

I MINA 'BENTE ÑUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. 130 (EC)

Introduced by:

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**AN ACT TO REPEAL AND REENACT CHAPTER 50 OF TITLE
10 OF THE GUAM CODE ANNOTATED RELATIVE TO THE
GUAM PESTICIDES ACT.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guahan* finds that since the passage of Public Law 14-22 in 1977 there has been a general increase in the importation of pesticides on Guam. During this time, there has also been illegal importation of banned pesticides and foreign manufactured pesticides. Also, with an increase in the farming population and an estimate of 1200 farms of various sizes, there has been an increase in the use of pesticides island-wide. Of growing concern is the misuse and misapplication of pesticides. Additionally, many of the larger farming operations are located over the northern aquifer. Pesticide contamination of Guam's groundwater and surface water, which represent nearly 98% of Guam's raw drinking water, is of particular concern. The increased use of pesticides has contribute to a loss of biodiversity, and possible health effects of authorized pesticides include immunological effects, endocrine disrupting effects, neurotoxicological disorders and various types of cancer. Further exacerbating the situation is the attempts to smuggle illegal and highly dangerous pesticides from foreign countries. Guam Customs and Quarantine Agency together with the Guam Environmental Protection Agency has been successful in intercepting shipments into Guam of illegal pesticides, however it is also unknown if some foreign pesticides have eluded authorities and made their way into the island and onto plants, soil, our water resources and into food products.

1 Reducing the use of, and dependence on, pesticides is necessary in order to minimize
2 problems relating to pest resistance, secondary pest problems and the depletion of agricultural soils.
3 *I Liheslaturan Guahan* further finds that improving the knowledge of the individual pesticide users
4 is an essential prerequisite for changing behavior and practices. Hence training, education and the
5 dissemination of information should be a crucial element of the thematic strategy and for the training
6 of agricultural commodity applicators and occupational applicators (farmers and operators) a
7 comprehensive framework/guidelines are needed. It is the intent of *I Liheslatura* to strengthen the
8 Guam Pesticide Act in order to address current pesticide challenges and sustain our environment. In
9 light of our current need to protect human health and the environment, it is critical that *I*
10 *Liheslaturan Guahan* update the Pesticide Control Act to reflect the challenges of today.

11 **Section 2.** Chapter 50 of Title 10 of the Guam Code Annotated is hereby *repealed and*
12 *reenacted* to read as follows:

13 **“CHAPTER 50.**
14 **GUAM PESTICIDES ACT.**

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|----|----------------|--|
| 15 | §50101. | Title and Purpose. |
| 16 | §50102. | Definitions. |
| 17 | §50103. | Powers and Duties of the Agency and the |
| 18 | | Board. |
| 19 | §50104. | Powers and Duties of the Administrator. |
| 20 | §50105. | Experimental Use Permits. |
| 21 | §50106. | Special Local Need Registration (SLN). |
| 22 | §50107. | Licensing, Importation and Sale of Restricted |
| 23 | | Use Pesticides, Certification and Record |
| 24 | | Keeping. |
| 25 | §50108. | Labeling Requirements. |
| 26 | §50109. | Coloration of Certain Pesticides. |
| 27 | §50110. | Prohibited Acts. |
| 28 | §50111. | Seizures: Stop-Sale and Removal from Sale |
| 29 | | Orders “Stop Sale”, “Use”, “Removal”, and |
| 30 | | “Seizure”. |
| 31 | §50112. | Notice of Arrival of Pesticides and Devices. |

1	§50113.	Arrival of Shipment.
2	§50114.	Shipments Arriving without the Notice of
3		Arrival.
4	§50115.	Release of Shipment or Entry Refused.
5	§50116.	Authority to Inspect.
6	§50117.	Hearings.
7	§50118.	Penalties and Enforcement.
8	§50119.	Pesticide Management Fund.
9	§50120.	Pesticide Program Additional Staff.
10	§50121.	Severability.

11

12 **§50101. Title and Purpose.** This Chapter may be cited as the *Guam*

13 *Pesticides Act of 2007* and has the following purposes:

- 14 (a) To regulate the importation, production, sale, distribution, use and
- 15 application of pesticides in the interest of public safety “and to ensure that all
- 16 pesticides sold, stored, distributed and used on Guam are registered with USEPA”.
- 17 (b) To implement and enforce a comprehensive regulatory and
- 18 enforcement program in the public interest, for the proper, safe, and efficient use of
- 19 pesticides and for the protection of human health and the environment, and to provide
- 20 effective implementation and enforcement of such comprehensive programs;
- 21 (c) To protect the consumer by requiring that pesticides sold in Guam be
- 22 correctly labeled with appropriate warnings and adequate directions for use;
- 23 (d) To control, restrict, suspend or ban the importation, receipt, sale and
- 24 the use of any pesticide or pesticide devices;
- 25 (e) To protect, maintain, and improve the quality of Guam’s environment
- 26 and public health;
- 27 (f) To protect people and the environment from adverse effects of
- 28 pesticides;
- 29 (g) To prevent pesticide pollution of the ground waters and surface waters
- 30 of Guam; and

1 (h) To assure safe conditions for people in places where pesticides are
2 present.

