

SR 86



DEPARTMENT OF THE NAVY

COMMANDER
NAVY REGION HAWAII
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SENATE COMMITTEE ON AGRICULTURE AND THE ENVIRONMENT SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Testimony on Senate Concurrent Resolution 172 and Senate Resolution 86, Related to
Underground Storage Tanks

Hearing Date and Time: Friday, March 24, 2017 1:15 p.m.

Testimony on behalf of Navy Region Hawaii

Good afternoon, Chair Gabbard, Chair Nishihara, Vice Chairs, and Senators,

Thank you for the opportunity to testify. I am testifying on behalf of the U.S. Navy and Department of Defense on Hawaii Senate Concurrent Resolution 172 and Senate Resolution 86. These resolutions primarily target the Department of Defense (DoD) Red Hill Bulk Fuel Storage Facility. The Environmental Protection Agency (EPA) and State of Hawaii Department of Health (DOH) regulate the Red Hill facility under a written agreement signed in September 2015 known as the Administrative Order on Consent (AOC). My testimony consists of four points: drinking water safety, fuel tank integrity, the AOC process and Red Hill's importance.

Drinking water from Red Hill is safe. Past and current validated testing confirms, and all parties agree, that drinking water from the Red Hill shaft is safe. A third party lab validates current testing. The Navy works with regulators at EPA and DOH, and with other stakeholders to ensure it remains safe. Regulators review monitoring data and test results to ensure our drinking water remains safe. Testing records confirm that the drinking water meets or exceeds all requirements. Since the fuel release in 2014, the Navy has increased the frequency that it tests drinking and groundwater and added additional monitoring wells, installing the newest operating wells in October 2016.

The Navy installed the first groundwater monitoring well in 2002. In 2008, the Navy developed and implemented a DOH approved Groundwater Protection Plan that incorporated the existing groundwater monitoring wells. Today, there are 12 groundwater monitoring sites around the Red Hill facility to detect any possible migration toward the drinking water source by collecting samples using procedures developed with DOH. We are installing two additional monitoring wells. Drilling one well is underway, and we await permit approval for our 14th monitoring well site. The Navy, with the approval of regulators, is assessing locations for additional wells outside of Navy property to further improve groundwater flow models. The Navy provides the complete suite of studies, analytical data, and technical reports to the regulatory agencies and makes the data part of the administrative record for public review. The Navy

updated the plan in 2009, 2010, and again in 2014, each time with DOH approval. The Navy is consulting with DOH and EPA to continually evolve and update the Groundwater Protection Plan.

We entirely agree that protecting the drinking water in Hawaii is an unquestioned, non-negotiable imperative. We are meeting this requirement through the AOC with our regulators, DOH and EPA. The AOC includes a formal process that solicits input from outside subject matter experts.

Red Hill tanks are not leaking. The Navy began a more stringent leak detection test at Red Hill in 2008 for two tanks, and then tested the remaining operational tanks in 2009. This new test, a tank tightness test, is a procedure that determines if an underground storage tank leaks. Operators precisely fill the tank and measure pressure over time to ensure the tank is not leaking. Planned to be a biennial test, the Navy increased tank tightness testing frequency to annually in 2015. The AOC and its Statement of Work (SOW) incorporated this test. The Navy completed the Red Hill annual tank tightness test on February 2nd. All operating tanks continue to pass leak detection criteria of Title 40 of the U.S. Code of Federal Regulations. **Red Hill fuel tanks are not leaking.**

In 2014, contractors completed a multi-year service inspection and planned maintenance on fuel tank 5, which was not in service. There were three major failures that resulted in the fuel release, poor workmanship and lack of quality control by the contractor, poor quality assurance oversight by the Navy, and the operators' lack of procedural compliance. The Navy took appropriate and corrective actions to fix the contractor's issues, lack of quality control and procedural failures. **No other tanks were involved in the 2014 fuel release.** The Navy reiterates for the record, that the official estimation for the 2014 fuel release from Red Hill Tank 5, based on best accounting practices, is approximately 27,000 gallons, not 40,000 gallons as the resolutions indicate.

In a letter to stakeholders, Rear Adm. John Fuller, Commander, Navy Region Hawaii, said:

"To address fuel tank integrity, the Navy employs a continuing process that monitors the tanks with testing and inspections and sustains them with planned preventative as well as corrective maintenance, as needed. We take to heart and apply the lessons learned and process improvements we developed after the fuel release from Tank 5 in 2014. While we have a world class system today, the Navy will continue to improve monitoring systems under AOC section 4."

Since 2006, Federal Government spent over \$200 million on improvements: installed groundwater and soil vapor monitoring systems, structurally reinforced and renovated the tunnels and passageways, improved ventilation, tank interiors, oil tight door systems, fire protection systems, pipelines, and Red Hill drinking water shaft security. This is in addition to our normally occurring preventive maintenance, tank testing and inspections.

The AOC process is working and on-track. To date the Navy and DoD invested over \$16 million and tens of thousands of hours specifically towards the AOC. The AOC focus is maintaining our safe drinking water. The Navy is committed to the AOC along with the regulators, EPA and DOH. The AOC sets hard deadlines for deliverables and is enforceable by the EPA and DOH. The AOC solicits and addresses external subject matter opinions. To date, the EPA, DOH, DLA, Navy, and other stakeholders address tank inspection, repair and maintenance; tank upgrade alternatives; release detection/tank tightness testing; corrosion testing; investigation and remediation; groundwater protection; as well as a risk and vulnerability assessment. The AOC creates legally enforceable decisions which are implemented using the federal procurement processes and, where necessary, the military construction process. Progress to date includes:

- Completed Section 6 and 7 (ground water assessment and modeling) analysis and EPA and DOH approved it.
- Completed the Current Fuel Release Monitoring Systems Report (Section 4.3) and EPA approved it.
- Completed the Corrosion and Metal Fatigue Practices Report (Section 5.2) and the EPA and DOH approved it.
- Completed the Section 6 and 7 (Monitoring Well Installation Plan).
- Completed the Sampling and Analysis Plan.
- Completed the Existing Data Evaluation Summary Report.
- Completed the Section 2 tank inspection, maintenance, and repair report. The Section 2 decision document and implementation plan is due April 24th.
- Submitted the Section 3 tank upgrade alternatives scope of work.
- Developing Section 3 tank upgrade alternatives report, due December 8th.
- Scoping the New Release Detection Alternatives Report (Section 4.6).
- Scoping the Destructive Testing effort.

SCR 172 and SR 86 propose a specific material solution as the tank upgrade alternative, explicitly double-walling, without the technical underpinning or engineering research to support that choice. These proposals effectively "put the cart before the horse" on how to install new technology in an operational facility; they are proposals that have neither been tested nor proven at this scale. Addressing tank upgrade alternatives at Red Hill is a unique and very complex issue, which is why the Navy supports the science-based process mandated by the AOC. The Navy, with input from subject matter experts, will complete a rigorous yearlong evaluation of the leading six tank upgrade alternatives, three of which are double-wall options, in December 2017. With the analysis in hand, the Navy, with the regulators, will decide on the best available practical solution to continue upgrading the Red Hill tanks.

The National Defense Authorization Act (NDAA) of 2016 requires the Navy and DLA to brief the House Armed Services Committee on its Tank Upgrade Alternative recommendation upon final review. We respectfully remind all stakeholders that there are no "off the shelf" solutions to many of these requirements. Assessing the best available practicable technology requires consideration of alternatives – including some untested

alternatives – as well as considering public input. We remain committed to the AOC process, which focuses on achieving the best solutions for Red Hill.

The AOC is working; it is enforceable and will oversee the development and implementation of upgrades to the Red Hill fuel facility.

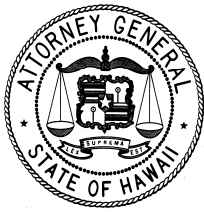
The Red Hill facility is of vital strategic importance to our nation and US Pacific Command. Red Hill's importance hasn't changed in the past two years; if anything its importance has increased. Two years ago Brigadier General O'Neil, Director of Logistics, addressing PACOM's command of Air Force, Marines, Army, and Navy forces, testified (paraphrasing for clarity only):

The Red Hill facility holds a significant percentage of petroleum war reserves required to defend national security interest in the Pacific region. It supports all US military forces stationed in and transiting through Hawaii via its hardened, underground, cyber-protected, gravity feed system to Joint Base Pearl Harbor-Hickam. It supports the Hawaii Army and Air National Guard and is capable of defense support to civil authorities should circumstances dictate. There is no comparable US owned facility anywhere from India to mainland USA. USPACOM remains committed to operating environmentally sound facilities, demonstrated through a trained workforce and continued financial investment that has improved safety, accountability, detection and monitoring at Red Hill.

Red Hill has been vital to our nation since construction; it is vital today; and will remain vital for the foreseeable future. The DoD asks the Legislature to defer these resolutions to allow DOH to continue its work with EPA and the Navy. We remain committed to protecting drinking water in Hawaii as an unquestioned, non-negotiable requirement. The AOC, which describes tasks that the Navy will complete within certain time constraints, is dedicated to meeting that requirement. This legally enforceable process provides the roadmap for the Red Hill facility with enhanced oversight and approval roles for DOH and EPA with expert resources beyond what these resolutions propose.

In summary, your military in Hawaii and throughout the Pacific needs continuous and uninterrupted access to large volume, secure and sustainable fuel storage facilities. The Red Hill facility provides fuel to support countless contingency operations in the Pacific, and is essential to safeguard our national interests and support humanitarian missions overseas. The forward presence provided by your military builds international cooperation, maintains regional stability, and ensures maritime security, including the free flow of commerce to Hawaii, the mainland, and throughout the Indo-Asia-Pacific region. Red Hill will continue to operate safely with the process already established in the AOC. We respectfully request your support to defer action on these resolutions to ensure that the State Department of Health, the EPA, DLA, the Navy, and other stakeholders have sufficient time to complete our collaborative Administrative Order on Consent.

Thank you for the opportunity to testify today.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.C.R. NO. 172 and S.R. NO. 86, URGING THE DEPARTMENT OF HEALTH TO ADOPT RULES FOR UNDERGROUND STORAGE TANKS AND TANK SYSTEMS THAT CONFORM WITH RECENT REVISIONS TO FEDERAL REGULATIONS AND INCLUDE ADDITIONAL REQUIREMENTS FOR CERTAIN FIELD-CONSTRUCTED UNDERGROUND STORAGE TANKS.

BEFORE THE:

SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT AND ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

DATE: Friday, March 24, 2017

TIME: 1:15 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Wade H. Hargrove III, Deputy Attorney General

Chairs Gabbard and Nishihara and Members of the Committees:

The Department of the Attorney General writes in respectful opposition to both S.C.R. No. 172 and S.R. No. 86 (the Resolutions).

The Resolutions request that the Department of Health (DOH) adopt and incorporate into state rules recent updates to the federal underground storage tank (UST) rules promulgated by the United States Environmental Protection Agency (EPA). The notable exception is that DOH is also asked to make the new tank upgrade requirements generally apply to tanks over 50,000 gallons and specifically require "secondary containment" and the use of release detection that can detect a 0.5 gallon per hour leak rate for such tanks, requirements not in the new federal rules. DOH, as the executive agency charged with executing the state's environmental laws has, however, already entered into an administrative order on consent (AOC) in DOH docket no. 15-UST-EA-01 with the EPA, the United States Department of the Navy (Navy), and the Defense Logistics Agency (DLA) to address the environmental concerns at Red Hill and is thereby obligated to execute this agreement. The Resolutions unnecessarily conflict with the DOH's enforcement discretion to enter into the AOC in lieu of rulemaking or some other enforcement option. This could jeopardize DOH's

cooperative enforcement strategy, and place the State of Hawaii at risk of protracted litigation with the federal government.

