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

In the Matter of the Application of
DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY
OF HONOLULU

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

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

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CONTESTED CASE HEARING

CHAIRWOMAN PINGREE: Good afternoon.

Today is January 25th, 2012 and it's day number three of the contested case hearing on the Ewa-
State Special Use Permit Amendment Application - 2008/SUP-2 Waimanalo Gulch Sanitary Landfill.

As I recall, we left off with ENV. ENV, do you have another witness to call or a ten-minute oral summary?

MS. VIOLA: Just a procedural note -- do you want to handle the subpoena that -- I'm not sure how you want to handle the subpoena.

MR. CHIPCHASE: For Waste Management?

CHAIRWOMAN PINGREE: The subpoena was just placed in front of us today, so I'm not quite sure if the commissioners had an opportunity to review it, so I would prefer not.

MS. VIOLA: Okay.

CHAIRWOMAN PINGREE: Thank you.

MR. CHIPCHASE: Chair, before we begin, this is Cal Chipchase and Christopher Goodin for the Ko Olina Community Association and Senator Shimabukuro and here with me today is Ken Williams for the association.
I did have one small procedural matter to take up before we start. At the last hearing, I had shown Mr. Steinberger an exhibit that we had marked for identification purposes as K-163. It was an excerpt from the October 2008 final Environmental Impact Statement for the landfill. I did not move it into evidence at that time because I did not have copies for counsel and all the commissioners. We've since filed that exhibit and circulated copies of it, and so at this time I would move K-163 into evidence.

CHAIRWOMAN PINGREE: That's fine.

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

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

MS. VIOLA: A-33.

MR. CHIPCHASE: No objection.

CHAIRWOMAN PINGREE: Thank you.

MS. VIOLA: ENV calls Steven Chang.

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

MR. CHIPCHASE: I have, Chair.
CHAIRWOMAN PINGREE: Thank you.

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

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

CHAIRWOMAN PINGREE: Thank you.

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

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

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

I'm a graduate of Purdue University with a bachelor of science degree in civil engineering and also a master's degree from the University of Hawaii in 1976. I have worked as a private engineering consultant with the company Sam O. Hirota in Honolulu. I've also worked with the Los Angeles County Sanitation District in Whittier, California, and prior to taking the branch chief position in
Solid Hazardous Waste, I worked in the Department of Health, Clean Water Branch, initially as an environmental engineer, and last, section supervisor of their permitting section. And since 1993, I've been with the Department of Health Solid and Hazardous Waste Branch.

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

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

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

As the chief of the solid waste branch, I am familiar with the Waimanalo Gulch Sanitary Landfill. Our branch is responsible for ensuring that the Waimanalo Gulch Sanitary Landfill complies
with all laws applicable to municipal solid waste
landfills so as to protect human health and the
environment.

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

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

Waimanalo Gulch Sanitary Landfill may
accept municipal solid waste and special waste. This is solid waste which because of its source or physical, chemical or biological characteristics require special consideration for proper processing or disposal or both.

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

If the landfill is required to cease accepting municipal solid waste on July 31st, 2012, the deadline imposed via the 2008/SUP-2, many of the wastes mentioned above that are traditionally disposed of at the landfill will have to be disposed of at H-POWER, the PVT landfill, recycled or transported off-island. In some instances, there
are no current options for on-island management.  
As an example, automotive shredder waste;  
while our branch does not preclude H-POWER from  
disposing of this waste, H-POWER has expressed  
reservations about processing this waste because it  
tends to burn at a very high temperature due to  
composition of waste, which would in turn cause  
problems for their equipment.  

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

Outdated food, contaminated products,  
pharmaceuticals, sterilized foreign waste, which is  
Waste from ships and -- foreign ships and airplanes  
-- and sterilized medical waste, except for medical  
sharps -- these waste streams can currently be  
disposed at H-POWER. However, medical and foreign  
Waste must be sterilized and the medical sharps must  
be removed and disposed of separately. H-POWER does  
not accept medical sharps due to concerns regarding  
worker safety at the facility. The sharps would  
have to be shipped away as special waste at
extremely high cost to generators.

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

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

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

Thank you.

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

MR. CHIPCHASE: No objection.
MS. VIOLA: No objection.

MR. SANDISON: No objection.

CHAIRWOMAN PINGREE: Thank you.

Would you kindly raise your right hand?

MR. CHANG: Okay.

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

MR. CHANG: I do.

CHAIRWOMAN PINGREE: Thank you.

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

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

MR. SANDISON: I'll go after you.

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

MR. SANDISON: I have no cross.

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

MR. SANDISON: Please proceed. I'd like
to reserve cross until after you're done.

MR. CHIPCHASE: Well, procedurally,

Schnitzer is the first intervenor and its order is
first, so --

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

CHAIRWOMAN PINGREE: Thank you.

EXAMINATION

BY MR. CHIPCHASE:

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

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

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

CHAIRWOMAN PINGREE: Yes.

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

CHAIRWOMAN PINGREE: Does anyone need an
extra copy?
BY MR. CHIPCHASE:

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

A. Okay.

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

A. Yes, it is.

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

A. Yes, it is.

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

A. Yes.

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

A. That's correct.

Q. How many landfills are there in the state
of Hawaii, public and private?

A. Active landfills or --

Q. Active landfills.

A. I believe last count we had 13.

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

A. All but two.

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

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

Q. Between nine and 11?

A. Right.

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

A. Yes, we are.

Q. And you are the chief of that branch?

A. That's correct.

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

A. Yes.

Q. So since about 1993?

A. Yes.
Q. So as the chief of the Solid and Hazardous Waste Branch, you're familiar with the operation of Waimanalo Gulch Sanitary Landfill for at least about the last 18 years?
A. Yes.
Q. So in your capacity as chief, you know that the Waimanalo Gulch landfill has been cited for violations by the Department of Health and now by the EPA?
A. Yes.
Q. I'd like to look at a couple of those violations, starting in 2006. Mr. Chang, I've handed you a copy of a document marked Exhibit K-59. It's a January 31st, 2006 letter to Waste Management of Hawaii and the Department of Environmental Services from the State of Hawaii Department of Health. Do you see that?
A. Yes.
Q. And attached to that is a notice and finding of violation and also an order.
A. Yes.
Q. I believe if you'll look to the certificate of service for the notice of violation, you signed the certificate of service for the Solid and Hazardous Waste Branch.
A. Yes.

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

A. Yes.

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

Do you see that paragraph?

A. Yes, I do.

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

A. Yes.

Q. What is flagging?

A. Flagging is -- well, you can imagine when you place municipal solid waste on the ground and they bring in heavy equipment to track it, to
flatten it, then they bring in daily cover -- dirt
to cover it. The whole intent is to make sure that
there is no exposure of solid waste and it -- it's a
measure to protect against vectors, flies -- to
protect from exposure to vectors, flies, birds and
other things.

Q. So this was a failure to properly cover --
A. That's correct.

Q. -- the MSW?
A. Right.

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

Do you see that?
A. Yes.

Q. This is -- April 28th was the first
paragraph we looked at. This is now May 25th. So a
month later, in the same cell, still inadequate soil
coverage; right?
A. Yes.
Q. If we look at the very next paragraph, on June 3rd, 2005, the south slopes of MSW cell E1 fronting Ko Olina Resort continues to be observed with exposed MSW and heavy flagging. Mr. Cosulo (phonetic) said that WMH is leveling high spots within MSW cell E1 and once completed the area will be covered with intermediate soil.

Do you see that?

A. Yes.

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

A. Yes.

Q. That was a Department of Health finding?

A. Yes.

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

Do you see that?

A. Yes.

Q. Page 15, count seven.

A. Okay. Right.

Q. What's leachate?

A. Leachate is water that passes through the
landfill, percolating down, and is captured on the
liner, which is below the trash.

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

Do you see that?

A. Yes.

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

A. That's correct.

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

A. That's correct.

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

A. Yes.

Q. Now, if you'd look under the same count,
count 15, down to paragraph 178 for me -- paragraph 178 says that the facility's operating plan -- And that means the Waimanalo Gulch Sanitary Landfill's operating plan; right?

A. Yes.

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

Do you see that?

A. Yes.

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

Do you see that?

A. Yes.

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

Do you see that?

