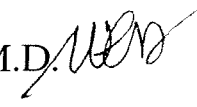


MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

Bill No. 104 (LS)

Introduced by:

J.A. Lujan
Mike Cruz, M.D. 

AN ACT TO ESTABLISH STRICT ACCOUNTABILITY
FOR ADVERSE EFFECTS ON PERSONAL HEALTH AND
ENVIRONMENTAL QUALITY AS A RESULT OF NEW
LANDFILL FACILITY CONSTRUCTION, OPERATION,
CLOSING AND MONITORING

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

2 **Section 1. Legislative Intent.** *I Liheslaturan Guåhan* recognizes that

3 modern municipal solid waste facilities, including landfills, are designed to be
4 constructed, operated, maintained, closed and monitored subsequent to final closing
5 in a manner that safeguards public health and environmental integrity. Public
6 expectations are that Guam's new municipal landfill will be operated in a manner
7 similar to other current public facilities, without appropriate engineering standards,
8 adequate maintenance, regulatory oversight, or extended term responsibilities. Our
9 people reasonably expect that habitation of adjacent lands will expose residents to
10 noxious fumes or residues, contamination of groundwater and other insidious long-
11 term environmental hazards, without timely health threat notification, legal
12 protection or financial recourse. Furthermore, the pristine, natural public setting in
13 the proposed vicinity of landfill and other municipal solid waste processing
14 facilities is reasonably considered by our people to be similarly threatened with

1 negligent or economic discharge of wastes from engineered containment facilities.
2 It is therefore the intent of *I Liheslaturan Guåhan* to (1) restore public confidence in
3 the government's municipal solid waste management by providing meaningful
4 economic incentives for public and private operators of solid waste handling and
5 disposal facilities to conform to the most stringent known public health and
6 environmental protection standards; (2) encourage private sector participants in
7 government solid waste projects to accurately calculate all associated costs,
8 including financial risks of extended term liability; and (3) distribute among current
9 beneficiaries the entire cost of landfill construction and operation, including losses
10 suffered by persons and natural inhabitants of lands in the vicinity of such facilities.

11 **Section 2.** Occupants of property in areas where new solid waste transfer,
12 processing or landfill operations are constructed or maintained, are entitled to
13 compensation and damages for any and all untoward health effects suffered
14 subsequent to such construction or operations. For purposes of this Section, facility
15 operations shall include closing and post-closing monitoring activities. The
16 government of Guam shall not indemnify from liability any private contractor,
17 manager, consultant, operator, or financial party-in-interest for solid waste
18 management facilities constructed, managed, operated or financed by them in the
19 public interest. All government contracts, leases or other similar agreements with
20 private entities to construct, operate or maintain solid waste handling or facilities
21 shall include constructive obligation provisions to compensate affected occupants
22 for health care, loss of income and relocation arising from the private entity's acts or
23 omissions, and require evidence of a surety bond or other insurance policy to cover
24 this contingency. Where the government of Guam owns or operates such facility, all
25 direct medical and relocation costs and loss of income suffered by affected
26 occupants shall be paid without regard to the limits of the government claims act.

1 **Section 3.** Public lands and natural resources which are contingent to,
2 downstream of, or downwind of new solid waste transfer, processing or landfill
3 operations are hereby declared strictly protected natural environments. In the event
4 that these areas or resources are despoiled or otherwise rendered unsuitable as a
5 result of noxious discharge from a landfill or processing center during construction,
6 operation, closing or post-closing monitoring activities, full restoration to
7 preexisting natural state is required. All private service and materials suppliers,
8 consultants, and financial parties-in-interest with respect to construction,
9 management, operation, closing, or post-closing monitoring of a new landfill or
10 solid waste processing center remain jointly and severally liable for environmental
11 damage or degradation caused by such facilities and operations. The government of
12 Guam shall not indemnify any private entity from liability for municipal solid waste
13 facilities constructed, operated, closed or monitored by private entities in the public
14 interest. A performance bond to cover this contingent obligation shall be required of
15 private entities contracted by or permitted to operate by the government of Guam.
16 Where the government of Guam owns or operates such facility, restoration of public
17 lands and resources to pre-landfill or solid waste facility condition shall be
18 accomplished with such budgeted appropriations and fees collected to cover current
19 year operating expenses; continuing restoration and remediation costs shall be
20 detailed in subsequent budget requests. Notwithstanding the provisions of 4 GCA
21 Chapter 3 concerning Liability of Officers and Employees, failure by any responsible
22 government employee or official to prevent environmental damage or degradation
23 to these protected natural environments, or to expeditiously address same once
24 detected, shall be dismissed from government service for cause. Nothing in this
25 Section shall be interpreted to prevent or dissuade private landowners from
26 developing their private properties, or to diminish the responsibilities of landfill or

1 solid waste facility operators to prevent and mitigate environmental degradation on
2 subsequently developed private lands.

3 **Section 4.** Every solicitation, request for proposals, agreement, contract
4 or award between the government of Guam and any private professional, financial
5 or construction service for all landfill or other municipal solid waste facilities shall
6 contain constructive notice of public policy concerning strict personal health and
7 environmental liability contained in Sections 2 and 3 of this Act.



Office of the Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932
TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

Office of the Speaker

MARK FORBES
Date: 12/12/05
Time: 3:30
Rec'd by: [Signature]
Print Name: M.F.
28-05-0475

12 DEC 2005

The Honorable Mark Forbes
Speaker
Mina' Bente Ocho Na Liheslaturan Guåhan
Twenty-Eighth Guam Legislature
155 Hesler Street
Hagåtña, Guam 96910

Senator Edward J.B. Calvo
SECRETARY OF THE LEGISLATURE
ACKNOWLEDGEMENT RECEIPT
Rcv'd by: [Signature]
Print Name & Initial
Time: 11:50
Date: 12-15-05

Dear Speaker Forbes:

Enclosed please find Bill No. 104(LS), "AN ACT TO ESTABLISH STRICT ACCOUNTABILITY FOR ADVERSE EFFECTS ON PERSONAL HEALTH AND ENVIRONMENTAL QUALITY AS A RESULT OF NEW LANDFILL FACILITY CONSTRUCTION, OPERATION, CLOSING AND MONITORING," which I have vetoed.

Although I commend a well-intended piece of legislation, I can find no practical reason to support it. The purpose of this bill is to restore public confidence in solid waste management. Unfortunately, this bill if enacted into law may deter the construction of a new landfill. The government of Guam is under a federal Consent Decree to open a landfill that is compliant with federal environmental regulations. These regulations include the remedies for potential liabilities; and while the intent of this legislation are commendable, it could potentially delay or deter the construction of the new landfill. If a new landfill is not built pursuant to the District Court Consent Decree, the government of Guam will be severely penalized for noncompliance by the United States Environmental Protection Agency.

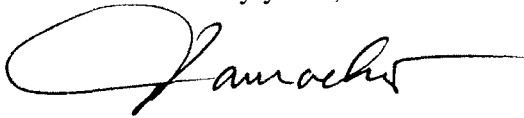
The Solid Waste Management and Litter Control Act requires the Guam Environmental Protection Agency to secure a financial guarantee or assurance from owners and operators of solid waste landfill facilities for all costs related to health and environmental restoration attributed to the operation of the facility. Article 7, of the Guam Environmental Protection Agency Solid Waste Disposal rules and regulations for the Guam Environmental Protection Agency Solid Waste Disposal, set forth the criteria for financial assurance.

While Bill 104 contains similar notable provisions, the over-inclusive effect may seriously hinder investment into a new landfill. The bill would render all private service and materials suppliers, consultants, and financial parties-in-interest with respect to construction, management,

operation, closing or post-closing monitoring remain jointly and severally liable. While attempting to be all inclusive, the net effect is over done. Without properly constructing an adequate landfill within the time lines of the Consent Decree, the government of Guam will be fined substantial penalties in the tens of millions of dollars. Further by limiting competitive investment, it may reduce quality resources from being funneled into the new landfill. Guam may then end up with a landfill not as environmentally sound.

While I agree with the intent, I cannot support legislation that will hamper and delay the opening of the new landfill. Existing laws and regulation address the concerns of this bill. The GEPA regulates for the protection of our environment and imposes strict penalties for noncompliance. I would recommend that rules and regulation be developed through several round table discussions for a workable measure that would fully address these issues without jeopardizing our commitment for a new landfill.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Camacho', with a large, sweeping initial 'C'.

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

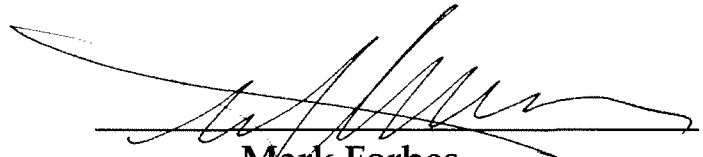
cc: Honorable Edward J.B. Calvo
Senator and Legislative Secretary

Attachment


I MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

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

This is to certify that Bill No. 104 (LS), "AN ACT TO ESTABLISH STRICT ACCOUNTABILITY FOR ADVERSE EFFECTS ON PERSONAL HEALTH AND ENVIRONMENTAL QUALITY AS A RESULT OF NEW LANDFILL FACILITY CONSTRUCTION, OPERATION, CLOSING AND MONITORING" was on the 30th day of November, 2005, duly and regularly passed.

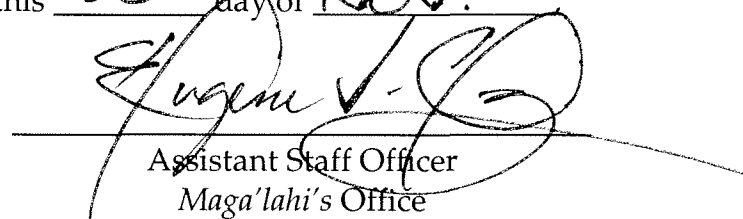

Mark Forbes
Speaker

Attested:

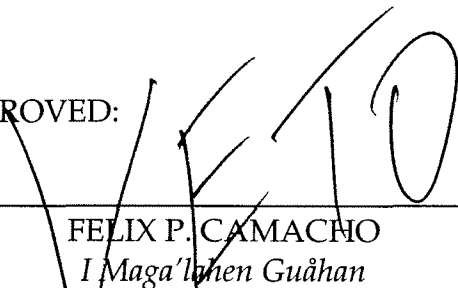

Edward J.B. Calvo
Senator and Secretary of the Legislature

.....
This Act was received by *I Maga'lahaen Guåhan* this _____ day of _____
2005, at _____ o'clock _____ P.M.

30 day of NOV.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session

Bill No. 104 (LS)

As amended.

Introduced by:

J. A. Lujan

Mike Cruz

F. B. Aguon, Jr.

Edward J.B. Calvo

B. J.F. Cruz

Mark Forbes

L. F. Kasperbauer

R. Klitzkie

L. A. Leon Guerrero

A. B. Palacios

R. J. Respicio

Ray Tenorio

A. R. Unpingco

J. T. Won Pat

**AN ACT TO ESTABLISH STRICT ACCOUNTABILITY
FOR ADVERSE EFFECTS ON PERSONAL HEALTH
AND ENVIRONMENTAL QUALITY AS A RESULT OF
NEW LANDFILL FACILITY CONSTRUCTION,
OPERATION, CLOSING AND MONITORING.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

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a manner that safeguards public health and environmental integrity. Public

expectations are that Guam's new municipal landfill will be operated in a manner

similar to other current public facilities, without appropriate engineering standards,

1 adequate maintenance, regulatory oversight, or extended term responsibilities. Our
2 people reasonably expect that habitation of adjacent lands will expose residents to
3 noxious fumes or residues, contamination of groundwater and other insidious long-
4 term environmental hazards, without timely health threat notification, legal protection
5 or financial recourse. Furthermore, the pristine, natural public setting in the proposed
6 vicinity of landfill and other municipal solid waste processing facilities is reasonably
7 considered by our people to be similarly threatened with negligent or economic
8 discharge of wastes from engineered containment facilities. It is therefore the intent
9 of *I Liheslaturan Guåhan* to (1) restore public confidence in the government's
10 municipal solid waste management by providing meaningful economic incentives for
11 public and private operators of solid waste handling and disposal facilities to conform
12 to the most stringent known public health and environmental protection standards; (2)
13 encourage private sector participants in government solid waste projects to accurately
14 calculate all associated costs, including financial risks of extended term liability; and
15 (3) distribute among current beneficiaries the entire cost of landfill construction and
16 operation, including losses suffered by persons and natural inhabitants of lands in the
17 vicinity of such facilities.

