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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

UNITED STATES OF AMERICA and
STATE OF HAWAII DEPARTMENT
OF HEALTH,

Plaintiffs,

v.

WASTE MANAGEMENT OF HAWAII,
INC. and CITY AND COUNTY OF
HONOLULU,

Defendants.

Civil Action No. 19-224

CONSENT DECREE

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The United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Hawaii Department of Health (“DOH”) (hereinafter “Plaintiffs”), by and through their counsel of record, have filed a Complaint in this matter concurrently with this Consent Decree, alleging that the City and County of Honolulu and Waste Management of Hawaii, Inc. (hereinafter “Defendants”) have violated Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), by discharging pollutants without National Pollutant Discharge Elimination System (“NPDES”) Permit authorization, and by discharging pollutants in stormwater in violation of the terms of the Notice of General Permit Coverage for Industrial Stormwater (hereinafter “NPDES Permit”) specified in Appendix B of Hawaii Administrative Rules § 11-55 which authorizes stormwater and certain non-stormwater discharges from the Waimanalo Gulch Sanitary Landfill. The Complaint also alleges violations of Hawaii Revised Statutes Section 342D-50(a) in connection with these stormwater discharges.

The City and County of Honolulu owns and Waste Management of Hawaii, Inc. operates the Waimanalo Gulch Sanitary Landfill located at 92-460 Farrington Highway in Kapolei, Hawaii (hereinafter “Facility”). The Facility is a municipal solid waste landfill. The Facility discharges stormwater associated with industrial activity to Waimanalo Gulch, which the Plaintiffs contend to be a water of the United States that flows to the Pacific Ocean, a traditionally navigable water.

Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant by any person except as authorized by and in compliance with certain other sections of the Clean Water Act, including Section 402, 33 U.S.C. § 1342, under which regulators may issue NPDES permits authorizing the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits. Defendants are and have been authorized to discharge certain pollutants in stormwater from the Facility in accordance with Hawaii Administrative Rules § 11-55 Appendix B and a series of NPDES Permits.

The Complaint alleges that during a series of storms in December 2010 and January 2011, Defendants discharged stormwater contaminated with leachate and medical waste when the landfill was flooded with stormwater and, that Defendants' discharges during and after those storms contained iron, zinc, and pH in excess of permit limits. Further, the Complaint alleges that since January 2011, Defendants have discharged stormwater containing iron, zinc, lead, total suspended solids, and pH in excess of NPDES permit limits, as well as other contaminants which required monitoring of the water and soil quality around the Facility. The Complaint alleges that the January 2011 discharges were sufficient to interfere with beneficial uses of the Pacific Ocean. The Complaint further alleges that Defendants violated the terms of their NPDES permit by failing to update,

implement, and comply with the Facility's storm water pollution control plan before, during, and after the storms of December 2010 and January 2011.

WMH admits that it caused the discharge of pollutants from a point source to a water of the United States in violation of its NPDES permit during two time periods: December 19-23, 2010 and January 12-13, 2011. *See United States of America v. Waste Management of Hawaii, Inc.*, 15-cr-00523 Docket No. 22 (D. HI July 10, 2015) (Memorandum of Plea Agreement).

As a result of the discharges, Defendants agreed to certain remediation and monitoring efforts with the Plaintiffs in *In re Waste Management of Hawaii, Inc.*, Administrative Order on Consent for Removal Action, CERCLA Docket No. 09-2011-0007 and RCRA Docket No. 7003-09-2011-0001; and *In re Waste Management of Hawaii, Inc. and City and County of Honolulu*, Finding of Violation and Order, Docket No. CWA-309(a)-12-003.

Defendants do not admit any liability to the United States or to the State arising out of the other violations alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309 of the Act, 33 U.S.C. § 1319, and over the Parties. This Court has supplemental jurisdiction over the State law claims asserted by the State of Hawaii pursuant to 28 U.S.C. § 1367. Venue lies in this District pursuant to 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendants conduct business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 et. seq.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 9, the United States Attorney for the District of Hawaii, and the United States Department of Justice, in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents,

or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Clean Water Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Clean Water Act” or “Act” shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251–1387.

“Complaint” shall mean the complaint filed by the United States and the State in this action.

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto.

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run through the end of the next business day.

“Defendants” shall mean Waste Management of Hawaii, Inc., and the City and County of Honolulu.

