



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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In reply, please refer to:

October 24, 2019

TO: The Honorable David Y. Ige  
Governor of Hawaii

FROM: *fw* Bruce S. Anderson, Ph.D.  
Director of Health

*Anthony Ross*

SUBJECT: REQUEST FOR GOVERNOR'S PRELIMINARY APPROVAL OF  
PROPOSED HAWAII ADMINISTRATIVE RULES, TITLE 11,  
CHAPTER 11-280.1, "UNDERGROUND STORAGE TANKS"

Pursuant to Administrative Directive 18-02, the Department of Health requests your approval to hold public hearings for the proposed amendment of Hawaii Administrative Rules (HAR), Title 11, chapter 280.1, entitled "Underground Storage Tanks".

The following information is provided in accordance with Administrative Directive 18-02:

**a. Summary of changes**

**i. Why is this chapter of Hawaii Administrative Rules being amended?**

The primary purpose of the proposed changes to chapter 11-280.1, HAR, is to further protect Hawaii's environment and natural resources, especially Hawaii's groundwater, by requiring all airport hydrant fuel distribution systems and underground storage tank (UST) systems with field-constructed tanks to be provided with secondary containment.

Additional changes are proposed to:

- Make non-substantive corrections to improve the clarity of existing requirements.
- Make edits to ensure that the state regulations are fully consistent with the federal UST regulations.
- Clarify notification and reporting requirements.

**ii. What problem is the rule change meant to solve?**

Please see answer to previous section.

### iii. List all changes that are being made

#### 1. Secondary containment for airport hydrant fuel distribution systems and UST systems with field-constructed tanks.

Section 11-280.1-21 is revised to require that airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before July 15, 2018 be provided with secondary containment by July 15, 2045 or permanently closed. The option to utilize an alternative design which the Director of Health determines is protective of human health and the environment is removed. Conforming changes are made to section 11-280.1-41(a)(2), (a)(3), and (b)(4), requiring monthly interstitial monitoring for tanks and piping with any installed secondary containment.

Airport hydrant systems and UST systems with field-constructed tanks installed on or after July 15, 2018 are already required to have secondary containment [section 11-280.1-20(g)(2)]. Secondary containment is not required for some piping associated with airport hydrant systems and UST systems with field-constructed tanks, regardless of installation date; this remains unchanged [sections 11-280.1-20(g)(2) and 11-280.1-21(b)(2)].

#### 2. Under-dispenser containment.

Section 11-280.1-25(c) is revised to require under-dispenser containment (UDC) to allow for visual inspection and access to the components in the containment system or monitoring for leaks from the dispenser system with a sensing device that signals the operator of the presence of regulated substances, rather than requiring both visual access and a sensor. This change makes the state regulations the same as the federal requirements for UDCs in 40 CFR §280.20(f)(2), which require either visual access or monitoring with a sensor. Conforming changes to section 11-280.1-37, which contains requirements not found in the federal rules, are also made: UDCs that meet the requirements of section 11-280.1-25(c) by allowing for visual inspection must in fact be visually inspected for damage and have any liquid or debris removed every thirty-one days. This change makes the state regulations more consistent with the federal requirements for UDCs.

#### 3. Permanent closure and change-in-service notification and reporting.

- a. Section 11-280.1-34 has been revised to require notifications of planned permanent closure or change-in-service and scheduled excavation work for permanent closure or change-in-service to be made using the “Notice of Intent to Close Underground Storage Tanks” form rather than the “Notification for Underground Storage Tanks” form. The “Notice of Intent to Close...” form is better tailored to provide the information needed by the department about a planned closure or change in service than the general notification form. A conforming change to a cross-reference is made in section 11-280.1-32(c) and changes to section 11-280.1-71(a), (b), and (e)(1) are made to clarify that notifications related to closure and change-in-service must be submitted on the forms required in section 11-280.1-34.
- b. A requirement to submit a UST closure report to the department is added to section 11-280.1-71(e). Currently, the department requests this information from owners and

operators of UST sites undergoing closure on a case-by-case basis. The submission of a closure report in all cases will assist the department in documenting closure and change-in-service of tanks from which there is no release.

4. Release detection—tanks.

The introductory paragraphs of section 11-280.1-41(a)(1), (2), and (3) have been rephrased to clarify which tanks each paragraph applies to. All tanks that are not part of an airport hydrant fuel distribution system and are not part of a UST system with field-constructed tanks fall under paragraph (a)(1). Paragraph (a)(2) covers all tanks associated with airport hydrant systems and UST systems with field-constructed tanks, except field-constructed tanks with a capacity greater than 50,000 gallons; tanks associated with these types of UST systems that are not themselves field-constructed fall under paragraph (a)(2). Paragraph (a)(3) covers field-constructed tanks with a capacity greater than 50,000 gallons.

5. Release investigation and confirmation.

In section 11-280.1-52(b)(1), “or” is replaced with “and” to clarify that when secondary containment testing is appropriate, this testing must be done in addition to rather than in place of other required system tests. Section 11-280.1-52(b)(1)(A) explains what system tests must determine. To investigate a suspected release from a tank with secondary containment, both a tank tightness test (of the inner wall) and secondary containment testing (of the outer wall) are necessary to meet the requirements of section 11-280.1-52(b)(1)(A).

6. Release confirmation reporting.

Section 11-280.1-61(b) is revised to require that notice of confirmation of a release be submitted on the “Confirmed Release Notification” form. When this form is accurately completed, it will include all the information about the release listed in this section, so the list is no longer necessary. The “Confirmed Release Notification” form simplifies the department’s work by specifying the format that owners and operators must use to provide information about confirmed releases.

7. Free product recovery reporting.

The language “or within another reasonable period of time determined by the department” is added to section 11-280.1-64(a)(4) following the required reporting timeline “within forty-five days after confirming a release.” This new wording is consistent with the language already included in sections 11-280.1-62(b) and 11-280.1-63(b) regarding reporting timelines and therefore removes a potential conflict between the reporting requirements of these sections. This change is consistent with the overall objective of subchapter 6 to allow the department to be flexible with reporting timelines depending on the circumstances at a particular site. This change also makes the state regulations more consistent with the intent of the federal regulations for free product recovery reporting at 40 CFR §280.64(d).

8. Financial responsibility.

Section 11-280.1-110(b) has been corrected by the addition of a missing reference to the “Certification of Underground Storage Tank Installation” form required by section 11-280.1-325(d). This correction to section 11-280.1-110(b) makes the state regulations consistent with the federal requirements at 40 CFR §280.110(b). Section 11-280.1-325(d)(3), which corresponds to 40 CFR §280.22(e)(3) in the federal regulations, specifies that the owner or operator must certify compliance with the financial responsibility requirements on the “Certification of Underground Storage Tank Installation” form.

9. Retraining for Class A and B Operators.

The sentence “At a minimum, the training must cover the area(s) determined to be out of compliance.” is added to the introductory paragraph of section 11-280.1-244(b), describing re-training required for operators at sites that have been determined by the department to be out of compliance with the regulations. This corrects an accidental omission in the existing chapter which has the effect now of reducing the scope of the required re-training and making the language the same as in the federal regulations (40 CFR §280.244). This retraining requirement can be waived if Class A and B operators take an annual refresher training covering all applicable requirements in section 11-280.1-242 (see section 11-280.1-244(c)(1)).

10. Change in owner or operator for a permit.

In section 11-280.1-331, “Request for approval” is replaced with “An application” to clarify that a separate request prior to submission of the application for transfer of permit is not required. A requirement for the current owner to sign an application for change in ownership is added. This change is made to ensure that the current owner is aware of the prospective new owner’s application for change in ownership.

11. Additional corrections.

These corrections are made to further improve the readability of the chapter.

- a. For clarity, “the effective date of these rules” has been changed to July 15, 2018 throughout the regulations. Phrases such as “one year after the effective date of these rules” have also been replaced with the appropriate date.
- b. Missing commas are added in section 11-280.1-10(a) and 11-280.1-10(a)(1)(B).
- c. In existing sections 11-280.1-(20)(g)(2)(B) and 11-280.1-21(c)(2), the phrase “field-constructed tanks greater than 50,000 gallons” has been corrected to “field-constructed tanks with a capacity greater than 50,000 gallons.” Note that section 11-280.1-21(c)(2) will be moved to 11-280.1-21(b)(2)(B).
- d. In section 11-280.1-34(a)(3), the word “dispenser” has been corrected to “dispenser system.” This conforming change was overlooked when the definitions “dispenser” and “dispenser system” were adopted in chapter 11-280.1, HAR (effective July 15, 2018).
- e. In section 11-280.1-34(a)(5), the word “leak” has been corrected to “release” to more clearly refer to the release detection requirements of subchapter 4.
- f. In section 11-280.1-34(c)(2), “of” has been corrected to “for” in the phrase, “investigation for soil and groundwater cleanup,” referring to the title of section

11-280.1-65, and a missing semicolon has been added at the end of the paragraph.

