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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 1:30 p.m., on
January 25, 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
- 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

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WITNESS: STEVEN Y.K. CHANG

EXAMINATION BY: PAGE

Mr. Chipchase 14, 66

Ms. Viola 58

Planning Commission 69

WITNESS: LARRY SNODGRASS

Mr. Goodin 78

Mr. Sandison 84

1 CONTESTED CASE HEARING

2

3

CHAIRWOMAN PINGREE: Good afternoon.

4

Today is January 25th, 2012 and it's day number

5

three of the contested case hearing on the Ewa-

6

State Special Use Permit Amendment Application -

7

2008/SUP-2 Waimanalo Gulch Sanitary Landfill.

8

As I recall, we left off with ENV. ENV,

9

do you have another witness to call or a ten-minute

10

oral summary?

11

MS. VIOLA: Just a procedural note -- do

12

you want to handle the subpoena that -- I'm not sure

13

how you want to handle the subpoena.

14

MR. CHIPCHASE: For Waste Management?

15

CHAIRWOMAN PINGREE: The subpoena was just

16

placed in front of us today, so I'm not quite sure

17

if the commissioners had an opportunity to review

18

it, so I would prefer not.

19

MS. VIOLA: Okay.

20

CHAIRWOMAN PINGREE: Thank you.

21

MR. CHIPCHASE: Chair, before we begin,

22

this is Cal Chipchase and Christopher Goodin for the

23

Ko Olina Community Association and Senator

24

Shimabukuro and here with me today is Ken Williams

25

for the association.

1 I did have one small procedural matter to
2 take up before we start. At the last hearing, I had
3 shown Mr. Steinberger an exhibit that we had marked
4 for identification purposes as K-163. It was an
5 excerpt from the October 2008 final Environmental
6 Impact Statement for the landfill. I did not move
7 it into evidence at that time because I did not have
8 copies for counsel and all the commissioners. We've
9 since filed that exhibit and circulated copies of
10 it, and so at this time I would move K-163 into
11 evidence.

12 CHAIRWOMAN PINGREE: That's fine.

13 MS. VIOLA: On that note, the ENV would
14 also like to at this point move into evidence all
15 exhibits in its exhibit list.

16 MR. CHIPCHASE: I'm sorry. Dana, that's
17 A-1 through --

18 MS. VIOLA: A-33.

19 MR. CHIPCHASE: No objection.

20 CHAIRWOMAN PINGREE: Thank you.

21 MS. VIOLA: ENV calls Steven Chang.

22 CHAIRWOMAN PINGREE: Before we proceed
23 with Steven, would you kindly identify yourselves
24 for the record?

25 MR. CHIPCHASE: I have, Chair.

1 CHAIRWOMAN PINGREE: Thank you.

2 MR. SANDISON: Ian Sandison. I have with
3 me Arsima Muller and we are attorneys for intervenor
4 Schnitzer Steel of Hawaii.

5 MS. VIOLA: Dana Viola and Brian Black on
6 behalf of ENV.

7 CHAIRWOMAN PINGREE: Thank you.

8 MS. VIOLA: The commission has Mr. Chang's
9 testimony, but he's going to do a brief summary and
10 essentially review his major points.

11 MR. CHANG: All right. Well, my testimony
12 is fairly short, so I can just read through.

13 Good afternoon, my name is Steven Chang,
14 Steven Y.K. Chang. I'm the chief of the State of
15 Hawaii Department of Health Solid and Hazardous
16 Waste Branch. My office is located at 919 Ala Moana
17 Boulevard.

18 I'm a graduate of Purdue University with a
19 bachelor of science degree in civil engineering and
20 also a master's degree from the University of Hawaii
21 in 1976. I have worked as a private engineering
22 consultant with the company Sam O. Hirota in
23 Honolulu. I've also worked with the Los Angeles
24 County Sanitation District in Whittier, California,
25 and prior to taking the branch chief position in

1 Solid Hazardous Waste, I worked in the Department of
2 Health, Clean Water Branch, initially as an
3 environmental engineer, and last, section supervisor
4 of their permitting section. And since 1993, I've
5 been with the Department of Health Solid and
6 Hazardous Waste Branch.

7 So as chief of the Solid and Hazardous
8 Waste Branch, I oversee the management of regulated
9 solid waste generated within the state through
10 environmental planning, permitting, promotion of
11 pollution prevention and waste minimization
12 activities and the development of partnerships with
13 both generators and the regulated community.

14 The Solid and Hazardous Waste Branch also
15 works to prevent releases and threats of petroleum,
16 hazardous substances, pollutants or contaminants
17 into the environment through aggressive enforcement
18 of environmental laws and regulations.

19 So along with solid waste activities, I
20 also manage the State's underground storage tank
21 program and the hazardous waste programs.

22 As the chief of the solid waste branch, I
23 am familiar with the Waimanalo Gulch Sanitary
24 Landfill. Our branch is responsible for ensuring
25 that the Waimanalo Gulch Sanitary Landfill complies

1 with all laws applicable to municipal solid waste
2 landfills so as to protect human health and the
3 environment.

4 Pursuant to Hawaii Revised Statutes,
5 Chapter 342H and the Hawaii Administrative Rules,
6 Title 11, Chapter 58.1, the City and County of
7 Honolulu Department of Environmental Services is the
8 owner and Waste Management of Hawaii is the operator
9 and were issued a solid waste management permit
10 number LF-0182-09 for the Waimanalo Gulch Sanitary
11 Landfill located at 92-460 Farrington Highway, and
12 you have attachment of the permit.

13 The permit authorizes the City and Waste
14 Management to construct and operate the Waimanalo
15 Gulch Sanitary Landfill pursuant to the terms,
16 conditions, requirements, limitations and
17 restrictions set forth in the permit. Specifically,
18 the permit allows the Waimanalo Gulch Sanitary
19 Landfill to accept municipal solid waste and ash for
20 disposal at the municipal solid waste landfill and
21 ash monofill until a date specified in the
22 associated Special Use Permit or until the landfill
23 and monofill reaches its permanent capacity,
24 whichever comes first.

25 Waimanalo Gulch Sanitary Landfill may

1 accept municipal solid waste and special waste.
2 This is solid waste which because of its source or
3 physical, chemical or biological characteristics
4 require special consideration for proper processing
5 or disposal or both.

6 For example, the Waimanalo Gulch Sanitary
7 Landfill may accept the following wastes for
8 disposal provided they meet specified acceptance
9 criteria: Dead animals, sandblast grit, mattresses,
10 outdated food or commercial products, petroleum
11 contaminated soil, sewage sludge, grit and
12 screenings from wastewater treatment plants, auto
13 shredder residue, treated medical waste, sterilized
14 foreign waste, pharmaceuticals, TVs, monitors and
15 other electronic waste, other residential,
16 commercial or industrial solid waste not disposed of
17 at the Honolulu Program of Waste Energy Recovery or
18 H-POWER.

19 If the landfill is required to cease
20 accepting municipal solid waste on July 31st, 2012,
21 the deadline imposed via the 2008/SUP-2, many of the
22 wastes mentioned above that are traditionally
23 disposed of at the landfill will have to be disposed
24 of at H-POWER, the PVT landfill, recycled or
25 transported off-island. In some instances, there

1 are no current options for on-island management.

2 As an example, automotive shredder waste;
3 while our branch does not preclude H-POWER from
4 disposing of this waste, H-POWER has expressed
5 reservations about processing this waste because it
6 tends to burn at a very high temperature due to
7 composition of waste, which would in turn cause
8 problems for their equipment.

9 TV, monitors and other electronic waste --
10 individuals currently disposing of e-waste with the
11 City will no longer have the option and will likely
12 have to incur a higher cost to return these devices
13 to manufacturers or these devices will be illegally
14 dumped to avoid such costs.

15 Outdated food, contaminated products,
16 pharmaceuticals, sterilized foreign waste, which is
17 waste from ships and -- foreign ships and airplanes
18 -- and sterilized medical waste, except for medical
19 sharps -- these waste streams can currently be
20 disposed at H-POWER. However, medical and foreign
21 waste must be sterilized and the medical sharps must
22 be removed and disposed of separately. H-POWER does
23 not accept medical sharps due to concerns regarding
24 worker safety at the facility. The sharps would
25 have to be shipped away as special waste at

1 extremely high cost to generators.

2 Petroleum contaminated soil, this waste
3 can be disposed of at the PVT Landfill.

4 DOH is working with the City to determine
5 alternative disposal options, but there are in fact
6 wastes that cannot be burned, recycled, reused or
7 shipped; in particular sewage sludge. Because these
8 wastes currently must be disposed of via landfilling
9 and because contingencies such as H-POWER'S planned
10 maintenance shut-downs or emergencies created by
11 natural disasters require alternative disposal
12 options so as to efficiently respond to
13 unanticipated contingencies, there is in fact still
14 a need for a landfill.

15 My branch is concerned about the
16 imposition of the July 31st, 2012 deadline at the
17 point in time when there are no disposal options for
18 certain types of waste which may potentially
19 threaten human health or the environment.

20 Thank you.

21 CHAIRWOMAN PINGREE: Thank you. If
22 counsel doesn't object, I failed to swear in the
23 witness prior to testimony. I'd like to swear in
24 the witness now.

25 MR. CHIPCHASE: No objection.

1 MS. VIOLA: No objection.

2 MR. SANDISON: No objection.

3 CHAIRWOMAN PINGREE: Thank you.

4 Would you kindly raise your right hand?

5 MR. CHANG: Okay.

6 CHAIRWOMAN PINGREE: Do you solemnly
7 swear or affirm that the testimony that you gave and
8 are about to give will be the truth, the whole truth
9 and nothing but the truth?

10 MR. CHANG: I do.

11 CHAIRWOMAN PINGREE: Thank you.

12

13 STEVEN Y.K. CHANG,
14 called as a witness, being first duly sworn to tell
15 the truth, the whole truth and nothing but the
16 truth, was examined and deposed as follows:

17 MR. CHIPCHASE: Ian, did you have any
18 cross?

19 MR. SANDISON: I'll go after you.

20 MR. CHIPCHASE: I think the order is this
21 way.

22 MR. SANDISON: I have no cross.

23 MR. CHIPCHASE: I'm sorry? You have no
24 cross?

25 MR. SANDISON: Please proceed. I'd like

1 to reserve cross until after you're done.

2 MR. CHIPCHASE: Well, procedurally,
3 Schnitzer is the first intervenor and its order is
4 first, so --

5 MR. SANDISON: I have no cross at this
6 time, but we'll reserve the opportunity to do cross
7 if issues are raised during Ko Olina's cross that
8 are germane.

9 CHAIRWOMAN PINGREE: Thank you.

10

11

E X A M I N A T I O N

12

BY MR. CHIPCHASE:

13

Q. Good afternoon, Mr. Chang. My name is Cal
14 Chipchase. I represent the Ko Olina Community
15 Association and Senator Shimabukuro, who have
16 intervened in this proceeding, investigative
17 proceeding. I have a few questions for you.