“Detention Basin” shall mean the stormwater basin at the Facility, located at the southern end of the Facility by the Facility entrance, which discharges to Waimanalo Gulch and ultimately the Pacific Ocean, depicted on Appendix B to the Consent Decree as the “MODIFIED DETENTION BASIN.”

“DOH” shall mean the State of Hawaii Department of Health, Clean Water Branch, and any of its successor departments or agencies.

“Effective Date” shall have the definition provided in Section XIV.

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

“Facility” shall mean the Waimanalo Gulch Sanitary Landfill located at 92-460 Farrington Highway, Kapolei Hawaii.

“Forecasted Storm Event” shall mean a Rainfall Event forecasted on the National Weather Service website (www.forecast.weather.gov), Weather Underground website (www.wunderground.com/weather/us/hi/kapolei), or a similar source of weather information for Kapolei, Oahu as 60% or greater chance to occur, or as “likely” to occur, within the next 48 hours, and where the storm system is coming from the south. Defendants may rely on any one of these sources of weather forecasts to assess whether a Forecasted Storm Event triggers obligations under this Consent Decree, and are not required to check other sources.

“HOBAS Pipe” shall mean the buried fiberglass mortar pipe conveyance at the Facility with diameters varying from 78 inches to 104 inches with a total length of approximately 5,200 feet, depicted on Appendix B to the Consent Decree as the “HOBAS PIPE.”

“Paragraph” shall mean a portion of this Decree identified by an arabic numeral.

“Parties” shall mean the United States, the State of Hawaii, and Defendants.

“Rainfall Event” shall mean a rainfall that accumulates more than 0.1 inch of rain and occurs at least 72 hours after the end of the previous measurable (greater than 0.1 inch) Rainfall Event. See Hawaii Administrative Rules § 11-55 Appendix B. Rainfall that occurs within 72 hours after a Rainfall Event shall be considered a continuation of the same Rainfall Event.

“Section” shall mean a portion of this Decree identified by a roman numeral;

“Significant Rainfall Event” shall mean a rainfall that accumulates at least 1.0 inch of rain in a 24-hour period. For purposes of determining whether a Significant Rainfall Event has occurred at the Facility, Defendants shall use measurements from the Facility’s on-site rain gauge, or from the Kapolei, Oahu National Weather Station if the Facility’s on-site rain gauge is not available.

“State” shall mean the State of Hawaii.

“Surface Water Management Plan” or “SWMP” shall mean the plan to manage stormwater at the Facility described in Solid Waste Permit No. LF-0182-09, issued by the Hawaii Department of Health, Solid Waste Branch.

“Stormwater Pollution Control Plan” or “SWPCP” shall mean the plan to minimize the discharge of pollutants in stormwater described by Hawaii Administrative Rules § 11-55 Appendix B;

“Western Diversion Structure” shall mean the concrete diversion and channel transition structure located in Waimanalo Gulch at the northern terminus of the landfill that diverts and conveys non-industrial stormwater flows to the Western Diversion System, depicted on Appendix B to the Consent Decree as the “DIVERSION STRUCTURE”;

“Western Diversion System Outlet” shall mean the concrete structure, also known as the flip bucket, located at the terminus of the Western Diversion System that discharges to the stilling basin within Waimanalo Gulch;

“United States” shall mean the United States of America, acting on behalf of EPA; and

“Year” shall mean a calendar year.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Defendant Waste Management of Hawaii, Inc. shall pay the sum of \$150,000 as a civil penalty to the

United States, together with interest accruing from the Effective Date, at the rate specified in 28 U.S.C. § 1961 as of the Effective Date.

9. Within 30 Days after the Effective Date, Defendant City and County of Honolulu shall pay the sum of \$62,500 as a civil penalty to the United States, together with interest accruing from the Effective Date, at the rate specified in 28 U.S.C. § 1961 as of the Effective Date.

10. Defendants shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice account, in accordance with written instructions provided to Defendants by the Financial Litigation Unit (FLU) of the United States Attorney's Office for the District of Hawaii after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to: Andrew M. Kenefick, Senior Legal Counsel, Waste Management Legal Department, 720 Fourth Avenue, Suite 400, Kirkland, WA 98033-8136 (akenefick@wm.com) on behalf of Defendant WMH, and Kamilla C. K. Chan, Department of the Corporation Counsel, City and County of Honolulu, 530 South King Street, Room 110, Honolulu, HI 96813 (kamilla.chan@honolulu.gov) on behalf of Defendant Honolulu. Defendants may change the individual who will

receive payment instructions on their behalf by providing written notice of such change to the United States, EPA, and the State in accordance with Section XIII (Notices).