We understand that DOH fully intends to update its own rules to incorporate the federal updates. In fact the AOC itself acknowledges that the new federal regulations will apply to Red Hill when adopted by DOH (section 1.8 of Appendix A, Statement of Work). We also understand DOH does not intend to make the upgrade requirements of the new federal rules apply to tanks with the scale and capacity of the tanks at Red Hill because those rules were never designed to be applied in that way. Rather, DOH is committed to following through with its obligations under the AOC for the purpose of achieving the most environmentally protective outcome at Red Hill. The AOC, as both an order of the DOH and a contractual agreement, is directed at the same regulatory compliance issues the Resolutions' proposed rule amendments attempt to address. Therefore, those rule amendments would contradict the AOC in significant ways. Specifically, the requested rule change would mandate that a system of secondary containment and a specific method of leak detection designed, and typically used for 10,000-30,000 gallon USTs, be applied to the 12.5-12.7 million gallon tanks at Red Hill. Imposing certain aspects of the new federal rules on the field-constructed Red Hill tanks, as the Resolutions would have DOH do, needlessly invites the possibility that the Navy and DLA will be required to perform tasks that are irreconcilable with the peculiar circumstances at Red Hill. Technical requirements incompatible with the situation to which they will be applied are likely to be far more difficult for DOH to enforce than those designed specifically for Red Hill. For example, in the context of retail gas stations, the term "interior lining" has some regulatory meaning. For conditions at Red Hill, however, there is no available, proven "interior lining" for a manufacturer to install or warranty. The AOC is the result of DOH's conclusion that there is no "off-the-shelf" application that can readily be installed at Red Hill. Accordingly, the AOC requires DOH to partner with EPA and industry experts, and the Navy and DLA experts, to develop new technologies and methods better suited to the unique engineering complexity present at Red Hill. The Resolutions contradict the regulatory conclusions reached by DOH and thus upend DOH's careful examination of the full record in the Red Hill matter.

As the regulatory agency charged with protecting Hawaii's environment and whose responsibility it is to correct any noncompliance issues affecting the operation of USTs, DOH has both the statutory authority and regulatory obligation to select an enforcement mechanism and see it through, so long as there is no change in circumstances. After the release from the Navy's Red Hill tank #5 on January 13, 2014, DOH, with the assistance of the Department of the Attorney General, evaluated the various environmental enforcement mechanisms at its disposal and elected to enter into the AOC with the necessary parties with the intention of engaging experts in the scientific and engineering fields of tank design to address the many unique geologic and operational aspects of the Red Hill facility. This collaborative enforcement strategy came about after careful investigation and deliberation. Asking DOH to simply adopt rules inconsistent with the AOC is to ask DOH to effectively withdraw from the AOC, contrary to its commitment to act in good faith with respect to that agreement. Such withdrawal may be detrimental to the cooperative effort to develop new tank technologies with its EPA partner and could potentially place DOH on a collision course with the Navy, DLA and even the EPA. It is unlikely under these circumstances that the work that has been undertaken by the Navy, DLA, and EPA pursuant to the AOC thus far, most of which has been done at great expense, will continue without disruption.

Any impediment to the full implementation of the AOC may increase the risk of litigation. Litigation with the Navy and DLA would, at a minimum, severely disrupt the progress currently being made pursuant to the AOC. The first casualty of a disruption in this work would be the Tank Upgrade Alternatives (TUA) decision document (section 3 of Appendix A, Statement of Work). This decision document is scheduled to be completed at the end of this year and will evaluate a variety of tank upgrades, including concepts for improved operational design and overall function, for the purpose of arriving at the best available practicable technology (BAPT). Section 3.6 of Appendix A, Statement of Work, empowers the Navy to develop pilot programs to test proposed new BAPT prior to fully installing it as a TUA upgrade required by the AOC. Section 3.7 requires that the TUA decision be re-evaluated every five years. This means that the technology selected for installation at Red Hill, under the AOC, is not static but instead

