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**CHAPTER 49
AIR POLLUTION CONTROL ACT**

SOURCE: Chapter 49 was repealed and reenacted by P.L. 24-40:2.

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§ 49101. Title.

This Chapter shall be known as the *Air Pollution Control Act*.

§ 49102. Statement of Policy.

It is hereby declared to be the public policy of this Territory and the purpose of this Chapter to achieve and maintain the levels of air quality that will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this Territory and facilitate the enjoyment of the natural attractions of this Territory.

To these ends, it is the purpose of this Chapter to provide for a coordinated Territory-wide program of air pollution prevention, abatement,

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and control and to provide a framework within which all values may be balanced in the public interest.

§ 49103. Definitions.

As used in this Chapter:

(a) *Administrator* means the Administrator of the Guam Environmental Protection Agency, or the Administrator's designee.

(b) *Agency* means the Guam Environmental Protection Agency.

(c) *Air Pollutant* means any air pollution agent or combination of such agents, including any physical; chemical; biological; radioactive, inclusive of source material special nuclear material, and byproduct material; substance; or matter which is emitted or otherwise enters the ambient air. The term includes any precursors to the formation of any pollutant, to the extent that the agent or combination of such agents is identified in any Federal or Territory rules as precursors.

(d) *Air Pollution* means the presence in the outdoor atmosphere of one (1) or more substances in such quantities and duration as is, or tends to be, injurious to human health, welfare, plant life, animal life, or property, or would unreasonably interfere with the enjoyment of life or property.

(e) *Air Pollution Emission Source* means property, real or personal, which emits, or may emit, air pollution.

(f) *Applicable Requirements* means any standard or other requirement, term or condition, adopted by the Administrator through regulation.

(g) *Clean Air Act* means the Federal Clean Air Act of 1963, as amended.

(h) *Compliance Plan* means a plan which includes a description of how a source proposes to comply with all applicable requirements pursuant to this Chapter, and includes a schedule of compliance and a schedule under which the permittee will submit progress reports to the Agency.

(i) *Emission* means a release of air pollutants into the outdoor atmosphere.

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(j) *Fugitive Emissions* means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(k) *Hazardous Air Pollutant* means those hazardous air pollutants listed in §112(b) of the Clean Air Act, as amended, 42 United States Code §7412(b), and any other pollutant designated by Federal or Territory rules as hazardous.

(l) *Major Source* means any air pollution emission source, or any group of sources, that is located on one (1) or more contiguous properties or adjacent properties, and is under common control of the same person or persons, and that emits or has the potential to emit, considering controls:

(1) any hazardous air pollutant, except radionuclides, in the aggregate if ten (10) tons per year or more, including fugitive emissions, or twenty-five (25) tons per year or more of any combination, including fugitive emissions or such lesser quantity as the Administrator may establish by rule; or

(2) one hundred (100) tons per year or more of any air pollutant belonging to a single major industrial grouping, including fugitive emissions, as established by the Administrator by rule; or

(3) for radionuclides, major source shall have the meaning specified by the United States Environmental Protection Agency ("USEPA") Administrator by rule.

(m) *Owner or Operator* means any person who owns, leases, operates, controls or supervises an air pollution emission source.

(n) *Permit* means written authorization from the Administrator to construct, modify, relocate or operate an air pollution emission source. A permit authorizes the permittee to cause or allow the emission of an air pollutant in a specified manner or amount, or to do any act, not forbidden by this Chapter or by rules adopted pursuant to the Chapter.

(o) *Person* means any individual, partnership, firm, association, municipality, public or private corporation, subdivision, or agency of the Territory, trust, estate or any other legal entity.

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(p) *Pollution Prevention* means the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source.

(q) *USEPA Administrator* means the Administrator of the United States Environmental Protection Agency, or his designee.

§ 49104. Powers and Duties of the Agency.

The Agency is authorized and directed to:

(a) hold hearings related to any aspect of, or matter in the administration of, this Chapter, and in connection therewith, compel the attendance of witnesses and the production of evidence;

(b) require access to records relating to emissions, which cause or contribute to air pollution;

(c) prepare and develop a comprehensive plan for prevention, abatement and control of air pollution in this Territory;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this Chapter;

(e) encourage and conduct studies, investigations, and research relating to air pollution and its causes, effects, prevention, abatement and control;

(f) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the Territory;

(g) establish ambient air quality standards for the Territory;

(h) collect and disseminate information and conduct educational and training programs relating to air pollution;

(i) delegate those responsibilities and duties, as appropriate for the purpose of administering the requirements of this Chapter;

(j) advise, consult, contract and cooperate with other agencies of the Territory, industries, the Federal government and with interested persons or groups;

(k) consult, upon request, with any person proposing to construct, install, or otherwise acquire, an air pollutant source, device or system on the air pollution problem, which may be related to the source, device or system. Nothing in any consultation shall be construed to

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relieve any person from compliance with this Chapter, or any other provision of law;

(l) carry out a program of inspection and testing of all modes of transportation, to enforce compliance with applicable emission standards when necessary and practicable, and to control or limit the operation of motor vehicles and other modes of transportation, when in the opinion of the Agency, the modes of transportation are producing, or pose an immediate danger of producing, unacceptable levels of air pollutants;

(m) establish and administer a Territory-wide air pollution control permit program;

(n) delay or prevent any construction, modification or operation of air pollution sources and modifications which, in the opinion of the Agency, would cause the ambient air pollution level in the locality of construction, modification or operation, to exceed limit for ambient concentration established by the Territory of Guam implementation plan promulgated pursuant to the Clean Air Act, or which construction, modification or operation would, in the opinion of the Agency, violate any provision of any land use plan established by the Territory of Guam implementation plan;

(o) prepare, adopt, promulgate, amend, rescind, repeal and enforce any other rules and regulations as may be necessary to establish additional requirements which may be at least equivalent to, or more stringent or broader in scope than, the requirements of the Clean Air Act and regulations promulgated pursuant to the Clean Air Act that are applicable to Guam;

(p) do all things necessary and convenient to prepare and submit a plan, or plans, for the implementation, maintenance and enforcement of each primary and secondary ambient air quality standard for any pollutant established pursuant to the Clean Air Act;

(q) establish and collect fees for conducting inspections and laboratory analyses, as necessary, for the purpose of carrying out this Chapter.

(r) establish, as directed by the Board of Directors, a task force for conducting research on the issue of Guam's transition to the use of ultra-low sulfur diesel (ULSD); and to analyze the information that

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surfaces from said research, with specific consideration of all related factors, including, but *not* limited to, the transition to ULSD in the mainland U.S.; the exemptions in place for Guam and the regional islands; the overall cost impact for suppliers and consumers, including individuals paying at the pump and affected agencies of the government of Guam; infrastructure needs; the impact this transition will have to the Marianas region; supply sources for Guam; local and regional demand; a general timeline reflecting Guam's transition to ULSD; and the establishment of any necessary benchmark dates for the transition period.

This task force *shall* be comprised of members of the public and private sector and *shall* meet bi-weekly until such time that a written report of its findings and recommendations is submitted to *I Liheslatura*, which *shall* be done *no later than* December 1, 2010.

SOURCE: Subsection (r) added by P.L. 30-184:3 (Aug. 28, 2010).

§ 49105. Powers and Duties of the Administrator.

