REPORT TO TWENTY-FOURTH LEGISLATURE
STATE OF HAWAII
2008

LITIGATION AGAINST
WASTE MANAGEMENT AND CITY & COUNTY

PURSUANT TO H.C.R. 76, H.D.1, 2006
REQUESTING THE DEPARTMENT OF HEALTH
TO SUBMIT FINAL REPORT ON ITS LITIGATION AGAINST
WASTE MANAGEMENT OF HAWAII, INC.
AND CITY AND COUNTY OF HONOLULU

PREPARED BY:

STATE OF HAWAII
DEPARTMENT OF HEALTH
SOLID AND HAZARDOUS WASTE BRANCH
JANUARY 2008

I. Introduction

This is our final report on the litigation between the Department of Health (DOH), State of Hawaii vs. Waste Management of Hawaii, Inc. (WMH) and City and County of Honolulu (City), which complies with House Concurrent Resolution (HCR) No. 76, H.D. 1. HCR No. 76, H.D. 1 requests the DOH:

1. to prepare an interim and final report on the status of the litigation between the Department of Health, State of Hawaii vs. Waste Management of Hawaii, Inc. and City and County of Honolulu (Docket No. 05-SHW-SWS-004) (the "litigation" or "enforcement case");
2. to report on how it conducts health surveillances related to environmental factors, such as landfills and infectious disease; and
3. to report on how the divisions of the Department of Health work together to share information on environmental matters and determine any actions to be taken.

Our previously submitted report, dated December 2006, included our interim report on the status of the litigation and addressed aforementioned items 2 and 3. Therefore, this report is only providing information associated with the settlement of the litigation.

II. Basis for Litigation

On January 31, 2006, the DOH issued a Notice and Finding of Violation and Order against WMH and the City for alleged violations of solid waste management laws, regulations, and permit conditions at the Waimanalo Gulch Sanitary Landfill (WGSL). WMH is the operator, and the City is the owner of the WGSL. In general, the DOH alleged the following violations:

1. Exceedance of permitted grades.
2. Failure to submit annual operating reports in a timely manner.
3. Failure to place daily cover on the MSW landfill.
4. Failure to place intermediate cover material on the ash monofill.
5. Exceedance of leachate head on the liner in the ash monofill.
6. Exceedance of leachate head on the liner in MSW Cell E-1 sump.
7. Failure to measure leachate levels and to maintain records on leachate levels in Cell 4B sump.
8. Failure to measure leachate levels and maintain records on leachate levels in the ash monofill sump.
9. Failure to notify DOH of noncompliance on equipment blockage in MSW Cell 4B leachate lateral line and inability to measure leachate levels.
10. Failure to notify DOH of noncompliance in a timely manner on the exceedances of permit grades and submission of the AORs.
11. Unauthorized storage of material on the ash monofill.
12. Failure to manage and ban the acceptance of special waste.
13. Failure to maintain records and record location of asbestos disposal at the landfill.
14. Failure to cover a dead animal.
15. Failure to submit annual surface water management plans.

16. Failure to control the generation of dust from vehicular traffic.
17. Failure to minimize free litter generation in the landfill.
18. Failure to monitor explosive gases and maintain monitoring records.

WMH and the City requested a contested case hearing and various pre-hearing litigation procedures occurred.

III. Waimanalo Gulch Settlement

The litigation between the DOH, State of Hawaii vs. WMH and the City concluded with the signing of a settlement agreement on December 7, 2007. The settlement agreement outlines the corrective actions and compliance requirements that WMH and the City need to perform, and the agreed penalty amounts. In general, corrective actions include:

1. Proper waste screening.
2. Implementation of a revised groundwater and leachate monitoring program.
3. Placement of daily cover and implement a daily cover verification program.
4. Placement of ash cover and implement a cover verification program.
5. Placement of intermediate cover.
6. Submission of a grade modification application.
7. Submission of an installation report regarding the construction of a leachate manhole at Sump 4B.
8. Leachate monitoring and record keeping.
9. Adequate pumping of leachate to maintain levels within compliance.
10. Installation of grade control markers.
11. Implementation of the Asbestos Management and Disposal Plan.
12. Implementation of the Interim Perimeter Gas Monitoring Plan.
13. Implementation of the permanent Perimeter Gas Monitoring System and Plan.
14. Submission of gas monitoring data.

In addition, the settlement agreement defined the penalty amount as $1.5 million, and provided penalty payment options to be chosen by WMH and the City. The payment options are summarized below.

1. Cash payment of $1.5 million; or
2. Cash payment of $520,000; payment of $637,500 to be used towards supplemental environmental projects; and the expenditure of at least $342,500 towards the design and construction of a residential community drop-off center at the landfill (valued at $450,000 or more).

A copy of the settlement agreement is provided as an Attachment.

The DOH is working with the Department of Business Economic Development and Tourism to obtain and implement one or more supplemental environmental project proposals.

ATTACHMENT

DEPARTMENT OF HEALTH, STATE OF HAWAII
VS.
WASTE MANAGEMENT OF HAWAII, INC.
AND
CITY AND COUNTY OF HONOLULU

SETTLEMENT AGREEMENT

IN THE DEPARTMENT OF HEALTH

STATE OF HAWAII

Department of Health, State of Hawaii, Complainant, vs. Waste Management of Hawaii, Inc. And City and County of Honolulu, Respondents.	))))))))))))	DOCKET NO. 05-SHW-SWS-004 **SETTLEMENT AGREEMENT**

SETTLEMENT AGREEMENT

This is a Settlement Agreement ("Agreement") between the Solid Waste Section, Department of Health, State of Hawaii ("DOH"), and Waste Management of Hawaii, Inc. ("WMH") and the City and County of Honolulu, hereinafter referred to as "RESPONDENTS", to set forth RESPONDENTS' responsibilities relating to the payment of penalties and injunctive relief.

I. PRELIMINARY STATEMENT

1. On or about January 31, 2006, COMPLAINANT DOH, filed an eighteen count, Notice and Finding of Violation and Order in Docket No. 05-SHS-SWS-004 ("NFV") for certain permit violations concerning the operations and management of the Waimanalo Gulch Sanitary Landfill (the "Landfill") which is owned, operated and/or controlled by RESPONDENTS. The NFV is incorporated by reference and made a part of the settlement of this case.

2. Pursuant to HRS sections 342H-9 and 342H-10, the DOH NFV assessed a total penalty of $ 2,769,616.00 against RESPONDENTS. Shortly thereafter, to correct an error in calculating the penalty amount, DOH reduced the assessed penalty to $2,445,130.00.

3. The DOH and RESPONDENTS have agreed to conclude this enforcement action by entering into this Agreement.

II. WAIVER OF RIGHTS

4. RESPONDENTS hereby agree to waive any rights RESPONDENTS may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in the NFV.

5. RESPONDENTS admit and agree that the DOH has jurisdiction to enter into this Agreement and to enforce its terms. Further, RESPONDENTS agree that the DOH has jurisdiction and authority to compel compliance with the terms and conditions of this Agreement in an enforcement proceeding and be bound by the laws and rules of the State of Hawai'i.

III. PARTIES BOUND

6. This Agreement shall apply to and be binding upon the DOH and RESPONDENTS. RESPONDENTS agree to carry out all actions required of RESPONDENTS by this Agreement. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement. RESPONDENTS shall give notice of this Agreement to any successors in interest prior to transfer of ownership of the Landfill or of the contractor operating the Landfill. No change in ownership or corporate status of RESPONDENTS or of the Landfill shall alter RESPONDENTS' responsibilities under this Agreement without written consent by the DOH.

IV. CORRECTIVE ACTIONS AND COMPLIANCE REQUIREMENTS

7. RESPONDENTS agree to act in accordance with the Hawaii Revised Statutes, the Hawaii Administrative Rules, the conditions of their solid waste management permit and this Agreement.

