16 Q. However, have you been able to essentially
17 peruse the documents provided by the committee?

18 A. The minutes are posted on site, as well as
19 the staff will advise me of any significant issues
20 that arise.

21 Q. So based on the review of the minutes as
22 well as your discussions with staff, what do you
23 understand to be the progress that the site
24 selection committee has made regarding their
25 recommendations?

1 A. Well, the committee has met since January
2 20th of 2011, and I must -- earlier I said that the
3 last meeting was July 20th. I was corrected. There
4 was actually a meeting in November of 2011. And
5 during that time, they have gone through and looked
6 at reviewing potential sites that were below what we
7 call the underground injection control line. This
8 line was designated by the Department of Health and
9 the Board of Water Supply for the intent of
10 outlining the edge of potable aquifers so as to
11 protect the ground water, and so that's --

12 Historically, the Department of Health and
13 the Board of Water Supply would never allow any type
14 of development above that UIC, such as a landfill.
15 So the search was pretty much restricted to below
16 that UIC line. And so those sites that came up from
17 that study were presented, I believe, to this
18 advisory committee and which, you know, some sites
19 were obviously not going to occur. Some sites, you
20 know, were perhaps too small, some sites were
21 appropriate. So it's kind of like going into a
22 cafeteria and deciding what you want to eat. Some
23 things you want to eat, some things you don't. So
24 they did narrow it down to several sites which would
25 probably be appropriate technically-wise for a

1 landfill. The committee has gone through
2 establishing criteria.

3 Now, keep in mind, this is not the site
4 selection committee. This is an advisory committee
5 on site selection. So the committee's task is to
6 identify community values as far as, you know, when
7 you're dealing with selecting of landfills, you
8 know, in the past, in the old days, as a public
9 works engineer, you used to go through and designate
10 a site regardless of what the community thought.
11 You don't do that anymore. You go to the community
12 and get their involvement, find out what are the
13 concerns and the values. That is their task. They
14 went through and established a series of criteria
15 based off of community values.

16 The last go-around, which was in November,
17 the committee requested that the City's consultant
18 identify potential sites above the underground
19 control line, so --

20 MS. DAWSON: Above?

21 THE WITNESS: Above.

22 A. So we're talking central Oahu, so the
23 Pearl Harbor aquifer area, the Schofield aquifer
24 area, those areas. They were asking the consultant
25 to identify potential sites above the UIC. So that

1 was the last meeting that we went through. Now, why
2 would that be raised? It was because the committee,
3 I believe, sent an inquiry to the Department of
4 Health regarding siting of a landfill above the UIC,
5 and basically the Department of Health responded
6 that, Give us the site and we'll tell you. So that
7 was kind of the response that came back from the
8 Department of Health. It was the same response that
9 came back from the Board of Water Supply; you let us
10 know where you're considering and then we will then
11 tell you whether or not it's appropriate and we'll
12 let you have a landfill site up there. So that was
13 one issue on there.

14 Also, we had drawn the bottom line as a
15 hundred acres. That, of course, was because we're
16 looking in the long-term very far down the road as
17 to if this is a replacement landfill, you want to be
18 able to accommodate everything, and so we felt that
19 a hundred acres would be the size of the parcel that
20 we'd be looking for.

21 The committee asked to consider parcels
22 from 100 to 90 acres, and so that's the task that
23 the consultant has now, and that's why the next
24 meeting is probably not going to occur until about
25 February or March, simply because of the additional

1 information that the committee has asked of the
2 consultant and the amount of work that it takes for
3 the consultant to go through and identify the sites.

4 MS. VIOLA: No further questions.

5 CHAIRWOMAN PINGREE: Thank you very much.
6 What I'd like to do is to open up questioning to the
7 commission.

8 MR. CHIPCHASE: Nothing further.

9 CHAIRWOMAN PINGREE: Any other questions?

10 MR. SANDISON: I have a question.

11

12 E X A M I N A T I O N

13 BY MR. SANDISON:

14 Q. Schnitzer processes approximately 120,000
15 tons of waste metal every year. If Schnitzer were
16 not able to process this waste metal, how would the
17 City deal with the waste stream?

18 A. First off, metal is a recyclable product,
19 and so our policy is we do not want to see
20 recyclable products going into a landfill and we
21 certainly can't take care of it at H-POWER, because
22 it has no heat value. That is why we depend on
23 metal recyclers.

24 Now, if Schnitzer was -- what you're
25 indicating is that Schnitzer could not process that

1 metal; in other words, they were to leave the island
2 because of --

3 Q. For whatever reason.

4 A. -- whatever reason, how would the City
5 deal with it? You know, it's a good question.

6 Right now, I believe, when you register
7 your car you pay a \$3 beautification fee and that \$3
8 fee is basically intended to pay for the service
9 that picks up derelict cars that are left abandoned
10 in various places. Again, I can only speculate that
11 perhaps what would happen is that fee would go up
12 significantly in order to be able to handle these
13 derelict or old abandoned cars in order to ship them
14 off island. Because certainly when you shred metal,
15 you can get a lot more tonnage into a container
16 where you're paying for your cubic foot as well as
17 your tonnage than you can with just a crushed car.
18 So, you know, that may be where the City would have
19 to go.

20 We don't want to end up in a situation
21 like Maui was in. Several years ago, Maui had what
22 we call rogue cars, just inundated the landscape,
23 and they were in a real issue. They had a crisis,
24 as far as I'm concerned. And I believe they
25 resolved it, and perhaps through recycling, I hope.