The Administrator shall have and may exercise the following powers and duties:

(a) to consider actions of the agency as set forth in § 49104 of this Chapter, and shall take actions as necessary to protect human health, welfare or the environment;

(b) to issue, amend, rescind and enforce orders as may be necessary to ensure compliance with any of the provisions of this Chapter, or of any rules and regulations issued pursuant to this Chapter including, but not limited to, the issuance of an administrative penalty order and requiring the taking of whatever remedial measures may be necessary or appropriate to implement or effectuate the provisions and purposes of this Chapter;

(c) to establish an effective enforcement system for the prevention, control and abatement of air pollution, including specific requirements under the air pollution control permit program through all appropriate administrative and judicial courses of action;

(d) to issue, continue in effect, modify, revoke, reissue or deny permits as the Agency may prescribe;

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(e) to assure compliance by all sources required to have a permit with each applicable standard, regulation or requirement provided by Federal or Territorial statutes or rules; and

(f) to accept, receive and administer grants and other funds or fees from public and private agencies, including the Federal government, for carrying out any of the purposes of this Chapter.

§ 49106. Monitoring and Reporting Required.

The Administrator may require an owner or operator of any source, on a continuous, periodic or one-time basis to:

(a) establish, maintain and submit records;

(b) draft reports;

(c) install, use and maintain monitoring equipment, and use audit procedures or methods;

(d) sample emissions in accordance with such procedures or methods at such location, at such intervals, during periods and in the manner prescribed by the Administrator;

(e) keep records on the source and the control equipment parameters, production variables or other indirect data when direct monitoring is impractical;

(f) sample and analyze the composition of the fuel, waste, or other products being burned or incinerated;

(g) submit compliance certifications; and

(h) provide other information as the Agency may require.

§ 49107. Air Pollution Control Permit Program.

(a) Program Applicability.

(1) The Administrator shall determine which air pollution emission sources shall be obligated to apply for, and obtain, air pollution control permits. At a minimum the Administrator shall require a permit for any air pollution emission source that is classified as a major source, or is required to obtain a permit by any applicable standard, regulation or requirement provided by Federal or Territory statutes or rules.

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(2) Beginning thirty (30) days after the effective date of the revised Guam Air Pollution Control Standards and Regulations pursuant to this Section, any person who sells any air pollution emission source, which must be permitted pursuant to the Guam Air Pollution Control Standards and Regulations, shall notify the purchaser of the permit requirements pursuant to this Chapter.

(3) Provided a permit is required, no person may begin or continue construction, reconstruction, modification, relocation, nor begin or continue operation of an air pollution emission source, without first applying for, and obtaining, a valid air pollution control permit from the Administrator.

(4) Permits being renewed shall be subject to the same procedural requirements that apply to initial permit issuance, including the procedures of Federal oversight and public participation.

(5) Permit expiration terminates the source's right to operate, unless a timely and complete renewal application is submitted to the Agency. To be deemed complete, an application must provide all information required or requested by the Administrator.

(6) If a timely and complete renewal application is submitted, the source's ability to operate without a permit after the expiration date is conditioned on the owner or operator acting consistently with the permit previously granted, or in accordance with the plans, specifications and other information submitted as a part of the renewal application. The previous permit terms and conditions will remain enforceable by the Administrator.

(7) If, while processing an application that has been determined or deemed to be complete, the Agency determines that additional information is necessary to evaluate, or take final action on that application, the Agency will inform the source of the additional information required and set a reasonable deadline for a response. Failure to submit the information within the specified time period may result in denial of the permit.

(b) Permit Applications.

(1) Every application shall contain sufficient information for the Administrator to determine and impose all applicable requirements. Every application shall include a compliance certification, plan and, if

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applicable, a schedule. The Agency may require that permit applications be accompanied by other plans, specifications, meteorological monitoring data, ambient air quality monitoring data, and other information necessary to identify the source, air emissions and the air quality impacts to determine whether the proposed installations, modification or operation will be in accordance with applicable rules and standards.

(2) The Agency, by regulation, will specify when a proposed permit offered for public comment shall be subject to Federal oversight and public participation.

(c) Permit Conditions.

(1) The Administrator shall issue a permit, if it is determined that the sources will comply with all requirements of this Chapter, and the rules and standards adopted pursuant to this Chapter.

(2) Each permit shall contain and require compliance with all applicable Federal requirements, and must contain monitoring, record keeping and reporting requirements sufficient to assure compliance with applicable Federal requirements. Each limitation, control and requirement in the permits shall be permanent, quantifiable and otherwise enforceable as a practical matter. The permit may also be subject to such additional reasonable conditions as the Administrator may prescribe to ensure compliance, including emission limitations, and control technology requirements.

(3) The Administrator may require pollution prevention audits, or the implementation of pollution prevention measures to ensure that emissions are reduced or eliminated when feasible.

(d) Other Permit Actions.

(1) The Administrator, on the Administrator's own initiative or the application of any person, may terminate, modify, suspend, or revoke and reissue any permit if, after affording the permittee an opportunity for a public hearing, the Administrator determines that:

(A) the permit contains a material mistake made in establishing the emissions limitations or other requirements of the permit;

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(B) permit action is required to assure compliance with the applicable requirements of this Chapter, the Clean Air Act, or any other applicable Federal or Territory statutes or rules;

(C) there is a violation of any condition of the permit;

(D) the permit was obtained by misrepresentation or failure to disclose fully all relevant facts;

(E) there is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(F) more frequent monitoring or reporting by the permittee is required; or

(G) such is in the public interest. In determining the public interest, the Administrator shall consider the environmental effects, which cannot be avoided should the action be implemented; the alternatives to the proposed action; the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; irreversible and irretrievable commitments of resources, which would be involved in the proposed action should it be implemented; and any other factors which the Administrator may by rule prescribe, provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(2) The Administrator may revise a permit administratively if the revision:

(A) corrects typographical errors;

(B) identifies a change in the name, address or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(C) allows for a change in ownership or operational control of a source where the Agency determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility coverage, and liability between the current and new permittees has been submitted to the Agency; or

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(D) makes any other change that the Agency determines to be similar to those in §§ 49107(d)(2)(a) through (c), inclusive.

(3) The Administrator may take other permit actions as may be established by regulation.

(e) Fees.

(1) The Administrator shall establish fees for permits issued pursuant to this Chapter to be paid by the applicant prior to the issuance of the permit, and thereafter on a schedule established by the Agency.

(2) All monies collected as fees shall be deposited in the Air Pollution Control Special Fund established under Subsection (f) of § 49107 of this Chapter.

(3) The fees shall be at a set rate to ensure that the Air Pollution Control Special Fund has enough money to adequately support and administer the Air Pollution Control Permit Program.

(f) Air Pollution Control Special Fund. There is established a fund to be known as the, 'Air Pollution Control Special Fund,' which shall be maintained separate and apart from any other funds of the government of Guam, and shall be administered by the Administrator. Independent records and accounts shall be maintained in connection with the Fund. All permit application fees, annual emission fees, and other funds collected or received pursuant to this Chapter shall be deposited in the Air Pollution Control Special Fund, and used only for the costs of administration and implementation of this Chapter; for providing staff and resources to assist permit applicants with the application process; review and act upon permit applications; write permits; implement and enforce permit conditions, including legal support; prepare guidance and rules; prepare emission inventories; monitor air quality; inspect facilities to ensure compliance and offer assistance with pollution prevention alternatives; provide technical assistance to permittees; administer the Fund; and any other duties needed to administer this Chapter.

(g) Public Participation. Where public participation is deemed appropriate by the Administrator, or is required, the Administrator shall provide for notice and opportunity for public comment as follows:

(1) The Administrator shall make available for public inspection in at least one (1) location:

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- (A) information on the subject matter;
- (B) all information submitted by the applicant, except for that deemed confidential;
- (C) the Agency's analysis and draft permit; and
- (D) other information and documents deemed appropriate by the Agency.

(2) The Administrator shall notify the public of the availability of information listed in § 49107(g)(1). Notification shall be published in a newspaper which is printed and issued at least twice weekly.

