

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony COMMENTING on SB2407
RELATING TO UNDERGROUND STORAGE TANKS**

SENATOR JARRETT KEOHOKALOOLE, CHAIR
SENATE COMMITTEE ON HEALTH
SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Hearing Date: 2/11/2022

Room Number: Videoconference

1 **Fiscal Implications:** This measure will impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (department's) appropriations and
3 personnel priorities.

4 **Department Testimony:** This measure would require the department to review a response plan,
5 hold a public hearing, and determine that a facility is in "good standing" before issuing any
6 permit for an underground storage tank (UST) system. These new requirements would impose a
7 significant burden on the department's UST program because they apply to all of the
8 approximately 700 UST systems statewide. The department simply could not meet the proposed
9 new requirements without additional staffing.

10 The requirements for submission of facility-specific response plans and holding a public
11 hearing prior to permitting may be reasonable if applied only to a specific subset of UST systems
12 that pose a much greater risk to human health and the environment and are a subject of greater
13 public interest than the typical UST system. The department suggests applying these
14 requirements only to a limited set of facilities, perhaps defined by storage capacity.

15 *Public hearings*

1 Including permit modifications and transfers, the UST program issued over 800 permits
2 in the last five years, including over 400 in a single year (because the majority of permits are on
3 the same five-year cycle based on the start date of the permitting requirement). It would be
4 impossible for the UST program to process this many permits with current staffing levels if each
5 permit required holding a public hearing. Holding public hearings on neighbor islands would be
6 particularly difficult because the staff is centralized on Oahu. The department does not believe
7 the level of public interest in typical UST systems such as gas stations and systems storing fuel
8 for emergency generators warrants holding such hearings. At least 80% of the permits issued in
9 the last five years were renewals or permit transfers that did not involve a change to the UST
10 system.

11 *Good standing*

12 The proposed requirement for the department to determine whether a permit applicant is
13 in “good standing” would also impose a significant burden on the department. It would be
14 difficult and time consuming for the department to construct an exhaustive list of contractual
15 obligations to the state, applicable federal and environmental laws, government-issued permits,
16 and financial obligations for each facility, much less to determine whether the applicant is in
17 “good standing” for each of these obligations at any particular moment in time. This could not be
18 accomplished without additional staffing.

19 *Response plans*

20 The department believes that the majority of UST systems do not need a facility specific
21 response plan for a worst case scenario. In the case of a typical gas station UST system, the
22 appropriate response would be to shut off product flow and call 911. Subchapter 10 of chapter
23 11-280.1, HAR, requires all operators to be trained to take such actions in response to an alarm
24 or a release. Immediate cleanup and reporting of spills, overfills, and suspected releases are
25 required by sections 11-280.1-50 and 11-280.1-53. Financial assurance is required for UST
26 system owners and operators other than state and federal government entities (§11-280.1-90).

1 **Offered Amendments:** The department suggests replacing section 1 of the bill with the
2 following:

3 SECTION 1. Section 342L-4, Hawaii Revised Statutes, is amended to read as follows:

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

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

10 (c) The director shall issue a permit for any term, not exceeding five years, if the director
11 determines this to be protective of human health and the environment; provided that the director
12 shall not approve an application for the issuance or renewal of a permit for an underground
13 storage tank system with a capacity greater than 100,000 gallons without the department first
14 holding a public hearing in the county affected by the approved permit; provided further that the
15 permit may be subject to conditions as the director may prescribe. The director, on application,
16 shall renew a permit from time to time for a term not to exceed five years if the director
17 determines this to be protective of human health and the environment. The director shall not
18 deny an application for the issuance or renewal of a permit without affording the applicant an
19 opportunity for a hearing in accordance with chapter 91.

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

- 23 (1) There is a violation of any condition of the permit;
24 (2) The permit was obtained by misrepresentation, or failure to disclose fully all
25 relevant facts; or
26 (3) There is a release or threatened release of regulated substances that the
27 department deems to pose an imminent and substantial risk to human health or the
28 environment.

