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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

24 JUN 2009

2009 JUN 25 AM 9:57
JS

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Transmitted herewith is Bill No. 80(COR) "AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS " which I signed into law on June 19, 2009 as **Public Law 30-36**.

Sinseru yan Magåhet,

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy of Bill

30-09-0743
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 6/24/09
Time 3:14
Received by JS


I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

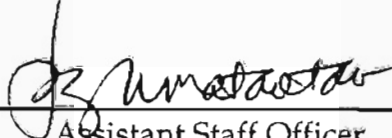
This is to certify that Substitute Bill No. 80 (COR), "AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS," was on the 29th day of May 2009, duly and regularly passed.

Attested:



Benjamin J.F. Cruz
Acting Speaker


vicente e. pangelinan
Acting Legislative Secretary

This Act was received by I Maga'láhen Guåhan this 9 day of June, 2009, at
2:05 o'clock P.M.


Assistant Staff Officer
Maga'láhi's Office

APPROVED:


FELIX P. CAMACHO
I Maga'láhen Guåhan

Date:

19 JUNE 2009

Public Law No.

30-36

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 80 (COR)

As substituted by the Author,
and amended.

Introduced by:

T. C. Ada
F. B. Aguon, Jr.
F. F. Blas, Jr.
E. J.B. Calvo
B. J.F. Cruz
J. V. Espaldon
Judith P. Guthertz, DPA
T. R. Muña Barnes
v. c. pangelinan
Adolpho B. Palacios, Sr.
M. J. Rector
R. J. Respicio
Telo Taitague
Ray Tenorio
Judith T. Won Pat, Ed.D.

**AN ACT TO REPEAL AND RE-ENACT CHAPTER 76, OF
TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO
THE STORAGE OF HAZARDOUS MATERIALS.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** Chapter 76, Title 10, Guam Code Annotated, is *repealed* and
3 *re-enacted* to read:

“CHAPTER 76

UNDERGROUND STORAGE OF REGULATED SUBSTANCES

6 **§76101. Title.** This Chapter *shall* be known as the “Underground
7 Storage of Regulated Substances Act.”

1 **§76102. Statement of Purpose.** The purpose of this Chapter is

2 to:

3 (a) establish a program to prevent contamination from substances
4 stored underground;

5 (b) ensure that newly constructed underground storage tanks meet
6 appropriate standards;

7 (c) ensure that existing tanks be properly maintained, inspected,
8 and tested by licensed and certified professionals; and

9 (d) enact and establish regulations, guidelines, standards, and
10 policies that ensure consistent cleanup of regulated substances and
11 mitigation of the damage they cause.

12 **§76103. Definitions.**

13 (a) *Administrator* means the Administrator of the Guam
14 Environmental Protection Agency.

15 (b) *Agency* means the Guam Environmental Protection Agency.

16 (c) *Board* means the Board of Directors of the Guam Environmental
17 Protection Agency.

18 (d) *CERCLA* means the Comprehensive Environmental Response,
19 Compensation, and Liability Act, commonly called Superfund, which
20 was enacted by Congress on December 11, 1980, and amended by the
21 Superfund Amendments and Reauthorization Act (SARA) on October
22 17, 1986.

23 (e) *Corrective Action* means the investigation and cleanup of
24 contamination from solid and hazardous waste sites, and includes
25 action taken to minimize or mitigate the impact of a release from an
26 Underground Storage Tank (UST) or tank system.

1 (f) *Gathering Lines* means any pipelines, equipment, facility, or
2 building used in the transportation of oil or gas during oil or gas
3 production or gathering operations.

4 (g) *Guarantor* means any person, other than the owner or operator,
5 who provides evidence of financial responsibility for the UST.

6 (h) *Hazardous Substance Underground Storage Tank or Hazardous*
7 *Substance Underground Storage Tank System* means a UST or tank
8 system that contains a hazardous substance, as defined in Section
9 101(14) of the federal Comprehensive Environmental Response,
10 Compensation, and Liability Act (CERCLA) of 1980, as amended, but
11 not including any substance regulated as a hazardous waste under
12 Subtitle C of the federal Resource Conservation and Recovery Act
13 (RCRA), as amended, or any mixture of such substances and
14 petroleum, and which is *not* a petroleum UST or tank system.

15 (i) *Installation* means to add or replace equipment.

16 (j) *Installation Permit* means a written approval from the
17 Administrator to construct, install, or put into place, a UST system.

18 (k) *Maintenance* means the operational upkeep to prevent a UST
19 system from releasing product.

20 (l) *Motor Fuel* means petroleum or petroleum-based substance that
21 is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, any
22 grade of gasohol, any grade of ethanol, or any grade of bio-diesel and
23 that is used to operate a motor engine.

24 (m) *Operate* means to control or direct the function of a UST.

25 (n) *Operator* means any person in control of, or who is responsible
26 for, the daily operation of a UST.

1 (o) *Owner* means:

2 (1) in the case of a UST system in use on November 8,
3 1984, or brought into use on or after that date, any person who
4 owns a UST system used for the storage, use or dispensing of
5 regulated substances; and

6 (2) in the case of a UST system in use before
7 November 8, 1984, but no longer in use after that date, any
8 person who owned such UST system immediately before the
9 discontinuation of its use.

10 (p) *Permit* means Installation Permit.

11 (q) *Person* means an individual, trust, firm, corporation,
12 partnership, consortium, joint venture, joint stock company, political
13 subdivision of a state, any interstate body, commercial entity,
14 association, or agency, department, instrumentality of the Federal
15 government or the government of Guam, including, autonomous
16 agencies or any other legal entity.

17 (r) *Petroleum Marketing Facilities* means all facilities at which
18 petroleum is produced or refined and all facilities from which
19 petroleum is sold or transferred to other petroleum marketers or to the
20 public.

21 (s) *Pipe or Piping* means a hollow cylinder or the tubular conduit
22 constructed of non-earthen materials. Pipe or Piping includes elbows,
23 couplings, unions, valves, or other inline fixtures, that contain and
24 convey regulated substances from a UST to a dispenser.

1 (t) *Pipeline Facility* (including gathering lines) means new and
2 existing pipe rights-of-ways and any associated equipment, facilities,
3 or buildings.

4 (u) *RCRA* means the Solid Waste Disposal Act of 1980, as
5 amended by the Resource Conservation and Recovery Act of 1984, as
6 amended. (*Public Law 87-272, Title II, §9001, as added Public Law*
7 *98-616, Title VI, §601(a), November 8, 1984, 98 Stat. 3277, and*
8 *amended Public Law 99-499, Title II, §205(a), October 17, 1986, 100*
9 *Stat. 1696; Public Law 102-508, Title III, §302, October 24, 1992,*
10 *106 Stat. 3307; Public Law 103-429, §7(d), October 31, 1994, 108*
11 *Stat. 4389; Public Law 109-58, Title XV, §1532(a), 1533(1), August 8,*
12 *2005, 119 Stat. 1104, 1105; 42 U.S.C. §6991c, et. Seq.) and*
13 regulations promulgated pursuant thereto.

14 (v) *Regulated Substance* means any element, compound, mixture,
15 solution, or substance that, when released into the environment, may
16 create substantial danger to the public health, welfare, or the
17 environment. They include:

18 (1) Any substance defined in Section 101(14) of
19 CERCLA, Public Law 96-510, as amended, but *not* including
20 any substance regulated as a hazardous waste under Subtitle C
21 of RCRA, also known as Public Law 94-580, as amended;

22 (2) Petroleum, including crude oil or any fraction
23 thereof, which is liquid at standard conditions of temperature
24 and pressure (60 degrees Fahrenheit and 14.7 pounds per square
25 inch absolute);

26 (3) Any grade of gasohol, ethanol, or bio-diesel; and

1 (4) Any other substance as designated by the
2 Administrator.

3 (w) *Release* means the spill, leak, emission, discharge, escape,
4 leaching, or disposing of a regulated substance from a UST.

5 (x) *Secondary Containment* refers to a component of a secondary
6 containment system and means a UST and its piping having inner and
7 outer barriers.

8 (y) *Tank* means underground storage tank (UST).

9 (z) *Underground Storage Tank or UST* means any one (1) or
10 combination of tanks, including underground pipes connected thereto,
11 used to contain an accumulation of regulated substances, and the
12 volume of which, including the volume of the underground pipes
13 connected thereto, is ten percent (10%) or more beneath the surface of
14 the ground or water.

15 **§76104. Power and Duties of the Administrator.**

16 The Administrator *shall*:

17 (a) develop and administer a UST program for Guam
18 pursuant to this Chapter;

19 (b) provide technical assistance to local and federal agencies,
20 and other persons, and cooperate with appropriate local
21 agencies and private organizations in enforcing this Chapter;

22 (c) serve as Guam's official representative for all purposes of
23 Subtitle I of RCRA, also known as Public Law 94-580, as
24 amended, and for the purpose of any Guam or federal
25 legislation that regulates USTs;

1 (d) enact, modify, update, repeal, and enforce rules and
2 regulations governing UST design, construction, installation,
3 release detection and inventory control, compatibility, record
4 maintenance, reporting, corrective action, closure, and financial
5 responsibility in order to enforce this Chapter;

6 (e) establish the procedures for the issuance and review of
7 permits governing the design, operation, and closure of USTs;

8 (f) enact and enforce other rules and regulations as necessary
9 to establish a UST program, which meets the requirements of
10 Section 9004 of Subtitle I of RCRA;

11 (g) issue, amend, rescind, and enforce orders as necessary to
12 ensure compliance with this Chapter or any rules and
13 regulations enacted pursuant hereto, including, but *not* limited
14 to:

15 (1) administrative penalty orders;

16 (2) require corrective actions as may be necessary or
17 appropriate to this Chapter; and

18 (3) commence civil actions in the Superior Court of
19 Guam, including, actions for a temporary or permanent
20 injunction as needed to enforce this Chapter;

21 (h) establish an effective enforcement system (that includes,
22 at a minimum, a field citation program) for the prevention,
23 control and abatement of UST pollution, including, specific
24 conditions under the permit requirements and delivery
25 prohibition of product to ineligible USTs and through all
26 appropriate administrative and judicial courses of action;

- 1 (i) establish a delivery prohibition program that describes, at
2 a minimum, the criteria and mechanism for prohibiting the
3 delivery, deposit, and acceptance of product to any UST
4 system;
- 5 (j) develop and establish operator training program
6 requirements in cooperation with UST owners and operators;
- 7 (k) issue, continue in effect, modify, revoke, reissue, or deny
8 permits;
- 9 (l) ensure that all permit holders comply with applicable
10 requirements mandated by Federal and Guam statutes or rules;
11 and
- 12 (m) establish, accept, receive, and administer grants and other
13 funds or fees from public and private agencies, including the
14 Federal government, for carrying out any purpose of this
15 Chapter.

16 **§76105. Notification Requirement.**

17 (a) Except as otherwise provided in this Section, each owner
18 of an underground storage tank *shall* notify the Agency in writing and
19 *shall* specify the tank's age, size, type, location, and use.

20 (b) For an underground storage tank that was taken out of
21 operation on or before January 1, 1974, regardless of whether the tank
22 was removed from the ground, the owner is exempt from giving
23 notice.

24 (c) For an underground storage tank that was taken out of
25 operation after January 1, 1974, but before November 8, 1984, and

1 that was removed from the ground before May 8, 1986, the owner is
2 exempt from giving notice.

3 (d) For an underground storage tank that was taken out of
4 operation after January 1, 1974, but before November 8, 1984, and
5 that was *not* removed from the ground before May 8, 1986, the owner
6 *shall* specify the type and quantity of the substances that were stored
7 in the tank immediately before it was taken out of operation. These
8 requirements are in addition to the requirements for the notice
9 prescribed in Subsection (a).

10 (e) For an underground storage tank that was taken out of
11 operation after November 8, 1984, but before December 22, 1988, the
12 Administrator *shall* require the owner to specify the age, size,
13 location, and use of the tank, the type and quantity of the substances
14 that were stored in the tank immediately before it was taken out of
15 operation, and the date the UST ceased operation.

16 (f) An owner who brings an underground storage tank into
17 operation *shall* meet the notification requirements of this Section
18 within thirty (30) days after the tanks are brought into operation.

19 (g) A person who sells a tank for use as an underground
20 storage tank *shall* notify the purchaser of the notice requirements of
21 Subsection (f).

22 (h) The notice required by this Section *shall* be made on
23 forms prescribed by the Agency.

24 **§76106. Tank Standards.**

25 From the effective date of this Chapter until the effective date of new
26 UST standards enacted hereunder, all new and existing USTs *shall*:

- 1 (a) prevent release of stored regulated substances due to corrosion
2 or structural failure for the operational life of the tank;
- 3 (b) be cathodically protected against corrosion, constructed of non-
4 corrosive material, or designed to prevent the release of the stored
5 regulated substance; and
- 6 (c) be constructed and lined with materials compatible with the
7 substance stored.

8 **§76107. Secondary Containment System – Release Prevention**
9 **and Release Detection Standards.**

10 (a) The Administrator *shall* develop and implement a
11 program that at least meets the minimum requirements of the “Grant
12 Guidelines to States for Implementing the Secondary Containment
13 Provision of the Energy Policy Act of 2005” (EPA-510-R-06-001,
14 November 2006) published by U.S. EPA and any subsequent
15 modifications thereto.

16 (b) The Administrator *shall* require secondary containment
17 on all existing, new or replaced UST and connected piping.

18 (c) The Administrator *shall* require under-dispenser
19 containment on all motor fuel dispenser systems.

20 (d) The Administrator *shall* require that each existing, new, or
21 replaced UST and piping have a secondary containment system and be
22 monitored for leaks.

23 **§76108. Delivery Prohibition Requirements.**

24 (a) The Administrator *shall* develop and implement a delivery
25 prohibition program with processes and procedures that at least meets the
26 requirements set forth in “Grant Guidelines to States for Implementing the

1 Delivery Prohibition Provision of the Energy Policy Act of 2005” (EPA-
2 510-R-06-003, August 2006) published by U.S. EPA and any subsequent
3 modification thereto.

4 (b) The Administrator *shall* prohibit the delivery, deposit, or
5 acceptance of regulated substances to a UST for both equipment and
6 operational violations.

7 **§76109. Operator Training.**

8 The Administrator *shall* develop and administer an operator training
9 program that is at least as stringent as the requirements set forth in the
10 “Grant Guidelines to States for Implementing the Operator Training
11 Provision of the Energy Policy Act of 2005” (EPA-510-D-07-002, August
12 2006) published by U.S. EPA and any subsequent modification thereto.
13 Operators *shall* participate in the UST operator training programs.

14 **§76110. Leak Detection and Record Maintenance.**

15 (a) The owner and operator of a UST *shall* maintain a leak
16 detection system that identifies releases dangerous to human health
17 and the environment.

18 (b) The owner or operator *shall* maintain systematic and
19 complete records to demonstrate compliance with this Chapter and
20 regulations enacted hereto.

21 **§76111. Public Participation.**

22 (a) Upon timely application, any person whose interests may
23 be adversely affected by a release or threatened from a UST system
24 *shall* be allowed to intervene as a right in any civil action when the
25 applicant claims an interest relating to the property or transaction
26 which is subject of the action, and the applicant is so situated that the

1 disposition of the action may as a practical matter impair or impede
2 the applicant's ability to protect that interest.

3 (b) Any person may maintain an action for declaratory and
4 equitable relief to restrain any violation of this Chapter. On *a prima*
5 *facia* showing of a violation of this Chapter, a preliminary injunction
6 *shall* be issued to restrain any further violation of this Chapter. *No*
7 bond is required for an action under this Subsection.

8 **§76112. Notification and Reporting Requirements on**
9 **Releases.**

10 *No later than* twenty-four (24) hours after he/she suspects a release
11 from a tank or ancillary equipment has occurred, the owner and the operator
12 of a UST *shall* notify the Agency orally or in writing. Within fourteen (14)
13 days after he/she suspects a leak, the owner and operator *shall* report to the
14 Agency in writing regarding the substance released, the quantity released,
15 the cause of the release, the time when the release occurred and the
16 corrective action taken as of the date of the report.

17 **§76113. Corrective Action.**

18 (a) The owner or operator of a UST *shall* stop a confirmed
19 release within twelve (12) hours of confirmation or knowledge that a
20 release occurred. The owner and operator *shall* take corrective action
21 in response to a release to protect human health and the environment,
22 and *shall* restore the environment and the UST and/or pipeline facility
23 to a condition acceptable to the Administrator.

24 (b) The Administrator may require the owner and operator to
25 undertake corrective action, investigation, monitoring, surveying,
26 testing, and research necessary and appropriate to:

- 1 (1) identify the existence and extent of the release;
- 2 (2) identify the source and nature of the regulated
- 3 substance involved;
- 4 (3) evaluate the extent of the danger to human health,
- 5 safety, welfare, and the environment; and
- 6 (4) develop and implement a corrective action plan.

7 (c) If the owner or operator does *not* take immediate action
8 to complete actions under this Section and adequately complete the
9 cleanup of a release or fails to comply with an order of the
10 Administrator, the Administrator may clean up the release or contract
11 with a private entity to do so.

12 (d) If the Administrator is authorized to act under Subsection
13 (b) hereof, he/she may undertake such investigation, monitoring,
14 surveying, testing, and other information gathering as he/she deems
15 appropriate to identify the existence and extent of danger to human
16 health, safety, welfare, and the environment. In addition, the
17 Administrator may undertake or contract with a private entity to
18 undertake such planning, fiscal, economic, engineering, and other
19 studies and investigation he/she deems appropriate to plan and direct
20 cleanup actions, and to recover the costs and legal costs thereof.

21 **§76114. Underground Storage Tank Management Fund.**

22 There is hereby established a fund to be known as the “Underground
23 Storage Tank Management Fund”, hereinafter referred to as the UST-LUST
24 Fund, a non-lapsing, revolving fund.

25 (a) Notwithstanding the Central Accounting Act, all fees,
26 reimbursements, assessments, fines, forfeitures, and other funds

1 collected or received pursuant to this Chapter, *shall* be deposited in
2 the UST-LUST Fund. This Fund *shall* be kept in a bank licensed to
3 do business on Guam, and funds *shall* be paid out *only* upon a request
4 for payment or requisition submitted by the Director or Administrator
5 and countersigned by the Chairman of the Board. All monies in this
6 Fund *shall* require legislative appropriation.

7 (b) The Administrator *shall* administer the UST-LUST Fund
8 and make disbursements from the Fund:

9 (1) to fund actions authorized by §76113 of this
10 Chapter;

11 (2) to train Agency employees in the regulation of
12 USTs and response to release of regulated substances from
13 USTs; or

14 (3) to fund the administration, purchase of equipment,
15 supplies, and payment of personnel costs arising from
16 enforcement of this Chapter.

17 **§76115. Financial Responsibility.**

18 (a) All owners and operators of UST systems, within one
19 hundred eighty (180) days of the effective date of this Chapter, *shall*
20 establish and maintain evidence of financial responsibility, as
21 provided for in this Section, for taking corrective action and
22 compensating third parties for bodily injury and property damage
23 caused by accidental releases arising from the operation of
24 underground storage tanks in at least the following per occurrence
25 amounts:

1 (1) For all owners or operators of petroleum
2 underground storage tanks that are located at petroleum
3 marketing facilities, or that own or operate five (5) or more
4 tanks, or that handle an average of more than ten thousand
5 (10,000) gallons of petroleum per month based on annual
6 throughput for the previous calendar year: \$2,000,000.

7 (2) For all other owners or operators of petroleum
8 underground storage tanks: \$500,000.

9 (b) Owners or operators of petroleum underground storage
10 tanks *shall* demonstrate financial responsibility for taking corrective
11 action and for compensating third parties for bodily injury and
12 property damage caused by accidental release arising from the
13 operation of petroleum underground storage tanks in at least the
14 following annual aggregate amounts:

15 (1) For owners or operators of four (4) or fewer tanks,
16 an annual aggregate amount of \$1,000,000.

17 (2) For owners or operators of five (5) or more tanks,
18 an annual aggregate amount of \$2,000,000.

19 (3) For owners and operators of ten (10) or more
20 tanks, an annual aggregate amount of at least \$2,000,000, or
21 such other higher aggregate amount as set forth in regulations
22 promulgated by the Administrator.

23 (c) Subject to the approval of the Administrator, an owner or
24 operator of a UST *shall* establish evidence of financial responsibility
25 by any one, or a combination of, the following methods in accordance
26 with the rules and regulations promulgated by the Administrator:

1 (1) commercial or private insurance, including, risk
2 retention group;

3 (2) qualification as a self-insurer as specified in
4 Subsection (f) of this Section;

5 (3) a guarantee, surety bond, or letter of credit; or

6 (4) any other reasonable and economically practicable
7 means.

8 (d) The Administrator *shall not* approve any financial
9 responsibility method or combination of methods, unless the owner or
10 operator has demonstrated that such method(s):

11 (1) are valid and enforceable;

12 (2) are issued by a provider that is qualified or
13 licensed in Guam;

14 (3) do *not* permit cancellation without allowing the
15 Administrator to draw funds;

16 (4) *shall only* be directly used for corrective action and
17 third party liability costs; and

18 (5) require the provider to notify the owner or operator
19 and the Administrator of any circumstances that would impair
20 or suspend coverage.

