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CH. 76 STORAGE OF HAZARDOUS MATERIALS

CHAPTER 76
STORAGE OF HAZARDOUS MATERIALS

NOTE: P.L. 20-106:1 added Storage of Hazardous Materials as Chapter 88; however, Compiler has assigned this Act to Chapter 76 to place it in the Division on Public Safety to which it more properly belongs.

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§ 76101. Title.

This Chapter shall be known as the *Underground Storage of Hazardous Substances Act*.

§ 76102. Findings of Necessity and Statement of Purpose.

(a) The people of Guam find that:

(1) Substances hazardous to the public health and safety, and to the environment, are stored prior to use in hundreds of underground locations in the territory.

(2) Underground tanks used for the storage of hazardous substances are potential sources of contamination of the ground,

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underlying sole sources aquifer, surface or marine waters, and may pose other dangers to public health and the environment.

(3) In several states, underground storage has resulted in undetected and uncontrolled releases of hazardous substances into the ground. These releases have contaminated public drinking water supplies and created a potential threat to the public health and to the waters of these states.

(4) Current laws do not specifically govern the construction, maintenance, testing, and use of underground tanks used for the storage of hazardous substances for the purposes of protecting the public health and the environment.

(5) The protection of the public from releases of hazardous substances is an issue of territorial concern.

(b) It is hereby declared to be the purpose of this Chapter to:

(1) Establish a continuing program for preventing contamination from, and improper storage of, hazardous substances stored underground;

(2) Establish orderly procedures that will ensure that newly constructed underground storage tank meet appropriate standards;

(3) Establish orderly procedures that will ensure that existing tanks be properly maintained, inspected, and tested so that the health, property, and resources of the people of Guam will be protected.

§ 76103. Definitions.

For the purpose of this Chapter, the following definitions apply:

(a) *Administrator* shall mean the Administrator of the Guam Environmental Protection Agency or his designee.

(b) *Agency* shall mean the Guam Environmental Protection Agency.

(c) *Board* shall mean the Board of Directors of the Guam Environmental Protection Agency.

(d) *Guarantor* shall mean any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.

(e) *Operator* shall mean any person in control of, or having responsibility for, the daily operation of an underground storage tank.

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(f) *Owner* shall mean:

(1) In the case of an underground storage tank in use or brought into use on or after the effective date of this Chapter, 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 Chapter, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

(g) *Person* shall mean an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, consortium, joint venture, commercial entity, association, a political subdivision of Guam, interstate body, or any agency, department, or instrumentality of the Federal government or government of Guam, or any other legal representative, agency or assigns.

(h) *Regulated Substance or Hazardous Substance* shall mean any 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 Resource Conservation and Recovery Act of 1976, also known as Public Law 94-580, as amended); 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 Administrator.

(i) *Release* includes, but is not limited to, any spilling, leaking, emitting, discharge, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

(j) *Underground Storage Tank* shall mean any one (1) or combination of tanks (including underground 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 percent

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(10%) or more beneath the surface of the ground. Underground Storage Tank does not include any of the following:

- (1) Septic tank;
- (2) 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;
- (3) Surface impoundment, pit, pond, or lagoon;
- (4) Storm water or waste water collection system;
- (5) Flow-through process tank;
- (6) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (7) Storage tank situated in an underground area (such as a basement, cellar, shaft, or tunnel) is the storage tank is situated upon or above the surface of the floor.

§ 76104. Powers and Duties.

The Agency shall have the responsibility to:

- (a) Develop and administer a underground storage tank program for Guam pursuant to the provisions of this Chapter;
- (b) Study, investigate, or cause to be studied and investigated, pollution from underground storage tanks and causes, prevention, control, and abatement thereof, as deemed necessary to protect human health and the environment;
- (c) Provide technical assistance to local and federal agencies, and other persons, and cooperate with appropriate local agencies and private organizations in carrying out the provisions of this Chapter;
- (d) Serve as Guam's official representative for all purposes of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and for the purpose of such other Guam or federal legislation as may hereafter be enacted to assist in the management of underground storage tanks;
- (e) Prepare, adopt, promulgate, modify, update, repeal, and enforce rules and regulations governing underground storage tank design,

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construction, installation, release detection and inventory control, compatibility, record maintenance, reporting, corrective action, closure, and financial responsibility in order to conserve the land and water resources of Guam, protect the health, prevent environmental pollution and public nuisances, and enable it to carry out the purposes and provisions of this Chapter;

(f) Establish the procedures for review and issuance of permits governing the design, operation, and closure of underground storage tanks;

(g) Prepare, issue, modify, revoke and enforce orders for compliance with any of the provisions of this Chapter or of any rules and regulations issued pursuant thereto and requiring the taking of such remedial measures for underground storage tank management as may be necessary or appropriate to implement or effectuate the provisions and purposes of this Chapter;

(h) Prepare, adopt, promulgate, modify, update, repeal, and enforce such other rules and regulations as may be necessary to establish an underground storage tank program which meets the requirements of Section 904 of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and regulations promulgated pursuant thereto.

§ 76105. Notification Requirements.

(a) Any owner who brings into use an underground storage tank after the effective date of this Chapter shall notify the Agency within thirty days of such action. Notices shall include, but not limited to, at least the following specifications:

- (1) The date the tanks 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 or removed.

§ 76106. New Tank Standards.

(a) From and after the effective date of this Chapter until the effective date of new tank performance standards promulgated thereunder, no person may install an underground storage tank unless the tank meets all of the following requirements:

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(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 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.

(b) Notwithstanding Subsection (a), if the Administrator determines that soils at an installation location are not corrosive enough to cause an underground storage tank to have a release during its operating life and the Administrator determines that the tank is adequately protected, a storage tank without corrosion protection may be installed at that location.

(c) The performance for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.

§ 76107. Leak Detection and Record Maintenance.

(a) The owner or operator of an underground storage tank shall maintain a leak 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.

(b) The owner or operator shall maintain systematic and complete records of the information obtained from Subsection (a).

§ 76108. Reporting Requirements.

(a) The owner and operator of an underground storage tank shall notify the Agency of each release from the tank as soon as practicable but no later than twenty-four (24) hours after the release is detected. The owner may contract with the operator to assume the obligations created by this Section.

(b) The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than twelve (12) hours after the release is detected.

(c) Notice by the operator and owner may be made orally or in writing but shall be followed within fourteen (14) days by a written report to the Agency that a release has been detected. The written report shall include, but not be limited to, the nature of the release, the period of time over which

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the release occurred and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report.

§ 76109. Corrective Action.

(a) When a release is discovered the owner or operator of an underground storage tank shall take immediate action to stop the release.

(b) The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank in a manner consistent with future protection of human health and the environment, and restoration of the environment to a condition and quality acceptable to the Agency. The Agency may require the owner or operator to undertake such investigations, monitoring, surveys, testings and other information gathering as the Agency considers necessary or appropriate to:

(1) Identify the existence and extent of the release;

(2) Identify the source and nature of the hazardous substance involved; and

(3) Evaluate the extent of danger to human health, safety, welfare or the environment.

(c) If the owner or operator does not take immediate action to stop a release from an underground storage tank or immediately commence and promptly and adequately complete the cleanup of a release, the Agency may stop the release or cleanup the release, or contract to stop the release or contract for cleanup of the release.

(d) Whenever, the Agency is authorized to act under subsection (c) of this section, the Agency directly or by contract may undertake such investigations, monitoring, surveys, testing and other information gathering as it may deem appropriate to identify the existence and extent of the release, the source and nature of the hazardous substance involved and the extent of danger to human health, safety, welfare or the environment. In addition, the Agency directly or by contract may undertake such planning, fiscal, economic, engineering and other studies and investigations as it may deem appropriate to plan and direct cleanup actions, to recover the costs thereof and legal costs.

§ 76110. Hazardous Substance Emergency Response and Remedial Action Fund.

(a) There is established a fund to be known as the Hazardous Substance Emergency Response and Remedial Action Fund (the "Action Fund") which

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shall be used by the Agency as a nonlapsing, revolving fund. The Legislature shall make an initial, one time appropriation of Twenty Thousand Dollars (\$20,000) to the Action Fund. All fees, reimbursements, assessments, fines, bail forfeitures, and other funds collected or received pursuant to this Chapter shall be deposited in the Action Fund.

(b) The Administrator shall administer the Action Fund and make disbursements from the fund for the following purposes:

(1) Funding actions and activities authorized under §76109 of this Chapter.

(2) Training of Agency employees involved in regulation of underground storage of hazardous substances or response to release of hazardous substances from underground storage tanks

(3) Providing for the general administration and implementation of this Chapter, including the purchase of equipment and payment of personnel costs of the Agency.

§ 76111. Financial Responsibility.

(a) The owner or operator of an underground storage tank shall maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and non- sudden accidental releases arising from the operation of an underground storage tank.

(b) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal bankruptcy law, or if jurisdiction in any Guam, 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 such action against a guarantor, 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 section. The subsection does not limit any other Guam or Federal statutory, contractual, or common

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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 sections 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-516, as amended, or other applicable law.

§ 76112. Closure.