18

The first thing I'd like to do is --

19

MR. CHIPCHASE: Chair, do the
20 commissioners have a copy of his written testimony?

21

CHAIRWOMAN PINGREE: Yes.

22

MR. CHIPCHASE: If not, I have extra
23 copies.

24

CHAIRWOMAN PINGREE: Does anyone need an
25 extra copy?

1 BY MR. CHIPCHASE:

2 Q. Mr. Chang, I understand that you read most
3 of your testimony into the record. I'm going to
4 hand you a copy of your testimony just to make sure
5 we're looking at the same document.

6 A. Okay.

7 Q. Mr. Chang, is the document I handed you a
8 copy of your written testimony in this matter dated
9 December 13, 2011?

10 A. Yes, it is.

11 Q. And I understand -- hang onto it. Okay.
12 I understand that the Solid and Hazardous Waste
13 Branch is responsible for regulatory compliance with
14 the Waimanalo Gulch landfill. Is that right?

15 A. Yes, it is.

16 Q. I think you linked that regulatory
17 compliance to protecting human health and the
18 environment. Was that right?

19 A. Yes.

20 Q. And I believe you identified the City and
21 County of Honolulu Department of Environmental
22 Services, ENV, as the owner of the landfill, and
23 Waste Management as the operator. Is that right?

24 A. That's correct.

25 Q. How many landfills are there in the state

1 of Hawaii, public and private?

2 A. Active landfills or --

3 Q. Active landfills.

4 A. I believe last count we had 13.

5 Q. And of those 13 landfills, how many are
6 permitted to accept municipal solid waste?

7 A. All but two.

8 Q. So we have 11 that are permitted to accept
9 municipal solid waste?

10 A. Yes. I'm trying to count off the top of
11 my head. I'm coming up with nine right now. Sorry.

12 Q. Between nine and 11?

13 A. Right.

14 Q. And does the Solid and Hazardous Waste
15 Branch -- or is the Solid and Hazardous Waste Branch
16 responsible for the regulation of all of those
17 landfills?

18 A. Yes, we are.

19 Q. And you are the chief of that branch?

20 A. That's correct.

21 Q. And I think you said you've been the chief
22 for 18 years.

23 A. Yes.

24 Q. So since about 1993?

25 A. Yes.

1 Q. So as the chief of the Solid and Hazardous
2 Waste Branch, you're familiar with the operation of
3 Waimanalo Gulch Sanitary Landfill for at least about
4 the last 18 years?

5 A. Yes.

6 Q. So in your capacity as chief, you know
7 that the Waimanalo Gulch landfill has been cited for
8 violations by the Department of Health and now by
9 the EPA?

10 A. Yes.

11 Q. I'd like to look at a couple of those
12 violations, starting in 2006. Mr. Chang, I've
13 handed you a copy of a document marked Exhibit K-59.
14 It's a January 31st, 2006 letter to Waste Management
15 of Hawaii and the Department of Environmental
16 Services from the State of Hawaii Department of
17 Health. Do you see that?

18 A. Yes.

19 Q. And attached to that is a notice and
20 finding of violation and also an order.

21 A. Yes.

22 Q. I believe if you'll look to the
23 certificate of service for the notice of violation,
24 you signed the certificate of service for the Solid
25 and Hazardous Waste Branch.

1 A. Yes.

2 Q. And if you would, would you turn to page
3 five of the notice of violation? It's count three.
4 Count three is titled Failure to Place Daily Cover
5 on the Active Face of MSW Landfill. Do you see
6 that?

7 A. Yes.

8 Q. If we look down to page eight, paragraph
9 53 under the same count, paragraph 53 states -- and
10 I'll read it for you: On April 28, 2005, at 6:55
11 p.m., the DOH inspectors observed the northeast
12 corner of the work face, parens, an old work face
13 from the previous day, close parens, with heavy
14 flagging and exposed MSW. The south slopes of MSW
15 cell E1 fronting Ko Olina Resort continues to be
16 observed with exposed MSW and heavy flagging.

17 Do you see that paragraph?

18 A. Yes, I do.

19 Q. That was a finding that the Department of
20 Health made; right?

21 A. Yes.

22 Q. What is flagging?

23 A. Flagging is -- well, you can imagine when
24 you place municipal solid waste on the ground and
25 they bring in heavy equipment to track it, to

1 flatten it, then they bring in daily cover -- dirt
2 to cover it. The whole intent is to make sure that
3 there is no exposure of solid waste and it -- it's a
4 measure to protect against vectors, flies -- to
5 protect from exposure to vectors, flies, birds and
6 other things.

7 Q. So this was a failure to properly cover --

8 A. That's correct.

9 Q. -- the MSW?

10 A. Right.

11 Q. This was April 28, 2005, and if we look
12 forward to paragraph 60 of the same count, it says:
13 On May 25th, 2005, the DOH inspectors observed
14 exposed MSW and heavy flagging on the recently
15 completed northeast end of MSW cell E1 due to
16 inadequate soil cover. Mr. Gordy (phonetic), the
17 environmental manager, was notified of the issue and
18 was present during the inspection.

19 Do you see that?

20 A. Yes.

21 Q. This is -- April 28th was the first
22 paragraph we looked at. This is now May 25th. So a
23 month later, in the same cell, still inadequate soil
24 coverage; right?

25 A. Yes.

1 Q. If we look at the very next paragraph, on
2 June 3rd, 2005, the south slopes of MSW cell E1
3 fronting Ko Olina Resort continues to be observed
4 with exposed MSW and heavy flagging. Mr. Cosulo
5 (phonetic) said that WMH is leveling high spots
6 within MSW cell E1 and once completed the area will
7 be covered with intermediate soil.

8 Do you see that?

9 A. Yes.

10 Q. So then another week after the May 25th
11 inspection, still heavy flagging on cell E1; right?

12 A. Yes.

13 Q. That was a Department of Health finding?

14 A. Yes.

15 Q. So then I'd like you to look at page 15 of
16 the notice of violation. It's count seven. The
17 count is titled Failure to Measure Leachate Levels
18 and to Maintain Records on Leachate Levels in cell
19 4-B sump.

20 Do you see that?

21 A. Yes.

22 Q. Page 15, count seven.

23 A. Okay. Right.

24 Q. What's leachate?

25 A. Leachate is water that passes through the

1 landfill, percolating down, and is captured on the
2 liner, which is below the trash.

3 Q. If we look at paragraph 113, still under
4 count seven, it says: On March 11, 2005, the DOH
5 inspectors requested a copy of the leachate log
6 maintained at the facility for the three leachate
7 sumps that are located within the facility. Mr. Joe
8 Hernandez provided the log to the inspectors and the
9 log shows that the leachate sump in MSW cell B4 has
10 not been measured since May 2003.

11 Do you see that?

12 A. Yes.

13 Q. That's another finding by the Department
14 of Health?

15 A. That's correct.

16 Q. So for cell 4-B, this leachate level, this
17 water that had passed through municipal solid waste
18 had not been measured for two years?

19 A. That's correct.

20 Q. If you'd look forward to page 25 for me --
21 this is count 15 of the same notice of violation and
22 it's entitled Failure to Submit Annual Surface Water
23 Management Plan. Do you see that?

24 A. Yes.

25 Q. Now, if you'd look under the same count,

1 count 15, down to paragraph 178 for me -- paragraph
2 178 says that the facility's operating plan --

3 And that means the Waimanalo Gulch
4 Sanitary Landfill's operating plan; right?

5 A. Yes.

6 Q. -- dated July 2004, section 6.8.5, annual
7 update of surface water management plan provides
8 WGSJ will prepare and submit to HDOH an annual
9 update to the surface water management plan by
10 September 1 of each year.

11 Do you see that?

12 A. Yes.

13 Q. And then down among the information that
14 it's supposed to include in this plan is engineering
15 calculations confirming the capacity of the system.

16 Do you see that?

17 A. Yes.

18 Q. Then if we look down at paragraph 180, we
19 see in a letter dated June 22, 2005, WMH stated that
20 they have not been able to locate the annual updates
21 for 2003 and 2004.

22 Do you see that?

23 A. Yes.

24 Q. That's a finding that the Department of
25 Health made?

1 A. That is correct.

2 Q. Then the very next paragraph: To date,
3 the DOH has not received the annual update for 2003
4 and 2004.

5 Do you see that?

6 A. Yes.

7 Q. As of the date of this order, you were
8 missing two years of updates; right?

9 A. That's correct.

10 Q. If you would now turn to page 31 of the
11 same notice of violation -- this is count 18. It's
12 an 18-count notice. It's titled Failure to Monitor
13 Explosive Gases and Maintain Monitoring Records.

14 Do you see that?

15 A. Yes.

16 Q. Why is monitoring explosive gases
17 important?

18 A. Methane is one of the common by-products
19 of the landfill operations and so as material begins
20 to decompose, you have a release of water and
21 methane gas and methane is a flammable -- it is
22 ignitable, so it can be a source of ignition that
23 could cause, potentially, landfill fires.

24 Q. Let's look under then that same count,
25 paragraph 210, if you would. In paragraph 210, the

1 Department of Health found that in a letter dated
2 May 23, 2005, DOH requested all reports on all
3 explosive gas monitoring data collected in
4 accordance with explosive gas requirements in the
5 permit LF-0054-2 and HAR 11-58.1 from 2003.

6 Do you see that?

7 A. Yes.

8 Q. The next paragraph, paragraph 211 -- in a
9 letter dated June 22, 2005, WMH provided explosive
10 gas monitoring data for 2005 but could not find data
11 collected for prior year.

12 Do you see that?

13 A. Yes.

14 Q. The next paragraph, paragraph 212:
15 Respondents failed to monitor for explosive gases in
16 2003 and 2004, in violation of 11-58.1-15D.

17 Do you see that?

18 A. Yes.

19 Q. So for two years -- the Department of
20 Health found that for two years Waste Management was
21 not monitoring these explosive gases, this methane
22 you talked about; right?

23 A. Right.

24 Q. Let's look at another letter from the
25 Department of Health to Waste Management and the

1 City, K-101.

2 Mr. Chang, I've handed you a copy of a
3 document marked Exhibit K-101. It's a letter from
4 the State of Hawaii Department of Health dated
5 October 25th, 2006 to Waste Management of Hawaii,
6 Inc. and the Department of Environmental Services.

7 Do you see that?

8 A. Yes.

9 Q. If you would, turn to the second page of
10 the letter for me. At paragraph number two, the
11 first sentence says: The facility continues to
12 violate special condition three, item nine, by
13 exceeding permit grades on the placement of ash and
14 MSW.