A. Yes.

Q. That's a finding that the Department of Health made?
A. That is correct.

Q. Then the very next paragraph: To date, the DOH has not received the annual update for 2003 and 2004. Do you see that?

A. Yes.

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

A. That's correct.

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

A. Yes.

Q. Why is monitoring explosive gases important?

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

Q. Let's look under then that same count, paragraph 210, if you would. In paragraph 210, the
Department of Health found that in a letter dated May 23, 2005, DOH requested all reports on all explosive gas monitoring data collected in accordance with explosive gas requirements in the permit LF-0054-2 and HAR 11-58.1 from 2003.

Do you see that?

A. Yes.

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

Do you see that?

A. Yes.

Q. The next paragraph, paragraph 212:

Respondents failed to monitor for explosive gases in 2003 and 2004, in violation of 11-58.1-15D.

Do you see that?

A. Yes.

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

A. Right.

Q. Let's look at another letter from the Department of Health to Waste Management and the
City, K-101.


Do you see that?

A. Yes.

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

Do you see that?

A. Yes.

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

A. That's correct.

Q. And if we look at the next paragraph, paragraph three, MSW cell 4-B sump remains inaccessible and thus leachate monitoring has not been conducted, in violation of special condition three, item six, and general conditions one, items 9B and 9C.
Do you see that?

A. Yes.

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

A. That's correct.

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

A. Intermediate cover.

Q. Intermediate cover. You're quite right.

Thank you for correcting me.

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

Do you see that?

A. Yes.

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

A. Correct.

Q. And if we look at the very next paragraph, the permitted -- paragraph five, the permitted upper storm water pond and eastern storm water diversion
ditch has not been constructed.

Do you see that?

A. Yes.

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

A. Yes.

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

A. Yes.

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

Do you see that?

A. Yes.

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

A. That is correct.
Q. And this is the same finding that the department made in the last letter we looked at?
A. Correct.
Q. Look at the second item. MSW cell 4-B sump remains inaccessible and thus leachate monitoring has not been conducted.
Do you see that?
A. Yes.
Q. The same finding we looked at in the prior letter and the same finding we looked at in the notice of violation; right?
A. That's correct.
Q. If we look at the third item down there, inadequate soil cover was observed on the top deck and side slopes of the east, west and north areas of MSW cell 11, including part of MSW cell 10 top deck area.
Do you see that?
A. Yes.
Q. So another finding that waste had not been properly covered; right?
A. Correct.
Q. Let's look at another letter from the Department of Health to ENV and Waste Management, K-66.
CHAIRWOMAN PINGREE: I'm sorry? What exhibit is that?

MR. CHIPCHASE: K-66.

BY MR. CHIPCHASE:

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

A. Yes.

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

A. Yes.

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

Do you see that?

A. Yes.

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

A. Yes.

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

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

BY MR. CHIPCHASE:

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

Do you see that?

A. Yes.

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

A. Isopac.

Q. Isopac -- between 2008 topography flown 5-9-2008 and master plan final grade shows that part of the west berm on MSW cell 8 was up to 30 feet higher than designed grades.
1. Do you see that?

2. A. Yes.

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

4. A. Correct.

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

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

Q. I see. So what had been designed and
approved as following of studies and engineering
determining what was safe, what was actually
constructed was 30 feet higher than that?
A. That's correct.
Q. So then if we look at the next paragraph, paragraph 22 references an August 3rd, 2009 submittal, so a little more than a year after paragraph 21; right?
A. Yes.
Q. And if we look down at the bottom of that paragraph, this plan shows or this report shows that part of the west berm on MSW cell 8 was up to 32 feet higher than designed grade?
A. That's correct.
Q. So over the course of the year, they increased the design -- the actual part of the west berm another two feet above the permitted design grade?
A. I'm not real sure. It could be different parts of what's called cell 8.
Q. I see. So at least part of it, though, on this date of the report was 32 feet higher than had been designed and approved?
A. That's correct.
Q. If we look at the second count, on page five of this notice of violation, it's entitled Failure to Notify Department of Health of
Noncompliance Regarding Construction of the West Berm. Do you see that?

A. Yes.

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

Do you see that?

A. Yes.

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

A. That's correct.

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

Do you see that?

A. Yes.

Q. The finding is Waste Management knew it was in violation or knew it hadn't constructed the berm to design specifications and it just didn't tell the Department of Health?
A. That's correct.

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

A. That's correct.

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

A. Yes.

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

A. Yes.

Q. I'd like to take you to paragraph 21 of the finding of violation and order. Paragraph 21 says: Respondents have failed to comply with the requirements of the Hawaii Industrial Activities General Permit, the notice of coverage and its SWPCP in that on at least three occasions associated with storm events in December 2010 and January 2011, respondents failed to prevent run-off of surface water that had contacted waste, failed to control erosion, prevent loss of cover or wash-out of refuse slopes, failed to properly manage leachate and...
failed to adequately retain and remove silt from surface water before it was discharged from the site.

Do you see that?

A. Yes.

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

Do you see that?

A. Yes.

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

A. Yes. According to the documents here, it is.
Q. So then the next paragraph, paragraph 23:
As to certain constituents, respondents have failed
to analyze effluent samples associated with these
discharges consistent with the requirements of
HAR Section 11-55, appendix A, standard condition
14-D. The constituents at issue include, but are
not necessarily limited to, BOD5 and chromium.
Do you see that?
A. Yes.
Q. So another finding from the EPA?
A. That's correct.
Q. And if you turn to page 15 of this notice
of finding of violation, it's dated November 29,
2011; right?
A. That's correct.
Q. So a couple of months ago?
A. Yes.
Q. As chief of the solid waste branch, are
you aware that Waste Management discovered that an
employee had fabricated wellhead gas monitoring
readings at the landfill from mid 2010 to August
2011?
A. I've heard it from other people.
Q. Mr. Chang, I've handed you a copy of a
document marked K-160. The document is titled
Waimanalo Gulch Sanitary Landfill Landfill Gas Extraction Assessment, dated September 28, 2011, and it's noted that it was prepared for Waste Management of Hawaii, Inc.

Do you see that?

A. Yes.

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

Do you see that?

A. Yes.

Q. Based on this report and the
acknowledgment that Waimanalo Gulch Sanitary
Landfill had used fabricated wellhead gas readings
from about mid 2010 to 2011, intervenor subpoenaed
all monitoring records and all internal
investigation documents from Waste Management of
Hawaii.

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

A. I'm not aware of that.

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

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

CHAIRWOMAN PINGREE: That's fine.

MS. VIOLA: Can I see the documents?

BY MR. CHIPCHASE:

Q. Mr. Chang, when we first started talking,
you said there were 13 landfills in the state and
between nine and 11 were authorized to accept MSW.
Do you remember that?
Q. Then we looked at a number of findings by the Department of Health and by the EPA and then the fabricated gas wellhead reading report from 2006 through just a couple of months ago. How many of the other 13 landfills in the state over that same period have been cited by the EPA for violating the Clean Water Act?

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

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

A. I'm not aware of that.

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

A. For solid waste?

Q. For solid waste.

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

Q. Looking at those other landfills, are you aware of any that have had as many findings of
violation as Waimanalo Gulch Sanitary Landfill in that same five-year period?

A. In the last five years, probably not.

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

A. Yes.

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

A. (Witness nods.)

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

A. Yes.

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

BY MR. CHIPCHASE:
Q. All right. Then let's go through them. Looking at the first item under paragraph nine, automotive shredder waste -- you say that while SHWB, the Solid and Hazardous Waste Branch, does not preclude H-POWER from disposing of this waste, H-POWER has expressed reservations about processing this waste stream because it tends to burn at very high temperature.

Do you remember that testimony that's in here?

A. Yes.

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

A. Well, in the case of most of the material they handle, automobile carcasses are run through a shredder. The metals are removed and then you have residue which is the plastic, the seats and the dashboards and stuff, that contain both ferrous and non-ferrous materials, and the facility tries to remove that either by magnet or by dielectric currents and then the residuals of the stuff basically is the material that's sent to the landfill for disposal.
Q. So your division does not prohibit H-POWER from burning that residual, does it?
A. That's correct.
Q. The operator of H-POWER is Covanta; is that right?
A. Yes, it is.
Q. Has Covanta expressed these reservations to you?
A. To my staff, I believe. I'm not sure if I was directly in the conversation when they mentioned that, but I've asked my staff on the situation on the status and would it be acceptable and the response has been such, that there are concerns about accepting the material because of the nature of the ASR.
Q. I see. So Covanta said something to your staff and your staff brought you up to speed on it?
A. That's correct.
Q. I see. So you don't have firsthand knowledge of it?
A. I can't recall. I mean, we engaged in many discussions with Covanta, and I don't know if I asked them directly. But that's my basic understanding of what's happening there.
Q. Do you know why the City has not called
someone from Covanta to come and explain its
position to the commission?

