

Jonathan C. McKay
Marnie E. Riddle
Mele Coleman 10103
DEPARTMENT OF THE NAVY
OFFICE OF GENERAL COUNSEL
850 Ticonderoga Street, Suite 110
JBPHH, HI 96860
Telephone: (808) 473-1794
Facsimile: (808) 473-1791

DEPARTMENT OF HEALTH

STATE OF HAWAII

IN THE MATTER OF)	Case No. 19-UST-EA-01
)	
Contested Case Hearing Re: Red Hill Permit)	NAVY’S MOTION FOR STAY OF
Application)	PROCEEDINGS; [PROPOSED] ORDER;
)	EXHIBIT A
)	
)	CERTIFICATE OF SERVICE
)	
)	
)	

NAVY’S MOTION FOR STAY OF PROCEEDINGS

Pursuant to HAR § 11-1-40¹ and § 11-1-24(b)(13)², the Department of the Navy (Navy) respectfully moves the Hearings Officer for a stay of all proceedings in this matter, including extant deadlines for motions and production of information. Such a stay will promote judicial economy and conserve litigant resources. The Navy also requests that pending deadlines be stayed while this motion is considered and decided.

¹ § 11-1-40 Continuance of contested case hearing. The contested case hearing shall be held at the time and place set in the notice of hearing. The hearings officer may continue the hearing based on a stipulation, motion, or the hearings officer's own initiative, and at the hearing may continue the hearing from day to day or adjourn the hearing to a later day or to a different place without notice other than an announcement at the hearing.

² § 11-1-24 Hearings officer; duties and powers. ... (b) In any contested case, the hearings officer may: ... (13) Perform such other functions and duties, and issue such orders necessary for the proper conduct of the hearing and the resolution of the case.

MEMORANDUM IN SUPPORT OF MOTION

On March 7, 2022, the Secretary of Defense directed the Department of the Navy to defuel and permanently close the Red Hill Bulk Fuel Storage Facility (see Exhibit A, March 7, 2022 Secretary of Defense Memorandum, “Immediate Actions to Permanently Close the Red Hill Bulk Fuel Storage Facility at Joint Base Pearl Harbor-Hickam and to Redistribute Fuel in Accordance with INDOPACOM Plans for Strategic Fuel Storage in the Pacific Region”). In light of the decision to close Red Hill, the Navy requests a stay of this permit proceeding to allow the parties to confer regarding the path forward, and to avoid waste of litigant and agency time and resources. Because operations at Red Hill are currently suspended, granting the requested stay will not result in prejudice to any party. Denying the Navy’s motion would require the parties to continue investing time and resources to brief currently calendared motions and to produce and review documents and information that are no longer relevant to the proceeding.

For the foregoing reasons, the Navy respectfully requests that the Hearings Officer issue the Order proposed below and stay this proceeding.

[PROPOSED] ORDER

This proceeding and all procedural deadlines now in effect, including those set forth in the January 10, 2021 Order for Information, Scheduling Order No. 8, and Scheduling Order No. 9, are hereby stayed pending a status conference on May 23, 2022 at 9:00 a.m. At that time the parties will address the need to renew or lift the stay.

Respectfully Submitted,

Dated: March 7, 2022

/S/ Marnie E. Riddle
Marnie E. Riddle



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

MAR 07 2022

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Immediate Actions to Permanently Close the Red Hill Bulk Fuel Storage Facility at Joint Base Pearl Harbor-Hickam and to Redistribute Fuel in Accordance with INDOPACOM Plans for Strategic Fuel Storage in the Pacific Region

In recent months, leaders across the Department of Defense have worked to address the November release and contamination at the Red Hill Bulk Fuel Storage Facility (RHBFSF) in Hawaii. Our approach has been guided by a commitment to protect the population, the environment, and the security of the nation. We believe these goals are mutually reinforcing and we have taken broad actions to remedy environmental impacts, restore safe drinking water, and care for affected military families and the people of Hawaii.

We also launched a thorough review of the facility's long-term future, to include the option of defueling and permanently closing RHBFSF. Since late January 2022, we have been on an aggressive schedule to analyze and determine the distribution of fuel reserves for our operations in the Pacific theater. This work has been evidence-based and fully aligns with our focus on the population, the environment, and national security.

As an outcome of this review, today I am directing the Secretary of the Navy, in coordination with the Commander of the United States Indo-Pacific Command, to take all steps necessary to defuel and permanently close the Red Hill Bulk Fuel Storage Facility.

To carry out this direction, the Secretary of the Navy, in cooperation with the Director, Defense Logistics Agency (DLA), will defuel the facility in compliance with environmental safeguards and best practices. By no later than May 31, 2022, the Secretary of the Navy and Director, DLA will provide me with a plan of action with milestones to defuel the facility. The plan of action shall require that defueling operations commence as soon as practicable after the facility is deemed safe for defueling and target the completion of that defueling within 12 months. The Secretary of the Navy will also work with the U.S. Environmental Protection Agency and with the State of Hawaii Department of Health to plan for and implement the permanent closure of the RHBFSF in a manner that complies with all applicable laws. In connection with the permanent closure of the RHBFSF, the Secretary of the Navy shall plan and budget for all necessary corrective action for any prior releases from the facility. As we move forward in closing Red Hill, we will continue to involve our federal, congressional, state, and community stakeholders.

Redistributing our fuel reserve across the Indo-Pacific will better position the United States to meet future challenges in the region. Our approach will fully comply best practices and environmental regulations for fuel storage on land and afloat.

EXHIBIT A

In parallel with our work to defuel and permanently close RHBFSF, the Department of Defense remains committed to mitigating the impacts of the November incident. We will complete environmental mitigation efforts at the Red Hill drinking water well and any other impacted areas. We will restore safe drinking water to all affected residents and provide best-in-class sampling and testing to ensure the continued safety of drinking water. And we will care for our military families by addressing any health impacts from this incident and by using available authorities to provide assistance to address displacement from homes or damage to household goods.

Today's decision will better support our operations in the Pacific theater, while caring for the health and safety of the people of Hawaii and our military families. We will continue to do everything we can to safeguard the population, the environment, and the security of the nation.

A handwritten signature in black ink, appearing to read "Roy D. Burt". The signature is stylized with a large, looped 'R' and a trailing flourish.

**DEPARTMENT OF HEALTH
STATE OF HAWAII**

IN THE MATTER OF)	
)	CERTIFICATE OF SERVICE
Contested Case Hearing Re Permit)	
Application)	
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that, on this date, a true and correct copy of the foregoing document was emailed to the following:

Hearings Officer

Lou.chang@hula.net

Board of Water Supply

ella.gannon@morganlewis.com
david.brown@morganlewis.com
wogai.mohmand@morganlewis.com

Honolulu Corporate Counsel

jlau3@honolulu.gov

Department of Health

James.c.paige@hawaii.gov
Jean.luka@doh.hawaii.gov

Sierra Club

davidkimofrankel@gmail.com

Respectfully Submitted,

Dated: March 7, 2022

/S/ Marnie E. Riddle
Marnie E. Riddle
Agency Representative