

REPORT OF THE COMMITTEE ON TRANSPORTATION, SUSTAINABILITY AND HEALTH

Voting Members:

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

Committee Meeting Held
February 8, 2022

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

Mr. Chair:

Your Committee on Transportation, Sustainability and Health which considered Bill 48 (2021), CD1 entitled:

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

which passed Second Reading and a Public Hearing held at the January 26, 2022 Council meeting, reports as follows:

The purpose of Bill 48 (2021), CD1, 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 BWS Manager and Chief Engineer testified in support of the Bill.

At your Committee meeting on February 8, 2022, four individuals and one organization testified remotely in support of the Bill.

Your Committee considered and approved a posted, proposed CD2 (OCS2022-0084/2/1/2022 1:43 PM) version of the Bill that makes the following amendments:

- A. Creates a requirement for the owner or operator of any UST or UST system with a capacity to store more than 100,000 gallons of any regulated substance that is in operation on the effective date of the ordinance to apply
-

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON **FEB 23 2022**

COMMITTEE REPORT NO. **11**

REPORT OF THE COMMITTEE ON TRANSPORTATION, SUSTAINABILITY AND HEALTH

Voting Members:

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

Committee Meeting Held
February 8, 2022
Page 2

for a permit if it desires to continue operations.

- B. Removes the provision that the standard for granting or renewal of a UST permit will be whether the system will be protective of human health and the environment, and replaces the standard with the requirement that the applicant must demonstrate that the UST or UST system will not leak into the environment during its operating life.
- C. Amends the provisions relating to the term of a permit to provide for a term to be specified in the permit (but not to exceed five years), rather than for an automatic five-year term.
- D. Removes the provision that the standard for revoking a permit for a release or threatened release of regulated substances requires the department to first deem that such release poses an imminent and substantial risk to human health or the environment.
- E. Removes provisions relating to the permittee's obligation to notify the department of all changes in information relating to a UST. Retains the requirement that a permittee must report evidence of any release of a regulated substance.
- F. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee received written testimony from 97 individuals in support, and four offered comments on the Bill.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

FEB 23 2022

COMMITTEE REPORT NO. **11**

REPORT OF THE COMMITTEE ON TRANSPORTATION, SUSTAINABILITY AND HEALTH

Voting Members:

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

Committee Meeting Held
February 8, 2022
Page 3

Your Committee also received written testimony in support of the Bill from the following institutions, organizations, and governmental agencies:

- Honolulu Board of Water Supply
- Life of the Land
- Hawai'i Youth Climate Coalition
- Sierra Club of Hawai'i
- Livable Hawaii Kai Hui
- Surfrider Foundation Oahu
- Hawai'i Peace and Justice
- Faith Action for Community Equity
- Weaving our Stories
- Council for Native Hawaiian Advancement
- Koolau-Waialua Alliance
- Windward Coalition
- Native Hawaiian & Pacific Islander Hawai'i Covid-19 (NHPI 3R) Team
- Our Revolution Hawaii
- 350 Hawaii
- Wai Ola Alliance
- Environmental Caucus of The Democratic Party of Hawai'i
- Free Access Coalition
- Kia'i Report
- Frazer-Frantz Family Hui

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON FEB 23 2022

COMMITTEE REPORT NO. 11

REPORT OF THE COMMITTEE ON TRANSPORTATION, SUSTAINABILITY AND HEALTH

Voting Members:

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

Committee Meeting Held
February 8, 2022
Page 4

Your Committee on Transportation, Sustainability and Health is in accord with the intent and purpose of Bill 48 (2021), CD1, as amended herein, and recommends that it pass Third Reading, in the form attached hereto as Bill 48 (2021), CD2. (Ayes: Cordero, Elefante, Tulba – 3; Noes: None; Excused: Kia'āina – 1.)

Respectfully submitted,


Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

FEB 23 2022

COMMITTEE REPORT NO. **11**



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.

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.



A BILL FOR AN ORDINANCE

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. The owner or operator of such an underground storage tank or tank system that is operating upon the effective date of this ordinance shall, if it desires to continue the operation of the tank or tank system, apply for a permit within 60 days of the effective date of this ordinance, and may continue to operate until a decision on the application is made. If the permit is denied and the applicant requests a contested case hearing, the underground storage tank or tank system shall cease to operate unless and until that decision is reversed.
- (b) The department shall not issue a permit unless the applicant demonstrates that the tank or tank system will not leak any regulated substance into the environment during its operating life.

A permit shall specify its duration, but in no case shall a permit remain in effect for more than five years. The permit may be subject to conditions established by the department. 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.



A BILL FOR AN ORDINANCE

- (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:
- (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.

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.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **48 (2021), CD2**

A BILL FOR AN ORDINANCE

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.

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 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.



A BILL FOR AN ORDINANCE

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 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.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **48 (2021), CD2**

A BILL FOR AN ORDINANCE

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