

42. In 2004 City and County sewer discharged raw sewage into the Ala Wai Canal, flowing out of the HARBOR. Photos of the HARBOR showed clearly shows the pattern and disbursement water takes flowing out the HARBOR, ie. directly to the surfing spots outside the HARBOR where Plaintiff regularly surfs or otherwise spends long hours in the ocean.

43. For more than 40 years, STATE and DLNR leased the SITE to a boat yard operator whose normal business related operations at the site included but were not limited to applying, replacing, storing ignitable; corrosive, reactive and toxic painting wastes that contain toxic metal based pigments, acid or alkaline cleaning solutions, rust removers, battery acid, caustic hot tanks waste, petroleum parts washer solvents, solvent-based paint waste, waste kerosene or gasoline; and spent paint booth exhaust filters, cyanide plating wastes, waste concentrated bleaches, pressurized aerosol cans, warfarin (rat poison), wood products containing arsenic and cyanide, benzene, DDT, formaldehyde, vinyl chloride and metallic sodium and potassium along with other HAZARDOUS MATERIALS waste like old and leaking batteries and acids of all kinds, lead based paints, resins, acetones, solvents, paint thinners and other thinning agents, materials and equipment used fiberglass repairs, gasoline and diesel engine overhauls, milling and machining metal parts, removing and replacing asbestos insulation on engine heater and exhaust systems, installing and replacing electrical components that include mercury, operating an

overhead crane system utilizing large gasoline and electric motors and hydraulic systems, and parked vehicles and boats that leaked petroleum and other HAZARDOUS MATERIALS fluid from their engine or from holding tanks on their cabs or on or below decks.

44. Other HAZARDOUS MATERIALS used in typical boat yard like the SITE include spent halogenated solvents used in degreasing including but not limited to tetrachloroethylene, or perchloroethylene (perc), trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride and chlorinated fluorocarbons (freons); spent halogenated solvents, and still bottoms, from uses other than degreasing including but not limited to chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, or freon 112, ortho-dichlorobenzene and Trichlorofluoromethane (freon); spent non-halogenated solvents, and still bottoms, that are ignitable including but not limited to xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone (MIBK), n-butyl alcohol, cyclohexanone, methanol, cresols and cresylic acid, nitrobenzene, toluene, methyl ethyl ketone (MEK), carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol and 2-nitropropane.

45. As an example of a typical product used or stored at the SITE: Gasoline, both leaded and unleaded is HAZARDOUS MATERIALS, as defined by 29 CFR 1910.1200, is a Carcinogenic, Category 2 that may cause cancer, may cause lung damage if swallowed and if it contains benzene becomes more toxic and harmful. Benzene is a

colorless or light yellow liquid at room temperature used to make other chemicals that are used to make plastics, resins, and nylon and synthetic fibers. Benzene is also used to make some types of lubricants, rubbers, dyes, detergents, drugs, and pesticides. Benzene leaks from underground storage tanks or from HAZARDOUS MATERIALS and or waste sites containing benzene and can contaminate well water. The major effect of benzene from long-term exposure is on the blood (Long-term exposure means exposure of a year or more) is leukemia, cancer of the blood-forming organs. Benzene works by causing cells not to work correctly. Benzene can cause bone marrow not to produce enough red blood cells, which can lead to anemia, excessive bleeding and can affect the immune system, increasing the chance for infection. The Department of Health and Human Services (DHHS) has determined that benzene causes cancer in humans.

Another example of a typical solvent used or stored at the SITE: 46. Tetrachloroethylene is sometimes used for vapor degreasing in metal-cleaning operations in shipyards. The major effects from chronic inhalation exposure to tetrachloroethylene in humans are neurological effects, including sensory symptoms such as headaches, impairments in cognitive and motor neurobehavioral functioning and color vision decrements. Epidemiological studies of dry cleaning workers exposed to tetrachloroethylene and other solvents suggest an increased risk for a variety of cancers (esophagus, kidney, bladder, lung, pancreas, and cervix). Animal

studies have reported an increased incidence of liver cancer in mice, via inhalation and gavage (experimentally placing the chemical in the stomach), and kidney and mononuclear cell leukemia in rats. Other effects noted in humans include cardiac arrhythmia, liver damage, and possible kidney effects. EPA considered the epidemiological and animal evidence on tetrachloroethylene as intermediate between a probable and possible human carcinogen (Group B/C.) Plaintiff was diagnosed with cardiac arrhythmia in 2009.

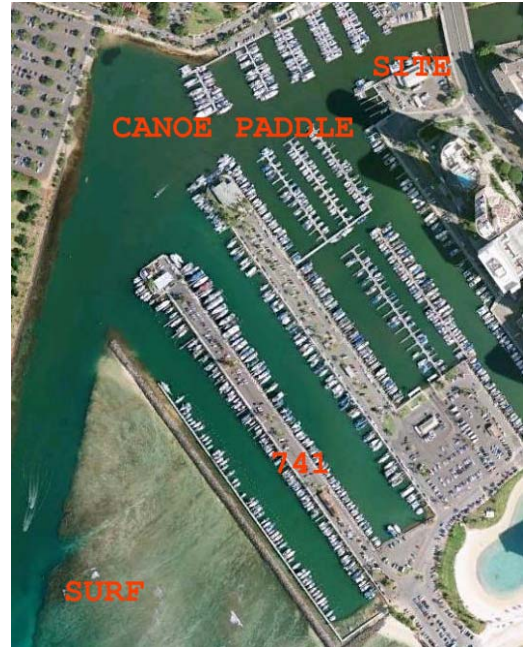
47. All at relevant times, STATE stored, used, spilled or otherwise release HAZARDOUS MATERIALS or waste limits that exceed CWA and EPA standards with or without a permit. In this case no permit has been applied for by STATE or granted to STATE or extended to STATE to the best of Plaintiff's knowledge, as of the date of filing this Complaint.

48. Negligent, ignorant, or unsupervised boat yard employees (many who were part time help hired for no more than a day or two, or boat owners and friends working on their boats at the dock) spilled HAZARDOUS MATERIALS, waste or fluids on to the ground that was exposed or otherwise covered with patched of asphalt and concrete. There was no monitoring or external controls over the use, storage, leaking, spilling or leaching of these HAZARDOUS MATERIALS by Defendants.

49. Plaintiff has first hand knowledge about the work performed and HAZARDOUS MATERIALS used at the SITE because he worked on a

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The SITE is located on the Waikiki side of the Ala Wai Small Boat Harbor (HARBOR) adjacent to the Ala Wai Bridge on Ala Moana Blvd. At all relevant times, the site was and is owned by STATE, leased by DLNR for commercial purposes. The SITE is built on land fill and abuts the navigable water that exits the HARBOR where Plaintiff and other members of the public surf, swim, dive, canoe paddle and otherwise use the water for purposes describe in this Complaint. HAZARDOUS MATERIALS, chemicals/liquids that originate on the surface of the SITE leach into the land fill under the SITE or run off the surface of the SITE then out into the HARBOR, eventually ending up in the surfing and diving spots outside the HARBOR.



This photo of the 2004 City and County



sewer discharge clearly shows the pattern and disbursement water takes flowing out the HARBOR, ie. directly to the surfing spots outside the HARBOR where Plaintiff regularly surfs or otherwise spends long hours in the ocean. For more than 40 years, STATE and DLNR leased the SITE to a boat yard operator whose normal business related operations at the site included but were not limited

to applying, replacing, storing ignitable, corrosive, reactive and toxic painting wastes.

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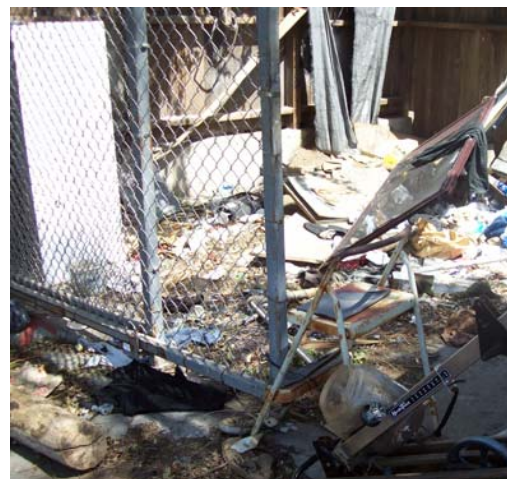
In early August, Plaintiff took photos of the SITE that clearly show discarded batteries, oil and chemical containers, exposed ground covered with black liquids and solids, and other apparently HAZARDOUS MATERIALS stored and spilled all over the SITE.



In
 2011

about January

STATE attempted to cover up its mess (unlawful acts and omissions) at the SITE by filling or covering evidence of HAZARDOUS MATERIALS, oily or discolored areas with new gravel or scraping off the discolored soil, power HAZARDOUS MATERIALS by washing and discharging the oily and discolored areas on the asphalt and cement into the adjacent salt water (HARBOR), removing the batteries and leaking cans of chemicals and solvents abandoned at the SITE, and erecting a fence around the SITE, all in an apparent attempt to hide the unlawful acts that had and have been occurring at the SITE over the last 45 years, under the lease to the boat yard and under direct control of STATE at the present time.



Despite STATE'S attempt to cover up its HAZARDOUS WASTE problems at the SITE, the evidence is still there as of the date of this filing of this lawsuit.