



# SIERRA CLUB OF HAWAII

## MĀLAMA I KA HONUA. *Cherish the Earth.*

JOINT SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
AND PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Friday, March 24, 2017 1:15 PM Room 224

In SUPPORT SCR172/SR86 Underground Storage Tanks

**LATE**

Aloha Chairman Gabbard, Chairman Nishihara, and members of the joint AEN/PSM Committees,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i strongly **SUPPORTS SCR172**, which urges the Department of Health to update Hawai'i's underground storage tanks regulations to address field-constructed tanks. Our primary concern is the safety of groundwater supplies beneath the Red Hill Bulk Fuel Storage tanks.

### **Department of Health is Hawai'i's Advocate in the AOC**

We applaud and appreciate the Department of Health's vigilance in the days immediately following the latest leak through the negotiation of the Administrative Order on Consent (AOC) to the current analysis and compliance phase of the process. Especially in light of the uncertainty surrounding the Environmental Protection Agency, DOH's oversight has been crucial to ensuring consistent enforcement and compliance with the terms of the AOC. DOH fulfills this important role despite severe and longlasting budget cuts throughout the department. DOH is Hawai'i's advocate in the AOC arrangement; we need them to ensure that the public's health and safety are well-protected.

The State has a public trust obligation to protect and preserve the water resources of Hawai'i, as detailed in Article XI, § 7 of the State's Constitution. Updating the underground storage tank regulations helps the Department of Health deliver on its constitutional responsibility to protect our groundwater supplies from contamination.

Federal law specifically preserves state authority to impose stricter regulations on USTs. In adopting its hazardous waste statute, Congress specifically empowered states to design more stringent requirements (42 U.S.C. §6929) that are applied to all facilities including those operated by the U.S. military (42 U.S.C. §6991F). At least nine other states have stricter requirements for underground storage tank facilities.<sup>1</sup>

### **Early completion is not inconsistent with the AOC**

We recognize that the AOC is the current legal tool employed to address broad public concern about the aging tanks above O'ahu's largest aquifer. Support for this resolution, updated regulations, and added transparency in the decision-making process are not intended to undermine the AOC in anyway. Rather, these efforts are proffered supplement the AOC and reinforce DOH's recognized authority to act. These measures are additive, not mutually exclusive to the AOC.

There is nothing in the AOC that prohibits the Navy from upgrading the tanks on a faster timeline. The Navy is operating under self-imposed limitations on the number of tanks that can be modernized at one time, and

<sup>1</sup> <https://www.epa.gov/sites/production/files/2016-11/documents/ca-16-34.pdf>

self-imposed parameters on the pace of tank inspections, alternatives analysis, and monitoring well installations. If they wanted it done faster, it would be possible.

The unwavering public concern for the safety of our water should motivate the Navy to proceed as quickly as humanly possible and consider the broadest scope of alternatives for meeting their needs while also ensuring public health and safety. No alternative to the current situation should be considered off the table when it comes to protecting O‘ahu’s water supply.

### **Protecting public health and our environment is paramount**

More fundamentally, we find that the AOC does not address a basic concern for the fate of our water. These massive fuel tanks should have never been built in Red Hill, above our drinking water supply. These tanks do not appear to have been designed with a “forever operation” in mind. The Navy cannot guarantee these tanks will never leak again. And when fuel does leak from these tanks, it cannot be cleaned up. The fact that the Navy has these tanks now is not reason enough to continue their existence indefinitely. Indeed, if fuels tanks like these were proposed for construction today, there is zero chance they would be authorized for construction as they built are now.

There is no mission superior to ensuring the Southern O‘ahu aquifer is safe for drinking, farming, and gathering for generations to come.

### **Background Information**

Under current law, field-constructed USTs are exempt from many of the requirements designed to protect public health and the environment. There are over 38 military facilities throughout the Hawaiian Islands that include field-constructed underground fuel storage tanks; many of them built around World War II.<sup>2</sup>

The Red Hill Bulk Fuel Storage Facility is the largest field-constructed underground storage tank system in Hawai‘i, storing up to 250 million gallons of jet fuel.<sup>3</sup> Built in the 1940’s, this antique facility has suffered numerous leaks.<sup>4</sup> Most recently in January 2014, tank 5 leaked 27,000 gallons of jet fuel into the surrounding environment only 20 days after the tank passed inspection.<sup>5</sup>

The Red Hill facility is located a mere 100 feet above from O‘ahu’s primary groundwater aquifer. This aquifer provides 600,000 residents from Hālawā to Hawai‘i Kai with drinking water.<sup>6</sup> Since 2005, U.S. Navy tests indicate petroleum contaminants in the groundwater underneath and near the Red Hill tanks.<sup>7</sup> Independent toxicology tests completed for the Board of Water Supply show continued petroleum contamination in the groundwater as of July 2016.<sup>8</sup>

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<sup>2</sup> Red Hill Task Force report to the 2015 Legislature, Appendix E, [http://rbhawaii.info/reports/legprts/doh/2015/scr73\\_hd1\\_14.pdf](http://rbhawaii.info/reports/legprts/doh/2015/scr73_hd1_14.pdf)

<sup>3</sup> Red Hill Task Force Report to the 2015 Legislature, page 1 [http://rbhawaii.info/reports/legprts/doh/2015/scr73\\_hd1\\_14.pdf](http://rbhawaii.info/reports/legprts/doh/2015/scr73_hd1_14.pdf)

<sup>4</sup> Navy monitoring reports, compiled by Honolulu Board of Water Supply, <http://www.boardofwatersupply.com/bws/media/files/red-hill-briefing-public-meeting-moanalua-middle-school-2016-08-15.pdf>

<sup>5</sup> Red Hill Task Force Report to the 2015 Legislature, page 3 [http://rbhawaii.info/reports/legprts/doh/2015/scr73\\_hd1\\_14.pdf](http://rbhawaii.info/reports/legprts/doh/2015/scr73_hd1_14.pdf)

<sup>6</sup> Red Hill Task Force Report to the 2015 Legislature, page [http://rbhawaii.info/reports/legprts/doh/2015/scr73\\_hd1\\_14.pdf](http://rbhawaii.info/reports/legprts/doh/2015/scr73_hd1_14.pdf)

<sup>7</sup> Navy monitoring reports, compiled by Honolulu Board of Water Supply, page 10 <http://www.boardofwatersupply.com/bws/media/files/red-hill-briefing-public-meeting-moanalua-middle-school-2016-08-15.pdf>

<sup>8</sup> Honolulu Board of Water Supply, Red Hill Toxicology Report, December 2016 <http://www.boardofwatersupply.com/bws/media/files/red-hill-toxicology-study-results-summary-and-faq-2016-12-01.pdf>

In 2015, the Navy negotiated an administrative process (known as the Administration Order on Consent (AOC)) with the Defense Logistics Agency, U.S. EPA and the Department of Health to “address past fuel releases and minimize the likelihood of future releases”.<sup>9</sup> The AOC outlines a 20-year evaluation process, but provides no real actions for remediation or leak prevention.<sup>10</sup> Three years since the last spill, the Navy can demonstrate little progress towards cleaning up existing contamination or guaranteeing against future leaks.

Thank you very much for this opportunity to provide testimony on this important issue.

Mahalo,

A handwritten signature in black ink, appearing to read 'M. J. Townsend', is positioned above the printed name.

Marti Townsend  
Director

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<sup>9</sup> <http://health.hawaii.gov/shwb/files/2015/09/Final-Red-Hill-FAQ-29SEP15.pdf>

<sup>10</sup> <https://www.regulations.gov/document?D=EPA-R09-UST-2015-0441-0569>

**LATE**

Aloha Chairs Gabbard and Nishihara and members of both committees,

My name is Quincy Bedoya and I am a second year law student at the University of Hawaii at Manoa William S. Richardson School of Law. I am in full support of SCR 172 / SR 86 relating to underground storage tanks (USTs).

SCR 172 / SR 86 would urge the Department of Health (DOH) to adopt rules mandating that the field constructed USTs at Red Hill to comply with the same State and Federal regulations that other USTs have to comply with. Given the history of leaks from the USTs at Red Hill and the potential risk that they pose to the drinking water resource just directly below,<sup>1</sup> this bill is highly appropriate. It is imperative that DOH act quickly to fulfill its constitutionally mandated duty to protect our public trust resources,<sup>2</sup> and this resolution provides a method that would help DOH do just that.

