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THE " LEGAL ASPECTS " OF THE CONTAMINATION OF GUAM'S ENVIRONMENT WITH
TOXIC CHEMICALS = = = = =

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**----- [A] Department of Defense & Territorial Memorandum of
Agreement -----**

“Chemical Warfare Test Kits” uncovered in the village of Mongmong, July 1999.



About the Program

The Department of Defense (DoD) and State/Territorial Memorandum of Agreement (DSMOA) Program is a core of eight Guam EPA staff who work closely with the Department of Defense on *environmental restoration and clean-up work on Guam. The program was created by the Superfund*

Amendment and Reauthorization Act of 1986.

Under the DSMOA Program, Guam EPA maintains regulatory oversight of environmental restoration efforts undertaken by the Department of Defense (Navy and Air Force) on Guam to ensure compliance with local and federal laws and regulations. The program oversees three DoD programs:

Base Realignment and Closure: A clean-up program to ensure the environmental suitability of properties for transfer to GovGuam.

Installation Restoration Program: The main DoD environmental restoration program which covers on-base actions, such as the Orote landfill at COMNAVMAR, CB landfill clean-up at Finegayan, and Andersen Air Force Base Superfund actions.

Formerly Used Defense Sites (FUDS): U.S. Army Corps of Engineers program to clean up military sites that are no longer owned by the U.S. Government.

Guam Brownfields Program

Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance. Cleaning up and reinvesting in these properties takes development pressures off of undeveloped, open land, and both improves and protects the environment.

Guam EPA has recently begun addressing Brownfields sites and works in partnership with the Guam Economic Development and Commerce Authority, the Port Authority of Guam, and the Guam International Airport Authority. It is our goal to identify and evaluate the risks posed by these properties, and find solutions so that reuse and redevelopment is possible.

1999 Program of the Year

The Defense and State Memorandum of Agreement/CERCLA Program was awarded *the Governor's Award of Excellence for Program of the Year* for 1999. This award is given to recognize a program for its exemplary performance and contribution to the welfare of the people of Guam.

-----[B]= U.S. GENERAL ACCOUNTING OFFICE

ABANDONED –BUT- NOT CLEANED UP TOXIC CHEMICALS DUMPSITES

*Guam: Properties Identified for Potential Inclusion in FUDS Cleanup Program
Guam has 48 properties. These properties are listed according to eligibility and hazards.*

Property name	Property number	Eligibility	<u>Hazards</u>	Eligible projects
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5TH FIELD MARINE SUPPLY DEPOT	H09GM0302	Yes	Yes	1
AREA 101	H09GM0295	Yes	Yes	1
AREA 106	H09GM0297	Yes	Yes	1
AREA 108	H09GM0298	Yes	Yes	1
ASAN POINT TANK FARM	H09GM0285	Yes	Yes	1
CAMEL ROCK ASAN BCH	H09GM0003	Yes	Yes	1
CASCADA COUNTRY CLUB	H09GM0299	Yes	Yes	1
GUAM ADVENTIST ACADEMY	H09GM0014	Yes	Yes	1
GUAM SITE 1	H09GM0016	Yes	Yes	1
HARMON QUARRY	H09GM0004	Yes	Yes	1
IBANEZ/GUERRERO PROPERTIES	H09GM0269	Yes	Yes	2
LONFIT PLANNING PROJECT	H09GM0300	Yes	Yes	2
MIYAMA HILLS	H09GM0284	Yes	Yes	1
TUMON GUN SITE	H09GM0006	Yes	Yes	1
U.S. NAVAL HOSPITAL	H09GM0274	Yes	Yes	1
WAR IN PACIFIC- GUAM	H09GM0001	Yes	Yes	1
AREA 104	H09GM0296	Yes	Yes	1
PASEO DE SUSANNA	H09GM0005	Yes	Yes	1

----- *[C] THE LAW* -----

TOXIC CHEMICALS AND "THE COMMUNITY RIGHT-TO-KNOW ACT"

Fact Sheet: Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)
August 1994

Introduction

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA). This act amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), commonly known as "Superfund".

Included under Title III of SARA, was a free standing law, the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), commonly known as SARA Title III. Its purpose is: **to encourage and support emergency planning efforts at the State and local levels, and provide the public and local governments with information concerning potential chemical hazards present in their communities.**

This fact sheet presents an overview of EPCRA reporting requirements and provides a synopsis of Air Force responsibilities under EPCRA. It also lists references which contain detailed explanation of the subjects discussed.

EPCRA Reporting Requirements

EPCRA requires a facility to document, notify, and report information. The specific requirements are contained in the following sections of EPCRA which will be discussed below:

- Emergency Planning (Sections 301-303)
- Emergency Release Notification (Section 304)
- Community Right-to-Know Reporting Requirements (Sections 311-312)
- Toxic Chemical Release Inventory Reporting (Section 313)
- Emergency Planning (Sections 301-303)

These sections are to ensure State and local communities are prepared to respond to potential chemical threats. As a first step, each State had to establish a State Emergency Response Commission (SERC). In turn, the SERC designated local emergency planning districts. For each district, the SERC appoints, supervises and coordinates the activities of a Local Emergency Planning Committee (LEPC). The LEPC must, in turn, develop an emergency response plan for its district and review it annually. The membership of the LEPC includes representatives of public and private organizations as well as a representative from every facility subject to EPCRA emergency planning requirements.

