

REPORT OF THE COMMITTEE ON TRANSPORTATION, SUSTAINABILITY AND HEALTH

Voting Members:

Radiant Cordero, Chair; Brandon J.C. Elefante, Vice-Chair;
Esther Kia'aina, Augie Tulba

Committee Meeting Held
January 11, 2022

Honorable Tommy Waters
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Transportation, Sustainability and Health, which considered Bill 48 (2021), entitled:

"A BILL FOR AN ORDINANCE RELATING TO UNDERGROUND STORAGE TANKS,"

introduced on December 1, 2021, and which passed First Reading at the December 15, 2021, Council meeting, reports as follows:

The purpose of Bill 48 (2021) is to protect the purity of O'ahu's groundwater by requiring that no person shall operate an underground storage tank or tank system that has a capacity to store more than 100,000 gallons of any regulated substance without first obtaining a permit from the City.

The Managing Director testified in support of the proposed CD1 and provided information on the Bill, stating that the Mayor is considering designating the Department of Facility Maintenance, Department of Environmental Services, or the Honolulu Board of Water Supply ("BWS") as the permitting agency. While the Mayor's inclination is for the BWS to perform the permitting function, because the BWS is a semi-autonomous agency under Article VII, Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition), as amended, the Mayor may only make such a recommendation to the Board for their consideration.

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

JAN 26 2022

COMMITTEE REPORT NO.

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The BWS Manager and Chief Engineer testified in support of the Bill and provided information on the Bill. He stated that the current position of the BWS is that the Red Hill Bulk Fuel Storage Facility should be defueled and relocated to a location not over an aquifer. Additionally, if the Mayor and the Board reach an agreement, the BWS will take on the responsibility of protecting Honolulu's water resources as the permitting agency.

At your Committee meeting on January 11, 2022, six individuals remotely testified in support, and an individual offered comments on the Bill.

Written testimony in support of the Bill was received from 73 individuals, one individual in opposition, and one individual offered comments.

Your Committee also received written testimony on the Bill from the following organizations:

- Mālama Mānoa (Support)
 - Livable Hawaii Kai Hui (Support)
 - Hawai'i Youth Climate Coalition (Support)
 - Hawai'i Peace and Justice (Support)
 - Sierra Club (Support)
 - Environmental Caucus of The Democratic Party of Hawai'i (Support)
 - Young Progressives Demanding Action (YPDA) (Support)
 - Windward Coalition (Support)
 - Native Hawaiian & Pacific Islander Hawai'i Covid-19 Team (Support)
 - California Indian Environmental Alliance (Support)
 - Urban Reziliency (Support)
 - Hawai'i Public Health Institute (Support)
 - Moanaview Estates AOUO (HOA) (Support)
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ADOPTED ON JAN 26 2022

COMMITTEE REPORT NO. 1

REPORT OF THE COMMITTEE ON TRANSPORTATION, SUSTAINABILITY AND HEALTH

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- Council for Native Hawaiian Advancement (Support)
- Free Access Coalition (Comment)

Your Committee considered a proposed CD1 (OCS2022-0007/1/5/2022 8:01 am) that makes the following amendments:

A. In SECTION 2 of the bill, the CD1:

1. Adds a new Section 41-45.1 ("Definitions") amplifying former Section 41-45.1(a) and adding specific definitions for "Department" and "Department of Health."
2. Provides that the new Article 45 in ROH Chapter 41 relating to underground storage tanks ("USTs") will be implemented and enforced by the department or agency designated by the Mayor.
3. Provides that the standard for granting or renewal of a UST permit will be whether the UST or UST system will be protective of human health and the environment, rather than a determination that the UST or UST system will not leak any regulated substance into the environment during its operating life.
4. Adds new ROH Sections 41-45.3 ("Underground storage tank permit procedures"), 41-45.4 ("Inspections"), 41-45.5 ("Notification and reporting"), and 41-45.6 ("Administration and enforcement").
5. The rulemaking provision has been moved from Section 41-45.1(d) to Section 41-45.6(d).

B. A new SECTION 3 relating to severability is added to the bill.

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REPORT OF THE COMMITTEE ON TRANSPORTATION, SUSTAINABILITY AND HEALTH

Voting Members:

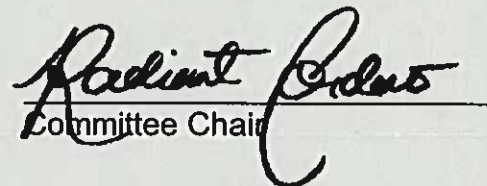
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C. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee on Transportation, Sustainability and Health is in accord with the intent and purpose of Bill 48 (2021), as amended herein, and recommends it pass Second Reading, be scheduled for a public hearing, and thereafter be referred back to Committee in the form attached hereto as Bill 48 (2021), CD1. (Ayes: Cordero, Elefante, Kia'āina, Tulba – 4; Noes: None.)

Respectfully submitted,


Committee Chair

CITY COUNCIL
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HONOLULU, HAWAII

ADOPTED ON JAN 26 2022

COMMITTEE REPORT NO. 1



A BILL FOR AN ORDINANCE

RELATING TO UNDERGROUND STORAGE TANKS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The City and County of Honolulu ("City") has a public trust duty to protect the purity of O'ahu's groundwater. The U.S. Environmental Protection Agency has designated the Southern O'ahu Basal Aquifer, stretching from Schofield Barracks through urban Honolulu, as the "principal source of drinking water" for O'ahu that "if contaminated, would create a significant hazard to public health." Underground storage tanks containing petroleum products are a threat to O'ahu's groundwater. The State of Hawai'i, Department of Health ("DOH"), has determined that no underground storage tank or underground storage tank system in Hawai'i poses as great a threat to groundwater as the underground storage tanks at the Red Hill Bulk Fuel Storage Facility ("Facility"). The DOH has concluded that the storage of up to 187 million gallons of fuel, 100 feet above a drinking water resource, is inherently dangerous.

The U.S. Department of the Navy ("Navy") underground storage tanks at the Facility have a long history of leaking. Navy reports reveal that the tanks have contaminated groundwater beneath the Facility. A Quantitative Risk and Vulnerability Assessment of the Facility prepared for the Navy in 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 year is 27.6 percent; over the next five years, the risk is 80.1 percent; and over the next ten years, the risk is 96.0 percent. Eight of the currently operating tanks at the Facility have not been inspected pursuant to modern standards in more than two decades and are overdue for inspection. Corrosion from the back of the Facility's tanks, at times creating through-holes, is a significant problem. Other large capacity underground storage tank systems at the Facility also pose a risk to groundwater.

United States Code Title 42, Section 6991f(a), gives the City the legal authority to enact underground storage tank requirements with which all federal agencies must comply. Section 342L-20, Hawaii Revised Statutes ("HRS"), allows the City to adopt ordinances and rules governing any matter relating to underground storage tanks, provided they are not inconsistent with the DOH's underground storage tank rules.



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The City Council finds that no underground storage tank or tank system that contains a large volume of petroleum product should be allowed to operate above a sole source aquifer on O'ahu unless it can be established that the tank will not release any regulated substance during its operating life. Such a requirement is consistent with HRS Section 342L-32 and the public trust doctrine.

SECTION 2. Chapter 41, Revised Ordinances of Honolulu 1990, is amended by adding a new article to read as follows:

"Article 45. Underground Storage Tanks

Sec. 41-45.1 Definitions.

All terms used in this article are to be interpreted in a manner consistent with Section 342L-1, Hawaii Revised Statutes ("HRS"), and Section 11-280.1-12, Hawaii Administrative Rules ("HAR"), and:

"Department" means the city department or agency designated by the mayor.

"Director of Health" means the Director of the State Department of Health.

