



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
UFISINAN I MAGA LAHI
AGANA, GUAM 96910 U.S.A.

MAR 26 1990

The Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
Post Office Box CB-1
Agana, Guam 96910

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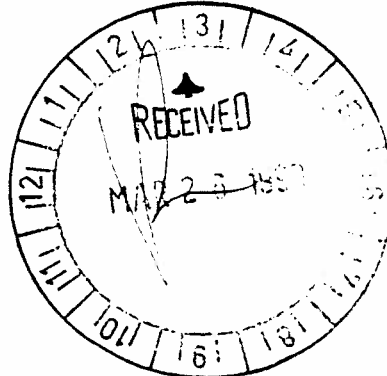
Dear Mr. Speaker:

Transmitted herewith is Bill No. 259, which I have signed into law this date
as Public Law No. 20-110.

Sincerely,

Joseph F. Ada
JOSEPH F. ADA
Governor

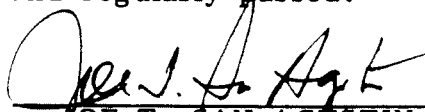
Attachment



TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 259 (LS), "AN ACT TO AMEND SUBSECTIONS (a) OF SECTIONS 37012 AND 37013 OF THE GOVERNMENT CODE, TO ADD A NEW SUBITEM (4) TO SUBSECTION (b) OF SECTION 32101 OF TITLE 10, GUAM CODE ANNOTATED, TO ADD SUBSECTIONS (p) THROUGH (z) TO §32101 OF SAID TITLE, TO ADD SECTIONS 32112 THROUGH 32120 TO SAID TITLE, ALL RELATIVE TO HAZARDOUS SUBSTANCE PROTECTION, AND MAKING AN APPROPRIATION THEREFOR," was on the 29th day of September, 1989, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



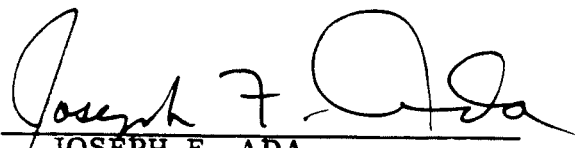
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 5th day of Oct, 1989,
at 3:50 o'clock P.m.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: October 17, 1989

Public Law No. 20-110

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 259 (LS)
As substituted by the Committee
on Health, Welfare & Ecology and
further substituted by the
Committee on Rules

Introduced by:

M. C. Ruth
J. G. Bamba
D. Parkinson

A. R. Unpingco
T. V. C. Tanaka
M. D. A. Manibusan
E. R. Duenas
E. M. Espaldon
D. F. Brooks
J. P. Aguon
E. P. Arriola
M. Z. Bordallo
H. D. Dierking
C. T. C. Gutierrez
P. C. Lujan
G. Mailloux
T. S. Nelson
F. J. A. Quitugua
E. D. Reyes
J. T. San Agustin
F. R. Santos

AN ACT TO AMEND SUBSECTIONS (a) OF
SECTIONS 37012 AND 37013 OF THE
GOVERNMENT CODE, TO ADD A NEW
SUBITEM (4) TO SUBSECTION (b) OF
SECTION 32101, OF TITLE 10, GUAM CODE
ANNOTATED, TO ADD SUBSECTIONS (p)
THROUGH (z) TO §32101 OF SAID TITLE, TO
ADD SECTIONS 32112 THROUGH 32120 TO
SAID TITLE, ALL RELATIVE TO HAZARDOUS
SUBSTANCE PROTECTION, AND MAKING AN
APPROPRIATION THEREFOR.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. Legislative findings. The Legislature hereby finds that:
3 (a) There are nearly four hundred known cases of asbestos

1 poisoning on Guam.

2 (b) Polychlorinated biphenyl ("PCB") spills have occurred at the
3 Navy Piti Power Plant in 1987, and in the vicinity of the George
4 Washington High School in 1988.

5 (c) No less than nineteen chlorine gas leaks have occurred on
6 Guam between September 1979 and the present.

7 (d) Litigation has resulted in a number of cases, including but
8 not limited to, Civil Case 646-82, wherein plaintiffs allege permanent
9 injuries due to negligence on the part of the government of Guam with
10 respect to chlorine gas exposure.

11 (e) The government of Guam carries no liability insurance to
12 protect itself from litigation arising out of exposure to toxic or
13 hazardous substances, including, but not limited to, asbestos, chlorine
14 gas and PCB.

15 (f) The Department of Public Health and Social Services does not
16 presently offer toxic or hazardous substance testing to the people of
17 Guam.

18 (g) The Worker's Compensation Commission does not make
19 compensation payments unless injury can be medically determined
20 within one (1) year from the occurrence despite the fact that injuries
21 resulting from toxic or hazardous substance exposure may not be
22 medically apparent during such period.

23 (h) The government of Guam should compensate people exposed
24 to toxic or hazardous substances resulting from its negligence even
25 though injury or disability may not be medically or immediately
26 apparent.

27 Section 2. §32101 of Title 10, Guam Code Annotated, is hereby
28 amended by adding a new subitem (4) to subsection (b) to read:

29 "(4) 'Hazardous substance' shall mean any toxic or hazardous
30 substance as defined by:

31 (a) 29 CFR 1910, Subpart Z, Toxic and Hazardous
32 Substances, Occupational Safety and Health Administration Act
33 (OSHA) and any amendments thereto;

1 (b) Threshold Limit Values for Chemical Substances and
2 Physical Agents in the Work Environment, American Conference of
3 Governmental Industrial Hygienists (ACGIH) and any amendments
4 thereto;

5 (c) Title III, also known as the 'Emergency Planning and
6 Community Right-To-Know Act of 1986' as contained in U.S.
7 Public Law 99-499, also known as the 'Superfund Amendments and
8 Reauthorization Act of 1986', and any amendments thereto;

9 (d) Waste, or combination of wastes, which because of its
10 quantity, concentration or physical, chemical, or infectious
11 characteristics may either:

12 (1) Cause, or significantly contribute to an increase in
13 mortality or an increase in serious irreversible illness;

14 (2) Pose a substantial or potential hazard to human
15 health or environment when improperly treated, stored,
16 transported, disposed of or otherwise mismanaged.;

17 (e) Asbestos, chlorine gas and Polychlorinated biphenyls
18 (PCBs)."

19 Section 3. §32101 of Title 10, Guam Code Annotated, is hereby
20 amended by adding subsections (p), (q), (r), (s), (t), (u), (v), (w),
21 (x), (y), and (z) thereto to read as follows:

22 "(p) 'Agency' shall mean the government of Guam or any
23 department, agency, autonomous agency, authority, branch or
24 instrumentality thereof.

25 (q) 'Commission' shall mean the Worker's Compensation
26 Commission of the Department of Labor.

27 (r) 'B Reader' shall mean a radiologist or pulmonologist who has
28 received specialized training in the interpretation of chest x-rays
29 specifically relating to occupational lung diseases and who has passed a
30 proficiency test administered by the Centers for Disease Control,
31 National Institute for Occupational Safety and Health (NIOSH).

32 (s) 'Person' shall mean any human being, and not any
33 corporation, partnership or business entity.

1 (t) 'Employee' shall mean a person as defined in subsection (i)
2 of §37002 of the Government Code of Guam.

3 (u) 'Exposure' shall mean a person's subjection to a hazardous
4 substance defined by subsection (b)(4) of this section where the level
5 of same is above and beyond the acceptable limits as defined by:

6 (1) 29 CFR 1910, Subpart Z, Toxic and Hazardous
7 Substances, Occupational Safety and Health Administration Act,
8 and any amendments thereto;

9 (2) Threshold Limit Value for Chemical Substances and
10 Physical Agents in the Work Environment, American Conference of
11 Governmental Industrial Hygienists (ACGIH) and any amendments
12 thereto;

13 (3) Title III, also known as the 'Emergency Planning and
14 Community, Right-To-Know Act of 1986' as contained in U.S.
15 Public Law 99-499, also known as the 'Superfund Amendments and
16 Reauthorization Act of 1986', and any amendments thereto.

17 (v) 'Injury' shall mean physical impairment or death arising out
18 of exposure to hazardous substances defined by subsection (b)(4) of
19 this section, and such disease, medical impairment or infection as a
20 result of such exposure.

21 (w) 'Disability' shall mean incapacity because of injury as
22 defined by subsection (v) of this section which prevents a person from
23 earning a living wage or other employment.

24 (x) 'Negligence' shall mean the failure to exercise the care that
25 a prudent person or entity should exercise.

26 (y) 'Average annual wages' shall mean:

27 (1) If employed at the time of exposure: The total wages
28 paid to the person for the year immediately preceding the date of
29 exposure.

30 (2) If unemployed twelve (12) months or less, or, if a
31 person's total annual earnings, as computed in (1) above, are
32 less than two thousand eighty (2,080) hours times the existing
33 minimum wage rate of Guam: Such sum as shall reasonably
34 represent the annual earning capacity of the person, having

1 regard to the previous earnings of the exposed person in the
2 occupation in which he or she was working at the time of
3 exposure, and of other persons of the same or similar class
4 working in the same neighboring locality or other employment of
5 such person, including the reasonable value of the services of the
6 employer if engaged in self-employment.

7 (3) Having never been employed, or, if unemployed thirteen
8 (13) months or more at the time of exposure: An amount equal to
9 one percent (1%) of the existing minimum wage rate of Guam,
10 utilizing a twenty (20) hour a week basis for calculation.

11 (z) 'Whole life factor' shall mean the whole value of a person
12 based on his or her age as determined by the American Experience
13 Mortality Table used by the Commission."

14 Section 4. Sections 32112, 32113, 32114, 32115, 32116, 32117, 32118,
15 32119, and 32120 are hereby added to Chapter 32, Title 10, Guam Code
16 Annotated, to read:

17 "§32112. Hazardous Substance Testing Offered. (a) The
18 Department shall provide testing to any person who requests such
19 tests for hazardous substances defined by Section 32101(b)(4) of this
20 Chapter. The fee for such testing shall be set by the Department
21 pursuant to the provisions of the Administrative Adjudication Law.

22 (b) The Department is authorized to procure or contract for the
23 services of a certified B Reader to conduct and interpret asbestos
24 x-ray tests and such other professional services for the testing of
25 exposure to hazardous substances defined by said Section 32101(b)(4).

26 (c) Every affected agency shall incorporate in the job
27 specifications of its employees the types of testing available at the
28 Department for hazardous substances defined by said Section
29 32101(b)(4). Failure to make such statement shall be deemed a citable
30 violation under Chapter 87 of this Title.

31 §32113. Government of Guam to procure hazardous substance
32 liability insurance coverage. The government of Guam shall procure
33 liability insurance coverage for hazardous substances defined by
34 Section 32101(b)(4) of this Chapter to insure itself against claims for

1 injury, disability and death arising under the provisions of this
2 Chapter. The Governor shall request from the Legislature any
3 appropriation to comply with this Section on an annual basis.

4 §32114. Awards for exposure where no injury, disability or death
5 is apparent. (a) On a finding by the Commission that the
6 government of Guam or any of its employees, officers or agents was
7 negligent in the handling, storage, management, generation, disposal
8 or transportation of hazardous substances defined by Section
9 32101(b)(4) of this Chapter, and exposure to said hazardous
10 substances has occurred but no injury, disability or death is
11 immediately medically apparent, the Commission shall award
12 compensation to the exposed person in the amount equal to one percent
13 (1%) of the exposed person's future earnings as computed using his or
14 her whole life factor and average annual earnings as defined in this
15 Chapter.

16 (b) Such compensation shall be paid in one lump sum commuted
17 in compliance with the provisions of subsection (j) of §37014 of the
18 Government Code of Guam.

19 (c) The maximum compensation provisions of subsection (m) of
20 §37014 of the Government Code shall not apply to the compensation
21 paid pursuant to this Chapter; provided, however, that in the event
22 that such exposure eventually leads to injury disability or death, the
23 Worker's Compensation Law shall preempt this Chapter, and any
24 compensation payable under such law shall be offset by such amounts
25 heretofore paid to the exposed person.

26 (d) In the event of exposure where no injury, disability or
27 death is immediately medically apparent, or, in the event of injury,
28 disability or death resulting from exposure to hazardous substances
29 defined by Section 32101(b)(4) of this Chapter, the burden of proof
30 shall be on the government of Guam to prove it was not negligent. In
31 the absence of such a showing by the government of Guam, the
32 Commission shall come to a finding of negligence and compensation shall
33 be paid as provided herein. Notwithstanding the provisions of this
34 subsection, any person who accepts such compensation shall not be

1 permitted to file additional claims against the government of Guam for
2 the same exposure, until such time as injury, disability or death, as
3 opposed to exposure, is apparent.