1 (d) No applicant for a modification or renewal of a permit shall be held in violation of
2 the requirement to obtain a permit during the pendency of the applicant's application so long as
3 the applicant acts in compliance with the permit previously granted.

4 (e) An application for any permit required under this chapter for an underground storage
5 tank system with a capacity greater than 100,000 gallons shall include a specific response plan
6 including protocols and procedures to respond to a worst case scenario. The specific response
7 plan shall include provisions for:

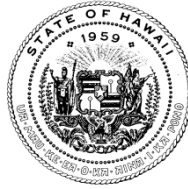
8 (1) The immediate notification and containment of spills;

9 (2) The removal of tank contents to an alternative location;

10 (3) Identification of available funds for public health care costs and environmental
11 remediation; and

12 (4) Other requirements deemed appropriate by the director.”

13
14 Thank you for the opportunity to testify on this measure.



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 11, 2022
1:00 P.M.
State Capitol, Videoconference

S.B. 2407
RELATING TO UNDERGROUND FUEL STORAGE TANKS

Senate Committee(s) on Health and Agriculture & Environment

The Department of Transportation (DOT) offers **comments** to S.B. 2407. The DOT recognizes the intent of is to protect our fragile ecosystem and natural drinking water resources. The DOT is recommending the bill be revised to address the following concerns.

Currently, HRS, §342L-33 through 36 and Hawaii Administrative Rules (HAR) Chapter 11-280.1 provides adequate authority and guidance for notification, response and financial liability for underground storage tanks (USTs), therefore proposed amendments to HRS, §342L-4(b) seem unnecessary.

The proposed amendment to require a public hearing for every issuance or renewal of an UST operating permit will overly burden the Department of Health, significantly extend the permitting process, and create a backlog of applications. The DOT recommends keeping the current language in HRS, §342L-4(c) which gives the Director of Health the discretion in determining a hearing to modify, suspend, or revoke any permit.

Thank you for the opportunity to provide testimony.

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com



RICK BLANGIARDI, MAYOR

BRYAN P. ANDAYA, Chair
KAPUA SPROAT, Vice Chair
RAY C. SOON
MAX J. SWORD
NA'ALEHU ANTHONY

JADE T. BUTAY, Ex-Officio
DAWN B. SZEWCZYK, Designate Ex-Officio

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.
Deputy Manager and Chief Engineer

February 11, 2022

LATE

The Honorable Jarrett Keohokalole, Chair
and Members
Senate Committee on Health
Via Videoconference
Honolulu, Hawaii 96813

The Honorable Mike Gabbard, Chair
and Members
Senate Committee on Agriculture and Environment
Via Videoconference
Honolulu, Hawaii 96813

Dear Chair Keohokalole, Chair Gabbard, and Members:

Subject: Senate Bill 2407: Relating to Underground Storage Tanks

The Honolulu Board of Water Supply (BWS) supports Senate Bill (SB) 2407. This bill proposes amending Hawaii Revised Statutes §342L-4 to require underground storage tank (UST) permit applicants to submit contingency plans for worst case scenarios and for the Department of Health to make a determination that a permit applicant is in good standing before approving it. SB 2407 also requires the approval of UST permit applications and renewals be subject to a public hearing. The BWS supports revising Hawaii's UST laws to require mandatory contingency planning for UST operators to protect Oahu's critical drinking water resources and increased transparency in the UST permitting process. We recommend, the financial obligations condition in the proposed new section 342L-4(d) should reference the requirements in §342L-36.

Thank you for your consideration of our testimony concerning SB 2407.

Very truly yours,

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

SB-2407

Submitted on: 2/9/2022 5:39:01 PM

Testimony for HTH on 2/11/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Susan Pcola_Davis	Individual	Support	Yes

Comments:

I support bill SB2407

This bill seems to close any possible loopholes as it stood.

