

| TESTIMONIES GIVEN BY: | Company | Oral/Written | Date |
|--|----------------------|--------------|---------|
| 1. Mark Frasier | WMF HI Env | Written | 3.1.13 |
| 2. Howard West | ESI | Oral | 3.8.13 |
| 3. Wayne Easley | Easley Corp. | Oral | 3.8.13 |
| 4. Mark Leong | HFN Maui Petroleum | Oral | 3.8.13 |
| 5. Robert Fung | Aloha Petroleum | Oral | 3.8.13 |
| 6. Hawaii Petroleum Marketers Association (HPMA) | | Written | 3.8.13 |
| 7. C.L. Stathos | Dept of Defense | Written | 5.7.13 |
| 8. Benjamin Alonzo, Sr. | Keaau Service | Written | 5.9.13 |
| 9. Tina Prettyman | Gentry's Kona Marina | Written | 5.9.13 |
| 10. Wendell Pestana | Ewa Repair Shop | Written | 5.9.13 |
| 11. I Sun Hwang | JMH Inc dba Ewa Mart | Written | 5.9.13 |
| 12. Edsel Eshima | Chevron | Written | 5.9.13 |
| 13. Smita Patel | Patel's Texaco | Written | 5.10.13 |
| 14. John Aickin | Kahala Gas | Written | 5.10.13 |
| 15. Aaron Y. Poentis | Dept of Navy | Written | 5.10.13 |
| 16. Robert Fung | Aloha Petroleum | Written | 5.10.13 |
| 17. Norman Stewart | Tesoro | Written | 5.10.13 |
| 18. Mark Leong | HFN Hawaii Petroleum | Written | 5.10.13 |
| 19. Steve Wetter | HFN Maui Petroleum | Written | 5.10.13 |
| 20. K. Sayle Hirashima | Mid Pac Petroleum | Written | 5.10.13 |
| 21. Various below | 76 Station Dealers | Written | 5.10.13 |

(Randy Amine, Jon Tsutsumi, Chad Willing, Blake Tanaka, Keith Nagano, Gail Au, Eric Park, Cheryl Gonzalez, Burt Chinen, Dan Del Mundo, Kat Tandal)

1 STATE OF HAWAII DEPARTMENT OF HEALTH

2 SOLID AND HAZARDOUS WASTE BRANCH

3

4

5 PUBLIC HEARING

6 IN RE:

7 UNDERGROUND STORAGE TANK RULES

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12 The above-entitled matter came on for public

13 hearing on April 8, 2013, at 1:33 p.m., at the

14 State of Hawaii Department of Health, Solid and

15 Hazardous Waste Branch, 5th Floor Conference Room,

16 919 Ala Moana Boulevard, Honolulu, Hawaii 96814.

17

18

19 BEFORE HEARINGS OFFICER: STEVEN JACOBSON

20

21

22 REPORTED BY: LAURA SAVO, RPR, CSR

23

24

Ali'i Court Reporting
956 Uwao Street
Honolulu, Hawaii 96813

1 MS. PERRY: So good afternoon. Thanks
2 for coming out today.

3 (Brief pause due to
4 technical difficulties.)

5 MS. PERRY: Okay. So if you haven't done
6 so already, please sign in and indicate whether
7 you're going to present testimony today.

8 My name is Thu Perry. I'm the public
9 participation coordinator for the UST program.
10 Roxanne Kwan is the supervisor, and, of course --

11 (Brief pause due to
12 technical difficulties.)

13 MS. PERRY: Okay. So today we'll be
14 accepting testimony for Hawaii Administrative Rules
15 11-281 entitled "Underground Storage Tanks." This
16 will consist of mandates from the Energy Policy Act
17 of 2005 as well as state-derived initiatives. If
18 you guys had went to that informational meeting
19 earlier on this year, there are some changes.
20 There's a summary of those changes up here if you
21 want a copy.

22 As you can see, we are attempting to
23 video conference with Hilo, Kona, Kahului and

24 Lihue. Hopefully, that goes well.

25 Our hearing officer is Steven Jacobson.

3

1 He will be directing the sequence of questioning
2 and then also setting the ground rules for the
3 meeting.

4 There are extra copies of the rules
5 itself if you want to take a look at those and
6 that's about it. So thanks again for coming out
7 today and we look forward to your testimony.

8 THE HEARINGS OFFICER: Okay. That took
9 up a lot of what I was going to say. I will start
10 by saying these hearings are held pursuant to
11 Sections 91-3 and 92-41 of the Hawaii Revised
12 Statutes. And the hearings are, again, on the
13 proposed amendments to Hawaii Administrative Rules
14 Section -- Chapter 11-281, entitled "Underground
15 Storage Tanks." Those have been available.

16 At the conclusion of the hearing, there
17 will be an opportunity to submit written testimony.
18 For those folks who haven't submitted today, that
19 opportunity will go through May 10th. You're
20 submitting them to the Solid and Hazardous Waste
21 Branch here in Suite 212 down on the second floor.

22 Please bring in two copies. If you're going to
23 testify -- it could enter as your testimony after
24 the hearing. That will -- if you're turning in
25 written testimony or already have, your testimony

4

1 is already in. So if you're going to testify
2 orally also, if you could just hit the high points,
3 but if you've got 20 pages of testimony, you don't
4 need to do it all again because, people, you know,
5 the purpose of this hearing is to gather
6 information. It's going to be given to the folks
7 who are doing the final review of what's been
8 proposed. So they will have both the transcript
9 of the hearing and they'll have the written
10 comments.

11 Notice of this public hearing was
12 published on Monday, the 8th, in a number of
13 newspapers statewide that are probably on the other
14 notice.

15 How many folks are going to be orally
16 testifying today here on Oahu? Anybody? One? Is
17 that all? Okay.

18 Outer island folks, how many people are
19 going to be testifying from there? Hilo first.

20 HILO SPEAKER: This is Hilo. Currently,

21 I do not have anybody interested to deliver an oral
22 testimony.

23 THE HEARINGS OFFICER: Okay. Thank you.

24 Kauai?

25 HILO SPEAKER: You're welcome.

5

1 KAUAI SPEAKER: No, not here at this
2 time.

3 THE HEARINGS OFFICER: Maui?

4 MAUI SPEAKER: No. Zero.

5 THE HEARINGS OFFICER: Kona?

6 MS. KANAGY: We have one.

7 THE HEARINGS OFFICER: Okay. So we have
8 one person in Kona and one person on Oahu. That
9 seems to be the total I've got. Okay.

10 Okay. It doesn't seem like I'm going to
11 be needing to impose limits for 50 people who want
12 to testify or anything. So it's a little simpler
13 than the Greenhouse Gas Regulation Hearings.

14 Okay. There is one of you on an outer
15 island, could you please mute? I'm not sure who it
16 is. Thank you.

17 Okay. All right. Why don't we begin
18 with the testimony from Kona. And if we have a

19 glitch, we've --

20 MS. KANAGY: We're having trouble hearing
21 here in Kona.

22 THE HEARINGS OFFICER: We can hear you --
23 I can hear you just fine.

24 KONA SPEAKER: We can't hear you.

25 MR. EASLEY: We can't hear you.

6

1 THE HEARINGS OFFICER: Okay. Why don't
2 we have the Oahu --

3 MS. KANAGY: Here we go. Now we got it.

4 THE HEARINGS OFFICER: Okay. Go ahead.

5 Witness, if you could please give your
6 name first and any affiliation that you wish to
7 disclose.

8 MR. EASLEY: Wayne Easley, Easley Corp.

9 THE HEARINGS OFFICER: Okay. Please go
10 ahead with your testimony, Mr. Easley.

11 MR. EASLEY: Well, they're really two
12 questions, but I'm told that's testimony.

13 Question one: On your Section 11-281-53,
14 there's a change on pressurized piping. What you
15 don't give is an implementation date. Once the
16 rules are accepted, how much time, three years, one
17 year, six months, before we have to comply with

18 that section? It's on page 281-65, and I have it
19 written here and I'll send that through to you.

20 THE HEARINGS OFFICER: Okay.

21 MR. EASLEY: If you guys could give us
22 the timing so we have some measure of complying to
23 that.

24 THE HEARINGS OFFICER: Okay. So the
25 comment is there needs to be some timing. Okay.

7

1 Anything --

2 MR. EASLEY: Yeah. Second one is on page
3 281-46, keeping records on site at each site. For
4 those of us who keep corporate offices in the
5 past -- Roxanne, if you're there. Jack Ridge is a
6 thing of the past. I know he's gone. You guys did
7 approve that we could keep our records at our
8 corporate office, mainly because they're quite
9 intense and we don't want them floating around at
10 each site. It now refers to an alternate method as
11 approved by director. Could you eventually give us
12 comment on that, how we find an alternate method
13 approved by director? That's it.

14 THE HEARINGS OFFICER: Okay. Thank you
15 for your testimony.

16 Kona, anyone else to testify there?

17 Hello?

18 MS. KANAGY: No. That's all.

19 THE HEARINGS OFFICER: Okay. If you
20 could mute -- thank you. If you could mute your
21 speaker at this point.

22 MR. EASLEY: We can't hear them again.

23 MS. KANAGY: We can't hear when we mute
24 it.

25 KONA SPEAKER: We can't hear them anyway.

8

1 THE HEARINGS OFFICER: You must be
2 hearing me say something. All right.

3 KONA SPEAKER: Oh, there we go. There we
4 go.

5 THE HEARINGS OFFICER: All right.

6 Mr. Fung, do you want to testify?

7 MR. FUNG: Well --

8 THE HEARINGS OFFICER: You can come up
9 here or you can testify. What do you want to do?

10 MR. FUNG: I'm not the speaker that
11 indicated I wanted to speak.

12 THE HEARINGS OFFICER: Okay. Oh,
13 Mr. Fung, were you going to testify also?

14 MR. FUNG: I was pretty much here to

15 listen, but --

16 THE HEARINGS OFFICER: Okay. Well, I

17 guess I got handed the wrong person's name then.

18 Okay. If the gentleman who indicated he wanted

19 to speak, do you want to come up? Why don't you

20 come up here. It makes it easier on the court

21 reporter.

22 MR. WEST: Where do you want me to sit?

23 THE HEARINGS OFFICER: Right there. Then

24 they can see you on the other islands too, I think.

25 Yeah, there you go.

9

1 MR. WEST: Okay. I'll make it brief

2 because I do intend to write this up, but there are

3 a few points in this --

4 THE HEARINGS OFFICER: Also, if you could

5 indicate your name.

6 MR. WEST: My name is Howard West. I'm

7 with ESI Consulting firm.

8 THE HEARINGS OFFICER: Okay. Thank you.

9 MR. WEST: And there were a number of

10 things that I expected to be in this revision that

11 ended up not being in the revision, and one of the

12 most important things was issued in a July 2005

13 letter by the department who indicated at that time
14 that they would move towards using the action
15 levels established by the DOH HEER office and,
16 therefore, uniting the two groups together with
17 some commonality for action levels, which makes a
18 lot of sense rather than have two disparate sets of
19 action levels when you're dealing with the same
20 human health issues.

