

115TH CONGRESS
1ST SESSION

S. 437

To provide for environmental oversight and remediation activities at Red Hill Bulk Fuel Storage Facility.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2017

Mr. SCHATZ (for himself and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To provide for environmental oversight and remediation activities at Red Hill Bulk Fuel Storage Facility.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Red Hill Oversight
5 and Environmental Protection Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATIVE ORDER ON CONSENT/
9 STATEMENT OF WORK; (AOC/SOW).—The terms “Ad-
10 ministrative Order on Consent/Statement of Work”

1 and “(AOC/SOW)” mean a legally enforceable
 2 agreement between the United States Department of
 3 the Navy (Navy), the Defense Logistics Agency
 4 (DLA), the United States Environmental Protection
 5 Agency (EPA), Region 9, and the State of Hawaii
 6 Department of Health (DOH) that the parties vol-
 7 untarily entered into on September 28, 2015 [EPA
 8 DKT NO. RCRA 7003–R9–2015–01/DOH DKT
 9 NO. 15–UST–EA–01].

10 (2) CONGRESSIONAL DEFENSE COMMITTEES.—

11 The term “congressional defense committees” has
 12 the meaning given the term in section 101(a)(16) of
 13 title 10, United States Code.

14 (3) FACILITY.—The term “facility” means the

15 Red Hill Bulk Fuel Storage Facility located on
 16 Oahu, Hawaii.

17 **SEC. 3. FINDINGS.**

18 Congress makes the following findings:

19 (1) Construction on the Red Hill Bulk Fuel
 20 Storage Facility began in secret in December 1940.

21 (2) More than 3,900 workers constructed the
 22 underground facility.

23 (3) Construction of the facility continued non-
 24 stop except for the time of the attack on Pearl Har-
 25 bor, on December 7, 1941. The facility was com-

1 pleted in September 1943, nine months ahead of
2 schedule.

3 (4) The facility was constructed underground in
4 hollowed out volcanic rock to allow for maximum
5 protection of the fuel supply.

6 (5) The facility's 20 steel tanks are encased by
7 2.5–4 feet of concrete and surrounded by basalt bed-
8 rock.

9 (6) Only 18 fuel tanks are currently oper-
10 ational.

11 (7) The facility is the largest single Department
12 of Defense fuel storage facility in the Pacific the-
13 ater.

14 (8) The facility protects more than 250,000,000
15 gallons of fuel.

16 (9) The fuels stored are marine diesel, F-76,
17 and two types of jet fuel: JP-5 and JP-8.

18 (10) The fuel stored at the facility directly sup-
19 ports vessels and aircraft of—

20 (A) the United States Navy and Air Force
21 in Hawaii, the Pacific theater, and around the
22 world;

23 (B) the Hawaii National Guard;

24 (C) the United States Coast Guard; and

1 (D) the National Oceanic and Atmospheric
2 Administration.

3 (11) The facility allows the United States mili-
4 tary to—

5 (A) maintain a forward presence;

6 (B) build cooperation with partner nations,
7 including through the biannual Rim of the Pa-
8 cific exercise;

9 (C) ensure maritime security; and

10 (D) maintain regional stability.

11 (12) Military forward presence—

12 (A) keeps sea lanes open; and

13 (B) ensures the free flow of commerce to
14 Hawaii, the continental United States, and the
15 Indo-Asia-Pacific region.

16 (13) In 1991, the facility was used as a trans-
17 fer point for moving fuel from the continental
18 United States to the Persian Gulf.

19 (14) This transfer of fuel was done as part of
20 the first Gulf War.

21 (15) The facility was declassified in 1995.

22 (16) The facility is physically protected and
23 cyber-hardened.

24 (17) The facility can be operated entirely off
25 the electric grid by using gravity flow to transport

1 fuel from the facility to Pearl Harbor, Hickam Air-
2 field, and a truck loading site.

3 (18) The facility is located approximately 100
4 feet above the basal groundwater table on the
5 boundary of the Waimalu and Moanalua Aquifer
6 Systems.

7 (19) The Waimalu and Moanalua aquifers are
8 sources of potable water and are potentially vulner-
9 able to contamination from an unscheduled dis-
10 charge of fuel from the facility.

11 (20) The Navy and the Defense Logistics Agen-
12 cy have kept the drinking water safe through 70
13 years of operation.

14 (21) The Navy and the Defense Logistics Agen-
15 cy are responsible for protecting the public from un-
16 scheduled fuel leaks that may pose a risk to the
17 drinking water.

18 (22) The facility has experienced unscheduled
19 fuel leaks as evidenced by stains beneath several of
20 the existing fuel tanks.

21 (23) Chronic releases of petroleum, oils, and lu-
22 bricants have the potential to cause damage to
23 Oahu's drinking water supply.

1 (24) Historic records compiled by the Navy in
2 a 2008 ground water protection plan indicated that
3 there were more than 30 leaks dating back to 1947.

4 (25) The 2008 ground water protection plan
5 suggested at least 170,000 gallons of fuel has leaked
6 since the facility began operating.

7 (26) In January 2014, the United States Navy
8 discovered a loss of fuel from Tank #5 and notified
9 the Environmental Protection Agency and the Ha-
10 waii Department of Health (DOH).

11 (27) The Navy estimated the fuel loss at ap-
12 proximately 27,000 gallons.

13 (28) Following the January 2014 fuel release,
14 the EPA and DOH negotiated an enforceable agree-
15 ment, an Administrative Order on Consent (AOC),
16 with the Navy and the DLA [EPA DKT NO. RCRA
17 7003-R9-2015-01/DOH DKT NO. 15-UST-EA-
18 01].

19 (29) The order requires the Navy and the DLA
20 to take actions, subject to DOH and EPA approval.

21 (30) The order addresses fuel releases and
22 implementable infrastructure improvements to pro-
23 tect human health and the environment.

1 (31) The order includes a Statement of Work
2 (SOW) that lays out the specific tasks the Navy and
3 the DLA must implement.

4 (32) The SOW consists of 8 sections on overall
5 project management:

6 (A) Tank inspection.

7 (B) Repair and maintenance.

8 (C) Tank upgrade alternatives.

9 (D) Release detection and tank tightness
10 testing.

11 (E) Corrosion and metal fatigue practices.

12 (F) Investigation and remediation of re-
13 leases.

14 (G) Groundwater protection and evalua-
15 tion.

16 (H) Risk and vulnerability assessment.

17 (33) Each section includes deadlines for the
18 Navy and DLA to meet planned deliverables.

19 (34) The Fiscal Year 2018–2019 Area Cost
20 Factor for Pearl Harbor is 2.26.

21 (35) The Area Cost Factor may impact deci-
22 sionmaking for sustainment, repair, and mainte-
23 nance priorities.

24 (36) Since the January 2014 fuel loss, the
25 Navy has—

1 (A) increased standards for contractor
2 workmanship;

3 (B) increased government oversight;

4 (C) updated operator procedures;

5 (D) increased training;

6 (E) instituted new safeguards, checks, bal-
7 ances, and alarm procedures; and

8 (F) installed two additional groundwater
9 monitoring wells.

10 (37) The facility has 12 total groundwater mon-
11 itoring sites.

12 **SEC. 4. SENSE OF CONGRESS.**

13 It is the sense of Congress that—

14 (1) the facility is a national strategic asset
15 that—

16 (A) supports combatant commander the-
17 ater security requirements;

18 (B) supports contingency operations;

19 (C) provides essential and timely support
20 to the United States and allies' military mobili-
21 zations and disaster response efforts in the
22 Indo-Asia-Pacific and around the world; and

23 (D) is routinely used to support normal
24 transit of Navy and Air Force movements in
25 the region;

1 (2) the facility in its current form cannot be
2 replicated anywhere else in the world;

3 (3) moving the fuel to another storage facility
4 in the Indo-Asia-Pacific would have implications for
5 the United States military force structure in the
6 State of Hawaii and put at risk billions of dollars in
7 annual economic activity that the Armed Forces
8 bring to the State of Hawaii;

9 (4) if the facility were closed, the United States
10 Armed Forces would be unable to support the Na-
11 tional Military Strategy, including the goals of the
12 United States Pacific Commander, and national se-
13 curity interests would be significantly undermined;

14 (5) constant vigilance is required to ensure that
15 facility degradation and fuel leaks do not pose a
16 threat to the people of Hawaii, especially the drink-
17 ing water on Oahu;

18 (6) despite its importance, the facility continues
19 to face long-term challenges without robust and con-
20 sistent funding that provides the Navy and DLA
21 with the resources needed to improve the tanks and
22 associated infrastructure;

23 (7) achieving the AOC/SOW deliverables is a
24 multiyear effort that will require sustained commit-

1 ment from the Department of Defense and Con-
2 gress;

3 (8) the annual budget submissions of the De-
4 partment of Defense and the Environmental Protec-
5 tion Agency must adequately reflect the funding re-
6 quirements necessary to meet the deliverables com-
7 mitted to under the AOC/SOW;

8 (9) the Department of Defense must also in-
9 clude information about how future years budgets
10 will support the near-term and long-term measures
11 detailed in the reported schedule of work to prevent
12 future fuel leaks; and

13 (10) for facility sustainment and maintenance,
14 Pearl Harbor has a high Area Cost Factor (ACF),
15 and the Department of Defense should develop a
16 strategy that fiscally accounts for that ACF.

17 **SEC. 5. BUDGET SUBMISSIONS.**

18 (a) DEPARTMENT OF DEFENSE.—

19 (1) ANNUAL BUDGET JUSTIFICATION.—The
20 Secretary of Defense, in consultation with the Sec-
21 retary of the Navy, shall ensure that the budget jus-
22 tification materials submitted to Congress in support
23 of Department of Defense budget for any fiscal year
24 (as submitted with the budget of the President
25 under section 1105(a) of title 31, United States

1 Code) includes a description of how the Department
2 will use funds to support any deliverables that the
3 parties of the AOC/SOW have identified as nec-
4 essary to mitigate and prevent fuel leaks at the Red
5 Hill Bulk Fuel Storage Facility on Oahu, Hawaii.

6 (2) FUTURE YEARS DEFENSE BUDGET.—The
7 Secretary of Defense, in consultation with the Sec-
8 retary of the Navy, shall ensure that each future-
9 years defense program submitted to Congress under
10 section 221 of title 10, United States Code, de-
11 scribes how the Department will use funds to sup-
12 port any deliverables that the parties of the AOC/
13 SOW have identified as necessary to mitigate and
14 prevent fuel leaks at the Red Hill Bulk Fuel Storage
15 Facility on Oahu, Hawaii, in the period covered by
16 the future-years defense program.

17 (b) ENVIRONMENTAL PROTECTION AGENCY.—The
18 Administrator of the Environmental Protection Agency
19 shall ensure that the budget justification materials sub-
20 mitted to Congress in support of the budget for the Agen-
21 cy for any fiscal year (as submitted with the budget of
22 the President under section 1105(a) of title 31) includes
23 a description of how the Agency will use funds to support
24 any deliverables that the parties of the AOC/SOW have
25 identified as necessary to mitigate and prevent fuel leaks

1 at the Red Hill Bulk Fuel Storage Facility on Oahu, Ha-
2 waii.

3 **SEC. 6. ANNUAL LOCALITY ADJUSTMENT OF DOLLAR**
4 **THRESHOLDS APPLICABLE TO RED HILL.**

5 (a) IN GENERAL.—Notwithstanding the dollar limita-
6 tions in section 2805 of title 10, United States Code, the
7 Secretary of Defense may obligate or expend, from the
8 amounts described in subsection (b), not more than
9 \$6,780,000 to carry out an unspecified minor military
10 construction project for the sustainment and maintenance
11 of the Red Hill Bulk Fuel Storage Facility on Oahu, Ha-
12 waii.

13 (b) AMOUNTS.—The amounts described in this sub-
14 section are—

15 (1) amounts authorized to be appropriated for
16 the Department of Defense for operation and main-
17 tenance, Defense-wide, for any of fiscal years 2017
18 through 2030; and

19 (2) amounts authorized to be appropriated for
20 the Department of Defense for military construction
21 not otherwise authorized by law for any of fiscal
22 years 2017 through 2030.

23 (c) NOTIFICATION.—In accordance with section
24 2805(b) of title 10, United States Code, the Secretary
25 shall submit to the congressional defense committees writ-

1 ten notice of any decision to carry out an unspecified
2 minor military construction project under subsection (a).

3 The notice shall include—

4 (1) the justification for the project; and

5 (2) the estimated cost of the project.

6 (d) SUNSET.—The authority to carry out a project
7 under subsection (a) expires on September 30, 2030.

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