

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-281
Hawaii Administrative Rules

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SUMMARY

1. §11-281-01 is amended.
2. §11-281-02 is repealed.
3. §11-281-03 is amended.
4. §§11-281-11 to 11-281-17 are amended.
5. §11-281-18 is repealed.
6. §11-281-19 is added.
7. §11-281-21 is repealed.
8. §11-281-21.5 is added.
9. §11-281-22 is repealed.
10. §§11-281-23 to 11-281-26 are amended.
11. §11-281-29 is amended.
12. §11-281-31 is amended.
13. §§11-281-33 to 11-281-34 are amended.
14. §11-281-41 is amended.
15. §§11-281-43 to 11-281-45 are amended.

16. §11-281-46 is added.
17. §§11-281-51 to 11-281-54 are amended.
18. §11-281-61 is amended.
19. §11-281-63 is amended.
20. §§11-281-71 to 11-281-72 are amended.
21. §§11-281-74 to 11-281-80.1 are amended.
22. §§11-281-81 to 11-281-85 are amended.
23. §11-281-91 is amended.
24. §§11-281-93 to 11-281-98 are amended.
25. §§11-281-103 to 11-281-104 are amended.
26. §§11-281-106 to 11-281-107 are amended.
27. §§11-281-110 to 11-281-112 are amended.
28. §11-281-115 is amended.
29. §§11-281-121 to 11-281-122 are amended.
30. §§11-281-123 to 11-281-128 are repealed.
31. §11-281-129 is added.
32. §11-281-131 is amended.
33. Chapter 281 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 281

UNDERGROUND STORAGE TANKS

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SUBCHAPTER 1

SCOPE AND APPLICABILITY

§11-281-01 Scope and applicability. (a) The requirements of this chapter apply to all owners and operators of underground storage tanks or tank systems as defined in section 11-281-03 except:

- (1) Any UST or tank system holding hazardous wastes listed or identified under chapter 342J, Hawaii Revised Statutes or the rules adopted thereunder, or Subtitle C of the federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.
- (2) Any wastewater treatment UST system that is part of a wastewater treatment facility regulated under chapter 342D, Hawaii Revised Statutes or section 402 or 307(b) of the federal Clean Water Act (33 U.S.C. section 1342 or 1317).
- (3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
- (4) Any UST or tank system whose capacity is one hundred ten gallons or less.
- (5) Any UST or tank system that contains a de minimis concentration of regulated substances.
- (6) Any emergency spill or overflow containment UST or tank system that is expeditiously emptied after use.
- (7) Any USTs or tank systems containing radioactive material that are regulated under the federal Atomic Energy Act of 1954 (42 U.S.C. section 2011 and following).

- (8) Any UST or tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the federal Nuclear Regulatory Commission under 10 C.F.R. Part 50, Appendix A.

(b) Owners and operators of the following special types of underground storage tanks or tank systems, as more generally defined in section 11-281-03, are subject only to the requirements of subchapters 6, 7, 8 and the requirements of sections 11-281-12 and 11-281-13:

- (1) Airport hydrant fuel distribution USTs and tank systems directly connected to underground hydrant piping used to fuel aircraft.
- (2) Field-constructed underground storage tanks and tank systems located on military installations owned and operated by the United States Department of Defense.

(c) Subchapter 5 does not apply to any UST or tank system installed prior to the effective date of these rules that stores fuel solely for use by emergency power generators. [Eff 1/28/00; am and comp]
(Auth: HRS §342L-3) (Imp: 40 C.F.R. §280.10)

§11-281-02 REPEALED. [R]

§11-281-03 Definitions. As used in this chapter:

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST or tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST or tank system.

"Ancillary equipment" means any mechanical or electrical devices or structural components associated with the UST or tank system including, but not limited to, fittings, flanges, valves, sensors, dispensers and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Cathodic protection" is a technique to prevent

corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, an UST or tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and USTs or tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and USTs or tank systems.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST or tank system under conditions likely to be encountered in the UST or tank system.

"Consumptive use" with respect to heating oil means consumed on the premises where stored.

"Corrective action" means those activities carried out in response to any release from an underground storage tank or tank system to minimize or mitigate the impact of the release of regulated substances in order to protect human health and the environment. The term may be used interchangeably with "release response action".

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal USTs or tank systems. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal USTs or tank systems.

"Department" means the state department of health.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the

surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., UST from piping).

"Director" means the director of the state department of health.

"Dispenser" means equipment that is used to transfer a regulated substance from underground piping, through a rigid or flexible hose or piping located aboveground, to a point of use outside of the underground storage tank system such as a motor vehicle.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure assessment" means a determination regarding the extent of exposure of, or potential for exposure of, individuals to regulated substances from a release from an UST or tank system. An exposure assessment shall be based on factors such as the nature and extent of contamination, the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, dermal exposure, soil ingestion, and food chain contamination), the size of the community or communities within the likely pathways of exposure, an analysis of expected human exposure levels with respect to short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for the contaminants.

"Farm" includes fish hatcheries, rangeland, and nurseries with growing operations.

"Farm tank" is a UST or tank system located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm UST must be located on the farm property and must be used only for farm related purposes.

"Field citation" is a "Field Citation" as referred to in Appendix VII entitled "Field Citation/Settlement Agreement", dated June 2012, which is made a part of this

chapter and is located at the end of the chapter, or on an electronic form prescribed by the director, and is valid after an authorized employee of the department signs and issues it to an owner or operator. A field citation is an offer to settle an administrative case involving a violation of this chapter and is not an administrative order.

"Flow-through process tank" is an UST or tank system that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process USTs or tank systems do not include USTs used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Force majeure" is any event arising from causes beyond the control of the owner or operator or of any entity controlled by the owner or operator (including, but not limited to, the owner or operator's contractors and subcontractors) that delays or prevents the performance of any obligation under the field citation, despite the owner or operator's best efforts to fulfill the obligation. The owner or operator's "best efforts to fulfill the obligation" include using good faith efforts to anticipate any potential force majeure event, and good faith efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the force majeure event, such that the delay is minimized to the greatest extent possible.

"Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"HRS" means the Hawaii Revised Statutes.

"Hydraulic lift tank" means an UST or tank system holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Installation" means the act of installing a new UST or tank system or installing an existing UST or tank system at a new location.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an UST or tank system from releasing product.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"Operate" means to place or deposit a regulated substance into an UST or tank system, to dispense a regulated substance from an UST or tank system, to close an UST or tank system, to maintain an UST or tank system, and/or to exercise control of or responsibility for an UST or tank system on a daily basis regardless of whether a regulated substance is being actively managed on a daily basis.

"Operational life" refers to the period beginning when installation of the UST or tank system has commenced until the time the UST or tank system is properly closed under subchapter 8.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST or tank system.

"Overfill release" is a release that occurs when an UST is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

- (1) In the case of a particular UST or tank system in use or brought into use on or after November

8, 1984, any person who owns an UST or tank system;
and

- (2) In the case of a particular UST or tank system in use before November 8, 1984, but no longer in use after that date, any person who owned such an UST or tank system immediately before the discontinuation of its use.

"Permit" means written authorization, as provided for in section 342L-4, HRS, from the director to install or operate an UST or tank system. A permit authorizes owners or operators to install and operate an UST or tank system in a manner, or to do an act, not forbidden by chapter 342L, Hawaii Revised Statutes, or by this chapter, but requiring review by the department.

"Person" means an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the state or a county, the United States government, federal agency, interstate body, or any other legal entity.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Petroleum underground storage tank" or "petroleum underground storage tank system" means an UST or tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such tanks or tank systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit constructed of non-earthen materials that routinely contains or conveys regulated substances from the underground storage tank(s) to the dispenser(s) or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that

contain and convey regulated substances from the underground storage tank(s) to the dispenser(s). This definition does not include vent, vapor recovery, or fill lines.

"Pipeline facilities" are new and existing pipe rights-of-way (including gathering lines) and any associated equipment, facilities, or buildings.

"Provider of financial assurance" means a person that provides evidence of financial responsibility for one or more USTs or tank systems.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to human health, welfare, or the environment. The term includes:

- (1) Any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act);
- (2) Petroleum; and
- (3) Any other substance designated by the department.

"Release" includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST or tank system.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST or tank system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Release response action" means those activities carried out in response to any release from an underground storage tank or tank system to minimize or mitigate the impact of the release of regulated substances in order to protect human health and environment. The term "release response action" may be used interchangeably with "corrective action".

"Repair" means any effort or undertaking to restore functionality to or correct a problem with an UST or UST system, including but not limited to the replacement of any ancillary equipment, piping or USTs.

"Reportable quantity" means the quantities of regulated substances that must be reported to the department when released to the environment, as defined in section 11-451-6.

"Residential tank" is an UST or tank system located on property used primarily for dwelling purposes.

"Secondary Containment" means a release prevention and release detection system for an underground storage tank or piping. The release prevention part of secondary containment is an underground storage tank or piping having an inner and outer barrier. Between these two barriers is a space for monitoring. The release detection part of secondary containment is a method of monitoring the space between the inner and outer barriers for a leak or release of regulated substances from the underground tank or piping (called interstitial monitoring).

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the UST are pumped out periodically and hauled to a treatment facility.

"Storm-water collection system" or "wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Technical Guidance Manual for Underground Storage Tank Closures and Release Response" or "TGM" means the Technical Guidance Manual for Underground Storage Tank

Closure and Release Response published by the Hawaii department of health.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground storage tank" or "UST" means any one or combination of tanks used to contain an accumulation of regulated substances, and the volume of which is ten per cent or more beneath the surface of the ground. This term does not include any:

- (1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes. Farm tanks must be used only for farm related purposes;
- (2) Tank used for storing heating oil for consumptive use on the premises where stored;
- (3) Septic tank;
- (4) Pipeline facility (including gathering lines) regulated under:
 - (A) The federal Natural Gas Pipeline Safety Act of 1968, Public Law No. 90-481, as amended (49 U.S.C. App. 1671, et seq.); or
 - (B) The federal Hazardous Liquid Pipeline Safety Act of 1979, Public Law No. 96-129, as amended (49 U.S.C. App. 2001, et seq.);
- (5) Surface impoundment, pit, pond, or lagoon;
- (6) Storm water or wastewater collection system;
- (7) Flow-through process tank;
- (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; and
- (9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

"Underground storage tank system" or "UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Variance" means a special written authorization from the director to own, install, or operate an UST or tank

system in a manner deviating from, or to do an act that deviates from, the requirements of this chapter that are more stringent than 40 CFR Part 280.

"Wastewater treatment tank" means an UST tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods. [Eff 1/28/00; am and comp] (Auth: HRS §342L-3) (Imp: 40 C.F.R. §280.12)

§§11-281-04 to 11-281-10 (Reserved)

SUBCHAPTER 2

DESIGN, CONSTRUCTION, AND INSTALLATION

§11-281-11 Performance standards for underground storage tanks and tank systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST or tank system is used to store regulated substances, all owners and operators of USTs or tank systems must meet the requirements of this subchapter. [Eff 1/28/00; am and comp] (Auth: HRS §342L-32) (Imp: 40 C.F.R. §280.20)

§11-281-12 Tank requirements. Each UST must be properly designed, constructed, and installed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. All USTs must meet one of the following requirements:

- (1) The UST is constructed of fiberglass-reinforced plastic;
- (2) The UST is constructed of steel and shall be cathodically protected in the following manner:
 - (A) The UST shall be coated with a suitable dielectric material;
 - (B) Field-installed cathodic protection systems must be designed by a corrosion

- (1) The piping is constructed of fiberglass-reinforced plastic;
- (2) The piping is constructed of steel and cathodically protected in the following manner:
 - (A) The piping shall be coated with a suitable dielectric material;
 - (B) Field-installed cathodic protection systems must be designed by a corrosion expert;
 - (C) Impressed current systems shall be designed to allow determination of current operating status as required in section 11-281-42; and
 - (D) Cathodic protection systems shall be operated and maintained in accordance with section 11-281-42;
- (3) The piping is constructed of metal without additional corrosion protection measures provided that:
 - (A) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
 - (B) The owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the piping; or
- (4) Piping that does not comply with paragraph (1), (2), or (3) may be used if the department determines that the piping construction and corrosion protection are designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1) through (3). [Eff 1/28/00; am and comp]
(Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.20)

§11-281-14 Spill and overflow prevention equipment.

- (a) Except as provided in subsection (b), to prevent

spilling and overfilling associated with product transfer to an UST or tank system, owners and operators must use the following spill and overfill prevention equipment:

- (1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
 - (2) Overfill prevention equipment that will:
 - (A) Automatically shut off flow into the UST when the UST is more than ninety-five percent full;
 - (B) Alert the transfer operator when the UST is more than ninety percent full by restricting the flow into the UST or triggering a high-level alarm; or
 - (C) Restrict flow thirty minutes prior to overfilling, or alert the operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the UST so that none of the fittings located on top of the UST are exposed to product due to overfilling.
- (b) Owners and operators are not required to use the spill and overfill prevention equipment specified in subsection (a) if:
- (1) Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in subsection (a); or
 - (2) The UST or tank system is filled by transfers of no more than twenty-five gallons at one time.
- (c) Spill and 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. [Eff 1/28/00; am and comp
] (Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.20)

§11-281-15 Installation. All USTs and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or

independent testing laboratory and in accordance with the manufacturer's instructions. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.20)

§11-281-16 Certification of installation. (a) All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with section 11-281-15:

- (1) The installer has been certified by the UST and piping manufacturers;
- (2) The installation has been inspected and certified by a licensed professional engineer with education and experience in UST or tank system installation;
- (3) All work listed in the manufacturer's installation checklists have been completed and the checklists maintained; or
- (4) The owner or operator has complied with another method for ensuring compliance with section 11-281-15 that is determined by the department to be no less protective of human health and the environment.

(b) All owners and operators shall certify compliance with subsection (a) by completing and submitting to the department the Certification of Underground Storage Tank Installation (Appendix III entitled "Certification of Underground Storage Tank Installation", dated June 2012, which is made a part of this chapter and is located at the end of this chapter, or on an electronic form prescribed by the director). [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.20)

§11-281-17 Secondary containment. (a) An UST or tank system installed on or after the effective date of these rules must be provided with secondary containment designed, constructed and installed in a manner consistent with the requirements of this subchapter.

(b) Secondary containment must be designed, constructed, and installed to:

- (1) Contain regulated substances released from the

- UST or tank system until they are detected and removed; and
- (2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST or tank system.
 - (c) Double-walled USTs must be designed, constructed, and installed to:
 - (1) Contain a release from any portion of the inner UST within the outer wall until removed; and
 - (2) Detect the failure of the inner and outer walls.
 - (d) External liners (including vaults) must be designed, constructed, and installed to:
 - (1) Contain one hundred percent of the capacity of the largest UST within its boundary;
 - (2) Prevent precipitation or ground water intrusion from interfering with the ability to contain or detect a release of regulated substances; and
 - (3) Surround the UST completely to effectively prevent lateral and vertical migration of regulated substances in the event of a release.
 - (e) All piping installed after the effective date of these rules must be provided with secondary containment (e.g., trench liners, double-walled pipes, etc.) that meets the requirements of subsection (b). [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.42)

§11-281-18 REPEALED. [R]

§11-281-19 Under dispenser containment.

Dispensers installed on or after the effective date of the rules must have an under dispenser containment that will prevent releases from reaching soil, groundwater, and surface water. This containment must:

- (1) Be liquid-tight on its sides, bottom and at any penetrations;
- (2) Be compatible with the substance conveyed by the piping;
- (3) Allow for visual inspection and the components in the containment system must be accessible;

and

- (4) Be monitored with a sensing device that signals the operator of the presence of regulated substances. [Eff and comp]
(Auth: HRS §§342L-3, 342L-32) (Imp: 42 U.S.C. §6991b)

§11-281-20 (Reserved)

SUBCHAPTER 3

NOTIFICATION, PERMITS, AND VARIANCES

§11-281-21 REPEALED. [R]

§11-281-21.5 Notification requirements for USTs and tank systems. (a) The owner of an UST or tank system shall notify the department of any of the following changes in information relating to the UST or tank system:

- (1) Permanent or temporary closure, or the return to currently-in-use status;
- (2) Change-in-service under subchapter 8;
- (3) Changes in product dispensing method, dispenser, or under dispenser containment;
- (4) Changes in financial responsibility mechanism;
- (5) Changes in leak detection method;
- (6) Changes in spill and overfill prevention method;
- (7) Changes in piping;
- (8) Changes in type of regulated substances stored;
- (9) Changes in corrosion protection mechanism; and
- (10) Installation of or changes in secondary containment.

(b) The owner shall submit notification within thirty days following any of the changes requiring notification under this section, except that notification of permanent closures and change-in-service under subchapter 8 must be received by the department at least thirty days before commencement of the closure or

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change-in-service.

(c) The notification shall be on the form prescribed in Appendix I entitled "Notification for Underground Storage Tanks", dated June 2012, which is made a part of this chapter and is located at the end of this chapter, or on an electronic form prescribed by the director. [Eff and comp] (Auth: HRS §342L-3) (Imp: HRS §342L-30)

§11-281-22 REPEALED. [R]

§11-281-23 Permit required. (a) No person shall install or operate an UST or tank system without first obtaining a permit from the director; except that any unpermitted UST or tank system brought into use before the effective date of these rules shall have three years from the effective date of these rules to obtain a permit to operate pursuant to the requirements of this subchapter.

(b) The director shall approve an application for a permit only if the applicant has submitted sufficient information to the satisfaction of the director that the technical, financial, and other requirements of this chapter are or can be met and the installation and operation of the UST or tank system will be done in a manner that is protective of human health and the environment.

(c) A permit shall be issued only in accordance with chapter 342L, HRS and this chapter, and it shall be the duty of the permittee to ensure compliance with the law in the installation and operation of the UST or tank system.

(d) Issuance of a permit shall not relieve any person of the responsibility to comply fully with all applicable laws. [Eff 1/28/00; am and comp] (Auth: HRS §342L-3) (Imp: HRS §342L-31)

§11-281-24 Application for a permit. (a) Every application for a permit shall be submitted to the department on forms prescribed in Appendix II entitled "Application for an Underground Storage Tank Permit", dated June 2012, which is made a part of this chapter and is located at the end of this chapter, or on an electronic

form prescribed by the director.

(b) A permit fee in accordance with section 11-281-35 shall accompany each application for a permit.

(c) The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include but not be limited to the following:

- (1) General information on involved parties, including the landowner, UST owner, and UST operator; identification of location of the UST or tank system; and basic description of the UST or tank system;
- (2) Age, size, location, and uses of the UST or tank system;
- (3) Other information required in Appendix II entitled "Application for an Underground Storage Tank Permit", dated June 2012, which is made a part of this chapter and is located at the end of this chapter, or on an electronic form prescribed by the director; and
- (4) Other information as the department may require.

(d) Every application shall be signed by the owner and the operator and shall constitute an acknowledgement that the applicant(s) assumes responsibility for the installation and operation of the UST or tank system in accordance with this chapter and the conditions of the permit, if issued. Each signatory shall be:

- (1) In the case of a corporation, a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;
- (2) In the case of a partnership, a general partner;
- (3) In the case of a sole proprietorship, the proprietor; or
- (4) In the case of a county, state, or federal entity, either a principal executive officer, ranking elected official, or other duly authorized employee. [Eff 1/28/00; am and comp
] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-281-25 Permit. (a) Upon approval of an application for a permit to install and operate an UST or tank system, the director shall issue a permit for a term of five years except as noted in subsection (b).

(b) The owner or operator shall have one year from the issuance of the permit to install an UST or tank system. If the installation is not completed within one year, the permit expires and the owner or operator must apply for a new permit.

(c) The owner or operator must inform the department at least seven days prior to performing the actual installation. The information shall include the permit number, name and address of the UST or tank system, the contact person, the contact person's phone number, and date and time of actual installation.

(d) The owner or operator must notify the department within thirty days after the installation of the UST or tank system. The notification shall be submitted on the form prescribed in Appendix III entitled "Certification of Underground Storage Tank Installation", dated June 2012, which is made a part of this chapter and is located at the end of this chapter, or on an electronic form prescribed by the director. If information submitted on the form prescribed in Appendix II entitled "Application for an Underground Storage Tank Permit" dated June 2012, which is made a part of this chapter and is located at the end of this chapter, or on an electronic form prescribed by the director, has changed since the original application, Part IV of Appendix III entitled "Certification of Underground Storage Tank Installation", dated June 2012, which is made a part of this chapter and is located at the end of this chapter, or on an electronic form prescribed by the director, must be completed and submitted.

(e) The department, where practicable and appropriate, may issue one permit to the owner or operator of an UST system for the purpose of combining all USTs, piping, and any ancillary equipment constituting that UST system under one permit, irrespective of the number of individual USTs, so long as that UST system is part of one reasonably contiguous physical location. [Eff 1/28/00; am and comp] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-281-26 Permit renewals. (a) On application, a permit may be renewed for a term of five years.

(b) A renewal fee in accordance with section 11-281-35 shall accompany each application for renewal of a permit.

(c) An application for a renewal shall be received by the department at least one hundred and eighty days prior to the expiration of the existing permit and shall be submitted on forms prescribed in Appendix IV entitled "Application for Renewal of an Underground Storage Tank Permit", dated June 2012, which is made a part of this chapter and is located at the end of this chapter, or on an electronic form prescribed by the director. [Eff 1/28/00; am and comp] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-281-27 Action on and timely approval of an application for a permit. (a) The director need not act upon nor consider any incomplete application for a permit. An application shall be deemed complete only when:

- (1) All required and requested information, including the application form, plans, specifications, and other information required by this subchapter have been submitted in a timely fashion;
- (2) All fees have been paid as prescribed in section 11-281-35; and
- (3) The director determines that the application is complete.

(b) The director shall approve, approve with conditions, or deny a complete application for a permit to install or operate an UST or tank system or a permit renewal, modification, or transfer, required under this chapter. The director shall notify the applicant of his or her decision, within one hundred and eighty days of receipt of a complete application per subsection (a). Otherwise, the application is deemed approved on the one hundred and eightieth day. [Eff 1/28/00; comp] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

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§11-281-28 Permit conditions. The director may impose conditions on a permit that the director deems reasonably necessary to ensure compliance with this chapter and any other relevant state requirement, including conditions relating to equipment, work practice, or operation. Conditions may include, but shall not be limited to, the requirement that devices for measurement or monitoring of regulated substances be installed (including the requirements of section 11-281-25) and maintained and the results reported to the director, all costs and expenses to be borne by the applicant. [Eff 1/28/00; comp] (Auth: HRS § 342L-3) (Imp: HRS §§ 342L-4, 342L-31)

§11-281-29 Modification of permit. (a) The director may modify a permit if there is a change that requires a modification to an existing permit. Changes requiring a permit modification shall include but not be limited to:

- (1) The addition or removal of an UST from an UST system; and
- (2) Any change to or modification of an UST or UST system which would otherwise place the existing UST or UST system out of compliance with this chapter or an existing permit.

(b) An application for modification of a permit shall be made in writing to the department and shall be accompanied by sufficient information on the planned renovation or modification to the UST or tank system to assist the director in making a determination as to whether the application for modification should be denied or granted.

(c) Applications for a permit modification shall be received by the department no later than sixty days prior to the occurrence of the event that prompted the application except that applications for change-in-service must be received by the department at least thirty days before the owner or operator begins the change-in-service. Applications shall be submitted on forms prescribed in Appendix II entitled "Application for an Underground Storage Tank Permit", dated June 2012, which is made a part

of this chapter and is located at the end of this chapter, or on an electronic form prescribed by the director.

(d) Owners and operators shall submit a permit application to add USTs or tank systems to an existing permit. If the director approves the addition, the existing permit shall be terminated, and a new permit shall be issued which covers the additional USTs as well as the already-permitted USTs. The term of the new permit shall be for the remaining term of the original permit. [Eff 1/28/00; am and comp] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-281-30 Revocation or suspension of permit. The director may revoke or suspend a permit if the director finds any one of the following:

- (1) There is a release or threatened release of regulated substances that the department deems to pose an imminent and substantial risk to human health or the environment;
- (2) The permittee violated a condition of the permit; or
- (3) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts. [Eff 1/28/00; comp] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-281-31 Change in owner or operator for a permit.

(a) No permit to install, own, or operate an UST or tank system shall be transferable unless approved by the department. Request for approval to transfer a permit from one owner to another owner must be made by the new owner. Request for approval to transfer a permit from one operator to another operator must be made by the owner.

(b) The transferred permit will be effective for the remaining life of the original permit.

(c) An application for the transfer shall be received by the department at least thirty days prior to the proposed effective date of the transfer and shall be submitted on forms prescribed in Appendix V entitled "Application for Transfer of an Underground Storage Tank Permit", dated June 2012, which is made a part of this chapter and is located

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at the end of this chapter, or on an electronic form prescribed by the director. [Eff 1/28/00; am and comp] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

§11-281-32 Variations allowed. Provisions of chapter 342L, Hawaii Revised Statutes, and the rules in this chapter relating to USTs or tank systems which are more stringent than the federal rules and regulations promulgated by the U.S. Environmental Protection Agency under Subtitle I of the federal Resource Conservation and Recovery Act of 1976, Public Law 94-580, as amended, may be varied by the director in accordance with sections 342L-5 and 342L-6, HRS and this chapter. No variance may be less stringent than the federal requirements. [Eff 1/28/00; comp] (Auth: HRS §342L-3) (Imp: HRS §342L-5)

§11-281-33 Variance applications. (a) Every application for a variance shall be submitted to the department on forms prescribed in Appendix VI entitled "Application for an Underground Storage Tank Variance", dated June 2012, which is made a part of this chapter and is located at the end of this chapter, or on an electronic form prescribed by the director.

(b) A variance fee in accordance with section 11-281-35 shall accompany each application for a variance.

(c) Every application shall be signed by the owner and operator, and the signature shall be by one of the following:

- (1) In the case of a corporation, by a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;
- (2) In the case of a partnership, by a general partner;
- (3) In the case of a sole proprietorship, by the proprietor; or
- (4) In the case of a county, state, or federal entity, by a principal executive officer, ranking

elected official, or other duly authorized employee.

(d) The director shall approve, approve with conditions, or deny a complete application for a variance or variance renewal or modification as required under this chapter and sections 342L-5 and 342L-6, HRS. The director shall notify the applicant of his or her decision, within one hundred and eighty days of receipt of a complete application. Otherwise, the application is deemed approved on the one hundred and eightieth day. [Eff 1/28/00; am and comp] (Auth: HRS §342L-3)
(Imp: HRS §342L-6)

§11-281-34 Maintenance of permit or variance. (a) Permits and variances, including application records, shall be maintained at the location of the UST or tank system for which the permit was issued and shall be made available for inspection upon request of any duly authorized representative of the department.

(b) No person shall willfully deface, alter, forge, counterfeit, or falsify any permit or variance. [Eff 1/28/00; am and comp] (Auth: HRS §342L-3)
(Imp: HRS §§342L-4, 342L-6, 342L-31)

§11-281-35 Fees. (a) Every applicant for a permit or a variance, or applicant for modification or renewal of a permit or variance, or applicant for a transfer of a permit, shall pay the applicable fees as set forth below:

Type of Application	Permit	Variance
Permit or variance application	\$150	\$200
Application to modify	\$100	\$150
Application for renewal	\$ 50	\$100
Application for transfer	\$ 25	NA

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(b) Fees shall be submitted with the application and are nonrefundable.

(c) Fees shall be made payable to the State of Hawaii.

(d) If more than one type of application is combined, the highest applicable fee will be assessed. However, a permit application and a variance application shall not be combined under one fee. [Eff 1/28/00 ; comp

] (Auth: HRS §342L-3) (Imp: HRS

§342L-14)

§§11-281-36 to 11-281-40 (Reserved)

SUBCHAPTER 4

GENERAL OPERATING REQUIREMENTS

§11-281-41 Spill and overfill control. (a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. Owners and operators must ensure that the volume available in the UST is greater than the volume of product to be transferred to the UST before the transfer is made and that the transfer operation is monitored constantly to prevent spilling and overfilling.

(b) Owners and operators must report, investigate, and clean up any spills and overfills in accordance with section 11-281-64.

(c) Sump maintenance.

(1) Spill prevention equipment, under dispenser containment, and containment sumps that are part of an interstitial monitoring system must be maintained free of regulated substances, water and debris at all times; and

(2) Spill prevention equipment must pass a test at least every three hundred sixty-five days to ensure this equipment is liquid tight. This test must be performed using a vacuum, pressure or liquid method according to requirements developed by the manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or other method approved by the department.

(d) Overfill control maintenance. Overfill prevention equipment must be operational at all times. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.30)

§11-281-42 Operation and maintenance of corrosion protection systems.

(a) All owners and operators of steel USTs or tank systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST or tank system is used to store regulated substances:

- (1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the UST and piping that routinely contain regulated substances and are in contact with the ground.
- (2) All USTs or tank systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
 - (A) Frequency. All cathodic protection systems must be tested within six month of installation and at least every three years thereafter; and
 - (B) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association; and
- (3) USTs or tank systems with impressed current cathodic protection systems must also be inspected every sixty days to ensure the equipment is operating properly.

(b) For USTs or tank systems using cathodic protection, records of the operation of the cathodic protection must be maintained by the owners and operators in accordance with section 11-281-45 to demonstrate compliance with the performance standards in this section. These records must provide the following:

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- (1) The results of the last three inspections required in subsection (a) (3); and
- (2) The results of testing from the last two inspections required in subsection (a) (2).
[Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.31)

§11-281-43 Compatibility. Owners and operators must use an UST or tank system made of or lined with materials that are compatible with the substance stored in the UST or tank system. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.32)

§11-281-44 Repairs. (a) Owners and operators of USTs or tank systems must ensure that repairs will prevent releases due to structural failure or corrosion for as long as the UST or tank system is used to store regulated substances.

(b) UST or tank system repairs must meet the following requirements:

- (1) Repairs to USTs and tank systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.
- (2) Repairs to fiberglass-reinforced plastic USTs may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.
- (3) Prior to the return to use of a repaired UST system, any repaired USTs, piping that routinely contains product, or repaired containment walls must pass either a tank tightness test in accordance with section 11-281-52(3), a line tightness test utilizing a 0.1 gallon per hour leak rate at one and one-half times the operating pressure, or an integrity test using vacuum,

pressure, or liquid method in accordance with requirements developed by the manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory respectively.

- (4) Within six months following the repair of any cathodically protected UST or tank system, the cathodic protection system must be tested in accordance with sections 11-281-42(a)(2) and (3) to ensure that it is operating properly.

(c) Any existing UST or UST system that fails to meet any of the requirements of subsections (a) and (b) must comply with the permanent closure requirements of subchapter 8. [Eff 1/28/00; am and comp]
(Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.33)

§11-281-45 Recordkeeping. (a) Owners and operators of USTs or tank systems must cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests by the department for submission of records, monitoring and testing by owners or operators in accordance with chapter 342L, Hawaii Revised Statutes.

(b) Owners and operators must generate and maintain accurate records of the following information, in a form that is capable of being reviewed by the department upon request, for the remaining operating life of the UST or tank system unless otherwise specified:

- (1) Compliance with the corrosion protection requirements of subchapter 2 and this subchapter;
- (2) Compliance with the release detection requirements of subchapter 5, for at least three years after the record is generated;
- (3) Documentation of any and all maintenance performed on the UST system and tests, including the results and analysis for functionality or operability, for at least three years after the record is generated;
- (4) Documentation of any and all repairs to the UST system;
- (5) Any and all records that the equipment being

utilized to monitor or maintain the UST system is designed to produce, for at least three years after the record is generated;

- (6) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer;
- (7) Operating manuals for all currently installed leak detection equipment;
- (8) Compliance with change-in-service or permanent closure requirements, including results of the site assessment, under subchapter 8, for at least three years after completion of permanent closure or change-in-service;
- (9) Permits or variances or both, including all documentation, as specified in section 11-281-34(a); and
- (10) Proof of current financial assurance mechanisms used to demonstrate financial responsibility as required by subchapter 9.

(c) Owners and operators must keep and maintain records at the following locations:

- (1) All records required by this section shall be made immediately available for inspection by the department by:
 - (A) Being maintained at the UST site; or
 - (B) Another method as approved by the director.
- (2) The permanent closure records specified in subsection (b) (8) may be maintained at a readily available alternative site and shall be provided for inspection to the department upon request.
[Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-32) (Imp: 40 C.F.R. §280.34)

§11-281-46 Operator training. (a) Operator designation and notice.

- (1) No later than one hundred twenty days after the effective date of these rules, owners and operators must designate for each UST or tank system that is in use or temporarily out of use a class A, class B, and class C operator trained

and certified in accordance with the requirements of this section.

- (2) Separate individuals may be designated for each class of operator or an individual may be designated for more than one of the operator classes. An individual who is designated for more than one operator class must be trained and certified in each operator class for which the operator is designated.
- (3) Owners and operators shall submit written notice to the department identifying the class A and class B operator for each UST or tank system in use or temporarily out of use no later than thirty days after an operator assumes the operator's responsibilities as a class A or class B operator. The notification must include the name of each operator, the date training was completed, the name and address of each facility where the USTs or tank systems for which the operator has been designated is located and written verification from a training and certification program approved or administered by the department that the class A and class B operator for each UST or tank system has successfully completed operator training and is certified in the operator's class.
- (4) Owners and operators shall maintain current copies of all operator training certifications for each UST's or tank system's designated class A, class B, and class C operator on site at the facility where the UST or tank system for which the operator has been designated is located and make them immediately available for inspection upon request by the department.
 - (b) Operator classes. The three classes of operators are as follows:
 - (1) The class A operator has primary responsibility to oversee the proper operation and maintenance of a facility's UST or tank system and ensure compliance with the requirements of this chapter. The class A operator must be trained in the following:
 - (A) A general knowledge of UST system

- requirements regarding operation, maintenance, and recordkeeping and standards including but not limited to:
- (i) Spill prevention;
 - (ii) Overfill prevention;
 - (iii) Release detection;
 - (iv) Corrosion protection;
 - (v) Emergency response; and
 - (vi) Product compatibility;
- (B) Financial responsibility documentation;
 - (C) Notification requirements;
 - (D) Release and suspected release reporting and response;
 - (E) Temporary and permanent closure;
 - (F) Permitting; and
 - (G) Class B and class C operator training and certification.
- (2) The class B operator is responsible for implementing the day-to-day aspects of operating, maintaining, and recordkeeping for a facility's UST or tank system. The class B operator must be trained in the following:
- (A) Components of UST systems;
 - (B) Materials of UST system components;
 - (C) Methods of release detection and release prevention applied to UST components;
 - (D) Operation and maintenance requirements that apply to UST systems including but not limited to:
 - (i) Spill prevention;
 - (ii) Overfill prevention;
 - (iii) Release detection;
 - (iv) Corrosion protection;
 - (v) Emergency response; and
 - (vi) Product compatibility;
 - (E) Release and suspected release reporting and response;
 - (F) Reporting and recordkeeping requirements; and
 - (G) Class C operator training requirements.
- (3) A class C operator is generally the first person in line to respond to emergency conditions and is responsible for the initial response to alarms

or other indications of a suspected release or other emergency involving a facility's UST or tank system. This individual has the primary responsibility of notifying the class A or class B operator and appropriate emergency responders when necessary and must be fully trained and certified prior to taking responsibility for emergency responses. The class C operator must be trained to:

- (A) Take action in response to emergencies (such as, situations posing an immediate danger or threat to the public or to the environment and that require immediate action); and
 - (B) Take appropriate action in response to alarms generated by the UST monitoring system.
- (c) Training and certification requirements.
- (1) Class A, class B, and class C operator training and certification and retraining and recertification must be obtained from an operator training and certification program approved or administered by the department. An operator training and certification program may consist of in-class or on-line instruction and may include practical exercises but must, at a minimum, incorporate an evaluation of operator knowledge through written examination, practical demonstration, or other reasonable testing methods.
 - (2) The department may accept operator training and certification verification from other states if the operator training and certification is deemed by the department to be equivalent to the requirements of this section.
 - (3) Class A and class B operators shall be retrained and recertified every five years. The class C operators shall be retrained and recertified every three hundred sixty-five days.
 - (4) If the department determines that an UST or tank system is out of compliance, the class A and class B operators must be retrained and recertified within ninety days. At a minimum, an UST or tank

system is out of compliance if the system:

- (A) Meets any of the delivery prohibition criteria outlined in section 11-281-129; or
- (B) Is not in significant compliance with other requirements, such as temporary or permanent closure, tank registration or financial responsibility as determined by the director. [Eff and comp] (Auth: HRS §§342L-3, 342L-32) (Imp: 42 U.S.C. §6991i)

§§11-281-47 to 11-281-50 (Reserved)

SUBCHAPTER 5

RELEASE DETECTION

§11-281-51 General requirements for all underground storage tanks or tank systems. (a) Owners and operators of new and existing USTs or tank systems must provide a method, or combination of methods, of release detection that:

- (1) Can detect a release from any portion of the UST and the connected underground piping that routinely contains product;
- (2) Utilizes equipment compatible with the regulated substances being stored, that is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions or recommendations;
- (3) Meets the performance requirements in section 11-281-52 or section 11-281-53. Owners and operators must also provide the department with the equipment manufacturer's or installer's written documentation of any performance claims and their manner of determination. In addition, the method utilized must be capable of detecting the leak rate or quantity specified for that method in section 11-281-52 (2), (3), or (4) or

section 11-281-53(1) or (2), with a minimum probability of detection (Pd) of 0.95 and a maximum probability of false alarm (Pfa) of 0.05.

(b) When a release detection method operated in accordance with the performance standards in sections 11-281-52 and 11-281-53 indicates a release may have occurred, owners and operators must notify the department in accordance with subchapter 6.

(c) All release detection equipment must be properly serviced and maintained to ensure operability, including but not limited to a thorough inspection and service at least every three hundred sixty-five days, or in a time frame recommended by the equipment manufacturer, whichever is more frequent. All maintenance and service of the release detection equipment must be conducted by a technician with current certification or training appropriate to the equipment serviced.

(d) Owners and operators of any UST or tank system that cannot apply a method of release detection that complies with the requirements of this subchapter must comply with change-in-service or closure procedures in subchapter 8.

(e) Owners and operators of any USTs or piping installed after the effective date of these rules must utilize the method of release detection described in section 11-281-52(7). [Eff 1/28/00; am and comp
] (Auth: HRS §§342L-3, 342L-33) (Imp: 40
C.F.R. §§280.40, 280.41, 42 U.S.C. §6991b)

§11-281-52 Methods of release detection for tanks.
Each method of release detection for tanks used to meet the requirements of section 11-281-51 must be conducted in accordance with the following:

- (1) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least one per cent of flow-through plus one hundred thirty gallons on a monthly basis in the following manner:
 - (A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank

- are recorded each operating day;
 - (B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
 - (C) If a manual measuring device is used (e.g. a gauge stick), the measurements must be made through a drop tube and one that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;
 - (D) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
 - (E) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
 - (F) Product dispensing is metered and recorded within the state standards for meter calibration; or for non-retail enterprises, calibrated to an accuracy of six cubic inches for every five gallons of product withdrawn (in both cases, the meter must be calibrated every three hundred sixty-five days; and
 - (G) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.
- (2) Manual tank gauging. Manual tank gauging must meet the following requirements:
- (A) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank (of the period defined in the table below for the size of the tank);
 - (B) If a manual measuring device is used (e.g. a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch and shall be based

on the average of two consecutive gauge stick readings at both the beginning and ending of the period;

- (C) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (D) A leak is suspected and subject to the requirements of subchapter 6 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity (in gallons)	Tank Dimensions	Weekly Standard (in gallons)	Monthly Standard (in gallons)	Minimum Test Duration
550	N/A	10	5	36 hrs.
551 - 1,000	N/A	13	7	36 hrs. *
1,000	64" dia. X 73" l.	9	4	44 hrs.
1,000	48" dia. X 128" l.	12	6	58 hrs.
1,001 - 2,000	N/A	26	13	36 hrs. *

** Must be combined with tank tightness testing*

- (E) Measurements shall be conducted each week of the month. If the month has five measurement periods, the weekly test with the smallest discrepancy shall not be used in calculating the average.
- (F) Tanks of one thousand gallons or less nominal capacity may use manual tank gauging as the sole method of release detection when using the standards in the above table except that where an asterisk is indicated tank tightness testing is required. Tanks of five hundred fifty-one gallons to two thousand gallons may use manual tank gauging in place of inventory control in this paragraph when using the

standards in subparagraph (D) table that indicate with an asterisk that tank tightness testing is also required. Tanks of greater than two thousand gallons nominal capacity may not use manual tank gauging to meet the requirements of this subchapter.

- (3) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table at the time of the tank tightness test.
- (4) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:
 - (A) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and
 - (B) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of paragraph (1). Inventory control is required only when the automatic tank gauging is not third party certified for detecting a release of 0.2 gallons per hour with a ninety-five per cent probability of detection and five per cent probability of false alarm and was installed prior to December 22, 1990.
- (5) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:
 - (A) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation

- area;
- (B) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;
 - (C) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, soil moisture, or other known interferences so that a release could go undetected for more than thirty days;
 - (D) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;
 - (E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;
 - (F) In the tank system excavation zone, the site is assessed with written documentation to ensure compliance with the requirements in subparagraphs (A) through (D) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and
 - (G) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (6) Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:
- (A) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

- (B) Groundwater is never more than twenty feet from the ground surface and the hydraulic conductivity of the soil (s) between the UST or tank system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravel, coarse to medium sands, coarse silts or other permeable materials);
 - (C) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter-pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;
 - (D) Monitoring wells shall be sealed from the ground surface to the top of the filter-pack;
 - (E) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
 - (F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of one inch of free product on top of the groundwater in the monitoring wells;
 - (G) Within and immediately below the tank system excavation zone, the site is assessed with written documentation to ensure compliance with the requirements in subparagraphs (A) through (E) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and
 - (H) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (7) Interstitial monitoring. Interstitial monitoring between the tank system and a secondary barrier immediately around or beneath it may be used, but only if the monitoring system is designed, constructed and installed to detect

a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

- (A) For double-walled tank systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product.
 - (B) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.
- (8) Other methods. Any other type of release detection method, or combination of methods, can be used if:
- (A) It can detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
 - (B) The owners and operators demonstrate to the department that the method can detect a release as effectively as any of the methods allowed in paragraphs (3) through (7), and the department approves the method. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, owners and operators must comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-33) (Imp: 40 C.F.R. §280.43)

§11-281-53 Methods of release detection for piping.
 Each method of release detection for piping used to meet the requirements of section 11-281-51 must be conducted

in accordance with the following:

- (1) Pressurized piping. Underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector that alerts the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping and detects leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. A test must be performed at least every three hundred sixty-five days of the operation of the leak detector in accordance with the manufacturer's recommendations, and:
 - (A) For pressurized piping installed prior to the effective date of these rules the piping must be line tightness tested utilizing a 0.1 gallon per hour leak rate at one and one-half times the operating pressure at least every three hundred sixty-five days or be monitored in accordance with either section 11-281-52(5), (6), (7) or (8); and
 - (B) For pressurized piping installed after the effective date of these rules the piping must be interstitially monitored by means of a sensing device that signals the operator of the presence of any regulated substance in the interstitial space.
- (2) Suction piping. Underground piping that conveys regulated substances under suction must be:
 - (A) For suction piping installed prior to the effective date of these rules the piping must be line tightness tested utilizing a 0.1 gallon per hour leak rate at one and one-half times the operating pressure at least every three years or be monitored in accordance with either section 11-281-52(5), (6), or (8) or be interstitially monitored by means of a sensing device that signals the operator of the presence of any regulated substance in the interstitial space; and
 - (B) For suction piping installed after the

effective date of these rules the piping must be interstitially monitored by means of a sensing device that signals the operator of the presence of any regulated substance in the interstitial space.

- (C) No release detection is required for suction piping that is designed and constructed to meet the following standards:
- (i) The below-grade piping operates at less than atmospheric pressure;
 - (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
 - (iii) Only one check valve is included in each suction line; and
 - (iv) The check valve is located directly below and as close as practical to the suction pump. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-33) (Imp: 40 C.F.R §280.44, 42 U.S.C. §6991b)

§11-281-54 Release detection verification and records. (a) Owners and operators must monitor, verify, and generate a record that confirms, at least every thirty days or as otherwise specified by the release detection method being utilized, that the equipment is functioning in accordance with the manufacturer's design and is monitoring the integrity of the UST system by either performing a test or obtaining information as required by that method.

(b) All owners and operators of USTs or tank systems must keep and maintain records in accordance with section 11-281-45 demonstrating compliance with all applicable requirements of this subchapter. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-33) (Imp: 40 C.F.R. §280.45)

§§11-281-55 to 11-281-60 (Reserved)

SUBCHAPTER 6

RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

§11-281-61 Reporting of suspected releases.

Owners and operators of USTs or tank systems must notify the department within twenty-four hours, and follow the procedures in section 11-281-63, for any of the following conditions:

- (1) The discovery by any person of evidence of regulated substances which may have been released at the UST or tank system site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);
- (2) Unusual UST or tank system operating conditions observed or experienced by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST or tank system, or an unexplained presence of water in the tank or in the interstice), unless a component of the UST or tank system is found to be defective but not leaking, and is immediately repaired or replaced; or
- (3) Monitoring results from a release detection method required under sections 11-281-52 and 11-281-53 indicate a release may have occurred unless:
 - (A) The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring results do not confirm the initial result; or
 - (B) In the case of inventory control monthly reconciliation, two consecutive months of data do not confirm the initial result.
[Eff 1/28/00; am and comp]
(Auth: HRS §§342L-3, 342L-34) (Imp: 40 C.F.R. §280.50)

§11-281-62 Investigation of off-site impacts.

When required by the department, owners and operators of USTs or tank systems must follow the procedures in section 11-281-63 to determine if the UST or tank system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the department or brought to the department's attention by any person. [Eff 1/28/00; comp] (Auth: HRS §§342L-3, 342L-34) (Imp: 40 C.F.R. §280.51)

§11-281-63 Release investigation and confirmation steps. (a) Unless release response action is initiated in accordance with subchapter 7, owners and operators must immediately investigate and confirm all suspected releases of regulated substances that require reporting under section 11-281-61 within seven days following the discovery of the suspected release, unless a written request for extension of time is granted by the director.

(b) Investigations and confirmations required in subsection (a) must use the following steps:

(1) Testing. Owners and operators must conduct one or more of the following tests to determine whether a leak exists in any portion of the UST system:

- (A) System test according to the requirements for tank tightness testing in section 11-281-52(3) and line tightness testing utilizing a 0.1 gallon per hour leak rate at one and one-half times the operating pressure;
- (B) Interstitial integrity test that is performed in the space between the tank or piping walls and ensures that the area being tested has integrity and will contain a leak. This may be done using a vacuum, pressure or liquid method in accordance with requirements developed by the manufacturer, a code of practice developed by a nationally recognized association or independent

- testing laboratory; or
- (C) Other method approved by the department.
- (2) In addition, the following is applicable:
- (A) Owners and operators must repair, or replace the UST or tank system, and begin release response action in accordance with subchapter 7 if the test results for the UST system, UST, or delivery piping indicate that a leak exists.
 - (B) Further investigation is not required if the test results for the UST system, UST, and delivery piping do not indicate that a leak exists and if the discovery of environmental contamination subject to the reporting requirements of section 11-281-61(1) is not the basis for suspecting a release.
 - (C) Owners and operators must conduct a site assessment as described in paragraph (3) if the test results for the UST system, UST, and delivery piping do not indicate that a leak exists but the discovery of environmental contamination subject to the reporting requirements of section 11-281-61(1) is the basis for suspecting a release.
- (3) Site assessment. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST or tank system site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, type of initial alarm or cause for suspicion, type of backfill and surrounding soil, the depth and flow of groundwater, and other factors as appropriate for identifying the presence and source of a release.
- (A) If the test results for the excavation zone, or the UST or tank system site, indicate that a release has occurred, owners and operators must begin release response action in accordance with subchapter 7; or

(B) If the test results for the excavation zone, or the UST or tank system site, do not indicate that a release has occurred, further investigation is not required.

(c) If it is determined that a release has not occurred, owners and operators must report the results of the investigation in writing to the department within thirty days following discovery of the suspected release. The report shall include, but not be limited to, results of the tests pursuant to subsection (b) as well as performance claims pursuant to section 11-281-51(a)(3).
[Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-34) (Imp: 40 C.F.R. §280.52)

§11-281-64 Reporting and cleanup of spills and overfills. (a) Owners and operators of USTs or tank systems must contain and immediately clean up all spills and overfills in a manner which is protective of human health and the environment as set forth in section 11-281-78.

(b) Owners and operators must notify the department within twenty-four hours and begin release response action in accordance with subchapter 7 in the following cases:

- (1) Spill or overflow of petroleum that results in a release to the environment that exceeds twenty-five gallons or that causes a sheen on nearby surface waters; and
- (2) Spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity as determined in compliance with section 11-451-6 (determination of reportable quantities).

(c) If the owners and operators cannot, within twenty-four hours, contain and complete the cleanup of a spill or overflow of petroleum that is less than twenty-five gallons, or a spill or overflow of a hazardous substance that is less than the reportable quantity, then the owners and operators must immediately notify the department of the incident and continue cleaning up the spill or overflow. Owners and operators must also complete and submit to the department a written report of the actions taken in response to the spill or overflow within ninety days of the spill

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or overfill. [Eff 1/28/00; comp] (Auth:
HRS §§342L-3, 342L-34) (Imp: 40 C.F.R. §280.53)

§§11-281-65 to 11-281-70 (Reserved)

SUBCHAPTER 7

RELEASE RESPONSE ACTION

§11-281-71 General. (a) Owners and operators of USTs or tank systems must comply with the requirements of this subchapter in responding to releases of regulated substances from USTs or tank systems.

(b) For purposes of complying with this subchapter, the date of confirmation of a release shall be the date the release is confirmed in accordance with section 11-281-63. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-35) (Imp: 40 C.F.R. §280.60)

§11-281-72 Immediate response actions. (a) Upon confirmation of a release in accordance with section 11-281-63, or after a release from the UST or tank system is identified in any other manner, owners and operators must perform the following immediate response actions within twenty-four hours following the confirmation:

- (1) Report the release to the department by telephone;
- (2) Identify and mitigate any safety hazards (such as fire, explosion, and vapor hazards) posed by the release of the regulated substance;
- (3) Take necessary actions to prevent any further release of the regulated substance into the environment, including removal of as much of the regulated substance from the UST or tank system as possible; and
- (4) Take necessary action to minimize the spread of contamination.

(b) Within seven days of confirmation, owners and operators must submit to the department a written notice

of confirmation. The notice shall include, but not be limited to, the following information: source of the release, method of discovery and confirmation, estimated quantity of substance released, type of substance released, immediate hazards, release impact, migration pathways, and actions taken. [Eff 1/28/00; am and comp]
(Auth: HRS §§342L-3, 342L-35) (Imp: 40 C.F.R. §280.61)

§11-281-73 Posting of signs. (a) If the department determines that posting of signs is appropriate, owners and operators shall post signs around the perimeter of the site informing passersby of the potential hazards. In this instance, "site" means an area where contamination poses an immediate health risk or an area where contaminated media is exposed to the surface.

(b) Signs shall be placed at each entrance to the site and at other locations in sufficient numbers to be seen from any approach to the site.

(c) Signs shall be legible and readable from a distance of at least twenty-five feet. The sign legend shall read, "Caution - Petroleum/Hazardous Substance Contamination - Unauthorized Personnel Keep Out". Other sign legends may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the site and that entry onto the site may be dangerous. A contact person and telephone number shall be listed on the sign.

(d) The sign may be removed upon determination by the department that no further release response action is necessary or that posting of signs is no longer appropriate. [Eff 1/28/00; comp] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §342L-35)

§11-281-74 Initial abatement measures and site assessment. (a) After a release has been confirmed, owners and operators must perform the following release abatement and control measures:

- (1) Continue to remove as much of the regulated substance from the UST or tank system as is necessary to prevent further release to the environment;

- (2) Visually inspect the area around the UST or tank system for evidence of any aboveground releases or exposed below ground releases and continue to take necessary actions to minimize the spread of contamination and to prevent further migration of the released substance into surrounding soils, air, surface water, and groundwater;
- (3) Continue to monitor and mitigate any safety hazards (such as fire, explosion, and vapors) posed by the release that have migrated from the UST or tank system excavation zone and entered into subsurface structures (such as sewers or basements);
- (4) Remedy hazards (such as dust and vapors and the potential for leachate generation) posed by contaminated soils and debris that are excavated or exposed as a result of release confirmation activities undertaken pursuant to subchapter 6 or release response actions undertaken pursuant to this subchapter;
- (5) Investigate to determine the possible presence of free product, and begin free product removal in accordance with section 11-281-76;
- (6) Remove or remediate contaminated soil at the site to the extent necessary to prevent the spread of free product;
- (7) Conduct an assessment of the release by measuring for the presence of a release where contamination is most likely to be present at the UST or tank system site, unless the presence and source of the release have been confirmed in accordance with the site assessment required by section 11-281-63 (b) (3) or the site assessment required for change-in-service or permanent UST or tank system closures in section 11-281-83. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the types of backfill and surrounding soil, depth and flow of groundwater, and other factors as appropriate for identifying the presence and source of a release; and

(8) If any of the remedies in this section include treatment or disposal of contaminated soils, owners or operators must comply with all applicable local, state, and federal requirements.

(b) Initial site assessment and abatement shall be completed within ninety days of confirmation of a release or sooner if directed by the department. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-35) (Imp: 40 C.F.R. §280.62)

§11-281-75 Initial site characterization. (a) During release response actions under this subchapter, owners and operators must concurrently assemble necessary information about the characteristics of the site and the nature of the release to adequately assess the impact or potential impact of the release on human health and the environment.

(b) The information assembled pursuant to subsection (a) must include, but is not limited to, the following:

- (1) Data on the nature and estimated quantity of release;
 - (2) Data from available sources and any and all previous site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological data, and land use;
 - (3) Results of the site assessment required under section 11-281-74(a)(7);
 - (4) Results of the free product investigations required under section 11-281-74(a)(5) to be used by the owners and operators to determine whether free product must be recovered under section 11-281-76; and
 - (5) Any other information that may relate to the impact of the release on human health and the environment.
- (c) Initial site characterization shall be

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completed within ninety days of confirmation of a release or sooner as determined by the department. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-35) (Imp: 40 C.F.R. §280.63)

§11-281-76 Free product removal. (a) At sites where investigations indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable, as determined by the department, while continuing actions initiated under sections 11-281-62 and 11-281-63, or preparing for actions required under sections 11-281-71 through 11-281-78. In meeting the requirement of this section, owners and operators must:

(1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;

(2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(4) Prepare and submit to the department, included in the first quarter progress report required pursuant to section 11-281-80.1(a), information that provides at least the following:

(A) Name of the person(s) responsible for implementing the free product removal measures;

(B) Estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(C) Type of free product recovery system used;

(D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(E) Type of treatment applied to, and the

effluent quality expected from, any discharge;

- (F) All actions already performed or currently underway to remove free product including steps to obtain any necessary permits for any discharges;
- (G) Disposition of the recovered free product; and
- (H) Schedule for completion of free product removal.

(b) Owners and operators shall initiate free product removal as soon as practicable but no later than thirty days following confirmation of a release or sooner if directed by the department. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-35) (Imp: 40 C.F.R. §280.64)

§11-281-77 Investigation of soil and groundwater contamination. (a) For releases confirmed in accordance with section 11-281-63 or after a release from the UST or tank system that is identified in any manner, owners and operators must determine the location and extent of the soil contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater and surface water, as necessary and must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release.

(b) Owners and operators must include information collected in accordance with this section with each quarterly report required pursuant to sections 11-281-80.1(a) and (b). [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-35) (Imp: 40 C.F.R. §280.65)

§11-281-78 Site cleanup criteria. (a) For releases confirmed in accordance with section 11-281-63 or after a release from the UST or tank system that is identified in any other manner, owners and operators must remediate soil, surface water, and groundwater, and materials contaminated by releases from USTs or tank systems in a manner that is protective of human health and

the environment and achieves cleanup as described in subsection (b).

(b) Owners and operators must remediate contaminated soil, groundwater and surface water at the site to residual concentrations that meet one of the following criteria:

- (1) Default Tier 1 Screening Levels as presented in Table 1 (Tier 1 Screening Levels for Soil and Groundwater), section 11-281-80.1; or
- (2) Site-specific action levels as approved by the department. Site-specific action levels must take into account the following factors:
 - (A) For systemic toxicants, acceptable levels shall represent concentration levels to which the human population may be exposed without adverse effect during a lifetime or part of a lifetime, and incorporating an adequate margin of safety;
 - (B) For known or suspected carcinogens, acceptable levels are generally concentration levels in soil, groundwater and vapor that represent an excess upper bound lifetime cancer risk to an individual of between 10^{-4} and 10^{-6} using information on the relationship between dose and response. The 10^{-6} excess risk level shall be used as the point of departure for determining acceptable levels for alternatives when chemical specific state or federal requirements are not available or are not sufficiently protective because of the presence of multiple contaminants at the site or multiple pathways of exposure;
 - (C) Impacts to ecological receptors, including but not limited to plants and animals; and
 - (D) Other applicable requirements, including but not limited to nuisance concerns for odor and taste, if applicable.

NOTE: Owners and operators should consult with the department on how the standards in this subsection can be met. Owners and operators should also consult the department for forms to be used that will be helpful in

expediting the department's review of the owners' and operators' reports.

(c) The department may require the owners and operators to modify cleanup activities being performed at a site if the department determines that the activities are not being carried out in accordance with this subchapter, or are not achieving cleanup levels that are protective of human health and the environment. The department may impose modifications to cleanup activities by written notice to the owners and operators, and the owners and operators must implement necessary changes to the cleanup activities in response to the department's notice by a time schedule established by the department.

(d) A schedule for estimated completion of site cleanup shall be included in each fourth quarter report required pursuant to section 11-281-80.1(b). [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §342L-35)

§11-281-78.1 Notification of confirmed releases.

(a) Within ninety days following confirmation of a release pursuant to section 11-281-63 or after a release from the UST or tank system is identified in any other manner, the owner and operator shall notify, in writing, those members of the public directly affected by the release, and the proposed response to the release, including a historical account of actions performed since the discovery of the release. Members of the public directly affected by the release shall include:

- (1) Persons who own, hold a lease for, or have easements at, any property on which the regulated substance released from the UST was discovered; and
- (2) Other persons as identified by the director.

(b) The owner and operator shall send a letter to all members of the public directly affected by the release. Model language for the letter shall be provided by the department and shall include at least the following information:

- (1) Name and address of the UST or UST system;
- (2) Statement that a release of regulated substance has been confirmed at the UST or UST system;

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- (3) Name of a contact person at the department; and
- (4) Reference to an attached factsheet pursuant to subsection (c).

(c) The letter to the members of the public directly affected by the release shall include a factsheet which contains the following information:

- (1) Name and address of the UST or UST system;
- (2) Name and address of the owner and operator of the UST or UST system;
- (3) Name, address, and telephone contact of the party performing the cleanup activities;
- (4) Date of the confirmed release;
- (5) Nature and extent of the confirmed release;
- (6) Summary of measures taken to assess the release and extent of contamination; and
- (7) Summary of the proposed response to the release. The factsheet shall be updated on a quarterly basis and sent to all members of the public directly affected by the release. If additional members of the public directly affected by the release are identified in the course of release response actions, then the owner and operator shall provide those persons with all previous and future letters and factsheets.

(d) The owner and operator shall include in the quarterly report required pursuant to section 11-281-80.1 the following information:

- (1) Copy of the letter pursuant to subsection (b);
- (2) List of the members of the public directly affected by the release and to whom the letter was sent; and
- (3) Copies of the factsheet and amended factsheets pursuant to subsection (c). [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §342L-35)

§11-281-79 Corrective action plan. (a) The department may require that the owner and operator submit a written corrective action plan for responding to a release, if one or more of the following minimum threshold criteria is met:

- (1) Actual or probable release to groundwater which

- is a drinking water supply;
- (2) Actual or probable release to surface water which is a drinking water supply;
 - (3) Actual or probable release to air that poses a threat to public health;
 - (4) Actual or probable release to and extensive contamination of soil that poses a direct contact hazard due to uncontrolled access;
 - (5) Actual or probable existence of uncontrolled regulated substances that pose a direct contact hazard due to uncontrolled access;
 - (6) Actual or probable adverse impact to natural resources;
 - (7) Actual or probable imminent danger of fire or explosion; or
 - (8) A determination by the director that a release poses a substantial endangerment to public health or welfare, the environment, or natural resources.

(b) Such plans must be submitted to the department within thirty days of the department's request unless an extension of time is granted by the department.

(c) Owners and operators must make necessary modifications to the corrective action plan when directed to do so by the department.

(d) Corrective action plans which are required to be submitted to the department shall be subject to the review and discretionary approval of the department in accordance with the procedures set forth in this section.

NOTE: Forms such as those in the TGM may be helpful in fulfilling the requirements of this section.

(e) The department will approve written corrective action plans only after owners and operators demonstrate to the satisfaction of the department that implementation of the plan will be safe and will adequately protect human health and the environment in accordance with section 11-281-78. In making this determination, the department will consider the following factors:

- (1) Physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (2) Hydrogeologic characteristics of the facility and the surrounding area;

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- (3) Proximity, quality, and current and future uses of nearby surface water and groundwater;
 - (4) Potential effects of residual contamination on nearby surface water and groundwater;
 - (5) An exposure assessment; and
 - (6) All other information assembled in compliance with this subchapter.
- (f) The public participation procedures set forth in section 11-281-80 apply to all corrective action plans submitted under this section.
- (g) Upon approval of a corrective action plan, owners and operators must implement the plan, including any modifications to the plan made by the department.
- (h) Owners and operators must monitor, evaluate, and report quarterly to the department the results of implementing the corrective action plan pursuant to this section and section 11-281-80.1.
- (i) Owners and operators who have been requested by the department to submit a corrective action plan are encouraged to begin cleanup of contaminated soils, surface water, groundwater, and materials before the plan is approved by the department provided that they:
- (1) Notify the department of their intention to begin cleanup;
 - (2) Ensure that cleanup measures undertaken are consistent with the cleanup actions required pursuant to section 11-281-78;
 - (3) Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and
 - (4) Incorporate self-initiated cleanup measures in the corrective action plan. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-35) (Imp: 40 C.F.R. §280.66)

§11-281-80 Public participation for corrective action plans. (a) The department shall conduct public participation activities as outlined in subsections (e) through (j) where:

- (1) A corrective action plan required pursuant to section 11-281-79(a) has been submitted and the

department has made a tentative decision concerning the proposed plan; or

- (2) Implementation of any previously approved corrective action plan has not achieved the cleanup levels established in the plan and termination of the plan is under consideration by the department.

(b) Costs for all public participation activities described in subsections (e) through (j) shall be borne by the owner and operator of the UST or UST system, including the costs of making copies of materials to the public under subsection (h).

(c) The department will provide notice to the public of the release and the applicable response by means designed to reach those members of the public directly affected by the release and the cleanup actions planned.

(d) Members of the public directly affected by the release shall include the following:

- (1) Those individuals defined in section 11-281-78.1(a); and
- (2) The general public.

(e) Notice to those individuals defined in subsection (d)(1) shall be in the form of a letter from the department and shall include at least the following information:

- (1) Name and address of the UST or UST system;
 - (2) Name and address of the owner and operator of the UST or UST system;
 - (3) Summary of the release information and the proposed or previously approved corrective action plan;
 - (4) The department's tentative decision concerning the proposed corrective action plan or concerning the termination of the previously approved corrective action plan;
 - (5) Announcement that an informational meeting will be held in accordance with subsection (i);
 - (6) Request for comments on the corrective action plan and the department's tentative decision; and
 - (7) Availability of information on the release and the department's tentative decision.
- (f) Notice to those individuals defined in

subsection (d) (2) shall be in the form of a notice in a local newspaper and shall include at least the same information as in subsection (e).

(g) Comments shall be received by the department no later than thirty days after the notice provided in subsections (e) and (f) or after the end of the public meeting, if held, pursuant to subsection (i), whichever occurs later.

(h) Information on the release, the proposed corrective action plan, and the department's tentative decision on the plan shall be made available to the public for inspection upon request.

(i) Before approving a corrective action plan, the department may conduct a public meeting to provide information and receive comments on the proposed plan. A meeting will be held if there is sufficient public interest. Public interest shall be indicated by written request to the department.

(j) At the director's discretion, a notice of final decision may be issued. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-35) (Imp: 40 C.F.R. §280.67)

§11-281-80.1 Release response reporting. (a) No later than ninety days following the confirmation of a release in accordance with section 11-281-63 or after a release from the UST or tank system is identified in any other manner, owners and operators must submit to the department a written report and an electronic copy of the written report which includes:

- (1) All release response actions taken pursuant to this subchapter during the first ninety-day period (first quarter); and
- (2) A plan for future release response actions to be taken.

(b) Beginning one hundred eighty days following confirmation of a release, owners and operators must submit written quarterly progress reports and an electronic copy of the written report to the department documenting:

- (1) All response actions taken pursuant to this subchapter after the last reported date;
- (2) A plan for future release response actions to

- be taken; and
- (3) Information required pursuant to section 11-281-78.1.
 - (c) Quarterly progress reports are not required if:
 - (1) Response actions have met the requirements of section 11-281-78; and
 - (2) A final quarterly report has been submitted.

NOTE: The report contents and format in the TGM may be helpful in complying with this section.

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Table 1. Tier 1 Screening Levels for Soil and Groundwater

Contaminant	DRINKING WATER SOURCE THREATENED				DRINKING WATER SOURCE NOT THREATENED			
	Groundwater (ug/l)	Basis	Soil (mg/kg)	Basis	Groundwater (ug/l)	Basis	Soil (mg/kg)	Basis
Benzene	5.0	DWP	0.30	L	46	CAT	0.53	L
Toluene	40	DWS	3.2	L	130	CAT	10	L
Ethylbenzene	30	DWS	1.6	VI	290	CAT	1.6	VI
Xylenes	20	DWS	2.1	L	100	CAT	11	L
MTBE	5.0	DWS	0.028	L	1,800	GC	1.6	VI
Acenaphthene	na	-	120	L	na	-	120	L
Benzo(a)pyrene	na	-	0.15	DE	na	-	0.15	DE
Fluoranthene	na	-	87	L	na	-	87	L
Naphthalene	17	DWP	0.46	VI	24	CAT	0.46	VI
TPH-gasolines	100	DWP/S	100	L/GC	500	CAT	100	GC
TPH-middle distillates	100	DWS	100	L	640	CAT	500	GC
TPH-residual fuels	100	DWS	500	GC	640	CAT	500	GC
Tetrachloroethylene (PCE)	5.0	DWP	0.07	VI	120	CAT	0.07	VI
Trichloroethylene	5.0	DWP	0.21	VI	360	CAT	0.21	VI
1,2 cis Dichloroethylene	70	DWP	1.2	VI	590	CAT	1.2	VI
1,2 trans Dichloroethylene	100	DWP	2.1	VI	590	CAT	2.1	VI
Vinyl Chloride	2.0	DWP	0.04	VI	21	CAT	0.04	VI
1,1 Dichloroethylene	7.0	DWP	1.2	L	25	CAT	4.3	L
1,1,1 Trichloroethane	62	CAT	7.0	L	62	CAT	7.0	L
Polychlorinated Biphenyls (PCBs)	na	-	1.1	DE	na	-	1.1	DE
Cadmium	3.0	CAT	14	DE	3.0	CAT	14	DE
Lead	5.6	CAT	400	DE	5.6	CAT	800	DE

Table 1. Recommended Screening Level updates.

1. Final drinking water action level lowest of screening levels for toxicity (Primary MCLs, "DWP"), taste & odor (Secondary MCLs, "DWS"), vapor intrusion ("VI") and chronic aquatic toxicity ("CAT").
2. Final non-drinking water action level lowest of screening levels vapor intrusion ("VI"), chronic aquatic toxicity ("CAT") and gross contamination ("GC").
3. Final soil action level lowest of screening levels for direct exposure ("DE"), vapor intrusion ("VI"), leaching ("L") and gross contamination ("GC").
4. Testing for acenaphthene, benzo(a)pyrene, fluoranthene and PCBs in groundwater is not necessary due to low solubility and low mobility. Cleanup of contaminated soil will be adequate to address potential groundwater concerns.

[Eff 1/28/00; am and comp] (Auth. HRS
 §§342L-3, 342L-35) (Imp: HRS §342L-35)

SUBCHAPTER 8

CLOSURE AND CHANGE-IN-SERVICE

§11-281-81 Temporary closure. (a) An UST or tank system is considered temporarily closed if owners and operators do not deposit regulated substance into the UST or tank system or dispense regulated substance from the UST or tank system during a time period of three hundred sixty-five days or less except as provided for in subsection (e).

(b) When an UST or tank system is temporarily closed, owners and operators must continue operation and maintenance of any corrosion protection system in accordance with section 11-281-42, and any release detection method in accordance with subchapter 5. However, release detection is not required as long as the UST or tank system is empty. The UST or tank system is empty when

all materials have been removed using practices commonly recognized by the industry so that no more than 2.5 centimeters (one inch) of residue, or residue that is no more than 0.3 percent by weight of the total capacity of the UST or tank system, remains in the UST or tank system.

(c) Owners and operators must comply with subchapters 6 and 7 if a release is suspected or confirmed.

(d) When an UST or tank system is temporarily closed for ninety days or more, owners and operators must also comply with the following requirements:

- (1) Leave vent lines open and functioning; and
- (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(e) When an UST or tank system is temporarily closed for more than three hundred sixty-five days, owners and operators must permanently close the UST or tank system if it does not meet the performance standards in sections 11-281-11 through 11-281-19. An UST or tank system filled by transfers of more than twenty-five gallons at one time, must meet spill and overflow prevention equipment requirements and owners and operators who fail to meet such requirements must permanently close the UST or tank system. Permanent closure must be conducted in accordance with sections 11-281-82 through 11-281-85, unless the department grants an extension of the three hundred sixty-five days temporary closure period. Owners and operators must complete a site assessment in accordance with section 11-281-83 before such an extension can be requested. [Eff 1/28/00; am and comp]
(Auth: HRS §§342L-3, 342L-37) (Imp: 40 C.F.R. §280.70)

§11-281-82 Permanent closure and change-in-service.

(a) In permanently closing or changing the service of an UST or tank system, owners and operators must comply with the requirements of this section.

(b) At least thirty days before beginning either permanent closure or a change-in-service of an UST or tank system, owners and operators must notify the department in writing of their intent to permanently close or make the change-in-service, unless such action is in response to a confirmed release.

NOTE: A form such as that in the TGM may be helpful in fulfilling the notification requirements of subsection (b).

(c) At least seven days before a permanent closure or change-in-service action, owners or operators must notify the department of the exact date(s) that the activity will occur.

(d) To permanently close an UST or tank system, owners and operators must:

- (1) Empty the UST and tank system by removing all liquid contents and accumulated sludges from the UST and tank system;
- (2) Remove the UST or tank system from the ground, or leave the UST or tank system in-place and fill the UST or tank system with an inert solid material in accordance with local agency requirements; and
- (3) Conduct a site assessment of the area beneath and around the UST or tank system in accordance with section 11-281-83.

(e) Continued use of an UST or tank system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must:

- (1) Empty the UST and tank system by removing all liquid contents and accumulated sludges from the UST and tank system; and
- (2) Conduct a site assessment of the area beneath and around the UST or tank system in accordance with section 11-281-83. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-37) (Imp: 40 C.F.R. §280.71)

§11-281-83 Site assessment. (a) Owners and operators must perform a site assessment in permanently closing or changing the service of an UST or tank system.

(b) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release of regulated substance where contamination is most likely to be present at the UST or tank system site.

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(c) In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the types of backfill and surrounding soil, the depth and flow of groundwater, and other factors appropriate for identifying the presence of a release.

(d) If a release of regulated substance is discovered in carrying out the requirements of this section, or by any other means, owners and operators must respond to the release in accordance with the requirements of subchapter 7. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-37) (Imp: 40 C.F.R. §280.72)

§11-281-84 Previously-closed underground storage tanks or tank systems. (a) Owners and operators of USTs or tank systems which have been removed before December 22, 1988, or were left in-place but have not been in operation on or after December 22, 1988, must comply with the requirements of this subchapter, and subchapter 7, if contaminated soil, contaminated groundwater, or free product as a vapor or liquid is discovered by any means in or around the location or former location of the UST or tank system.

(b) Upon discovery of contamination, owners and operators must comply with the suspected release response requirements of subchapter 6. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-37) (Imp: 40 C.F.R. §280.73)

§11-281-85 Closure reporting. Owners and operators permanently closing or changing the service of an UST or tank system must submit to the department an accurate revised written notification form pursuant to section 11-281-21.5. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-37) (Imp: 40 C.F.R. §280.74)

§§11-281-86 to 11-281-90 (Reserved)

SUBCHAPTER 9

FINANCIAL RESPONSIBILITY

§11-281-91 Applicability. (a) This subchapter applies to all owners and operators of petroleum USTs or tank systems except as otherwise provided in this section.

(b) (Reserved)

(c) State and federal government entities whose debts and liabilities are the debts and liabilities of the United States, the State of Hawaii, or any other state, are exempt from the requirements of this subchapter.

(d) The requirements of this subchapter do not apply to owners and operators of any UST or tank system described in section 11-281-01(a) or (b).

(e) If owners and operators of a petroleum UST or tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

[Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.90)

§11-281-92 (Reserved)

§11-281-93 Definition of terms. When used in this subchapter, the following terms have the meanings given below:

"Accidental release" means any sudden or nonsudden release of petroleum from an UST or tank system that results in a need for release response action, compensation for bodily injury or property damage, or both, neither expected nor intended by UST or tank system owners or operators.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Chief Financial Officer" in the case of local government owners and operators, means the individual with

the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Corrective action" or "release response action" means those activities carried out in response to any release from an underground storage tank or tank system to minimize or mitigate the impact of the release of regulated substances in order to protect human health and the environment.

"Director" means the director of the department of health.

"Financial reporting year" means the latest consecutive twelve months period for which any of the following reports used to support a financial test is prepared:

- (1) A 10-K report submitted to the U.S. Securities and Exchange Commission;
- (2) An annual report of tangible net worth submitted to Dun and Bradstreet; or
- (3) Annual reports submitted to the federal Energy Information Administration or the federal Rural Electrification Administration.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

"HAR" means the Hawaii Administrative Rules.

"HRS" means the Hawaii Revised Statutes.

"Legal defense cost" is any expense that owners or operators or providers of financial assurance incur in defending against claims or actions brought:

- (1) By the U.S. EPA or the state to require release response action or to recover the costs of release response action;
- (2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
- (3) By any person to enforce the terms of a financial assurance mechanism.

"Local government" means counties.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an UST or tank system. This definition is

intended to assist in the understanding of these rules and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".

"Owner or operator" when owners or operators are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs or tank systems as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include response actions associated with releases from USTs or tank systems which are covered by the policy.

"Provider of financial assurance" means a person that provides evidence of financial responsibility to an owner or operator of an UST or tank system through one of the financial mechanisms listed in sections 11-281-96 through 11-281-102, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Substantial governmental relationship" means the extent of a governmental relationship necessary under

applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST or tank system release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under sections 11-281-98(b)(1) and 11-281-98(b)(2) means only those changes that could result in a gap in coverage such as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.92)

§11-281-94 Amount and scope of required financial responsibility. (a) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking release response action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following per-occurrence amounts:

- (1) For owners or operators of petroleum USTs or tank systems that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of petroleum per month based on annual throughput for the previous calendar year: \$1,000,000; and
- (2) For all other owners or operators of petroleum USTs or tank systems: \$500,000.

(b) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking release response action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following annual aggregate amounts:

- (1) For owners or operators of one to one hundred petroleum USTs: \$1,000,000; and
- (2) For owners or operators of one hundred one or more petroleum USTs: \$2,000,000.

(c) For the purposes of subsections (b) and (f) only, "a petroleum "UST" " means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in subsection (e), if an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

- (1) Taking release response action;
- (2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
- (3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b).

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum USTs or tank systems, the annual aggregate required shall be based on the number of USTs or tank systems covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum USTs or tank systems are acquired or installed. If the number of petroleum USTs or tank systems for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the anniversary of the date on which the

mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.93)

§11-281-95 Allowable mechanisms and combinations of mechanisms. (a) Subject to the limitations of subsections (b) and (c):

- (1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in sections 11-281-96 through 11-281-102 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems; and
- (2) A local government owner or operator may use any one or combination of the mechanisms listed in sections 11-281-103 through 11-281-107 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems.

(b) An owner or operator may use a guarantee under section 11-281-97 or surety bond under section 11-281-99 to establish financial responsibility only if the state attorney general has submitted a written statement to the director that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the State.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this

rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor. [Eff 1/28/00; am and comp]
 (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.94)

§11-281-96 Financial test of self-insurance. (a)
 An owner or operator, or guarantor or both may satisfy the requirements of section 11-281-94 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor or both, must meet the criteria of subsection (b) or (c) based on year-end financial statements for the latest completed fiscal year.

(b) (1) The owner or operator, or guarantor or both, must have a tangible net worth of at least ten times:

(A) The total of the applicable aggregate amount required by section 11-281-94, based on the number of USTs or tank systems for which a financial test is used to demonstrate financial responsibility to the state department of health;

(B) (i) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to U.S. EPA under 40 Code of Federal Regulations 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147; or

(ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the state department of health under sections 11-264-101, 11-264-143, 11-264-145, 11-265-143,

- 11-265-145, 11-264-147, and
11-265-147 after the state hazardous
waste program has been authorized by
the U.S. EPA under 40 Code of Federal
Regulations part 271; and
- (C) The sum of current plugging and abandonment
cost estimates for which a financial test
is used to demonstrate financial
responsibility to the U.S. EPA under 40 Code
of Federal Regulations 144.63 or to the
state department of health when the state
underground injection program is
authorized by the U.S. EPA under 40 Code
of Federal Regulations 145.
- (2) The owner or operator, or guarantor or both, must
have a tangible net worth of at least
\$10,000,000.
- (3) The owner or operator, or guarantor or both, must
have a letter signed by the chief financial
officer worded as specified in subsection (d).
- (4) The owner or operator, or guarantor or both, must
either:
- (A) File financial statements annually with
the U.S. Securities and Exchange
Commission, the federal Energy Information
Administration, or the federal Rural
Electrification Administration; or
- (B) Report annually the firm's tangible net
worth to Dun and Bradstreet, and Dun and
Bradstreet must have assigned the firm a
financial strength rating of 4A or 5A.
- (5) The firm's year-end financial statements, if
independently audited, cannot include an
adverse auditor's opinion, a disclaimer of
opinion, or a "going concern" qualification.
- (c) (1) The owner or operator, or guarantor or both,
must meet the financial test requirements of
section 11-264-143(f) (1) substituting the
appropriate amounts specified in sections
11-281-94(b) (1) and (b) (2) for the "amount of
liability coverage" each time specified in that
section.

- (2) The fiscal year-end financial statements of the owner or operator, or guarantor or both, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
 - (3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
 - (4) The owner or operator, or guarantor or both, must have a letter signed by the chief financial officer, worded as specified in subsection (d).
 - (5) If the financial statements of the owner or operator, or guarantor or both, are not submitted annually to the U.S. Securities and Exchange Commission, the federal Energy Information Administration or the federal Rural Electrification Administration, the owner or operator, or guarantor, or both, must obtain a special report by an independent certified public accountant stating that:
 - (A) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, or guarantor or both, with the amounts in such financial statements; and
 - (B) In connection with that comparison, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.
- (d) To demonstrate that it meets the financial test under subsection (b) or (c), the chief financial officer of the owner or operator, or guarantor, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve months for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," or "guarantee" or both,] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or both] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator" or "guarantor" or both]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes or 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under sections 11-281-24 and 11-281-26, Hawaii Administrative Rules.]

A [insert: "financial test" or "guarantee" or both] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other U.S. Environmental Protection Agency regulations or state programs authorized by the U.S. Environmental Protection Agency under 40 CFR Parts 271 and 145:

AMOUNT

EPA Regulations:

Closure (§§264.143 and 265.143)	\$ _____
Post-Closure Care (§§264.145 and 265.145)	\$ _____
Liability Coverage (§§264.147 and 265.147)	\$ _____
Corrective Action (§264.101(b))	\$ _____
Plugging and Abandonment (§144.63)	\$ _____

Authorized State Programs:

Closure	\$ _____
Post-Closure Care	\$ _____
Liability Coverage	\$ _____
Corrective Action	\$ _____
Plugging and Abandonment	\$ _____

TOTAL \$ _____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of section 11-281-96(b), Hawaii Administrative Rules, are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of section 11-281-96(c), Hawaii Administrative Rules, are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both \$ _____

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or \$ _____

- guarantee or both,
- 3. Sum of lines 1 and 2 \$ _____
- 4. Total tangible assets \$ _____
- 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$ _____
- 6. Tangible net worth [subtract line 5 from line 4] \$ _____
- 7. Is line 6 at least \$10,000,000? Yes No
- 8. Is line 6 at least ten times line 3? Yes No
- 9. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission? Yes No
- 10. Have financial statements for the latest fiscal year been filed with the federal Energy Information Administration? Yes No
- 11. Have financial statements for the latest fiscal year been filed with the federal Rural Electrification Administration? Yes No
- 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] Yes No

ALTERNATIVE II

- Amount
- 1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both, \$ _____
- 2. Amount of corrective action, closure and post-closure care costs, liability

- coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both, \$ _____
3. Sum of lines 1 and 2 \$ _____
4. Total tangible assets \$ _____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$ _____
6. Tangible net worth [subtract line 5 from line 4] \$ _____
7. Total assets in the U.S. [required only if less than ninety per cent of assets are located in the U.S.] \$ _____
8. Is line 6 at least \$10,000,000? Yes No
9. Is line 6 at least six times line 3? Yes No
10. Are at least ninety per cent of assets located in the U.S.? [If "No," complete line 11] Yes No
11. Is line 7 at least six times line 3? Yes No
- [Fill in either lines 12-15 or lines 16-18:]
12. Current assets \$ _____
13. Current liabilities \$ _____
14. Net working capital [subtract line 13 from line 12] \$ _____
15. Is line 14 at least six times line 3? Yes No
16. Current bond rating of most recent bond issue _____
17. Name of rating service _____
18. Date of maturity of bond _____
19. Have financial statements for the latest

of the financial test based on the year-end financial statements, or within thirty days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.95)

§11-281-97 Guarantee. (a) An owner or operator may satisfy the requirements of section 11-281-94 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

- (1) A firm that:
 - (A) Possesses a controlling interest in the owner or operator;
 - (B) Possesses a controlling interest in a firm described under subparagraph (A);
 - (C) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
- (2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within one hundred twenty days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 11-281-96 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in section 11-281-96(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that it no longer meets the requirements of the financial test of either section 11-281-96(b) or (c), and (d), the guarantor

must notify the owner or operator within ten days of receiving such notification from the director. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-281-110(c).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of [name of state], herein referred to as guarantor, to the Hawaii state department of health and to any and all third parties, and obliges, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of section 11-281-96(b) or (c) and (d), Hawaii Administrative Rules, and agrees to comply with the requirements for guarantors as specified in section 11-281-97(b), Hawaii Administrative Rules.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes or 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under sections 11-281-24 and 11-281-26, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies the requirements of subchapter 9 of chapter 11-281 of the Hawaii Administrative Rules for assuring funding for [insert:

"taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Hawaii director of health, shall fund a standby trust fund in accordance with the provisions of section 11-281-108, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the Hawaii director of health determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 7 of chapter 11-281 of Hawaii Administrative Rules, the guarantor upon written instructions from the Hawaii director of health shall fund a standby trust in accordance with the provisions of section 11-281-108, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" or "nonsudden" or both] accidental releases

arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-281-108, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of section 11-281-96 (b) or (c) and (d), Hawaii Administrative Rules, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-281, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of subchapter 9 of chapter 11-281, Hawaii Administrative Rules for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or

other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-281-94, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-281-97(c), Hawaii Administrative Rules, as such rules were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(d) An owner or operator who uses a guarantee to satisfy the requirements of section 11-281-94 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the director of Hawaii department of

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health under section 11-281-108. This standby trust fund must meet the requirements specified in section 11-281-102. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.96)

§11-281-98 Insurance and risk retention group coverage. (a) An owner or operator may satisfy the requirements of section 11-281-94 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes or 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under sections 11-281-24 and 11-281-26, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action", and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the

underground storage tank(s) identified above. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage, and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this paragraph are hereby amended to conform with subsections (a) through (e);
 - a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
 - b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-281-96 through 11-281-101, Hawaii Administrative Rules.

- c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the Hawaii director of health a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.] I hereby certify that the wording of this instrument is identical to the wording in section 11-281-98(b)(1), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or

eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2) CERTIFICATE OF INSURANCE

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground

storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes or 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under sections 11-281-24 and 11-281-26, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage

- and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].
2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:
 - a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.
 - b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-281-96 through 11-281-101, Hawaii Administrative Rules.
 - c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.
 - d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only

after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-281-98(b)(2), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Hawaii"].
[Signature of authorized representative of Insurer]

[Type Name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in Hawaii. [Eff 1/28/00; am and comp]
(Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.97)

§11-281-99

§11-281-99 Surety bond. (a) An owner or operator may satisfy the requirements of section 11-281-94 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: _____

Period of coverage: _____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes or 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under sections 11-281-24 and 11-281-26, Hawaii Administrative Rules, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:
Per occurrence \$ _____
Annual aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Hawaii department of health, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under subchapter 9 of chapter 11-281 of the Hawaii Administrative Rules to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with subchapter 7 of chapter 11-281 of the Hawaii Administrative Rules, and the Hawaii director of health's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden"

or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in subchapter 9 of chapter 11-281 of the Hawaii Administrative Rules, within one hundred twenty days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-281-94, Hawaii Administrative Rules.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Hawaii director of health that the Principal has failed to ["take corrective action, in accordance with subchapter 7 of chapter 11-281 of Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with chapter 11-281, Hawaii Administrative Rules, and the Hawaii director of health's instructions," or "third party liability compensation" or both] or place funds in an amount

up to the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-281-108, Hawaii Administrative Rules.

Upon notification by the Hawaii director of health that the Principal has failed to provide alternate financial assurance within sixty days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Hawaii director of health has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-281-108, Hawaii Administrative Rules.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in section 11-281-99(b), Hawaii Administrative Rules, as such rules were constituted on the date this bond was executed.

§11-281-99

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]
State of Incorporation: _____
Liability limit: \$ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s),
corporate seal, and other information in the same manner
as for Surety above.]

Bond premium: \$ _____

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of section 11-281-94 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under section 11-281-108. This standby trust fund must meet the requirements specified in section 11-281-102. [Eff 1/28/00; comp _____] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.98)

§11-281-100 Letter of credit. (a) An owner or operator may satisfy the requirements of section 11-281-94 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to

issue letters of credit in the State of Hawaii where used and whose letter-of-credit operations are regulated and examined by a federal or State of Hawaii agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of Hawaii director of health]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. ___, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342L, Hawaii Revised Statutes."

This letter of credit may be drawn on to cover [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes or 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under

sections 11-281-24 and 11-281-26, Hawaii Administrative Rules, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-281-94, Hawaii Administrative Rules.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your

instructions.

We certify that the wording of this letter of credit is identical to the wording specified in section 11-281-100(b), Hawaii Administrative Rules, as such rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 11-281-94 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under section 11-281-108. This standby trust fund must meet the requirements specified in section 11-281-102.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt. [Eff 1/28/00; comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.99)

§11-281-101 Trust fund. (a) An owner or operator may satisfy the requirements of section 11-281-94 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations

are regulated and examined by a federal agency or an agency of the State of Hawaii.

(b) The wording of the trust agreement must be identical to the wording specified in section 11-281-102(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in section 11-281-102(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(e) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(f) Within sixty days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing. [Eff 1/28/00; comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.102)

§11-281-102 Standby trust fund. (a) An owner or operator using any one of the mechanisms authorized by section 11-281-97, section 11-281-99, or section 11-281-100 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the State of Hawaii.

(b) (1) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced

With the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the State of _____" or "a national bank"], the "Trustee[.]".

Whereas, the Hawaii state department of health has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.;

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator

who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Hawaii state department of health. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Hawaii director of health's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Hawaii state department of health.

Section 4. Payment for ["Corrective Action" or "Third-Party Liability Claims" or both]. The Trustee shall make payments from the Fund as the Hawaii director of health shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered

by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-281-94, Hawaii Administrative Rules.

The Trustee shall reimburse the Grantor, or other persons as specified by the Hawaii director of health, from the Fund for corrective action expenditures or third-party liability claims or both, in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may

communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the federal Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without

in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all [documents] records of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in

respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Hawaii director of health to the Trustee shall be in writing, signed by the director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or the director or both, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Hawaii director of health if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Hawaii director of health, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Hawaii director of health issued in accordance

with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in section 11-281-102(b)(1), Hawaii Administrative Rules, as such rules were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

(2) The standby trust agreement, or trust agreement,

must be accompanied by a formal certification of acknowledgment similar to the following:

State of

County
of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

(c) The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.103)

§11-281-103 Local government bond rating test. (a) A general purpose local government owner or operator, or local government, or both, serving as a guarantor may satisfy the requirements of section 11-281-94 by having a currently outstanding issue or issues of general obligation bonds of \$1,000,000 or more, excluding refunded

obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard and Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 11-281-94 by having a currently outstanding issue or issues of revenue bonds of \$1,000,000 or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or A Standard & Poor's rating of AAA, AA, A or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator, or guarantor or both, must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator, or guarantor or both, must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective

action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

* [Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-281-103(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown

immediately below.

[Date]

[Signature]

[Name]

[Title]

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator, or guarantor or both other than a general purpose government must sign a letter worded exactly as follow, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or both] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test.] The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

* [Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-281-103(e), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(f) The director may require reports of financial condition at any time from the local government owner or operator, or local government guarantor, or both. If the director finds, on the basis of such reports or other information, that the local government owner or operator, or guarantor or both, no longer meets the local government bond rating test requirements of this section, the local government owner or operator must obtain alternative coverage within thirty days after notification of such a finding.

(g) If a local government owner or operator using

the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within one hundred fifty days of the change in status. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.104)

§11-281-104 Local government financial test. (a) A local government owner or operator may satisfy the requirements of section 11-281-94 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator must meet the criteria of subsection (b) (2) and (b) (3) based on year-end financial statements for the latest completed fiscal year.

(b) (1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(A) Total Revenues: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial

- test (interfund transfers), liquidation of investments, and issuance of debt.
- (B) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).
- (C) Local Revenues: Consists of total revenues (as defined in subparagraph (A)) minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.
- (D) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. Excludes payments on noninterest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.
- (E) Total Funds: Consists of the sum of cash and investment securities from all funds,

including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(F) Population consists of the number of people in the area served by the local government.

- (2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.
- (3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in subsection (c).

(c) To demonstrate that it meets the financial test under subsection (b), the chief financial officer of the local government owner or operator, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert:

"taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or both] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes or 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under sections 11-281-24 and 11-281-26, Hawaii Administrative Rules.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues
 - a. Revenues (dollars)

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and

special revenues, but excluding revenues to funds held in a trust or agency capacity.

- b. Subtract interfund transfers (dollars) _____
- c. Total Revenues (dollars) _____

2. Total Expenditures

- a. Expenditures (dollars) _____
Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
- b. Subtract interfund transfers (dollars) _____
- c. Total Expenditures (dollars) _____

3. Local Revenues

- a. Total Revenues (from 1c) (dollars) _____
- b. Subtract total intergovernmental transfers (dollars) _____
- c. Local Revenues (dollars) _____

4. Debt Service

- a. Interest and fiscal charges (dollars) _____
- b. .Add debt retirement (dollars) _____
- c. Total Debt Service (dollars) _____

5. Total Funds (Dollars)

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (Persons) _____

PART II: APPLICATION OF TEST

7. Total Revenues to Population

- a. Total Revenues (from 1c) _____
- b. Population (from 6) _____
- c. Divide 7a by 7b _____
- d. Subtract 417 _____

- e. Divide by 5,212 _____
- f. Multiply by 4.095 _____

8. Total Expenses to Population

- a. Total Expenses (from 2c) _____
- b. Population (from 6) _____
- c. Divide 8a by 8b _____
- d. Subtract 524 _____
- e. Divide by 5,401 _____
- f. Multiply by 4.095 _____

9. Local Revenues to Total Revenues

- a. Local Revenues (from 3c) _____
- b. Total Revenues (from 1c) _____
- c. Divide 9a by 9b _____
- d. Subtract 0.695 _____
- e. Divide by 0.205 _____
- f. Multiply by 2.840 _____

10. Debt Service to Population

- a. Debt Service (from 4d) _____
- b. Population (from 6) _____
- c. Divide 10a by 10b _____
- d. Subtract 51 _____
- e. Divide by 1,038 _____
- f. Multiply by -1.866 _____

11. Debt Service to Total Revenues

- a. Debt Service (from 4d) _____
- b. Total Revenues (from 1c) _____
- c. Divide 11a by 11b _____
- d. Subtract 0.068 _____
- e. Divide by 0.259 _____
- f. Multiply by -3.533 _____

12. Total Revenues to Total Expenses

- a. Total Revenues (from 1c) _____
- b. Total Expenses (from 2c) _____
- c. Divide 12a by 12b _____
- d. Subtract .910 _____
- e. Divide by 0.899 _____
- f. Multiply by 3.458 _____

13. Funds Balance to Total Revenues

- a. Total Funds (from 5) _____
- b. Total Revenues (from 1c) _____
- c. Divide 13a by 13b _____
- d. Subtract 0.891 _____
- e. Divide by 9.156 _____
- f. Multiply by 3.270 _____

14. Funds Balance to Total Expenses

- a. Total Funds (from 5) _____
- b. Total Expenses (from 2c) _____
- c. Divide 14a by 14b _____
- d. Subtract 0.866 _____
- e. Divide by 6.409 _____
- f. Multiply by 3.270 _____

15. Total Funds to Population

- a. Total Funds (from 5) _____
- b. Population (from 6) _____
- c. Divide 15a by 15b _____
- d. Subtract 270 _____
- e. Divide by 4,548 _____
- f. Multiply by 1.866 _____

16. Add 7f+8f+9f+10f+11f+12f+13f+14f+15f+4.937 _____

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in subsection 11-281-104(c), Hawaii Administrative Rules, as such rules were constituted on the date shown immediately below.

[Date]
[Signature]
[Name]
[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator

must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(e) The director may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsections (b) and (c), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within thirty days of notification by the director that it no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.105)

§11-281-105 (Reserved)

§11-281-106 Local government guarantee. (a) A local government owner or operator may satisfy the requirements of section 11-281-94 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

- (1) Demonstrate that it meets the bond rating test requirements of section 11-281-103 and deliver a copy of the chief financial officer's letter as contained in section 11-281-103(c) to the local government owner or operator;
- (2) Demonstrate that it meets the worksheet test requirements of section 11-281-104 and deliver

a copy of the chief financial officer's letter as contained in section 11-281-104(c) to the local government owner or operator; or

- (3) Demonstrate that it meets the local government fund requirements of section 11-281-107(1), (2), or (3), and deliver a copy of the chief financial officer's letter as contained in section 11-281-107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance pursuant to section 11-281-103, 11-281-104, 11-281-107(1), (2), or (3), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-281-114(c).

(c) The guarantee agreement must be worded as specified in subsection (d) or (e), depending on which of the following alternative guarantee arrangements is selected:

- (1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the director, the guarantee shall be worded as specified in subsection (d).
- (2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the director for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in subsection (e).

(d) If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee With Standby Trust Made
By a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-281-103, Hawaii Administrative Rules, the local government financial test requirements of section 11-281-104, Hawaii Administrative Rules, or the local government fund under section 11-281-107(1), (2), or (3), Hawaii Administrative Rules.]

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes or 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under sections 11-281-24 and 11-281-26, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 9 of chapter 11-281, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either

"sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the director of the hawaii department of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-281-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 7 of chapter 11-281 of Hawaii Administrative Rules, the guarantor upon written instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-281-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage

to third parties caused by ["sudden" or "nonsudden" or both] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of section 11-281-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 {Bankruptcy}, U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-281, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 9 of chapter 11-281 of Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such

cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owner, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-281-94, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-281-106, Hawaii Administrative Rules, as such rules were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(e) If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee Without Standby Trust Made
by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 11-281-103, Hawaii Administrative Rules, the local government financial test requirements of section 11-281-104, Hawaii Administrative Rules, or the local governmental fund under section 11-281-107(1), (2), or (3)], Hawaii Administrative Rules.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number

provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes or 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under sections 11-281-24 and 11-281-26, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 9 of chapter 11-281 of Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the director shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases

arising out of the operation of the above-identified tank(s) in accordance with subchapter 7 of chapter 11-281 of Hawaii Administrative Rules, the guarantor upon written instructions from the director shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" or "nonsudden" or both] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-281, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 9 of chapter 11-281 of Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert: local government owner or operator] arising from and in the course of, employment by [insert: local government owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption

of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-281-94, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-281-106, Hawaii Administrative Rules, as such rules were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

_____] (Auth:
HRS §§342L-3, 342L-36) (Imp: 40 C.F.R.
§280.106)

§11-281-107 Local government fund. A local government owner or operator may satisfy the requirements of section 11-281-94 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (2), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

(1) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems and is funded for the full amount of coverage required under section 11-281-94, or funded for part of the required amount of coverage and used in combination

with other mechanism(s) that provide the remaining coverage;
or

(2) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, and is funded for five times the full amount of coverage required under section 11-281-94, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under section 11-281-94, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

(3) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven year period is hereafter referred to as the "pay-in-period". The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

- (A) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for

- compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, or
- (B) The local government owner or operator has a letter signed by the state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(4) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator, or guarantor or both must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor.] This letter is in support of the use of the local government fund mechanism do demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or both] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism: (List for each facility: the name and address of the facility where tanks are assured by the local government fund).

[Insert: "The local government fund is funded for the full amount of coverage required under section 11-281-94, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for ten times the

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full amount of coverage required under section 11-281-94, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in conjunction with other mechanism(s) that provide the remaining coverage." or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the Hawaii attorney general stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year):

[If fund balance is incrementally funded as specified in section 11-281-107(3), Hawaii Administrative Rules, insert:

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in-period:]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-281-107, Hawaii Administrative Rules as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

[Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.107)

§11-281-108 Substitution of financial assurance mechanisms by owner or operator. (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 11-281-94.

(b) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. [Eff 1/28/00; comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.108)

§11-281-109 Cancellation or nonrenewal by a provider of financial assurance. (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

- (1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- (2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 11-281-114, the owner

or operator must obtain alternate coverage as specified in this subchapter within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner or operator must notify the director of such failure and submit:

- (1) The name and address of the provider of financial assurance;
- (2) The effective date of termination; and
- (3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with section 11-281-107(2). [Eff 1/28/00; comp] (Auth: HRS §§342L-3, 324L-36) (Imp: 40 C.F.R. §280.109)

§11-281-110 Reporting by owner or operator. (a) An owner or operator must submit the appropriate forms listed in section 11-281-111(b) documenting current evidence of financial responsibility to the director:

- (1) Within thirty days after the owner or operator identifies a release from an UST or tank system required to be reported under section 11-281-64 or 11-281-72;
- (2) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within thirty days after the owner or operator receives notice of:
 - (A) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;
 - (B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
 - (C) Failure of a guarantor to meet the requirements of the financial test; or
 - (D) Other incapacity of a provider of financial assurance; or
- (3) As required by sections 11-281-96(g) and 11-281-109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this subchapter as specified in the notification form submitted pursuant to section 342L-30, Hawaii Revised Statutes, section 11-281-21.5, or the permit applications under sections 11-281-24 and 11-281-26 when notifying the director of the installation of an UST or tank system.

(c) The director may require an owner or operator to submit evidence of financial assurance as described in section 11-281-111(b) or other information relevant to compliance with this subchapter at any time. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.110)

§11-281-111 Financial assurance records. (a) Owners or operators must generate and maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an UST or tank system until released from the requirements of this subchapter under section 11-281-113. An owner or operator must maintain such evidence at the UST or tank system site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the director.

(b) An owner or operator must generate and maintain the following types of evidence of financial responsibility:

- (1) An owner or operator using an assurance mechanism specified in sections 11-281-96 through 101, or sections 11-281-103 through 107, must maintain a copy of the instrument worded as specified.
- (2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than one hundred twenty days after the close of the financial reporting year.

- (3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (4) A local government owner or operator using a local government guarantee under section 11-281-106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (5) A local government owner or operator using the local government bond rating test under section 11-281-103 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (6) A local government owner or operator using the local government guarantee under section 11-281-106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under section 11-281-103 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (8) An owner or operator using a local government fund under section 11-281-107 must maintain the following records:
 - (A) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund;
 - (B) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under section 11-281-107 using incremental funding backed by bonding authority, the financial statements must show the previous year's

- balance, the amount of funding during the year, and the closing balance in the fund;
- (C) If the fund is established under section 11-281-107 using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section 11-281-107, or attestation by the state attorney general as specified under section 11-281-107).
- (9) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.
- (10) (A) An owner or operator using an assurance mechanism specified in sections 11-281-96 through 11-281-107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of subchapter 9 of chapter 11-281 of the Hawaii Administrative Rules.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subchapter 9 of chapter 11-281 of the Hawaii Administrative Rules, is (are) as follows:
[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective

action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases".]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

- (B) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.111)

§11-281-112 Drawing on financial assurance mechanisms. (a) Except as specified in subsection (d), the director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

- (1) (A) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

- (B) The director determines or suspects that a release from an UST or tank system covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the director pursuant to subchapter 6 or 7 of a release from an UST or tank system covered by the

- mechanism; or
- (2) The conditions of subsection (b) (1), (b) (2) (A), or (b) (2) (B) are satisfied.
- (b) The director may draw on a standby trust fund
- when:
- (1) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted release response action as required under subchapter 7; or
- (2) The director has received either:
- (A) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[_____].

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(Notary)

Date [Signatures]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary)

Date

or,

- (B) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank or tank system covered by financial assurance under this subchapter and the director determines that the owner or operator has not satisfied the judgment.

(c) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under subsection (b) (2) (A), and valid court orders under subsection (b) (2) (B).

(d) A governmental entity acting as guarantor under section 11-281-106(e), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in subsections (a), (b), and (c). [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.112)

§11-281-113 Release from financial responsibility. An owner or operator is no longer required to maintain financial responsibility under this subchapter for an UST or tank system after the UST or tank system has been properly and permanently closed or, if release response action is required, after the release response action has been completed and the UST or tank system has been properly and permanently closed as required by subchapter 8. [Eff 1/28/00; comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.113)

§11-281-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance. (a) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-281-111(b) documenting current financial responsibility.

(b) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-281-97.

(c) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-281-111(b) documenting current financial responsibility.

(d) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-281-106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this subchapter within thirty days after receiving notice of such an event. If the owner or operator does not obtain

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alternate coverage within thirty days after such notification, the owner or operator must notify the director. [Eff 1/28/00; comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.114)

§11-281-115 Replenishment of guarantees, letters of credit, or surety bonds. (a) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

- (1) Replenish the value of financial assurance to equal the full amount of coverage required; or
- (2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by section 11-281-94. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms. [Eff 1/28/00; am and comp] (Auth: HRS §§342L-3, 342L-36) (Imp: 40 C.F.R. §280.115)

§§11-281-116 to 11-281-120 (Reserved)

SUBCHAPTER 10

ENFORCEMENT

§11-281-121 Purpose. The purpose of this subchapter is to create an enforcement program that facilitates the effective and expeditious resolution of violations of chapter 342L, HRS, and this chapter. [Eff

1/28/00; am and comp] (Auth: HRS §342L-3)
(Imp: 40 C.F.R. §281.41)

§11-281-122 Field citations. (a) Field citations may be issued for violations of chapter 342L, HRS, and this chapter that the department, in its discretion, deems appropriate for resolution through the issuance of a field citation. Nothing in this section requires the department to elect one enforcement mechanism over another and the decision to proceed with one course of action over, or in conjunction with, another is within the discretion of the director.

(b) The field citation is an offer to settle an administrative case that the department shall withdraw if the owner or operator declines to accept the department's offer to settle, in which case the department may bring a formal administrative action under chapter 342L, HRS.

(c) The field citation may be on a form provided by the department for this purpose and set forth sufficient facts to notify the recipient of the violations, the applicable law, and provide a settlement amount.

(d) The penalties that may be assessed for settlement of a field citation are as listed in Appendix VIII entitled "Field Citation Penalty Amounts", dated June 2012, which is made a part of this chapter and is located at the end of this chapter.

(e) By signing the settlement agreement attached to any field citation, the owner or operator agrees not to challenge the field citation order and accepts the settlement agreement. Subsequent signature by the director constitutes acceptance by the director of the settlement agreement.

(f) The owner or operator signing the settlement agreement waives the right to a contested case hearing pursuant to chapter 91, HRS.

(g) If the owner or operator does not correct the violations, pay the settlement amount, and sign and return the settlement agreement within thirty days or within an extension period, the field citation is automatically withdrawn and the department may proceed with a formal enforcement action in accordance with chapter 342L, HRS.

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(h) Failure to return the settlement agreement and pay the settlement amount within the time allowed does not relieve the owner or operator of the responsibility to comply fully with the provisions of this chapter and chapter 342L, HRS, including correcting the violations that have been specifically identified in the field citation. [Eff 1/28/00; am and comp] (Auth: HRS §342L-3) (Imp: 40 C.F.R. §281.41)

§§11-281-123 to 11-281-128 REPEALED.

[R]

§11-281-129 Delivery, deposit, and acceptance prohibition. (a) No person shall deliver to, deposit into, or accept a regulated substance into an UST or tank system that has been identified by the department as ineligible for delivery, deposit, or acceptance.

(b) An UST or tank system shall be identified by the department as ineligible for delivery, deposit, or acceptance by placement of a tag or other notice of ineligibility onto the fill pipe of the ineligible UST or tank system. The department shall make a reasonable effort to notify tank owners, operators, or both, in writing prior to designating a tank ineligible. If an owner or operator is not present at the facility at the time the underground storage tank is identified as ineligible, the department may notify an employee at the facility at the time of identification in lieu of the owner or operator.

(c) No person shall remove, tamper with, destroy, or damage a tag or other notice of ineligibility affixed to any UST or tank system unless authorized to do so by the department. Removal of a tag or other notice of ineligibility by the department or person authorized by the department shall occur only after the department confirms that the conditions giving rise to the delivery prohibition have been corrected to the department's satisfaction. The department shall make this determination either at a hearing, if one is requested in accordance with this section, or as soon as practicable.

(d) Pursuant to this section, a tag or other notice

of ineligibility may immediately be affixed to the fill pipe of an UST or tank system upon finding by the department of any of the following:

- (1) Operating without a permit issued by the department;
- (2) Operating inconsistently with one or more conditions of a permit issued by the department;
- (3) Required spill prevention equipment is not installed or properly functioning or maintained;
- (4) Required overfill protection equipment is not installed or properly functioning or maintained;
- (5) Required release detection equipment is not installed or properly functioning or maintained;
- (6) Required corrosion protection equipment is not installed or properly functioning or maintained;
- (7) Failure to maintain financial responsibility;
or
- (8) Failure to protect a buried metal flexible connector from corrosion.

(e) An owner or operator of an UST or tank system designated by the department to be ineligible shall be provided a hearing to contest the department's determination of ineligibility within forty-eight hours of the department's receipt of a written request by the owner or operator of the ineligible UST or tank system. The hearing shall modify or affirm the department's determination of ineligibility and shall be conducted in accordance with chapter 91, HRS, and the department's rules of practice and procedure. [Eff and comp]
(Auth: HRS §342L-3) (Imp: 40 C.F.R. §281.41)

§11-281-130 (Reserved)

SUBCHAPTER 11

APPENDICES

§11-281-131 Appendices. Appendices I through VIII, located at the end of the chapter, are made part of this chapter. These appendices are entitled:

- Appendix I -- Notification for Underground Storage Tanks, June 2012
- Appendix II -- Application for an Underground Storage Tank Permit, June 2012
- Appendix III -- Certification of Underground Storage Tank Installation, June 2012
- Appendix IV -- Application for Renewal of an Underground Storage Tank Permit, June 2012
- Appendix V -- Application for Transfer of an Underground Storage Tank Permit, June 2012
- Appendix VI -- Application for an Underground Storage Tank Variance, June 2012
- Appendix VII -- Field Citation/Settlement Agreement, June 2012
- Appendix VIII -- Field Citation Penalty Amounts, June 2012
[Eff 1/28/00; am and comp] (Auth: HRS §342L-3) (Imp: HRS §§342L-3, 342L-4, 342L-6, 342L-30, 342L-31; 40 C.F.R. §280.22)

SOLID AND HAZARDOUS WASTE BRANCH

Underground Storage Tank Program

919 Ala Moana Blvd • Room 212 • Honolulu, Hawaii 96814

Phone: 808 - 586- 4226 • Fax: 808-586-7509 • <http://www.hawaii.gov/health/environmental/waste/ust>

NOTIFICATION FOR UNDERGROUND STORAGE TANKS

Return completed form to:

Solid and Hazardous Waste Branch
Underground Storage Tank Program
919 Ala Moana Blvd., Room 212
Honolulu, Hawaii 96814

Facility ID Number: _____

Permit Number: _____

Type Of Notification: (Check all that apply)

- UST Status Change (temporary or permanent closure or return to use)**
- Change in Piping** **Change in Release Detection**
- Change in Spill and Overfill prevention method**
- Change in Financial Responsibility**
- Other: _____

Date Activity Occurred: _____

State Use Only

Date received: _____

Date Entered into Computer: _____

Data Clerk's Initials: _____

Comments: _____

I. LOCATION OF TANK(S)

Facility Name or Company Site identifiers _____ Location Contact Person _____

Location Address (P.O. Box not acceptable) _____ City _____ State _____ Zip Code _____ Island _____ Tax Map Key # _____

Location Phone # (w/ area code) _____ Location Fax # (w/ area code) _____

II. CONTACT PERSON IN CHARGE OF TANK(S)

Name _____ Job/Position Title _____

Mailing Address _____ City _____ State _____ Zip Code _____

Phone # (w/ area code) _____ Fax # (w/ area code) _____ E-mail Address _____

III. OWNER OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity) _____

Mailing Address _____ City _____ State _____ Zip Code _____

Phone # (w/ area code) _____ Fax # (w/ area code) _____ E-mail Address _____

IV. OPERATOR OF TANK(S) (if same as Section III, check here ___)

Operator Name (Corporation, Individual, Public Agency, or Other Entity) _____

Mailing Address _____ City _____ State _____ Zip Code _____

Phone # (w/ area code) _____ Fax # (w/ area code) _____ E-mail Address _____

VI. TYPE OF FACILITY (Select the appropriate facility description)

- | | | | | |
|--|--|--|--|---|
| <input type="checkbox"/> Airline | <input type="checkbox"/> Auto Dealership | <input type="checkbox"/> Baseyard | <input type="checkbox"/> Car Rental | <input type="checkbox"/> Cleaner/Laundromat |
| <input type="checkbox"/> Communication Sites | <input type="checkbox"/> Contractor | <input type="checkbox"/> Farm | <input type="checkbox"/> Fire Station | <input type="checkbox"/> Gas Station |
| <input type="checkbox"/> Golf Course | <input type="checkbox"/> Hospital | <input type="checkbox"/> Petroleum Distributor | <input type="checkbox"/> Police Station | <input type="checkbox"/> Residential |
| <input type="checkbox"/> Resort/Hotel | <input type="checkbox"/> School | <input type="checkbox"/> Service Centers/Auto Repair/Maintenance | | |
| <input type="checkbox"/> Trucking/Transporter | <input type="checkbox"/> Utilities | <input type="checkbox"/> Wastewater Treatment Plants | <input type="checkbox"/> Wholesaler/Retailer | |
| <input type="checkbox"/> Other (Explain) _____ | | | | |

VII. FINANCIAL RESPONSIBILITY (Check all that apply)

- | | | | |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Financial Test of Self Insurance | <input type="checkbox"/> Commercial Insurance | <input type="checkbox"/> Guarantee | <input type="checkbox"/> Surety Bond |
| <input type="checkbox"/> Letter of Credit | <input type="checkbox"/> Trust Fund | <input type="checkbox"/> Local Government Bond Rating Test | |
| <input type="checkbox"/> Exempt: State or Federal Agency | <input type="checkbox"/> Other Method Allowed (Specify) _____ | | |

VIII. FACILITY DRAWING

Include a drawing showing the general layout of the facility. This drawing should be no larger than 11 by 17 inches and preferably to scale. This drawing should show the following:

- A. The property boundaries of the facility;
- B. Identification of streets, roads and nearby bodies of water;
- C. Identification of nearby facilities;
- D. Tax Map Key (TMK) Numbers;
- E. Location of buildings at the facility;
- F. The approximate dimensions of the property boundaries and major buildings;
- G. Location of all USTs (identified by number consistent with the tank numbers in Sections VIII), dispenser pumps, and associated pipings; and
- H. Indication of North/South direction.

IX. LOCATION MAP

Include a map showing the location of the tanks with respect to nearby landmarks. The map should indicate roads and landmarks to a level of detail such that the site would be easily located

X. DESCRIPTION OF TANK(S) (Complete for each tank at this location)

Tank Number	Tank No. __				
1. Status of Tank (Mark only one)					
A. Currently in Use					
B. Temporarily Out of Use (Also complete Section XII)					
C. Permanently Out of Use (Also complete Section XII)					
2. Date of Installation (mo/year)					
3. Estimated Capacity (gallons)					
A. Compartmentalized? Yes/No					
Estimated compartment Capacity (gallons)					
B. Manifolder? Yes/No					
4. Substance Currently or Last Stored in Greatest Quantity by Volume					
A. Gasoline (Specify grade of product)					
B. Diesel					
C. Gasohol (including ethanol blends) Specify grade of product					
D. Kerosene					
E. Used Oil / Waste Oil					
F. JP-4					
G. Non-Petroleum Hazardous Substance (CERCLA name and/or CAS #)					
H. Mixture of Substances Please specify.					
I. Other, please specify.					
5. Substance Compatible with Tank and Piping (Y/N)					
6. Tank (Mark all that apply)					
A. Manufacturer and Model					
B. Underwriters Laboratory No.					

Tank Number	Tank No. __				
C. Primary Containment Material or Single-Walled Tank					
i. Fiberglass reinforced plastic					
ii. Steel					
iii. Other, please specify.					
D. Secondary Containment Material					
i. Fiberglass reinforced plastic					
ii. Steel					
iii. Other, please specify.					
iv. None					
E. Corrosion Protection (except fiberglass reinforced plastic tanks)					
i. Fiberglass coated steel					
ii. Double-walled steel					
iii. Impressed current system					
iv. Sacrificial anode system					
v. Corrosion expert determination					
vi. Other, please specify.					
7. Piping					
A. Manufacturer and Model					
B. Underwriters Laboratory No.					
C. Primary Containment Material or Single-Walled Piping					
i. Fiberglass reinforced plastic					
ii. Flex piping					
iii. Steel					
iv. Other, please specify.					
v. None					

Tank Number	Tank No. __				
D. Secondary Containment Material					
i. Fiberglass Reinforced Plastic					
ii. Flex piping					
iii. Lined trench					
iv. Other, please specify.					
v. None					
E. Corrosion Protection (except fiberglass reinforced plastic piping)					
i. Fiberglass coated steel					
ii. Impressed current system					
iii. Sacrificial anode system					
iv. Corrosion expert determination					
v. Other, please specify.					
8. Method of Product Dispensing					
A. Unsafe Suction (valve at tank)					
B. Safe Suction (no valve at tank)					
C. Pressure					
D. Not Applicable					
9. Spill Prevention Equipment					
A. Manufacturer / Model					
B. Capacity (gallons)					
10. Overfill Prevention Equipment					
A. Automatic shutoff device (flapper) Make/Model					
B. Overfill alarm Make/Model					
C. Ball float valve Make/Model					

Tank Number	Tank No. __									
11. Release Detection (Mark all that apply)	TANK	PIPE								
A. Manual tank gauging		NA								
B. Tank tightness testing		NA								
C. Inventory controls		NA								
D. Automatic tank gauging		NA								
E. Vapor monitoring										
F. Groundwater monitoring										
G. Interstitial monitoring										
H. Statistical inventory reconciliation										
I. Automatic line leak detectors (Y/N) If yes, specify type	NA									
J. Line tightness testing	NA									
K. Other method approved by the department. Please specify.										

XI. DESCRIPTION OF DISPENSER AND UNDER DISPENSER CONTAINMENT
(Attach additional sheet if necessary.)

Dispenser Unit	Manufacturer of Dispenser	Dispenser Serial No.	Under dispenser Containment installed (Yes/No)
1			
2			
3			
4			
5			
6			
7			
8			

XII. TANK(S) OUT OF USE OR CHANGE IN SERVICE

Tank Number	Tank No. __				
1. Closing of Tank					
A. Estimated date last used (mo./day/year)					
B. Estimated date tank closed (mo./day/year)					
C. Tank was removed from ground					
D. Tank was closed in ground					
E. Tank filled with inert material Describe					
F. Change in service					
2. Site Assessment Completed (Y/N)					
3. Evidence of a Leak Detected (Y/N)					

XIII. CERTIFICATION OF COMPLIANCE FOR REPAIRS (Complete for each tank at this location)

Tank Number	Tank No. __				
A. Date Repaired					
B. Provide description of repair along with the Tank Number (Attach additional sheet if necessary.)					
C. Select one of the following:					
i. Installation certified by tank and piping manufacturers					
ii. Installation inspected by a registered engineer.					
iii. Manufacturer's installation checklists have been completed and documented					
iv. Another method allowed by the department. Please specify					

XIV. CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Print or Type Name of owner or owner's authorized representative

Official Title

Signature

Date Signed

Status of Signatory (Mark as appropriate):

- 1. Corporation: ___ principal executive officer
 ___ duly authorized representative
- 2. Partnership: ___ general partner
- 3. Sole proprietorship: ___ proprietor
- 4. Government entity: ___ principal executive officer
 ___ ranking elected official

Appendix II

**SOLID AND HAZARDOUS WASTE BRANCH
Underground Storage Tank Program**

919 Ala Moana Blvd • Room 212 • Honolulu, Hawaii 96814

Phone: 808 - 586- 4226 • Fax: 808-586-7509 • <http://www.hawaii.gov/health/environmental/waste/ust>

APPLICATION FOR AN UNDERGROUND STORAGE TANK PERMIT

Return completed form to:

Solid and Hazardous Waste Branch
Underground Storage Tank Program
919 Ala Moana Blvd., Room 212
Honolulu, Hawaii 96814

Facility ID Number: _____

Type Of Notification: (Check all that apply)

___ Installation and Operation (\$150)

___ Operation (\$150)

___ Modification - except for temporary & permanent closure (\$100)

State Use Only

Date received: _____

Permit No. : _____

Permit Fee: _____

Date Paid: _____

Receipt No.: _____

Comments: _____

I. LOCATION OF TANK(S)

Facility Name or Company Site identifiers _____

Location Contact Person _____

Location Address (P.O. Box not acceptable) _____

City _____

State _____

Zip Code _____

Island _____

Tax Map Key # _____

Location Phone # (w/ area code) _____

Location Fax # (w/ area code) _____

II. CONTACT PERSON IN CHARGE OF TANK(S)

Name _____

Job / Position Title _____

Mailing Address _____

City _____

State _____

Zip Code _____

Phone # (w/ area code) _____

Fax # (w/ area code) _____

E-mail Address _____

III. OWNER OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity)

Mailing Address _____ City _____ State _____ Zip Code _____

Phone # (w/ area code) _____ Fax # (w/ area code) _____ E-mail Address _____

IV. OPERATOR OF TANK(S) (if same as Section III, check here ___)

Operator Name (Corporation, Individual, Public Agency, or Other Entity)

Mailing Address _____ City _____ State _____ Zip Code _____

Phone # (w/ area code) _____ Fax # (w/ area code) _____ E-mail Address _____

V. CONTRACTOR

Company Name _____ Contact Person Name _____

Mailing Address _____ City _____ State _____ Zip Code _____

Phone # (w/ area code) _____ Fax # (w/ area code) _____ E-mail Address _____

VI. TYPE OF OWNER

- | | | |
|--|--|---|
| <input type="checkbox"/> Federal Government (Military) | <input type="checkbox"/> Federal Government (Non-Military) | <input type="checkbox"/> State Government |
| <input type="checkbox"/> Local Government | <input type="checkbox"/> Marketer | <input type="checkbox"/> Non-Marketer |

VII. TYPE OF FACILITY (Select the appropriate facility description)

- | | | | | |
|--|--|--|--|---|
| <input type="checkbox"/> Airline | <input type="checkbox"/> Auto Dealership | <input type="checkbox"/> Baseyard | <input type="checkbox"/> Car Rental | <input type="checkbox"/> Cleaner/Laundromat |
| <input type="checkbox"/> Communication Sites | <input type="checkbox"/> Contractor | <input type="checkbox"/> Farm | <input type="checkbox"/> Fire Station | <input type="checkbox"/> Gas Station |
| <input type="checkbox"/> Golf Course | <input type="checkbox"/> Hospital | <input type="checkbox"/> Petroleum Distributor | <input type="checkbox"/> Police Station | <input type="checkbox"/> Residential |
| <input type="checkbox"/> Resort/Hotel | <input type="checkbox"/> School | <input type="checkbox"/> Service Centers/Auto Repair/Maintenance | | |
| <input type="checkbox"/> Trucking/Transporter | <input type="checkbox"/> Utilities | <input type="checkbox"/> Wastewater Treatment Plants | <input type="checkbox"/> Wholesaler/Retailer | |
| <input type="checkbox"/> Other (Explain) _____ | | | | |

VIII. FINANCIAL RESPONSIBILITY (Check all that apply)

- Financial Test of Self Insurance
 Commercial Insurance
 Guarantee
 Surety Bond
 Letter of Credit
 Trust Fund
 Local Government Bond Rating Test
 Exempt: State or Federal Agency
 Other Method Allowed (Specify) _____

IX. FACILITY DRAWING

Include a drawing showing the general layout of the facility. This drawing should be no larger than 11 by 17 inches and preferably to scale. This drawing should show the following:

- A. The property boundaries of the facility;
- B. Identification of streets, roads and nearby bodies of water;
- C. Identification of nearby facilities;
- D. Tax Map Key (TMK) Numbers;
- E. Location of buildings at the facility;
- F. The approximate dimensions of the property boundaries and major buildings;
- G. Location of all USTs (identified by number consistent with the tank numbers in Sections VIII), dispenser pumps, and associated pipings; and
- H. Indication of North/South direction.

X. LOCATION MAP

Include a map showing the location of the tanks with respect to nearby landmarks. The map should indicate roads and landmarks to a level of detail such that the site would be easily located

XI. DESCRIPTION OF TANK(S) (Complete for each tank at this location)

Tank Number	Tank No.____				
1. Status of Tank (Mark only one)					
A. Currently in Use					
B. Temporarily Out of Use					
2. Date of Installation (mo/year)					
3. Estimated Capacity (gallons)					
A. Compartmentalized? Yes/No					
Estimated compartment capacity (gallons)					
B. Manifoldded? Yes/No					
5. Substance Stored					
A. Gasoline (Specify grade of product)					
B. Diesel					
C. Gasohol (Including ethanol blends) Specify grade of product					
D. Kerosene					

Tank Number	Tank No.____				
E. Used Oil / Waste Oil					
F. JP-4					
G. Non-Petroleum Hazardous Substance (CERCLA name and/or CAS #)					
H. Mixture of Substances Please specify					
I. Other, please specify.					
6. Substance Compatible with Tank and Piping (Y/N)					
7. Tank (Mark all that apply)					
A. Manufacturer and Model					
B. Underwriters Laboratory No.					
C. Primary Containment Material or Single-Walled Tnk					
i. Fiberglass reinforced plastic					
ii. Steel					
iii. Other, please specify.					
D. Secondary Containment Material					
i. Fiberglass reinforced plastic					
ii. Steel					
iii. Other, please specify.					
iv. None					
E. Corrosion Protection (except fiberglass reinforced plastic tanks)					
i. Fiberglass coated steel					
ii. Double-walled steel					
iii. Impressed current system					
iv. Sacrificial anode system					
v. Corrosion expert determination					
vi. Other, please specify.					

Tank Number	Tank No. __				
8. Piping					
A. Manufacturer and Model					
B. Underwriters Laboratory No.					
C. Primary Containment Material or Single-Walled Piping					
i. Fiberglass reinforced plastic					
ii. Flex piping					
iii. Steel					
iv. Other, please specify.					
D. Secondary Containment Material					
i. Fiberglass reinforced plastic					
ii. Flex piping					
iii. Lined trench					
iv. Other, please specify.					
v. None					
E. Corrosion Protection (except fiberglass reinforced plastic piping)					
i. Fiberglass coated steel					
ii. Impressed current system					
iii. Sacrificial anode system					
iv. Corrosion expert determination					
v. Other, please specify.					
9. Method of Product Dispensing					
A. Unsafe Suction (valve at tank)					
B. Safe Suction (no valve at tank)					
C. Pressure					
D. Not Applicable					
10. Spill prevention equipment					
Manufacturer and Model					
Capacity (gallons)					

Tank Number	Tank No. __									
11. Overfill prevention equipment										
i. Automatic shutoff device (flapper) Make and Model										
ii. Overfill alarm Make and Model										
iii. Ball float valve Make and Model										
12. Release Detection (Mark all that apply)	TANK	PIPE								
A. Manual tank gauging		NA								
B. Tank tightness testing		NA								
C. Inventory control		NA								
D. Automatic tank gauging		NA								
E. Vapor monitoring										
F. Groundwater monitoring										
G. Interstitial monitoring										
H. Statistical inventory reconciliation										
I. Automatic line leak detectors (Y/N) If yes, specify type.	NA									
J. Line tightness testing	NA									
K. Other method approved by the Department. Please specify										

XII. DESCRIPTION OF DISPENSER AND UNDER DISPENSER CONTAINMENT
(Attach additional sheet if necessary.)

Dispenser Unit	Manufacturer of Dispenser	Dispenser Serial No.	Under dispenser Containment installed (Yes/No)
1			
2			
3			
4			
5			

XIII. OPERATOR'S CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name of operator or operator's authorized representative (Print or Type) Official Title

Signature Date Signed

Status of Signatory (Mark as appropriate)--

- 1. Corporation: principal executive officer
 duly authorized representative
- 2. Partnership: general partner
- 3. Sole proprietorship: proprietor
- 4. Government entity: principal executive officer
 ranking elected official
 duly authorized employee

XIV. OWNER'S CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name of owner or owner's authorized representative (Print or Type) Official Title

Signature Date Signed

Status of Signatory (Mark as appropriate)--

- 1. Corporation: principal executive officer
 duly authorized representative
- 2. Partnership: general partner
- 3. Sole proprietorship: proprietor
- 4. Government entity: principal executive officer
 ranking elected official
 duly authorized employee

**SOLID AND HAZARDOUS WASTE BRANCH
Underground Storage Tank Program**

919 Ala Moana Blvd • Room 212 • Honolulu, Hawaii 96814

Phone: 808 - 586- 4226 • Fax: 808-586-7509 • <http://www.hawaii.gov/health/environmental/waste/ust>

**CERTIFICATION OF UNDERGROUND STORAGE TANK
INSTALLATION**

**Return completed form within
30 days after tank installation to:**

Solid and Hazardous Waste Branch
Underground Storage Tank Program
919 Ala Moana Blvd., Room 212
Honolulu, Hawaii 96814

Facility ID Number: _____

Permit Number: _____

State Use Only

Date received: _____

Date entered into computer: _____

Data clerk initials: _____

LOCATION OF TANK(S)

Facility Name or Company Site identifiers _____

Location Contact Person _____

Location Address (P.O. Box not acceptable) _____

City _____

State _____

Zip Code _____

Island _____

Tax Map Key # _____

Location Phone # (w/ area code) _____

Location Fax # (w/ area code) _____

Part I. CERTIFICATION OF COMPLIANCE FOR NEW TANK(S) (Complete for each tank at this location)

Tank Number	Tank No. ___				
1. Date USTs installed					
2. Installation					
A. Installation certified by tank and piping manufacturers					
B. Installation inspected by a registered engineer					
C. Installation inspected and approved by the department					
D. Manufacturer's installation checklists have been completed and documented					
E. Another method allowed by the department. Please specify					
3. Estimated date product to be placed into USTs					
4. Substance to be stored. (Specify type and grade of product)					

Part IV. CHANGES TO ORIGINAL INSTALLATION PLANS (Complete this Part only if changes were made to the original installation plans)

FINANCIAL RESPONSIBILITY (Check all that apply)

- Financial Test of Self Insurance Commercial Insurance Guarantee Surety Bond
 Letter of Credit Trust Fund Local Government Bond Rating Test
 Exempt: State or Federal Agency Other Method Allowed (Specify) _____

DESCRIPTION OF TANK(S) (Complete for each tank at this location)

Tank Number	Tank No.____				
1. Status of Tank (Mark only one)					
A. Currently in Use					
B. Temporarily Out of Use					
2. Date of Installation (mo/year)					
3. Estimated Capacity (gallons)					
A. Compartmentalized? Yes/No					
Estimated compartment capacity (gallons)					
B. Manifolded? Yes/No					
5. Substance Stored					
A. Gasoline (Specify grade of product)					
B. Diesel					
C. Gasohol (Including ethanol blends) Specify grade of product					
D. Kerosene					
E. Used Oil / Waste Oil					
F. JP-4					
G. Non-Petroleum Hazardous Substance (CERCLA name and/or CAS #)					
H. Mixture of Substances Please specify					
I. Other, please specify.					
6. Substance Compatible with Tank and Piping (Y/N)					

Tank Number	Tank No.____				
7. Tank (Mark all that apply)					
A. Manufacturer and Model					
B. Underwriters Laboratory No.					
C. Primary Containment Material					
i. Fiberglass reinforced plastic					
ii. Steel					
iii. Other, please specify.					
D. Secondary Containment Material					
i. Fiberglass reinforced plastic					
ii. Steel					
iii. Other, please specify.					
iv. None					
E. Corrosion Protection (except fiberglass reinforced plastic tanks)					
i. Fiberglass coated steel					
ii. Double-walled steel					
iii. Impressed current system					
iv. Sacrificial anode system					
v. Corrosion expert determination					
vi. Other, please specify.					
8. Piping					
A. Manufacturer and Model					
B. Underwriters Laboratory No.					
C. Primary Containment Material					
i. Fiberglass reinforced plastic					
ii. Flex piping					
iii. Steel					
iv. Other, please specify.					

Tank Number	Tank No.____				
D. Secondary Containment Material					
i. Fiberglass reinforced plastic					
ii. Flex piping					
iii. Lined trench					
iv. Other, please specify.					
v. None					
E. Corrosion Protection (except fiberglass reinforced plastic piping)					
i. Fiberglass coated steel					
ii. Impressed current system					
iii. Sacrificial anode system					
iv. Corrosion expert determination					
v. Other, please specify.					
9. Method of Product Dispensing					
A. Unsafe Suction (valve at tank)					
B. Safe Suction (no valve at tank)					
C. Pressure					
D. Not Applicable					
10. Spill prevention equipment					
Manufacturer and Model					
Capacity (gallons)					
11. Overfill prevention equipment					
i. Automatic shutoff device (flapper) Make and Model					
ii. Overfill alarm Make and Model					
iii. Ball float valve Make and Model					

12. Release Detection (Mark all that apply)	TANK	PIPE								
A. Manual tank gauging		NA								
B. Tank tightness testing		NA								
C. Inventory control		NA								
D. Automatic tank gauging		NA								
E. Vapor monitoring										
F. Groundwater monitoring										
G. Interstitial monitoring										
H. Statistical inventory reconciliation										
I. Automatic line leak detectors (Y/N) If yes, specify type.	NA									
J. Line tightness testing	NA									
K. Other method approved by the Department. Please specify										

DESCRIPTION OF DISPENSER AND UNDER DISPENSER CONTAINMENT (Attach additional sheet if necessary.)

Dispenser Unit	Manufacturer of Dispenser	Dispenser Serial No.	Under dispenser Containment installed (Yes/No)
1			
2			
3			
4			
5			

Appendix IV
SOLID AND HAZARDOUS WASTE BRANCH
Underground Storage Tank Program

919 Ala Moana Blvd • Room 212 • Honolulu, Hawaii 96814

Phone: 808 - 586- 4226 • Fax: 808-586-7509 • <http://www.hawaii.gov/health/environmental/waste/ust>

**APPLICATION FOR RENEWAL OF AN UNDERGROUND STORAGE
TANK PERMIT**

Return completed form to:

Solid and Hazardous Waste Branch
Underground Storage Tank Program
919 Ala Moana Blvd., Room 212
Honolulu, Hawaii 96814

Facility ID Number: _____

Permit No: _____

Renewal Fee \$50

State Use Only

Date received: _____

Date entered into computer: _____

Data clerk's initials: _____

Comments: _____

I. LOCATION OF TANK(S)

Facility Name or Company Site identifiers _____

Location Contact Person _____

Location Address (P.O. Box not acceptable) _____

City _____

State _____

Zip Code _____

Island _____

Tax Map Key # _____

Location Phone # (w/ area code) _____

Location Fax # (w/ area code) _____

II. CONTACT PERSON IN CHARGE OF TANK(S)

Name _____

Job/Position Title _____

Mailing Address _____

City _____

State _____

Zip Code _____

Phone # (w/ area code) _____

Fax # (w/ area code) _____

E-mail Address _____

III. OWNER OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity) _____

Mailing Address _____

City _____

State _____

Zip Code _____

Phone # (w/ area code) _____

Fax # (w/ area code) _____

E-mail Address _____

IV. OPERATOR OF TANK(S) (if same as Section III, check here ___)

Operator Name (Corporation, Individual, Public Agency, or Other Entity)

Mailing Address

City

State

Zip Code

Phone # (w/ area code)

Fax # (w/ area code)

E-mail Address

V. DESCRIPTION OF TANK(S) (Complete for each tank at this location)

Tank Number	Tank No. ___				
1. Date of Installation (mo/year)					
2. Estimated Capacity (gallons)					
Compartmentalized? Yes/No					
Estimated compartment capacity (gallons)					
Manifolded? Yes/No					
3. Substance Stored					
A. Gasoline (Specify grade of product)					
B. Diesel					
C. Gasohol (Including ethanol blends) Specify grade of product					
D. Kerosene					
E. Used Oil / Waste Oil					
F. JP-4					
G. Non-Petroleum Hazardous Substance (CERCLA name and/or CAS #)					
H. Mixture of Substances Please specify					
I. Other, please specify.					

Did you have any repairs since your last application? Y_____ N_____

If yes, please indicate the date of the repair and what action was taken:

VI. OPERATOR'S CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name of operator or operator's authorized representative (Print or Type) Official Title

Signature Date Signed

Status of Signatory (Mark as appropriate)--

- 1. Corporation: ___ principal executive officer
 ___ duly authorized representative
- 2. Partnership: ___ general partner
- 3. Sole proprietorship: ___ proprietor
- 4. Government entity: ___ principal executive officer
 ___ ranking elected official
 ___ duly authorized employee

VII. OWNER'S CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name of owner or owner's authorized representative (Print or Type) Official Title

Signature Date Signed

Status of Signatory (Mark as appropriate)--

- 1. Corporation: ___ principal executive officer
 ___ duly authorized representative
- 2. Partnership: ___ general partner
- 3. Sole proprietorship: ___ proprietor
- 4. Government entity: ___ principal executive officer
 ___ ranking elected official
 ___ duly authorized employee

SOLID AND HAZARDOUS WASTE BRANCH

Underground Storage Tank Program

919 Ala Moana Blvd • Room 212 • Honolulu, Hawaii 96814

Phone: 808 - 586- 4226 • Fax: 808-586-7509 • <http://www.hawaii.gov/health/environmental/waste/ust>

**APPLICATION FOR TRANSFER OF AN
UNDERGROUND STORAGE TANK PERMIT**

Return completed form to:

Solid and Hazardous Waste Branch
Underground Storage Tank Program
919 Ala Moana Blvd., Room 212
Honolulu, Hawaii 96814

Facility ID Number: _____

Permit No.: _____

Transfer Fee: \$25

Type of Notification: (Check all that apply)

____ Change of Owner ____ Change of Operator

I. LOCATION OF TANK(S)

Facility Name or Company Site identifiers _____

Location Contact Person _____

Location Address (P.O. Box not acceptable) _____

City _____

State _____

Zip Code _____

Island _____

Tax Map Key # _____

Location Phone # (w/ area code) _____

Location Fax # (w/ area code) _____

II. CONTACT PERSON IN CHARGE OF TANK(S)

Name _____

Job/Position Title _____

Mailing Address _____

City _____

State _____

Zip Code _____

Phone # (w/ area code) _____

Fax # (w/ area code) _____

E-mail Address _____

III. OWNER OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity) _____

Mailing Address _____

City _____

State _____

Zip Code _____

Phone # (w/ area code) _____

Fax # (w/ area code) _____

E-mail Address _____

IV. OPERATOR OF TANK(S) (if same as Section III, check here ___)

Operator Name (Corporation, Individual, Public Agency, or Other Entity) _____

Mailing Address _____ City _____ State _____ Zip Code _____

Phone # (w/ area code) _____ Fax # (w/ area code) _____ E-mail Address _____

V. TYPE OF FACILITY (Select the appropriate facility description)

- Airline Auto Dealership Baseyard Car Rental Cleaner/Laundromat
 Communication Sites Contractor Farm Fire Station Gas Station
 Golf Course Hospital Petroleum Distributor Police Station Residential
 Resort/Hotel School Service Centers/Auto Repair/Maintenance
 Trucking/Transporter Utilities Wastewater Treatment Plants Wholesaler/Retailer
 Other (Explain) _____

VI. FINANCIAL RESPONSIBILITY (Check all that apply)

- Financial Test of Self Insurance Commercial Insurance Guarantee Surety Bond
 Letter of Credit Trust Fund Local Government Bond Rating Test
 Exempt: State or Federal Agency Other Method Allowed (Specify) _____

VII. DESCRIPTION OF TANK(S) (Complete for each tank at this location)

Tank Number	Tank No.____				
1. Date of Transfer					
2. Date of Installation (mo/year)					
3. Estimated Capacity (gallons)					
Compartmentalized? Yes/No					
Estimated compartment capacity (gallons)					
Manifolded? Yes/No					
4. Substance Stored					
A. Gasoline (Specify grade of product)					
B. Diesel					
C. Gasohol (Including ethanol blends) Specify grade of product					
D. Kerosene					

Tank Number	Tank No.____				
E. Used Oil / Waste Oil					
F. JP-4					
G. Non-Petroleum Hazardous Substance (CERCLA name and/or CAS #)					
H. Mixture of Substances Please specify.					
I. Other, please specify					

VIII. OPERATOR'S CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

 Name of operator or operator's authorized representative (Print or Type) Signature Date Signed

 Official Title

Status of Signatory (Mark as appropriate)

- 1. Corporation: principal executive officer
 duly authorized representative
- 2. Partnership: general partner
- 3. Sole proprietorship: proprietor
- 4. Government entity: principal executive officer
 ranking elected official
 duly authorized employee

IX. OWNER'S CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

 Name of owner or owner's authorized representative (Print or Type) Signature Date Signed

 Official Title

Status of Signatory (Mark as appropriate)

- 1. Corporation: principal executive officer
 duly authorized representative
- 2. Partnership: general partner
- 3. Sole proprietorship: proprietor
- 4. Government entity: principal executive officer
 ranking elected official
 duly authorized employee

Appendix VI
SOLID AND HAZARDOUS WASTE BRANCH
Underground Storage Tank Program

919 Ala Moana Blvd • Room 212 • Honolulu, Hawaii 96814

Phone: 808 - 586- 4226 • Fax: 808-586-7509 • <http://www.hawaii.gov/health/environmental/waste/ust>

APPLICATION FOR AN UNDERGROUND STORAGE TANK VARIANCE

Return completed form to:

Solid and Hazardous Waste Branch
Underground Storage Tank Program
919 Ala Moana Blvd., Room 212
Honolulu, Hawaii 96814

State Use Only

Date received: _____

Variance No. : _____

Variance Fee: _____

Date Paid: _____

Receipt No.: _____

Comments: _____

Facility ID Number: _____

Type Of Variance: (Check all that apply)

____ New Application (\$200) ____ Modification (\$150)

____ Renewal (\$100)

I. LOCATION OF TANK(S)

Facility Name or Company Site identifiers _____

Location Contact Person _____

Location Address (P.O. Box not acceptable) _____

City _____

State _____

Zip Code _____

Island _____

Tax Map Key # _____

Location Phone # (w/ area code) _____

Location Fax # (w/ area code) _____

II. CONTACT PERSON IN CHARGE OF TANK(S)

Name _____

Job Position Title _____

Mailing Address _____

City _____

State _____

Zip Code _____

Phone # (w/ area code) _____

Fax # (w/ area code) _____

E-mail Address _____

III. OWNER OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity) _____

Mailing Address _____

City _____

State _____

Zip Code _____

Phone # (w/ area code) _____

Fax # (w/ area code) _____

E-mail Address _____

IV. OPERATOR OF TANK(S) (if same as Section III, check here ___)

Operator Name (Corporation, Individual, Public Agency, or Other Entity)

Mailing Address _____ City _____ State _____ Zip Code _____

Phone # (w/ area code) _____ Fax # (w/ area code) _____ E-mail Address _____

V. LANDOWNER

Owner Name (Corporation, Individual, Public Agency, or Other Entity)

Mailing Address _____ City _____ State _____ Zip Code _____ Island _____

Phone # (w/ area code) _____ Fax # (w/ area code) _____ E-mail Address _____

On a separate sheet of paper provide information on Sections VI--XIII.

- VI. Provide information concerning the age, size, type, location, and uses of the UST or tank system for which a variance is being sought. Attach a copy of Notification for Underground Storage Tanks (Form No. I) and/or Application for an Underground Storage Tank Permit (Form No. II) and Certification of Underground Storage Tank Installation (Form No. III).
- VII. Identify the State laws or rules (HRS 342L and the rules adopted under HAR Chapter 64) from which a variance is being sought.
- VIII. Explain how present conditions do not fully conform to State laws or rules.
- IX. Explain the reason for the variance request.
- X. Explain how a variance from State laws/rules would not be less stringent than the federal regulations promulgated under RCRA Subtitle I.
- XI. Explain how the requested variance would protect human health and the environment to an equivalent degree allowed by the federal regulations.
- XII. Explain how the requested variance would not imminently or substantially endanger human health or the environment or the public's safety.
- XIII. Explain how compliance with the requirements for which variance is sought would result in serious financial hardship to the owner and the operator of the UST or tank system. Provide supporting documentation.

XIV. OPERATOR'S CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name of operator or operator's authorized representative (Print or Type) Official Title

Signature Date Signed

Status of Signatory (Mark as appropriate)--

- 1. Corporation: principal executive officer
 duly authorized representative
- 2. Partnership: general partner
- 3. Sole proprietorship: proprietor
- 4. Government entity: principal executive officer
 ranking elected official
 duly authorized employee

XV. OWNER'S CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name of owner or owner's authorized representative (Print or Type) Official Title

Signature Date Signed

Status of Signatory (Mark as appropriate)--

- 1. Corporation: principal executive officer
 duly authorized representative
- 2. Partnership: general partner
- 3. Sole proprietorship: proprietor
- 4. Government entity: principal executive officer
 ranking elected official
 duly authorized employee

HAWAII DEPARTMENT OF HEALTH

Solid and Hazardous Waste Branch
Underground Storage Tank Section
919 Ala Moana Blvd., Room 212
Honolulu, Hawaii 96814

Phone: 808 - 586- 4226 • Fax: 808-586-7509

FIELD CITATION/SETTLEMENT AGREEMENT

NOTICE OF CITATION

On ____/____/____, at ____:____ am/pm at the Facility known as:

located at:

ID number:

in the presence of the Owner/Operator/On-site Representative:

an authorized employee of the Hawaii Department of Health (DOH) inspected this facility to determine compliance with underground storage tank regulations promulgated under chapter 342L, Hawaii Revised Statutes (HRS). This inspection revealed the following violations:

*§ 11-281-_____, HAR Settlement: \$_____
Violation:_____

Date(s):_____

Proposed Settlement Total: \$_____

*HAR means the Hawaii Administrative Rules

FIELD CITATION No:

FIELD CITATION ORDER

The owner and operator are hereby ordered to correct the violations described in the Notice of Citation section of this form.

The Field Citation Order is not an adjudicatory proceeding or contested case under chapter 91, HRS but is an offer to settle an administrative case that is issued solely with reference to the Settlement Agreement on the reverse of this form. If the Settlement Agreement is not returned in correct form within 30 calendar days of the date of inspection, this Field Citation Order is hereby withdrawn, without prejudice to DOH's ability to file additional enforcement actions for the above or any other violations.

I have personally observed the violations described above, and find the owner and operator in violation of the above-referenced regulations.

_____, Date:____/____/____
(Signature of DOH Inspector)

RECEIPT BY OWNER OR OPERATOR

I hereby acknowledge receipt of this Notice of Citation/Field Citation Order

_____, Date:____/____/____
(Signature of Owner, Operator or On-site Representative)

(Print Name)

(Print Title)

(Print Mailing Address of Owner or Operator)

INSTRUCTIONS

If you wish to avoid enforcement actions and penalties for the violations noted of up to \$25,000 per tank per day for each violation, you may participate in an expedited settlement by:

1. Correcting all of the violations noted by the inspector.
2. Providing a description of all of the actions you took to correct the violations and attaching copies of any records or other documents evidencing the actions you took to correct the violations.
3. Signing the Settlement Agreement on the reversed side after you have corrected all of the violations.
4. Submitting a cashier's or personal check made out to "State of Hawaii" for the full payment of the "Proposed Settlement Total" noted in the Notice of Citation Section, together with the original of this form to the address at the top left of this form.

WITHIN THIRTY CALENDAR DAYS OF THE INSPECTION DATE.

DESCRIPTION OF CORRECTIONS

Please describe the work performed to correct the violations. Attach copies of all documents describing the work that was performed.

**INFORMATION ABOUT THIS
FIELD CITATION/SETTLEMENT AGREEMENT**

The Hawaii Department of Health (DOH) has authority under chapter 342L, Hawaii Revised Statutes to issue Notices of Violation and Compliance Orders and to pursue civil penalties for violations of the underground storage tank laws. However, DOH encourages the expedited settlement of easily verifiable violations of underground storage tank laws, such as the violations described in the Notice of Citation section on the reverse, by agreeing to standard settlement terms that include expedited correction of the violations and payment of the settlement amount indicated in the Notice of Violation section on the reverse side of this form.

You may resolve the cited violations quickly by correcting the violations, paying the settlement amount and signing and returning the Settlement Agreement to DOH within 30 calendar days of the issuance of the field citation. DOH, at its discretion, may grant one 30 calendar day extension of this settlement offer for good cause. The payment of the settlement agreement must be in the form of a check payable to the "State of Hawaii" with the number of the field citation written on the check.

DOH will not accept nor approve the Settlement Agreement if there is any alteration of the Field Citation/Settlement Agreement, if there is payment of less than the full amount of the settlement, if the Settlement Agreement is not returned within the time required, or if the violations are not corrected within the time allowed. DOH will treat any response to the field citation, other than timely acceptance of the Settlement Agreement, or timely request for a 30-day extension, as an indication that you are not interested in pursuing this expedited settlement procedure.

If the Settlement Agreement is not returned in proper form or if full payment of the settlement amount is not made within the time required, DOH may proceed without prejudice to file enforcement actions for the above cited or any other violations or both. Failure to pay the Settlement Agreement and pay the settlement amounts within the time allowed does not relieve you of the responsibility to correct the violations identified by the inspector, nor to comply fully with all other regulatory requirements.