3 **§50102. Definitions.** As used in this Chapter unless the content clearly
4 requires otherwise:

5 (1) *Active Ingredients* shall mean:

6 (a) In the case of a pesticide other than a plant growth regulator,
7 defoliant or desiccant, an ingredient which will prevent, destroy, repeal or
8 mitigate any pest;

9 (b) In the case of a plant growth regulator, defoliant or desiccant,
10 an ingredient which, through physiological action, will accelerate or retard the
11 rate of growth or rate of maturation or otherwise alter the behavior of
12 ornamental or crop plants or the produce thereof.

13 (2) *Administrator* shall mean the Administrator of the Guam
14 Environmental Protection Agency.

15 (3) *Adulterated* shall apply to any pesticide if its strength or purity falls
16 below the professed standard of quality as expressed on its labeling under which it is
17 sold, or if any substance has been substituted or abstracted wholly or in part for the
18 pesticide, or any valuable constituent of the pesticide has been wholly or in part
19 abstracted.

20 (4) *Agency* shall mean the Guam Environmental Protection Agency.

21 (5) *Agriculture Commodity* shall mean any and all plant and animal
22 produced in Guam for Commercial purposes (not for personal consumption).

23 (6) *Animal* shall mean all vertebrate and invertebrate species, including
24 but not limited to man and other mammals, birds, fish and shellfish.

25 (7) *Board* shall mean Board of Directors of the Guam Environmental
26 Protection Agency.

27 (8) *Carrier* shall mean every description of craft, whether aircraft, surface
28 craft or other contrivance used or capable of being used as a means of transportation
29 in the air or water. The person responsible for the carrier shall be the owner, or his
30 agent, including the operator having the command of the carrier.

1 (9) *Certified Pesticide Applicator* shall mean any individual who is
2 certified under regulations promulgated under this chapter to use or to supervise the
3 use of pesticides, and shall include, but not be limited to:

4 (a) Private applicator shall mean a certified applicator who uses or
5 supervises the use of any pesticide which is classified for restricted use for
6 purposes of producing any agricultural commodity on property owned or
7 leased by the applicator or the applicator's employer or (if applied without
8 compensation other than trading of personal services between producers of
9 agricultural commodities) on the property of another person;

10 (b) Commercial applicator shall mean an applicator (whether or
11 not the applicator is a private applicator with respect to some uses) who uses
12 or supervises the use of any pesticide which is classified for restricted use for
13 any purpose or on any property other than as provided in 9(a).

14 (10) *CFR* shall mean the Code of Federal Regulations.

15 (11) *Core Training* shall mean the prerequisite training toward having a
16 certified pesticide license for application of restricted use pesticides or for applying
17 general use pesticides on any agriculture commodities. It is also required under
18 §50107 (d) of this Act.

19 (12) *Custom Officer* shall mean the Chief of Customs under the Department
20 of Commerce or his authorized representative.

21 (13) *Defoliant* shall mean any substance or mixture of substances intended
22 to cause the foliage to drop from a plant, with or without causing abscission.

23 (14) *Desiccant* shall mean any substance or mixture of substances intended
24 for artificially accelerating the drying of plant tissues.

25 (15) *Device* shall mean any instrument or contrivance (other than a firearm)
26 intended for trapping, destroying, repelling or mitigating pests or any other form of
27 plant or animal life; but not including equipment used for the application of pesticides
28 when sold separately.

29 (16) *Environment* includes water, air, land and animals living therein, all
30 plants and man and the interrelationships which exist among them.

1 (17) *Experimental Use Permit* shall mean a permit which is issued by the
2 Administrator only for bona fide research programs under the supervision of public
3 officials.

4 (18) *Facility* shall mean a farm, building, room, nursery, golf course,
5 landscaper, or any other type of location where pesticides are stored, used, sold, or
6 disposed of.

7 (19) *FIFRA* shall mean the Federal Insecticide, Fungicide, Rodenticide Act
8 and its amendments.

9 (20) *Fungus* shall mean all nonchlorophyll-bearing thallophytes including
10 rusts, smuts, mildews, molds and yeasts, except those on or living in man or other
11 animals and those on or in processed foods, beverages or pharmaceutical.

12 (21) *General Use Pesticide* shall mean a pesticide other than one
13 designated as restricted pesticide.

14 (22) *Imminent Hazard* shall mean a situation which exists when the
15 continued use of a pesticide during the time required for cancellation proceedings
16 would likely result in unreasonable adverse effects on the environment, or would
17 involve unreasonable hazards to the survival of a species declared endangered by the
18 Secretary of the Interior under the Federal Endangered Species Act or the Endangered
19 Species Act of Guam 5 GCA Chapter 63, Article 2, and their amendments.

20 (23) *Importer* shall mean the person who initially receives incoming
21 pesticides to Guam.

22 (24) *Importation* shall mean importing or bringing of chemical pesticides or
23 devices.

24 (25) *Inert Ingredient* shall mean an ingredient which is not an active
25 ingredient and as such does not act as a pesticide.

26 (26) *Ingredient Statement* shall mean:

27 (a) A statement of the chemical name and common name where
28 applicable of each active ingredient, together with the name and percentage of
29 each and the total percentage of inert ingredients, if any, in the pesticide;

1 (b) Whenever the pesticide contains arsenic in any form, a
2 statement of the percentages of total and water soluble arsenic, each calculated
3 as elementary arsenic.

4 (27) *Insect* shall mean invertebrate animals belonging to the class *Insecta*
5 including beetles, bugs, bees, flies and other allied classes of arthropods, including
6 spiders, mites, ticks, centipedes and wood lice.

7 (28) *Label* shall mean the written, printed or graphic matter on or attached
8 to the pesticide or device, or any of its containers or wrappers.

9 (29) "Labeling" means all labels and other written, printed or graphic
10 matter accompanying the pesticide or device at any time or to which reference is
11 made on the label or in literature accompanying the pesticide or device, except for
12 current official publications of the U.S. Environmental Protection Agency, United
13 States Department of Agriculture, United States Department of Interior, United States
14 Department of Health, Education and Welfare, state experiment stations, state or
15 territorial agriculture colleges or other similar Federal, state or territorial institutions
16 or agencies authorized by law to conduct research in the field of pesticides.

17 (30) *Misbranded* shall mean any pesticide or device if:

18 (a) Its labeling bears any statement, design or graphic
19 representation relative thereto or to its ingredients which is false or misleading
20 in any particular;

21 (b) It is contained in a package or other container or wrapping
22 which does not conform to the standards established by the Board pursuant to
23 §50110;

24 (c) It is an imitation of and is offered for sale under the name of
25 another pesticide or device;

26 (d) Its labeling does not bear the Federal registration and
27 establishment number for pesticides or establishment number for pesticide
28 devices;

29 (e) Any advertisement by means of newspaper, leaflet, radio or
30 television is false or misleading in any particular;

1 (f) The labeling accompanying it does not contain instructions for
2 use which are necessary, proper and adequate for the protection of the public;

3 (g) The label does not contain warning or caution statements
4 which may be necessary and if complied with, together with any requirements
5 imposed under '3(d) FIFRA is adequate to protect health and the environment;

6 (h) The label does not bear an ingredient statement on the
7 immediate container;

8 (i) Any word, statement or other information required by or under
9 this Chapter to appear on the labeling is not prominently placed thereon with
10 such conspicuousness and in such terms as to render it likely to be read and
11 understood by the ordinary individual under customary conditions of purchase
12 and use;

13 (j) In the case of a plant growth regulator, defoliant or desiccant
14 when used as directed it is injurious to living man or other vertebrate animals,
15 or vegetation to which it is applied, or to the person applying such pesticides;
16 provided that physical or physiological effects on plants or parts thereof shall
17 not be deemed to be injurious when this is the purpose for which the plant
18 growth regulator, defoliant or desiccant was applied, in accordance with the
19 label claims and recommendations.

20 (31) *Nematode* shall mean invertebrate animals of the Phylum
21 *Nemathelminthes* and the class *Nematoda* including unsegmented round worms with
22 elongated *fusiform* or sac-like bodies covered with cuticle and inhabiting soil, water,
23 plants or plant parts.

24 (32) *Notice of Arrival* shall mean a legal document authorized under
25 §50112 for the purpose of collecting information concerning the importation and
26 consignment of pesticides on Guam.

27 (33) *Person* shall mean the territory of Guam or any instrumentality
28 thereof, or any individual, firm, corporation, association or partnership, or any
29 organized group of persons whether incorporated or not.

30 (34) *Pest* shall mean any insect, rodent, nematode, fungus, weed or any
31 other form of terrestrial or aquatic plant or animal life or virus, bacteria or other

1 microorganism, except viruses, bacteria or other microorganisms on or in living man
2 or other living animals which the Board declares to be a pest under §50103.

3 (35) *Pesticide* shall mean:

4 (a) Any substance or mixture of substances intended for
5 preventing, destroying, repelling or mitigating any pest;

6 (b) Any substances or mixture substances intended for use as a
7 plant growth regulator, defoliant or desiccant.

8 (36) *Plant Growth Regulator* shall mean any substance or mixture of
9 substances intended through physiological action, for accelerating or retarding the
10 rate of growth or rate of maturation, or for otherwise altering the behavior of plants or
11 the produce thereof, but not including substances that are intended as plant nutrients,
12 trace elements, nutritional chemicals, plant inoculants and soil amendments.

13 (37) *Produce* shall mean to manufacture, prepare, propagate, compound or
14 process any pesticide, any active ingredient, or device or to package, repackage, label
15 or re-label or otherwise change the container of any pesticide or device.

16 (38) *Producer* shall mean any person who manufactures, prepares,
17 compounds, propagates or processes any pesticide or device.

18 (39) *Producing Establishment* shall mean any place where a pesticide or
19 device or active ingredient is produced or repackaged.

20 (40) *Protect Health and the Environment or Protection of Health and the*
21 *Environment* shall mean protection against any injury to man and protection against
22 any unreasonable adverse effects on the environment taking into account the public
23 interest, including benefits from the use of the pesticide.

24 (41) *Registrant* shall mean a person who has registered any pesticide or
25 device pursuant to this Chapter.

26 (42) *Restricted Pesticide* shall mean:

27 (a) A pesticide so designated by regulation under '3(d) of FIFRA
28 and so designated on its label; or

29 (b) A pesticide determined by the Board to be unsafe for use by
30 persons other than a certified applicator, and so designated by inclusion on a
31 list of restricted pesticides adopted by the Board.

1 (43) *Sell or Distribute* shall mean to distribute, solicit, sell, offer for sale,
2 hold for sale, transport or deliver for transportation between points within Guam.

3 (44) *To Use Any Pesticide in a Manner Inconsistent with its Labelling* shall
4 mean to use any pesticide in a manner not permitted by the labelling.

5 (45) *USEPA* shall mean the United States Environmental Protection
6 Agency.

7 (46) *Under the Direct Supervision of a Certified Applicator* shall mean
8 unless otherwise specified by its labeling, that the certified applicator is physically
9 present at the time and place the pesticide is applied.

10 (47) *Unreasonable Adverse Effects on the Environment* shall mean any
11 unreasonable risk to man or the environment, taking into account the economic, social
12 and environmental costs and benefits of the use of any pesticide.

13 (48) *Use* shall mean mixing, loading, application, and storage of pesticides,
14 containers and devices, disposal of pesticides, containers and devices, and
15 transportation of containers.

16 (49) *Weed* shall mean any plant which grows where not wanted.

17 **§50103. Powers and Duties of the Agency and the Board.** The Agency shall
18 be responsible for the implementation of the Chapter. All authority vested in the Board by
19 virtue of this Chapter may, with like force and effect, be exercised by such employees of the
20 Agency as the Board may from time to time designate for the purpose. The Board shall have
21 the authority to:

22 (a) Adopt, promulgate, amend, rescind, repeal rules and regulations, in
23 accordance with the Administrative Adjudication Law:

24 (1) As may be necessary to implement and effectuate the
25 provisions and regulations of this Chapter;

26 (2) As may be necessary to establish additional requirements,
27 which may be at least equivalent to or more stringent or broader in scope than
28 the requirements of the Federal Insecticide, Fungicide and Rodenticide Act
29 (FIFRA) and regulations promulgated pursuant to the FIFRA;

30 (3) Designate restricted pesticides;

31 (4) Suspend or ban certain pesticides or specific uses of certain

1 pesticides;

2 (5) Require keeping of and access to records relating to
3 importation, receipt, sale, production, use, storage, or disposal of pesticide and
4 pesticide device;

5 (b) Only after holding a public hearing, with at least 10 days prior to
6 public notice:

7 (1) Declare as a pest any form of plant or animal life (other than
8 bacteria, a virus, or other micro-organisms on or in living humans or living
9 animals) which is injurious to health or the environment;

10 (2) Designate restricted pesticides or devices;

11 (3) Suspend or ban certain pesticides or specific uses of certain
12 pesticides;

13 (4) The Agency shall promulgate rules and regulations regarding
14 any action taken under this subsection within twelve (12) months of any
15 action taken; and

16 (5) Revoke a permit, license or certification.

17 (6) Require coloration of a pesticide and to exempt from coloration
18 specific uses of certain pesticides.

19 (c) Hold hearings related to any aspect of, or matter in the administration
20 of, this Chapter, and in connection therewith, administer oaths, examine witnesses
21 and issue subpoenas to compel the attendance of witnesses and the production of
22 evidence;

23 (d) Hear and decide appeals of orders issued by the Administrator.

24 (e) Deny a permit, license, registration, or certification.

25 (f) Establish procedures, conditions, and fees for pesticide registration and
26 permits, and for licenses and certification, under this Chapter.

27 (g) Establish procedures and standards, and fees for the collection and
28 examination of samples of pesticides or devices, for coloring of pesticides, and for
29 storage and disposal.

30 **§50104. Powers and Duties of the Administrator.** The Administrator shall
31 the have the following powers and duties:

- 1 (a) Encourage voluntary cooperation by persons and affected groups to
2 achieve the purposes of this Chapter;
- 3 (b) Establish an effective enforcement program for the implementation of
4 this Chapter;
- 5 (c) In implementing the provisions of this Chapter, take actions necessary
6 to protect human health, welfare, or the environment;
- 7 (d) Issue, continue in effect, modify, revoke, reissue, or deny permits,
8 licenses, certifications, or registrations;
- 9 (e) Collect and disseminate information;
- 10 (f) Conduct educational, certification, and training programs;
- 11 (g) Refuse the importation of any pesticide or pesticide devices;
- 12 (h) Issue letters of warning to violators as appropriate;
- 13 (i) Issue, amend, rescind, and enforce orders as may be necessary to
14 ensure compliance with any provision of this Chapter, or of any rules, regulations,
15 license, certification, registration, standards, or requirements issued pursuant to this
16 Chapter including, but not limited to, an administrative penalty order, “not limited to”
17 an emergency order, an administrative penalty or order requiring whatever remedial
18 measures may be necessary or appropriate to implement or effectuate the provisions
19 and purposes of this Chapter;
- 20 (j) Hold hearings related to any aspect of, or matter in the administration
21 of, this Chapter, and in connection therewith, administer oaths, examine witnesses
22 and issue subpoenas to compel the attendance of witnesses and the production of
23 evidence;
- 24 (k) Seize certain pesticides, pesticide device, or specific uses of certain
25 pesticides;
- 26 (l) Suspend certain pesticides or specific uses of certain pesticides;
- 27 (m) Consult, upon request, with any person proposing to import, distribute,
28 produce, or manufacture any pesticide or pesticide devices. Nothing in any
29 consultation shall be construed to relieve any person from compliance with this
30 Chapter, or any other provision of the law;
- 31 (n) Accept, receive, and administer grants and other funds or fees from

1 public and private agencies, including the federal government, for carrying out any
2 of the purposes of this Chapter;

3 (o) Cooperate with or enter into agreements with any person for purposes
4 of implementing the provisions of this Chapter.

