



**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING EL DORADO COUNTY ORDINANCE CODE TITLE 8 – PUBLIC HEALTH AND SAFETY, CHAPTER 8.38 – HAZARDOUS MATERIALS; REPEALING CHAPTER 8.40 – UNDERGROUND STORAGE TANKS; AND REPEALING CHAPTER 8.41 – FUEL CONTAINING MTBE

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:**

**Section 1.** Chapter 8.40 of Title 8 of the El Dorado County Ordinance Code entitled Underground Storage Tanks is hereby repealed and deleted in its entirety.

**Section 2.** Chapter 8.41 of Title 8 of the El Dorado County Ordinance Code entitled Fuel Containing MTBE is hereby repealed and deleted in its entirety.

**Section 3.** Chapter 8.38 of Title 8 of the El Dorado County Ordinance Code entitled Hazardous Materials is hereby amended and replaced in its entirety to read as follows:

**CHAPTER 8.38**

**HAZARDOUS MATERIALS**

**Section 8.38.010 – Title**

This chapter shall be known and may be cited as the "County of El Dorado Hazardous Materials Ordinance."

**Section 8.38.020 – Purpose**

The purpose of this chapter is to protect the public health, safety and the environment, and establish requirements for businesses that handle, store or dispose of hazardous materials, consistent with California Health and Safety Code and California Code of Regulations as specified in this chapter. It is the purpose of this chapter to incorporate and implement these laws and regulations which establish standards and procedures for the regulation and permitting of facilities within the unincorporated area of County of El Dorado and within the incorporated

territory of each municipality within County of El Dorado. It is also the purpose of this chapter to establish the procedures for the enforcement of these laws and regulations. This chapter is not intended, and shall not be construed, to apply to any substance or activity which is preempted by federal or state law.

### **Section 8.38.030 – Findings**

The Board of Supervisors of the County of El Dorado finds that:

- A. In 1993 the Unified Program was established by SB 1082 that developed a consolidated enforcement and inspection program designed to ensure effective, efficient, and coordinated enforcement of the laws implemented by California Environmental Protection Agency (CalEPA), Department of Toxic Substances Control (DTSC), State Water Resources Control Board (SWRCB), the Regional Water Quality Control Boards (RWQCBs), the Office of Emergency Services (Cal OES), and the Office of the State Fire Marshal (CAL FIRE-OSFM) as those laws relate to facilities that store hazardous materials or generate, store or treat hazardous waste.
- B. In 1996 the California Environmental Protection Agency (CalEPA) certified the County of El Dorado as the Unified Program Agency to perform enforcement and inspection on behalf of the state pursuant to the California Health and Safety Code and California Code of Regulations sections specified in this chapter.

### **Section 8.38.040 – Definitions**

- A. Unless otherwise expressly stated, those terms referred to and defined by Sections 25501, 25270.2, 25404, 25532, 25110 through 25124, 25281 of the California Health and Safety Code, or as amended, shall have the same meaning as used in this chapter.
- B. Defined Terms. For purposes of this chapter, the following definitions shall apply:
  - 1. *Board of Supervisors* or *board* - means the Board of Supervisors of County of El Dorado.
  - 2. *California Electronic Reporting System* or *CERS* - means the database maintained by the state to which all business subject to this ordinance must submit information.
  - 3. *Certified Unified Program Agency* or *CUPA* - means an agency certified by the Secretary to implement the unified program specified in Chapter 6.11 of the Health and Safety Code (commencing with Section 25404) within a jurisdiction. The Environmental Management Department is the CUPA for both the incorporated and unincorporated areas of the County of El Dorado.