This Field Citation/Settlement Agreement is not an adjudicatory proceeding or contested case under chapter 91, HRS. However, if you do not sign and return the Settlement Agreement and pay the settlement amounts within the time allowed, and DOH pursues further enforcement measures in order to have the violations corrected or to seek penalties, you will receive instructions describing your rights under applicable laws. By signing this Field Citation Order/Settlement Agreement, you waive your right to a contested case hearing under chapter 91, HRS with respect to the violations cited in the Notice of Citation section.

If this Field Citation Order/Settlement Agreement is not signed by the owner or operator and by DOH, DOH reserves the right to: (1) issue a Notice of Violation for any or all of the violations described in the Notice of Citation section of this field citation, and (2) order the payment of a penalty higher than the amount(s) indicated as settlement amount(s) in the Notice of Citation. The penalty amounts set forth in the Notice of Citation section are lower than the penalties ordinarily issued in a Notice of Violation because they are amounts adjusted for expedited settlement.

Final approval of the Settlement Agreement is in the sole discretion of DOH. Upon final approval by DOH, a copy of the approved Settlement Agreement will be returned to you, and DOH will take no further action against you for the violations cited in the Notice of Citation section. If you have any questions, you may contact the DOH UST Section at (808) 586-4226.

**FIELD CITATION No:
SETTLEMENT AGREEMENT**

By signing below, the owner or operator accepts the terms of this Settlement Agreement, and agrees not to challenge the issuance of the Notice of Citation and Field Citation Order. Subsequent signature by DOH constitutes its acceptance of the Settlement Agreement. This Field Citation/Settlement Agreement is not effective until signed by both the owner or operator and by DOH. This settlement offer expires thirty calendar days after the date of the inspection, unless otherwise specified in a written extension granted by DOH.

SETTLEMENT AGREEMENT. To expeditiously settle the violations described in the Notice of Citation, DOH AND THE OWNER OR OPERATOR SIGNING BELOW HEREBY ENTER INTO THE SETTLEMENT AGREEMENT, subject to the following terms and conditions:

1. This Settlement Agreement is binding on DOH and the Owner or Operator signing below.
2. The Owner or Operator signing below certifies, subject to civil and criminal penalties for making a false submission to DOH, that the Owner or Operator has corrected the violations within thirty calendar days from the date of inspection (unless DOH has granted an extension) and has presented DOH with a check to pay the full amount of the "Proposed Settlement Total" prescribed in the Notice of Citation section on the reverse.
3. The Owner or Operator signing below waives any objections to DOH's jurisdiction with respect to this Field Citation/Settlement Agreement, waives any objections to the violations and settlement amount in the Notice of Citation section, and consents to DOH's final approval of this Settlement Agreement without further notice.
4. The Owner or Operator signing below waives the right to a contested case hearing for the cited violations under chapter 91 HRS.
5. Upon DOH's final approval of this Settlement Agreement, DOH agrees that it will take no further action against the Owner or Operator for the violations described in the Notice of Citation section, provided that the violations have been fully corrected.
6. DOH does not waive any enforcement action it may take for any past, present or future violations of the underground storage tank laws not described in the Notice of Citation section. This is not a waiver of any violations of any other statute or regulations.
7. Final approval of the Settlement Agreement is in the sole discretion of DOH. Upon DOH's final approval below, this Settlement Agreement becomes effective, and DOH shall mail a copy to the Owner or Operator.

AGREEMENT BY OWNER OR OPERATOR

I hereby certify that the violations cited in the Notice of Citation have been corrected, and agree to the terms of the Settlement Agreement described above.

Date: ____/____/____
(Signature of Owner and/or Operator)

(Print Name)

(Print Title)

(Print Mailing Address of Person Signing Agreement)

FINAL APPROVAL BY DOH:

Date: ____/____/____
(Signature)

(Title)

Appendix VIII - FIELD CITATION PENALTY AMOUNTS (June 2012)

Statutory or Regulatory Citation	<u>Violation</u>	Penalty Amount for Settle- ment
HAR 11-281-12(1)	Improper design, construction, or installation of fiberglass-reinforced plastic tank	\$300
11-281-12(2)	Improper design, construction or installation of steel tank, or of corrosion protection for steel tank	\$300
11-281-12(2)(A)	Installation of a steel tank with unsuitable dielectric coating	\$150
11-281-12(2)(B)	Field-installed cathodic protection was not designed by a corrosion expert	\$300
11-281-12(2)(C)	Impressed current system is not designed to allow determination of current operating status	\$150
11-281-12(2)(D)	Improper operation or maintenance of tank cathodic protection system	\$150
11-281-12(3)	Improper design, construction or installation of steel-fiberglass-reinforced-plastic composite tank	\$300
11-281-12(4)	Failure to have site properly assessed, or to maintain documentation to demonstrate that a metal UST requires no additional corrosion protection measures	\$150
11-281-13(1)	Improper design, construction or installation of fiberglass-reinforced plastic piping	\$300
11-281-13(2)	Improper design, construction or installation of steel piping, or cathodic protection for steel piping	\$300

11-281-13 (2) (A)	Installation of steel piping with unsuitable dielectric coating	\$150
11-281-13 (2) (B)	Field-installed cathodic protection of steel piping was not designed by a corrosion expert	\$300
11-281-13 (2) (C)	Impressed current system for piping is not designed to allow determination of current operating status	\$150
11-281-13 (2) (D)	Improper operation or maintenance of piping cathodic protection system	\$150
11-281-13 (3)	Failure to have site properly assessed, or to maintain documentation to demonstrate that metal piping requires no additional corrosion protection measures	\$150
11-281-14 (a)	Failure to use a spill prevention system or an overflow prevention system	\$300
11-281-14 (a) (1)	Spill prevention equipment will not prevent release of product to environment when transfer hose is detached from fill pipe	\$150
11-281-14 (a) (2)	Overflow prevention equipment does not meet performance standards	\$150
11-281-14 (c)	Failure to have overflow alarm(s) clearly labeled and located where the delivery person can see and hear the alarm	\$150
11-281-15	Failure to install tank in accordance with accepted codes and standards	\$150
11-281-15	Failure to install piping in accordance with accepted codes and standards	\$150
11-281-16 (a)	Failure to ensure that a proper method of certification, testing or inspection was used for the UST installation	\$150
11-281-16 (b)	Failure to complete or submit proper documentation to certify compliance with tank notification and installation requirements	\$150

11-281-17(a)	Failure to provide properly designed, constructed or installed secondary containment on new UST or tank system	\$300
11-281-17(b)	Improper design, construction or installation of secondary containment	\$300
11-281-17(c)	Improper design, construction or installation of double walled UST	\$300
11-281-17(d)	Improper design, construction or installation of external liners	\$300
11-281-17(e)	Failure to provide secondary containment for new piping installation	\$300
11-281-19	Failure to provide new or replaced dispenser with under dispenser containment	\$300
11-281-19(1)	Under dispenser containment is not liquid tight	\$150
11-281-19(2)	Under dispenser containment is not compatible with substance conveyed by piping	\$150
11-281-19(3)	Under dispenser containment does not allow for visual inspection or access to components in containment system	\$150
11-281-19(4)	Failure to monitor under dispenser containment with a sensing device that signals the operator of the presence of regulated substances	\$300
11-281-21.5(a)	Failure to notify the department of changes in information relating to the UST or tank system	\$150

11-281-21.5(b)	Failure to submit notification to the department of changes in information relating to the UST or tank system within 30 days following the change	\$50
11-281-23	Failure to obtain a permit from the director before installing or operating a UST or UST system	\$300
11-281-25(c)	Failure to inform the department at least 7 days prior to installation	\$150
11-281-25(d)	Failure to notify the department within 30 days after the installation of the UST system	\$150
11-281-26	Failure to submit proper documents for a permit renewal within the specified time frame	\$150
11-281-29	Failure to properly apply for the modification of a permit within the specified time frame	\$150
11-281-31(a)	Owner failed to request approval to transfer permit	\$150
11-281-31(c)	Failure to apply for the transfer of a permit within the specified time frame	\$50
11-281-34	Failure to properly maintain a permit or variance at the location of the UST or tank system, and to make the document(s) immediately available for inspection upon request	\$50
11-281-41(a)	Failure to prevent overfills or spills during the transfer of product	\$300
11-281-41(c)(1)	Failure to maintain spill prevention equipment, containment sumps and under dispenser containment free of regulated substances, water and debris at all times	\$50

11-281-41 (c) (2)	Failure to properly conduct or pass a test on spill prevention equipment at least every 365 days	\$150
11-281-41 (d)	Failure to maintain the overflow prevention equipment operational at all times	\$150
11-281-42 (a) (1)	Failure to operate or maintain corrosion protection system continuously	\$150
11-281-42 (a) (2)	Failure to perform inspection or testing of cathodic protection system using proper criteria and a qualified tester within specified time frames	\$150
11-281-42 (a) (3)	Failure to inspect operability of the impressed current cathodic protection systems every 60 days	\$150
11-281-42 (b)	Failure to maintain required records of cathodic protection operation, inspections and testing	\$50
11-281-43	Failure to ensure that the UST system is made of or lined with materials compatible with substance stored	\$150
11-281-44 (b) (1)	Failure to repair UST system in accordance with accepted codes and standards	\$150
11-281-44 (b) (2)	Failure to repair fiberglass-reinforced UST by the manufacturer's authorized representative, or in accordance with accepted codes and standards	\$150
11-281-44 (b) (3)	Failure to have repaired UST, piping or containment wall, tightness or integrity tested prior to returning the UST or tank system back into service	\$300
11-281-44 (b) (4)	Failure to test cathodic protection system within six months of repair of any cathodically protected UST or tank system	\$150

11-281-45(b)(1)	Failure to generate and maintain accurate records of compliance with corrosion protection requirements	\$50
11-281-45(b)(2)	Failure to generate and maintain accurate records of compliance with the release detection requirements for at least 3 years	\$50
11-281-45(b)(3)	Failure to generate and maintain accurate documentation of maintenance and tests performed on the UST system for at least 3 years	\$50
11-281-45(b)(4)	Failure to generate and maintain accurate documentation of repairs to the UST system for the life of the equipment	\$50
11-281-45(b)(5)	Failure to generate and maintain accurate records that the monitoring equipment is designed to produce	\$50
11-281-45(b)(6)	Failure to maintain all written performance claims for release detection equipment for the life of the equipment	\$50
11-281-45(b)(7)	Failure to maintain operating manuals for all currently installed leak detection equipment for the remaining operating life of the UST or UST system	\$50
11-281-45(b)(8)	Failure to generate and maintain record of compliance with change-in-service or permanent closure requirements including results of the site assessment or to maintain the records for the required time period	\$50
11-281-45(b)(9)	Failure to maintain record of permit or variance or both	\$50
11-281-45(b)(10)	Failure to maintain records of proof of current financial assurance mechanism used to demonstrate financial responsibility	\$50
11-281-45(c)(1)	Failure to make records immediately available for inspection by maintaining the records on site or by using another method approved by the director	\$50

11-281-45(c)(2)	Failure to maintain permanent closure records at a readily available alternative site, or to provide records upon request	\$50
11-281-46(a)(1)	Failure to designate a trained and certified class A, class B or class C operator, or to designate operators within the specified time frame	\$300
11-281-46(a)(2)	Failure to have individual trained and certified for the operator class for which he or she is designated	\$150
11-281-46(a)(3)	Failure to submit proper written notice to the department with proper class A and class B operator information, or to submit notice within the specified time frame	\$50
11-281-46(a)(4)	Failure to maintain current copies of all operator training certifications or to make copies immediately available upon request	\$50
11-281-46(c)(1)	Failure to obtain operator training from a program approved or administered by the department	\$50
11-281-46(c)(3)	Failure to retrain and recertify class A or class B operator every five years, or class C operator every 365 days	\$150
11-281-46(c)(4)	Failure to retrain and recertify class A and class B operators within 90 days after an associated UST system was determined to be out of compliance	\$300
11-281-51(a)	Failure to provide proper release detection method	\$300
11-281-51(b)	Failure to notify the department of release detection conditions indicating a possible release	\$150
11-281-51(c)	Failure to properly service or maintain release detection equipment in the time frame specified, or to have service and maintenance of release detection equipment conducted by a technician with current certification or training appropriate to the equipment serviced	\$300

11-281-51(d)	Failure to close or complete change-in-service for any UST system that cannot meet release detection requirements	\$300
11-281-52(1)	Failure to conduct proper inventory control monthly	\$300
11-281-52(1)(A)*	Failure to record inventory volume measurements each operating day	\$50
11-281-52(1)(B)*	Failure to use inventory control equipment capable of measurements to the nearest 1/8th of an inch over the full range of the tank's height	\$50
11-281-52(1)(C)*	Failure to take proper readings or measurements	\$50
11-281-52(1)(D)*	Failure to reconcile product inputs with delivery receipts by measurement of tank inventory volume before and after deliveries	\$50
11-281-52(1)(E)*	Failure to make deliveries through a drop tube that extends to within one foot of the tank bottom	\$50
11-281-52(1)(F)*	Failure to have product dispensing equipment properly calibrated every 365 days	\$50
11-281-52(1)(G)*	Failure to measure water level to the nearest 1/8th of an inch at least once a month	\$50
11-281-52(2)	Improper operation or maintenance of manual tank gauging (MTG)	\$300
11-281-52(2)(A)	Failure to conduct MTG for the appropriate time period	\$50

11-281-52(2)(B)	Failure to take two proper level measurements at the beginning and end of the appropriate MTG time period	\$50
11-281-52(2)(C)	Failure to use MTG equipment that is capable of measurements to the nearest 1/8th of an inch over the full range of the tank's height	\$50
11-281-52(2)(D)	Variation between beginning and ending measurements exceeded weekly or monthly standard and was not treated as a suspected leak	\$50
11-281-52(2)(E)	Failure to take weekly measurements	\$50
11-281-52(3)	Failure to properly conduct tank tightness testing that meets specified requirements	\$150
11-281-52(4)	Failure to use ATG that meets specified requirements	\$300
11-281-52(4)(A)	Failure to use ATG with an automatic product level monitor that can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product	\$150
11-281-52(4)(B)	Failure to conduct inventory control or another test of equivalent performance when ATG is not third party certified	\$150
11-281-52(5)	Inadequate testing or monitoring of vapors	\$300
11-281-52(5)(A)#	Failure to use sufficiently porous backfill	\$150
11-281-52(5)(B)#	Failure to use a sufficiently volatile substance or tracer compound in conjunction with vapor monitoring devices	\$150
11-281-52(5)(C)#	Failure to ensure that the measurement of vapors by the monitoring device remains operative so that a release could not go undetected for more than 30 days	\$150

11-281-52(5)(D)#	Failure to ensure the level of background contamination does not interfere with the method used to detect releases	\$150
11-281-52(5)(E)#	Failure to use a vapor monitor that is designed and operated to detect any significant increase in concentration above background of the regulated substance stored, or tracer compound placed in tank system	\$150
11-281-52(5)(F)#	Failure to assess the site with written documentation to ensure compliance with requirements or to properly establish the number and position of monitoring wells	\$150
11-281-52(5)(G)#	Failure to clearly mark or secure monitoring wells for vapor monitoring	\$150
11-281-52(6)	Improper testing or monitoring of a ground water monitoring system	\$300
11-281-52(6)(A)@	Failure to use the system on a stored substance that is immiscible in water and has a specific gravity of less than one	\$150
11-281-52(6)(B)@	Failure to employ a system with proper ground water level and soil conductivity	\$150
11-281-52(6)(C)@	Failure to use proper monitoring well casing	\$150
11-281-52(6)(D)@	Failure to properly seal monitoring wells	\$150
11-281-52(6)(E)@	Failure to use monitoring wells that intercept or are as close to the excavation zone as technically feasible	\$150
11-281-52(6)(F)@	Failure to use equipment that can detect at least 1/8th of an inch of free product on top of ground water in the monitoring wells	\$150
11-281-52(6)(G)@	Failure to assess the site with written documentation to ensure compliance with the requirements or to establish the number and position of monitoring wells	\$150

11-281-52(6)(H)@	Failure to clearly mark or secure monitoring wells	\$150
11-281-52(7)	Improper design, construction or installation of interstitial monitoring	\$300
11-281-53	Failure to provide a method of release detection for underground piping that meets requirements	\$300
11-281-53(1)	Failure to provide automatic line leak detector that meets performance requirements or failure to conduct proper test of operability of line leak detector at least every 365 days	\$150
11-281-53(1)(A)	Failure to conduct proper line tightness testing every 365 days, or to conduct proper release detection monitoring on underground pressurized piping system installed before the effective date of these rules	\$300
11-281-53(1)(B)	Failure to provide interstitial monitoring for pressurized piping installed after the effective date of these rules	\$300
11-281-53(2)(A)	Failure to conduct proper line tightness test at least every three years or conduct proper release detection monitoring on suction piping installed prior to the effective date of these rules	\$300
11-281-53(2)(B)	Failure to provide interstitial monitoring for suction piping installed after the effective date of these rules	\$300
11-281-53(2)(C)	Suction piping does not meet all specifications for safe suction	\$300
11-281-54(a)	Failure to monitor, verify, and generate a record to confirm, at least every 30 days, or as otherwise specified, that the release detection method does not indicate a release.	\$300
11-281-61	Failure to notify the department within 24 hours of evidence of a suspected release	\$150
11-281-63	Failure to meet the requirements of investigating and confirming a	\$300

suspected release within seven days following discovery

11-281-64(a)	Failure to properly contain and immediately clean up all spills and overfills	\$300
11-281-64(b)	Failure to notify the department within 24 hours and begin release response action as required	\$300
11-281-81(b)	Failure to continue operation and/or maintenance of corrosion protection system in a temporarily closed tank system	\$150
11-281-81(b)	Failure to continue operation and/or maintenance of release detection in a temporarily closed tank system that is not empty	\$300
11-281-81(d)	Failure to comply with temporary closure requirements	\$300
11-281-81(d)(1)	Failure to leave vent lines open and functioning for a tank system that is temporarily closed for 90 or more days	\$150
11-281-81(d)(2)	Failure to cap and secure all other lines, pumps, manways, and ancillary equipment for a tank system that is temporarily closed for 90 or more days	\$150
11-281-81(e)	Failure to permanently close or upgrade a tank system where regulated substances have not been deposited after 365 days	\$300
11-281-82(b)	Failure to notify the department, in writing, at least 30 days before beginning either permanent closure or change-in-service	\$300
11-281-82(c)	Failure to notify the department at least 7 days before a permanent closure or change-in-service action	\$150
11-281-82(d)(1)	Failure to empty the UST and tank system by removing all liquid contents and accumulated sludges for tank closure	\$300

11-281-82 (d) (2)	Failure to remove closed UST or tank system from the ground or fill closed UST or tank system with an inert solid material	\$300
11-281-82 (d) (3)	Failure to conduct a site assessment of the area beneath and around the closed UST or tank system	\$300
11-281-85	Failure to properly maintain closure or change-in-service records	\$300
11-281-94 (a)	Failure to meet the financial responsibility requirement for per-occurrence coverage amount	\$150
11-281-94 (b)	Failure to meet the financial responsibility requirement for annual aggregate coverage amount	\$150
11-281-94 (f)	Failure to review and adjust financial assurance after acquiring new or additional USTs	\$150
11-281-95	Failure to use an approved mechanism or combination of mechanisms to demonstrate financial responsibility	\$150
11-281-110 (a) (1)	Failure to submit evidence of financial responsibility to the director within 30 days of detecting a known or suspected release	\$150
11-281-110 (a) (2)	Failure to report evidence of financial responsibility to the director if the provider becomes incapable of providing financial assurance and the owner or operator is unable to obtain alternate coverage within 30 days	\$150
11-281-111 (b) (10)	Failure to certify that the financial assurance mechanism is in compliance with requirements	\$150
11-281-129 (a)	Regulated substance was delivered, deposited, or accepted into an ineligible UST or UST system	\$300

11-281-129(c)	Tag or notice of ineligibility was removed, tampered with, destroyed or damaged	\$300
342L-6(e), HRS	Failure to renew a variance	\$150
342L-30(a)	Failure to notify the department by December 31, 1989, of the existence of a tank	\$300
342L-30(b)	Failure to notify the department by December 31, 1989, of the existence of a tank taken out of operation between January 1, 1974, and May 19, 1986	\$300
342L-30(c)	Failure to notify the department within 30 days after the installation of a tank brought into use after May 19, 1986	\$300
342L-30(e)	Failure to notify the department within 30 days of June 18, 1992, whether a person who acquires ownership of a tank after December 31, 1989 still owns the tank	\$150
342L-30(g)	Failure to notify tank purchaser of notification requirements	\$300
* If citing more than 5 paragraphs, cite instead 11-281-52(1)		
# If citing more than 5 paragraphs, cite instead 11-281-52(5)		
@ If citing more than 5 paragraphs, cite instead 11-281-52(6)		

Amendments to and compilation of chapter 281, title 11, Hawaii Administrative Rules, on the Summary Page dated _____ were amended on _____ following a public hearing held on April 8, 2013, after public notice was given in the Honolulu Star-Advertiser, the Maui News, the Garden Island News and The Hawaii Tribune-Herald on March, 1, 2013.

The amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: _____

Filed

APPROVED AS TO FORM:



Wade H. Hargrove III
Deputy Attorney General

