

## Hawaii Orders Navy To Shut Down Fuel Storage Facility

By **Juan Carlos Rodriguez**

*Law360 (January 4, 2022, 5:55 PM EST)* -- The Hawaii Department of Health on Monday ordered the U.S. Navy to shut down a fuel storage facility that allegedly leaked and contaminated nearby residents' drinking water.

There have been several reported fuel spills over the years at the Red Hill underground storage tanks at Joint Base Pearl Harbor-Hickam. But in 2021, residents reported smelling and tasting something resembling gasoline in the water coming out of their faucets. The Navy acknowledged a couple of spills, including one in November that released 14,000 gallons of fuel and water.

After the November spill, the DOH issued an emergency order to suspend operations at the tanks and ultimately empty them, and the Navy contested it. A hearing officer issued a decision in late December, which on Monday was finalized by DOH Deputy Director of Behavioral Health Marian Tsuji.

"In light of today's ruling, we call upon the Navy to act without further delay to address the imminent peril this facility poses to the people and environment of Hawaii," Deputy Director of Environmental Health Kathleen Ho said in a statement Monday.

Under the order, the Navy must quit using the tanks and continue to maintain environmental and monitoring controls, install a drinking water treatment system, submit a plan within 30 days about how to drain the fuel tanks and then act to complete the plan, and hire an independent third party to assess the "design and operational deficiencies" at the fuel tanks.

Navy spokesperson Commander Reann Mommsen said in a statement Tuesday that the branch is reviewing the decision.

The Department of Health said that following the November spill, the Navy voluntarily suspended operations at Red Hill as the administrative case was initiated.

The DOH said the 2021 spills from Red Hill "refute" the Navy's claims that the system is protective of groundwater. The department noted that it previously rejected the Navy's proposal to upgrade the tanks as "significantly flawed" and for failing "to adequately address key regulatory concerns."

According to the DOH, the Navy's groundwater flow models don't match "important field conditions," rendering them unfit for use in decision-making.

"Beginning no later than 2018, the regulatory agencies have repeatedly and consistently provided, and [Navy] has consistently rejected, significant technical corrective comment on the ... conceptual site model, the purpose of which is to describe the hydrogeologic site conditions, and respondent's preliminary groundwater flow models, the purpose of which is to determine groundwater movement as may be related to contaminant transport," the DOH said in its order.

It said the deficiencies in both models "have not been adequately addressed" by the Navy.

The department said that given the spills over the past year and the drinking water contamination situation, the Navy cannot ensure that "immediate and appropriate response actions" will be available in the case of another spill.

"The risk of any additional contaminants in the aquifer or lack of immediate action now may exacerbate the current situation and further jeopardize our aquifer system," the department said.

The U.S. Environmental Protection Agency Office of Inspector General in December announced it would investigate the drinking water contamination.

The DOH is represented by Holly M. Shikada, Diane K. Taira and Wade H. Hargrove of the state Department of the Attorney General.

The City and County of Honolulu Board of Water Supply is represented by Dana M. O. Viola and Jeff A. Lau of the Honolulu Department of Corporation Counsel and Ella Foley Gannon, David K. Brown and Wogai Mohmand of Morgan Lewis & Bockius LLP.

The Sierra Club is represented by David L. Henkin, Isaac H. Moriwake and Kylie W. Wager Cruz of Earthjustice.

The Navy is represented by Craig D. Jensen, Marnie E. Riddle, Jonathan C. McKay and Dave Fitzpatrick of the Office of General Counsel.

The matter is Department of Health, State of Hawaii v. U.S. Department of the Navy, docket number 21-UST-EA-02 at the Department of Health.

--Editing by Kelly Duncan.