

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 13-385, 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 MOLOKAI INTEGRATED SOLID WASTE MANAGEMENT FACILITY".

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 the settlement of alleged violations at the Molokai Integrated Solid Waste Management Facility ("landfill") through the payment of a \$20,000 cash penalty.

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 MOLOKAI INTEGRATED SOLID WASTE MANAGEMENT FACILITY RELATED TO NOTICE OF FINDING AND VIOLATION AND ORDER, STATE OF HAWAII DEPARTMENT OF HEALTH DOCKET NO. 13-SHW-SWS-003", 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-003 ("Notice"), states the administrative enforcement action against the County of Maui is based on an inspection of the County's solid waste disposal facility in Naiwa, Molokai, on April 11, 2011, and documents submitted by the County.

COUNCIL OF THE COUNTY OF MAUI  
**POLICY AND INTERGOVERNMENTAL  
AFFAIRS COMMITTEE**

Page 2

**Committee  
Report No.** \_\_\_\_\_

The Notice alleges violations of the County's solid waste management permit LF-0092-04, for failure to effectively manage its litter control program in the landfill and prevent litter from spreading beyond the property line of the facility, including the collection and proper disposal of all windblown material. The Notice also alleges the County failed to place daily cover material on specified areas of the landfill. 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 \$20,955.

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, excessive rains led to soil erosion in covered areas of the landfill, which resulted in some trash being exposed. He described efforts to keep the landfill open and accept trash even if areas of the landfill were in need of remediation.

Your Committee discussed the adequacy of staffing at the landfill. The Director noted the Department will now close the landfill if sufficient staff is not available to remain open and remediate possible violations.

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:

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 MOLOKAI INTEGRATED SOLID WASTE MANAGEMENT

COUNCIL OF THE COUNTY OF MAUI  
**POLICY AND INTERGOVERNMENTAL  
AFFAIRS COMMITTEE**

Page 3

Committee  
Report No. \_\_\_\_\_

FACILITY RELATED TO NOTICE OF FINDING AND VIOLATION  
AND ORDER, STATE OF HAWAII DEPARTMENT OF HEALTH  
DOCKET NO. 13-SHW-SWS-003”, be PASSED ON FIRST READING  
and be ORDERED TO PRINT; and

2. That County Communication 13-385 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 MOLOKAI INTEGRATED SOLID WASTE MANAGEMENT FACILITY RELATED TO NOTICE OF FINDING AND VIOLATION AND ORDER, STATE OF HAWAII DEPARTMENT OF HEALTH DOCKET NO. 13-SHW-SWS-003

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

SECTION 1. Purpose. The State of Hawaii ("State") alleged violations regarding the Molokai Integrated Solid Waste Management Facility ("Molokai Landfill") pursuant to a Notice and Findings of Violation and Order ("NOV"), State of Hawaii Department of Health ("State") Docket No. 13-SHW-SWS-003, 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 Molokai Landfill NOV by way of the Agreement, in substantial conformance with Exhibit "1", which includes payment of a penalty in the sum of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00). 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

S:\ALL\RMT\Ordinances\IGA MoLF DOH NOV 2013.doc

IN THE DEPARTMENT OF HEALTH

STATE OF HAWAII

|  |  |
|--|--|
| DEPARTMENT OF HEALTH,<br>STATE OF HAWAII,<br><br>COMPLAINANT,<br><br>vs.<br><br>COUNTY OF MAUI, DEPARTMENT OF<br>ENVIRONMENTAL MANAGEMENT<br><br>RESPONDENT. | DOCKET NO. 13-SHW-SWS-003<br>Molokai Integrated Solid Waste<br>Management Facility, County of Maui<br><br>SETTLEMENT AGREEMENT |
|--|--|

**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 settlement and agreement of payment in cash penalty in the sum of \$20,000.00.

**I. PRELIMINARY STATEMENT**

1. On April 11, 2011, COMPLAINANT, DOH, inspected the Molokai Integrated Solid Waste Management facility, 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 Molokai Integrated Solid Waste Management facility, TMK 5-2-11:27 and 30 (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-0092-04. 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 \$20,955.00 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**

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 agreed to pay a cash penalty in

the sum of \$20,000.00 which shall be due within 90 days of the signing of this agreement.

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

#### **VI. STIPULATED PENALTIES**

11. Failure by the RESPONDENT to pay the penalty in section V (Penalty) above, unless excused pursuant to section VIII (Delays or Impediments to Compliance) herein, shall obligate the RESPONDENT to pay \$1,000 per day for each day that such failure continues.

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

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 or of any other provision of law.

#### **VII. FORM OF PAYMENT**

14. 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**

15. 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.

16. 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**

17. 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**

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 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 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**

19. 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**

20. 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**

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

**XIV. EFFECTIVE DATE**

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

**XV. MODIFICATIONS**

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

**XVI. TERMINATION**

24. 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**

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

**XVIII. COSTS**

26. 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  
& LEGALITY:



---

Richelle M. Thomson  
Deputy Corporation Counsel