7.1. RESPONDENTS shall make every practicable effort to screen waste and prevent disposal of any unacceptable waste, including but not limited to, whole tires, white goods, and lead-acid batteries, from entering and being disposed at the Landfill.

7.2. RESPONDENTS shall implement the Groundwater and Leachate Monitoring Plan dated August 2007, and any approved subsequent submissions. Groundwater and leachate samples from each monitoring well and leachate sump shall be collected and analyzed on a quarterly basis, or as required or otherwise approved by the DOH.

a. Groundwater samples shall be analyzed for constituents listed in 40 CFR 258, Appendix I, major cations and anions (Mg, Na, Ca, K, Cl, CO3, SO4, HCO3), major leachate indicators (TDS, TOC, total alkalinity, nitrogen-ammonia, Cl, and Fe), COD, nitrate-N, bromide, and field measurements (electrical conductance, pH, temperature, turbidity, and groundwater surface elevation), or as required or otherwise approved by the DOH.

b. Groundwater samples from newly installed wells shall also be analyzed for the following constituents in the first quarterly monitoring event: constituents listed in 40 CFR 258, Appendix II, major cations and anions (Mg, Na, Ca, K, Cl, CO3, SO4, HCO3), major leachate indicators (TDS, TOC, total alkalinity, nitrogen-ammonia, Cl, Fe), COD, nitrate-N, bromide, and field measurements (electrical conductance, pH, temperature, turbidity, and groundwater surface elevation), or as required or otherwise approved by the DOH.

c. Leachate samples shall be analyzed for constituents listed in 40 CFR 258, Appendix II, major cations and anions (Mg, Na, Ca, K, Cl, CO3, SO4, HCO3), major leachate indicators (TDS, TOC, total alkalinity, nitrogen-ammonia, Cl, Fe), COD, nitrate-N, bromide, and field measurements (electrical conductance, pH, temperature, and turbidity), or as required or otherwise approved by the DOH.

7.3. RESPONDENTS shall place a minimum of 6-inches of daily cover on the active MSW workface at the end of each workday, and shall leave no exposed waste. RESPONDENTS shall implement a Daily Cover Monitoring Verification Program as follows:

a. RESPONDENTS shall take digital photos of the active workface at the middle and end of each weekday (Monday through Friday), from the same perspective, to document the placement and thickness of daily cover. Digital photo records shall be maintained at the facility and submitted to the DOH via email by 12:00 noon on the next business day, with cell location information. RESPONDENTS and DOH will work cooperatively to determine the best perspective for the photos.

b. RESPONDENTS shall record the following quantitative items on a daily basis:
   i. Volume of waste disposed,
   ii. Cell geometry, and
   iii. Volume and type of daily cover used.

7.4. RESPONDENTS shall apply at least six inches of soil cover over exposed ash (not inclusive of alternative daily cover of fresh ash) every seven (7) days, or more frequently as required by the DOH. RESPONDENTS shall implement a Weekly Cover Monitoring Verification Program as follows:

a. RESPONDENTS shall take digital photos of the active ash workface on a weekly basis, prior to the placement of the weekly cover and after the weekly cover has been placed. Digital photo records shall be maintained at the facility and submitted to the DOH via email by 12:00 noon on the next business day following the day on which weekly cover was placed, with cell location information. RESPONDENTS and DOH will work cooperatively to determine the best perspective for the photos.

b. RESPONDENTS shall record the following quantitative items on a weekly basis:

i. Volume of waste ash disposed,

ii. Cell geometry, and

iii. Volume of soil cover used.

7.5. RESPONDENTS shall cover all inactive ash and MSW areas with intermediate cover. Inactive areas are areas that do not receive waste (ash or MSW) within a 30-day period. RESPONDENTS shall also cover any area receiving vehicular traffic with intermediate cover, regardless of the time period since last receiving waste. Intermediate cover shall be a minimum of 12 inches of earthen material (may include six inches of soil daily cover). Particle size shall be adequate to minimize infiltration and direct stormwater to collection systems.