18 **Section 2.** Occupants of property in areas where new solid waste transfer,
19 processing or landfill operations are constructed or maintained, are entitled to
20 compensation and damages for any and all untoward health effects suffered
21 subsequent to such construction or operations. For purposes of this Section, facility
22 operations shall include closing and post-closing monitoring activities. The
23 government of Guam shall not indemnify from liability any private contractor,
24 manager, consultant, operator, or financial party-in-interest for solid waste
25 management facilities constructed, managed, operated or financed by them in the
26 public interest. All government contracts, leases or other similar agreements with

1 private entities to construct, operate or maintain solid waste handling or facilities shall
2 include constructive obligation provisions to compensate affected occupants for health
3 care, loss of income and relocation arising from the private entity's acts or omissions,
4 and require evidence of a surety bond or other insurance policy to cover this
5 contingency. Where the government of Guam owns or operates such facility, all direct
6 medical and relocation costs and loss of income suffered by affected occupants shall
7 be paid without regard to the limits of the Government Claims Act.

8 **Section 3.** Public lands and natural resources which are contingent to,
9 downstream of, or downwind of new solid waste transfer, processing or landfill
10 operations are hereby declared strictly protected natural environments. In the event
11 that these areas or resources are despoiled or otherwise rendered unsuitable as a result
12 of noxious discharge from a landfill or processing center during construction,
13 operation, closing or post-closing monitoring activities, full restoration to preexisting
14 natural state is required. All private service and materials suppliers, consultants, and
15 financial parties-in-interest with respect to construction, management, operation,
16 closing, or post-closing monitoring of a new landfill or solid waste processing center
17 remain jointly and severally liable for environmental damage or degradation caused
18 by such facilities and operations. The government of Guam shall not indemnify any
19 private entity from liability for municipal solid waste facilities constructed, operated,
20 closed or monitored by private entities in the public interest. A performance bond to
21 cover this contingent obligation shall be required of private entities contracted by or
22 permitted to operate by the government of Guam. When the government of Guam
23 owns or operates such a facility, restoration of public lands and resources to pre-
24 landfill or solid waste facility condition shall be accomplished with such budgeted
25 appropriations and fees collected to cover current year operating expenses; continuing
26 restoration and remediation costs shall be detailed in subsequent budget requests.

1 Notwithstanding the provisions of Title 4 G.C.A. Chapter 3 concerning Liability of
2 Officers and Employees, any responsible government employee or official who fails
3 to prevent environmental damage or degradation to these protected natural
4 environments, or to expeditiously address same once detected, shall be dismissed from
5 government service for cause. Nothing in this Section shall be interpreted to prevent
6 or dissuade private landowners from developing their private properties, or to
7 diminish the responsibilities of landfill or solid waste facility operators to prevent and
8 mitigate environmental degradation on subsequently developed private lands.

9 **Section 4.** Every solicitation, request for proposals, agreement, contract or
10 award between the government of Guam and any private professional, financial or
11 construction service for all landfill or other municipal solid waste facilities shall
12 contain constructive notice of public policy concerning strict personal health and
13 environmental liability contained in Sections 2 and 3 of this Act.

6

I MINA' BENTE OCHO NA LIHESLATURAN GUAHAN

2005 (FIRST) Regular Session

Date: 11/30/05
12:180

VOTING SHEET

Bill No. 104 (LS)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
AGUON, Frank B., Jr.					✓
BROWN, Joanne M.S.		✓			
CALVO, Edward J.B.	✓				
CRUZ, Benjamin J.F.	✓				
CRUZ, Michael (Dr.)	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F. III		✓			
KLITZKIE, Robert		✓			
LEON GUERRERO, Lourdes A.		✓			
LUJAN, Jesse A.	✓				
PALACIOS, Adolpho B.	✓				
RESPICIO, Rory J.	✓				
TENORIO, Ray		✓			
UNPINGCO, Antonio R. II	✓				
WON PAT, Judith T.	✓				

TOTAL

9 5 _____ 0 1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence