

CHAPTER 342L
UNDERGROUND STORAGE TANKS

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Law Journals and Reviews

Liability Insurance Coverage for Pollution Claims. 12 UH L. Rev. 83.

"PART I. DEFINITIONS AND GENERAL PROVISIONS

§342L-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Complaint" means any written charge filed with or by the department that a person is violating or has violated any provision of this chapter or any rule adopted pursuant to this chapter, or a permit, variance, or order issued pursuant to this chapter.

"Department" means the department of health.

"Director" means the director of health.

"Existing underground storage tank" or "existing tank" or "existing underground storage tank system" or "existing tank system" means an underground storage tank or tank system for which installation commenced not later than December 22, 1988. Installation is considered to have commenced if:

- (1) The owner or operator has obtained all federal, state, and county approvals or permits necessary to begin physical construction of the site or installation of the underground storage tank or tank system; and
- (2) Either a continuous on-site physical construction or installation program has begun or the owner or operator has entered into contractual obligations (which cannot be canceled or modified without substantial loss) for physical construction at the site or installation of the underground storage tank or tank system to be completed within a reasonable time.

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

"Owner" means:

- (1) In the case of a particular underground storage tank or tank system in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank or tank system; and

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

"Party" means each person or agency named as a party or properly entitled to be a party in any court or agency proceeding.

"Permit" means written authorization from the director to install or operate an underground storage tank or tank system. A permit authorizes the owner or operator to install and operate an underground storage tank or tank system in a manner, or to do any act, not forbidden by this chapter or by rules adopted under 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 which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

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

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

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

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

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Soil remediation site" means designated state-owned land set aside for the purpose of remediating contaminated soils.

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

- (1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (2) Tank used for storing heating oil for consumptive use on the premises where stored;
- (3) Septic tank;
- (4) Pipeline facility (including gathering lines) regulated under:
 - (A) The federal Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended; or
 - (B) The federal Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;
- (5) Surface impoundment, pit, pond, or lagoon;
- (6) Storm water or wastewater collection system;
- (7) Flow-through process tank;
- (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; and
- (9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

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

"Variance" means special written authorization from the director to own, install, or operate an underground storage tank or tank system in a manner deviating, or to do an act that deviates, from the requirements of rules adopted under this chapter. [L 1989, c 212, pt of §6; am L 1992, c 259, §3; am L 2016, c 179, §3]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[§342L-2] Administration.** The department shall administer this chapter through the director. The director may delegate to

any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules. [L 1989, c 212, pt of §6]

" **§342L-3 Powers; rulemaking; appointment of hearings officers.** (a) The director may adopt, amend, and repeal state rules controlling and regulating underground storage tanks and tank systems. All rules shall be adopted pursuant to chapter 91.

(b) In addition to other specific powers provided in this chapter, the director may appoint without regard to chapter 76, hearings officers to conduct public participation activities including public hearings and public informational meetings. [L 1989, c 212, pt of §6; am L 1992, c 259, §4; am L 2000, c 253, §150]

" **§342L-4 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the department.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines this to be protective of human health and the environment; provided that the permit may be subject to conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not to exceed five years if the director determines this to be protective of human health and the environment. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit;
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) 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.

(d) No applicant for a modification or renewal of a permit shall be held in violation of the requirement to obtain a permit during the pendency of the applicant's application so long as the applicant acts in compliance with the permit previously granted. [L 1989, c 212, pt of §6; am L 1992, c 259, §5]

" **[§342L-4.5] Permits near shoreline prohibited; exception.**

(a) The department shall not issue a permit for a new underground fuel storage tank within one hundred yards of the shoreline; provided that a permit may be issued by the department for purposes of repairing or replacing an existing underground fuel storage tank.

(b) Except as otherwise provided in subsection (c), the holder of a permit for an existing underground fuel storage tank within one hundred yards of the shoreline may renew the permit.

(c) Beginning January 1, 2045, no person shall operate an underground fuel storage tank within one hundred yards of the shoreline, and no permit for an underground fuel storage tank within one hundred yards of the shoreline shall be renewed. [L 2016, c 179, §2]

" **§342L-5 Variances allowed.** Provisions under this chapter deemed more stringent than the federal rules established under Subtitle I of the federal Resource Conservation and Recovery Act, as added by the federal Hazardous and Solid Waste Amendments of 1984, may be varied by the department, when the variance results in an equivalent degree of human health and environmental protection and does not present a greater danger to human health or the environment. [L 1989, c 212, pt of §6; am L 1992, c 259, §6]

" **§342L-6 Variances; procedures for.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not fully conform to standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the standards established pursuant to this chapter.

(c) Whenever an application is approved, the department shall issue a variance authorizing the installation or operation

of an underground storage tank or tank system in a manner deviating from full compliance with applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The installation or operation of an underground storage tank or tank system occurring or proposed to occur by the granting of the variance does not present a greater danger to human health or the environment than the installation or operation of what would have been allowed by the federal rules established under Subtitle I of the federal Resource Conservation and Recovery Act, as added by the federal Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§6991-6991i;
- (2) The installation or operation of an underground storage tank or tank system occurring or proposed to occur does not imminently and substantially endanger human health or the environment or the public's safety; and
- (3) Compliance with the rules or standards from which variance is sought would produce serious financial hardship to the owner and operator.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and conditions consistent with the reasons thereof, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate storage of the regulated substance involved, it shall be only until the necessary means for storage becomes practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of storing the regulated substance involved.
- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the owner and operator to monitor for releases and report the results to the department.

(e) Any variance granted pursuant to this section may be renewed from time to time on previous terms and conditions, subject to modifications, and for periods not exceeding five years at a time; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding

variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for deviation from full compliance with applicable standards not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law, including revocation of the variance.

(h) Any application for a variance, submitted pursuant to this chapter, shall be subject to the public participation requirements listed below.

- (1) Public notices of every completed application for a variance shall be given in a manner designed to inform interested and potentially interested persons of the proposed activity. Procedures for giving public notice shall include at least the following:
 - (A) Notice shall be given within the geographical areas of the proposed activity;
 - (B) Notice shall be mailed to any person or group upon request; and
 - (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area;
- (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons or groups may submit their written comments with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director;
- (3) The contents of public notice of applications for variances shall include at least the following:
 - (A) Name, address, and telephone number of the agency issuing the public notice;
 - (B) Name and address of each applicant and other involved parties including the landowner,

- facility owner, underground storage tank or tank system owner, facility operator, and underground storage tank or tank system operator;
- (C) Brief description of all applicant activities or operations that result in the activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);
 - (D) A short description of the location of each underground storage tank or tank system;
 - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) and any other means by which interested persons may influence or comment upon those determinations; and
 - (F) Address and telephone number of the state agency or other location at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents; and
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed activity, or other appropriate area, at the discretion of the director. [L 1989, c 212, pt of §6; am L 1992, c 259, §§7, 8; am L 1998, c 2, §92]

" §342L-7 Authority to obtain information and data, inspect, and require and conduct activities; penalties for disclosure.

(a) For the purpose of developing or assisting in the development of any rule, conducting any study, taking any release response action, or enforcing this chapter, any owner or operator of an underground storage tank or tank system, and any person involved in response actions relating to any releases from these tanks or tank systems, upon the request of any duly authorized representative of the department, shall:

- (1) Furnish information relating to the tanks or tank systems, including tank equipment and contents and any response actions relating to releases from the tanks or tank systems;
- (2) Conduct monitoring or testing; and
- (3) Permit the designated representative at all reasonable times to have access to, and to copy all records relating to the tanks or tank systems.

(b) For the purpose of developing or assisting in the development of any rule, conducting any study, investigating an actual or suspected release, monitoring for compliance or noncompliance with this chapter, any rule or standard adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, taking release response action, or enforcing this chapter, any duly authorized representative of the department may:

- (1) Enter at reasonable times any establishment or place;
- (2) Inspect and obtain samples from any person of any regulated substances contained in any underground storage tank or tank system;
- (3) Conduct monitoring or testing of the tanks or tank systems, associated equipment, contents, or soils, air, surface water, or groundwater; and
- (4) Take release response action.

Each inspection shall be commenced and completed with reasonable promptness.

(c) Any records, reports, or information obtained from any persons under this section shall be available to the public except as provided in this subsection. Upon a showing satisfactory to the department that public disclosure of records, reports, or information, or a particular part thereof, to which the department representative has access under this section would divulge information entitled to protection under chapter 92F, the department shall consider the information or a particular portion thereof to be confidential. No such confidential information secured pursuant to this section by any official or employee of the department within the scope and [course] of the official's or employee's employment in the prevention, control, or abatement of releases from underground storage tanks or tank systems shall be disclosed by the official or employee with the following exception: the document or information may be disclosed to officers, employees, or authorized representatives of the State or of the United States, including local government entities, who have been charged with carrying out this chapter or Subtitle I of the federal Resource Conservation and Recovery Act, or when relevant in any proceeding under this chapter.

