

IN THE DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,) DOCKET NO. 10-SHS-SWS-006
STATE OF HAWAII,)
)
COMPLAINANT,)
)
vs.)
)
The Trash Man, LLC)
)
) ORDER
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)
)
RESPONDENT)
_____)

ORDER

Pursuant to chapter 342H, Hawaii Revised Statutes (HRS), the Department of Health's (DOH) Solid Waste Management Control rules, and the attached Notice and Finding of Violation made this day in Docket No. 10-SHS-SWS-006, The Trash Man, LLC, hereinafter "RESPONDENT," is hereby ordered to:

1. Immediately cease and desist acceptance of solid waste at an unpermitted and/or unauthorized solid waste management facility.
2. Within thirty (30) calendar days of this order becoming final, remove all solid waste, including but not limited to roofing material, shingles, Styrofoam, concrete scrap, lumber scrap, cardboard, mattresses, pallets, carpet remnants, flooring waste material, furniture, glass, metal, and rubbish from 96-1268 Waihona Place, Pearl City, Hawaii, TMK # 9-6-004:018 (referred to as the "Site"). The solid waste shall be transported to DOH-permitted solid waste management **disposal** facilities or DOH-permitted recycling facilities.
3. Within thirty (30) calendar days of this order becoming final, submit a work plan and implementation schedule to assess and remediate the Site. The plan shall be prepared and implemented by a qualified environmental consultant. The plan shall include trenching beneath the area of waste stockpile in the presence of DOH personnel after removal of solid waste to demonstrate complete removal, and sampling and testing to determine environmental impact from the solid waste activities.
4. Upon the DOH's approval of the work plan, a qualified environmental consultant shall conduct the site assessment in accordance with the approved implementation schedule; however, work at the site shall commence no later than fourteen (14) days of the DOH's approval. RESPONDENT shall notify the DOH of any deviation from the approved implementation schedule.

Within thirty (30) calendar days of completion of field sampling activities, an assessment report shall be submitted to the DOH for review and approval. The assessment report shall include a description of the field activities, sampling procedures, and analytical results. The report shall also include proposed cleanup actions based on the above assessment, a plan of action to minimize or mitigate any threats to public health and the environment due to contaminants possibly left on-site by the facility's operation, and a proposed implementation schedule.

5. Upon the DOH's approval of the proposed cleanup actions, environmental controls and implementation schedule, RESPONDENT shall implement the approved cleanup actions within the approved implementation schedule; however, work at the site shall commence no later than fourteen (14) days of the DOH's approval.

6. Within ten (10) calendar days of the completion of the cleanup actions, RESPONDENT shall provide a cleanup report. This report shall include a description of the cleanup activities, any verification sampling, and documentation, including disposal receipts prepared by the receiving facilities, for the disposal of any material or solid waste removed from the facility. If additional cleanup is necessary, corrective actions shall continue until cleanup meets standards acceptable by the DOH.

7. Send to the Director of Health, within ten (10) calendar days after this order becomes final, a certified check payable to the State of Hawaii in the amount of fifty-nine thousand, six hundred and forty dollars and no cents (\$59,640.00).

The provisions of this Order and the Notice and Finding of Violation shall become final unless, within twenty (20) days after receipt, you submit a **written** request for a hearing, along with a copy of the Order and Notice and Finding of Violation, to the Hearings Officer, c/o Director of Health, 1250 Punchbowl St., Third Floor, Honolulu, Hawaii 96813. Your written request for hearing, along with the Order and Notice and Finding of Violation, must be filed with the Hearings Office within the twenty (20) day period. You may file the hearing request in person at the Director's office, during regular business hours, or may mail the same to the above address within the allotted time. **Failure to timely file the hearing request and related documents may result in a denial of your hearing request.**

If a hearing is properly requested, a pre-hearing conference will be set by the Hearings Officer and you will be notified of the date, time and place of the pre-hearing conference. The hearing will be conducted in accordance with Chapter 91 of the HRS and Title 11, Chapter 1 of the Hawaii Administrative Rules. If you have special needs due to a disability and these needs will aid you in participating in the hearing or pre-hearing conference, please contact the Hearings Officer at (808) 586-4409 (voice) or through the Telecommunications Relay Service (711), at least ten (10) working days before the hearing or pre-hearing conference.

At the hearing, the parties may present relevant evidence and argument on the issues raised by this case. The parties may also examine and cross-examine witnesses and present exhibits.

Parties may be represented by legal counsel at their own expense. An individual may appear on his/her own behalf, or a member of a partnership may represent the partnership,

or an officer or authorized employee of a corporation, or trust, or association may represent the corporation, trust or association.

After such hearing, the Order shall be affirmed, modified or rescinded by the Director or Hearings Officer.

The written request for a hearing, along with the related documents and pleadings in this case shall be directed to:

Hearings Officer
c/o Director of Health
Department of Health
1250 Punchbowl Street, Third Floor
Honolulu, HI 96813

All other inquiries regarding this matter shall be directed to: Steven Y.K. Chang, Chief, Solid and Hazardous Waste Branch, Department of Health, 919 Ala Moana Boulevard, Room 212, Honolulu, Hawaii 96814.

DATED: Honolulu, Hawaii 3/29/11

DEPARTMENT OF HEALTH
STATE OF HAWAII



GARY GILL
Deputy Director for Environmental Health

APPROVED AS TO FORM:



KATHLEEN S. HO
Deputy Attorney General

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NOTICE AND FINDING OF VIOLATION

A. INTRODUCTION

1. This is an administrative enforcement action instituted pursuant to §342H-7 of the Hawaii Revised Statutes (HRS). Complainant is the Department of Health (DOH), Solid and Hazardous Waste Branch. Respondent is The Trash Man, LLC, (RESPONDENT).
2. RESPONDENT operated an unpermitted solid waste management facility (transfer station) at 96-1268 Waihona Place, Pearl City, Hawaii, (TMK 9-6-004:018) referred to as the "Site."
3. RESPONDENT leases, operates, controls, or manages the Site.

B. JURISDICTION AND LAWS

4. HRS §342H-7 authorizes the DOH to issue orders assessing a penalty for any past or current violation of HRS chapter 342H or the rules adopted thereunder, and to require compliance immediately or within a specified time.
5. RESPONDENT is a "person" as defined in HRS §342H-1.
6. Hawaii Administrative Rules (HAR) Subchapter 1, General Provisions §11-58.58 1-03 defines a Transfer Station as a permanent, fixed, supplemental collection and transportation facility, used by persons and route collection vehicles to

deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling facility. Transfer stations may also include recycling activities.

7. HRS §342H-30(b) provides:

"No person, including any public body, shall operate a solid waste management system without first securing approval in writing from the director."

8. HAR §11-58.1-04 provides:

"It shall be unlawful for any person to establish, modify, or operate any solid waste management facility or a part thereof, or any extension or addition thereto without a permit."

C. STATEMENT OF FACTS

9. On or about December 7, 2010, DOH inspectors observed an unpermitted transfer station operation on the property located at the Site. Approximately 1,000 cubic yards of stockpiled construction and demolition (C&D) waste, including but not limited to roofing material, bricks, roofing shingles, Styrofoam, lumber, cardboard, mattresses, pallets, carpets remnants, flooring waste material, furniture and rubbish were observed on the far southeast corner of the property along the edge of a stream embankment.

10. On or about December 7, 2010, DOH inspectors observed heavy equipment and operators, and several large rubbish containers at the Site.

11. On or about December 7, 2010, DOH inspectors did not observe at the Site environmental controls in place to prevent leachate contaminants from leaching into surrounding soils and the nearby stream.

12. On or about December 7, 2010, Mr. James Wood, Vice President of The Trash Man, LLC, verbally confirmed that construction and demolition waste is brought to the "Site", placed directly upon the ground in order to sort/separate recyclables from non-recyclables, and after storing and separating the solid waste, the RESPONDENT transfers waste to either recycling facilities, or the landfill.

13. Mr. Wood also stated that the transfer operation existed at the Site for nine months.

14. On July 18, 2008, the RESPONDENT previously received a DOH warning letter for a prior unpermitted facility where the same type of solid waste management activities occurred. The letter outlined State of Hawaii statutory requirements for solid waste management operations, including solid waste management permits.

15. On May 27, 2004, Mr. John Guinan, President of The Trash Man, LLC, attended a meeting with DOH to discuss solid waste permitting requirements and the permitting application process.

D. FINDINGS

On the basis of the provisions of Jurisdiction and Statement of Facts cited above, it is hereby found and determined that:

16. At all relevant times at the Site, RESPONDENT operated a "solid waste management system" as defined in HRS §342H-1, which included the storage, processing and transfer of solid waste.

17. At all relevant times, the RESPONDENT did not have a permit to establish, modify or operate a solid waste management system at the site pursuant to HAR §11-58.1-04.

18. RESPONDENT violated HRS §342H-30(b), and HAR §11-58.1-04 of the DOH's Solid Waste Management Control rules.

19. RESPONDENT is, therefore, subject to the provisions of sections 342H-7 *Enforcement*, 342H-9 *Penalties*, 342H-10 *Administrative Penalties*, and 342H-11 *Injunctive Relief*, HRS, including penalties not to exceed \$10,000 for each day of each violation.

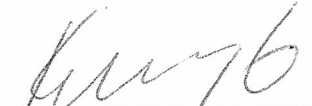
DATED: Honolulu, Hawaii 3/29/11.

DEPARTMENT OF HEALTH
STATE OF HAWAII



GARY GILL
Deputy Director for Environmental Health

APPROVED AS TO FORM:



KATHLEEN S. HO
Deputy Attorney General