15 Do you see that?

16 A. Yes.

17 Q. That's a finding the Department of Health
18 made?

19 A. That's correct.

20 Q. And if we look at the next paragraph,
21 paragraph three, MSW cell 4-B sump remains
22 inaccessible and thus leachate monitoring has not
23 been conducted, in violation of special condition
24 three, item six, and general conditions one, items
25 9B and 9C.

1 Do you see that?

2 A. Yes.

3 Q. That was the same cell 4-B sump issue we
4 looked at in the notice of violation from earlier in
5 the year; right?

6 A. That's correct.

7 Q. If we look down at the next paragraph,
8 paragraph four, portions of ash cell 6 requires
9 immediate cover.

10 A. Intermediate cover.

11 Q. Intermediate cover. You're quite right.
12 Thank you for correcting me.

13 Based on the growth of vegetation in this
14 area and visual observation, the ash has not been
15 covered within seven days' placement, in violation
16 of the facility's permit special condition 3B, item
17 two.

18 Do you see that?

19 A. Yes.

20 Q. So again, a finding that waste had not
21 been covered; right?

22 A. Correct.

23 Q. And if we look at the very next paragraph,
24 the permitted -- paragraph five, the permitted upper
25 storm water pond and eastern storm water diversion

1 ditch has not been constructed.

2 Do you see that?

3 A. Yes.

4 Q. So that's related to water management,
5 storm water management; right?

6 A. Yes.

7 Q. Let's look at another letter that the
8 Department of Health sent to Waste Management and
9 the City. It's K-125. Mr. Chang, I have handed you
10 a copy of a letter from the State of Hawaii
11 Department of Health dated May 3rd, 2007, marked
12 Exhibit K-125, and it's addressed to Waste
13 Management of Hawaii and the Department of
14 Environmental Services. Do you see that?

15 A. Yes.

16 Q. If you'd take a look at the second page
17 for me, and look at item one -- the facility
18 continues to violate special condition three, item
19 nine, by exceeding permit grades on the placement of
20 ash and MSW.

21 Do you see that?

22 A. Yes.

23 Q. That's another finding by the Department
24 of Health; right?

25 A. That is correct.

1 Q. And this is the same finding that the
2 department made in the last letter we looked at?

3 A. Correct.

4 Q. Look at the second item. MSW cell 4-B
5 sump remains inaccessible and thus leachate
6 monitoring has not been conducted.

7 Do you see that?

8 A. Yes.

9 Q. The same finding we looked at in the prior
10 letter and the same finding we looked at in the
11 notice of violation; right?

12 A. That's correct.

13 Q. If we look at the third item down there,
14 inadequate soil cover was observed on the top deck
15 and side slopes of the east, west and north areas of
16 MSW cell 11, including part of MSW cell 10 top deck
17 area.

18 Do you see that?

19 A. Yes.

20 Q. So another finding that waste had not been
21 properly covered; right?

22 A. Correct.

23 Q. Let's look at another letter from the
24 Department of Health to ENV and Waste Management,
25 K-66.

1 CHAIRWOMAN PINGREE: I'm sorry? What
2 exhibit is that?

3 MR. CHIPCHASE: K-66.

4 BY MR. CHIPCHASE:

5 Q. Mr. Chang, I've handed you a document
6 marked K-66. It's a copy of a letter dated May 13,
7 2010 from the State of Hawaii Department of Health
8 to Waste Management of Hawaii, Inc. and Department
9 of Environmental Services. Do you see that?

10 A. Yes.

11 Q. And the subject of the letter is notice
12 and finding of violation, slash, order. Do you see
13 that?

14 A. Yes.

15 Q. If we could turn to the notice of
16 violation, on the first page, paragraph three, it
17 states: On the basis of information obtained during
18 the course of investigation, the DOH solid waste
19 section has determined that respondents have
20 violated HRS 342H, HAR 11-58.1 and respondent's
21 solid waste management plan.

22 Do you see that?

23 A. Yes.

24 Q. The respondents here are Waste Management
25 of Hawaii and the City and County of Honolulu;

1 right?

2 A. Yes.

3 CHAIRWOMAN PINGREE: Counsel, would you
4 re-refer me to that? You said it was page three?

5 MR. CHIPCHASE: Oh. Of course. This is
6 page one of the notice and finding of violation,
7 paragraph three.

8 BY MR. CHIPCHASE:

9 Q. And if we turn to the next page, under
10 count one, the title is Failure to Construct the
11 Final Cover and West Berm in Accordance with Design
12 specifications.

13 Do you see that?

14 A. Yes.

15 Q. If you look down at paragraph 21 under
16 this count, it says: On July 31, 2008, WMH
17 submitted the annual operating report Waimanalo
18 Gulch Sanitary Landfill July 1, 2007, dash, July 30,
19 2008. Figure six of the report -- Isopac
20 (phonetic)?

21 A. Isopac.

22 Q. Isopac -- between 2008 topography flown
23 5-9-2008 and master plan final grade shows that part
24 of the west berm on MSW cell 8 was up to 30 feet
25 higher than designed grades.

1 Do you see that?

2 A. Yes.

3 Q. So that's a finding the Department of
4 Health made; right?

5 A. Correct.

6 Q. Could you explain to me what that finding
7 means?

8 A. Well, when -- in the course of
9 constructing a landfill, Waste Management, as the
10 operator, comes up with designs. They have designs
11 on how to sequence and how to place material on the
12 landfill, and they have done their studies to look
13 at stability to make sure -- so they have designed
14 height limits which they feel are within what we
15 call the factor of safety of a safe landfill design.
16 So looking at those plans, they have identified what
17 the final height of the landfill should be
18 throughout the entire landfill, and so that's what
19 we're looking at. And so when we're able to compare
20 what they had in their design versus what they
21 actually did in the ground, there was a difference
22 of 30 feet.

23 Q. I see. So what had been designed and
24 approved as following of studies and engineering
25 determining what was safe, what was actually

1 constructed was 30 feet higher than that?

2 A. That's correct.

3 Q. So then if we look at the next paragraph,
4 paragraph 22 references an August 3rd, 2009
5 submittal, so a little more than a year after
6 paragraph 21; right?

7 A. Yes.

8 Q. And if we look down at the bottom of that
9 paragraph, this plan shows or this report shows that
10 part of the west berm on MSW cell 8 was up to 32
11 feet higher than designed grade?

12 A. That's correct.

13 Q. So over the course of the year, they
14 increased the design -- the actual part of the west
15 berm another two feet above the permitted design
16 grade?

17 A. I'm not real sure. It could be different
18 parts of what's called cell 8.

19 Q. I see. So at least part of it, though, on
20 this date of the report was 32 feet higher than had
21 been designed and approved?

22 A. That's correct.

23 Q. If we look at the second count, on page
24 five of this notice of violation, it's entitled
25 Failure to Notify Department of Health of

1 Noncompliance Regarding Construction of the West
2 Berm. Do you see that?

3 A. Yes.

4 Q. If we look down at paragraph 28 of this
5 count, in paragraph 28 the Department of Health
6 finds that Waste Management was aware that the west
7 berm was not constructed in accordance with design
8 specifications as early as 2007.

9 Do you see that?

10 A. Yes.

11 Q. So the finding is Waste Management knew it
12 was not in compliance with design specifications; is
13 that right?

14 A. That's correct.

15 Q. If we look, then, down at paragraph 29, it
16 reads: Respondents failed to notify DOH of the
17 noncompliant west berm construction in accordance
18 with Solid Waste Management Permit Number LF-0054-2,
19 part one, standard conditions, item ten.

20 Do you see that?

21 A. Yes.

22 Q. The finding is Waste Management knew it
23 was in violation or knew it hadn't constructed the
24 berm to design specifications and it just didn't
25 tell the Department of Health?

1 A. That's correct.

2 Q. The EPA has also cited Waste Management
3 for violations; isn't that right?

4 A. That's correct.

5 Q. I'd like you to take a look at Exhibit
6 K-123. Mr. Chang, the document I've handed you,
7 K-123, is a letter from the United States
8 Environmental Protection Agency to the Department of
9 Environmental Services and Waste Management of
10 Hawaii. Do you see that?

11 A. Yes.

12 Q. Attached to the letter is a finding of
13 violation and order. Do you see that?

14 A. Yes.

15 Q. I'd like to take you to paragraph 21 of
16 the finding of violation and order. Paragraph 21
17 says: Respondents have failed to comply with the
18 requirements of the Hawaii Industrial Activities
19 General Permit, the notice of coverage and its SWPCP
20 in that on at least three occasions associated with
21 storm events in December 2010 and January 2011,
22 respondents failed to prevent run-off of surface
23 water that had contacted waste, failed to control
24 erosion, prevent loss of cover or wash-out of refuse
25 slopes, failed to properly manage leachate and

1 failed to adequately retain and remove silt from
2 surface water before it was discharged from the
3 site.

4 Do you see that?

5 A. Yes.

6 Q. If we look at the very next paragraph,
7 paragraph 22 of this findings of violation and
8 order, it states: Discharges from WGS� associated
9 with these storm events have failed to comply with
10 effluent limitations established in the notice of
11 coverage and water quality standards established in
12 HAR Section 11-54-4. This noncompliance includes,
13 but is not necessarily limited to, effluent
14 limitations for iron, zinc and pH. This
15 noncompliance also includes, but is not necessarily
16 limited to, water quality standards requiring
17 protection of recreational uses of Hawaii's waters
18 and prohibiting the presence of substances
19 attributable to domestic, industrial or other
20 controlled sources of pollutants.

21 Do you see that?

22 A. Yes.

23 Q. That's a finding from the EPA; right?

24 A. Yes. According to the documents here, it
25 is.

1 Q. So then the next paragraph, paragraph 23:
2 As to certain constituents, respondents have failed
3 to analyze effluent samples associated with these
4 discharges consistent with the requirements of
5 HAR Section 11-55, appendix A, standard condition
6 14-D. The constituents at issue include, but are
7 not necessarily limited to, BOD5 and chromium.

8 Do you see that?

9 A. Yes.

10 Q. So another finding from the EPA?

11 A. That's correct.

12 Q. And if you turn to page 15 of this notice
13 of finding of violation, it's dated November 29,
14 2011; right?

15 A. That's correct.

16 Q. So a couple of months ago?

17 A. Yes.

18 Q. As chief of the solid waste branch, are
19 you aware that Waste Management discovered that an
20 employee had fabricated wellhead gas monitoring
21 readings at the landfill from mid 2010 to August
22 2011?

23 A. I've heard it from other people.

24 Q. Mr. Chang, I've handed you a copy of a
25 document marked K-160. The document is titled

1 Waimanalo Gulch Sanitary Landfill Landfill Gas
2 Extraction Assessment, dated September 28, 2011, and
3 it's noted that it was prepared for Waste Management
4 of Hawaii, Inc.

