

STATE OF HAWAII
DEPARTMENT OF HEALTH
SOLID AND HAZARDOUS WASTE BRANCH
UNDERGROUND STORAGE TANK SECTION

NOTICE OF VIOLATION AND ORDER

<p>TO: THE UNITED STATES DEPARTMENT OF THE NAVY c/o REAR ADMIRAL TIMOTHY KOTT COMMANDER NAVY REGION HAWAII</p> <p>850 Ticonderoga St., Suite 110 JBPHH, Hawaii 96860-5101</p> <p>Respondent</p>	<p>NOVO No. 21-UST-EA-01</p> <p>Re: Violations at the underground storage tank system located at Red Hill/Pearl Harbor-Hickam on the Island of Oahu, aka the Red Hill Bulk Fuel Storage Facility</p>
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This Notice of Violation and Order (NOVO) is an administrative enforcement action initiated pursuant to chapters 91 and 342L of the Hawaii Revised Statutes (HRS) and chapters 11-1 and 11-280.1 of the Hawaii Administrative Rules (HAR) by the DEPARTMENT OF HEALTH (the "Department") against THE UNITED STATES DEPARTMENT OF THE NAVY, c/o REAR ADMIRAL TIMOTHY KOTT, COMMANDER NAVY REGION HAWAII (the "Respondent") and is based upon violations observed during an inspection of the Red Hill Bulk Fuel Storage Facility (the "Facility") that was conducted during the period of September 28, 2020 to October 9, 2020 (the "Inspection") and the subsequent examination of information related thereto. Respondent is the owner and operator of the Facility. This NOVO concerns only the violations identified herein and does not function to preclude or limit actions by any public agency or private party. The Department reserves the right to bring other actions for other violations as may be necessary to protect public health and the environment.

I. NOTICE OF VIOLATION

Statutes/Rules	<p>In accordance with the Resource Conservation and Recovery Act (RCRA) [see 42 U.S.C. sections 6991f and 6991g], the Department has authority to investigate federal underground storage tank (UST) facilities and to require immediate compliance with, and to assess an administrative penalty for violations of, chapter 342L, HRS, or any rule adopted pursuant thereto.</p> <p>Section 342L-7(b), HRS, states that:</p> <p>"For the purpose of developing or assisting in the development of any rule, conducting any study, investigating an actual or suspected release, monitoring for compliance or noncompliance with this chapter, any rule or standard adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, taking release response action, or enforcing this chapter, any duly authorized representative of the department may:</p> <ol style="list-style-type: none">(1) Enter at reasonable times any establishment or place;(2) Inspect and obtain samples from any person of any regulated substances contained in any underground storage tank or tank system;(3) Conduct monitoring or testing of the tanks or tank systems, associated equipment, contents, or soils, air, surface water, or groundwater; and(4) Take release response action." <p>Section 342L-8(a), HRS, states that:</p> <p>"If the Director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit or variance issued pursuant to this chapter, the director may do one or more of the following:</p>
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- (1) Issue an order assessing an administrative penalty for any past or current violation;
- (2) Issue an order requiring compliance immediately or within a specified time; or
- (3) Commence a civil action in the circuit environmental court in the circuit in which the violation occurred or the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties, or other relief."

Section 342L-10(a), HRS, states that:

"Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$25,000 for each individual tank for each day of each violation. Each day of each violation shall constitute a separate offense. In addition, any person who fails to comply with an order issued under this chapter within the time specified in the order shall be fined not more than \$25,000 for each day of noncompliance with the order. Any action taken in environmental court to impose or collect the penalty provided for in this subsection shall be considered a civil action."

Section 11-280.1-31(1), HAR, requires that for metal UST systems with corrosion protection, the corrosion protection system must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

Section 11-280.1-33(a)(5), HAR, requires that prior to the return to use of a repaired UST system, any repaired piping that routinely contains product must pass a line tightness test in accordance with section 11-280.1-44(2).

The term "repair" means "to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly." [section 11-280.1-12, HAR]

The line tightness test must be able to "detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure." [section 11-280.1-44(2), HAR]

Section 11-280.1-35(a)(1), HAR, requires that spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) prevent releases to the environment by either being double walled and periodically monitored at least once every thirty-one (31) days, or being tested for liquid tightness at least once every three hundred sixty-five (365) days in a manner prescribed by the manufacturer, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, or as otherwise approved by the Department.

Section 11-280.1-36(a)(4), HAR, requires walkthrough inspections of hydrant pits to visually check for damage, remove liquid or debris, and check for any leaks at least once every thirty-one (31) days where confined space entry is not required.