21 So I notice here at the front when you
22 have this list of small changes that are in here,
23 one of them that's indicated is you've replaced the
24 Tier 1 Action Levels with screening levels for soil
25 and groundwater. And at some point too, I was told

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1 that they were revised to be more current. They
2 haven't been revised at all. They're the same
3 action levels that were present in March of 2000
4 when the last Underground Storage Tank Technical
5 Guidance Manual was released, which shows no
6 progress by the department at all in moving towards
7 what the HEER office is establishing. So I would
8 encourage the department to redraft that part to
9 include maybe not some hard numbers, but some
10 numbers that say levels established by the
11 department and so on.

12 This turned out to be quite an issue in
13 the past where now the Solid and Hazardous Waste
14 Branch had to issue a letter saying anybody who
15 wants to use the DOH HEER Environmental Action
16 Levels is welcome to do so, but it's not
17 necessary, and the reason for that because it's
18 in state law, because it's in 11-281. So now we
19 have the same issue here that could have been
20 corrected and seemed to be the intent to be
21 corrected back in July 2005, and, yet, we have hard
22 numbers in here. So when the action levels change
23 because there's no -- there's new toxicological
24 data, these numbers will never be updated and
25 they'll continue to be old and ancient. So that's

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1 my recommendation.

2 Another is that the department has united
3 with the HEER office in requiring that
4 environmental hazard evaluations and environmental
5 hazard management plans be prepared for certain
6 sites where there may be residual contamination.
7 There's no mention of environmental hazard
8 evaluations or environmental hazard management
9 plans in this new document, and because the

10 department is starting to require it for certain
11 sites, I would suggest that it should be
12 implemented in 11-281 to make it something that
13 everyone can read and go, oh, yeah, we have to do
14 this if we're leaving residual contamination
15 behind.

16 Let's see. That's basically it.

17 THE HEARINGS OFFICER: Okay. Thank you
18 for your testimony.

19 Is there anyone else here on Oahu who has
20 come in and wants to testify that didn't
21 indicate --

22 MR. FUNG: I think so.

23 THE HEARINGS OFFICER: Okay. I didn't
24 mean to force you to. I just got handed that slip.
25 I didn't mean to put you on the spot.

12

1 MR. FUNG: No. Thank you.

2 THE HEARINGS OFFICER: If you could give
3 your name and any affiliation.

4 MR. FUNG: Who am I talking to here?

5 THE HEARINGS OFFICER: Yeah, just talk
6 toward me, but just make sure the court reporter --

7 Well, actually, you've got all those
8 people in the other islands.

9 MR. FUNG: All right. My name is Robert
10 Fung. I'm secretary and general counsel for Aloha
11 Petroleum. We're still in the process of
12 finalizing our position statement. So our primary
13 objective was to come and listen, but it feels like
14 we really need to just give some of the high level
15 points, and it just feels for us, we're a little
16 puzzled as to why the DOH is not working more
17 closely with the EPA on these rules. It just feels
18 that perhaps DOH is getting a little ahead of, you
19 know, the EPA in terms of the proposed UST -- UST
20 rules.

21 There are some questions that we have, I
22 mean, in terms of compliance costs that don't
23 appear to have been taken into account. It will be
24 a heavy burden on the small mom and pop operators
25 that maybe have just a few stations or, you know, a

13

1 few tanks.

2 Some of the methodologies that in terms
3 of testing, we're not sure if there's -- I guess we
4 want to understand better in terms of justification
5 for some of these testing requirements. We don't
6 think that enough consideration has been put into

7 the costs in terms of, for example, testing the
8 containment sumps in terms of the costs handling
9 the liquid after that in terms of the compliance
10 costs.

11 Another question we had was in terms of
12 the drop tubes. They're not designed to be taken
13 out to be inspected. Merely, just if there's a
14 problem with it, it has to be replaced.

15 It's just on a high level, we just had a
16 lot of questions. That's, basically, we wanted to
17 come here and listen and formulate -- you know,
18 finalize our position statement which we'll be
19 filing shortly.

20 THE HEARINGS OFFICER: Okay. Yeah, I
21 think you have until May 10th.

22 MR. FUNG: Correct.

23 THE HEARINGS OFFICER: Okay. Thank you
24 for your testimony.

25 Anyone else here? Okay. I see no one.

14

1 Anybody on Hilo who's arrived or would
2 now like to speak?

3 HILO SPEAKER: No interest yet.

4 THE HEARINGS OFFICER: Maui?

5 MAUI SPEAKER: No, sir. Not yet.

6 THE HEARINGS OFFICER: Kauai?

7 KAUAI SPEAKER: No. Thank you.

8 THE HEARINGS OFFICER: Okay. And anyone
9 else in Kona?

10 MS. KANAGY: We have one more in Kona.

11 KONA SPEAKER: Yeah, we've got one more
12 in Kona.

13 THE HEARINGS OFFICER: Okay.

14 MR. LEONG: My name is Mark Leong. I'm
15 the general manager for Hawaii Petroleum.

16 Similarly, like Robert has -- Robert Fung has, just
17 looking at the EPA-proposed rules that aren't even
18 final yet, I mean, they're looking at no rule to
19 replace tanks in a 10-year period which I, quite
20 frankly, think is an arbitrary number that the
21 State of Hawaii is coming up with.

22 Similarly, with single wall piping, I
23 mean, the EPA is proposing that if you inflate 50
24 percent or more, then the whole line needs to be
25 replaced. For the State of Hawaii, they're just

1 saying any portion needs to be double walled. So

2 I'm kind of scratching my head as well why the

3 State of Hawaii is trying to propose rules when the

4 EPA rules aren't even final yet.

5 Spill prevention equipment, containment
6 sumps, same concerns. You know, we feel visual
7 inspection is sufficient. Needless generation of
8 hazardous wastewater that must be handled, stored,
9 transported and disposed has unnecessary compliance
10 costs, not only to the mom and pop, but to the
11 small petroleum marketers as well.

12 The testing that's being required, the
13 State of Hawaii refers to the EPA RP 1200, which I
14 understand doesn't meet any ANSI specifications,
15 and I'm pretty sure the PEI didn't include any
16 small petroleum marketers or mom and pop store in
17 coming up with that RP 1200 rule.

18 So and then, similarly, along with the
19 overfill protection, I mean, I think the state, and
20 I could be misunderstanding it, is asking for
21 liquid testing as well. Again, needless
22 generation of waste product. And then there's
23 also some things in here and I might not be
24 100-percent clear, but it applies to vacuum and
25 pressure testing. Existing equipment with

1 secondary containment is not necessarily designed
2 to or for positive or negative pressure. So we

3 think the testing could void warranty or lead to a
4 hole or rupture in a perfectly fine system to begin
5 with.

6 So I think that's just basically where
7 I'm coming from. Again, you know, we're still
8 trying to get our arms around the proposed rules
9 and we will be providing written testimony. Thank
10 you.

11 THE HEARINGS OFFICER: Thank you.

12 Anyone else in Kona?

13 MS. KANAGY: No.

14 KONA SPEAKER: That's it.

15 THE HEARINGS OFFICER: Okay. Thank you.

16 Anybody else on an outer island or in the
17 room? Unless you tell me yes, outer islands, I'll
18 believe that you don't have someone.

19 All right. Thank you all for coming
20 today and for your participation. Once again,
21 people who wish to submit written testimony have
22 until 4:30 p.m. on May 10th to the Solid and
23 Hazardous Waste Branch downstairs in room 212.
24 This is 919 Ala Moana Boulevard. It's Honolulu,
25 96814.

1 That will conclude the hearing. Thank
2 you all for coming.

3 (Whereupon the hearings was
4 adjourned at 1:52 p.m.)

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C E R T I F I C A T E

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

I, LAURA SAVO, a Certified Shorthand Reporter in and for the State of Hawaii, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place herein stated, and was thereafter reduced to typewriting under my supervision;

That the foregoing is a full, true and correct transcript of said proceedings;

I further certify that I am not of counsel or attorney for any of the parties to this case, nor in any way interested in the outcome hereof, and that I am not related to any of the parties hereto.

Dated this 12th day of April, 2013, in Honolulu, Hawaii.

LAURA SAVO, RPR, CSR NO. 347

Perry, Thu

From: Mark Frazier [frazierm001@hawaii.rr.com]
Sent: Friday, March 01, 2013 10:49 AM
To: Perry, Thu; Takaba, Richard R
Subject: NOTICE OF PUBLIC HEARING On Underground Storage Tank Rules
Attachments: old EAL action.pdf; ATT959368.htm; New EAL screen.pdf; ATT959369.htm

Thu/Rich, glancing at the announcement this issue caught my eye.

"replacing Tier 1 Action Levels with Tier 1 Screening Levels for Soil and Groundwater;"

(b) Owners and operators must remediate contaminated soil, groundwater and surface water at the site to residual [levels which] concentrations that meet one of the following criteria: (1) Default[tier]Tier1[actionlevels]Screening Levels as presented in Table [1-1a] (page 281-79)

I find this sentence confusing it seems to say default is old and new levels, use both at the same time, then it refers to the old levels Tbl 1-1a. Why not just say-use the new levels, tbl 1 "screening"? (see below). No reference is made to the new "screening" table 1. Also both are table 1, why not call them table 1 and table 2.

Where is the connection to the HEER tables/levels since they may change with time?

--

Mark Frazier

WMF Hawaii Environmental, Inc.

Experienced Environmental Consulting

Information contained in this communication is confidential and is intended only for the individual or entity to whom it is addressed. Unauthorized use of this communication is prohibited. If you have received this communication in error, please contact the sender immediately.

Testimony from the Hawaii Petroleum Marketers Association (“HPMA”)

Submitted 4/08/12

HPMA comments in RED

**BRIEF SUMMARY OF PROPOSED CHANGES TO HAWAII ADMINISTRATIVE RULES,
TITLE 11, CHAPTER 281**

General objection: The State Department of Health is preparing to implement rules before EPA has implemented their revised rules, running the risk of adopting rules that are out of step with federal regulations, creating a very confusing regulatory environment, especially for small, single-site operators.

Compliance cost is also an issue for small operators who will either have to pass additional cost to consumers or reassess whether their business can remain viable in the face of higher and higher direct cost. This effect will have particular impact to rural, low volume sites that may be forced to close because they cannot cope with the additional cost of compliance. This will limit consumer options to obtain fuel.

Secondary Containment (Hawaii Administrative Rules (HAR) 11-281-17, and HAR 11-281-51(e))

All existing underground storage tanks (USTs) and UST systems must be provided with secondary containment within 10 years of the effective date of the rules.

All USTs or UST systems installed on or after the effective date of the rules must be provided with secondary containment (i.e. be double walled) AND use interstitial monitoring for release detection on the tank(s) and piping.

If a portion of single walled piping is replaced, the replaced portion must be provided with secondary containment and interstitial monitoring.

