

COUNCIL OF THE COUNTY OF MAUI
POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE

January 24, 2014

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on January 14, 2014, makes reference to County Communication 13-384, from the Department of the Corporation Counsel, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE CENTRAL MAUI MUNICIPAL SOLID WASTE LANDFILL".

The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the State Department of Health ("DOH") for settlement of alleged violations at the Central Maui Municipal Solid Waste Landfill through the payment of a \$50,000 cash penalty and performance of approved supplemental environmental projects at a cost of at least \$70,000.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE CENTRAL MAUI MUNICIPAL SOLID WASTE LANDFILL RELATING TO NOTICE AND FINDING OF VIOLATION AND ORDER, STATE OF HAWAII DEPARTMENT OF HEALTH DOCKET NO. 13-SHW-SWS-002", approved as to form and legality, incorporating nonsubstantive revisions.

Your Committee notes the Notice and Finding of Violation dated February 4, 2013, in the DOH Docket 13-SHW-SWS-002 ("Notice"), states the administrative enforcement action against the County of Maui is based on an inspection of the County's solid waste disposal facility on Pulehu Road, Puunene, Maui, on April 4, 2011, and documents submitted by the County.

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The Notice alleges violations of the County's solid waste management permit LF-0089-08, for failure to maintain leachate compliance levels in the Phase IV-A wet well and the Phase IV-B sump for a period of approximately three months, during specified dates from January through April 2011. The Notice also alleges the County failed to monitor and record leachate levels before and after leachate pumping on a daily basis and after a storm event. The Notice specifies conditions of the permit the DOH alleges have been violated and references penalties not to exceed \$10,000 for each day of each violation. The related Order dated February 4, 2013, would require the County to pay \$121,900.

The County disputed the allegations in the Notice and Order and requested a contested case hearing. The proposed bill contains the terms of a negotiated settlement to resolve the issues in this matter rather than proceed with a contested case hearing.

The Director of Environmental Management informed your Committee in the beginning of 2011, there were storm events on Maui that created considerable landfill leachate. He explained leachate is formed when rainwater or any type of liquid comes into contact with exposed waste. Because of the storms, the leachate level rose above what the landfill was able to accommodate. He described efforts to lower the level and other factors contributing to the problem.

The Director noted steps taken to minimize a recurrence. He also described three proposals for supplemental environmental projects his Department intends to pursue with the DOH. He advised your Committee the Department views the terms of the intergovernmental agreement to be appropriate.

Your Committee voted 5-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Hokama and members Cochran, Crivello, Guzman, and White voted "aye". Committee Vice-Chair Couch and members Baisa, Carroll, and Victorino were excused.

Your Policy and Intergovernmental Affairs Committee **RECOMMENDS** the following:

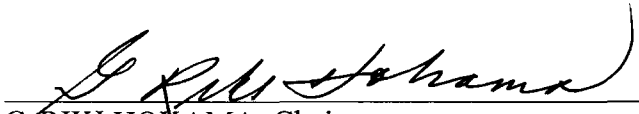
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1. That Bill _____ (2014), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE CENTRAL MAUI MUNICIPAL SOLID WASTE LANDFILL RELATING TO NOTICE AND FINDING OF VIOLATION AND ORDER, STATE OF HAWAII DEPARTMENT OF HEALTH DOCKET NO. 13-SHW-SWS-002", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 13-384 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE CENTRAL MAUI MUNICIPAL SOLID WASTE LANDFILL RELATING TO NOTICE AND FINDING OF VIOLATION AND ORDER, STATE OF HAWAII DEPARTMENT OF HEALTH DOCKET NO. 13-SHW-SWS-002

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The State of Hawaii ("State") alleged violations regarding the Central Maui Municipal Solid Waste Landfill ("Central Maui Landfill") pursuant to a Notice of Finding and Violation and Order ("NOV"), State of Hawaii Docket No. 13-SHW-SWS-002, issued on or about February 7, 2013. The County of Maui ("County") disputed the allegations, and requested a contested case hearing. County and the State have agreed to enter into a negotiated settlement agreement instead of proceeding with a contested case hearing. To avoid incurring expenses and the uncertainty of an administrative hearing officer's determination of the parties' respective rights and liabilities, the Department of Environmental Management has reviewed the proposed Settlement Agreement, attached hereto as Exhibit "1" ("Agreement"), and agrees with the terms and conditions therein.

Section 2.20.020, Maui County Code ("MCC"), provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a

financial obligation upon the County or any department or agency thereof.

Section 3.16.020(B), MCC, provides that any settlement in excess of \$7,500 shall require Council authorization.

SECTION 2. Authorization. The Council approves attempts to reach resolution of the Central Maui Landfill NOV by way of the Agreement, in substantial conformance with Exhibit "1", which includes payment of a penalty in an amount not to exceed ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00). SEVENTY THOUSAND AND NO/100 DOLLARS (\$70,000.00) of the penalty amount may be used to implement a Supplemental Environmental Project subject to certain conditions as set forth in the Agreement. In the event that County fails to meet the conditions and deadlines governing the Supplemental Environmental Project provided for in the Agreement, the County must pay the full penalty amount of ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$120,000.00). The Council hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui
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IN THE DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH, STATE OF HAWAII, COMPLAINANT, vs. COUNTY OF MAUI, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, RESPONDENT.	DOCKET NO. 13-SHW-SWS-002 Central Maui Municipal Solid Waste Landfill County of Maui SETTLEMENT AGREEMENT
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SETTLEMENT AGREEMENT

This is a Settlement Agreement ("Agreement") between the Solid Waste Section (SWS), Department of Health, State of Hawaii (DOH), and the County of Maui, Department of Environmental Management (hereinafter referred to as "RESPONDENT"), to ensure the implementation of the proposed supplemental environmental projects (SEPs) equivalent to \$70,000.00 and payment of a cash penalty in the sum of \$50,000.00, as agreed by RESPONDENT.

I. PRELIMINARY STATEMENT

1. On April 4, 2011, COMPLAINANT, DOH, inspected the Central Maui Municipal Solid Waste Landfill, which is owned, operated and controlled by the RESPONDENT. The inspection was conducted pursuant to DOH's authority under Hawaii Revised Statutes (HRS) section 342H-6. DOH's investigation included the review of documents provided by the RESPONDENT at the facility at the time of investigation.

2. On or about February 7, 2013, DOH issued a Notice of Finding and Violation and Order (incorporated herein as "NFV" and "Order") against RESPONDENT for operations at the Central Maui Municipal Landfill, TMK 3-8-003:019, 025 (referred to as the "facility"), wherein DOH alleged, and continues to allege, that RESPONDENT violated HRS chapters 342H, Hawaii Administrative Rules (HAR) chapter 58.1., and solid waste management permit, LF-0089-08. See NFV, Part C, "Statement of Facts."

EXHIBIT " 1 "

3. Pursuant to HRS sections 342H-9 and 342H-10 and according to DOH's "Office of Solid Waste Management Draft Administrative and Civil Penalty Policy," DOH assessed a total penalty of \$121,900.00 against RESPONDENT. See Order.

4. DOH and RESPONDENT have agreed to conclude this enforcement action by entering into this Agreement.

II. ADMISSIONS AND WAIVERS OF RIGHTS

5. RESPONDENT neither admits nor denies any allegations of fact or law set forth in the NFV. RESPONDENT hereby agrees to waive any rights RESPONDENT may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in the Complaint.

6. RESPONDENT admits and agrees that DOH has jurisdiction to enter into this Agreement and to enforce its terms. Further, RESPONDENT agrees that DOH has jurisdiction and authority to compel compliance with the terms and conditions of this Agreement in an enforcement proceeding, either administrative or judicial, or to impose reasonable sanctions for violations of this Agreement. RESPONDENT hereby consents to the issuance of this Agreement without adjudication.

III. PARTIES BOUND

7. This Agreement shall apply to and be binding upon the DOH and RESPONDENT. The RESPONDENT agrees to carry out all actions required of the RESPONDENT 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. The RESPONDENT shall give notice of this Agreement to any successors in interest prior to transfer of ownership and to any contractor performing activities contemplated by this Agreement and shall submit a copy of each such notice to the DOH. No change in ownership or corporate status of the RESPONDENT or of the site shall alter the RESPONDENT'S responsibilities under this Agreement without written consent by the DOH.

IV. RIGHTS RESERVED BY DOH

8. DOH reserves the right to take actions consistent with any applicable law, against the responsible entities, and to exercise rights the director may have under any applicable law including recovering costs and taking enforcement actions.

V. PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECT

9. HRS sections 342H-9 and 342H-10 authorize an administrative penalty of up to \$10,000 per day for each violation of any provision of Chapter 342H, any rule adopted thereunder, or any term or condition of a permit issued pursuant to Chapter 342H. For the violations described in section I, RESPONDENT shall pay a cash penalty in the sum

of \$50,000, which shall be due within 90 days of the signing of this agreement; and perform DOH-approved supplemental environmental projects (SEPs) at a cost of at least \$70,000, as further described in paragraph 10.

10. RESPONDENT shall submit SEP proposals and associated cost estimates and implementation schedules to the DOH within ninety (90) days of the signing of this agreement. The DOH shall review and provide comment and/or approval of the SEP proposals within 21 days of receipt of the proposals. If SEP proposals are not submitted within 90 days of signing of this agreement, or not agreed upon within 6 months of the signing of this agreement, then the RESPONDENT shall pay the full penalty amount described in paragraph 3.

11. The completion of the SEP shall be within a reasonable period of time as agreed to in the proposed SEP. If the RESPONDENT chooses to provide in-kind support to carry out the SEP, this support shall not be conducted with staff resources that are otherwise providing normal services for solid waste management within the county. The project also shall not include any actions that will merely address issues associated with regulatory compliance.

If the SEP projects are not completed within the time period agreed to at the time of SEP approval, the county shall pay full penalty amount minus the value of any completed SEP projects.

12. The RESPONDENT shall pay the penalty as set forth in Section VII (Form of Payment).

VI. STIPULATED PENALTIES

13. Failure by the RESPONDENT to implement SEP within the time period agreed at the time of SEP approval as required by section V above, unless excused pursuant to section VIII (Delays or Impediments to Compliance) herein and/or excluding the implementation of paragraphs 10 and 11 if full penalties are paid in accordance with paragraphs 10 and 11, shall obligate the RESPONDENT to pay \$1,000 per day for each day that such failure continues.

14. The RESPONDENT shall pay stipulated penalties within seven (7) days of demand as set forth in section VII (Form of Payment).

15. 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 or of any other provision of law.

VII. FORM OF PAYMENT

16. The penalty payable under sections V (Penalty) and VI (Stipulated Penalties) shall be paid by cashier's check, payable to the State of Hawaii, and shall be received at the DOH as set forth in section X (Notification).

VIII. DELAYS OR IMPEDIMENTS TO COMPLIANCE

17. The RESPONDENT 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 the 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 the RESPONDENT 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. The RESPONDENT shall take all reasonable measures to avoid or minimize any such delay.

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

IX. ENTRY AND INSPECTION

19. Any authorized representative of the DOH, upon presentation of credentials, may enter upon the premises and/or inspect the records of the RESPONDENT 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.

X. NOTIFICATION

20. 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 party 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

Kyle K. Ginoza, P.E., Director
Department of Environmental Management
County of Maui
2200 Main Street, Suite 100
Wailuku, Hawaii 96793
Telephone: (808) 270-8230
Telefax: (808) 270-8234

XI. AUTHORITY OF SIGNATORIES

21. Each undersigned representative of 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.

XII. BINDING EFFECT

22. The provisions of this Agreement shall apply to and be binding upon the parties to this action, their officers, agents, trustees, servants, employees, successors, assignees and attorneys. The RESPONDENT shall give notice of this Agreement to any successors in interest prior to transfer of ownership and to any contractor performing activities contemplated by this Agreement and shall submit a copy of each such notice to the DOH.

XIII. ENTIRE AGREEMENT

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

XIV. EFFECTIVE DATE

24. This Agreement shall become effective as soon as it has been signed by the parties.

XV. MODIFICATIONS

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

XVI. TERMINATION

26. The RESPONDENT must demonstrate to the DOH's satisfaction that the RESPONDENT has complied with all of the terms of this Agreement. Within thirty (30) working days after such a showing by the RESPONDENT, the DOH shall issue a letter to the RESPONDENT certifying satisfactory compliance, which shall terminate this Agreement.

XVII. EFFECT

27. This Agreement constitutes final resolution of all disputed issues in this case.

XVIII. COSTS

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

Dated: Honolulu, Hawaii _____.

DEPARTMENT OF HEALTH
STATE OF HAWAII

GARY GILL
Deputy Director for Environmental Health

COUNTY OF MAUI

ALAN M. ARAKAWA
Mayor

APPROVED AS TO FORM:

KATHLEEN S.Y. HO
Deputy Attorney General

APPROVAL RECOMMENDED:

COUNTY OF MAUI
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



KYLE K. GINOZA
Director

APPROVED AS TO FORM
AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel