

Pre-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board (SBRRB): Proposed Repeal of Hawaii Administrative Rules, Title 11, Chapter 281 and Adoption of Hawaii Administrative Rules, Title 11, Chapter 280.1 Regarding Underground Storage Tanks (USTs)

Background

Hawaii is an approved state for the U.S. Environmental Protection Agency (EPA)'s national underground storage tank (UST) program implementing the Resource Conservation and Recovery Act (RCRA), Subtitle I. In order to maintain approval and EPA funding for this program, Hawaii is required by the Code of Federal Regulations (CFR), Title 40 Part 281 (40 CFR 281) to adopt state rules equivalent to and at least as stringent as the program's federal regulations, which are found in 40 CFR 280, by October 13, 2018. The new (2015) federal rules improve environmental protection by increasing emphasis on properly operating and maintaining equipment. The lack of proper operation and maintenance of UST systems has been found to be one of the main causes of release of regulated substances to the environment. New requirements such as regular release detection equipment testing, walkthrough inspections, and proper operation and maintenance are key for preventing and quickly identifying releases.

The Department of Health (department) is proposing to repeal chapter 11-281, Hawaii Administrative Rules (HAR) and adopt chapter 11-280.1, HAR. This proposed rulemaking action involves numerous changes to the regulations. Most of the proposed changes are federal changes and are required for the continued EPA approval of the State UST program. For these federally-mandated changes, the department has no discretion to consider less restrictive alternatives. Therefore, the requirements of chapter 201M, Hawaii Revised Statutes do not apply to these changes. This small business impact statement focuses only on state-initiated changes that are not federally required.

The proposed state-initiated change affecting small businesses (as "affects small business" is defined in §201M-1) is:

Require secondary containment for petroleum underground storage tanks (USTs) and piping installed before August 9, 2013, except for airport hydrant systems and UST systems with field-constructed tanks. (Secondary containment is already required for tanks and piping installed on or after August 9, 2013.) This requirement is proposed to become effective ten years after the effective date of the new rules.

The existing requirement is in §11-281-17, Hawaii Administrative Rules (HAR) and will be moved to §11-280.1-21(d)(1)(A). The new requirement will be in §11-280.1-21(d)(1)(B), HAR.

An analysis is provided below. The analysis covers the following requirements of §201M-2(b), Hawaii Revised Statutes:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;

- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules

Hawaii has approximately 717 facilities statewide that collectively own about 1507 regulated underground storage tanks (USTs). About 218 small businesses own regulated USTs.

Businesses that will be directly affected by, and bear the cost of, the proposed requirement are those that own or operate a UST storing petroleum that was installed prior to August 9, 2013 and does not have secondary containment and those whose UST systems have single-walled piping. The current chapter 11-281, HAR requires secondary containment for USTs and piping installed on or after August 9, 2013.

About 154 facilities within the state own a total of 417 single-walled USTs that must be closed or provided with secondary containment under the proposed rules. Statewide, about 113 facilities have some single-walled piping, and most of these facilities are the same ones with single-walled tanks. Many of these facilities are owned by the same large companies.

(2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected

About 52 affected facilities are small businesses, owning a total of 150 single-walled tanks (including 12 tanks that are temporarily closed). About 22 of these small businesses will need to replace single-walled tanks only and 30 will need to replace both single-walled tanks and piping. The affected small businesses are mainly gas stations.

UST system owners replacing single-walled tanks and piping will experience a negative financial impact in the short-term due to the cost of replacing their old tank(s) and piping with a new system provided with secondary containment or closing the old tank(s) that can no longer meet requirements. In the long-term, closing or replacing the single-walled UST system could help them avoid more costly release investigations, release response, and remediation costs.

(3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance

The average costs of removal/closure and replacement of tank systems varies widely and depends on a number of factors, including the number and size of tanks in a tank system, the amount of piping, and location variables such as the depth to the water table. According to two local contractors who perform this type of work, removal of three 10,000-gallon single-walled tanks and installation of three 10,000-gallon tanks with secondary containment could cost anywhere from \$350,000 to \$750,000, depending on site conditions. This is equivalent to approximately \$4,000 to \$8,000 per tank per year over the 30-year life of the tanks. The cost of replacing piping for an average gas station site is estimated to be \$25,000 to \$42,000. These estimates include the cost of a site assessment, but do not include any remediation costs.

The most common tank configuration at small businesses with single-walled USTs is one to three tanks ranging in size from 8,000 to 10,000 gallons, so these cost estimates are on the high side of representative. About one third of the affected small businesses will incur much lower costs to replace significantly smaller tanks or only one 10,000-gallon tank. About six small businesses may face higher costs to replace tanks larger than 10,000 gallons and/or to replace more than three tanks.

During the course of replacing old UST systems, tank owners may also incur costs for remediation. UST system owners and operators are already required to have financial assurance (insurance, surety bond, letter of credit, etc.) covering a minimum of \$500,000 in remediation costs. The department is aware of cases where cleanups have cost more than one million dollars, but costs around \$100,000 are typical. These costs are not associated with the proposed rules; however, the requirement to provide tanks and piping installed prior to August 9, 2013 with secondary containment may result in UST system owners incurring remediation costs sooner than would otherwise be the case.

(4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used

There are no monetary costs or benefits to the department or other regulatory agencies associated with the proposed changes. UST program staff expect to receive regulatory paperwork requiring review (closure reports, site assessments, permit applications, installation notification forms, release notifications, release response reports) in clusters that may slow processing time around the implementation deadline.

(5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements,

less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques

As a consideration to small businesses affected by the proposed rule requiring secondary containment, the implementation timeline is set for ten years after the effective date of the new rules. In 2012, the department proposed to require tanks 30 years old or of unknown age to be provided with secondary containment. The SBRRB recommended that the rules proposing this requirement proceed to public hearing (letter dated April 23, 2012), but the rule was not finalized. Owners and operators were made aware at that time that the department would consider proposing this requirement again. By the time that owners and operators are required to either close or replace their single-walled tanks with secondarily contained tanks, all affected tanks will be at least 30 years old and affected small business owners will have had fifteen years of notice, a very reasonable timeline to prepare and consider business decisions for their aging facilities.

(6) How the agency involved small business in the development of the proposed rules

The department has included UST owners and operators, including small businesses, industry consultants, and other interested parties on its mailing list throughout the process of developing the proposed rules. The department e-mailed and mailed out a notice December 20-22, 2017 including information on where the public could view or download a draft of chapter 11-280.1, HAR online and inviting businesses to attend public meetings regarding the rulemaking between January 17 and February 1, 2018 on Oahu, Hawaii Island, Maui, and Kauai. The department will address small business concerns and official comments received from small businesses during the public hearing and comment period (planned for June 2018) before finalizing the rules.

(7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard

The proposed requirements do not have a direct counterpart in the federal UST regulations.