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**Section 3.1**

**CONTAMINATED PARCELS**

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## Section 3.1

### CONTAMINATED PARCELS

#### PURPOSE

This chapter establishes requirements regarding the acquisition of contaminated properties and implements procedures to protect the Guam Department of Public Works (DPW) hereafter referred to as the Department from costs of remediation and liability for contamination caused by others.

#### AUTHORITY

40 CFR, Parts 260 through 272 and Part 280 and 300  
42 United States Code, Section 6901, et seq.  
42 United States Code Annotated, Section 9601(35)  
42 United States Code Annotated, Section 9607(b)(3)  
10 GCA § 32108, Regulations  
10 GCA § 32109, Examination and Investigation

#### SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions.

#### REFERENCES

29 CFR 1910, Subpart Z, Toxic and Hazardous Substance Occupational Safety and Health Administration Act  
40 CFR, Parts 260 through 272  
10 GCA § 32112, Hazardous Substance Testing Offered  
10 GCA § 32113, Government of Guam to Procure Hazardous Substance Liability Insurance Coverage

#### FORMS

None specific to this Section.

#### GENERAL

This section addresses the process to be followed in the acquisition of right of way parcels which are contaminated or suspected to be contaminated. To the extent possible, acquisition of parcels contaminated with non-petroleum contaminants are to be avoided. For non-petroleum contaminated parcels which cannot be avoided and must be acquired, the intent is to recover costs of remediation and to the extent possible minimize the Department's liability for contamination existing prior to the acquisition.

Recovery of costs of remediation is limited to those circumstances in which the Department would be required to undertake remediation where the owner or operator would have been required to carry out such remediation in the absence of the Department's acquisition. The costs to be recovered are those costs which the owner or operator would have incurred using the approved remediation technique(s) most advantageous to the owner. These costs may not be the same as those encountered by the Department in an expedited remediation.

It is critical that the Department work pro-actively and with due diligence in identifying the existence of contaminated parcels

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as early as possible in the project development process. This should be followed by the creation of a course of action to efficiently and effectively deal with the issues.

## DEFINITIONS

**Contaminant:** Any pollutant, hazardous substance or contaminant.

**Contamination:** The presence of any contaminant on land or in the waters of the Territory of Guam, in quantities which are, or may be, potentially harmful or injurious to animals, plant life or human health and welfare, which exceed the established Federal or Territorial Maximum Contaminant Levels (MCL).

**Contamination Source:** The place of origin or major concentration of contaminants from which contamination migrates to surrounding areas through the soil or groundwater.

**Contamination Stigma:** A diminution in the market value of a property which results from the knowledge in the market place that the property is or was contaminated and which diminution persists after remediation to Federal and Territorial standards. Contamination stigma does not include the costs of remediation.

**Hazardous Material:** Any material which has, or when combined with other materials will have, a deleterious effect on people or the environment.

**Hazardous Waste Site:** A site at which wastes as defined in *40 Code of Federal Regulations, Parts 260 through 272*, have been disposed, treated, or stored.

**Non-Petroleum Contaminant:** Any contaminant other than those defined as petroleum contaminants.

**Non-Petroleum Contaminated Parcel:** A parcel which has non-petroleum contaminants in the soil or groundwater in potentially dangerous quantities or levels in excess of the allowable maximum contaminant levels or risk based criteria established by rule or law. If both non-petroleum and petroleum contaminants are present the parcel will be treated as a non-petroleum contaminated parcel.

**Owner:** The individual or legal entity holding title to parcels which the Department is seeking to acquire or from whom the Department has acquired title. In the case of multiple individuals or entities jointly holding title, the term will apply to all holders collectively.

**Operator:** The individual or legal entity holding a right of possession to parcels which the Department is seeking to acquire from the owner and who has performed activities at the site for personal or commercial reasons that may have contaminated or added to contamination of the soils and groundwater on the site or exiting from the site.

**Parcel:** A tract of land as defined in Chapter 2.1 and further defined as identified by the Department for acquisition as a portion of the right of way for a transportation project.

**Petroleum Contaminant:** Any petroleum or petroleum product as defined in *40 CFR, Part 261*.

**Petroleum Contaminated Parcel:** A parcel which has only petroleum contaminants in the soil or groundwater in potentially dangerous quantities or levels in excess of the allowable maximum contaminant levels. See **Section 3.1.3, Non-Petroleum Contaminated Parcel**.

**Remediation:** Those activities necessary to remove, treat or otherwise reduce contamination to a level acceptable to the regulatory agency having jurisdiction.

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**Superfund site:** A site on the National Priorities List as adopted by the United States Environmental Protection Agency.

**Valuation:** The process of estimating the market value of an identified interest or interests in a specific parcel of real estate as of a given date.

### **3.1.1 Identification of Contaminated Sites**

Contaminated sites should be identified in accordance with **10 GCA, §32109, Investigation and Examination** and applicable Guam and Federal Environmental Protection Agency procedures. In all cases, the presence of contamination and the nature of the contamination present must be made known to the real estate appraiser so that a determination can be made regarding the presence of contamination stigma. For those parcels on which the remediation costs are to be considered during the valuation process, the nature and extent of the contamination must be known prior to the beginning of the valuation process and a supported estimate of the remediation costs must be made available to the real estate appraiser. The remediation costs included in such an estimate must be those the owner would be expected to incur in the absence of the taking by the Department.

### **3.1.2 Petroleum Contaminated Parcels**

Petroleum contaminated parcels should be acquired using standard acquisition procedures. Since the owner of such properties would not be required to remediate the contamination except for the Department's actions, the costs of such remediation should not be considered in the valuation process. However, contamination stigma must be considered.

### **3.1.3 Non-Petroleum Contaminated Parcels**

#### **3.1.3.1 Superfund sites**

To the extent possible, sites which have been designated as Superfund sites or which are proposed for such designation should not be acquired, either in part or in whole. If avoidance is not possible, the sites must be acquired by eminent domain or under threat of condemnation. Costs of remediation should not be considered in the valuation and acquisition process, however, contamination stigma must be considered.

Donations of parcels which are part of Superfund sites should not be accepted.

#### **3.1.3.2 Hazardous waste sites**

Contamination stigma must always be considered in the valuation of these sites and they must be acquired in the following manner:

- (A)** Sites which are enrolled in or are eligible to be enrolled in Federal or Territory-funded remediation programs may be acquired without considering the costs of remediation in the valuation and acquisition process.
- (B)** Sites which have not been enrolled in and are not eligible to be enrolled in Federal or Territory-funded remediation programs must be acquired as follows:
  - (1)** If the contamination source is not located within the parcel to be acquired, the costs of remediation should not be considered in the valuation and acquisition process.
  - (2)** If the contamination source is located, either partially or wholly within the parcel to be acquired, steps must be taken to protect the Department from costs and liability associated with the acquisition of the contamination source. The valuation process should reflect the impact to market

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value of the amount the owner would reasonably be expected to expend in the remediation of the contamination in the absence of the Department's taking. If anticipated remediation costs cannot be recovered through a reduction in purchase price, the acquisition documents should contain language preserving the Department's right to seek reimbursement of such costs from the owner or operator.

### **3.1.4 Valuation of Contaminated Parcels**

Nothing in this procedure is intended to substitute for the application of proper professional judgment and due diligence in the valuation of properties. It is recognized that circumstances, such as highest and best use and severance analyses, may exist wherein the real property appraiser must consider the presence of contamination, even when such contamination or its source is not within the area to be acquired by the Department, in order to properly evaluate the impact of an acquisition on a tract. However, it is the intent of the Department that the value of the part to be acquired should not be directly impacted by the anticipated costs of remediation, except as indicated in this procedure.

### **3.1.5 Contaminated Uneconomic Remnants**

#### **3.1.5.1 Contamination source located on the remnant or contamination located only on the remnant:**

The offer to purchase the remnant must be conditioned upon remediation being completed at the owner's expense. This may be accomplished by having remediation completed prior to title transfer or by the owner's agreement to pay the costs of remediation. Care must be taken to ensure that an owner entering into an agreement to pay remediation costs is financially capable of meeting the obligations under the agreement.

#### **3.1.5.2 Contamination shared between the remnant and right of way parcel:**

The offer to purchase the remnant should generally be conditioned upon the owner's agreement to pay the cost of remediation associated with the remnant. Where the cost of remediation of the remnant is indistinguishable from the cost of remediation of the right of way parcel, the Department of Public Works Right of Way Supervisor through consultation with the Attorney Generals Office may elect to not include the condition in the offer to purchase.

### **HISTORY**

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