A. No.

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

That's your testimony; right?

A. Yes.

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

A. That's correct.

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

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

Q. And the capacity increases; right?
A. That's correct.

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

A. No.

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

A. I believe they do, yeah.

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

A. That's correct.

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

A. Yes.

Q. Let's look at the final one. I skipped over the TV, monitors and other electronic waste. By the way, Mr. Chang, did you prepare your declaration?

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

Q. Okay. So on the subject of TV, monitors and electronic waste, you say: Individuals currently disposing of e-waste with the City will no
longer have this option and will likely have to
incur high costs to return these devices to
manufacturers or these devices will be illegally
dumped to avoid such costs; right?

A. Yes.

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

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

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

A. That's correct.

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

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

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

A. Yes. We're into the second year of
electronic waste recycling, the first year of TV recycling.

Q. That's a state law?
A. That's correct.

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

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

A. Yes.

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

A. Right.

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

A. Yes.

Q. If we look then down at paragraph three, that's the -- locally, the Hawaii Electronic Waste
and Television Recycling and Recovery Law was adopted by the State of Hawaii -- the Hawaii State Legislature in 2008. Do you see that?

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Correct.

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

A. Yes.

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

A. That's correct.

Q. And then below that, it says free drop-off
events. Do you see that?

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

A. That's correct.

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

A. Yes.

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

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

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

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

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

Q. To make sure I understand completely --
the consumers have other options other than
disposing of it in the landfill now. Some of them
are not as convenient --

A. That's correct.

Q. -- for the consumer; right?

A. That's correct.

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

A. That's our goal.

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

Do you see that?

A. Yes.

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

A. Uh-huh.

Q. Hang onto that for a second. Mr. Chang, I've handed you another document. The top of it is titled Hawaii Electronic Waste and Television...
Recycling and Recovery Law. Do you see that?

A. Yes.

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

A. That's correct.

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

A. Yes.

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

CHAIRWOMAN PINGREE: Thank you.

BY MR. CHIPCHASE:

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

MR. CHIPCHASE: Do you need a break?

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

CHAIRWOMAN PINGREE: We'll take a break momentarily.

BY MR. CHIPCHASE:

Q. Mr. Chang, I'd like to take another look at your declaration. This time I'd like to look at paragraph ten. In paragraph ten you identify sewage sludge as waste that cannot be burned, recycled,
reused or shipped. Do you see that?

A. Yes.

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

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

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

A. Yes.

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

A. Which is up in Wahiawa, I believe.

Q. I think that's right.

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

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

A. That's their plan.

Q. Mr. Chang, I've handed you a copy of a document titled Final Environmental Impact Statement In-vessel Composting Facility, and it's dated
September 2011. Do you see that?

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes.

Q. With this facility on line, another 15 to 20,000 tons of sewage sludge recycled; right?

That's the plan?

A. That's correct.
Q. Are you aware that sewage sludge can, in fact, be burned?

A. I think some components of it can be.

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

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

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

A. That's correct, yeah.

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

A. Yes.

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

A. Yes.

Q. In fact, Waimanalo Gulch itself is
required to have a backup plan for the disposal of waste in the event of emergencies; right?

   A. Correct.

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

   A. Yes.

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

CHAIRWOMAN PINGREE: That's fine.

MR. CHIPCHASE: Thank you.

BY MR. CHIPCHASE:

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

   Do you see that?

   A. Yes.
Q. This is the current permit for the landfill?

A. Correct.

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Uh-huh.

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

A. Yes. Yes.

Q. If we look down at item B under 13, The
permittees shall implement emergency action plans for at least the following situations. Item two of that is severe storm, paren, two-year 24-hour storm or greater or continued significant rainy condition duration over 14 days. Do you see that?

A. Yes.

Q. That's a requirement of the permit?

A. Yes.

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

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

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

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

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

A. Well, they took actions necessary to try
to remedy the flooding that occurred in what's referred to as the E6 cell, and again, because of the multiple storm events, a lot of options that would have been available failed. They were directed by the Department of Health and the emergency on-scene coordinator to do things to remedy situations and not exacerbate things more than they already were. So I think they attempted to comply with Department of Health guidance.

MR. CHIPCHASE: Your witness.

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

(Discussion off the record.)

(Break taken.)

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

MS. VIOLA: Thank you.

EXAMINATION

BY MS. VIOLA:

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

A. The Kaneohe Marine Corps Air Station
landfill accepts waste from the naval facility there and that's comprised of solid -- municipal solid waste from their operation.

Q. Only their operation?
A. That's correct.

Q. So for the rest of the island and everyone who is not at Kaneohe Marine Corps Air Base, what is the only landfill option available?
A. It's Waimanalo Gulch.

Q. You were asked a number of questions regarding prior enforcement actions dating back to 2006. Did the Department of Environmental Services and/or Waste Management contest any of the violations that were alleged in these numerous -- excuse me -- in these violations?
A. The only two I can speak of directly would be the two solid waste enforcement cases and they were contested by Waste Management.

Q. Were these particular enforcement actions that you were involved in, were they resolved to your satisfaction?
A. They were resolved.

Q. And do you have any remaining concerns regarding leachate violations at Waimanalo Gulch Sanitary Landfill?
A. We always continue to monitor. That is -- really, the main thing is maintaining surveillance and making sure that we're getting up-to-date information. So at this point in time, the landfill has been very good in providing us that data.

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

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

Q. And regarding the reporting requirements?

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

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

A. Yes.

Q. Regarding the construction of the berms that was discussed in the -- I believe 2010 violation, do you have any concerns regarding the berm?
A. No. Waste Management provided additional detailed analysis of the berm and demonstrated that it satisfactorily met the requirements of design.

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

A. There are no current enforcement actions.

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

A. Yes, we are.

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

A. We had asked that question back in October of last year, in anticipation that -- you know, we treated it as though that if that condition were not removed, we as a department want to know what the City was planning to do. So we asked questions specifically to that and we got a response in October or November, and it was revised most recently on January the 9th of this year. I have a document from, I believe, Tim Steinberger, and he addresses those issues, and the items that he
indicated there are dependent on having the third boiler in operation to be mattresses, sewage sludge, grit, large branches and trunks and TVs. Those are items that are contingent on having the third boiler in place.

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

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

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

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

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

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

Q. But even if there is substantial diversion like you were discussing with counsel, do you still
feel that there's a need for a landfill?
   A. Yes.

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

   Q. So to summarize, you feel there's a need for a landfill for what purpose?
   A. For emergencies, for natural disasters -- I mean, if that occurs -- in many cases if it simply exceeds our capacity for solid waste management.

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

   Do you feel that Waste Management is compliant with this condition?
A. Back in 2008, they did submit a plan to us and in their most recent annual reporting, they indicated there were no changes to that submission from the City and County.

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

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

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

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

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

A. The solid waste programs did not seek...
enforcement actions based on the storm events in December and January -- December 2010 and January 2011.

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

A. No.

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

A. That's correct.

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

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

MS. VIOLA: Thank you. Nothing further.

MR. SANDISON: I have no cross.

CHAIRWOMAN PINGREE: No cross?

MR. CHIPCHASE: I just have a couple of follow-up questions, Mr. Chang.
THE WITNESS: Okay.

EXAMINATION

BY MR. CHIPCHASE:

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

A. Yes.

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

A. Yes.

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

A. Yes. That's correct.

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

A. Yes.

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

A. Yes.

Q. So despite the monitoring and despite the reporting requirements, the violations that we
reviewed still happened, didn't they?

A. Yes.

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

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

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

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

Q. So isn't this the kind of contingency that the backup plan required by the permit is designed to address?
A. In the backup plan they mentioned in 2008, one of it was the Hawaiian Waste option, which unfortunately was not available that day.

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

A. Well, it was not available.

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

A. Yes.

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

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

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

A. That's correct.

Q. -- of the same Department of Health?

A. Yes.

MR. CHIPCHASE: No further questions.
MS. VIOLA: Nothing further.