1 But we don't want to go there. And the same
2 occurred many, many years ago with Kailua. So
3 that's what we want to avoid.

4 But obviously, there's good value in
5 steel. There's good market value for it, and so we
6 certainly do not want to take something that is of
7 good market value and just dispose of it.

8 MR. SANDISON: Thank you. Nothing
9 further.

10 CHAIRWOMAN PINGREE: Thank you.
11 Commissioners, questions?

12 MS. DAWSON: Yes.

13

14 E X A M I N A T I O N

15 BY MS. DAWSON:

16 Q. Thank you for your testimony. You've been
17 very, very helpful to us. We have a tough decision
18 to make, so forgive our questions, because we need
19 as much information as we can get to make the best
20 possible recommendation.

21 A. Absolutely. And ask any question you need
22 to ask and I'll try to give you the best answer I
23 can.

24 Q. Apparently the consultant has been asked
25 to deal with the neighborhoods in the new site

1 selection and that may be because of what the water
2 department has come up with in terms of their supply
3 -- response and/or -- I'm not sure the reasons.

4 However, I'm wondering why we have not
5 asked for the same kind of neighborhood input before
6 we make a decision. This is the first that I know
7 that we have gone to the neighborhood on a -- to
8 discuss a site selection and say what do you think
9 about this. I'm sure that the responses have been
10 very negative, not-in-my-backyard kind of thing.
11 But we can't really deal with that.

12 So why are we now only beginning to ask
13 the neighborhoods what they think about this?

14 A. Okay. If you look at the makeup of the
15 advisory committee, you'll notice that they're from
16 completely across the island. They cover just about
17 every area of the island and they also are somewhat
18 knowledgeable in community needs, as well as land
19 use issues, as well as technical issues and health
20 issues.

21 Now, why are we just now going out to the
22 community? No site has been selected yet. You
23 know, we still have not gone through that --

24 Q. Other than Waimanalo Gulch.

25 A. Well, that was back in 2004.

1 Q. Right.

2 A. But as far as the future site, whether it
3 be a replacement or supplemental site, that has not
4 gone through yet. We're still developing the
5 criteria to be utilized and a lot of that has to do
6 with community values. So if the consultant is now
7 going out to the communities, out to the
8 neighborhood boards, I would suspect, and asking
9 them for input -- this part of it, I'm not aware if
10 they're doing this -- but I would say it's not a
11 negative thing. Obviously, you do want the
12 community's input, and when a site is designated, I
13 would imagine at that time they will be going out
14 again to the community and engaging in as much
15 conversation, give-and-take conversation as possible
16 to get community feedback.

17 Q. Don't they need to have some potential
18 sites identified in order to go to the community?
19 How do you go to them and say, How would you like to
20 have some rubbish in your backyard? You know what
21 they're going to say.

22 A. That's why I said I was unaware that they
23 were actually going out to communities at this point
24 and talking to them. So that's, you know, a little
25 bit -- that's new information to me.

1 I know on the wastewater side we have been
2 going out to the communities because we have
3 projects in those communities and we have been
4 asking for input, specifically the Kailua community
5 and also the area over towards Ala Moana park, that
6 area and Moiliili, because we have some significant
7 projects and we've been asking for community input
8 on those projects. So on the wastewater side, I
9 know we've been doing this quite a bit. As far as
10 the landfill siting, I would have to get back to the
11 consultant and ask them.

12 Q. I know the advisory site selection
13 committee is made up primarily of community
14 volunteers, as I understand it.

15 A. Yes.

16 Q. I want to know what role is the consultant
17 playing in this. Let me clarify on that. The
18 consultant has been -- I believe it's the same
19 consultant, R. M. Towill -- has been advising the
20 advisory committee and doing some of the technical
21 work for them since 2001 or two, I believe.

22 A. I believe you're correct that they were
23 the original consultant on the blue ribbon
24 committee.

25 Q. Is R. M. Towill submitting any technical

1 information to you on some of their searches?

2 A. I have not seen anything specifically from
3 R. M. Towill. They have -- like I said, the
4 information that has been presented that is now --
5 that was presented to the committee was, in a sense,
6 not much different than the information that was
7 submitted back in 2003.

8 Q. Yes.

9 A. And that being that there's only so many
10 sites below the UIC line that meets those physical
11 qualifications. Actually, I believe two or three
12 sites, or maybe more, have dropped off of the list
13 because other uses for the sites have occurred
14 since. So the population of sites, I believe, has
15 decreased.

16 Now, the new issue of going above the UIC,
17 the consultant is still involved in doing that
18 research, and so we have not seen anything to date,
19 and we're waiting for him to come back and say, Yes,
20 we are now prepared to go forward and provide this
21 information to the advisory committee.

22 Now, the consultant doesn't direct the
23 advisory committee. They are the technical side of
24 it. So when the advisory committee asks for
25 information, technical information such as this,

1 that's the consultant's job.

2 Now, part of the consultant's job is also
3 to provide a facilitator and it's important that we
4 keep things on track. I think that earlier -- not
5 in this session, but certainly last year we were
6 indicating that we'd like to bring this to
7 resolution by fall of 2011, and here we are in early
8 2012 and we want to bring it to conclusion. So we
9 want that facilitator to keep things on track as
10 much as possible.

11 Q. It seems that the previous facilitator did
12 reasonably well in at least providing minutes of the
13 discussion and the issues that were discussed. But
14 the facilitator did not seem to have any collection
15 of technical information. It was merely the
16 reaction of the committee members. So I'm not sure
17 what you're asking of your facilitator.