5 Do you see that?

6 A. Yes.

7 Q. If I could point you to the first page of
8 the assessment, it says: In August 2011, Waste
9 Management of Hawaii, Inc., WMH, identified
10 significant irregularities with the landfill gas
11 data that had purportedly been collected and
12 recorded by its landfill gas technician at the
13 Waimanalo Gulch Sanitary Landfill, WGSL. Further
14 investigation revealed that some wellhead gas
15 parameter measurements were not actually taken and
16 that data had been fabricated instead of collected
17 through verifiable measurement. Based on interviews
18 conducted during the investigation, it appears that
19 the failure to collect data and the fabrication of
20 replacement data began in mid 2010 and continued
21 until August 2011, when the failure was investigated
22 and identified.

23 Do you see that?

24 A. Yes.

25 Q. Based on this report and the

1 acknowledgment that Waimanalo Gulch Sanitary
2 Landfill had used fabricated wellhead gas readings
3 from about mid 2010 to 2011, intervenor subpoenaed
4 all monitoring records and all internal
5 investigation documents from Waste Management of
6 Hawaii.

7 Are you aware that Waste Management of
8 Hawaii has refused to produce to intervenors and to
9 this commission documents associated with their
10 internal investigation of these fabricated readings?

11 A. I'm not aware of that.

12 Q. Mr. Chang, I've handed you two documents.

13 MR. CHIPCHASE: And what I would like to
14 do, Chair, is just to move these two documents into
15 evidence as K164 and K-165. The first document is
16 intervenor's subpoena to Waste Management and the
17 second document is Waste Management's response to
18 the subpoena.

19 CHAIRWOMAN PINGREE: That's fine.

20 MS. VIOLA: Can I see the documents?

21 BY MR. CHIPCHASE:

22 Q. Mr. Chang, when we first started talking,
23 you said there were 13 landfills in the state and
24 between nine and 11 were authorized to accept MSW.
25 Do you remember that?

1 A. Yes.

2 Q. Then we looked at a number of findings by
3 the Department of Health and by the EPA and then the
4 fabricated gas wellhead reading report from 2006
5 through just a couple of months ago.

6 How many of the other 13 landfills in the
7 state over that same period have been cited by the
8 EPA for violating the Clean Water Act?

9 A. For clean water, I'm sorry, but I -- I
10 would not be able to tell you exactly. More my area
11 would be the solid waste.

12 Q. Okay. Fair enough. In that same period,
13 are you aware of any other of the 13 landfills that
14 submitted fabricated gas wellhead readings?

15 A. I'm not aware of that.

16 Q. Are you aware of any other landfills that
17 were subject to an 18-count notice of violation by
18 the Department of Health?

19 A. For solid waste?

20 Q. For solid waste.

21 A. I'd have to go back -- there are some that
22 do have multiple counts. I'm not sure if other
23 landfills were cited for up to 18.

24 Q. Looking at those other landfills, are you
25 aware of any that have had as many findings of

1 violation as Waimanalo Gulch Sanitary Landfill in
2 that same five-year period?

3 A. In the last five years, probably not.

4 Q. Mr. Chang, I'd like to take a look at
5 paragraph nine of your declaration. This is a
6 paragraph you shared with the commission earlier in
7 your summary, and you talk about the July 31st, 2012
8 deadline; right?

9 A. Yes.

10 Q. And then you identify ways that there's no
11 option other than the Waimanalo Gulch Sanitary
12 Landfill. Right?

13 A. (Witness nods.)

14 Q. And you list automotive shredder waste, TV
15 monitors, outdated food or contaminated products,
16 pharmaceuticals, sterilized foreign waste from ships
17 and airplanes, sterilized medical waste except for
18 medical sharps and petroleum contaminated soil. Do
19 you see that in there?

20 A. Yes.

21 MS. VIOLA: Objection. That's a
22 mischaracterization of what his testimony says. It
23 doesn't say that there are no alternative disposal
24 methods.

25 BY MR. CHIPCHASE:

1 Q. All right. Then let's go through them.

2 Looking at the first item under paragraph
3 nine, automotive shredder waste -- you say that
4 while SHWB, the Solid and Hazardous Waste Branch,
5 does not preclude H-POWER from disposing of this
6 waste, H-POWER has expressed reservations about
7 processing this waste stream because it tends to
8 burn at very high temperature.

9 Do you remember that testimony that's in
10 here?

11 A. Yes.

12 Q. So for the shredder waste, you're talking
13 about the plastics and others things that are left
14 over after the recycler takes the metal; is that
15 right?

16 A. Well, in the case of most of the material
17 they handle, automobile carcasses are run through a
18 shredder. The metals are removed and then you have
19 residue which is the plastic, the seats and the
20 dashboards and stuff, that contain both ferrous and
21 non-ferrous materials, and the facility tries to
22 remove that either by magnet or by dielectric
23 currents and then the residuals of the stuff
24 basically is the material that's sent to the
25 landfill for disposal.

1 Q. So your division does not prohibit H-POWER
2 from burning that residual, does it?

3 A. That's correct.

4 Q. The operator of H-POWER is Covanta; is
5 that right?

6 A. Yes, it is.

7 Q. Has Covanta expressed these reservations
8 to you?

9 A. To my staff, I believe. I'm not sure if I
10 was directly in the conversation when they mentioned
11 that, but I've asked my staff on the situation on
12 the status and would it be acceptable and the
13 response has been such, that there are concerns
14 about accepting the material because of the nature
15 of the ASR.

16 Q. I see. So Covanta said something to your
17 staff and your staff brought you up to speed on it?

18 A. That's correct.

19 Q. I see. So you don't have firsthand
20 knowledge of it?

21 A. I can't recall. I mean, we engaged in
22 many discussions with Covanta, and I don't know if I
23 asked them directly. But that's my basic
24 understanding of what's happening there.

25 Q. Do you know why the City has not called

1 someone from Covanta to come and explain its
2 position to the commission?

3 A. No.

4 Q. If we look down at the third item in your
5 list, outdated food or contaminated products,
6 pharmaceuticals, sterilized foreign waste from ships
7 and airplanes and sterilized medical waste except
8 for medical sharps, you say that these waste streams
9 can currently be disposed of at H-POWER. However,
10 the medical and foreign waste must be sterilized and
11 the medical sharps must be removed and disposed of
12 separately. H-POWER does not accept medical sharps
13 due to concerns regarding worker safety at the
14 facility.

15 That's your testimony; right?

16 A. Yes.

17 Q. So these wastes can currently be burned
18 except for the sharps?

19 A. That's correct.

20 Q. And when the third boiler is up and
21 running, there's even a greater capacity to burn
22 this waste; right?

23 A. It would make it easier for them to do so,
24 yes.

25 Q. And the capacity increases; right?

1 A. That's correct.

2 Q. So does your branch prohibit the burning
3 of even sharps?

4 A. No.

5 Q. Are you aware that, in fact, facilities on
6 the mainland do burn sharps?

7 A. I believe they do, yeah.

8 Q. And if we look down at the fourth item on
9 your list, petroleum-contaminated soil, this waste
10 can be disposed of at PVT Landfill.

11 A. That's correct.

12 Q. So if we didn't have Waimanalo, the
13 petroleum waste could go to PVT?

14 A. Yes.

15 Q. Let's look at the final one. I skipped
16 over the TV, monitors and other electronic waste.

17 By the way, Mr. Chang, did you prepare
18 your declaration?

19 A. I spoke to Dana Viola. She had some
20 questions for me. She prepared a draft. I reviewed
21 it with my attorney to make sure it would be
22 accurate statements.

23 Q. Okay. So on the subject of TV, monitors
24 and electronic waste, you say: Individuals
25 currently disposing of e-waste with the City will no

1 longer have this option and will likely have to
2 incur high costs to return these devices to
3 manufacturers or these devices will be illegally
4 dumped to avoid such costs; right?

5 A. Yes.

6 Q. But, I mean, E-waste is highly recyclable;
7 isn't it?

8 A. There is a value to certain types of
9 e-waste. There are lesser values for,
10 unfortunately, TV monitors and cathode ray tubes.

11 Q. But in the City and County of Honolulu,
12 businesses and the government are already banned
13 from disposing of e-waste at the landfill; isn't
14 that right?

15 A. That's correct.

16 Q. So for these businesses and government,
17 there's already mandatory recycling of these
18 products on Oahu.

19 A. That's correct. They can arrange to -- we
20 have different companies to ship the material off-
21 island.

22 Q. And so that even for consumers, businesses
23 are required to have programs for the recycling of
24 certain electronic devices; right?

25 A. Yes. We're into the second year of

1 electronic waste recycling, the first year of TV
2 recycling.

3 Q. That's a state law?

4 A. That's correct.

5 Q. On Oahu, consumers have a number of
6 recycling options for these products. I'd like to
7 show you some of them.

8 Mr. Chang, I've handed you a copy of a
9 printout from the ENV, Department of Environmental
10 Services' website. Do you see their logo in the top
11 left?

12 A. Yes.

13 Q. If you look at the first paragraph of it,
14 it's titled What To Do With Your Old Electronics.
15 This is a consumer resource.

16 A. Right.

17 Q. Third sentence: Home electronics are
18 exempt from the ban -- the ban we just talked about
19 -- and can be disposed of with regular household
20 refuse or bulky collection, but you are encouraged
21 to consider the recycling option presented below.
22 Do you see that?

23 A. Yes.

24 Q. If we look then down at paragraph three,
25 that's the -- locally, the Hawaii Electronic Waste

1 and Television Recycling and Recovery Law was
2 adopted by the State of Hawaii -- the Hawaii State
3 Legislature in 2008. Do you see that?

4 A. Yes.

5 Q. That's the state law we talked about;
6 right?

7 A. Yes.

8 Q. And then if we look at the next paragraph,
9 it says: On Oahu e-waste was banned from disposal
10 as of July 2006. Do you see that?

11 A. Yes.

12 Q. So the rest of this consumer resource
13 provides options for consumers to dispose of
14 e-waste; right?

15 A. Yes.

16 Q. One option is to donate the e-waste;
17 right?

18 A. Correct.

19 Q. Another option, on the second page, is
20 free drop-off. Do you see that?

21 A. Yes.

22 Q. And then below that are listed a number of
23 businesses that will take your e-waste; right?

24 A. That's correct.

25 Q. And then below that, it says free drop-off

1 events. Do you see that?

2 A. Yes.

3 Q. So there are -- businesses hold events or
4 the City holds events to collect e-waste; right?

5 A. That's correct.

6 Q. That's waste that's then diverted from the
7 landfill?

8 A. Yes.

9 Q. So with these programs in place, it's not
10 quite right to say that individuals currently
11 disposing of e-waste with the City will no longer
12 have this option and will likely have to incur high
13 costs to return these devices to manufacturers, is
14 it?