Sec. 41-45.2 Underground storage tank permit required.

- (a) No person shall operate an underground storage tank or tank system that has a capacity to store more than 100,000 gallons of any regulated substance without first obtaining a permit from the department.
- (b) The department shall issue a permit, for a term of five years if it determines that granting the permit is protective of human health and the environment. The permit may be subject to conditions of the department. The department, on application, shall renew a permit for a term of five years if it determines this to be protective of human health and the environment. The department 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 HRS Chapter 91. The department may issue a permit for less than five years pursuant to the procedures in Section 41-45.3(a).
- (c) The department, upon its own motion or upon 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 HRS Chapter 91, the department determines that:



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- (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.

Sec. 41-45.3 Underground storage tank permit procedures.

- (a) Upon filing an application for a permit under HRS Section 342L-4, a person seeking a permit under this article must submit an identical filing to the department within 30 days of filing the application with the Director of Health. The application shall be accompanied by all plans, specifications, and such other information as required by the department or the Director of Health. If a permit has been issued by the Director of Health pursuant to HRS Section 342L-4 prior to the effective date of this ordinance, and the permit is active as of the effective date of this ordinance, the permittee shall submit the application to the Department within 30 days of the effective date of this ordinance, and the department shall grant a permit for the remaining term of the State permit according to the standards set forth in Section 41-45.2(b).
- (b) A permit application review fee of \$15,000 shall accompany a permit application and each subsequent permit renewal application.

Sec. 41-45.4 Inspections.

For purposes of conducting any study; investigating any actual or suspected release; monitoring for compliance or noncompliance with this article, any rule or standard adopted pursuant to this article, or any permit or variance issued pursuant to this article; 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; and
- (3) Conduct monitoring or testing of the tanks or tank systems, associated equipment, contents, or soils, air, surface water, or groundwater.



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A permittee shall allow the department or an authorized representative of the department access to the underground storage tank or tank system within a reasonable amount of time.

Sec. 41-45.5 Notification and reporting.

- (a) A permittee under this article must notify the department in writing within 30 days of any of the following changes in information relating to an underground storage tank or tank system, and may use a form prescribed by the Director of Health to comply with this section:
- (1) Completed closure or change-in-service;
 - (2) Temporary closure or return to currently-in-use status;
 - (3) Changes in product dispensing method, dispenser systems, or under dispenser containment;
 - (4) Changes in release detection method;
 - (5) Changes in spill and overflow detection method;
 - (6) Changes in piping;
 - (7) Changes in type of regulated product stored;
 - (8) Changes in corrosion protection mechanism; and
 - (9) Installation of or changes in secondary containment.
- (b) A permittee under this article shall report to the department within 24 hours when evidence is discovered by any person of a release of a regulated substance from the underground storage tank or tank system.

Sec. 41-45.6 Administration and enforcement.

- (a) Any person who violates this article, any rule adopted pursuant to this article, or any condition of a permit issued pursuant to this article shall be fined by the department not more than \$25,000 for each individual tank that is in violation 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 article or under any rule adopted pursuant to this article, within the time



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specified in the order or rule, shall be fined not more than \$25,000 for each day of noncompliance with the order.

- (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 or 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 41-45.3;

shall be fined by the department not more than \$500 per day of denial, obstruction, hindrance, or failure.

- (c) All fines collected under this article shall be considered special deposits pursuant to Revised Charter Section 7-114.
- (d) The director may adopt rules in accordance with Chapter 91 to aid in the implementation and enforcement of this article."

SECTION 3. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. When revising, compiling, or printing SECTION 2 of this ordinance in the Revised Ordinances of Honolulu, the Revisor of Ordinances shall substitute for the phrase "the effective date of this ordinance," the actual date upon which this ordinance takes effect.



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SECTION 5. This ordinance takes effect upon approval.

INTRODUCED BY:

Radiant Cordero

Tommy Waters

DATE OF INTRODUCTION:

December 1, 2021
Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu