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LEXIS DISTRICT OF COLUMBIA CODE ANNOTATED
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*** CURRENT THROUGH D.C. LAW 17-256, EFFECTIVE NOVEMBER 19, 2008 ***
*** AND THROUGH D.C. ACT 17-503 ***
*** STATE ANNOTATIONS CURRENT THROUGH AUGUST 7, 2008 ***

TITLE 8. ENVIRONMENTAL AND ANIMAL CONTROL AND PROTECTION
SUBTITLE A. ENVIRONMENTAL CONTROL AND PROTECTION
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SUBCHAPTER VII. UNDERGROUND STORAGE TANK MANAGEMENT

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D.C. Code § 8-113.01 (2008)

§ 8-113.01. Definitions [Formerly § 6-995.1]

For the purposes of this subchapter, the term:

- (1) "Facility" means 1 or more underground storage tanks at a given location.
- (2) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for the underground storage tank facility.
- (3) "Operator" means any person in control of, or having responsibility for, the daily operation of a facility.
- (4) "Owner" means:
 - (A) In the case of an underground storage tank in use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; or
 - (B) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned a tank immediately before discontinuation of its use.
- (5) "Person" means any individual, partnership, corporation (including a government corporation), trust, firm, joint stock company, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, the District of Columbia ("District") government, the United States government, a foreign government, or any interstate body.

(6) "Petroleum" means petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure of 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

(7) "Regulated substance" means:

(A) Any substance defined in § 101(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, approved December 11, 1980 (94 Stat. 2767; 42 U.S.C.S. § 9601(14)). The term "regulated substance" shall not include any substance regulated as a hazardous waste under subtitle C of title II of the Solid Waste Disposal Act, approved October 21, 1976 (90 Stat. 2806; 42 U.S.C.S. § 6921 et seq.);

(B) Petroleum; or

(C) Any other substance designated by the Mayor in accordance with rules issued pursuant to § 8-113.12.

(8) "Release" means any spill, leak, emission, discharge, escape, leach, or disposal from an underground storage tank.

(9) (A) "Responsible party" means:

(i) An owner or operator as defined in this section;

(ii) A person who caused or contributed to a release from an underground storage tank system;

(iii) A person who caused a release as a result of transfer of a regulated substance to or from an underground storage tank system;

(iv) A person found to be negligent, including any person who previously owned or operated an underground storage tank or facility, or who arranged for or agreed to the placement of an underground storage tank system by agreement or otherwise; or

(v) The owner of real property where an underground storage tank is or was located or where contamination from an underground storage tank is discovered if the owner or operator of the tank as defined in paragraphs 3 and 4 cannot be located or is insolvent, or, if the real property owner refuses without good cause to permit the owner or operator of the tank access to the property to investigate or remediate the site.

(B) If the owner and operator of a petroleum underground storage tank are separate persons, only the owner shall be required to demonstrate financial responsibility. Both the owner and operator shall be liable in the event of noncompliance with the requirements of 40 CFR 280.90 et seq.

(10) "Underground storage tank" means 1 or any combination of tanks, including underground pipes that connect tanks, that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground. "Underground storage tank" does not mean a tank that is exempted in accordance with rules issued pursuant to § 8-113.12.

HISTORY: 1981 Ed., § 6-995.1; Mar. 8, 1991, D.C. Law 8-242, § 2, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(a), 39 DCR 5690.

NOTES:

LEGISLATIVE HISTORY OF LAW 8-242. --Law 8-242, the "District of Columbia Underground Storage Tank Management Act of 1990," was introduced in Council and assigned Bill No. 8-382. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-325 and transmitted to both Houses of Congress for its review.

LEGISLATIVE HISTORY OF LAW 9-159. --Law 9-159, the "District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-286. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-253 and transmitted to both Houses of Congress for its review. D.C. Law 9-159 became effective on September 29, 1992.

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D.C. Code § 8-113.02 (2008)

§ 8-113.02. Notification [Formerly § 6-995.2]

(a) Within 120 days after March 8, 1991, the owner of an underground storage tank shall notify the Mayor of the existence of any tank and specify the age, size, type, location, and use of the tank and any other information required by the Mayor.

(b) Notice shall not be required if the owner of an underground storage tank has:

- (1) Taken the tank out of operation on or before January 1, 1974; or
- (2) Previously filed a federal underground storage tank notification form with the Mayor.

(c) Any owner who brings into use an underground storage tank after March 8, 1991, shall notify the Mayor within 30 days of the existence of the tank as provided in subsection (a) of this section.

(d) Any owner of tanks located at different facilities shall file a separate notification form for each facility.

(e) An owner shall submit notice to the Mayor 30 days prior to a permanent removal from service or a change in the reported use, contents, or ownership of an underground storage tank.

(f) Beginning 30 days after the Mayor issues rules pursuant to § 8-113.12 regarding performance standards for new underground storage tanks, any person who deposits regulated substances into an underground storage tank or sells or leases an underground storage tank shall notify the owner of the tank of the notification requirement pursuant to this section.

(g) Beginning 30 days after September 29, 1992, any person who sells real property in the District of Columbia upon which underground storage tanks are located, or from which underground storage tanks have been removed during the seller's ownership, shall inform each prospective buyer in writing, prior to entering into a contract for sale, of the existence or removal of any tanks of which the seller has knowledge.

HISTORY: 1981 Ed., § 6-995.2; Mar. 8, 1991, D.C. Law 8-242, § 3, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(b), 39 DCR 5690.

NOTES:

SECTION REFERENCES. --This section is referenced in § 8-113.09.

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 9-159. --See note to § 8-113.01.

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D.C. Code § 8-113.03 (2008)

§ 8-113.03. Release notification requirements [Formerly § 6-995.3]

(a) Any responsible party or any authorized agent of a responsible party; any person who tests, installs, or removes tanks; any person who engages in site investigation, assessment, remediation, or geotechnical exploration; or any public utility company or authorized agent of a public utility company who knows, or has reason to know, of a release from an underground storage tank shall notify the Mayor of the release.

(b) The notification shall consist of, if known, the name of the owner, operator, and any other responsible party, as well as the location, date, time, volume, and substance of the release. The notification shall include, if known, any immediate and ongoing action taken to mitigate the release, any subsequent hazardous conditions caused by the release, and an evaluation of any potential environmental hazard evident by the condition or disposition of the tank.

HISTORY: 1981 Ed., § 6-995.3; Mar. 8, 1991, D.C. Law 8-242, § 4, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(c), 39 DCR 5690.

NOTES:

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 9-159. --See note to § 8-113.01.

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D.C. Code § 8-113.04 (2008)

§ 8-113.04. Interim prohibition for installation [Formerly § 6-995.4]

From March 8, 1991, until the effective date of the rules issued pursuant to § 8-113.12 regarding performance standards for new underground storage tanks, no person may install an underground storage tank to store a regulated substance unless the tank, whether of single or double wall construction, complies with the District of Columbia Fire Prevention Code and the new tank performance standards set forth in 40 CFR part 280.

HISTORY: 1981 Ed., § 6-995.4; Mar. 8, 1991, D.C. Law 8-242, § 5, 38 DCR 344.

NOTES:

SECTION REFERENCES. --This section is referenced in § 8-113.09.

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

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D.C. Code § 8-113.05 (2008)

§ 8-113.05. Underground Storage Tank Trust Fund [Formerly § 6-995.5]

(a) The District of Columbia Underground Storage Tank Trust Fund ("Fund") is hereby established as a nonlapsing, revolving fund, to be administered by the Mayor and used for the implementation of the District's regulatory program for underground storage tanks that contain regulated substances.

(b) The Fund shall be financed through tank fees, including registration, licensure, certification, and inspection fees, civil penalties, costs and judgments recovered, grants, contributions, and monies received as reimbursement pursuant to the provisions of this subchapter.

(c) The Fund shall be accounted for under procedures established pursuant to subchapter V of Chapter 3 of Title 47, and any other applicable law.

(d) Disbursements from the Fund may be made to undertake corrective action including site assessment, cleanup, and housing and relocation assistance. A disbursement may be made if there is a release of a regulated substance into the environment from an underground storage tank, based upon a priority system to be established by the Mayor, if the action is necessary to protect human health or the environment, and 1 or more of the following exist:

(1) No person can be found within 90 days or a shorter period, as may be necessary to protect human health or the environment, who is:

(A) An owner or operator;

(B) Subject to the corrective action rules issued pursuant to § 8-113.12; and

(C) Capable of proper implementation of the required corrective action.

