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9 WAI OLA ALLIANCE

10 [PRO HAC VICE APPLICATION PENDING]

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF HAWAII**

13 WAI OLA ALLIANCE, a public  
interest association; MELODIE  
14 ADUJA, CLARENCE KU CHING,  
PETER DOKTOR, KIM COCO  
15 IWAMOTO, and MARY MAXINE  
KAHAULELIO, as individuals and as  
16 members of the WAI OLA  
ALLIANCE,

17 Plaintiffs,

18 vs.

19 THE UNITED STATES  
DEPARTMENT OF THE NAVY,

20 Defendant.

**COMPLAINT FOR DECLARATORY  
RELIEF, INJUNCTIVE RELIEF,  
AND CIVIL PENALTIES**

**Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387**

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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. This is a citizen enforcement action for injunctive relief, civil penalties,  
5 and attorney’s fees initiated by the Wai Ola Alliance and its individual members (the  
6 “Alliance” or “Plaintiffs”) for ongoing violations the Federal Water Pollution Control  
7 Act (“Clean Water Act” or “Act”), 33 U.S.C. §§ 1251–1389, resulting from the  
8 United States Department of the Navy’s (“Navy” or “Defendant”) operation of the  
9 Red Hill Bulk Fuel Storage Facility (the “Facility” or “Red Hill”). *See* 33 U.S.C. §  
10 1365(a)(1).

11 2. Defendant has violated, and will continue to violate, the Clean Water  
12 Act’s statutory prohibition on the unpermitted discharge of pollutants to waters of the  
13 United States, section 301(a). *See id.* § 1311(a).

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

21 **II. JURISDICTION**

22 4. This Court has subject matter jurisdiction over the Alliance and the Navy  
23 (collectively the “Parties”) and over the subject matter of this action pursuant to  
24 section 505(a)(1)(A) of the Act. *See* 33 U.S.C. § 1365(a)(1)(A); 28 U.S.C. § 1331 (an  
25 action arising under the laws of the United States).

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1           5.       This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331  
2 because this action arises under the Clean Water Act and the Declaratory Judgment  
3 Act, 28 U.S.C. §§ 2201–2240.

4           6.       Plaintiffs seek declaratory relief establishing that Defendant has violated  
5 the Clean Water Act. *See* 28 U.S.C. § 2201(a).

6           7.       Plaintiffs seek injunctive relief directing Defendant to:

- 7           a. Abate all discharges of pollutants from the Facility to waters of the United  
8 States without a permit; and  
9           b. Require the Navy to take appropriate actions to prevent unlawful  
10 discharges of pollutants to waters of the United States during defueling and  
11 closure;

12           8.       Plaintiffs request the Court order Defendant to pay statutory penalties of  
13 up to \$59,973.00 per day per violation. *See* 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R.  
14 §§ 19.1–19.4.

15           9.       Plaintiffs request the Court award reasonable litigation costs, including  
16 fees for attorneys, experts, and consultants, incurred in bringing this action. *See* 33  
17 U.S.C. § 1365(d).

18           10.      The relief requested is authorized pursuant to 28 U.S.C. §§ 2201–2202  
19 (power to issue declaratory relief in case of actual controversy and further necessary  
20 relief based on such a declaration) and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties  
21 and injunctive relief).

22           11.      As a jurisdictional pre-requisite to enforcing the Clean Water Act in  
23 Federal District Court, prospective citizen plaintiffs must prepare a Notice of  
24 Violation and Intent to File Suit letter (“Notice Letter”) containing, *inter alia*,  
25 sufficient information to allow the recipient to identify the standard, limitation, or  
26 order alleged to be violated, and the activity alleged to constitute a violation. 33  
27 U.S.C. § 1365(a); 40 C.F.R. § 135.3(a).

1           12.       The Notice Letter must be sent via certified mail at least sixty (60) days  
2 prior to filing a complaint (“Notice Period”) to the owner of the facility alleged to be  
3 in violation of the Act. 33 U.S.C. § 1365(b); 40 C.F.R. § 135.2(a)(1).

4           13.       A copy of the Notice Letter must be mailed to the Administrator of the  
5 U.S. Environmental Protection Agency (“U.S. EPA”), the Regional Administrator of  
6 the U.S. EPA for the region in which a violation is alleged to have occurred, and the  
7 chief administrative officer for the water pollution control agency for the State in  
8 which the violation is alleged to have occurred. 33 U.S.C. § 1365(b); 40 C.F.R.  
9 § 135.2(b)(1)(A).

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

17          15.       A true and correct copy of the February 7, 2022 Notice Letter is attached  
18 hereto as **Exhibit A** and is incorporated by reference.

19          16.       On February 7, 2022, the Alliance sent by certified mail a copy of the  
20 Notice Letter to the United States Attorney General (Certified Mailing No. 7021 1970  
21 0000 1422 8482), the Administrator of the U.S. EPA (Certified Mailing No. 7021  
22 1970 0000 1422 8475), the Regional Administrator of U.S. EPA Region IX (Certified  
23 Mailing No. 7021 1970 0000 1422 8413), the Governor of Hawai`i (Certified Mailing  
24 No. 7021 1970 0000 1422 8406), and Director of the Hawai`i State Department of  
25 Health (Certified Mailing No. 7021 1970 0000 1422 8390).

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1 17. As a courtesy, the Alliance also gave notice to Lieutenant General  
2 Darrell K. Williams, Director of Defense Logistics Agency (Certified Mailing No.  
3 7021 1970 0000 1422 8451), the agency that owns the fuel stored at Red Hill.

4 18. More than sixty (60) days have passed since the Notice Letter was issued  
5 to the Navy, and the above listed Federal and State agencies. *See* 33 U.S.C. §  
6 1365(b)(1).

7 19. Plaintiffs are informed and believe, and allege, that neither the U.S. EPA  
8 nor the State of Hawai`i has commenced or is diligently prosecuting a court action to  
9 redress violations alleged in the Notice Letter and this complaint. *See id.* § 1365(b)(2).

10 20. Plaintiffs' claim for civil penalties is not barred by any prior  
11 administrative penalty under section 309(g) of the Act. *See id.* § 1319(g).

12 21. Venue is proper in the District of Hawai`i pursuant to section 505(c)(1)  
13 of the Act because the source of the violations is located within this judicial district.  
14 *See id.* § 1365(c)(1).

15 **III. THE PARTIES**

16 **A. Wai Ola Alliance**

17 22. The Hawaiian words "wai ola," from which the Alliance's name is  
18 derived, translate into English as "the water of life."

19 23. The Alliance is a community-based organization composed of  
20 environmentally- and culturally-focused individuals and organizations dedicated to  
21 protecting the waters of Hawai`i from the effects of past and ongoing discharges of  
22 petroleum pollutants from Red Hill to Pu`uloa, Hālawa Stream, and other nearby  
23 surface waters.

24 24. The Alliance and its individual members are committed to preserving the  
25 human right to water, and to healthy aquatic ecosystems for present and future  
26 generations.

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