4. *Consolidated Permit to Operate* - means a permit to operate issued to facilities that are subject to one or more requirements of this chapter.
5. *County* - means the County of El Dorado.
6. *Day* - means calendar day, unless otherwise expressly noted.
7. *Director* - means the Director of the County of El Dorado Environmental Management Department or his/her designee.
8. *Environmental Management Department* - means the County of El Dorado Environmental Management Department.
9. *Facility* - means a single location or site which is used for any activity regulated pursuant to this chapter and includes the same meaning set forth in Sections 25281(f), 25270.2(a) and 25404(a)(5) of the Health and Safety Code.
10. *Hazardous materials* - has the same meaning set forth in Section 25501(n) of the Health and Safety Code, and include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that the material would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.
11. *Health and Safety Code* - means the California Health and Safety Code.
12. *Hearing authority* - means any person or persons, qualified by training or experience, which the Board of Supervisors may appoint to conduct such hearings; or an administrative law judge assigned to the State of California Office of Administrative Hearings.
13. *Operator* - means any person in control of, or having daily responsibility for, daily operations that result in the storage and/or management of hazardous materials.
14. *Owner* - means the owner of a facility that stores and/or manages hazardous materials.
15. *Person* - means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the state, federal government, or any department or agency thereof.
16. *Secretary* - means the Secretary of the California Environmental Protection Agency.

17. *Unified Program Agency* or *UPA* - means the CUPA and has the same meaning as set forth in Section 25404(c) of the Health and Safety Code.

**Section 8.38.050 – Administration**

Except as otherwise provided, the Director is charged with the responsibility of administering this chapter and shall be authorized from time to time to promulgate and enforce such policies, rules or regulations consistent with the purpose, intent, and express terms of this chapter as he or she deems necessary to implement such purposes, intent, and express terms. No policies, rules or regulations promulgated by the Director or amendments thereof shall be enforced or become effective until thirty calendar days following the date on which the proposed policies, rules or regulations are approved by the El Dorado County Board of Supervisors and filed with the Clerk of the Board of Supervisors.

**Section 8.38.060 – Incorporation and Implementation of State Laws and Regulations**

Except as otherwise expressly provided by this chapter, all requirements, limitations and exemptions contained in the Health and Safety Code and the California Code of Regulations adopted to implement the requirements as they pertain to UPA are hereby incorporated herein by reference and made a part of this chapter. These state laws and regulations may be amended or subject to change without notice or action by the County. County of El Dorado Environmental Management Department, as the CUPA, is hereby designated to implement and enforce, pursuant to Sections 25404 through 25404.9 of the Health and Safety Code and the regulations (Title 27 of the California Code of Regulations) adopted pursuant thereto, the following:

- A. Division 20, Chapter 6.5 of the Health and Safety Code (commencing with Section 25100) and Title 22 of the California Code of Regulations for Hazardous Waste Generator/Tiered Permitting Program, with the exception of sections applicable to persons operating transportable treatment units;
- B. Division 20, Chapter 6.67 of the Health and Safety Code (commencing with Section 25270) Above Ground Petroleum Storage Act and the regulations adopted pursuant thereto;
- C. Division 20, Chapter 6.7 of the Health and Safety Code (commencing with Section 25280) and Title 23 of the California Code of Regulations for Underground Storage Tank Program ;
- D. Division 20, Chapter 6.95 (commencing with Section 25500) of the Health and Safety Code and Title 19 of the California Code of Regulations for Business and Area Plan Program;

- E. Division 12, Part 2, Chapter 1 , Article 2 sections 13141 through 13143.9 of the Health and Safety Code as the agency responsible for implementation and enforcement of the Hazardous Material Management Plan/Hazardous Material Inventory Statement Program and the regulations (Title 24) adopted pursuant thereto;
- F. Division 20, Chapter 6.95 of the Health and Safety Code (commencing with Section 25531) and Title 19 of the California Code of Regulations for California Accidental Release Prevention Program.

**Section 8.38.070 –Permit Required**

- A. A valid, unexpired, unsuspended and unrevoked Consolidated Permit to Operate shall be required to conduct the activities regulated by this chapter.
- B. The Consolidated Permit to Operate is specific to the site, business, facility, business operator, and business owner and may not be transferred to other business operators, business owners, or locations.
- C. Any person assuming ownership or operation of a unified program facility or business for which a valid Consolidated Permit to Operate has been previously issued shall have thirty (30) days after the date of assumption of ownership or operation to register on the CERS database pursuant to Section 8.38.080 of this chapter and apply for a permit pursuant to this chapter. During the period from the date of registration or date of application is completed until a new Consolidated Permit to Operate is issued or refused, the person shall not be held to be in violation of this chapter.
- C. A person shall be deemed to operate a business, underground storage tank, or hazardous waste facility if the person in effect supervises, directs, organizes, manages, handles, controls, or is in any way responsible for or in charge of a facility for which a Consolidated Permit to Operate is required.
- D. Compliance with this section does not prevent the obligation to obtain valid permits otherwise required by this code or compliance with other applicable ordinances, including but not limited to the County zoning code Title 130.

**Section 8.38.080 – CERS – Registration on the California Electronic Reporting System Database**

A person shall register on the CERS database within thirty (30) days of assuming ownership or operation of a business or facility subject to this chapter, and shall update or certify their information on the CERS database annually, on or before March 1. The elements prescribed in Section 25505 of the Health and Safety Code are required for facilities subject to this chapter.

### **Section 8.38.090 – Other Permits Required**

Application for other permits under this chapter, including application for site remediation, underground storage tank construction, replacement, repair, removal or temporary closure, shall be filed on a form or forms provided by and containing such information as prescribed by the Director. These permits are not transferrable and any changes from the original application may be subject to additional fees.

### **Section 8.38.100 – Permit Issuance**

The Director shall issue a decision within thirty (30) days of an approved CERS submittal or filing of a completed application, unless the applicant has filed with the Director written notice of a request, and received written approval, for an extension of time within which action on the submittal or application is to be taken on the grounds that additional time is required to prepare or present plans or other information, obtain zoning variances or other permits, or make other corrections remedying inconsistencies with the provisions of this chapter.

### **Section 8.38.110 – Permit Denial**

A Consolidated Permit to Operate or other permit will not be issued, renewed, or extended if the Director upon inspection of the business or facility, determines that it does not comply with the provisions of this chapter. A permit shall not be issued, renewed, or extended if the application and other local fees, state surcharges, or any other charges assessed pursuant to Board resolution have not been paid.

### **Section 8.38.120 – Permit Conditions**

Permits issued pursuant to this chapter shall be subject to such conditions as the Director determines are necessary to comply with the provisions of this chapter. Access to all businesses and facilities subject to regulation by this chapter for purposes of compliance inspections during normal business hours is a condition of all operating permits.

### **Section 8.38.130 – Permit Terms and Renewal**

- A. The Consolidated Permit to Operate issued pursuant to the provisions of this chapter shall be valid for three (3) years from the date on which the permit is issued. An annual fee as prescribed in Board resolution shall be paid by the person issued a Consolidated Permit to Operate during the term of such permit.
- B. Other permits issued pursuant to this chapter shall be valid for one (1) year from the date of issuance, unless the applicant requests in writing and receives in writing, approval of the extension by the Director. Fees shall be assessed based on the nature of construction, repair, removal or closure of underground storage tank systems; or site

remediation as prescribed in the Board fee resolution.

**Section 8.38.140 – Grounds for Permit Revocation, Modification, or Suspension**

Any permit issued pursuant to this chapter may be revoked, modified or suspended by the Director during its term, upon one or more of the following grounds:

- A. Violation of any of the terms or conditions of the permit, including nonpayment of fees;
- B. Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts;
- C. A change in any condition that results in or requires modification or termination of the operation of the facility; or
- D. Violation of any provision of this chapter, including the State laws and regulations incorporated by reference in this chapter.

**Section 8.38.145 – Method of Permit Revocation, Modification, or Suspension**

The Director may revoke, modify, or suspend a permit by issuing a written notice stating the reasons therefor. The revocation, modification, or suspension shall become effective fifteen (15) days after service of the notice, unless the holder of the permit enters into a settlement agreement with the Director or appeals the notice in accordance with Section 8.38.240. The Director shall notify the permit holder of such revocation, modification, or suspension by any of the following methods:

- A. Written notice by certified mail, return receipt requested, to the permit holder and to the person shown on the latest equalized county tax roll to be the owners of the real property on which the facility is located;
- B. Personal delivery of written notice served upon the owner or operator of the facility;
- C. Posting written notice on the property and thereafter mailing a copy of the notice by first class mail, postage prepaid to the person shown on the latest equalized county tax roll to be the owner(s) of the real property. Service in this manner is deemed complete at the time of mailing.

**Section 8.38.150 – Number of Permits**

Persons subject to this chapter that operate at more than one address or location shall apply for and comply with all requirements necessary to obtain a separate Consolidated Permit to Operate for each location where such a facility is maintained. Each place or site where a different street address is assigned to a person utilizing hazardous materials at or above threshold quantities shall

be deemed to constitute a separate location. With respect to a business conducted at a single location whose operation involves the handling of different and multiple types of hazardous materials at or above threshold quantities in functions that are different from each other, or involves functions that are separated by significant physical distances, the Director may require more than one permit and as many permits as are necessary and appropriate to effectively administer the provisions of this chapter.

#### **Section 8.38.160 – Time of Issuance**

Decisions on permit to operate submittals or other permit applications shall be issued no later than thirty (30) calendar days following the date on which an approved CERS submittal or completed application is filed. A submittal or application shall not be deemed complete within the meaning of this chapter until the date on which the applicant has provided all information required by this chapter. A submittal or application shall not be deemed complete until the applicant has corrected all deficiencies in its submittal or application, and all fees prescribed pursuant to Board resolution have been paid in full.

#### **Section 8.38.170 – Fees**

Fees for the permits and other regulatory functions associated with this chapter shall be established by Board resolution and shall be assessed annually. Fees shall include, as applicable, any state surcharge as determined by the legislature. No refund or rebate of any permit fee or other fee required by this chapter shall be allowed by reason of the fact that the permit is denied or the permittee discontinues the activity or use of a facility prior to the expiration of the term of that permit or that the permit is suspended or revoked prior to the expiration of the term. Fees that are collected may include, but are not limited to the following:

- A. Permit to operate;
- B. Permit to close, temporarily close, construct, remodel underground storage tank system;
- C. Investigation, consultation and review of an unauthorized release of a hazardous substance, including incident response;
- D. Reasonable cost of services incurred for each application for review of records, report of premises, or file search for an environmental assessment, site investigation, or real estate property transfer.

#### **Section 8.38.180 – Inspections**

- A. Initial Inspection. Within 90 days of the issuance of a Consolidated Permit to Operate, the Director or his/her designee shall conduct an on-site inspection of the facility.

- B. Routine and Complaint Inspections. The Director may, in accordance with this chapter, at any reasonable hour of the day, enter and inspect a facility, or any other place or environment where hazardous materials or wastes are stored, handled, processed, disposed of, or being treated. The Director shall make a reasonable effort to inform the owner or operator of his or her inspection. A report listing any violation of applicable laws, regulations and ordinances shall be prepared by the Director and uploaded to CERS. An electronic or hard copy of the report shall be provided to the owner/operator.

### **Section 8.38.190 – Violations**

- A. No person shall cause, suffer, or permit the storage of hazardous materials:
  - 1. In a manner which violates a provision of this chapter or any other applicable federal or state laws or regulations relating to hazardous materials; or
  - 2. In a manner which causes actual or threatened disposal or release of hazardous materials into the environment or poses a significant risk of such actual or threatened disposal or release.
- B. Violations of this chapter shall be deemed a public or private nuisance and may be remedied through abatement proceedings or other regulatory action in accordance with the provisions of this chapter, state or federal law, if applicable.
- C. A violation of this chapter shall constitute a separate offense. Each and every day such a violation continues shall constitute a separate offense. The person committing or permitting such offenses may be charged with a separate offense for each such violation and penalized accordingly.

### **Section 8.38.200 – Enforcement**

- A. Pursuant to Section 25292.3 of the Health and Safety Code, upon discovery of a significant violation that poses an imminent threat to human health or safety or the environment or of any regulation adopted pursuant to Division 20, Chapter 6.7 of the Health and Safety Code, the UPA may affix a “red tag” to the fill pipe of the noncompliant underground storage tank system preventing the delivery of petroleum.
- B. Administrative Enforcement:
  - 1. Pursuant to Section 25404.1.1 of the Health and Safety Code, if the Director determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the Director is authorized to enforce or implement pursuant to this chapter, the

Director may issue an administrative enforcement order requiring that the violation be corrected and impose an administrative penalty as specified in Section 8.38.210.

