DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-280.1
Hawaii Administrative Rules

February 18, 2020

SUMMARY

1. Chapter 11-280.1 is amended and compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-280.1

UNDERGROUND STORAGE TANKS

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Historical note: This chapter is based substantially upon chapter 11-281. [Eff 1/28/00; am and comp 8/09/13; R 7/15/18]

## SUBCHAPTER 1

## PROGRAM SCOPE AND INSTALLATION REQUIREMENTS FOR PARTIALLY EXCLUDED UST SYSTEMS

**§§11-280.1-1 to 11-280.1-9 (Reserved).**

**§11-280.1-10 Applicability.** (a) The requirements of this chapter apply to all owners and



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operators of an UST system as defined in section 11-280.1-12, except as otherwise provided in this section.

(1) Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this chapter as follows:

(A) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet all applicable requirements of this chapter, except that those installed before July 15, 2018 must meet the applicable requirements of subchapters 4, 8, 10, and 12 no later than July 15, 2019.

(B) UST systems that store fuel solely for use by emergency power generators must meet all applicable requirements of this chapter, except that those installed before August 9, 2013 must meet the applicable requirements of subchapter 4 no later than July 15, 2019.

(2) Any UST system listed in subsection (c) must meet the requirements of section 11-280.1-11.

(b) Exclusions. The following UST systems are excluded from the requirements of this chapter:

(1) Any UST system holding hazardous wastes listed or identified under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under chapter 342D, Hawaii Revised Statutes, or Section 402 or 307(b) of the Clean Water Act;

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

(4) Any UST system whose capacity is one hundred ten gallons or less;

(5) Any UST system that contains a de minimis concentration of regulated substances; and

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Partial Exclusions. Subchapters 2, 3, 4, 5, 7, 10, and 12 do not apply to:

(1) Wastewater treatment tank systems not covered under subsection (b)(2);

(2) Aboveground storage tanks associated with:

(A) Airport hydrant fuel distribution systems; and

(B) UST systems with field-constructed tanks;

(3) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and

(4) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 C.F.R. part 50. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §342L-3)

**§11-280.1-11 Installation requirements for partially excluded UST systems.** (a) Owners and operators must install an UST system listed in section 11-280.1-10(c)(1), (3), or (4) storing regulated substances (whether of single or double wall



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construction) that meets the following requirements:

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding subsection (a), an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the tank. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-12 Definitions.** When used in this chapter, the following terms have the meanings given below:

"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 system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Airport hydrant fuel distribution system" (also called "airport hydrant system") means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline,

barge, rail car, or other motor fuel carrier.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"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, a 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 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 tank systems.

"Class A operator" means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements established by the department. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

"Class B operator" means the individual who has day-to-day responsibility for implementing applicable regulatory requirements established by the department.



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The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST system.

"Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

"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 tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

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

"Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

"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 tanks. 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



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or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"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., tank from piping).

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

"Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

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

"EPA" means the United States Environmental Protection Agency.

"Excavation zone" means the volume containing the tank 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 tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. Farm includes fish hatcheries, rangeland, and nurseries with growing operations.

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

"Flow-through process tank" is a tank 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 tanks do not include tanks 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.

"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.

"Hazardous substance" means a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, except any substance regulated as a hazardous waste under chapter 342J, Hawaii Revised Statutes, or

the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance or any mixture of such substances and petroleum, and that is not a petroleum UST system.

"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.

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

"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 underground storage tank system from releasing product.

"Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (e.g., motor gasoline blended with alcohol).

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning

when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

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

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

"Owner" means:

(1) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

(2) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Permit" means written authorization, as provided for in section 342L-4, Hawaii Revised Statutes, 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).

"Petroleum UST system" means an underground storage tank system that contains petroleum or a

mixture of petroleum with de minimis quantities of other regulated substances. Such 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 that is constructed of non-earthen materials.

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

"Regulated substance" means hazardous substances, petroleum, and any other substance designated by the department that, when released into the environment, may present substantial danger to human health, welfare, or the environment. The term regulated substance includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system into groundwater, surface water, or subsurface soils.

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

"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.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Secondary containment" or "secondarily contained" means a release prevention and release

detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

"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 tank 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.

"Temporary closure" or "temporarily closed" means that owners and operators do not deposit regulated substances into the UST or tank system nor dispense regulated substances from the UST or tank system for sixty days or longer, except for UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks. For UST systems that store fuel solely for use by emergency power generators and UST systems with field-constructed tanks, "temporary closure" or "temporarily closed" means that the UST or tank system



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is empty, as defined in section 11-280.1-70(a), and owners and operators do not deposit regulated substances into the UST or tank system for sixty days or longer.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil, groundwater, and surface water.

"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 release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent 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;

(2) Tank used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tank;

(4) Pipeline facility (including gathering lines):

(A) Which is regulated under 49 U.S.C. chapter 601; or

(B) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline

pressure or as an integral part of a pipeline;

(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; or

(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.

The term underground storage tank or UST does not include any pipes connected to any tank which is described in paragraphs (1) to (9).

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"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 C.F.R. part 280.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ]

(Auth: HRS §342L-3) (Imp: HRS §342L-3)

**§11-280.1-13 Installation requirements for partially excluded UST systems--codes of practice.** The following codes of practice may be used as

guidance for complying with section 11-280.1-11:

(1) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";

(2) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

(3) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or

(4) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems". [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§§11-280.1-14 to 11-280.1-19 (Reserved).**

SUBCHAPTER 2

UST SYSTEMS: DESIGN, CONSTRUCTION, AND INSTALLATION

**§11-280.1-20 Performance standards for UST systems.** (a) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, owners and operators of UST systems must meet all applicable requirements of this subchapter. UST systems must meet the requirements of this section as follows:



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(1) UST systems installed after December 22, 1988, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the requirements of this section, except as specified in subsection (g).

(2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed on or after July 15, 2018 must meet the requirements of this section.

(b) Tanks. Each tank 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 as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic; or

(2) The tank is constructed of steel and cathodically protected in the following manner:

(A) The tank is coated with a suitable dielectric material;

(B) Field-installed cathodic protection systems are designed by a corrosion expert;

(C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and

(D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or according to guidelines established by the department; or

(3) The tank is constructed of steel and clad or jacketed with a non-corrodible material; or

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

(A) The tank is installed at a site that is

determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the department to be 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 paragraphs (1) to (4).

(c) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, installed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of a non-corrodible material; or

(2) The piping is constructed of steel and cathodically protected in the following manner:

(A) The piping is coated with a suitable dielectric material;

(B) Field-installed cathodic protection systems are designed by a corrosion expert;

(C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and

(D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or guidelines established by the department; or

(3) The piping is constructed of metal without additional corrosion protection measures



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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) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the piping; or

(4) The piping construction and corrosion protection are determined by the department to be 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) to (3).

(d) Spill and overfill prevention equipment.

(1) Except as provided in paragraphs (2) and (3), to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(A) 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

(B) Overfill prevention equipment that will:

(i) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;

(ii) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or

(iii) Restrict flow thirty minutes prior

to overfilling, alert the transfer operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (1) if:

(A) 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 paragraph (1)(A) or (B); or

(B) The UST system is filled by transfers of no more than twenty-five gallons at one time.

(3) Flow restrictors used in vent lines may not be used to comply with paragraph (1)(B) when overfill prevention is installed or replaced after July 15, 2018.

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

(5) Spill and overfill prevention equipment must be periodically tested or inspected in accordance with section 11-280.1-35.

(e) Installation. The UST system 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.

(f) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or



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inspection is used to demonstrate compliance with subsection (e) by providing a certification of compliance on the "Certification of Underground Storage Tank Installation" form prescribed by the director and in accordance with section 11-280.1-325(d).

(1) The installer has been certified by the tank and piping manufacturers;

(2) The installer has been certified or licensed by the department;

(3) The installation has been inspected and certified by a licensed professional engineer with education and experience in UST system installation;

(4) The installation has been inspected and approved by the department;

(5) All work listed in the manufacturer's installation checklists has been completed and the checklists maintained; or

(6) The owner and operator have complied with another method for ensuring compliance with subsection (e) that is determined by the department to be no less protective of human health and the environment.

(g) Secondary containment.

(1) UST systems installed on or after August 9, 2013, other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).

(2) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for:

(A) Suction piping that meets the requirements of section 11-280.1-41(b)(6);

(B) Piping associated with UST systems with

field-constructed tanks with a capacity greater than 50,000 gallons; and

(C) Piping associated with airport hydrant systems. [Eff 7/16/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-21 Upgrading of UST systems.** (a) All UST systems must comply with one of the following requirements:

(1) UST system performance standards in section 11-280.1-20(b) to (d);

(2) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before July 15, 2018:

(A) The system performance standards in section 11-280.1-20(b) and (c); and

(B) Not later than July 15, 2019, the system performance standards under section 11-280.1-20(d); or

(3) Closure requirements under subchapter 7.

(b) UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than July 15, 2028, tanks and piping installed before August 9, 2013 must be provided with secondary containment that meets the requirements of section 11-280.1-24, except for suction piping that meets the requirements of section 11-280.1-41(b)(6).