18 A. I will have to get back with my staff and
19 ask them exactly what is -- what they see as the
20 role of the facilitator and has the facilitator been
21 successful in dealing with that.

22 Q. I think they've probably been very
23 successful, but I don't think they've been tasked
24 with dealing with the right material. My question
25 on Towill consulting activities is that they have

1 been the consultant to ENV or the committee for
2 almost ten years. Who pays them?

3 A. The City pays them.

4 Q. The City pays them.

5 A. Yes. They're paid by a CIP appropriation
6 from the City Council.

7 Q. Do you have any idea how much they have
8 been paid?

9 A. For this last go-around, the appropriation
10 was \$500,000. I do not know how much has been paid
11 out at this time.

12 Q. I imagine it was considerably more.
13 That's my guess. However, I'm wondering why we stay
14 with the same consultant who has not come up with
15 reasonable or intensive technical information that
16 would tell us about the sites that are most
17 appropriate, least likely to be objected to, or
18 everything is going to be objected to but most
19 appropriate in terms of its effectiveness for a new
20 site. How is this consultant kept on? Is it just
21 an ongoing contract that keeps them on and on and
22 on?

23 A. No. Actually, with each appropriation, if
24 it's not a supplemental appropriation -- in other
25 words, it's going to add money to a contract -- if

1 it's a new appropriation, you have to follow the
2 state procurement code for consultant services,
3 which is a quality-based selection. In other words,
4 you review the qualifications. And one of the
5 criteria under the state procurement code is past
6 experience, and R. M. Towill has done this type of
7 work throughout the state. Actually, I believe
8 they're also engaged in Kauai's activity for
9 locating a new landfill site. So they have been
10 used by the other counties, as well.

11 Q. Is there any reason why the expertise
12 throughout the United States is nonexistent, that we
13 could not have some other -- I don't mean to speak
14 against R. M. Towill. I'm looking for results.

15 A. Yes. And I understand exactly what you're
16 saying. There are some very large firms in the --
17 throughout the United States that deal with these
18 issues. I guess it's a matter of do we have these
19 large firms, such as AECOM, URS Corporation, CH2M
20 Hill, et cetera -- first off, do they have that --
21 are they dealing with solid waste. Second off, do
22 they have the local knowledge, which is somewhat
23 important, especially when you're dealing with a
24 community-based type of planning effort, and also,
25 do they have the local knowledge as far as the

1 geology goes. These all have to play into your
2 decision-making when you're looking for a
3 consultant. Again, it comes down to who is the best
4 qualified to do the job.

5 But I hear what you're saying, yes,
6 because actually, I worked for URS Corporation,
7 which is the nation's largest engineering firm, so I
8 know what you're talking about exactly.

9 Q. When you put out an RFP, it doesn't just
10 go out locally; it goes to the entire --

11 A. When we put out an RFP, yes, we post it on
12 line. Now, for consultant selection, we put out
13 what's called a request for qualifications. So
14 every consultant who wants to respond to this and
15 submit their qualifications can. And they actually
16 identify those areas that they have the expertise
17 that they're pursuing. So if it's solid waste, they
18 will check that box, you know, I am pursuing solid
19 waste type of work.

20 Once they start going through the process,
21 this takes a minimum of three people and they have
22 to be civil servants, staff, or you can even have
23 people from the outside. It's not restricted to
24 just civil servants. It cannot be appointees and it
25 cannot be elected officials. That's one of the

1 things that is clear in the state procurement code.
2 They sit down as a committee and they review the
3 qualifications and as a committee they make the
4 determination as to who is the best qualified
5 consultant. At that time, they rank those.

6 They send that recommendation over to the
7 contracting officer for the City, and that would be
8 the director of budget and fiscal services; at this
9 situation right now we're in, it's Mike Hanson. He
10 reviews the reports from the committee and he either
11 concurs with their ranking or he may for some reason
12 kick it back to the committee and say, I see
13 something that is not complete here or in keeping
14 with the state procurement code, at which time they
15 have to sit down again as a committee and redo the
16 whole process. So that's pretty much how it goes.

17 So on consultant services, it's not based
18 off a dollar value. It's based off of
19 qualifications. So that's the process that was
20 used.

21 Q. I'm glad to hear that, because sometimes
22 in hearing the reasons why something has been -- a
23 site has been eliminated, it seems like the dollar
24 figure is the one that controls the decision and I'm
25 suggesting that we also look at the human figure.

1 A. Yes.

2 Q. And I don't see that taken into account
3 very often. It's the site of acquiring the land,
4 the site of doing studies, all the different things
5 that go into preparing a new site. This cost factor
6 seems to govern everything and I think it's time
7 that we look into the human factor.

8 Two years ago this committee made a very
9 clear statement that we did not want to put a drop-
10 dead date on our decision.

11 A. That is correct.

12 Q. And the reason we did that is because we
13 had been put off again and again and again, and we
14 have been brought right up to the deadline, or close
15 to it, with literally a gun to our heads saying, Are
16 you going to let it go or are you going to close it
17 down. That's a no-win --

18 A. It is. I agree.

19 Q. -- choice of options. We're not going to
20 put the City into dire peril, but at the same time I
21 think that this commission feels that it has been --
22 maybe for good reasons, but we've been misused time
23 and time again, saying, Okay, two more years, five
24 more years, two more years, and it just goes on and
25 on and on. So this is why we said the last time,

1 two years ago, we're not going to put a drop-dead
2 date on it. I'm not saying that that's what we're
3 going to do this time, but it is clear that everyone
4 should know why we gave the maximum leeway to get
5 something done, and our focus was on site selection.

