



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
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HONOLULU, HI 96801-3378

In reply, please refer  
to:

February 25, 2022

Rear Admiral Timothy Kott  
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[via email only: [timothy.j.kott@navy.mil](mailto:timothy.j.kott@navy.mil)]

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Dear RADM Kott and Mr. Summers:

**SUBJECT:** Assessment of Independent Third Party  
Hawaii Department of Health Emergency Order  
Red Hill Bulk Fuel Storage Facility  
Docket No. 21-UST-EA-02

In accordance, with the Emergency Order issued on December 6, 2021, which was upheld by the Department of Health (DOH) on January 3, 2022, the Navy is required under Item 3 (and similarly under Item 5) to, "... submit a workplan and implementation schedule, prepared by a qualified independent third party approved by the Department, to assess the Facility operations and system integrity to safely defuel the Bulk Fuel Storage Tanks" (emphasis added). On January 11, 2022, within hours before contract execution, the Navy notified the DOH that Simpson Gumpertz & Heger (SGH) was selected as their independent third-party contractor. In this notification, the Navy explained that their review of independence was based on the selection "of engineering firms with limited to no Navy contracts." Subsequent to this notification, the DOH requested the Navy for information regarding company's qualifications and resume of similar or related projects, and a copy of the contract and the scope of work, which we received on January 14, 2022 and February 2, 2022, respectively.

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While the Navy's effort to engage a contractor with little or no prior connection to the Navy is critical to preserve the contractor's independence, this independence can only be maintained if that contractor remains free from overriding direction and control by the Navy. The contract language does not describe any structure or protections necessary to establish the independence of the contractor. Instead, the Performance Work Statement sets up frequent close oversight by the Navy of the work and process being undertaken by the contractor. Further, the contract language does not present or describe the terms of the Emergency Order that the Navy and contractor must meet, nor does it include regulatory participation in the schedule.

Based on the documents received thus far, the DOH disapproves SGH and Risktec Solutions (Risktec) as meeting the requirement of an independent third party as their contract is currently structured, and as a consequence, the Navy is in non-compliance with the Emergency Order.

The DOH received and reviewed the following documents and offer more detailed comment on our assessment of the Navy's "independent third party."

1. Company Overview of SGH and Risktec, and Summary of Project Team Leadership (received January 14, 2022)
2. Solicitation Contract/Order for Commercial Items, Contract No. N0018922P0080P00001 (received February 2, 2022)
3. SGH Implementation Schedule (Plan of Actions & Milestones) (received February 2, 2022)
4. SGH Supplemental Work Plan to Assess the Facility Operations and System Integrity to Safely Defuel the Bulk Fuel Storage Tanks (received February 2, 2022)
5. SGH Performance Work Statement Presentation (received February 2, 2022)
6. Amendment of Solicitation/Modification of Contract, Amendment/Modification No. P00002 (received February 11, 2022)
7. Revision 1, Performance Work Statement (received February 11, 2022)

While the DOH has no objection to the selection of the project team or the project team's qualifications, we do have significant concerns about the independence of their work product. For example: the proposed evaluation will only be based on information provided by the Navy, the DOH is not included in any discussions or site visits to ensure that our concerns will be addressed, and the number of opportunities (weekly meetings) that the Navy will have to provide comment on the progress or findings from the work being performed suggests the Navy will have a great deal of influence over the work in progress. The Navy's ability to influence the work product is evidenced throughout the contract and related documents. Some relevant examples are described below:

### Contract

1. Page 30. The Quality Assurance Surveillance Plan (QASP) focuses on the quality, quantity, timeliness, etc. of the performance outputs to be delivered by the contractor. Section 4 of the QASP specifies “Customer satisfaction is the most significant external indicator of the success and effectiveness of all services provided and can be measured through customer complaints.” While we recognize that the Navy needs to ensure that payment is made only when work is performed adequately, some assurance is needed by the DOH that this QASP will not affect the independent evaluation and assessment of the Facility.

