

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
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October 29, 2019

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Dr. Bruce Anderson
Director
State of Hawaii
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P.O. Box 3378
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Dear Dr. Anderson:

Subject: Honolulu Board of Water Supply Request for Contested Case Hearing Concerning the United States Department of the Navy's UST Permit Application for Red Hill Bulk Fuel Storage Facility, JBPHH, Oahu, DOH Facility ID No. 9-102271

Pursuant to Hawaii Administrative Rules § 11-1-22, the Honolulu Board of Water Supply (BWS) respectfully requests a contested case hearing – and files this complaint – regarding the United States Department of the Navy's (Navy) application for a permit to operate the field-constructed underground storage tanks (USTs) at its Red Hill Bulk Fuel Storage Facility (RHBFSF).

Based on the Navy's permit application and the information available to the BWS for review, the RHBFSF tanks as they are currently configured and operated do not satisfy the mandate of Hawaii Revised Statutes § 342L-32(b) that all USTs and UST systems must be "operated to prevent releases ... for the operational life of the tank or tank system". Further, they do not comply with any of the enumerated requirements in Hawaii Administrative Rules § 11-280.1-20(b) for corrosion protection, and may not meet the leak detection requirements in Hawaii Administrative Rules § 11-280.1-43(10). Accordingly, it is not appropriate for the Hawaii Department of Health (DOH) to issue an operating permit for the existing field-constructed, single-walled USTs at the RHBFSF. Instead, the RHBFSF tanks should be relocated away from the sole source groundwater aquifer that nourishes Oahu's drinking water or upgraded with secondary containment so as to comply with State law.

I. Background

The RHBFSF is located approximately 2.5 miles northeast of Pearl Harbor. It occupies approximately 144 acres of land along the western edge of the Koolau Range situated on a topographic ridge that divides the Halawa Valley and the Moanalua Valley directly above a high-quality groundwater aquifer. The Navy stores nearly 200 million gallons of fuel at the RHBFSF in colossal World War II vintage underground storage tanks a mere 100 feet above the very aquifer from which the BWS provides drinking water to residents from Moanalua to Hawaii Kai. Numerous leaks from the RHBFSF tanks, including a release of at least 27,000 gallons of fuel from RHBFSF Tank No. 5 in January 2014, have been documented and

sampling from under and around the RHBFSF has demonstrated the existence of petroleum contamination in the very aquifer that sustains Honolulu's water supply. Fortunately, testing conducted to date indicates that water provided by BWS drinking water wells remains compliant with standards for safe drinking water. The proximity of the RHBFSF to our critical drinking water resources, however, demands that the permitting process carefully evaluate and assess whether the RHBFSF complies with State law applicable to UST operations.

On July 15, 2018, the DOH amended its UST rules to, among other things, subject all USTs – including previously-exempt, field-constructed tanks at the RHBFSF – to State UST requirements. Under the current rules, the Navy was required to obtain a permit to operate the RHBFSF tanks by July 15, 2019. See HAR § 11-280.1-10(a)(1)(A). The Navy submitted an initial permit application for the RHBFSF tanks on March 14, 2019 and a revised permit application on May 23, 2019.

On June 18, 2019, the Sierra Club requested a contested case hearing and filed a complaint on the Navy's UST permit application for the RHBFSF. The Sierra Club seeks to have the DOH deny the permit application, and have the Navy relocate the RHBFSF tanks. The BWS also provided comments concerning the Navy's permit application and draft permit on June 24, 2019, in which it advised the DOH that it does not believe it would be appropriate to issue an operating permit for the existing field-constructed, single-walled USTs at the RHBFSF. It is our understanding that the DOH has yet to respond to the Sierra Club's request for a contested case hearing. On October 18, 2019 the BWS gave notice to DOH of its intention to seek intervenor status in the potential contested case hearing and now affirmatively seeks its own contested case hearing to preserve its rights on this important issue.

II. Discussion

The BWS is entitled to a contested case hearing, as the issuance of an operating permit for the field-constructed USTs at the RHBFSF would interfere with BWS constitutional obligation to provide clean drinking water to Oahu. Indeed, Article XI, Section 9 of the Hawaii State Constitution guarantees the citizens of Hawaii the substantive "right to a clean and healthful environment." See also *Cnty. of Hawaii v. Ala Loop Homeowners*, 123 Haw. 391 (2010). The BWS has a constitutional public trust responsibility to protect the water resources it manages. It thus must oppose the issuance of this operating permit unless and until the RHBFSF tanks can be operated to prevent releases for their operational life and ensure that nearby groundwater resources are protected as required by State law.

A. The BWS' Public Trust Responsibility

The BWS is entitled to a contested case hearing on the Navy's RHBFSF permit application because our critical drinking water resources will be placed at risk if the proposed draft operating permit is approved. The BWS is the largest municipal drinking water utility in the State of Hawaii and is responsible for managing Oahu's municipal water resources and distribution system. The BWS distributes an average of approximately 145 million gallons of potable water per day to around one million people on Oahu. To ensure the water it distributes is safe and potable, BWS carefully and proactively manages its intricate system consisting of 194 active potable water sources, 171 potable water reservoirs, and approximately 2,100 miles of pipeline servicing nearly every community on Oahu.

The BWS has a public trust responsibility to protect the water resources that it manages and preserve the rights of present and future generations in the waters of the State. Public trust is the principle embedded in the Hawaii Constitution and State law that the Hawaii Supreme Court has consistently held obligates the State, including the BWS, to protect the purity of our water:

“[T]he public trust doctrine applies to all water resources without exception or distinction. The state water resources trust thus embodies a dual mandate of 1) protection and 2) maximum reasonable and beneficial use. The public trust is, therefore, the duty and authority to maintain the purity and flow of our waters for future generations and to assure that the waters of our land are put to reasonable and beneficial uses.”

Kauai Springs, Inc. v. Planning Comm'n of Cnty. of Kauai, 133 Haw. 141, 172 (2014) (alteration and emphasis in original) (citations and internal quotation marks omitted). Moreover, this responsibility is “unlimited by any surface-ground distinction,” extending to all water resources, including groundwater. *In re Water Use Permit Applications*, 94 Haw. 97, 133-135, 139 (2000).

B. The Existing Single-Walled RHBFSF Tanks Do Not Comply with Hawaii Law

As stated in the BWS' June 24, 2019 comments on the Navy's UST permit application, the RHBFSF tanks do not comply with Hawaii law and, therefore, DOH cannot issue an operating permit for their existing configuration and/or operation. Specifically, the RHBFSF tanks do not satisfy the legal mandate that all USTs and UST systems “be designed, constructed, installed, upgraded, maintained, repaired, and operated to prevent releases of the stored regulated substances for the operational life of the tank or tank system.” HRS § 342L-32(b). Further, the RHBFSF tanks do not comply with any of the requirements for corrosion protection enumerated in Hawaii's UST rules. See HAR § 11-280.1-20(b). Accordingly, it would be inappropriate to issue an operating permit for the existing field-constructed, single-walled USTs at the RHBFSF.

Additionally, the redaction of certain documents cited by the Navy in support of its permit application have made it impossible for either the BWS or any member of the public to determine if the RHBFSF tanks can meet the leak detection requirements as the Navy claims. See HAR § 11-280.1-43(10). The BWS has requested that the DOH provide an unredacted version of any and all documentation supporting the Navy's claims but, to date, no such data or information has been provided. The BWS intends to seek this and other information as part of the contested case hearing process and reserves the right to amend, modify, or supplement its position upon further review of such information.

This request for a contested case hearing incorporates by reference the BWS' June 24, 2019 comments on the Navy's UST permit application and all of the reference materials attached thereto, including all legal and factual contentions regarding issues with the permit application. BWS also plans to introduce additional evidence at the contested case hearing in support of its position as well.

III. Conclusion and Relief Requested

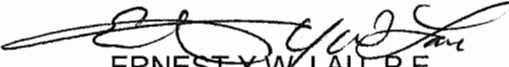
The BWS requests a contested case hearing to oppose the issuance of an operating permit for the field-constructed USTs as they are currently configured and operated at the RHBFSF and to protect the BWS' substantial interests in the protection of the irreplaceable sole-source

Dr. Bruce Anderson
October 29, 2019
Page 4

groundwater aquifer that nourishes Oahu's drinking water supply. For the foregoing reasons, the BWS' request for a contested case hearing should be granted.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Very truly yours,



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