We object to the arbitrary replacement of single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. In addition, internal lining of a single-wall tank provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound. The use of an arbitrary deadline to enforce this proposed rule is also objectionable, as it does not take into account site specific variable such as soil conditions or geography.

Spill Prevention Equipment, Containment Sumps and Under Dispenser Containment (HAR 11-281-19, and HAR 11-281-41(c))

Dispensers installed on or after the effective date of the rules must be provided with under dispenser containment (UDC). The UDC must be monitored for leaks with a sensing device that signals the operator if a leak is detected.

Spill prevention equipment (spill buckets) and containment sumps that are utilized as part of an interstitial monitoring system, must pass a test annually to ensure that they are liquid tight. UDC installed on or after the effective date of the rules must pass a test annually to ensure that it is liquid tight. The method for testing needs to be one that is developed by the manufacturer, a nationally recognized organization, an independent testing laboratory, or other method approved by DOH. The Petroleum Equipment Institute (PEI) has published procedures for this kind of testing in their publication RP1200, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities, available through PEI.

Spill prevention equipment, UDCs and containment sumps must be maintained free of regulated substance, water and debris at all times.

The method of testing spill prevention equipment, containment sumps and under dispenser containment is objectionable to HPMA in the following areas:

- ***The method of testing of the equipment may actually damage equipment that is being tested.***
- ***The cost of the annual testing is high and will be passed on to consumers.***
- ***The assurance offered by this type of testing may not be commensurate with the amount of cost and disruption to businesses.***

Overfill Prevention and Maintenance (HAR 11-281-14(c), and HAR 11-281-41(d)),

Overfill prevention equipment (flappers, ball floats, alarms) is required to be checked annually for proper functioning.

Overfill prevention methods that rely on the use of alarms must have the alarms clearly labeled and located where the delivery person can clearly see AND hear the alarm in order to immediately stop delivery of the product.

HPMA opposes this requirement primarily because the removal of drop tubes is required. They are fragile and expensive and not meant to be removed for inspection, but only to be replaced.

Kwan, Roxanne S

From: Perry, Thu
Sent: Tuesday, May 07, 2013 8:31 AM
To: Kwan, Roxanne S
Subject: FW: FINAL HAWAII UST REG COMMENTS **Please Confirm**
Attachments: HAWAII UST REG COMMENTS1.PDF
Importance: High

Just FYI another comment. When do you want to meet to go over these? I've done what I could with them.

Thank you,
Thu

-----Original Message-----

From: Brasher, DeEllen M CIV CNRSW, N40 [mailto:deellen.brasher@navy.mil]
Sent: Tuesday, May 07, 2013 8:27 AM
To: Perry, Thu
Cc: Brasher, DeEllen M CIV CNRSW, N40
Subject: FW: FINAL HAWAII UST REG COMMENTS **Please Confirm**
Importance: High

<<HAWAII UST REG COMMENTS1.PDF>> Hi Thu,

Thanks for the opportunity to provide comments on the proposed rules for underground storage tanks. Per our discussion, I faxed the letter early this morning and have attached it for your consideration of including the addition to the end of section 11-281-129.

Please confirm that you received the letter and my email and let me know if you have any questions.

Thanks,

DeEllen M. Brasher
DoD Regional Environmental Coordination Officer Navy Region Southwest
937 N. Harbor Drive
Box 81, Bldg. 1, 5th Fl, Rm S510
San Diego, CA 92132-0058
Office: 619-532-2434
Cell: 760-845-3880



DEPARTMENT OF DEFENSE
REGION 9 REGIONAL ENVIRONMENTAL COORDINATOR
937 NORTH HARBOR DRIVE BOX 81
SAN DIEGO, CA 92132-0058

5090
Ser N40JRR.cs/021
May 7, 2013

Ms. Thu Perry
State of Hawaii Department of Health
Solid and Hazardous Waste Branch
919 Ala Moana Blvd., Ste 212
Honolulu, HI 96814-4920

Dear Ms. Perry:

On behalf of the Department of Defense (DoD) Regional Environmental Coordinator for EPA Region 9, and the military services in Hawaii, we respectfully request the below addition to the proposed Underground Storage Tank Regulation §11-281-129. We appreciate the opportunity to provide comments on the proposed rules for underground storage tanks (USTs), including the adoption of a new rule regarding "delivery prohibition".

DoD supports this state-proposed regulation, but desires to include some mission essential flexibility for USTs on military installations. Specifically, when considering a delivery prohibition, State of Hawaii Department of Health (DOH) should have clear authority to defer the prohibition when the prohibition will negatively impact our military installations' national security mission, or increase risk to human health or the environment.

Of particular concern to DoD is the effect a delivery prohibition could have on military operations and humanitarian disaster relief efforts. For example, some military USTs are used to store JP-8, a fuel used in military aircraft, armored vehicles and emergency generators. A delivery prohibition could thus halt military operations, force re-routing of critical armament or personnel, or cause other adverse national security impacts.

DoD's addition to the proposed regulations is consistent with federal guidelines. On August 7, 2006, the U.S. Environmental Protection Agency (EPA) issued its Grant Guidelines to States for Implementing the Delivery Prohibition Provision of the Energy Policy Act of 2005 which provide in part:

A state retains the discretion to decide whether to identify an underground storage tank as ineligible to deliver, deposit, or accept product based on whether the prohibition is in the best interest of the public. In some cases, prohibition of delivery, deposit, or acceptance of product to an underground storage tank is not in the best interest of the public, even in the cases of significant and/or sustained noncompliance (e.g., certain emergency generator underground storage tanks).

Accordingly, DoD recommends the addition of the following subparagraph (f) to the end of §11-281-129:

"(f) If a prohibition under (a) of this section would have an adverse effect on a United States military mission or would increase risk of harm to human health or the environment, the department may defer, upon written request by the owner, the prohibition for a period of no more than 180 days after the determination under (a) of this section is made."

In closing, Hawaii's military bases and training ranges are crucial to supporting our national security mission. DoD, therefore, respectfully requests the DOH adopt this recommendation.

If you have questions or need additional information, please contact Ms. DeEllen Brasher at 619-532-2434. Thank you for the opportunity to provide comments on this matter.

Sincerely,



C. L. STATHOS
By direction



KEAAU SERVICE STATION, INC.

P.O. BOX 335 KEAAU, HAWAII 96749

(808) 966-9373

May 7, 2013

Department of Health
Solid and Hazardous Waste Branch
UST Section
919 Ala Moana Boulevard
Suite 212
Honolulu, Hawaii 96814

To Whom It May Concern:

Thank you for allowing me to provide written testimony regarding the proposed UST rules.

Keaau Service owns and operates three retail fueling facilities ---two of the sites are in the outskirts of Hilo and the last site in the rural town of Naalehu. Each of our locations has four fuel offerings, 87-unleaded, 89-blend, 92-premium, and diesel.

In reviewing the *overall proposed rules*, we note that in every proposed modification of the current rules, there are no specific policies and procedures listed. Everything is written in generalities. What could be at issue is that with no specific policies and procedures, it leaves the rules open for interpretation later ---without specific knowledge of what we are agreeing to it could make it more costly both in time and money.

Secondly, the method of *testing spill prevention equipment, containment sumps and under dispenser containment* is objectionable to MPP in the following areas:

- The method of testing of the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner, i.e., overfill tube flappers
- The time and cost of the annual testing is already costly and by adding another layer of additional testing will raise the cost. For example, testing all spill prevention equipment at a just one of my sites may involve the use of approximately 600 gallons of water per year since each site has at least three turbine sumps and three drop fuel sumps . Once the water has been used to test the spill prevention equipment, it will most likely be deemed contaminated (although the determination of contamination remains highly subjective). The "contaminated" water will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this waste is about \$8 per gallon, leading to an annual additional cost of \$4,800 per site per annum. And since we are located on the neighbor islands, waste will need to be transported for disposal.
- Other costs that need to be considered are the cost of disruption of our ongoing business during the extensive testing and the additional administrative cost that will be required to comply with these proposed rules.

Sincerely,

Benjamin Alonzo, Sr.
President

**GENTRY'S
KONA MARINA
HONOKOHAU HARBOR**

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

May 9, 2013

Solid and Hazardous Waste Branch
919 Ala Moana Boulevard, Ste 212
Honolulu, HI 96814

Via facsimile: 808-586-7509

Re: **SUBMITTAL OF WRITTEN TESTIMONY IN OPPOSITION
FOR PROPOSED CHANGES TO HAR TITLE 11, CHAPTER 281**

GKM Inc. dba Sea Store & Deli is a single store fuel operator that services the Kona boating community. After reading through the proposed rule changes, we feel that our small business will be adversely affected by many of the changes being proposed and make us unable to compete with large petroleum companies.

We would like to offer testimony in OPPOSITION of the following rule changes:

Secondary Containment (HAR 11-281-17 and HAR 11-281-51 (e)) – proposing to provide secondary containment to all existing UST systems within 10 years of the effective date of the rule.

Currently, the proposed rule change would make the State of Hawaii more stringent than those presented in 40 Code of Federal Regulation (CFR) Part 280, Subpart B – 280.20 - 280.22 and present significant costs to owners to retrofit existing systems with secondary containment. Many small businesses are operating and maintaining single-walled tanks in compliance with federal and state regulations without any issues. It seems arbitrary (i.e. placing a 10 year timeline) and lacks sound reasoning to put a timeline on secondary containment conversion when single walled tanks can, and are currently, being monitored and maintained for leaks with other effective methods.

Operator Training (HAR 11-281-46) adds additional training and administrative expense to already struggling small businesses.

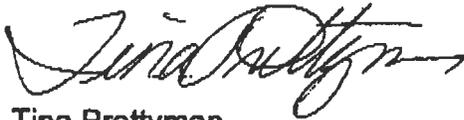
Spill Prevention Equipment, Containment Sumps and Under Dispenser Containment (HAR 11-281-19 and HAR 11-281-41(c)). Requiring owners to perform a liquid tightness test annually on under dispenser containment is unnecessary if sumps are well maintained with alarms and inspected regularly. The cost for disposing of the hazardous liquid byproduct of the testing will be significant. Currently all hazardous waste is shipped off island for disposal. It may also mean shutting operations down during annual testing which will result in further loss of revenue.

Our small off-the-beaten path single operating site services marine businesses from diving to commercial fishing vessels and their vehicles. We employ about 8-10 full and part time personnel. We do our best to offer a competitive fuel pricing although it has been difficult given that we have a large box wholesaler within a mile of our location.

The regulations you are proposing will add significant operating and administrative costs on ours and other single site businesses in the islands potentially eliminating most small mom-and-pop retailers who employ half a dozen or so people. I strongly urge you to weigh the potential impact of your proposed rule changes on small businesses versus the gain.

Thank you for your consideration.

