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**UNITED STATES DISTRICT COURT**

**DISTRICT OF HAWAII**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL NO.

**COMPLAINT FOR  
DECLARATORY**

DEPARTMENT OF HEALTH, STATE OF HAWAII; ELIZABETH A. CHAR, in her official capacity as Department of Health Director; MARIAN E. TSUJI, in her official capacity as Department of Health Deputy Director;

Defendants,

and

SIERRA CLUB; BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU,

Intervenor-Defendants.

**AND INJUNCTIVE  
RELIEF**

## INTRODUCTION

1. The United States Department of the Navy (the “Navy”) files this Complaint pursuant to 28 U.S.C. §§ 2201–02 and Hawaii Revised Statutes (“HRS”) §§ 91-14 and 342L-13 to protect its rights respecting an order issued by the Hawaii Department of Health, Docket No. 21-UST-EA-02, on January 3, 2022 (the “Final Order”). *See* Exhibit A. The Final Order unlawfully imposes certain requirements on the Navy’s management of the Red Hill Bulk Fuel Storage Facility (“Red Hill” or “Facility”), which stores fuel to support U.S. military forces throughout the Indo-Pacific Command area of responsibility. The Navy hopes to resolve any differences with the State of Hawaii regarding the Final Order through negotiation, but files this suit out of an abundance of caution to satisfy the 30-day

statute of limitations that Hawaii law imposes on judicial review of such orders.

*See* HRS § 91-14(b).

2. Since 2015, the Navy has worked closely with the Hawaii Department of Health (“DOH”), the United States Environmental Protection Agency (“EPA”), and other partners as the Navy conducts environmental analyses and infrastructure improvements to minimize the threat of any fuel releases at Red Hill. This work has been carried out in accordance with an administrative agreement between DOH, the Navy, EPA, and the Defense Logistics Agency. The Navy has also endeavored to obtain all necessary authorizations from DOH for the operation of the underground storage tanks at Red Hill.

3. On November 20, 2021, the Navy recovered approximately 14,000 gallons of a fuel-and-water mixture that had been released from a fire suppression drain line located about a quarter of a mile downhill of the fuel tanks at Red Hill. The Navy quickly initiated an investigation into the release. Following reports of a chemical or petroleum odor in the water in the Navy’s water distribution system, the Navy immediately began testing the water and, along with the United States Army and others, providing potable and bottled water to residents. The Navy has also provided information and held town halls for the Joint Base Pearl Harbor-Hickam community and arranged for alternative housing, laundry service, and medical assistance.

4. On November 28, 2021, the same day the Navy began receiving reports of a chemical or petroleum odor in drinking water, the Navy shut down the Red Hill Shaft, one of three wells the Navy used to service the Navy's water distribution system. The Navy later verified that the Red Hill Shaft was contaminated by the November 20, 2021 release. In coordination with DOH and EPA, the Navy is in the process of completely flushing and testing the system.

5. On December 6, 2021, DOH issued an ex parte Emergency Order directing the Navy to suspend operations at Red Hill, to install a drinking water treatment system at Red Hill Shaft, and to take a variety of other actions, including the defueling of the underground storage tanks at Red Hill. *See* Exhibit B. On January 3, 2022, after an expedited hearing, DOH adopted the requirements of the Emergency Order in a Final Order.

6. These Orders were premised on HRS § 342L-9, which authorizes emergency powers and procedures only when “an imminent peril to human health and safety or the environment is or will be caused by: (1) A release; (2) Any action taken in response to a release from an underground storage tank or tank system; or (3) The installation or operation of an underground storage tank or tank system . . . that requires immediate action[.]” The Final Order adopted the reasoning of the administrative hearings officer that two such “imminent perils” required immediate

action: first, the November 20, 2021 release; and second, the very existence of Red Hill.

7. The Navy recognizes that the November 2021 release and subsequent contamination of the Red Hill Shaft was an emergency and is committed to remediating the situation. The Final Order, however, reaches beyond the November 2021 release and, in so doing, exceeds the emergency powers granted DOH under HRS § 342L-9. Rather than direct action that may be necessary to remediate the November 2021 release, the Final Order goes further, effectively seeking to shut down the Red Hill facility itself. HRS § 342L-9 was not written to address long-term issues, which are the subject of other Hawaii statutes. And the swift and truncated nature of the hearing DOH provided for review of the Emergency Order was inadequate to evaluate the entire Red Hill facility.

8. Whether the entire facility is built and operated in a manner that protects human health and the environment is the subject of ongoing permitting proceedings following DOH's proposal to issue a permit for the underground storage tanks in June 2021. And the actions necessary to manage long-term risk for the entire facility are also the subject of the pre-existing administrative agreement. Though the Navy shares DOH's commitment to improving Red Hill and securing the health and safety of Hawaiian citizens and the environment, the Final Order here was not a lawful means for achieving these ends.

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