(3) Public notice shall be mailed to any person, group or Agency upon request.

(4) The Administrator shall provide a period of not less than thirty (30) days following the date of the public notice, during which time interested persons may submit written comments on the subject matter, application, the Agency's analysis and draft permit, and other appropriate considerations. The period for comment may be extended at the sole discretion of the Administrator.

(5) The Administrator, at the Administrator's sole discretion, may hold a public hearing if the public hearing would aid in the Administrator's decision.

§ 49108. Inspections, Testing and Sampling.

(a) Any duly authorized officer, employee or representative of the Agency may enter and inspect any property, premise or place on or at which an air pollutant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this Chapter and rules and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the Agency who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any inspection. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

(b) The Agency may conduct tests and take samples of air pollutants, fuel, process materials or other materials which affect or may affect emission of air pollutants from any source. Upon request of the Agency, the

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person responsible for the source to be tested shall provide necessary holes in stacks or ducts and any other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission of air pollutants. If an authorized employee of the Agency, during the course of an inspection, obtains a sample of air pollutant, fuel, process material or other material, he or she shall give the owner or operator of the equipment or fuel facility a receipt for the sample obtained.

(c) The Administrator may withhold any information obtained from an inspection while an investigation is pending. Upon completion of the case, this information will be available to the public for inspection.

§ 49109. Emission Control Requirements.

(a) The Agency shall establish the emission control requirement, by rule or regulation, necessary to prevent, abate or control air pollution. The requirements may be for the Territory as a whole, or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this Chapter, and in order to take account of varying local conditions.

(b) The Agency may require the owner or operator of any air pollution emission source, discharging air pollutants, to install monitoring equipment or devices, conduct whatever tests the Agency may prescribe, and submit periodic reports on the nature and amount of discharges to the Agency.

§ 49110. Variances.

(a) Any person who owns or who is in control of any plant, building, structure, establishment, process or equipment, may apply to the Agency for a variance from the rules and regulations. The Agency may grant a variance, but only after public hearing on due notice, if it finds that:

(1) the emissions occurring, or proposed to occur, do not endanger or tend to endanger human health or safety; and

(2) compliance with the rules and regulations from which variance is sought would produce serious hardship without greater benefits to the public.

(b) No variance shall be granted pursuant to this Section until the Agency has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges and the general public.

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(c) Any variance or renewal thereof shall be granted within the requirements of Subsection (a) of this Section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is not practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the Agency may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed the reasonable time, as in the view of the Agency, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this Item (2) of Subsection (c) of this Section shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Items (1) and (2) of this Subsection (c) of § 49110 of this Chapter, it shall be for not more than one (1) year.

(d) Any variance granted pursuant to this Section may be renewed on terms and conditions and for periods, which would be appropriate on initial granting of a variance. If complaint is made to the Agency on account of the variance, no renewal thereof shall be granted, unless, following public hearing on the complaint on due notice, the Agency finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application must be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Agency shall give public notice of the application in accordance with rules and regulations of the Agency.

(e) A variance or renewal shall not be a right of the applicant or holder thereof, but shall be in the discretion of the Agency.

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(f) Nothing in this Section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of § 49113 of this Chapter to any person or property.

§ 49111. Hearings.

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

(b) The Board shall, not more than sixty (60) days after receipt of the notice of appeal, hold a public hearing consistent with the Administrative Adjudication Law.

(c) The Board shall either affirm, modify or revoke any action which is appealable, or issue an appropriate order or orders for the prevention, abatement or control of the emission involved or for the taking of any other corrective action as may be appropriate to prevent, abate or control air pollution.

(d) Any person adversely affected by a decision of the Agency may have judicial review by filing a petition with the Superior Court of Guam in accordance with the Administrative Adjudication Law, and by simultaneously sending a copy of the filing by serving the Administrator. The petitioner shall reimburse the Agency for the expenses associated with the preparation of the record for judicial review.

§ 49112. General Enforcement.

(a) Whenever the Agency determines that there is probable cause based upon an investigation that a violation of any provision of this Chapter or rule or regulation pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of this Chapter or rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order specifying the necessary corrective action to be taken and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Any order under this Section shall become final unless, no later than fifteen (15) days after the

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date the notice and order are served, the person or persons named therein request in writing a hearing before the Agency. Upon such a request, the Agency shall hold a hearing pursuant to § 49111 of this Chapter. In lieu of an order, the Agency may require that the alleged violator, or violators, appear before the Agency for a hearing at a time and place specified in the notice and answer the charges complained of, or the Agency may initiate action pursuant to § 49116 of this Chapter.

(b) No order issued under this Chapter shall prevent the Administrator from assessing any penalties, nor otherwise effect or limit the Administrator's authority to enforce under other provisions of this Chapter or rule or regulation, nor affect any person's obligation to comply with any Section of this Chapter or rule or regulation, or with a term or condition of any permit issued.

(c) Nothing in this Chapter shall prevent the Agency from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

§ 49113. Emergency Orders.

(a) Notwithstanding any other law, if the Administrator determines that a pollution source or combination of sources is creating an imminent and substantial endangerment to the public health, welfare or the environment, the Administrator, with the concurrence of the Governor, shall order any person causing, or contributing to the release of any air pollutants or combination of air pollutants, to immediately reduce or discontinue the release. Any order under this Section shall fix a place and time, not later than seventy-two (72) hours thereafter, for a hearing to be held before the Agency.

(b) If the Administrator finds that emissions from the operation of one (1) or more air pollution sources is causing imminent danger to human health or safety, he or she may order the person responsible for the operation in question to immediately reduce or discontinue emissions, without regard to the provisions of § 49111 of this Chapter. In such event, the requirements for hearing set forth in Subsection (a) of this Section shall apply.

(c) Nothing in this Section shall be construed to limit any power, which the Governor or any other officer may have to declare an emergency and act

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on the basis of that declaration, if that power is conferred by statute or constitutional provision, or inheres in the office.

§ 49114. Confidentiality of Information.

(a) Any records, reports, or information obtained under §§ 49106, 49107 and 49108 of this Chapter shall be available to the public, except that upon a showing satisfactory to the Agency by any person that records, reports or information, or particular part thereof, other than emission data, to which the Agency has access under §§ 49106, 49107 and 49108 of this Chapter, if made public, would divulge production, sales figures, methods, processes or production unique to the person, or would otherwise tend to effect adversely the competitive position of the person by revealing trade secrets, the Agency shall consider the record, report, information or particular portion thereof, confidential in the administration of this Chapter. The contents of an air pollution control permit itself shall not be entitled to confidentiality protection.

(b) Nothing in the Section shall be construed to prevent the use of records or information by the Agency in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, provided that these analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this Section.

(c) Nothing in this Section shall be construed to prevent disclosure of whatever report, record or information to Federal, Territorial or local representatives as is necessary for purposes of administration of any Federal, Territorial or local air pollution control laws, or when relevant, in any proceeding under this Chapter.

§ 49115. 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. The right to injunctive relief is in addition to any other powers or penalties conferred by this Chapter.

§ 49116. Penalties.

(a) Administrative Penalties. The Administrator may issue an administrative order against any person and assess a civil administrative penalty of up to Ten Thousand Dollars (\$10,000.00) per day per violation

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not to exceed a total penalty of Two Hundred Thousand Dollars (\$200,000.00).

(1) Before issuing an administrative order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's intent to issue the order, and provide the person an opportunity to request a hearing on the proposed administrative penalty order, within thirty (30) days of the date the notice of intent is received by the person. If a hearing is requested, it will be conducted pursuant to § 49111 of this Chapter. If no hearing is requested within the period specified, the administrative penalty to be assessed will automatically be imposed and deemed final.

(2) The Administrator may settle, modify or release, with or without conditions, any administrative penalty which may be imposed under this Subsection (a) of § 49116 of this Chapter.

(3) Any person against whom a civil administrative penalty is assessed may seek judicial review in accordance with § 49111 of this Chapter and the Administrative Adjudication Law.

(4) If any person fails to comply with an administrative penalty order after the assessment has become final, or after a court in an action brought under Subsection (3) of this Section has entered a final judgment in favor of the Administrator, the Attorney General of Guam shall bring a civil action to enforce the order or to recover the amount ordered or assessed, plus current interest rates from the date of the final order or decision or the date of the final judgment, as the case may be. In this action, the validity, amount and appropriateness of the order or assessment shall not be subject to review. The Administrator need only show that:

(A) notice was given;

(B) a hearing was held, or the time granted for requesting a hearing has run without a request for a hearing;

(C) the penalty was imposed; and

(D) the penalty remains unpaid.

(b) Civil Penalties. Any person who violates any provision of this Chapter, any rule or regulation promulgated under this Chapter, refuses, or neglects to comply with any final order issued by the Administrator in

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carrying out the provisions of this Chapter, shall, in addition to other sanctions, pay a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) per day for each violation or non-compliance.

(c) Criminal Penalties.

(1) Any person who knowingly violates any of the air pollution control permit rules adopted by the Agency pursuant to this Chapter, including any condition in a permit or any fee or filing requirement, shall be punished by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by imprisonment not to exceed five (5) years, or both.

(2) Any person who knowingly makes a false statement, representation or certification in any form, in any notice or report required by an air pollution control permit, or who knowingly renders inaccurate any monitoring device or method required by the Agency to report as required by this Chapter, shall be punished by a fine not to exceed Ten Thousand Dollars (\$10,000.00) for each day of violation or by imprisonment not to exceed two (2) years, or both, for each instance of violation.

(3) Any person who negligently releases into the ambient air any hazardous air pollutant, and who at the time negligently places another person in imminent danger of death or serious bodily injury, upon conviction, shall be punished by a fine not to exceed Ten Thousand Dollars (\$10,000.00) or imprisonment not to exceed one (1) year, or both. If a conviction of any person under this Subsection (c) of § 49116 of this Chapter is for a violation committed after a first conviction of the person under this Subsection, the maximum punishment shall be doubled with respect to both amount of fine and term of imprisonment.

(4) Any person who knowingly releases into the ambient air any hazardous air pollutant, and who knows at the time that another person is thereby placed in imminent danger of death or serious bodily injury, upon conviction, shall be punished by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or imprisonment of not more than fifteen (15) years, or both. Any organization which violates this Item (4) of Subsection (c) of § 49116 shall be subject to a fine not to exceed One Million Dollars (\$1,000,000.00). If a conviction of any person under this Item (4) is for a violation committed after a first conviction

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of the person under this Item (4), the maximum punishment shall be doubled with respect to both amount of fine and term of imprisonment.

(d) **Penalty Assessment Criteria.**

(1) The Administrator, or the court as the case may be, in determining the amount of any penalty to be assessed, shall take into consideration, in addition to any other factors as justice may require, the size of the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, economic benefit of non-compliance and the seriousness of the violation.

(2) It is presumed that the violator's economic and financial condition allows payment of the penalty, and the burden of proof to the contrary is on the violator.

(3) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed, if the Administrator has notified the source of the violation and makes a prima facie showing that the conduct or events giving rise to the violation are likely to continue or recurred past the date of the notice, the days of violation shall be presumed to include the date of the notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved.

(4) Each day of continued violation of this Chapter or rules and regulations promulgated pursuant to this Chapter shall be deemed a separate violation or offense.

(e) **Disposition of Collected Fines and Penalties.** Fines and penalties collected under this Section related to the air pollution control permit program shall be deposited into the Air Pollution Control Special Fund pursuant to Subsection (f) of § 49107 of this Chapter.

§ 49117. Motor Vehicle Pollution Control.

(a) As the state of knowledge and technology relating to the control of emission from motor vehicles may permit or make appropriate, and in furtherance of the purpose of this Chapter, the Agency may provide rules and regulations for the control of emissions from motor vehicles. These rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper

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maintenance of such equipment and vehicles. Any rules and regulations pursuant to this Section shall be consistent with provisions of Federal law, if any, relating to control of emission from the vehicles concerned.

(b) Except as permitted or authorized by law, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle required by rules or regulations of the Agency to be maintained in or on the vehicle. Any failure to maintain in good working order or removal, dismantling, or causing of inoperability shall subject the owner or operator to suspension or cancellation of the registration of the vehicle by the Department of Revenue and Taxation, or penalties not to exceed One Thousand Dollars (\$1,000.00) per day of violation. The vehicle shall not be eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and in good working order.

(c) The Agency may carry out a program of inspection and testing of motor vehicles to enforce compliance with applicable emission standards or may carry out the inspection and testing jointly with another government of Guam agency.

(d) The Agency shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if the feature or equipment has been certified, approved or otherwise authorized pursuant to Federal law.

(e) The remedies and penalties provided in this Section shall apply to violations hereof, and no provision of § 49116 of this Chapter shall apply thereto.

(f) As used in this Section, *Motor Vehicle* shall mean any vehicle with an internal combustion engine used on public roads and highways for the purpose of transportation.

§ 49118. Time Frame and Implementation.

(a) This Law shall go into effect one hundred eighty (180) days after enactment. During that initial one hundred eighty (180) day period, the Administrator of the Guam Environmental Protection Agency shall educate the public about the new law and generally prepare for implementation. Education of the public shall include the provision of educational materials

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and presentations to those holding permits and conducting public presentations of information about this new regulation.

(b) When the one hundred eighty (180) day period described above ends, the Administrator and other law enforcement officials shall enforce the law as mandated herein.

§ 49119. Ultra-Low Sulfur Diesel Fuel Standard.

Notwithstanding any other provision of law, rule or administrative policy or waiver, effective January 1, 2011, all diesel fuel imported to Guam for the purpose of sale and distribution in Guam *shall* meet the USEPA standards for *ultra-low sulfur diesel fuel*. For purposes of this Section, *ultra -low sulfur diesel fuel shall* be generally defined as fuel that contains fifteen parts per million (15ppm) or less of sulfur content, as established by the USEPA Direct Final Rule. The Guam Environmental Protection Agency Board of Directors *shall* create compliance standards for diesel fuel. Any waivers of the fifteen parts per million (15ppm) sulfur content standard of this Section *shall* require approval by *I Liheslaturan Guåhan*.

SOURCE: Added by P.L. 30-184:2 (Aug. 28, 2010).

2010 NOTE: P.L. 30-184:5, provides;

“**Section 5.** All bulk storage tanks used to store diesel fuel intended for sale or re-sale *shall* be sampled and tested in accordance with 40 CFR, Part 80, Subpart I for the purpose of certifying that the fuel meets the required ultra-low sulfur diesel (ULSD) content of 15ppm or less. The ULSD certification *shall* be posted in a manner consistent with 40 CFR, Part 80, Subpart I, and that can be viewed for inspection by regulatory officials and the general public. Wholesale and retail suppliers of ULSD (15ppm or less) fuel *shall* comply with the certification requirement upon depletion of diesel fuel containing higher than 15ppm of sulfur.”

§ 49120. Severability.

The provisions of this Chapter are severable and if any of the provisions of this Chapter are held invalid or unconstitutional or the application thereof to any person or circumstance is held inapplicable, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions or application of this Chapter.

SOURCE: Formerly § 49119 of this chapter. Renumbered by P.L. 30-184:1 (Aug. 28, 2010).
