

ACT 197

H.B. NO. 2284-86

A Bill for an Act Relating to Underground Storage Tanks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that of the approximately three million underground storage tanks in the United States, an estimated 100,000 are presently leaking harmful substances. Within the next five years, another 350,000 underground storage tanks are also expected to leak. Consequently, the Hazardous and Solid Waste Amendments of 1984 created a new, comprehensive federal program for the regulation of underground storage tanks. Under these new provisions states may adopt their own regulatory programs by establishing state standards that at least meet minimum federal standards. The purpose of this Act is to establish state standards to protect Hawaii's public health and the environment from ground and surface water contamination resulting from leaking underground storage tanks that are at least as stringent as those adopted by federal rules promulgated under Title VI of the Hazardous and Solid Waste Amendments of 1984.

SECTION 2. Chapter 342, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . UNDERGROUND STORAGE TANKS

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

"Department" means the department of health.

"Guarantor" means any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.

"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 an underground storage tank in use or brought into use on or after the effective date of this Act, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and
- (2) In the case of an underground storage tank in use before the effective date of this Act, but no longer in use after that date, any

person who owned such tank immediately before the discontinuation of its use.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, the State, or a political subdivision of the State. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

"Regulated substance" means element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public 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, Public Law 96-510, as amended (but not including any substance regulated as a hazardous waste under subtitle C of the Act); or
- (2) 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); 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 into groundwater, surface water, or subsurface soils.

"Underground storage 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. Exemptions from this definition and rules adopted under this chapter include:

- (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 Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended;
 - (B) The Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;
- (5) Surface impoundment, pit, pond, or lagoon;
- (6) Storm water or waste water 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.

§342- Notification requirements. (a) The owner of an existing underground storage tank shall notify the department by December 31, 1986, of the existence of such tank and specify the age, size, type, location, and uses of such tank. Notice shall be made on an approved form of notice provided by the department.

(b) The owner of an existing underground tank taken out of operation between January 1, 1974, and the effective date of this Act shall notify the department by December 31, 1986, of the existence of the tank, unless the owner knows the tank subsequently was removed from the ground. Notices shall include, to the extent known to the owner, at least the following specifications:

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

(c) Any owner who brings into use an underground storage tank after the effective date of this Act shall notify the department within thirty days after the installation of the tank, specifying the age, size, type, location, and uses of the tank.

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

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

§342- New tank standards. (a) The department shall adopt performance standards under chapter 91 which shall apply to underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.

(b) New tank construction standards shall include at least the following specifications:

- (1) The tank will prevent releases of the stored regulated substances due to corrosion or structural failure for the operational life of the tank;
- (2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, or steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and
- (3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

§342- Leak detection and record maintenance. (a) The department shall adopt under chapter 91 standards of performance for maintaining a leak detection system, an inventory control system, and tank testing system, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment. In addition, the department shall adopt requirements for maintaining records of any such monitoring, leak detection, inventory control, and tank testing system.

(b) The requirements for the leak detection and record maintenance system shall include, but are not limited to:

- (1) Directing the operator of an underground storage tank to keep accurate regulated substance inventory records for the purpose of detecting leaks. Records shall be kept for each tank on each day a regulated substance is added to or withdrawn from the tank and shall include, as a minimum, a record of the amount of stored

- regulated substance withdrawn and received and the amount of stored regulated substance in the tank.
- (2) Inventory measurements shall be made by gauge or gauge stick or by readout from an automatic monitoring system.
- (3) Inventory records shall be maintained on a regular basis; provided that daily inventory records need not be maintained on those days when a tank is not used if such period does not exceed seven days.
- (4) Losses or gains from each day's inventory period shall be averaged for each five consecutive readings or once a week.
- (5) Records required to be maintained by the operators, pursuant to this section, shall be retained for a minimum of two years.

§342- Reporting of releases and corrective action. The department shall adopt under chapter 91 requirements for the reporting of any releases and corrective action taken in response to a release from an underground storage tank.

§342- Tank closure requirements. The department shall adopt under chapter 91 requirements for the closure of tanks, including the removal and disposal of tanks to prevent future releases of regulated substances into the environment.

§342- Corrective action. The department shall adopt under chapter 91 requirements for taking corrective action in response to a release from an underground storage tank which should include at least the following:

- (1) Requirement that when a leak is found, the substances in the tank be emptied if emptying the substances does not present a greater danger to public health and the environment;
- (2) Requirement for the removal or proper abandonment of the tank, following the requirements established under section 342-6, or repair and testing of the tank before placing it back into operation; and
- (3) Requirement that the owner of the leaking underground storage tank restore the environment to a condition and quality acceptable to the department.

§342- Financial responsibility. (a) The department shall adopt under chapter 91 requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and unsudden accidental releases arising from operating an underground storage tank. Evidence of financial responsibility may be established by rule by any one, or any combination of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In prescribing requirements under this subsection, the department may specify policy or other contractual terms, conditions, or defenses which 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 law, 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 guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which 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 guarantor if an action had been brought against the guarantor by the owner or operator.

(c) The total liability of a guarantor shall be limited to the aggregate amount which the guarantor 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 guarantor to its owner or operator, including, but not limited to, the liability of the guarantor 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 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-516, as amended, or other applicable law.

(d) Corrective action and compensation programs financed by fees on tank owners and operators and administered by the department may be submitted as evidence of financial responsibility under this section.

§342- Inspections, monitoring, and testing. (a) For the purpose of developing or assisting in the development of any regulation, conducting any study, or enforcing this part, any owner or operator of an underground storage tank, upon the request of any duly authorized representative of the department, shall furnish information relating to such tanks, including tank equipment and contents; conduct monitoring or testing; and permit the designated representative at all reasonable times to have access to, and to copy all records relating to such tanks. For the purpose of developing or assisting in the development of any rule, conducting any study, or enforcing this part, such representatives are authorized:

- (1) To enter at reasonable times any establishment or place where an underground storage tank is located;
- (2) To inspect and obtain samples from any person of any regulated substances contained in such tank; and
- (3) To conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.

Each inspection shall be commenced and completed with reasonable promptness.

(b) 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 commercial or financial information entitled to protection under state law, the department shall consider such information or a particular portion thereof to be confidential; provided that the document or information may be disclosed to officers, employees, or authorized representatives of the State or of the United States, who have been charged with carrying out this part or Subtitle I of the Resource Conservation and Recovery Act of 1976, Public Law 94-580, as amended, or when relevant in any proceeding under this part.

§342- Tank permit requirements. (a) No person shall own, install, or operate an underground storage tank brought into use after the effective date of the new tank standards established in section 342- unless a permit is obtained from the department and upon payment of a fee to be established by rule under chapter 91. The application for the permit shall include the new tank standards provided in section 342- .

(b) The department shall prepare a form which provides for the acceptance of the obligations of a transferred permit by any person who is to assume the ownership of an underground storage tank from the previous owner. That person shall complete the form accepting the obligations of the permit and submit the completed form within thirty days after the ownership of the underground storage tank is to be transferred.

§342- Variances. Provisions under this part deemed more stringent than the federal rules established under Title VI of the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, as amended, may be varied by the department, when the variance results in an equivalent degree of environmental protection and does not present a greater danger to public health and the environment.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000, or so much thereof as may be necessary for fiscal year 1986-1987, for the purposes of this Act.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 19, 1986.)