Section 11-280.1-41(a)(2)(A), HAR, requires tanks installed before July 15, 2018 that are part of an airport hydrant fuel distribution system or a UST system with field-constructed tanks, and that are not field-constructed tanks with a capacity greater than 50,000 gallons, to be monitored for releases at least every thirty-one days using one of the methods listed in section 11-280.1-43(4) to (9), HAR.

Nature of the Violations	<p>Note: <i>The counts below reflect only those violations for which a penalty has been assessed. The penalties assigned to each count, and instructions with respect to areas of non-compliance, are contained in the Order below. This NOVO is the result of a routine UST compliance inspection, is being addressed separate and apart from the contested case in DOH Docket No. 19-UST-EA-01, and is in no way meant to influence the final decision in that contested case. The inclusion of or omission from this NOVO of any area of potential non-compliance with chapter 11-280.1, HAR, that may also be subject to dispute in the contested case in Doc. No. 19-UST-EA-01 should not be interpreted as a declaration by the Department of a position in that other matter.</i></p> <p>Count I: At the time of Inspection, a device referred to by Respondent as Rectifier #10, intended to provide corrosion protection (via electrical current, i.e., “cathodic protection”) for the underground pipeline running from the pump house to the aboveground storage tank referred to by Respondent as AST #55, was not in operation.</p> <p><i>Consequently, at the time of Inspection, Respondent was in violation of section 11-280.1-31(1), HAR.</i></p> <p>Count II: At the time of Inspection, the Respondent had failed to perform adequate line tightness testing on repaired piping prior to returning that piping to service. The repaired piping in question consisted of three (3) active lines identified as containing the fuels JP-5, F-24 and F-76 transporting fuel from the pump house to Hotel Pier (aka the “Hotel Pier” pipelines). Repairs, including but not limited to welding and other similar efforts, were made to improve the functionality of the pipelines. At the time of Inspection, however, Respondent had not performed a line tightness test at a leak rate of 0.1 gph in accordance with section 11-280.1-44(2) on any of the three (3) repaired Hotel Pier pipelines prior to their return to use.</p> <p><i>Consequently, at the time of Inspection, Respondent was in violation of section 11-280.1-33(a)(5), HAR.</i></p> <p>Count III: At the time of Inspection, Respondent had failed to test, at least annually and in a manner prescribed by the manufacturer, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, or as otherwise approved by the Department, the integrity of five (5) portable spill prevention equipment modules (i.e., catchments used to contain accidental drips during fuel receipts), located at the Facility’s various piers and the Kuahua truck loading rack where fuel was routinely transferred from vehicles to the Facility. Additionally, Respondent failed to test, at least annually and in a manner prescribed by the manufacturer, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, or as otherwise approved by the Department, the integrity of four (4) fixed spill containment structures (concrete structures) located at the Hickam truck loading rack.</p> <p><i>Consequently, at the time of Inspection, Respondent was in violation of section 11-280.1-35(a)(1), HAR.</i></p> <p>Count IV: At the time of Inspection, Respondent had failed to perform an adequate walkthrough inspection by visually checking the Diamond Head Hydrant Loop pit 21D for damage, removing liquid or debris, and checking for any leaks at least every thirty-one (31) days.</p> <p><i>Consequently, at the time of Inspection, Respondent was in violation of section 11-280.1-36(a)(4), HAR.</i></p>
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	<p>Count V: At the time of Inspection, Respondent was not utilizing any form of release detection for two (2) double-walled underground storage tanks referred to by Respondent as the Diamond Head (2,000 gal., installed on or about July 2010) and Ewa (4,000 gal., installed on or about May 2006) Product Recovery Tanks. Since these tanks were installed before July 15, 2018, are part of an airport hydrant fuel distribution system, and have a capacity of less than or equal to fifty thousand (50,000) gallons, they need to be monitored with release detection at least every thirty-one (31) days using one of the methods listed in section 11-280.1-43(4) to (9), HAR.</p> <p><i>Consequently, at the time of Inspection, Respondent was in violation of section 11-280.1-41(a)(2)(A), HAR.</i></p>
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II. ORDER

Respondent is hereby ordered to:

1. Within thirty (30) days of receipt of this NOVO, notify the Department of, and describe in detail, any and all corrective actions undertaken to remedy the violations described Counts I, III, IV, and V in this NOVO and any and all efforts to return the Facility to compliance with chapter 11-280.1, HAR.
2. Within thirty (30) days of receipt of this NOVO, submit to the Department for review and approval, a Work Plan and Implementation Schedule to correct the following areas of continued non-compliance:
 - a) The violation contained, and described in more detail, in Count II.
 - b) The Facility continues to repair USTs without performing an adequate tank tightness test. Per section 11-280.1-33(a), HAR, Respondent must "ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances." Further, section 11-280.1-33(a)(4), HAR, specifies that "[p]rior to the return to use of a repaired UST system, any repaired USTs must pass a tank tightness test in accordance with section 11-280.1-43(3)." Section 11-280.1-43(3), HAR, provides that "[t]ank 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." (emphasis added). Respondent's process of "Clean, Inspect and Repair" (CIR) necessarily involves the repair of tanks, all of which must be tested for tightness in accordance with chapter 11-280.1, HAR. The tanks Respondent refers to as Tank No. 5 and the "surge tanks" are examples of USTs to which this chapter applies and which remain out of compliance with section 11-280.1-33(a) and 11-280.1-33(a)(4).
3. Upon the Department's approval of the Work Plan and Implementation Schedule, Respondent shall implement the Work Plan in accordance with the approved Implementation Schedule and work at the site shall commence no later than thirty (30) days after the Department's approval.
4. Pay an administrative penalty as follows for the above violations:
 - a) Count I - Failure to provide corrosion protection in violation of section 11-280.1-31(1), HAR \$30,000.00
 - b) Count II - Failure to perform a line tightness test on three (3) active pipelines subsequent to repairs in violation of section 11-280.1-33(a)(5), HAR \$179,982.00

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| c) | <u>Count III</u> - Failure to perform a liquid tightness test on spill prevention equipment in violation of section 11-280.1-35(a)(1), HAR | \$22,950.00 |
| d) | <u>Count IV</u> - Failure to perform an adequate walkthrough inspection in violation of section 11-280.1-36(a)(4), HAR | \$2,250.00 |
| e) | <u>Count V</u> - Failure to maintain adequate release detection in violation of section 11-280.1-41(a)(2)(A), HAR | \$90,000.00 |

Total administrative penalty: \$325,182.00

This NOVO becomes final and enforceable, and the penalty becomes due and payable, 20 days after your receipt of this NOVO, unless before the 20 days expire, you submit a written request for a hearing to the Hearings Officer, c/o Director of Health, Department of Health, 1250 Punchbowl Street, Third Floor, Honolulu, HI 96813 and to the Solid and Hazardous Waste Branch, Department of Health, 2827 Waimano Home Road #100, Pearl City, Hawaii 96782.

In any request for a hearing, please include a copy of this NOVO. At a hearing, you may seek to avoid any penalty, and the Department may seek the maximum penalty per day, per violation. Parties may present evidence and witnesses on their behalf, and may examine and cross-examine all witnesses and evidence presented by the Department. Parties may be represented by attorneys at their own expense, or they may represent themselves. Any hearing will be in accordance with chapter 91, HRS, and chapter 11-1, HAR. The final administrative penalty will be determined at the conclusion of the hearing and will be based upon all the evidence. The final penalty may be greater or less than that contained in this NOVO, or no penalty at all.

In lieu of a hearing, you may send a certified check or money order to the Underground Storage Tank Section of the Department of Health, 2827 Waimano Home Road #100, Pearl City, Hawaii 96782, within 20 days of your receipt of this NOVO, in an amount equal to the administrative penalty noted above and complete any corrective action required by this NOVO. This will satisfy the NOVO and terminate this administrative action. Upon receipt of the full penalty amount and confirmation of the satisfactory completion of any corrective action, the Department will notify you that this administrative action has been closed. Any certified check or money order should be made payable to the "State of Hawaii" and include the NOVO reference number.

If you have questions, please call Lene Ichinotsubo, P.E., Acting Chief of the Solid and Hazardous Waste Branch at (808) 586-4226. If you have special needs due to a disability and require accommodation to aid you in participating in the hearing or pre-hearing conference, please contact the Hearings Officer at (808) 586-4409 (voice) or through the Telecommunications Relay Service (711), at least ten (10) working days before the hearing or pre-hearing conference date.

DATED: Honolulu, Hawaii October 26, 2021

DEPARTMENT OF HEALTH
STATE OF HAWAII

Kathleen Ho

APPROVED AS TO FORM:



Wade H. Hargrove III
Deputy Attorney General

KATHLEEN S. HO
Deputy Director for Environmental Health