(d) Any representative of the department, acquiring confidential information pursuant to this section, who intentionally or knowingly divulges or discloses information, upon conviction, shall be fined not more than \$5,000 or be imprisoned for a period not to exceed one year, or both, unless the disclosure is authorized in this chapter or ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted

pursuant to this chapter. [L 1989, c 212, pt of §6; am L 1992, c 259, §9]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[§342L-7.5] Record maintenance.** The department, pursuant to chapter 91, shall adopt requirements for the establishment and maintenance of records relating to underground storage tanks and tank systems. [L 1992, c 259, pt of §1]

" **§342L-8 Enforcement.** (a) If the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit or variance issued pursuant to this chapter, the director may do one or more of the following:

- (1) Issue an order assessing an administrative penalty for any past or current violation;
- (2) Issue an order requiring compliance immediately or within a specified time; or
- (3) Commence a civil action in the circuit environmental court in the circuit in which the violation occurred or the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties, or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of any permit or variance issued under this chapter, and shall state with reasonable specificity the nature of the violation. Any administrative penalties assessed in the order shall be in accordance with section 342L-11.

(c) Any order issued under this chapter shall become final, unless not later than twenty days after the order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the order is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators

appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(d) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If, after a hearing held pursuant to this section, the director finds that one or more violations have occurred or are occurring, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or release involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order, the director finds that no violation has occurred or is occurring, the director shall rescind the order. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or release.

(e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to collect the administrative penalty.

In any proceeding to collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

(f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

(g) All penalties shall be deposited to the credit of the leaking underground storage tank fund established in section 342L-51. [L 1989, c 212, pt of §6; am L 1990, c 298, §14; am L 1992, c 259, §10; am L 1995, c 180, §30; am L 2014, c 218, §8]

" **§342L-9 Emergency powers; procedures.** (a)

Notwithstanding any other law to the contrary, if the governor or the director determines that an imminent peril to human health and safety or the environment is or will be caused by:

- (1) A release;
- (2) Any action taken in response to a release from an underground storage tank or tank system; or
- (3) The installation or operation of an underground storage tank or tank system;

that requires immediate action, the governor or the director, without a public hearing, may order any person causing or contributing to the peril to immediately reduce or stop the release or activity, and may take any and all other actions as may be necessary. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office. [L 1989, c 212, pt of §6; am L 1992, c 259, §11; am L 1995, c 201, §5]

Cross References

Environmental response law, see chapter 128D.

" **§342L-10 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$25,000 for each individual tank for each day of each violation. Each day of each violation shall constitute a separate offense. In addition, any person who fails to comply with an order issued under this chapter within the time specified in the order shall be fined not more than \$25,000 for each day of noncompliance with the order. Any action taken in environmental court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who:

- (1) Denies, obstructs, or hampers the entrance, inspection, or conduct of release response activities by any duly authorized representative of the department at any building, place, site, facility, vehicle, or structure that the representative is authorized to enter, inspect, or at which the representative is authorized to conduct release response activities; or

(2) Fails to provide information requested by the representative as required under section 342L-7; shall be fined not more than \$500 per day of denial, obstruction, hindrance, or failure. Any action taken in environmental court to impose or collect the penalty provided for in this subsection shall be considered a civil action. [L 1989, c 212, pt of §6; am L 1991, c 157, §17; am L 1992, c 259, §12; am L 1995, c 180, §31; am L 2014, c 218, §8]

" **§342L-11 Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter or by rules adopted under this chapter, the director may impose by order the penalties specified in section 342L-10.

(b) Factors to be considered in imposing an administrative penalty include:

- (1) The nature and history of the violation and of any prior violations;
- (2) The economic benefit, if any, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action;
- (4) Good faith efforts to comply; and
- (5) Any other matters that justice may require.

(c) It shall be presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary shall be on the violator. [L 1989, c 212, pt of §6; am L 1992, c 259, §13; am L 1995, c 180, §32]

" **§342L-11.5 REPEALED.** L 1992, c 259, §34.

" **§342L-12 Injunctive and other relief.** The director may institute a civil action in any environmental court of competent jurisdiction for injunctive and other relief to prevent or stop any violation of this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance, to impose and collect civil penalties, to collect administrative penalties, or to obtain other relief. The environmental court may grant relief in accordance with the Hawaii rules of civil procedure. [L 1989, c 212, pt of §6; am L 1992, c 259, §14; am L 1995, c 180, §33; am L 2014, c 218, §8]

Rules of Court

Injunctions, see HRCF rule 65.

" **[§342L-12.5] Intervention.** Any person may intervene in any civil action to enforce this chapter if the person has an interest that is, or may be, adversely affected. [L 1992, c 259, pt of §1]

" **§342L-13 Appeal.** If any party is aggrieved by an order of the director, the party may appeal in the manner provided in chapter 91 to the circuit environmental court of the circuit in

which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of an order shall not be stayed on appeal unless specifically ordered by [an] environmental court of competent jurisdiction. [L 1989, c 212, pt of §6; am L 1992, c 259, §15; am L 2014, c 218, §8]

" **§342L-14 Fees.** Notwithstanding section 342L-36.5 to the contrary, the director may establish reasonable fees for the registration of underground storage tanks or tank systems, for the issuance, renewal, and modification of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances including inspections and necessary site visits (not including court costs or other costs associated with any formal enforcement action), and for the review, evaluation, and approval of plans regarding release response activities. The fees shall be deposited to the credit of the general fund. [L 1989, c 212, pt of §6; am L 1992, c 259, §16]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

Section 342L-36.5 referred to in text is repealed.

" **§342L-15 Public records; confidential information.** Reports and records submitted to the department by any person on the ownership, installation, or operation of underground storage tanks or tank systems shall be made available for inspection by the public during established office hours except as provided in this section. Upon a showing satisfactory to the department that public disclosure of records, reports, or information, or a particular part thereof, to which the department's representative has access to under this section would divulge information entitled to protection under chapter 92F, the department shall consider the information or a particular portion thereof to be confidential. No confidential information secured pursuant to this section by any official or employee of the department within the scope of and [course] of the official's or employee's employment in the prevention, control, or abatement of releases from underground storage tanks or tank systems, shall be disclosed by the official or employee with the following exception: the document or information may be disclosed to officers, employees, or authorized representatives of the State or of the United States, including county government entities, who have been charged with carrying out this chapter or Subtitle I of the federal Resource Conservation

and Recovery Act, or when relevant in any proceeding under this chapter. [L 1989, c 212, pt of §6; am L 1992, c 259, §17]

" **§342L-16 Nonliability of department personnel.**

Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section 342L-7(d). [L 1989, c 212, pt of §6; am L 1992, c 259, §18]

" **[§342L-17] Other action not barred.** No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter. [L 1989, c 212, pt of §6]

" **[§342L-18] Enforcement by state and county authorities.**

All state and county health authorities and police officers shall enforce this chapter and the rules and orders of the department. [L 1989, c 212, pt of §6]

" **[§342L-19] Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law. [L 1989, c 212, pt of §6]

" **§342L-20 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to underground storage tanks or tank systems that are governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to underground storage tanks or tank systems shall be void and of no effect if inconsistent with a rule of the department upon the adoption thereof. [L 1989, c 212, pt of §6; am L 1992, c 259, §19]

" **[§342L-21] Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter shall in the discretion of the court receive priority in the courts of the State. [L 1989, c 212, pt of §6]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§342L-22 REPEALED.** L 1992, c 259, §35.

" **[\$342L-23] Directory of underground storage tank service providers.** (a) The director shall develop and maintain a directory of service providers who are identified in [subsection] (c). Information submitted by service providers shall be made readily available to owners and operators of underground storage tanks and tank systems and the public for review and inspection upon request.

(b) The directory shall consist of service providers who are:

- (1) Individuals, engaged in types of services in [subsection] (c), having signatory authority and responsibilities; and
 - (2) Persons, representing firms engaged in types of services in [subsection] (c), who have signatory authority and responsibilities.
- (c) Categories of service providers include the following:
- (1) Installation of underground storage tanks or tank systems;
 - (2) Retrofitting underground storage tanks or tank systems for corrosion protection, spill and overflow prevention, and release detection;
 - (3) Operating and maintaining corrosion protection systems;
 - (4) Repairing underground storage tanks and tank systems;
 - (5) Testing and monitoring underground storage tanks and tank systems for releases of petroleum and hazardous substances;
 - (6) Assessment of an underground storage tank site for the nature and extent of contamination of soil and waters by released substances;
 - (7) Procurement of product, soil, and water samples;
 - (8) Preparation and analysis of product, soil, and water samples;
 - (9) Procurement of field measurements to screen for and characterize contaminants;
 - (10) Abatement and remediation of contaminants at the site to levels protective of human health and the environment;
 - (11) Cleaning of underground storage tanks or tank systems;
 - (12) Excavating and removing underground storage tanks or tank systems, and contaminated soils and debris;

- (13) Transporting underground storage tanks or tank systems, contaminated soils and debris; and
- (14) Treatment, storage, and disposal of uncleaned underground storage tanks or tank systems, contaminated soils and debris.

(d) Effective June 18, 1992, service providers wishing to be listed in the directory may submit to the director, at a minimum, the following types of information:

- (1) Full name of the individual or person in a firm with signatory authority and responsibilities;
- (2) Current job title and description of responsibilities;
- (3) Name of the firm or company currently employing the person, if applicable;
- (4) Identification of the specific category or categories of services provided in [subsection] (c) to be provided;
- (5) List the number, types, and qualifications of personnel reporting to the person with signatory authority and responsibility, if any;
- (6) For the individual or person with signatory authority and responsibility, formal education, including specific copies of diplomas from high schools, vocational schools, colleges, and universities;
- (7) For the individual or person with signatory authority and responsibility, registrations and certifications, including copies of registered professional engineering license, plumbers license, tank or tank system installer certification by manufacturer, tank or tank system testing certifications, commercial haulers license, etc. (including registrations and certifications from other states);
- (8) For the individual or person with signatory authority and responsibility, formal training, including description of courses and seminars and certificates of completion thereof;
- (9) For the individual or person with signatory authority and responsibility, related work experience, including type of work, and identification and telephone numbers of any references;
- (10) For the individual or person with signatory authority and responsibility, memberships and affiliation with professional and work organizations; and
- (11) For the individual or person with signatory authority and responsibility, statement attesting to coverage of financial liability relating to the applicable categories of work in [subsection] (c). [L 1992, c 259, pt of §1]

Revision Note

"June 18, 1992" substituted for "on the date of approval of this Act".