15 A. Well, there's still --- it's mainly an
16 issue of convenience. Obviously, most consumers
17 don't want to drive down to a store to take their
18 old stuff. They prefer putting it at the curbside.
19 Unfortunately, that is just simply the nature of
20 what people do. There is some inconvenience in the
21 current collection system. There are individual
22 collections run by recyclers. But again, much of it
23 is driven by the manufacturers who take back these
24 products and provide an incentive or a cost to --
25 once we collect the material, to get it to market

1 where it can be recycled, say, on the west coast.

2 So the current law is not very effective
3 at this point in time, and in this year's
4 legislature we have a proposal to try to make it
5 more convenient to have greater presence by
6 manufacturers to have local collections, rather than
7 a case like Dell, who simply requires you to mail
8 back things to them, which requires you to go and
9 get a box, get a mailing slip, pack it up and then
10 take it to a shipper, which makes it even more
11 inconvenient. More people are reticent to do that.

12 That's one of the problems with the
13 current e-waste, is we need to have a greater
14 presence of the manufacturers to take back these
15 materials at a level where it's not going to incur
16 costs. Right now, manufacturers or -- recyclers who
17 take it back could charge you for that material.

18 And there's a lot of material that you
19 would like to donate that local charities and groups
20 won't take it because they're too old. So a lot of
21 times a lot of stuff just sits in people's garages,
22 so --

23 Q. To make sure I understand completely --
24 the consumers have other options other than
25 disposing of it in the landfill now. Some of them

1 are not as convenient --

2 A. That's correct.

3 Q. -- for the consumer; right?

4 A. That's correct.

5 Q. But the Department of Health is working on
6 improving the law so that it's even more convenient
7 for consumers?

8 A. That's our goal.

9 Q. So if we could just look, then, just at
10 one of the free drop-off items, just to identify it
11 -- it's on page two. It's Intrade Corporation,
12 which I think is one of the ones you mentioned. It
13 reads under the Intrade Corporation item: Intrade
14 Corporation warehouse in Kalihi, bolded and
15 capitalized, free pick-up or drop-off of unlimited
16 small consumer, government or commercial e-waste and
17 accessories, functional or not.

18 Do you see that?

19 A. Yes.

20 Q. Then there's a whole list of the things
21 that includes; right?

22 A. Uh-huh.

23 Q. Hang onto that for a second. Mr. Chang,
24 I've handed you another document. The top of it is
25 titled Hawaii Electronic Waste and Television

1 Recycling and Recovery Law. Do you see that?

2 A. Yes.

3 Q. This is put out by your branch; right?

4 A. That's correct.

5 Q. So this is another consumer resource on
6 recycling of e-waste; right?

7 A. Yes.

8 MR. CHIPCHASE: Chair, I'd like to move
9 the two documents that we've identified, first the
10 printout from the ENV website into evidence as K-166
11 and then the material from the State of Hawaii
12 Department of Health as K-167.

13 CHAIRWOMAN PINGREE: Thank you.

14 BY MR. CHIPCHASE:

15 Q. Mr. Chang, I'd like to now --

16 MR. CHIPCHASE: Do you need a break?

17 THE WITNESS: No. I'm fine. She probably
18 needs a break.

19 CHAIRWOMAN PINGREE: We'll take a break
20 momentarily.

21 BY MR. CHIPCHASE:

22 Q. Mr. Chang, I'd like to take another look
23 at your declaration. This time I'd like to look at
24 paragraph ten. In paragraph ten you identify sewage
25 sludge as waste that cannot be burned, recycled,

1 reused or shipped. Do you see that?

2 A. Yes.

3 Q. This inaugural facility at Sand Island
4 currently recycles up to about 20,000 tons of sewage
5 sludge; right?

6 A. You mean the -- I'm trying to think of the
7 name of the treatment system. But they convert it
8 into pellets.

9 Q. So that's one recycling option that's
10 already under way, right, for sewage sludge?

11 A. Yes.

12 Q. And then you know about the new in-vessel
13 containment facility that's going to open or
14 scheduled to open in 2013; right?

15 A. Which is up in Wahiawa, I believe.

16 Q. I think that's right.

17 A. Yeah. We've had discussions with the
18 company that's proposing that project.

19 Q. Are you aware that this new facility will
20 be able to take up to 150,000 tons annually of
21 sewage sludge, green waste and food waste?

22 A. That's their plan.

23 Q. Mr. Chang, I've handed you a copy of a
24 document titled Final Environmental Impact Statement
25 In-vessel Composting Facility, and it's dated

1 September 2011. Do you see that?

2 A. Yes.

3 Q. It's an excerpt from that document. I'd
4 like you to turn to what we have as the third page.
5 It's page 6-1. Look at section 6.1.2. Do you see
6 that?

7 A. Yes.

8 Q. So in that opening sentence of this final
9 Environmental Impact Statement, the statement
10 identifies the composting of up to 150,000 tons per
11 year of green waste, food waste and sewage sludge
12 that we talked about. Do you see that?

13 A. Yes.

14 Q. Then down there, second sentence from the
15 end of that same paragraph: Without this composting
16 facility, approximately 5,000 to 10,000 tons per
17 year of food waste and 15,000 to 20,000 tons per
18 year of sewage sludge would continue to be placed in
19 Oahu's only landfill with no other alternatives.

20 Do you see that?

21 A. Yes.

22 Q. With this facility on line, another 15 to
23 20,000 tons of sewage sludge recycled; right?
24 That's the plan?

25 A. That's correct.

1 Q. Are you aware that sewage sludge can, in
2 fact, be burned?

3 A. I think some components of it can be.

4 Q. Well, in fact, burning sewage sludge is an
5 established technology, isn't it?

6 A. You're talking about -- there are
7 different types of sludge that you collect from
8 treatment plants and certain things are handled one
9 way -- the majority of the organic material, if
10 dried properly, can be burned.

11 Q. In fact, other municipalities do burn
12 sewage sludge?

13 A. That's correct, yeah.

14 Q. Focusing on the same paragraph of your
15 declaration, you identify potential contingencies
16 that may require a landfill, such as H-POWER's
17 planned maintenance shutdowns or emergencies. Do
18 you see that?

19 A. Yes.

20 Q. To address emergencies, we could have a
21 landfill that's permitted to accept municipal solid
22 waste only in the case of declared emergencies;
23 right?

24 A. Yes.

25 Q. In fact, Waimanalo Gulch itself is

1 required to have a backup plan for the disposal of
2 waste in the event of emergencies; right?

3 A. Correct.

4 Q. And the same things with planned
5 shutdowns; if we have scheduled shutdowns or even
6 unexpected shutdowns of H-POWER, we could have a
7 landfill permitted to accept municipal solid waste
8 in those events; right?

9 A. Yes.

10 MR. CHIPCHASE: Chair, I was just
11 reminded, and he's quite right, that I need to move
12 into evidence as K-168 the excerpt from the
13 in-vessel composting facility final Environmental
14 Impact Statement.

15 CHAIRWOMAN PINGREE: That's fine.

16 MR. CHIPCHASE: Thank you.

17 BY MR. CHIPCHASE:

18 Q. Mr. Chang, I'd like to hand you Exhibit
19 A-4. Mr. Chang, A-4 is a letter from the state
20 Department of Health dated June 4, 2010 to the
21 Department of Environmental Services and Waste
22 Management of Hawaii, the subject of which is Solid
23 Waste Management Permit No. LF-0182-09.

24 Do you see that?

25 A. Yes.

1 Q. This is the current permit for the
2 landfill?

3 A. Correct.

4 Q. If you would turn to page 13 of the permit
5 and look down at item 14 for me -- it's entitled
6 Alternate Waste Disposal Option. Do you see that?

7 A. Yes.

8 Q. This is the part that requires Waimanalo
9 Gulch Sanitary Landfill, the operator and the owner,
10 to have a backup plan, a viable alternative to
11 disposal at the landfill in the event of emergency,
12 earthquake or other event that may preclude the
13 acceptance and disposal of waste at the landfill;
14 right?

15 A. Yes.

16 Q. Then if you would look just two pages
17 earlier, at page 11, item 13, titled Emergency
18 Action Plan -- do you see that?

19 A. Yes.

20 Q. This is another requirement of the permit;
21 right?

22 A. Uh-huh.

23 Q. I'm sorry. You have to --

24 A. Yes. Yes.

25 Q. If we look down at item B under 13, The

1 permittees shall implement emergency action plans
2 for at least the following situations. Item two of
3 that is severe storm, paren, two-year 24-hour storm
4 or greater or continued significant rainy condition
5 duration over 14 days. Do you see that?

6 A. Yes.

7 Q. That's a requirement of the permit?

8 A. Yes.

9 Q. Did the permittees implement this
10 emergency plan during the rainy conditions in
11 December 2010 and January 2011?

12 A. I would have to go back to see what they
13 submitted as their plan. I don't have their
14 emergency action plan in front of me, so I'd have to
15 take a look and see if they complied to all those
16 things.

17 Q. So sitting here today, you don't know
18 whether they did?

19 A. Things were happening very fast, so it was
20 -- I would have to go back and review it to make
21 sure.

22 Q. I just want to understand what your
23 understanding today is. Sitting here today, you
24 don't know whether they complied or not?

25 A. Well, they took actions necessary to try

1 to remedy the flooding that occurred in what's
2 referred to as the E6 cell, and again, because of
3 the multiple storm events, a lot of options that
4 would have been available failed. They were
5 directed by the Department of Health and the
6 emergency on-scene coordinator to do things to
7 remedy situations and not exacerbate things more
8 than they already were. So I think they attempted
9 to comply with Department of Health guidance.

10 MR. CHIPCHASE: Your witness.

11 CHAIRWOMAN PINGREE: I think it's a good
12 time for us to take a short break. Why don't we
13 take a ten-minute break and resume at 3:00?

14 (Discussion off the record.)

15 (Break taken.)

16 CHAIRWOMAN PINGREE: Back on the record.
17 The witness is sworn in. You may continue.

18 MS. VIOLA: Thank you.

19

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

21 BY MS. VIOLA:

22 Q. Mr. Chang, when you referred to other
23 landfills in the state, are there any other
24 landfills that can accept MSW on the island of Oahu?

25 A. The Kaneohe Marine Corps Air Station

1 landfill accepts waste from the naval facility there
2 and that's comprised of solid -- municipal solid
3 waste from their operation.

4 Q. Only their operation?

5 A. That's correct.

6 Q. So for the rest of the island and everyone
7 who is not at Kaneohe Marine Corps Air Base, what is
8 the only landfill option available?

9 A. It's Waimanalo Gulch.

10 Q. You were asked a number of questions
11 regarding prior enforcement actions dating back to
12 2006. Did the Department of Environmental Services
13 and/or Waste Management contest any of the
14 violations that were alleged in these numerous --
15 excuse me -- in these violations?

16 A. The only two I can speak of directly would
17 be the two solid waste enforcement cases and they
18 were contested by Waste Management.

19 Q. Were these particular enforcement actions
20 that you were involved in, were they resolved to
21 your satisfaction?