### Performance Work Statement (attached to Contract)

2. Clearly the work plan was not prepared in response to the Emergency Order, but the Secretary of the Navy’s order for assessment. There is no opportunity identified in the scope of work or in the implementation schedule for the DOH review and approval of independent third party, work plans, or assessments prior to execution as specified in the Emergency Order. While it is reasonable for the SGH Team to obtain much of their inputs from the Navy, who would be the most familiar with its own infrastructure and operations, it is equally important for the SGH Team to obtain inputs from the DOH, the agency who issued the Emergency Order, and the U.S. Environmental Protection Agency (EPA), who together with the DOH, have been reviewing work performed at the Facility over the last six to seven years. Based on the project schedule, it appears that that the work identified in the work plan has already started. If so, the work to date cannot be considered independent without further disclosures to and evaluations by the DOH. We expect that some of your meetings and information gathering will need to be redone with the DOH present. Depending on the type of meeting or information gathering, we believe that the EPA and other stakeholder subject matter experts should also be provided an opportunity to be present; for example, during the planned Process Hazard Analysis to evaluate risk from the proposed defueling process and “what-if” scenarios.
3. Page 12, 4.5 Assumption, Item 10. This paragraph states, “Only one round of consolidated and self-consistent comments will be addressed for the deliverables.” It is unclear why only one-round of comments will be addressed for the numerous deliverables and from whom these comments will be received.
4. Page 12, 4.5 Assumptions, Item 13. This paragraph states, “We [the SGH Team] assume that the Navy will supply us with all the data upon which we should rely.” This implies that the Navy can influence, even if unintentionally, the assessment by controlling the data provided to the SGH Team.

5. Page 12, 4.5 Assumption, Item 15. This paragraph states, "Native files, including, but not limited to, computer inputs/outputs, spreadsheet calculations, etc., developed by our team will not be provided." Sufficient information shall be provided to enable peer review of the submissions.
6. Page 13, 5.4 Weekly Reports and Presentations. According to this paragraph, the SGH Team "will prepare and issue weekly reports after the weekly project meetings to document the progress and discussed items. Slides presented at the weekly meetings will be attached to the weekly reports. The slides will contain information related to the work process, finding, analysis results, and mitigation recommendations." There appears to be significant opportunity for the Navy to provide input and guidance on the assessment and findings, creating concern that the evaluation of the facility may be influenced by the Navy's priorities or concerns.
7. Page 15, 7.3 Schedule. This section states, "We plan to commence the work on 17 January 2022, and complete it by 30 April 2022, as requested in the solicitation." According to the implementation schedule, in order for the SGH Team to be able to respond to stakeholder comments, comments need to be with the SGH Team by March 11, 2022, however, the Interim Assessment Report with Identified Deficiencies (50%) won't be completed until March 7, 2022, for the defueling workplan (March 10, 2022, for the Red Hill Assessment). Thus, unless there is effective and transparent communication between all parties, it is not possible for stakeholders to respond by March 11, 2022, on the defueling plan. In addition, there is no date provided for an opportunity for additional stakeholder comment in the schedule for the Pre-Final Assessment, as discussed in the Performance Work Statement.

In order for the DOH to approve the selection of the SGH Team as compliant with the Emergency Order, the DOH requires the work plan, implementation schedule and contract to be revised to address the concerns outlined in this letter. The DOH will be sending a list of comments on the work plans themselves under a separate cover. The SGH Team may address all these comments in the same revision of the work plans and implementation schedule. At a minimum, the following must be incorporated to address concerns relating to the "independent" nature of work to be performed by the SGH Team:

1. The SGH Team shall submit to the DOH all submissions and/or deliverables that are provided to the Navy at the same time, without any Navy comment or revision prior to submission to the DOH. These shall include the weekly reports and presentations.
  - a. As the Navy is the most familiar with their Facility, it is highly likely that they will have comments on submissions regarding their Facility. Any Navy comment shall be delivered at the same time to the SGH Team and the DOH.

Similarly, any DOH comments on any deliverable will be submitted to the SGH Team and the Navy at the same time.

- b. We also recognize that the SGH Team's deliverables may contain Critical Infrastructure information, which the Navy may claim confidentiality under 10 USC §130e. Information designated by the Secretary of Defense as Department of Defense critical infrastructure security information (known as "DCRIT") pursuant to that statute are exempt from disclosure under exemption 3 of the Freedom of Information Act (5 USC §552(b)(3)). Therefore, upon receipt of any SGH Team submission, the DOH will hold from public release for five (5) business days for the Navy to make a claim of confidentiality and provide justification for such a claim. If we do not receive a claim of confidentiality within five (5) days, then we will consider the submission a releasable public document. If the Navy claims confidentiality within the five (5) business days, then the Navy is allowed an additional five (5) business days to produce a redacted version that is releasable to the public. Depending on the volume of the submission, the DOH may consider an extension on the submission of the redacted version.
2. The SGH Team submissions and/or deliverables shall be peer reviewable, so that the DOH and other stakeholders may be able to fully follow the entire process from objective to work plan design, implementation of work plan, data gathered, analysis performed, and resulting recommendation. Specifically, all sources of information shall be documented; interviews recorded and site visits fully documented; standards that are being utilized shall be identified; work effort shall be detailed in its objective, methodology and results; basis for work effort and selected method explained; analysis performed, and associated calculations provided; recommendations and basis for the recommendations explained; and how those recommendations will be implemented. Regarding sources of information, a brief statement on the SGH Team's evaluation on the quality of the information from the source and how it was used in the assessment should be provided.
3. Information provided by the Navy to the SGH Team shall also be provided to the DOH in electronic format, unless otherwise approved by the DOH. If these documents are available on-line, then a reference and weblink is sufficient for submission. If these documents contain DCRIT, then both a redacted and unredacted version shall be provided to the DOH. Submission of this data to the DOH should be at the same time as to the SGH Team, with the explanation of the purpose of the information. If information has already been provided, interviews and meetings conducted, and inspections performed, copies of this information, including but not limited to, interview notes and recordings, meeting minutes/summaries and

4. inspection reports shall be provided to the DOH as soon as possible. The DOH intends to share unredacted versions of documents to our consultants on this project for review, including EPA.

Depending on the information provided by the Navy, the DOH may provide the SGH Team with additional information that may provide a more complete picture or background information on the specific subject matter; or raise questions or concerns. In addition, depending on the scope of the meeting or activity missed, the DOH may require a “redo” of the meetings or other activities.

5. The DOH and their consultants shall be invited to attend all site visits, interviews, meetings, and other activity occurring for this project. Sufficient notice shall be provided. Ideally the DOH and their consultants would have been invited to the kick-off meeting. The meeting minutes for this meeting shall be provided as requested under Item 3 above.
6. The DOH and their consultants, EPA and other stakeholder SMEs shall be invited to attend the Process Hazard Analysis workshops to ensure that our concerns and a full range of alternative scenarios will be addressed.
7. The work plan and implementation schedule shall be revised to allow the DOH and their consultants and interested stakeholders ample opportunity to review incoming information, including, but not limited to, input information and weekly progress reports to facilitate timely feedback. Depending on data received, the DOH may provide comment at any time, which shall be incorporated into the work plan and/or assessment.
8. Additional stakeholder input shall be obtained frequently so that concerns may be addressed at early enough stages. Currently, it is only allowed at 50% and 75% completion points, although the implementation schedule only mentions input collection at one stage and with insufficient time. Given that the contract currently assumes that information will only come from the Navy, early and frequent comment from stakeholders shall be obtained to ensure that the SGH Team is not limited in relying on only what the Navy considers important and relevant. In addition, clarification on the definition between internal and external stakeholder is needed.

Please note that until concerns about the independence of the work product detailed in this letter are appropriately addressed, the DOH will not approve this project team as an approved independent third party.

We will be providing our comments regarding the work plans under a separate cover. Please be reminded, as specified by the Emergency Order, that the independent third party, as well as the work plans and implementation schedule, and assessment shall be approved

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by the DOH prior to implementation. Thus, in addition to being in non-compliance with the Emergency Order, if work has already started, the Navy is proceeding at risk and without the DOH approval.

Enclosed are comments from Earthjustice, dated February 8, 2022, for your review and consideration.

Should you have any questions please contact me at (808) 586-4424.

Sincerely,

*Kathleen Ho*

KATHLEEN S. HO  
Deputy Director for Environmental Health

Enclosure

c: CAPT. Troy Gronberg  
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February 8, 2022

*Via Electronic Mail only*

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Re: *Navy Noncompliance with Emergency Order, Docket No. 21-UST-EA-02*

Deputy Director Ho,

We write on behalf of the Sierra Club to express serious concerns about the Navy's failure to comply with the Emergency Order that the Department of Health issued on December 6, 2021, and affirmed in the January 3, 2022, Final Decision in Docket No. 21-UST-EA-02. This letter focuses on deficiencies in the workplans and implementation schedule that the Navy submitted earlier this month pursuant to paragraphs 3 and 5 of the Emergency Order.

### **The Navy Did Not Secure Department Approval of Its Contractors**

As a threshold matter, to our knowledge, the Navy failed to secure the Department's approval of the contractors—Simpson Gumpertz & Herger (SGH) and Risktec—who prepared the workplans and implementation schedule. This violated paragraphs 3 and 5 of the Emergency Order, both of which specify that the workplans and implementation schedule must be “prepared by a qualified independent third party *approved by the Department.*” (Emphasis added).

### **The Navy Failed to Focus on Prompt Defueling of the Red Hill Tanks**

In preparing the workplans and implementation schedule, the Navy gave short shrift to the critical task of “assess[ing] the Facility operations and system integrity to safely defuel the Bulk Fuel Storage Facility,” which is key to removing the imminent peril to O'ahu's sole source aquifer. Emergency Order ¶ 3. The Navy relegates this urgent task to a cursory Supplemental Work Plan (dated Feb. 1, 2022), and the associated Implementation Schedule (dated Feb. 1, 2022) makes no attempt to expedite this assessment to allow for the prompt “defuel[ing of] the Bulk Fuel Storage Tanks at the Facility.” Emergency Order ¶ 4.

Instead, the Navy focuses single-mindedly on trying to justify continued operation of the Red Hill Facility. It devotes its primary workplan to “develop[ing] recommendations to mitigate



deficiencies in operations of the facility and integrity of equipment and structures,” with an eye to keeping fuel in the Red Hill tanks, perched above O’ahu’s sole source aquifer. Red Hill Assessment Contract Performance Work Statement at 2. The Navy’s Implementation Schedule prioritizes tasks that seek to support continued operations, backburnering the few tasks necessary to prepare for safe defueling.

The Emergency Order recognizes the need for “immediate action now” to avoid “further [jeopardy to] our aquifer system.” Emergency Order at 4. The workplans and implementation schedule the Navy submitted fail to reflect the urgency of the existential threat the people of O’ahu face as long as approximately 180 million gallons of fuel remains in leaky tanks above the island’s primary source of drinking water. The Department should disapprove the Navy’s submittals and insist that the Navy promptly revise its workplans and implementation schedule to prioritize prompt defueling of the Red Hill tanks. The Navy’s analysis of design and operational deficiencies can occur after the threats to our aquifer have been removed through defueling.

### **The Navy’s Proposed Analyses Are Based on Faulty Assumptions**

Disapproval is further warranted because the Navy’s workplan for assessing design and operational deficiencies is based on faulty assumptions—detailed on pages 11 and 12 of the Red Hill Assessment Contract Performance Work Statement—that preclude any reliance on the analyses the Navy’s contractors intend to perform. These unjustified assumptions include:

- Assumption #1: “Most of the work can be executed from our home offices in the continental US.” If the fuel leaks that occurred in May and November 2021 have taught us anything, it is that the design of the Red Hill Facility is poorly documented and understood (after all, how did thousands of gallons of fuel get into a firefighting foam drain line?). Accurate assessment of design and operational deficiencies cannot be accomplished without thorough on-site investigations.
- Assumption #3: “The facility was designed using recognized codes and standards or comparable alternatives, and some design original basis of design information is present.” The lack of standards in the design and construction of the Red Hill Facility—which Navy has always claimed is “one of a kind”—and the lack of detailed information regarding the facility’s design contributed to the November 2021 fuel spill and current crisis.
- Assumption #4: “Geohazards such as landslides, damage intentionally caused to the facility, flooding (internal and external), tsunami, and projectile impact hazards are not included in the scope of work.” In the seven years since signing the Administrative Order, the Navy has failed to assess risks to the Red Hill Facility from “external events” like fire, flooding, and earthquakes. The Navy clearly intends to rely on its assessment of

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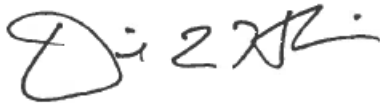
design and operational deficiencies to seek to justify continued operations at the Red Hill Facility. The Department must insist that the Navy finally evaluate the potential for contamination of our aquifer from these foreseeable types of risks.

- Assumption 6: “Effects of failing/falling members on structures and equipment will not be checked.” Again, given that the Navy will undoubtedly seek to use this assessment to justify continued operation of the facility, the Department must insist that the Navy evaluate these foreseeable risks, which are a particularly critical consideration given how compromised the facility’s infrastructure may be from active corrosion in the tanks and the concrete. The types of events that this assumption would ignore are akin to the situation of a trolley cart crashing into a pipeline, which precipitated the current crisis.

For the foregoing reasons, we urge the Department to disapprove the Navy’s submittals and require the Navy promptly to submit new workplans and implementation schedules that (1) are prepared by a Department-approved contractor; (2) prioritize prompt, safe defueling of the Red Hill Facility; and (3) reject baseless assumptions that preclude reliable analysis of the design and operational deficiencies that threaten O’ahu’s primary source of drinking water. If the Department does not disapprove these submittals, the Navy in the future will claim that the conclusions reached in its flawed assessments were based on methodologies that were “approved by the Department of Health.” Please take prompt steps to avoid that eventuality.

If you would like to discuss our concerns, please feel free to contact me via email ([dhenkin@earthjustice.org](mailto:dhenkin@earthjustice.org)) or telephone (808-599-2436).

Regards,



David L. Henkin  
Attorney for Sierra Club

cc: Robert T. Nakatsuji  
Wade H. Hargrove