- Including a specific response plan that includes protocols and procedures to respond to a worse case scenario.
 1. Define “worse case scenario” with specific examples.
 2. Add: Immediate notification of all people, schools, businesses, hospitals or any other entity that needs to respond.

It includes

1. Immediate notification and containment of spills [**to whom, immediately upon spill**]
2. Removal of tank contents to an alternative **location [If possible, or immediately shut down the tank]**
3. Identification of available funds for public health care costs and environmental remediation; [**Is this possible?**]
 - Is it safe to drink JP5 and JP8, jet fuels and P-76 marine diesel?
4. Other requirements deemed appropriate by the director.

Most importantly, holding a public hearing in the county affected by the approved permit. [**Does the public really have a say? This is not a new issue for the public outcry.**]

Who’s missing: The Board of Water Supply. And it has become apparent that the BWS has been put in a corner.

The Board of Water Supply must be able to be part of the process to approve a permit.



Senate Committees on Health / Agriculture and Environment

Friday, February 11th, 2022, 1p.m.

Hawai'i Alliance for Progressive Action Supports: SB2407

Aloha Chairs Keohokalole/Gabard, Vice Chair Baker/Nishihara and Members of the Committees,

On behalf of the Hawai'i Alliance for Progressive Action (HAPA) I am submitting testimony in **support of SB2407**. HAPA is a state-wide organization that engages approximately 10,000 local residents annually.

Mahalo for hearing SB2407, which requires permit applicants to submit contingency plans for worst case scenarios relating to underground fuel storage tanks. The bill requires a public hearing to be held to permit approval.

SB2407 seeks to protect our islands' most precious resource from fuel contamination. The presence of leaky fuel tanks at Red Hill and the Navy's mismanagement of this crisis directly impacts the health and quality of life of Oahu's residents, and will continue to for generations to come. Some of our staff and many of our supporters are directly affected by this crisis. Our water is precious and we all have a duty to protect our islands' source of life for present and future generations.

The legislature must do all that it can to remove the threat of something far worse happening to our water supply, both now and for future generations to come. O'ahu's residents are facing a serious crisis which will continue for years. Board of Water Supply's Ernie Lau said that the Hālawā shaft – which was shut down as a precaution following the Navy's Red Hill well contamination – could be shut down for years, even permanently.

We cannot allow 80-year-old underground storage tanks that store up to 187 million gallons of fuel per day and that pose such an immense threat of leaking and contaminating our environment and water supply to operate 100 feet above O'ahu's sole-source drinking water aquifer.

Navy officials cannot be trusted to protect our water. They have lied time and time again. The following reasons explain why the legislature must act since the Navy has failed to:

- The Navy lied about an active leak at Pearl Harbor for months, discovering the leak in January 2021 but not informing Health Department officials until May. This was revealed in whistleblower emails and documents in October.
- A whistleblower also told the Department of Health in September that Navy officials provided false testimony and withheld information about the full extent of the Facility's infrastructure, including connected pipelines, as well as "historical records of corrosion issues, including holes in tanks" at its Red Hill fuel facility during legal proceedings.
- The Navy suspended use of its Red Hill water shaft on November 28, but the public only found out on December 1. The Navy continues to confuse and gaslight community members.

The Hawai'i Alliance for Progressive Action (HAPA) is a public non-profit organization under Section 501(c)(3) of the Internal Revenue Code. HAPA's mission is to catalyze community empowerment and systemic change towards valuing 'aina (environment) and people ahead of corporate profit.