(c) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks: Not later than July 15, 2038, tanks and piping installed before July 15, 2018 must be provided with secondary containment that meets the requirements of section 11-280.1-24 or must utilize a design which the director determines is protective of human health and the environment, except for:

(1) Suction piping that meets the requirements

of section 11-280.1-41(b)(6);
(2) Piping associated with UST systems with field-constructed tanks with a capacity greater than 50,000 gallons; and
(3) Piping associated with airport hydrant systems. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-22 (Reserved).**

**§11-280.1-23 Tank and piping design for hazardous substance UST systems.** Owners and operators of hazardous substance UST systems must provide secondary containment for tanks and underground piping that meets the requirements of section 11-280.1-24. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-24 Secondary containment design.** (a) Secondary containment systems must be designed, constructed, and installed to:
(1) Contain regulated substances leaked from the primary containment until they are detected and removed;
(2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
(3) Be checked for evidence of a release at least every thirty-one days.
(b) Double-walled tanks must be designed, constructed, and installed to:
(1) Contain a leak from any portion of the inner tank within the outer wall; and
(2) Detect the failure of the inner wall.
(c) External liners (including vaults) must be

designed, constructed, and installed to:

(1) Contain one hundred percent of the capacity of the largest tank within its boundary;

(2) Prevent precipitation and groundwater intrusion from interfering with the ability to contain or detect a leak or release of regulated substances; and

(3) Surround the UST completely to effectively prevent lateral and vertical migration of regulated substances. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-25 Under-dispenser containment.** (a) Dispenser systems installed on or after August 9, 2013, other than for airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must have under-dispenser containment that meets the requirements in subsection (c).

(b) Dispenser systems installed on or after July 15, 2018 must have under-dispenser containment that meets the requirements in subsection (c).

(c) Under-dispenser containment required by subsection (a) or (b) must:

(1) Be liquid-tight on its sides, bottom, and at any penetrations;

(2) Be compatible with the substance conveyed by the piping; and

(3) Meet one of the following requirements:

(A) Allow for visual inspection and access to the components in the containment system; or

(B) Be monitored for leaks from the dispenser system with a sensing device that signals the operator of the presence of regulated substances. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)



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**§11-280.1-26 Performance standards and design for UST systems--codes of practice.** (a) The following codes of practice may be used to comply with section 11-280.1-20(b)(1):

(1) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"; or

(2) Underwriter's Laboratories of Canada S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".

(b) The following codes of practice may be used to comply with section 11-280.1-20(b)(2):

(1) Steel Tank Institute "Specification STI-P3® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";

(2) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";

(3) Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", and S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids", and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";

(4) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or

(5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", and Underwriters Laboratories Standard 58, "Standard for Steel Underground

Tanks for Flammable and Combustible Liquids".

(c) The following codes of practice may be used to comply with section 11-280.1-20(b)(3):

(1) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";

(2) Steel Tank Institute ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks";

(3) Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or

(4) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®".

(d) The following codes of practice may be used to comply with section 11-280.1-20(c)(1):

(1) Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or

(2) Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".

(e) The following codes of practice may be used to comply with section 11-280.1-20(c)(2):

(1) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

(2) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";

(3) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";

(4) NACE International Standard Practice SP

0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or

(5) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".

(f) Tank and piping system installation practices and procedures described in the following codes of practice may be used to comply with the requirements of section 11-280.1-20(e):

(1) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

(2) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(3) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".

(g) When designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, "Petroleum Fuel Facilities". [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§§11-280.1-27 to 11-280.1-29 (Reserved).**

SUBCHAPTER 3

GENERAL OPERATING REQUIREMENTS

**§11-280.1-30 Spill and overfill control.** (a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with section 11-280.1-53. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-31 Operation and maintenance of corrosion protection.** All owners and operators of metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71:

(1) All corrosion protection systems 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.

(2) All UST 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 months of installation and at least every three years thereafter; and

(B) Inspection criteria. The criteria that are used to determine that cathodic



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protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

(3) UST systems with impressed current cathodic protection systems must also be inspected every sixty days to ensure the equipment is operating properly.

(4) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained, in accordance with section 11-280.1-34, to demonstrate compliance with the performance standards in this section. These records must provide the following:

(A) The results of the last three inspections required in paragraph (3); and

(B) The results of testing from the last two inspections required in paragraph (2). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-32 Compatibility.** (a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

(b) Owners and operators must notify the department at least thirty days prior to switching to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:

(1) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill

equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:

(A) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

(B) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or

(2) Use another option determined by the department to be no less protective of human health and the environment than the options listed in paragraph (1).

(c) Owners and operators must maintain records in accordance with section 11-280.1-34 documenting compliance with subsection (b) for as long as the UST system is used to store the regulated substance. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-33 Repairs allowed.** (a) Owners and operators of UST systems 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. The repairs must meet the following requirements:

(1) Repairs to UST 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



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tanks 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) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications;

(4) Prior 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);

(5) 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);

(6) Prior to return to use of a repaired UST system, repairs to secondary containment areas of tanks and piping used for interstitial monitoring, containment sumps used for interstitial monitoring of piping, and containment walls must have the secondary containment tested for integrity using vacuum, pressure, or liquid methods in accordance with requirements developed by the manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or requirements established by the department;

(7) Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with section 11-280.1-31(2) and (3) to ensure that it is operating properly; and

(8) Prior to the return to use of repaired spill or overfill prevention equipment, the

repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with section 11-280.1-35 to ensure it is operating properly.

(b) UST system owners and operators must maintain records, in accordance with section 11-280.1-34, of each repair until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-34 Notification, reporting, and recordkeeping.** (a) Notification. Owners and operators shall notify the department of any of the following changes in information relating to an UST or tank system by submitting the "Notification for Underground Storage Tanks" form prescribed by the director:

(1) Completed closure or change-in-service;
(2) Temporary closure or the return to currently-in-use status;
(3) Changes in product dispensing method, dispenser system, or under dispenser containment;
(4) Changes in financial responsibility mechanism;
(5) Changes in release 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) Intent to close notification. Owners and operators shall notify the department of planned



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permanent closure or change-in-service of an UST or tank system and scheduled excavation work for permanent closure or change-in-service by submitting the "Notice of Intent to Close Underground Storage Tanks" form prescribed by the director.

(c) Timing of notification. Owners and operators shall submit the notifications required in subsection (a) and (b) within thirty days following any of the changes requiring notification, except that:

(1) Notification of planned permanent closure or change-in-service must be received by the department at least thirty days before commencement of excavation work for closure or change-in-service;

(2) Notification of scheduled excavation work for permanent closure or change-in-service must be received by the department at least seven days before the scheduled work date;

(3) Notification of change in type of regulated substance stored to a regulated substance containing greater than ten percent ethanol or greater than twenty percent biodiesel must be received by the department at least thirty days before the change; and

(4) Notification of temporary closure must be received by the department within thirty days of the UST system having met the definition of temporary closure in section 11-280.1-12.

(d) Reporting. Owners and operators must submit the following information to the department:

(1) Reports of all releases including suspected releases (sections 11-280.1-50 and 11-280.1-52), spills and overfills (section 11-280.1-53), and confirmed releases (section 11-280.1-61);

(2) Release response actions planned or taken, including initial abatement measures (section 11-280.1-62), initial site characterization (section 11-280.1-63), free product removal (section 11-280.1-64), investigation for soil and groundwater

cleanup (section 11-280.1-65), and corrective action plan (section 11-280.1-66);

(3) Quarterly release response reports (section 11-280.1-65.2);

(4) Current evidence of financial responsibility as required in section 11-280.1-110; and

(5) Notice of changes in Designated Class A or B Operators (section 11-280.1-241(c)).

(e) Recordkeeping. Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (section 11-280.1-20(b)(4); section 11-280.1-20(c)(3));

(2) Documentation of operation of corrosion protection equipment (section 11-280.1-31(4));

(3) Documentation of compatibility for UST systems (section 11-280.1-32(c));

(4) Documentation of UST system repairs (section 11-280.1-33(b));

(5) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (section 11-280.1-35(b));

(6) Documentation of periodic walkthrough inspections (section 11-280.1-36(b));

(7) Documentation of compliance with under-dispenser containment sensing device requirements (section 11-280.1-37(b));

(8) Documentation of compliance with release detection requirements (section 11-280.1-45);

(9) Results of the site investigation conducted at permanent closure or change-in-service (section 11-280.1-74);

(10) Documentation of operator training (section 11-280.1-245);

(11) Permits or variances or both, including all



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documentation, as specified in section 11-280.1-334(a); and

(12) Evidence of current financial assurance mechanisms used to demonstrate financial responsibility (section 11-280.1-111).

(f) Availability and maintenance of records.

(1) Owners and operators must keep the required records at the UST site or an alternative location approved by the department.

(2) Owners and operators must make the records immediately available for inspection by the department at the UST site.

(3) Permanent closure records required under section 11-280.1-74 may be maintained or submitted to the department as provided in section 11-280.1-74.

(g) Owners and operators of UST systems must cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests by the department for document submission, testing, and monitoring by the owner or operator pursuant to chapter 342L, Hawaii Revised Statutes.

[Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-3, 342L-7, 342L-7.5, 342L-30)

**§11-280.1-35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.** (a) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must prevent releases to the environment by meeting one

of the following:

(A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than once every thirty-one days. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing periodic monitoring of this equipment; or

(B) The spill prevention equipment is tested at least once every three hundred sixty-five days to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(i) Requirements developed by the manufacturer. (Note: Owners and operators may use this option only if the manufacturer has developed requirements.);

(ii) Code of practice developed by a nationally recognized association or independent testing laboratory; or

(iii) Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in clauses (i) and (ii).

(2) Containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

(A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than annually. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing



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periodic monitoring of this equipment; or

(B) The containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(3) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in section 11-280.1-20(d) and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(b) Owners and operators must maintain records as follows (in accordance with section 11-280.1-34) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment:

(1) All records of testing or inspection must be maintained for three years; and

(2) For spill prevention equipment not tested every three hundred sixty-five days and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-36 Periodic operation and maintenance walkthrough inspections.** (a) To properly operate and maintain UST systems, beginning not later than July 15, 2019, owners and operators must conduct walkthrough inspections that, at a minimum, check the following equipment as specified below:

(1) Every thirty-one days:

(A) Spill prevention equipment:

(i) Visually check for damage;

(ii) Remove liquid or debris;

(iii) Check for and remove obstructions in the fill pipe;

(iv) Check the fill cap to make sure it is securely on the fill pipe; and

(v) For double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and

(B) Release detection equipment:

(i) Check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and

(ii) Ensure records of release detection testing are reviewed and current;

(2) Annually:

(A) Containment sumps:

(i) Visually check for damage, leaks to the containment area, or releases to the environment;

(ii) Remove liquid (in contained sumps) or debris; and

(iii) For double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and

(B) Hand held release detection equipment: Check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;



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(3) For UST systems receiving deliveries at intervals greater than every thirty-one days, spill prevention equipment may be checked in accordance with paragraph (1)(A) prior to each delivery; and

(4) For airport hydrant systems, at least once every thirty-one days if confined space entry according to the Occupational Safety and Health Administration is not required or at least annually if confined space entry is required (see 29 C.F.R. part 1910):

(A) Hydrant pits:

(i) Visually check for any damage;

(ii) Remove any liquid or debris; and

(iii) Check for any leaks; and

(B) Hydrant piping vaults: Check for any hydrant piping leaks.

(b) Owners and operators must maintain records, in accordance with section 11-280.1-34, of operation and maintenance walkthrough inspections for three years. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every thirty-one days due to infrequent deliveries. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-37 Periodic inspection and maintenance of under-dispenser containment.** (a) Under-dispenser containment that allows for visual inspection and access to the components in the containment system to meet the requirements of section 11-280.1-25 must be visually inspected for damage and have any liquid or debris removed every thirty-one days.

(b) Sensing devices for under-dispenser containment used to meet the requirements of section 11-280.1-25 must:

(1) Be operated and maintained in accordance with one of the following:
(A) The manufacturer's instructions;
(B) A code of practice developed by a nationally recognized association or independent testing laboratory; or
(C) Requirements determined by the department to be no less protective of human health and the environment than those in subparagraphs (A) and (B); and
(2) Be inspected for proper operation, and electronic and mechanical components tested, at least annually.

(c) UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with subsection (a) or (b). Written documentation of all inspection, testing, and maintenance must be maintained for at least three years. All records that the UDC sensor and connected equipment are designed to produce must be maintained for at least three years after the record is generated. [Eff 7/15/18; comp 1/17/20; am and comp JUL 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-38 General operating requirements--codes of practice.** (a) The following codes of practice may be used to comply with section 11-280.1-30(a): the transfer procedures described in National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids" or American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles". Further guidance on spill and overfill prevention appears in American Petroleum Institute Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets".

(b) The following codes of practice may be used to comply with section 11-280.1-31(2):



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(1) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";

(2) NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";

(3) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";

(4) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

(5) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(c) The following code of practice may be useful in complying with section 11-280.1-32: American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations".

(d) The following codes of practice may be used to comply with section 11-280.1-33(a)(1):

(1) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(2) American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines";

(3) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";

(4) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";

(5) National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";

(6) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";

(7) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

(8) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks".

(e) The following codes of practice may be used to comply with section 11-280.1-33(a)(6):

(1) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks";

(2) Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space"; or

(3) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

(f) The following code of practice may be used to comply with section 11-280.1-35(a)(1), (2) and (3): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities". [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)



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**§11-280.1-39 (Reserved).**

SUBCHAPTER 4

RELEASE DETECTION

**§11-280.1-40 General requirements for all UST systems.** (a) Owners and operators of UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Utilizes equipment compatible with the regulated substances being stored;

(3) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions;

(4) Is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the department to be no less protective of human health and the environment than the requirements of paragraphs (1) to (3). 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. A test of the proper operation must be performed at least every three hundred sixty-five days, or in a time frame recommended by the equipment manufacturer, whichever is more frequent. Beginning July

15, 2019, as applicable to the facility, the test must cover at a minimum the following components and criteria:

(A) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

(B) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

(C) Automatic line leak detector: test operation to meet criteria in section 11-280.1-44(1) by simulating a leak;

(D) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

(E) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation; and

(5) Meets the performance requirements in section 11-280.1-43 or 11-280.1-44, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods listed in section 11-280.1-43(2), (3), (4), (8), (9), and (10) and section 11-280.1-44(1), (2), and (4) must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in section 11-280.1-43 or 11-280.1-44 indicates a release may have occurred, owners and operators must notify the department in accordance with subchapter 5.

(c) Any UST system that cannot apply a method of release detection that complies with the requirements



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of this subchapter must complete the change-in-service or closure procedures in subchapter 7. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-41 Requirements for petroleum UST systems.** (a) Tanks. Owners and operators of petroleum UST systems must provide release detection for tanks as follows:

(1) Tanks that are neither part of an airport hydrant fuel distribution system nor a UST system with field-constructed tanks:

(A) Tanks installed before August 9, 2013 must 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), except that:

(i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and

(ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).

(B) Not later than July 15, 2028, tanks installed before August 9, 2013 must be monitored for releases at least every thirty-one days in accordance with

section 11-280.1-43(7).

(C) Tanks installed on or after August 9, 2013 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(2) Tanks that are part of an airport hydrant fuel distribution system or a UST system with field-constructed tanks, except field-constructed tanks with a capacity greater than 50,000 gallons:

(A) Tanks installed before July 15, 2018 must 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), except that:

(i) UST systems that meet the performance standards in section 11-280.1-20, and the monthly inventory control requirements in section 11-280.1-43(1) or (2), may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and

(ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).

(B) Tanks installed on or after July 15, 2018 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(3) Field-constructed tanks with a capacity greater than 50,000 gallons:

(A) Tanks installed before July 15, 2018 must be monitored for releases at least every thirty-one days using one of the



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methods listed in section 11-280.1-43(4), (7), (8), and (9) or use one or a combination of the methods of release detection listed in section 11-280.1-43(10).

(B) Tanks installed on or after July 15, 2018 must be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7).

(b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases as follows:

(1) Piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and

(ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with section 11-280.1-44(3).

(B) Suction piping. Underground piping that conveys regulated substances under suction must:

(i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);

(ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-44(3); or

(iii) Meet the standards in paragraph (6)(A) to (E).

(2) Not later than July 15, 2028, piping installed before August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet one of the following:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7); and

(ii) Be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1).

(B) Suction piping. Underground piping that conveys regulated substances under suction must:

(i) Be monitored for releases at least every thirty-one days in accordance with section 11-280.1-43(7); or

(ii) Meet the standards in paragraph (6)(A) to (E).

(3) Piping installed on or after August 9, 2013, for UST systems other than airport hydrant fuel distribution systems and UST systems with field-constructed tanks, must meet the technical specifications in paragraph (2)(A) or (B).

(4) Piping for UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons and not part of an airport hydrant fuel distribution system:

(A) Piping installed before July 15, 2018 must meet the technical specifications in paragraph (1)(A) or (B).

(B) Not later than July 15, 2038, piping installed before July 15, 2018 must meet the technical specifications in paragraph (2)(A) or (B), unless an

alternative design is approved by the director under section 11-280.1-21(c).

(C) Piping installed on or after July 15, 2018 must meet the technical specifications in paragraph (2)(A) or (B).

(5) Piping for airport hydrant fuel distribution systems and UST systems with field-constructed tanks with a capacity greater than 50,000 gallons must meet one of the following:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and

(ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with any of the methods in section 11-280.1-43(7) to (9) designed to detect a release from any portion of the underground piping that routinely contains regulated substances; or

(iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4).

(B) Suction piping. Underground piping that conveys regulated substances under suction must:

(i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);

(ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-43(7) to (9) designed to detect a release from

any portion of the underground piping that routinely contains regulated substances;

(iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4); or

(iv) Meet the standards in paragraph (6)(A) to (E).

(6) No release detection is required for suction piping that is designed and constructed to meet the following standards:

(A) The below-grade piping operates at less than atmospheric pressure;

(B) 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;

(C) Only one check valve is included in each suction line;

(D) The check valve is located directly below and as close as practical to the suction pump; and

(E) A method is provided that allows compliance with subparagraphs (B) to (D) to be readily determined. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-42 Requirements for hazardous substance UST systems.** Owners and operators of hazardous substance UST systems must monitor these systems in accordance with section 11-280.1-43(7) at least every thirty-one days. In addition, underground piping that conveys hazardous substances under pressure must be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ]

(Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-43 Methods of release detection for tanks.** Each method of release detection for tanks used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 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 percent 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 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 an accuracy of six cubic inches for every five gallons of

product withdrawn, and the meter is 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 using the appropriate minimum duration of test value in the table below during which no liquid is added to or removed from 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;

(C) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(D) 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;

(E) A release is suspected and subject to the requirements of subchapter 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

| Nominal tank capacity | Minimum duration of test | Weekly standard (one test) | Monthly standard (four test average) |
|---|---|---|---|
| 550 gallons or less | 36 hours | 10 gallons | 5 gallons |
| 551–1,000 gallons (when tank diameter is 64 inches) | 44 hours | 9 gallons | 4 gallons |
| 551–1,000 gallons (when tank diameter is 48 inches) | 58 hours | 12 gallons | 6 gallons |
| 551–1,000 gallons (also requires periodic tank tightness testing) | 36 hours | 13 gallons | 7 gallons |
| 1,001–2,000 gallons (also requires periodic tank tightness testing) | 36 hours | 26 gallons | 13 gallons |

(F) Tanks of five hundred fifty gallons or less nominal capacity and tanks with a nominal capacity of five hundred fifty-one to one thousand gallons that meet the tank diameter criteria in the table in subparagraph (E) may use manual tank gauging as the sole method of release detection. All other tanks with a nominal capacity of five hundred fifty-one to two thousand gallons may use manual tank gauging in place of inventory control in paragraph (1), combined with tank tightness testing as indicated in the table. Tanks of greater than two thousand gallons nominal capacity may not use this method 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.

(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;

(B) The automatic tank gauging equipment must meet the inventory control (or other test of equivalent performance) requirements of paragraph (1); and

(C) The test must be performed with the system operating in one of the following modes:

(i) In-tank static testing conducted at least once every thirty-one days; or

(ii) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty-one days.

(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, or soil moisture or other known interferences so that a release could go undetected for more than



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thirty-one 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 UST excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (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 soils between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, 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 an inch of free product on top of the groundwater in the monitoring wells;

(G) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (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 UST system and a secondary barrier immediately around or beneath it may be used, but only if the 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 UST systems, the sampling or testing method can detect a leak through the inner wall in any portion of the tank that routinely contains product;

(B) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least $10^{-6}$ cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty-one days;

(v) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a twenty-five-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(C) For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(8) Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data similar to those described in paragraph (1) must meet the following requirements:

(A) Report a quantitative result with a calculated leak rate;

(B) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty gallons within thirty-one days; and

(C) Use a threshold that does not exceed one-half the minimum detectible leak rate.

(9) 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 owner and operator can demonstrate to the department that the method can detect a release as effectively as any of the methods allowed in paragraphs (3) to (8), 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, the owner and operator must comply with any conditions imposed by the department on its use to ensure the protection of human health and the



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environment.

(10) Methods of release detection for field-constructed tanks. One or a combination of the following methods of release detection for tanks may be used when allowed by section 11-280.1-41.

(A) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

(B) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;

(C) Use an automatic tank gauging system to perform release detection at least every thirty-one days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;

(D) Perform vapor monitoring (conducted in accordance with paragraph (5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(E) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(i) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

(ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with paragraph (5) or (6), respectively, for the stored regulated substance) at least every thirty-one days; or

(F) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (E). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-44 Methods of release detection for piping.** Each method of release detection for piping used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

(1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with section 11-280.1-40(a)(4).

(2) Line tightness testing. A periodic test of



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piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(3) Applicable tank methods. Any of the methods in section 11-280.1-43(5) to (9) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(4) Methods of release detection for piping associated with airport hydrant systems and field-constructed tanks. One or a combination of the following methods of release detection for piping may be used when allowed by section 11-280.1-41.

(A) (i) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

MAXIMUM LEAK DETECTION RATE PER TEST SECTION VOLUME

| Test section volume (gallons) | Semiannual test—leak detection rate not to exceed (gallons per hour) | Annual test—leak detection rate not to exceed (gallons per hour) |
|---|---|---|
| <50,000 | 1.0 | 0.5 |
| ≥50,000 to <75,000 | 1.5 | 0.75 |
| ≥75,000 to <100,000 | 2.0 | 1.0 |
| ≥100,000 | 3.0 | 1.5 |

(ii) Piping segment volumes ≥100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

PHASE IN FOR PIPING SEGMENTS ≥100,000 GALLONS IN VOLUME

| | |
|---|---|
| First test ..... | Not later than July 15, 2021 (may use up to 6.0 gph leak rate). |
| Second test ..... | Between July 15, 2021 and July 15, 2024 (may use up to 6.0 gph leak rate). |
| Third test ..... | Between July 15, 2024 and July 15, 2025 (must use 3.0 gph for leak rate). |
| Subsequent tests .. | Not later than July 15, 2025 begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above. |

(B) Perform vapor monitoring (conducted in accordance with section 11-280.1-43(5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(C) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty-one days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(i) Perform a line tightness test (conducted in accordance with subparagraph (A) using the leak rates for the semiannual test) at least every two years; or

(ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with section 11-280.1-43(5) or (6), respectively, for the stored regulated substance) at least every thirty-one days; or

(D) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (C). In comparing methods, the department shall consider the size of

release that the method can detect and the frequency and reliability of detection. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-45 Release detection recordkeeping.** All UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

(1) 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, must be maintained for the operating life of the UST system. Records of site assessments required under section 11-280.1-43(5)(F) and (6)(G) must be maintained for as long as the methods are used. Records of site assessments developed after July 15, 2018 must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department;

(2) The results of any sampling, testing, or monitoring must be maintained for at least three years, except as follows:

(A) The results of annual operation tests conducted in accordance with section 11-280.1-40(a)(4) must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in section

11-280.1-40(a)(4) or needs to have action taken, and describe any action taken to correct an issue;

(B) The results of tank tightness testing conducted in accordance with section 11-280.1-43(3) must be retained until the next test is conducted; and

(C) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with section 11-280.1-43(10) or section 11-280.1-44(4) must be retained until the next test is conducted;

(3) All records that the equipment being utilized to monitor or maintain the UST system is designed to produce must be maintained for at least three years after the record is generated; and

(4) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three years. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-33) (Imp: HRS §§342L-3, 342L-7.5, 342L-33)

**§11-280.1-46 Release detection--codes of practice.** (a) The following code of practice may be used to comply with section 11-280.1-40(a)(4): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".



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(b) Practices described in the American Petroleum Institute Recommended Practice RP 1621, "Bulk Liquid Stock Control at Retail Outlets" may be used, where applicable, as guidance in meeting the requirements of section 11-280.1-43(1). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-33) (Imp: HRS §§342L-3, 342L-33)

**§§11-280.1-47 to 11-280.1-49 (Reserved).**

SUBCHAPTER 5

RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

**§11-280.1-50 Reporting of suspected releases.** Owners and operators of UST systems must notify the department within twenty-four hours and follow the procedures in section 11-280.1-52 for any of the following conditions:

(1) The discovery by any person of evidence of released regulated substances at the UST 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 system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless:

(A) The system equipment or component is found not to be releasing regulated substances to the environment;

(B) Any defective system equipment or component is immediately repaired or replaced; and

(C) For secondarily contained systems, except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.

(3) Monitoring results, including investigation of an alarm, from a release detection method required under sections 11-280.1-41 and 11-280.1-42 that 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 does not confirm the initial result;

(B) The leak is contained in the secondary containment and:

(i) Except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

(ii) Any defective system equipment or component is immediately repaired or replaced;

(C) In the case of inventory control described in section 11-280.1-43(1), a second month of data does not confirm the initial result or the investigation determines no release has occurred; or

(D) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing). [Eff



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7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-34) (Imp: HRS §§342L-3, 342L-34)

**§11-280.1-51 Investigation of off-site impacts.** When required by the department, owners and operators of UST systems must follow the procedures in section 11-280.1-52 to determine if the UST 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 has been observed by the department or brought to the department's attention by any person. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-52 Release investigation and confirmation steps.** (a) Unless release response action is initiated in accordance with subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 11-280.1-50 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 or another procedure approved by the department:

(1) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in sections 11-280.1-43(3) and 11-280.1-44(2) and, as appropriate, secondary containment testing described in section 11-280.1-33(a)(6)).

(A) The test must determine whether:

(i) A leak exists in that portion of

the tank that routinely contains product, or the attached delivery piping; or

(ii) A breach of either wall of the secondary containment has occurred.

(B) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, or close the UST system. In addition, owners and operators must begin release response action in accordance with subchapter 6 if the test results for the system, tank, or delivery piping indicate that a release exists.

(C) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.

(D) Owners and operators must conduct a site assessment as described in paragraph (2) if the test results for the system, tank, and delivery piping do not indicate that a release exists but environmental contamination is the basis for suspecting a release.

(2) Site assessment. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill and surrounding soil, the depth and flow of groundwater, and other factors as appropriate for identifying the presence and source of the release.

(A) If the test results for the excavation zone or the UST site



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indicate that a release has occurred, owners and operators must begin release response action in accordance with subchapter 6;

(B) If the test results for the excavation zone or the UST 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 required by subsection (b) as well as performance claims pursuant to section 11-280.1-40(a)(5). [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-53 Reporting and cleanup of spills and overfills.** (a) Owners and operators of UST 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 11-280.1-65.3.

(b) Owners and operators must notify the department within twenty-four hours and begin release response action in accordance with subchapter 6 in the following cases:

(1) Spill or overfill 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 overfill 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.

(c) Owners and operators must immediately notify the department of a spill or overfill of petroleum that is less than 25 gallons or a spill or overfill of a hazardous substance that is less than its reportable quantity, as determined in compliance with section 11-451-6, and comply with section 11-280.1-62(b) if cleanup cannot be accomplished within twenty-four hours.

(d) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

**§§11-280.1-54 to 11-280.1-59 (Reserved).**

SUBCHAPTER 6

RELEASE RESPONSE ACTION

**§11-280.1-60 General.** Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subchapter, except for USTs excluded under section 11-280.1-10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended, or under section 342J-36, Hawaii Revised Statutes. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)



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**§11-280.1-61 Immediate response actions.** (a) Upon confirmation of a release in accordance with section 11-280.1-52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following response actions within twenty-four hours:

(1) Report the release to the department by telephone;

(2) 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;

(3) Identify and mitigate any safety hazards (such as fire, explosion, and vapor hazards) posed by the release of the regulated substance; and

(4) Take necessary action to minimize the spread of contamination.

(b) Within seven days of confirmation, owners and operators must accurately complete and submit to the department the "Confirmed Release Notification" form prescribed by the director.

(c) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

**§11-280.1-61.1 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-62 Initial abatement measures and site assessment.** (a) Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures:

(1) Continue to remove as much of the regulated substance from the UST 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 belowground 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

additional fire and safety hazards posed by vapors or free product that have migrated from the UST 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, site investigation, abatement, or release response action activities;

(5) 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 site, unless the presence and source of the release have been confirmed in accordance with the site assessment required by section 11-280.1-52(b) or the site assessment required for change-in-service or permanent closure in section 11-280.1-72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill and surrounding soil, depth and flow of groundwater and other factors as appropriate for identifying the presence and source of the release;

(6) Investigate to determine the possible presence of free product, and begin free product removal in accordance with section 11-280.1-64;

(7) Remove or remediate contaminated soil at the site to the extent necessary to prevent the spread of free product; 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) Within twenty days after release

confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under subsection (a) and any resulting information or data. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-63 Initial site characterization.** (a) Owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in sections 11-280.1-60 and 11-280.1-61. This information must include, but is not necessarily limited to the following:

(1) Data on the nature and estimated quantity of release;

(2) Data from available sources 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 conditions, and land use;

(3) Results of the site assessment required under section 11-280.1-62(a)(5); and

(4) Results of the free product investigations required under section 11-280.1-62(a)(6), to be used by owners and operators to determine whether free product must be recovered under section 11-280.1-64.

