

1 William A. Harrison (HI Bar No. 2948)  
wharrison@hamlaw.net  
2 HARRISON & MATSUOKA  
3 American Savings Bank Tower  
1001 Bishop Street, Suite 1180  
4 Honolulu, Hawai`i 96813  
Tel: (808) 523-7041

5 Daniel Cooper (*pro hac vice*)  
6 daniel@sycamore.law  
Jesse C. Swanhuysen (*pro hac vice*)  
7 jesse@sycamore.law  
SYCAMORE LAW, INC.  
8 1004 O'Reilly Avenue, Ste. 100  
San Francisco, California 94129  
9 Tel: (415) 360-2962

10 Attorneys for Plaintiff  
11 WAI OLA ALLIANCE

12 (*additional counsel listed on next page*)

13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF HAWAII**

15 WAI OLA ALLIANCE, a public  
16 interest association, et al.,

17 Plaintiffs,

18 vs.

19 THE UNITED STATES  
20 DEPARTMENT OF DEFENSE, THE  
UNITED STATES DEPARTMENT  
21 OF THE NAVY, JOINT TASK  
FORCE RED HILL, THE UNITED  
22 STATES NAVY REGION HAWAII,  
23 and THE UNITED STATES NAVY  
FACILITIES ENGINEERING  
24 COMMAND—HAWAII

25 Defendants.

Civil Case No. 1:22-cv-00272-LEK-RT

**SECOND AMENDED COMPLAINT  
FOR DECLARATORY RELIEF AND  
INJUNCTIVE RELIEF**

**Federal Water Pollution Control Act,  
33 U.S.C. § 1251, et seq.;**  
**Resource Conservation and Recovery  
Act, 42 U.S.C. § 6901, et seq.**

1 Phillip Gregory (*pro hac vice*)  
2 pgregory@gregorylawgroup.com  
3 GREGORY LAW GROUP  
4 1250 Godetia Drive  
5 Redwood City, California 94062  
6 Tel: (650) 278-2957

7 Jason Flander (*pro hac vice*)  
8 jrf@atalawgroup.com  
9 James T. Brett (*pro hac vice*)  
10 jtb@atalawgroup.com  
11 AQUA TERRA AERIS LAW GROUP  
12 4030 Martin Luther King Jr. Way  
13 Oakland, California 94609  
14 Tel: (916) 202-3018  
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1 The Wai Ola Alliance, a community association of Hawai`i residents seeking to  
2 protect the waters of O`ahu, by and through its counsel, hereby alleges:

3 **I. INTRODUCTION**

4 1. The Wai Ola Alliance and its individual members (the “Alliance” or  
5 “Plaintiffs”) bring this citizen enforcement action against the United States  
6 Department of the Navy (“Navy” or “Defendant”) to preserve the rights of present and  
7 future generations in the life-giving waters of Hawai`i.

8 2. The Alliance seeks to abate conduct by the Defendant that fundamentally  
9 jeopardizes the environmental, socio-economic, and cultural fabric of O`ahu,  
10 including specifically through its:

11 a. significant ongoing violations of the Resource Conservation and  
12 Recovery Act (“RCRA”), 42 U.S.C. § 6901, *et seq.*; and

13 b. significant ongoing violations of the Federal Water Pollution Control Act  
14 (“Clean Water Act”) 33 U.S.C. § 1251, *et seq.*

15 3. Defendant has violated, and will continue to violate:

16 a. the RCRA section 7002(a) prohibition on conduct that may present an  
17 imminent and substantial endangerment to human health and the  
18 environment, 42 U.S.C. § 6972(a); and

19 b. the Clean Water Act section 301 prohibition on the unpermitted  
20 discharges of pollutants to waters of the United States, 33 U.S.C. §  
21 1311(a).

22 4. The Navy’s operation of the Red Hill Bulk Fuel Storage Facility (the  
23 “Facility” or “Red Hill”), including but not limited to the past and present handling,  
24 storage, treatment, transportation, and/or disposal of solid waste, has and will continue  
25 to present imminent and substantial endangerment to health and the environment  
26 through historic, existing, and impending contamination of the irreplaceable Southern  
27 O`ahu Basal Aquifer (the “Aquifer”).

1           5.       The Navy has and will continue to discharge pollutants, including but not  
2 limited to petroleum-based pollutants (e.g., jet propellant-5, jet propellant-8, marine  
3 diesel), from point sources at the Facility to waters of the United States, including but  
4 not limited to Pearl Harbor (hereinafter “Pu`uloa”) and Hālawā Stream, without  
5 permit authorization from the United States Environmental Protection Agency (“U.S.  
6 EPA”) or any agency of the State of Hawai`i (“Hawai`i”) in violation of the  
7 prohibition on such discharges in the Clean Water Act’s section 301(a). *See id.*

8           6.       Plaintiffs request declaratory and injunctive relief for ongoing violations  
9 of RCRA and the Clean Water Act resulting from the Navy’s operation of the Facility.  
10 *See* 33 U.S.C. § 1365(a)(1); 42 U.S.C. § 6972(a)(1)(A) and (B).

11           7.       Plaintiffs further seek the imposition of coercive civil penalties, as  
12 appropriate, for violations of the Clean Water Act. 33 U.S.C. § 1319(d).

13       **II. JURISDICTION AND VENUE**

14           8.       This Court has subject matter jurisdiction over the Alliance and the Navy  
15 (collectively the “Parties”) and over the subject matter of this action pursuant to  
16 section 7002 of RCRA, 42 U.S.C. § 6972(a), and section 505(a)(1)(A) of the Clean  
17 Water Act. *See* 33 U.S.C. § 1365(a)(1)(A).

18           9.       This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331  
19 because this action arises under RCRA, the Clean Water Act, and the Declaratory  
20 Judgment Act, 28 U.S.C. § 2201, *et seq.*

21           10.      Plaintiffs seek declaratory relief establishing that Defendant has violated  
22 RCRA and the Clean Water Act. *See* 28 U.S.C. § 2201(a).

23           11.      Plaintiffs seek injunctive relief related to RCRA violations, pursuant to  
24 42 U.S.C. § 6972(a)(1)(A) and (B), directing the Navy to:

- 25           a.       eliminate the imminent and substantial endangerment to health and the  
26               environment by implementing operational and physical modifications  
27               related to its handling, storage, treatment, transportation, and disposal of

- 1                   solid waste at Red Hill;
- 2                   b. develop a critical path analysis and comprehensive management plan
- 3                   with deadlines for timely and safe defueling of the Facility; and
- 4                   c. develop a critical path analysis and comprehensive management plan
- 5                   with deadlines for timely and safe decommissioning and closure of the
- 6                   Facility.

7           12.       Plaintiffs seek injunctive relief related to Clean Water Act violations

8 pursuant to 33 U.S.C. § 1365(a)(1), directing Defendant to:

- 9                   a. abate all discharges of pollutants from the Facility to waters of the United
- 10                   States without a permit; and
- 11                   b. require the Navy to take appropriate actions to prevent unlawful discharges
- 12                   of pollutants to waters of the United States during defueling and closure of
- 13                   the Facility.

14       13.       Plaintiffs further seek injunctive relief obligating Defendant to remedy,

15 reduce, redress, mitigate, and/or offset all adverse human health, wildlife, and

16 environmental consequences resulting from contamination of the Aquifer and the

17 surface waters caused by violations of RCRA and the Clean Water Act.

18       14.       Plaintiffs request the Court award reasonable litigation costs, including

19 fees for attorneys, experts, and consultants, incurred in bringing this action. *See* 42

20 U.S.C. § 6972(e); 33 U.S.C. § 1365(d).

21       15.       The relief requested is authorized pursuant to 28 U.S.C. §§ 2201–2202

22 (power to issue declaratory relief in case of actual controversy and further necessary

23 relief based on such a declaration).

24       16.       As a jurisdictional pre-requisite to enforcing RCRA and the Clean Water

25 Act in Federal District Court, prospective citizen plaintiffs must serve a Notice of

26 Violation and Intent to File Suit letter (“Notice Letter”) on potential defendants, and

27 certain state and federal agencies.

1           17.       Under the Clean Water Act, the Notice Letter must contain, *inter alia*,  
2 sufficient information to allow the recipient to identify the standard, limitation, or  
3 order alleged to be violated, and the activity alleged to constitute a violation, and be  
4 sent via certified mail at least sixty (60) days prior to filing a complaint to the owner  
5 of the facility alleged to be in violation of the Clean Water Act. 33 U.S.C. §§ 1365(a),  
6 (b); 40 C.F.R. § 135.2(a)(1).

7           18.       A copy of any Clean Water Act Notice Letter must be mailed to the  
8 Administrator of the U.S. EPA, the Regional Administrator of the U.S. EPA for the  
9 region in which a violation is alleged to have occurred, and the chief administrative  
10 officer for the water pollution control agency for the State in which the violation is  
11 alleged to have occurred. 33 U.S.C. § 1365(b); 40 C.F.R. § 135.2(b)(1)(A).

12           19.       Under RCRA, the Notice Letter must contain, *inter alia*, sufficient  
13 information to permit the recipient to identify the specific permit, standard, regulation,  
14 condition, requirement, or order which has allegedly been violated, the activity  
15 alleged to constitute the violation(s), and be sent via certified mail at least ninety (90)  
16 days prior to filing a complaint to the person(s) responsible for the alleged violation.  
17 42 U.S.C. § 6972(b)(2)(A); 40 C.F.R. § 254.3.

18           20.       A copy of any RCRA Notice Letter must also be mailed to the  
19 Administrator of the U.S. EPA, the Regional Administrator of the U.S. EPA for the  
20 region in which a violation is alleged to have occurred, and the chief administrative  
21 officer of the solid waste management agency for the State in which the violation is  
22 alleged to have occurred. 40 C.F.R. § 254.2.

23           21.       On November 2, 2021, the Alliance sent by certified mail a Notice Letter  
24 (the “2021 Notice Letter”) alleging RCRA violations to the Navy, including  
25 specifically Lloyd J. Austin III, Secretary of Defense (Certified Mailing No. 7021  
26 0950 0000 5373 2963), the Honorable Carlos Del Toro, Secretary of the Navy  
27 (Certified Mailing No. 7021 0950 0000 5373 2956), Admiral Samuel J. Paparo,

1 Commander of the U.S. Pacific Fleet (Certified Mailing No. 7021 0950 0000 5373  
2 2932).

3 22. A true and correct copy of the 2021 Notice Letter is attached hereto as  
4 **Exhibit A** and is incorporated by reference.

5 23. The Alliance sent a copy of the 2021 Notice Letter by certified mail to  
6 the United States Attorney General (Certified Mailing No. 7021 0950 0000 5373  
7 2918), the Administrator of the U.S. EPA (Certified Mailing No. 7021 0950 0000  
8 5373 2925), the Regional Administrator of U.S. EPA Region IX (Certified Mailing  
9 No. 7021 0950 0000 5373 2901), the Governor of Hawai`i (Certified Mailing No.  
10 7021 0950 0000 5373 2895), and Director of the Hawai`i State Department of Health  
11 (Certified Mailing No. 7021 0950 0000 5373 2888).

12 24. On February 7, 2022, the Alliance sent by certified mail a supplemental  
13 Notice Letter (the "2022 Notice Letter") alleging ongoing violations of RCRA and the  
14 Clean Water Act to the Navy, including specifically Lloyd J. Austin III, Secretary of  
15 Defense (Certified Mailing No. 7021 1970 000 1422 8468), the Honorable Carlos Del  
16 Toro, Secretary of the Navy (Certified Mailing No. 7021 1970 0000 1422 8444),  
17 Admiral Samuel J. Paparo, Commander of the U.S. Pacific Fleet (Certified Mailing  
18 No. 7021 1970 0000 1422 8437), and Rear Admiral Timothy Kott, Commander of  
19 Navy Region Hawai`i (Certified Mailing No. 7021 1970 0000 1422 8420).

20 25. A true and correct copy of the 2022 Notice Letter is attached hereto as  
21 **Exhibit B** and is incorporated by reference.

22 26. On February 7, 2022, the Alliance sent by certified mail a copy of the  
23 2022 Notice Letter to the United States Attorney General (Certified Mailing No. 7021  
24 1970 0000 1422 8482), the Administrator of the U.S. EPA (Certified Mailing No.  
25 7021 1970 0000 1422 8475), the Regional Administrator of U.S. EPA Region IX  
26 (Certified Mailing No. 7021 1970 0000 1422 8413), the Governor of Hawai`i  
27 (Certified Mailing No. 7021 1970 0000 1422 8406), and Director of the Hawai`i State



1 Department of Health (Certified Mailing No. 7021 1970 0000 1422 8390).

2 27. As a courtesy, the Alliance also sent the 2021 Notice Letter and 2022  
3 Notice Letter to Lieutenant General Darrell K. Williams, Director of Defense  
4 Logistics Agency (Certified Mailing No. 7021 1970 0000 1422 8451 and 7021 1970  
5 0000 1422 8451), the agency that owns the fuel stored at Red Hill.

6 28. More than ninety (90) days have passed since the 2021 Notice Letter and  
7 2022 Notice Letter were issued to the Navy, and sent to the above listed Federal and  
8 State agencies. *See* 42 U.S.C. § 6972(b)(2)(A).

9 29. More than sixty (60) days have passed since the 2021 Notice Letter and  
10 2022 Notice Letter were issued to the Navy, and sent to the above listed Federal and  
11 State agencies. *See* 33 U.S.C. § 1365(b)(1).

12 30. On March 13, 2023, the Alliance sent by certified mail a second  
13 supplemental Notice Letter (the “2023 Notice Letter”) alleging ongoing violations of  
14 RCRA and the Clean Water Act to the Navy, again including Lloyd J. Austin III,  
15 Secretary of Defense (Certified Mailing No. 7022 3330 0002 2643 5198), the  
16 Honorable Carlos Del Toro, Secretary of the Navy (Certified Mailing No. 5150 7022  
17 3330 0002 2643), and Admiral Samuel J. Paparo, Commander of the U.S. Pacific  
18 Fleet (Certified Mailing No. 7022 3330 0002 2643 5143).