(2) A situation exists that requires immediate action by the Mayor to protect human health and the environment.

(3) Corrective action costs at a facility exceed the amount of coverage required by the Mayor pursuant to the financial responsibility requirement imposed in the rules, and expenditures from the Fund are necessary to ensure an effective corrective action.

(4) The responsible party for the tank has failed or refused to comply with an order issued by the Mayor that requires compliance with the corrective action rules.

(e) The District government's share of the cost of corrective action with respect to any release of regulated substances into the environment from an underground storage tank undertaken under a cooperative agreement with the United States Environmental Protection Agency shall be in accordance with the provisions of section 9003(h)(7)(B) of the Solid Waste Disposal Act, approved November 8, 1984 (98 Stat. 3279; 42 U.S.C.S. 6991b(h)(7)(B)).

(f) Disbursements from the Fund may be provided for administrative and operational costs incurred by the Mayor in the implementation of the provisions of the underground storage tank regulatory program.

(g) If costs are incurred by the District government for undertaking any corrective or enforcement action with respect to the release of a regulated substance from an underground storage tank, the responsible parties shall be jointly and severally liable to the District government for the costs. In addition to any other enforcement action, the Mayor may assess any reasonable costs of the correction of the condition and any related expenses as a tax against the property, carry the tax on the regular tax rolls, and collect the tax in the same manner as real estate taxes are collected. In determining the equities for seeking the recovery of costs under this subsection, the Mayor may consider the amount of financial responsibility required to be maintained under the rules issued pursuant to § 8-113.12.

(h) Nothing in this section shall be construed to make the District government responsible for corrective action costs to any person in excess of the monies in the Fund.

HISTORY: 1981 Ed., § 6-995.5; Mar. 8, 1991, D.C. Law 8-242, § 6, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(d), 39 DCR 5690.

NOTES:

SECTION REFERENCES. --This section is referenced in § 8-113.08.

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 9-159. --See note to § 8-113.01.

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D.C. Code § 8-113.06 (2008)

§ 8-113.06. Certification, registration, and licensing [Formerly § 6-995.6]

(a) The Mayor may require the licensing of any business and the certification of any individual who installs, removes, or tests underground storage tanks. The Mayor may, by rules issued in accordance with § 8-113.12, establish prerequisites for licensing and certification including minimum qualifications, proof of financial responsibility, application fees, and procedures.

(b) Any owner of an underground storage tank that contains a regulated substance shall register the tank with the Mayor on an annual basis pursuant to the rules issued and shall pay the required fee. A copy of the registration certificate shall be kept conspicuously displayed and available for inspection at any facility where the underground storage tank is located.

(c) The annual registration fee shall be:

(1) \$ 500 for an initial registration and \$ 200 for a renewal registration for a tank over 10,000 gallons; and

(2) \$ 200 for an initial registration and \$ 100 for a renewal registration for a tank of 10,000 gallons or under.

(d) The Mayor may adjust fees in accordance with rules issued pursuant to § 8-113.12 beginning 2 years after March 8, 1991.

HISTORY: 1981 Ed., § 6-995.6; Mar. 8, 1991, D.C. Law 8-242, § 7, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(e), 39 DCR 5690.

NOTES:

SECTION REFERENCES. --This section is referenced in § 8-113.07.

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 9-159. --See note to § 8-113.01.

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D.C. Code § 8-113.07 (2008)

§ 8-113.07. Denial, suspension, or revocation [Formerly § 6-995.7]

The Mayor may suspend, revoke, or refuse to issue, renew, or restore a license or certificate issued under § 8-113.06 to protect the public health, safety, or welfare if the Mayor finds that the applicant or holder has:

- (1) Failed to meet and maintain the standards established by this subchapter or rules issued pursuant to this subchapter;
- (2) Submitted a false or fraudulent record, invoice, or report;
- (3) Engaged in fraud or misrepresentation in the application for licensure or certification;
- (4) Had a history of repeated violations; or
- (5) Had his license or certification denied, revoked, or suspended in another state or jurisdiction.

HISTORY: 1981 Ed., § 6-995.7; Mar. 8, 1991, D.C. Law 8-242, § 8, 38 DCR 344.

NOTES:

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

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D.C. Code § 8-113.08 (2008)

§ 8-113.08. Right of entry; inspections; analyses; corrective action [Formerly § 6-995.8]

(a) For the purpose of enforcing this subchapter or any rule issued pursuant to this subchapter, the Mayor or his or her designated representative may, at any reasonable time, upon the presentation of appropriate credentials to the owner, operator, or agent in charge:

(1) Enter without delay any place where an underground storage tank is or has been located or where a release is suspected;

(2) Inspect and obtain samples of any regulated substance contained in the tank;

(3) Inspect and copy any record, report, information, or test result required to be maintained pursuant to this subchapter, rules issued pursuant to this subchapter, or relevant to the operation of any underground storage tank; and

(4) Conduct monitoring or testing of any tank, associated equipment, contents, surrounding soils, air, surface water, or groundwater.

(b) If the Mayor is denied access to any place where an underground storage tank is or has been located, the Mayor may apply to a court of competent jurisdiction for a search warrant.

(c) If a designated representative or employee of the Mayor obtains any sample prior to leaving the premises, he or she shall give the owner, operator, or agent in charge, a receipt that describes the sample obtained, and if requested, a portion of the sample equal in volume or weight to the portion obtained. If any analysis is made of a sample, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(d) The Mayor may require the responsible party to provide any information or record with respect to any underground storage tank or system if the information or record is necessary to determine compliance with the rules or to conduct monitoring or testing of the tanks, associated equipment, contents, surrounding soils, air, or surface water or groundwater. The Mayor may require the responsible party to take any necessary corrective action.

(d-1) The Mayor, or his or her designated agent, may enter upon property to perform, or cause to be performed, corrective actions necessary to protect human health or the environment under the

circumstances set forth in § 8-113.05(d). The Mayor shall give prior notice of the action to the owner or operator and the real property owner by first attempting personal service or service by registered mail, and, if unsuccessful, by providing notice by publication and conspicuous posting on the property.

(e) The Mayor may take summary corrective action if a release of a regulated substance from an underground storage tank creates an imminent threat to human health or the environment. The Mayor shall provide an opportunity for a hearing with respect to the summary action without prejudice to the authority of the Mayor to take and complete the action. The Mayor shall give prior notice of the action to the owner, operator, or agent in charge and the real property owner, by personal service or by registered mail, and by conspicuous posting on the property, unless the emergency nature of the situation makes prior notice by personal service or registered mail impractical. If the owner, operator, or agent in charge cannot be located, notice shall be provided by conspicuous posting on the property.

HISTORY: 1981 Ed., § 6-995.8; Mar. 8, 1991, D.C. Law 8-242, § 9, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(f), 39 DCR 5690.

NOTES:

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 9-159. --See note to § 8-113.01.

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D.C. Code § 8-113.09 (2008)

§ 8-113.09. Enforcement; penalties [Formerly § 6-995.9]

(a) If the Mayor believes or has reason to believe that there is a violation or a threatened violation of this subchapter or the rules issued pursuant to this subchapter, the Mayor may give written notice of the violation or threatened violation to the owner, operator, or any other responsible party deemed appropriate by the Mayor, and may require the person to take the corrective measures the Mayor considers reasonable and necessary.

(1) Repealed.

(b) If a person fails to comply with a notice of violation issued pursuant to subsection (a) of this section within the time stated in the notice, the Mayor may issue a proposed compliance order, or a proposed cease and desist order, or may institute a court action for injunctive relief, damages, civil penalties, or recovery of any corrective action costs, necessary to promptly and effectively terminate the violation or threatened violation and protect life, property, or the environment.

(1) A proposed compliance order or proposed cease and desist order issued under this section shall include a statement of the nature of the violation, afford the right to a hearing, and allow a reasonable time for compliance with the order, consistent with the likelihood of harm and the need to protect health, safety, life, property, and the environment, and shall state any penalties to be assessed for failure to comply with the order.

(2) A proposed order issued under this section shall become effective and final unless the person or persons named therein request a hearing no later than 15 days after the order is served. If requested, the public hearing shall be conducted in compliance with the requirements of § 2-509.

(c) (1) The Mayor may issue an immediate compliance order, or an immediate cease and desist order, or may seek a temporary restraining order, without first issuing a notice of violation or threatened violation pursuant to subsection (a) of this section and without first providing reasonable notice and an opportunity to be heard pursuant to subsection (b) of this section, in order to require a person to correct a situation which immediately threatens public health or the environment or to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment.

(2) A compliance order or cease and desist order issued under this section shall be effective upon issuance and shall become final unless the person named in the order requests a public hearing within 72 hours after the order is served. If requested, the Mayor shall hold a hearing within 15 days from the date the hearing request is received and shall issue a decision no later than 15 days after the hearing. The hearing shall be conducted in compliance with § 2-509.

(d) Any person who fails to comply with a final compliance order or a final cease and desist order issued pursuant to this section shall be liable for a civil penalty of not more than \$ 25,000 for each day of noncompliance.

(e) Any person who knowingly fails to notify or submits false information pursuant to § 8-113.02(a) through (f) shall be subject to a civil penalty not to exceed \$ 10,000 for each violation.

(f) Any person who fails to comply with any applicable rules issued pursuant to § 8-113.12 or with the requirements of § 8-113.04 shall be subject to a civil penalty not to exceed \$ 10,000 for each tank for each day of violation.

(g) A civil fine, penalty, or fee may be imposed as an alternative sanction for any infraction of the provisions of this subchapter or the rules issued in accordance with this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction shall be pursuant to Chapter 18 of Title 2.

(h) Any action under this section shall be in the Superior Court of the District of Columbia in the name of the District of Columbia, and shall be instituted by the Office of the Attorney General for the District of Columbia.

(i) In any action brought for civil penalties, damage, or equitable relief under this subchapter, the statute of limitations shall not begin to toll until the injury is discovered or, with reasonable diligence, should have been discovered.

(j) The Mayor may cause to be entered any final order requiring a party to take corrective action or to pay fines, penalties, or costs as a judgment against the party in the Superior Court of the District of Columbia. The Mayor may enforce the judgment in the same manner as any other civil judgment may be enforced under District law.

(k) Any person adversely affected or aggrieved by a final order issued pursuant to this section may appeal to the District of Columbia Court of Appeals.

HISTORY: 1981 Ed., § 6-995.9; Mar. 8, 1991, D.C. Law 8-242, § 10, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(g), 39 DCR 5690; Apr. 18, 1996, D.C. Law 11-110, § 12, 43 DCR 530; Apr. 20, 1999, D.C. Law 12-264, § 17, 46 DCR 2118.

NOTES:

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 9-159. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 11-110. --Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

LEGISLATIVE HISTORY OF LAW 12-264. --Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

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*** AND THROUGH D.C. ACT 17-503 ***

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TITLE 8. ENVIRONMENTAL AND ANIMAL CONTROL AND PROTECTION
SUBTITLE A. ENVIRONMENTAL CONTROL AND PROTECTION
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D.C. Code § 8-113.10 (2008)

§ 8-113.10. Summary action [Formerly § 6-995.10]

(a) If the Mayor determines during or after an investigation that the conduct of any business or individual who installs, removes, or tests an underground storage tank presents an imminent danger to the health or safety of the residents of the District, the Mayor may summarily suspend or restrict, without a hearing, the license of the business or certificate of the individual.

(b) At the time of the summary suspension or restriction, the Mayor shall provide the licensee or certificate holder with a written notice stating the action that is being taken, the basis for the action, and the right of the licensee or certificate holder to request a hearing.

(c) A licensee or certificate holder shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of the license or certificate. The Mayor shall hold a hearing within 15 days of receipt of a timely request, and shall issue a decision within 15 days after the hearing.

(d) Any decision and order adverse to a licensee or certified holder shall be in writing and accompanied by findings of fact and conclusions of law. The Mayor shall provide a copy of the decision and order and findings of fact and conclusions of law to each party or his or her attorney of record.

(e) Any licensee or certificate holder aggrieved by a decision and order may file an appeal in accordance with § 2-510.

HISTORY: 1981 Ed., § 6-995.10; Mar. 8, 1991, D.C. Law 8-242, § 11, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(h), 39 DCR 5690.

NOTES:

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 9-159. --See note to § 8-113.01.

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D.C. Code § 8-113.11 (2008)

§ 8-113.11. Citizen's right of action [Formerly § 6-995.11]

(a) Any person aggrieved by a violation of any requirement of this subchapter or rule issued pursuant to this subchapter may commence a civil action on his or her own behalf against any person who is alleged to be in violation.

(b) The Court shall have jurisdiction in any action brought pursuant to subsection (a) of this section to enforce the requirement or to order any action necessary to correct the violation, and to impose any civil penalty provided for the violation.

(c) No action may be commenced under subsection (a) of this section until 30 days after the plaintiff has given notice of the violation to the Office of Attorney General for the District of Columbia for the District of Columbia and to the alleged violator.

(d) No action may be commenced under subsection (a) of this section if the Mayor has commenced and is diligently prosecuting an action to obtain compliance with the requirements of this subchapter or rules issued pursuant to this subchapter.

(e) The Court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party if the court determines an award is appropriate.

(f) An owner or operator who enters on the property of another person in order to investigate or remediate a leaking underground storage tank site shall be liable for any damages to person or property which result from the action of the owner or operator or the agents of the owner or operator.

HISTORY: 1981 Ed., § 6-995.11; Mar. 8, 1991, D.C. Law 8-242, § 12, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(i), 39 DCR 5690.

NOTES:

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 9-159. --See note to § 8-113.01.

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ANALYSIS

Action for money damages.

ACTION FOR MONEY DAMAGES.

Although the statutory language is ambiguous regarding the possibility of a private cause of action for money damages, there is language that limits the court's ability to grant relief to the ordering of "any action necessary to correct the violation" and the imposition of civil penalties. 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

Because the District underground storage tank statute was enacted to protect the public's health, not for the special benefit of a class of which the plaintiff property owner was a member, private individuals could utilize the citizen suit provision to sue responsible parties to compel compliance with the statute and to abate any effects of petroleum UST releases, but not to collect money damages. 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

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D.C. Code § 8-113.12 (2008)

§ 8-113.12. Rules [Formerly § 6-995.12]

(a) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue and may revise, as appropriate, rules necessary to carry out the purposes and implement the provisions of this subchapter, including rules regarding requirements for:

- (1) The maintenance of leak detection, prevention, inventory control, and tank testing systems;
- (2) The maintenance of records of any monitoring or leak detection system or an inventory control or tank testing system;
- (3) The reporting of releases and any corrective action taken;
- (4) The abandonment in place, closure, or removal of underground storage tanks to prevent future releases of regulated substances into the environment;
- (5) The maintenance of evidence of financial responsibility in order to take corrective action and compensate any 3rd party for bodily injury or property damage which shall conform to the federal financial responsibility requirements issued pursuant to section 9004 of the Solid Waste Disposal Act, approved November 8, 1984 (98 Stat. 3282; 42 U.S.C.S. § 6991c);
- (6) The establishment of standards of performance for new underground storage tanks;
- (7) The taking of corrective action in response to a release from an underground storage tank that meets District and federal cleanup objectives;
- (8) Public participation in the implementation and enforcement of this subchapter;
- (9) Standards and fees for the registration, installation, and abandonment of tanks; and
- (10) Tanks that are exempt from regulation.

(b) Until the Mayor, by rule, determines which tanks shall be exempt from regulation, the exemptions set forth in section 9001(1) of the Solid Waste Disposal Act (42 U.S.C.S. § 6991(1)) shall be applicable.

HISTORY: 1981 Ed., § 6-995.12; Mar. 8, 1991, D.C. Law 8-242, § 13, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(j), 39 DCR 5690.

NOTES:

SECTION REFERENCES. --This section is referenced in § 8-113.01, § 8-113.02, § 8-113.04, § 8-113.05, § 8-113.06, and § 8-113.09.

LEGISLATIVE HISTORY OF LAW 8-242. --See note to § 8-113.01.

LEGISLATIVE HISTORY OF LAW 9-159. --See note to § 8-113.01.

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