- g. A missing parenthesis is added at the end of paragraph 11-280.1-52(b)(1).
- h. Section 11-280.1-53(c) is edited for clarity. The requirements to “contain and immediately clean up” and “continue cleaning up” are already covered in section 11-280.1-53(a) for all spills and overfills, so these are removed. The written report referred to in this section is the same as the report described in section 11-280.1-62(b), so the description of the reporting requirement is replaced with “comply with section 11-280.1-62(b)”.
- i. In section 11-280.1-244(b)(2), “tank registration, or financial responsibility” is deleted from the list of examples of “other requirements” whose violation may trigger the requirement to retrain Class A and B Operators. The term “registration” is no longer applicable, and both permitting (which replaces registration) and financial responsibility requirements are included in the delivery prohibition criteria in section 11-280.1-429 that are referred to in section 11-280.1-244(b)(1). Therefore, the inclusion of tank registration and financial responsibility in section 11-280.1-244(b)(2) is redundant.
- j. In section 11-280.1-324, “Description of tanks, piping, ancillary equipment, spill and overfill prevention equipment, and release detection equipment;” is added to the list of information required on the UST system permit application. This section identifies “Other information required in the form prescribed by the director; and Other information as the department may require.” as requirements, so this is not adding a new requirement. The new language clarifies the application process by describing what a large portion of the prescribed form consists of: a description of the UST system components.
- k. The missing word “be” is added to the phrase “must be completed and submitted” in section 11-280.1-325(d).

## **b. Impact of changes**

### **i. How does this rule change address the problem?**

The proposed changes correct minor mistakes and inconsistencies in the existing chapter and are therefore a complete remedy to those problems. The introduction of a secondary containment requirement for airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before July 15, 2018 will reduce the likelihood that a release from an UST system will impact the state’s sources of drinking water.

### **ii. Who are the stakeholders? Positive and negative.**

- Owners and operators of UST systems that are not airport hydrant systems nor UST systems with field-constructed tanks will be interested in understanding what new requirements will apply to their sites (gas stations, for example). Since the changes primarily either reduce their burden or simply introduce clarification of an existing

requirement, these owners and operators will likely be supportive of the proposed changes.

- The United States Navy and the Defense Logistics Agency (which supplies fuel to the Navy) will be very interested in how these rule changes will impact their operations and will likely be concerned about the implications for their existing airport hydrant systems and UST systems with field-constructed tanks installed before July 15, 2018.
- The United States Environmental Protection Agency (EPA) will be very interested in how our rulemaking impacts the Navy's long-term strategy moving forward with respect to its strategic planning for their existing UST systems. Since, however, none of the proposed changes will render the state rules less stringent than the federal rules, the changes have no impact on EPA's authorization of our state program. Thus, EPA has no formal role in this rulemaking effort and is unlikely to take any formal position.
- Organizations that remain concerned about how changes to chapter 11-280.1, HAR, will affect the environment and our natural resources, notably the Sierra Club and the Board of Water Supply, are paying close attention to the regulations for UST systems with field-constructed tanks because of the large size of field-constructed tanks and their disproportionate potential to impact the environment and natural resources.

### **iii. What are the potential problems with the rule change?**

It is difficult to predict the way in which this rulemaking effort will affect ongoing efforts by the United States Navy and Defense Logistics Agency to comply with the Administrative Order on Consent in Department of Health docket number 15-UST-EA-01.

### **iv. What is the fiscal impact?**

There will be minimal long- and short-range program and financial impacts on the state since UST program staffing and rules are already in place. Currently budgeted funds will allow continued operation of the program at existing levels, performing regular duties, including inspections, outreach and technical assistance to the regulated community, and oversight and remediation of sites with leaking USTs. The proposed rule changes will not change the department's overall responsibilities to implement the UST program.

### **v. What is the economic impact to the State?**

It is difficult to predict the way in which this rulemaking effort will influence the United States Navy, as the operator of the tanks most likely to be affected by the proposed rules, with respect to their long-term strategic plans for the operation of military installations in Hawaii.

The department is not required to prepare a Small Business Impact Statement for these proposed rule changes because they will not affect small businesses, as this is defined in §201M-1, Hawaii Revised Statutes.

**c. Consequences if changes are not made**

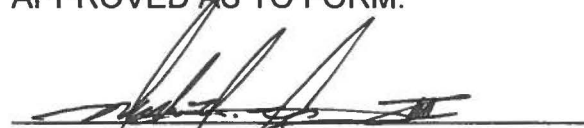
**i. What are the consequences if the rule change does not get adopted, amended, or repealed?**

These changes are being made to better protect Hawaii's groundwater and natural resources. The consequence of not making these changes is arguably that the state's groundwater will remain at greater risk of contamination from airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before July 15, 2018.

Thank you for your consideration in this matter. If you have any questions, please contact Ms. Lene Ichinotsubo, Acting Chief of the Solid and Hazardous Waste Branch, at (808) 586-4226.

- c: Department of the Attorney General  
Department of Budget and Finance  
Department of Business, Economic Development and Tourism  
Office of Planning, Policy and Program Development

APPROVED AS TO FORM:

  
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WADE H. HARGROVE III  
Deputy Attorney General

Date 10/24/19

APPROVED       DISAPPROVED

  
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DAVID Y. IGE  
Governor of Hawaii

Date 10/25/19