19 31. The 2023 Notice Letter was also addressed to Capitan Cameron J.  
20 Geertsema Commander, Navy Facilities Engineering Command – Hawaii (Certified  
21 Mailing No. 7022 3330 0002 2643 5167), and Rear Admiral Stephen D. Barnett  
22 Commander, Navy Region Hawaii, and Rear Admiral Timothy Kott, Commander of  
23 Navy Region Hawai`i (Certified Mailing No. 7022 3330 0002 2643 5136).

24 32. A true and correct copy of the 2023 Notice Letter is attached hereto as  
25 **Exhibit C** and is incorporated by reference.

26 33. On March 13, 2022, the Alliance sent by certified mail a copy of the  
27 2023 Notice Letter to the United States Attorney General (Certified Mailing No. 7022  
3330 0002 2643 5174), the Administrator of the U.S. EPA (Certified Mailing No.



1 7022 3330 0002 2643 5181), the Regional Administrator of U.S. EPA Region IX  
2 (Certified Mailing No. 7022 1670 0002 1677 1702), the Governor of Hawai`i  
3 (Certified Mailing No. 7022 1670 0002 1677 1726), and Director of the Hawai`i State  
4 Department of Health (Certified Mailing No. 7022 1670 0002 1677 1733).

5 34. As a courtesy, the Alliance also sent the 2023 Notice Letter to Lieutenant  
6 General Darrell K. Williams, Director of Defense Logistics Agency (Certified Mailing  
7 No. 7022 3330 0002 2643 1740), and Rear Admiral John. F. Wade, Commander, Joint  
8 Task Force Red Hill.

9 35. More than ninety (90) days have passed since the 2023 Notice Letter  
10 were issued to the Navy, and sent to the above listed Federal and State agencies. *See*  
11 42 U.S.C. § 6972(b)(2)(A).

12 36. Plaintiffs are informed and believe, and allege, that neither the U.S. EPA  
13 nor the State of Hawai`i has commenced or is diligently prosecuting a court action to  
14 redress violations alleged in the Notice Letters, the First Amended Complaint, or this  
15 Second Amended Complaint. 33 U.S.C. § 1365(b)(2).

16 37. Venue is proper in the District of Hawai`i because the alleged violations  
17 of RCRA and the Clean Water Act occurred and are occurring on the island of O`ahu,  
18 which is located within this judicial district. *See* 42 U.S.C. § 6972(a); 33 U.S.C. §§  
19 1319(b), 1365(c)(1).

### 20 **III. THE PARTIES**

#### 21 **A. Wai Ola Alliance**

22 38. The Hawaiian words “wai ola,” from which the Alliance’s name is  
23 derived, translate into English as “the water of life.”

24 39. The Alliance is a community-based organization composed of  
25 environmentally- and culturally-focused individuals and organizations dedicated to  
26 protecting the waters of Hawai`i from the effects of past and ongoing releases,  
27 discharges, and disposal of petroleum pollutants from Red Hill to the Aquifer,  
Pu`uloa, Hālawā Stream, and other nearby surface waters.

1           40.       The Alliance and its individual members are committed to preserving the  
2 human right to water, to vibrant functioning aquatic ecosystems, and to clean and  
3 healthy drinking water for present and future generations.

4           41.       With this action, the Alliance seeks to protect interests that are related to  
5 its organizational purposes.

6           42.       Members of the Alliance, and the named plaintiffs in this action, include:

- 7           a. Mary Maxine Kahaulelio (a.k.a., Auntie Max), who was born and raised on  
8 O`ahu, is a native Hawaiian kupuna, and is currently a community organizer  
9 and activist for the rights of native Hawaiians;
- 10          b. Clarence Ku Ching (a.k.a., Uncle Ku), who was born and raised on O`ahu,  
11 served as a trustee to the Office of Hawaiian Affairs, is a native Hawaiian  
12 kupuna, and is currently a community organizer, and activist for the rights of  
13 native Hawaiians;
- 14          c. Melodie Aduja, who lives on O`ahu, served as a Hawai`i State Senator for  
15 District 23 (2003–2004), and is currently the co-chair of the Environmental  
16 Caucus, Democratic Party of Hawai`i;
- 17          d. Kim Coco Iwamoto, who lives on O`ahu, served as a member of Hawai`i’s  
18 State Board of Education (2006–2011), and currently owns and operates a  
19 business on O`ahu;
- 20          e. Peter Doktor, who lives on O`ahu, is a U.S. military veteran, was a high  
21 school teacher, and is currently a social justice and peace activist;
- 22          f. Steven Hanaloa Helelā is a native Hawaiian activist who lives on O`ahu and  
23 has worked for decades to protect native lands and waters of Hālawā, O`ahu,  
24 and throughout Hawai`i;
- 25          g. Kalamaokaaina Niheu, who lives on O`ahu, is a native Hawaiian, family  
26 medicine physician, published author on the effects of militarization in  
27 Hawai`i, and co-founder of Mauna Medic Healers Hui;
- h. Dr. Lynette Hiilani Cruz (a.k.a., Auntie Lynette), who lives on O`ahu, is a

1 native Hawaiian kupuna and retired professor of anthropology at Hawai'i  
2 Pacific University, and is currently a community organizer and advocate for  
3 social and environmental justice;

- 4 i. James J. Rodrigues (a.k.a., Uncle Sparky), who was born and raised on  
5 O`ahu, is a native Hawaiian kupuna and community activist for social and  
6 environmental justice; and  
7 j. Jade Mahina Frank, who was born and raised on O`ahu, is a native Hawaiian  
8 and currently is a community organizer and warrior for climate justice.

9 43. The Alliance is based in Honolulu.

10 44. The Alliance has members who reside in and around Honolulu.

11 45. At all relevant times, Plaintiffs were and are “person[s]” within the  
12 meaning of Section 1004(15) of RCRA. *See* 42 U.S.C. § 6903(15).

13 46. At all relevant times, Plaintiffs were and are “citizens” within the  
14 meaning of Clean Water Act. *See* 33 U.S.C. §§ 1362(5), 1365(a), (g).

15 47. The environmental, health, aesthetic, spiritual, economic, and  
16 recreational interests of Alliance members have been, are being, and will continue to  
17 be adversely affected by the Navy’s ongoing violations of RCRA and the Clean Water  
18 Act.

19 48. Continuing commission of the acts and omissions alleged herein will  
20 cause Plaintiffs irreparable harm, for which they have no plain, speedy, or adequate  
21 remedy at law.

22 49. The relief sought herein will redress the harms to Plaintiffs caused by  
23 Defendant’s violations of RCRA and the Clean Water Act.

24 **B. The United States Departments of Defense and the Navy**

25 50. The Navy is the maritime service branch of the United States Armed  
26 Forces.

27 51. The Navy is led by the Secretary of the Navy.

1           52.     The Navy is a military department and instrumentality of the Department  
2 of Defense (“DOD”).

3           53.     DOD is led by the Secretary of Defense.

4           54.     The Navy and DOD are each a “person” as defined in, and/or otherwise  
5 properly subject to liability for violations of, RCRA and the Clean Water Act. 42  
6 U.S.C. § 6903(15); 33 U.S.C. § 1362(5).

7           55.     The Navy is the owner and operator of Red Hill.

8           56.     Since the first amended complaint was filed in this action, DOD and the  
9 Navy have created additional administrative and/or command layers onto defueling,  
10 closure, and environmental remediation activities.

11          57.     To address what it describes as the “Red Hill problem set,” DOD has  
12 assigned defueling, closure, and environmental remediation responses to different  
13 commands, each of which is an instrumentality of DOD or the Navy.

14          58.     Responsibility for Facility defueling has been assigned to the Joint Task  
15 Force Red Hill (“JTF”), which reports directly to the U.S. Indo-Pacific Command  
16 (“INDOPACOM”).

17          59.     INDOPACOM is an instrumentality of DOD.

18          60.     Responsibility for closure of the Facility has been assigned to Navy  
19 Region Hawaii.

20          61.     Navy Region Hawaii is an instrumentality of the Navy.

21          62.     Responsibility for environmental remediation at the Facility is assigned  
22 to Navy Facilities Engineering Command – Hawaii.

23          63.     Navy Facilities Engineering Command – Hawaii is an instrumentality of  
24 the Navy.

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1 **IV. STATUTORY BACKGROUND**

2 **A. The Resource Conservation and Recovery Act**

3 64. The Congressional objective in crafting RCRA was “to promote the  
4 protection of health and the environment.” 42 U.S.C. § 6902(a).

5 65. With RCRA, Congress established a National Policy according to which  
6 solid waste, including petroleum waste, “should be treated, stored, or disposed of so  
7 as to minimize the present and future threat to human health and the environment.” 42  
8 U.S.C. § 6902(b).

9 66. RCRA section 7002(a)(1)(B) provides that citizens may commence a  
10 civil action “against any person including the United States and any other  
11 governmental instrumentality or agency [and] including any past or present generator,  
12 past or present transporter, or past or present owner or operator of a treatment,  
13 storage, or disposal facility who has contributed or who is contributing to the past or  
14 present handling, storage, treatment, or transportation, or disposal of any solid or  
15 hazardous waste which may present and imminent and substantial endangerment to  
16 health or the environment.” 42 U.S.C. § 6972(a)(1)(B).

17 67. RCRA defines “person” to include “an individual, trust, firm, joint stock  
18 company, corporation (including a government corporation), partnership, association,  
19 State, municipality, commission, political subdivision of a State, or any interstate  
20 body and shall include each department, agency, and instrumentality of the United  
21 States.” 42 U.S.C. § 6903(15).

22 68. RCRA defines “solid waste” as “any garbage, refuse, sludge from a  
23 waste treatment plant, water supply treatment plant, or air pollution control facility  
24 and other discarded material, including solid, liquid, semisolid, or contained gaseous  
25 material resulting from industrial, commercial, mining, and agricultural operations,  
26 and from community activities.” 42 U.S.C. § 6903(27).

27 69. Under Section 1004(3), “[t]he term ‘disposal’ means the “discharge,  
deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or

1 on any land or water so that such solid waste or hazardous waste or any constituent  
2 thereof may enter the environment or be emitted into the air or discharged into any  
3 waters, including ground-waters.” 42 U.S.C. § 6903(3) (emphasis added).

4 70. Courts have interpreted “solid waste” to mean materials “that are truly  
5 discarded, disposed of, thrown away, or abandoned.” *American Min. Congress v.*  
6 *U.S.E.P.A.*, 824 F.2d 1177, 1190 (D.C. Cir. 1987). Unless a discarded material is part  
7 of an ongoing industrial process or is actively being reused, it will, after it has served  
8 its intended purpose, constitute solid waste. *Id.*

9 71. An action for injunctive relief is authorized by RCRA. 42 U.S.C.  
10 § 6972(a) (“The district court shall have jurisdiction . . . to restrain” any imminent and  
11 substantial endangerment).

12 **B. The Clean Water Act**

13 72. According to the Supreme Court, “[t]he Clean Water Act [] was enacted  
14 [] to restore and maintain the chemical, physical, and biological integrity of the  
15 Nation's waters. [33 U.S.C.] § 1251(a).” *Gwaltney of Smithfield v. Chesapeake Bay*  
16 *Foundation* (1987) 484 U.S. 49, 52 (internal quotations and citation omitted).

17 73. Section 301(a) of the Clean Water Act is titled *ILLEGALITY OF POLLUTANT*  
18 *DISCHARGES EXCEPT IN COMPLIANCE WITH LAW*. 33 U.S.C. § 1311(a).

19 74. Section 301(a) provides: “Except as in compliance with this section and  
20 sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any  
21 pollutant by any person shall be unlawful.” *Id.*

22 75. “In order to achieve [its] goals, § 301(a) of the Act makes unlawful the  
23 discharge of any pollutant into navigable waters except as authorized by specified  
24 sections of the Act. 33 U.S.C. § 1311(a).” *Gwaltney of Smithfield*, 484 U.S. at 52  
25 (internal quotations and citations omitted); *see also* David M. Bearden et. al., Cong.  
26 Rsch. Serv., RL30798, *Environmental Laws: Summaries of Major Statutes*  
27 *Administered by the Environmental Protection Agency* 25 (2011) (“To achieve its  
objectives, the [A]ct embodies the concept that all discharges into the nation’s waters

1 are unlawful, unless specifically authorized by a permit.”).

2 76. The Clean Water Act provides for the issuance of permits that authorize  
3 the discharge of pollutants into navigable waters in compliance with specified effluent  
4 standards. In section 402(a), 33 U.S.C. § 1342(a), the Act established the National  
5 Pollutant Discharge Elimination System, under which the U.S. EPA (or a state  
6 authorized by U.S. EPA) may issue a permit for the discharge of any pollutant  
7 provided that the authorized discharge complies with the effluent standards specified  
8 in the permit or otherwise imposed by the Act. *Sierra Club v. Va. Elec. & Power Co.*,  
9 903 F.3d 403, 405 (4th Cir. 2018).

10 77. The term “navigable waters” includes waters of the United States. 33  
11 U.S.C. § 1362(7).

12 78. “The term “discharge” when used without qualification includes a  
13 discharge of a pollutant, and a discharge of pollutants.” 33 U.S.C. § 1362(16).

14 79. “The term ‘pollutant’ means dredged spoil, solid waste, incinerator  
15 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological  
16 materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand,  
17 cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33  
18 U.S.C. § 1362(6); *see also Cty. Of Maui v. Haw. Wildlife Fund* (2020) 140 S.Ct. 1462,  
19 1465 (“the Act defines ‘pollutant’ broadly.”)

20 80. “The term ‘discharge of a pollutant’ and the term ‘discharge of  
21 pollutants’ each means (A) any addition of any pollutant to navigable waters from any  
22 point source, [and] (B) any addition of any pollutant to the waters of the contiguous  
23 zone or the ocean from any point source other than a vessel or other floating craft.” 33  
24 U.S.C. § 1362(12); *see also Cty. Of Maui*, 140 S.Ct. at 1469 (the Act “defines the  
25 term discharge of a pollutant as any addition of any pollutant to  
26 navigable waters [including navigable streams, rivers, the ocean, or coastal waters]  
27 from any point source.” (brackets in original) (internal quotations omitted)).



1           81.       “The term “point source” means any discernible, confined and discrete  
2 conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well  
3 . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14); *Cnty.*  
4 *Ass'n for Restoration of the Env't v. Henry Bosma Dairy*, 305 F.3d 943, 955 (9th Cir.  
5 2002) (“the definition of a point source is to be broadly interpreted.”)

6           82.       Section 505(a)(1) of the Clean Water Act provides for citizen  
7 enforcement against any “person” who is alleged to be in violation of an “effluent  
8 standard or limitation . . . or an order issued by the Administrator or a State with  
9 respect to such a standard or limitation.” 33 U.S.C. § 1365(a)(1), (f).

10          83.       “Effluent standard or limitation” is defined to include the prohibition in  
11 section 301(a) against unpermitted discharges. 33 U.S.C. § 1365(f)(1); *see also Am.*  
12 *Frozen Food Inst. v. Train*, 539 F.2d 107, 128 (D.C. Cir. 1976) (the Clean Water  
13 Act’s section 301(a) prohibition on unpermitted discharges is self-executing).

14          84.       A “person” under the Clean Water Act includes individuals, corporations,  
15 partnerships, associations, States, municipalities, commissions, and political  
16 subdivisions of a State, or any interstate body. 33 U.S.C. § 1362(5).

17          85.       Each separate violation of the Clean Water Act subjects a violator to a  
18 penalty of up to \$59,973.00 per day per violation. 33 U.S.C. §§ 1319(d), 1365(a); 40  
19 C.F.R. §§ 19.1–19.4.

20          86.       Section 505(d) of the Clean Water Act allows a prevailing or  
21 substantially prevailing party to recover litigation costs, including fees for attorneys,  
22 experts, and consultants where it finds that such an award is appropriate. 33 U.S.C. §  
23 1365(d); *see also St. John’s Organic Farm v. Gem County Mosquito Abatement Dist.*,  
24 574 F.3d 1054, 1062–1064 (9th Cir. 2009) (holding that the court’s discretion to deny  
25 a fee award to a prevailing plaintiff is narrow, and denial is “extremely rare.”).

26       ///

27       ///

1 **V. FACTUAL BACKGROUND**

2 **A. The Red Hill Bulk Fuel Storage Facility**

3 87. The Facility was constructed between 1940 and 1943.

4 88. The Facility was a classified state secret from the time it was being  
5 constructed until 1995.

6 89. The Facility includes twenty (20) “field constructed” underground  
7 storage tanks (“USTs”).

8 90. The Facility includes approximately seven (7) miles of tunnels.

9 91. The Facility includes approximately twenty-nine (29) miles of pipelines.

10 92. The Facility includes surge tanks.

11 93. The Facility includes above ground storage tanks.

12 94. The Facility includes slop oil and oil recovery facilities.

13 95. The Facility includes the remains of burn pits for petroleum product  
14 disposal.

15 96. The USTs are connected by pipelines to fueling stations at various piers  
16 along Pu`uloa, including but not limited to Hotel Pier, Kilo Pier, Mike Pier, Bravo  
17 Pier, and Sierra Pier.

18 97. Hotel Pier was built in 1941 and is located immediately south to the  
19 mouth of Hālawa Stream (see IMAGE 1). Ramon Mendoza, *Pearl Harbor Hotel Pier*  
20 *Release 3* (2021), available at [https://health.hawaii.gov/ust/files/2021/11/R-Pearl-](https://health.hawaii.gov/ust/files/2021/11/R-Pearl-Harbor-Hotel-Pier-Release.USCG_.Area_.Mtg_.ppt.pdf)  
21 [Harbor-Hotel-Pier-Release.USCG\\_.Area\\_.Mtg\\_.ppt.pdf](https://health.hawaii.gov/ust/files/2021/11/R-Pearl-Harbor-Hotel-Pier-Release.USCG_.Area_.Mtg_.ppt.pdf).

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IMAGE 1



Hotel Pier (Yellow)

Hālawa Stream (Blue)

Manifold Area (Red)

12 98. Hotel Pier has been used as a refueling hub for large Navy vessels since  
13 World War II. *Id.*; Naval Facilities Eng’g Command, *Hotel Pier Plume Delineation*  
14 *Pearl Harbor Naval Supply Center 2* (Draft, 2021).

15 99. Hotel Pier is used for both “receipt and issue” of fuel. (Michael Baker  
16 Int’l, *2019 One-Time Static Liquid Pressure Testing Report of Four Sections*  
17 *([redacted] Feet) of Petroleum Pier Pipelines 1* (2019), available at  
18 <https://health.hawaii.gov/ust/files/2021/11/R-2019-08-13-REDACTED-JBPHH-2019->  
19 [One-time-SLPT-of-Four-Sections-xxxxx-Feet-of-Pier-Pipelines.pdf](https://health.hawaii.gov/ust/files/2021/11/R-2019-08-13-REDACTED-JBPHH-2019-One-time-SLPT-of-Four-Sections-xxxxx-Feet-of-Pier-Pipelines.pdf).

20 100. Petroleum products, including fuel, for distribution from Hotel Pier are  
21 supplied via Valve Station 3 (VS-3). Mendoza, *Pearl Harbor Hotel Pier Release* at 3.

22 101. Valve Station 3 (VS-3) is supplied by large subsurface product lines  
23 connected to the Facility’s USTs. *Id.*

24 102. A 2015 report assessing pipeline integrity recommended “[i]solating and  
25 temporarily deactivating or permanently closing the defuel line on the Hotel Pier.”  
26 Enter. Eng’g, Inc., *Integrity Management Plan – POL Pipelines NAVSUP FLC Pearl*  
27 *Harbor, HI (PRL) 6* (Interim Final Submission, 2015).

1 103. Kilo Pier is located parallel to and immediately south of Hotel Pier (see  
2 IMAGE 2).

3 IMAGE 2



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10  
11  
12 Hotel Pier (*Yellow*) | Hālawā Stream (*Blue*) | Kilo Pier (*Green*)

13  
14 104. The Facility derives its name from the ridge into which the USTs were  
15 built, known as Kapūkaki or “Red Hill.”

16 105. Each UST has the capacity to hold 12.5 million gallons of petroleum-  
17 based fuel.

18 106. As of April 2022, eighteen (18) USTs were operational, two (2) were not  
19 in service, and at least fourteen (14) USTs contained petroleum-based fuel.

20 107. Each UST is used to store petroleum-based fuels.

21 108. The USTs currently contain diesel marine fuel (“F-76”) and multiple  
22 types of jet propellant fuel (“JP-5,” “JP-8,” and “F-24”).

23 109. Petroleum fuels and oils stored at Red Hill, and that have leaked and/or  
24 spilled are “solid waste” under RCRA. *See* 42 U.S.C. § 6903(27); In the Matter of  
25 Red Hill Bulk Fuel Storage Facility, U.S. EPA Dkt. No. RCRA 7003-R9-2015-01,  
26 Haw. Dep’t of Health Dkt. No. 15-UST-EA-01 (2015) (“2015 AOC”).  
27

1 110. Petroleum fuels and oils stored at Red Hill, and that have been  
2 discharged to surface waters, are “pollutants” under the Clean Water Act, including  
3 but not limited to fuel oil and jet propellant fuel. *See* 33 U.S.C. § 1362(6).

4 111. Two tunnels connect the USTs and allow partial access.

5 112. The upper tunnel provides access to the top of each tank.

6 113. The lower tunnel houses pipelines and other equipment that carry fuel  
7 from the USTs to distribution points at Pu`uloa.

8 114. Some of the Facility’s pipelines are exposed.

9 115. Some of the Facility’s pipelines are buried.

10 116. Some of the Facility’s pipelines are, depending on tides, located under  
11 water.

12 117. Each UST is constructed with a quarter-inch steel “liner.”

13 118. Each steel “liner” is reinforced with three to four feet of concrete.

14 119. The concrete reinforces the steel “liners,” but does not provide fluid  
15 containment.

16 120. The tops and bottoms of each tank are domed half-inch steel.

17 121. The quarter-inch steel “liners” each have approximately two acres of  
18 surface area. Bechtel Corp., *Engineering Survey of U.S. Navy Petroleum Facilities at*  
19 *Pearl Harbor* 12 (1949) (“Bechtel Eng’g Survey”).

20 122. The USTs are located approximately 100 to 200 feet below the ground  
21 surface.

22 123. The Navy cannot physically assess, inspect, maintain, or protect the  
23 backside of the USTs, and therefore the potential for a corrosion induced failure in the  
24 tanks has been a concern for decades. *See Bechtel Eng’g Survey* at 9-11; Letter from  
25 Earnest Y. W. Lau, Bd. of Water Supply, City & Cnty. of Honolulu, to Roy K.  
26 Amemiya, Jr., City & Cnty. of Honolulu (May 4, 2017) at 2–3, 11.

27 124. The Navy does not possess an operating permit from the State of Hawai`i



1 or the U.S. EPA for the Facility.

2 **B. The Sole Source Aquifer**

3 125. The USTs are positioned approximately 100 feet above an underlying  
4 groundwater aquifer.

5 126. In 2010, the Navy stated as follows: “The [F]acility sits over an aquifer  
6 system that supplies potable water to Naval Station (NAVSTA) Pearl Harbor and  
7 public water systems on the island of Oahu, HI.” Naval Audit Service, *Audit Report*  
8 *N2010-0049* 11 (Aug. 15, 2010).

9 127. The underlying groundwater aquifer system is called the Southern O‘ahu  
10 Basal Aquifer.

11 128. U.S. EPA designated the Aquifer as a “sole source” aquifer in 1987. 52  
12 Fed. Reg. 45496.

13 129. The “sole source” designation means that there are no alternative  
14 drinking water source(s) that could physically, legally and economically supply all  
15 those who depend on the Aquifer for fresh water.

16 130. The Aquifer is an irreplaceable source of fresh water.

17 131. According to U.S. EPA, the Aquifer is the “principal source of drinking  
18 water” for the island, which “[i]f contaminated, would create a significant hazard to  
19 public health.” 52 Fed. Reg. at 45497.

20 132. Approximately 77% of residents on O‘ahu rely on the Aquifer for water.

21 133. There are multiple potable water supply wells, which supply residents  
22 with water from the Aquifer, located in the vicinity of Red Hill.

23 134. Potable water supply wells located in the vicinity of Red Hill include, but  
24 are not limited to:

- 25 a. the Navy’s Red Hill Shaft well 2254-01 (“Red Hill Shaft”), which is  
26 located approximately 3,000 feet west and hydraulically downgradient  
27 from Red Hill;

1           b. the Honolulu Board of Water Supply’s (“HBWS”) Hālawā Shaft well  
2           2354-01 (“Hālawā Shaft”), which is located approximately 5,000 feet  
3           northwest of Red Hill; and

4           c. the HBWS Moanalua wells 2153-10, 2153-11, and 2153-12, which are  
5           located approximately 6,500 feet south of Red Hill.

6           135. Data collected by the U.S. Geological Survey in 2015 show that the  
7           groundwater level at Hālawā Shaft is about three (3) feet lower than that beneath the  
8           Facility’s USTs, demonstrating that the hydraulic gradient could drive contaminant  
9           migration to Hālawā Shaft. Lau, Bd. of Water Supply, City & Cnty. of Honolulu, to  
10          Roy K. Amemiya, Jr., City & Cnty. of Honolulu at 1–2.

11          136. Since at least 2008, the Navy acknowledged that cleaning up and/or  
12          remediating the impact of a large spill would be infeasible. Naval Facilities Eng’g  
13          Command, *Red Hill Bulk Fuel Storage Facility Final Groundwater Protection Plan*  
14          ES-3 (2008) (“2008 Groundwater Protection Plan”).

15          137. The Navy has stated: “Under site conditions, remediation of a large fuel  
16          release would be extremely costly and technically difficult, due to the underground  
17          nature of Red Hill, the steep ridgeline upon which Red Hill is located, the distance  
18          from ground surface to the Aquifer (between 400 and 500 feet on the Red Hill  
19          ridgeline), and finally because of the complex hydrogeology associated with the  
20          fractured basalt aquifers. Pump and treat methods could be implemented but would be  
21          costly and inefficient in this environment. Multi-phased extraction may be more  
22          efficient, but very complex at the depths required.” Naval Facilities Eng’g Command,  
23          *Interim Update Red Hill Bulk Fuel Storage Facility Final Groundwater Protection*  
24          *Plan* at ES-4 (2014) (“2014 Groundwater Protection Plan Interim Update”); *see also*  
25          Letter from Steven Linder, Red Hill Project Coordinator, U.S. EPA Region 9, and  
26          Roxanne Quan, Interim Red Hill Project Coordinator, Haw. Dep’t of Health to Gordie  
27          Meyer, Commander, Navy Region Haw., Notice of Deficiency for the Tank Upgrade



1 Alternatives Decision Document and New Release Detection Alternatives Decision  
2 Document, for Red Hill Administrative Order on Consent Statement of Work Sections  
3 3.5 and 4.8 (Oct. 26, 2020) (“Notice of Deficiency”) attach. B at 8.

4 138. Hawai`i Department of Health (“DOH”) has assigned Facility  
5 Identification Number 9-102271 to Red Hill.

6 **C. Human Health Impacts of Petroleum Exposure**

7 139. Petroleum-based fuels have been released to the environment from Red  
8 Hill, including to Red Hill Shaft.

9 140. Fuels released from Red Hill are composed of a heterogeneous mixture  
10 of chemical constituents.