21 (e) Surety bonds *shall* be payable to the Guam
22 Environmental Protection Agency, to include costs and expenses of
23 the cleanup of any release, as well as, damages incurred by the
24 government, consistent with the provisions of this Chapter. Any bond
25 filed with the Agency must be issued by a bonding company
26 authorized to do business within Guam. The Guam EPA is authorized

1 to establish a special account, escrow, standby trust, or other trust or
2 account mechanism into which funds established as financial
3 assurance may be deposited when needed. Notwithstanding any other
4 provision of law, the Administrator may retain and use such amounts
5 for the purposes for which the financial assurance was established.

6 (f) To qualify as a self-insurer, the UST system owner or
7 operator *shall*:

8 (1) demonstrate a tangible net worth of at least ten
9 (10) times:

10 (A) the total of the aggregate amount required in
11 Subsection (c) of this Section;

12 (B) the sum of the corrective action cost
13 estimates, the current closure and post-closure care cost
14 estimates, and the amount of liability coverage required
15 under this Chapter; and

16 (C) the sum of plugging and abandonment cost
17 estimates in effect for which a financial test is used to
18 demonstrate financial responsibility under this Chapter.

19 (2) The owner or operator *shall* have a tangible net
20 worth of at least \$10,000,000.

21 (3) The owner or operator *shall* meet the requirements
22 set forth in 40 CFR 280.95.

23 (g) The total liability of any guarantor is limited to the
24 aggregate amount that the guarantor has provided as evidence of
25 financial responsibility to the UST system owner or operator under
26 this Section. Nothing in this Subsection *shall* be construed to limit

1 any other territorial or federal statutory, contractual or common law
2 liability of a guarantor to its owner or operator, including, but *not*
3 limited to, the liability of such guarantors for bad faith either in
4 negotiating or in failing to negotiate the settlement of any claim. For
5 the purpose of this Subsection, the term “guarantor” means any
6 person, other than the owner or operator, who provides evidence of
7 financial responsibility for an owner or operator pursuant to this
8 Section.

9 (h) Any claim costs incurred by the Agency for taking
10 emergency, preventive, corrective or enforcement action may be filed
11 directly against the bonding company, the insurer, the guarantor, or
12 any other person providing evidence of financial responsibility. Any
13 amount collected or awarded under this Subsection *shall* be paid into
14 the Guam Environmental Protection Agency’s UST-LUST Fund.

15 (i) An owner or operator of an UST system *shall* designate a
16 person within Guam as his/her resident agent for service of process,
17 and such designation *shall* be filled in accordance with rules and
18 regulation promulgated by the Agency.

19 (j) The financial responsibility amounts required by this
20 Section, or any portion of such amount, may be satisfied by utilization
21 of the Guam Environmental Protection Agency’s UST-LUST Fund.

22 **§76116. Closure.**

23 The owner or operator *shall* close a UST so as to prevent future
24 releases of regulated substances. The owner and operator shall comply with
25 the release response provisions in this Chapter and other requirements
26 promulgated by the Administrator before and during removal of the USTs.

1 The Administrator *shall* adopt requirements for change-in-service and
2 temporary and permanent closure of USTs and tank systems.

3 **§76117. Permit Requirements.**

4 (a) No person shall own, install, or operate a UST without a permit
5 issued by the Administrator. An applicant for a permit *shall* pay a permit
6 processing fee prescribed by the regulations.

7 For the purpose of this Chapter, and until such rules and regulations
8 describing the UST Fee Schedule has been adopted, an interim annual fee of
9 Two Hundred Fifty Dollars (\$250.00) per tank *shall* be established as the
10 permit fee and *shall* go into effect one hundred eighty (180) days after
11 enactment of this Chapter.

12 (b) Said permit *shall* be non-transferable and conditioned upon the
13 observance of the laws of Guam and related rules and regulations.

14 (c) A permit holder *shall* apply for the renewal of each permit
15 he/she holds, upon forms provided by the Administrator, *not less than* sixty
16 (60) calendar days prior to the permit's expiration.

17 (d) Each permit application and permit renewal application *shall* be
18 submitted with evidence of financial responsibility, in a sum established by
19 the Administrator by regulation.

20 **§76118. Inspection and Entry.**

21 The Administrator may inspect all USTs at reasonable times to take
22 corrective action or to ensure compliance with this Chapter and the rules and
23 regulations enacted pursuant hereto. The Administrator's authority to
24 inspect *shall* include, but is *not* limited, to the following:

1 (a) requesting and obtaining from any owner or operator, and
2 deliverer and guarantor of a UST, information relating to such tanks,
3 their associated equipment, and their contents;

4 (b) conducting any study or performance of monitoring, and
5 testing of tanks, their associated equipment, or surrounding soils, air,
6 surface water, or groundwater;

7 (c) inspecting and copying all records relating to the USTs;

8 (d) inspecting and obtaining samples of regulated substances
9 contained in the USTs; and

10 (e) taking corrective action or performing site assessment
11 activities at the location of the UST.

12 **§76119. Confidentiality of Records.**

13 Reports and records submitted to the Agency by any person on the
14 ownership, installation, or operation of underground storage tanks or tank
15 systems *shall* be made available for inspection by the public during
16 established office hours, except as provided in this Section. Upon a showing
17 satisfactory to the Agency that public disclosure of records, reports, or
18 information, or a particular part thereof, to which the Agency's
19 representative has access to under this Section would divulge information
20 entitled to protection under 5GCA Chapter 10, Freedom of Information, the
21 Agency *shall* consider the information or particular portion thereof to be
22 confidential. *No* confidential information secured pursuant to this Section
23 by any official or employee of the Agency within the scope of, and of the
24 official's or employee's employment in the prevention, control, or abatement
25 of releases from underground storage tanks or tank systems, shall be
26 disclosed by the official or employee, with the following exceptions: the

1 document or information may be disclosed to officers, employees, or
2 authorized representatives of the government of Guam or of the United
3 States, including, county government entities, who have been charged with
4 carrying out this Chapter or Subtitle I of the Federal Resource Conservation
5 and Recovery Act, or when relevant in any proceeding under this Chapter.
6 Where such information constitutes confidential business information under
7 federal law, it *shall* be submitted as such to federal entities.

8 **§76120. Notice.**

9 Any notice or other official correspondence affecting the rights of any
10 person under this Chapter *shall* be delivered by personal service, or sent by
11 registered mail with a return receipt to the address of such person as shown
12 by the Agency records. The return receipt, signed by addressee, or his/her
13 agent, *shall* be conclusive proof of delivery.

14 **§76121. Hearings.**

15 (a) Any person who received an order from the Administrator
16 pursuant to this Chapter or any person whose permit application is
17 disapproved by the Administrator may, within fifteen (15) calendar
18 days after receipt thereof, file with the Board a notice of intent to
19 appeal and a verified petition describing the basis of such appeal.

20 (b) The Board *shall, not more than* sixty (60) days after
21 receipt of such notice of intent to appeal, hold a public hearing at
22 which the appellant may appear and present evidence supporting the
23 petition.

24 (c) The Board may administer oaths and issue subpoenas to
25 compel the attendance of witnesses and the production of evidence in
26 all such hearings.

1 (d) The Board *shall* affirm, modify, or revoke the action
2 appealed and *shall* notify the appellant of its decision *not more than*
3 thirty (30) days after the hearing. Said notice *shall* be in writing and
4 *shall* state the reasons for the decision.

5 (e) Any person may appeal such decision by filing a verified
6 petition in Superior Court of Guam within ten (10) days after he/she
7 receives the notice required by Subsection (d) hereof. The petitioner
8 *shall* make a transcript of the proceeding at his/her expense.

9 **§76122. Injunction.**

10 The Administrator may, in addition to the other powers conferred on
11 him/her by this Chapter, file an action in the Superior Court of Guam to
12 immediately restrain any violation or threatened violation of this Chapter or
13 the rules and regulations enacted pursuant hereto.

14 **§76123. Applicability to Government Agencies.**

15 All agencies of the government of Guam, and of the Government of
16 the United States, *shall* comply with all of the provisions of this Chapter
17 pursuant to U.S. Public Law 94-580, RCRA, including permit requirements,
18 with the exception of §§76114 and 76117(d).

19 **§76124. Penalties.**

20 (a) A person who violates any provisions of this Chapter, or
21 rules or regulations enacted pursuant hereto, or who refuses or
22 neglects to comply with an order issued by the Administrator to
23 require compliance with this Chapter, *shall* pay the Agency a civil
24 penalty *up to* Eleven Thousand Dollars (\$11,000) for each tank for
25 each day of each violation.

1 (b) Any person with an interest that may be adversely affected
2 by a violation of this Chapter may intervene as a matter of right in any
3 civil action brought by the Administrator to require compliance with
4 this Chapter.

5 (c) A person who knowingly fails to notify the Administrator
6 pursuant to §§76105 or 76112, or who makes any false statement or
7 representation in any UST notification, permit application, or other
8 document filed, maintained, or used for compliance with this Chapter,
9 *shall* be guilty of a misdemeanor and may be subject to imprisonment
10 for *up to* twelve (12) months and fined *up to* Eleven Thousand Dollars
11 (\$11,000) per day for each violation, or both.

12 (d) Any person who denies, obstructs, or hampers the
13 entrance, inspection, or conduct of release response activity by a
14 representative of the Agency at any building, place, site, facility,
15 vehicle, or structure that the representative is authorized to enter, or
16 any inspector who fails to provide information requested by the
17 agency representative as pursuant to §76110 shall be fined up to
18 Eleven Thousand Dollars (\$11,000.00) for every day he denies,
19 obstructs or hinders the acquisition of, or fails to provide, the
20 information requested, as determined in a civil action in the Superior
21 Court of Guam.”

22 **Section 2. Rules and Regulations.** The Guam Environmental Protection
23 Agency *shall* establish the applicable regulations, guidelines, standards and
24 policies *no later than* three hundred sixty-five (365) days of enactment of this Act,
25 during which time the Administrator shall make available to the Board a tri-annual

1 report of the milestones reached as related to the Regulation of Underground
2 Storage Tanks on Guam.

3 **Section 3. Severability.** *If any provision of this law, or the application*
4 *thereof to any person or circumstance, is held invalid or contrary to law, such*
5 *invalidity shall not affect any other provision or application of this law which can*
6 *be given effect without the invalid provision or application, and to this end the*
7 *provisions of this law are severable.*

I MINA' TRENTA NA LIHESLATURAN GUÅHAN

2009 (FIRST) Regular Session

Date: 5/29/09

VOTING SHEET

SBill No. 80 (COR)

Resolution No. _____

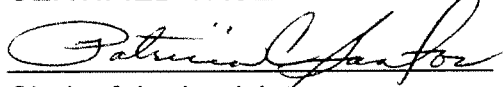
Question: _____

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BLAS, Frank F., Jr.	✓				
CALVO, Edward J.B.	✓				
CRUZ, Benjamin J. F.	✓				
ESPALDON, James V.	✓				
GUTHERTZ, Judith Paulette	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RECTOR, Matthew	✓				
RESPICIO, Rory J.	✓				
TAITAGUE, Telo	✓				
TENORIO, Ray	✓				
WON PAT, Judith T.	✓				

TOTAL

15 _____

CERTIFIED TRUE AND CORRECT:


Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guahan
THIRTIETH GUAM LEGISLATURE

May 26, 2009

The Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'Trenta Na Liheslaturan Guahan
155 Hesler Place
Hagåtña, Guam 96910

RE: Committee Report – Bill No. 80 (COR)


Dear Speaker Won Pat:

The Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs, to which was referred Bill No. 80 (COR), sponsored by Senator Thomas C. Ada – “An Act to repeal and re-enact Chapter 76 of Title 10, Guam Code Annotated, relative to the storage of hazardous materials,” hereby reports out said legislation with the recommendation TO DO PASS.

Committee votes are as follows:

<u>9</u>	TO PASS
<u>0</u>	NOT TO PASS
<u>0</u>	TO REPORT OUT ONLY
<u>0</u>	TO ABSTAIN
<u>0</u>	TO PLACE IN INACTIVE FILE

Very Truly Yours,


Rory J. Respicio
Chairperson

2009 MAY 26 PM 12:44
RJR

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS




I Mina'Trenta na Libeslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

May 26, 2009

MEMORANDUM

To: All Members
Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs

From: Senator Rory J. Respicio 
Committee Chairperson

Subject: Committee Report – SubBill No. 80 (COR)

Transmitted herewith for your consideration is the report on SubBill No. 80 (COR). This report includes the following:

- Committee Voting Sheet
- Committee Report Narrative
- A copy of SubBill No. 80 (COR)
- Public Hearing Sign-in Sheet
- Notices of Public Hearing

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Thank you.

SENATOR RORY J. RESPICIO
MAJORITY LEADER
CHAIRMAN, COMMITTEE ON RULES

CHAIRMAN, COMMITTEE ON NATURAL RESOURCES
 & FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I MINA' TRENTA NA LIHESLATURAN GUÅHAN
 THIRTIETH GUAM LEGISLATURE

COMMITTEE VOTING SHEET

SubBill No. 80 (COR) (T.C. Ada) - An Act to repeal and re-enact Chapter 76 of Title 10, Guam Code Annotated, relative to the storage of hazardous materials.

	SIGNATURE	TO PASS	NOT TO PASS	TO REPORT OUT ONLY	ABSTAIN DUE TO POTENTIAL CONFLICT	TO PLACE IN INACTIVE FILE
SENATOR RORY J. RESPICIO Chairperson		<input checked="" type="checkbox"/>				
SENATOR JUDITH P. GUTHERTZ Vice-Chairperson		<input checked="" type="checkbox"/>				
SPEAKER JUDITH T. WON PAT, Ed.D. Member						
VICE-SPEAKER BENJAMIN J.F. CRUZ Member		<input checked="" type="checkbox"/>				
LEGISLATIVE SECRETARY TINA ROSE MUÑA BARNES Member		<input checked="" type="checkbox"/>				
SENATOR THOMAS C. ADA Member		<input checked="" type="checkbox"/>				
SENATOR FRANK B. AGUON, JR. Member		<input checked="" type="checkbox"/>				
SENATOR ADOLPHO B. PALACIOS Member		<input checked="" type="checkbox"/>				
SENATOR VICENTE C. PANGELINAN Member		<input checked="" type="checkbox"/>				
SENATOR MATT RECTOR Member		<input checked="" type="checkbox"/>				
SENATOR FRANK F. BLAS, JR. Minority Member						
SENATOR JAMES V. ESPALDON Minority Member						

Public Hearing

Bill No. 80 (COR) - An act to repeal and re-enact Chapter 76 of Title 10, Guam Code Annotated, Relative to the Storage of Hazardous Material.

I. Overview

The Committee on Natural Resources convened on Thursday, April 16, 2009 at 1:00 PM to hold a public hearing on Bill No. 80 (COR). Notice of the hearing was disseminated to all senators and all main media broadcasting outlets on Thursday, April 9, 2009 and Tuesday, April 14, 2009. Various stakeholders were also notified via e-mail and/or fax prior to the hearing. Notice of the hearing was also posted on the Guam Legislature's website.

Committee Members and Senator present:

Senator Rory Respicio, Chairperson
Senator Thomas C. Ada
Senator Adolpho B. Palacios, Sr.
Speaker Judith T. Won Pat
Senator Matt Rector
Senator Telo Taitague
Senator Judith Guthertz

Submitted Written or Oral Testimonies:

Ivan Quinata, Acting GEPA Director
Vince Periera, Program Manager
Michael O'Mallen
Jesse Cruz
Pete Cruz

II. Summary of Testimonies

Mr. Quinata

Provided oral and written testimony (written testimony is attached)

Mr. Ivan Quinata submitted testimony as the acting Administrator of Guam Environmental Protection Agency. He testified in support for Bill 80. Mr. Quinata presented a history of the use of Underground Storage Tanks (UST) in Guam. He stated that there are 314 registered tanks mainly used for the storage and distribution of fuels. He provided the information that the adoption of the rules and regulations regarding USTs by Congress and EPA showed the importance regulation of USTs. He briefed that the Guam UST program was established in 1988 and mandated into law in 1989. It was iterated by Mr. Quinata that the partnership between USEPA and GEPA has been very effective in providing compliance with federal UST regulation on Guam. His testimony mentioned that USEPA had provided over \$1M in funds

since 1998 to support the regulation of USTs. It was made clear that GEPA currently does not collect fees from the owner/operators of tanks systems on island, but this act would provide GEPA the powers to establish a fee schedule to support its operation. Mr. Quinata submits that 82% of the releases on Guam from USTs have been completely cleaned while the remainder is under remediation and/or monitoring. He stressed that the impact to the environment and life on Guam can be substantial and even detrimental to the Island.

Mr. Quinata expressed his support for the provision that would provide funding to conduct inspections, issue orders or bring actions under this subtitle. He concludes that GEPA strongly supports the principles of Bill 80 because it would provide more flexibility in the use of funds to do more proactive work on preventing leaks. He mentioned that the statues on the Bill has been reviewed and commented by the Guam 's Assistant Attorney General, USEPA Region 9, Guam UST Program Manager, USEPA Region 9 Attorney.

Questions and Answers:

Senator Respicio:Called on the panel to testify for Bill 80. Yielded the floor to Senator Ada to introduce Bill 80.

Senator Ada: provided a brief introduction on Bill 80. He mentioned that Bill 80 would update existing statues introduced in the early 80's. It would authorize GEPA to follow new regulatory mandates as adopted by USEPA.

Senator Respicio: asked, what were the comments/testimonies like during public commenting period conducted by GEPA?

Vince Pereira: the stakeholders were more concerned with what were the regulations that fall under these sections addressed in Bill 80. In order for GEPA to establish the rules and regulation we have to amend current statute to give us the authority. The current statue (chapter 76) doesn't comply with federal statutes.

Michael O'Mallen: The Hazwaste management program had a public hearing on "bill 80" and took written comments at two stakeholders meeting, June 11, 2008 and July 17, 2008. The stakeholders were more concerned with what the regulations would look like. The statues were just broad guidelines on how we would draft our rules and regulation. During the public hearings, we repeatedly referenced federal guidelines to show that Guam will mirror federal guidelines. The cost per tank for permitting was of concerns, we did not have a figure yet, but most states charge \$250-\$300 per tank. Testimony from environmental consultants on the severability of the penalties for owners and operators who violate the UST statue was concerning for them. The cost of \$11,000 and prison time for six months seemed steep. It was told that this was in the federal statutes and we believe that this is how severe noncompliance should be addressed. We

did change the language from \$11K and prison time to \$11K and may be sent to prison. But we still feel that any release will be detrimental to the environment and is subject to severe fines.

Vincent Pereira: As far as the dollars value, those are federal dollars value for the violation. GEPA cannot go below the value, but we can go above it.

Senator Respicio: That is a broad range.

Senator Ada: When you look at the provisions for the amount and time frames in the Bill, these aren't arbitrary numbers; they are within the federal statutes already. The federal numbers sets the floor for the penalties and reporting time frames. Certainly, Guam can, by statute as opposed to imposing a \$11K fine, impose a \$21K fine. That would be the prerogative of the government. You mentioned in the testimony that since 1998, the USEPA provided \$1M in funds to support the UST program, but in Bill 80 you also addressed to establish fees.

Vincent Pereira: We don't know whether the funds will continue in order to supplement the employees or the program. We are also looking at field citations for violation.

Senator Ada: By establishing fees you will ensure that there are funds to support the program in the future? I am concerned about what you mentioned in the testimony, that 73% of the facilities with active tanks on Guam meet regulatory standards. What about the remaining 27% percent?

Michael O'Mallen: I do majority of the inspections. When we go out on the field, we report the conditions as seen on arrival. Two types of compliance; release protection and release prevention. It could be just a matter of a sticking flap involve that prevents the overfilling of the tank. Or something to ensure that there is proper annual maintenance on the tanks. It is not saying that there is a release on the tank, just improper maintenance. However, it is still cited as a violation. Bill 80 would give us enforcement authority to where we could issue field citations similar to what the federal USUST inspector does. This will allow us to go into full enforcement. 27% may just be noncompliance, but number is similar to the stateside.

Senator Ada: Will these standards be applicable to USTs inside the military base?

Vincent Pereira: Yes, if we are promulgated, then we can do enforcement at federal facilities.

Senator Respicio: This bill also seeks to establish a fund. Do you know how much this fund will generate potentially?

Vincent Pereira: If you look at \$300/tank, that would equal \$90K dollars for permit fees, then you add a field citation fee, so it would depend.

Senator Respicio: Could we pass the bill without the appropriation of \$25K that you are requesting in this bill?

Vincent Pereira: If this provision will stall the bill, then I would not mind if it was taken out.

Speaker Wonpat: The bill would allow you to actually charge you per tank. Once this bill is passed then you can implement the law to get your seed money.

Vincent Pereira: I am not sure if we have to get have the regulation approved first by the USEPA.

Senator Respicio: Once this bill is passed then it will be a policy.

Speaker Wonpat: This will be effective immediately.

Senator Ada: What the speaker is saying is that we have a provision that would establish an annual permitting fee.

Speaker Wonpat: That would be your seed money. I hope you have no objections to that.

Vincent Pereira: If you say we can do it, then yes we are open to that.

Ivan Quinata: We would have to develop that fee structure and have the board approve it.

Speaker Wonpat: The important thing is to get started. Then the initial fee passed by the legislature can then be amended following a new fee schedule.

Senator Respicio: You can start the program without the \$25K.

Vincent Pereira: Yes.

Speaker Wonpat: On page 8, line 38, why did you choose “may” instead of shall. Is there a reason for that? Shall is stronger.

Vincent Pereira: We can change it to “shall”.

Speaker Wonpat: A permit fee, processing fee, and inspection fees should be taken into consideration when drafting a fee schedule. In page 2: paragraph 5 from your testimony: is non-compliance of these people never fined?

Vincent Pereira: We haven't been promulgated the authority to issue fines.

Speaker Wonpat: So you have no teeth. You were not able to fine them, even if you reference federal standards?

Vincent Pereira: No we are not able to. When we do a co-inspection with USEPA, then we target those we previously cited. If they fail to comply, then USEPA can fine them. The fees however will go to USEPA.

Speaker Wonpat: All these fees should go right back to this special fund to be created.

Senator Palacios: Three simple questions. What is the acronym on page nine: UST-LUST funds?

Vincent Pereira: UST- leaking underground storage tank.

Senator Palacios: What is current regulation? What would it mean to the stakeholders? Will it be an additional cost if this is passed next week. With respect to the size of the tank and so forth.

Vincent Pereira: This Bill follows federal regulations and so the stakeholders should be in compliance already.

Senator Palacios: Will there be a need for the stakeholders to replace or update the tank and are there available parts on Guam. There are times when the government of Guam would implement requirements when it was not possible to follow because of the lack of resources.

Vincent Pereira: Let me provide you with an example. We have federal facilities that were showing a leak. Then GEPA would notify them that they have to shut down the tank until they get the necessary parts to fix it. They will need to comply until it is fixed.

Senator Palacios: Has it been considered in the process, that any cost to the vendor will be billed into the end user?

Vincent Pereira: I don't think this affect the consumers. If the owner/operator does not comply, then we can shut down the tank and then the operator will lose money from that.

Senator Palacios: I want to know if the body had considered these things?

Michael O'Mallen: This was brought up in the public meetings, would this impact? The stakeholders said no.

Vincent Pereira: Saipan charges \$250/tank.

Senator Palacios: I understand, this is a cost recovery.

Jesse Cruz: They are releasing a commodity themselves, so if they don't fix a leak, they will be losing money.

Pete Cruz: In terms of industry and would this impact the cost of upgrading? First of all they should be in compliance already. There is no impact because they should already be up to date. As soon as GEPA gets the regulations together, we would have oversight of the program with the blessing of the federal EPA. Importantly, the money will go back to fund the local program, not the US treasury.

Senator Rector: How much do you think the total cost of the program cost the people of Guam?

Vincent Pereira: Michael O'Mallen is the only person who does the inspection.

Senator Rector: Then the whole program is run under you, is this adequate, is this getting the job done? What would it take or how much more personnel do you need?

Vincent Pereira: Two additional people would be great.

Senator Rector: You will need additional staff to support the program. What is the total cost to protect the people of Guam. \$300/tank is pretty low. The oil companies should be able to pay for the cost for this program.

Vincent Pereira: That is why we have to go in and find out what fees we need to charge, we are just looking at one inspection fee.

Pete Cruz: What our intent is, is to start with the \$300/tank fee mechanism and then develop a fee structure based on how to support the program. This is still in the statutory portion of the amendment, then we will do the numbers to establish a fee structure.

Senator Rector: In that case, how long will it take the agency to come up with a fee structure to cover the cost of the program.

Ivan Quinata: This is stated in my testimony. GEPA will intend to complete the draft, fee structure, other regulatory requirements within a year.

Senator Rector: This is a very long time. Can this be expedited? I support this bill, this is a very important bill. This is protecting our aquifer.

Vincent Pereira: In order for our regulations to be promulgated, we have to go back to USEPA and see if this is in compliance with USEPA standards

Senator Rector: So what are you saying? Even if this is passed, then you still have to go back to USEPA and find out if this law is in compliance with them.

Vincent Pereira: There are certain sections that have to be approved by USEPA to give us the authority.

Senator Ada: Bill 80 has been vetted by USEPA to make sure that it is in compliance with existing federal regulations. The regulations that you propose is already in draft form. There are model regulations in place.

Vincent Pereira: We already have a draft of the regulation, but in order for us to establish the regulation, we first have to update the statues and this bill will do that.

Senator Ada: If this bill gets passed and then we will have to come back a few months to do amending then I would rather wait.

Vincent Pereira: I am clarifying that we already have the regulations, but we had to update the statute to give us the authority to implement one.

Ivan Quinata: This statute have been reviewed by USEPA, its attorney and the local Attorney General, so I don't see any issues.

Pete Cruz: What Vince's is trying to convey is that the old statute does not give authority to GEPA, this new bill addresses this by adding a mechanism to do so. The concern about time frame of a year in drafting the regulation and what is being done to protect Guam during that time is addressed in the continual inspections with USEPA.

Speaker Wonpat: If this bill passes, will this open the way to establish the rules and regulations and a set fee schedule?

Vince Pereira: yes

Senator Respecio: Do you already have your rules and regulations?

Vince Pereira: yes, a draft. The draft regulation needs to go back to Region 9 for review and I don't know how long it will take them to review it.

SenRespecio: How much time do you need? The legislature can promulgate rules and regulation by introducing it as legislation. This is what Senator Adaplan to do with this bill. We don't have to wait the 90 day. We can incorporate the rules and regulations into this bill.

Michael O'Mallen: We are going to take the draft regulation and do a section by section public hearing. The stakeholders were concerned about our rules and regulations during the public hearing for the statute.

Senator Respecio: The rules and regulations would go through the legislature and then the 90day clock ticks. If we don't act on it in 90days, then it lapses into law.

Speaker Wonpat: If the legislature sets a 90day to promulgate the rule and reg, can you meet the timeline

Vince Pereira: We still have to get concurrence from USEPA

Senator Respecio: Can you just submit it now? Have you made any attempts to submit it to them.

Ivan Quinata: If we do submit it, then they will ask if our statues are updated.

Senator Rector: My concern is that we should do this as fast as possible. We are here to help you. My other concern is that the people of Guam should not get stuck with the bill to support this program. I would like to see a fee schedule done as fast as possible to cover the cost. The

\$300 per tank is only \$90K a year. I don't think this is enough. This should be done as fast as possible so we are not taking money from other agencies to subsidize this program.

Senator Gutherz: I would hate to think that the government of Guam agency would be deferring to the federal government. It is appropriate to share information with federal EPA, but the focal point should be getting this legislature to pass this bill. Then you should immediately go through the administrative adjudication process to get the rules and regulations in place.

Senator Respecio: Calls the public hearing for Bill 80 to an end at 3:00 pm

III. Findings and recommendations

The Committee on Rules and Natural Resources finds that current law must be updated in order to aid the Guam Environmental Agency in the pursuit of its mandate. Currently law does not provide GEPA the authority to develop its Rules and Regulations. As it stands, GEPA does not have the authority to issue and collect fines for non-compliance with the UST statute. To help address this problem, USEPA set a requirement for GEPA to establish an updated statute that would allow GEPA to implement new rules and regulations.

In order to achieve these aims, and after receiving public input on Bill No. 80, the Committee has amended the bill as such:

- General spelling and grammar corrections have been made throughout the document.
- Permissive language to replace "may" with "shall" was done
- In §76114, language to address the creation of the UST-LUST fund was included.
- In §76117, a permitting fee of \$250 was included for the purpose of establishing seed money for the UST_LUST fund.
- §76125, Rules and Regulations was added. Provision to include a milestone for the establishment of the Rules and Regulations.
- In §76126, Severability clause was added.

The Committee on Rules and Natural Resources, to which was referred **Bill No. 80 (COR)n** - An act to repeal and re-enact Chapter 76 of Title 10, Guam Code Annotated, Relative to the Storage of Hazardous Material - finds support for the bill and hereby submits its findings and recommendations to I Mina' Trenta Na LiheslaturanGuåhan to DO PASS SubBill No. 80 (COR).

SENATOR RORY J. RESPICIO

MAJORITY LEADER



CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS

I Mina'Trenta na Libeslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

PUBLIC HEARING SIGN-IN SHEET
Thursday, April 16, 2009

BILL NO. 80 - AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED,
RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS.

NAME	AGENCY OR ORGANIZATION	SUPPORT? OPPOSE?	WRITTEN TESTIMONY	ORAL TESTIMONY	CONTACT NUMBER	EMAIL ADDRESS
Ivan Quinata	GUAM EPA	SUPPORT	✓		475-1603	ivanquinata@epa.guam.gov
Vincent J. Pereira	GUAM EPA	SUPPORT			475-1658	vincentp@epa.guam.gov
Michael O'Malley	GUAM EPA	SUPPORT			475-1637	
Florida M Sanchez	GEPA Board	Support				
Jesse T. Cruz	GUAM IBA	Support				

**Testimony of
Ivan Quinata, Acting Administrator
Guam Environmental Protection Agency**

**On Legislature Bill 80
Before the Committee on Rules, Natural Resources, and Federal, Foreign &
Micronesian Affairs
Guam
April 16, 2009**

Introduction:

Buenas, Hafa Adai, and Good Afternoon everyone! My name is Ivan Quinata, Acting Administrator of Guam Environmental Protection Agency. Thank you for the opportunity to testify this afternoon on the Legislature's Bill 80, the Underground Storage of Regulated Substances Act 2009.

I would like to begin by recognizing the leadership of Senator Rory Respicio, chairman for the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs and Senator Thomas C. Ada in introducing this Bill. After the many underground storage tank closures and upgrades associated with the December 1998 deadline for spill, overfill, and corrosion protection, we have entered a new era in the operation and regulation of underground storage tanks. This legislation establishes the criteria and sets the priorities for the next generation of underground storage tanks program.

Program Background:

The use of Underground Storage Tanks (UST) is widespread in Guam and across the country. The majority of the USTs are used for the storage and distribution of fuels, including gasoline and diesel. In Guam, there are approximately 314 registered (permitted) tanks located at 172 facilities which includes gas stations, residential estates, commercial and industrial buildings, hotels, golf courses, federal and local government agencies, and resorts.

In 1984, the United States Congress recognized the need to properly operate and maintain underground tanks and added Subtitle I to the Resource Conservation and Recovery Act (RCRA). In 1986, Congress acknowledged the need to respond to releases from USTs and amended RCRA to establish the leaking underground storage tank trust funds. In 1988 the Environmental Protection Agency promulgated regulations for the UST program. Those regulations set forth the technical requirements for tank installation and operation, established requirements for financial responsibility for owners and operators of tank systems, and set the criteria for approval of State regulatory programs. This system set clear ten-year goals for the upgrade of all underground tanks across the country and provided the framework for an effective partnership between EPA and the states, wherein the states were given discretion and flexibility on the implementation of the program. The delegation model is often cited as

an example of how the federal and state programs can work together toward a common goal.

The Guam UST program was established in 1988 and operated as an extension of the Hazardous Waste Management Program. In 1989, Guam's legislature passed the Storage of Hazardous Materials as Chapter 88; however the Compiler of Law re-assigned this Act as Chapter 76 to place it in the Division on Public Safety to which it more properly belongs. Prior to this, the Agency relied on the authorities of the Oil Pollution Control Regulations, which served as the basis for regulating oil spills, including leaks from underground tanks.

The partnership between USEPA Region 9 and Guam EPA has been very effective in providing compliance with federal UST regulations on Guam. Tank owners/operators who are non-compliant during Guam EPA's UST inspection at their facilities were re-inspected during a co-agency inspection and given field citations by USEPA Region 9 for the violation(s) found at their facility.

Since the establishment of the program, the program has regulated 692 UST holding petroleum products. Of that number, 433 or 63%, have been permanently closed. The remaining USTs on Guam has largely been upgraded to current standards, and 73% of the facilities with active tanks in Guam meet regulatory standards for corrosion protection and leak detection systems.

Federal assistance has been a critical component of this effort. Since 1998, USEPA has provided over \$1,000,000 in funds to support the regulation of underground tank systems on the island. Currently, Guam EPA does not have any fees collected from owners/operators of tank systems on the island. Therefore, Guam EPA intends to implement a fee structure for annual notification from tank owners/operators to supplement its operation.

Leaking underground storage tanks, as well as other types of spills and releases from these facilities, can cause catastrophic impacts to the environment and the surrounding community. We have all seen and heard the horrible stories from American Samoa and Hawaii. However, since the start of our UST program, there have been 137 releases from underground tanks in Guam. The vast majority of these releases, 113 or 82%, have been completely cleaned up. Of the remainder, 25 are subject to ongoing clean up, remediation and/or monitoring to ensure that conditions continue to improve.

Leaking underground storage tanks can seriously impact the quality of our environment and life. When contamination is detected in a community, the anxiety of the residents rises as people worry about the health and safety of their families. Property values plummet when contamination is detected nearby. Contamination can migrate into our natural resources and destroy their values and beauty. In Guam, gasoline migrated from a former Exxon Service Station and contaminated our sole source aquifer for the village and surrounding areas. The petroleum contamination at this site migrated into the nearby Guam Waterworks Authority production well and the corrective action for the site

required extensive testing of the soils and groundwater by the owner. Results of the soil and groundwater testing required the installation of a soil vapor extractor and a granulated activated carbon system for the petroleum contamination. In order for the residences to have safe drinking water, monitoring of the petroleum contamination at the site is ongoing.

In Warwick, Rhode Island gasoline migrated from the Potter's Mobil site and contaminated a wetland area in the center of a residential neighborhood. Not only was the value of the wetland diminished, but odors from the contamination caused problems throughout that neighborhood and impacted resident's quality of life until they were controlled.

We particularly support the provision in the Bill that provides funding to conduct inspections, issue orders, or bring actions under this subtitle.

The statute has been reviewed and commented by Guam's Assistant Attorney General David Highsmith, Mr. Eric Magnan, USEPA Region 9, Guam's UST Program Manager, and Ms. Meredith Newton, USEPA Region 9 Attorney, UST Program. In addition, the Agency has completed its public comment period with petroleum distributors, stakeholders, and the public in compliance with the Adjudication Law.

Summary and Conclusions

In conclusion, we all recognize that the underground storage tank program implemented by USEPA and the states have made tremendous progress in controlling the threats of releases. Bare steel tanks are largely a thing of the past and the majority of tank systems are equipped to protect them from corrosion, detect leaks in a timely manner, and prevent overfilling. However, these new systems are more complex and difficult to operate. If not operated correctly, they can provide a false sense of security without the level of protection as designed. We strongly support the underlying principle of the Underground Storage of Regulated Substances Act of 2009, which is to give Guam greater flexibility to implement Guam's UST Regulation, particularly by providing more flexibility in the use of funds to do more proactive work on preventing leaks.

We hope the Bill will provide flexibility during the transition period when Guam looks to new, innovative ways to meet all their goals of this Bill. Guam EPA has shown a history of being innovators in the UST program and I am sure that many new and effective approaches will be considered as this Bill moves forward. Guam EPA intends to complete its "Draft Underground Storage Tank Regulation" within one (1) year after the approval of Bill 80 and seek promulgation from USEPA Region 9 to conduct enforcement actions on owners/operators that are not in compliance with the regulation.

Thank you once again for the opportunity to comment on this legislation and thank you once again, Senator Respicio and Ada, for your continued leadership on this issue.

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (First) REGULAR SESSION

Bill No. 80 (COR)
As Substituted by the Author

Introduced by:

T.C. Ada

AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF
TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO
THE STORAGE OF HAZARDOUS MATERIALS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2

3 Section 1. Chapter 76, Title 10, Guam Code Annotated is repealed and re-
4 enacted to read:
5

6 "CHAPTER 76
7 UNDERGROUND STORAGE OF REGULATED
8 SUBSTANCES"
9
10
11

12 § 76101. Title. This Chapter shall be known as the Underground Storage of
13 Regulated Substances Act.

14 §76102. Statement of Purpose. The purpose of this Chapter is to:

- 15 (a) Establish a program to prevent contamination from substances
16 stored underground;
17
18 (b) Ensure that newly constructed underground storage tanks meet appropriate
19 standards;
20
21 (c) Ensure that existing tanks be properly maintained, inspected, and tested by
22 licensed and certified professionals; and
23
24 (d) Enact and establish regulations, guidelines, standards, and policies that ensure
25 consistent cleanup of regulated substances and mitigation of the damage they
26 cause.
27

28 § 76103. Definitions.
29

1 (a) **Administrator** means the Administrator of the Guam Environmental
2 Protection Agency.

3
4 (b) **Agency** means the Guam Environmental Protection Agency.

5
6 (c) **Board** means the Board of Directors of the Guam Environmental Protection
7 Agency.

8
9 (d) **CERCLA** means Comprehensive Environmental Response, Compensation,
10 and Liability Act, commonly called Superfund, which was enacted by congress in
11 December 11, 1980 and amended by Superfund Amendments and Reauthorization
12 Act (SARA) on October 17, 1986.

13
14 (e) **Corrective Action** means the investigation and cleanup of contamination from
15 solid and hazardous waste sites and includes action taken to minimize or mitigate
16 the impact of a release from an Underground Storage Tank (UST) or tank system.

17
18 (f) **Gathering Lines** means any pipelines, equipment, facility, or building used in
19 the transportation of oil or gas during oil or gas production or gathering
20 operations.

21
22 (g) **Guarantor** means any person, other than the owner or operator, who provides
23 evidence of financial responsibility for the UST.

24
25 (h) **Hazardous Substance Underground Storage Tank or Hazardous**
26 **Substance Underground Storage Tank System** means a UST or tank system that
27 contains a hazardous substance defined in Section 101(14) of the federal
28 Comprehensive Environmental Response, Compensation, and Liability Act
29 (CERCLA) of 1980, as amended, but not including any substance regulated as a
30 hazardous waste under Subtitle C of the federal Resource Conservation and
31 Recovery Act (RCRA), as amended, or any mixture of such substances and
32 petroleum, and which is not a petroleum UST or tank system.

33
34 (i) **Installation** means to add or replace equipment.

35
36 (j) **Installation Permit** means a written approval from the Administrator to
37 construct, install, or put into place, a UST system.

38
39 (k) **Maintenance** means the operational upkeep to prevent a UST system from
40 releasing product.

41
42 (l) **Motor Fuel** means petroleum or petroleum-based substance that is motor
43 gasoline, aviation gasoline, No.1 or No.2 diesel fuel, any grade of gasohol, any
44 grade of ethanol, or any grade of bio-diesel and that is used to operate a motor
45 engine.

1
2 (m) **Operate** means to control or direct the function of a UST.

3
4 (n) **Operator** means any person in control of, or who is responsible for, the daily
5 operation of a UST.

6
7 (o) **Owner** shall mean:

8
9 (1) In the case of a UST system in use on November 8, 1984, or brought into
10 use on or after that date, any person who owns a UST system used for the storage, use
11 or dispensing of regulated substances; and

12
13 (2) In the case of a UST system in use before November 8, 1984, but no
14 longer in use after that date, any person who owned such UST system immediately
15 before the discontinuation of its use.

16
17 (p) **Permit** means Installation Permit.

18
19 (q) **Person** means an individual, trust firm, corporation, partnership, consortium,
20 joint venture, joint stock company, political subdivision of a state, any interstate
21 body, commercial entity, association, or agency, department, instrumentality of
22 the Federal government or the government of Guam, including autonomous
23 agencies or any other legal entity.

24
25 (r) **Petroleum Marketing Facilities** means all facilities at which petroleum is
26 produced or refined and all facilities from which petroleum is sold or transferred
27 to other petroleum marketers or to the public.

28
29 (s) **Pipe or Piping** means a hollow cylinder or the tubular conduit constructed of
30 non-earthen materials. **Pipe or Piping** includes elbows, couplings, unions, valves,
31 or other inline fixtures that contain and convey regulated substances from a UST
32 to a dispenser.

33
34 (t) **Pipeline Facility** (Including gathering lines) means new and existing pipe
35 rights-of-ways and any associated equipment, facilities, or buildings.

36
37 (u) **RCRA** means the Solid Waste Disposal Act of 1980 as amended by the
38 Resource Conservation and Recovery Act of 1984, as amended. (*Public Law 87-*
39 *272, Title II, §9001, as added Public Law 98-616, Title VI, §601(a), November 8,*
40 *1984, 98 Stat. 3277, and amended Public Law 99-499, Title II, §205(a), October*
41 *17, 1986, 100 Stat. 1696; Public Law 102-508, Title III, §302, October 24, 1992,*
42 *106 Stat. 3307; Public Law 103-429, §7(d), October 31, 1994, 108 Stat. 4389;*
43 *Public Law 109-58, Title XV, §1532(a), 1533(1), August 8, 2005, 119 Stat. 1104,*
44 *1105; 42 U.S.C. §6991c, et. Seq.) as amended, and regulations promulgated*

45 pursuant thereto.

1
2 (v) **Regulated Substance** means any element, compound, mixture, solution, or
3 substance that, when released into the environment, may create substantial danger
4 to the public health, welfare, or the environment. They include:

5
6 (1) Any substance defined in Section 101(14) of CERCLA, Public Law 96-
7 510 as amended, but not including any substance regulated as a hazardous waste
8 under Subtitle C of RCRA, also known as Public Law 94-580, as amended; or

9
10 (2) Petroleum, including crude oil or any fraction thereof, which is liquid at
11 standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7
12 pounds per square inch absolute);

13
14 (3) Any grade of gasohol, ethanol, or bio-diesel; and

15
16 (4) Any other substance as designated by the Administrator.

17
18 (w) **Release** means the spill, leak, emission, discharge, escape, leaching, or
19 disposing of a regulated substance from a UST.

20
21 (x) **Secondary Containment** refers to a component of a secondary containment
22 system and means a UST and its piping having inner and outer barriers.

23
24 (y) **Tank** means underground storage tank (UST).

25
26 (z) **Underground Storage Tank or UST** means any one (1) or combination of
27 tanks including underground pipes connected thereto, used to contain an
28 accumulation of regulated substances, and the volume of which including the
29 volume of the underground pipes connected thereto is ten percent (10%) or more
30 beneath the surface of the ground or water.

31 **§76104. Power and Duties of the Administrator.**

32
33 The Administrator shall:

34
35 (a) Develop and administer a UST program for Guam pursuant to this Chapter;

36
37 (b) Provide technical assistance to local and federal agencies, and other persons,
38 and cooperate with appropriate local agencies and private organizations in
39 enforcing this Chapter;

40
41 (c) Serve as Guam's official representative for all purposes of Subtitle I of
42 RCRA, also known as Public Law 94-580 as amended, and for the purpose of any
43 Guam or federal legislation that regulates USTs;

1 (d) Enact, modify, update, repeal, and enforce rules and regulations governing
2 UST design, construction, installation, release detection and inventory control,
3 compatibility, record maintenance, reporting, corrective action, closure, and
4 financial responsibility in order to enforce this Chapter;
5

6 (e) Establish the procedures for the issuance and review of permits governing the
7 design, operation, and closure of USTs;
8

9 (f) Enact and enforce other rules and regulations as necessary to establish a UST
10 program which meets the requirements of Section 9004 of Subtitle I of RCRA;
11

12 (g) Issue, amend, rescind, and enforce orders as necessary to ensure compliance
13 with this Chapter or any rules and regulations enacted pursuant hereto, including,
14 but not limited to:
15

16 (1) Administrative penalty orders;
17

18 (2) Require corrective actions as may be necessary or appropriate to this
19 Chapter; and
20

21 (3) Commence civil actions in the Superior Court of Guam, including actions
22 for a temporary or permanent injunction as needed to enforce this Chapter.
23

24 (h) Establish an effective enforcement system (that includes, at a minimum, a
25 field citation program) for the prevention, control and abatement of UST
26 pollution, including specific conditions under the permit requirements and
27 delivery prohibition of product to ineligible USTs and through all appropriate
28 administrative and judicial courses of action;
29

30 (i) Establish a delivery prohibition program that describes, at a minimum, the
31 criteria and mechanism for prohibiting the delivery, deposit, and acceptance of
32 product to any UST system;
33

34 (j) Develop and establish operator training program requirements in cooperation
35 with UST owners and operators;
36

37 (k) Issue, continue in effect, modify, revoke, reissue, or deny permits;
38

39 (l) Ensure that all permit holders comply with applicable requirements mandated
40 by Federal and Guam statutes or rules; and
41

42 (m) Establish, accept, receive, and administer grants and other funds or fees from
43 public and private agencies including the Federal government, for carrying out
44 any purpose of this Chapter.

1 **§ 76105. Notification Requirement.**
2

3 (a) Except as otherwise provided in this section, each owner of an underground
4 storage tank shall notify the Agency in writing and shall specify the tank's age,
5 size, type, location, and use.
6

7 (b) For an underground storage tank that was taken out of operation on or before
8 January 1, 1974, regardless of whether the tank was removed from the ground, the
9 owner is exempt from giving notice.
10

11 (c) For an underground storage tank that was taken out of operation after January
12 1, 1974, but before November 8, 1984, and that was removed from the ground
13 before May 8, 1986, the owner is exempt from giving notice.
14

15 (d) For an underground storage tank that was taken out of operation after January
16 1, 1974, but before November 8, 1984, and that was not removed from the ground
17 before May 8, 1986, the owner shall specify the type and quantity of the
18 substances that were stored in the tank immediately before it was taken out of
19 operation. These requirements are in addition to the requirements for the notice
20 prescribed in Subsection (a).
21

22 (e) For an underground storage tank that was taken out of operation after
23 November 8, 1984, but before December 22, 1988, the Administrator shall require
24 the owner to specify the age, size, location, and use of the tank, the type and
25 quantity of the substances that were stored in the tank immediately before it was
26 taken out of operation and the date the UST ceased operation.
27

28 (f) An owner who brings an underground storage tank into operation shall meet
29 the notification requirements of this section within thirty (30) days after the tanks
30 are brought into operation.
31

32 (g) A person who sells a tank for use as an underground storage tank shall notify
33 the purchaser of the notice requirements of Subsection (f).
34

35 (h) The notice required by this section shall be made of forms prescribed by the
36 Agency.

37 **§76106. Tank Standards.**
38

39 From the effective date of this Chapter until the effective date of a new UST standards
40 enacted hereunder, all new and existing USTs shall:
41

42 (a) Prevent release of stored regulated substances due to corrosion or structural
43 failure for the operational life of the tank;
44

1 (b) Be cathodically protected against corrosion, constructed of non-corrosive
2 material, or designed to prevent the release of the stored regulated substance; and
3

4 (c) Be constructed and lined with materials compatible with the substance stored.

5 **§ 76107. Secondary Containment System – Release Prevention and Release**
6 **Detection Standards.**

7
8 (a) The Administrator shall develop and implement a program that at least meets
9 the minimum requirements of the “Grant Guidelines to States for Implementing
10 the Secondary Containment Provision of the Energy Policy Act of 2005” (EPA-
11 510-R-06-001, November 2006) published by U.S. EPA and any subsequent
12 modifications thereto.

13
14 (b) The Administrator shall require secondary containment on all existing, new or
15 replaced UST and connected piping.

16
17 (c) The Administrator shall require under-dispenser containment on all motor fuel
18 dispenser systems.

19
20 (d) The Administrator shall require each existing, new, or replaced UST and
21 piping have a secondary containment system and be monitored for leaks.

22
23 **§ 76108. Delivery Prohibition Requirements.**

24
25 (a) The Administrator shall develop and implement a delivery prohibition
26 program with processes and procedures that at least meets the requirements set
27 forth in “Grant Guidelines to States for Implementing the Delivery Prohibition
28 Provision of the Energy Policy Act of 2005” (EPA-510-R-06-003, August 2006)
29 published by U.S. EPA and any subsequent modification thereto.

30
31 (b) The Administrator shall prohibit the delivery, deposit, or acceptance of
32 regulated substances to a UST for both equipment and operational violations.

33 **§ 76109. Operator Training.**

34
35 The Administrator shall develop and administer an operator training program that is at
36 least as stringent as the requirements set forth in the “Grant Guidelines to States for
37 Implementing the Operator Training Provision of the Energy Policy Act of 2005” (EPA-510-D-
38 07-002, August 2006) published by U.S. EPA and any subsequent modification thereto.
39 Operators shall participate in the UST operator training programs.

1 **§ 76110. Leak Detection and Record Maintenance.**

2
3 (a) The owner and operator of a UST shall maintain a leak detection system that
4 identifies releases dangerous to human health and the environment.

5
6 (b) The owner or operator shall maintain systematic and complete records to
7 demonstrate compliance with this Chapter and regulations enacted hereto.

8 **§ 76111. Public Participation.**

9
10 (a) Upon timely application, any person whose interests may be adversely
11 affected by a release or threatened from a UST system shall be allowed to
12 intervene as a right in any civil action when the applicant claims an interest
13 relating to the property or transaction which is subject of the action, and the
14 applicant is so situated that the disposition of the action may as a practical matter
15 impair or impede the applicant's ability to protect that interest.

16
17 (b) Any person may maintain an action for declaratory and equitable relief to
18 restrain any violation of this chapter. On a prima facie showing of a violation of
19 this chapter, a preliminary injunction shall be issued to restrain any further
20 violation of the chapter. No bond is required for an action under this subsection.

21
22 **§ 76112. Notification and Reporting Requirements on Releases.**

23
24 No later than twenty-four (24) hours after he/she suspects a release from a tank or
25 ancillary equipment has occurred, the owner and the operator of a UST shall notify the Agency
26 orally or in writing. Within fourteen (14) days after he/she suspects a leak, the owner and
27 operator shall report to the Agency in writing regarding the substance released, the quantity
28 released, the cause of the release, the time when the release occurred and the corrective action
29 taken as of the date of the report.

30 **§ 76113. Corrective Action.**

31
32 (a) The owner or operator of a UST shall stop a confirmed release within twelve
33 (12) hours of confirmation or knowledge that a release occurred. The owner and
34 operator shall take corrective action in response to a release to protect human
35 health and the environment, and shall restore the environment and the UST and/or
36 Pipeline Facility to a condition acceptable to the Administrator.

37
38 (b) The Administrator may require the owner and operator to undertake corrective
39 action, investigation, monitoring, surveying, testing, and research necessary and
40 appropriate to:
41

- (1) Identify the existence and extent of the release;
- (2) Identify the source and nature of the regulated substance involved;
- (3) Evaluate the extent of the danger to human health, safety, welfare, and the environment; and
- (4) Develop and implement a corrective action plan.

(c) If the owner or operator does not take immediate action to complete actions under this section and adequately complete the cleanup of a release or fails to comply with an order of the Administrator, the Administrator may cleanup the release or contract with a private entity to do so.

(d) If the Administrator is authorized to act under Subsection (b) hereof, he/she may undertake such investigation, monitoring, surveying, testing, and other information gathering as he/she deems appropriate to identify the existence and extent of danger to human health, safety, welfare, and the environment. In addition, the Administrator may undertake or contract with a private entity to undertake such planning, fiscal, economic, engineering, and other studies and investigation he/she deems appropriate to plan and direct cleanup actions, and to recover the costs and legal costs thereof.

§ 76114. Underground Storage Tank Management Fund.

There is hereby established a fund to be known as the Underground Storage Tank Management Fund, hereinafter referred to as the UST-LUST Fund, a non lapsing, revolving fund.

- (a) Notwithstanding the Central Accounting Act, all fees, reimbursement, assessment, fines, forfeitures, and other funds collected or received pursuant to this Chapter shall be deposited in the UST-LUST Fund. This fund shall be kept in a bank licensed to do business on Guam and funds shall be paid out only upon a request for payment or requisition submitted by the Director or Administrator and countersigned by the Chairman of the Board. All monies in this fund shall require legislative appropriation.
- (b) The Administrator shall administer the UST-LUST Fund and make disbursements from the fund:
 - (1) To fund actions authorized by §76113 of this Chapter.
 - (2) To train Agency employees in the regulation of USTs and response to release of regulated substances from USTs.
 - (3) To fund the administration, purchase of equipment, supplies, and payment of personnel cost arising from enforcement of this Chapter.

1 **§ 76115. Financial Responsibility.**

2
3 (a) All owners and operators of UST systems, within 180 days of the effective
4 date of this chapter, shall establish and maintain evidence of financial
5 responsibility, as provided for in this section, for taking corrective action and
6 compensating third parties for bodily injury and property damage caused by
7 accidental releases arising from the operation of underground storage tanks in at
8 least the following per occurrence amounts:

9
10 (1) For all owners or operators of petroleum underground storage tanks that
11 are located at petroleum marketing facilities or that own or operate five or
12 more tanks or that handle an average of more than 10,000 gallons of
13 petroleum per month based on annual throughput for the previous calendar
14 year, \$2,000,000.

15 (2) For all other owners or operators of petroleum underground storage
16 tanks: \$500,000.

17
18 (b) Owners or operators of petroleum underground storage tanks shall
19 demonstrate financial responsibility for taking corrective action and for
20 compensating third parties for bodily injury and property damage caused by
21 accidental release arising from the operation of petroleum underground storage
22 tanks in at least the following annual aggregate amounts:

23
24 (1) For owners or operators of four or fewer tanks, an annual aggregate
25 amount of \$1,000,000.

26 (2) For owners or operators of five or more tanks, an annual aggregate
27 amount of \$2,000,000.

28 (3) For owners and operators of 10 or more tanks, an annual aggregate
29 amount of at least \$2,000,000 or such other higher aggregate amount as set
30 forth in regulations promulgated by the Administrator.

31
32 (c) Subject to the approval of the Administrator, an owner or operator of an UST
33 shall establish evidence of financial responsibility by any one, or a combination of
34 the following methods in accordance to the rules and regulations promulgated by
35 the Administrator:

36 (1) Commercial or private insurance, including risk retention group;

37 (2) Qualification as a self-insurer as specified in subparagraph (f) of this
38 section;

39 (3) A guarantee, surety bond, or letter of credit; or

40 (4) Any other reasonable and economically practicable means.

41
42
43 (d) The Administrator shall not approve any financial responsibility method or
44 combination of methods, unless the owner or operator has demonstrated that such
45 method(s):

- 1
- 2 (1) Are valid and enforceable;
- 3 (2) Are issued by a provider that is qualified or licensed in Guam;
- 4 (3) Do not permit cancellation without allowing the Administrator to draw
- 5 funds;
- 6 (4) Shall only be directly used for corrective action and 3rd party liability
- 7 costs; and
- 8 (5) Require the provider to notify the owner or operator and the
- 9 Administrator of any circumstances that would impair or suspend coverage.

10

11 (e) Surety bonds shall be payable to the Guam Environmental Protection Agency,

12 to include costs and expenses of the cleanup of any release, as well as damages

13 incurred by the Government, consistent with the provisions of this chapter. Any

14 bond filed with the Agency must be issued by a bonding company authorized to

15 do business within the territory. The Guam EPA is authorized to establish a

16 special account, escrow, standby trust, or other trust or account mechanism into

17 which funds established as financial assurance may be deposited when needed.

18 Notwithstanding any other provision of law, the Administrator may retain and use

19 such amounts for the purposes for which the financial assurance was established.

20

21 (f) To qualify as a self-insurer the UST system owner or operator shall

22 (1) Demonstrate a tangible net worth of at least ten times:

23 (a) The total of the aggregate amount required in subsection (c) of this

24 section;

25 (b) The sum of the corrective action cost estimates, the current closure

26 and post-closure care cost estimates, and the amount of liability coverage

27 required under this chapter; and

28 (c) The sum of plugging and abandonment cost estimates in effect for

29 which a financial test is used to demonstrate financial responsibility

30 under this chapter.

31

32

33

34 (2) The owner or operator shall have a tangible net worth of at least

35 \$10,000,000.

36 (3) The owner or operator shall meet the requirement set forth in 40 CFR

37 280.95.

38

39 (g) The total liability of any guarantor is limited to the aggregate amount that the

40 guarantor has provided as evidence of financial responsibility to the UST system

41 owner or operator under this section. Nothing in this subsection shall be construed

42 to limit any other territorial or federal statutory, contractual or common law

43 liability of a guarantor to its owner or operator including, but not limited to, the

44 liability of such guarantors for bad faith either in negotiating or in failing to

45 negotiate the settlement of any claim. For the purpose of this subsection, the term

1 “guarantor” means any person, other than the owner or operator, who provides
2 evidence of financial responsibility for an owner or operator pursuant to this
3 section.
4

5 (h) Any claim costs incurred by the Agency for taking emergency, preventive,
6 corrective or enforcement action may be filed directly against the bonding
7 company, the insurer, the guarantor, or any other person providing evidence of
8 financial responsibility. Any amount collected or awarded under this subsection
9 shall be paid into Guam Environmental Protection Agency’s UST-LUST Fund.
10

11 (i) An owner or operator of an UST system shall designate a person within Guam
12 as his/her resident agent for service of process, and such designation shall be
13 filled in accordance with rules and regulation promulgated by the Agency.
14

15 (j) The financial responsibility amounts required by this section, or any portion of
16 such amount, may be satisfied by utilization of Guam Environmental Protection
17 Agency UST-LUST Fund.

18 **§ 76116. Closure.**
19

20 The owner or operator shall close a UST so as to prevent future releases of regulated
21 substances. The owner and operator shall comply with the release response provisions in this
22 Chapter and other requirements promulgated by the Administrator before and during removal of
23 the USTs. The Administrator shall adopt requirements for change in-service and temporary and
24 permanent closure of USTs and tank systems.

25 **§ 76117. Permit Requirements.**
26

27 (a) No person shall own, install, or operate a UST without a permit issued by the
28 Administrator. An applicant for a permit shall pay a permit processing fee
29 prescribed by the regulations.

30 For the purpose of this Chapter and until such rules and regulations describing
31 the UST Fee Schedule has been adopted, an interim annual fee of Two Hundred
32 Fifty Dollars (\$250.00) per tank shall be established as the permit fee and shall go
33 into effect One Hundred Eighty (180) days upon enactment of this Chapter.
34

35 (b) Said permit shall be non-transferable and conditioned upon the observance of
36 the laws of Guam and related rules and regulations.
37

38 (c) A permit holder shall apply for the renewal of each permit he/she holds, upon
39 forms provided by the Administrator, not less than sixty (60) calendar days prior
40 to the permit’s expiration.
41

1 (d) Each permit application and permit renewal application shall be submitted
2 with evidence of financial responsibility, in a sum established by the
3 Administrator by regulation.

4 **§ 76118. Inspection and Entry.**

5
6 The Administrator may inspect all USTs at reasonable times to take corrective action or to
7 ensure compliance with this Chapter and the rules and regulations enacted pursuant hereto. The
8 Administrator's authority to inspect shall include, but is not limited, to the following:
9

10 (a) Requesting and obtaining from any owner or operator and deliverer and
11 guarantor of a UST, information relating to such tanks, their associated
12 equipment, and their contents;
13

14 (b) Conducting any study or performance of monitoring, and testing of tanks,
15 their associated equipment, or surrounding soils, air, surface water, or
16 groundwater;
17

18 (c) Inspecting and copying all records relating to the USTs;
19

20 (d) Inspecting and obtaining samples of regulated substances contained in the
21 USTs; and
22

23 (e) Taking corrective action or performing site assessment activities at the
24 location of the UST.

25 **§ 76119. Confidentiality of Records.**

26
27 Reports and records submitted to the Agency by any person on the ownership,
28 installation, or operation of underground storage tanks or tank systems shall be made
29 available for inspection by the public during established office hours except as provided in
30 this section. Upon a showing satisfactory to the Agency that public disclosure of records,
31 reports, or information, or a particular part thereof, to which the agency's representative has
32 access to under this section would divulge information entitled to protection under 5GCA
33 Chapter 10, Freedom of Information, the Agency shall consider the information or particular
34 portion thereof to be confidential. No confidential information secured pursuant to this
35 section by any official or employee of the Agency within the scope of and of the official's or
36 employee's employment in the prevention, control, or abatement of releases from
37 underground storage tanks or tank systems, shall be disclosed by the official or employee
38 with following exceptions: the document or information may be disclosed to officers,
39 employees, or authorized representatives of the territory or of the United States, including
40 county government entities, who have been charged with carrying out this chapter or Subtitle
41 I of the federal Resource Conservation and Recovery Act, or when relevant in any
42 proceeding under this chapter. Where such information constitutes confidential business
43 information under federal law, it shall be submitted as such to federal entities.

1 **§ 76120. Notice.**

2
3 Any notice or other official correspondence affecting the rights of any person under this
4 Chapter shall be delivered by personal service, or sent by registered mail with a return receipt to
5 the address of such person as shown by the Agency records. The return receipt, signed by
6 addressee, or his/her agent, shall be conclusive proof of delivery.

7 **§ 76121. Hearings.**

8
9 (a) Any person who received an order from the Administrator pursuant to this
10 Chapter or any person whose permit application is disapproved by the
11 Administrator may, within fifteen (15) calendar days after receipt thereof, file
12 with the Board a notice of intent to appeal and a verified petition describing the
13 basis of such appeal.

14
15 (b) The Board shall, not more than sixty (60) days after receipt of such notice of
16 intent to appeal, hold a public hearing at which the appellant may appear and
17 present evidence supporting the petition.

18
19 (c) The Board may administer oaths and to issue subpoenas to compel the
20 attendance of witnesses and the production of evidence in all such hearings.

21
22 (d) The Board shall affirm, modify, or revoke the action appealed and shall notify
23 the appellant of its decision not more than thirty (30) days after the hearing. Said
24 notice shall be in writing and shall state the reasons for the decision.

25
26 (e) Any person may appeal such decision by filing a verified petition in Superior
27 Court of Guam within ten (10) days after he/she receives the notice required by
28 Subsection (d) hereof. The petitioner shall make a transcript of the proceeding at
29 his/her expense.

30 **§ 76122. Injunction.**

31
32 The Administrator may, in addition to the other powers conferred on him/her by this
33 Chapter, file an action in the Superior Court of Guam to immediately restrain any violation or
34 threatened violation of this Chapter or the rules and regulations enacted pursuant hereto.
35

36 **§ 76123. Applicability to Government Agencies.**

37
38 All agencies of the Government of Guam and of the Government of the United States
39 shall comply with all provisions of this Chapter pursuant to U.S. Public Law 94-580, RCRA,
40 including permit requirements with the exception of §§76114 and 76117(d).

1 **§ 76124. Penalties.**

2
3 (a) A person who violates any provisions of this Chapter, or rules or
4 regulations enacted pursuant hereto, or who refuses or neglects to comply with an
5 order issued by the Administrator to require compliance with this Chapter, shall
6 pay the Agency a civil penalty up to eleven thousand dollars (\$11,000) for each
7 tank for each day of each violation.

8
9 (b) Any person with an interest that may be adversely affected by a violation
10 of this Chapter may intervene as a matter of right in any civil action brought by
11 the Administrator to require compliance with this Chapter.

12
13 (c) A person who knowingly fails to notify the Administrator pursuant to
14 §§76105 or 76112 or who makes any false statement or representation in any UST
15 notification, permit application, or other document filed, maintained, or used for
16 compliance with this Chapter shall be guilty of a misdemeanor and may be
17 subject to imprisonment for up to twelve (12) months and fined up to eleven
18 thousand dollars (\$11,000) per day for each violation, or both.

19
20 (d) Any person who denies, obstructs, or hampers the entrance, inspection, or
21 conduct of release response activity by a representative of the Agency at any
22 building, place, site, facility, vehicle, or structure that the representative is
23 authorized to enter or inspect who fails to provide information requested by the
24 Agency representative as pursuant to §76110 shall be fined up to Eleven
25 Thousand Dollars (\$11,000.00) for every day he denies, obstructs or hinders the
26 acquisition of, or fails to provide, the information requested, as determined in a
27 civil action in the Superior Court of Guam.

28
29
30 **Section 2.**

31
32 **§ 76125.** Rules and Regulations. The Guam Environmental Protection Agency shall
33 establish the regulations, guidelines, standards and policies no later than Three Hundred Sixty-
34 five (365) days upon enactment of this law. During which the Administrator shall make
35 available to the Board, a tri-annual report of the milestones reached as related to the Regulation
36 of Underground Storage Tanks on Guam.


37
38 **§ 76126.** Severability. If any of the provision of this law, or the application thereof
39 to any person or circumstance, is held invalid or contrary to law, such invalidity shall not affect
40 any other provision or application of this law which can be given effect without the invalid
41 provision or application, and to this end the provisions of this law are severable.

1 § 76127. Reserved.
2
3
4
5

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (First) REGULAR SESSION

Bill No. 80(COR)

Introduced by:

T.C. Ada 

**AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF
TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO
THE STORAGE OF HAZARDOUS MATERIALS.**

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Chapter 76, Title 10, Guam Code Annotated is repealed and re-enacted to read:

**“CHAPTER 76
UNDERGROUND STORAGES OF REGULATED
SUBSTANCES**

2009 MAR 23 AM 8:15 m.c.

§ 76101. Title. This Chapter shall be known as the Underground Storage of Regulated Substances Act.

§76102. Statement of Purpose. The purpose of this Chapter is to:

- (a) Establish a program to prevent contamination from substances stored underground;
- (b) Ensure that newly constructed underground storage tanks meet appropriate standards;
- (c) Ensure that existing tanks be properly maintained, inspected, and tested by licensed and certified professionals;
- (d) Enact and establish regulations, guidelines, standards, and policies that ensure consistent cleanup of regulated substances and mitigation of the damage they cause.

§ 76103. Definitions.

- (a) **Administrator** means the Administrator of the Guam Environmental Protection Agency.
- (b) **Agency** means the Guam Environmental Protection Agency.

1
2 (c) **Board** means the Board of Directors of the Guam Environmental Protection
3 Agency.
4

5 (d) **CERCLA** means Comprehensive Environmental Response, Compensation,
6 and Liability Act, commonly called Superfund, which was enacted by congress in
7 December 11, 1980 and amended by Superfund Amendments and Reauthorization
8 Act (SARA) on October 17, 1986.
9

10 (e) **Corrective Action** means the investigation and cleanup of contamination
11 from solid and hazardous waste sites and includes action taken to minimize or
12 mitigate the impact of a release from an Underground Storage Tank (UST) or tank
13 system.
14

15 (f) **Gathering Lines** means any pipelines, equipment, facility, or building used in
16 the transportation of oil or gas during oil or gas production or gathering
17 operations.
18

19 (g) **Guarantor** means any person, other than the owner or operator, who provides
20 evidence of financial responsibility for the UST.
21

22 (h) **Hazardous Substance Underground Storage Tank or Hazardous**
23 **Substance Underground Storage Tank System** means a UST or tank system
24 that contains a hazardous substance defined in Section 101(14) of the federal
25 Comprehensive Environmental Response, Compensation, and Liability Act
26 (CERCLA) of 1980, as amended, but not including any substance regulated as a
27 hazardous waste under Subtitle C of the federal Resource Conservation and
28 Recovery Act (RCRA), as amended, or any mixture of such substances and
29 petroleum, and which is not a petroleum UST or tank system.
30

31 (i) **Installation** means to add or replace equipment.
32

33 (j) **Installation Permit** means a written approval from the Administrator to
34 construct, install, or put into place, a UST system.
35

36 (k) **Maintenance** means the operational upkeep to prevent a UST system from
37 releasing product.
38

39 (l) **Motor Fuel** means petroleum or petroleum-based substance that is motor
40 gasoline, aviation gasoline, No.1 or No.2 diesel fuel, any grade of gasohol, any
41 grade of ethanol, or any grade of bio-diesel and that is used to operate a motor
42 engine.
43

44 (m) **Operate** means to control or direct the function of a UST.
45

1 (n) **Operator** means any person in control of, or who is responsible for, the daily
2 operation of a UST.

3
4 (o) **Owner** shall mean:

5
6 (1) In the case of a UST system in use on November 8, 1984, or brought into
7 use on or after that date, any person who owns a UST system used for the storage, use
8 or dispensing of regulated substances; and

9
10 (2) In the case of a UST system in use before November 8, 1984, but no
11 longer in use after that date, any person who owned such UST system immediately
12 before the discontinuation of its use.

13
14 (p) **Permit** means Installation Permit.

15
16 (q) **Person** means an individual, trust firm, corporation, partnership, consortium,
17 joint venture, joint stock company, political subdivision of a state, any interstate
18 body, commercial entity, association, or agency, department, instrumentality of
19 the Federal government or the government of Guam, including autonomous
20 agencies or any other legal entity.

21
22 (r) **Petroleum Marketing Facilities** means all facilities at which petroleum is
23 produced or refined and all facilities from which petroleum is sold or transferred
24 to other petroleum marketers or to the public.

25
26 (s) **Pipe or Piping** means a hollow cylinder or the tubular conduit constructed of
27 non-earthen materials. **Pipe or Piping** includes elbows, couplings, unions, valves,
28 or other inline fixtures that contain and convey regulated substances from a UST
29 to a dispenser.

30
31 (t) **Pipeline Facility** (Including gathering lines) means new and existing pipe
32 rights-of-ways and any associated equipment, facilities, or buildings.

33
34 (u) **RCRA** means the Solid Waste Disposal Act of 1980 as amended by the
35 Resource Conservation and Recovery Act of 1984, as amended. (*Public Law 87-*
36 *272, Title II, §9001, as added Public Law 98-616, Title VI, §601(a), November 8,*
37 *1984, 98 Stat. 3277, and amended Public Law 99-499, Title II, §205(a), October*
38 *17, 1986, 100 Stat. 1696; Public Law 102-508, Title III, §302, October 24, 1992,*
39 *106 Stat. 3307; Public Law 103-429, §7(d), October 31, 1994, 108 Stat. 4389;*
40 *Public Law 109-58, Title XV, §1532(a), 1533(1), August 8, 2005, 119 Stat. 1104,*
41 *1105; 42 U.S.C. §6991c, et. Seq.) as amended, and regulations promulgated*
42 *pursuant thereto.*

1 (v) **Regulated Substance** means any element, compound, mixture, solution, or
2 substance that, when released into the environment, may create substantial danger
3 to the public health, welfare, or the environment. They include:
4

5 (1) Any substance defined in Section 101(14) of CERCLA, Public Law 96-
6 510 as amended, but not including any substance regulated as a hazardous waste
7 under Subtitle C of RCRA, also known as Public Law 94-580, as amended; or
8

9 (2) Petroleum, including crude oil or any fraction thereof, which is liquid at
10 standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7
11 pounds per square inch absolute);
12

13 (3) Any grade of gasohol, ethanol, or bio-diesel; and
14

15 (4) Any other substance as designated by the Administrator.
16

17 (w) **Release** means the spill, leak, emission, discharge, escape, leaching, or
18 disposing of a regulated substance from a UST.
19

20 (x) **Secondary Containment** refers to a component of a secondary containment
21 system and means a UST and its piping having inner and outer barriers.
22

23 (y) **Tank** means underground storage tank (UST).
24

25 (z) **Underground Storage Tank or UST** means any one (1) or combination of
26 tanks including underground pipes connected thereto, used to contain an
27 accumulation of regulated substances, and the volume of which including the
28 volume of the underground pipes connected thereto is ten per cent (10%) or more
29 beneath the surface of the ground or water.

30 **§76104. Power and Duties of the Administrator.**

31 The Administrator shall:
32

33 (a) Develop and administer a UST program for Guam pursuant to this Chapter;
34

35 (b) Provide technical assistance to local and federal agencies, and other persons,
36 and cooperate with appropriate local agencies and private organizations in
37 enforcing this Chapter;
38

39 (c) Serve as Guam's official representative for all purposes of Subtitle I of
40 RCRA, also known as Public Law 94-580 as amended, and for the purpose of any
41 Guam or federal legislation that regulates USTs;
42
43

1 (d) Enact, modify, update, repeal, and enforce rules and regulations governing
2 UST design, construction, installation, release detection and inventory control,
3 compatibility, record maintenance, reporting, corrective action, closure, and
4 financial responsibility in order to enforce this Chapter;
5

6 (e) Establish the procedures for the issuance and review of permits governing the
7 design, operation, and closure of USTs;
8

9 (f) Enact and enforce other rules and regulations as necessary to establish a UST
10 program which meets the requirements of Section 9004 of Subtitle I of RCRA;
11

12 (g) Issue, amend, rescind, and enforce orders as necessary to ensure compliance
13 with this Chapter or any rules and regulations enacted pursuant hereto, including,
14 but not limited to:

15 (1) Administrative penalty orders;
16

17 (2) Require corrective actions as may be necessary or appropriate to this
18 Chapter; and
19

20 (3) Commence civil actions in the Superior Court of Guam, including actions
21 for a temporary or permanent injunction as needed to enforce this Chapter.
22

23 (h) Establish an effective enforcement system (that includes, at a minimum, a
24 field citation program) for the prevention, control and abatement of UST
25 pollution, including specific conditions under the permit requirements and
26 delivery prohibition of product to ineligible USTs and through all appropriate
27 administrative and judicial courses of action;
28

29 (i) Establish a delivery prohibition program that describes, at a minimum, the
30 criteria and mechanism for prohibiting the delivery, deposit, and acceptance of
31 product to any UST system;
32

33 (j) Develop and establish operator training program requirements in cooperation
34 with UST owners and operators;
35

36 (k) Issue, continue in effect, modify, revoke, reissue, or deny permits;
37

38 (l) Ensure that all permit holders comply with applicable requirements mandated
39 by Federal and Guam statutes or rules; and
40

41 (m) Establish, accept, receive, and administer grants and other funds or fees from
42 public and private agencies including the Federal government, for carrying out
43 any purpose of this Chapter.
44

1 **§ 76105. Notification Requirement.**

2
3 (a) Except as otherwise provided in this section, each owner of an underground
4 storage tank shall notify the Agency in writing and shall specify the tank's age,
5 size, type, location, and use.

6
7 (b) For an underground storage tank that was taken out of operation on or before
8 January 1, 1974, regardless of whether the tank was removed from the ground, the
9 owner is exempt from giving notice.

10
11 (c) For an underground storage tank that was taken out of operation after January
12 1, 1974, but before November 8, 1984, and that was removed from the ground
13 before May 8, 1986, the owner is exempt from giving notice.

14
15 (d) For an underground storage tank that was taken out of operation after January
16 1, 1974, but before November 8, 1984, and that was not removed from the ground
17 before May 8, 1986, the owner shall specify the type and quantity of the
18 substances that were stored in the tank immediately before it was taken out of
19 operation. These requirements are in addition to the requirements for the notice
20 prescribed in Subsection A.

21
22 (e) For an underground storage tank that was taken out of operation after
23 November 8, 1984, but before December 22, 1988, the Administrator may require
24 the owner to specify the age, size, location, and use of the tank, the type and
25 quantity of the substances that were stored in the tank immediately before it was
26 taken out of operation and the date the UST ceased operation.

27
28 (f) An owner who brings an underground storage tank into operation shall meet
29 the notification requirements of this section within thirty (30) days after the tanks
30 are brought into operation.

31
32 (g) A person who sells a tank for use as an underground storage tank shall notify
33 the purchaser of the notice requirements of Subsection F.

34
35 (h) The notice required by this section shall be made of forms prescribed by the
36 Agency.

37 **§76106. Tank Standards.**

38
39 From the effective date of this Chapter until the effective date of a new UST standards
40 enacted hereunder, all new and existing USTs shall:

41
42 (a) Prevent release of stored regulated substances due to corrosion or structural
43 failure for the operational life of the tank;

1 (b) Be cathodically protected against corrosion, constructed of non-corrosive
2 material, or designed to prevent the release of the stored regulated substance; and

3
4 (c) Be constructed and lined with materials compatible with the substance stored.

5 **§ 76107. Secondary Containment System – Release Prevention and Release**
6 **Detection Standards.**

7
8 (a) The Administrator shall develop and implement a program that at least meets
9 the minimum requirements of the “Grant Guidelines to States for Implementing
10 the Secondary Containment Provision of the Energy Policy Act of 2005” (EPA-
11 510-R-06-001, November 2006) published by U.S. EPA and any subsequent
12 modifications thereto.

13
14 (b) The Administrator shall require secondary containment on all existing, new or
15 replaced UST and connected piping.

16
17 (c) The Administrator shall require under-dispenser containment on all motor fuel
18 dispenser systems.

19
20 (d) The Administrator shall require each existing, new, or replaced UST and
21 piping have a secondary containment system and be monitored for leaks.

22
23 **§ 76108. Delivery Prohibition Requirements.**

24
25 (a) The Administrator shall develop and implement a delivery prohibition
26 program with processes and procedures that at least meets the requirements set
27 forth in “Grant Guidelines to State for Implementing the Delivery Prohibition
28 Provision of the Energy Policy Act of 2005” (EPA-510-R-06-003, August 2006)
29 published by U.S. EPA and any subsequent modification thereto.

30
31 (b) The Administrator shall prohibit the delivery, deposit, or acceptance of
32 regulated substances to a UST for both equipment and operational violations.

33 **§ 76109. Operator Training.**

34
35 The Administrator shall develop and administer an operator training program that is at
36 least as stringent as the requirements set forth in the “Grant Guidelines to States for
37 Implementing the Operator Training Provision of the Energy Policy Act of 2005” (EPA-510-D-
38 07-002, August 2006) published by U.S. EPA and any subsequent modification thereto.
39 Operators shall participate in the UST operator training programs.

1 **§ 76110. Leak Detection and Record Maintenance.**

2
3 (a) The owner and operator of a UST shall maintain a leak detection system that
4 identifies releases dangerous to human health and the environment.

5
6 (b) The owner or operator shall maintain systematic and complete records to
7 demonstrate compliance with this Chapter and regulations enacted hereto.

8 **§ 76111. Public Participation.**

9
10 (a) Upon timely application, any person whose interests may be adversely
11 affected by a release or threatened from a UST system shall be allowed to
12 intervene as a right in any civil action when the applicant claims an interest
13 relating to the property or transaction which is subject of the action, and the
14 applicant is so situated that the disposition of the action may as a practical matter
15 impair or impede the applicant's ability to protect that interest.

16
17 (b) Any person may maintain an action for declaratory and equitable relief to
18 restrain any violation of this chapter. On a prima facie showing of a violation of
19 this chapter, a preliminary injunction shall be issued to restrain any further
20 violation of the chapter. No bond is required for an action under this subsection.

21
22 **§ 76112. Notification and Reporting Requirements on Releases.**

23
24 No later than twenty-four (24) hours after he/she suspects a release from a tank or
25 ancillary equipment has occurred, the owner and the operator of a UST shall notify the Agency
26 orally or in writing. Within fourteen (14) days after he/she suspects a leak, the owner and
27 operator shall report to the Agency in writing regarding the substance released, the quantity
28 released, the cause of the release, the time when the release occurred and the corrective action
29 taken as of the date of the report.

30 **§ 76113. Corrective Action.**

31
32 (a) The owner or operator of a UST shall stop a confirmed release within twelve
33 (12) hours of confirmation or knowledge that a release occurred. The owner and
34 operator shall take corrective action in response to a release to protect human
35 health and the environment, and shall restore the environment and the UST and/or
36 Pipeline Facility to a condition acceptable to the Administrator.

37
38 (b) The Administrator may require the owner and operator to undertake corrective
39 action, investigation, monitoring, surveying, testing, and research necessary and
40 appropriate to:
41

- 1 (1) Identify the existence and extent of the release;
2
3 (2) Identify the source and nature of the regulated substance involved;
4
5 (3) Evaluate the extent of the danger to human health, safety, welfare, and
6 the environment; and
7
8 (4) Develop and implement a corrective action plan.

9
10 (c) If the owner or operator does not take immediate action to complete actions
11 under this section and adequately complete the cleanup of a release or fails to
12 comply with an order of the Administrator, the Administrator may cleanup the
13 release or contract with a private entity to do so.
14

15 (d) If the Administrator is authorized to act under Subsection (b) here of, he/she
16 may undertake such investigation, monitoring, surveying, testing, and other
17 information gathering as he/she deems appropriate to identify the existence and
18 extent of danger to human health, safety, welfare, and the environment. In
19 addition, the Administrator may undertake or contract with a private entity to
20 undertake such planning, fiscal, economic, engineering, and other studies and
21 investigation he/she deems appropriate to plan and direct cleanup actions, and to
22 recover the costs and legal costs thereof.

23 **§ 76114. Underground Storage Tank Management Fund.**

24
25 There is hereby established a fund to be known as the Underground Storage Tank
26 Management Fund, hereinafter referred to as the UST-LUST Fund, a non-lapsing, revolving
27 fund.
28

29 (a) All fees, reimbursement, assessment, fines, forfeitures, and other funds
30 collected or received pursuant to this Chapter shall be deposited in the UST-
31 LUST Fund.
32

33 (b) The Administrator shall administer the UST-LUST Fund and make
34 disbursements from the fund:
35

- 36 (1) To fund actions authorized by §76113 of this Chapter.
37 (2) To train Agency employees in the regulation of USTs and response to
38 release of regulated substances from USTs.
39 (3) To fund the administration, purchase of equipment, supplies, and
40 payment of personnel costs arising from enforcement of this Chapter.

41 **§ 76115. Financial Responsibility.**
42

1 (a) All owners and operators of UST systems, within 180 days of the effective
2 date of this chapter, shall establish and maintain evidence of financial
3 responsibility, as provided for in this section, for taking corrective action and
4 compensating third parties for bodily injury and property damage caused by
5 accidental releases arising from the operation of underground storage tanks in at
6 least the following per occurrence amounts:
7

8 (1) For all owners or operators of petroleum underground storage tanks that
9 are located at petroleum marketing facilities or that own or operate five or
10 more tanks or that handle an average of more than 10,000 gallons of
11 petroleum per month based on annual throughput for the previous calendar
12 year, \$2,000,000.

13 (2) For all other owners or operators of petroleum underground storage
14 tanks: \$500,000.
15

16 (b) Owners or operators of petroleum underground storage tanks shall
17 demonstrate financial responsibility for taking corrective action and for
18 compensating third parties for bodily injury and property damage caused by
19 accidental release arising from the operation of petroleum underground storage
20 tanks in at least the following annual aggregate amounts:
21

22 (1) For owners or operators of four or fewer tanks, an annual aggregate
23 amount of \$1,000,000.

24 (2) For owners or operators of five or more tanks, an annual aggregate
25 amount of \$2,000,000.

26 (3) For owners and operators of 10 or more tanks, an annual aggregate
27 amount of at least \$2,000,000 or such other higher aggregate amount as set
28 forth in regulations promulgated by the Administrator.
29

30 (c) Subject to the approval of the Administrator, an owner or operator of an UST
31 may establish evidence of financial responsibility by any one, or a combination of
32 the following methods:
33

34 (1) Commercial or private insurance, including risk retention group;

35 (2) Qualification as a self-insurer;

36 (3) A guarantee, surety bond, or letter of credit; or

37 (4) Any other reasonable and economically practicable means.
38

39 (d) The Administrator shall not approve any financial responsibility method or
40 combination of methods, unless the owner or operator has demonstrated that such
41 method(s):
42

43 (1) Are valid and enforceable;

44 (2) Are issued by a provider that is qualified or licensed in Guam;

1 (3) Do not permit cancellation without allowing the Administrator to draw
2 funds;

3 (4) Shall only be directly used for corrective action and 3rd party liability
4 costs; and

5 (5) Require the provider to notify the owner or operator and the
6 Administrator of any circumstances that would impair or suspend coverage.
7

8 (e) Surety bonds shall be payable to the Guam Environmental Protection Agency,
9 to include costs and expenses of the cleanup of any release, as well as damages
10 incurred by the Government, consistent with the provisions of this chapter. Any
11 bond filed with the Agency must be issued by a bonding company authorized to
12 do business within the territory. The Guam EPA is authorized to establish a
13 special account, escrow, standby trust, or other trust or account mechanism into
14 which funds established as financial assurance may be deposited when needed.
15 Notwithstanding any other provision of law, the Administrator may retain and use
16 such amounts for the purposes for which the financial assurance was established.
17

18 (f) To qualify as a self-insurer the UST system owner or operator shall
19

20 (1) Demonstrate a tangible net worth of at least ten times:
21

22 (a) The total of the aggregate amount required in subsection (c) of this
23 section;

24 (b) The sum of the corrective action cost estimates, the current closure
25 and post-closure care cost estimates, and the amount of liability coverage
26 required under this chapter; and

27 (c) The sum of plugging and abandonment cost estimates in effect for
28 which a financial test is used to demonstrate financial responsibility
29 under this chapter.
30

31 (2) The owner or operator shall have a tangible net worth of at least
32 \$10,000,000.

33 (3) The owner or operator shall meet the requirement set forth in 40 CFR
34 280.95.
35

36 (g) The total liability of any guarantor is limited to the aggregate amount that the
37 guarantor has provided as evidence of financial responsibility to the UST system
38 owner or operator under this section. Nothing in this subsection may be construed
39 to limit any other territorial or federal statutory, contractual or common law
40 liability of a guarantor to its owner or operator including, but not limited to, the
41 liability of such guarantors for bad faith either in negotiating or in failing to
42 negotiate the settlement of any claim. For the purpose of this subsection, the term
43 "guarantor" means any person, other than the owner or operator, who provides
44 evidence of financial responsibility for an owner or operator pursuant to this
45 section.

1
2 (h) Any claim costs incurred by the Agency for taking emergency, preventive,
3 corrective or enforcement action may be filed directly against the bonding
4 company, the insurer, the guarantor, or any other person providing evidence of
5 financial responsibility. Any amount collected or awarded under this subsection
6 shall be paid into Guam Environmental Protection Agency's UST-LUST Fund.
7

8 (i) An owner or operator of an UST system shall designate a person within Guam
9 as his/her resident agent for service of process, and such designation shall be
10 filled in accordance with rules and regulation promulgated by the Agency.
11

12 (j) The financial responsibility amounts required by this section, or any portion of
13 such amount, may be satisfied by utilization of Guam Environmental Protection
14 Agency UST-LUST Fund.

15 **§ 76116. Closure.**

16
17 The owner or operator shall close a UST so as to prevent future releases of regulated
18 substances. The owner and operator shall comply with the release response provisions in this
19 Chapter and other requirements promulgated by the Administrator before and during removal of
20 the USTs. The Administrator shall adopt requirements for change in-service and temporary and
21 permanent closure of USTs and tank systems.

22 **§ 76117. Permit Requirements.**

23
24 (a) No person shall own, install, or operate a UST without a permit issued by the
25 Administrator. An applicant for a permit shall pay a permit processing fee
26 prescribed by the regulations.
27

28 (b) Said permit shall be non-transferable and conditioned upon the observance of
29 the laws of Guam and related rules and regulations.
30

31 (c) A permit holder shall apply for the renewal of each permit he/she holds, upon
32 forms provided by the Administrator, not less than sixty (60) calendar days prior
33 to the permit's expiration.
34

35 (d) Each permit application and permit renewal application shall be submitted
36 with evidence of financial responsibility, in a sum established by the
37 Administrator by regulation.

38 **§ 76118. Inspection and Entry.**

39
40 The Administrator may inspect all USTs at reasonable times to take corrective action or
41 to ensure compliance with this Chapter and the rules and regulations enacted pursuant hereto.
42 The Administrator's authority to inspect shall include, but is not limited, to the following:

1
2 (a) Requesting and obtaining from any owner or operator and deliverer and
3 guarantor of a UST, information relating to such tanks, their associated
4 equipment, and their contents;

5
6 (b) Conducting any study or performance of monitoring, and testing of tanks,
7 their associated equipment, or surrounding soils, air, surface water, or
8 groundwater;

9
10 (c) Inspecting and copying all records relating to the USTs;

11
12 (d) Inspecting and obtaining samples of regulated substances contained in the
13 USTs; and

14
15 (e) Taking corrective action or performing site assessment activities at the
16 location of the UST.

17 **§ 76119. Confidentiality of Records.**

18
19 Reports and records submitted to the Agency by any person on the ownership,
20 installation, or operation of underground storage tanks or tank systems shall be made
21 available for inspection by the public during established office hours except as provided in
22 this section. Upon a showing satisfactory to the Agency that public disclosure of records,
23 reports, or information, or a particular part thereof, to which the agency's representative has
24 access to under this section would divulge information entitled to protection under Guam's
25 Sunshine Reform Act of 1999, the Agency shall consider the information or particular
26 portion thereof to be confidential. No confidential information secured pursuant to this
27 section by any official or employee of the Agency within the scope of and of the official's or
28 employee's employment in the prevention, control, or abatement of releases from
29 underground storage tanks or tank systems, shall be disclosed by the official or employee
30 with following exceptions: the document or information may be disclosed to officers,
31 employees, or authorized representatives of the territory or of the United States, including
32 county government entities, who have been charged with carrying out this chapter or Subtitle
33 I of the federal Resource Conservation and Recovery Act, or when relevant in any
34 proceeding under this chapter. Where such information constitutes confidential business
35 information under federal law, it shall be submitted as such to federal entities.

36 **§ 76120. Notice.**

37
38 Any notice or other official correspondence affecting the rights of any person under this
39 Chapter shall be delivered by personal service, or sent by registered mail with a return receipt to
40 the address of such person as shown by the Agency records. The return receipt, signed by
41 addressee, or his/her agent, shall be conclusive proof of delivery.

1 **§ 76121. Hearings.**

2
3 (a) Any person who received an order from the Administrator pursuant to this
4 Chapter or any person whose permit application is disapproved by the
5 Administrator may, within fifteen (15) calendar days after receipt thereof, file
6 with the Board a notice of intent to appeal and a verified petition describing the
7 basis of such appeal.

8
9 (b) The Board shall, not more than sixty (60) days after receipt of such notice of
10 intent to appeal, hold a public hearing at which the appellant may appear and
11 present evidence supporting the petition.

12
13 (c) The Board may administer oaths and to issue subpoenas to compel the
14 attendance of witnesses and the production of evidence in all such hearings.

15
16 (d) The Board shall affirm, modify, or revoke the action appealed and shall notify
17 the appellant of its decision not more than thirty (30) days after the hearing. Said
18 notice shall be in writing and shall state the reasons for the decision.

19
20 (e) Any person may appeal such decision by filing a verified petition in Superior
21 Court of Guam within ten (10) days after he/she receives the notice required by
22 Subsection (d) hereof. The petitioner shall make a transcript of the proceeding at
23 his/her expense.

24 **§ 76122. Injunction.**

25
26 The Administrator may, in addition to the other powers conferred on him/her by this
27 Chapter, file an action in the Superior Court of Guam to immediately restrain any violation or
28 threatened violation of this Chapter or the rules and regulations enacted pursuant hereto.
29

30 **§ 76123. Applicability to Government Agencies.**

31
32 All agencies of the Government of Guam and of the Government of the United States
33 shall comply with all provisions of this Chapter including permit requirements with the
34 exception of §§76114 and 76117(d).

35 **§ 76124. Penalties.**

36
37 (a) A person who violates any provisions of this Chapter, or rules or
38 regulations enacted pursuant hereto, or who refuses or neglects to comply with an
39 order issued by the Administrator to require compliance with this Chapter, shall
40 pay the Agency a civil penalty up to eleven thousand dollars (\$11,000) for each
41 tank for each day of each violation.
42

1 (b) Any person with an interest that may be adversely affected by a violation
2 of this Chapter may intervene as a matter of right in any civil action brought by
3 the Administrator to require compliance with this Chapter.
4

5 (c) A person who knowingly fails to notify the Administrator pursuant to
6 §§76105 or 76112 or who make any false statement or representation in any UST
7 notification, permit application, or other document filed, maintained, or used for
8 compliance with this Chapter shall be guilty of a misdemeanor and may be
9 subject to imprisonment for up to twelve (12) months and fined up to eleven
10 thousand dollars (\$11,000) per day for each violation, or both.
11

12 (d) Any person who denies, obstructs, or hampers the entrance, inspection, or
13 conduct of release response activity by a representative of the Agency at any
14 building, place, site, facility, vehicle, or structure that the representative is
15 authorized to enter or inspect or who fails to provide information requested by the
16 Agency representative as pursuant to §76110 may be fined not more than five
17 hundred dollars (\$500.00) for every day he denies, obstructs or hinders the
18 acquisition of, or fails to provide, the information requested, as determined in a
19 civil action in the Superior Court of Guam.
20

21
22 **Section 2.**
23

24 **§ 76125. Appropriation.** The sum of Twenty-Five Thousand Dollars (\$25,000.00)
25 is hereby appropriated from the General Fund to the UST-LUST Fund.
26

27 **§ 76126. Reserved.**
28

29 **§ 76127. Reserved.**
30
31
32
33



COMMITTEE ON RULES

I Mina'Trenta na Liheslaturan Guåhan • 30th Guam Legislature

155 Hesler Place, Hagatña, Guam 96910 • tel: (671)472-7679 • fax: (671)472-3547 • roryforguam@gmail.com

**SENATOR
RORY J.
RESPICIO
CHAIRPERSON**

March 23, 2009

**SENATOR
Judith P. Guthertz
VICE
CHAIRPERSON**

Memorandum

**MAJORITY
MEMBERS:**

**Judith T. Won Pat
SPEAKER**

**Benjamin J. F. Cruz
VICE SPEAKER**

**Tina Rose Muña Barnes
LEGISLATIVE SECRETARY**

**Thomas C. Ada
SENATOR**

**Frank B. Aguon, Jr.
SENATOR**

**Adolpho B. Palacios, Sr.
SENATOR**

**Vicente C. Pangelinan
SENATOR**

**Matthew Rector
SENATOR**


**MINORITY
MEMBERS:**

**Frank F. Blas, Jr.
SENATOR**

**James V. Espaldon
SENATOR**

To: Clerk of the Legislature
I Mina'Trenta Na Liheslaturan Guåhan

Attorney Therese M. Terlaje, Legislative Legal Counsel
I Mina'Trenta Na Liheslaturan Guåhan

From: Senator Judith P. Guthertz 
Acting Chairperson, Committee on Rules
I Mina'Trenta Na Liheslaturan Guåhan

Subject: Referral of Bill No. 80(COR)


As Chairperson of the Committee on Rules, I am forwarding my referral of Bill No. 80(COR).

Please ensure that the subject Bill is referred, in my name, to the respective Chairperson, as shown on the attachment. I am also requesting that the same be forwarded to all Senators of *I Mina'Trenta Na Liheslaturan Guåhan*.

Should you have any questions, please contact Elaine Tajalle or Stephanie Mendiola from my office.

Si Yu'os Ma'åse.

Attachment

2009 MAR 24 AM 9:42 

Bill/Resolution Introduction/Referral

Bill	Sponsor	Description	Date Introduced	Date Referred	Committee Referred
80(COR)	T. C. Ada	An Act to repeal and re-enact Chapter 76 of Title 10, Guam Code Annotated, relative to the storage of hazardous materials.	3/23/09	3/23/09	Committee on Rules, Natural Resources, Federal, Foreign, and Micronesian Affairs

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

AGENDA

PUBLIC HEARING - THURSDAY, APRIL 16, 2009
Public Hearing Room · I Liheslatura · Hagåtña, Guam

9:00 AM - 12:00 PM

- ~~Appointment of Florida M. Sanchez to serve as a Member of the Guam Environmental Protection Agency Board of Directors. [***NOTE: This item will be addressed at 1:00 P.M.***]~~
- ~~Bill No. 3 (J.T. Won Pat, Ed.D.) - An act to add a new §1127 to Chapter 1 of Title 1 of the Guam Code Annotated, relative to Senators submitting a disclosure of financial interest on any bill voted on the floor of I Liheslaturan Guåhan. [***NOTE: This item will be addressed at 1:00 P.M.***]~~
- Bill No. 4 (Ray Tenorio) - An act to add a new Chapter 14 to Title 2 Guam Code Annotated relative to refining the means of providing transparency in the legislative process by requiring that certain information be placed on the Legislative website.
- Bill No. 49 (B.J.F. Cruz / R.J. Respicio / J.P. Guthertz, DPA) - An act to repeal and re-enact Sections §1105 of Chapter 1, Title 2, and §5101 of Chapter 5, Title 3, and §6103 of Chapter 6, Title 3, of the Guam Code Annotated and to amend Sections §7105 of Chapter 7, Title 3, and §16301 (e) Article 3 of Chapter 16, Title 3, of the Guam Code Annotated, relative to amending the term of office from two years to four years and to provide for staggered terms for members of the Guam Legislature.
- ~~Bill No. 85 (J.P. Guthertz, DPA / R.J. Respicio / B.J.F. Cruz) - An act add a new § 849.4 to Article 1 of Chapter 8 of Title 1 of the Guam Code Annotated, to name the old Legislative/Island Court Building the "Speaker Carlos Pangelinan Taitano Building," and to provide for an appropriate display of memorabilia of Speaker Taitano and other early Guam pioneers within the building. [***NOTE: At the request of the Sponsor, the consideration of Bill No. 85 has been *POSTPONED* until further notice.***]~~

1:00 PM - 3:00 PM

- Bill No. 3 (J.T. Won Pat, Ed.D.) - An act to add a new §1127 to Chapter 1 of Title 1 of the Guam Code Annotated, relative to Senators submitting a disclosure of financial interest on any bill voted on the floor of I Liheslaturan Guåhan.
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Testimony should be addressed to Senator Rory J. Respicio, Chairperson, and may be submitted via hand-delivery to our office or our mailbox at the Main Legislature Building at 155 Hesler Place, Hagatna, Guam 96910, via e-mail to roryforguam@gmail.com, or via facsimile to (671) 472-3547. Individuals requiring special accommodations, auxiliary aids, or services shall contact and submit their request to Stephanie Mendiola or Elaine Tajalle at our office. We look forward to your attendance and participation.

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS

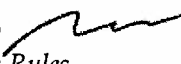


I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 9, 2009

MEMORANDUM

To: All Senators / All Members
Committee on Rules, Natural Resources, Federal, Foreign, & Micronesian Affairs

From: Senator Rory J. Respicio 
Chairperson, Committee on Rules

Subject: First Notice – Public Hearing
Thursday, April 16, 2009 – 9:00 AM

Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs will be conducting a Public Hearing on **Thursday, April 16, 2009 at 9:00 AM** in the Legislature's Public Hearing Room. This hearing is scheduled to receive public testimony on the following items:

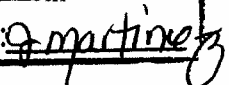
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GUAM LEGISLATURE
REPRODUCTION/MAIL ROOM

DATE: 4/9/09

TIME: 4:05 PM

RECEIVED BY: 



1:00 PM – 3:00 PM

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Testimony should be addressed to Senator Rory J. Respicio, Chairperson, and may be submitted via hand-delivery to our office or our mailbox at the Main Legislature Building at 155 Hesler Place, Hagatna, Guam 96910, via e-mail to roryforguam@gmail.com, or via facsimile to (671) 472-3547. Individuals requiring special accommodations, auxiliary aids, or services shall contact and submit their request to Stephanie Mendiola or Elaine Tajalle at our office.

For further information, please contact our office at 472-7679.
I look forward to your attendance and participation.

Si Yu'os Ma'ãse'!

cc: Sergeant-At-Arms/Protocol/AV
Clerk of the Legislature

SENATOR RORY J. RESPICIO

MAJORITY LEADER

CHAIRMAN, COMMITTEE ON RULES

CHAIRMAN, COMMITTEE ON NATURAL RESOURCES
& FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I MINA' TRENTA NA LIHESLATURAN GUÅHAN
THIRTIETH GUAM LEGISLATURE

PRESS RELEASE

FIRST NOTICE OF PUBLIC HEARING

THURSDAY, APRIL 16, 2009 – 9:00 AM

(April 9, 2009 – FOR IMMEDIATE RELEASE) Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs will be conducting a Public Hearing on **Thursday, April 16, 2009 at 9:00 AM** in the Legislature's Public Hearing Room. This hearing is scheduled to receive public testimony on the following items:

9:00 AM – 12:00 PM

- **Appointment of Florida M. Sanchez** to serve as a Member of the Guam Environmental Policy Agency Board.
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1:00 PM – 3:00 PM

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- **Bill No. 88** (J.T. Won Pat, Ed.D.) - An act to amend Section 1 of Public Law 29-84, relative to the David T. Lintiacio Plan Nursery Building.

Testimony should be addressed to Senator Rory J. Respicio, Chairperson, and may be submitted via hand-delivery to our office or our mailbox at the Main Legislature Building at 155 Hesler Place, Hagatna, Guam 96910, via e-mail to rorryforguam@gmail.com, or via facsimile to (671) 472-3547. Individuals requiring special accommodations, auxiliary aids, or services shall contact and submit their request to Stephanie Mendiola or Elaine Tajalle at our office. We look forward to your attendance and participation.

- 30 -

For further information, please contact the Office of Senator Rory J. Respicio at 472-7679.

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS

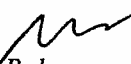


I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 13, 2009

MEMORANDUM

To: All Senators / All Members
Committee on Rules, Natural Resources, Federal, Foreign, & Micronesian Affairs

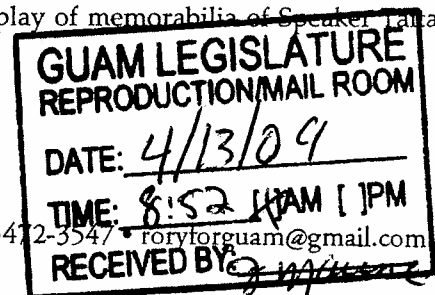
From: Senator Rory J. Respicio 
Chairperson, Committee on Rules

Subject: Second Notice – Public Hearing
Thursday, April 16, 2009 – 9:00 AM

Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs will be conducting a Public Hearing on **Thursday, April 16, 2009 at 9:00 AM** in the Legislature's Public Hearing Room. This hearing is scheduled to receive public testimony on the following items:

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RJR to All Sens
RE: 2009.04.16 PH Notice2
April 13, 2009
Page 2 of 2

1:00 PM – 3:00 PM

- **Appointment of Florida M. Sanchez** to serve as a Member of the Guam Environmental Policy Agency Board.
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I look forward to your attendance and participation.

Si Yu'os Ma'åse'!

cc: Sergeant-At-Arms/Protocol/AV
Clerk of the Legislature

SENATOR RORY J. RESPICIO

MAJORITY LEADER

CHAIRMAN, COMMITTEE ON RULES

CHAIRMAN, COMMITTEE ON NATURAL RESOURCES
& FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I MINA' TRENTA NA LIHESLATURAN GUÅHAN
THIRTIETH GUAM LEGISLATURE

PRESS RELEASE

SECOND NOTICE OF PUBLIC HEARING

THURSDAY, APRIL 16, 2009 – 9:00 AM

(April 13, 2009 – FOR IMMEDIATE RELEASE) Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs will be conducting a Public Hearing on Thursday, April 16, 2009 at 9:00 AM in the Legislature's Public Hearing Room. This hearing is scheduled to receive public testimony on the following items:

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- **Bill No. 88** (J.T. Won Pat, Ed.D.) - An act to amend Section 1 of Public Law 29-84, relative to the David T. Limtiaco Plan Nursery Building.

Testimony should be addressed to Senator Rory J. Respicio, Chairperson, and may be submitted via hand-delivery to our office or our mailbox at the Main Legislature Building at 155 Hesler Place, Hagatna, Guam 96910, via e-mail to rorryforguam@gmail.com, or via facsimile to (671) 472-3547. Individuals requiring special accommodations, auxiliary aids, or services shall contact and submit their request to Stephanie Mendiola or Elaine Tajalle at our office. We look forward to your attendance and participation.

- 30 -

For further information, please contact the Office of Senator Rory J. Respicio at 472-7679.

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Mr. George Lai, Board Chairperson Ms. Lorilee Crisostomo, Administrator	Stephanie E. Mendiola
COMPANY:	DATE:
Guam Environmental Protection Agency	Monday, April 13, 2009
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
(671) 472-9402 475-8007	4
PHONE NUMBER:	SENDER'S PHONE NUMBER:
(671) 475-1658	(671) 472-7679
RE:	
Notice of Public Hearing Thursday, April 16, 2009 – 1:00 PM	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

Good Afternoon, Mr. Lai & Ms. Crisostomo:

Attached are your letters of invitation from Senator Rory J. Respicio for the Public Hearing scheduled for this Thursday, April 16, 2009 at 1:00 PM in the Public Hearing Room at the Main Legislature Building in Hagåtña. For your easy reference, attached is a copy of the day's Agenda.

Should you have any questions or concerns, please don't hesitate to contact our office at (671) 472-7679.

Thank you,

Stephanie Mendiola

SENATOR RORY J. RESPICIO

MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 13, 2009

VIA FACSIMILE

(671) 477-9402

Mr. George Lai

Chairperson, Board of Directors
Guam Environmental Protection Agency
P.O. Box 22439 GMF
Barrigada, Guam 96921

RE: Notice of Public Hearing – Thursday, April 16, 2009 – 1:00 PM

Hafa Adai! Mr. Lai:

Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesia Affairs will conduct a Public Hearing on **Thursday, April 16, 2009 at 1:00 P.M.** in the Legislature's **Public Hearing Room**. The items on the afternoon Agenda are as follows:

- **Appointment of Florida M. Sanchez** to serve as a Member of the Guam Environmental Protection Agency Board of Directors.
- **Bill No. 70** (B.J.F. Cruz) - An act to amend Section 2 of Public Law 29-104; relative to extending the date of submission for an independent study and investigation of radiation leakage into Apra Harbor.
- **Bill No. 80** (T.C. Ada) - An Act to repeal and re-enact Chapter 76 of Title 10, Guam Code Annotated, relative to the storage of hazardous materials.
- **Bill No. 88** (J.T. Won Pat, Ed.D.) - An act to amend Section 1 of Public Law 29-84, relative to the David T. Limtiaco Plan Nursery Building.

In your capacity as the Chairperson of the Board of Directors for the Guam Environmental Protection Agency, you are hereby invited to testify on any/all of the aforementioned items. Testimony should be addressed to Senator Rory J. Respicio, Chairperson, Committee on Rules, Natural Resources, and Federal, Foreign & Micronesia Affairs; and may be hand-delivered or mailed to the Office of Senator Rory J. Respicio at 155 Hesler Place, Hgatna, Guam 96910; e-mailed to roryforguam@gmail.com; or faxed to (671) 472-3547. For further information, please contact my office at 472-7679. I look forward to your attendance and participation.

Very truly yours,


Rory J. Respicio

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Libeslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 13, 2009

VIA FACSIMILE & E-MAIL

(671) 477-9402

Lorilee.Crisostomo@guamepa.net

Ms. Lorilee Crisostomo

Administrator

Guam Environmental Protection Agency

P.O. Box 22439 GMF

Barrigada, Guam 96921

RE: Notice of Public Hearing – Thursday, April 16, 2009 – 1:00 PM

Hafa Adai! Ms. Crisostomo:

Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesia Affairs will conduct a Public Hearing on **Thursday, April 16, 2009 at 1:00 P.M.** in the Legislature's **Public Hearing Room**. The items on the afternoon Agenda are as follows:

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- **Bill No. 88** (J.T. Won Pat, Ed.D.) - An act to amend Section 1 of Public Law 29-84, relative to the David T. Limtiaco Plan Nursery Building.

In your capacity as the Administrator of the Guam Environmental Protection Agency, you are hereby invited to testify on any/all of the aforementioned items. Testimony should be addressed to Senator Rory J. Respicio, Chairperson, Committee on Rules, Natural Resources, and Federal, Foreign & Micronesia Affairs; and may be hand-delivered or mailed to the Office of Senator Rory J. Respicio at 155 Hesler Place, Hgatna, Guam 96910; e-mailed to roryforguam@gmail.com; or faxed to (671) 472-3547. For further information, please contact my office at 472-7679. I look forward to your attendance and participation.

Very truly yours,


Rory J. Respicio

SENATOR RORY J. RESPICIO

MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

AGENDA

PUBLIC HEARING

THURSDAY, APRIL 16, 2009

Public Hearing Room · *I Liheslatura* · Hagåtña, Guam

9:00 AM – 12:00 PM

- ~~Appointment of Florida M. Sanchez to serve as a Member of the Guam Environmental Protection Agency Board of Directors. [***NOTE: This item will be addressed at 1:00 P.M.***]~~
- **Bill No. 3** (J.T. Won Pat, Ed.D.) - An act to *add* a new §1127 to Chapter 1 of Title 1 of the Guam Code Annotated, relative to Senators submitting a disclosure of financial interest on any bill voted on the floor of *I Liheslaturan Guåhan*.
- **Bill No. 4** (Ray Tenorio) - An act to *add* a new Chapter 14 to Title 2 Guam Code Annotated relative to refining the means of providing transparency in the legislative process by requiring that certain information be placed on the Legislative website.
- **Bill No. 49** (B.J.F. Cruz / R.J. Respicio / J.P. Guthertz, DPA) - An act to repeal and re-enact Sections §1105 of Chapter 1, Title 2, and §5101 of Chapter 5, Title 3, and §6103 of Chapter 6, Title 3, of the Guam Code Annotated and to amend Sections §7105 of Chapter 7, Title 3, and §16301 (e) Article 3 of Chapter 16, Title 3, of the Guam Code Annotated, relative to amending the term of office from two years to four years and to provide for staggered terms for members of the Guam Legislature.
- **Bill No. 85** (J.P. Guthertz, DPA / R.J. Respicio / B.J.F. Cruz) - An act add a new § 849.4 to Article 1 of Chapter 8 of Title 1 of the Guam Code Annotated, to name the old Legislative/Island Court Building the "Speaker Carlos Pangelinan Taitano Building," and to provide for an appropriate display of memorabilia of Speaker Taitano and other early Guam pioneers within the building.

1:00 PM – 3:00 PM

- **Appointment of Florida M. Sanchez** to serve as a Member of the Guam Environmental Protection Agency Board of Directors.
- **Bill No. 70** (B.J.F. Cruz) - An act to amend Section 2 of Public Law 29-104; relative to extending the date of submission for an independent study and investigation of radiation leakage into Apra Harbor.
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- **Bill No. 88** (J.T. Won Pat, Ed.D.) - An act to amend Section 1 of Public Law 29-84, relative to the David T. Lintiaco Plan Nursery Building.

Testimony should be addressed to Senator Rory J. Respicio, Chairperson, and may be submitted via hand-delivery to our office or our mailbox at the Main Legislature Building at 155 Hesler Place, Hagatna, Guam 96910, via e-mail to roryforguam@gmail.com, or via facsimile to (671) 472-3547. Individuals requiring special accommodations, auxiliary aids, or services shall contact and submit their request to Stephanie Mendiola or Elaine Tajalle at our office. We look forward to your attendance and participation.

MESSAGE CONFIRMATION

APR-13-2009 01:37 PM MON

FAX NUMBER :
NAME :

NAME/NUMBER : 4758007 *Guam EPA*
PAGE : 4
START TIME : APR-13-2009 01:36PM MON
ELAPSED TIME : 00' 39"
MODE : STD ECM
RESULTS : [O.K]

155 Hotel Place • Hagåtña, Guam 96910 • (671)472-7679 • Fax: (671)472-3547 • roryforrory@gmail.com

Stephanie Mendola
Thank you,
Stephanie Mendola

Good Afternoon, Mr. Lai & Ms. Cristostomo:
Attached are your letters of invitation from Senator Rory J. Respicio for the Public Hearing scheduled for this Thursday, April 16, 2009 at 1:00 PM in the Public Hearing Room at the Main Legislature Building in Hagåtña. For your easy reference, attached is a copy of the day's Agenda. Should you have any questions or concerns, please don't hesitate to contact our office at (671) 472-7679.

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

RE: Notice of Public Hearing
Thursday, April 16, 2009 - 1:00 PM

PHONE NUMBER: (671) 475-1658
SENDER'S PHONE NUMBER: (671) 472-7679

FAX NUMBER: (671) ~~472-8007~~ *476-8007*
TOTAL NO. OF PAGES INCLUDING COVER: 4

COMPANY: Guam Environmental Protection Agency
DATE: Monday, April 13, 2009

TO: Mr. George Lai, Board Chairperson
Ms. Lorette Cristostomo, Administrator
FROM: Stephanie F. Mendola

FACSIMILE TRANSMITTAL SHEET

CHAIRMAN
Committee on Rules, Natural Resources
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



SENATOR RORY J. RESPICIO
Majority Leader

I Mina Tenta na Libestaturan Guahan
THIRTIETH GUAM LEGISLATURE

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Libeslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 15, 2009

VIA FACSIMILE & E-MAIL

(671) 649-0145

peterjohn.camacho@gmha.org

Mr. PeterJohn D. Camacho

Administrator

Guam Memorial Hospital Authority

850 Gov. Carlos G. Camacho Rd.

Tamuning, Guam 96913

RE: Notice of Public Hearing – Thursday, April 16, 2009 – 1:00 PM

Hafa Adai! Mr. Camacho:

Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs will conduct a Public Hearing on **Thursday, April 16, 2009 at 1:00 P.M.** in the Legislature's **Public Hearing Room**. Among the Agenda items up for public consideration, of which you may be particularly interested in, is **Bill No. 80 (sponsored by T.C. Ada) - AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS**. A copy of Bill No. 80 can be found on *I Liheslatura's* website at www.guamlegislature.org.

I apologize for the delayed notice, but would like to invite you to testify on any/all of the items on the day's Agenda, a copy of which is attached for your easy reference. Testimony should be addressed to Senator Rory J. Respicio, Chairperson, Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs; and may be hand-delivered or mailed to the Office of Senator Rory J. Respicio at 155 Hesler Place, Hgatna, Guam 96910; e-mailed to roryforguam@gmail.com; or faxed to (671) 472-3547. Written testimony will be accepted until Monday, April, 27, 2009 at 5:00 PM.

For further information, please contact my office at 472-7679. I look forward to your attendance and participation.

Very truly yours,


Rory J. Respicio

Attachment (1)

SENDING REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.
Pr. 15 2009 05:23PM

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

YOUR LOGO : SEN.BARNES00
YOUR FAX NO. : 4723400

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	6490145	Apr. 15 05:22PM	01'10	SND	02	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.
Pr. 15 2009 05:23PM

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 15, 2009

VIA FACSIMILE

(671) 649-5615

Mr. Douglas Dean

General Manager

South Pacific Petroleum Company

816 N. Marine Corps Drive

Eva Building, Second Floor

Tamuning, Guam 96913

RE: Notice of Public Hearing – Thursday, April 16, 2009 – 1:00 PM

Hafa Adai! Mr. Dean:

Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs will conduct a Public Hearing on **Thursday, April 16, 2009 at 1:00 P.M.** in the Legislature's **Public Hearing Room**. Among the Agenda items up for public consideration, of which you may be particularly interested in, is **Bill No. 80 (sponsored by T.C. Ada) - AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS**. A copy of Bill No. 80 can be found on *I Liheslatura's* website at www.guamlegislature.org.

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Very truly yours,


Rory J. Respicio

Attachment (1)

SENDING REPORT

Apr. 15 2009 05:27PM

YOUR LOGO : SEN. BARNES00
YOUR FAX NO. : 4723400

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	6495615	Apr. 15 05:26PM	01'12	SND	02	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 15, 2009

VIA FACSIMILE

(671) 648-3789

Mr. Gennaro Cioffi
Country Manager
Mobil Oil Guam, Inc.
642 E. Marine Corps Dr.
Hagatna, Guam 96932

RE: Notice of Public Hearing – Thursday, April 16, 2009 – 1:00 PM


Hafa Adai! Mr. Cioffi:

Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs will conduct a Public Hearing on **Thursday, April 16, 2009 at 1:00 P.M.** in the Legislature's **Public Hearing Room**. Among the Agenda items up for public consideration, of which you may be particularly interested in, is **Bill No. 80 (sponsored by T.C. Ada) - AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS**. A copy of Bill No. 80 can be found on *I Liheslatura's* website at www.guamlegislature.org.

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Very truly yours,


Rory J. Respicio

Attachment (1)

SENDING REPORT

Apr. 15 2009 05:25PM

YOUR LOGO : SEN.BARNES00
YOUR FAX NO. : 4723400

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	6483789	Apr. 15 05:23PM	01'18	SND	02	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

SENATOR RORY J. RESPICIO

MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 15, 2009

VIA FACSIMILE & E-MAIL

(671) 366-~~3602~~ 6060

Joycei.martratt@andersen.af.mil

Brig. General Philip M. Ruhlman

Commander, 36th Wing

Unit 14003

APO AP 96543-4003

RE: Notice of Public Hearing – Thursday, April 16, 2009 – 1:00 PM

Hafa Adai! Brig. General Ruhlman:

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For further information, please contact my office at 472-7679. I look forward to your attendance and participation.

Very truly yours,


Rory J. Respicio

Attachment (1)

SENATOR RORY J. RESPICIO

MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 15, 2009

VIA FACSIMILE

(671) 477-1852

The Honorable Alberto C. Lamorena III

Guam Judicial Center
120 West O'Brian Drive
Hagåtña, Guam 96910

RE: Notice of Public Hearing – Thursday, April 16, 2009 – 1:00 PM

Hafa Adai! Presiding Judge Lamorena:

Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs will conduct a Public Hearing on **Thursday, April 16, 2009 at 1:00 P.M.** in the Legislature's **Public Hearing Room**. Among the Agenda items up for public consideration, of which you may be particularly interested in, is **Bill No. 80 (Sponsored by T.C. Ada) - AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS**. A copy of Bill No. 80 can be found on *I Liheslatura's* website at www.guamlegislature.org.

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Very truly yours,


Rory J. Respicio

Attachment (1)

SENDING REPORT

Apr. 15 2009 05:44PM

YOUR LOGO : SEN. BARNES00
YOUR FAX NO. : 4723400

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	4771852	Apr. 15 05:43PM	01'16	SND	02	OK

(LAMORENA)

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

SENATOR RORY J. RESPICIO

MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina'Trenta na Liheslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 15, 2009

VIA FACSIMILE

(671) 649-8565

Ms. Mary Torre

Chairperson, Board of Directors
Guam Hotel & Restaurant Association
P.O. Box 8565
Tamuning, Guam 96931

RE: Notice of Public Hearing – Thursday, April 16, 2009 – 1:00 PM

Hafa Adai! Ms. Torre:

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For further information, please contact my office at 472-7679. I look forward to your attendance and participation.

Very truly yours,


Kory J. Respicio

Attachment (1)

SENDING REPORT

Apr. 15 2009 05:41PM

YOUR LOGO : SEN. BARNES00
YOUR FAX NO. : 4723400

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	6498565	Apr. 15 05:40PM	01'06	SND	02	OK

(GHRA)

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

MESSAGE CONFIRMATION

APR-16-2009 10:14 AM THU

FAX NUMBER :
NAME :

NAME/NUMBER : 3666060
PAGE : 2
START TIME : APR-15-2009 05:37PM WED
ELAPSED TIME : 00'52"
MODE : STD ECM
RESULTS : [O.K]

SENATOR RORY J. RESPICIO
MAJORITY LEADER

CHAIRMAN
COMMITTEE ON RULES, NATURAL RESOURCES
AND FEDERAL, FOREIGN & MICRONESIAN AFFAIRS



I Mina Trenta na Libeslaturan Guåhan
THIRTIETH GUAM LEGISLATURE

April 15, 2009

VIA FACSIMILE & E-MAIL

(671) 366-~~3682~~ 6060
royce.martratt@andersen.af.mil

Brig. General Philip M. Ruhlman
Commander, 36th Wing
Unit 14003
APO AP 96543-4003

RE: Notice of Public Hearing - Thursday, April 16, 2009 - 1:00 PM

Hafa Adai! Brig. General Ruhlman:

Please be advised that the Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs will conduct a Public Hearing, on Thursday, April 16, 2009 at 1:00 P.M., in the Legislature's **Public Hearing Room**. Among the Agenda items up for public consideration, of which you may be particularly interested in, is **Bill No. 80 (sponsored by T.C. Ada) - AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS**. A copy of Bill No. 80 can be found on *Lihestatu*'s website at www.guamlegislature.org

I apologize for the delayed notice, but would like to invite you to testify on any/all of the items on the day's Agenda, a copy of which is attached for your easy reference. Testimony should be addressed to Senator Rory J. Respicio, Chairperson, Committee on Rules, Natural Resources, and Federal, Foreign & Micronesian Affairs; and may be hand-delivered or mailed to the Office of Senator Rory J. Respicio at 155 Hesler Place, Hgatna, Guam 96910; e-mailed to rorjfor Guam@gmail.com; or faxed to (671) 472-3547. Written testimony will be accepted until Monday, April, 27, 2009 at 5:00 PM.

For further information, please contact my office at 472-7679. I look forward to your attendance and participation.

Very truly yours,


Rory J. Respicio

Attachment (1)

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (First) REGULAR SESSION

Bill No. 80(COR)

Introduced by:

T.C. Ada 

**AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF
TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO
THE STORAGE OF HAZARDOUS MATERIALS.**

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Chapter 76, Title 10, Guam Code Annotated is repealed and re-enacted to read:

**“CHAPTER 76
UNDERGROUND STORAGES OF REGULATED
SUBSTANCES**

2009 MAR 23 AM 8:15 m.c

§ 76101. Title. This Chapter shall be known as the Underground Storage of Regulated Substances Act.

§76102. Statement of Purpose. The purpose of this Chapter is to:

- (a) Establish a program to prevent contamination from substances stored underground;
- (b) Ensure that newly constructed underground storage tanks meet appropriate standards;
- (c) Ensure that existing tanks be properly maintained, inspected, and tested by licensed and certified professionals;
- (d) Enact and establish regulations, guidelines, standards, and policies that ensure consistent cleanup of regulated substances and mitigation of the damage they cause.

§ 76103. Definitions.

- (a) **Administrator** means the Administrator of the Guam Environmental Protection Agency.
- (b) **Agency** means the Guam Environmental Protection Agency.

1
2 (c) **Board** means the Board of Directors of the Guam Environmental Protection
3 Agency.
4

5 (d) **CERCLA** means Comprehensive Environmental Response, Compensation,
6 and Liability Act, commonly called Superfund, which was enacted by congress in
7 December 11, 1980 and amended by Superfund Amendments and Reauthorization
8 Act (SARA) on October 17, 1986.
9

10 (e) **Corrective Action** means the investigation and cleanup of contamination
11 from solid and hazardous waste sites and includes action taken to minimize or
12 mitigate the impact of a release from an Underground Storage Tank (UST) or tank
13 system.
14

15 (f) **Gathering Lines** means any pipelines, equipment, facility, or building used in
16 the transportation of oil or gas during oil or gas production or gathering
17 operations.
18

19 (g) **Guarantor** means any person, other than the owner or operator, who provides
20 evidence of financial responsibility for the UST.
21

22 (h) **Hazardous Substance Underground Storage Tank or Hazardous**
23 **Substance Underground Storage Tank System** means a UST or tank system
24 that contains a hazardous substance defined in Section 101(14) of the federal
25 Comprehensive Environmental Response, Compensation, and Liability Act
26 (CERCLA) of 1980, as amended, but not including any substance regulated as a
27 hazardous waste under Subtitle C of the federal Resource Conservation and
28 Recovery Act (RCRA), as amended, or any mixture of such substances and
29 petroleum, and which is not a petroleum UST or tank system.
30

31 (i) **Installation** means to add or replace equipment.
32

33 (j) **Installation Permit** means a written approval from the Administrator to
34 construct, install, or put into place, a UST system.
35

36 (k) **Maintenance** means the operational upkeep to prevent a UST system from
37 releasing product.
38

39 (l) **Motor Fuel** means petroleum or petroleum-based substance that is motor
40 gasoline, aviation gasoline, No.1 or No.2 diesel fuel, any grade of gasohol, any
41 grade of ethanol, or any grade of bio-diesel and that is used to operate a motor
42 engine.
43

44 (m) **Operate** means to control or direct the function of a UST.
45

1 (n) **Operator** means any person in control of, or who is responsible for, the daily
2 operation of a UST.

3
4 (o) **Owner** shall mean:

5
6 (1) In the case of a UST system in use on November 8, 1984, or brought into
7 use on or after that date, any person who owns a UST system used for the storage, use
8 or dispensing of regulated substances; and

9
10 (2) In the case of a UST system in use before November 8, 1984, but no
11 longer in use after that date, any person who owned such UST system immediately
12 before the discontinuation of its use.

13
14 (p) **Permit** means Installation Permit.

15
16 (q) **Person** means an individual, trust firm, corporation, partnership, consortium,
17 joint venture, joint stock company, political subdivision of a state, any interstate
18 body, commercial entity, association, or agency, department, instrumentality of
19 the Federal government or the government of Guam, including autonomous
20 agencies or any other legal entity.

21
22 (r) **Petroleum Marketing Facilities** means all facilities at which petroleum is
23 produced or refined and all facilities from which petroleum is sold or transferred
24 to other petroleum marketers or to the public.

25
26 (s) **Pipe or Piping** means a hollow cylinder or the tubular conduit constructed of
27 non-earthen materials. **Pipe or Piping** includes elbows, couplings, unions, valves,
28 or other inline fixtures that contain and convey regulated substances from a UST
29 to a dispenser.

30
31 (t) **Pipeline Facility** (Including gathering lines) means new and existing pipe
32 rights-of-ways and any associated equipment, facilities, or buildings.

33
34 (u) **RCRA** means the Solid Waste Disposal Act of 1980 as amended by the
35 Resource Conservation and Recovery Act of 1984, as amended. (*Public Law 87-*
36 *272, Title II, §9001, as added Public Law 98-616, Title VI, §601(a), November 8,*
37 *1984, 98 Stat. 3277, and amended Public Law 99-499, Title II, §205(a), October*
38 *17, 1986, 100 Stat. 1696; Public Law 102-508, Title III, §302, October 24, 1992,*
39 *106 Stat. 3307; Public Law 103-429, §7(d), October 31, 1994, 108 Stat. 4389;*
40 *Public Law 109-58, Title XV, §1532(a), 1533(1), August 8, 2005, 119 Stat. 1104,*
41 *1105; 42 U.S.C. §6991c, et. Seq.) as amended, and regulations promulgated*

42 pursuant thereto.
43

1 (v) **Regulated Substance** means any element, compound, mixture, solution, or
2 substance that, when released into the environment, may create substantial danger
3 to the public health, welfare, or the environment. They include:
4

5 (1) Any substance defined in Section 101(14) of CERCLA, Public Law 96-
6 510 as amended, but not including any substance regulated as a hazardous waste
7 under Subtitle C of RCRA, also known as Public Law 94-580, as amended; or
8

9 (2) Petroleum, including crude oil or any fraction thereof, which is liquid at
10 standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7
11 pounds per square inch absolute);
12

13 (3) Any grade of gasohol, ethanol, or bio-diesel; and
14

15 (4) Any other substance as designated by the Administrator.
16

17 (w) **Release** means the spill, leak, emission, discharge, escape, leaching, or
18 disposing of a regulated substance from a UST.
19

20 (x) **Secondary Containment** refers to a component of a secondary containment
21 system and means a UST and its piping having inner and outer barriers.
22

23 (y) **Tank** means underground storage tank (UST).
24

25 (z) **Underground Storage Tank or UST** means any one (1) or combination of
26 tanks including underground pipes connected thereto, used to contain an
27 accumulation of regulated substances, and the volume of which including the
28 volume of the underground pipes connected thereto is ten per cent (10%) or more
29 beneath the surface of the ground or water.

30 **§76104. Power and Duties of the Administrator.**

31 The Administrator shall:
32

33 (a) Develop and administer a UST program for Guam pursuant to this Chapter;
34

35 (b) Provide technical assistance to local and federal agencies, and other persons,
36 and cooperate with appropriate local agencies and private organizations in
37 enforcing this Chapter;
38

39 (c) Serve as Guam's official representative for all purposes of Subtitle I of
40 RCRA, also known as Public Law 94-580 as amended, and for the purpose of any
41 Guam or federal legislation that regulates USTs;
42
43

1 (d) Enact, modify, update, repeal, and enforce rules and regulations governing
2 UST design, construction, installation, release detection and inventory control,
3 compatibility, record maintenance, reporting, corrective action, closure, and
4 financial responsibility in order to enforce this Chapter;

5
6 (e) Establish the procedures for the issuance and review of permits governing the
7 design, operation, and closure of USTs;

8
9 (f) Enact and enforce other rules and regulations as necessary to establish a UST
10 program which meets the requirements of Section 9004 of Subtitle I of RCRA;

11
12 (g) Issue, amend, rescind, and enforce orders as necessary to ensure compliance
13 with this Chapter or any rules and regulations enacted pursuant hereto, including,
14 but not limited to:

15 (1) Administrative penalty orders;

16 (2) Require corrective actions as may be necessary or appropriate to this
17 Chapter; and

18 (3) Commence civil actions in the Superior Court of Guam, including actions
19 for a temporary or permanent injunction as needed to enforce this Chapter.
20

21 (h) Establish an effective enforcement system (that includes, at a minimum, a
22 field citation program) for the prevention, control and abatement of UST
23 pollution, including specific conditions under the permit requirements and
24 delivery prohibition of product to ineligible USTs and through all appropriate
25 administrative and judicial courses of action;

26 (i) Establish a delivery prohibition program that describes, at a minimum, the
27 criteria and mechanism for prohibiting the delivery, deposit, and acceptance of
28 product to any UST system;

29 (j) Develop and establish operator training program requirements in cooperation
30 with UST owners and operators;

31 (k) Issue, continue in effect, modify, revoke, reissue, or deny permits;

32 (l) Ensure that all permit holders comply with applicable requirements mandated
33 by Federal and Guam statutes or rules; and

34 (m) Establish, accept, receive, and administer grants and other funds or fees from
35 public and private agencies including the Federal government, for carrying out
36 any purpose of this Chapter.
37
38
39
40
41
42
43
44

1 **§ 76105. Notification Requirement.**

2
3 (a) Except as otherwise provided in this section, each owner of an underground
4 storage tank shall notify the Agency in writing and shall specify the tank's age,
5 size, type, location, and use.
6

7 (b) For an underground storage tank that was taken out of operation on or before
8 January 1, 1974, regardless of whether the tank was removed from the ground, the
9 owner is exempt from giving notice.

10
11 (c) For an underground storage tank that was taken out of operation after January
12 1, 1974, but before November 8, 1984, and that was removed from the ground
13 before May 8, 1986, the owner is exempt from giving notice.

14
15 (d) For an underground storage tank that was taken out of operation after January
16 1, 1974, but before November 8, 1984, and that was not removed from the ground
17 before May 8, 1986, the owner shall specify the type and quantity of the
18 substances that were stored in the tank immediately before it was taken out of
19 operation. These requirements are in addition to the requirements for the notice
20 prescribed in Subsection A.
21

22 (e) For an underground storage tank that was taken out of operation after
23 November 8, 1984, but before December 22, 1988, the Administrator may require
24 the owner to specify the age, size, location, and use of the tank, the type and
25 quantity of the substances that were stored in the tank immediately before it was
26 taken out of operation and the date the UST ceased operation.
27

28 (f) An owner who brings an underground storage tank into operation shall meet
29 the notification requirements of this section within thirty (30) days after the tanks
30 are brought into operation.
31

32 (g) A person who sells a tank for use as an underground storage tank shall notify
33 the purchaser of the notice requirements of Subsection F.
34

35 (h) The notice required by this section shall be made of forms prescribed by the
36 Agency.

37 **§76106. Tank Standards.**

38
39 From the effective date of this Chapter until the effective date of a new UST standards
40 enacted hereunder, all new and existing USTs shall:

41
42 (a) Prevent release of stored regulated substances due to corrosion or structural
43 failure for the operational life of the tank;
44

1 (b) Be cathodically protected against corrosion, constructed of non-corrosive
2 material, or designed to prevent the release of the stored regulated substance; and
3

4 (c) Be constructed and lined with materials compatible with the substance stored.

5 **§ 76107. Secondary Containment System – Release Prevention and Release**
6 **Detection Standards.**

7
8 (a) The Administrator shall develop and implement a program that at least meets
9 the minimum requirements of the “Grant Guidelines to States for Implementing
10 the Secondary Containment Provision of the Energy Policy Act of 2005” (EPA-
11 510-R-06-001, November 2006) published by U.S. EPA and any subsequent
12 modifications thereto.
13

14 (b) The Administrator shall require secondary containment on all existing, new or
15 replaced UST and connected piping.
16

17 (c) The Administrator shall require under-dispenser containment on all motor fuel
18 dispenser systems.
19

20 (d) The Administrator shall require each existing, new, or replaced UST and
21 piping have a secondary containment system and be monitored for leaks.
22

23 **§ 76108. Delivery Prohibition Requirements.**

24
25 (a) The Administrator shall develop and implement a delivery prohibition
26 program with processes and procedures that at least meets the requirements set
27 forth in “Grant Guidelines to State for Implementing the Delivery Prohibition
28 Provision of the Energy Policy Act of 2005” (EPA-510-R-06-003, August 2006)
29 published by U.S. EPA and any subsequent modification thereto.
30

31 (b) The Administrator shall prohibit the delivery, deposit, or acceptance of
32 regulated substances to a UST for both equipment and operational violations.

33 **§ 76109. Operator Training.**

34
35 The Administrator shall develop and administer an operator training program that is at
36 least as stringent as the requirements set forth in the “Grant Guidelines to States for
37 Implementing the Operator Training Provision of the Energy Policy Act of 2005” (EPA-510-D-
38 07-002, August 2006) published by U.S. EPA and any subsequent modification thereto.
39 Operators shall participate in the UST operator training programs.

1 **§ 76110. Leak Detection and Record Maintenance.**

2
3 (a) The owner and operator of a UST shall maintain a leak detection system that
4 identifies releases dangerous to human health and the environment.

5
6 (b) The owner or operator shall maintain systematic and complete records to
7 demonstrate compliance with this Chapter and regulations enacted hereto.

8 **§ 76111. Public Participation.**

9
10 (a) Upon timely application, any person whose interests may be adversely
11 affected by a release or threatened from a UST system shall be allowed to
12 intervene as a right in any civil action when the applicant claims an interest
13 relating to the property or transaction which is subject of the action, and the
14 applicant is so situated that the disposition of the action may as a practical matter
15 impair or impede the applicant's ability to protect that interest.

16
17 (b) Any person may maintain an action for declaratory and equitable relief to
18 restrain any violation of this chapter. On a prima facia showing of a violation of
19 this chapter, a preliminary injunction shall be issued to restrain any further
20 violation of the chapter. No bond is required for an action under this subsection.

21
22 **§ 76112. Notification and Reporting Requirements on Releases.**

23
24 No later than twenty-four (24) hours after he/she suspects a release from a tank or
25 ancillary equipment has occurred, the owner and the operator of a UST shall notify the Agency
26 orally or in writing. Within fourteen (14) days after he/she suspects a leak, the owner and
27 operator shall report to the Agency in writing regarding the substance released, the quantity
28 released, the cause of the release, the time when the release occurred and the corrective action
29 taken as of the date of the report.

30 **§ 76113. Corrective Action.**

31
32 (a) The owner or operator of a UST shall stop a confirmed release within twelve
33 (12) hours of confirmation or knowledge that a release occurred. The owner and
34 operator shall take corrective action in response to a release to protect human
35 health and the environment, and shall restore the environment and the UST and/or
36 Pipeline Facility to a condition acceptable to the Administrator.

37
38 (b) The Administrator may require the owner and operator to undertake corrective
39 action, investigation, monitoring, surveying, testing, and research necessary and
40 appropriate to:
41

- 1 (1) Identify the existence and extent of the release;
2
3 (2) Identify the source and nature of the regulated substance involved;
4
5 (3) Evaluate the extent of the danger to human health, safety, welfare, and
6 the environment; and
7
8 (4) Develop and implement a corrective action plan.

9
10 (c) If the owner or operator does not take immediate action to complete actions
11 under this section and adequately complete the cleanup of a release or fails to
12 comply with an order of the Administrator, the Administrator may cleanup the
13 release or contract with a private entity to do so.
14

15 (d) If the Administrator is authorized to act under Subsection (b) here of, he/she
16 may undertake such investigation, monitoring, surveying, testing, and other
17 information gathering as he/she deems appropriate to identify the existence and
18 extent of danger to human health, safety, welfare, and the environment. In
19 addition, the Administrator may undertake or contract with a private entity to
20 undertake such planning, fiscal, economic, engineering, and other studies and
21 investigation he/she deems appropriate to plan and direct cleanup actions, and to
22 recover the costs and legal costs thereof.

23 **§ 76114. Underground Storage Tank Management Fund.**

24
25 There is hereby established a fund to be known as the Underground Storage Tank
26 Management Fund, hereinafter referred to as the UST-LUST Fund, a non-lapsing, revolving
27 fund.
28

29 (a) All fees, reimbursement, assessment, fines, forfeitures, and other funds
30 collected or received pursuant to this Chapter shall be deposited in the UST-
31 LUST Fund.
32

33 (b) The Administrator shall administer the UST-LUST Fund and make
34 disbursements from the fund:
35

- 36 (1) To fund actions authorized by §76113 of this Chapter.
37 (2) To train Agency employees in the regulation of USTs and response to
38 release of regulated substances from USTs.
39 (3) To fund the administration, purchase of equipment, supplies, and
40 payment of personnel costs arising from enforcement of this Chapter.

41 **§ 76115. Financial Responsibility.**
42

1 (a) All owners and operators of UST systems, within 180 days of the effective
2 date of this chapter, shall establish and maintain evidence of financial
3 responsibility, as provided for in this section, for taking corrective action and
4 compensating third parties for bodily injury and property damage caused by
5 accidental releases arising from the operation of underground storage tanks in at
6 least the following per occurrence amounts:
7

8 (1) For all owners or operators of petroleum underground storage tanks that
9 are located at petroleum marketing facilities or that own or operate five or
10 more tanks or that handle an average of more than 10,000 gallons of
11 petroleum per month based on annual throughput for the previous calendar
12 year, \$2,000,000.

13 (2) For all other owners or operators of petroleum underground storage
14 tanks: \$500,000.
15

16 (b) Owners or operators of petroleum underground storage tanks shall
17 demonstrate financial responsibility for taking corrective action and for
18 compensating third parties for bodily injury and property damage caused by
19 accidental release arising from the operation of petroleum underground storage
20 tanks in at least the following annual aggregate amounts:
21

22 (1) For owners or operators of four or fewer tanks, an annual aggregate
23 amount of \$1,000,000.

24 (2) For owners or operators of five or more tanks, an annual aggregate
25 amount of \$2,000,000.

26 (3) For owners and operators of 10 or more tanks, an annual aggregate
27 amount of at least \$2,000,000 or such other higher aggregate amount as set
28 forth in regulations promulgated by the Administrator.
29

30 (c) Subject to the approval of the Administrator, an owner or operator of an UST
31 may establish evidence of financial responsibility by any one, or a combination of
32 the following methods:
33

34 (1) Commercial or private insurance, including risk retention group;

35 (2) Qualification as a self-insurer;

36 (3) A guarantee, surety bond, or letter of credit; or

37 (4) Any other reasonable and economically practicable means.
38

39 (d) The Administrator shall not approve any financial responsibility method or
40 combination of methods, unless the owner or operator has demonstrated that such
41 method(s):
42

43 (1) Are valid and enforceable;

44 (2) Are issued by a provider that is qualified or licensed in Guam;

1 (3) Do not permit cancellation without allowing the Administrator to draw
2 funds;

3 (4) Shall only be directly used for corrective action and 3rd party liability
4 costs; and

5 (5) Require the provider to notify the owner or operator and the
6 Administrator of any circumstances that would impair or suspend coverage.
7

8 (e) Surety bonds shall be payable to the Guam Environmental Protection Agency,
9 to include costs and expenses of the cleanup of any release, as well as damages
10 incurred by the Government, consistent with the provisions of this chapter. Any
11 bond filed with the Agency must be issued by a bonding company authorized to
12 do business within the territory. The Guam EPA is authorized to establish a
13 special account, escrow, standby trust, or other trust or account mechanism into
14 which funds established as financial assurance may be deposited when needed.
15 Notwithstanding any other provision of law, the Administrator may retain and use
16 such amounts for the purposes for which the financial assurance was established.
17

18 (f) To qualify as a self-insurer the UST system owner or operator shall
19

20 (1) Demonstrate a tangible net worth of at least ten times:
21

22 (a) The total of the aggregate amount required in subsection (c) of this
23 section;

24 (b) The sum of the corrective action cost estimates, the current closure
25 and post-closure care cost estimates, and the amount of liability coverage
26 required under this chapter; and

27 (c) The sum of plugging and abandonment cost estimates in effect for
28 which a financial test is used to demonstrate financial responsibility
29 under this chapter.
30

31 (2) The owner or operator shall have a tangible net worth of at least
32 \$10,000,000.

33 (3) The owner or operator shall meet the requirement set forth in 40 CFR
34 280.95.
35

36 (g) The total liability of any guarantor is limited to the aggregate amount that the
37 guarantor has provided as evidence of financial responsibility to the UST system
38 owner or operator under this section. Nothing in this subsection may be construed
39 to limit any other territorial or federal statutory, contractual or common law
40 liability of a guarantor to its owner or operator including, but not limited to, the
41 liability of such guarantors for bad faith either in negotiating or in failing to
42 negotiate the settlement of any claim. For the purpose of this subsection, the term
43 "guarantor" means any person, other than the owner or operator, who provides
44 evidence of financial responsibility for an owner or operator pursuant to this
45 section.

1
2 (h) Any claim costs incurred by the Agency for taking emergency, preventive,
3 corrective or enforcement action may be filed directly against the bonding
4 company, the insurer, the guarantor, or any other person providing evidence of
5 financial responsibility. Any amount collected or awarded under this subsection
6 shall be paid into Guam Environmental Protection Agency's UST-LUST Fund.
7

8 (i) An owner or operator of an UST system shall designate a person within Guam
9 as his/her resident agent for service of process, and such designation shall be
10 filled in accordance with rules and regulation promulgated by the Agency.
11

12 (j) The financial responsibility amounts required by this section, or any portion of
13 such amount, may be satisfied by utilization of Guam Environmental Protection
14 Agency UST-LUST Fund.

15 **§ 76116. Closure.**

16
17 The owner or operator shall close a UST so as to prevent future releases of regulated
18 substances. The owner and operator shall comply with the release response provisions in this
19 Chapter and other requirements promulgated by the Administrator before and during removal of
20 the USTs. The Administrator shall adopt requirements for change in-service and temporary and
21 permanent closure of USTs and tank systems.

22 **§ 76117. Permit Requirements.**

23
24 (a) No person shall own, install, or operate a UST without a permit issued by the
25 Administrator. An applicant for a permit shall pay a permit processing fee
26 prescribed by the regulations.
27

28 (b) Said permit shall be non-transferable and conditioned upon the observance of
29 the laws of Guam and related rules and regulations.
30

31 (c) A permit holder shall apply for the renewal of each permit he/she holds, upon
32 forms provided by the Administrator, not less than sixty (60) calendar days prior
33 to the permit's expiration.
34

35 (d) Each permit application and permit renewal application shall be submitted
36 with evidence of financial responsibility, in a sum established by the
37 Administrator by regulation.

38 **§ 76118. Inspection and Entry.**

39
40 The Administrator may inspect all USTs at reasonable times to take corrective action or
41 to ensure compliance with this Chapter and the rules and regulations enacted pursuant hereto.
42 The Administrator's authority to inspect shall include, but is not limited, to the following:

1
2 (a) Requesting and obtaining from any owner or operator and deliverer and
3 guarantor of a UST, information relating to such tanks, their associated
4 equipment, and their contents;

5
6 (b) Conducting any study or performance of monitoring, and testing of tanks,
7 their associated equipment, or surrounding soils, air, surface water, or
8 groundwater;

9
10 (c) Inspecting and copying all records relating to the USTs;

11
12 (d) Inspecting and obtaining samples of regulated substances contained in the
13 USTs; and

14
15 (e) Taking corrective action or performing site assessment activities at the
16 location of the UST.

17 **§ 76119. Confidentiality of Records.**

18
19 Reports and records submitted to the Agency by any person on the ownership,
20 installation, or operation of underground storage tanks or tank systems shall be made
21 available for inspection by the public during established office hours except as provided in
22 this section. Upon a showing satisfactory to the Agency that public disclosure of records,
23 reports, or information, or a particular part thereof, to which the agency's representative has
24 access to under this section would divulge information entitled to protection under Guam's
25 Sunshine Reform Act of 1999, the Agency shall consider the information or particular
26 portion thereof to be confidential. No confidential information secured pursuant to this
27 section by any official or employee of the Agency within the scope of and of the official's or
28 employee's employment in the prevention, control, or abatement of releases from
29 underground storage tanks or tank systems, shall be disclosed by the official or employee
30 with following exceptions: the document or information may be disclosed to officers,
31 employees, or authorized representatives of the territory or of the United States, including
32 county government entities, who have been charged with carrying out this chapter or Subtitle
33 I of the federal Resource Conservation and Recovery Act, or when relevant in any
34 proceeding under this chapter. Where such information constitutes confidential business
35 information under federal law, it shall be submitted as such to federal entities.

36 **§ 76120. Notice.**

37
38 Any notice or other official correspondence affecting the rights of any person under this
39 Chapter shall be delivered by personal service, or sent by registered mail with a return receipt to
40 the address of such person as shown by the Agency records. The return receipt, signed by
41 addressee, or his/her agent, shall be conclusive proof of delivery.

1 **§ 76121. Hearings.**

2
3 (a) Any person who received an order from the Administrator pursuant to this
4 Chapter or any person whose permit application is disapproved by the
5 Administrator may, within fifteen (15) calendar days after receipt thereof, file
6 with the Board a notice of intent to appeal and a verified petition describing the
7 basis of such appeal.

8
9 (b) The Board shall, not more than sixty (60) days after receipt of such notice of
10 intent to appeal, hold a public hearing at which the appellant may appear and
11 present evidence supporting the petition.

12
13 (c) The Board may administer oaths and to issue subpoenas to compel the
14 attendance of witnesses and the production of evidence in all such hearings.

15
16 (d) The Board shall affirm, modify, or revoke the action appealed and shall notify
17 the appellant of its decision not more than thirty (30) days after the hearing. Said
18 notice shall be in writing and shall state the reasons for the decision.

19
20 (e) Any person may appeal such decision by filing a verified petition in Superior
21 Court of Guam within ten (10) days after he/she receives the notice required by
22 Subsection (d) hereof. The petitioner shall make a transcript of the proceeding at
23 his/her expense.

24 **§ 76122. Injunction.**

25
26 The Administrator may, in addition to the other powers conferred on him/her by this
27 Chapter, file an action in the Superior Court of Guam to immediately restrain any violation or
28 threatened violation of this Chapter or the rules and regulations enacted pursuant hereto.
29

30 **§ 76123. Applicability to Government Agencies.**

31
32 All agencies of the Government of Guam and of the Government of the United States
33 shall comply with all provisions of this Chapter including permit requirements with the
34 exception of §§76114 and 76117(d).

35 **§ 76124. Penalties.**

36
37 (a) A person who violates any provisions of this Chapter, or rules or
38 regulations enacted pursuant hereto, or who refuses or neglects to comply with an
39 order issued by the Administrator to require compliance with this Chapter, shall
40 pay the Agency a civil penalty up to eleven thousand dollars (\$11,000) for each
41 tank for each day of each violation.
42

1 (b) Any person with an interest that may be adversely affected by a violation
2 of this Chapter may intervene as a matter of right in any civil action brought by
3 the Administrator to require compliance with this Chapter.
4

5 (c) A person who knowingly fails to notify the Administrator pursuant to
6 §§76105 or 76112 or who make any false statement or representation in any UST
7 notification, permit application, or other document filed, maintained, or used for
8 compliance with this Chapter shall be guilty of a misdemeanor and may be
9 subject to imprisonment for up to twelve (12) months and fined up to eleven
10 thousand dollars (\$11,000) per day for each violation, or both.
11

12 (d) Any person who denies, obstructs, or hampers the entrance, inspection, or
13 conduct of release response activity by a representative of the Agency at any
14 building, place, site, facility, vehicle, or structure that the representative is
15 authorized to enter or inspect or who fails to provide information requested by the
16 Agency representative as pursuant to §76110 may be fined not more than five
17 hundred dollars (\$500.00) for every day he denies, obstructs or hinders the
18 acquisition of, or fails to provide, the information requested, as determined in a
19 civil action in the Superior Court of Guam.
20

21
22 **Section 2.**
23

24 **§ 76125. Appropriation.** The sum of Twenty-Five Thousand Dollars (\$25,000.00)
25 is hereby appropriated from the General Fund to the UST-LUST Fund.
26

27 **§ 76126. Reserved.**
28

29 **§ 76127. Reserved.**
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31
32
33