



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

July 16, 2012

Mr. Larry Dill, P.E.
Department of Public Works
4444 Rice Street, Suite 275
Lihue, Hawaii 96766

Mr. Jeffrey K. Kaohi
District Manager
Waste Management of Hawaii
6900-D Kaunualii Highway
Kekaha, HI 96866

RE: Conditional Determination of Acceptability under the CERCLA Off-Site Rule for Kekaha Landfill to Receive CERCLA Waste from the Kilauea Sugar Co. Site on Kaua'i

Dear Messrs. Dill and Kaohi ;

By letter dated February 10, 2012, the State of Hawaii Department of Health, Hazard Evaluation and Emergency Response Office provided concurrence to dispose of soil from the Kilauea Sugar Co. Pesticide Mixing-Area into the Kekaha Landfill on Kaua'i. EPA Region 9 has made a project-specific affirmative determination of acceptability under the provisions of the CERCLA Off-Site Rule, 40 CFR §300.440, for the Kekaha Landfill located on Kauai to receive CERCLA waste originating from remediation and/or removal actions at the Kilauea Sugar Co. Site. Receipt of CERCLA waste must be in accordance with all applicable permits and regulations. The approval is contingent upon the following conditions and recommendations:

- (1) The approval to receive CERCLA waste only applies to waste originating from the Kilauea Sugar Co. Site;
- (2) The soil from the Kilauea Sugar Co. Site will not be used as cover material;
- (3) Waste Management of Hawaii and the County of Kauai will receive confirmation from the Hawaii Department of Health, Clean Water Branch concerning the requested exclusion (referenced in the correspondence from the County of Kauai to Hawaii Department of Health Clean Water Branch dated August 19, 2010) from the requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit Coverage for Storm Water ; and
- (4) The County of Kaua'i will verify alignment of its financial assurance mechanism with the requirements of Part II – Special Conditions Section A. 12 in the Solid Waste Permit dated November 16, 2009 and HAR 11-58.1-18 (e) (9) and (12). The HAR

section contains a provision for a “State-Approved Mechanism”. By correspondence dated November 9, 2004 to the Hawaii Department of Health, Solid and Hazardous Waste Branch, the County of Kaua’i submitted a letter indicating satisfaction with the financial assurance requirements for closure/post closure and corrective action at the Kekaha Landfill. It is recommended that the County of Kaua’i receive written verification from the Hawaii Department of Health, Solid and Hazardous Waste Branch of approval of the financial assurance mechanism as described in the 2004 letter (or other recent pertinent correspondence). Alternatively, the County of Kaua’i may utilize the options identified in the Federal Register Notice Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities; Final Rule dated November 27, 1996 with the concurrence of the Hawaii Department of Health, Solid and Hazardous Waste Branch.

The approval to receive CERCLA waste from the Kilauea Sugar Co. Site is effective as of the date of this letter.

On September 16, 1993, EPA amended the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, by adding Section 300.440, now known as the Off-Site Rule (“Rule”). The Rule codifies the requirements contained in Section 121 (d)(3) of CERCLA, 42 U.S.C. §9621(d)(3), and incorporates many provisions of EPA’s former Off-Site Policy. The Rule established criteria and procedures for determining whether facilities are acceptable for the receipt of CERCLA waste.

The Rule requires that, prior to a facility’s initial receipt of CERCLA waste; EPA must determine that there are no relevant violations or relevant releases at the facility.

If you have any questions concerning this matter, please contact Kandice Bellamy, Region 9’s CERCLA Off-Site Rule Coordinator, at (415) 972-3304.

Sincerely,

Kandice Bellamy
Region 9 CERCLA Off-Site
Rule Coordinator

cc Mr. Troy K. Tanigawa
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