6 In many ways, it may be the City Council
7 that we should be questioning right now, because
8 they're the ones that came in and changed the rules.
9 The experts and the Land Use Commission and our
10 commission had all made their decision, and the City
11 Council came in and said, We're going to stay where
12 we are. So I feel that in many ways we need more
13 accountability from the City Council. They can't
14 make a decision like that and not come up with some
15 kind of a better explanation than they have in the
16 past.

17 Okay. I want to move on on some other
18 questions that I had.

19 One has to do with the seven-year estimate
20 for preparing a site and it appears another seven-
21 year estimate for selecting the site. When
22 Waimanalo Gulch was first selected -- this is from
23 previous testimony that we had -- I believe it was
24 in 1987 that they started out the operation there,
25 but it was two years prior to that, 1985, when they

1 made the selection. Now, it took them two years
2 then to prepare Waimanalo Gulch to receive waste.

3 We have progressed greatly in technology.
4 So I want to know where does this seven years come
5 from, first of all, to find -- that's part of my
6 reason for asking about R. M. Towill -- seven years
7 to make a site selection seems way out of whack, and
8 then another seven years to prepare the site. Can
9 you comment on that?

10 A. Yes, I can. Actually, Waimanalo Gulch,
11 when it was originally selected, as I recall, being
12 a very young boy at that time, it was sugar cane.
13 Basically, there was a small community out there,
14 but for the most part it was sugar cane and there
15 did not seem to be as much objection at that time to
16 constructing a landfill out in that area. And I've
17 heard all sorts of stories as to why there was no
18 objection, but it did not seem to be as much
19 opposition to it during that time. So back in the
20 very early '80s and late '70s, it wasn't as
21 difficult to do a straight public works project,
22 especially when you're out in the middle of a cane
23 field.

24 The same with the Honouliuli treatment
25 plant. There was really not much out where that was

1 other than cane field and the naval air station.
2 Today, of course, it's right in the middle of a huge
3 development and so any time we want to do something
4 out there, we get the same amount of push-back.

5 As far as selecting a site, I don't think
6 we're looking at seven years to select the site. I
7 think we're looking at a much shorter time to select
8 the site. What we're talking about is, you know,
9 identify a site and then start forward with the
10 process as far as getting the permits required,
11 which, of course, involves an EIS and then coming
12 back to the planning commission and going to the
13 LUC, if need be, and going to the City Council for
14 appropriation, going through land acquisition.
15 Those types of activities in 2011 seem to be
16 incredibly longer to do than they did back in 1980,
17 unfortunately.

18 So we're saying that in the best time
19 frame, you could have a landfill up and operating in
20 seven years. So I don't think selecting a site is
21 going to take seven years, but certainly from the
22 process of starting once you have that site
23 identified -- and, you know, I think that's --

24 When we look back on 2004, we started the
25 process for the City Council's decision to begin

1 with. Now we're in 2011 and we're still discussing
2 it today. So that's already been seven years, and
3 we own the property and it's already a landfill. So
4 now we're talking about what we call a green-filled,
5 a site that is not being used as a landfill that
6 perhaps -- I would say most likely is going to be
7 privately-owned property and perhaps zoned in an
8 area that may be inconsistent with a landfill under
9 that current zoning. So we know that there's going
10 to be issues surrounding it. Seven years, again,
11 that's a best guess. We always say at least, is the
12 term that we use.

13 Now, in the Planning Commission's decision
14 to not put a date but instead hold the City's feet
15 to the fire, I thought that was a good decision.
16 Now, as far as the Land Use Commission deciding to,
17 I guess, make its own decision and move the date on
18 it, that's a state issue, of which we have to go
19 back to the state.

20 Now, we could have chosen to go directly
21 to the LUC on this instead of coming back to the
22 Planning Commission, but we felt it was appropriate
23 to start out with this agency because this is the
24 county's planning commission and the county's
25 planning commission makes decisions on county

1 issues. And we were concerned that, first off, it
2 would be kind of a slap to the face of this
3 committee if we were just to avoid you. The other
4 is, there was concern we'd go to the LUC and they'd
5 go, Have you gone to the Planning Commission, go
6 back to the Planning Commission, which would really
7 set you up against the wall, and we didn't want to
8 go there, so that's why we're doing this in the
9 sequence that we are.

10 Q. It's still a little puzzling, although our
11 counsel has advised us that we are able to make a
12 decision that would affect a Land Use order. That
13 seems a little out of our jurisdiction, but
14 apparently we have the ability to do that. So we
15 will, I guess, have to wait and see how much farther
16 we can go along.

17 A. Okay.

18 Q. I am hoping that that seven-year period is
19 just a very liberal estimate. I can't imagine that
20 it will take seven years to prepare a site, no
21 matter where it is. But that's not for us to say.

22 A. Yes. And if I can again speak over on the
23 wastewater side -- we know that the issues of going
24 to secondary at Sand Island, we have a lot of
25 issues. The EPA gave us to 2035, understanding all

1 of the issues surrounding acquiring additional
2 property and going through all of the necessary
3 motions and permits in order to do that.

4 Q. I'm thinking of the water line and the
5 instructions to the site selection that they want to
6 stay below the waterline. I'm thinking also that
7 that puts us in a flood zone, staying below the
8 waterline, in most cases.