(b) Within forty-five days of release confirmation, or another reasonable period of time determined by the department, owners and operators must submit the information collected in compliance with subsection (a) to the department in a manner that demonstrates its applicability and technical adequacy.

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

**§11-280.1-64 Free product removal.** (a) At sites where investigations under section 11-280.1-62(a)(6) 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, as necessary, any actions initiated under sections 11-280.1-61 to 11-280.1-63, or preparing for actions required under sections 11-280.1-65 to 11-280.1-66. In meeting the requirements 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, within forty-five days after confirming a release, or within another reasonable period of time determined by the department, a free product removal report that provides at least the following information:

(A) The name of the person responsible for implementing the free product removal measures;

(B) The estimated quantity, type, and

thickness of free product observed or measured in wells, boreholes, and excavations;

(C) The 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) The 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 that have been or are being taken to obtain necessary permits for any discharge;

(G) The 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 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-65 Investigations for soil and groundwater cleanup.** (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater and surface water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(1) There is evidence that groundwater wells



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have been affected by the release (e.g., as found during release confirmation or previous release response actions);

(2) Free product is found to need recovery in compliance with section 11-280.1-64;

(3) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under sections 11-280.1-60 to 11-280.1-64); and

(4) The department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

(b) Owners and operators must include information collected in accordance with this section with each quarterly report required pursuant to section 11-280.1-65.2. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-65.1 Notification of confirmed releases.** (a) Within ninety days following confirmation of a release, the owner and operator shall notify those members of the public directly affected by the release in writing of 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 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;
(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.

(d) 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.

(e) The owner and operator shall include in the quarterly report required pursuant to section 11-280.1-65.2 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 subsections (c) and (d).

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)



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**§11-280.1-65.2 Release response reporting.** (a) No later than ninety days following the confirmation of a release, owners and operators must submit to the department a written report in the format specified by the department. The report must include:

(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 to the department written quarterly progress reports and an electronic copy of the written report in a format specified by the department. The reports must document:

(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 11-280.1-65.1.

(c) Quarterly progress reports are not required if:

(1) Response actions have met the requirements of section 11-280.1-65.3; and

(2) A final quarterly report has been submitted.

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

**§11-280.1-65.3 Site cleanup criteria.** (a) 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 in subsection (e); or

(2) Site-specific action levels as approved by the department. Owners and operators should consult with the department on how the standards in this paragraph can be met. 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.

(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 11-280.1-65.2(b).

(e) The figure labeled "Table 1. Tier 1 Screening Levels of Soil and Groundwater" is made a part of this subsection.

Table 1. Tier 1 Screening Levels for Soil and Groundwater

| Contaminant | DRINKING WATER SOURCE THREATENED | | | | DRINKING WATER SOURCE NOT THREATENED | | | |
|---|---|---|---|---|---|---|---|---|
| | Groundwater (ug/l) | Basis[1] | Soil (mg/kg) | Basis[2] | Groundwater (ug/l) | Basis[3] | Soil (mg/kg) | Basis[2] |
| Acenaphthene | N/A[4] | - | 120 | L/VI | N/A[4] | - | 120 | L/VI |
| Benzene | 5.0 | DWP | 0.30 | L | 71 | CAT | 0.77 | VI |
| Benzo(a)pyrene | N/A[4] | - | 3.6 | DE | N/A[4] | - | 3.6 | DE |
| Dichloroethylene, cis 1,2- | 70 | DWP | 0.36 | VI | 620 | CAT | 0.36 | VI |
| Dichloroethylene, trans 1,2- | 100 | DWP | 3.6 | VI | 560 | CAT | 3.6 | VI |
| Ethylbenzene | 7.3 | CAT | 0.90 | L | 7.3 | CAT | 0.90 | L |
| Fluoranthene | N/A[4] | - | 87 | L | N/A[4] | - | 87 | L |
| Lead | 5.6 | CAT | 200 | DE | 5.6 | CAT | 200 | DE |
| Methyl Tert Butyl Ether (MTBE) | 5.0 | DWS | 0.028 | L | 730 | CAT | 2.3 | VI |
| Naphthalene | 12 | CAT | 3.1 | L | 12 | CAT | 3.1 | L |
| Polychlorinated Biphenyls (PCBs) | N/A[4] | - | 1.2 | DE | N/A[4] | - | 1.2 | DE |
| Tetrachloethylene (PCE) | 5.0 | DWP | 0.098 | VI | 53 | CAT | 0.098 | VI |
| Toluene | 9.8 | CAT | 0.78 | L | 9.8 | CAT | 0.78 | L |
| TPH-gasolines | 300 | DWP | 100 | GC | 500 | CAT | 100 | GC |
| TPH-middle distillates | 400 | DWP | 220 | DE | 640 | CAT | 220 | DE |
| TPH-residual fuels | 500 | DWS | 500 | GC | 640 | CAT | 500 | GC |
| Trichloroethylene | 5.0 | DWP | 0.089 | VI | 47 | CAT | 0.089 | VI |
| Vinyl Chloride | 2.0 | DWP | 0.036 | VI | 18 | VI | 0.036 | VI |
| Xylenes | 13 | CAT | 1.4 | L | 13 | CAT | 1.4 | L |

Notes to Table 1.

1. Drinking water screening levels are the lowest of screening levels for: drinking water primary maximum contaminant levels based on toxicity ("DWP"), drinking water secondary maximum contaminant levels based on taste and odor concerns ("DWS"), vapor intrusion ("VI"), and chronic aquatic toxicity ("CAT").

2. Soil screening levels are the lowest of screening levels for: direct exposure ("DE"), vapor intrusion ("VI"), leaching ("L"), and gross contamination ("GC").

3. Non-drinking water screening levels are the lowest of screening levels vapor intrusion ("VI"), chronic aquatic toxicity ("CAT"), 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-66 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) If a plan is required, owners and operators must submit the plan to the department in a format established by the department within thirty days of the department's request, unless an extension of time is granted by the department.

(c) 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. Owners and operators are responsible for submitting a corrective action plan that provides for adequate protection of human health and the environment as determined by the department and must make necessary modifications to the plan when directed to do so by the department.

(d) The department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department will consider the following factors as appropriate:

(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;

(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.

(e) The public participation procedures set forth in section 11-280.1-67 apply to all corrective action plans submitted under this section.

(f) Upon approval of a corrective action plan, owners and operators must implement the plan, including any modifications to the plan made by the department. 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 11-280.1-65.2.

(g) 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 11-280.1-65.3;

(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 that is submitted to the department for approval.

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-67 Public participation for corrective action plans.** (a) The department shall

conduct public participation activities in accordance with subsections (c) through (h) when:

(1) A corrective action plan required pursuant to section 11-280.1-66(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) The department will provide notice to the public of the release and the applicable response as required in subsections (c) and (d). Costs for all public participation activities described in subsections (c) through (h) 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 (f).

(c) Notice to members of the public directly affected by the release, as defined in section 11-280.1-65.1(a), shall be given 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 (g);

(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.

(d) Notice to the general public shall be given

in the form of a notice in a local newspaper and shall include at least the information required in subsection (c)(1) to (7).

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

(f) 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.

(g) 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.

(h) At the director's discretion, a notice of final decision may be issued. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§§11-280.1-68 to 11-280.1-69 (Reserved).**

SUBCHAPTER 7

OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

**§11-280.1-70 Temporary closure.** (a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31, and applicable release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. Spill and

overfill operation and maintenance testing and inspections in subchapter 3 are not required during temporary closure. If the UST system is empty, release detection and release detection operation and maintenance testing and inspections in subchapters 3 and 4 are not required. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST 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.

(c) When an UST system is temporarily closed for more than twelve months, owners and operators must permanently close the UST system if it does not meet the applicable design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this twelve-month period in accordance with sections 11-280.1-71 to 11-280.1-74, unless the department provides an extension of the twelve-month temporary closure period. Owners and operators must complete a site assessment in accordance with section 11-280.1-72 before such an extension can be applied for. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-71 Permanent closure and changes-in-service.** (a) At least thirty days before beginning either permanent closure or a change-in-service of an UST or tank system under subsections (c) and (d), owners and operators must notify the department of their intent to permanently close or make the change-



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in-service, as required in section 11-280.1-34, unless such action is in response to a confirmed release. The required assessment of the excavation zone under section 11-280.1-72 must be performed after notifying the department but before completion of the permanent closure or change-in-service.

(b) At least seven days before excavation work for a permanent closure or change-in-service, owners or operators must notify the department of the exact date that the work will occur, as required in section 11-280.1-34.

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

(1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges;

(2) Remove the UST or tank system from the ground, fill the UST or tank system with an inert solid material, or close the tank in place in a manner approved by the department; and

(3) Conduct a site assessment in accordance with section 11-280.1-72.

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

(1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges; and

(2) Conduct a site assessment in accordance with section 11-280.1-72.

(e) Within thirty days of completing a permanent closure or change-in-service, owners and operators must submit to the department:

(1) A notification as required in section 11-280.1-34; and

(2) A UST closure report, including the results of the site assessment conducted in accordance with section 11-280.1-72. [Eff 7/15/18; comp 1/17/20; am and comp

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] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-72 Assessing the site at closure or change-in-service.** (a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. 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. The requirements of this section are satisfied if one of the external release detection methods allowed in section 11-280.1-43(5) and (6) is operating in accordance with the requirements in section 11-280.1-43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (a), or by any other manner, owners and operators must begin release response action in accordance with subchapter 6. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-372)

**§11-280.1-73 Applicability to previously closed UST systems.** (a) When directed by the department, the owner and operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

(b) When directed by the department, the owner and operator of an UST system with field-constructed



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tanks or an airport hydrant fuel distribution system permanently closed before August 9, 2013 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-74 Closure records.** Owners and operators must maintain records in accordance with section 11-280.1-34 that are capable of demonstrating compliance with closure requirements under this subchapter. The results of the excavation zone assessment required in section 11-280.1-72 must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

(1) By the owners and operators who took the UST system out of service;

(2) By the current owners and operators of the UST system site; or

(3) By mailing these records to the department if they cannot be maintained at the closed facility. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-37) (Imp: HRS §§342L-3, 342L-7.5, 342L-37)

**§11-280.1-75 Closure--codes of practice.** The following cleaning and closure procedures may be used to comply with section 11-280.1-71:

(1) American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";

(2) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum

Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";

(3) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";

(4) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks", may be used as guidance for compliance with this section;

(5) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and

(6) National Institute for Occupational Safety and Health Publication 80-106, "Criteria for a Recommended Standard...Working in Confined Space", may be used as guidance for conducting safe closure procedures at some tanks containing hazardous substances. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§§11-280.1-76 to 11-280.1-89 (Reserved).**

SUBCHAPTER 8

FINANCIAL RESPONSIBILITY



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**§11-280.1-90 Applicability.** (a) This subchapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(c) The requirements of this subchapter do not apply to owners and operators of any UST system described in section 11-280.1-10(b), (c)(1), (c)(3), or (c)(4).

(d) If the owner and operator of a petroleum underground storage 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-91 (Reserved).**

**§11-280.1-92 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 arising from operating an underground storage tank system that results in a need for release response action and/or compensation for bodily injury or property damage neither expected nor intended by the tank system owner or operator.

"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.

"Financial reporting year" means the latest consecutive twelve-month 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 Energy Information Administration or the Rural Utilities Service.

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

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(1) By 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.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank system. This definition is intended to assist in the understanding of these regulations 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 the owner or operator 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.

"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 an entity that provides financial assurance to an owner or operator of an underground storage tank system through one of the financial mechanisms listed in sections 11-280.1-95 through 11-280.1-107, 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 section 11-280.1-97(b)(1) and (2) means only those changes that could result in a gap in coverage 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-93 Amount and scope of required financial responsibility.** (a) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility 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 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 corrective action and for compensating third parties for bodily injury and property damage



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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 underground storage tank" or "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 the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) Taking corrective 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 underground storage tanks, the annual aggregate required shall be based on the number of tanks 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 underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-94 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 11-280.1-95 through 11-280.1-103 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 11-280.1-104 through 11-280.1-107 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 11-280.1-96 or surety bond under section 11-280.1-98 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-95 Financial test of self-insurance.** (a) An owner or operator, and/or guarantor, may satisfy the requirements of section 11-280.1-93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor, 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, and/or guarantor, must have a tangible net worth of at least ten times:

(A) The total of the applicable aggregate amount required by section 11-280.1-93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department, to EPA, or to a state implementing agency under a state program approved by EPA under 40 C.F.R. part 281;

(B) The sum of the RCRA subtitle C 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 demonstrate financial responsibility to the department under 40 C.F.R. sections 261.143 and 261.147, as incorporated and amended in section 11-261.1-1, 40 C.F.R. sections 264.101,

264.143, 264.145, and 264.147, as incorporated and amended in section 11-264.1-1, and 40 C.F.R. sections 265.143, 265.145, and 265.147, as incorporated and amended in section 11-265.1-1, to EPA under 40 C.F.R. sections 261.143, 261.147, 264.101, 264.143, 264.145, 264.147, 265.143, 265.145, and 265.147, or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. 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 EPA under 40 C.F.R. section 144.63 or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 145.

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least $10,000,000.

(3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subsection (d).

(4) The owner or operator, and/or guarantor, must either:

(A) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; 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



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opinion, or a "going concern" qualification.

(c) (1) The owner or operator, and/or guarantor, must meet the financial test requirements of 40 C.F.R. section 264.147(f)(1), as incorporated and amended in chapter 11-264.1, substituting the appropriate amounts specified in section 11-280.1-93(b)(1) and (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, and/or guarantor, 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, and/or guarantor, 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, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, 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, and/or guarantor, 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-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, 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 "accidental releases"] 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, or a corresponding financial test under EPA or another authorized state program, by this [insert: "owner or operator" or "guarantor"]:

[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 or a corresponding financial test under EPA or under a state program approved under 40 C.F.R. part 281. 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 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 C.F.R. parts 271 and 145:

| | Amount |
|---|---|
| EPA Regulations: | |
| Closure (§§261.143, 264.143, and 265.143) | $ |
| Post-Closure Care (§§264.145 and 265.145) | $ |
| Liability Coverage (§§261.147, 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 subsection (b) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection (c) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

| | | 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. | 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 Utilities Service? | 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 fiscal year been filed with the U.S. Securities and Exchange Commission, the federal Energy Information Administration, or the federal Rural Utilities Service? | Yes | No |

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-95(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

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

(e) If an owner or operator using the test to provide financial assurance finds that he or she 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.

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

(g) If the owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that he or she 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 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-96 Guarantee.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 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); or

(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 11-280.1-95 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 11-280.1-95(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 section 11-280.1-95(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 11-280.1-114(e).

(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 obligees, on behalf of [owner or operator] of



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[business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, and agrees to comply with the requirements for guarantors as specified in section 11-280.1-96(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 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326 and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements 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 11-280.1-112, 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 6 of chapter 11-280.1, 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 11-280.1-112, 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" and/or "nonsudden"] 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 11-280.1-112, 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 the financial test criteria of



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section 11-280.1-95(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 11-280.1, 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 8 of chapter 11-280.1, 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 11-280.1-93, 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 11-280.1-96(c), Hawaii Administrative Rules, as such regulations 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 11-280.1-93 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 Hawaii director of health under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)



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**§11-280.1-97 Insurance and risk retention group coverage.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 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 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, 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) to (e) of this paragraph are hereby amended

to conform with subsections (a) to (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 11-280.1-95 to 11-280.1-102 and sections 11-280.1-104 to 11-280.1-107, 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 11-280.1-97(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 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, 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 11-280.1-95 to 11-280.1-102 and 11-280.1-104 to 11-280.1-107, 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 11-280.1-97(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 the State of Hawaii. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-98 Surety bond.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 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 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility. List the coverage guaranteed by the bond: "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" "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 8 of chapter 11-280.1, 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 6 of chapter 11-280.1, 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 accidental releases" or "nonsudden accidental releases" 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 8 of chapter 11-280.1, 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 11-280.1-93, 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 6 of chapter 11-280.1, 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 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "third party liability compensation"] 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 11-280.1-112, 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 11-280.1-112, 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 one hundred twenty 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 Thereof, 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 11-280.1-98(b), Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

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 11-280.1-93 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 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-99 Letter of credit.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 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 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" and/or "compensating third parties for bodily injury and property damage caused by" 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 C.F.R. section 280.22, or permit applications submitted under sections 11-280.1-324 and 11-280.1-326, 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 11-280.1-93, 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 11-280.1-99(b), Hawaii Administrative Rules, as such regulations 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 and copyrighted 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 11-280.1-93 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 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103.

(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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)



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**§§11-280.1-100 to 11-280.1-101 (Reserved).**

**§11-280.1-102 Trust fund.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 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 in which the fund is established.

(b) The wording of the trust agreement must be identical to the wording specified in section 11-280.1-103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in section 11-280.1-103(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. JUL - 8 2021 [illegible] 7/15/18; comp 1/17/20; comp ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-103 Standby trust fund.** (a) An owner or operator using any one of the mechanisms authorized by section 11-280.1-96, 11-280.1-98, or 11-280.1-99 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 in which the fund is established.

(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 [insert

"standby" where trust agreement is standby trust agreement] 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" and/or "compensating third parties for bodily injury and property damage caused by" 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 11-280.1-93, 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 and/or third-party liability claims, 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 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 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 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 and/or the Hawaii director of health, 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 11-280.1-103(b)(1), Hawaii

Administrative Rules, as such regulations 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 the 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-104 Local government bond rating test.** (a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of section 11-280.1-93 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 & 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 11-280.1-93 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 and/or guarantor 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 and/or guarantor 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 THE 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" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] 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 11-280.1-104(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 and/or guarantor other than a general purpose government 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 THE 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" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] 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 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 11-280.1-104(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 and/or local government guarantor. If the director finds, on the basis of such reports or other information, that the local government owner or operator and/or guarantor 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.

(h) 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 bond rating test or within thirty

days of notification by the director that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within ten days. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-105 Local government financial test.** (a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 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 (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 non-interest-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" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] 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 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, 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 4c)
   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 4c)
   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 0.910
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 section 11-280.1-105(c), Hawaii Administrative Rules, as such regulations 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 7/15/18; comp 1/17/20; comp JUL - 8 2021] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-106 Local government guarantee.** (a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 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 requirement of section 11-280.1-104 and deliver a copy of the chief financial officer's letter as contained in section

11-280.1-104(d) and (e) to the local government owner or operator;

(2) Demonstrate that it meets the worksheet test requirements of section 11-280.1-105 and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-105(c) to the local government owner or operator; or

(3) Demonstrate that it meets the local government fund requirements of section 11-280.1-107(1), (2), or (3), and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under section 11-280.1-104, 11-280.1-105, or 11-280.1-107(1), (2), or (3), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal 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 11-280.1-114(e).

(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) 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 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(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 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements 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) 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 11-280.1-112, 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 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, 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" and/or "nonsudden"]

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 11-280.1-112, 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 11-280.1, 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 8 of chapter 11-280.1, 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 owned, rented, loaned 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 11-280.1-93, 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 11-280.1-106(d), Hawaii Administrative Rules, as such regulations 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) 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 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(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 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements 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) 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 6 of chapter 11-280.1, 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" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount



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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 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 11-280.1, 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 8 of chapter 11-280.1, 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, 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 11-280.1-93, 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 11-280.1-106(e), Hawaii Administrative Rules, as such regulations 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:

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-107 Local government fund.** A local government owner or operator may satisfy the requirements of section 11-280.1-93 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 11-280.1-93, 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 11-280.1-93, 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 11-280.1-93, 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



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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 appropriate 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 and/or guarantor 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 to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] 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 11-280.1-93, 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 five times the full amount of coverage required under section 11-280.1-93, 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 "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 State 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

11-280.1-107(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 11-280.1-107(4), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

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

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-108 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 11-280.1-93.

(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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp:

HRS §§342L-3, 342L-36)

**§11-280.1-109 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 11-280.1-114, 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



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(3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with section 11-280.1-111(b). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-110 Reporting by owner or operator.** (a) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director:

(1) Within thirty days after the owner or operator identifies a release from an underground storage tank or tank system required to be reported under section 11-280.1-53 or 11-280.1-61;

(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 11-280.1-95(g) and 11-280.1-109(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, or section 11-280.1-34, the permit application submitted pursuant to section 11-280.1-324 or 11-280.1-326, and the certification of installation form submitted pursuant to section 11-280.1-325(d).

(c) The director may require an owner or operator to submit evidence of financial assurance as described in section 11-280.1-111(b) or other information relevant to compliance with this subchapter at any time. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-111 Recordkeeping.** (a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank or tank system until released from the requirements of this subchapter under section 11-280.1-113. An owner or operator must maintain such evidence at the underground storage tank 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 maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-99 or section 11-280.1-102 or sections 11-280.1-104 to 11-280.1-107 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



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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 11-280.1-106(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 11-280.1-104 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 11-280.1-106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under section 11-280.1-104 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 11-280.1-107 must maintain the following documents:

(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 11-280.1-107(3) 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; and

(C) If the fund is established under section 11-280.1-107(3) 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 11-280.1-107(3)(A), or attestation by the state attorney general as specified under section 11-280.1-107(3)(B)).

(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 11-280.1-95 to 11-280.1-107 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 8 of chapter 11-280.1, Hawaii Administrative Rules.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subchapter 8 of chapter 11-280.1, 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" and/or "compensating third parties for bodily injury and property damage caused by" 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-36) (Imp: HRS §§342L-3, 342L-7.5, 342L-36)

**§11-280.1-112 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 underground storage tank 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 5 or 6 of a release from an underground storage tank 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 6; 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 A 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 11-280.1-106(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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-113 Release from the requirements.** An owner or operator is no longer required to maintain financial responsibility under this subchapter for an underground storage tank or tank system after the tank or tank system has been permanently closed or undergoes a change-in-service or, if release response action is required, after release response action has been completed and the tank or tank system has been permanently closed or undergoes a change-in-service as required by subchapter 7. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-114 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 11-280.1-111(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 11-280.1-96.

(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 11-280.1-111(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 11-280.1-106.

(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 alternate coverage within thirty days after such notification, the owner or operator must notify the director. [Eff 7/15/18; comp 1/17/20; comp

JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-115 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 11-280.1-93. 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-116 to 11-280.1-199 (Reserved).**

SUBCHAPTER 9

LENDER LIABILITY

**§11-280.1-200 Definitions.** (a) UST technical standards, as used in this subchapter, refers to the UST preventative and operating requirements under subchapters 2, 3, 4, 7, and 10 and section 11-280.1-50.

(b) Petroleum production, refining, and marketing.

(1) "Petroleum production" means the production of crude oil or other forms of petroleum (as defined in section 11-280.1-12) as well as the production of petroleum products from purchased materials.

(2) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) "Indicia of ownership" means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A "holder" is a person who, upon the

effective date of this regulation or in the future, maintains indicia of ownership (as defined in subsection (c)) primarily to protect a security interest (as defined in subsection (f)(1)) in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A "borrower, debtor, or obligor" is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) "Security interest" means an interest in a petroleum UST or UST system or in the facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST

system is located, for the purpose of securing a loan or other obligation.

(2) "Primarily to protect a security interest", as used in this subchapter, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) "Operation" means, for purposes of this subchapter, the use, storage, filling, or dispensing of petroleum contained in an UST or UST system. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-201 to 11-280.1-209 (Reserved).**

**§11-280.1-210 Participation in management.** (a) The term "participating in the management of an UST or UST system" means that the holder is engaging in decisionmaking control of, or activities related to, operation of the UST or UST system, as defined in this section. Actions that are participation in management:

(1) Participation in the management of an UST or UST system means, for purposes of this subchapter, actual participation by the holder in the management or control of decisionmaking related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating

in the management of the UST or UST system only if the holder either:

(A) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or

(B) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in this chapter.

(b) Actions that are not participation in management pre-foreclosure:

(1) Actions at the inception of the loan or

other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subchapter. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subchapter. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(A) Policing the security interest or loan.

(i) A holder who engages in policing

activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(ii) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with this chapter, provided that the holder does not otherwise

participate in the management or daily operation of the UST or UST system as provided in sections 11-280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

(B) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the

terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(A) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subchapter, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for

a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in section 11-280.1-210(a)) prior to or after foreclosure.

(B) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in section 11-280.1-210(c)(2). A holder that outbids, rejects, or fails to act upon a written, bona fide, firm offer of

fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in section 11-280.1-210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subchapter.

(A) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within twelve months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate

publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the twelve-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the twelve-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(B) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding,

rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(i) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention,

preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and release response and corrective action costs incurred under sections 11-280.1-51 to 11-280.1-67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is

the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this subsection.

(ii) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within ninety days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in section 11-280.1-210(c). A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder was acting diligently to acquire

marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under this chapter, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11- 280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the

UST or UST system. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-211 to 11-280.1-219 (Reserved).**

**§11-280.1-220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.** Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST release response and corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided the person:

(1) Does not participate in the management of the UST or UST system as defined in section 11-280.1-210; and

(2) Does not engage in petroleum production, refining, and marketing as defined in section 11-280.1-200(b). [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-221 to 11-280.1-229 (Reserved).**

**§11-280.1-230 Operating an underground storage tank or underground storage tank system.** (a) Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in section 11-280.1-210(c), is not an "operator" of a petroleum UST or UST system for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in section 11-280.1-210(c), acquires a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located.

(1) A holder is not an "operator" of a petroleum UST or UST system for purposes of compliance with this chapter if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of this chapter.

(2) If another operator does not exist, as provided for under paragraph (1), a holder is not an "operator" of the UST or UST system, for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder:

(A) Empties all of its known USTs and UST systems within sixty calendar days after foreclosure, or another

reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and

(B) Empties those USTs and UST systems that are discovered after foreclosure within sixty calendar days after discovery, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(3) If another operator does not exist, as provided for under paragraph (1), in addition to satisfying the conditions under paragraph (2), the holder must either:

(A) Permanently close the UST or UST system in accordance with sections 11-280.1-71 to 11-280.1-74, except section 11-280.1-72(b); or

(B) Temporarily close the UST or UST system in accordance with the following applicable provisions of section 11-280.1-70:

(i) Continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31;

(ii) Report suspected releases to the department; and

(iii) Conduct a site assessment in accordance with section 11-280.1-72(a) if the UST system

is temporarily closed for more than twelve months and the UST system does not meet the applicable system design, construction, and installation requirements in subchapter 2, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the department. For purposes of this provision, the twelve-month period begins to run from the date on which the UST system is emptied and secured under paragraph (2).

(4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in this chapter. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-231 to 11-280.1-239 (Reserved).**

SUBCHAPTER 10

OPERATOR TRAINING

**§11-280.1-240 General requirement for all UST systems.** All owners and operators of UST systems must ensure they have designated Class A, Class B, and Class C operators who meet the requirements of this subchapter. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-241 Designation of Class A, B, and C operators.** (a) UST system owners and operators must designate:

(1) At least one Class A and one Class B operator for each UST or group of USTs at a facility; and

(2) Each individual who meets the definition of Class C operator at the UST facility as a Class C operator.

(b) Separate individuals may be designated for each class of operator or an individual may be designated for more than one of the operator classes.

(c) Owners and operators shall submit written notice to the department identifying the Class A and Class B operators 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 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 in the operator's class. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-242 Requirements for operator training.** UST system owners and operators must ensure Class A, Class B, and Class C operators meet the requirements of this section. Any individual designated for more than one operator class must successfully complete the required training program or comparable examination according to the operator classes in which the individual is designated.

(1) Class A operators. Each designated Class A operator must either be trained in accordance with subparagraphs (A) and (B) or pass a comparable examination in accordance with paragraph (5).

(A) At a minimum, the training must teach the Class A operators about the purpose, methods, and function of:

(i) Spill and overfill prevention;

(ii) Release detection;

(iii) Corrosion protection;

(iv) Emergency response;

(v) Product and equipment compatibility and demonstration;

(vi) Financial responsibility;

(vii) Notification and permitting;

(viii) Temporary and permanent closure;

(ix) Reporting, recordkeeping, testing, and inspections;

(x) Environmental and regulatory consequences of releases; and

(xi) Training requirements for Class B and Class C operators.

(B) At a minimum, the training program must evaluate Class A operators to determine these individuals have the knowledge and skills to make informed decisions regarding compliance and determine whether appropriate individuals are fulfilling the operation, maintenance, and recordkeeping requirements for UST systems in accordance with subparagraph (A).

(2) Class B operators. Each designated Class B operator must either receive training in accordance with subparagraphs (A) and (B) or pass a comparable examination, in accordance with paragraph (5).

(A) At a minimum, the training program for Class B operators must teach the Class B operator about the purpose, methods, and function of:

(i) Operation and maintenance, including components of UST systems, materials of UST system components, and methods of release detection and release prevention applied to UST components;

(ii) Spill and overfill prevention;

(iii) Release detection and related reporting;

(iv) Corrosion protection;

(v) Emergency response;

(vi) Product and equipment compatibility and demonstration;

(vii) Reporting, recordkeeping, testing, and inspections;

(viii) Environmental and regulatory consequences of releases; and

(ix) Training requirements for Class C operators.

(B) At a minimum, the training program must evaluate Class B operators to determine these individuals have the knowledge and skills to implement applicable UST regulatory requirements in the field on the components of typical UST systems in accordance with subparagraph (A).

(3) Class C operators. Each designated Class C operator must either: be trained by a Class A or Class B operator in accordance with subparagraphs (A) and (B); complete a training program in accordance with subparagraphs (A) and (B); or pass a comparable examination, in accordance with



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paragraph (5).

(A) At a minimum, the training program for the Class C operator must teach the Class C operators to take appropriate actions (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases resulting from the operation of the UST system.

(B) At a minimum, the training program must evaluate Class C operators to determine these individuals have the knowledge and skills to take appropriate action (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases from an underground storage tank system.

(4) Training program requirements. Any training program must meet the minimum requirements of this section, must incorporate an evaluation of operator knowledge through written examination, a practical demonstration, or other reasonable testing methods acceptable to the department, and must be approved or administered by the department. An operator training program may consist of in-class or on-line instruction and may include practical exercises.

(5) Comparable examination. A comparable examination must, at a minimum, test the knowledge of the Class A, Class B, or Class C operators in accordance with the requirements of paragraph (1), (2), or (3), as applicable. The acceptability of a comparable examination to meet the requirements of this section is determined by the department. The department may accept operator training verification from other states if the operator training is deemed by the department to be equivalent to the

requirements of this section. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-243 Timing of operator training.** (a) An owner and operator must ensure that designated Class A, Class B, and Class C operators meet the requirements in section 11-280.1-242.

(b) Class A and Class B operators designated on or after July 15, 2018 must meet requirements in section 11-280.1-242 within thirty days of assuming duties.

(c) Class C operators designated after July 15, 2018 must be trained before assuming duties of a Class C operator. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-244 Retraining.** (a) Class A and class B operators shall be retrained every five years. Class C operators shall be retrained every three hundred sixty-five days.

(b) Class A and Class B operators of UST systems determined by the department to be out of compliance must complete a training program or comparable examination in accordance with requirements in section 11-280.1-242. The training program or comparable examination must be developed or administered by the department or an independent organization. At a minimum, the training must cover the area(s) determined to be out of compliance. An UST or tank system is out of compliance if the system:

(1) Meets any of the delivery prohibition criteria outlined in section 11-280.1-429; or

(2) Is in significant violation of other requirements, such as temporary or permanent

closure requirements, as determined by the director.

(c) UST system owners and operators must ensure Class A and Class B operators are retrained as required in subsection (b) no later than thirty days from the date the department determines the facility is out of compliance, except in one of the following situations:

(1) Class A and Class B operators take annual refresher training. Refresher training for Class A and Class B operators must cover all applicable requirements in section 11-280.1-242;

(2) The department, at its discretion, waives this retraining requirement for either the Class A or Class B operator or both. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-245 Documentation.** Owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with section 11-280.1-34 as follows:

(1) The list must:

(A) Identify all Class A, Class B, and Class C operators currently designated for the facility; and

(B) Include names, class of operator trained, date assumed duties, date each completed initial training, and any retraining.

(2) Records verifying completion of training or retraining must be a paper or electronic record for Class A, Class B, and Class C operators. The records, at a minimum, must identify name of trainee, date trained,

operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as Class A, Class B, and Class C operators are designated. The following requirements also apply to the following types of training:

(A) Records from classroom or field training programs (including Class C operator training provided by the Class A or Class B operator) or a comparable examination must, at a minimum, be signed by the trainer or examiner;

(B) Records from computer based training must, at a minimum, indicate the name of the training program and web address, if Internet based; and

(C) Records of retraining must include those areas on which the Class A or Class B operator has been retrained.

[Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§§11-280.1-246 to 11-280.1-249 (Reserved).**

SUBCHAPTER 11

(RESERVED).

**§§11-280.1-250 to 11-280.1-299 (Reserved).**



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SUBCHAPTER 12

PERMITS AND VARIANCES

**§§11-280.1-300 to 11-280.1-322 (Reserved).**

**§11-280.1-323 Permit required.** (a) No person shall install or operate an UST or tank system without first obtaining a permit from the director.

(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, Hawaii Revised Statutes, 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-3, 342L-31)

**§11-280.1-324 Application for a permit.** (a) Every application for a permit shall be submitted to the department on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(b) A permit fee in accordance with section 11-280.1-335 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; location of the property (including TMK); and basic description of the UST or tank system;

(2) Age, size, precise location within the property, and use of each UST;

(3) Description of tanks, piping, ancillary equipment, spill and overfill prevention equipment, and release detection equipment;

(4) Other information required in the form prescribed by the director; and

(5) Other information as the department may require.

(d) Every application shall be signed by the owner and the operator and shall constitute an acknowledgment that the applicants assume 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 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ]
(Auth: HRS §§342L-3, 342L-7.5, 342L-14)
(Imp: HRS §§342L-4, 342L-30, 342L-31)



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**§11-280.1-325 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 "Certification of Underground Storage Tank Installation" form prescribed by the director. If information submitted on the "Application for an Underground Storage Tank Permit" form has changed since the original application, the section of the certification form entitled "Changes to Original Installations Plans" must be completed and submitted. The certification of installation must certify compliance with the following requirements:

(1) Installation of tanks and piping under section 11-280.1-20(f);

(2) Cathodic protection of steel tanks and piping under section 11-280.1-20(b) and (c);

(3) Financial responsibility under subchapter 8; and

(4) Release detection under sections 11-280.1-41 and 11-280.1-42.

(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 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-326 Permit renewals.** (a) On application, a permit may be renewed for a term of five years.

(b) A renewal fee in accordance with section 11-280.1-335 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 eighty days prior to the expiration of the existing permit and shall be submitted on the "Application for Renewal of an Underground Storage Tank Permit" form prescribed by the director. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-327 Action on complete permit application.** (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 11-280.1-335; 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. [Eff 7/15/18; am and comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-328 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 and maintained and the results reported to the director, all costs and expenses to be borne by the applicant. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-329 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 the "Application for an Underground Storage Tank Permit" 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-330 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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-331 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. An application to

transfer a permit from one owner to another owner must be signed by both the current owner and the prospective new owner. An application 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 the "Application for Transfer of an Underground Storage Tank Permit" form prescribed by the director. [Eff 7/15/18; comp 1/17/20; am and comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-30, 342L-31)

**§11-280.1-332 Variances allowed.** Provisions of chapter 342L, Hawaii Revised Statutes, and this chapter relating to USTs or tank systems which are more stringent than Title 40, part 280 of the Code of Federal Regulations, published by the Office of the Federal Register, as amended as of July 1, 2017, may be varied by the director in accordance with sections 342L-5 and 342L-6, Hawaii Revised Statutes, and this chapter. No variance may be less stringent than the federal requirements. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §342L-5)

**§11-280.1-333 Variance applications.** (a) An application for a variance shall be submitted to the department on the "Application for an Underground Storage Tank Variance" form prescribed by the director.

(b) A variance fee in accordance with section 11-280.1-335 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, Hawaii Revised Statutes. The director shall notify the applicant of the director's decision, within one hundred eighty days of receipt of a complete application. Otherwise, a complete application is deemed approved on the one hundred eightieth day after it is received by the department. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-5, 342L-6)

**§11-280.1-334 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 wilfully deface, alter, forge, counterfeit, or falsify any permit or variance. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-7,

342L-31)

**§11-280.1-335 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 | $300 | $400 |
| Application to modify | $200 | $300 |
| Application for renewal | $100 | $200 |
| Application for transfer | $50 | NA |

(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 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §342L-14)

**§§11-280.1-336 to 11-280.1-399 (Reserved).**

SUBCHAPTER 13

ENFORCEMENT

**§§11-280.1-400 to 11-280.1-420 (Reserved).**

**§11-280.1-421 Purpose.** The purpose of this subchapter is to create an enforcement program that facilitates the effective and expeditious resolution of violations of chapter 342L, Hawaii Revised Statutes, and this chapter. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021 ] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

**§11-280.1-422 Field citations.** (a) Field citations may be issued for violations of chapter 342L, Hawaii Revised Statutes, and this chapter that the department 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 allegation of noncompliance with this chapter. If the owner or operator declines to accept the department's offer to settle within the time period set forth in the field citation, the department may bring administrative or civil enforcement action under chapter 342L, Hawaii Revised Statutes.

(c) The field citation shall set forth sufficient facts to notify the recipient of the alleged violations, the applicable law, the proposed settlement amount, and the time period during which to respond.

(d) By returning the signed settlement agreement attached to the field citation and payment of the proposed settlement amount to the department, the

owner or operator will be deemed to have accepted the terms and conditions of the settlement offer.

(e) By signing the settlement agreement, the owner or operator waives his or her right to a contested case hearing pursuant to chapter 91, Hawaii Revised Statutes. [Eff 7/15/18; comp 1/17/20; comp ] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

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**§§11-280.1-423 to 11-280.1-428 (Reserved).**

**§11-280.1-429 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. 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 for a hearing 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, Hawaii Revised Statutes, and the department's rules of practice and procedure. [Eff 7/15/18; comp 1/17/20; comp JUL - 8 2021] (Auth: HRS §342L-3) (Imp: HRS §342L-32.5)

DEPARTMENT OF HEALTH

The Amendment and Compilation of Chapter 11-280.1, Hawaii Administrative Rules, on the Summary Page dated February 18, 2020, occurred on February 18, 2020 following a public hearing held on December 2, 2019, after public notice was given in The Maui News on October 29, 2019 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on October 30, 2019.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

BRUCE S. ANDERSON, Ph.D.
Director of Health

DAVID Y. IGE
Governor of Hawaii

Dated: June 25, 2021

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

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LIEUTENANT GOVERNOR'S OFFICE