11 141. The primary contaminants of concern in fuels released from Red Hill to  
12 the Aquifer are middle distillates, which include lead, Total Petroleum Hydrocarbons  
13 (“TPH”), benzene, toluene, ethylbenzene, xylenes, naphthalene, 1-  
14 methylnaphthalenes, and 2-methylnaphthalenes.

15 142. Exposure to these toxic contaminants is harmful to human health. 2015  
16 AOC at 6.

17 143. Since at least November 28, 2021, residents, schools, businesses,  
18 churches, and others served by the Navy’s water distribution system have been  
19 exposed to toxic pollutants.

20 144. Exposed individuals have reported suffering from numerous ailments,  
21 including nausea, stomach cramps, vomiting, skin rashes, sore throats, burning eyes,  
22 difficulty breathing, and headaches—including illness requiring emergency medical  
23 attention.

24 145. Approximately 6,000 people sought medical attention for ailments  
25 related to their exposure between November 20, 2021 and August 9, 2022.

26 146. So severe are the health impacts that state and federal agency officials  
27 warned residents not only to avoid drinking the water, but also to avoid contact

1 through clothes washing, bathing, and other daily essential uses of water.

2 147. At least one family reported the death of a pet resulting from its exposure  
3 to water contaminated by Red Hill.

4 148. Many individuals served by the Navy's water distribution system believe  
5 that their exposure to some or all of the toxic contaminants pre-dated recent releases,  
6 and continue despite assurances that the water is safe.

7 **D. The Affected Surface Waters**

8 149. Pu`uloa was an abundant food source for communities of the sovereign  
9 Hawaiian Kingdom on O`ahu.

10 150. Pu`uloa was a sacred feature for communities of the sovereign Hawaiian  
11 Kingdom on O`ahu.

12 151. Historically, Pu`uloa's waters were known as "Wai Momi" or "pearl  
13 waters."

14 152. Native oysters, and oyster reefs, were once abundant and integral parts of  
15 the marine ecosystem and local culture.

16 153. Stories about Pu`uloa are recorded in history through native Hawaiian  
17 chants, songs, and legends.

18 154. According to Kānaka Maoli beliefs, Pu`uloa is home to the shark  
19 goddess Ka`ahupahau, who protected O`ahu and strictly enforced kind, fair behavior  
20 on the part of both sharks and humans.

21 155. Pu`uloa has been degraded by decades of intense use and misuse by the  
22 U.S. military.

23 156. Pu`uloa continues to serve as a spiritually and politically important place  
24 to Hawai`i's native people.

25 157. Pu`uloa is a navigable water and a water of the United States.

26 158. Pu`uloa and hydrologically connected portions of the Pacific Ocean that  
27 provide commercial and recreational fisheries, habitat for endangered species,  
wetlands, and water-contact recreation areas. Env't Prot. Agency, *National Priorities*

1 *List Site Narrative for Pearl Harbor Naval Complex 1 (July 29, 1991), available at*  
2 <https://semspub.epa.gov/work/09/2400179.pdf>.

3 159. Ahupua`a is the Hawaiian term that describes distinct geographic,  
4 socioeconomic, and cultural regions.

5 160. Most commonly, an ahupua`a extends from the sea into the mountains, or  
6 from “ridge to reef.”

7 161. Hālawa Valley is an ahupua`a.

8 162. Hālawa Valley is located on the southern portion of the island of Oahu.

9 163. The ahupua`a of Hālawa is highly sacred to Kānaka Maoli.

10 164. According to Kānaka Maoli beliefs, Hālawa is the birthplace and home to  
11 the Mother Earth goddess called Papahānaumoku.

12 165. Hālawa Valley is home to one of only two or three known remaining  
13 Hale o Papa, which are women’s temples where Papahānaumoku is worshipped.

14 166. Hālawa Stream flows from East to West through Hālawa Valley.

15 167. Hālawa Stream empties into Pu`uloa south of the Pearl Harbor National  
16 Memorial, and immediately north of Hotel Pier.

17 168. Hālawa Stream is a water of the United States.

### 18 **E. Environmental Impacts of Oil Spills**

19 169. Petroleum can be rapidly lethal to fish, birds, mammals, and shoreline  
20 organisms due to the readily dissolved components of oil and the physical effects of  
21 smothering and destruction of the thermal insulation and buoyancy provided by fur  
22 and feathers.

23 170. Chronic and sublethal effects are associated with the less soluble  
24 components of oil such as the polycyclic aromatic hydrocarbons, and some effects  
25 may be expressed long after brief exposures.

26 171. Exposure to oil can occur through coating of the epidermis (skin, fur,  
27 feathers), inhalation of aerosols of particulate oil and volatile hydrocarbons by air-

1 breathing wildlife in contact with surface oil, ingestion of oil by birds and mammals  
2 via preening, and ingestion of contaminated sediments and plant materials.

3 172. Oil can be acutely toxic to fish in the 24- to 48-hour period following a  
4 discharge or spill.

5 173. This acute toxicity is typically attributable to the light molecular weight  
6 petroleum hydrocarbons such as benzene, toluene, ethylbenzene, xylene, and other  
7 light petroleum distillates.

8 174. Effects include the first genetic and molecular responses of cells to  
9 impacts on rates of reproduction, growth, disease, and survival.

10 **F. Leaks, Spills, Releases, and Discharges from Red Hill (1943–2017)**

11 175. The Facility became operational in 1943.

12 176. Between its construction and 1995, “public access [was prohibited] and  
13 independent investigations were not conducted” at Red Hill. *2008 Groundwater  
14 Protection Plan* at 1-2.

15 177. The Navy acknowledges that records from that era indicate that “one or  
16 more” tanks leaked. *2014 Groundwater Protection Plan Interim Update* at 1-3.

17 178. The Navy does not possess accurate records or other accounts of spills,  
18 leaks, releases, and discharges of petroleum contaminants (“Release Incidents”) from  
19 Red Hill between 1943 and 2017.

20 179. The Navy’s records verify at least seventy (70) Release Incidents from  
21 Red Hill between 1943 and 2017, i.e., an average rate of nearly one (1) documented  
22 Release Incident per year of operation.

23 180. The total amount of fuel released during the seventy (70) recorded  
24 Release Incidents is unknown, even to the Navy.

25 181. According to DOH, it is “more likely than not” that the Navy has  
26 “understated the true number of releases [and] total volume of fuel actually released”  
27 from the Facility. Haw. Dep’t of Health, Hearings Officer’s Proposed Decision and  
Order, Findings of Fact, and Conclusions of Law (Dec. 27, 2021) 6 (¶ 25) affirmed by

1 DOH, Final Decision, Order, Findings of Fact, and Conclusions of Law (Jan. 3, 2022)  
2 (“*DOH Decision and Order*”).

3 182. Some examples of Release Incidents between 1943 and 1998 from the  
4 USTs for which the Navy does have records (or partial records) include:

- 5 a. in October of 1947, the Navy reports a “leak noted; unknown amount” at  
6 Tank 2, after which the UST was emptied;
- 7 b. in July of 1949, Tank 16 released approximately 11,000 gallons over  
8 eleven (11) days, but the records have “no additional information;”
- 9 c. several months later in December of 1949, Tank 16 released  
10 approximately 18,000 gallons over four (4) days;
- 11 d. between April and May of 1958 “[a]pproximately 1500 gallons leaked  
12 from” Tank 9;
- 13 e. in June 1969 Tank 17 was leaking at a rate of approximately 1 gallon per  
14 1.5 minutes over at many as 24-hours;
- 15 f. between August 1970 and April 1972, Tank 1 experienced an  
16 “[u]nexplained fuel drop amounting to 31,294 gallons;”
- 17 g. between May 1975 and August 1978, the Navy reports that Tank 1 again  
18 experienced an “[u]nexplained fuel drop,” this time “amounting to  
19 32,765 gallons;”
- 20 h. in January, July, September, and October of 1981, the Navy reports the  
21 discovery of “severe” and other leaks in Tanks, 10, 13, 15, and 16  
22 following tank repair projects, but the Navy has “no details;” and
- 23 i. in 1998 the Navy reported finding “holes in the steel liner” of Tank 19  
24 during a maintenance project. *2008 Groundwater Protection Plan* at 3-2,  
25 3-5.

26 183. In 2014, the Navy stated that “[p]revious Site Investigations (SIs) at the  
27 Facility showed that past [] releases have contaminated the fractured basalt, basal

1 groundwater, and soil vapor beneath the Facility with petroleum hydrocarbons.” *2014*  
2 *Groundwater Protection Plan Interim Update* at ES-1.

3 184. Starting on January 13, 2014, the Navy reported a Release Incident of JP-  
4 8 fuel from Tank 5 (“2014 Release Incident”), one month after placing Tank 5 back  
5 into service after routine scheduled maintenance, including cleaning, inspection, and  
6 repairs.

7 185. The 2014 Release Incident continued for at least five (5) days until  
8 January 18, 2014.

9 186. The Navy estimates that at least 27,000 gallons were released during the  
10 2014 Release Incident. 2015 AOC at 5.

11 187. The Navy has been unable to determine the total amount of fuel released to  
12 the environment from Tank 5 between January 13 and 18, 2014. 2015 AOC at 5.

13 188. The Navy was unable to locate any of the fuel released during the 2014  
14 Release Incident despite conducting multiple investigations. 2015 AOC at 5.

15 189. The Navy’s groundwater monitoring well nearest to Tank 5 showed a  
16 “signature spike of petroleum products” following the 2014 Release Incident.  
17 Petitioner’s Post-Hr’g Mem. at 9 (¶ 37), In the Matter of Red Hill Bulk Fuel Storage  
18 Facility, U.S. EPA Dkt. No. RCRA 7003-R9-2015-01, Haw. Dep’t of Health Dkt. No.  
19 15-UST-EA-01 (2015) (“HBWS Post-Hr’g Mem.”).

20 190. The Navy’s groundwater monitoring program confirmed that fuel  
21 released during the 2014 Release Incident was not contained within the Facility.

22 191. Following the 2014 Release Incident, U.S. EPA, U.S. EPA Region IX,  
23 DOH, the Navy, and the Defense Logistics Agency initiated a process to negotiate the  
24 2015 AOC Administrative Order on Consent.

25 192. The 2015 AOC was structured to establish a process for collecting the  
26 necessary data and evaluating technical solutions to address past fuel releases, and to  
27 reduce the potential for future releases.

1 193. On September 28, 2015, U.S. EPA, U.S. EPA Region IX, DOH, the  
2 Navy, and the Defense Logistics Agency executed the 2015 AOC.

3 194. To date, the Navy has completed some data collection and evaluation  
4 work required by the 2015 AOC.

5 195. Many of the deliverables required by the 2015 AOC were never  
6 completed or approved by state or federal regulators, including key Navy reports, and  
7 the Navy's tank upgrade proposals.

8 196. On February 24, 2022, HBWS manager and chief engineer Ernie Lau  
9 said, "there's still no real progress on the [2015] AOC." Christina Jedra, *Regulators*  
10 *Were Watching the Navy's Red Hill Fuel Facility. What Went Wrong?*, Honolulu Civil  
11 Beat (Feb. 24, 2022), available at [http://www.civilbeat.org/2022/02/regulators-were-](http://www.civilbeat.org/2022/02/regulators-were-watching-the-navys-red-hill-fuel-facility-what-went-wrong/)  
12 [watching-the-navys-red-hill-fuel-facility-what-went-wrong/](http://www.civilbeat.org/2022/02/regulators-were-watching-the-navys-red-hill-fuel-facility-what-went-wrong/).

13 197. In addition to Release Incidents at the Facility's USTs, leaks and spills  
14 from the Facility's pipeline infrastructure have resulted in contamination of Pu'uoloa,  
15 Hālawa Stream, and other surface waters.

16 198. In 1989, the Navy's investigation in the area near Valve Station 3 (VS-3)  
17 at Hotel Pier found soils contaminated with hydrocarbons. Mendoza, *Pearl Harbor*  
18 *Hotel Pier Release* at 3.

19 199. In 1992, the area that includes Hotel Pier and Valve Station 3 was listed  
20 on the National Priorities List.<sup>1</sup> *Id.*

21 200. Between 1992 and 1996, a Remedial Investigation identified a subsurface  
22 plume containing diesel fuel (F-76) and residual oil adjacent to Hotel Pier. *Id.* at 4.

23 201. In 1994, the Navy released approximately 8,000 gallons of waste oil to  
24 the environment near Hotel Pier. *Id.*

25

26

27 <sup>1</sup> The National Priorities List is the priority list of hazardous waste sites in the United States eligible for long-term remedial investigation and remedial action (cleanup) financed by the federal Superfund program under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).



1           202.     In 1997, the Navy released at least 2,500 gallons of F-76 to the  
2 environment near Hotel Pier due to a damaged pressure gauge. *Id.*

3           203.     In 1997, a Remedial Investigation/Feasibility Study<sup>2</sup> identified a  
4 subsurface petroleum plume of approximately 127,000 gallons adjacent to Hotel Pier  
5 that was discharging into Pu`uloa. Naval Facilities Eng'g Command, *Hotel Pier*  
6 *Plume Delineation Pearl Harbor Naval Supply Center* at 2.

7           204.     The Navy suspected the source of the 127,000-gallon leak was Valve  
8 Station 3 (VS-3) and related subsurface petroleum pipelines. *Id.*

9           205.     In 1999, the Navy identified electrical lines, sewer and utility lines, and  
10 storm drains located throughout the Hotel Pier site were acting as preferential  
11 pathways for the migration and discharge of subsurface petroleum contaminants into  
12 Pu`uloa. *Id.* at 9.

13           206.     In 2001, the Navy installed liners, collection sumps, skimming  
14 equipment, and cutoff walls in the storm drain near Hotel Pier in an effort to limit  
15 contaminant discharge into Pu`uloa. *Id.*

16           207.     A 2015 report assessing pipeline integrity recommended “[i]solating and  
17 temporarily deactivating or permanently closing the defuel line on the Hotel Pier.”  
18 Enter. Eng'g, Inc., *Integrity Management Plan – POL Pipelines NAVSUP FLC Pearl*  
19 *Harbor, HI (PRL) 6* (Interim Final Submission, 2015).

