



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region IX
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San Francisco, CA 94105

ENFORCEMENT AND COMPLIANCE
ASSURANCE DIVISION

Sent via E-Mail: Dstephen.D.Barnett.mil@us.navy.mil

VIA ELECTRONIC MAIL – READ RECEIPT REQUESTED

Rear Admiral Stephen Barnett
Joint Base Pearl Harbor-Hickam
Commander, U.S. Navy Region Hawaii
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Pearl Harbor, HI 96860-5101
stephen.d.barnett.mil@us.navy.mil

Re: Request for Extension of Time to Provide Information Pursuant to Request for Information under Section 3007(a) of the Resource Conservation and Recovery Act for the Releases of Aqueous Film Forming Foam at Red Hill Bulk Fuel Storage Facility

Dear Rear Admiral Barnett,

This letter is in response to the Department of Navy's (DON's) February 3, 2023 letter responding to U.S. Environmental Protection Agency (EPA) Region 9's January 6, 2023 Request for Information ("Request for Information") regarding the November 2022 release of Aqueous Film Forming Foam (AFFF) concentrate at the Red Hill Bulk Fuel Storage Facility and other potential releases of AFFF. DON's February 3, 2023 letter requests additional time to respond to EPA's Request for Information and questions EPA's legal authority to require the information pursuant to Section 3007 of RCRA.

EPA disagrees with Navy's assertion that EPA lacks the legal authority under RCRA Section 3007 to require the provision of AFFF information because AFFF and its components are not currently listed or characteristic hazardous waste pursuant to the regulatory definitions in the Code of Federal Regulations. Consistent with EPA's long-standing legal interpretation, EPA has the authority pursuant to RCRA Section 3007 to require information about AFFF and its components pursuant to the statutory definition of hazardous waste in RCRA Section 1004(5).

Delays in responding to the information request letter impedes EPA's investigation into the November 22 release, but EPA is willing to provide additional time if the Navy will provide the requested information in phases as indicated below.

As noted in Navy's February 3, 2023 letter, information responsive to questions 4 and 5 of EPA's Request for Information are available on the Navy's Electronic Data Management System. Thus, no additional responses are needed for questions 4 and 5.

EPA grants an extension until February 20, 2023, for the following information requested pursuant to question 1 and 3 of the Information Request:

- 1) DON video(s) of the AFFF release; and
- 2) Output data from the Navy's Supervisory Control and Data Acquisition ("SCADA") system.

EPA grants an extension until March 15, 2023 for responses to questions 2, 6, 7, and the remainder of question 1.

If DON determines it is necessary, DON may make a claim of confidentiality as provided in the Request for Information.

If you have any questions, please contact Jamie Marincola of my staff at 415-972-3520 or Marincola.JamesPaul@epa.gov, or Dustin Minor in our Office of Regional Counsel at 415-972-3888 or Minor.Dustin@epa.gov. Your cooperation in this matter is appreciated.

Sincerely,

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

cc: Kathleen Ho, Deputy Director, Hawai'i Department of Health
Karnig Ohannessian, U.S. Navy
VADM John Wade, Joint Task Force Red Hill
RADM Jeffrey Kilian, NAVFAC Pacific