must be improved upon as new, better technology is developed. Any new technology discovered has to then be implemented at Red Hill going forward. Finally, pursuant to section 3.5, any tanks to which BAPT has not been properly applied by the year 2027 must be taken out of service. The AOC timeframes have been carefully calculated to expedite the installation of new technology within the constraints of Congressional funding mechanisms and the regulations governing federal procurement. The AOC recognizes these federal constraints and incorporates them into the process not to delay progress, but rather to make possible the stipulated deadlines and penalties for noncompliance. In our estimation and that of DOH, this is a far more advantageous approach than engaging in litigation to force the federal government to change its internal practices and procedures. Additionally, the development of new technology via the AOC is similarly preferable to the prospect of litigating rules requiring untested and unproven technologies or, worse, technologies that are wholly impracticable at Red Hill. Thus, while the procedures of the AOC call for extensive collaboration and will take time to produce results, these procedures demand immediate accountability on the part of the Navy and DLA.

The Department of the Attorney General respectfully requests that the Legislature amend the Resolutions to instead encourage DOH to execute the AOC and allow DOH an opportunity to fully implement the current environmental enforcement strategy.

Otherwise, we respectfully request that Resolutions be held.

BOARD OF WATER SUPPLY

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March 24, 2017

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Deputy Manager and Chief Engineer *elle*

The Honorable Mike Gabbard, Chair
and Members
Committee on Agriculture and Environment
State Senate
Hawaii State Capitol, Room 201
Honolulu, Hawaii 96813

and

The Honorable Clarence Nishihara, Chair
and Members
Committee on Public Safety, Intergovernmental, and Military Affairs
State Senate
Hawaii State Capitol, Room 214
Honolulu, Hawaii 96813

Dear Chair Gabbard, Chair Nishihara, and Members:

Subject: **Senate Concurrent Resolution 172 and Senate Resolution 86: URGING THE DEPARTMENT OF HEALTH TO ADOPT RULES FOR UNDERGROUND STORAGE TANKS AND TANK SYSTEMS THAT CONFORM WITH RECENT REVISIONS TO FEDERAL REGULATIONS AND INCLUDE ADDITIONAL REQUIREMENTS FOR CERTAIN FIELD-CONSTRUCTED UNDERGROUND STORAGE TANKS**

We strongly support Senate Concurrent Resolution 172 and Senate Resolution 86. These resolutions will insure our environment and underground sources of drinking water are protected from the impacts of leaking underground petroleum fuel tank systems through the application of standardized rules, best practices and timeframes that uniformly apply to all systems regardless of size and construction type.

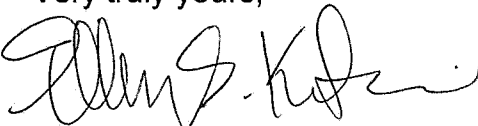
Existing state and federal regulations exempt large field-constructed underground storage tanks (USTs) from the requirements that must be met by owners of smaller underground tank systems. These resolutions address this imbalance from the greater risks posed by larger field constructed systems such as the Red Hill fuel tanks. The groundwater underneath the Red Hill tanks is already contaminated with petroleum contaminants that current state and federal regulations are not requiring clean up at this

The Honorable Mike Gabbard, Chair and Members
The Honorable Clarence Nishihara, Chair and Members
March 24, 2017
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time nor the installation of protective secondary containment, in part as they state, due to its size and the challenges such size creates. Size should not be a reason to exempt large tanks from regulatory requirements aimed at preserving our most precious drinking water resource – the groundwater aquifer. The State Department of Health and Navy cite the Red Hill Administrative Order on Consent (AOC) as the fix that in reality allows them 22- 27 years to implement. There is no substitute for pure water and the longer it takes to accomplish major upgrades to this 74 year-old fuel facility to eliminate the risk of future fuel leaks poses an unacceptable and growing risk to our precious groundwater resources in the area. Both resolutions close critical gaps in state regulations and protects and preserves our drinking water aquifer.

Thank you for your consideration of our testimony on Senate Concurrent Resolution 172 and Senate Resolution 86.

Very truly yours,



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

Testimony Submitted to the Senate Committee on Agriculture and Environment and
Committee on Public Safety, Intergovernmental, and Military Affairs

By Benton Kealii Pang, chair of Kōmike Kaiaola (Ecosystems committee) for Ke One o Kakūhihewa (O'ahu
Council for the Association of Hawaiian Civic Clubs)

March 24, 2017, 1:15PM

Room 224

In Support of SCR 172 and SR 86 URGING THE DEPARTMENT OF HEALTH TO ADOPT RULES FOR
UNDERGROUND STORAGE TANKS AND TANK SYSTEMS THAT CONFORM WITH RECENT
REVISIONS TO FEDERAL REGULATIONS AND INCLUDE ADDITIONAL REQUIREMENTS FOR
CERTAIN FIELD-CONSTRUCTED UNDERGROUND STORAGE TANKS..

Aloha Chairs Gabbard and Nishihara, Vice Chairs Riviere and Wakai, and Members of the Committee.

Thank you for hearing these resolutions. My name is Benton Kealii Pang, chair of Kōmike Kaiaola
(Ecosystems Committee) for Ke One o Kakūhihewa (O'ahu Council for the Association of Hawaiian Civic
Clubs). I write in SUPPORT of SCR172 & SR 86 to adopt rules for underground storage tanks that conform
with federal regulations for the following reasons:

- Native Hawaiians consider freshwater or wai, sacred to the Gods Kane and Lono.
- Groundwater is important to everyone living in Hawai'i and must be protected to accommodate
the needs of multiple users.
- Many storage tanks, like those at the Red Hill Bulk Fuel Storage Facility, pose a health and safety
danger to the public and environment due to exemptions provided to these types of
underground storage tank facilities.

Please help protect our water and environment by adopting SCR172 & SR 86. Mahalo for your time and
consideration.

Aloha Aina,

Benton Kealii Pang, Ph.d.

Chair, Kōmike Kaiaola (Ecosystems Committee)

Ke One o Kakūhihewa (O'ahu Council of the Association of Hawaiian Civic Clubs)



Ke One O Kākuhihewa

O'ahu Council of the Association of Hawaiian Civic Clubs
P.O. Box 37874
HONOLULU, HAWAII 96837-1122

Testimony Submitted to the Senate Committee on Agriculture and Environment and
Committee on Public Safety, Intergovernmental, and Military Affairs

By Roth K. Puahala, Ke One O Kākuhihewa

O'ahu Council of the Association of Hawaiian Civic Club

March 24, 2017, 1:15PM

Room 224

In Support of SCR 172 and SR 86 URGING THE DEPARTMENT OF HEALTH TO ADOPT RULES FOR UNDERGROUND STORAGE TANKS AND TANK SYSTEMS THAT CONFORM WITH RECENT REVISIONS TO FEDERAL REGULATIONS AND INCLUDE ADDITIONAL REQUIREMENTS FOR CERTAIN FIELD-CONSTRUCTED UNDERGROUND STORAGE TANKS..

Aloha Chairs Gabbard and Nishihara, Vice Chairs Riviere and Wakai, and Members of the Committee.

Thank you for hearing these resolutions. I write in SUPPORT of SCR172 & SR 86 to adopt rules for underground storage tanks that conform with federal regulations for the following reasons:

- Native Hawaiians consider freshwater or wai, sacred to the Gods Kane and Lono.
- Groundwater is important to everyone living in Hawai'i and must be protected to accommodate the needs of multiple users.
- Many storage tanks, like those at the Red Hill Bulk Fuel Storage Facility, pose a health and safety danger to the public and environment due to exemptions provided to these types of underground storage tank facilities.

Please help protect our water and environment by adopting SCR172 & SR 86. Mahalo for your time and consideration.

Aloha Aina,

Roth K. Puahala

Roth K. Puahala, Pelekikena
Ke One O Kākuhihewa
O'ahu Council of the Association of Hawaiian Civic Club

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 19, 2017 4:59 PM
To: AEN Testimony
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Subject: *Submitted testimony for SR86 on Mar 24, 2017 13:15PM*

SR86

Submitted on: 3/19/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Don Aweau	Individual	Support	No

Comments:

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