20           208.     On August 23, 2016, the Navy stated the following with respect to the  
21 historical contaminant plume near Hotel Pier: “The sources of subsurface petroleum  
22 may have been spills in the vicinity of Valve Station 3 (VS-3), associated subsurface  
23 product lines for VS-3, and subsurface pipelines running parallel to [REDACTION]  
24 (ATS 2014).” Naval Facilities Eng'g Command, *Annual Performance Monitoring*  
25 *Report Product Recovery System Remedial Action Area 1 (RAA-1) 1-1* (2015),  
26 *available at*

27 \_\_\_\_\_  
<sup>2</sup> A Remedial Investigation/Feasibility Study is a CERCLA process for defining the nature and extent of contamination, assessing risk to human health and the environment, and developing a cleanup strategy to eliminate potentially harmful human health and environmental impacts.

1 [https://health.hawaii.gov/ust/files/2021/11/42nd.HPIer\\_.Monitoring.Report.pdf](https://health.hawaii.gov/ust/files/2021/11/42nd.HPIer_.Monitoring.Report.pdf); *see*  
2 *also* Naval Facilities Eng’g Command, *Annual Performance Monitoring Report*  
3 *Product Recovery System Remedial Action Area 1 (RAA-1) 1-1 (2016)*, available at  
4 <https://health.hawaii.gov/ust/files/2021/11/43AnnualReport.HPIer2017.pdf>.

5 209. During the last assessment of the subsurface petroleum plume near Hotel  
6 Pier in September 2017 the Navy found ongoing contamination, including a 2.4-inch  
7 thick layer of contaminants. Naval Facilities Eng’g Command, *Hotel Pier Plume*  
8 *Delineation Pearl Harbor Naval Supply Center* at 10.

9 210. Nearly twenty (20) years after identifying the massive underground  
10 plume of petroleum contamination near Hotel Pier, significant pollution remained on  
11 site.

12 211. DOH has characterized the history of leaks, spills, discharges, and  
13 releases from Red Hill as “damning.” *DOH Decision and Order* at 14 (¶ 65).

14 **G. Discharges to Surface Waters from Red Hill (2020–2021)**

15 *2020 Hotel Pier Discharges*

16 212. On March 17, 2020, at approximately 9:14 a.m. HST, the Navy notified  
17 Hawai`i Department of Health (“DOH”) of a discharge of oil to Pu`uloa and Hālawa  
18 Stream at Hotel Pier (“Hotel Pier Discharge 1”). Haw. Dep’t of Health, *Notice of*  
19 *Interest in a Release Or Threatened Release of Hazardous Substances 1* (December  
20 21, 2020); *see also* Haw. Dep’t of Health, *Emergency Order 2* (December 5, 2021),  
21 available at [https://health.hawaii.gov/about/files/2021/12/Emergency-Order-](https://health.hawaii.gov/about/files/2021/12/Emergency-Order-12.05.2021-signed.pdf)  
22 [12.05.2021-signed.pdf](https://health.hawaii.gov/about/files/2021/12/Emergency-Order-12.05.2021-signed.pdf).

23 213. The Navy believed the “discharge of petroleum into Hālawa Stream”  
24 (Wharf H-6) and the ocean (Wharf H-5) was from a 4-inch diameter steel pipe  
25 oriented perpendicular to the seawall, the end of which is submerged at high tide.  
26 Naval Facilities Eng’g Command *Hotel Pier Plume Delineation Pearl Harbor Naval*  
27 *Supply Center* at 1.

214. The Navy “sealed the [4-inch diameter steel] pipe.” *Id.*

1           215.     After sealing the 4-inch pipe, the Navy reported that the rate at which  
2 petroleum contamination was being released from the 4-inch pipe to the environment  
3 slowed, but did not stop. *Id.*

4           216.     Based on visual observations reported by the Navy, the release rate from  
5 the 4-inch pipe subsequently increased and necessitated additional mitigation effort,  
6 e.g., more frequent change-outs of sorbent material. *Id.*

7           217.     On June 2, 2020, at approximately 1:45 p.m. HST, the Navy again  
8 notified DOH of a discharge of oil to Pu`uloa and Hālawa Stream at Hotel Pier  
9 (“Hotel Pier Discharge 2”) (“Hotel Pier Discharge 1” and “Hotel Pier Discharge 2”  
10 are collectively referred to as the “2020 Hotel Pier Discharges”). Haw. Dep’t of  
11 Health, *Notice of Interest in a Release Or Threatened Release of Hazardous*  
12 *Substances; see also* Haw. Dep’t of Health, *Emergency Order*.

13           218.     DOH assigned UST Facility Identification Number 9-102271 to both  
14 2020 Hotel Pier Discharges.

15           219.     The Navy did not disclose the 2020 Hotel Pier Discharges to the public  
16 until 2021.

17           220.     The Navy could not initially determine whether the source of the 2020  
18 Hotel Pier Discharges was from previously identified releases of petroleum  
19 contaminants, e.g., the 127,000-gallon underground contaminant plume discovered in  
20 1997, or the result of a new, “active” leak. Email from James Saul, U.S. Navy, to  
21 Sherri Eng, U.S. Navy (Feb. 2, 2021).

22           221.     According to the Navy, as of September 2020, the rate of discharge from  
23 the 2020 Hotel Pier Discharges was visually estimated to be approximately 20 gallons  
24 per day, based on a 6-second video showing non-aqueous phase liquid (“NAPL”)  
25 floating to the surface of the harbor. Naval Facilities Eng’g Command, *Hotel Pier*  
26 *Plume Delineation Pearl Harbor Naval Supply Center* at 1.

27           222.     On January 14, 2021, the Navy sent DOH a letter explaining that:

- a. the source of the 2020 Hotel Pier Discharges had not yet been identified;

- 1 b. enhanced containment efforts were required; and
- 2 c. the Navy had only engaged in “preliminary efforts on potential remedial
- 3 measures” to date.

4 Letter from J.G. Mayer, Captain, U.S. Navy, to Keith Kawaoka, Deputy Dir. for Env’t  
5 Health, State of Haw. Dep’t of Pub. Health (Jan. 14, 2021), *available at*  
6 [https://health.hawaii.gov/ust/files/2021/11/R-Navy.Response.NOI\\_.Release-of-HS-at-](https://health.hawaii.gov/ust/files/2021/11/R-Navy.Response.NOI_.Release-of-HS-at-H-Pier1585-1.pdf)  
7 [H-Pier1585-1.pdf](https://health.hawaii.gov/ust/files/2021/11/R-Navy.Response.NOI_.Release-of-HS-at-H-Pier1585-1.pdf).

8 223. As of January 21, 2021, the Navy was treating the 2020 Hotel Pier  
9 Discharges as “a ‘remediation’ effort [and] not an ‘active’ leak.” Email from Trent  
10 Kalp, Captain, U.S. Navy, to Karlie Blake et al., Commander, U.S. Navy 1 (Draft Jan.  
11 21, 2021).

12 224. On January 21, 2021, the Navy had “significant political concerns if ~~this~~  
13 [the 2020 Hotel Pier Discharges] were to become an ‘active’ leak [because] 1)  
14 Activist organizations will use this to advance their anti-Red Hill narrative . . . at a  
15 sensitive time as the contested case hearing begins and legislative season starts, 2)  
16 community and regulator confidence in past, current and future pipeline pressure and  
17 tank tightness testing will be questioned . . . because we can only test to the fidelity of  
18 current technology.” *Id.*

19 225. As of January 21, 2021, nearly a year after first reporting the 2020 Hotel  
20 Pier Discharges, the Navy was “pursuing a contractor . . . to definitely rule out an  
21 ‘active’ leak.” *Id.*

22 226. As of January 27, 2021, “no leak ha[d] been confirmed” by the Navy at  
23 Hotel Pier. Email from Trent Kalp, U.S. Navy, to James Meyer, U.S. Navy 1 (Jan. 27,  
24 2021).

25 227. In the February 1, 2021 internal email, the Navy’s NOSC James Derrell  
26 Saul wrote “[t]here is still product in the water from H6 around the corner to H1  
27 corner, but it is in globs, patches, and streaks now whereas before there were much

1 larger areas with a solid layer of product.” Email from James Saul, U.S. Navy, to  
2 Sherri Eng, U.S. Navy (Feb. 1, 2021).

3 228. On February 2, 2021, NOSC James Derrell Saul sent an email to DOH’s  
4 Sherri Eng titled *Hotel Release Daily Situation Report 2/2/21*, in which he  
5 summarized a February 2, 2021 visit to Hotel Pier with, among others, PENCO<sup>3</sup> staff,  
6 and representatives of DOH and the United States Coast Guard (“Coast Guard”).

7 Email from James Saul, U.S. Navy, to Sherri Eng, U.S. Navy (Feb. 2, 2021).

8 229. In the February 2, 2021 internal email, NOSC James Derrell Saul  
9 indicated that PENCO staff person Mr. DC Carter “was firm in his belief that there  
10 [was] an active leak” during the February 2, 2021 visit to Hotel Pier. *Id.*

11 230. During the February 2, 2021 visit, NOSC James Derrell Saul observed  
12 that oil “sheen was escaping and the boom was improperly secured.” *Id.*

13 231. As of February 2021, PENCO was planning “to perform environmental  
14 response actions to contain, recover, and mitigate, the ongoing oil discharge into the  
15 waters of Pearl Harbor through the quay walls at the foot of Hotel Pier and the  
16 surrounding piers.” Pac. Env’t Corp., *Site Specific Health & Safety Plan for the Hotel*  
17 *Piers Spill Investigation & Mitigation, Pearl Harbor, Honolulu, Hawaii* at 4.0 (2021),  
18 *available at* [https://health.hawaii.gov/ust/files/2021/11/PENCO-HOTEL-PIERS-HS-](https://health.hawaii.gov/ust/files/2021/11/PENCO-HOTEL-PIERS-HS-SITE-PLAN.pdf)  
19 [SITE-PLAN.pdf](https://health.hawaii.gov/ust/files/2021/11/PENCO-HOTEL-PIERS-HS-SITE-PLAN.pdf).

20 232. On February 4, 2021, James G (Gordie) Meyer (CAPT USN NAVFAC  
21 HAWAII PEARL (USA)) sent an email to James R Sullivan (R CR USN NFEXWC  
22 PHE CA (USA)) at 11:42 am with the subject line *RE: JBPHH Potential Fuel Leak 0*  
23 *Request EXWC assistance* in which he writes: “We have a relatively significant  
24 amount of fuel being released into the water at Pearl Harbor daily . . . could be from  
25 an active fuel line . . . not only environmental concern but also as it relates to the Red  
26  
27

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<sup>3</sup> Pacific Environmental Corporation, or PENCO, provides oil spill recovery and clean-up services to the Navy.

1 Hill fuel system.” Email from James Meyer, Captain, U.S. Navy, to James Sullivan,  
2 Commander, U.S. Navy (Feb. 4, 2021).

3 233. In the February 4, 2021 email, James G. (Gordie) Meyer wrote that the  
4 Navy “has done some pressure tests, most have passed, but the fidelity of the tests  
5 can’t rule out a slow ongoing release.” *Id.*

6 234. In the February 4, 2021 email, Meyer wrote that “DOH is very interested  
7 in this ongoing fuel release and we would like to quell any concerns of this being an  
8 active release and tied to Red Hill (even if that tie is not accurate, the media and  
9 opponents to Red Hill don’t care).” *Id.*

10 235. On February 5, 2021, James R Sullivan (R CR USN NFEXWC PHE CA  
11 (USA)) sent an email to James G (Gordie) Meyer (CAPT USN NAVFAC HAWAII  
12 PEARL (USA)) at 11:37 am with the subject line *RE: JBPHH Potential Fuel Leak 0*  
13 *Request EXWC assistance* in which he describes the need to “[i]dentify Source of JP5  
14 currently observed seeping into Pearl Harbor.” Email from James Sullivan, U.S.  
15 Navy, to James Meyer, U.S. Navy (Feb. 5, 2021).

16 236. The document titled *2021 One-time Leak Detection Testing Report of 11*  
17 *Sections of Petroleum Pipelines* states that it “documents the first time that leak  
18 detection testing ha[d] been performed on the 14 sections of petroleum pipelines  
19 associated with [Valve Station 3 (VS 3)].” Michael Baker Int’l, *2021 One-time Leak*  
20 *Detection Testing Report of 11 Sections of Petroleum Pipelines* at 1.

21 237. The Incident Status Summary prepared by NOSC James Derrell Saul on  
22 March 17, 2021 states that “[d]aily efforts continue to locate the source[.]” Derrell  
23 Saul, Navy On-Scene Coordinator Representative, *U.S. Navy, Incident Status*  
24 *Summary 1* (Mar. 17, 2021), available at  
25 [https://health.hawaii.gov/ust/files/2021/11/R-INCIDENT-STATUS-SUMMARY-3-](https://health.hawaii.gov/ust/files/2021/11/R-INCIDENT-STATUS-SUMMARY-3-17-21.pdf)  
26 [17-21.pdf](https://health.hawaii.gov/ust/files/2021/11/R-INCIDENT-STATUS-SUMMARY-3-17-21.pdf).

27 238. The source of the 2020 Hotel Pier Discharges remained unidentified for  
at least 365 days after the Navy initially notified DOH of the release.



1           239.     The Incident Status Summary prepared by NOSC James Derrell Saul on  
2 March 31, 2021 states that “excavation revealed a steady flow of fuel that replenishes  
3 when vacuumed out.” Saul, *Incident Status Summary* at 3.

4           240.     As of May 2021, the Navy “presume[ed]” that the 2020 Hotel Pier  
5 Discharges had “originated from a leaking underground fuel pipeline at the manifold  
6 area adjoining the release points into Pearl Harbor and Hālawā Stream.” Naval  
7 Facilities Eng’g Command, *Hotel Pier Plume Delineation Pearl Harbor Naval Supply*  
8 *Center* at 26.