9 A. It could put you -- you know, for the most
10 part, the UIC line, this underground injection
11 control line, follows the freeway or Farrington
12 Highway, for the most part. When you get out to
13 east Honolulu, it follows around Kalaniana'ole
14 Highway. So yes, if you're down in the low-lying
15 areas, you could be, indeed, in a flood area, so
16 you'd want to, of course, keep it above a tsunami
17 inundation zone, as well as a hurricane inundation
18 zone. You do not want to put it down into an area
19 where it's at risk.

20 Q. I haven't heard that discussion from
21 anyone yet, about putting a new site within a flood
22 zone. But knowing what happened in Japan with the
23 tsunami, it seems like it ought to be written
24 everywhere as one of the items that we are being
25 extremely cautious about, because of the damage that

1 can be done of having all of this waste sucked out
2 into the ocean in massive amounts. However, this is
3 for you guys to figure out. Could I move on to
4 something else?

5 A. Yes, please. Absolutely.

6 Q. Originally, the site -- the previous site
7 selection committee was told to look for a single
8 area that would take on the waste, the landfill.

9 A. Yes.

10 Q. Then the City Council came along and asked
11 them to include in their search construction waste,
12 as well --

13 A. Yes.

14 Q. -- to combine the two areas.

15 A. The City Council asked us at a hearing
16 over a discussion of the fate of Nanakuli B to
17 consider C and D, but not as a -- not that site as
18 being -- to be utilized primarily for C and D; that
19 PVT, in their mind, would still be in operation.
20 But as a fail-safe in the event that PVT could not
21 expand or that PVT reached capacity and they decided
22 -- because they are a private outfit -- and they
23 decided to pull out of the state. So that is why
24 the City Council asked us to also consider that in
25 our planning, which we did.

1 Q. Do I understand you that PVT has asked to
2 pull out?

3 A. No. In the event PVT decided that they no
4 longer wanted to do business or they could not
5 expand their site in the future when they were
6 approaching capacity.

7 Q. Okay. I think -- it was disturbing to
8 have the two types of collection put together in
9 one, because that seems to narrow the field in terms
10 of a site selection, finding something -- a place
11 that's going to be large enough, have the capacity
12 to have both construction waste and landfill.
13 It's like the site selection committee is being
14 given an impossible task.

15 A. It seems that, but again, the intent was
16 to identify an area of land that you would need.
17 Now, that's not to say that just because it can
18 accommodate or it has enough land to accommodate
19 C and D that you're actually going to construct
20 C and D cells in that landfill. It's more like,
21 okay, in the future, if the need arises, we can --
22 the county does have the ability to go in and
23 construct cells that are appropriate for C and D,
24 and then go in and apply to the Department of Health
25 for a C and D permit. Again, it's a fail-safe

1 issue.

2 I'm looking way down the road, probably
3 longer than I'm going to be alive. But we are
4 looking down the road because this is -- this is
5 just good long-range planning.

6 Q. I believe either in your testimony or in
7 some of the material that we had it was indicated,
8 and the City Council may have indicated this, that
9 cost was a factor, that putting them together would
10 mean fewer transportation costs and fewer
11 preparation costs. Did I hear right on that?

12 A. I'm not sure if that came out of the City
13 Council or not. Like I said, it was a request
14 during the committee hearing from City Council if we
15 could please include C and D in our planning, and
16 which that was -- we added that on as part of
17 identifying an area of land to accommodate future
18 needs for C and D.

19 Q. I believe it was mentioned that
20 transportation costs would be a factor. Is that a
21 different --

22 A. Yes. Transportation costs were presented
23 as a factor for ash, because we were also, again,
24 looking at a replacement landfill, which means
25 Waimanalo Gulch has reached its capacity, there is

1 no more available space for ash residue. So you
2 also -- it is just prudent and good long-range
3 planning to be able to accommodate those ash
4 portions in a landfill if we're going to continue
5 doing waste-to-energy.

6 And given the situation in the world today
7 as far as renewable energy, I think that we will be
8 in the waste-to-energy business for a long time.

9 Q. How much did it cost us to put in the
10 boiler, the third boiler?

11 A. The third boiler, the appropriation was
12 \$300 million. And originally, the number was
13 somewhat less that we were pursuing, but that was
14 strictly to put in a boiler.

15 What has occurred was -- again, that
16 long-range planning -- it was determined that it
17 would be better to also include an additional
18 generator. Right now we have a generator that
19 produces up to 50 megawatts. So putting in an
20 additional generator that would produce an
21 additional 32 megawatts, giving us a full capacity
22 of 82 megawatts of power generation at H-POWER;
23 also, expanding the tip floor size so that we could
24 cut down on the wait period at H-POWER and to be
25 able to fully utilize both sides, the RDF side plus

1 the mass burn side, much more efficiently.

2 Some of the things that drives the private
3 haulers to attempt to go to the Waimanalo Gulch
4 landfill is they don't want to wait in line, because
5 their drivers are being paid by the hour and they're
6 paying for that truck. So obviously, the more loads
7 they can take, the more money the private guys can
8 make. So if you can reduce that queue time, then
9 there's a lot more incentive for people to be going
10 up to the H-POWER facility, as opposed to attempting
11 to go over to the Waimanalo Gulch.

12 Q. Is it feasible that we might someday build
13 an H-POWER boiler on another part of the island?

14 A. You know, the thing with H-POWER is it's
15 located in a heavy industrial-zoned area, which is
16 appropriate. Trying to put one on another part of
17 the island, of course, would require industrial
18 zoning, and I'm not sure whether or not that would
19 be a benefit or not.

20 I know what you're talking about; it means
21 a shorter drive, say, if the trucks are out in east
22 Honolulu if you, say, put an H-POWER facility
23 somewhere out on that side of the island. However,
24 again, this is an industrial type of operation and
25 it is appropriately located in an industrial park

1 that's been designated as an industrial park.

2 Q. Do we ever consider the cost of
3 transportation, bringing in waste from Hawaii Kai
4 and Windward and Leeward and all over the place? I
5 mean, aren't those costs --

6 A. Oh, yes. There's costs associated with
7 them, but, you know, the way that we manage the
8 collection of waste is we have what are called
9 transfer stations located throughout the island. So
10 these are big holding areas of which the trucks go
11 and they deposit their waste and then that waste is
12 placed in much larger trucks which take it out to
13 H-POWER facility. So yes, those costs are
14 considered.

15 And actually, we're going to be, over the
16 next -- either this coming fiscal year or next
17 fiscal year, we're going to be looking at
18 appropriating money to add an additional base yard
19 for collection trucks out in the Kapolei area,
20 because it seems to me that Kapolei has grown very
21 fast. It's obviously -- that whole Kapolei region
22 out there has got quite a bit of population, but
23 we're still operating out of the Pearl City yard.
24 So those trucks have to drive quite a ways to make
25 their runs. So we're looking at, okay, let's have

1 another yard. So we're going to start that process,
2 also. Like I said, if we can get it appropriated
3 this year, we will. If not, it will probably have
4 to be fiscal year '14.

5 Q. On another matter -- on our request to
6 ship some of our waste, I presume most of the metal
7 stuff -- but on our request to -- or the denial of
8 our request by the Yakima --

9 A. Yes.

10 Q. Have we looked further for any other place
11 where it would be appropriate, where we could ship
12 -- is the Yakima area the only available area?

13 A. Well, that was the area that was
14 identified by the contractor, and that was because
15 the Roosevelt landfill in Washington state heavily
16 markets for other states' waste. Also, the Columbia
17 Ridge landfill in Oregon, they also lobby for other
18 states' waste, as well. So it's all economics for
19 the contractor who was given the contract as to how
20 to deal with this.

21 Now, he determined to himself that the
22 only way that he could win this contract is if he
23 came in at under \$100 a ton. And during council
24 discussions, the council said, We shouldn't be
25 paying more than \$100 a ton to ship our MSW off

1 island. He came in at \$99.89 or some number like
2 that, very close to \$100. The other bidders that
3 came in were more like around 160 to \$180 a ton,
4 which was -- when you really look at the economics
5 of it, it was a more reasonable cost. But we did
6 award the contract to him because he met all of the
7 obligations of the RFP.

8 Now, originally, we denied award to him.
9 However, he contested. It went to DCCA. DCCA said
10 No, by the strict word of the RFP, he met everything
11 in there. He just has to apply for his permits. He
12 doesn't have to have them in hand. So that was why
13 the award was made. He came back later saying --
14 first off, the original guy went out of business.
15 He sold the company to somebody else. They came
16 back and said, We can't make this thing work at \$100
17 a ton, we need to have a contract amendment that ups
18 the amount. We said, Well, we can't do that because
19 you -- first off, you haven't even started the
20 contract, so you haven't proven to us that you can.
21 You didn't not have all your permits in place yet
22 that you said that you had.

23 He actually represented to the City
24 Council that he could have started shipping
25 yesterday, is what he told the City Council, when in

1 fact he never had the permits to be able to ship.
2 And in the end, he could not -- the USDA withdrew
3 their compliance agreement. In other words, he was
4 not authorized by the United States government to be
5 able to take MSW across the Pacific Ocean, up the
6 Columbia River, and take it to the Roosevelt or the
7 Columbia Ridge landfill.

8 Now, of course, there's other options I
9 guess you could look at, which would be, say,
10 California, but California is even more difficult to
11 deal with than Oregon or Washington, because those
12 landfills are not actively pursuing outside waste,
13 such as Oregon and Washington state are.

14 Q. It sounded like the rejection of our waste
15 was not a matter of money. They didn't want it even
16 if we paid them exorbitant sums. They just didn't
17 want it, period.

18 A. They did not want Hawaii waste. They do
19 take the waste from Alaska, from some of the small
20 cities or towns.

21 Q. What's the difference?

22 A. I don't know, Commissioner. They objected
23 to it, and perhaps the difference is that the small
24 communities in Alaska are already Indian-based, so
25 you're dealing with one tribe to another tribe. So

1 I don't know.

2 BY MR. PACOPAC:

3 Q. But on the bid, if you rejected it --

4 A. Yes.

5 Q. After they came back, you rejected it.
6 Don't you look at the second bidder then?

7 A. The second bidder -- actually, yes, that's
8 what you do is you look at second bidder. However,
9 if they protest that, which they did -- they
10 appealed it to the DCCA, and so you have to go that
11 course. You can't just go out and award it. So
12 that was -- so we went through the DCCA and DCCA
13 came back in favor of the HWS company.

14 Q. The first one?

15 A. The first one.

16 Q. But then when that failed out, then that
17 just trumped everything?

18 A. Well, because --

19 Q. You didn't go back to the other bidders?

20 A. Because the other companies were also
21 looking to utilize Roosevelt or Columbia Ridge
22 Landfill, as well.

23 Q. Because they're rejected, they can't go
24 there either?

25 A. Yes. Because the USDA would not give them

1 a compliance agreement.