Very similar legislation has been introduced in the past, however they have seen little success. The testimony opposing them have generally been premised around the arguments that: (1) the Red Hill Bulk Fuel Storage Facility is vital to military operations in Hawaii;<sup>3</sup> and (2) DOH, the U.S. Navy, Defense Logistics Agency (DLA), and the EPA have already created an effective plan to protect the environment, and more specifically the drinking water beneath the Red Hill Facility.<sup>4</sup> It has been 2 years, the Administrative Order on Consent (AOC) has been completed, and we are no better off than we were last time around. Despite 27,000 gallons of jet fuel leaking out of one of the USTs at Red Hill 3 years ago,<sup>5</sup> there has been no requirement for the Navy to clean up the spill. Further, it has been suggested that DOH has not carried out its constitutional duty to effectively protect the public's drinking water.<sup>6</sup>

As the agency regulating USTs in the State, DOH is not relieved of its constitutional duty to protect the groundwater directly beneath the Red Hill facility because they are waiting on a 22-year study determining "cost-effective" tank upgrade solutions and to what extent, if any, the

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<sup>1</sup> Red Hill Fuel Storage Facility Task Force, *Report to the Twenty-Eighth Legislature of the State of Hawaii 2015*, p. 14 (Dec. 2014) at: <http://health.hawaii.gov/shwb/files/2015/01/Senate-Concurrent-Resolution-73.pdf>.

<sup>2</sup> Haw. Const. Art. XI § 1.

<sup>3</sup> Captain Dean Tufts, U.S. Navy, *Testimony on S.B. 1168 before the Senate Committees on Energy and Environment and Health*, 28th Leg., 2015 Reg. Sess., (Haw. 2015).

<sup>4</sup> Department of Health, State of Hawaii, *Testimony on S.B. 1259 before the Senate Committees on Agriculture and Environment and Public Safety, Intergovernmental, and Military Affairs*, 29th Leg., 2017 Reg. Sess., (Haw. 2017).

<sup>5</sup> *Administrative Order on Consent*, p. 5-6 (Sept. 2015) at: <http://www.boardofwatersupply.com/bws/media/files/red-hill-aoc-final-2015-09-29.pdf>.

<sup>6</sup> Honolulu Board of Water Supply, *Letter Regarding Results of Toxicology Study and Request for Immediate Action in Response to Releases to Groundwater at the Red Hill Bulk Fuel Storage Facility*, p. 4 (Dec. 13, 2016) at: <http://www.boardofwatersupply.com/bws/media/files/red-hill-letter-to-doh-results-of-toxicology-study-request-immediate-action-2016-12-13.pdf>.

environment needs to be remediated.<sup>7</sup> The fact that requiring the upgrades outlined in this resolution would be costly to the U.S. Navy does not outweigh the need to protect and conserve the Hawaii's groundwater for the "benefit of present and future generations."<sup>8</sup> This combined with the U.S. House of Representatives Committee on Armed Services mandate that the Navy, DLA, and the EPA to compare potential tank upgrade alternatives with "the cost of the replacement or relocation of the existing storage tanks"<sup>9</sup> suggests that it is appropriate to stop the continued use of the USTs at the Red Hill facility if the Navy and DLA feel that meeting the requirements outlined in this resolution would be too costly.

Thank you for taking the time to consider my testimony and please support SCR 172 / SR 86.

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<sup>7</sup> *In re Water Use Permit Applications (Waiahole I)*, 94 Hawaii 97, 154-55 (Haw. 2000) (adopting the "precautionary principle").

<sup>8</sup> *Id.* at 133.

<sup>9</sup> <https://www.congress.gov/congressional-report/114th-congress/house-report/537/1>.



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 23, 2017 9:49 PM  
**To:** AEN Testimony  
**Cc:** ericgarrison@gmx.com  
**Subject:** Submitted testimony for SCR172 on Mar 24, 2017 13:15PM

**SCR172**

Submitted on: 3/23/2017

Testimony for AEN/PSM on Mar 24, 2017 13:15PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eric Garrison	Individual	Oppose	No

Comments: Please let the EPA experts decide instead of deciding for them.

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**LATE**

**SCR172**

Submitted on: 3/23/2017

Testimony for AEN/PSM on Mar 24, 2017 13:15PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul Bleeker	Individual	Oppose	No

Comments: I think the pesticides in the water in central oahu got treated. If there is a problem, just treat the water. No need to mess with the rocks.

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**SCR172**

Submitted on: 3/23/2017  
Testimony for AEN/PSM on Mar 24, 2017 13:15PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Steve Robinson	Individual	Oppose	No

Comments: Isn't this just going to anger Trump?

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