"PART II. UNDERGROUND STORAGE TANK REGULATION

§342L-30 Notification requirements. (a) Except as provided in subsection (c), the owner of an existing underground storage tank or existing tank system shall notify the department by December 31, 1989, of the existence of the tank or tank system and specify the age, size, type, location, and uses of the tank or tank system. Notice shall be made on an approved form of notice provided by the department.

(b) The owner of an existing underground storage tank or existing tank system taken out of operation between January 1, 1974, and May 19, 1986, shall notify the department by December 31, 1989, of the existence of the tank or tank system, unless the tank or tank system was removed from the ground prior to May 8, 1986. Notices shall include, to the extent known to the owner, at least the following specifications:

- (1) The date the tank or tank system was taken out of operation;
- (2) The age of the tank or tank system on the date taken out of operation;
- (3) The size, type, and location of the tank or tank system; and
- (4) The type and quantity of substances left stored in the tank or tank system on the date taken out of operation.

(c) Any owner who brings into use an underground storage tank or tank system after May 19, 1986, shall notify the department within thirty days after the installation of the tank or tank system, specifying the age, size, type, location, and uses of the tank or tank system.

(d) Subsections (a) to (c) shall not apply to tanks or tank systems for which notice was given pursuant to section 103(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-516, as amended.

(e) Any person who acquired ownership of an underground storage tank or tank system after December 31, 1989, shall notify the department within thirty days of June 18, 1992, whether or not the person still owns the underground storage tank or tank system. Any person who acquires ownership of an underground storage tank or tank system after June 18, 1992,

shall notify the department within thirty days of acquiring ownership. If there is a change of operator of an underground storage tank or tank system, the owner shall notify the department within thirty days of the change of operator. Notification of any of the above changes in the owner or operator of an underground storage tank or tank system shall be made on a form provided by the department.

(f) The owner of an underground storage tank or tank system taken out of operation on or before January 1, 1974, shall not be required to notify the department.

(g) Any person who sells a tank or tank system intended to be used as an underground storage tank or tank system shall notify the purchaser of the tank or tank system of the owner's notification requirements established under this section.

(h) Beginning on June 7, 1989, and for eighteen months thereafter, any person who deposits regulated substances into an underground storage tank or tank system shall notify the owner of the tank or tank system of the owner's notification requirements established under this section.

(i) Any failure to comply with the requirements of this section, including any submission of false information, shall be subject to the penalties set forth in sections 342L-10 and 342L-11 for each day of each violation. [L 1989, c 212, pt of §6; am L 1992, c 259, §20]

Revision Note

"June 18, 1992," substituted for "the effective date of this Act".

" **§342L-31 Permit requirements and transfer of permit.** (a) No person shall install or operate an underground storage tank or tank system brought into use after the effective date of the tank or tank system standards established in section 342L-32 unless a permit is obtained from the department and upon payment of a fee.

(b) No permit to own or operate an underground storage tank or tank system shall be transferred to any person without prior written approval of the director.

(c) The department shall prepare a form for an application to request the director's approval to transfer a permit of ownership or operation of an underground storage tank or tank system. A person wishing to accept the obligations of a transferred permit to own or operate an underground storage tank or tank system from the previous owner or operator shall complete an application form and submit the form to the director. The director shall review the application and issue

an approval of the transfer if the applicant proves to the satisfaction of the director that the applicant is able to comply with the conditions of the permit. [L 1989, c 212, pt of §6; am L 1992, c 259, §21]

" **§342L-32 Standards for tanks and tank systems.** (a) The department shall adopt standards under chapter 91 which shall apply to underground storage tanks and tank systems.