MR. SANDISON: Nothing further.

CHAIRWOMAN PINGREE: Thank you very much.

 Commissioners, any questions?

MR. PACOPAC: I have a question.

EXAMINATION

BY MR. PACOPAC:

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

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

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

A. Well --

Q. Or you just came in and said, You need to
do this, so it never went --

A. In designing, you know, you have the properties above the landfill that are not owned by the City and County, right, and there was supposed to be a design that basically put a diversion channel where the water would be intercepted so it wouldn't come onto landfill property.

Unfortunately, that was not yet completed, all right, and they had designed an inlet above the working face, the E6 cell where they were placing trash, and they had a berm put up and they had a huge 36-inch pipe, with the idea that any rain that would fall on the property, landfill property, would be diverted into that pipe and go under the cell and then go into the drainage canal or the drainage ditch.

But in the course of the storm, boulders and stuff that came from the -- I believe from the mauka properties, blocked that inlet, and so -- you know, the storms were very short intensity, occurred over like next morning -- had over-topped the berms, had entered into the E6 cells. There was -- we see evidence of maybe 20 feet of water sitting in the cell, and so they went in and removed the boulders and opened the entrance to the channel. And then
within about a week there was another storm event
and the same thing happened, material kept coming
down.

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

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

        A.  That's correct.

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

        CHAIRWOMAN PINGREE:  Any other questions
for this witness?

        Thank you very much.

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

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

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

CHAIRWOMAN PINGREE: That's fine.

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

CHAIRWOMAN PINGREE: Thank you.

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

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

CHAIRWOMAN PINGREE: Please proceed.

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

MR. SNODGRASS: Well, of course, you know
my name is Larry Snodgrass. I work for Schnitzer
Steel in Kapolei, and I'm the general manager there;
I have been since December of 2010. Prior to that,
I was with Schnitzer for 28 years in Portland,
Oregon. And I've had a number of positions there
from maintenance superintendent to plant manager.
We have been -- I say "we," Schnitzer and its predecessors -- have been in business, as everybody knows, since 1949 on Oahu processing scrap metal and generally exporting it.

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

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

So it's a really valuable service that we supply to the island. In addition to trying to make a profit at it, as every business has to do, we have to -- we have to be very careful with our solid
waste management permit. We are fairly scrutinized on how we do our business.

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

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

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

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

The waste itself is composed of mostly plastics, glass, carpeting, insulation, and it's ground to a very fine texture. We truck every
single day. We never have days that we don't carry it out. Because we have -- under our solid waste management permit, it also tells us how much we can store on site. And when you shred 800 tons a day, you generate 20 percent of that in shredder residue. So, you know, it's a pretty easy math thing. That's about 200 tons that we generate every day that really needs to go somewhere. We can't take it to a construction debris landfill. The solid waste management permit clearly states that it has to be a sanitary landfill. So we don't really have a lot of choices.

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

And the difference between really a car that comes from like Discount Auto Parts is they strip everything out of them. They sell a lot of products. There's not that much of a demand for that type of business here like there is on the mainland. The demand isn't that high. And we do
have one customer that's called Discount Auto Parts. Their cars that come in, there's nothing left to them but the steel shell. There's no motors, which doesn't matter. There's no carpeting. There's no seats.

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

We are required to annually test our shredder residue for the landfill so that we can continue to haul it up there. The landfill closure in 2011, January and February, when we had the five and a half inches of rain, six inches of rain and then the ten or 11 inches of rain was devastating to us. We had to stop buying so much scrap. We had to curtail our operations to the point where we didn't generate so much shredder residue because we
couldn't take it to the landfill. The landfill was closed. And so we had to make arrangements and write letters to the DOH explaining our situation, and discuss it with them and we were allowed to keep a little bit more on site until the landfill could start taking it again.

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

MR. SANDISON: Does that conclude your summary?

MR. SNODGRASS: Yes, it does.

EXAMINATION

BY MR. GOODIN:

Q. Good afternoon, Mr. Snodgrass. My name is Christopher Goodin and I represent Ko Olina Community Association and Senator Maile Shimabukuro.
I have a few questions for you.

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

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

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

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

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

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

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

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

Q. Could your solid waste management permit be amended so that you'd be able to dispose of
automotive shredder waste at, say, a construction
and debris landfill?

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

Q. Have you ever inquired?

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

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

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

CHAIRWOMAN PINGREE: Not with us.

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

CHAIRWOMAN PINGREE: Thank you very much.

MR. GOODIN: You're welcome.

BY MR. GOODIN:

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

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

Q. You signed this testimony? Could you
please show me where you signed it?
A. Well, I thought that I signed the testimony; put it that way.

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

That's what it says; right?

A. Yeah.

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

A. It is allowed.

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

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

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

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

Q. So it's 81 --

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

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

Q. Per ton, okay, to dispose at the landfill.

And you receive currently a fifty percent discount --

A. That's correct.

Q. -- on the tipping fee?

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

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

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

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

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

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

MR. GOODIN: This is cross-examination.

MR. SANDISON: It's beyond the scope of
the direct testimony.

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

CHAIRWOMAN PINGREE: Okay. Proceed.

MR. GOODIN: Thank you.

BY MR. GOODIN:

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

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

Do you see that?

A. Yes, I do.

Q. One more thing -- now, looking at the second paragraph, it states that the 80 percent discount on tipping fees charged by the City when companies deliver recycling residue to the Waimanalo
Gulch landfill cost the City about two million last year. Do you see that?

A. Uh-huh.

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

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

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

A. I guess it's correct.

MR. GOODIN: Thank you. No further questions.

MR. SANDISON: A couple of questions on redirect.

EXAMINATION

BY MR. SANDISON:

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

Your direct testimony says: If the Waimanalo Gulch solid waste landfill is limited to
ash and residue from H-POWER after July 31, 2012, Schnitzer would have no other place to dispose of its recycling waste.

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

A. Yes, it is.

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

A. Yes.

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

A. Yes.

MR. SANDISON: No further questions, sir.

CHAIRWOMAN PINGREE: Thank you.

MR. SANDISON: I have no further questions.

MS. VIOLA: Nothing further.

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

CHAIRWOMAN PINGREE: We're up there.
MR. GOODIN: K-169.
CHAIRWOMAN PINGREE: K-169?
MR. GOODIN: Yes.
CHAIRWOMAN PINGREE: Thank you, Mr. Snodgrass.
Commissioners, do you have any questions for Mr. Snodgrass?
(No response.)
CHAIRWOMAN PINGREE: Thank you.
MR. SNODGRASS: Thank you.
CHAIRWOMAN PINGREE: In the interest -- we have 12 minutes left.
MR. CHIPCHASE: Chair, this is what I propose, that we use the time to try to figure out our schedule. I think it's safe to say that with the one hearing date we have remaining scheduled on the 8th, we won't be done. But I guess before I jump into that, does Schnitzer rest?
MR. SANDISON: Schnitzer rests.
MR. CHIPCHASE: Okay. So one hearing date -- we have identified six witnesses and a number of subpoenaed witnesses, plus one expert, and so I think we could probably complete the case with the 8th and one full day.
CHAIRWOMAN PINGREE: One full thereafter?

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

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

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

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

MS. VIOLA: As objected by Mr. Chipchase,
this is an administrative procedure. These are rebuttal witnesses to what was brought up on direct and on cross-examination, so we should have the opportunity to call those witnesses.

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

(Discussion off the record.)

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

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

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

MR. CHIPCHASE: Chair, here's the thing -- by doing it this way, we did not have the benefit of
the written direct testimony that we all agreed to submit, and if it turns out to be the two witnesses that were previously on the ENV's list, then I sort of think we've been sandbagged here.

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

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

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

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

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

MR. CHIPCHASE: Yes, Chair.

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

MR. CHIPCHASE: Yes, Chair.
CHAIRWOMAN PINGREE: So an additional date after February 8th.

And ENV, you need another half day?

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

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

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

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

MR. CHIPCHASE: Thank you, Chair.
CHAIRWOMAN PINGREE: What we'll try and do is schedule something, with Jeanne's assistance, of course, another full day.

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

MR. PACOPAC: Move to adjourn.

MR. YOUNG: Second.

CHAIRWOMAN PINGREE: Thank you.

Adjourned.

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

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