

CADES SCHUTTE LLP

CALVERT G. CHIPCHASE 7757-0
CHRISTOPHER T. GOODIN 8562-0
1000 Bishop Street, Suite 1200
Honolulu, Hawai'i 96813-4212
Telephone: (808) 521-9200
Facsimile: (808) 521-9210
E-mail: cchipchase@ca-des.com
cgoodin@ca-des.com

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

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 WGS� up to July 31,
2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGS� after July 31, 2012."

FILE NO. 2008/SUP-2

INTERVENORS' REQUEST FOR
ISSUANCE OF A SUBPOENA
DUCES TECUM TO THE
CUSTODIAN OF RECORDS OF
DEPARTMENT OF
ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF
HONOLULU

SUBPOENA DUCES TECUM

[RE: CUSTODIAN OF RECORDS
OF DEPARTMENT OF
ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF
HONOLULU]

EXHIBIT A

CERTIFICATE OF SERVICE

Contested Case:
Beginning December 7, 2011

RECEIVED

'12 MAR 14 P3:30

DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLULU

KOCA 27

**INTERVENORS' REQUEST FOR ISSUANCE OF A SUBPOENA DUCES
TECUM TO THE CUSTODIAN OF RECORDS OF DEPARTMENT OF
ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU**

Pursuant to Honolulu Planning Commission Rule § 2-69, Intervenors Ko Olina Community Association and Maile Shimabukuro hereby request that an authorized representative of the Honolulu Planning Commission issue a subpoena duces tecum to the custodian of records of the Department of Environmental Services, City and County of Honolulu ("ENV"), to require the custodian of records to produce documents for inspection and copying.

The documents sought to be produced are those related to, evidencing, and/or constituting a report prepared by or for the ENV regarding a second sewage management digester and/or disposal options at the Synagro facility at 1350 Sand Island Parkway, #6, Honolulu, Hawai'i 96819. These documents are believed to be material and relevant to the issues involved in this matter, including the ENV's ability to divert sewage sludge from the Waimanalo Gulch Sanitary Landfill. Exhibit A, a January 26, 2012 letter from the Mayor to City Council members, references these documents at page 2: "We are awaiting the details of AECOM's further analysis of two alternative backup component projects, a second digester and a dewatering system, which we anticipate in about six weeks, or by the end of February."

Intervenors respectfully request that the subpoena attached hereto be issued by an authorized representative of the Honolulu Planning Commission.

DATED: Honolulu, Hawai'i, March 14, 2012.

CADES SCHUTTE
A Limited Liability Law Partnership

A handwritten signature in cursive script, appearing to read "Chris Good", written over a horizontal line.

CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN
Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

CADES SCHUTTE LLP

CALVERT G. CHIPCHASE 7757-0

CHRISTOPHER T. GOODIN 8562-0

1000 Bishop Street, Suite 1200

Honolulu, Hawai'i 96813-4212

Telephone: (808) 521-9200

Facsimile: (808) 521-9210

E-mail: cchipchase@cades.com

cgoodin@cades.com

Attorneys for Intervenors

KO OLINA COMMUNITY ASSOCIATION

and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION

OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

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

“14. Municipal solid waste shall be
allowed at the WGSL up to July 31,
2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGSL after July 31, 2012.”

FILE NO. 2008/SUP-2

SUBPOENA DUCES TECUM

[RE: CUSTODIAN OF RECORDS
OF DEPARTMENT OF
ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF
HONOLULU]

EXHIBIT A

Contested Case:

Beginning December 7, 2011

SUBPOENA DUCES TECUM

THE CITY AND COUNTY OF HONOLULU TO:

ANY OFFICER AUTHORIZED BY LAW TO SERVE SUBPOENAS IN THE STATE OF HAWAII, YOU ARE COMMANDED to subpoena the individual named below:

CUSTODIAN OF RECORDS OF
DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU ("ENV")
1000 Uluohia Street, Suite 308
Kapolei, Hawai'i 96707

WITNESS, YOU ARE COMMANDED to appear at the date, time, and place indicated below on behalf of Intervenors Ko Olina Community Association and Maile Shimabukuro.

WITNESS, YOU ARE FURTHER COMMANDED to bring with you, and permit inspection and copying of, all documents related to evidencing, and/or constituting a report prepared by or for the ENV regarding a second sewage management digester and/or disposal options at the Synagro facility at 1350 Sand Island Parkway, #6, Honolulu, Hawai'i 96819. Exhibit A, a January 26, 2012 letter from the Mayor to City Council members, references these documents at page 2: "We are awaiting the details of AECOM's further analysis of two alternative backup component projects, a second digester and a dewatering system, which we anticipate in about six weeks, or by the end of February."

Date: March 21, 2012

Time: 9:00 a.m.

Place: Cades Schutte LLP
1000 Bishop Street, 12th Floor
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, March ____, 2012.

AUTHORIZED REPRESENTATIVE
PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

RETURN AND ACKNOWLEDGMENT OF SERVICE

I HEREBY CERTIFY AND DECLARE under penalty of perjury (1) that I served the document(s) listed herein by delivering a copy to the person at the date, time, and place herein shown, and (2) that I tendered to the person the fee for one day's attendance and mileage allowed by law.

DOCUMENT(S) SERVED:

1. SUBPOENA DUCES TECUM [RE: CUSTODIAN OF DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU]

Name of Person Served: _____

Date and Time Served: _____

Place Served: _____

Server's Name: _____

Server's Signature: _____

Date Signed: _____

ACKNOWLEDGEMENT OF SERVICE

I HEREBY ACKNOWLEDGE receipt of the document(s) identified above.

Printed Name: _____

Signature: _____

Date and Time: _____

Phone Number: _____

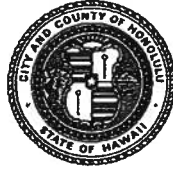
RECEIVED
CITY CLERK
C & C OF HONOLULU

OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 300 * HONOLULU, HAWAII 96813
PHONE: (808) 768-4141 * FAX: (808) 768-4242 * INTERNET: www.honolulu.gov

2012 JAN 31 AM 9: 15

PETER B. CARLISLE
MAYOR



DOUGLAS S. CHIN
MANAGING DIRECTOR
CHRYSTN K. A. EADS
DEPUTY MANAGING DIRECTOR

January 26, 2012

RISR 447957

The Honorable Ernest Y. Martin, Chair
The Honorable Ann Kobayashi, Budget Committee Chair
The Honorable Romy M. Cachola, Councilmember
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawai'i 96813

Subject: November 18, 2011 and January 4, 2011 (sic) Memorandum and Council Communication 312(2011) and RISR 447957

Dear Chair Martin, Budget Chair Kobayashi and Councilmember Cachola,

Thank you for your memorandum of November 18, 2011 (CC-312) and your follow up memorandum of January 4, 2011 (sic) (RISR 447957).

We have met with you individually, provided progress reports on our consultant AECOM's study of alternative technologies to address the capacity and redundancy issues at Sand Island Wastewater Treatment Plant (SIWWTP), and answered your questions at two public works and sustainability (PWS) committee public hearings – on November 16, 2011 and on January 11, 2012. Indeed, the PWS chairman acknowledged, "It is to this administration's credit that they have been so open minded and so willing to work with council on this matter."

As you have in addition requested a written response to your inquiries let me reiterate our previous answers. Here are the facts surrounding the plan and design (P&D) contract:

1. The regulatory agencies¹ have told the administration they are closely monitoring the situation at SIWWTP because the proposed anaerobic digester project ("the backup component project") was defunded by the council in the 2012 budget.
2. Violations issued by regulators are extraordinarily costly; therefore the backup component project the city selects needs to be an approved and reliable system that ensures compliance with the consent decree and the NPDES permit.
3. The system operators have since 2010 intermittently recorded exceedance of the physical capacity of the current anaerobic digester.²

¹ The federal environmental protection agency (EPA) and the state department of health (DOH) for the National Pollutant Discharge Elimination System (NPDES) permit and the Consent Decree

² Our consultant, HDR, has recently explained that the 'capacity' reached in 2008 was contractual capacity, which would incur additional costs, not physical capacity of the digester. Symptoms of physical capacity issues were