Sincerely,



Tina Prettyman
General Manager

VIA FACSIMILE (808) 586-7509

State of Hawaii
Department of Health
Solid and Hazardous Waste Branch
919 Ala Moana Boulevard, Suite 212
Honolulu, Hawaii 96814

Re: Proposed Changes to Hawaii Administrative Rules for UST's
Title II, Chapter 281

Dear Director,

I write to submit my testimony in opposition to several of the proposed changes to the UST rules (HAR 281). My specific objections are detailed below.

General Objection

The DOH is attempting to implement major changes to the UST rules before the U.S. EPA's proposed UST rules, have been finalized and go into effect. The new rules would cause a confusing regulatory environment for small dealers like me. Additionally, increased costs to comply with the new rules will force me to pass along those costs to my customers or even reassess whether I can stay in business in the face of higher and higher direct costs.

Requirement for Secondary Containment in UST's within 10 years

I object to the requirement of replacing existing single-wall UST's with double-wall UST's because there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. The 10-year deadline is also objectionable because it doesn't take into account site-specific variables such as the condition of the UST's. The cost to comply with this new requirement would be astronomical and may force small dealers like me to close because we cannot afford the direct cost of replacing UST's along with the loss of business due to closure during tank replacement.

Spill Prevention Equipment, Containment Sumps and Under Dispenser Containment

The method proposed by DOH to test spill prevention equipment, containment sumps and under dispenser containment will penalize dealers for the following reasons:

- The method of testing the equipment may actually damage the equipment;
- The cost of the annual testing is high and dealers will be forced to pass along the cost to their customers;
- The assurance offered by this type of testing may not compensate for the testing costs and business disruption; and
- Performing a leak test on containment sumps will needlessly generate a high volume of waste water for each test and will force dealers to absorb the high costs of disposal of the contaminated water.

MAY 09 2013

State of Hawaii
Department of Health
Solid and Hazardous Waste Branch
Page 2

Further, I believe it is unnecessary to conduct integrity testing on secondary containment sumps, because visual inspection alone is sufficient to ensure that spill buckets are free of cracks, holes, debris and water.

Overfill Protection and Maintenance

There are already requirements for UST systems to be equipped with automatic shutoff valves, high level alarms or flow restrictors. I also oppose the removal of drop tubes. Drop tubes are fragile and expensive. They are not meant to be removed for inspection, but only to be replaced. There is no justification for the need for overfill equipment testing as overfill events are rare.

For the above reasons, I oppose these proposed changes to the UST rules.

Thank you.

EWA REPAIR SHOP, INC.

Company Name

By: Kendell Pestana

Printed Name: WENDELL PESTANA

Title: PRESIDENT

Date: 5/8/2009

VIA FACSIMILE (808) 586-7509

State of Hawaii
Department of Health
Solid and Hazardous Waste Branch
919 Ala Moana Boulevard, Suite 212
Honolulu, Hawaii 96814

Re: Proposed Changes to Hawaii Administrative Rules for UST's
Title 11, Chapter 281

Dear Director,

I write to submit my testimony in opposition to several of the proposed changes to the UST rules (HAR 281). My specific objections are detailed below.

General Objection

The DOH is attempting to implement major changes to the UST rules before the U.S. EPA's proposed UST rules, have been finalized and go into effect. The new rules would cause a confusing regulatory environment for small dealers like me. Additionally, increased costs to comply with the new rules will force me to pass along those costs to my customers or even reassess whether I can stay in business in the face of higher and higher direct costs.

Requirement for Secondary Containment in UST's within 10 years

I object to the requirement of replacing existing single-wall UST's with double-wall UST's because there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. The 10-year deadline is also objectionable because it doesn't take into account site-specific variables such as the condition of the UST's. The cost to comply with this new requirement would be astronomical and may force small dealers like me to close because we cannot afford the direct cost of replacing UST's along with the loss of business due to closure during tank replacement.

Spill Prevention Equipment, Containment Sumps and Under Dispenser Containment

The method proposed by DOH to test spill prevention equipment, containment sumps and under dispenser containment will penalize dealers for the following reasons:

- The method of testing the equipment may actually damage the equipment;
- The cost of the annual testing is high and dealers will be forced to pass along the cost to their customers;
- The assurance offered by this type of testing may not compensate for the testing costs and business disruption; and
- Performing a leak test on containment sumps will needlessly generate a high volume of waste water for each test and will force dealers to absorb the high costs of disposal of the contaminated water.

MAY 09 2013

Further, I believe it is unnecessary to conduct integrity testing on secondary containment sumps, because visual inspection alone is sufficient to ensure that spill buckets are free of cracks, holes, debris and water.

Overfill Protection and Maintenance

There are already requirements for UST systems to be equipped with automatic shutoff valves, high level alarms or flow restrictors. I also oppose the removal of drop tubes. Drop tubes are fragile and expensive. They are not meant to be removed for inspection, but only to be replaced. There is no justification for the need for overfill equipment testing as overfill events are rare.

For the above reasons, I oppose these proposed changes to the UST rules.

Thank you.

JMH INC. DBA EWA MART
Company Name

By: *I Sun Hwang*

Printed Name: I SUN HWANG

Title: PRES

Date: 05/09/2013

**Chevron****GARLOW PETROLEUM, INC**
JOBBER, CHEVRON PRODUCTS COMPANY

MAY 09 2013

May 7, 2013

State of Hawaii
Department of Health
Solid and Hazardous Waste Branch
919 Ala Moana Boulevard, Ste. 212
Honolulu HI 96814

RE: Proposed Changes to Hawaii Administrative Rules, Title 11, Chapter 281, Regarding Underground Storage Tanks

Dear Sir:

The following are our comments to the proposed changes to Hawaii Administrative Rules, Title 11, Chapter 281.

We believe that compliance cost will be an issue with small operators who will have to pass on additional cost to consumers or determine whether their business can remain operating in the face of higher costs. Larger operators with multiple sites will be adversely affected by the higher compliance and will have to re-evaluate the operations of their sites. The additional costs will ultimately be passed on to the consumer at the pump. In addition, our business customers who have underground storage tanks will also be affected, and they also will have to cope with the additional compliance costs.

We do not agree to the replacement of the single-wall tanks with double-wall tanks, and we find this proposed rule as excessive and costly. Internal lining of a single-wall tank is cost effective in providing secondary containment without removing existing tanks which are structurally sound.

We believe that the proposed method of testing spill prevention equipment could actually cause damage to equipment being tested. For example, drop tubes are fragile and expensive to replace, and they are not designed to be removed for inspection. The cost of the annual testing will be high and passed on to the consumer. Water used to test the spill prevention equipment will in all likelihood be deemed to be hazardous waste, and it will have to be treated and disposed of as hazardous waste – another additional cost.

We respectfully submit our comments to the proposed changes to the Hawaii Administrative Rules regarding underground storage tanks.

Sincerely,

Edsel Eshima
Controller

MAY 10 2013

TO

DEPARTMENT OF SOLID WASTE AND HAZARDOUS MATERIAL

FROM,

PATEL'S TEXACO, INC,

83-5282 MAMALAHOA HIGHWAY,

CAPT. COOK, HI 96704

WE WOULD LIKE TO PROTEST AGAINST THE NEW PROPOSED REGULATIONS FOR UNDERGROUND STORAGE TANKS.

JUST A FEW YEARS AGO WE SPEND THOUSANDS OF DOLLARS TO BRING THE TANKS AND THE MONITORING EQUIPMENT TO COMPLY WITH THE STATE AND FEDERAL AGENCIES. WE BELIEVE THAT IF THESE TANKS AND EQUIPMENT IS PROPERLY MAINTAINED, MEET THE CURRENT EPA REGULATIONS. THE STATE'S NEW PROPOSED RULE OF REPLACING THE TANKS WITHIN 10YEARS IS OVERREACHING AND MAYBE FINANCIALLY IMPOSSIBLE FOR A LOT OF SMALL BUSSINESS OWNERS.

VISUAL INSPECTION OF THE SPILL PREVENTION EQUIPMENT SHOULD SUFFICE.

COMPLYING WITH THE STATE'S PROPOSED REQUIREMENT TO DO A LEAK DETECTION TEST WILL INCURE ADDED OPERATING EXPENSE TO THE DEALERS.

IN THIS ECONOMY, THESE ADDED EXPENSES MAY FORCE A LOT OF SMALL BUSSINESSES, THAT HAVE PUT A LIFETIME OF HARD WORK TO BUILT THE BUSSINESS, TO CLOSE,

AS FOR OVERFILL PROTECTION, REMOVING DROP TUBES FOR INSPECTION WILL BE EXPENSIVE AND EXPOSE THE TUBES TO DAMAGE.

IN CONCLUSION, WE BELIEVE THE CURRENT EPA REGULATIONS ARE SUFFICIENT. ALL OF US GAS STATION OWNERS ARE AWARE OF OUR RESPONSIBILITIES TOWARDS OUR COMMUNITY, AND ARE DELIGENT ABOUT KEEPING OUR EQUIPMENT MAINTAINED. EVEN IF THE SMALL GAS STATION OWNERS ARE ABLE FINANCIALLY TO COMPLY WITH THE NEW REGULATIONS, THE EXOBRIENT COST WILL BE PASSED ON TO THE CONSUMER IN FORM OF HIGHER FUEL PRICES.

Smita Patel

SMITA PATEL

DATE 5/10/2013

MAY 10 2013

Via Fax (808) 586-7509

State of Hawaii
Department of Health
Solid and Hazardous Waste Branch
919 Ala Moana Boulevard, Suite 212
Honolulu, Hawaii 96814

Dear Mr. Steven Y. K. Chang, P.E.:

I believe that the SOH underestimates the cost of complying with the Proposed Changes. We are a single site operator that serves a remote community and the cost to comply would be burdensome. Costs would be either passed on to the consumer or we may close operations. Proposed Rules are premature to the EPA final rules and are overreaching.

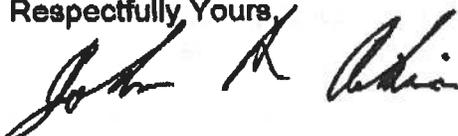
Secondary Containment – I object to the arbitrary replacement of single wall tanks that are being adequately maintained and monitored, with double walled tanks. Tank lining companies have recent data to prove that the integrity of recently lined single wall tanks in Hawaii meets or exceeds original manufacturer specifications. Choosing 10 years to replace single wall tanks is arbitrary.

Spill Prevention Equipment, Containment Sumps, & Under Dispenser Containment – I agree that under dispenser containment is required but the annual costs associated with the proposed testing is high. I estimate annual compliance costs to be roughly \$6,000.00. Again as a remote operator the costs will be passed onto the consumer or we may just close operations.

Overfill Protection – Drop tubes are not meant to be removed to be inspected. They are expensive and fragile. In fact, the mere act of removing the drop tube may damage it thereby increasing the likelihood of failure then replacement at a cost of roughly \$700.00 per tube.

I thank you for the opportunity to submit my testimony and look forward to more detailed collaboration to come up with a reasonable yet environmentally safe rule making.

Respectfully Yours,



John Aickin
Kahala Gas...
Oceanview.....



DEPARTMENT OF THE NAVY

COMMANDER
NAVY REGION HAWAII
850 TICONDEROGA ST STE 110
JBPHH, HAWAII 96860-5101

MAY 10 2013 ¹⁰

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Ser N45/559
May 10, 2013

CERTIFIED MAIL NO. 7011 0110 0002 1804 3326

Ms. Thu Perry
State of Hawaii Department of Health
Solid and Hazardous Waste Branch
Underground Storage Tank Section
919 Ala Moana Boulevard Room 212
Honolulu, HI 96814

Dear Ms. Perry:

SUBJECT: PROPOSED AMENDMENTS TO HAWAII ADMINISTRATIVE RULES,
CHAPTER 11-281, ENTITLED, "UNDERGROUND STORAGE TANKS"

The Navy respectfully requests the below questions and comments on the proposed amendments to Hawaii Administrative Rules, Chapter 11-281, "Underground Storage Tanks" be included as testimony.

1. §11-281-19: Under the new UST rules, do existing under dispenser containment (installed before the effective date of the new UST rules) have to be equipped with a leak sensing device and pass an annual tightness test?
2. §11-281-19: What are the differences in under dispenser containment requirements for the installation of a new dispenser at a site with existing under dispenser containment
 - a) PRIOR to the new State UST laws being adopted, versus
 - b) AFTER the effective date of the new UST rules?
3. §11-281-41(c)(2): "Spill prevention equipment, under dispenser containment and containment sumps that are part of an interstitial monitoring system must pass a test at least every three hundred sixty-five days to ensure this equipment is liquid tight."

The statement is confusing because of the phrase: "that are part of an interstitial monitoring system". We are not aware of any spill buckets that are directly associated with interstitial monitoring. If the intent is to perform annual tests of these units, recommend the DOH revise the wording to read: "Spill prevention

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Ser N45/559
May 10, 2013

equipment (spill buckets), under dispenser containment, and containment sumps must pass a test at least every three hundred sixty-five days to ensure this equipment is liquid tight."

4. §11-281-41(c): For the testing of under dispenser containment and containment sumps, why is the frequency annual? Why not once every two or three years? Annual tests of under dispenser containment and containment sumps are a significant cost to an operator. We prefer 30-day visual inspections by the operator to determine if there is any free product in them.
5. §11-281-41(c): Will there be recommended testing methods and technician qualifications/certifications to test spill prevention equipment, under dispenser containment, and containment sumps? If so, we recommend listing the methods and qualifications/certifications that are pre-approved by the DOH.
6. §11-281-44: Is there a time requirement standard for repairing/correcting a problem for routine or emergency issues? Will exceptions be allowed due to material, technician, and funding availability if the problem does not get corrected within the time requirement?
7. §11-281-46(c): Training and certification requirements for class A, class B, and class C operators. Are there any in-class or on-line training approved by the DOH available to review prior to the rules being approved into law?
8. Unattended locations
 - a) §11-281-41(a): Are there waivers or exceptions to have owners and operators constantly monitor fuel transfers?
 - b) §11-281-51: Will there be additional requirements to monitor remote/unattended locations remotely? If so, will there be recommended/approved software/hardware?

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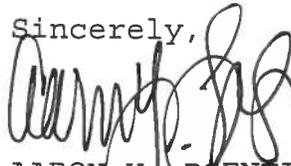
Ser N45/559

May 10, 2013

- c) §11-281-61: Will there be exceptions if a fuel alarm occurs, but gets reported at a later time (2 or more days later)?

If you have questions or need additional information, please contact Ms. Raelynn Kishaba at 471-1171, extension 233. Thank you for the opportunity to provide comments on this matter.

Sincerely,



AARON Y. POENTIS

Director

Regional Environmental Department

By direction of the

Commander



MAY 10 2013

1132 Bishop Street, Suite 1700 • Honolulu, Hawaii 96813 • Telephone (808) 522-9700 • Facsimile (808) 522-9707 • www.alohagas.com

Fax Transmittal

Fax to: Mr. Steven Y. K. Chang, P.E.
State of Hawaii
Department of Health
Solid and Hazardous Waste Branch

Date: May 10, 2013

Fax Number: (808) 586-7509

From: Robert W. Fung
General Counsel

Number of pages, including this transmittal page: 9

Should you not receive all pages of this document, please call my assistant Judy Kitsu at (808) 522-9739.

REMARKS:

Please find attached two copies of Aloha Petroleum, Ltd.'s testimony in opposition to the proposed changes to Hawaii Administrative Rules, Title 11, Chapter 281, Underground Storage Tanks. Thank you.

The information contained in this fax message is intended only for the personal and confidential use of the designated recipient(s) named above. This message may be privileged and confidential. If you have received this communication in error, please notify us immediately by telephone.



May 10, 2013

*oral (+)
written*

VIA FACSIMILE (808) 586-7509

State of Hawaii
 Department of Health
 Solid and Hazardous Waste Branch
 919 Ala Moana Boulevard, Suite 212
 Honolulu, Hawaii 96814

Dear Mr. Steven Y. K. Chang, P.E.:

Aloha Petroleum, Ltd. ("Aloha") hereby submits its written testimony in opposition to the proposed changes to Hawaii Administrative Rules, Title 11, Chapter 281, Underground Storage Tanks ("Proposed Changes")

Introduction

Aloha believes that several of the Proposed Changes are unnecessary, overreaching or seriously flawed. While we understand and support the agency's objective of preventing potential releases from UST systems, we oppose the Proposed Changes outlined below basically because there is little to no justification for the Proposed Changes and the significant costs associated with required compliance to these Proposed Changes.

We believe the State Department of Health ("DOH") significantly underestimates the compliance costs imposed by the Proposed Changes relating to required secondary containment, leak detection and additional testing. Given that Aloha operates multiple retail sites, the per-company compliance cost is far greater than the DOH may have contemplated. Compliance cost will also be especially burdensome for small "Mom and Pop" operators who will either have to pass additional costs to consumers or reassess whether their business can remain viable in the face of higher and higher compliance costs. The Proposed Changes will adversely impact consumer options to obtain fuel especially at rural, low volume sites that may be forced to close because they cannot bear the additional cost of compliance.

We also do not understand the DOH's rush to adopt and implement the Proposed Changes even before the Environmental Protection Agency ("EPA") has adopted and implemented the revised federal UST regulations. The State of Hawaii runs the risk of adopting rules that are out of step with federal regulations, and creating

Dept. of Health
Solid and Hazardous Waste Branch
May 10, 2013
Page 2



a very confusing and burdensome regulatory environment for all UST owners and operators.

Aloha opposes the following Proposed Changes to the UST rules:

1. Secondary Containment

HAR §11-281-17(b) requires All existing underground storage tanks (UST's) and UST systems must be provided with secondary containment within 10 years of the effective date of the rules.

Aloha objects to the arbitrary 10-year replacement of single-wall tanks with double-wall tanks in the absence of scientific support or data to support this rule change. We see no reason to support replacing structurally sound single-wall tanks after 10 years especially if they are being adequately maintained and monitored. In addition, internal lining of a single-wall tank provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound.

The cost of replacing every single-wall UST owned by Aloha with new double-wall tanks within ten years from the effective date of these rules would be astronomical. Aloha has over 100 single-wall tanks in service that would have to be removed and replaced with double-wall tanks over a 10-year span at a cost of over \$8 million.

This rule would be retroactive for all UST systems and also require replacing single wall piping with double wall piping. It would also be cost-prohibitive to dig up and replace all single-wall piping with double wall piping. Aloha supports the EPA's proposed definition for "replaced" for triggering the secondary containment requirement for existing tanks and piping rather than the DOH requirement to replace all single wall tanks and single wall piping. Aloha also agrees with the EPA that "replaced" should apply to piping only when 50% or more of a pipe run to a single tank is removed.

2. Under-Dispenser Containment (HAR §11-281-19)

The DOH is proposing that owners and operators install under-dispenser containment beneath new and replaced dispensers. Aloha agrees with the DOH that under-dispenser containment is required only for new dispenser systems.

The proposed rule is not clear on which equipment must be replaced to rise to the level of a "new" dispenser system and trigger the under-dispenser containment requirement. Under-dispenser containment under the proposed rule would occur with the replacement of check valves, shear valves, unburied risers or flexible connectors. Aloha believes that the trigger for under-dispenser containment should be the replacement of *all* equipment in the vertical footprint of the dispenser down as far as the horizontal supply line that brings product from the UST. This provision as currently proposed creates a powerful disincentive to upgrade older UST equipment as owners

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May 10, 2013
Page 3



who do would be subject to burdensome and costly testing and inspection requirements. Instead, owners of older equipment are more likely to avoid these costs and burdens by simply keeping existing UST systems in the ground as long as possible, thus increasing the potential risk for a release. The DOH's proposal actually penalizes those who make the upgrades while rewarding those who don't.

Aloha's proposed trigger reflects standard industry practice when installing a "new dispenser system" - everything down to the supply line from the UST. Installing under-dispenser containment requires breaking concrete at existing facilities. Any time concrete is broken at an existing facility, costs rise exponentially. To minimize the substantial cost of this mandate, DOH's under-dispenser trigger must also assume the replacement of equipment that requires the breaking of concrete. Aloha believes that the vertical footprint trigger correctly and fairly balances cost considerations with the added environmental protection that under-dispenser containment would provide. Aloha also believes that the installation frequency of under-dispenser containment at existing facilities would not be substantially altered with adoption of the vertical footprint trigger. Leaving the proposed requirement as is will discourage the replacement of older crash/impact valves and flex connectors.

3. Spill Prevention Equipment Tests

The DOH is proposing owners and operators test spill prevention equipment, catchment basins, spill buckets at installation and at least once every twelve months thereafter. Aloha opposes the proposed testing requirements.

Aloha believes it is unnecessary to conduct integrity testing on secondary containment sumps. Visual inspection alone is sufficient to ensure that spill buckets are free of cracks, holes, debris and water. If the sump area is dry and clean upon visual inspection, then integrity of the containment areas is assured. Owners and operators are continuously performing visual inspections of spill buckets throughout the year. When a crack, hole or other damage is detected the spill bucket is replaced. Performing a "Leak Test" to assess integrity on containment sumps needlessly generates hazardous waste water that must be properly handled, stored, transported and disposed - all of which adds unnecessary compliance costs.

Performing a "Leak Test" generates over 1,500 gallons of waste water per test at a typical three tank location, calculated below:

- 3 containment sumps measuring 4 feet diameter by 3 feet deep = 282 gallons of waste water per sump;
- 4 dispenser sumps measuring 4 X 2 X 3 feet deep = 168 gallons of waste water per sump;
- 3 spill buckets = 5 gallons of waste water per bucket;

Dept. of Health
Solid and Hazardous Waste Branch
May 10, 2013
Page 4



- 3 containment sumps + 4 dispenser sumps + 3 spill buckets = 1,533 gallons of waste water.

At an estimated cost of \$3.00 per gallon to dispose of contaminated waste water, the Leak Test would add more than \$4,599 to the overall cost to comply with the DOH's proposal. In addition, the labor cost to conduct each test will increase \$650 to \$800. Aloha also has 85 sites that have electrical connections which must be moved before adding water to the sump, which will create a cost of \$2,500 per location. Additional costs are calculated below:

- Water removal \$4,599 x 85 sites = \$390,915;
- Electrical \$2,500 X 85 = \$57,500;
- Labor = \$700 x 85 = \$59,500;
- Total increase in cost for the first year testing = \$507,915.
- Estimated annual cost of \$450,415 thereafter to maintain compliance with the new rules.

4. Overfill Prevention Equipment Tests

(HAR 11-281-14(c), and HAR 11-281-41(d)),

Overfill prevention equipment (flappers, ball floats, alarms) is required to be checked annually for proper functioning.

Aloha is concerned with this proposal because it requires removal of UST drop tubes, which are expensive, lightweight and fragile. UST drop tubes are not designed to be removed for inspection, but only when they are replaced. Requiring the removal and inspection of drop tubes is tantamount to a replacement mandate with associated costs of approximately \$700 per unit. Aloha's concern is heightened given the probability that the only testing standard likely to emerge will be from organizations representing equipment manufacturers who have a vested interest in equipment replacement.

If you have any questions, please contact me by phone at (808) 522-9754 or via email at rfung@alohagas.com. Thank you for carefully considering Aloha's testimony in this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert W. Fung".

Robert W. Fung
General Counsel



May 10, 2013

VIA FACSIMILE (808) 586-7509

State of Hawaii
Department of Health
Solid and Hazardous Waste Branch
919 Ala Moana Boulevard, Suite 212
Honolulu, Hawaii 96814

Dear Mr. Steven Y. K. Chang, P.E.:

Aloha Petroleum, Ltd. ("Aloha") hereby submits its written testimony in opposition to the proposed changes to Hawaii Administrative Rules, Title 11, Chapter 281, Underground Storage Tanks ("Proposed Changes")

Introduction

Aloha believes that several of the Proposed Changes are unnecessary, overreaching or seriously flawed. While we understand and support the agency's objective of preventing potential releases from UST systems, we oppose the Proposed Changes outlined below basically because there is little to no justification for the Proposed Changes and the significant costs associated with required compliance to these Proposed Changes.

We believe the State Department of Health ("DOH") significantly underestimates the compliance costs imposed by the Proposed Changes relating to required secondary containment, leak detection and additional testing. Given that Aloha operates multiple retail sites, the per-company compliance cost is far greater than the DOH may have contemplated. Compliance cost will also be especially burdensome for small "Mom and Pop" operators who will either have to pass additional costs to consumers or reassess whether their business can remain viable in the face of higher and higher compliance costs. The Proposed Changes will adversely impact consumer options to obtain fuel especially at rural, low volume sites that may be forced to close because they cannot bear the additional cost of compliance.

We also do not understand the DOH's rush to adopt and implement the Proposed Changes even before the Environmental Protection Agency ("EPA") has adopted and implemented the revised federal UST regulations. The State of Hawaii runs the risk of adopting rules that are out of step with federal regulations, and creating

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a very confusing and burdensome regulatory environment for all UST owners and operators.

Aloha opposes the following Proposed Changes to the UST rules:

1. Secondary Containment

HAR §11-281-17(b) requires **All** existing underground storage tanks (UST's) and UST systems must be provided with secondary containment within 10 years of the effective date of the rules.

Aloha objects to the arbitrary 10-year replacement of single-wall tanks with double-wall tanks in the absence of scientific support or data to support this rule change. We see no reason to support replacing structurally sound single-wall tanks after 10 years especially if they are being adequately maintained and monitored. In addition, internal lining of a single-wall tank provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound.

The cost of replacing every single-wall UST owned by Aloha with new double-wall tanks within ten years from the effective date of these rules would be astronomical. Aloha has over 100 single-wall tanks in service that would have to be removed and replaced with double-wall tanks over a 10-year span at a cost of over \$8 million.

This rule would be retroactive for all UST systems and also require replacing single wall piping with double wall piping. It would also be cost-prohibitive to dig up and replace all single-wall piping with double wall piping. Aloha supports the EPA's proposed definition for "replaced" for triggering the secondary containment requirement for existing tanks and piping rather than the DOH requirement to replace **all** single wall tanks and single wall piping. Aloha also agrees with the EPA that "replaced" should apply to piping only when 50% or more of a pipe run to a single tank is removed.

2. Under-Dispenser Containment (HAR §11-281-19)

The DOH is proposing that owners and operators install under-dispenser containment beneath new and replaced dispensers. Aloha agrees with the DOH that under-dispenser containment is required only for new dispenser systems.

The proposed rule is not clear on which equipment must be replaced to rise to the level of a "new" dispenser system and trigger the under-dispenser containment requirement. Under-dispenser containment under the proposed rule would occur with the replacement of check valves, shear valves, unburied risers or flexible connectors. Aloha believes that the trigger for under-dispenser containment should be the replacement of **all** equipment in the vertical footprint of the dispenser down as far as the horizontal supply line that brings product from the UST. This provision as currently proposed creates a powerful disincentive to upgrade older UST equipment as owners

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who do would be subject to burdensome and costly testing and inspection requirements. Instead, owners of older equipment are more likely to avoid these costs and burdens by simply keeping existing UST systems in the ground as long as possible, thus increasing the potential risk for a release. The DOH's proposal actually penalizes those who make the upgrades while rewarding those who don't.

Aloha's proposed trigger reflects standard industry practice when installing a "new dispenser system" - everything down to the supply line from the UST. Installing under-dispenser containment requires breaking concrete at existing facilities. Any time concrete is broken at an existing facility, costs rise exponentially. To minimize the substantial cost of this mandate, DOH's under-dispenser trigger must also assume the replacement of equipment that requires the breaking of concrete. Aloha believes that the vertical footprint trigger correctly and fairly balances cost considerations with the added environmental protection that under-dispenser containment would provide. Aloha also believes that the installation frequency of under-dispenser containment at existing facilities would not be substantially altered with adoption of the vertical footprint trigger. Leaving the proposed requirement as is will discourage the replacement of older crash/impact valves and flex connectors.

3. Spill Prevention Equipment Tests

The DOH is proposing owners and operators test spill prevention equipment, catchment basins, spill buckets at installation and at least once every twelve months thereafter. Aloha opposes the proposed testing requirements.

Aloha believes it is unnecessary to conduct integrity testing on secondary containment sumps. Visual inspection alone is sufficient to ensure that spill buckets are free of cracks, holes, debris and water. If the sump area is dry and clean upon visual inspection, then integrity of the containment areas is assured. Owners and operators are continuously performing visual inspections of spill buckets throughout the year. When a crack, hole or other damage is detected the spill bucket is replaced. Performing a "Leak Test" to assess integrity on containment sumps needlessly generates hazardous waste water that must be properly handled, stored, transported and disposed - all of which adds unnecessary compliance costs.

Performing a "Leak Test" generates over 1,500 gallons of waste water per test at a typical three tank location, calculated below:

- 3 containment sumps measuring 4 feet diameter by 3 feet deep = 282 gallons of waste water per sump;
- 4 dispenser sumps measuring 4 X 2 X 3 feet deep = 168 gallons of waste water per sump;
- 3 spill buckets = 5 gallons of waste water per bucket;

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- 3 containment sumps + 4 dispenser sumps + 3 spill buckets = 1,533 gallons of waste water.

At an estimated cost of \$3.00 per gallon to dispose of contaminated waste water, the Leak Test would add more than \$4,599 to the overall cost to comply with the DOH's proposal. In addition, the labor cost to conduct each test will increase \$650 to \$800. Aloha also has 85 sites that have electrical connections which must be moved before adding water to the sump, which will create a cost of \$2,500 per location. Additional costs are calculated below:

- Water removal \$4,599 x 85 sites = \$390,915;
- Electrical \$2,500 X 85 = \$57,500;
- Labor = \$700 x 85 = \$59,500;
- Total increase in cost for the first year testing = \$507,915.
- Estimated annual cost of \$450,415 thereafter to maintain compliance with the new rules.

4. Overfill Prevention Equipment Tests

(HAR 11-281-14(c), and HAR 11-281-41(d)),

Overfill prevention equipment (flappers, ball floats, alarms) is required to be checked annually for proper functioning.

Aloha is concerned with this proposal because it requires removal of UST drop tubes, which are expensive, lightweight and fragile. UST drop tubes are not designed to be removed for inspection, but only when they are replaced. Requiring the removal and inspection of drop tubes is tantamount to a replacement mandate with associated costs of approximately \$700 per unit. Aloha's concern is heightened given the probability that the only testing standard likely to emerge will be from organizations representing equipment manufacturers who have a vested interest in equipment replacement.

If you have any questions, please contact me by phone at (808) 522-9754 or via email at rfung@alohagas.com. Thank you for carefully considering Aloha's testimony in this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Robert W. Fung', written over a white background.

Robert W. Fung
General Counsel

Ms. Thu Perry
State of Hawaii
Department of Health

Re: Comments on Proposed changes to Hawaii Administrative Rules,
Title11, Chapter 281

Congratulations on a job well done with crafting the proposed changes to your regulations. Tesoro Refining and Marketing Co LLC (Tesoro) appreciates the efforts you have made in keeping your changes workable and at an appropriate level of effort to benefit the people and businesses in the State of Hawaii.

That being said, we would like to draw your attention to a few places where we see that slight adjustments might make the proposed changes more effective or more easily complied with:

1. **Records (HAR 11-281-45 (b), and HAR 11-281-46).**
“If a release detection monitoring system is capable of producing a written (printout) or electronic record of testing results... Release detection records and maintenance records must be kept for at least three years after the record is generated.”

The issue with this section is that systems with printout ability typically have thermal printers on their Automatic Tank Gauges (ATG). Unfortunately, the thermal print does not last and well before the three years have elapsed, the print will have disappeared. Given your requirements to have the data in the store and the lack of longevity it would seem that this type of record keeping for three years is difficult at best and may be functionally impossible in this manner.

A possible solution to this problem would be to allow spreadsheet type record keeping which many stores already use as a substitute. The spreadsheet approach would allow much less cumbersome record keeping, provide a more permanent record and allow inspectors to quickly check compliance without laboriously going through 36 months worth of printouts. Additionally, allowing it to be kept off site, but immediately available, as is consistent with EPA regulations, would make retention of historical files much less burdensome for store operators.

2. **Operator Training (HAR 11-281-46)**
This section reads in part “you will need to submit Class and B operator designee names with their certification and associated facilities to DOH...”.

While Tesoro agrees with the need for training for Level A and B operators, the requirement to submit additional paperwork to DOH for acceptance after a person

is certified is time consuming and would be burdensome to DOH. The sheer volume of paperwork that will be submitted to DOH will be staggering as all stores are required to have level A and B operators and most stores will have multiple operators at any particular level. Our experience in other states indicates that this type of requirement is time consuming and creates no advantage for the system.