9           241.     The 2020 Hotel Pier Discharges discharged petroleum from multiple  
10 release points into surface waters. *Id.*

11           242.     On June 30, 2021, DOH sent the Navy a letter stating that, based on  
12 available data—including specifically the pressure test failures and existing evidence  
13 of a release to surface waters—DOH “is confirm[ing] that a release from the Red Hill  
14 Bulk Storage Facility has occurred.” Letter from Keith Kawaoka, Deputy Director for  
15 Env’t Health, Haw. Dep’t of Health, State of Haw., to Timothy Kott, Rear Admiral,  
16 U.S. Navy 1 (June 30, 2021).

17           243.     According to the Incident Status Summary prepared by NOSC James  
18 Derrell Saul on July 15, 2021, “[a]ll evidence continues to support the defuel line as  
19 the likely source” of the 2020 Hotel Pier Discharges. Derrell Saul, Navy On-Scene  
20 Coordinator Representative, U.S. Navy, *Incident Status Summary* 1 (July 15, 2021),  
21 *available at* [https://health.hawaii.gov/ust/files/2021/11/INCIDENT-STATUS-](https://health.hawaii.gov/ust/files/2021/11/INCIDENT-STATUS-SUMMARY-7-15-21.pdf)  
22 [SUMMARY-7-15-21.pdf](https://health.hawaii.gov/ust/files/2021/11/INCIDENT-STATUS-SUMMARY-7-15-21.pdf).

23           244.     On August 2, 2021, the Navy sent DOH an INITIAL ABATEMENT  
24 MEASURES AND SITE ASSESSMENT, HOTEL PIER (“Initial Abatement  
25 Assessment”) for DOH HEER INCIDENT RELEASE CASE NOS. 20200317-0914  
26 AND 20200602-1345. Sherri Eng, U.S. Navy, *Initial Abatement Measures & Site*  
27 *Assessment, Hotel Pier* (August 2, 2021), *available at*



1 [https://health.hawaii.gov/ust/files/2021/11/R-2021-08-02-Hotel-Pier-initial-](https://health.hawaii.gov/ust/files/2021/11/R-2021-08-02-Hotel-Pier-initial-abatement-and-site-assessment.pdf)  
2 [abatement-and-site-assessment.pdf](https://health.hawaii.gov/ust/files/2021/11/R-2021-08-02-Hotel-Pier-initial-abatement-and-site-assessment.pdf).

3 245. The Navy’s August 2, 2021 Initial Abatement Assessment states that  
4 “[t]he cleanup and recovery actions . . . are currently ongoing.” *Id.* at p. 1.

5 246. On August 2, 2021, the Navy sent a letter to DOH in which it states that  
6 “[t]he recovery of product decreased from 40 to 50 gallons during the initial release,  
7 down to 1 to 2 gallons during the current period.” Email from Sherri Eng, U.S. Navy,  
8 to Roxanne Kwon, Haw. Dep’t of Health (Aug. 2, 2021) attachment at 1, *available at*  
9 [https://health.hawaii.gov/ust/files/2021/11/R-2021-08-02-email-I-abatement-mea-site-](https://health.hawaii.gov/ust/files/2021/11/R-2021-08-02-email-I-abatement-mea-site-assessment.pdf)  
10 [assessment.pdf](https://health.hawaii.gov/ust/files/2021/11/R-2021-08-02-email-I-abatement-mea-site-assessment.pdf).

11 247. On August 2, 2021, the Navy sent a letter to DOH in which it states that  
12 “[i]t is believed that the source of the release was the defuel line[,] which has been  
13 secured. Residual jet fuel/diesel and small amounts of historic product remain in the  
14 surrounding area, and are being recovered, but some amount will likely remain over  
15 time.” *Id.* at 3.

16 248. As of January 7, 2022, “clean up and recovery actions [related to the  
17 2020 Hotel Pier Discharges] were ongoing.” Commander, U.S. Navy, *Quarterly*  
18 *Release Response Report Hotel Pier 5* (2022).

19 249. As of January 7, 2022, the Navy had not definitively established the  
20 source of the 2020 Hotel Pier Discharges to waters of the United States. *Id.*

21 250. The Navy has not eliminated the source of the Hotel Pier discharge to  
22 waters of the United States.

23 251. As of January 7, 2022, the Navy had not definitively established the  
24 extent of the soil or water contamination caused by the 2020 Hotel Pier Discharges.  
25 *Id.* (Navy describes “[c]ontamination appears to be confined to area of Valve Station 3  
26 (VS-3), and the area to the west.”).

1 252. The Navy has discharged pollutants, including but not limited to  
2 petroleum products such as jet fuel, from a point source into Hālawā Stream in the  
3 vicinity of Hotel Pier.

4 253. The Navy has discharged pollutants, including but not limited to  
5 petroleum products such as fuel, from a point source into Pu`ūloa in the vicinity of  
6 Hotel Pier.

7 *2021 Kilo Pier Discharge*

8 254. On July 16, 2021, the Navy discharged petroleum from a pipeline into  
9 Pu`ūloa at Kilo Pier (“Kilo Pier Discharge”). Letter from Sherri Eng, Dir., Reg’l Env’t  
10 Dep’t, U.S. Navy, to Roxanne Kwan, Haw. Dep’t of Health (July 23, 2021); *DOH*  
11 *Decision and Order*.

12 255. The Kilo Pier Discharge was reported to DOH on July 16, 2021 at  
13 approximately 9:25 p.m. Letter from Kathleen Ho, Deputy Director for Env’t Health,  
14 to Timothy Kott, Rear Admiral, U.S. Navy (Sept. 20, 2021).

15 256. On July 23, 2021, the Navy submitted a confirmed release notification  
16 form (“Confirmed Release Form”) to DOH stating that approximately 150 gallons of  
17 diesel fuel was released at Kilo Pier from DOH facility identification number 9-  
18 102271. Sherri Eng, Dir., Reg’l Env’t Dep’t, U.S. Navy, *Confirmed Release*  
19 *Notification Form 2* (July 23, 2021).

20 257. The Kilo Pier Discharge occurred into a boomed area of Pu`ūloa at  
21 Wharf K10 and/or Wharf K11. *Id.* at 1.

22 258. The July 23, 2021 Confirmed Release Form identifies the source of the  
23 release as piping. *Id.* at 2.

24 259. The July 23, 2021 Confirmed Release Form identifies the cause of the  
25 release as “corrosion.” *Id.*

26 260. The July 23, 2021 Confirmed Release Form states that the area into  
27 which the release occurred was “already boomed.” *Id.*

1 261. DOH sent the Navy a letter on September 20, 2021, regarding the release  
2 of F76 marine diesel fuel at “Wharf K-10/11 (aka Kilo Wharf/Pier)” into the surface  
3 waters of Pu`uloa. Letter from Kathleen Ho, Deputy Director for Env’t Health, to  
4 Timothy Kott, Rear Admiral, U.S. Navy at 2.

5 262. According to the September 20, 2021 letter from DOH, the Navy stated  
6 that the Kilo Pier Discharge was caused by corrosion at the ten (10) inch multipurpose  
7 fuel line that is visible and located beneath Kilo Wharf/Pier on Astoria Street. *Id.*

8 263. According to the September 20, 2021 letter from DOH, the multipurpose  
9 fuel line that was the source of the Kilo Pier Discharge is connected to Valve Station 3  
10 (VS-3). *Id.*

11 264. The Kilo Pier pipeline is designated as a multi-product pipeline with  
12 connections to the F-76, JP-5, and F-24 pipelines at Valve Station 3 (VS-3). Michael  
13 Baker Int’l, *2021 One-time Leak Detection Testing Report of 11 Sections of Petroleum*  
14 *Pipelines* at 1.

15 265. According to the September 20, 2021 letter from DOH, the Kilo Pier  
16 Discharge continued for one week. Letter from Kathleen Ho, Deputy Director for  
17 Env’t Health, to Timothy Kott, Rear Admiral, U.S. Navy at 2.

#### 18 **H. Environmental Monitoring and Reporting**

19 266. Despite unambiguous guidance from DOH, and in conflict with the  
20 recommendations of internal Navy audits, the Facility’s USTs are not equipped with  
21 precision leak detection systems. *HBWS Proposed Findings of Fact, Conclusions of*  
22 *Law, and Recommended Decision* at 17, ¶ 58; Naval Audit Service, *Audit Report*  
23 *N2010-0049* at 20.

24 267. The absence of leak detection technology means the Navy cannot  
25 accurately or quickly detect, and therefore respond to, leaks and spills. *Id.* at 20.

26 268. As a result, the Navy relies heavily on “indirect” sources of data—  
27 including specifically soil vapor, groundwater, and rock core sampling—to assess if

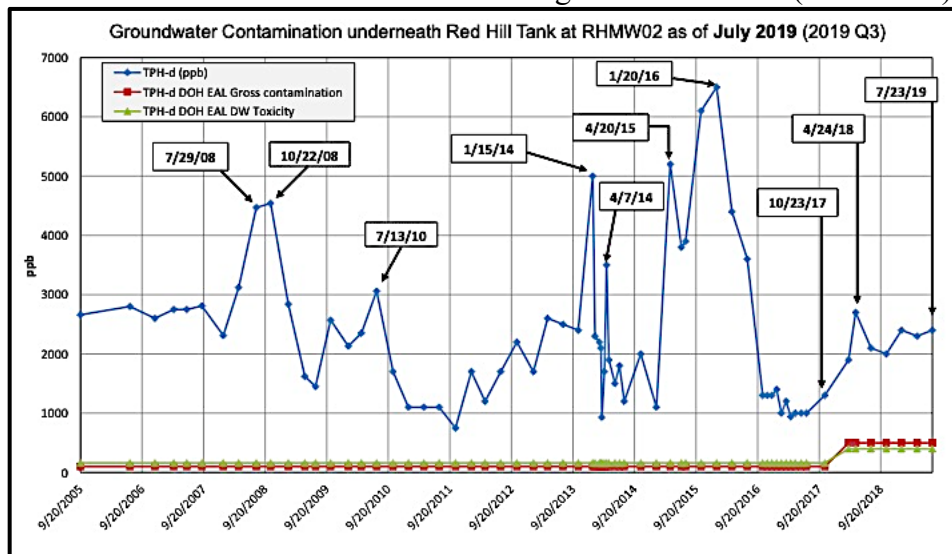
1 and when leaks and spills occur, and then to characterize the size and impact of spills  
 2 that have occurred.

3 269. In 2008, the Navy has conducted soil vapor monitoring under at least  
 4 eighteen (18) of the USTs. “[T]he highest soil vapor readings are beneath Tanks 6, 16,  
 5 14, 11, and 12.” *2008 Groundwater Protection Plan* (2008) at 1-7.

6 270. Recent testimony given by the Navy in hearings before DOH described  
 7 “elevated or pronounced spikes of soil vapor readings at Tanks 20, 17, 18, 16, and 15  
 8 in particular.” *HBWS Post-Hr’g Mem.* at 7.

9 271. For decades, groundwater monitoring data collected at monitoring wells  
 10 located under and near the Facility establish beyond dispute that fuel releases impact  
 11 the Aquifer (see IMAGE 3).

12 **IMAGE 3**  
 13 Groundwater Contamination in Monitoring Well RHMW02 (2005-2019)



14 [Source: Honolulu Board of Water Supply]

15 272. Samples collected between 2005 and 2009 demonstrate ongoing  
 16 contamination of the groundwater above DOH Environmental Action Levels, which  
 17 are pollutant concentrations below which DOH asserts there is no threat to human  
 18 health or the environment. Naval Audit Service, *Audit Report N2010-0049* at 11–12.

19 273. The Navy’s data show that Red Hill Monitoring Well No. 2  
 20 (“RHMW02”), which is located near the middle of the Facility, consistently exhibits  
 21 the highest levels of contamination, particularly TPH. *Id.* at 12–13.

1 274. In the early 2000s, the Navy performed transverse rock-core analyses  
2 beneath each tank. 2015 AOC at 5. The study revealed evidence of petroleum staining  
3 beneath nineteen (19) of the Facility’s twenty tanks. 2015 AOC at 5; *see also* Red Hill  
4 Bulk Fuel Storage Facility Community Informational Briefing, PURE WATER HAWAII,  
5 [http://purewaterhawaii.org/red-hill-bulk-fuel-storage-facility-  
informational-briefing](http://purewaterhawaii.org/red-hill-bulk-fuel-storage-facility-community-<br/>6 informational-briefing) (last visited Sept. 3, 2021).

7 275. According to the Navy, “[t]he most likely source of the petroleum  
8 contamination [in rock core samples] was from the USTs, although it is possible that  
9 the leaks could have originated from buried piping or spills in the tunnels that seeped  
10 into the rock.” *2014 Groundwater Protection Plan Interim Update* at 1-6.

11 276. Soil vapor, rock core, and groundwater monitoring data collected and  
12 reported by the Navy confirm “disposal” of petroleum contaminants from the Facility  
13 to the environment, including to the Aquifer.

14 277. Following the November 20, 2021 release of 19,000 gallons of petroleum  
15 described below, the Navy expanded groundwater sampling for petroleum  
16 constituents by creating a plan to install new groundwater monitoring wells.

17 278. The Navy agreed to install a minimum of 22 new groundwater  
18 monitoring wells in 2022 and 2023 in accordance with the September 2, 2022 Work  
19 Plan conditionally approved by the Regulatory Agencies on September 29, 2022,

20 279. These 22 new wells include “sentinel wells” intended to better evaluate  
21 the threat to regional water supply sources.

22 280. On or about October 21, 2022, the Navy began, for the first time, making  
23 the sampling results public by posting the sampling results on its website.

24 <http://jbphh-safewaters.org>.

25 281. Data of soil and groundwater testing posted between December 5, 2022  
26 and April 21, 2023 establish the presences of petroleum pollutants at twenty-five (25)  
27 Navy wells located at or around the Facility.

1           282.     The twenty-five (25) Navy wells in which petroleum contaminants were  
2 detected include without limitation: HDMW2253-03, NMW24, RHMW01,  
3 RHAMW01R, RHMW02, RHMW03, RHMW04, RHWM06, RHMW08, RHMW09,  
4 RHMW11-05, RHMW12A, RHMW13-05, RHMW14-03, RHMW15-05, RHMW16,  
5 RHMW17, RHMW19, RHMW2254-01, RHP01, RHP03, RHP04A, RHP04B, and  
6 RHP04C.

7           283.     Following the identification of Total Petroleum Hydrocarbons (“TPH”)  
8 in the Navy’s Aiea-Halawa well, HBWS closed one of its municipal supply wells,  
9 located 1.5 miles away downflow from the Navy Aiea-Halawa well.

10           **I.       2021 Release Incidents**

11           284.     On May 6, 2021, fuel was released from Red Hill (“May 2021 Release  
12 Incident”) during the refueling of Tank 20.

13           285.     The May 2021 Release Incident occurred despite actions taken by the  
14 Navy as part of its efforts to comply with the 2015 AOC.

15           286.     The May 2021 Release Incident occurred during the refueling of Tank  
16 20.

17           287.     On or about October 14, 2021, the Navy made public a report containing  
18 the findings of its investigation into the May 2021 Release Incident.

19           288.     According to the report released on October 14, 2021, “[t]he estimated  
20 amount of JP-5 released in the lower Red Hill tunnel on 6 May is 1,618 gallons. 1,580  
21 gallons were recovered, for a difference of approximately 38 gallons.” Dep. Officer in  
22 Charge, NAVSUP Naval Petroleum Office, Mem. to Commander, NAVSUP (Sept.  
23 15, 2021).

24           289.     As of February 25, 2022, the Navy revised the estimate of fuel released  
25 during the May 2021 Release Event upward from approximately 1,600 gallons to  
26 approximately 19,000 gallons.

27

1           290.    In May 2021, the Navy assured DOH and the public that fuel lost during  
2 May 2021 Release Incident did not reach the environment, i.e., was contained and/or  
3 captured inside the Facility.

4           291.    Two weeks before the May 2021 Release Incident, soil vapor monitor  
5 readings of volatile organic compounds near Tank 20 ranged between 173 and 223  
6 parts per billion by volume (ppbv).

7           292.    On May 13, 2021, volatile organic compounds measurements near Tank  
8 20 reached 232,667 ppbv.

9           293.    Fuel released during the May 2021 Release Incident reached the  
10 environment.

11          294.    On May 6, 2021, the Facility’s “out of balance alarm in the [Automated  
12 Fuel Handling System],” which warns operators when the amount of fuel moving  
13 from source to destination is unequal was not, *but could have been*, set to alert  
14 operators of a 1,632-gallon imbalance.

15          295.    On October 28, 2021, Capitan Gordie Meyer told members of the DOH  
16 Fuel Tank Advisory Committee that the Navy could safely operate Red Hill going  
17 forward.

18          296.    On November 20, 2021, fuel was released from Red Hill (“November  
19 2021 Release Incident”) despite Capitan Gordie Meyer’s assurances.

20          297.    The Navy has publicly stated that as much as 3,322 gallons of fuel  
21 reached the Aquifer as a result of the November 2021 Release Incident.

22          298.    The November 2021 Release Incident occurred despite the actions taken  
23 by the Navy as part of its efforts to comply with the 2015 AOC.

24          299.    The Navy initially reported that the fuel released during the November  
25 2021 Release Incident was from a pipe associated with the Facility’s fire suppression  
26 system.

27



1       300.     The Navy initially reported that there was no evidence indicating that the  
2 fuel released during the November 2021 Release Incident had reached the  
3 environment.

4       301.     The Navy initially reported that there was no evidence indicating that any  
5 drinking water source had been affected by the November 2021 Release Incident.

6       302.     The Navy initially reported that the amount of fuel released during the  
7 November 2021 Release Incident was approximately 14,000 gallons.

8       303.     In 2022, the Navy revised its estimate of how much fuel was released  
9 during the November 2021 Release Incident upward to approximately 19,000 gallons.

10       304.    On November 27, 2021, the Navy suspended its use of and operations at  
11 Red Hill.

12       305.    The Navy did not does not publicly disclose its suspension on use and  
13 operations of Red Hill on November 27, 2021.

14       306.    The Red Hill Shaft well is the closest of approximately five (5) wells in  
15 the vicinity of the Red Hill USTs.

16       307.    Water from the Red Hill Shaft well is used to supply water to as many as  
17 93,000 individuals, mostly residents of military housing on and near JBPHH.

18       308.    By November 28, 2021, the Navy had received multiple complaints from  
19 residents receiving water from the Navy's water distribution system.

20       309.    On November 29, 2021, DOH issued a public health advisory telling  
21 families served by the Navy's water distribution system to avoid any use of water in  
22 their home which might expose them to the contamination—no drinking, cooking,  
23 washing, etc.

24       310.    Resident's complaints included reports of petroleum smell, chemical  
25 taste, and oily sheen in tap water.

26       311.    Individuals that consumed contaminated water reported suffering from  
27 nausea, stomach cramps, vomiting, skin rashes, sore throats, burning eyes, difficulty  
breathing, and headaches.

1           312.     Some individuals who consumed water contaminated with petroleum  
2 released during the November 2021 Release Incident required emergency medical  
3 attention.

4           313.     On December 1, 2021, testing showed petroleum contamination in water  
5 being distributed to school children at Red Hill Elementary, which is served by the  
6 Navy’s water system.

7           314.     On December 2, 2021, the Navy confirmed that multiple tests had  
8 established the presence of volatile hydrocarbons associated with JP-5 or diesel fuel in  
9 Red Hill Shaft well.

10          315.     On December 6, 2021, the Navy finally makes a public disclosure that it  
11 suspended use and operation of Red Hill in November.

12          316.     As of February 25, 2022, the Navy public position was that fuel released  
13 during the November 2021 Release Incident reached the Aquifer via a drain line  
14 located in one of the Facility’s tunnels.

15          317.     The Navy has acknowledged that it was unaware that the drain line  
16 existed at the time of the November 2021 Release Incident.

17          318.     The Navy became aware of the drain line when personnel reviewed  
18 schematics of the Facility from 1941.

19          319.     On December 2, 2021, HBWS shut down Hālawa Shaft as a  
20 precautionary measure because, in the words of HBWS manager and chief engineer  
21 Ernie Lau, water distributed to consumers draws water “from the same glass” as the  
22 Navy’s contaminated Red Hill Shaft well.

23          320.     By December 10, 2021, HBWS had shuttered two additional wells due to  
24 fears that continued pumping could cause migration of the contaminant plume further  
25 into the Aquifer.

26          321.     The Navy lacks a sufficient understanding of how water moves in the  
27 Aquifer to determine when or if contamination will migrate into the HBWS Hālawa  
Shaft, ‘Aiea and Hālawa wells that supply Honolulu and surrounding communities.

1 322. On December 10, 2021, the Navy reported that results of analyses of  
2 water samples collected on December 5, 2021 from the Red Hill Shaft well, including  
3 for Total Petroleum Hydrocarbons as diesel (“TPH-d”).

4 323. The DOH Environmental Action Level (“EAL”) for TPH-d is 400  
5 micrograms per liter (“µg/L”).

6 324. EALs are contaminant concentration below which DOH assumes there is  
7 not a significant threat to human health or the environment.

8 325. The Navy’s analyses showed TPH-d as high as 140,000 µg/L in water  
9 collected at the Red Hill Shaft well.

10 326. DOH has called the contamination caused by the November 2021  
11 Release Incident a “humanitarian and environmental emergency and disaster.” Haw.  
12 Dep’t of Health, *Emergency Order* (Dec. 6, 2021); *DOH Decision and Order* at ¶ 39.

13 **J. The State Emergency Order**

14 327. On December 6, 2021, DOH issued an Emergency Order premised on its  
15 position that the Facility “poses an imminent and ongoing peril to human health and  
16 safety and the environment.” Haw. Dep’t of Health, *Emergency Order* (Dec. 6, 2021);  
17 *DOH Decision and Order* at ¶ 39.

18 328. On January 3, 2022, DOH adopted the requirements of the Emergency  
19 Order in a Final Order (“Final Order”). Haw. Dep’t of Health, Docket No. 21-UST-  
20 EA-02 (Jan. 3, 2022).

21 329. The Emergency Order requires the Navy take, among others, the  
22 following three (3) actions:

23 a. complete an investigation that is similar to what was required under the  
24 2015 AOC to “assess the Facility operations and system integrity;”

25 b. submit a detailed work plan and schedule for making repairs to the  
26 Facility and revisions to operating procedures; and

27 c. remove fuel from the Facility. Haw. Dep’t of Health, *Emergency Order*  
at 4.

1 330. The Emergency Order does not require the permanent closure of the  
2 Facility. Haw. Dep’t of Health, *Emergency Order* at 4.

3 331. On February 2, 2022, the Navy filed challenges to the Emergency Order  
4 and Final Order in Federal District Court and Hawaii Circuit Court.

5 332. The Navy later withdrew both challenges to the Emergency Order and  
6 Final Order.

7 333. On March 7, 2021, the Secretary of Defense announced that the Red Hill  
8 Facility would be defueled and then closed.

9 334. On information and belief, the decision to defuel and close Red Hill may  
10 be withdrawn unilaterally by the Secretary of Defense.

11 335. On May 6, 2022, DOH issued a new/revised Emergency Order.

12 **K. Risk Assessments and Facility Integrity (2010-2022)**

13 336. In 2010, the Navy concluded that that “the age of the [F]acility presents a  
14 future risk of a moderate to large release of fuel to the underlying groundwater.”  
15 Naval Audit Service, *Audit Report N2010-0049*.

16 337. Corrosion is a pervasive threat to the integrity of the Facility’s  
17 infrastructure, including but not limited to the USTs, pipelines, and valve systems. *See*  
18 *e.g.*, Enter. Eng’g, Inc., *Integrity Management Plan – POL Pipelines NAVSUP FLC*  
19 *Pearl Harbor, HI (PRL)* at 3 (recommending urgent repair of an F-76 pipeline  
20 identified as “critical infrastructure” due to “84% wall loss” caused by corrosion); *see*  
21 *also* Enter. Eng’g, Inc., *FLEET LOGISTICS CENTER (FLC) PEARL HARBOR*  
22 *JOINT BASE PEARL HARBOR HICKAM, HAWAII (PRL) POL Pipelines Integrity*  
23 *Management Plan (IMP) B-14 (2019)* (identifying one hundred ten (110) pipe  
24 supports on F-24, F-76, and JP-5 pipelines at Hotel Pier as “corroded beyond repair.”)

25 338. A 2015 report assessing pipeline integrity identified the need to  
26 “[r]epair[] failing [pipeline] coatings throughout the” Facility, including specifically at  
27 Mike Pier. Enter. Eng’g Inc. *Integrity Management Plan – POL Pipelines NAVSUP*  
*FLC Pearl Harbor, HI (PRL)* at 6.

1 339. Naval Facilities Engineering Command released a Technical Report in  
2 September 2016 titled “Final Piggings Completion Report: Inspection and Repair of  
3 Red Hill Pipelines” (“2016 Pipeline Inspection Report”). Naval Facilities Eng’g  
4 Command, *FINAL PIGGING COMPLETION REPORT* (2016).

5 340. The 2016 Pipeline Inspection Report identified hundreds of pipeline  
6 “anomalies” and other concerns, e.g., a 70.8% loss of metal due to corrosion in one  
7 section of the JP-8 pipeline, requiring “mandatory” repairs that “[a]re critical to the  
8 hydraulic and structural integrity of the piping.” *Id.* at 8.

9 341. The Navy has not completed all of the pipeline repairs recommended in  
10 the 2016 Pipeline Inspection Report.

11 342. In 2018, the Navy contracted for a study called the *Quantitative Risk and*  
12 *Vulnerability Assessment (Phase I)* (“2018 Risk Assessment”).

13 343. Among the goals of the 2018 Risk Assessment was to assess the  
14 Facility’s potential for future releases to the environment, including specifically to the  
15 Aquifer.

16 344. The Navy’s 2018 Risk Assessment identified the Facility as “high-risk,”  
17 i.e., there is a high probability of a future releases from the Facility to the Aquifer.

18 345. According to the 2018 Risk Assessment, 5,806 gallons of fuel will be  
19 released each year (Facility-wide) from chronic, undetected leaks.

20 346. The 2018 Risk Assessment identified probabilities for fuel releases from  
21 the Facility in the near and foreseeable future.

22 347. The 2018 Risk Assessment concludes that there is a greater than 27%  
23 probability of a sudden release of up to 30,000 gallons of fuel from the Facility each  
24 year.

25 348. The 2018 Risk Assessment concludes there is greater than 34%  
26 probability of a sudden release of more than 120,000 gallons of fuel from the Facility  
27 in the next 100 years.

1           349.    The 2018 Risk Assessment concludes there is a greater than a 5%  
2 probability of a sudden release of more than 1,000,000 gallons of fuel from the  
3 Facility in the next 100 years.

4           350.    The 2018 Risk Assessment conclusions indicated that there was an 80%  
5 probability of a release from Red Hill of between 1,000 and 30,000 gallons before  
6 2023.

7           351.    The 2018 Risk Assessment conclusions indicated that there was a 96%  
8 probability of a 1,000 to 30,000 gallon release before 2028.

9           352.    The 2018 Risk Assessment’s calculation of a 1,000 to 30,000 gallon  
10 release before 2028, unfortunately, proved accurate.

11          353.    The 2018 Risk Assessment’s conclusions indicated that there was a  
12 99.8% probability of a 1,000 to 30,000 gallon release before 2038.

13          354.    In 2019, Naval Supply Systems Command (“NAVSUP”) conducted  
14 inspections of Navy fuel operations in Hawai`i, including but not limited to operations  
15 at Red Hill.

16          355.    NAVSUP inspectors prepared a report containing findings from the 2019  
17 inspections.

18          356.    NAVSUP inspectors reported, among others, the following problems  
19 with the Navy’s fuel operations:

- 20           a. Leadership was not aware of its oversight responsibilities;  
21           b. Maintenance programs were insufficient;  
22           c. Failures to accurately certify and document inventory;  
23           d. Annual spill prevention trainings were not being conducted as required by  
24           state law;  
25           e. Minor leaks were not being cleaned up;  
26           f. The sources of leaks were not being fixed;  
27           g. Valves that should have been closed were left open; and

1 h. Personnel were intentionally discharging fuel into secondary containment  
2 rather than following proper procedures.

3 357. In 2021, the HBWS expressed its concern that “corrosion that leads to  
4 through-wall holes in the ¼-inch thick steel liner used to contain fuel is well  
5 documented.” HBWS Post-Hr’g Mem. at 6.

6 358. The Navy has documented through-wall holes in Tanks 2, 5, 6, 10, 15,  
7 16, 17, 19, and 20.

8 359. In a report first released to the public on January 20, 2022, the Navy  
9 stated the following:

10 a. “The Navy is responsible for the 6 May 2021 and 20 November 2021  
11 fuel spills at the Red Hill Bulk Fuel Storage Facility (Red Hill) and  
12 subsequent water contamination;”

13 b. “[The Navy’s] investigation [] revealed several preventable contributing  
14 factors including a culture of procedural non-compliance; material  
15 deficiencies; poor training and supervision; ineffective command and  
16 control; absence of ownership regarding operational safety; unacceptable  
17 immediate response actions, including a lack of timely, accurate, and  
18 thorough reporting; and a fundamentally flawed investigative process  
19 concerning the 6 May 2021 spill;” and

20 c. There are ongoing and “significant risks presented by fuel storage and  
21 transfer operations” at Red Hill, as well as other fuel storage facilities  
22 managed by the Navy around the world. Christopher J. Cavanaugh, U.S.  
23 Navy, *Command Investigation into the 6 May 2021 and 20 November*  
24 *2021 Incidents at Red Hill Bulk Fuel Storage Facility* 4 (Jan. 20, 2022).

25 360. Pursuant to the Emergency Order, the Navy contracted with Simpson  
26 Gumpertz and Heger ("SGH") to assess operations and system integrity to safely  
27 defuel the Facility.



1           361.     On April 29, 2022, SGH issued a report (redacted) entitled Final  
2 Assessment Report, Assessment of Red Hill Underground Fuel Storage Facility, Pearl  
3 Harbor, Hawai`i (29 April 2022) (“SGH Assessment”).

4           362.     SGH reviewed existing reports on tanks, pipelines, and piers at the  
5 Facility. SGH Assessment at 20–80.

6           363.     SGH also conducted walk throughs, observing and photographing current  
7 conditions at the Facility. *Id.* at 89–164.

8           364.     SGH also modeled the risk of pipeline failures during defueling of the  
9 Facility. *Id.* at 212–243.

10          365.     The SGH Assessment documents extensive pipeline corrosion, failed  
11 coatings, improper repairs, inadequate pipe supports, inappropriate connections and  
12 valving, and other failures in operation and management of the Facility by the Navy.  
13 *Id.* at 89–164.

14          366.     The SGH Assessment specifically documents extensive pipe corrosion,  
15 pipe pitting, pipe hanger failure, severe valve corrosion, and improper pipe routing, at  
16 Hotel, Kilo, Sierra, Mike and Bravo piers. *Id.* at 158–165.

17          367.     Piping at Hotel, Kilo, Sierra, Mike and Bravo piers are over Pu`uloa,  
18 and/or in Pu`uloa during high tide.

19          368.     SGH stress modeling found that stresses on existing pipelines at the  
20 Facility will exceed acceptable levels during defueling at least five locations, with two  
21 significantly overstressed by defueling. *Id.* at 213, 216, 217, 225, 236.

22          369.     The SGH Assessment concludes that the “conditions observed in all  
23 tanks is similar[, and that] scanning has revealed numerous weld defects, including  
24 lack of fusion, porosity, and [] cracking.” *Id.* at 200.

25          370.     The SGH Assessment contains a list of tasks to that must be completed at  
26 the Facility before defueling can be safely conducted. *Id.* at 303–307.

27

1           371.     The SGH Assessment recommends a total of twenty-nine (29) tasks,  
2 including development of procedures and manuals, pipe repairs and reconfiguration,  
3 valve and coupling replacement, and system evaluation. *Id.*

4           372.     Twelve (12) of the recommendations are characterized as high priority,  
5 which SGH defines as “critical to the hydraulic and structural integrity of the piping.”  
6 *Id.*

7           **L.       Closure Planning**

8           373.     On June 30, 2022—more than six (6) months after DOH issued the  
9 Emergency Order—the Navy released a defueling plan (“June Defueling Plan”).

10          374.     The June Defueling Plan is eighteen (18) pages in total.

11          375.     Based on the June Defueling Plan, the Navy does not appear to be  
12 following the recommendation contained in the SGH Assessment to employ  
13 independent third-party verification of all design changes, repairs, and modifications  
14 currently being planned and implemented.

15          376.     The Navy’s best-case-scenario for completing the defueling of Red Hill  
16 is December 1, 2024.

17          377.     On July 19, 2022, DOH rejected the June Defueling Plan, citing the  
18 Navy’s failure to include substance, details, and timelines. DOH further criticized the  
19 plan for failing to fully address any of the Emergency Order’s minimum requirements.

20          378.     The June Defueling Plan contains significant caveats, e.g., likely seven  
21 (7) month delays on receiving various essential components, which virtually  
22 guarantee that the Navy cannot meet the December 1, 2024 timeline.

23          379.     The June Defueling Plan’s timeline is based on unrealistic schedules,  
24 e.g., assumes that DOH and other regulatory agencies with oversight responsibilities  
25 can receive, review, comment on, and approve various reports, plans, and proposals in  
26 a single day.

27

1 380. The June Defueling Plan contains significant caveats, e.g., likely seven  
2 (7) month delays on receiving various essential components, which virtually  
3 guarantee that the Navy cannot meet the December 1, 2024 timeline.

4 381. The June Defueling Plan, despite acknowledging that enhanced training  
5 is a pre-requisite to safe defueling, does not schedule such training until 2024.

6 382. Given the unrealistic assumptions and scheduling proposed by the Navy,  
7 the defueling process will not be completed until the end of 2028 under the June  
8 Defueling Plan.

9 **M. 2023 Administrative Consent Order.**

10 383. On June 2, 2023, U.S. EPA released an administrative consent order  
11 (EPA Dkt. No. RCRA 7003-R9-2023-001, EPA Dkt. No. PWS-AO-2023-001)(“2023  
12 Consent Order”) regarding the Red Hill Bulk Fuel Storage Facility.

13 384. The “2023 Consent Order” provides for the performance by Navy and  
14 DLA of activities related to the safe “Defueling” and “Closure,” as those terms are  
15 defined below, of the Red Hill Bulk Fuel Storage Facility and for performance by the  
16 Navy of activities related to the delivery of a safe and resilient supply of drinking  
17 water to the Navy-owned water system on O‘ahu.

18 385. U.S. EPA entered into the 2023 Consent Order pursuant to its authorities  
19 delegated under 42 U.S.C. § 6973 and 42 U.S.C. § 300(i).

20 386. The 2023 Consent Order concludes that “that Navy’s and DLA’s  
21 handling or disposal of solid waste may present an imminent and substantial  
22 endangerment to health or the environment.”

23 387. The 2023 Consent Order further concludes that “[v]olatile hydrocarbons  
24 associated with fuel in drinking water may endanger the health of persons by causing  
25 acute and chronic health effects such as cough, difficulty breathing, abdominal pain  
26 and vomiting, drowsiness, restlessness, convulsions, dermatitis, and skin damage.  
27 These contaminants present in or likely to enter underground sources of drinking

1 water near the Facility that are the source of water for the JBPHH System may present  
2 an imminent and substantial endangerment to the health of persons.”

3 388. The 2023 Consent Order requires the Navy to submit to U.S. EPA  
4 monitoring, defueling, and closure plans, according to specifications included in an  
5 attached “Statement of Work.”

6 389. The 2023 Consent Order does not contain any requirements specific to  
7 remediation of the Aquifer.

8 **VI. CLAIMS FOR RELIEF**

9 **FIRST CAUSE OF ACTION**

10 **Defendant’s Ongoing Creation of an Imminent and**  
11 **Substantial Endangerment to Health and the Environment**  
12 **(42 U.S.C. § 6972(a))**

13 390. Plaintiffs re-alleges and incorporates all preceding paragraphs as if fully  
14 set forth herein.

15 391. The past and continuing practices of Defendant have caused  
16 contamination and continue to contaminate the sole source Aquifer.

17 392. Defendants’ treatment, handling, storage, transportation, and disposal of  
18 the solid wastes has and continues to present an imminent and substantial  
19 endangerment to public health and the environment, 42 U.S.C. § 6972(a)(1)(B).

20 393. According to the Secretary of the Navy Carlos Del Toro, the Navy’s  
21 contamination of O’ahu’s drinking water is a “horrible tragedy.” While tragic is a  
22 proper description, Del Toro’s comments fail to acknowledge that Red Hill has  
23 released fuel into the environment throughout its history, did so throughout 2020 and  
24 2021, and that the current catastrophe could have been—and should have been—  
25 avoided.

26 394. The Navy has been aware of and on notice for decades that Red Hill’s  
27 tanks and associated infrastructure, e.g., pipelines, are antiquated, corroding, leaking,  
improperly operated and maintained, and at risk of failure.

1 395. Given Red Hill’s history of releases, the findings of 2018 Risk  
2 Assessment, and considering the events of the last two years, there plainly is no  
3 scenario in which O’ahu’s water and environment are safe.

4 396. Under the best-case scenario, Red Hill will continue to release thousands  
5 of gallons of petroleum contamination annually, at least some portion of which will  
6 reach the environment.

7 397. Under the worst-case scenario, one or more of Red Hill’s USTs fail, and  
8 the island’s sole source Aquifer is rendered useless for the foreseeable future.

9 398. Defendant's defueling, closure, and clean-up plans proposed to date  
10 ensure that the imminent and substantial endangerment presented by the Facility will  
11 continue through at least 2028, and perhaps indefinitely.

12 399. Pursuant to RCRA Section 7002, Defendants are subject to an injunction  
13 under RCRA ordering them to cease and abate any past or present handling, storage,  
14 treatment, and/or transportation of any solid waste or hazardous waste that may  
15 present an imminent and substantial endangerment to public health and/or the  
16 environment.

17 400. Plaintiffs’ interests are harmed and will continue to be harmed by this  
18 imminent and substantial endangerment and by Defendants’ failure to abate the  
19 endangerment unless the Court grants the relief herein sought.

20 **SECOND CAUSE OF ACTION**

21 **Defendant’s Ongoing, Unpermitted Discharges of**  
22 **Pollutants Violate Section 301(a) of the Clean Water Act**  
23 **(33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))**

24 401. The Alliance re-alleges and incorporates all preceding paragraphs as if  
25 fully set forth herein.

26 402. The Navy has violated section 301(a) of the Act by discharging pollutants  
27 to waters of the United States without permit authorization.

1       403. Each and every discharge of pollutants to waters of the United States  
2 without permit authorization is a separate and distinct violation of section 301(a) of the  
3 Act. 33 U.S.C. § 1311(a).

4       404. The Navy’s violations of section 301(a) of the Act are ongoing and  
5 continuous.

6       405. The Navy is subject to an assessment of coercive civil penalties for each  
7 and every violation of the Act and/or an order of this court pursuant to sections 309(d)  
8 and 505 of the Act. 33 U.S.C. §§ 1319(d), 1365; 40 C.F.R. § 19.4.

9       406. An action for injunctive relief is authorized by section 505(a) of the Act.  
10 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above  
11 would irreparably harm the Alliance, named plaintiffs, and the residents of the State  
12 of Hawai`i, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

13       407. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)  
14 because an actual controversy exists as to the rights and other legal relations of the  
15 Parties.

16       408. The Navy is liable for at least 510 violations and days of violation of the  
17 Act’s prohibition on unpermitted discharges of pollutants to waters of the United  
18 States from the Facility, and those violations are ongoing.

19       409. The Alliance is informed and believes, and therefore alleges that the  
20 Navy is also discharging pollutants from prior spills near the Hotel, Kilo, Mike, and  
21 Bravo piers, via seeps, storm drains, sumps, utility trenches, or other point sources to  
22 Pu`uloa, a water of the United States.

23       410. The Alliance will include additional violations and days of violations in  
24 this enforcement as discovered via this litigation.

25       WHEREFORE, the Alliance prays for judgment against Defendant as set forth  
26 hereafter.

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**RELIEF REQUESTED**

Wherefore, Plaintiffs respectfully request that this Court grant the following relief:

- a. Declare Defendant to have violated, and to be in violation of, RCRA and the Clean Water Act as alleged herein;
- b. Enjoin any activity constituting the imminent and substantial endangerment of public health and/or the environment;
- c. Enjoin any discharge of pollutants from the Facility to waters of the United States except as authorized by a permit;
- d. Issue injunctive relief obligating Defendant to remedy, reduce, redress, mitigate, and/or offset all adverse human health, wildlife, and environmental consequences resulting from contamination of the Aquifer caused but violations of RCRA;
- e. Order Defendant to take appropriate actions to prevent unlawful discharges of pollutants to waters of the United States during defueling and closure;
- f. Award Plaintiffs’ reasonable attorneys’ and expert witness fees, and costs incurring in bringing this litigation; and
- g. Award any such other and further relief deemed appropriate by the Court.

Dated: October 13, 2023

Respectfully submitted,

By: /s/ Jesse C. Swanhuysen  
Jesse C. Swanhuysen  
/s/ Daniel Cooper  
Daniel Cooper  
Sycamore Law, Inc.  
Attorneys for Plaintiffs