5 **§50105. Experimental Use Permits. (a) Issuance.** Any person who
6 already has received appropriate approval under FIFRA from U.S. EPA for an experimental
7 use permit that includes experimental use of a pesticide in Guam must apply to the
8 Administrator for an experimental use permit for the pesticide prior to experimental use of
9 the pesticide in Guam. The Administrator may issue an experimental use permit if he
10 determines that the applicant needs such permit in order to accumulate information necessary
11 to register a pesticide under FIFRA or under this Chapter.

12 (b) **Temporary Tolerance Level.** If the Administrator determines that the use of
13 a pesticide may reasonably be expected to result in any residue on or in food or feed, he may
14 establish a temporary tolerance level for the residue of the pesticide before issuing the
15 experimental use permit.

16 (c) **Use Under Permit.** Use of a pesticide under an experimental use permit shall
17 be under the supervision of the Administrator, and shall be subject to such terms and
18 conditions and be for such period of time as the Administrator may prescribe in the permit.

19 (d) **Studies.** When any experimental use permit is issued for a pesticide
20 containing any chemical or combination of chemicals which has not been included in any
21 previously registered pesticide, the Administrator may specify that studies be conducted to
22 detect whether the use of the pesticide under the permit may cause unreasonable adverse
23 effects on the environment. All results of such studies shall be reported to the Administrator
24 before such pesticide may be registered under this Chapter.

25 (e) **Revocation.** The Administrator may revoke any experimental use permit, at
26 any time, if he finds that its terms or conditions are being violated, or that its terms or
27 conditions are inadequate to avoid unreasonable adverse effects on the environment.

28 (f) Permit shall be under the supervision of the Administrator, and shall be
29 subject to such terms and conditions and be for such period of time as the Administrator may
30 prescribe in the permit, including but not limited to conditions that require the permittee to
31 obtain written permission of the property owner and the substantial participation in the

1 experimental use by an experienced pesticide researcher approved by the Administrator. All
2 costs involved with the permit process shall be the responsibility of the permittee.

3 **§50106. Special Local Need Registration (SLN).** (a) Any federally
4 registered pesticide for which the Administrator has determined has an additional use which
5 meets special local needs in accordance with FIFRA, may be registered with the USEPA
6 Administrator, provided that the federal registration for the pesticide or the device has not
7 previously been denied, suspended, disapproved, or cancelled by the Administrator of
8 USEPA.

9 (b) The Administrator, whenever he deems it necessary in the administration of
10 this part, may require the submission of the complete formula of any pesticide.

11 (c) If it appears to the Administrator that the composition of the article and its
12 labeling and other material required to be submitted comply with the requirements of this
13 Chapter and '24 (c) of FIFRA, he may register the article.

14 (d) Any person who applies for a Special Local Need Registration shall pay all
15 costs relating to the Agency's review thereof.

16 (e) The following requirements must be addressed when applying for or
17 approving a SLN registration:

18 (1) The area where the pesticide is to be applied:

- 19 (a) must not be within an endangered species location;
- 20 (b) must be approved by the immediate landowner;
- 21 (c) must not contain any imminent environmental threat.

22 (2) A public notice concerning the proposed Special Local Need
23 registration has been provided.

24 (3) A determination has been made that there are no other available
25 pesticides that can be used for this specific pest problem.

26 **§50107. Licensing, Importation and Sale of Restricted Use Pesticides,**
27 **Certification and Record Keeping.** (a) **Licensing.** Every person who imports,
28 sells or distributes restricted pesticides shall obtain an annual license from the Agency.
29 Requirements, procedures and fees for licenses shall conform to the regulations promulgated
30 under this Chapter.

1 **(b) Importation and Sale of Restricted Use Pesticides:** Every person who
2 imports, sells, or distributes Restricted Use Pesticides shall have a certified sales manager or
3 a manager employed by the company who has passed one of the certification trainings
4 covering pesticide laws and regulations, pesticide hazards, proper usage, safe storage,
5 distribution and disposal methods.

6 **(c) Certification.** Every person who applies any pesticide which is classified for
7 restricted use shall obtain certification from the Agency, which shall be valid for at least
8 three years. Every person who applies any restricted use pesticides and who has less than 6
9 months of application experience must be under the direct supervision of a pesticide manager
10 or his assigned, except for a farm operation.

11 **(d) Basic Training.** Any farmer, owner of a business or any person who applies
12 general use pesticide as part of his/her job or duties, shall be required to take the Core
13 training and pass the examination. Upon successful completion of the core training and
14 exam, a Basic Training Identification card will be issued by the Agency. Examples of
15 applicators who must complete the basic training requirements pay the applicable fees and
16 conform to regulations promulgated under this Paragraph include (but not limited to) the
17 following Pesticide control companies, golf courses, landscaping companies, maintenance
18 companies, farms operations that raise agricultural commodities

19 **(e) Record Keeping:** Any person issued a license, certification, or permit for
20 RUPs under the provisions of this Chapter shall be required by the Administrator to keep
21 accurate records for at least two years from the date of importation or sale and containing the
22 following information:

23 (1) The delivery, movement, holding, or storage of any pesticide or device
24 including quantity and name and registration number;

25 (2) The date received, name of consignor and consignee;

26 (3) Any other information necessary for the enforcement of this Chapter
27 as prescribed by the Administrator;

28 (4) In the case of pesticide use, the name, registration number, quantity of
29 pesticide and solution used.

30 (5) The Administrator shall have access to such records and at any
31 reasonable time make copies of such records for the purpose of carrying out the

1 provisions of this Chapter. Unless required for the enforcement of this Act, such
2 information shall be confidential and, if summarized, shall not identify an individual
3 person.

4 **§50108. Labeling Requirements.** Each container of pesticides shall
5 bear thereon or attached thereto in a conspicuous place, a plainly written or printed label in
6 the English language. Pesticide Importers shall assist Guam EPA on the development and
7 translation of public outreach materials to ensure that pesticide applicators understand all
8 requirements as deemed necessary by the Administrator. The label must provide all
9 information required under FIFRA, applicable federal regulations, and required by USEPA
10 including the following:

- 11 (1) Name, brand or trademark under which the pesticide is sold or
12 distributed;
- 13 (2) Ingredient statement;
- 14 (3) Direction for use which if complied with will adequately protect the
15 health and environment;
- 16 (4) Warning or caution statements as specified by regulation;
- 17 (5) Weight or measure of content;
- 18 (6) EPA registration number;
- 19 (7) EPA establishment number; and
- 20 (8) Classification statement.

21 **§50109. Coloration of Certain Pesticides.** (a) Pesticides known as
22 standard lead arsenate, basic lead arsenate, sodium arsenate, calcium arsenate, magnesium
23 arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate or barium
24 fluosilicate shall be distinctly colored as specified by regulation.

25 **§50110. Prohibited Acts.** (a) It shall be unlawful for any person to
26 import, distribute, sell, or offer for sale in Guam:

- 27 (1) Any pesticide or device which is not registered with USEPA or whose
28 registration has been cancelled or suspended;
- 29 (2) Any pesticide that is misbranded;
- 30 (3) Any pesticide that is not produced in an EPA registered pesticide-
31 producing establishment;

1 (4) Any registered pesticide if the composition differs from its registered
2 composition at the time of its distribution or sale;

3 (5) Any registered pesticide if the claims made for it or any of the
4 directions for its use differ in substance from the representations made in connection
5 with its registration under this Chapter or FIFRA;

6 (6) Any pesticide that is not in the producer's, re-filler's, registrant's, or
7 the manufacturer's original unbroken immediate container;

8 (7) Any restricted pesticide to any person other than a certified pesticide
9 applicator or licensed dealer;

10 (8) Any pesticide whose coloration is not in conformity with under this
11 Chapter;

12 (9) Any pesticide which is adulterated or misbranded;

13 (10) Any pesticides in any manner that has been suspended or banned; or

14 (11) Any experimental use pesticide that has not been registered with U.S.
15 EPA and Guam EPA

16 (12) Any pesticide that has not be registered under special local needs
17 provisions of this Act

18 (b) To use, apply, store, transport, mix, dispose, discard or supervise the use of an
19 application of a pesticide or device inconsistent with its labelling or restrictions imposed by
20 the Administrator.

21 (c) To use, store, transport, mix, dispose or discard any pesticide or the containers
22 of any pesticide or device in any manner that could have adverse effects on the environment.

23 (d) To use, store, transport, mix, apply, or, as determined by GEPA, improperly
24 dispose or discard any pesticides or devices that is are not registered with USEPA (e) To
25 use, store, transport, mix, dispose or discard any pesticide or device which is under an
26 experimental use permit inconsistent to the provision of such permit.

27 (e) To use, store, transport, mix, dispose, discard or apply any restricted pesticide
28 or device unless the person is a certified pesticide applicator or is acting under the immediate
29 supervision and control of a current certified pesticide applicator with a valid certificate
30 issued pursuant to regulations adopted under this Chapter.

31 (f) To use, store, transport, mix, dispose, discard or apply any pesticide or device

1 in any manner that has been suspended or banned pursuant to this Chapter or any pesticide
2 whose registration has been cancelled or suspended by USEPA or an experimental use permit
3 or special local need registration that has been cancelled or suspended by the Agency.

4 (g) To detach, alter, deface or destroy, in whole, or in part, any label or alter any
5 labeling of the pesticide or device unless such action is taken with the approval of the
6 Administrator to correct an improper label or labeling.

7 (h) To add any substance to or take any substance from a pesticide or device in a
8 manner that may defeat the purpose of this Chapter, unless the pesticide in question is
9 properly registered as required under FIFRA and the establishment where the pesticide is
10 produced is registered as required under FIFRA.

11 (i) To use for a person's own advantage or to reveal any information relative to
12 formulas of products acquired in the administration of this Chapter to persons other than to
13 proper officials or Employees of the Agency, or any courts in response to a subpoena or to
14 physicians or in emergencies to pharmacists and other qualified persons for use in the
15 preparation of practical treatment.

16 (j) To falsify any report or record required to be made or maintained or to fail to
17 file reports required by the Agency.

18 (k) To submit to the Agency data known to be false.

19 (l) To violate any provision of this chapter or any rule, regulation, standard,
20 permit, certificate, license or order issued pursuant to this Chapter.

21 (m) Violate any rule, regulation, standard, or order issued or promulgated by
22 USEPA under FIFRA.

23 (n) To use, store, transport, mix, dispose or discard a pesticide in any way
24 inconsistent with the Federal Worker Protection Standards (WPS) found at 40 CFR Part 170
25 and under this Chapter.

26 (o) To import any pesticides to Guam without an approved Notice of Arrival
27 (NOA) prior to the arrival of the pesticide product.

28 **§50111. Seizures: Stop-Sale and Removal from Sale Orders “Stop Sale”,**
29 **“Use”, “Removal”, and “Seizure”.** (a) Whenever a pesticide or device is found by the
30 Administrator or his designated agent and there is reason to believe that the pesticide or

1 device has been or is intended to be distributed, used, sold or disposed of in violation of this
2 Chapter, the Administrator may:

3 (1) Issue a written or printed order to stop the importation, distribution,
4 sale, use, storage, or improper disposal, and to remove the pesticide in accordance
5 with this Chapter, and;

6 (2) Seize the pesticides or device.

7 (b) Any pesticide or device seized hereunder shall, after entry of decree, be
8 disposed of or sale as the Court directs. Proceeds, if sold, shall be paid to the Pesticide
9 Management Fund, provided that the pesticide or device shall not be sold contrary to the
10 provisions of this Chapter, and provided that upon payment of costs and execution and
11 delivery of a good and sufficient bond conditioned that the pesticide or device shall not be
12 disposed of unlawfully, the Court may direct the pesticide or device to be delivered to the
13 owner thereof.

14 (c) When a decree of condemnation is entered against the pesticide or device,
15 court costs, fees, storage and other proper expenses shall be awarded against the person, if
16 any, intervening as claimant of the pesticide or device.

17 **§50112. Notice of Arrival of Pesticides and Devices.** An importer
18 desiring to import pesticides or devices into Guam shall submit to the Administrator a
19 completed Agency's Notice of Arrival form prior to the arrival of the shipment. Promptly
20 after receipt, the Administrator shall complete said form, indicating the disposition to be
21 made of the shipment of pesticides or devices upon its arrival in Guam and shall return the
22 form to the importer or his agent.

23 **§50113. Arrival of Shipment.** Upon arrival of a shipment of pesticides or
24 devices, the importer or his agent shall submit to the Customs Officer at the port of first
25 arrival, the Notice of Arrival completed by the Administrator and indicating to Customs the
26 action to be taken on the shipment of pesticides or devices. The Customs Officer at the port
27 of arrival shall immediately notify the Agency of such arrival of shipment and compare
28 documents for the shipment of pesticides or devices and certify its agreement therewith.

29 **§50114. Shipments Arriving without the Notice of Arrival.** When a
30 shipment of pesticides or devices arrives in Guam without the submission by the importer or
31 his agent of the Notice of Arrival, such shipment shall be refused entry by the Customs

1 Officer. Any expenses incident to the handling, storage or transfer of pesticides or devices
2 refused entry into Guam shall be at the carrier's risk and expense.

3 **§50115. Release of Shipment or Entry Refused.** If the completed Notice of
4 Arrival directs the Customs Officer to release the shipment of pesticides or devices and from
5 examination if it appears to be in compliance, the shipment shall be released to the importer.
6 If the completed Notice of Arrival directs the Customs Officer to refuse entry of a shipment
7 and from examination of the shipment it appears to violate provisions of this Act such
8 shipment shall be refused entry and shall be treated as a prohibited importation.

9 **§50116. Authority to Inspect.**(a) The Agency or any authorized
10 representative or employee of the Agency may enter upon any public or private property,
11 according to law at any reasonable time to examine and inspect application methods and
12 equipment, to examine and collect documentary and environmental evidence (including but
13 not limited to sample of plants, soil and other materials) and to perform any other act for the
14 purpose of carrying out and effectuating the purposes of this Act, regulations developed
15 under this Act, FIFRA and federal pesticide regulations. This includes, but is not limited to,
16 the following locations: where pesticides or devices are used, imported or exported,
17 produced, distributed, held for distribution or offered for distribution, sold, held for sale, or
18 offered for sale, stored, disposed; where handlers and workers, as defined under the federal
19 Worker Protection Standard(WPS), are present. GEPA should have the authority to take
20 necessary enforcement action (s) as specified in this Act.

21 (b) Should entry be denied to any place where entry is sought, the Agency or any
22 authorized representative or employee of the Agency may apply to any court of competent
23 jurisdiction for a search warrant authorizing entry. The court may, upon a showing by the
24 Administrator that there is reason to believe that the provisions of this Act have been
25 violated, issue a search warrant.

26 **§50117. Hearings.** (a) Any person who receives an order from the
27 Administrator as authorized by this Chapter and any person whose license, certification,
28 permit, registration or Notice of Arrival is disapproved by the Administrator may, within
29 fifteen (15) days of the date of receipt of such order or disapproval, file a Notice of Intent to
30 appeal with the Board, setting forth in such notice a verified petition outlining the legal and
31 factual basis for such appeal.

1 (b) The Board of Directors shall, not more than sixty (60) calendar days after
2 receipt of such Notice of Appeal, hold a public hearing at which time the appellant may
3 appear and present evidence in person or through counsel in support of this petition.

4 (c) The Agency is hereby authorized to administer oaths, examine witnesses and
5 issue subpoenas to compel the attendance of witnesses and the production of evidence
6 relevant to the matter involved in the hearing.

7 (d) The Board shall affirm, modify or revoke any action which is appealed and
8 shall notify the appellant of its decision not more than thirty (30) calendar days after the
9 conclusion of the hearing. Such notice shall be in writing and shall state the reasons for the
10 decision.

11 (e) Any person may appeal such decision to the Superior Court of Guam by filing
12 with the Agency a written notice of such intent to appeal within ten (10) days of the notice in
13 subsection (d) of this section and shall have a transcript of the proceedings upon request and
14 payment of the expense of preparation and certification of the transcript, and filling out a
15 petition with the Superior Court of Guam within thirty (30) days of the notice in subsection
16 (d) of this section.

17 **§50118. Penalties and Enforcement. (a) Criminal Penalties.** Any person
18 who knowingly violates any provision of this Chapter, or any valid rule or regulation
19 promulgated under this Chapter, or who refuses or neglects to comply with any lawful
20 license, certification, permit, registration, Notice of Arrival, or order issued by the
21 Administrator in carrying out the provisions of this Chapter shall, upon conviction, be guilty
22 of a felony and sentenced to imprisonment for a term not to exceed five (5) years and be
23 fined not more than ten thousand dollars (\$10,000.00) per day for each violation or non-
24 compliance and shall make restitution.

25 (b) **Civil Penalties.** Any person who violates any provision of this Chapter,
26 or any valid rule or regulation promulgated under this Chapter, or refuses or neglects to
27 comply with any lawful license, certification, permit, registration, Notice of Arrival, or order
28 issued by the Administrator in carrying out the provisions of this Chapter shall, in addition to
29 clean-up cost and other damages, forfeit and pay a civil penalty of not more than ten thousand
30 dollars (\$10,000.00) per day for each violation or non-compliance.

31 (c) **Administrative Penalties.** In addition to any other administrative or

1 judicial remedy provided by this Chapter, or by rules adopted under this Chapter, the
2 Administrator is authorized to impose by order the penalties specified in §50118(a-b).
3 Factors to be considered in imposing an administrative penalty include the nature and history
4 of the violation and of any prior violations, and the opportunity, difficulty, and history of
5 corrective action. It is presumed that the violator's economic and financial conditions allow
6 payment of the penalty, and the burden of proof to the contrary is on the violator. In any
7 proceeding to recover the civil penalty imposed, the Administrator need only show that
8 notice was given, a hearing was held or the time granted for requesting a hearing has expired
9 without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

10 (d) The Agency may institute and maintain a judicial action to enforce the
11 provisions of this Chapter, or any valid rule or regulation promulgated under this Chapter, or
12 any lawful license, certification, permit, registration, Notice of Arrival, or order issued by the
13 Administrator in carrying out the provisions of this Chapter, by injunction, receivership or
14 other appropriate remedy. The rights in this section are in addition to any other rules or
15 penalties conferred by this Chapter.

16 (e) Nothing in this Chapter shall be construed to abridge, limit, impair, create,
17 enlarge, or otherwise affect substantively or procedurally the right of any person to damages
18 or other relief on account of injury to person or property and to maintain any action of other
19 appropriate proceeding therefore.

20 **§50119. Pesticide Management Fund.** There is established a non-
21 lapsing, revolving fund, hereafter referred to as the "Pesticide Management Fund" which
22 shall be maintained separate and apart from any other funds of the Government of Guam, and
23 shall be administered by the Administrator. Independent records and accounts shall be
24 maintained in connection therewith. All fees, reimbursements, assessments, fines, bail
25 forfeitures, and other funds collected or received pursuant to this chapter shall be deposited
26 in this Fund and used for the administration and implementation of this Chapter, but not
27 limited to, including purchase of equipment, payment of personnel costs, public outreach,
28 training, contracts, and disposal of confiscated pesticides and devices.

29 **§50120. Pesticide Enforcement Program Additional Staff.**

30 (a) **Enforcement.** There is hereby established within the Agency's Pesticide
31 Enforcement Program under the Air and Land Division, two (2) additional staff for the

1 purpose of implementing and enforcing this Act and related environmental activities relative
2 to the functions of the Agency.

3 (b) **Staff.** The Program shall include two additional staff as follows:

4 (1) Environmental Health Specialist III, and

5 (1) Environmental Health Specialist II.

6 (c) **Funding.** The funding shall be submitted through *I Maga'lahaen Guahan* for a
7 budget request within ninety (90) days upon enactment, or *I Maga'lahaen Guahan* may use
8 his transfer authority for funding source.

9 **§50121. Severability.** *If* any provision of this Act or its application to any
10 person or circumstance is found to be invalid or contrary to law, such invalidity shall *not*
11 affect other provisions or applications of this Act which can be given effect without the
12 invalid provisions or application, and to this end the provisions of this Act are severable.