

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
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June 21, 2023

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Ms. Martha Guzman
Regional Administrator
U.S. Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

Dear Ms. Guzman:

Subject: Honolulu Board of Water Supply Comments to the 2023 Final Administrative Consent Order (AOC) for the Red Hill Bulk Fuel Storage Facility (RHBFSF) and Pearl Harbor-Hickam Water System, Honolulu, Hawaii, EPA R-09-RCRA-2022-0970

The Honolulu Board of Water Supply (BWS) appreciates the opportunity to offer the following written comments to the above-referenced final administrative consent order between the United States Environmental Protection Agency (EPA), the United States Department of the Navy (Navy), and the Defense Logistics Agency (DLA) (the "2023 Consent Order"). The BWS has received a copy of the 2023 Consent Order and is extremely disappointed that the EPA ignored critical feedback in finalizing the 2023 Consent Order with effectively no meaningful changes. As the BWS made clear in its own public comments (attached to this letter) to the then-proposed version of the consent agreement, the 2023 Consent Order lacks important details, clear timelines, strict penalties, meaningful opportunities for stakeholder participation, and public transparency. Nothing in the final 2023 Consent Order or the supporting materials provided by EPA changes this fact. Equally disheartening, the EPA made no effort to address the widespread concern that the 2023 Consent Order does nothing to ensure the Navy remediates the considerable damage it has done to Oahu's irreplaceable sole-source groundwater aquifer or address the serious public health impacts that are the direct result of the Navy's history of numerous, voluminous releases at the Red Hill facility.

The BWS continues to encourage strong regulatory action to address releases of fuel and other hazardous substances from the Red Hill facility. Unfortunately, the changes to the 2023 Consent Decree adopted by EPA simply do not accomplish that objective. The BWS does support the EPA's decision to acknowledge the cultural significance of our critical water resources to Native Hawaiians, recognize the role of certain subject matter experts (like the BWS) in the Red Hill defueling and closure process, require the

Navy to publicly report future releases that may present an immediate threat to human health or the environment, and the apparent intent of the Navy and EPA to enhance the public involvement by creating a Community Representative Initiative (CRI). But these changes to the 2023 Consent Order do not appreciatively move the needle; they largely require a flow of information to the public and the opportunity for some public interaction but fall far short of ensuring that important stakeholder feedback is actually considered by decisionmakers and incorporated into deliverables. As was witnessed during the Fuel Tank Advisory Committee (FTAC) meeting on June 6, 2023, there is considerable confusion regarding who will be selected to serve on the 10-member CRI, how CRI members are to be selected, and what influence, if any, the CRI members will have in the defueling and closure decision-making process going forward. Indeed, the creation of the CRI seems designed more to satisfy a public relations objective rather than to provide a real opportunity for the affected community to actually have a say in the timing and conditions under which the RHBFSF defueling and closure is conducted. As the BWS has repeatedly made clear in the past, merely requiring a flow of information to the public and the opportunity for some public interaction is not enough to ensure that the RHBFSF underground storage tank system is safely defueled or that the tank closure process will result in permanent facility closure or meaningful remediation of the underlying sole-source aquifer.

Other modifications to the 2023 Consent Order are even more troubling. In particular, by incorporating the Navy's current defueling plan, it appears that the EPA is effectively allowing the Navy to continue to store a "substantial amount of fuel (between 100,000 and 400,000 gallons)" at the RHBFSF after defueling has been completed. This is unacceptable to the BWS, and we feel compelled to remind all interested parties, including the Navy and the EPA, that the release of a mere fraction of that "substantial amount" of fuel resulted in the Navy's drinking water contamination crisis. To the BWS, defueling means that all the RHBFSF tanks and associated pipelines are completely empty before the facility is considered "defueled." The RHBFSF cannot be reasonably considered defueled until the entire underground storage tank system is "empty and clean" by "removing all liquids and accumulated sludges" as is required pursuant to the Hawaii Department of Health's regulations (see HAR § 11-280.1-71, effective July 8, 2021).

The BWS is also very concerned that certain changes to the 2023 Consent Order may result in less rather than more public transparency. For example, not highlighted by EPA in the revisions to the 2023 Consent Order is the fact that the final order only requires the Navy to make environmental data available to the public thirty days after receipt of "validated" sampling data. The BWS not only considers this a material change to the 2023 Consent Order, but one that is improper and certainly inadvisable given the Navy's long history of failing to timely provide important environmental data to regulators, stakeholders, and the public. The Navy should not be permitted to withhold "unvalidated" data for weeks or months simply because it has not sought or received what it considers "validated" data in a timely fashion. The EPA cannot countenance

Ms. Guzman
June 21, 2023
Page 3

anything other than complete public transparency from the Navy regarding any data that may inform potential impacts to human health or the environment.