(b) Underground storage tank and tank system standards shall include, but are not limited to the following specifications:

- (1) The tank and tank system shall be designed, constructed, installed, upgraded, maintained, repaired, and operated to prevent releases of the stored regulated substances for the operational life of the tank or tank system;
- (2) The material used in the construction or lining of the tank or tank system is compatible with the substance to be stored; and
- (3) Existing underground storage tanks or existing tank systems shall be replaced or upgraded not later than December 22, 1998, to prevent releases for their operating life. [L 1989, c 212, pt of §6; am L 1992, c 259, §22]

" **[§342L-32.5] Delivery, deposit, and acceptance prohibition.** No person shall deliver to, deposit into, or accept a regulated substance into an underground storage tank regulated under this chapter at a facility that has been identified by the department to be ineligible for such delivery, deposit, or acceptance. The delivery prohibition may go into effect at a facility before a hearing is conducted by the director. [L 2009, c 7, §2]

" **§342L-33 Release detection.** The department, pursuant to chapter 91, shall adopt standards of performance for maintaining a release detection system, including, but not limited to, inventory control, tightness testing, and any other methods designed to identify releases from the underground storage tank or tank system in a manner consistent with the protection of human health and the environment. [L 1989, c 212, pt of §6; am L 1992, c 259, §23]

" **§342L-34 Reporting of releases.** The department, pursuant to chapter 91, shall adopt requirements for reporting suspected or confirmed releases and action taken in response to a

suspected or confirmed release from an underground storage tank or tank system. [L 1989, c 212, pt of §6; am L 1992, c 259, §24]

" **§342L-35 Response to suspected or confirmed releases.** The department, pursuant to chapter 91, shall adopt requirements for investigating a suspected release and taking action in response to a confirmed release from an underground storage tank or tank system, which shall include at least the following:

- (1) Requirement that when a release is found, the substances in the tank or tank system be emptied if emptying the substances does not present a greater danger to human health or the environment;
- (2) Requirement for proper closure of the tank or tank system, following the requirements established under section 342L-37, or repair and testing of the tank or tank system before placing it back into operation;
- (3) Requirement that the owner and operator of the underground storage tank or tank system that had a release restore the environment to a condition and quality acceptable to the department; and
- (4) Requirement to notify those members of the public directly affected by the release and the proposed response to the release. [L 1989, c 212, pt of §6; am L 1992, c 259, §25]

" **§342L-36 Financial responsibility.** (a) The department, pursuant to chapter 91, shall adopt requirements for maintaining evidence of financial responsibility for taking response action and compensating third parties for bodily injury and property damage caused by any accidental releases arising from operating an underground storage tank or tank system. Evidence of financial responsibility may be established by any one, or any combination of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer, or any other method satisfactory to the department. In prescribing requirements under this subsection, the department may specify policy or other contractual terms, conditions, or defenses that are necessary or acceptable to establish evidence of financial responsibility.

(b) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the provider of financial assurance. In the case of action pursuant

to this subsection, the provider of financial assurance may invoke all rights and defenses that would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the provider of financial assurance if an action had been brought against the provider of financial assurance by the owner or operator.

(c) The total liability of a provider of financial assurance shall be limited to the aggregate amount that the provider of financial assurance has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a provider of financial assurance to the owner or operator, including, but not limited to, the liability of the provider of financial assurance for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other applicable law.

(d) The department may establish the amount of required coverage for particular classes or categories of underground storage tanks or tank systems containing petroleum, which shall not be less than \$1,000,000 for each occurrence with an appropriate aggregate requirement.

(e) The department may establish amounts lower than the amounts required by subsection (d) for underground storage tanks or tank systems containing petroleum, which are at facilities not engaged in petroleum production, refining, or marketing, and which are not used to handle substantial quantities of petroleum.

(f) The department may consider the following factors in establishing the amount of coverage:

- (1) The size, type, location, storage, and handling capacity of underground storage tanks or tank systems in the class or category and the volume of petroleum handled by the tanks or tank systems;
- (2) The likelihood of release from underground storage tanks or tank systems in the class or category;
- (3) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry;
- (4) The availability of methods of financial responsibility in amounts greater than the amount established by this section; and
- (5) Such other factors as the department deems pertinent.

(g) The department may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or tank systems if the department determines that methods of financial responsibility satisfying the requirements of this section are not generally available for underground storage tanks or tank systems in that class or category, and:

- (1) Steps are being taken to form a risk retention group for the class of tanks or tank systems; or
- (2) The State is taking steps to establish a fund to be implemented by the department or local agencies and departments for response action and compensation for the class of tanks or tank systems.

The initial suspension by the department pursuant to this subsection may be for a period not to exceed one hundred eighty days. A determination to continue suspension may be made with respect to the same class or category at the end of the period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the department finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund described in paragraph (2). [L 1989, c 212, pt of §6; am L 1992, c 259, §26]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§342L-36.5 REPEALED.** L 1992, c 259, §33.

" **§342L-37 Underground storage tank and tank system change in service and closure requirements.** Nothing in this chapter shall be construed to relieve the owners and operators of underground storage tanks and tank systems that have been removed from the ground of any responsibility to comply with the release response provisions in this chapter and any other requirements applicable to these owners and operators prior to the removal of the underground storage tanks or tank systems. The department, pursuant to chapter 91, shall adopt requirements for the change in service and temporary or permanent closure of underground storage tanks and tank systems, including requirements to prevent future releases of regulated substances into the environment. [L 1989, c 212, pt of §6; am L 1992, c 259, §28]

"PART III. DEPARTMENT RESPONSE PROGRAM FOR PETROLEUM

RELEASES

Cross References

Environmental response law, see chapter 128D.

§342L-50 Definitions. For the purpose of this part:

"Exposure assessment" means a determination regarding the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank or tank system. This 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.

"Facility" means, with respect to any owner or operator, a single parcel of property (or any contiguous or adjacent property), including improvements, in or upon which all underground storage tanks or tank systems used for the storage of petroleum that are owned or operated by the owner or operator are located.

"Fund" means the leaking underground storage tank fund.

"Owner" means any person who falls within the definition of owner contained within part I but excluding a person who does not participate in the management of an underground storage tank or tank system and is otherwise not engaged in petroleum production, refining, and marketing but holds indicia of ownership primarily to protect a security interest in the tank or tank system. [L 1989, c 212, pt of §6; am L 1992, c 259, §29]

" **§342L-51 Leaking underground storage tank fund.** (a) The department shall establish a revolving fund within the department which shall consist of moneys appropriated to the fund through federal grants, moneys appropriated to the fund by the legislature, moneys paid to the fund as a result of departmental compliance proceedings, moneys paid to the fund pursuant to court-ordered awards or judgments, moneys paid to the fund in court-approved or out-of-court settlements, and moneys given to the fund from other sources.

(b) Moneys from the fund shall be expended by the department for the sole purpose of responding to petroleum

releases from underground storage tanks or tank systems in a manner consistent with this chapter.

(c) Moneys in the fund, which were appropriated to the fund through a federal grant and which have been collected by the department as part of its cost recovery efforts pursuant to section 342L-53, may be paid to the federal government when such repayment is required by a condition in the relevant federal grant. [L 1989, c 212, pt of §6; am L 1992, c 259, §30]

" **§342L-52 Response to suspected or confirmed releases.** (a) In the event of a petroleum release from an underground storage tank or tank system, which occurs prior to the adoption of rules for response to suspected or confirmed releases pursuant to section 342L-35, the department may:

- (1) Issue an order requiring the owner or operator of an underground storage tank or tank system to undertake response action as is necessary to protect human health or the environment and fixing a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director; or
- (2) Undertake response action by itself or by contract as is necessary to protect human health or the environment.

The department shall use moneys from the fund to pay for costs incurred in undertaking or compelling a response action pursuant to this subsection.

The department shall assign priority in undertaking response actions, pursuant to this subsection, to cases in which the department cannot identify, within the time necessary to protect human health or the environment, a solvent owner or operator of the tank or tank system, or even if able to identify such a person, has cause to believe that the person cannot or will not properly undertake a response action.

(b) In the event of a petroleum release from an underground storage tank or tank system, which occurs after the adoption of rules for response to suspected or confirmed releases pursuant to section 342L-35, the department may take all actions and issue such orders as are described in subsection (a), which are in conformity with the rules; provided that the department may undertake response actions with respect to any release of petroleum into the environment from an underground storage tank or tank system only if the department finds the action to be necessary to protect human health or the environment and one or more of the following conditions exists:

- (1) No person can be found, within ninety days or such shorter period as may be necessary to protect human health or the environment who is:

- (A) An owner or operator of the tank or tank system;
 - (B) Subject to the response action rules; and
 - (C) Capable of carrying out the response action properly;
- (2) Prompt action by the department is required to protect human health or the environment;
 - (3) Anticipated costs of the response action at a facility will exceed the amount of financial responsibility coverage required by the department and, considering the class or category of tank or tank system from which the release occurred, the director determines that expenditures from the fund are necessary in order to assure effective response action; or
 - (4) The owner or operator of the tank or tank system has failed or refused to comply with a federal order issued pursuant to either section 9003 or 9006 of the federal Resource Conservation and Recovery Act or with an order issued pursuant to this section or section 342L-8 or 342L-9 to comply with the rules on response to suspected or confirmed releases.

The department shall assign priority in undertaking response actions pursuant to this subsection and in issuing orders requiring owners or operators to undertake response actions to those cases involving releases of petroleum from underground storage tanks or tank systems that pose the greatest threat to human health or the environment.

(c) The department is authorized to issue orders to the owner or operator of an underground storage tank or tank system to comply with rules adopted under section 342L-35.

(d) Response actions undertaken by the department may include the temporary or permanent relocation of residents and the provision of alternative household water supplies.

(e) In connection with the performance of any response action, the department may undertake an exposure assessment. A response action to abate immediate hazards or reduce exposure shall not be delayed in order to complete any exposure assessment. The costs of any such assessment may be deemed to have been incurred in undertaking the response action.