4 §32115. Report of exposure. Within thirty (30) days of
5 exposure, a person must report such exposure to the Commission in
6 order to be eligible for compensation under this Chapter.

7 §32116. Eligibility under Worker's Compensation Commission.
8 Nothing within this Chapter shall be construed to qualify any person
9 for benefits under the Worker's Compensation Law.

10 §32117. Hazardous Substance Expense Fund. (a) There is
11 hereby created a Hazardous Substance Expense Fund (the "Fund") to
12 be administered by the Worker's Compensation Commission for the
13 purpose of making payments under §32114 of this Chapter.

14 (b) Not later than forty-five (45) days after the beginning of
15 each fiscal year, each agency that utilizes, manages, generates,
16 disposes, transports, or is a repository of hazardous substances
17 defined by Section 32101(b)(4) of this Chapter shall contribute to the
18 Fund a sum equivalent to one percent (1%) of its total annual
19 personnel services budget.

20 (c) The Treasurer of Guam shall be the custodian of such Fund
21 and shall disburse moneys from such Fund only upon the authorized
22 order of the Commission.

23 (d) The Fund shall be subject to audit in accordance with
24 established government of Guam accounting and auditing procedures.

25 §32118. Severability. If any of the provisions of this Chapter,
26 or the application thereof to any person or circumstances, is held
27 invalid, such invalidity shall not affect any other provisions or
28 application of this Chapter which can be given effect without the
29 invalid provision or application, and to this end the provisions of this
30 Chapter are severable.

31 §32119. Report of hazardous substance incidents. Every agency
32 shall report incidents of exposure to hazardous substances defined by
33 Section 32101(b)(4) of this Chapter to the Department within ten (10)
34 days. The Department shall compile and maintain statistics of injuries

1 and deaths attributed to said hazardous substances. The statistics
2 shall not reveal the identity of any person who has been injured or
3 dies as a result of exposure to said hazardous substances.

4 §32120. Hazardous Pay. Any government of Guam employee who,
5 in the line and scope of his or her employment:

6 (a) Is required to enter a site where a suspected hazardous
7 substance exposure, as defined by Section 32101(b)(4) of this
8 Chapter, has occurred, either to make inspection, investigation or
9 assist in securing the area; or

10 (b) Is required to assist a person or person suspected to
11 have been exposed to a hazardous substance defined by said
12 Section 32101(b)(4); or

13 (c) Is required to medically test a person or persons who is
14 suspected to have been exposed to a hazardous substance defined
15 by said Section 32101(b)(4);

16 and it is determined that an exposure did in fact take place,
17 regardless of whether the site is owned or operated by the government
18 of Guam, shall not be eligible for compensation as provided in Section
19 32114 of this Chapter. However, said employee is entitled to apply
20 for, and shall receive, hazardous pay in the amount of ten percent
21 (10%) of the employee's hourly wage rate for the time spent at the
22 exposure site, or expended in the testing or examination of a person
23 suspected to have been exposed when and if it is determined that an
24 exposure did take place. Written notification that an exposure
25 occurred shall be provided by the Department to the Division of
26 Occupational Safety and Health, which shall then inform in writing the
27 affected employee and the Chief Officer, Director or Administrator of
28 the employee's agency. Nothing in this Section shall preclude said
29 employee from applying to the Commission for compensation where
30 medical injury, disability or death has been determined."

31 Section 5. Two Hundred Fifty Thousand Dollars (\$250,000) are hereby
32 appropriated from the General Fund to the Hazardous Substance Expense
33 Fund.

1 Section 6. Subsection (a) of §37012 of the Government Code is
2 amended to read:

3 "(a) Notice of an injury or exposure defined by subsection (u)
4 of §32101, Title 10, Guam Code Annotated, or death for which
5 compensation is payable under this Title, shall be given within thirty
6 (30) days after the date of such injury or exposure or death (1) to
7 the Commissioner and (2) to the employer."

8 Section 7. Subsection (a) of §37013 of the Government Code is
9 amended to read:

10 "(a) The right of compensation for disability and death under
11 this Title shall be barred unless a claim therefor is filed within one
12 (1) year after medical knowledge of disability or death. The time for
13 filing a claim shall not begin to run until the employee or beneficiary
14 becomes aware of the relationship between the injury or death and the
15 employment. If payment compensation has been made without an award
16 on account of such injury or death, a claim may be filed within one
17 (1) year after the date of the last payment. Such claim shall be filed
18 with the Commissioner. For the purposes of Chapter 32, Title 10,
19 Guam Code Annotated, notice of exposure where no disability or death
20 is immediately medically apparent, shall not constitute 'medical
21 knowledge' of disability or death."

22 Section 8. Within ninety (90) days from the effective date of this Act,
23 the Governor shall request from the Legislature an appropriation to fund
24 testing of hazardous substances defined by Section 32101 (b) of Title 10,
25 Guam Code Annotated, by the Department of Public Health and Social
26 Services (the "Department"). Notwithstanding the above, within One
27 Hundred Eighty (180) days from the effective date of this Act, the
28 Department shall offer testing of hazardous substances defined by said
29 Section 32101(b)(4) to anyone who requests the same.

30 Section 9. Within one hundred twenty (120) days from the effective
31 date of this Act, the government of Guam shall procure liability insurance
32 coverage for hazardous substances defined by said Section 32101(b)(4) to
33 insure itself against claims for injury, disability and death pursuant to
34 Section 32114, Title 10, Guam Code Annotated.

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. 259

Date: 9/29/89

Resolution No. _____

QUESTION: _____

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. P. Aguon	✓			
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks	✓			
H. D. Dierking	✓			
E. R. Duenas				✓
E. M. Espaldon	✓			
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux				✓
M. D. A. Manibusan	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka *	✓			
A. R. Unpingco	✓			

19

2

Introduced

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

JAN 04 '89

Rec'd
1/4/89
3:10 pm

Bill No. 259 (LS)

Introduced by:

M. C. Ruth
J. G. Bamba
D. Parkinson

A.R. Unpingco

E.C. Tangua

M.P. Marubusan

E.R. Due

AN ACT TO ADD A NEW CHAPTER 88 TO TITLE
10 GCA RELATIVE TO ENACTING A HAZARDOUS
SUBSTANCE PROTECTION ACT.

1 WHEREAS, there are nearly Four Hundred (400) known cases of asbestos
2 poisoning on Guam; and

3 WHEREAS, Polychlorinated biphenyl (PCB) spills have occurred at the Navy
4 Piti Power Plant in 1987, and in the vicinity of the George Washington High School
5 in 1988; and

6 WHEREAS, no less than nineteen (19) chlorine gas leaks have occurred on
7 Guam between September 1979 and the present; and

8 WHEREAS, litigation has resulted in a number of cases, including but not
9 limited to, Civil Case 646-82, wherein plaintiffs allege permanent injuries due to
10 negligence on the part of the Government of Guam with respect to chlorine gas
11 exposure; and

12 WHEREAS, the Government of Guam carries no liability insurance to protect
13 itself from litigation arising out of its use of or exposure to toxic or hazardous
14 substances, including, but not limited to, asbestos, chlorine gas and PCBs; and

15 WHEREAS, the Department of Public Health and Social Services does not
16 presently offer toxic or hazardous substance testing to the people of Guam; and

1 WHEREAS, the Worker's Compensation Commission may not make payments
2 unless injury can be medically determined within one-year, and injuries resulting
3 from toxic or hazardous substance exposure may not be medically apparent during
4 that time frame; and

5 WHEREAS, the Government of Guam should compensate people exposed to toxic
6 or hazardous substance when same has occurred as a result of its negligence even
7 though actual injuries may not be medically or immediately apparent; now, therefore,

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

9 Section 1. A new Chapter 88 is added to Title 10 GCA to read:

10 "Chapter 88

11 HAZARDOUS SUBSTANCE PROTECTION ACT

12 Section 88101. Definitions:

13 (a) 'Agency' shall mean the Government of Guam or any department, agency
14 autonomous agency, Authority, Branch or instrumentality thereof.

15 (b) 'Commission' shall mean the Worker's Compensation Commission of the
16 Government of Guam's Department of Labor.

17 (c) 'Hazardous substance' shall mean any toxic or hazardous substance as
18 defined by:

19 (1) 29 CFR 1910, Subpart Z, Toxic and Hazardous Substances,
20 Occupational Safety and Health Administration Act (OSHA) and any amendments
21 thereto;

22 (2) Threshold Limit Values for Chemical Substances and Physical Agents
23 in the Work Environment, American Conference of Governmental Industrial
24 Hygienists (ACGIH) and any amendments thereto;

25 (3) Title III, also known as the 'Emergency Planning and Community
25 Right-To-Know Act of 1986' as contained in U.S. Public Law 99-499, also know
26 as the 'Superfund Amendments and Reauthorization Act of 1986', and any
27 amendments thereto;

1 (4) Waste, or combination of wastes, which because of its quantity,
2 concentration; or physical, chemical, or infectious characteristics may either:

3 (a) Cause, or significantly contribute to an increase in mortality
4 or an increase in serious irreversible illness;

5 (b) Pose a substantial or potential hazard to human health or
6 environment when improperly treated, stored, transported, disposed
7 of or otherwise mismanaged.;

8 (5) Asbestos, chlorine gas and polychlorinated biphenyls (PCBS).

9 (d) 'B Reader' shall mean a radiologist or pulmonologist who has received
10 specialized training in the interpretation of chest x-rays specifically relating to
11 occupational lung diseases and who has passed a proficiency test administered by
12 the Centers for Disease Control (NIOSH).

13 (e) 'Person' shall mean any human being, and not any corporation, partnership
14 or business entity.

15 (f) 'Employee' shall mean any person as defined in 33 GCG 37002(i).

16 (g) 'Exposure' shall mean a person's subjection to a hazardous substance
17 where the level of same is above and beyond the acceptable limits as defined by:

18 (1) 29 CFR 1910, Subpart Z, Toxic and Hazardous Substances,
19 Occupational Safety and Health Administration Act, and any amendments
20 thereto;

21 (2) Threshold Limit Values for Chemical Substances and Physical Agents
22 in the Work Environment, American Conference of Governmental Industrial
23 Hygienists (ACGIH) and any amendments thereto;

24 (3) Title III, also known as the 'Emergency Planning and Community
25 Right-To-Know Act of 1986' as contained in U.S. Public Law 99-499, also known
26 as the 'Superfund Amendments and Reauthorization Act of 1986', and any
27 amendments thereto.

28 (h) 'Negligence' shall mean the failure to exercise the care that a prudent
29 person or entity should exercise.

1 (i) 'Average annual wages' shall mean:

2 (1) if employed at the time of exposure: the total wages paid to the
3 person for the year immediately preceding the date of exposure.

4 (2) if unemployed twelve (12) months or less, or, if a person's total
5 annual earnings, as computed in one (1) above, are less than two thousand
6 eighty (2,080) hours times the minimum wage rate of Guam at the time of
7 exposure: such sum as shall reasonably represent the annual earning capacity
8 of the person, having regard to the previous earnings of the exposed person
9 in the occupation in which he or she was working at the time of exposure,
10 and of other persons of the same or similar class working in the same
11 neighboring locality or other employment of such person, including the
12 reasonable value of the services of the employer if engaged in self-employment.

13 (3) Having never been employed, or, if unemployed thirteen (13) months
14 or more at the time of exposure: an amount equal to one percentum (1%)
15 of the existing minimum wage rate of Guam, utilizing a twenty (20) hour a
16 week basis for calculation.

17 (j) 'Whole life factor' shall mean the whole value of a person based on his/her
18 age as determined by the American Experience Mortality Table used by the
19 Commission.

20 Section 88102. Hazardous Substance Testing Offered.

21 (a) The Department of Public Health and Social Services shall offer hazardous
22 substance testing to any person who requests same. The fee for such testing shall
23 be set by the Department of Public Health and Social Services pursuant to the
24 Government of Guam Administrative Adjudication Act.

25 (b) The Department of Public Health and Social Services is authorized to
26 procure or contract for the services of a certified B Reader to conduct and interpret
27 asbestos x-ray tests and such other professional services for the testing of
28 hazardous substance exposure.

1 (c) Every affected agency shall incorporate in the job specifications of its
2 employees what hazardous substance testing is available at the Department of Public
3 Health and Social Services. Failure to make such statement shall be deemed a citable
4 violation under Chapter 87, Title 10 GCA.

5 Section 88103. Hazardous Substance Insurance Coverage.

6 The Government of Guam shall procure hazardous substance liability insurance
7 coverage to insure itself against claims for injury, disability and death arising out
8 of this Act. The Governor shall report to the Legislature the need for any
9 appropriations to comply with this Section on an annual basis.

