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OFFICE OF THE DIRECTOR  
DEPT. OF HEALTH

DEPARTMENT OF HEALTH

STATE OF HAWAII JAN -3 P1:29

DEPARTMENT OF HEALTH, STATE  
OF HAWAII,

Complainant,

vs.

UNITED STATES DEPARTMENT OF  
THE NAVY,

Respondent,

vs.

SIERRA CLUB and HONOLULU  
BOARD OF WATER SUPPLY,

Intervenors.

Docket No. 21-UST-EA-02

FINAL DECISION, ORDER,  
FINDINGS OF FACT, AND  
CONCLUSIONS OF LAW

FINAL DECISION, ORDER, FINDINGS OF FACT,  
AND CONCLUSIONS OF LAW

On December 6, 2021, the Department of Health (DOH or Department) issued an Emergency Order to the U.S. Department of the Navy (Navy), requiring action be taken by the Navy (Emergency Order).

By letter dated December 7, 2021, the Navy notified the DOH of its intent to contest the Emergency Order.

David Day was appointed as the hearings officer. Mr. Day duly conducted the evidentiary hearing on December 20 and 21, 2021, and issued the Hearing Officer's Proposed Decision and Order, Findings of Fact, and Conclusions of Law on December 27, 2021 (Proposal), which upheld the Emergency Order in its entirety. The parties were duly notified of the Proposal and each party had the

opportunity to file exceptions to the Proposal pursuant to Hawaii Administrative Rules § 11-1-42(b) and the Hearings Officer's Order Setting Time Limit for the Filing and Service of Specific Exceptions to the Proposal filed on December 27, 2021. Only the Navy presented arguments contained in the Navy's Exceptions to the Hearing Officer's Proposed Decision and Order, Findings of Fact, and Conclusions of Law submitted timely on December 29, 2021 (Navy's Exceptions) but did not request oral argument.

By Order Appointing Substitute Hearings Officer, Rescinding Orders of Prior Hearings Officer, and Setting New Schedule filed on December 13, 2021, the Director of Health delegated authority to issue the Department's final decision to the undersigned Deputy Director.

Pursuant to Hawaii Administrative Rules § 11-1-42(c), the undersigned personally reviewed and considered the entire record of this matter including the Navy's Exceptions. Having done so, the undersigned makes the following amendment to the Proposal:

1. Proposed FINDINGS OF FACT #101 – A typographical error exists in referencing the language of the Emergency Order, Item 3. FINDINGS OF FACT #101 is corrected by replacing it in its entirety with the following:

101. Item 3 of the Emergency Order requires the Navy to “[w]ithin 30 days of receipt of this EO, 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. Upon the Department’s approval of the assessment, workplan and implementation schedule, conduct necessary repairs and make necessary changes in operations to address any deficiencies identified in the assessment and workplan. Corrective actions shall be performed as expeditiously as possible.” These actions are necessary and designed to reduce or stop the imminent peril caused by continuing operations at the Red Hill Facility as currently configured and operated.

The undersigned believes and concludes that the Proposal filed on December 27, 2021, with amendment herein, accurately and completely states the relevant facts and accurately states the applicable law. The undersigned sustains the Proposal, as amended herein, and hereby adopts it as the final decision, order, findings of fact and conclusions of law, of the Department.

This final decision may be appealed pursuant to Hawaii Revised Statutes § 91-14.

DATED: Honolulu, Hawai'i, January 3, 2022.

  
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MARIAN E. TSUJI  
Deputy Director