At the time of payment, Defendants shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States et al. v. Waste Management of Hawaii, Inc. and the City and County of Honolulu* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-10729.

11. No later than 30 Days after the Effective Date, Defendant Waste Management of Hawaii, Inc. shall pay in lieu of a civil penalty \$150,000 to the State Department of Land and Natural Resources (DLNR)-Division of Aquatic Resources, which shall deposit the funds into a special trust account to be used, with priority for the Leeward Coast of Oahu, only for the following purposes: coral mitigation and restoration; research and action into coral conservation, identification of resilient corals (e.g. thermally tolerant) and transplantation; and habitat restoration and monitoring.

12. No later than 30 Days after the Effective Date, Defendant City and County of Honolulu shall pay in lieu of a civil penalty \$62,500 to the State DLNR-Division of Aquatic Resources, which shall deposit the funds into a special trust account to be used, with priority for the Leeward Coast of Oahu, only for the following purposes: coral mitigation and restoration; research and action into coral conservation, identification of resilient corals (e.g. thermally tolerant) and transplantation; and habitat restoration and monitoring.

13. All payments to be made to the State DLNR-Division of Aquatic Resources shall be made via a corporate or bank cashier's check for the total amount due. The checks shall be made to "State of Hawaii DLNR-Division of Aquatic Resources" and indicate they are for the Waste Management of Hawaii, Inc. and CCH Waimanalo Gulch Landfill consent decree. The payment must be either hand delivered or sent by certified mail to:

DLNR-Division of Aquatic Resources
Attn: Brian Neilson
1151 Punchbowl St. Rm 330
Honolulu, HI 96813

DOH affirms that the State DLNR-Division of Aquatic Resources is prepared to accept and apply the payment consistent with this Section. Each Defendant's responsibilities to the State under Paragraphs 11-13 shall be fully satisfied upon its tender of its respective payment to DLNR-Division of Aquatic Resources in the manner provided in this Paragraph.

14. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal, State, or local income tax.

V. COMPLIANCE REQUIREMENTS

15. Air Intake and Venting for HOBAS Pipe. Defendants shall retrofit the existing HOBAS Pipe by installing air intakes and vents, as follows:

a. Within 90 Days of the Effective Date, Defendants shall submit to EPA and DOH for review and approval a design plan to retrofit the existing HOBAS Pipe by installing air intakes and vents at the following locations:

- (1) Station 14+11 by retrofitting manhole No. 2;
- (2) Station 29+80 by retrofitting manhole No. 3; and
- (3) Station 52+60.

The design shall ensure the rim elevations of the air intake and vents are at least three feet above the projected maximum hydraulic grade-line to prevent the escape of stormwater from the HOBAS Pipe. The design shall also ensure intakes and vents have a capacity of not less than 40,000 cubic feet per minute of air flow in each direction. The design shall include covers for the air intakes and vents that will prevent unauthorized entry into the

HOBAS pipe yet still provide for free movement of air. Defendants shall address EPA's comments, if any, in accordance with Paragraphs 20-24.

b. Within 90 Days after receipt of EPA's final written approval of the design plan for the HOBAS Pipe retrofit, Defendants shall implement the design plan by installing air intakes and vents at Station 29+80 (Manhole No. 3) and Station 52+60. Within 180 Days after receipt of EPA's final written approval of the design plan for the HOBAS Pipe retrofit, Defendants shall complete implementation of the design plan by installing an air intake and vent at Station 14+11 (Manhole No. 2).

16. Western Diversion Structure Trash Screen. Defendants shall install a primary trash screen in the Western Diversion Structure, as follows:

a. Within 60 Days of the Effective Date, Defendants shall submit a design plan for installation of a primary trash screen in the Western Diversion Structure to EPA and DOH for review and approval. The primary trash screen shall be designed to collect debris prior to the existing trash rack attached to the box culvert entrance, and to ensure debris does not fully block the box culvert entrance. The primary trash screen shall be installed at a distance sufficient from the box culvert entrance to include an overflow bypass and to allow maintenance on both the box culvert entrance and the

primary trash rack. Defendants shall address EPA's comments, if any, in accordance with Paragraphs 20-24.

b. Within 120 Days after receipt of EPA's final written approval of the design plan for the Western Diversion Structure trash screen, Defendants shall complete implementation of the design plan.

17. Stormwater Pollution Control Plan. Within 30 Days of the Effective Date, Defendants shall submit a revised Stormwater Pollution Control Plan ("SWPCP") to EPA and DOH. The revised SWPCP shall include, at a minimum, the following elements:

a. Operational parameters for the Detention Basin's floating boom decant system, including anticipated frequency of discharge;

b. Methodology and equipment used to measure volume of flow discharged from the Detention Basin;

c. Maintenance protocols for the Detention Basin, including schedules and practices for sediment and trash removal and maintenance of the floating boom decanter;

d. Maintenance protocols and inspection schedules for the Western Diversion Structure (including all trash screens) to ensure that accumulated debris is removed and the hydraulic capacity of the Western Diversion Structure is maintained. At a minimum, Defendants shall inspect

the Western Diversion Structure (including all trash screens) once per month. Defendants shall also inspect the Western Diversion Structure (including all trash screens) within 24 hours after any Significant Rainfall Event, unless conditions are unsafe, in which case the inspection shall be conducted as soon as conditions allow;

e. Protocols for monitoring performance of the Western Diversion Structure during Rainfall Events;

f. Best Management Practices (“BMPs”) to address erosion control on active portions of the Facility that have not received or are not scheduled to receive waste within 30 Days, and that have not yet been vegetated or where vegetation has not been established. The SWPCP shall include schedules for when these specific BMPs will be deployed and how often they will be inspected. At a minimum, Defendants shall inspect BMPs monthly, and prior to any Forecasted Storm Event. The inspection shall be conducted at least 12 hours prior to the Forecasted Storm Event unless conditions are unsafe, in which case the inspection shall be conducted as soon as conditions allow. Defendants shall maintain records to demonstrate compliance with this Paragraph.

g. Maintenance protocols for the newly installed oil/water separator on the driveway near the Detention Basin; and

h. Revisions to inspection log sheets, reporting requirements, and record-keeping practices updated to reflect elements described above.

Defendants shall immediately implement the revised SWPCP upon submittal. If EPA, after consultation with DOH, provides written comments on additional revisions necessary to bring the revised SWPCP into compliance with the terms of this Consent Decree and Hawaii Administrative Rules § 11-55 Appendix B, or an individual NPDES permit for the Facility if and when one is issued, Defendants shall, within 30 Days, make such further revisions to the SWPCP and submit the revised SWPCP to EPA and DOH.

18. Detention Basin. Defendants shall comply with the following operating and monitoring parameters with respect to the Detention Basin:

a. Defendants shall discharge only stormwater associated with industrial activity from the Detention Basin.

b. Defendants shall ensure the Detention Basin has storage capacity to detain stormwater generated by a Significant Rainfall Event at all times other than during or within 72 hours after any Rainfall Event.

c. Defendants shall maintain a water level marker on the Detention Basin stand pipe to allow for verification that the Detention Basin has storage capacity to detain stormwater generated by a Significant Rainfall Event as described in Paragraph 18.b.

d. Within 30 Days of the Effective Date, Defendants shall submit a Detention Basin Monitoring Plan (either separately or as part of the Stormwater Pollution Control Plan) to EPA and DOH for review and approval. Defendants shall implement the Detention Basin Monitoring Plan upon submittal. The Detention Basin Monitoring Plan shall describe how Defendants will comply with Paragraph 18.e, including monitoring locations, sample collection protocols, and analytical methods. Defendants shall ensure that all monitoring and analysis is conducted in accordance with 40 C.F.R. Part 136. Defendants shall address EPA's comments, if any, in accordance with Paragraphs 20-22.

e. Concurrent Discharge Monitoring and Compliance Requirements. Within one year of the Effective Date, Defendants shall monitor and sample up to four Rainfall Events that result in concurrent discharges from both the Western Diversion System Outlet and the Detention Basin's floating boom decant system or riser in accordance with the requirements set forth in Appendix B to the Consent Decree. If, during the one-year period following the Effective Date, there are fewer than four Rainfall Events that result in discharges from both the Western Diversion System Outlet and the Detention Basin's floating boom decant system or riser, Defendants shall be deemed to be in compliance with this Paragraph if

Defendants have sampled all Rainfall Events that resulted in discharges from both the Western Diversion System Outlet and the Detention Basin's floating boom decant system or riser. Discharges from the Detention Basin's floating boom decant system or riser shall comply with the effluent limits described in Appendix A to the Consent Decree, provided however, that discharges that do not comply with the effluent limits described in Appendix A shall not be deemed violations of this Consent Decree if (1) the discharge occurred during or within 72 hours after the end of any Rainfall Event that reduces the capacity of the Detention Basin to less than that necessary to receive and detain the stormwater generated by a Significant Rainfall Event; and (2) Defendants were in compliance with Paragraph 18.a during the discharge. Notwithstanding any other provision herein, Defendants shall not be required under this Paragraph 18.e to sample discharges during unsafe conditions or outside of the Facility's normal operating hours (7:00 am to 4:30 pm). Defendants shall submit sampling results to EPA and DOH in accordance with Paragraph 26.c.

f. Annual Monitoring and Compliance Requirements. Nothing herein relieves Defendants from complying with the monitoring and compliance requirements set forth in Defendants' August 30, 2010, NPDES

Permit (which is incorporated by reference in Defendants' December 9, 2013, NPDES Permit).

19. Individual Permit Application. Within 270 Days of the Effective Date, Defendants shall submit an application for an individual NPDES permit for the Facility to DOH Engineering Branch, pursuant to 40 C.F.R. § 122.28(b)(3) and Hawaii Administrative Rules Section 11-55-34.5.

20. Approval of Deliverables. After review of any plan, report, or other document that is required to be submitted for review and approval pursuant to this Consent Decree, EPA, after consultation with the State, shall in writing:

(a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

21. If the submission is approved pursuant to Paragraph 20, Defendants shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 20(b) or (c), Defendants shall, upon written direction from EPA (after consultation with the State), take all actions required by the approved plan, report, or other item that EPA, after consultation with the State, determines are technically severable from any disapproved portions, subject to Defendants'

right to dispute only the specified conditions or the disapproved portions, under Section IX (Dispute Resolution).

22. If the submission is disapproved in whole or in part pursuant to Paragraph 20.c or 20.d, Defendants shall, within 30 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

23. Any stipulated penalties applicable to the original submission, as provided in Section VII, shall accrue during the 30-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

24. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with the State, may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Defendants' right to invoke Dispute Resolution and the right

of EPA, and the State, to seek stipulated penalties as provided in the preceding Paragraphs.

25. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

26. Defendants shall submit the following reports:

a. Annual Reports: By March 1st of each Year after the Effective Date of this Consent Decree, until termination of this Decree pursuant to Section XVII, Defendants shall submit an annual report for the preceding Year that shall include a status report of progress on each of the requirements described in Section V (Compliance Requirements). The annual report shall also provide a summary of routine facility inspection reports and any significant deficiencies identified and/or corrective actions

completed with respect to BMPs, the HOBAS Pipe, the Western Diversion Structure, or the Detention Basin. The annual report shall describe any updates or planned updates to the SWPCP.

b. Compliance Reports:

- (1) Within 60 Days after the last deadline for installing the HOBAS Pipe retrofit in Paragraph 15.b, Defendants shall submit a report to EPA and DOH certifying the activities described in Paragraph 15 have been completed.
- (2) Within 60 Days after the deadline for installing the trash screen in Paragraph 16.b, Defendants shall submit a report to EPA and DOH certifying the activities described in Paragraph 16 have been completed.

c. Monthly Reports. Defendants shall submit a monthly report (“Monthly Report”) to EPA and DOH (via e-mail or U.S. Mail) no later than 28 Days after the end of each calendar month. The Monthly Report shall state whether inspections were conducted as described in the revised SWPCP, describe the results of any inspections, provide all laboratory reports, and summarize monitoring results. The summary of monitoring results shall include a description of antecedent rainfall events and a description of Detention Basin operation, including method of discharge

(i.e., via the riser pipe, the floating surface decanter, and/or the spillway) during each sampling event. Defendants shall also certify on each Monthly Report that, for the calendar month covered by the Monthly Report, the Detention Basin was operated in compliance with Paragraphs 18.a–18.c. If no discharges occurred during the calendar month, the Monthly Report shall so state.

27. Whenever any violation of this Consent Decree, or of Hawaii Administrative Rules § 11-55 Appendix B, or an individual NPDES permit for the Facility if and when one is issued, or any other event affecting Defendants' performance under this Decree, may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA, and the State, orally or electronically as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

28. All reports shall be submitted to the persons designated in Section XIII (Notices).

29. Each report submitted by Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure 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, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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.

30. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

31. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

32. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

33. Defendants shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

34. Late Payment of Civil Penalty. If either Defendant fails to pay its portion of the civil penalty required to be paid under Section IV (Civil Penalty) when due, that Defendant shall pay a stipulated penalty of \$2,000 per Day for each Day that the payment is late.

35. Compliance Requirements – BMP Improvements.

a. The following stipulated penalties shall accrue per violation per Day for each violation of the compliance requirements identified in subparagraphs (b)-(g) below:

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-Compliance</u>
\$1,000	1 st through 14 th day
\$2,000	15 th through 30 th day
\$4,000	31 st day and beyond

b. For each Day Defendants fail to submit a design plan to retrofit the existing HOBAS Pipe in accordance with Paragraph 15.a;

c. For each Day Defendants fail to install air intakes and vents at all specified locations on the HOBAS Pipe in accordance with Paragraph 15.b;

d. For each Day Defendants fail to submit a design plan for installation of a primary trash screen on the Western Diversion Structure in accordance with Paragraph 16.a;

e. For each Day Defendants fail to install a primary trash screen on the Western Diversion Structure in accordance with Paragraph 16.b;

f. For each Day Defendants fail to submit a revised SWPCP in accordance with Paragraph 17;

g. For each Day Defendants fail to maintain capacity in the Detention Basin to detain stormwater generated by a Significant Rainfall Event (other than during or within 72 hours after the end of any Rainfall Event) in accordance with Paragraph 18.b; and

h. For each Day Defendants fail to submit an individual NPDES permit application pursuant to Paragraph 19.

36. Compliance Requirements - Discharges.

a. For each failure to comply with the requirement under Paragraph 18.a that only stormwater associated with industrial activity may be discharged from the Detention Basin, \$10,000 per Day;

b. For each parameter shown in Appendix A to the Consent Decree that Defendants fail to monitor for during a discharge event in accordance with Paragraphs 18.e, \$1,500 per parameter per discharge event;

c. For each failure to comply with the effluent limits set forth in Appendix A to the Consent Decree or in Paragraph 2 of Defendants' August 30, 2010, NPDES Permit (as amended), \$2,000 per effluent limit violation per Day, except that no stipulated penalties shall accrue if (1) the discharge occurred during or within 72 hours after the end of any Rainfall Event that reduces the capacity of the Detention Basin to less than that necessary to receive and detain the stormwater generated by a Significant Rainfall Event; and (2) Defendants were in compliance with Paragraphs 18.a and 18.b during the discharge;

37. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI:

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-Compliance</u>
\$500	1 st through 14 th day
\$1,000	15 th through 30 th day
\$2,000	31 st day and beyond

38. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

39. Defendants shall pay stipulated penalties to the United States and the State within 30 Days of a written demand by either Plaintiff. Defendants shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

40. Either Plaintiff may, in the un-reviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to it under this Consent Decree.

41. Stipulated penalties shall continue to accrue as provided in Paragraph 38, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA, or the State that is not appealed to the Court, Defendants shall pay accrued

penalties determined to be owing, together with interest, to the United States or the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

42. Defendants shall pay stipulated penalties owing to the United States and the State in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violations(s) the penalties are being paid.

43. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State

from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

44. The payment of penalties and interest, if any, shall not alter in any way Defendants' obligation to complete the performance of the requirements of this Consent Decree.

45. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

46. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best

efforts to fulfill the obligation. The requirement that Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Defendants’ financial inability to perform any obligation under this Consent Decree.

47. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall, within 7 days of when Defendants first knew that the event might cause a delay, provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants’ rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above

requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

48. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

49. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

50. If Defendants elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after

receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 46 and 47. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

51. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

52. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state

clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

53. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

54. The United States shall serve its Statement of Position within 45 Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

55. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

56. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

57. Standard of Review. In any dispute brought under Paragraph 53, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree and that they are entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with the law.

58. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of

Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 41. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

59. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

60. Upon request, Defendants shall provide EPA and the State or their authorized representatives splits of any samples taken by Defendants. Upon request, EPA or the State shall provide Defendants splits of any samples taken by EPA or the State.