RECEIVED
2012 JAN 26 P 12:06
CITY & COUNTY OF HONOLULU, HAWAII

4. The consultants have indicated a projected critical increase in volume at SIWWTP by 2015 due to increases in population and scheduled construction projects in the community.
5. The backup component project must serve the needs at SIWWTP until 2035 when secondary treatment is required under the consent decree; therefore it cannot be a short-term or band-aid fix.
6. The original Synagro contract in 2002 contemplated a second digester, operational provisions for the backup component project are reflected in the current operating contract, and connections for a second digester were installed when the original digester was constructed.
7. To our knowledge Synagro is not in breach of their contract with the city and the company has not bribed anyone or done anything else illegal within our state. If any councilmember has information to the contrary, as the former prosecuting attorney, I strongly urge that councilmember to immediately contact the federal bureau of investigation.
8. The city has the option to terminate the Synagro contract 'for convenience.' As you know from the contract (§ 6.10), the fee for doing this in 2012 would be two million dollars (\$2,000,000); in addition, there would be costs resulting from termination, including those incurred by the city to take over maintenance and operation of the system, among other costs (see *inter alia*, § 6.6). The decision to exercise this termination clause, as you also know, must occur prior to 180 days before the end of year five of the contract on September 30, 2012, or approximately April 4, 2012.
9. Thereafter, a selected replacement project would be subject to the procurement process, i.e., competitive bidding on the resultant RFP by all qualified vendors (which we assume would include Synagro).
10. A second Synagro digester would not have to go through the procurement process and, as the known and existing system, approval and permitting would be faster, making it arguably the most expedient emergency solution if the single digester fails.
11. We are awaiting the details of AECOM's further analysis of two alternative backup component projects, a second digester and a dewatering system, which we anticipate in about six weeks, or by the end of February.

From a system planning perspective, and to satisfy the regulatory agencies, the city must have a backup component project option on the table in the event of the failure of the current digester. It is akin to paying your homeowner's or car insurance premium in the event of the unthinkable. If you never need the coverage, the premiums may seem a frivolous waste of money; if you do experience a catastrophic event, the coverage is invaluable.

We certainly acknowledge that the P&D contract costs money and wasting tax dollars is

The Honorable Ernest Y. Martin
The Honorable Ann Kobayashi
The Honorable Romy M. Cachola
January 26, 2012
Page 3 of 3

wrong. In this case because the potential consequences are so dire, we feel the cost of the P&D contract is prudent protection, not wasteful. Therefore, at this time we are not in a position to cancel the plan and design contract. At the point in time the city is certain a feasible, cost-effective, acceptable alternative process may be pursued, if that is the decision, we may then cancel the P&D contract.

As to that important decision, we can appreciate the council's interest in and feedback regarding the backup component project. To that end, we have clearly heard the objection, primarily from Councilmember Cachola, to a second Synagro digester at Sand Island.³ However I understand there may be certain aspects of a dewatering system that, unless resolved, may be equally unappealing to council members of other districts. In any event, we all anticipate knowing the pros and cons of each option in time to allow for considerable discussion of the alternatives and for project selection before the councilmembers finalize the 2013 CIP budget.

While the information available to us to date indicates the backup component project could still be, at the end of the day, a second digester after all, I acknowledge the council's due diligence on this issue and believe we have, in turn, demonstrated we are open to considering AECOM's findings. I recognize we all want something that will be reliable until 2035 and will be cost effective, both financially and from a quality of life perspective, for the taxpayers of Honolulu.

I hope this puts the question to rest until we all have a failsafe backup plan for the Sand Island treatment plant before us.

Very truly yours,



Peter B. Carlisle
Mayor

cc: All Council members

³ Parenthetically, all of the other major treatment plants in the other districts on O'ahu have more than one digester to provide for routine maintenance and to provide safeguards against breakdowns.

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 WGS� up to July 31,
2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGS� after July 31, 2012.”

FILE NO. 2008/SUP-2

**CERTIFICATE OF SERVICE [RE:
SUBPOENA DUCES TECUM [RE:
CUSTODIAN OF RECORDS OF
DEPARTMENT OF
ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF
HONOLULU]]**

**CERTIFICATE OF SERVICE [RE: SUBPOENA DUCES TECUM
[RE: CUSTODIAN OF RECORDS OF DEPARTMENT OF
ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU]]**

The undersigned certifies that on this day a copy of SUBPOENA DUCES
TECUM [RE: CUSTODIAN OF RECORDS OF DEPARTMENT OF
ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU] was duly
served on the following persons:

ROBERT CARSON GODBEY, ESQ.
Corporation Counsel
DANA VIOLA, ESQ.
ROBERT BRIAN BLACK, ESQ.

(Hand Delivery)

Deputies Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawai'i 96813

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

DEPARTMENT OF ENVIRONMENTAL SERVICES (Certified Mail)
City and County of Honolulu
1000 Uluohia Street, Suite 308
Kapolei, Hawai'i 96707


DEPARTMENT OF PLANNING AND PERMITTING (Hand Delivery)
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawai'i 96813

IAN L. SANDISON, ESQ. (Hand Delivery)
DEAN H. ROBB, ESQ.
TIM LUI-KWAN, ESQ.
Carlsmith Ball LLP
American Savings Bank Tower
1001 Bishop Street, Suite 2200
Honolulu, Hawai'i 96813

Attorneys for Intervenor
SCHNITZER STELL HAWAII CORP.

DATED: Honolulu, Hawai'i, March 14, 2012.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO