

BOARD OF WATER SUPPLY

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The Red Hill Bulk Fuel Storage Facility Final Administrative Order on Consent (AOC) and Statement of Work (SOW)

Responsiveness to Board of Water Supply Comments Dated July 20, 2015 and Comparison of the Final AOC and SOW to the Proposed Versions

The Board of Water Supply (BWS) has reviewed the final signed Administrative Order on Consent (AOC) and Attachment A: Statement of Work (SOW) between the United States Environmental Protection Agency (EPA) and the Hawaii State Department of Health (DOH) with the United States Department of Navy (Navy) and the Defense Logistics Agency (DLA) (the "parties") dated September 28, 2015. Our review identified a small number of differences between the proposed (draft) AOC and SOW, released for public comment on June 1, 2015, and the final signed AOC and SOW agreement signed on September 28, 2015. This review evaluates whether the changes made by EPA and DOH in the final documents were responsive to the BWS comments on the draft versions that we submitted to EPA and DOH on July 20, 2015. Overall, our review finds that only two of seven changes in the final documents can be interpreted as responsive to our July 20th comments. It is disappointing that all but two comments were incorporated in the final AOC and SOW.

AOC Changes

BWS provided 35 comments specific to the proposed AOC and submitted them to the EPA and DOH on July 20, 2015 after completing a thorough technical evaluation of the draft document (BWS, 2015). BWS manually and electronically compared the proposed and final AOC documents and found no differences except for the names and dates of the signatures at the end of the document.

None of our 35 comments were addressed in the final signed AOC document. Based on the absence of any differences between the proposed and final AOC documents, we conclude that the final AOC is non-responsive in its entirety to our stated concerns.

Attachment A: SOW Changes

BWS submitted 30 comments specific to the proposed SOW to the EPA and DOH on July 20, 2015 after completing a thorough technical evaluation of the draft document (BWS, 2015). BWS manually and electronically compared the proposed and final SOW documents and found seven

changes. Of those changes, we determined two were responsive and five unresponsive to the BWS comments on the proposed SOW document as described below.

- **Section 1.1 Subject Matter Experts Involvement:** The final SOW states *“It is the intent of the Parties to seek the technical advice of subject matter experts, such as the Honolulu Board of Water Supply and Hawaii Department of Land and Natural Resources, as needed, for scoping and review of key deliverables. The Parties shall take actions that facilitate sharing of information with subject matter experts such as establishing confidentiality agreements and/or providing redacted versions of documents as necessary to address procurement integrity and security concerns.”* BWS specifically requested that it and other major stakeholders should be consulted and participate by providing technical review and comments on all work plans and deliverables prior to approval by the Regulatory Agencies (see BWS SOW summary comments #4 and #5 and SOW detailed comment #3). The final SOW only requires the parties to seek the technical advice “as needed” and to “facilitate sharing of information,” which may be redacted, with major stakeholders, but only after they have signed a confidentiality agreement. This change to the SOW does not provide for the open and unrestricted consultation and participation by major stakeholders. We believe that our ratepayers and the major stakeholders deserve a transparent AOC process and public availability of work plans and reports produced under the AOC and SOW. This change is therefore unresponsive to the BWS comments.
- **Section 1.2 Community Involvement:** The final SOW states *“The Regulatory Agencies will make the final deliverables available to the public to the extent such documents are not protected from public disclosure. The Parties shall also host public meetings at least annually to allow for the public to be provided progress updates by the Navy, DLA, and the Regulatory Agencies, and to ask questions about the Red Hill facility.”* The changes made to this section partially address the BWS’s comments (BWS SOW summary comment #4 and detailed comment #4). The hosting of public meetings annually is an improvement compared to the proposed SOW. This change is therefore responsive to the BWS comments. However, we urge the parties to hold quarterly or semi-annual public meetings instead of annual. We must re-emphasize that release of documents should not be limited to final deliverables, but should include other documents including, but not limited, to scopes of work, regulatory agency written responses, and technical memoranda.
- **Section 1.8 Compliance with Underground Storage Tank Regulations:** *“On June 22, 2015, EPA promulgated new regulations that apply to field-constructed underground storage tank systems. These new regulations will not become legally enforceable in states with federally-approved programs, such as the State of Hawaii, until the state’s rules are updated, and the state successfully receives federal approval of their revised regulations. Notwithstanding this schedule, Navy and DLA shall begin coordinating with the Regulatory Agencies in order to comply with the new federal UST regulations (see 80 Fed. Reg. 41623-41683) applicable to the Facility as soon as possible.”* The addition of this section appropriately addresses

one of the BWS AOC comments (BWS AOC detailed comment #6). This change is therefore responsive to the BWS comments.

- **Section 2.2 TIRM Procedures Report:** “At a minimum, the TIRM Procedures Report will identify and evaluate the following:
 - a. **Current TIRM procedures, including**
 1. **Non-destructive testing**
 2. **Destructive testing**
 3. **Quality control**
 4. **Welding inspections**
 5. **Tank inspections**
 6. **Pipeline inspections**
 7. **Alarm operation and testing**
 8. **Recommissioning (after maintenance or repair of tanks taken temporarily out of service);**
 - b. **Lessons learned from Tank 5 and related modifications to current procedures;**
 - c. **Quality Control and Assurance of TIRM;**
 - d. **Options for improving the TIRM procedures,**
 - e. **Schedule/frequency of modified American Petroleum Institute (“API”) 653 tank inspections, repairs, and maintenance; and**
 - f. **Actions that can be taken throughout the facility, as soon as practicable, to reduce risk of release that can be implemented independent of tank upgrades.”**

The changes made to this section attempt to address the corresponding BWS comments (BWS SOW detailed comments #2 and #20). This section only further defines the components of the TIRM procedures. The “as soon as practicable” qualification to Item F. above is disappointing because it is unclear as to which party member or members will make that determination. This change is therefore unresponsive to the BWS comments.

- **Section 3.5 TUA Decision Document and Implementation:** “Navy and DLA shall make good faith efforts to meet this twenty-two (22) year deadline.” changed to “Navy and DLA shall use their best efforts to install BAPT as soon as reasonably practicable while maintaining quality and performance requirements.” The changes made to this section do not appropriately address the corresponding BWS comment (BWS SOW detailed comment #10). This change is therefore unresponsive to the BWS comments

- **Section 7.3.2 Groundwater Monitoring Well Network Scope of Work:** *“If gaps in groundwater monitoring well data are identified and validated, Navy and DLA will begin installation of additional monitoring wells as soon as possible.”* This change to the final SOW is not responsive to our call for immediate efforts to improve groundwater monitoring (BWS SOW detailed comments #20 and 26). Instead, it leaves the decision about installing new groundwater monitoring wells open to one or more unspecified members of the parties and an unspecified validation process for identified data gaps. This change is therefore unresponsive to the BWS comments.
- **Section 8 Risk/Vulnerability Assessment:** *“A comparison of risks and benefits between the current Facility and alternative fuel storage facilities.”* The changes made to this section are not responsive to our relevant comments (BWS SOW detailed comments #28 and 29) because the change does not state that the Risk/Vulnerability shall include the listed components, but only that it “may” include the listed components. This change is therefore unresponsive to the BWS comments.

References

BWS. 2015. Board of Water Supply Comments to the Proposed Administrative Order on Consent (AOC) and Attachment A, Statement of Work (SOW) on the Red Hill Bulk Fuel Storage Facility. BWS letter to EPA and Hawaii DOH dated 20 July 2015.

Very truly yours,



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