61. Until five years after the termination of this Consent Decree, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) (hereinafter “Records”) in its or its contractors’ or agents’ possession or control, or that come into its or its contractors’ or agents’ possession or control, and that relate in any material manner to Defendants’ performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

62. Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege in lieu of providing a Record, they shall provide the following: (a) the title of the Record; (b) the date of the Record; (c) the name

and title of each author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the content of the Record; and (f) the privilege asserted by Defendants. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

63. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

64. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

65. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action, the Finding of Violation and Order issued by EPA to Defendants on November 29, 2011, and the Amended Finding of Violation and Order issued by EPA to Defendants on May 30, 2012, through the date of lodging of this Consent Decree.

66. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 65. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly stated in Paragraph 65. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise. Defendants reserve the right to raise all legal and equitable defenses in any such action, except as expressly precluded by this Consent Decree.

67. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent

Decree will result in compliance with provisions of the Clean Water Act or its implementing regulations or with any other provisions of federal, State, or local laws, regulations, or permits.

68. This Consent Decree does not limit or affect the rights of Defendants or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

69. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

70. Nothing in this Consent Decree limits the rights or defenses available under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), or under State law, in the event that the laws of the State, as currently or hereafter enacted, may prevent Defendants from raising the revenues needed to comply with this Decree.

XII. COSTS

71. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIII. NOTICES

72. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-10729

As to the United States by mail: EES Case Management Unit
Environment & Nat. Resources Div.
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-10729

As to EPA: Chief, Water II Enforcement Office
Enforcement Division, ENF 3-2
U.S. EPA, Region 9
75 Hawthorne St.
San Francisco, CA 94105
wampler.david@epa.gov

and

John Tinger
Enforcement Division, ENF 3-1
U.S. EPA, Region 9
75 Hawthorne St.
San Francisco, CA 94105
tinger.john@epa.gov

As to the State: Clean Water Branch
Enforcement Section Supervisor
Department of Health
P.O. Box 3378
Honolulu, Hawai'i 96801

and

Edward G. Bohlen
State of Hawai‘i
Department of the Attorney General
465 South King Street
Honolulu, Hawai‘i 96813

As to Waste Management
of Hawaii, Inc.:

Andrew M. Kenefick
Waste Management
720 Fourth Avenue, Suite 400
Kirkland, WA 98033

and

Lisa A. Bail
Goodsill Anderson Quinn & Stifel
First Hawaiian Center
999 Bishop Street, Suite 1600
Honolulu, HI 96813

As to City and County of
Honolulu:

Lori M.K. Kahikina, Director
Department of Environmental
Services
City and County of Honolulu
1000 Uluohia Street, Suite 308
Kapolei, Hawaii 96707

and

Kamilla C. K. Chan
Department of the Corporation
Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, HI 96813

73. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

74. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

75. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

76. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

77. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Time extensions for submissions of

deliverables shall be considered non-material modifications to this Consent Decree.

78. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 57, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

79. After: (1) Defendants have completed the requirements of Section V (Compliance Requirements); (2) Defendants have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree; and (3) DOH has issued Defendants an individual NPDES permit, or at least 2 Years have passed since the Effective Date (whichever comes first); Defendants may serve upon the United States and the State a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

80. Following receipt by the United States and the State of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the

Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

81. If the United States, after consultation with the State, does not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section IX. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

82. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

83. Each undersigned representative of Defendants, the State, and the Assistant Attorney General for the Environment and Natural Resources Division of

the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

84. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. INTEGRATION

85. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXI. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

86. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 5; Section V (Compliance Requirements), Paragraphs 15–21 and 25; Section VII (Reporting Requirements), Paragraphs 26 and 28–29; and Section XI (Information Collection and Retention), Paragraphs 59–61, are restitution or required to come into compliance with law.

XXII. FINAL JUDGMENT

87. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Defendants.

XXIII. APPENDICES

88. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is the Monitoring and Compliance Requirements for Concurrent Discharge Monitoring under Paragraph 18.e; and

“Appendix B” is a diagram depicting features of the Facility including the Western Diversion Structure, HOBAS pipe, and Detention Basin.

Dated and entered this ____ day of _____, 2019.

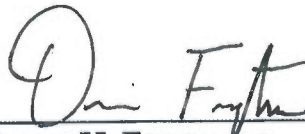
UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

Date: _____



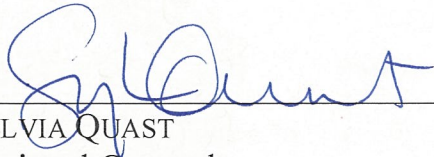
ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice



DAVIS H. FORSYTHE
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
999 18th Street, South Terrace Suite 370
Denver CO 80202

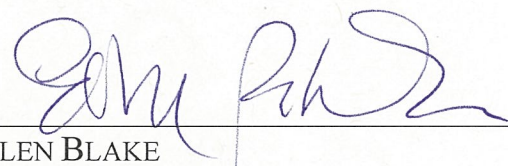
FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:

Date: Feb 14, 2019



SYLVIA QUAST
Regional Counsel
Region 9
U.S. Environmental Protection Agency

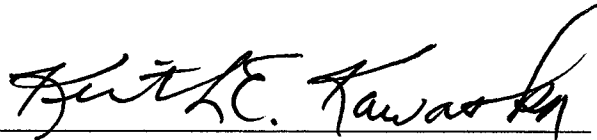
Date: Feb 14, 2019



ELLEN BLAKE
Attorney-Advisor
Region 9
U.S. Environmental Protection Agency

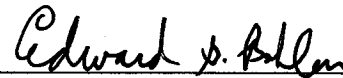
FOR THE HAWAII DEPARTMENT
OF HEALTH:

Date: 2-12-19

A handwritten signature in black ink, appearing to read "Keith E. Kawaoka", written over a horizontal line.

KEITH E. KAWAOKA, D.ENV.
Deputy Director for Environmental Health

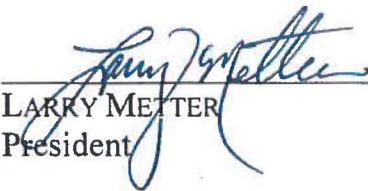
Date: 2/12/19

A handwritten signature in black ink, appearing to read "Edward G. Bohlen", written over a horizontal line.

Approved as to Form By:
EDWARD G. BOHLEN
Deputy Attorney General

FOR WASTE MANAGEMENT OF
HAWAII, INC.:

Date: 2/20/19


LARRY METTER
President

Date: 2/20/19


ANDREW M. KENEFICK
Senior Legal Counsel

FOR THE CITY AND COUNTY
OF HONOLULU:

Date: 4/25/19



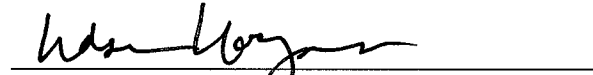
KIRK CALDWELL
Mayor
City and County of Honolulu

Date: 4/23/19



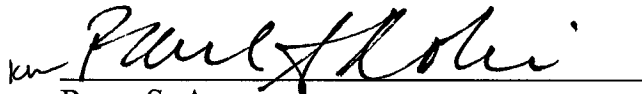
LORI M.K. KAHIKINA
Director
Department of Environmental Services

Date: 4/23/2019



NELSON H. KOYANAGI JR.
Director
Department of Budget and Fiscal Services

Date: 4/23/19



PAUL S. AOKI
Acting Corporation Counsel
Department of the Corporation Counsel

APPENDIX A

Concurrent Monitoring and Compliance Requirements

Parameter	Units	Sample Type	Minimum Sampling Frequency	Effluent Limitation ²	
				Max. Daily	Ave. Monthly
Flow	MGD	Depth measured/flow calculate	See note 1 below.	N/A	
pH	Std Units	Grab	See note 1 below.	5.5-8.0 at all times	
Total Suspended Solids (TSS)	mg/L	Grab	See note 1 below.	100	N/A
Total Iron	mg/L			1.0	N/A
Total Lead ³	mg/L			0.029	N/A
Total Zinc ³	mg/L			0.022	N/A

¹ If discharge begins during operating hours, the initial flow depth and grab sample shall be taken within first 15 minutes of discharge. If discharge begins outside of operating hours, the initial flow depth and grab sample shall be taken within the first hour of the operating day. Thereafter, flow depths and grab samples shall be collected every 3-4 hours during landfill operating hours on each operating day for as long as the discharge continues.

² Effluent limitations are only applicable to discharges from the Detention Basin.

³ The value listed is the minimum standard. Depending upon the receiving water CaCO₃ hardness, higher standards may be calculated using the respective formula in the U.S. Environmental Protection Agency publication Quality Criteria for Water (EPA 440/5-86-001, Revised May 1, 1987).

APPENDIX B

Diagram of Diversion Structure, HOBAS pipe, and Detention Basin