(f) Except as provided in this subsection, in order to protect human life, at any facility whose owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established pursuant to section 342L-36, the department shall expend no moneys from the fund to respond to releases at the facility pursuant to subsections (a) and (b). At these facilities the department may use the authority provided in this chapter to order a response action to these releases. The department may use moneys from

the fund to take a response action if necessary to protect human health at these facilities and shall seek full recovery of the costs of all such actions. Nothing in this subsection shall prevent the department from taking a response action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment. [L 1989, c 212, pt of §6; am L 1992, c 259, §31]

Cross References

Environmental response law, see chapter 128D.

Hawaii emergency planning and community right-to-know act, see chapter 128E.

" **§342L-53 Cost recovery.** (a) Whenever costs have been incurred by the department in the undertaking of a response action or enforcement action with respect to the release of petroleum from an underground storage tank or tank system, the owner or operator of the tank or tank system shall be liable to the federal government or the department for these costs. The liability under this subsection shall be construed to be the standard of liability that obtains under section 311 of the Federal Water Pollution Control Act.

(b) In seeking cost recovery, the department may consider the amount of financial responsibility required to be maintained pursuant to section 342L-36 and the factors considered in establishing the amount of financial responsibility pursuant to section 342L-36.

(c) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or tank system or from any person who may be liable for a release or threat of release under this section, to any other person, the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such an agreement for any liability under this section. Nothing in this chapter shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a provider of financial assurance, has or would have, by reason of subrogation or otherwise against any person.

(d) Moneys collected by the department as part of the cost recovery efforts pursuant to this section shall be deposited in the leaking underground storage tank fund established in section 342L-51. [L 1989, c 212, pt of §6; am L 1992, c 259, §32]

"[PART IV.] **FUEL TANK ADVISORY COMMITTEE**

Note

Transfer of rights, powers, etc. of the task force to study fuel tank leaks to the fuel tank advisory committee. L 2016, c 244, §3.

[\$342L-61] Fuel tank advisory committee; established; composition. (a) There is established in the department of health the fuel tank advisory committee, which shall consist of up to fourteen ex officio members and at least two public members.

(b) The ex officio members of the committee shall be:

- (1) The director of health, who shall serve as the committee's chair;
- (2) The four members of Hawaii's congressional delegation, or their designees;
- (3) The president of the Hawaii senate, or a senator appointed by the president of the senate;
- (4) The speaker of the Hawaii house of representatives, or a representative appointed by the speaker of the house;
- (5) The chairperson of the board of land and natural resources, or the chairperson's designee;
- (6) The chairperson of the board of water supply of a county with a population of five hundred thousand or more, or the chairperson's designee; and
- (7) The chairperson of the commission on water resource management, or the chairperson's designee.

(c) The following persons shall be invited to participate on the advisory committee as ex officio members:

- (1) The Commanding General of the United States Army, Pacific, or the Commanding General's designee;
- (2) The Commander of the Pacific Fleet of the United States Navy, or the Commander's designee;
- (3) The Commander of the Pacific Air Forces, or the Commander's designee; and
- (4) A representative from the United States Environmental Protection Agency, or the representative's designee.

(d) The governor shall appoint at least two public members from the community at large in accordance with section 26-34; provided that the advice and consent of the senate shall not be necessary.

(e) The public members of the advisory committee shall receive no salary, but shall be entitled to reimbursement for necessary expenses, including travel expenses. [L 2016, c 244, pt of §2]

" **[§342L-62] Duties.** (a) The advisory committee shall study issues related to leaks of field-constructed underground fuel storage tanks at the Red Hill Bulk Fuel Storage Facility, Kuahua Peninsula, Pacific Missile Range Facility Barking Sands, Hickam Pol Annex, and Schofield Barracks Military Reservation. The advisory committee shall consider:

- (1) The short- and long-term effects of leaks of the fuel tanks, including effects relating to the health of residents, safe drinking water, and the environment;
- (2) Response strategies to mitigate the effects of leaks from fuel tanks;
- (3) Methods to improve communication between the United States Navy, Air Force, and Army; the State; any local board of water supply; and the public in the event of a leak of any fuel tank;
- (4) Groundwater test results in relation to the surrounding areas of fuel tank facilities, with a particular emphasis on the groundwater near the Red Hill Bulk Fuel Storage Facility;
- (5) The implications of shutting down any fuel tank facility; and
- (6) Updates on progress toward meeting goals of agreement between the State, the affected county, and the federal government.

(b) No later than twenty days before the convening of each regular session, the advisory committee shall submit a report of its findings, including groundwater test results, and recommendations, including any proposed legislation, to the legislature. [L 2016, c 244, pt of §2]