2 BY MS. DAWSON:

3 Q. So does that mean we have nowhere else to
4 look?

5 A. We have nowhere else to look.

6 MR. PACOPAC: That's why it failed.

7 CHAIRWOMAN PINGREE: Any other questions?

8 MS. DAWSON: Yes, I do.

9 BY MS. DAWSON:

10 Q. When you were looking at some expansion of
11 the Hawaii Kai facilities, you mentioned that
12 because public health issues made that not feasible,
13 -- this is a perception. It sounded like there were
14 people there that were objecting or that the
15 well-being of those people was more important than
16 the well-being of the people that are on the Waianae
17 coast, and I found that very difficult. It sounded
18 like those people on the Waianae coast are
19 expendable, whether they die by gas or what --
20 whatever, whatever reason; whereas people on the
21 other coast are not -- I mean, we can't bend them in
22 any way.

23 A. I guess I'm -- which facility are you
24 talking --

25 Q. The Hawaii Kai facility.

1 A. We don't have a facility in Hawaii Kai.

2 Q. No, no. But the Hawaii Kai --

3 A. There's a treatment plant in Hawaii Kai,
4 yes.

5 Q. Right.

6 A. But, see, that treatment plant was
7 constructed by the developer of Hawaii Kai and the
8 City never took ownership of that facility. That
9 still lies underneath a private, so that whole
10 community over there is serviced by a private
11 company.

12 Q. I had just one other question for the
13 moment, and that is: Did I understand you to say
14 that medical waste, including the sharps, can now be
15 burned?

16 A. No. Sharps -- we do not accept sharps.

17 Q. What do you do with them?

18 A. Well, they go to the landfill. They go
19 into the red box and they go into the landfill. So,
20 yes, some medical waste is burned at H-POWER.

21 CHAIRWOMAN PINGREE: Thank you for your
22 questions. I have a question now.

23 THE WITNESS: Yes, please.

24 BY CHAIRWOMAN PINGREE:

25 Q. How often is capacity assessed?

1 A. How often is it assessed?

2 Q. Right. Landfill capacity.

3 A. Well, generally, Waste Management, they go
4 cell by cell, and generally they will give us notice
5 as to how many months of capacity they have left in
6 a specific cell.

7 Q. Do they take into consideration future
8 impact, such as what's going to happen in Japan when
9 we get supposedly a lot of things coming up on
10 shore?

11 A. Well, you know, that's -- these are these
12 unplanned type of events. However, with the current
13 SUP, as far as the footprint goes, you know, and
14 also with the methodology used of separating
15 recyclables from combustible to just non-useable
16 debris whatsoever, that non-useable debris that
17 would go up to the landfill, there should be
18 adequate capacity.

19 Now, if this becomes a real issue,
20 obviously, we would also be talking to the
21 Department of Health as to whether or not PVT would
22 be an appropriate location that some of this
23 material could be taken into.

24 Q. So capacity, from what I'm hearing, is
25 assessed regularly.

1 A. It is assessed regularly, yes.

2 Q. And future events are taken into
3 consideration?

4 A. As much as we can. As much as we can. We
5 try to make our population projections. Natural
6 disasters are almost impossible to predict, but you
7 know they're going to happen.

8 Q. I think we know that this disaster has
9 occurred, and in great likelihood, it's going to
10 affect our shores.

11 A. It is -- it looks, yes, that it will
12 affect our shores.

13 Q. -- which I assume is going to affect the
14 capacity of the landfill.

15 A. We'll definitely have material going up to
16 the landfill, yes.

17 CHAIRWOMAN PINGREE: Thank you. Any other
18 questions?

19 BY MR. PACOPAC:

20 Q. Some of the records say from 2004 we have
21 about 15 years' more capacity up there. Is that --

22 A. Yes. That's -- yes. Based off of the
23 current SUP, yes.

24 Q. So 15 years from when; 2004?

25 A. I believe at that time it was -- if we

1 could utilize the full footprint, at that time I
2 think it was from 2004.

3 Q. So we're looking at maybe, what; 2019,
4 then?

5 A. We'll, at this point it's kind
6 of hard to put a date on it, because a lot has
7 happened since 2004.

8 Q. But you're going to be putting --

9 A. Diversion has tremendously increased
10 and --

11 Q. Even at 2019, even at that rate, you're
12 reiterating seven years to get a new one going;
13 right?

14 A. Yes.

15 Q. And you know how things go. We don't get
16 it done 2018, right -- we're already 2012, so --

17 A. Yes.

18 Q. We're going to be stuck again with that
19 thing. We're going to be in the same boat again,
20 but we don't have anyplace else now.

21 A. And -- agreed. That's why it's so key
22 that we continue to divert as much waste as possible
23 from that landfill.

24 Q. And I think this commission -- I was with
25 Beadie in 2009, also, and the biggest key was why

1 can't we get a site selected? That was from 2004 to
2 2012. We still don't have a site, and they keep
3 saying it's going to take seven years after we come
4 up with a site. Now we're coming up to 2018.

5 A. Yes.

6 Q. If something goes wrong again, we're past
7 2019, even though we did the diversion, we won't
8 have too many more years left.

9 A. Yes. I hear you loud and clear.

10 Q. So I guess that's the urgency we have is
11 that from 2004 to 2009 we're like, Where is the
12 site?

13 A. Yes.

14 Q. Even the people who was screaming about
15 this case are arguing, Where is the site? It looks
16 like it will never end.

17 A. And again, you know, we've been following
18 the council resolution that identified Waimanalo
19 Gulch as the site.