The plan developed by the LEPC must:

1. Identify affected facilities and transportation routes.
2. Describe emergency notification and response procedures.
3. Designate community and facility emergency coordinators.
4. Describe methods to determine the occurrence and extent of a release.
5. Identify available response equipment and personnel.
6. Outline evacuation plans.

7. Describe training and practice programs and schedules.
8. Contain methods and schedules for exercising the plan.

Facilities subject to EPCRA

Determining if a facility is subject to the EPCRA emergency planning requirements is straightforward.

- a. The Environmental Protection Agency (EPA) published a list of "extremely hazardous substances (EHS)".
- b. For each EHS, the list includes the name and chemical abstract service number of the substance and a number called a threshold planning quantity (TPQ). The TPQ, expressed in pounds, is the critical number.
- c. If a facility has within its boundaries an amount of an extremely hazardous substance equal to or in excess of its threshold planning quantity, the facility is subject to the EPCRA emergency planning requirements and must notify both the SERC and the LEPC of this fact.
- d. The facility must also appoint an emergency response coordinator who will work with the LEPC on developing and implementing the local emergency plan at the facility.

Emergency Release Notification (Section 304)

This section provides the criteria under which a facility must report the accidental release of certain substances to the environment. A facility may be subject to these reporting requirements even if it is not subject to the provisions of Sections 301 to 303.

This section applies to any facility which:

1. Stores, produces or uses a "hazardous chemical" (any chemical which is a physical hazard or a health hazard); and
2. Releases a reportable quantity (RQ) of a substance contained in either of the following two tables published by the EPA in the Code of Federal Regulations:
3. List of extremely hazardous substances
4. List of CERCLA hazardous substances.

Community Right-to-Know Reporting Requirements (Sections 311-312)

- These sections establish reporting requirements which provide the public with important information on the hazardous chemicals in their communities.**
- The purpose is to increase community awareness of chemical hazards and to facilitate emergency planning. This section applies to any facility:**

Required by the Hazard communication Standard to prepare or have available a Material Safety Data Sheet (MSDA) for a hazardous chemical (See II above for definition),

and

that has onsite, for any one day in a calendar year, an amount of a hazardous chemical equal to or greater than the threshold limits established by the EPA

MSDS Reporting:

MSDS reporting requirements specifically provide information to the local community about mixtures and chemicals present at a facility and their associated hazards. For all substances whose on-site quantities exceed the above threshold limits, the facility must submit the following:

Initially a copy of the MSDS for each above-threshold chemical on-site or a list of the chemicals grouped into categories;

and

within three months of any change, an MSDS or list for additional chemicals which meet the reporting criteria.

Inventory Reporting

- ◆ Inventory reporting is designed to provide information on the amounts, location and storage conditions of hazardous chemicals and mixtures containing hazardous chemicals present at facilities.
- ◆ The inventory report has two forms.
 - a) The Tier One form, the simpler of the two, contains aggregate information for applicable hazard categories and must be submitted yearly by March 1.
 - b) The Tier Two form contains more detailed information, including the specific names of each chemical. This form is submitted upon request of any of the agencies authorized to receive the Tier One form. It can also be submitted yearly in lieu of the Tier One Form.

Toxic Chemical Release Inventory Reporting (Section 313)

- The purpose of this section is to inform the public and government officials about routine releases of toxic chemicals to the environment.*
- The data gathered will assist in research and development of regulations, guidelines, and standards.*
- Under this section, The EPA is required to establish the Toxic Release Inventory (TRI), an inventory of routine toxic chemical emissions from certain facilities.
- The original data requirements for the TRI, specified in SARA Title III, have been greatly expanded by the Pollution Prevention Act of 1990. The TRI must now also include information on source reduction, recycling and treatment.
- To obtain this data, EPCRA requires each affected facility to submit a Toxic Chemical Release Inventory Form (Form R) to the EPA and designated state officials each year on July 1.

Air Force Responsibilities Under EPCRA

- ⇒ The Air Force has, since 30 April 1993, in accordance with AFR 355-1, "Disaster Preparedness, Planning and Operations," voluntarily complied with Sections 303 and 304 of EPCRA in spite of the fact federal facilities were initially exempt from its requirements.
- ⇒ *On 3 August 1993, that all changed. The President signed Executive Order 12856, "Federal*

Compliance With Right-to-Know Laws and Pollution Prevention Requirements."

- *This Executive Order requires federal agencies, "**including DoD**", to fully comply with all provisions of EPCRA and the Pollution Prevention Act with one notable exception: the reporting requirements under Section 313.*
- *Currently a non-federal facility must file a Form R only if it is in a specified Standard Industrial Classification (SIC) Code. **This exclusion does not apply to federal agencies.** Federal agencies will comply with the provisions of Section 313 regardless of the SIC code that applies to their facilities.*

Regulatory Documents

To implement the provisions of SARA Title III, the **Environmental Protection Agency (EPA)**, has published a series of regulations in the **Code of Federal Regulations (CFR)**. These regulations, described below, contain specific guidance on meeting the requirements of the Law as well as the tables which are applicable to each section.

Emergency Planning (Sections 303-303)

Title 40, Part 355 (40 CFR 355) "EPA Regulations for Emergency Planning and Notification under CERCLA":

- 40 CFR 355.30, "Emergency planning".
Applicability criteria, notification requirements and procedures to calculate TPQs for solids and mixtures.
- 40 CFR 355, Appendix A.
List of extremely hazardous substances and their TPQs.

Emergency Release Notification (Section 304)

- ◆ Title 40, Part 355 (40 CFR 355), "EPA Regulations for Emergency Planning and Notification under CERCLA".
 - 40 CFR 355.40, "Emergency release notification." - Applicability criteria and notification requirements.
 - 40 CFR 355, Appendix A. - List of extremely hazardous substances.
- ◆ Title 40, Part 302 (40 CFR 302), "Designation Reportable Quantities, and Notification."
 - 40 CFR 302.4, "Designation of hazardous substances." - List of hazardous substances.
- ◆ Title 29, Part 1920 (29 CFR 1910), "Occupational Safety and Health Standards."
 - 29 CFR 1919.1200, "Hazard communication." - Definition of hazardous chemical.

Community Right-to-Know Reporting Requirements (Sections 311-312)

☐ Title 40, Section 370 (40 CFR 370) "EPA Hazardous Chemical Reporting and Community Right-to-Know Requirements."

- 40 CFR 370.20, "Applicability." - Applicability criteria and reporting threshold limits.
- 40 CFR 370.21, "MSDS Reporting." - MSDS reporting requirements.
- 40 CFR 370.25, "Inventory Reporting." - Tier I and II reporting requirements.
- 40 CFR 370.40, "Tier I emergency and hazardous inventory form." - Tier I report.
- 40 CFR 370.41, "Tier II emergency and hazardous inventory form." - Tier II report.

☐ Title 29, Part 1910 (29 CFR 1910), "Occupational Safety and Health Standards."

- 29 CFR 1910.1200, "Hazard communication." - Definition of hazardous chemicals.

Toxic Chemical Release Inventory Reporting (Section 313)

○ Title 40, Part 372 (40 CFR 372) "EPA Toxic Chemical Release Reporting Regulations."

- 40 CFR 372.5, "Persons subject to this part." - Applicability criteria for individuals.
- 40 CFR 372.10, "Recordkeeping." - Recordkeeping requirements for all facilities subject to this regulation.
- 40 CFR 372.22, "Covered facilities for toxic chemical release reporting." - Applicability criteria and reporting threshold limits.
- 40 CFR 372.25, "Reporting requirements and schedule for reporting." - Requirements and schedules for reporting toxic chemicals.
- 40 CFR 372.28, "Exemptions." - Exemptions to the requirements for reporting toxic chemicals.
- 40 CFR 372.45, "Notification about toxic chemicals." - Notification requirements for suppliers of toxic chemicals.
- 40 CFR 372.65, "Chemicals and chemical categories to which this part applies." - Chemicals and chemical categories which must be reported.
- 40 CFR 372.85, "Toxic chemical release reporting form and instructions." - Instructions for filling out the Form R.

Guidance Documents

The following documents are available for facilities responsible for complying with SARA Title III.

1. Guidance for Implementing Executive Order 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, Interim Final Draft, 28 February 1994, Environmental Protection Agency.

2. SARA Title III Fact Sheet. Environmental Protection Agency, January 1993.
3. Toxic Chemical Release Inventory Reporting Form R and Instructions, Environmental Protection Agency. (This document is revised yearly.)
4. Bibliography of materials on the Emergency Planning and Community Right-to-Know Act (Title III of SARA), Environmental Protection Agency
5. The Emergency Planning and Community Right-to-Know Act of 1986, Questions and Answers, EPCRA Hotline, June 1989.
6. Title III Lists of Lists, Environmental Protection Agency, January 1992.
7. Estimating Releases and Waste Treatment Efficiencies for the Toxic Chemical Release Inventory Form, Environmental Protection Agency, December 1978.

Directives

- ALMAJCOM/CEV MEMORANDUM: U.S. DEPARTMENT OF DEFENSE
DoD Implementing Guidance for Executive Order 12856, *Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements*
- ACTION MEMORANDUM: U.S. DEPARTMENT OF THE AIR FORCE
Department of the Air Force, 28 February 1994. EO 12856 and February 1994 Guidance for implementing the EO.
- EXECUTIVE ORDER
Executive Order 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, 3 August 1993.*
- If you would like copies of any of the referenced documents or need additional information concerning SARA Title III, please contact PRO-ACT at DSN 240-4214 or (800) 233-4356.

Fact Sheet

TI #2816 - August 1994

-----[D]= ABANDONED & ACTIVE TOXIC CHEMICALS
DUMPSITES -----