The 2023 Consent Order also includes new language that the Navy and/or DLA only has to notify the appropriate regulatory agencies and local authorities (including the CRI) if another spill or release from the RHBFSF or the Navy-owned Joint Base Pearl Harbor-Hickam water system is encountered by the Navy and/or DLA. The term “encountered” is not defined and appears to require the Navy and/or DLA to make such a determination. Neither the Navy nor the DLA should be afforded any such discretion. The BWS strongly urges the EPA to make clear to the Navy and DLA that any spill or release or reasonably suspected spill or release (e.g., indicated by an unexpected decrease in fuel gauging or inventory levels, etc.) must be reported immediately to the EPA and the community, and that the regulators and the affected community—not the Navy—make the determination of whether or not an emergency exists. This type of language only reinforces the long-standing BWS opinion that the RHBFSF warrants stringent oversight by an independent third party (Lau, 2016). The EPA cannot reasonably rely on the Navy to properly police itself given its long history of gross mismanagement of the RHBFSF and the catastrophic events that transpired in 2021 resulting directly in the current public health and drinking water crisis.

The BWS takes seriously its obligation to protect Oahu’s drinking water resources; our sole-source groundwater aquifer is one of a kind and cannot be replaced. As an island community, we must be vigilant in protecting this resource because there is no viable alternative from which to replenish our drinking water supplies. At its core, the 2023 Consent Order remains fatally flawed because it fails to do anything to meaningfully protect drinking water, natural resources, human health or the environment, and it utterly avoids holding the Navy accountable for the significant damages it has caused to the people of Hawaii. The people of Hawaii deserve, and the law requires, meaningful protection of our drinking water and real Navy accountability, not the same failed policies and oversight practices that led to the contamination of Oahu’s irreplaceable sole-source groundwater aquifer.

If you have any questions, please contact Mr. Erwin Kawata, Deputy Manager at (808) 748-5066.

Very truly yours,



ERNEST Y.W. LAU, P.E.
Manager and Chief Engineer

Ms. Guzman
June 21, 2023
Page 4

cc: Dr. Kenneth S. Fink, M.D.
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Attachment: Honolulu Board of Water Supply Written Comments to the 2023 Draft Consent Order from the Red Hill Bulk Fuel Storage Facility and Pearl Harbor-Hickam Water System, Honolulu, Hawaii, EPA R-09-RCRA-2022-0970 dated February 3, 2023

References

Lau, Ernest Y. W. (Lau). 2016. Board of Water Supply (BWS) Comments on the Red Hill Bulk Fuel Storage Facility (RHBFSF) Administrative Order on Consent (AOC) Work Plans and Associated Scoping Meetings. Letter to Mr. Bob Pallarino, EPA Red Hill Project Coordinator and Mr. Steven Chang, P.E., DOH Red Hill Project Coordinator. October 3.

United States Environmental Protection Agency (EPA). 2023. Region 9. Red Hill Bulk Fuel Storage Facility. Defueling, Closure, and Joint Base Pearl Harbor-Hickam Drinking Water System. 2023 Consent Order (Final). United States Department of the Navy and Defense Logistics Agency, Respondents. Red Hill Bulk Fuel Storage Facility, Oahu, Hawaii. Joint Base Pearl Harbor-Hickam Water System PWS ID No. HI00003650. EPA DKT No. RCRA 7003-R9-2023-001. EPA DKT No. PWS-AO-2023-001. June.

_____. 2023. 2023 Consent Order (Final). Attachment A. Statement of Work for the 2023 Administrative Consent Order for Defueling, Closure, and Drinking Water Protection for the Red Hill Bulk Fuel Storage Facility and the Joint Base Pearl Harbor-Hickam Water System. June.

United States Navy, United States Army, State of Hawaii Department of Health, and Environmental Protection Agency. 2022. Appendix A – Drinking Water Long-Term Monitoring Plan, Joint Base Pearl Harbor-Hickam Public Water System #HI0000360 and Aliamanu Military Reservation PWS #HI0000337, Oahu, Hawaii. June.

Ms. Guzman
June 21, 2023
Page 5

HAR § 11-280.1-71 – Hawaii Administrative Rules, Title 11, Department of Health, Underground Storage Tanks. Chapter 11-280.1-71. Permanent closure and changes in service. Effective July 8, 2021.