



**SUBMITTED ELECTRONICALLY VIA REGULATIONS.GOV AT
www.regulations.gov/commenton/EPA-R09-RCRA-2022-0970-0002**

February 6, 2023

**RE: Joint Community Comments on Proposed 2023 Order on Consent EPA Docket No.
 EPA-R09-RCRA-2022-0970-0002**

Dear Administrator Regan,

Thank you for the opportunity to comment on the proposed 2023 Consent Order (“2023 Order”) between the United States Department of the Navy (the “Navy”), the Defense Logistics Agency, and the United States Environmental Protection Agency (“U.S. EPA”) regarding the Red Hill Bulk Fuel Storage Facility (“Red Hill,” or the “Facility”). Unfortunately, rather than advancing a solution, the 2023 Order continues decades of regulatory failures with another backroom deal.

Introduction

This community faces an existential threat to our water and our island home. For decades our community has been sounding the alarm that the Navy's Red Hill fuel facility poses a threat to our lives and livelihood. Recent events—including the large-scale contamination of our sole source aquifer, the poisoning of nearly one hundred thousand people, and repeated releases of “forever” chemicals—confirm the need for a fundamental shift in how regulatory agencies and the public manage operations at Red Hill. The 2023 Order is bad public policy that fails on every level. The 2023 Order must be re-written with an accurate factual record, a public transparency mandate, enforceable standards, clear and rigorous timelines, meaningful penalties, and secure funding for remediation and protection of our sole source aquifer.

Set The Record Straight

U.S. EPA's decision about which facts and details to include, and which to omit, is disconcerting. Without a full, accurate recitation of the key facts, the Consent Order is deceptive. The Consent Order fails to set out essential, undisputable facts, including the May 2021 release, existing fuel contamination of our “sole source” aquifer, the Navy's cover up of a year-long fuel discharge to Pu'uloa at Hotel Pier in its bid to secure an operating permit, and the Navy's release of “forever chemicals” during its preparations for defueling. The 2023 Order does, bizarrely, include details about a small fuel release in 2022, including that the Navy *quickly contained and remediated* the spill. U.S. EPA's failure to focus on—or deliberate omission of—critical details likely explain why the proposal assumes good faith cooperation from the Navy and fails to reflect the urgency merited here.

Because of the failure of the Navy and U.S. EPA to protect Oahu's aquifer, creeks, and coastal waters, and the resulting contamination of our drinking water and Pu'uloa, the public has lost trust in the agencies and the process. The first steps in regaining that trust is to honestly recount the Navy's irresponsibility and deceit, and acknowledge U.S. EPA's failure to effectively protect public health and environment from Red Hill. Only by facing the facts at Red Hill can past failures be addressed, trust rebuilt, and our island protected.

Transparency and Public Oversight

Secrecy has been a defining characteristic at Red Hill for 80 years. The Consent Order is another “backroom deal” that perpetuates the failed policies and “oversight” practices that created the crisis we face today. The Consent Order was prepared without input from community stakeholders. The documents and data characterizing the contamination and relied on by U.S. EPA are either heavily redacted, or entirely withheld from public scrutiny. The Navy, and pliant government agencies have hidden behind false claims of protecting national security for too long. We will not accept another farcical “community engagement” process that sanctions incomplete information passing *from* the Navy *to* the public *after* important decisions have been made. U.S. EPA's proposal only requires the Navy to make “best efforts” to provide a “suitable” version of documents available within thirty days. The Consent Order must require: 1) full transparency—timely, public access to all information for which the Navy cannot justify claims of privilege; and 2) community oversight—mandatory consultation with a Community Oversight Committee *in advance of* every major decision.

Rigorous Timelines and Meaningful Penalties

The Navy is not an honest collaborator in addressing the crisis it continues to produce. The voluntary, cooperative process created in 2015 failed, and it is inappropriate here. U.S. EPA should not acquiesce to the Navy's proposals for defueling and closure. Further, U.S. EPA should reject

bureaucratic “dispute resolution” that will allow the Navy to delay every meaningful decision for months, while it convenes committees and files appeals.

Instead, U.S. EPA should issue a unilateral order setting the most aggressive timelines possible consistent with safe defueling and closure. The Navy’s plan to rehabilitate a dilapidated, underground network of pipelines that even it does not fully understand is slow, dangerous, and part of efforts to avoid closing the facility. The fastest safe way to empty the tanks is to construct an above-ground pipeline with secondary containment that can be observed during defueling. The 2023 Order must set date-specific requirements for each step in the defueling and closure process, impose mandatory, strict, and substantial penalties for non-compliance.

Prioritize Public Health and Environmental Protection

Defueling and closure of the Red Hill facility are only the first steps. Protecting public health and the environment will require investigating the extent and nature of existing groundwater contamination caused by decades of releases from the Red Hill facility, and then a long-term commitment full remediation of the Aquifer. The Consent Order fails to recognize this essential component of addressing the current crisis. Full remediation of our sole source aquifer must be prioritized not neglected. The Consent Order must contain clear, enforceable standards for groundwater quality that are as protective of public health and the environment as possible.

Funding

The Consent Order’s weak request that the Navy fund recovery efforts is astounding. The Navy is one of the largest, richest organizations on the planet. The 2023 Order must compel immediate and safe defueling, and require guaranteed, long-term funding for full remediation of the aquifer, including covering all costs incurred by government agencies in securing the Navy’s compliance with the public oversight, timelines, and standards described above.

Conclusion

This is an emergency that demands urgent and decisive enforcement action. With millions of people and our very way of life at risk, the parties to this letter believe that the Consent Order is unfair and unreasonable, threatens human health and the environment, and undermines the public interest. While we strongly support regulatory action to address the impacts of historic and ongoing releases of toxic substances from the Navy’s Red Hill facility, **the Consent Order is the wrong path.**

Sincerely,

/s/ John Miller
/s/ p.p. Clarence 'Ku' Ching
Wai Ola Alliance

/s/ Melodie Aduja
/s/ Alan Burdick
Environmental Caucus of the
Democratic Party of Hawai‘i

/s/ Rebekah Garrison
Shut Down Red Hill Coalition

/s/ Lynnette Cruz
Mālama Makua

/s/ Colonel (Ret.) Ann Wright
/s/ Pete Doktor
Veterans for Peace, HI Ch.113

/s/ Ashley Nishihara
Protect Our Aquifer

/s/ Healani Sonoda-Pale
Ka Lahui Hawai‘i

/s/ Janice Kimi
/s/ Toma Shiira
Shimanchu Wai Protectors

/s/ Hanaloa Helela
Ka‘ohewai

/s/ Suzanne Adely
National Lawyers Guild,
President

/s/ Rebekah Garrison
O'ahu Water Protectors

/s/ Dave Mulinix
Our Revolution Hawai'i

/s/ John Bickel
Americans for Democratic
Action, Hawai'i Chapter

/s/ Ted Bohlen
/s/ Doorae Shin
Climate Protectors Hawai'i

/s/ Micky Huihui
Hawai'i People's Fund

/s/ Aya Hirata Kimura
Church of the Crossroads

/s/ Sierra Dew
Wisdom Circles Oceania

/s/ Susan Gorman
Trinity United Methodist
Church and Climate
Protectors Coalition

/s/ Cynthia Franklin
Students and Faculty for
Justice at the University of
Hawai'i

/s/ Jennifer K.H. Nakamura
/s/ Hi'iaka Jardine
Kahaluu 'O Kahalu'u

/s/ Mark Koppel
Clean Power Task Force

/s/ Susan Pcola-Davis

/s/ Paul Bernstein

/s/ Kim Coco Iwamoto
Chamber of Sustainable
Commerce

/s/ Sherryl Pollack
350 Hawai'i

/s/ Jennifer Navaro
Zero Waste Hawaii Island

/s/ Lauren Blickley
Surfrider Foundation, Hawai'i
Region

/s/ Dyson Chee
/s/ Jade Frank
Hawai'i Youth Climate
Coalition

/s/ Danielle Espiritu
Ka 'Ohana o Ke Aloha

/s/ Lynell DaMate
Ko'olau Waialua Alliance

/s/ Kyle Kajihira
Hawai'i Peace & Justice

/s/ Monaeka Flores
/s/ Jessica Nagauta
Prutehi Litekyan: Save
Ritidian Guam/Guåhan

/s/ Kalamaoka`aina Niheu
Mauna Medic Healers

/s/ Henry Curtis
Life of the Land

/s/ Susan Ing
Hawaii Environmental
Change Agents

/s/ Sofie Oba

/s/ Robin S. Knox

/s/ Donna Wong
Hawai'i's Thousand Friends

/s/ Healani Sonoda-Pale
Queen's Court

/s/ Carolyn Hadfield
World Can't Wait Hawai'i

/s/ Ted Bohlen
Hawai'i Reef and Ocean
Coalition

/s/ Natali Segovia
Water Protector Legal
Collective

/s/ Helen Cox
Kauai Climate Action
Coalition

/s/ Will Caron
Young Progressives
Demanding Action

/s/ Cara Oba
Climate Protectors Hawai'i

/s/ Desta Rudolph
/s/ James Rudolph
Independent Energy Hawai'i

/s/ Jason Bradshaw
Labor Caucus of the
Democratic Party of Hawai'i

/s/ Danielle Espiritu
Ho`ola Hou ia Kalauao

/s/ Choon James
Keep the Country Forever

/s/ Atom, Riley, and Kailani
Miller