

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION 9

In the Matter of:	)	
	)	
Waste Management of Hawaii, Inc. and	)	FINDING OF VIOLATION
City and County of Honolulu	)	
	)	AND ORDER
Proceedings under Section 308(a) and 309(a)(3),	)	
(a)(4) and (a)(5)(A) of the Clean Water Act, as	)	Docket No. CWA-309(a)-12-003
amended, 33 U.S.C. Section 1318(a) and	)	
1319(a)(3), (a)(4) and (a)(5)(A)	)	

**STATUTORY AUTHORITY**

The following Finding of Violation and Order (Docket No. CWA-309(a)-12-003) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) pursuant to Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act [33 U.S.C. § 1318(a) and 1319(a)(3), (a)(4), and (a)(5)(A)] (hereinafter “the Act”). This authority has been delegated by the Administrator and the Regional Administrator of EPA Region 9 to the Director of the Water Division of EPA Region 9.

**FINDING OF VIOLATION**

The Director of the Water Division of EPA Region 9 finds that Respondents Waste Management of Hawaii, Inc.(WMH) and the City and County of Honolulu (CCH) are in violation of Section 301(a) of the Act [33 U.S.C. § 1311(a)]. This Finding is based on the following facts:

Background

1. Section 301(a) of the Act [33 U.S.C. § 1311(a)] prohibits any person from discharging pollutants into waters of the United States except in compliance with the terms of, inter

alia, a National Pollutant Discharge Elimination System (NPDES) permit issued in accordance with Section 402(a) of the Act. 33 U.S.C. § 1342(a).

2. Section 502(5) of the Act [33 U.S.C. § 1362(5)] defines “person” to mean an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
3. Section 502(6) of the Act [33 U.S.C. § 1362(6)] defines “pollutant” to mean dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
4. Section 502(12) of the Act [33 U.S.C. § 1362(12)] defines the term “discharge of pollutants” to mean any addition of any pollutant to navigable waters from any point source.
5. Section 502(7) of the Act [33 U.S.C. § 1362(7)] defines the term “navigable waters” to mean the waters of the United States, including the territorial seas.
6. Section 502(14) of the Act [33 U.S.C. § 1362(14)] defines the term “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged.
7. Section 402(p) of the Act [33 U.S.C. § 1342(p)] sets out the specific requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p)(2)(B) of the

- Act [33 U.S.C. § 1342(p)(2)(B)] requires permits to issued for discharges of storm water associated with industrial activities.
8. On November 16, 1990, EPA promulgated regulations at 40 C.F.R. Part 122.26, implementing Section 308 of the Act [33 U.S.C. § 1318] and the storm water provisions of Section 402(p) of the Act [33 U.S.C. § 1342(p)].
  9. 40 C.F.R. Part 122.26(c) provides that dischargers of storm water associated with industrial activities are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit. 40 C.F.R. Part 122.21(a) *Duty to apply* requires that any person who discharges or intends to discharge pollutants must apply for an NPDES permit unless exempt.
  10. 40 C.F.R. Part 122.26(b)(14) sets out the definition of “storm water discharge associated with industrial activities” and, at 40 C.F.R. Part 122.26(b)(14)(v), includes landfills.
  11. Section 402(b) of the Act [33 U.S.C. § 1342(b)] authorizes states to administer the NPDES program with the approval of the Administrator of EPA. The State of Hawaii, through its Department of Health (DOH), is a state approved under section 402(b) of the Act to administer the NPDES program, including the issuance of storm water permits.
  12. On October 25, 2002, DOH adopted the NPDES General Permit Authorizing Discharges Associated with Industrial Activities, HAR Chapter 11-55 Appendix B (the Hawaii Industrial Activities General Permit). This general permit became effective on November 7, 2002. It expired on October 21, 2007, when the Hawaii Industrial Activities General Permit was subsequently readopted by DOH with an effective date of October 22, 2007. The current general permit is set to expire on October 21, 2012.

## Respondents

13. Respondent CCH is a political subdivision of the State of Hawaii, and is therefore a person within the meaning of Section 502(5) of the Act [33 U.S.C. § 1352(5)]. CCH owns the Waimanalo Gulch Sanitary Landfill (WGSL).
14. Respondent WMH is a corporation registered to do business in Hawaii, and is therefore a person within the meaning of Section 502(5) of the Act [33 U.S.C. § 1352(5)]. WMH operates the WGSL on behalf of CCH.
15. Respondents have obtained authorization to discharge pollutants to waters of the United States pursuant to the terms of the Hawaii Industrial Activities General Permit.
16. On August 30, 2010, the State of Hawaii's Department of Health (HDOH) issued a notice of general permit coverage (NGPC) to Respondents, authorizing discharges consistent with the provisions of the Hawaii Industrial Activities General Permit, and imposing additional provisions regulating such discharges. The NGPC was issued to CCH. Joseph Whelan of WMH was acknowledged as the duly-authorized representative of CCH for purposes of the permit.
17. Appendix B to Hawaii Administrative Rules Chapter 11-55 sets forth the terms of the current Hawaii Industrial Activities General Permit. Appendix B requires, among other things, that the permittee shall develop and implement a storm water pollution control plan (SWPCP) to minimize the discharge of pollutants in storm water and to maintain compliance with the terms of the Hawaii Industrial Activities General Permit. Appendix B at 6(a).
18. The NGPC issued to Respondents further requires that Respondents implement, operate and maintain the facility's SWPCP to ensure that storm water discharges associated with

industrial activities will not cause or contribute to a violation of state water quality standards [NGPC Condition 3], and includes numeric effluent limitations with which storm water discharges from WGS� must comply [NGPC Condition 1, Note 1].

19. The notice of coverage further requires that Respondent revise the SWPCP for WGS� should any effluent limitation or water quality standards established in HAR, Section 11-54-4, be exceeded [NGPC Condition 4].
20. In January, 2009, Respondents certified a SWPCP for WGS�. On April 27, 2011, Respondents certified a new SWPCP for WGS�. Both SWPCPs includes, among other things, the following provision:

#### **2.5.6 Prevention of Pollutant Discharges**

The surface water management system for the landfill should prevent any discharge of pollutants to the U.S. waters or violation of water quality regulations by:

- o Preventing run-off of surface water that has contacted waste;
- o Controlling erosion to prevent loss of cover or washout of refuse slopes;
- o Managing leachate, and
- o Retaining and removing silt from surface water before it is discharged from the site.

21. 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 to prevent loss of cover or washout 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.

22. Discharges from WGS� 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 controllable sources of pollutants.
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. As to one sample, dated January 13, 2011, Respondents failure to properly maintain the sample temperature invalidated the analysis of the constituents in the sample and, as such, failed to comply with the requirements of HAR, Section 11-55 Appendix A, Standard Condition 14.

#### **ADMINISTRATIVE ORDER**

Taking the above findings into consideration and considering the potential environmental and human health effects of the violations and all good faith efforts to comply, EPA has determined that compliance consistent with the following requirements is reasonable. Pursuant to Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Act [33 U.S.C. §§ 1318 and 1319(a)(3), (a)(4), (a)(5)(A)], it is hereby ordered that Respondents shall comply with the following requirements:

##### Completion of Western Diversion Project

1. By December 1, 2011, Respondents shall complete construction of all features of the Western Diversion Project necessary to completely segregate off-site storm water run-on

from on-site storm water run-off from WGS� under the design storm conditions used for the planning and design of the Western Diversion Project. “Complete segregation” for purposes of this Order means that all storm water from the watershed up-gradient of WGS� and portions of WGS� that have never received municipal solid waste, including incinerator ash (collectively “MSW”) shall be diverted around the landfill and prevented from entering the landfill features designed to manage drainage of storm water run-off from the landfill. In addition, no storm water run-off from portions of WGS� that have received MSW shall enter into the features designed to divert storm water from the watershed up-gradient of WGS� around the landfill.

2. For purposes of the above requirement, “complete construction” means that substantial completion has occurred so that Respondents are able to use the Western Diversion Project to divert storm water run-on from a portion of the watershed up-gradient of WGS� around the landfill and the landfill, features designed to manage drainage of storm water run-off from the landfill consistent with the design intent. This shall include, but is not necessarily limited to, ensuring the run-on from the Western Diversion Project does not enter the detention basin that receives storm water run-off from WGS�. In addition, this shall include preventing storm water run-on from the up-gradient watershed from reaching landfill cells currently authorized to receive MSW or which have received MSW in the past.
3. To achieve compliance with these requirements, Respondent shall, at a minimum, be able to operate the following elements of the Western Diversion Project in accordance with the design intent as described in the Surface Water Management Plan for WGS� and the Western Surface Water Drainage Plan:

- The Western Diversion Berm,
  - The series of pipes and open channels designed to convey diverted up-canyon flows,
  - The Plunge Pool,
  - The Stilling Basin, and
  - All appurtenant features needed for the effective operation of these features consistent with the provisions of this Order and other regulatory requirements.
4. By no later than December 15, 2011, Respondents shall submit a report to EPA documenting compliance with the provisions set forth in Paragraphs 1-3 of this Order. If Respondents should assert they have achieved compliance with the performance requirements set forth in Paragraph 1 of this Order without achieving compliance with all of the requirements set forth in Paragraphs 2-3 of this Order, Respondents shall provide a technical justification explaining how full segregation of flows under design conditions is achieved, as required by Paragraph 1 of this Order.
5. If Respondents' December 15, 2011 report does not document full compliance with the provisions of Paragraphs 1-3 of this Order, Respondents shall submit on December 15, 2011 a compliance plan to EPA for review and approval, to include the following elements:
- A compliance schedule to complete construction of the Western Diversion Project and achieve the performance requirements of Paragraph 1 of this Order by the earliest practicable date. This schedule shall identify the current status of the work not yet completed on the elements of the Western Diversion Project, a proposed completion date for each element of the Western Diversion Project and



a technical justification for why the proposed completion date for each element constitutes the earliest practicable completion date for each element;

- Interim measures designed to prevent, to the extent feasible, storm water run-on from the up-gradient watershed from reaching the landfill cells which are authorized to receive MSW or which have received MSW in the past;
- Interim measures to prevent, to the extent technically feasible, discharges from the detention basin from violating the provisions of Respondents' NPDES permit, including both numeric and non-numeric criteria.

6. If Respondents' December 15, 2011 report does not document full compliance with Paragraphs 1-3 of this Order, Respondents shall submit monthly progress reports on the progress towards completion of compliance with these requirements and the status of Respondents' implementation of the interim compliance measures provided for in Paragraphs 1-5 of this Order.

7. If Respondents' December 15, 2011 report does not document full compliance with Paragraphs 1-3 of this Order, Respondents shall submit a supplemental report within 30 days of achieving full compliance with these requirements. This report shall document when each of the requirements of Paragraphs 1-3 was fully complied with, including the completion of construction of each of the elements of the Western Diversion Project set forth in Paragraph 3 of this Order.

#### Detention Basin Evaluation

8. No later than January 31, 2012, Respondents shall submit for EPA approval a plan of study to evaluate the detention basin's capacity to store and treat storm water under current conditions and following completion of the Western Diversion Project. The plan

of study shall evaluate the adequacy of the detention basin's capacity to store and treat storm water under the full build out of WGSL consistent with Respondents' existing full build out plans, including, but not limited to, completion of both Phase 1 and Phase II of the Eastern Drainage System. The plan of study shall include, at a minimum, the following elements:

- Modeling of the inflows the detention basin could be expected to receive under a variety storm conditions including, but not limited to the 10-year/24-hour storm, the 25-year/24-hour storm, and the 100-year/24-hour storm.
- Modeling of the capacity of the detention basin to capture and retain flows from the storms analyzed in the inflow modeling element.
- Discharge projections for the detention basin under each of the storms analyzed in the inflow modeling element. These discharge projections shall assess the anticipated volume and duration of discharges anticipated under each of the analyzed storms, whether discharges from the detention basin spillway will occur, and whether anticipated discharges will comply with the requirements of the existing WGSL NPDES permit including both numeric and non-numeric criteria.
- A discussion of the plans for improvements to the Eastern Drainage System, including Respondents' schedule for completing this project (Phase I and Phase II) and analysis of the impact of completion of planned improvements to the Eastern Drainage System on the modeling and discharge projections required above.
- A schedule for completing the work called for by the plan of study and the report provided for in Paragraph 10 of this Order.

9. Following submission of the plan of study required by Paragraph 8, EPA will approve, modify, or reject the plan of study. If EPA approves or modifies the plan of study, Respondents shall complete the work required by the plan of study consistent with its terms. If EPA rejects the plan of study, Respondents shall, within 30 days of its rejection, submit a revised plan of study addressing the deficiencies that resulted in EPA's rejection for EPA's review and approval consistent with the provisions of this paragraph.
10. Following completion of the work required by the approved plan of study, Respondents' shall submit a final report to EPA for approval as to the adequacy of the detention basin to manage storm water run-off from WGS� and achieve full compliance with the NPDES permit requirements for WGS� including both numeric and non-numeric criteria. If the report identifies any deficiencies with the detention basin in achieving these objectives, Respondents shall propose compliance measures sufficient to fully address any deficiencies as well as any appropriate interim measures to minimize deficiencies with the detention basin pending completion of measures needed to achieve full compliance. Respondents shall propose schedules for the timely implementation of all the proposed compliance measures.
11. Following submission of the final report required by Paragraph 10, EPA will approve, modify, or reject the final report. If EPA approves or modifies the final report, Respondents shall complete the work required by the final report consistent with its terms. If EPA rejects the final report, Respondents shall, within 30 days of its rejection, submit a revised final report addressing the deficiencies that resulted in EPA's rejection for EPA's review and approval consistent with the provisions of this paragraph.

### Monitoring Plan

12. By no later than January 2, 2012, Respondents shall submit an enhanced storm water monitoring plan to EPA for its review and approval. The enhanced storm water monitoring plan shall be designed to sample and analyze storm water discharges at WGS�'s NPDES sampling location on every day storm water is discharged from the detention basin. The enhanced storm water monitoring plan shall include procedures for assessing conditions at WGS� and the detention basin to determine if a discharge will occur during or following a storm event, procedures for assessing receiving water conditions following a discharge from the detention basin or WGS�, and procedures to ensure all samples are analyzed consistent with the provisions of the existing NPDES permit for WGS� and 40 CFR Part 136.
13. Following submission of the enhanced storm water monitoring plan required by Paragraph 12, EPA will approve, modify, or reject the monitoring plan. If EPA approves or modifies the enhanced storm water monitoring plan, Respondents shall implement the enhanced storm water monitoring plan consistent with its terms. If EPA rejects the enhanced storm water monitoring plan, Respondents shall, within 30 days of its rejection, submit a revised plan addressing the deficiencies that resulted in EPA's rejection for EPA's review and approval consistent with the provisions of this paragraph.
14. Upon issuance of this Order, prior to approval of the enhanced storm water monitoring plan pursuant to Paragraph 13, Respondents shall collect and analyze representative samples of discharges from WGS�'s NPDES sampling location on every day discharges from the detention basin occur. These samples shall be analyzed consistent with the provisions of Respondents' NPDES permit and 40 CFR Part 136. Following EPA's

approval of the enhanced storm water monitoring pursuant to Paragraph 13, the provisions of this paragraph shall terminate.

15. Respondents shall submit monthly reports of all sampling and analysis required pursuant to the terms of Paragraphs 12-14, due on the 15<sup>th</sup> of each month. These monthly reports shall identify all days that discharges from WGSL or the detention basin occurred during the preceding calendar month, whether representative sampling and analysis of the discharges occurred, and the results of the analysis. If no discharges occurred during the month being reported, the report shall so certify.

Certification

16. All reports submitted pursuant to this Order including, but not necessarily limited to the plan of study, the detention basin final report, the proposed monitoring plan, and the monitoring reports, must be signed by a duly authorized representative of Respondents (as specified by 40 CFR § 122.22(b)(2)). If Respondents agree, this representative may be a principal executive or other duly authorized representative of Respondent WMH.

All such reports shall include the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

17. All submittals shall be mailed to the following addresses:

U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105  
Attn: Lawrence Torres (WTR-7)

Hawaii Department of Health  
Clean Water Branch  
PO Box 3378  
Honolulu, HI 96801-3378  
Attn: Mike Tsuji

All telephone inquiries should be made to David Wampler at (415) 972-3975.

18. This Order shall be binding upon Respondents and their officers, directors, agents, employees, heirs, successors and assigns.
19. This Order is not and shall not be interpreted to be an NPDES Permit under Section 402 of the Act [33 U.S.C. § 1342], and does not waive or modify Respondents' obligation and responsibility to ascertain and comply with all applicable federal, state or local laws, regulations, ordinances, permits or licenses.
20. This Order is not and shall not be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order, and to enforce this Order.
21. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 CFR § 1320.4(a)(2).

22. Respondent may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 CFR Part 2, Subpart B, regulations to protect confidential business information it receives. If legally supportable, a claim of business confidentiality may be asserted in the manner specified by 40 CFR § 2.203(b) for all or part of the information requested by EPA. EPA will disclose information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
23. Section 309(a), (b), (d) and (g) of the Act, 33 U.S.C. § 1319(a), (b), (d) and (g) provides administrative and/or judicial relief for failure to comply with the CWA. In addition, Section 309(c) of the Act provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.
24. The State of Hawaii has been notified of this action.
25. This Order shall become effective upon the date of receipt by Respondents.

  
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Alexis Strauss  
Director, Water Division

29 Nov. 2011  
Dated