Closure of an underground storage tank shall be accomplished in a manner which prevents future releases of regulated substances.

§ 76113. Tank Permit Requirements.

(a) No person shall own, install, or operate an underground storage tank unless a permit is obtained from the Agency and upon payment of a fee to be prescribed by regulations. All such permits shall be non-transferable and conditioned upon the observance of the laws of Guam and such rules and regulations.

(b) Each permit holder shall apply for the renewal of each permit held, upon forms provided by the Agency, not less than sixty (60) days prior to the expiration of such underground storage tank permit to be renewed.

(c) Each permit application and each permit renewal application shall be submitted with evidence of financial responsibility, in a sum established by the Administrator and conditioned on the fulfillment by the permit holder of the requirements of this Chapter and the rules and regulations authorized herein.

§ 76114. Inspection and Entry.

The Agency is hereby authorized to inspect all underground storage tanks at all reasonable times to insure compliance with the laws of Guam, the provisions of this Chapter, and the rules and regulations authorized herein. This authority shall include, but not limited to, obtaining from any owner or operator of an underground storage tank, upon request information relating to such tanks, their associated equipment, and their contents; conducting monitoring and testing of tanks or surrounding soils, air, surface water or groundwater; inspecting and copying all records relating to tanks; and inspecting and obtaining samples of regulated substances contained in tanks.

§ 76115. Confidentiality of Records.

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Records or other information furnished to or obtained by the Administrator concerning regulated substances are available to the public, except that any records and information which relate to trade secrets, processes, operations, style of work or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of the Agency in the administration of this Chapter unless the owner or operator expressly agrees to their publication or availability to the public. This section does not prohibit the publishing of quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary in this section, information regarding the nature and quality of releases from underground storage tanks otherwise reportable pursuant to this Chapter shall be available to the public.

§ 76116. Notice.

Any notice, order or other official correspondence affecting the rights of any person under this Chapter shall be delivered by personal service, or sent by registered mail with a return receipt to the address of such person as shown by the records of the Agency. The return receipt, signed by the addressee, or his agent, shall be conclusive proof of delivery.

§ 76117. Hearings.

(a) Any person who received an order from the Administrator as authorized by this Chapter and any person whose permit application is disapproved by the Administrator may, within fifteen (15) days of the date of receipt of such order or disapproval, file a notice of intent to appeal with the Board, setting forth in such notice a verified petition outlining the basis for such appeal.

(b) The Board shall, not more than sixty (60) days after receipt of such notice of appeal, hold a public hearing at which time the person appealing may appear and present evidence in person or through counsel in support of this petition.

(c) The Board is hereby authorized to administer oaths and to issue subpoenas to compel the attendance of witnesses and the production of evidence in all such hearings. Transcripts may be made by either the Agency or the person appealing.

(d) The Board shall affirm, modify or revoke any action which is appealed and shall notify the appellant of its decision not more than thirty

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(30) days after the conclusion of the hearing. Such notice shall be in writing and shall state the reasons for the decision.

(e) Any person may appeal such decision to the Superior Court of Guam by filing with the Agency a written notice of such intent to appeal within ten (10) days of the notice of subsection (d) of this section and shall have a transcript of the proceedings upon request. The person making the appeal shall pay the Agency for the expenses associated with the preparation of the requested transcript.

§ 76118. Injunction.

The Agency may maintain an action to restrain any violation or threatened violation of the provisions of this Chapter or the rules and regulations authorized herein. Such right to injunctive relief is in addition to any other powers or penalties conferred by this Chapter.

§ 76119. Applicability to Government Agencies.

Agencies of the government of Guam and of the Government of the United States shall comply with all provisions of this Chapter including permit requirements with the exception of §§76111 and 76113(c).

§ 76120. Penalties.

(a) Any person who violates any underground storage tank provisions of this Chapter, or any valid underground storage tank rule or regulation promulgated under this Chapter, or who refuses or neglects to comply with any lawful order issued by the Administrator in carrying out the provisions of this chapter shall forfeit and pay the government of Guam a civil penalty not less than Ten Thousand Dollars (\$10,000) for each tank for each day of violation.

(b) Any person with an interest, which is or may be adversely affected by a violation of this Chapter, may intervene as a matter of right in any civil action brought by the Agency to require compliance with the provisions of this Chapter.

(c) Any person who knowingly fails to notify or makes any false statement or representation in any underground storage tank notification, permit application, or other document filed, maintained, or used for purposes of compliance with the provisions of this Chapter, upon conviction, shall be imprisoned not less than six (6) months or be fined not less than Ten Thousand Dollars (\$10,000) per day for each violation, or both.