2. By written policy, the Director shall adopt procedures for implementing administrative enforcement actions. Such procedures shall contain those elements required by, and shall be consistent with the provisions of, Section 25404.1.1 of the Health and Safety Code or any successor statute thereto. The administrative enforcement procedures adopted shall not be exclusive, but shall be cumulative with all other remedies available by law and under this chapter, including referral to the district attorney.

### **Section 8.38.210 – Penalties**

Any person that violates this chapter is subject to criminal, civil, and administrative penalties set forth in this chapter and any additional penalties available under applicable state law. Remedies available under this chapter are not exclusive and are in addition to and do not supersede or limit any and all other legal remedies and penalties available under applicable state law or regulation.

### **Section 8.38.220 – Injunctions**

When any person has engaged in, is engaged in, or threatens to engage in any acts or practices which violate this chapter, or any resolution, rule, or regulation adopted pursuant to this chapter, the Director may apply to any court of competent jurisdiction for an order enjoining those acts or practices, or for an order directing compliance.

### **Section 8.38.230 – Cease and Desist Orders**

- A. The Director may issue a cease and desist order requiring the owner or operator of any business or facility, or any other person responsible for any violation of this chapter, to take any of the following actions:
  1. Immediately discontinue any prohibited discharge of hazardous waste or hazardous substance;
  2. Immediately discontinue any other activity that constitutes a violation of this chapter;
  3. Remediate the area affected by the violation to the extent that it no longer presents a risk to the environment or receptors.
- B. The Director may issue an administrative enforcement order, as specified in Section 8.38.200 of this code, if it has been determined that an owner or operator has not

complied in full with the provisions of a previously issued cease and desist order.

### **Section 8.38.240 – Appeals**

Pursuant to Sections 25404.1.1(d) through (h) of the Health and Safety Code, any person served with an order pursuant to this chapter who has been unable to resolve any violation with the Director may, within fifteen (15) days after service of the order, request a hearing by filing a notice of defense with the Director. Upon receiving a notice of defense, the Director shall convene a hearing as prescribed in Section 25404.1.1(e) of the Health and Safety Code. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which the complaint is made shall be deemed to have been waived.

### **Section 8.38.250 – Hazardous Materials Incident Response**

Selected local firefighters and Environmental Management Department staff who have completed the required hazardous materials response training, as specified in the Federal Code of Regulations section 29 Part 1910.120, shall be designated as the County Hazardous Materials Response Team. The response vehicles used by the Hazardous Materials Response Team are hereby designated as hazardous materials response team vehicles for response to hazardous materials emergencies. These vehicles may be operated under authorized emergency vehicle permits as issued by the Commissioner of the California Highway Patrol as specified in the Vehicle Code Division 2, Section 2416 (a) 10.

### **Section 8.38.260 – Emergency Response Expenses Reimbursable**

Those expenses of an emergency response necessary to protect the public from a real or potential threat to health and safety incurred by a public agency within the County to confine, prevent, or mitigate the release, escape, or burning of hazardous substances are a charge against any person whose negligence causes the incident. Such expenses are a debt of the person liable therefore, and shall be collectible in the same manner as in the case of an obligation under contract, express or implied. The charge created against the person by this section is also a charge against the person's employer if the negligence causing the incident occurs in the course of the person's employment.

### **Section 8.38.270 – Severability**

If any provision of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof.

This ordinance shall become effective thirty (30) days following the adoption hereof.

Ordinance No. \_\_\_\_\_

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PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote of said Board:

**ATTEST**  
KIM DAWSON  
Clerk of the Board of Supervisors

Ayes:  
Noes:  
Absent:

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Sue Novasel  
Chair, Board of Supervisors

**APPROVED AS TO FORM**  
**DAVID LIVINGSTON**  
**COUNTY COUNSEL**

By: \_\_\_\_\_

Janeth San Pedro  
Sr. Deputy County Counsel