22 A. They were resolved.

23 Q. And do you have any remaining concerns
24 regarding leachate violations at Waimanalo Gulch
25 Sanitary Landfill?

1 A. We always continue to monitor. That is --
2 really, the main thing is maintaining surveillance
3 and making sure that we're getting up-to-date
4 information. So at this point in time, the landfill
5 has been very good in providing us that data.

6 Q. Do you have any remaining concerns
7 regarding the use of daily cover?

8 A. The -- Waste Management has applied for
9 and received approval to use alternative daily
10 cover, which is using tarps, and that seems to be an
11 effective method, so that in conjunction with soil
12 seems to be satisfactory right now.

13 Q. And regarding the reporting requirements?

14 A. Yeah. There are a host of reporting
15 requirements that they're required to do and we are
16 trying to do a better job making sure that we stay
17 on top of it, making sure that we're getting all the
18 information as required.

19 Q. Do you feel that Waste Management is
20 compliant with the reporting requirements?

21 A. Yes.

22 Q. Regarding the construction of the berms
23 that was discussed in the -- I believe 2010
24 violation, do you have any concerns regarding the
25 berm?

1 A. No. Waste Management provided additional
2 detailed analysis of the berm and demonstrated that
3 it satisfactorily met the requirements of design.

4 Q. So from the Solid and Hazardous Waste
5 Branch, are there any current enforcement actions
6 against Waimanalo Gulch Sanitary Landfill?

7 A. There are no current enforcement actions.

8 Q. So would you say that your department of
9 Solid and Hazardous Waste Branch is satisfied with
10 the operations at Waimanalo Gulch Sanitary Landfill
11 at the present?

12 A. Yes, we are.

13 Q. As of July 31st, 2012, are there going to
14 be disposal options to take care of, for example, in
15 particular, sewage sludge?

16 A. We had asked that question back in October
17 of last year, in anticipation that -- you know, we
18 treated it as though that if that condition were not
19 removed, we as a department want to know what the
20 City was planning to do. So we asked questions
21 specifically to that and we got a response in
22 October or November, and it was revised most
23 recently on January the 9th of this year. I have a
24 document from, I believe, Tim Steinberger, and he
25 addresses those issues, and the items that he

1 indicated there are dependent on having the third
2 boiler in operation to be mattresses, sewage sludge,
3 grit, large branches and trunks and TVs. Those are
4 items that are contingent on having the third boiler
5 in place.

6 Q. So as of July 31st, 2012, will the third
7 boiler be in place to take care of these waste
8 streams?

9 A. Based on discussions with the City, they
10 will not be.

11 Q. So as of July 31st, 2012, there are waste
12 streams that currently have to be disposed of at
13 Waimanalo Gulch Sanitary Landfill and cannot
14 otherwise be disposed of?

15 A. On-island disposal is limited to the
16 landfill. There could be possibilities where they
17 look for off-island disposal options, but I don't
18 think there's been pursuit on that.

19 Q. So as of July 31st, 2012, as stated in
20 your testimony, will there be waste streams that
21 cannot be disposed of other than at the landfill?

22 A. Yeah. I believe there will be waste
23 streams that won't be able to be handled.

24 Q. But even if there is substantial diversion
25 like you were discussing with counsel, do you still

1 feel that there's a need for a landfill?

2 A. Yes.

3 Q. Why?

4 A. If we just look back at last week when we
5 had a mechanical, electrical problem at the
6 landfill, they shut down the landfill, and we had
7 almost like a perfect storm where H-POWER had an
8 unplanned shutdown of one of their boilers and the
9 day that the power outage occurred, the second
10 boiler went down, so they were basically shut down.
11 Commercial haulers had -- they were stuck with the
12 trash that was in their vehicles. They had no place
13 to go. There's some emergency contingencies to try
14 to make space for it. But again, most people just
15 said they couldn't take anything anywhere.

16 Q. So to summarize, you feel there's a need
17 for a landfill for what purpose?

18 A. For emergencies, for natural disasters --
19 I mean, if that occurs -- in many cases if it simply
20 exceeds our capacity for solid waste management.

21 Q. You were asked questions regarding the
22 solid waste permit condition number 14, which talks
23 about a backup for the landfill.

24 Do you feel that Waste Management is
25 compliant with this condition?

1 A. Back in 2008, they did submit a plan to us
2 and in their most recent annual reporting, they
3 indicated there were no changes to that submission
4 from the City and County.

5 Q. So do you feel that Waste Management is
6 compliant with that condition?

7 A. They met the requirement saying that the
8 plan still is in play.

9 Q. You stated that -- and please correct me
10 if I'm misstating this -- that the Solid and
11 Hazardous Waste Branch felt that Waste Management
12 had a satisfactory response to the storms in
13 December 2010 and January 2011. Is that what I
14 heard?

15 A. Yes. I mean, there were many things
16 happening, and, you know, working with on-scene
17 coordinators and with Waste Management, the City,
18 the whole objective was to reduce the impact to the
19 community and try to be able to come up with plans
20 that could bring the landfill back into operation as
21 quickly as possible, bring them back into
22 compliance.

23 Q. So did you do an enforcement action based
24 on Waste Management's responses to the storms?

25 A. The solid waste programs did not seek

1 enforcement actions based on the storm events in
2 December and January -- December 2010 and January
3 2011.

4 Q. In giving your testimony as you have
5 through direct and cross-examination, would you
6 change anything in your testimony?

7 A. No.

8 Q. So your statement that you feel that
9 presently there is a need for a landfill because
10 there are certain wastes that cannot currently be
11 disposed of other than at the landfill, that's an
12 accurate statement?

13 A. That's correct.

14 Q. And that you are concerned that the
15 imposition of the July 31st, 2012 deadline at a
16 point in time when there's no disposal options for
17 certain waste types may threaten human health and
18 the environment, that's an accurate statement?

19 A. There is a high probability that that
20 could occur.

21 MS. VIOLA: Thank you. Nothing further.

22 MR. SANDISON: I have no cross.

23 CHAIRWOMAN PINGREE: No cross?

24 MR. CHIPCHASE: I just have a couple of
25 follow-up questions, Mr. Chang.

1 THE WITNESS: Okay.

2

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

4 BY MR. CHIPCHASE:

5 Q. Going back to the beginning, you've been
6 the chief of the Solid and Hazardous Waste Branch
7 for 18 years; right?

8 A. Yes.

9 Q. And has Waimanalo Gulch been around that
10 entire 18 years?

11 A. Yes.

12 Q. So the Solid and Hazardous Waste Branch
13 for that whole 18 years has been responsible for
14 ensuring regulatory compliance; right?

15 A. Yes. That's correct.

16 Q. The compliance to protect human health and
17 the environment; right?

18 A. Yes.

19 Q. So during that entire time, there have
20 also been reporting requirements from -- or by the
21 operator of the Waimanalo Gulch, Waste Management of
22 Hawaii; right?

23 A. Yes.

24 Q. So despite the monitoring and despite the
25 reporting requirements, the violations that we

1 reviewed still happened, didn't they?

2 A. Yes.

3 Q. You talked a little bit, I think -- and I
4 wasn't completely clear about the perfect storm that
5 happened last week, where I guess H-POWER had a
6 shutdown on an unscheduled basis and there was a
7 power outage at the landfill, as well.

8 A. Well, the -- two of the four high voltage
9 lines that traverse the landfill fell, blocking
10 access to the working faces at the landfill, so no
11 trucks could get to the working face to drop off any
12 waste.

13 Q. I see. So I think you said that the
14 commercial haulers had no place to go.

15 A. We were getting calls because H-POWER shut
16 down. They couldn't go to the landfill. The City
17 has another facility, called Hawaiian Waste, where
18 they could possibly take material and it could be
19 shredded and it could be wrapped and held for a
20 certain period of time. But they also had -- their
21 shredder was down, so basically there were no
22 options.

23 Q. So isn't this the kind of contingency that
24 the backup plan required by the permit is designed
25 to address?

1 A. In the backup plan they mentioned in 2008,
2 one of it was the Hawaiian Waste option, which
3 unfortunately was not available that day.

4 Q. I see. So the backup plan that they have
5 in place proved ineffective on that day?

6 A. Well, it was not available.

7 Q. And then the last thing I think you
8 touched on -- or one of last things you touched on
9 was the storm events in 2010 and 2011; right?

10 A. Yes.

11 Q. We looked at that EPA order, and just to
12 confirm my recollection of it, the EPA found a
13 violation of the Clean Water Act; right?

14 A. I believe that was in conjunction with our
15 Clean Water Branch. It is a water pollution
16 violation, so we were not involved directly with
17 that, other than any information was related to
18 landfill operation.

19 Q. I see. I understand. So the solid waste
20 branch wasn't involved in that part of it, but the
21 Clean Water Branch was?

22 A. That's correct.

23 Q. -- of the same Department of Health?

24 A. Yes.

25 MR. CHIPCHASE: No further questions.

1 MS. VIOLA: Nothing further.

2 MR. SANDISON: Nothing further.

3 CHAIRWOMAN PINGREE: Thank you very much.

4 Commissioners, any questions?

5 MR. PACOPAC: I have a question.

6

7

E X A M I N A T I O N

8 BY MR. PACOPAC:

9 Q. In your testimony talking about boiler
10 number three, counsel asked whether you'd be ready
11 to take the sewage sludge, and evidently the City
12 said no. When will it be ready?

13 A. I think I've heard late 2012 or early
14 2013.

15 Q. Just about six months too late, huh. One
16 more question. On that storm of 2012 -- the 2010
17 and 2011 storms, the emergency plan -- I know you
18 guys said that you guys stepped in and helped them
19 correct everything, right, the Department of Health,
20 helped them to fix whatever the problems were. But
21 they had an emergency plan in place. Was the
22 emergency plan effective or did they implement the
23 plan and was it effective?

24 A. Well --

25 Q. Or you just came in and said, You need to

1 do this, so it never went --

2 A. In designing, you know, you have the
3 properties above the landfill that are not owned by
4 the City and County, right, and there was supposed
5 to be a design that basically put a diversion
6 channel where the water would be intercepted so it
7 wouldn't come onto landfill property.
8 Unfortunately, that was not yet completed, all
9 right, and they had designed an inlet above the
10 working face, the E6 cell where they were placing
11 trash, and they had a berm put up and they had a
12 huge 36-inch pipe, with the idea that any rain that
13 would fall on the property, landfill property, would
14 be diverted into that pipe and go under the cell and
15 then go into the drainage canal or the drainage
16 ditch.

17 But in the course of the storm, boulders
18 and stuff that came from the -- I believe from the
19 mauka properties, blocked that inlet, and so -- you
20 know, the storms were very short intensity, occurred
21 over like next morning -- had over-topped the berms,
22 had entered into the E6 cells. There was -- we see
23 evidence of maybe 20 feet of water sitting in the
24 cell, and so they went in and removed the boulders
25 and opened the entrance to the channel. And then

1 within about a week there was another storm event
2 and the same thing happened, material kept coming
3 down.

4 So, you know, there was a plan to handle
5 the storm water on site, all right, but it was --
6 the 36-inch pipe was not intended to handle all of
7 the water that may have come down from the upper
8 lands, the mauka properties.

9 Q. Then, like you said, the diversion wasn't
10 completed yet?

11 A. That's correct.

12 MR. PACOPAC: That's all I have. Thank
13 you.

14 CHAIRWOMAN PINGREE: Any other questions
15 for this witness?

16 Thank you very much.

17 MS. VIOLA: At this time, the Department
18 of Environmental Services rests, but we reserve the
19 opportunity to call other witnesses in response to
20 testimony from --

21 CHAIRWOMAN PINGREE: I'm sorry. I didn't
22 hear that --

23 MS. VIOLA: At this point, the ENV rests,
24 but we reserve the opportunity to call rebuttal
25 witnesses in response to testimony presented by KOCA

1 and Shimabukuro.

2 CHAIRWOMAN PINGREE: That's fine.

3 MR. SANDISON: At this time, Schnitzer
4 will proceed with its case and we'd like to call
5 Larry Snodgrass to begin his testimony.

6 CHAIRWOMAN PINGREE: Thank you.

7 Mr. Snodgrass, before we proceed, would you raise
8 your hand?

9

10 LARRY SNODGRASS,
11 called as a witness, being first duly sworn to tell
12 the truth, the whole truth and nothing but the
13 truth, was examined and deposed as follows:

14

15 CHAIRWOMAN PINGREE: Please proceed.

16 MR. SANDISON: Mr. Snodgrass, would you
17 begin by summarizing your written direct testimony,
18 please?

19 MR. SNODGRASS: Well, of course, you know
20 my name is Larry Snodgrass. I work for Schnitzer
21 Steel in Kapolei, and I'm the general manager there;
22 I have been since December of 2010. Prior to that,
23 I was with Schnitzer for 28 years in Portland,
24 Oregon. And I've had a number of positions there
25 from maintenance superintendent to plant manager.

1 We have been -- I say "we," Schnitzer and its
2 predecessors -- have been in business, as everybody
3 knows, since 1949 on Oahu processing scrap metal and
4 generally exporting it.

5 We've probably processed more scrap metal
6 than any other company on the island. We deal with
7 products at their end of life, from automobiles to
8 washers, dryers, refrigerators, freezers, all types
9 of appliances, demolition debris, and another thing
10 that we deal with is all of the curbside recycling
11 that happens to be metal pieces. We don't actually
12 pick that up, but our customers pick it up and they
13 sell it to us after they have removed the Freon and
14 that type of thing out of the refrigeration units.

15 On average, we recycle about 800 tons of
16 scrap metal a day, and that would be 450 to 480
17 automobiles and another 320 or so in appliances,
18 tin, demolition debris. All of that goes through
19 our shredder. We have a 4,000 horsepower shredder
20 that reduces a full-size automobile to fist size
21 pieces in 30 seconds.

22 So it's a really valuable service that we
23 supply to the island. In addition to trying to make
24 a profit at it, as every business has to do, we have
25 to -- we have to be very careful with our solid

1 waste management permit. We are fairly scrutinized
2 on how we do our business.

3 And on an annual basis, we process about
4 120,000 tons of scrap. And if you were -- 120,000
5 tons of scrap is just -- you know, it's a pile to
6 most people. If you were to pile it up, it would be
7 50 feet wide, 40 feet high, and one and a quarter
8 miles long. That's how much comes off of everything
9 at end of life in Hawaii, mostly Oahu in a year.
10 We've been doing that, Schnitzer has, in partnership
11 with HMR -- we've been doing that for over ten
12 years, and so we've processed probably 1.2 million
13 tons. That is a lot of scrap metal.

14 A person wonders how can you possibly
15 generate that much and just keep doing it. I've
16 wondered that myself for years. When we built our
17 first shredder in Portland, I didn't think it was a
18 good investment, because I thought, Gee, how could
19 you possibly get that many automobiles and
20 appliances. Well, today they have a mega-shredder
21 there that will produce 220 tons an hour. The scrap
22 metal business really doesn't seem to slow down,
23 even though you would think that you would run out
24 at some point.

25 You know, we generate about 20 percent

1 waste, residual waste off of all the scrap metals
2 that we produce through the shredder. All 120,000
3 tons is not all shredder scrap metal, but a good
4 portion of it is, the biggest portion of it is. We
5 generate about 20,000 tons a year of what we call
6 shredder residue, and on the mainland, all of our
7 facilities on the mainland, it's classified as
8 alternate daily cover for the landfills. They use
9 it to fill over the garbage, to layer over the
10 garbage, put the garbage down, compact it, layer it
11 over with what they call ADC. We don't do that,
12 though.

13 But we have to have someplace to dispose
14 of it. We can't -- we realistically can't ship it
15 off the island. It's just too expensive. We really
16 need to have a sanitary landfill, and the DOH, in
17 our solid waste management permit stipulates that
18 the only place that we can dispose of it on the
19 island is a sanitary landfill. There happens to be
20 only the one, Waimanalo Gulch. So if it goes away
21 and we don't have access to it, what do we do with
22 it?

23 The waste itself is composed of mostly
24 plastics, glass, carpeting, insulation, and it's
25 ground to a very fine texture. We truck every

1 single day. We never have days that we don't carry
2 it out. Because we have -- under our solid waste
3 management permit, it also tells us how much we can
4 store on site. And when you shred 800 tons a day,
5 you generate 20 percent of that in shredder residue.
6 So, you know, it's a pretty easy math thing. That's
7 about 200 tons that we generate every day that
8 really needs to go somewhere. We can't take it to a
9 construction debris landfill. The solid waste
10 management permit clearly states that it has to be a
11 sanitary landfill. So we don't really have a lot of
12 choices.

13 What we do on a regular basis is we
14 process material that would otherwise be dumped,
15 laying around the island. If people don't have
16 someplace and businesses don't have someplace to
17 take the appliances, the automobiles, and if they
18 have to -- if in order for us to take these things,
19 they had to take everything out of the insides --

20 And the difference between really a car
21 that comes from like Discount Auto Parts is they
22 strip everything out of them. They sell a lot of
23 products. There's not that much of a demand for
24 that type of business here like there is on the
25 mainland. The demand isn't that high. And we do

1 have one customer that's called Discount Auto Parts.
2 Their cars that come in, there's nothing left to
3 them but the steel shell. There's no motors, which
4 doesn't matter. There's no carpeting. There's no
5 seats.

6 And if all of our customers were required
7 to do that to their automobiles before they could
8 dispose of them or sell them so that we wouldn't
9 have to -- so we wouldn't have the shredder residue
10 to deal with, what would happen to all those other
11 pieces that come off of the cars; the windshields,
12 the seats, the upholstery, the dash, the carpets,
13 the headliners? There's a lot of stuff that comes
14 off of the cars that we grind up very small and we
15 call it shredder residue. It goes directly to the
16 landfill.

17 We are required to annually test our
18 shredder residue for the landfill so that we can
19 continue to haul it up there. The landfill closure
20 in 2011, January and February, when we had the five
21 and a half inches of rain, six inches of rain and
22 then the ten or 11 inches of rain was devastating to
23 us. We had to stop buying so much scrap. We had to
24 curtail our operations to the point where we didn't
25 generate so much shredder residue because we

1 couldn't take it to the landfill. The landfill was
2 closed. And so we had to make arrangements and
3 write letters to the DOH explaining our situation,
4 and discuss it with them and we were allowed to keep
5 a little bit more on site until the landfill could
6 start taking it again.

7 But it truly -- without a place to dispose
8 of this and a place that is economical, it's going
9 to make business very difficult. If the July 31st,
10 2012 deadline is not changed, it will have a
11 devastating effect on us and a lot of our businesses
12 that -- our customers that we buy from, because they
13 will not have the same resources to buy their
14 products, sell their products, and I really don't
15 know -- I have no idea what the company will do at
16 that point.

17 MR. SANDISON: Does that conclude your
18 summary?

19 MR. SNODGRASS: Yes, it does.

20

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

22 BY MR. GOODIN:

23 Q. Good afternoon, Mr. Snodgrass. My name is
24 Christopher Goodin and I represent Ko Olina
25 Community Association and Senator Maile Shimabukuro.

1 I have a few questions for you.

2 Would allowing shredder waste at the
3 landfill -- would that take care of your concern,
4 if, say, the Special Use Permit were amended to
5 specifically allow automotive shredder waste?

6 A. It would take care of my concern in the
7 short term.

8 Q. Okay. How would it not take care of your
9 concern in the long term?

10 A. Things seem to change quite rapidly. The
11 July 31st deadline came up not very long ago as far
12 as the landfill closure. But yes, we need to have
13 someplace that we can dispose of our shredder
14 residue.

15 Q. Also, if you were able to burn your
16 automotive shredder waste, that would also take care
17 of Schnitzer's concerns; right?

18 A. I don't believe we are able to at this
19 time.

20 Q. If it were, it would take care of your
21 concerns; is that right?

22 A. If it wasn't extraordinarily expensive,
23 yes.

24 Q. Could your solid waste management permit
25 be amended so that you'd be able to dispose of

1 automotive shredder waste at, say, a construction
2 and debris landfill?

3 A. I couldn't tell you whether or not it
4 could be amended to dispose of it in that manner.

5 Q. Have you ever inquired?

6 A. The company has inquired into a number of
7 disposal options, with none of them being available.
8 And one of them was the C and D landfill, yes.

9 Q. I'd like to give you a copy of your
10 written direct testimony filed December 13, 2011.

11 MR. GOODIN: Do all the commissioners have
12 a copy of Mr. Snodgrass's testimony?

13 CHAIRWOMAN PINGREE: Not with us.

14 MR. GOODIN: I'll give you a copy. Just
15 give me a second here.

16 CHAIRWOMAN PINGREE: Thank you very much.

17 MR. GOODIN: You're welcome.

18 BY MR. GOODIN:

19 Q. Could you please turn to the last page of
20 your written direct testimony? Your written direct
21 testimony isn't signed, is it?

22 A. This -- this is the testimony I signed, I
23 believe.

24 Q. You signed this testimony? Could you
25 please show me where you signed it?

1 A. Well, I thought that I signed the
2 testimony; put it that way.

3 Q. Could you please turn to page five? The
4 bottom paragraph, the first sentence reads: If WGSL
5 is limited to ash and residue from H-POWER after
6 July 31st, 2012, Schnitzer will have no other place
7 to dispose of its recycling waste.

8 That's what it says; right?

9 A. Yeah.

10 Q. Isn't Schnitzer allowed to ship the
11 recycling waste off-island under its solid waste
12 management permit?

13 A. It is allowed.

14 Q. Thank you. What's a tipping fee, in the
15 context of the landfill?

16 A. What exactly are you looking for; the
17 dollar amount?

18 Q. First, what is a tipping fee, if you could
19 just tell me what it is generally?

20 A. The tipping fee is \$81 a month, I believe,
21 and we pay 50 percent.

22 Q. So it's 81 --

23 A. \$82 a month, and we pay 50 percent.

24 Q. You pay fifty percent. Okay. So that's
25 what you pay -- is it per ton?

1 A. Per ton.

2 Q. Per ton, okay, to dispose at the landfill.
3 And you receive currently a fifty percent
4 discount --

5 A. That's correct.

6 Q. -- on the tipping fee?

7 So has Schnitzer been receiving this
8 discount for more than a decade?

9 A. I can't tell you for sure whether or not
10 they have. I've only been here for just a little
11 over a year. I don't know when it started.

12 Q. Are you aware that Schnitzer has saved
13 millions of dollars based on the tipping fee
14 discount?

15 A. I'm aware of how much money we save today,
16 yes, 50 percent.

17 Q. If I could, I'd like to show you a Star
18 Advertiser article. So if you could look at the
19 third paragraph, the last sentence, it reads: Since
20 1998, Schnitzer has received about 19 million in
21 discounts, including --

22 MR. SANDISON: I'd like to object. This
23 is beyond the scope of the direct testimony.

24 MR. GOODIN: This is cross-examination.

25 MR. SANDISON: It's beyond the scope of

1 the direct testimony.

2 MR. CHIPCHASE: I'm sorry, Chair. We've
3 allowed all kinds of testimony beyond the scope of
4 cross for all the other witnesses. This is a
5 Planning Commission hearing. This is a witness that
6 was called to present testimony here. This is
7 relevant not only to the commission proceeding, but
8 to his bias.

9 CHAIRWOMAN PINGREE: Okay. Proceed.

10 MR. GOODIN: Thank you.

11 BY MR. GOODIN:

12 Q. Let me back up for a second. This article
13 is titled Council Ends Discounted Tipping Fees for
14 Recycling. It's a Star Advertiser article posted on
15 May 11, 2011.

16 Now, looking to the third paragraph, the
17 last sentence, it reads: Since 1998, Schnitzer has
18 received about 19 million in discounts, including
19 1.9 million last year.

20 Do you see that?

21 A. Yes, I do.

22 Q. One more thing -- now, looking at the
23 second paragraph, it states that the 80 percent
24 discount on tipping fees charged by the City when
25 companies deliver recycling residue to the Waimanalo

1 Gulch landfill cost the City about two million last
2 year. Do you see that?

3 A. Uh-huh.

4 Q. So 1.9 million of the two million dollar
5 discount went to Schnitzer for -- I guess this is
6 referring to 2010. Is that right?

7 A. Actually, it went to Schnitzer because of
8 the hundred percent that could go to the landfill.
9 20 percent went to the landfill, because we recycled
10 the other 80.

11 Q. But under this, Schnitzer is the primary
12 beneficiary of the tipping discount; is that
13 correct?

14 A. I guess it's correct.

15 MR. GOODIN: Thank you. No further
16 questions.

17 MR. SANDISON: A couple of questions on
18 redirect.

19

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

21 BY MR. SANDISON:

22 Q. You stated that Schnitzer would have no
23 other option -- let me read this.

24 Your direct testimony says: If the
25 Waimanalo Gulch solid waste landfill is limited to

1 ash and residue from H-POWER after July 31, 2012,
2 Schnitzer would have no other place to dispose of
3 its recycling waste.

4 Is it correct to say that it could not
5 economically dispose of its recycling waste anywhere
6 else?

7 A. Yes, it is.

8 Q. And is it also correct to say that the
9 only economical place to dispose of Schnitzer's
10 waste is on Oahu? Is that correct?

11 A. Yes.

12 Q. And is it also correct to say that by
13 economical, we mean it would cost more money to
14 dispose of the waste than could be generated and
15 that the operation would likely cease?

16 A. Yes.

17 MR. SANDISON: No further questions, sir.

18 CHAIRWOMAN PINGREE: Thank you.

19 MR. SANDISON: I have no further
20 questions.

21 MS. VIOLA: Nothing further.

22 MR. GOODIN: Chair, I'd like to move that
23 exhibit in as exhibit -- I believe we're at K-88 at
24 this point.

25 CHAIRWOMAN PINGREE: We're up there.

1 MR. GOODIN: K-169.

2 CHAIRWOMAN PINGREE: K-169?

3 MR. GOODIN: Yes.

4 CHAIRWOMAN PINGREE: Thank you, Mr.
5 Snodgrass.

6 Commissioners, do you have any questions
7 for Mr. Snodgrass?

8 (No response.)

9 CHAIRWOMAN PINGREE: Thank you.

10 MR. SNODGRASS: Thank you.

11 CHAIRWOMAN PINGREE: In the interest -- we
12 have 12 minutes left.

13 MR. CHIPCHASE: Chair, this is what I
14 propose, that we use the time to try to figure out
15 our schedule. I think it's safe to say that with
16 the one hearing date we have remaining scheduled on
17 the 8th, we won't be done.

18 But I guess before I jump into that, does
19 Schnitzer rest?

20 MR. SANDISON: Schnitzer rests.

21 MR. CHIPCHASE: Okay. So one hearing date
22 -- we have identified six witnesses and a number of
23 subpoenaed witnesses, plus one expert, and so I
24 think we could probably complete the case with the
25 8th and one full day.

1 CHAIRWOMAN PINGREE: One full thereafter?

2 MR. CHIPCHASE: It would have to be one
3 full thereafter.

4 CHAIRWOMAN PINGREE: What I do have,
5 Counsel, just so you know, is I have a confirmation
6 from a majority of the commissioners to -- of
7 course, you know we'll have it on the 8th, from 1:30
8 to 4:30. We also have the date of February 22nd and
9 March 7th. Those dates, unfortunately, are half
10 days again, which we know challenges our time, and
11 that's from 1:30 to 4:30 on both days.

12 MS. VIOLA: The City is intending to call
13 two rebuttal witnesses, so if Mr. Chipchase is
14 indicating that he needs an additional full day for
15 his witnesses, we have to ask for an additional half
16 day for our witnesses.

17 MR. CHIPCHASE: Well, I'll, of course,
18 object to that. If the City already knows it has
19 rebuttal witnesses before I've even presented my
20 testimony, they're not really rebuttal witnesses;
21 they're affirmative witnesses that should have been
22 called on direct. Rebuttal witnesses address and
23 rebut testimony offered and no testimony has been
24 offered by Ko Olina yet.

25 MS. VIOLA: As objected by Mr. Chipchase,

1 this is an administrative procedure. These are
2 rebuttal witnesses to what was brought up on direct
3 and on cross-examination, so we should have the
4 opportunity to call those witnesses.

5 CHAIRWOMAN PINGREE: I'm going to have to
6 confer with counsel.

7 (Discussion off the record.)

8 MR. CHIPCHASE: To make clear my position,
9 I would not object to the City re-opening -- at this
10 point calling the witnesses that it knows it already
11 has lined up before I present.

12 MS. VIOLA: Mr. Chipchase has already
13 presented direct testimony through written direct
14 testimony and we are presenting rebuttal witnesses
15 to his direct testimony, as well as to questions on
16 rebuttal on cross-examination.

17 If I could make one more comment -- in
18 terms of Mr. Chipchase's suggestion that we bring up
19 our rebuttal witnesses before his witnesses actually
20 testify, that would be inappropriate and essentially
21 unreasonable in the sense of the witnesses haven't
22 come forward to actually testify before the
23 commission yet.

24 MR. CHIPCHASE: Chair, here's the thing --
25 by doing it this way, we did not have the benefit of

1 the written direct testimony that we all agreed to
2 submit, and if it turns out to be the two witnesses
3 that were previously on the ENV's list, then I sort
4 of think we've been sandbagged here.

5 MS. VIOLA: These are not the two
6 witnesses that were on the witness list.

7 MR. CHIPCHASE: Even if that's not the
8 case, Chair, we haven't even presented the evidence
9 and we already know there are rebuttal witnesses.
10 They're really direct witnesses.

11 MS. VIOLA: Counsel is suggesting that
12 he's going to subpoena seven additional witnesses
13 for which we would not have the advantage of advance
14 written testimony, so we'd be put in the same
15 position.

16 CHAIRWOMAN PINGREE: We're going to allow
17 it for now. Thank you.

18 So what we've determined is, Mr.
19 Chipchase, you're going to need a full additional
20 day.

21 MR. CHIPCHASE: Yes, Chair.

22 CHAIRWOMAN PINGREE: And that would be --
23 the full additional day does not include February
24 8th; is that correct?

25 MR. CHIPCHASE: Yes, Chair.

1 CHAIRWOMAN PINGREE: So an additional date
2 after February 8th.

3 And ENV, you need another half day?

4 MS. VIOLA: At most. And I have a
5 conflict on February 22nd and will not be able to
6 attend on that day.

7 CHAIRWOMAN PINGREE: Conflict on February
8 22nd. What we will try to do as a commission is
9 find additional dates, as well. I can tell you that
10 we have February 8th confirmed from 1:30 to 4:30,
11 and of course since ENV is not available on February
12 22nd, the next confirmed date that I can tell you is
13 March 7th. But what I'd really like to do is get
14 something in between there. Otherwise, this is
15 going to go on too long. Okay? So we'll work
16 together as a commission --

17 MS. VIOLA: For the record, my co-counsel,
18 Mr. Black, will also not be available on the 22nd.

19 CHAIRWOMAN PINGREE: Thank you. So it
20 looks like the 22nd is not available. But certainly
21 we'll work between that period of time. It's just,
22 of course, a matter of coordination. I'll try and
23 get that out to you as soon as I can. I know, of
24 course, you have busy schedules.

25 MR. CHIPCHASE: Thank you, Chair.

1 CHAIRWOMAN PINGREE: What we'll try and do
2 is schedule something, with Jeanne's assistance, of
3 course, another full day.

4 Thank you very much. Any questions? If
5 there's no further questions, may I get a motion to
6 adjourn?

7 MR. PACOPAC: Move to adjourn.

8 MR. YOUNG: Second.

9 CHAIRWOMAN PINGREE: Thank you.

10 Adjourned.

11 (Hearing adjourned at 3:55 p.m.)

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C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, SUE M. FLINT, Notary Public, State of Hawaii, do hereby certify:

That on January 25th, 2012, at 1:30 p.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 92-page transcript of the contested case hearing in File No. 2008/SUP-2 dated January 25, 2012 was subscribed and sworn to before me this 5th day of February, 2012, in Honolulu, Hawaii.

Sue M. Flint

SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii
My Commission Exp: July 23, 2015