It would seem more reasonable to make use of Hawaii's excellent inspection system to check that the level A and B operators at the store during inspections. This would establish that the person actually working in the store has the proper certifications and the store is being operated as required under the regulations.

- 3. Spill Prevention Equipment, Containment Sumps and Under Dispenser Containment (HAR 11-281-19, and HAR 11-281-41 c)). Paragraph 2 reads: "Spill prevention equipment (spill buckets) and containment sumps that are utilized as part of an interstitial monitoring system must pass a test annually to ensure that they are liquid tight."**

Does this mean that if the spill bucket is not part of the interstitial monitoring system (which most aren't because they are not connected with any piping or tank interstitial space) that they would **not** require testing?

Currently most protocols for testing interstitial containment utilize a hydrostatic test which involves putting several gallons of water (sometimes 25 – 30 or more) into the sump and monitoring the level in the sump for a period of time. Once the water has been placed in the sumps it picks up residual petroleum products that are typically in these sumps and by definition becomes a hazardous waste. Because the water is now a hazardous waste it must be disposed of as such. Disposing of this water is expensive and extremely difficult as it must be shipped back to the mainland for disposal. Because of DOT regulations it is doubtful that the testing companies will transport the waste instead they will leave it on site for the store managers to deal with. This creates a hazardous waste storage issue for the store and in most cases it will not be disposed of expeditiously because of the cost and difficult logistics.

Requiring this test every year would seem to be overkill. Tesoro believes that it would be more reasonable to require the test every three years for containment sumps and because of the unique circumstances in Hawaii provide some practical method to dispose of contaminated sump water created by these tests. As written, the cost and logistical problems created by this regulation seem to far outweigh any environmental benefit.

- 4. Secondary Containment (HAR 11-281-17, and HAR 11-281-51(e)). "All existing underground storage tanks (USTs) and UST systems must be provided with secondary containment within 10 years of the effective date of the rules"**

Tesoro recognizes the environmental benefits of this change and endorses it as a general rule, however, we would like to point out that this requirement with no provision to deal with unusual circumstances, may not be the best interests of the people of the State of Hawaii. Because of the unique geological makeup of the Hawaiian Islands, there are many stores currently operating which would be put out of business because of this rule. For instance: in the case of a store with extremely high ground water, where the initial installation was possible in the past, new regulations and changing ground water conditions may make replacing the tank prohibitively expensive and nearly impossible from a logistics standpoint. This would, most likely, put the store out of business. If this store was located in the middle of Honolulu the impact to the surrounding community would be minimal. If however, the store is in a rural area, the impact would be much more drastic. These outlying stores frequently are the only source for fuel, groceries and sundries and often provide a major source of employment for the area. The loss of these stores would be a major detriment to the community.

With this reasoning in mind, Tesoro believes that adding an element to this rule that would allow stores, on an individual basis, to petition for exception to the ten year requirement would be a benefit to the State of Hawaii. The state would retain the ability to look at each case on its individual merits and make the determination which would serve the community, possibly requiring additional testing for the tank systems or assisting the owner in some way to upgrade and keep their store in business.

Thank you for allowing us the opportunity to comment on the Proposed Rule. Tesoro takes its responsibility to the State of Hawaii very seriously and strives in all of our activities to safeguard its people and environment. If I can be of assistance, please don't hesitate to contact me.

Norman J. Stewart
Environmental Compliance Administrator
Tesoro Refining & Marketing Company LLC
Norman.j.stewart@tsocorp.com
253 896-8704

MAY 10 2013



May 10, 2013

Via Fax (808) 586-7509

State of Hawaii
Department of Health
Solid & Hazardous Waste Branch
919 Ala Moana Boulevard, Ste 212
Honolulu, HI 96814

Dear Steven Y. K. Chang, P.E.:

Hawaii Petroleum Inc. (HPI) believes that several of the proposed changes to HAR, Title 11, Chapter 281, UST Proposed Changes are overreaching and unnecessary.

First of all we are puzzled as to why the State Department of Health is preparing to implement rules before EPA has implemented their proposed rules. The State of Hawaii runs the risk of adopting rules that are out of step with federal regulations, creating a very confusing and burdensome regulatory environment for all UST owners and operators. In addition, as proposed, the changes to the Hawaii Administrative Rules do not specifically specify the policies and procedures that will be deemed to be acceptable.

We also believe the State Department of Health ("DOH") significantly underestimates the compliance costs imposed by the Proposed Changes relating to required secondary containment, leak detection and additional testing. Compliance cost is an issue for small mom and pop or single site operators who will either have to pass additional cost to consumers or reassess whether their business can remain viable in the face of higher and higher direct cost. This effect will have particular impact to rural, low volume sites that may be forced to close because they cannot cope with the additional cost of compliance. This will limit consumer options to obtain fuel. For larger operators, with multiple sites, the cost of compliance, both one-time and recurring, will adversely affect the economics of operating sites. Additional costs will undoubtedly be absorbed by consumers in the form of higher prices at the pump.

Hawaii Petroleum Inc. (HPI) opposes the following Proposed Changes to the UST rules

Secondary Containment - (HAR 11-281-179(b) requires that all existing underground storage tanks (USTs) and UST systems must be provided with secondary containment within 10 years of the effective date of the rules.

We object to the arbitrary replacement of single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. In addition, internal lining of a single-wall tank provides a cost-effective solution to providing secondary containment without



having to remove existing tanks that are structurally sound. It is our understanding through discussion with other petroleum marketers in the State that there is recent data to suggest that single wall tanks, if maintained and monitored, meet or exceed manufacturer specifications rendering the 10 year replacement rule overreaching and arbitrary. The use of an arbitrary deadline to enforce this proposed rule is also objectionable, as it does not take into account site specific variable such as soil conditions or geography.

This rule would be retroactive for all UST systems and also require replacing single wall piping with double wall piping. It would also be cost-prohibitive to dig up and replace all single-wall piping with double wall piping. HPI supports the EPA's proposed definition for "replaced" for triggering the secondary containment requirement for existing tanks and piping rather than the DOH requirement to replace all single wall tanks and single wall piping. HPI also agrees with the EPA that "replaced" should apply to piping only when 50% or more of a pipe run to a single tank is removed.

Spill Prevention Equipment and Containment Sumps and (HAR 11-281-19)

HPI believes it is unnecessary to conduct integrity testing on secondary containment sumps. Visual inspection alone is sufficient to ensure that spill buckets are free of cracks, holes, debris and water. If the sump area is dry and clean upon visual inspection, then integrity of the containment areas is assured. Owners and operators are continuously performing visual inspections of spill buckets throughout the year. When a crack, hole or other damage is detected the spill bucket is replaced. Performing a "Leak Test" to assess integrity on containment sumps needlessly generates hazardous waste water that must be properly handled, stored, transported and disposed – all of which adds unnecessary compliance costs.

The method of testing spill prevention equipment, containment sumps and under dispenser containment is objectionable because (1) the method of testing of the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner (2) the cost of the annual testing is high and will be passed on to consumers. For example, testing all spill prevention equipment at a site may involve the use of several hundred gallons of water per year. Once the water has been used to test the spill prevention equipment, it will most likely be deemed contaminated. The water will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this waste is about \$8 per gallon, leading to a huge annual cost per site per annum. The cost of disposal will be further exacerbated if the site is located on the neighbor islands, where waste will need to be transported for disposal (3) Other costs that need to be considered are the cost of disrupted our ongoing business during the extensive testing and the additional administrative cost that will be required to comply with these proposed rules

Under Dispenser Containment (HAR 11-281-19)

The proposed rule is unclear on which equipment must be replaced to rise to the level of a new dispenser system and trigger the under-dispenser containment requirement. Under-dispenser containment



under the proposed rule would occur with the replacement of check valves, shear valves, unburred risers or flexible connectors. We believe that the trigger for under-dispenser containment should be the replacement of all equipment in the vertical footprint of the dispenser down as far as the horizontal supply line that brings product from the UST. This provision as currently proposed creates a powerful disincentive to upgrade older UST equipment as owners who do would be subject to burdensome and costly testing and inspection requirements. Instead, owners of older equipment are more likely to avoid these costs and burdens by simply keeping existing UST systems in the ground as long as possible, thus increasing the potential risk for a release. The DOH's proposal actually penalizes those who make the upgrades while rewarding those who don't.

HPI's proposed trigger reflects standard industry practice when installing a "new dispenser system" - everything down to the supply line from the UST. Installing under-dispenser containment requires breaking concrete at existing facilities. Any time concrete is broken at an existing facility, costs rise exponentially. To minimize the substantial cost of this mandate, DOH's under-dispenser trigger must also assume the replacement of equipment that requires the breaking of concrete. HPI believes that the vertical footprint trigger correctly and fairly balances cost considerations with the added environmental protection that under-dispenser containment would provide. HPI also believes that the installation frequency of under-dispenser containment at existing facilities would not be substantially altered with adoption of the vertical footprint trigger. Leaving the proposed requirement as is will discourage the replacement of older crash/impact valves and flex connectors.

Overfill Prevention and Maintenance (HAR 11-281-14(c), and HAR 11-281-41(d)) Overfill prevention equipment (flappers, ball floats, alarms) is required to be checked annually for proper functioning.

HPI is very concerned with this requirement because the removal of drop tubes is required. Drop tubes are not meant to be removed to be inspected. The equipment is fragile and expensive. To constantly remove for inspection would increase the risk of damaging it requiring replacement or worse a potential failure.

Thank you for the opportunity to provide written testimony and I look forward to your response. If there are any questions or concerns, please do not hesitate to call me at 808-960-3064 or via the e-mail listed below.

Mahalo,

Mark Leong

VP & General Manager

Hawaii Petroleum Inc.

mark@hawaiipetroleum.com



Around the corner. Across the neighbor islands.

MAY 10 2013

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May 10th, 2013

Dr. Steven Chang, P.E.
State of Hawaii
Department of Health
Solid & Hazardous Waste Branch
919 Ala Moana Boulevard, Ste 212
Honolulu, HI 96814

Via Fax (808) 5867509

Subject: Maui Petroleum's Testimony on DOH Proposed Rule Changes UST

**BRIEF SUMMARY OF PROPOSED CHANGES TO HAWAII ADMINISTRATIVE RULES,
TITLE 11, CHAPTER 281**

General objection: The State Department of Health is preparing to implement rules before EPA has implemented their revised rules, running the risk of adopting rules that are out of step with federal regulations, creating a very confusing regulatory environment, especially for small, single-site operators. In addition, as proposed, the changes to the Hawaii Administrative Rules do not specifically specify the policies and procedures that will be deemed to be acceptable. As an example the annual testing requirements do not specify the method of testing containment vessels and fueling system components.

Compliance cost is also an issue for small operators who will either have to pass additional cost to consumers or reassess whether their business can remain viable in the face of higher and higher direct cost. This effect will have particular impact to rural, low volume sites that may be forced to close because they cannot cope with the additional cost of compliance. This will limit consumer options to obtain fuel. For larger operators, with multiple sites, the cost of compliance, both one-time and recurring, will adversely affect the economics of operating sites. Additional costs will invariably be absorbed by consumers in the form of higher prices at the pump.