7.6. RESPONDENTS shall submit an application to the DOH for a permit modification to increase the maximum final grades of the ash monofill.

7.7. RESPONDENTS shall maintain the MSW leachate collection sump (4B-cell sump) leachate discharge riser and associated pumps and instrumentation. The sump leachate discharge riser shall be constructed in accordance with design drawing titled, *Sump 4B Riser* Replacement, by Sanborn, Head and Associates, Inc., dated July 26, 2007, and approved subsequent submissions. RESPONDENTS shall submit a written report, within 30 days of the Effective Date or receipt of a revised solid waste permit, whichever is earlier, documenting installation of the 4-B cell sump leachate discharge riser and associated equipment. The report shall be prepared by or approved by a professional engineer licensed in the State of Hawaii, and at a minimum, shall include the following:

a. Description of procedures for the installation of the 4-B cell sump leachate discharge riser and associated equipment,

b. Identification of any deviations from the written installation instructions, the reason for the deviations, and assessment of any effects on the usability of the sump or human health and the environment.

c. Discussion of observations (visual, meter readings, etc.) noted during installation of the leachate discharge riser system, including the presence of charred waste and observations related to the sump location, gravel depth, and liner system. Photo documentation shall also be provided.

d. Survey and as-built drawings documenting the location and construction details of the newly installed 4B-cell sump leachate discharge system.

e. Description of associated appurtenances associated with the sump leachate discharge riser. A copy of the manufacturer's specifications for any pumps and control and measuring devices shall also be provided.

f. Specify the sump depth, top of riser and compliance levels associated with the sump in feet above mean sea level (msl).

g. Certification that the sump leachate discharge riser, and associated appurtenances, were installed in accordance with the design and shall provide adequate means of complying with the leachate management provisions of HAR 11-58.1, the operations plan, and the revised solid waste permit.

7.8. Leachate Monitoring and Recordkeeping.

a. RESPONDENTS shall use automated monitoring systems to monitor leachate levels in all sumps and storage tanks. The automated systems shall include an alarm system to alert RESPONDENTS to anomalous conditions in the sumps or storage tanks.

b. RESPONDENTS shall maintain a log of the status of the leachate collection systems, and record in the log at least three times per week the date, level of leachate in each sump, volume of leachate in each tank, and associated pump rates.

c. RESPONDENTS shall take manual measurements of leachate levels in the ash sump and 4B sump, at least once per month. RESPONDENTS shall take manual measurements of leachate levels in the E1 sump on an annual basis. If manual measurements are inconsistent with automated readings or other problems are identified with the system, the DOH may increase the frequency of manual measurements.

7.9. RESPONDENTS shall remove leachate from the Landfill via each of the leachate sumps, in a manner that maintains a maximum depth of 30 centimeters (12 inches) of leachate above any part of the liner in the cell, outside the sump area.

7.10. Within thirty (30) days of the Effective Date, RESPONDENTS shall install and maintain grade survey control markers to delineate the boundaries and elevations of the ash monofill and MSW landfill areas in sufficient number to ensure compliance with permitted grades.

7.11. RESPONDENTS shall implement the Asbestos Management and Disposal Plan, as provided in the Site Operations Manual. Compliance with the plan does not preclude compliance with other applicable statutes, regulations, and rules. RESPONDENTS shall document the quantity, type, and location of asbestos disposed of in the MSW landfill. Disposal locations shall be recorded with GPS coordinates. RESPONDENTS shall maintain records on the amount and location of asbestos disposal.

7.12 RESPONDENTS shall implement the Interim Perimeter Gas Monitoring Plan dated December 2006, and approved subsequent submissions, until

implementation of the permanent Perimeter Gas Monitoring Plan required by Section 7.13. The gas monitoring program shall also be conducted in accordance with HAR 11-58.1-15(d) and these conditions.

a. RESPONDENTS shall monitor the concentration at depths that will minimize the infiltration of and dilution from atmospheric air.

b. RESPONDENTS shall minimize the amount of time that the probe is open prior to recording the gas concentrations.

c. The interim plan results shall all include the duration of time that the probe was open prior to recording the concentration, length of PVC piping extending above ground surface, and length of tubing inserted at each well.

7.13 RESPONDENTS shall implement the Perimeter Gas Monitoring Plan dated October 2007, and approved subsequent submissions, within six (6) months of the Effective Date or receipt of a revised solid waste permit, whichever is earlier. The gas monitoring program shall also be conducted in accordance with HAR 11-58.1-15(d) and these conditions.

a. The well shall not be vented, or opened prior to measuring the gas concentration.

b. RESPONDENTS shall install permanent gas monitoring probes within four (4) months of the Effective Date, or receipt of a modified solid waste permit, whichever is earlier, and provide documentation of installation within sixty (60) days of completion. Documentation shall include, but is not limited to, geologic logs of each probe location, surveyed locations and elevations of probes, and as-built drawings of each monitoring probe.

7.14 RESPONDENTS shall monitor the concentration of gases, including oxygen, methane, carbon dioxide, and hydrogen. RESPONDENTS shall monitor the concentration of gases in facility structures, including temporary structures, and at the property boundary on a monthly basis, or other frequency as approved by the DOH. If an exceedance is identified, RESPONDENTS may conduct a verification monitoring event, provided that the verification monitoring is conducted within one (1) hour of the initially detected exceedance. If exceedances or other anomalous conditions are identified, the DOH may increase the frequency of monitoring events.

a. The concentration of methane gas shall not exceed 25% of the lower explosive limit (LEL) for methane in facility structures.

b. The concentration of methane gas shall not exceed the LEL for methane at the facility property boundary.

c. The concentration of hydrogen gas shall not exceed 25% of the LEL for hydrogen in facility structures.

d. The concentration of hydrogen gas shall not exceed the LEL for hydrogen at the facility property boundary.

7.15 RESPONDENTS shall submit a report with results within 45 days of each monitoring event. The results shall include the date and time, gas concentrations by volume, barometric pressure, site conditions, name of personnel conducting the monitoring, description of equipment and calibration results, description of monitoring procedure, and identification of any procedures or observations outside of normal conditions.

If verification monitoring performed within one (1) hour of the initial exceedance shows concentrations below the limits in Section 7.14, RESPONDENTS shall place results in the operating record and send written notification of the exceedance and verification monitoring results to the DOH within seven (7) days.

7.16 If combustible gas concentrations exceed the limits in Section 7.14, and verification monitoring is not performed within one (1) hour of the initial exceedance or verification monitoring confirms the initial exceedance, RESPONDENTS shall perform the following.

a. Immediately take all necessary steps to ensure protection of human health;

b. Immediately notify the DOH of the exceedance;

c. Within three (3) days of detection, place in the operating record and submit to the DOH, the type of gas, gas levels detected and a description of the steps taken to protect human health; and

d. Within sixty (60) days of detection, prepare and implement a remediation plan for the combustible gas releases, place a copy of the plan in the operating record, provide a copy of the plan to the DOH, and notify the DOH that the plan has been implemented.

e. Within thirty (30) days after the remediation plan has been completed, submit a report to the DOH documenting the actions taken, additional monitoring results, and plans to prevent future recurrences.

f. The DOH may modify the reporting and implementation schedule, as necessary to protect human health and the environment.

7.17 This Article IV and its compliance requirements shall be effective until issuance of a revised solid waste permit for continued operations, if such a

permit is issued, or until closure for the Landfill, if such a permit is not issued. Thereafter, these requirements shall terminate except for the compliance date set forth in Section 7.13(b) and the Landfill shall be subject to the requirements set forth any revised solid waste permit, or in any permits, statutes, rules, or regulations governing closure.

V. PAYMENTS AND CONSIDERATION FOR SETTLEMENT

8. Civil Penalty Amount. RESPONDENTS shall pay a civil penalty in the amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000). RESPONDENTS may, in their discretion, satisfy this civil penalty through either of the following two options:

8.1. Cash Payment. Within THIRTY (30) days after the Effective Date of this Agreement, RESPONDENTS shall deliver payment in the amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000) to the DOH at the following address:

Solid and Hazardous Waste Branch
Environmental Management Division
Hawaii State Department of Health
919 Ala Moana Blvd., Room 212
Honolulu, Hawaii 96814

8.2. Cash Payment and Supplemental Projects. Within THIRTY (30) days after the Effective Date of this Agreement, RESPONDENTS shall notify the DOH of RESPONDENTS' election to satisfy the civil penalty through a combination of a cash payment to the DOH and Supplemental Environmental Projects, as described below. If RESPONDENTS elect this option, RESPONDENTS shall satisfy a, b and c as indicated below:

a. Within THIRTY (30) days after the Effective Date of this Agreement, RESPONDENTS shall deliver payment in the amount of FIVE HUNDRED TWENTY THOUSAND DOLLARS ($520,000) to the DOH at the address set forth in Section 8.1 above;

b. RESPONDENTS shall pay the amount of SIX HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS ($637,500) in the following manner;

(1) to the DOH, for deposit into a fund be established by order of the Hearings Officer in Docket No. 05-SHW-SWS-004 in an account established within the State of Hawaii Department of Accounting and General Services ("DAGS"). This fund shall be known as a Supplemental Environmental Project ("SEP") Fund and the amounts in the SEP Fund shall be used to fund environmentally beneficial projects to benefit Leeward communities located near the

landfill, or other communities or residents of Oahu, as selected by the DOH or any other State agency designated by the DOH after consultation with the Leeward communities located near the Landfill. RESPONDENTS shall deliver the funds to the DOH at the address stated in Section 8.1 above within THIRTY (30) days after receiving notice from the DOH that the SEP Fund has been established by DAGS, and that such funds are to be deposited. RESPONDENTS shall not participate in the selection of projects funded by the SEP Fund. If the DOH elects to hire a Supplemental Environmental Coordinator, the sum of $ 100,000.00, or such lesser amount as DOH may designated, from the SEP fund shall be used by the DOH to hire a Supplemental Environmental Coordinator to oversee the SEPs that will be selected by the DOH; or

(2) to environmentally beneficial projects selected by the DOH within 30 days of notification;

(3) or to a combination of (1) and (2), as determined by DOH.

If any funds paid in accordance with Section 8.2(b), remain unexpended for environmentally beneficial projects, those monies shall be paid to the DOH at the address listed in Section 8.1 at the discretion of DOH;

c. RESPONDENTS shall satisfy the balance of the penalty amount ($342,500) by designing, engineering, permitting, and constructing at an estimated cost of at least FOUR HUNDRED FIFTY THOUSAND DOLLARS ($450,000) a community drop off center (the "Drop-Off Center") to be located at the Landfill for use by local residents to drop-off solid waste and recyclables in the vicinity of the current scalehouse and administrative building. The design of the Drop-Off Center shall be approved by the DOH. The purpose of the Drop-Off Center is to allow members of the public to conveniently and safely deliver solid waste and/or recyclables to the Landfill for disposal and/or recycling without entering areas of the Landfill with active landfilling operations. If the actual cost to design, engineer, permit, and construct the Drop-Off Center does not exceed $450,000, then RESPONDENTS shall pay the difference to the DOH at the address set forth in Section 8.1 above.

Notwithstanding any other provision in this Agreement, if RESPONDENTS elect to satisfy the civil penalty amount through this option, RESPONDENTS shall be obligated to design, engineer, permit, and construct the Drop-Off Center only when the Landfill is issued all final permits and approvals required for the expansion of the Landfill and continuation of Landfill disposal operations. If RESPONDENTS are not

able to permit or construct the Drop-Off Center consistent with this Agreement and in spite of their reasonable efforts, then in lieu thereof, RESPONDENTS shall pay to the DOH the amount of FOUR HUNDRED THOUSAND DOLLARS ($400,000) at the address set forth in Section 8.1 above.

VI. RELEASES

9. Upon payment of the amounts set forth in Section V (PAYMENTS AND CONSIDERATION FOR SETTLEMENT), any and all violations and claims alleged or which could have been alleged by the DOH in the NFV shall be discharged, dismissed, waived and released as against RESPONDENTS, their respective directors, officers, employees, servants, agents, (former directors, officers, employees, servants and agents), assigns, attorneys, administrators, insurers, subsidiaries, affiliates and/or related entities.

VII. STIPULATED PENALTIES AND ENFORCEMENT

10. Failure by RESPONDENTS to pay the amounts in Section V (PAYMENTS AND CONSIDERATION FOR SETTLEMENT), shall obligate RESPONDENTS to pay a stipulated penalty of $1,000 per day for each day that such failure continues.

11. RESPONDENTS shall pay any stipulated penalties within seven (7) days of demand as set forth in Section VIII (Form of Payment).

12. If RESPONDENTS breach the terms of Section IV (CORRECTIVE ACTION AND COMPLIANCE REQUIREMENTS) prior to the termination of those requirements, RESPONDENTS agree to be subject to the penalties set forth in section 342H-9(a), Hawaii Revised Statutes for such breaches. RESPONDENTS reserve their rights to argue all legal and factual defenses under the law, except for any argument that penalties for such breaches may not be imposed pursuant to that section, any such arguments being contractually waived herein, in consideration of and for this Settlement Agreement. Further RESPONDENTS agree that for the purposes of said section 342H-9(a), any breach of the terms of Section IV (CORRECTIVE ACTION AND COMPLIANCE REQUIREMENTS) shall be considered breaches of a permit and/or variance issued pursuant to Chapter 342H, Hawaii Revised Statutes.

13. The provisions of this section shall not be construed to limit any other remedies, including but not limited to institution of proceedings for civil or criminal liability, available to DOH for violations of this Agreement future violations of the permit, or for violations of any other provision of law.

VIII. FORM OF PAYMENT

14. The amounts payable under Sections V (PAYMENTS AND CONSIDERATION FOR SETTLEMENT and VII (STIPULATED PENALTIES AND ENFORCEMENT) shall

be paid by cashier's check, payable to the State of Hawaii, and shall be delivered to the DOH as set forth in Section XI (NOTIFICATION).

IX. DELAYS OR IMPEDIMENTS TO COMPLIANCE

15. RESPONDENTS shall notify the DOH orally, as soon as feasible, and in writing within ten (10) calendar days of any delay or anticipated delay which does or may affect compliance with this Agreement. The notice shall describe in detail the anticipated length of the delay, the precise cause(s) of the delay, the measures taken and to be taken by RESPONDENTS to prevent or minimize the delay, the timetable by which those measures will be implemented, and the expected effect on the environment of the delay. RESPONDENTS shall take all reasonable measures to avoid or minimize any such delay.

16. The burden of proving that any delay is caused by circumstances entirely beyond the control of RESPONDENTS shall rest with RESPONDENTS.

X. ENTRY AND INSPECTION

17. Any authorized representative of the DOH, upon presentation of credentials, may enter upon the Landfill premises and/or inspect the Landfill records of RESPONDENTS at any time for the purpose of monitoring compliance with the provisions of this Agreement. This provision shall not be deemed to limit any authority the DOH otherwise has to enter and inspect.

XI. NOTIFICATION

18. Whenever, under the terms of this Agreement, a notice, report, or payment is required to be given by one party to another, such notice, report, or payment shall be directed to the individuals specified below, at the addresses given, unless a party gives notice in writing to the other parties that another individual has been designated to receive such communications:

Steven Y.K. Chang, P.E., Chief
Solid and Hazardous Waste Branch
Environmental Management Division
Hawaii State Department of Health
919 Ala Moana Blvd., Room 212
Honolulu, Hawaii 96814
Telephone: (808) 586-4226
Telefax: (808) 586-7509

Department of Environmental Services
City and County of Honolulu
1000 Uluohia Street, Suite 308
Kapolei, Hawaii 96707
Telephone: (808) 768-3486
Telefax: (808) 768-3487

Director of Operations
Waste Management of Hawaii, Inc.
Waimanalo Gulch Landfill
92-460 Farrington Hwy.
Kapolei, HI 96707
Telephone: (808) 668-2985
Telefax: (808) 668-1366

General Counsel, Western Group
Western Group Legal Department
7025 North Scottsdale Road, Suite 200
Scottsdale, AZ 85253
Telephone: (480) 624-8400
Telefax: (480) 951-5280

XII. AUTHORITY OF SIGNATORIES

19. Each undersigned representative or a party to this Agreement certifies that he or she has full authority to enter into the terms of this Agreement and legally to bind the party which he or she represents.

20. Compliance with this Agreement does not relieve RESPONDENTS' responsibility to comply with all other applicable laws and regulations.

XIII. NO ADMISSION OF LIABILITY

21.The parties acknowledge that neither this Agreement, nor the fact of settlement, nor the civil penalty and settlement payments, nor the settlement proceeds are, may be construed as, may be deemed evidence of, or may be used at any time as an admission, concession, presumption, or inference of fault, wrongdoing or liability of any party. The Agreement is to be construed strictly as a compromise and settlement of all the alleged violations in NFV for the purpose of ending past and present controversies, litigation of the contested case, and expenses.

XIV. ENTIRE AGREEMENT

22. This Agreement sets forth the entire agreement between the parties with respect to this matter.

XV. EFFECTIVE DATE

23. This Agreement shall become effective as soon as it has been signed by all the parties (the "Effective Date").

XVI. MODIFICATIONS

24. This Agreement shall not be modified except in writing, signed by all the parties.

XVII. TERMINATION

25. RESPONDENTS must demonstrate to the DOH's satisfaction that RESPONDENTS have made the payment required by Sections 8.1 or 8.2 (as appropriate) of this Agreement, and implemented the corrective actions and compliance requirements of Section IV (until those requirements are governed by a revised solid waste permit, as provided for in Section 7.17 of this Agreement. Within thirty (30) working days after such a showing by RESPONDENTS, the DOH shall issue a letter to RESPONDENTS certifying satisfactory compliance, which shall terminate this Agreement.

XVIII. EFFECT

26. This Agreement constitutes the final agreement between the parties and the settlement of Docket No. 05-SHW-SWS-004; and concludes the contested case proceedings which shall be dismissed with prejudice upon execution of this Agreement.

XIX. FEES AND COSTS

27. Each party shall bear its own costs and attorneys' fees.

XX. GOVERNING LAW

28. This Agreement shall be enforceable under, and interpreted according to the laws of the State of Hawaii.

XXI. SEVERABILITY OF UNLAWFUL PROVISIONS

29. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

XXII. COUNTERPART/FACSIMILE SIGNATURES

30. This Agreement may be executed in two or more counterparts or by facsimile, and any set of the counterparts or facsimile that are collectively executed by the Parties hereto shall be sufficient proof of this Agreement.

Dated: Honolulu, Hawaii DEC - 7 2007

DEPARTMENT OF HEALTH
STATE OF HAWAII

LAURENCE K. LAU
Deputy Director for Environmental Health

APPROVED AS TO FORM:

KATHLEEN S.Y. HO
Deputy Attorney General

WASTE MANAGEMENT OF HAWAII, INC,

ANDREW M. KENEFICK
Senior Legal Counsel
per Corporate Resolution (Dec. 6, 2007)

APPROVED AS TO FORM:

LORRAINE H. AKIBA
Attorney for Waste Management of Hawaii, Inc.

CITY AND COUNTY OF HONOLULU

DIRECTOR, DEPARTMENT OF
ENVIRONMENTAL SERVICES

APPROVED AS TO FORM:
AND LEGALITY:

Deputy Corporation Counsel

Department of Health, State of Hawaii vs. Waste Management, Inc. and City and County of Honolulu; Docket No. 05-SHW-SWS-004; Settlement Agreement