20 Q. Yeah. But in the future you knew you were
21 going to have to get another site.

22 A. Yes. And I think Commissioner
23 Komibatsu --

24 Q. Komatsubara.

25 A. In his statements -- sounds like a good

1 Okinawan name. I could be wrong.

2 Q. Komatsubara.

3 A. Komatsubara. You know, he pretty much
4 said it correctly, stop putting dates on these
5 things. Okay. You guys go out and find a new
6 landfill and then start the process and what you
7 have is what you'll have.

8 And that is why we're asking that that
9 condition 12 be removed by the Land Use Commission,
10 because yes, we know it's going to take time, and
11 with the recycling program, with the H-POWER
12 expansion, we're finding other opportunities for
13 landfill diversion. We could probably extend it out
14 beyond that 2019, 2018 date, so, you know, which
15 could carry us to a new landfill site, you know,
16 that has been identified, that's been permitted and
17 has been constructed and ready for operation.

18 Q. You know you'll have more time now, but we
19 still don't have a site. That's our whole concern.

20 A. Yes.

21 Q. We've been waiting and waiting. That's
22 why we did that; we didn't put a stop date on you
23 guys.

24 A. Right. Yes.

25 Q. We want you to come out and get it done.

1 I think that's what the community out there is
2 haggling about; like, yeah, they're dragging their
3 feet, they're not going to do nothing until it's
4 full.

5 A. Right.

6 Q. But we shouldn't. We should get it ready
7 before it's full.

8 A. I agree with you.

9 And actually, if you refer back to the
10 1997 Ewa Development Plan, it had indicated an
11 envelope of time depending on what type of programs
12 are out there from ten to 25 years. So even back in
13 1997, when they passed the -- by ordinance, the Ewa
14 Development Plan, that's 25 years, which would
15 actually take you to -- 2022 was already identified
16 in that plan, and that's what allowed everybody out
17 there to get their permits so they could go ahead
18 and develop that community.

19 MS. PINGREE: We're going to go ahead and
20 take one more question from Commissioner Dawson and
21 then -- I apologize. We have to vacate the room, so
22 I will be adjourning the meeting.

23 Ms. Dawson?

24 BY MS. DAWSON:

25 Q. We talked about enforcement and penalties

1 that are proposed or discussed whenever we have one
2 of these big warnings or citations for violations,
3 and you also talked about a two million dollar
4 settlement figure.

5 A. Yes.

6 Q. Is that the total of penalties that we
7 have paid thus far?

8 A. Well, actually, those penalties are being
9 paid by Waste Management, but I believe there was --
10 that settlement was rounded off to approximately
11 \$2.5 million.

12 Q. And was there one --

13 A. And then there was one other --

14 THE WITNESS: Dana, was it 100,000?

15 A. There was one other at 100,000, one other
16 settlement agreement.

17 BY MS. DAWSON:

18 Q. It brings to mind the citations of
19 violations that the City had for our sewer
20 department.

21 A. Yes.

22 Q. Repeatedly, again and again and again,
23 just as Waste Management has had in this case, and
24 finally we are looking at a massive order to rebuild
25 our sewers.

1 A. Yes.

2 Q. And it seems to me that if we continue the
3 way we are doing and we come up against a deadline
4 that we can't make, that we are going to be looking
5 at a massive penalty once again. So I think it's
6 incumbent on us to right now do something about not
7 just the penalties that are looming in the
8 background, but for the -- we say that we're doing
9 this for the good of the City, and we are, so it
10 seems like we want to just push everything forward.

11 One other suggestion for your site
12 selection committee -- you may be doing it in the
13 wrong way by having volunteers who are just lay
14 people, all terrific people, but they're lay people.
15 Then after they make a selection, then you'll go to
16 the community. Maybe it should be the other way
17 around, that you should have experts on your site --
18 a whole variety of experts on your site selection
19 committee so that they have strength behind their
20 advisory opinions, and if you had experts on that
21 committee, made your site selection and then go out
22 to the public, you're going to have a lot stronger
23 case for your public to deal with, or the community,
24 the neighborhoods to deal with, if they're given
25 good solid reasons, technical reasons, scientific

1 reasons why the sites -- different sites are being
2 recommended. So that's just a suggestion.

3 A. Okay. And if I could very quickly respond
4 -- if you look at the makeup of the committee you'll
5 see that we have Tom Arizumi, who used to be with
6 the Department of Health, who's obviously an expert
7 in environmental issues; Janice Marsters, who's on
8 the Sierra Club Council, as well as being a
9 hydrogeologist, environmental engineer, is also on
10 that committee; and at one time Bruce Anderson,
11 until he took his new job, was on that committee.
12 So there are people on there that are pretty akamai
13 people as far as expertise goes, so they're not
14 just, you know, off-the-street type of people,
15 but they clearly represent the community, and that's
16 what we're looking for.

17 CHAIRWOMAN PINGREE: Thank you very much
18 for your time today. We appreciate it.

19 THE WITNESS: Thank you very much.

20 CHAIRWOMAN PINGREE: We'll be meeting
21 again on January 25th -- that's two weeks from today
22 -- from 1:30 to 4:30 in this room.

23 So with that, may I have a motion to
24 adjourn?

25 MS. DAWSON: So moved.

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MR. TOLENTINO: Second.

(Hearing adjourned at 4:30 p.m.)

C E R T I F I C A T E

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STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on January 11, 2012, at 9:00 a.m., the foregoing contested case hearing was held;

That the hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision;

That the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

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

This 210-page transcript of the contested case hearing in File No. 2008/SUP-2 dated January 11, 2002 was subscribed and sworn to before me this 19th day of January, 2012, in Honolulu, Hawaii.

Sue M. Flint

SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2015