Secondary Containment (Hawaii Administrative Rules (HAR) 11-281-17, and HAR 11-281-51(e))

All existing underground storage tanks (USTs) and UST systems must be provided with secondary containment within 10 years of the effective date of the rules.

All USTs or UST systems installed on or after the effective date of the rules must be provided with secondary containment (i.e. be double walled) AND use interstitial monitoring for release detection on the tank(s) and piping.

If a portion of single walled piping is replaced, the replaced portion must be provided with secondary containment and interstitial monitoring.

We object to the arbitrary replacement of single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. In addition, internal lining of a single-wall tank provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound. The use of an arbitrary deadline to enforce this proposed rule is also objectionable, as it does not take into account site specific variable such as soil conditions or geography. All of this equipment was installed late in the 20th Century with warranties and assurances that it would last well over 30 years of commercial operations by manufacturers.

Spill Prevention Equipment, Containment Sumps and Under Dispenser Containment (HAR 11-281-19, and HAR 11-281-41(c))

Dispensers installed on or after the effective date of the rules must be provided with under dispenser containment (UDC). The UDC must be monitored for leaks with a sensing device that signals the operator if a leak is detected.

Spill prevention equipment (spill buckets) and containment sumps that are utilized as part of an interstitial monitoring system, must pass a test annually to ensure that they are liquid tight. UDC installed on or after the effective date of the rules must pass a test annually to ensure that it is liquid tight. The method for testing needs to be one that is developed by the manufacturer, a nationally recognized organization, an independent testing laboratory, or other method approved by DOH. The Petroleum Equipment Institute (PEI) has published procedures for this kind of testing in their publication RP1200, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities, available through PEI.

Spill prevention equipment, UDCs and containment sumps must be maintained free of regulated substance, water and debris at all times.

The method of testing spill prevention equipment, containment sumps and under dispenser containment is objectionable to MPI in the following areas:

- *The method of testing of the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner.*
- *The cost of the annual testing is high and will be passed on to consumers. For example, testing all spill prevention equipment at a national site may involve the use of approximately 500 gallons of water per year. Once the water has been used to test the spill prevention equipment, it will most likely be deemed contaminated (although the determination of contamination remains highly subjective). The "contaminated" water will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this waste is about \$8 per gallon, leading to an annual additional cost of \$4,000 per site per annum. The cost of disposal will be further exacerbated if the site is in a rural location, particularly the neighbor islands, where waste will need to be transported for disposal.*



MAY 10 2013 *uo*

**Objections to the State of Hawaii's Proposed changes to the Hawaii Administrative Rules
Regarding Underground Storage Tanks ("USTs")**

Submitted by Mid Pac Petroleum, LLC ("MPP")

Submitted 5/8/12

MPP comments in *BOLD ITALIC*

**BRIEF SUMMARY OF PROPOSED CHANGES TO HAWAII ADMINISTRATIVE RULES,
TITLE 11, CHAPTER 281**

General objection: The State Department of Health is preparing to implement rules before EPA has implemented their revised rules, running the risk of adopting rules that are out of step with federal regulations, creating a very confusing regulatory environment, especially for small, single-site operators. In addition, as proposed, the changes to the Hawaii Administrative Rules do not specifically specify the policies and procedures that will be deemed to be acceptable. As an example the annual testing requirements do not specify the method of testing containment vessels and fueling system components.

Compliance cost is also an issue for small operators who will either have to pass additional cost to consumers or reassess whether their business can remain viable in the face of higher and higher direct cost. This effect will have particular impact to rural, low volume sites that may be forced to close because they cannot cope with the additional cost of compliance. This will limit consumer options to obtain fuel. For larger operators, with multiple sites, the cost of compliance, both one-time and recurring, will adversely affect the economics of operating sites. Additional costs will invariably be absorbed by consumers in the form of higher prices at the pump.

Secondary Containment (Hawaii Administrative Rules (HAR) 11-281-17, and HAR 11-281-51(e))

All existing underground storage tanks (USTs) and UST systems must be provided with secondary containment within 10 years of the effective date of the rules.

All USTs or UST systems installed on or after the effective date of the rules must be provided with secondary containment (i.e. be double walled) AND use interstitial monitoring for release detection on the tank(s) and piping.

If a portion of single walled piping is replaced, the replaced portion must be provided with secondary containment and interstitial monitoring.

We object to the arbitrary replacement of single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. In addition, internal lining of a single-wall tank provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound. The use of an arbitrary deadline to enforce this proposed rule is also objectionable, as it does not take into account site specific variable such as soil conditions or geography.

MPP has specific and documented evidence that proves that the structural integrity of a properly maintained single-wall meets or exceeds original manufacturer specifications. We have recently lined our remaining single-wall tanks that were inspected as part of the lining process. The inspection showed that the tanks showed basically no signs of degradation after multiple decades of being in-service. Arbitrarily removing such tanks after a given period of time is, in our opinion, unnecessary.

Spill Prevention Equipment, Containment Sumps and Under Dispenser Containment (HAR 11-281-19, and HAR 11-281-41(c))

Dispensers installed on or after the effective date of the rules must be provided with under dispenser containment (UDC). The UDC must be monitored for leaks with a sensing device that signals the operator if a leak is detected.

Spill prevention equipment (spill buckets) and containment sumps that are utilized as part of an interstitial monitoring system, must pass a test annually to ensure that they are liquid tight. UDC installed on or after the effective date of the rules must pass a test annually to ensure that it is liquid tight. The method for testing needs to be one that is developed by the manufacturer, a nationally recognized organization, an independent

testing laboratory, or other method approved by DOH. The Petroleum Equipment Institute (PEI) has published procedures for this kind of testing in their publication RP1200, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities, available through PEI.

Spill prevention equipment, UDCs and containment sumps must be maintained free of regulated substance, water and debris at all times.

The method of testing spill prevention equipment, containment sumps and under dispenser containment is objectionable to MPP in the following areas:

- ***The method of testing of the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner.***
- ***The cost of the annual testing is high and will be passed on to consumers. For example, testing all spill prevention equipment at a notional site may involve the use of approximately 500 gallons of water per year. Once the water has been used to test the spill prevention equipment, it will most likely be deemed contaminated (although the determination of contamination remains highly subjective). The “contaminated” water will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this waste is about \$8 per gallon, leading to an annual additional cost of \$4,000 per site per annum. The cost of disposal will be further exacerbated if the site is in a rural location, particularly the neighbor islands, where waste will need to be transported for disposal.***
- ***Other costs that need to be considered are the cost of disrupted our ongoing business during the extensive testing and the additional administrative cost that will be required to comply with these proposed rules.***
- ***Another objection to the rules if they are adopted as currently promulgated is the physical constraints placed on the technicians that will be involved in the testing. There are simply are not enough qualified technicians to address the testing requirements in the proposed rules in a timely manner.***

- ***The assurance offered by this type of testing may not be commensurate with the amount of cost and disruption to businesses.***

Overfill Prevention and Maintenance (HAR 11-281-14(c), and HAR 11-281-41(d)),

Overfill prevention equipment (flappers, ball floats, alarms) is required to be checked annually for proper functioning.

Overfill prevention methods that rely on the use of alarms must have the alarms clearly labeled and located where the delivery person can clearly see AND hear the alarm in order to immediately stop delivery of the product.

MPP opposes this requirement because the removal of drop tubes is required. They are fragile and expensive and not meant to be removed for inspection, but only to be replaced. In addition, the efficacy of the testing is not certain and the act of testing these components may actually introduce more potential of a failure.

We respectfully submit these objections to the proposed changes to the Hawaii Administrative Rules. We strongly request that we have the opportunity to thoroughly discuss our concerns with the Department of Health prior to the implementation of any rule changes and that our objections be carefully considered. While we as specifically as a company and more generally as an industry have serious concerns about these changes, we do not take lightly our responsibility to maintain safe equipment and sound policies to insure that the environment remain protected as we provide our vital service to the communities of Hawaii.

Sincerely,



**K. Sayle Hirashima
Vice-President/Chief Financial Officer
Mid Pac Petroleum, LLC**

MAY 10 2013

May 7, 2013

Department of Health
Solid and Hazardous Waste Branch
UST Section
919 Ala Moana Boulevard
Suite 212
Honolulu, Hawaii 96814

To Whom It May Concern:

Thank you for allowing us to provide written testimony regarding some of the proposed UST rules.

We are 76 dealers that will be affected by these proposed UST rules if adopted by the Governor.

In reviewing the *overall proposed rules*, we note that in every proposed modification of the current rules, there are no specific policies and procedures listed. Everything is written in generalities. What could be at issue is that with no specific policies and procedures, it leaves the rules open for interpretation later ---without specific knowledge of what we are agreeing to it could make it more costly both in time and money.

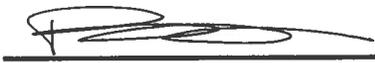
Secondly, the method of *testing spill prevention equipment, containment sumps and under dispenser containment* is objectionable to MPP in the following areas:

- The method of testing of the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner, i.e., overfill tube flappers
- The time and cost of the annual testing is already costly and by adding another layer of additional testing will raise the cost. For example, testing all spill prevention equipment at a just one of my sites may involve the use of approximately 600 gallons of water per year since each site has at least three turbine sumps and three drop fuel sumps. Once the water has been used to test the spill prevention equipment, it will most likely be deemed contaminated (although the determination of contamination remains highly subjective). The "contaminated" water will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this waste is about \$8 per gallon, leading to an annual additional cost of \$4,800 per site per annum. And since we are located on the neighbor islands, waste will need to be transported for disposal.
- Other costs that need to be considered are the cost of disruption of our ongoing business during the extensive testing and the additional administrative cost that will be required to comply with these proposed rules.

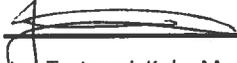
Thirdly, some of us have sites that have lined-single wall tanks which could affect our business because of the additional cost of having to arbitrarily replace single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored.

In conclusion, the ensuing costs of some of these proposed rules could possibly trickle down to the consumer. For these reasons which could affect the continued success of our business, we oppose adoption of the Hawaii proposed rulings.

Thank You,



Randy Amine, Koko Marina 76



Jon Tsutsumi, Koko Marina 76



Chad Willing, Aina Haina 76



Blake Tanaka, Harding Service



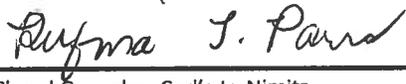
Keith Nagano, Kuulei Union



Gail Au, McCully Union



Eric Park, Ward and Beretania 76



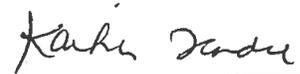
Cheryl Gonzalez, Carl's Jr. Nimitz



Burt Chinen, Burt's Service



Dan Del Mundo, Dan's Maili



Kat Tandal, Tandal's A/C, and Alignment Service