- Hundreds of community members reported chemical smells in their water on November 28 and then health issues on November 29, which the Navy refused to acknowledge as a potential health concern until the state Department of Health advised residents to not drink the clearly contaminated water.
- A day after the Navy said it had detected diesel in its 'Aiea Hālawā well at levels more than double the DOH safety limit, the military backtracked, saying the contaminated sample “did not come directly” from the well and the Navy does not believe the result proves the well is contaminated.
- They continue to not be transparent despite agreeing to the Administrative Order of Consent, which requires them to be more forthcoming about operations at the Red Hill facility.
- The BWS Hālawā shaft will be shut down until fuel is removed from the tanks and may not reopen for years to come. This shaft was a source of water for South O‘ahu from Hālawā to Maunāluā. The BWS has advised that mandatory water conservation measures will now need to be in place in the summer of 2022.
- The Navy “flushed” Red Hill contaminants for days in violation of Department of Health requirements despite repeated warnings. This risked long-lasting effects on birds, plants, fish, and other aquatic life from petroleum contamination

The Department of Health has agreed that the situation is inherently dangerous. DOH said that a water sample taken from the Red Hill drinking water shaft on December 5 confirmed the water is contaminated with "high levels" of petroleum and gasoline. The sample detected total petroleum hydrocarbons diesel range organics levels 350 times above the DOH Environmental Action Level (EAL) for drinking water, and gasoline range organics more than 66 times the DOH EAL.

The Red Hill facility – the fragile, antiquated fuel tanks and supporting systems – has a long history of leaking fuel into the surrounding environment and has already contaminated O‘ahu’s primary drinking water aquifer. Shutting down Red Hill immediately and entirely is the only way to guarantee the safety of our water and our people.

The Facility’s tanks, each with a 12.5 million-gallon capacity, had a quarter-inch thick steel liner when first constructed nearly 80 years ago. They are encased in aging concrete and the steel liners have been corroding to the point where many through-wall holes have been found and in some areas they are one-third of their original thickness.

These tanks have leaked 180,000 gallons of fuel since they were constructed and the Navy’s own risk assessment from 2018 concluded that the probability of an acute leak of between 1,000 and 30,000 gallons (independent of any earthquake risk) over the next ten years is 96%. The Navy cannot prove that the tank or tank system will not leak regulated substances into the environment.

Approximately 93,000 people living in military housing have been unable to use their water for over two months. If the Navy water system is further compromised, our housing crisis will mushroom.

Lower levels of petroleum products were also found in samples collected from the Aliamanu Child Development Center as well as homes located on the Navy's water system.

It's absolutely critical that the State Legislature take action immediately to address this major threat to Honolulu’s water supply.

Please pass SB2407.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read 'Anne Frederick', with a stylized flourish at the end.

Anne Frederick
Executive Director

SB-2407

Submitted on: 2/8/2022 3:04:18 PM

Testimony for HTH on 2/11/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lynn Murakami-Akatsuka	Individual	Support	No

Comments:

To Members of the Senate Committee on Health and the Senate Committee on Agriculture and Environment,

I strongly support the passage of SB 2407 to enhance the safety of the community and prevention of hazardous spills entering our aquifers, soil, and ocean. It promotes transparency of UST applicants and the public's involvement in the permitting evaluation process.

Thank you for the opportunity to testify in strong support of SB 2407.

LATE

SB-2407

Submitted on: 2/11/2022 12:10:18 PM

Testimony for HTH on 2/11/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Pete Doktor	Individual	Support	No

Comments:

Aloha `Aina Senate Committee Members,

Please pass SB 2407. Any measure intened to protect our sole-source aquifer, particularly from leaks related to the anquidated Red Hill Naval underground fuel tanks.

As a parent, it's been near traumatizing worrying since the 2014 fuel leaks if my keiki's development will be stunted or disabled like children in Flint, Michigan due to governmental failure to prioritize the protection of public water. We live about a mile from the Red Hill Naval Underground Fuel Tanks at Kapūkaki.

As a former DOE employee; it makes me nauseous reflecting on one of my daily duties: monitoring and encouraging elementary students to drink water after recesses from school drinking fountain.

As a military veteran, I am appalled by the Pentagon's position that so-called "national security" trumps the public health and safety of our citizens. Nothing could be more critical to our security than the water that makes life and economy possible on this `aina. The Constitution is explicit that there is to be civilian control of the military, and that it must.

Māhalo nui loa for advocating the public health and safety, our shared kuleana.

Pete Doktor
Moanalua