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MARK E. WEIDLER
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DEPUTY SECRETARY

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

August 15, 1996

Ken Schultz, President
The Advantage
1355 Wagon Train SE
Albuquerque, New Mexico 87123

RE: DISCLOSURE FORM FOR GANDY MARLEY INC.

Dear Mr. Schultz

Enclosed is the Disclosure Form about which Mr. Benito Garcia, Chief, New Mexico Environment Department (NMED), Hazardous and Radioactive Materials Bureau (HRMB) spoke with you by telephone on August 13, 1996. This is a requirement of the New Mexico Hazardous Waste Management Regulations. You are required to submit the Disclosure Form as soon as possible, no later than ninety (90) days from the date of your receipt of this letter. Enclosed also is a copy of NMED Regulations.

If you have any questions please call me at (505) 827-1561.

Sincerely,

Barbara Hoditschek
Barbara Hoditschek, Manager
RCRA Permits Management Program

Enclosures (2)

cc: Benito Garcia, Chief, HRMB

tank to give notice of the registration requirements of Subsection A of this section to the owner and operator of the tank.

C. By regulation, the board may require tank installers to obtain certification from the division and develop procedures for certification which will ensure that underground storage tanks are installed and repaired in a manner which will not encourage or facilitate leaking. If the board requires certification, it shall be unlawful for a person to install or repair an underground storage tank unless he is a certified tank installer. In accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the division may suspend or revoke the certification for a tank installer upon grounds that he:

- (1) exercised fraud, misrepresentation or deception in obtaining his certification;
- (2) exhibited gross incompetence in the installation or repair of an underground storage tank; or
- (3) was derelict in the performance of a duty as a certified tank installer.

D. By regulation, the board shall provide a schedule of fees sufficient to defray the reasonable and necessary costs of:

- (1) reviewing and acting upon applications for the registration of underground storage tanks;
- (2) reviewing and acting upon applications for the certification of tank installers; and
- (3) implementing and enforcing any provision of the Hazardous Waste Act [this article] applicable to underground storage tanks and tank installers including standards for the installation, operation and maintenance of underground storage tanks and for the certification of tank installers.

History: 1978 Comp., § 74-4-4.4, enacted by Laws 1987, ch. 179, § 6; 1989, ch. 322, § 6.

Cross references. — For hazardous waste emergency fund, see 74-4-8 NMSA 1978.

Resource Conservation and Recovery Act. — Section 9002(a)(5) of the Resource Conservation and Recovery Act, referred to in Subsection B, appears as 42 U.S.C. § 6991a(a)(5).

74-4-4.5. Hazardous waste fund created; appropriation.

A. There is created in the state treasury the "hazardous waste fund" which shall be administered by the division. All balances in the fund are appropriated to the division for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.

B. All fees collected pursuant to Subsection F of Section 74-4-4.2 NMSA 1978 shall be transmitted to the state treasurer for credit to the hazardous waste fund.

History: 1978 Comp., § 74-4-4.5, enacted by Laws 1987, ch. 179, § 7; 1989, ch. 322, § 7; 1989, ch. 324, § 36; 1990, ch. 124, § 20.

74-4-4.6. Repealed.

Repeals. — Laws 1989, ch. 322, § 17 repeals 74-4-4.6 NMSA 1978, as enacted by Laws 1989, ch. 322, § 8, relating to creation of the underground storage

tank fund, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

74-4-4.7. Permit applicant disclosure.

A. Every applicant for a permit pursuant to the Hazardous Waste Act [this article] shall file a disclosure statement with the department with the information required by, and on a form developed by, the department in cooperation with the department of public safety, at the same time the applicant files the application for a permit with the secretary.

B. Upon the request of the secretary, the department of public safety shall prepare and transmit to the secretary an investigative report on the applicant based in part upon the disclosure statement. The report shall be prepared and transmitted within ninety days after

the receipt of a copy of an applicant's disclosure statement from the department. Upon good cause, the ninety days may be extended for a reasonable period of time by the secretary.

C. In preparing the investigative report, the department of public safety may request and receive criminal history information on the applicant from the federal bureau of investigation or any other law enforcement agency or organization. While the investigative report is being prepared by the department of public safety, the secretary may also request information regarding any person who will be or could reasonably be expected to be involved in management activities of the hazardous waste facility or any person who has a controlling interest in any permittee. The department of public safety shall maintain confidentiality regarding the information received from a law enforcement agency as may be imposed by that agency as a condition for providing that information to the department of public safety.

D. All persons required to file a disclosure shall provide any assistance or information requested by the department of public safety or the secretary and shall cooperate in any inquiry or investigation conducted by the department of public safety or any inquiry, investigation or hearing conducted by the secretary. Nothing in this section shall be construed to waive a person's constitutional right against self-incrimination.

E. If any of the information required to be included in the disclosure statement changes, or if any information is added after filing the statement, the person required to file it shall provide that information in writing to the secretary within thirty days after the change or addition. Failure to provide the information within thirty days may constitute the basis for the revocation of, or denial of an application for, any permit issued or applied for in accordance with Section 74-4-4.2 NMSA 1978, but only if, prior to any denial or revocation, the secretary notifies the applicant or permittee of the secretary's intention to do so and gives the applicant or permittee fourteen days from the date of the notice to explain why the information was not provided within the required thirty-day period. The secretary shall consider this information when determining whether to revoke or deny the permit.

F. No person shall be required to submit the disclosure statement required by this section if the person is:

(1) the United States or any agency or instrumentality of the United States;

(2) a state or any agency or political subdivision of a state; or

(3) a corporation or an officer, director or shareholder of that corporation and that corporation:

(a) has on file and in effect with the federal securities and exchange commission a registration statement required under Section 5, Chapter 38, Title 1 of the federal Securities Act of 1933, as amended;

(b) submits to the secretary with the application for a permit evidence of the registration described in Subparagraph (a) of this paragraph and a copy of the corporation's most recent annual form 10-K or an equivalent report; and

(c) submits to the secretary on the annual anniversary of the date of the issuance of any permit it holds pursuant to the Hazardous Waste Act evidence of registration described in Subparagraph (a) of this paragraph and a copy of the corporation's most recent annual form 10-K or an equivalent report.

History: 1978 Comp., § 74-4-4.7, enacted by Laws 1992, ch. 43, § 4.

Emergency clauses. — Laws 1992, ch. 43, § 9 makes the act effective immediately. Approved March 6, 1992.

Securities Act of 1933. — Section 5, Chapter 38, Title 1 of the Federal Securities Act of 1933, appears as 15 U.S.C. § 77e(c).

74-4-4.8. Underground storage tank fund created; appropriation.

A. There is created in the state treasury the "underground storage tank fund" which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the underground storage tank program.