10 Section 88104. Awards For Exposure Where No Disability Is Apparent.

11 (a) On a finding by the Commission that the Government of Guam or any
12 of its employees, officers or agents was negligent in the handling, storage,
13 management, generation, disposal or transportation of hazardous substances, and
14 exposure to said hazardous substances has occurred but no injury or disability is
15 immediately medically apparent, the Commission shall award compensation to the
16 exposed person in the amount equal to one percentum (1%) of the exposed person's
17 future earnings as computed using his or her whole life factor and average annual
18 earnings as defined in this Chapter.

19 (b) Such compensation shall be paid in one lump sum commuted in compliance
20 with the provisions of 33 GCG 37014(j).

21 (c) Maximum compensation provisions of 33 GCG 37014(m) shall not apply
22 to the compensation paid pursuant to this Act; provided however, that in the event
23 that such exposure eventually leads to disability or death of the exposed person,
24 the Worker's Compensation Law shall preempt the Hazardous Substance Protection
25 Act, and any disability or death compensation payable under Title 33 of the GCG
26 shall be offset by such amounts heretofore paid to the exposed person.

27 (d) In the event of exposure where no disability is immediately medically
28 apparent, or, in the event of actual injury, disability or death resulting from

1 exposure to hazardous substances, the burden of proof shall be on the Government
2 of Guam to prove it was not negligent. In the absence of such a showing by the
3 Government of Guam, the Commission shall come to a finding of negligence and
4 compensation shall be paid as provided herein. Notwithstanding the above, any
5 person who accepts such compensation shall not be permitted to file additional claims
6 against the Government of Guam for the same exposure, unless and until such time
7 as actual injury, disability or death, as opposed to exposure, is apparent.

8 Section 88105. Mandatory Report.

9 Within thirty (30) days of exposure, a person must report such exposure to
10 the Commission in order to be eligible for compensation under this Act.

11 Section 88106. Eligibility Under Worker's Compensation Commission.

12 Nothing within this Act shall be construed to qualify any person for benefits
13 under Guam's Worker's Compensation Act.

14 Section 88107. Hazardous Substance Expense Fund.

15 (a) There is hereby created a Hazardous Substance Expense Fund to be
16 administered by the Worker's Compensation Commission for the purpose of making
17 payments under Section 88104 of this Act.

18 (b) Not later than forty-five (45) days after the beginning of each fiscal
19 year, each agency that uses, manages, generates, disposes, transports, or is a
20 repository of hazardous substances shall annually contribute to the Fund a sum
21 equivalent to one percentum (1%) of its total annual payroll.

22 (c) The Treasurer of Guam shall be the custodian of such Fund and shall
23 disburse moneys from such Fund only upon the authorized order of the Commission.

24 (d) The Fund shall be subject to audit in accordance with established
25 Government of Guam accounting and auditing procedures.

26 Section 88108. Severability.

27 If any of the provisions of this Code, or the application thereof to any person
28 or circumstance, is held invalid, such invalidity shall not affect any other provision

1 or application of this Code which can be given effect without the invalid provision
2 or application, and to this end the provisions of this Code are severable.

3 Section 88109. Hazardous Substance Reporting.

4 All cases of injury or death due to exposure to hazardous substances as defined
5 by Chapter 88, Title 10 GCA, shall be reported to the Department of Public Health
6 and Social Services. The Department of Public Health and Social Services shall
7 compile and maintain statistics of injuries and deaths attributed to hazardous
8 substances. Said statistics shall not reveal the identity of any person who has been
9 injured or died as a result of exposure to hazardous substances.

10 Section 88110. Hazardous Pay.

11 Any Government of Guam employee who, in the line and scope of his or her
12 employment:

13 (a) is required to enter a site where a suspected hazardous substance
14 exposure has occurred, either to make inspection, investigation or assist in securing
15 the area;

16 (b) is required to assist a person or persons suspected to have been exposed
17 to a hazardous substance;

18 (c) is required to medically test a person or persons who is suspected
19 to have been exposed to a hazardous substance;

20 and it is determined that an exposure did in fact take place, regardless of
21 whether the site is owned or operated by the Government of Guam, he or she shall
22 not be eligible for compensation as provided in Section 88104 of this Chapter.
23 However, said employee is entitled to apply for, and shall receive, hazardous pay
24 for the time spent at the exposure site, or expended in the testing or examination
25 of a person suspected to have been exposed when and if it is determined that an
26 exposure did take place. Written notification that an exposure occurred shall be
27 provided to the Division of Occupational Safety and Health, which shall then inform
28 the affected employee as well as the Chief Officer of his or her Agency in writing.

1 Nothing in this Section shall preclude said employee from applying to the
2 Commission for compensation where actual medical injury has been determined.

3 Section 2. There is hereby appropriated from the General Fund the initial
4 sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) to the Hazardous
5 Substance Expense Fund.

6 Section 3. Section 37012(a) of the Government Code of Guam is amended to
7 read:

8 '37012. Notice of injury or exposure or death. (a) Notice of an injury or
9 exposure or death for which compensation is payable under this Title, shall be
10 given within thirty (30) days after the date of such injury or exposure or death
11 (1) to the Commissioner and (2) to the employer."

12 Section 4. Section 37013(a) of the Government Code of Guam is amended to
13 read:

14 '37013. Time for filing of claims. (a) The right of compensation for disability
15 and death under this Title shall be barred unless a claim therefor is filed within
16 one (1) year after [the injury] medical knowledge of disability or death. The time
17 for filing a claim shall not begin to run until the employee or beneficiary becomes aware,
18 or, by the exercise of reasonable diligence should have been aware, of the
19 relationship between the injury or death and the employment. [and the right to
20 compensation for death shall be barred unless a claim therefor is filed within one
21 (1) year after the death; provided that, if] If payment compensation has been
22 made without an award on account of such injury or death, a claim may be filed
23 within one (1) year after the date of the last payment. Such claim shall be filed
24 with the Commissioner. For the purposes of Chapter 88, Title 10 GCA, also known
25 as the Hazardous Substance Protection Act, notice of exposure where no disability
26 or death is immediately medically apparent, shall not constitute 'medical knowledge'
27 of disability or death.'

28 Section 5. Within forty-five (45) days from the effective date of this Act,
29 the Governor shall report to the Legislature any recommendations for funding

1 hazardous substance testing by the Department of Public Health and Social Services,
2 and whether said department intends to subsidize such testing for Government of
3 Guam employees. Notwithstanding the above, within One Hundred Twenty (120)
4 days from the effective date of this Act, the Department of Public Health and Social
5 Services shall offer hazardous substance testing to anyone who requests same.

6 Section 6. Within One Hundred Twenty (120) days from the effective date
7 of this Act, the Government of Guam shall procure hazardous substance liability
8 insurance coverage to insure itself against claims for injury, disability and death
9 arising out of Chapter 88, Title 10 GCA.

10 Section 7. Section 87129 is added to Chapter 87, Title 10 GCA, also known
11 as the Occupational Safety and Health Code, as follows:

12 "Section 87129. Notice of Hazardous Substances. Standards promulgated under
13 Title III, also known as the 'Emergency Planning and Community Right-To-Know
14 Act of 1986' as contained in U.S. Public Law 99-499, also known as the 'Superfund
15 Amendments and Reauthorization Act of 1986' and any amendments thereto, are
16 hereby adopted by the Territory of Guam and shall be administered by the Division
17 with respect to the Government of Guam, and by the Guam Environmental Protection
18 Agency, with respect to the private sector. However, 'Penalty' provisions contained
19 therein shall not be applicable to any Agency. Agency penalties shall be those
20 contained in Sections 87113 and 87115 of this Chapter."



TWENTIETH GUAM LEGISLATURE

163 Chalan Santo Papa
Agana, Guam 96910
Tel: 472-3425/3426/3427

Senator
Madeleine Z. Bordallo

CHAIRPERSON

COMMITTEE ON
HEALTH, WELFARE
& ECOLOGY

VICE CHAIRPERSON:

COMMITTEE ON
HOUSING & COMMUNITY
DEVELOPMENT

COMMITTEE ON
ECONOMIC DEVELOPMENT

September 14, 1989

Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Health, Welfare and Ecology, to which was referred Bill No. 259, "AN ACT TO AMEND SECTIONS 37012(a) AND 37013(a) OF THE GOVERNMENT CODE; TO ADD A NEW SUBSECTION (4) TO SECTION 32101 (b); (p) THROUGH (z); AND SECTIONS 32112 THROUGH 32120 TO 10 GCA CHAPTER 32 RELATIVE TO ENACTING HAZARDOUS SUBSTANCE PROTECTION PROVISIONS, AND FOR OTHER PURPOSES" does recommend that the Bill, as Substituted by the Author, be Passed by the Twentieth Guam Legislature.

Votes of the Committee members are as follow:

To Pass	<u>9</u>
To Not Pass	<u>0</u>
To Report Out Only	<u>1</u>
To Place In The Inactive File	<u>0</u>
Abstained	<u>0</u>
Off-Island	<u>0</u>
Not Available	<u>2</u>

Respectfully submitted,

Madeleine Z. Bordallo
MADELEINE Z. BORDALLO

Enclosures

MEMBER:

Committee on Energy,
Utilities & Consumer
Protection

Committee on
General Governmental
Operations

Committee on
Justice, Judiciary &
Criminal Justice

Committee on
Youth, Human Resources,
Senior Citizens &
Cultural Affairs

Committee on Rules

Legislative Member
Commission on
Self-Determination

COMMITTEE ON HEALTH, WELFARE AND ECONOMY

VOTING SHEET

SUBSTITUTE BILL NO. 259

AN ACT TO AMEND SECTIONS 37012(a) AND 37013(a) OF THE GOVERNMENT CODE;
TO ADD A NEW SUBSECTION (4) TO SECTION 32101 (b); (p) THROUGH (z);
AND SECTIONS 32112 THROUGH 32120 TO 10 GCA CHAPTER 32
RELATIVE TO ENACTING HAZARDOUS SUBSTANCE PROTECTION PROVISIONS,
AND FOR OTHER PURPOSES

<u>COMMITTEE MEMBER</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO REPORT OUT ONLY</u>	<u>TO PLACE IN INACTIVE FILE</u>
<i>Madeleine Z. Bordallo</i> MADELEINE Z. BORDALLO Chairperson	✓			
<i>Gordon Mailloux</i> GORDON MAILLOUX Vice-Chairperson	✓			
ELIZABETH P. ARRIOLA Member				
<i>H. Dierring</i> HERMINIA D. DIERING Member	✓			
<i>Pilar C. Wujan</i> PILAR C. WUJAN Member	✓			
<i>Ted S. Nelson</i> TED S. NELSON Member	✓			
<i>Edward D. Reyes</i> EDWARD D. REYES Member	✓			
<i>Ernesto Espaldon</i> ERNESTO ESPALDON Member	✓			
<i>Marilyn D.A. Manibusan</i> MARILYN D.A. MANIBUSAN Member	✓ 9/14/89 mdm			
<i>Martha C. Ruth</i> MARTHA C. RUTH Member				
TOMMY TANAKA Member				
<i>Antonio R. Unpingco</i> ANTONIO R. UNPINGCO Member	9/14/89	need to review first		

~~CONFIDENTIAL - ENVIRONMENTAL EXPENSE~~
COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

COMMITTEE REPORT ON SUBSTITUTE BILL NO. 259

**AN ACT TO AMEND SECTIONS 37012(a) AND 37013(a) OF THE GOVERNMENT CODE;
TO ADD A NEW SUBSECTION (4) TO SECTION 32101 (b); (p) THROUGH (z);
AND SECTIONS 32112 THROUGH 32120 TO 10 GCA CHAPTER 32
RELATIVE TO ENACTING HAZARDOUS SUBSTANCE PROTECTION PROVISIONS,
AND FOR OTHER PURPOSES**

PREFACE

A Public Hearing on Bill No. 259 was conducted by the Committee on Health, Welfare and Ecology on June 20, 1989 at 8:00 a.m. in the Legislative Session Hall.

Members Present: Chairperson Senator Madeleine Z. Bordallo; Senators Elizabeth P. Arriola, Ted S. Nelson, Marilyn D. Manibusan, Martha C. Ruth, and Tony R. Unpingco.

Witnesses Heard: Senator Martha C. Ruth, sponsor; James L. Canto and Roland Solivio for Guam Environmental Protection Agency, Karen Cruz for Department of Public Health and Social Services, Frank Guevara for Department of Labor. **Written Testimonies:** Dr. Espaldon, Director of DPHSS; Manuel Q. Cruz, AFGE.

SUMMARY OF TESTIMONY

GEPA supports Bill 259 except Section 7. The local emergency planning committee at Civil Defense has yet to decide which agency will be responsible for administering the federal "Title III" requirements adopted by this bill. Dept. of Labor opposes automatic compensation for exposure until injury or illness is medically detected. DPHSS notes an existing statute, 10 GCA Chapter 32, on Hazardous Substances, requests clarification of overlapping definitions of hazardous substances, and new responsibilities. AFGE representative Manuel Cruz supports further extension of protections now provided to Federal employees to local persons and government employees. He notes liability insurance for accidental exposure only, and possible discrepancy of filing period for claims. Sponsor stated reason for bill is lack of enforcement of existing law. In 1988, between 2500 and 3500 persons would have been eligible for testing if this bill was law. Private sector employees are covered under the OSHA Act of 1970. There is a qualified doctor on-Island to perform testing, surveillance and to establish baseline exposure levels.

COMMITTEE FINDINGS/RECOMMENDATIONS

Bill 259 extends the responsibilities of DPHSS in testing for and monitoring exposure to hazardous substances. It also defines the extent of government liability, burden of proof and negligence. Numerous agencies are involved in enforcement of Title III standards adopted by Section 7. GovGuam employees were afforded initial protections under Section 2 of Public Law 19-19. Passage of this bill will create powerful incentives for strict monitoring, handling and testing for exposure to hazardous substances by the government of Guam.

The author submitted a substitute bill to the Committee for consideration, in response to testimonies received during the hearing. Specifically, the amendments are as follows:

- (a) Provisions are incorporated into current law, instead of creating a new chapter;
- (b) Clarifying compensation for time spent at exposure site;
- (c) Extended the time for funding request to be submitted to the Legislature; and
- (d) Removes section adopting "Title III" standards, as premature.

The Committee recommends Bill No. 259, as Substituted by the Author, to be Passed by the Twentieth Guam Legislature.

ATTACHMENTS

1. Committee Voting Sheet on Bill No. 259, as Substituted.
2. Bill No. 259 as Substituted by the Author.
3. Bill No. 259 as referred to Committee.
4. Section-by-Section analysis.
5. "Differences Between Bill 259 and Bill 259 as Substituted."
6. Sponsor's letter to DPHSS transmitting substitute draft for review.
7. Testimony of Dept. of Public Health and Social Services.
8. Testimony of Guam Environmental Protection Agency.
9. Testimony of Department of Labor.
10. Testimony of Manuel Q. Cruz, of AFGE.
11. Testimony by sponsor.
12. Transmittal of draft "Hazardous Materials Emergency Response Plan".
13. Fiscal Note from BBMR.
14. Committee Members Attendance Sheet.
15. Witnesses Attendance Sheet.

~~LEGISLATIVE GOVERNMENT~~
TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 259
As Substituted by the Author

Introduced by:

M. C. Ruth
J. G. Bamba
D. Parkinson
A. R. Unpingco
T. V.C. Tanaka
M. D.A. Manibusan
E. R. Duenas
E. M. Espaldon
D. F. Brooks

AN ACT TO AMEND SECTIONS 37012(a) AND 37013(a) OF THE GOVERNMENT CODE; TO ADD A NEW SUBSECTION (4) TO SECTION 32101 (b); (p) THROUGH (z); AND SECTIONS 32112 THROUGH 32120 TO 10 GCA CHAPTER 32 RELATIVE TO ENACTING HAZARDOUS SUBSTANCE PROTECTION PROVISIONS, AND FOR OTHER PURPOSES.

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

2 **Section 1. Legislative Findings.** The Legislature hereby finds:

3 a) There are nearly Four Hundred (400) known cases of asbestos
4 poisoning on Guam.

5 b) Polychlorinated biphenyl (PCB) spills have occurred at the Navy Piti
6 Power Plant in 1987, and in the vicinity of the George Washington High School
7 in 1988.

8 c) No less than nineteen (19) chlorine gas leaks have occurred on Guam
9 between September 1979 and the present.

10 d) Litigation has resulted in a number of cases, including but not limited
11 to, Civil Case 646-82, wherein plaintiffs allege permanent injuries due to
12 negligence on the part of the Government of Guam with respect to chlorine gas
13 exposure.

1 e) The Government of Guam carries no liability insurance to protect itself
2 from litigation arising out of its use of or exposure to toxic or hazardous
3 substances, including, but not limited to, asbestos, chlorine gas and PCBS.

4 f) The Department of Public Health and Social Services does not presently
5 offer toxic or hazardous substances testing to the people of Guam.

6 g) The Worker's Compensation Commission may not make payments unless
7 injury can be medically determined within one-year despite the fact that injuries
8 resulting from toxic or hazardous substance exposure may not be medically
9 apparent during that time frame.

10 h) The Government of Guam should compensate people exposed to toxic or
11 hazardous substances resulting from its negligence even though injury or
12 disability may not be medically or immediately apparent.

13 Section 2. A new subsection (4)(a through e) is added to subsection (b)
14 of Section 32101 of 10 GCA Chapter 32 as follows:

15 "(4) 'Hazardous substance' shall mean any toxic or hazardous substance
16 as defined by:

17 (a) 29 CFR 1910, Subpart Z, Toxic and Hazardous Substances,
18 Occupational Safety and Health Administration Act (OSHA) and any
19 amendments thereto;

20 (b) Threshold Limit Values for Chemical Substances and Physical
21 Agents in the Work Environment, American Conference of Governmental
22 Industrial Hygienists (ACGIH) and any amendments thereto;

23 (c) Title III, also known as the 'Emergency Planning and Community
24 Right-To-Know Act of 1986' as contained in U.S. Public Law 99-499, also
25 known as the 'Superfund Amendments and Reauthorization Act of 1986',
26 and any amendments thereto;

1 (d) Waste, or combination of wastes, which because of its quantity,
2 concentration or physical, chemical, or infectious characteristics may
3 either:

4 (1) Cause, or significantly contribute to an increase in
5 mortality or an increase in serious irreversible illness;

6 (2) Pose a substantial or potential hazard to human health or
7 environment when improperly treated, stored, transported, disposed
8 of or otherwise mismanaged.;

9 (e) Asbestos, chlorine gas and Polychlorinated biphenyls (PCBs)."

10 Section 3. Subsections (p), (q), (r), (s), (t), (u), (v), (w), (x), (y)
11 and (z) are added to §32101 of 10 GCA Chapter 32 as follows:

12 "(p) 'Agency' shall mean the Government of Guam or any department,
13 agency, autonomous agency, Authority, Branch or instrumentality thereof.

14 (q) 'Commission' shall mean the Worker's Compensation Commission of the
15 Government of Guam's Department of Labor.

16 (r) 'B Reader' shall mean a radiologist or pulmonologist who has received
17 specialized training in the interpretation of chest x-rays specifically relating to
18 occupational lung diseases and who has passed a proficiency test administered
19 by the Centers for Disease Control, National Institute for Occupational Safety
20 and Health (NIOSH).

21 (s) 'Person' shall mean any human being, and not any corporation,
22 partnership or business entity.

23 (t) 'Employee' shall mean a person as defined in 33 GCG 37002(i).

24 (u) 'Exposure' shall mean a person's subjection to a hazardous substance
25 defined by Section 32101 (b)(4) where the level of same is above and beyond
26 the acceptable limits as defined by:

27 (1) 29 CFR 1910, Subpart Z, Toxic and Hazardous Substances,

1 Occupational Safety and Health Administration Act, and any amendments
2 thereto;

3 (2) Threshold Limit Values for Chemical Substances and Physical
4 Agents in the Work Environment, American Conference of Governmental
5 Industrial Hygienists (ACGIH) and any amendments thereto;

6 (3) Title III, also known as the 'Emergency Planning and Community,
7 Right-To-Know Act of 1986' as contained in U.S. Public Law 99-499, also
8 known as the 'Superfund Amendments and Reauthorization Act of 1986',
9 and any amendments thereto.

10 (v) 'Injury' shall mean physical impairment or death arising out of
11 exposure to hazardous substances defined by Section 32101 (b)(4) of this
12 Chapter, and such disease, medical impairment or infection as a result of such
13 exposure.

14 (w) 'Disability' shall mean incapacity because of injury as defined by
15 Subsection (v) of Section 32101 of this Chapter which impairs a person from
16 earning a living wage or such other employment.

17 (x) 'Negligence' shall mean the failure to exercise the care that a prudent
18 person or entity should exercise.

19 (y) 'Average annual wages' shall mean:

20 (1) if employed at the time of exposure: the total wages paid to the
21 person for the year immediately preceding the date of exposure.

22 (2) if unemployed twelve (12) months or less, or, if a person's total
23 annual earnings, as computed in one (1) above, are less than two
24 thousand eighty (2,080) hours times the existing minimum wage rate of
25 Guam: such sum as shall reasonably represent the annual earning capacity
26 of the person, having regard to the previous earnings of the exposed

1 person in the occupation in which he or she was working at the time of
2 exposure, and of other persons of the same or similar class working in the same
3 neighboring locality or other employment of such person, including the
4 reasonable value of the services of the employer if engaged in self-employment.

5 (3) Having never been employed, or, if unemployed thirteen (13)
6 months or more at the time of exposure: an amount equal to one
7 percentum (1%) of the existing minimum wage rate of Guam, utilizing a
8 twenty (20) hour a week basis for calculation.

9 (z) 'Whole life factor' shall mean the whole value of a person based on his
10 or her age as determined by the American Experience Mortality Table used by
11 the Commission."

12 **Section 4.** Sections 32112, 32113, 32114, 32115, 32116, 32117, 32118, 32119
13 and 32120 are hereby added to 10 GCA Chapter 32 as follows:

14 **"§32112. Hazardous Substance Testing Offered.**

15 (a) The Department shall provide testing to any person who requests
16 such tests for hazardous substances defined by Section 32101(b)(4). The
17 fee for such testing shall be set by the Department pursuant to the
18 provisions of the Administrative Adjudication Act.

19 (b) The Department is authorized to procure or contract for the services
20 of a certified B Reader to conduct and interpret asbestos x-ray tests and such
21 other professional services for the testing of exposure to hazardous substances
22 defined by Section 32101(b)(4).

23 (c) Every affected agency shall incorporate in the job specifications
24 of its employees the types of testing available at the Department for hazardous
25 substances defined by Section 32101(b)(4). Failure to make such statement
26 shall be deemed a citable violation under Chapter 87, Title 10 GCA.

1 **§32113. Government of Guam To Procure Hazardous Substance Liability**
2 **Insurance Coverage.** The Government of Guam shall procure liability insurance
3 coverage for hazardous substances defined by Section 32101(b)(4) to insure
4 itself against claims for injury, disability and death arising out of this Act.
5 The Governor shall request from the Legislature any appropriation to comply
6 with this Section on an annual basis.

7 **§32114. Awards For Exposure Where No Injury, Disability Or Death Is**
8 **Apparent.** (a) On a finding by the Commission that the Government of Guam
9 or any of its employees, officers or agents was negligent in the handling,
10 storage, management, generation, disposal or transportation of hazardous
11 substances defined by Section 32101(b)(4), and exposure to said hazardous
12 substances has occurred but no injury disability or death is immediately
13 medically apparent, the Commission shall award compensation to the exposed
14 person in the amount equal to one percentum (1%) of the exposed person's
15 future earnings as computed using his or her whole life factor and average
16 annual earnings as defined in this Chapter.

17 (b) Such compensation shall be paid in one lump sum commuted in
18 compliance with the provisions of 33 GCG 37014(j).

19 (c) Maximum compensation provisions of 33 GCG 37014(m) shall not apply
20 to the compensation paid pursuant to this Act; provided however, that in the
21 event that such exposure eventually leads to injury disability or death, the
22 Worker's Compensation Law shall preempt this Act, and any compensation
23 payable under Title 33 of the GCG shall be offset by such amounts heretofore
24 paid to the exposed person.

25 (d) In the event of exposure where no injury disability or death is
26 immediately medically apparent, or, in the event of injury, disability or death
27 resulting from exposure to hazardous substances defined by Section

1 32101(b)(4), the burden of proof shall be on the Government of Guam to prove
2 it was not negligent. In the absence of such a showing by the Government of
3 Guam, the Commission shall come to a finding of negligence and compensation
4 shall be paid as provided herein. Notwithstanding the the provisions of this
5 subsection, any person who accepts such compensation shall not be permitted to
6 file additional claims against the Government of Guam for the same exposure,
7 until such time as injury, disability or death, as opposed to exposure, is
8 apparent.

9 §32115. **Report of Exposure.** Within thirty (30) days of exposure, a
10 person must report such exposure to the Commission in order to be eligible for
11 compensation under this Act.

12 §32116. **Eligibility Under Worker's Compensation Commission.** Nothing
13 within this Act shall be construed to qualify any person for benefits under
14 Guam's Worker's Compensation Act.

15 §32117. **Hazardous Substance Expense Fund.**

16 (a) There is hereby created a Hazardous Substance Expense Fund to be
17 administered by the Worker's Compensation Commission for the purpose of
18 making payments under §32114 of this Chapter.

19 (b) Not later than forty-five (45) days after the beginning of each fiscal
20 year, each agency that utilizes, manages, generates, disposes, transports, or
21 is a repository of hazardous substances defined by Section 32101(b)(4) shall
22 contribute to the Fund a sum equivalent to one percentum (1%) of its total
23 annual personnel services budget.

24 (c) The Treasurer of Guam shall be the custodian of such Fund and shall
25 disburse moneys from such Fund only upon the authorized order of the
26 Commission.

1 (d) The Fund shall be subject to audit in accordance with established
2 Government of Guam accounting and auditing procedures.

3 §32118. Severability. If any of the provisions of this Code, or the
4 application thereof to any person or circumstance, is held invalid, such
5 invalidity shall not affect any other provision or application of this Code which
6 can be given effect without the invalid provision or application, and to this end
7 the provisions of this Code are severable.

8 §32119. Report of Hazardous Substance Incidents. Every agency shall
9 report incidents of exposure to hazardous substances defined by Section
10 32101(b)(4) to the Department within ten (10) days. The Department shall
11 compile and maintain statistics of injuries and deaths attributed to said
12 hazardous substances. The statistics shall not reveal the identity of any
13 person who has been injured or dies as a result of exposure to said hazardous
14 substances.

15 §32120. Hazardous Pay. Any Government of Guam employee who, in the
16 line and scope of his or her employment:

17 (a) is required to enter a site where a suspected hazardous
18 substance exposure, defined by Section 32101(b)(4) has occurred, either
19 to make inspection, investigation or assist in securing the area or;

20 (b) is required to assist a person or persons suspected to have been
21 exposed to a hazardous substance defined by Section 32101(b)(4) or;

22 (c) is required to medically test a person or persons who is
23 suspected to have been exposed to a hazardous substance defined by
24 Section 32101(b)(4);

25 and it is determined that an exposure did in fact take place, regardless of
26 whether the site is owned or operated by the Government of Guam, shall not be
27 eligible for compensation as provided in Section 32114 of this Chapter.

1 However, said employee is entitled to apply for, and shall receive, hazardous
2 pay in the amount of ten percent (10%) of the employee's hourly wage rate for
3 the time spent at the exposure site, or expended in the testing or examination
4 of a person suspected to have been exposed when and if it is determined that
5 an exposure did take place. Written notification that an exposure occurred
6 shall be provided by the Department to the Division of Occupational Safety and
7 Health, which shall then inform in writing the affected employee and the Chief
8 Officer, Director or Administrator of the employee's agency. Nothing in this
9 Section shall preclude said employee from applying to the Commission for
10 compensation where medical injury, disability or death has been determined."

11 **Section 5.** There is hereby appropriated from the General Fund the initial
12 sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) to the Hazardous
13 Substance Expense Fund.

14 **Section 6.** Section 37012(a) of the Government Code is amended to read:

15 "§37012(a). Notice of injury or exposure or death. (a) Notice of an
16 injury or exposure defined by Section 32101(u) of 10 GCA Chapter 32 or death
17 for which compensation is payable under this Title, shall be given within thirty
18 (30) days after the date of such injury or exposure or death (1) to the
19 Commissioner and (2) to the employer."

20 **Section 7.** Section 37013(a) of the Government Code is amended to read:

21 "§37013(a). Time for filing of claims. (a) The right of compensation for
22 disability and death under this Title shall be barred unless a claim therefor is
23 filed within one (1) year after [the injury] medical knowledge of disability or
24 death. The time for filing a claim shall not begin to run until the employee or
25 beneficiary becomes aware or, by the exercise of reasonable diligence should
26 have been aware, of the relationship between the injury or death and the
27 employment. [and the right to compensation for death shall be barred unless a

~~GOVERNMENT OF GUAM~~

1 claim therefor is filed within one (1) year after the death; provided that, if] if
2 payment compensation has been made without an award on account of such
3 injury or death, a claim may be filed within one (1) year after the date of the
4 last payment. Such claim shall be filed with the Commissioner. For the
5 purposes of Chapter 32, Title 10 GCA, notice of exposure where no disability
6 or death is immediately medically apparent, shall not constitute 'medical
7 knowledge' or disability or death."

8 **Section 8.** Within ninety (90) days from the effective date of this Act, the
9 Governor shall request from the Legislature any appropriation to fund testing of
10 hazardous substances defined by 10 GCA, Chapter 32, Section 32101(b)(4) by
11 the Department of Public Health and Social Services. Notwithstanding the
12 above, within One Hundred Eighty (180) days from the effective date of this
13 Act, the Department shall offer testing of hazardous substances defined by 10
14 GCA Chapter 32 Section 32101(b)(4) to anyone who requests same.

15 **Section 9.** Within One Hundred twenty (120) days from the effective date
16 of this Act, the Government of Guam shall procure liability insurance coverage
17 for hazardous substances defined by Section 32101(b)(4) to insure itself against
18 claims for injury, disability and death arising out of Title 10 GCA, Chapter 32,
19 Section 32114.

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 259

Introduced by:
1-4-89

M. C. Ruth *[Signature]*
J. G. Bamba *[Signature]*
D. Parkinson *[Signature]*
A.R. Unpongco *[Signature]*
F.C. T... *[Signature]*
M.B. ... *[Signature]*
E.R. ... *[Signature]*
[Signature]
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AN ACT TO ADD A NEW CHAPTER 88 TO TITLE
10 GCA RELATIVE TO ENACTING A HAZARDOUS
SUBSTANCE PROTECTION ACT.

- 1 WHEREAS, there are nearly Four Hundred (400) known cases of asbestos
- 2 poisoning on Guam; and
- 3 WHEREAS, Polychlorinated biphenyl (PCB) spills have occurred at the Navy
- 4 Piti Power Plant in 1987, and in the vicinity of the George Washington High School
- 5 in 1988; and
- 6 WHEREAS, no less than nineteen (19) chlorine gas leaks have occurred on
- 7 Guam between September 1979 and the present; and
- 8 WHEREAS, litigation has resulted in a number of cases, including but not
- 9 limited to, Civil Case 646-82, wherein plaintiffs allege permanent injuries due to
- 10 negligence on the part of the Government of Guam with respect to chlorine gas
- 11 exposure; and
- 12 WHEREAS, the Government of Guam carries no liability insurance to protec
- 13 itself from litigation arising out of its use of or exposure to toxic or hazardous
- 14 substances, including, but not limited to, asbestos, chlorine gas and PCBs; and
- 15 WHEREAS, the Department of Public Health and Social Services does no
- 16 presently offer toxic or hazardous substance testing to the people of Guam; and

1 WHEREAS, the Worker's Compensation Commission may not make payments
2 unless injury can be medically determined within one-year, and injuries resulting
3 from toxic or hazardous substance exposure may not be medically apparent during
4 that time frame; and:

5 WHEREAS, the Government of Guam should compensate people exposed to toxic
6 or hazardous substance when same has occurred as a result of its negligence even
7 though actual injuries may not be medically or immediately apparent; now, therefore,

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

9 Section 1. A new Chapter 88 is added to Title 10 GCA to read:

10 "Chapter 88

11 HAZARDOUS SUBSTANCE PROTECTION ACT

12 Section 88101. Definitions:

13 (a) 'Agency' shall mean the Government of Guam or any department, agency
14 autonomous agency, Authority, Branch or instrumentality thereof.

15 (b) 'Commission' shall mean the Worker's Compensation Commission of the
16 Government of Guam's Department of Labor.

17 (c) 'Hazardous substance' shall mean any toxic or hazardous substance as
18 defined by:

19 (1) 29 CFR 1910, Subpart Z, Toxic and Hazardous Substances,
20 Occupational Safety and Health Administration Act (OSHA) and any amendments
21 thereto;

22 (2) Threshold Limit Values for Chemical Substances and Physical Agents
23 in the Work Environment, American Conference of Governmental Industrial
24 Hygienists (ACGIH) and any amendments thereto;

25 (3) Title III, also known as the 'Emergency Planning and Community
25 Right-To-Know Act of 1986' as contained in U.S. Public Law 99-499, also know
26 as the 'Superfund Amendments and Reauthorization Act of 1986', and any
27 amendments thereto;

1 (4) Waste, or combination of wastes, which because of its quantity,
2 concentration; or physical, chemical, or infectious characteristics may either:

3 (a) Cause, or significantly contribute to an increase in mortality,
4 or an increase in serious irreversible illness;

5 (b) Pose a substantial or potential hazard to human health or
6 environment when improperly treated, stored, transported, disposed
7 of or otherwise mismanaged.;

8 (5) Asbestos, chlorine gas and polychlorinated biphenyls (PCBS).

9 (d) 'B Reader' shall mean a radiologist or pulmonologist who has received
10 specialized training in the interpretation of chest x-rays specifically relating to
11 occupational lung diseases and who has passed a proficiency test administered by
12 the Centers for Disease Control (NIOSH).

13 (e) 'Person' shall mean any human being, and not any corporation, partnership
14 or business entity.

15 (f) 'Employee' shall mean any person as defined in 33 GCG 37002(i).

16 (g) 'Exposure' shall mean a person's subjection to a hazardous substance
17 where the level of same is above and beyond the acceptable limits as defined by:

18 (1) 29 CFR 1910, Subpart Z, Toxic and Hazardous Substances,
19 Occupational Safety and Health Administration Act, and any amendments
20 thereto;

21 (2) Threshold Limit Values for Chemical Substances and Physical Agents
22 in the Work Environment, American Conference of Governmental Industrial
23 Hygienists (ACGIH) and any amendments thereto;

24 (3) Title III, also known as the 'Emergency Planning and Community
25 Right-To-Know Act of 1986' as contained in U.S. Public Law 99-499, also known
26 as the 'Superfund Amendments and Reauthorization Act of 1986', and any
27 amendments thereto.

28 (n) 'Negligence' shall mean the failure to exercise the care that a prudent
29 person or entity should exercise.

1 (i) 'Average annual wages' shall mean:

2 (1) if employed at the time of exposure: the total wages paid to the
3 person for the year immediately preceding the date of exposure.

4 (2) if unemployed twelve (12) months or less, or, if a person's total
5 annual earnings, as computed in one (1) above, are less than two thousand
6 eighty (2,080) hours times the minimum wage rate of Guam at the time of
7 exposure: such sum as shall reasonably represent the annual earning capacity
8 of the person, having regard to the previous earnings of the exposed person
9 in the occupation in which he or she was working at the time of exposure,
10 and of other persons of the same or similar class working in the same
11 neighboring locality or other employment of such person, including the
12 reasonable value of the services of the employer if engaged in self-employment.

13 (3) Having never been employed, or, if unemployed thirteen (13) months
14 or more at the time of exposure: an amount equal to one percentum (1%)
15 of the existing minimum wage rate of Guam, utilizing a twenty (20) hour-a
16 week basis for calculation.

17 (j) 'Whole life factor' shall mean the whole value of a person based on his/her
18 age as determined by the American Experience Mortality Table used by the
19 Commission.

20 Section 88102. Hazardous Substance Testing Offered.

21 (a) The Department of Public Health and Social Services shall offer hazardous
22 substance testing to any person who requests same. The fee for such testing shall
23 be set by the Department of Public Health and Social Services pursuant to the
24 Government of Guam Administrative Adjudication Act.

25 (b) The Department of Public Health and Social Services is authorized to
26 procure or contract for the services of a certified B Reader to conduct and interpret
27 asbestos x-ray tests and such other professional services for the testing of
28 hazardous substance exposure.

1 (c) Every affected agency shall incorporate in the job specifications of its
 2 employees what hazardous substance testing is available at the Department of Public
 3 Health and Social Services. Failure to make such statement shall be deemed a citable
 4 violation under Chapter 87, Title 10 GCA.

5 Section 88103. Hazardous Substance Insurance Coverage.

6 The Government of Guam shall procure hazardous substance liability insurance
 7 coverage to insure itself against claims for injury, disability and death arising out
 8 of this Act. The Governor shall report to the Legislature the need for any
 9 appropriations to comply with this Section on an annual basis.

10 Section 88104. Awards For Exposure Where No Disability Is Apparent.

11 (a) On a finding by the Commission that the Government of Guam or any
 12 of its employees, officers or agents was negligent in the handling, storage,
 13 management, generation, disposal or transportation of hazardous substances, and
 14 exposure to said hazardous substances has occurred but no injury or disability is
 15 immediately medically apparent, the Commission shall award compensation to the
 16 exposed person in the amount equal to one percentum (1%) of the exposed person's
 17 future earnings as computed using his or her whole life factor and average annual
 18 earnings as defined in this Chapter.

19 (b) Such compensation shall be paid in one lump sum commuted in compliance
 20 with the provisions of 33 GCG 37014(j).

21 (c) Maximum compensation provisions of 33 GCG 37014(m) shall not apply
 22 to the compensation paid pursuant to this Act; provided however, that in the event
 23 that such exposure eventually leads to disability or death of the exposed person,
 24 the Worker's Compensation Law shall preempt the Hazardous Substance Protection
 25 Act, and any disability or death compensation payable under Title 33 of the GCG
 26 shall be offset by such amounts heretofore paid to the exposed person.

27 (d) In the event of exposure where no disability is immediately medically
 28 apparent, or, in the event of actual injury, disability or death resulting from

1 exposure to hazardous substances, the burden of proof shall be on the Government
2 of Guam to prove it was not negligent. In the absence of such a showing by the
3 Government of Guam, the Commission shall come to a finding of negligence and
4 compensation shall be paid as provided herein. Notwithstanding the above, any
5 person who accepts such compensation shall not be permitted to file additional claims
6 against the Government of Guam for the same exposure, unless and until such time
7 as actual injury, disability or death, as opposed to exposure, is apparent.

8 Section 88105. Mandatory Report.

9 Within thirty (30) days of exposure, a person must report such exposure to
10 the Commission in order to be eligible for compensation under this Act.

11 Section 88106. Eligibility Under Worker's Compensation Commission.

12 Nothing within this Act shall be construed to qualify any person for benefits
13 under Guam's Worker's Compensation Act.

14 Section 88107. Hazardous Substance Expense Fund.

15 (a) There is hereby created a Hazardous Substance Expense Fund to be
16 administered by the Worker's Compensation Commission for the purpose of making
17 payments under Section 88104 of this Act.

18 (b) Not later than forty-five (45) days after the beginning of each fiscal
19 year, each agency that uses, manages, generates, disposes, transports, or is a
20 repository of hazardous substances shall annually contribute to the Fund a sum
21 equivalent to one percentum (1%) of its total annual payroll.

22 (c) The Treasurer of Guam shall be the custodian of such Fund and shall
23 disburse moneys from such Fund only upon the authorized order of the Commission.

24 (d) The Fund shall be subject to audit in accordance with established
25 Government of Guam accounting and auditing procedures.

26 Section 88108. Severability.

27 If any of the provisions of this Code, or the application thereof to any person
28 or circumstance, is held invalid, such invalidity shall not affect any other provision

1 or application of this Code which can be given effect without the invalid provision
2 or application, and to this end the provisions of this Code are severable.

3 Section 88109. Hazardous Substance Reporting.

4 All cases of injury or death due to exposure to hazardous substances as defined
5 by Chapter 88, Title 10 GCA, shall be reported to the Department of Public Health
6 and Social Services. The Department of Public Health and Social Services shall
7 compile and maintain statistics of injuries and deaths attributed to hazardous
8 substances. Said statistics shall not reveal the identity of any person who has been
9 injured or died as a result of exposure to hazardous substances.

10 Section 88110. Hazardous Pay.

11 Any Government of Guam employee who, in the line and scope of his or her
12 employment:

13 (a) is required to enter a site where a suspected hazardous substance
14 exposure has occurred, either to make inspection, investigation or assist in securing
15 the area;

16 (b) is required to assist a person or persons suspected to have been exposed
17 to a hazardous substance;

18 (c) is required to medically test a person or persons who is suspected
19 to have been exposed to a hazardous substance;

20 and it is determined that an exposure did in fact take place, regardless of
21 whether the site is owned or operated by the Government of Guam, he or she shall
22 not be eligible for compensation as provided in Section 88104 of this Chapter.
23 However, said employee is entitled to apply for, and shall receive, hazardous pay
24 for the time spent at the exposure site, or expended in the testing or examination
25 of a person suspected to have been exposed when and if it is determined that an
26 exposure did take place. Written notification that an exposure occurred shall be
27 provided to the Division of Occupational Safety and Health, which shall then inform
28 the affected employee as well as the Chief Officer of his or her Agency in writing.

1 Nothing in this Section shall preclude said employee from applying to the
 2 Commission for compensation where actual medical injury has been determined.

3 Section 2. There is hereby appropriated from the General Fund the initial
 4 sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) to the Hazardous
 5 Substance Expense Fund.

6 Section 3. Section 37012(a) of the Government Code of Guam is amended to
 7 read:

8 '37012. Notice of injury or exposure or death. (a) Notice of an injury or
 9 exposure or death for which compensation is payable under this Title, shall be
 10 given within thirty (30) days after the date of such injury or exposure or death
 11 (1) to the Commissioner and (2) to the employer."

12 Section 4. Section 37013(a) of the Government Code of Guam is amended to
 13 read:

14 '37013. Time for filing of claims. (a) The right of compensation for disability
 15 and death under this Title shall be barred unless a claim therefor is filed within
 16 one (1) year after [the injury] medical knowledge of disability or death. The time
 17 for filing a claim shall not begin to run until the employee or beneficiary becomes aware
 18 or, by the exercise of reasonable diligence should have been aware, of the
 19 relationship between the injury or death and the employment. [and the right to
 20 compensation for death shall be barred unless a claim therefor is filed within one
 21 (1) year after the death; provided that, if] If payment compensation has been
 22 made without an award on account of such injury or death, a claim may be filed
 23 within one (1) year after the date of the last payment. Such claim shall be filed
 24 with the Commissioner. For the purposes of Chapter 88, Title 10 GCA, also known
 25 as the Hazardous Substance Protection Act, notice of exposure where no disability
 26 or death is immediately medically apparent, shall not constitute 'medical knowledge'
 27 of disability or death.'

28 Section 5. Within forty-five (45) days from the effective date of this Act,
 29 the Governor shall report to the Legislature any recommendations for funding

1 hazardous substance testing by the Department of Public Health and Social Services,
2 and whether said department intends to subsidize such testing for Government of
3 Guam employees. Notwithstanding the above, within One Hundred Twenty (120)
4 days from the effective date of this Act, the Department of Public Health and Social
5 Services shall offer hazardous substance testing to anyone who requests same.

6 Section 6. Within One Hundred Twenty (120) days from the effective date
7 of this Act, the Government of Guam shall procure hazardous substance liability
8 insurance coverage to insure itself against claims for injury, disability and death
9 arising out of Chapter 88, Title 10 GCA.

10 Section 7. Section 87129 is added to Chapter 87, Title 10 GCA, also known
11 as the Occupational Safety and Health Code, as follows:

12 "Section 87129. Notice of Hazardous Substances. Standards promulgated under
13 Title III, also known as the 'Emergency Planning and Community Right-To-Know
14 Act of 1986' as contained in U.S. Public Law 99-499, also known as the 'Superfund
15 Amendments and Reauthorization Act of 1986' and any amendments thereto, are
16 hereby adopted by the Territory of Guam and shall be administered by the Division
17 with respect to the Government of Guam, and by the Guam Environmental Protection
18 Agency, with respect to the private sector. However, 'Penalty' provisions contained
19 therein shall not be applicable to any Agency. Agency penalties shall be those
20 contained in Sections 87113 and 87115 of this Chapter."

**SECTION ANALYSIS
OF BILL 259 AS SUBSTITUTED**

Section 1. Legislative Findings. The Legislature finds: (a) there are nearly 400 known cases of asbestos poisoning on Guam; (b) PCB spills have occurred at the Navy Piti Power PLant in 1987 and in the vicinity of GW High School in 1988; (c) Guam has experienced no less than 19 incidents of chlorine gas leaks between September 1979 and the present; (d) litigation has resulted in a number of cases concerning chlorine gas exposure, including but not limited to, Civil Case 646-82, wherein plaintiffs allege permanent injuries due to negligence on part of the government; (e) the Government of Guam carries no liability insurance with respect to hazardous substance exposure; (f) the Department of Public Health does not presently offer hazardous substance testing; (g) under existing law, the Worker's Compensation Commission is restricted from making payments unless an injury can be medically determined within one-year, despite the fact that injuries due to hazardous substances may not become medically apparent during this time frame; and (h) the Government of Guam should compensate people exposed to hazardous substances as a result of its negligence even though injuries may not be medically or immediately apparent.

Section 2. A new subsection 4 is added to subsection (b) of Section 32101 of 10 GCA Chapter 32. Chapter 32 is the existing chapter on hazardous substances under Title 10 (Public Health) of the Guam Code Annotated; Section 32101 contains definitions, and (b) is the current definition of "hazardous substances". The new subsection (4) expands this to include those hazardous substances identified by: (a) the Occupational Safety and Health Administration (OSHA); (b) the American Conference of Governmental Industrial Hygienists (ACGIH); (c) the "Superfund Amendments and Reauthorization Act of 1986" or any amendments thereto; (d) waste or combination of wastes, which because of quantity, concentration or characteristics may (1) cause or significantly contribute to an increase in mortality or irreversible illness; or (2) pose a substantial, or potential hazard to human health or environment when improperly treated, stored, transported, disposed of or otherwise mismanaged; and (e) asbestos, chlorine gas and PCBs.

4 (a) through (c) are consistent with Federal standards, while (d) is consistent with the definition of hazardous substances utilized by the Government of Guam's Division of Occupational Safety and Health - and (e) emphasizes chlorine gas, asbestos and PCBs.

Section 3. Subsections (p) through (z) are added to Section 32101 of 10 GCA Chapter 32. Like Section 2, the citation is the existing chapter on hazardous substances contained in the Public Health title of the GCA. Section 32101 contains definitions. The following are to be added: **(p)** "Agency" means the Government of Guam, including any autonomous agency or branch; **(q)** "Commission" means the Worker's Compensation Commission of the Government of Guam's Department of Labor; **(r)** "B Reader" means a radiologist or pulmonologist who has training in occupational lung diseases and has passed the proficiency test administered by the Centers for Disease Control (NIOSH); **(s)** "Person" means any human being, and not a business entity; **(t)** "Employee" means a person defined in 33 GCG Section 37002 (i). 33 GCG is the chapter on Workmen's Compensation under the Government Code. Section 37002 contains definitions, and (i) defines "employee" as an employed person (including contractual and apprentice), but not agricultural or someone whose employment is purely casual; **(u)** "Exposure" means a person's subjection to a hazardous substance defined in Section 32101 (b) (4) where the level of same is above acceptable limits defined by: **(1)** OSHA; **(2)** ACGIH; or **(3)** the "Superfund Amendments and Reauthorization Act of 1986" or any amendments thereto; **(v)** "Injury" means the physical impairment or death arising out of exposure to hazardous substances defined by section 32101 (b) (4), and such disease, medical impairment or infection as a result of such exposure; **(w)** "Disability" means incapacity because of injury as defined by subsection (v) of Section 3210, which impairs a person from earning a living wage or such other employment; **(x)** "Negligence" means the failure to exercise prudent care; **(y)** "Average annual wages" means: **(1)** if employed at the time of exposure: total wages paid for the year immediately preceding date of exposure; **(2)** if employed 12 months or less, or, if total annual earnings are less than 2,080 hours times the minimum wage rate of Guam: a sum reasonably representing the annual earning capacity of the person; **(3)** if never been employed, or, if unemployed 13 months or more at the time of exposure: 1% of the existing minimum wage rate of Guam utilizing a 20 hour a week basis for calculation; **(z)** "Whole life factor" means the whole value of a person based on his/her age as determined by the

American Experience Mortality Table and used by the Worker's Compensation Commission when calculating awards.

Section 4. Sections 32112 through 32120 are added to 10 GCA Chapter 32. As with Sections 2 and 3, the citation is the existing chapter on hazardous substances contained in the Public Health title of the GCA. The added sections are as follows:

Section 32112. Hazardous Substance Testing Offered. (a) the Department of Public Health shall provide testing to any person who requests same for hazardous substances defined by Section 32101 (b) (4). The fee for testing shall be set by the Department pursuant to the Guam Administrative Adjudication Act; (b) the Department is authorized to contract for the services of a B reader and other professionals for testing of exposure to hazardous substances defined by Section 32101 (b) (4); and (c) every affected agency shall incorporate into the job specifications of its employees what testing is available at the Department for hazardous substances defined by Section 32101 (b) (4). Failure to make such a statement shall be deemed a violation under Chapter 87, Title 10 GCA (the Occupational Safety and Health code of the Government of Guam).

Section 32113. Government of Guam To Procure Hazardous Substance Liability Insurance Coverage. The Government of Guam is mandated to procure liability insurance coverage for hazardous substances defined by Section 32101 (b) (4). Such coverage shall insure the Government against claims for injury, disability and death arising out of this Act. The Governor shall report to the Legislature the need for any appropriations to fund same on an annual basis.

Section 32114. Awards For Exposure Where No Injury, Disability Or Death Is Apparent. (a) On a finding by the Worker's Compensation Commission that the Government of Guam is negligent in the handling, storage, management, generation, disposal or transportation of hazardous substances defined by Section 32101 (b) (4), and exposure has occurred but no injury, disability or death is immediately medically apparent, 1% of the exposed person's future earnings computed using his/her whole life factor and average annual earnings shall be awarded by the Commission; (b) this compensation shall be paid in one lump sum commuted in compliance with provisions of 33 GCG 37014 (j). 33 GCG is the Workmen's

Compensation title under the Government Code, Section 37014 deals with the payment of such compensation, and (j) provides the mechanism and formula for lump sum - as opposed to installment - payments of awards; (c) maximum compensation provisions of 33 GCG 37014 (m) - the ceiling allowed for awards - shall not apply to compensation paid under this Act, provided, however, in the event that exposure eventually leads to injury, disability or death, Title 33 GCG (Worker's Compensation Law) shall preempt this Act, and any payments made shall be offset against awards to be paid under Title 33 GCG; and (d) in the event of exposure where no injury, disability or death is immediately medically apparent, or, in the event of injury, disability or death resulting from exposure to hazardous substances defined by Section 32101 (b) (4), the burden of proof shall be on the Government of Guam to prove it was not negligent. In the absence of such a showing by the Government, the Worker's Compensation Commission shall come to a finding of negligence and compensation shall be paid as provided in this Act. Notwithstanding, anyone who accepts such compensation shall not be permitted to file additional claims against the Government for the same exposure unless and until such time as injury, disability or death, as opposed to exposure, is apparent.

Section 32115. Mandatory Report. Within 30 days of exposure, a person must report same to the Worker's Compensation Commission to be eligible for compensation under this Act.

Section 32116. Eligibility Under Worker's Compensation Commission. Nothing within this Act shall be construed to qualify a person for benefits under Title 33 GCG. This is a protective provision clarifying that the payment of awards under this Act does not necessarily qualify a person for benefits under Title 33 GCG.

Section 32117. Hazardous Substance Expense Fund. (a) A Hazardous Substance Expense Fund is created to be administered by the Worker's Compensation Commission for the purpose of making payments under Section 32114 (awards for exposure where no injury disability or death is apparent); (b) Within 45 days after the beginning of each fiscal year, every agency that uses, manages, generates, disposes, transports or is a repository of hazardous substances defined by Section 32101 (b) (4) shall contribute to the Fund an amount representing 1% of its annual personnel services budget; (c) the Treasurer of Guam shall be custodian of the Fund and shall make

disbursements only on order of the Commission; and (d) the Fund shall be subject to audit in accordance with established Government of Guam accounting and auditing procedures.

Section 32118. Severability. In the event any provision this code is held to be invalid, such invalidity shall not affect the other provisions which can be given effect without the invalid provision.

Section 32119. Hazardous Substance Reporting. All cases of exposure to hazardous substances defined by Section 32101 (b) (4) shall be reported to the Department of Public Health within 10 days. The Department shall compile statistics but shall not reveal the identity of any person injured or killed as a result of exposure to hazardous substances.

Section 32120. Hazardous Pay. Any Government of Guam employee, who, in the line and scope of employment is required to: (a) enter a site where a suspected exposure to hazardous substances defined by Section 32101 (b) (4) has occurred either to make inspection, investigation or assist in securing the area; (b) assist a person suspected to have been exposed; or (c) medically test a person suspected to have been exposed - and it is determined that an exposure did in fact take place, the employee shall not be eligible for compensation provided in Section 32114 (awards for exposure where no injury, disability or death is apparent). However, the employee shall be entitled to apply for, and shall receive hazardous pay amounting to 10% of his/her hourly wage rate for the time spent at the exposure site or expended in testing a person suspected to have been exposed. Written notification that an exposure has occurred shall be provided by the Department of Public Health to the Government of Guam's Division of Occupational Safety and Health, which shall inform the affected employee as well as the Chief Officer of his/her agency in writing. Nothing in this Section shall preclude said employee from applying to the Worker's Compensation Commission where medical injury has been determined.

Section 5. \$250,000 is appropriated from the General Fund to the Hazardous Substance Expense Fund. As provided in Section 32117 (a), the Fund is restricted in its use to making payments under Section 32114 (awards for exposure where no injury, disability or death is apparent). This is an initial appropriation. Future resources of

the Fund shall come from the 1% personnel services budget assessments provided in Section 32117 (b).

Section 6. Section 37012 (a) of the Government Code is amended to add "exposure" as defined by Section 32101 (u) when giving notice to the Worker's Compensation Commission. Section 37012 deals with notice to the Commission of injury or death, and (a) mandates a 30-day notice in order for a person to be eligible for compensation. Inclusion of "exposure" is deemed a critical amendment since this is the notice required under Section 32115 (mandatory report), and a person may not be eligible for compensation under Section 32114 (awards for exposure where no injury, disability or death is apparent) without same.

Section 7. Section 37013 (a) of the Government Code is amended. Section 37013 deals with the deadline for the filing of claims before the Worker's Compensation Commission, and (a) provides a one-year statute of limitation in which a person may be eligible for compensation. The amendments extend the statute of limitations until the employee or beneficiary should have "medical knowledge" of the disability or death. Secondly, "notice of exposure" is distinguished from "medical knowledge". This is considered to be crucial since the effects of many hazardous substances do not manifest themselves medically until years after the exposure. By amending Section 37013 (a), then, victims of hazardous substance exposure will have a remedy for relief so long as they give notice to the Commission within 30 days of exposure as provided in Section 37012 (a).

Section 8. Within 90 days from enactment, the Governor shall report to the Legislature any recommendations for funding testing of hazardous substances defined by Section 32101 (b) (4). Notwithstanding the above, within 180 days, the Department is mandated to offer testing of hazardous substances defined by Section 32101 (b) (4) to any person who requests same.

Section 9. Within 120 days from enactment, the Government of Guam shall procure liability insurance coverage for hazardous substances defined in Section 32101 (b) (4) to insure itself against claims for injury, disability and death arising out of Section 32114 (awards for exposure where no injury, disability or death is apparent).

**DIFFERENCES BETWEEN BILL 259 AND
BILL 259 AS SUBSTITUTED**

(1) Instead of creating an entirely new chapter under Title 10 GCA, the substituted version places its provisions within the existing title and chapter of the Guam Code Annotated (10 CGA, Chapter 32), which covers administration of hazardous substances under the Department of Public Health. Since the current definition of hazardous substances is expanded to include chemical, toxic and other potentially lethal substances (such as asbestos, chlorine gas and PCBs), the added "exposure" and "compensation" provisions are restricted to these additional substances.

(2) **Legislative Findings.** The substituted version replaces "Whereas" clauses with "Legislative findings".

(3) **Hazardous Pay.** The original version of Bill 259 simply provided that an employee "is entitled to apply for, and shall receive hazardous pay for the time spent at the exposure site ..." The substituted version clarifies this by specifying the amount of hazardous pay compensation to be "10% of the employee's hourly wage rate for the time spent at the exposure site ..." This amendment was made in response to testimony by an AFGE official during public hearings on Bill 259.

(4) In response to concerns raised by the Director of the Department of Public Health that the 45-day deadline for reporting funding recommendations to the Legislature, and the 120-day time limit for implementing hazardous substance testing were insufficient, the substituted version increases the reporting deadline to 90 days, and the implementation time limit to 180 days.

(5) In response to objections raised by GEPA that promulgation of standards under Title III was premature, the substituted version removes this Section of the Bill.



Martha Cruz Ruth
SENATOR

20th Guam Legislature
163 Chalan Santo Papa
Agana, Guam, U.S.A. 96910
Telephone: 472-3447/8

August 28, 1989

Ms. Karen Cruz
Department of Public Health
Mangilao, Guam

Re: Substitute Bill No. 259 - Hazardous Substance Protection Act.

Dear Ms. Cruz:

Enclosed please find draft of substitute Bill No. 259, relative to enacting a hazardous substance protection code.

In discussions with a staff member of the Committee on Health, concern was expressed over a number of the Department's comments respecting the Bill during its public hearing.

The substituted versions attempts to correct deficiencies noted by the Director.

First, rather than creating a separate chapter, the substituted Bill places the provisions within the existing 10 GCA Chapter 32. Secondly, the definition of "hazardous substances" is expanded by adding a new subsection (4) to (b) of Section 32101. Thirdly, the deadline for submitting funding recommendations to the Legislature for testing by the Department has been increased from 45 days to 90 days - while the time limit for implementing actual testing by the Department has been lengthened from 120 days to 180 days.

Finally (by way of clarification), the Director, in her testimony, questioned which categories testing would apply. The substitute Bill clarifies this by restricting testing to "persons" exposed to hazardous substances as now defined by Section 32101 (b) (4). Secondly, the Director questioned the amount of the appropriation, stating that it was unclear "whether this is seed money for litigants or start up funding for providing testing services".

MEMBER:

Committee on Tourism, Transportation and Communication • Committee on Energy, Utilities and Consumer Protection • Committee on Justice, Judiciary and Criminal Justice • Committee on Health, Welfare and Ecology • Committee on Youth, Human Resources, Senior Citizens

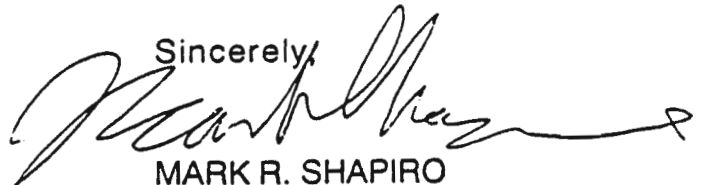
Section 32117 restricts the Fund to making payments provided in Section 32114, i.e., amounts to be assessed against the Government when exposure is due to its negligence. The mechanism for funding by the Department for testing is to be recommended to the Legislature as provided in Section 9. Fourthly, the Director states that the Bill does not address situations of "intentional" exposure. We disagree. Under Section 32114 (d), the burden of proof is on the Government to prove that it was not negligent, i.e., in a case of intentional exposure, the Government would not be liable. Finally, the Director asks what "division" is being referred to in Section 11. Under Chapter 87 Title 10 GCA, the "division" is the Division of Occupational Safety and Health under the Department of Labor.

Ms. Cruz, Senator Ruth would greatly appreciate it if you could comment on one aspect of the substitute Bill. In Section 32101 (b) (4), the definition of hazardous substances has been expanded. Is the expanded definition in any way in conflict with the present definition? She is particularly concerned about exemptions contained in Section 32101 (b) (2) and (3). The expanded definition of hazardous substance was provided to the Senator by Guam Environmental Protection Agency officials, and is consistent with definitions used by the Federal Government and the Guam Division of Occupational Safety and Health (Chapter 87 Title 10 GCA).

Senator Ruth would be deeply grateful if you could telephone me with your comments at 477-8896/97 - or fax them to the Senator at 477-8648 as soon as possible since we hope to ask the Committee on Health to mark up the Bill in the next day or so.

Thank you for your kind consideration in this matter.

Sincerely,



MARK R. SHAPIRO
Legislative Assistant

cc: Senator Bordallo

BILL 259

AN ACT TO ADD A NEW CHAPTER 88 TO TITLE 10 GCA RELATIVE TO ENACTING A HAZARDOUS SUBSTANCE PROTECTION ACT.

The bill proposes to mandate the DPHSS to insure that hazardous substance testing be made available to persons requesting services. Before any planning for these services can occur, it is important to first identify which hazardous substances will be tested. Only then will the Department be able to determine what special skills, knowledge and equipment would be necessary for testing of these hazardous substances.

It appears that the original intent of the bill was limited to the testing of a few hazardous substances, but the myriad of toxic substances to which this bill would apply make it necessary to examine this issue from the standpoint of the broad categories of laboratory testing. Testing can be performed for hazardous substances present on or in: 1) the bodies of humans/animals and 2) materials or environment utilized by man/animals. Detecting the presence in each category requires different methodology.

It is recommended that should these services be mandated, that we contract the services of an off-island facility or facilities with experts who are duly certified in these areas of hazardous substance testing. On-island laboratories are not adequate in terms of trained personnel and equipment to perform these types of tests. In protecting itself from litigation, the government must ensure that certified services are available for the testing of these hazardous substances. The legal implications of certification is critical in the determination of government liability.

Another issue is the possible conflict of interest where the government would be providing testing services to its own employees and the interest of the government would be to limit its liabilities.

The existing Hazardous Substances Law, 10 GCA Chapter 32, defines "hazardous substance". Is the intent of Bill 259 to expand on the definition of hazardous substances as well as provide for the framework from which claims can be filed? 10 GCA Chapter 32 contains provisions addressing consumer protection and the proposed bill focuses on workers compensation. It is unclear which definition of hazardous substances will apply.

Section 2 of Bill 259 appropriates \$250,000 to the hazardous Substance Expense Fund. It is unclear whether this is seed money for litigants or start up funding for providing testing services, including costs for equipment, supply procurement, personnel, maintenance contracts and certification services. In either case, the amount is sorely limited in even attempting to address testing services expenses, much less litigation costs.

~~CONFIDENTIAL GOVERNMENT INFORMATION~~

Section 5 provides for the timeframe in which the testing services will be made available. The Governor has only 45 days from the effective date of the act to recommend to the legislature for funding of services. The bill requires the Department of Public Health and Social Services to provide these services within 120 days. These deadlines are extremely restrictive, if not impossible, to allow for adequate and appropriate planning for these services and development of fee schedules, and establishing contracts which must be in full compliance with the Administrative Adjudication Law.

In the proposed Section 88104, the bill does not address the concern that there may be individuals who may intentionally expose themselves to hazardous substances to make a claim against the government. This places the burden of proof on the government to prove that it was not negligent in the handling of hazardous substances.

There also appears to be an error in Section 7. Chapter 87, Title 10 GCA is referenced as the "Occupational Safety and Health Code". In addition, Section 87129 (line 16) refers to a "division". What agency/department and division would be responsible for standards that would be promulgated?

Thank you for the opportunity to provide comment.


LETICIA V. ESPALDON, M.D.



GUAM ENVIRONMENTAL PROTECTION AGENCY

AHENSIAN PRUTEKSION LINA'LA GUAHAN

POST OFFICE BOX 2999 AGANA, GUAM 96910 TELEPHONE: (671) 646-8863/64/65 FAX: 646-9402

JUN 15 1999

Honorable Madeleine Z. Bordallo
Chairperson, Committee on Health
Welfare and Ecology
Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Dear Senator Bordallo:

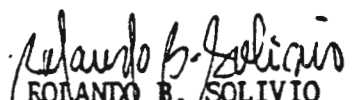
We have reviewed the Hazardous Substance Protection Act as proposed under Legislative Bill No. 259. Although we are supportive of the intent of this Bill, we wish to offer the following comment relating to Guam EPA's mandate relative to Title III activities under Section 7 of the Bill.

Section 7 of this Bill adds a new Section 87129 to Chapter 87, Title 10 GCA proposing to adopt Federal standards under Title III (Emergency Planning and Community Right-To-Know) of the Superfund Amendments and Reauthorization Act of 1986 to be administered by the Division of Occupational Safety and Health, within the Department of Labor, for the Government of Guam. Section 7 further mandates that the Guam EPA is to administer Title III standards for the private sector of the community.

It is our position that the adoption and administration of Title III standards by both the Department of Labor and Guam EPA should be held in abeyance at this time. As you may be aware, a State Emergency Response Commission (SERC) has been established by the Governor for the express purposes of planning for emergencies involving the release of toxic substances, establishing procedures for receiving and processing information collected under Title III, and reviewing local emergency plans. It is our understanding that the SERC and its planning committee are in the process of determining which Government of Guam agencies and departments will be responsible for administering the requirements under Title III for the Territory of Guam.

We are appreciative of the opportunity provided to our Agency to review and comment upon Bill 259.

Sincerely yours,


ROLANDO B. SOLIVIO
Acting Administrator

"ALL LIVING THINGS OF THE EARTH ARE ONE"



DEPARTMENT OF
LABOR
DIPATTAMENTON HUMOTNÁT

EDWARD A. GUERRERO, Director • JOHN M. TAIJITO, Deputy Director

JOSEPH F. ADA
Governor

FRANK F. BLAS
Lieutenant Governor

JUN 19 1989

The Honorable Madeleine Z. Bordallo
Chairperson
Committee on Health, Welfare
and Ecology
Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Madam Chair and Members of the Committee:

My name is Frank Guevara, acting as Director of Labor for Mr. Edward Guerrero who is presently "off-island" on official business.

Madam Chair and Members of the Committee, I wish to extend my sincere thank you on behalf of the Department of Labor for the invitation to appear before this Committee and for the opportunity to offer our testimony on the following bills:

BILL NOS. 7 AND 342

BILL NO. 7: AN ACT TO ADD A NEW 4 GCA 6223 RELATIVE TO ESTABLISHING A THIRTY PERCENT (30%) PAY INCREASE FOR GOVERNMENT EMPLOYEES WORKING IN HAZARDOUS AREAS DUE TO ASBESTOS: TO ADD A NEW 10 GCA SECTION 49114 RELATIVE TO THE IMPORTATION OF ASBESTOS.

BILL NO. 342: AN ACT TO ADD A NEW 4 GCA 6223 RELATIVE TO ESTABLISHING A THIRTY PERCENT (30%) PAY INCREASE FOR GOVERNMENT EMPLOYEES WORKING IN AREAS HAZARDOUS DUE TO ASBESTOS.

COMMENT

BILL NO. 7, SECTION 1, PARAGRAPH 6223 AND BILL NO. 342, SECTION 1: To award a 30% salary increase to an employee who was alleged to have been exposed to asbestos by virtue of work involvement or significant presence in an area in which asbestos is present is not reasonable and certainly not an economically sound legislation in that an exposure to asbestos, whether directly or indirectly, need not constitute the incurrence of an injury or

illness. Conversely, where exposure to asbestos has occurred, the latency period spans some 20-30 years before its carcinogenic effects can be (and it may never be) medically detected. If Bills 7 and 342 are enacted, the Government of Guam will be mandated to compensate employees alleged to have been exposed to asbestos, whether or not an injury or illness was incurred as the result of such exposure. The cost to the taxpayers would be astronomical and the loosely worded criteria for the 30% increased compensation would leave a wide margin for abuses. Of course, health effects of certain hazardous or toxic substances can be immediate or "acute." If after exposure, a medical evaluation determined that an injury or illness has resulted, then and only then should such compensation be considered warranted and justified. Employees alleged as having been exposed to or suspected of being exposed to asbestos, but through a medical evaluation it was determined that no injury or illness resulted from such exposure may not be compensated, but shall be immediately placed in a medical surveillance program, given an annual medical examination (chest x-ray and PFT) at no cost to the exposed employees and monitored on a regular basis for the duration of employment. If at any time during the remaining lifetime of a previously exposed employee, the carcinogenic effect(s) of the asbestos has been medically detected, the affected employee shall be appropriately compensated.

BILL NO. 259

AN ACT TO ADD A NEW CHAPTER 88 TO TITLE 10 GCA RELATIVE TO ENACTING A HAZARDOUS SUBSTANCE PROTECTION ACT.

COMMENT

SECTIONS 88104 + 88107: The comments provided above demonstrates the position of the Department of Labor and remains steadfastly germane as pertaining to compensation as provided for in these Sections. We are also happy to report that the provisions of Chapters 12 thru 14 of the newly developed Government of Guam Occupational Safety and Health Standard covers, in detail, specific requirements for the management, control, disposal, personal protection, hazard communication, material safety data sheet and industrial hygiene and medical surveillance requirements for employee safeguard against unnecessary exposure to hazardous and/or toxic chemicals

and other related substances, as prescribed by this Bill.

BILL NO. 365

**AN ACT TO PROVIDE FOR THE ASBESTOS APPLICATION, REMOVAL,
AND ENCAPSULATION ACT OF 1989.**

COMMENT

The Department of Labor fully acknowledges and concurs with the intent, purpose and objective of this bill; especially with the specific provisions of Section 5, 6, 7 and 8 pertaining to licensing, performance permit, administration and enforcement and penalty assessment which are the most essential regulatory requirements of an effective asbestos abatement program. We are also happy to report that the provisions of Chapter 20 of the newly developed Government of Guam Occupational Safety and Health Standard covers, in detail, the requirements for asbestos abatement (i.e., removal, encapsulation, contracting and control and disposal procedures); which is in conformance with this Bill.

It is now, and will continue to be the Guam Department of Labor's policy and commitment to provide the necessary guidelines, direction and training that will ensure a safe workplace and healthful working condition for all employees of the Government of Guam, and to assure that every level of management within the Government of Guam is held responsible and accountable for the implementation, enforcement and compliance with all Government of Guam Occupational Safety and Health standards and other consensus standards as may be adopted by the Government of Guam, as well as other related legislations as may be enacted from time to time by the Guam Legislature.

Sincerely,



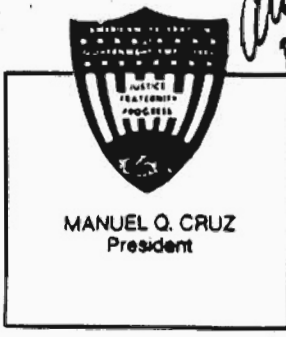
FRANK T. GUEVARA
Acting

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

420
Attn: *[Handwritten signature]*

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

RECORDED
JUN 30 1989
[Handwritten initials]



LOCAL 1689, INC.

Affiliated with the AFL-CIO

DRAWER DK, AGANA, GUAM 96910
TEL: (671) 332-2290/3149

In Reply Refer To:

AFGE: 89/171
30 June 1989

Senator Madeleine Z. Bordallo, Chairperson
Committee on Health, Welfare & Ecology
20th Guam Legislature
163 Chalan Santo Papa Street
Agana, Guam 96910

Re: Bill No. 259, Hazardous
Substance Protection Act

Dear Senator Bordallo and Members of the Committee:

I apologize for not attending the public hearing on Tuesday, 27 June 1989 to discuss Bill No. 259, "an act to add to new Chapter 88 to Title 10GCA relative to enacting a Hazardous Substance Protection Act". I had a previously scheduled meeting that day and I could not get a postponement.

My name is Manuel D. Cruz. I am the President of the American Federation of Government Employees (AFGE), Local 1689, Inc. My labor organization represents over 7,000 to 8,000 Federal employees in various Navy and Air Force Commands and Activities on Guam.

As a labor organization, we are supportive of the intent and purpose of Bill No. 259. It is high time that the Government of Guam employees receive the same protection and benefits resulting from exposures to toxic or hazardous substances, which protection and benefits are currently available to Federal employees. It is unfortunate that the Government of Guam is not providing these at this time.

As you know, our employees here on Guam have recently been taking the Federal Government to task for various exposures to asbestos, PCB and other related hazardous substances. It is important that we did these not only to correct wrong doings, but to make the Federal Government ever aware that our Federal employees deserve the protection and safety from these hazardous substances at their worksites.

Regarding Bill No. 259, we would like to offer the following comments for your consideration:

1. It is understood that Bill No. 259 addresses only exposures due to negligence on the part of the Government of Guam. Accidental exposures are covered by the Workmen's Compensation Program. This has to be made clear.

Page - 1
TO DO FOR ALL THAT WHICH NONE CAN DO FOR ONESELF

~~CONFIDENTIAL GOVERNMENT PROPERTY~~

2. Since the Department of Public Health and Social Services would be responsible for conducting hazardous substance testing under Bill No. 259, it is not clear who will be responsible for paying the fees for testing. The latest information we have for a comprehensive PCB test is between \$1000 to \$2000.

3. Section 88103 provides for hazardous substance liability insurance coverage. Again, unless we are mistaken, any liability insurance program would only cover accidental exposures and not negligent exposures.

4. Section 88104 appears to pre-empt Section 88103. Under this Section, the Government of Guam, rather than an insurance company, would be providing compensation for exposures with no apparent medical injury or disability.

5. Because of the numerous bureaucratic problems often encountered with any government activities, it is very commendable that Bill No. 259 places the burden of proof for negligence on the Government of Guam.

6. In Section 88105, it is provided that a person (not necessarily an employee) exposed to any hazardous substance must report the exposure within 30 days of exposure. It is not clear how the exposure is, in fact, to be determined whether by an incident report or a spill. In any event, for record purposes there needs to be such a report to base any serious claim to meet the 30-day deadline.

7. Hazardous pay in Section 88110 is a must to protect employees from any suspected hazardous substance. Since the percentage rate for hazardous pay was not specified, Bill No. 259 should be amended to set such a percentage rate. In the Federal Government, the percentage rate is between 8% to 12%.

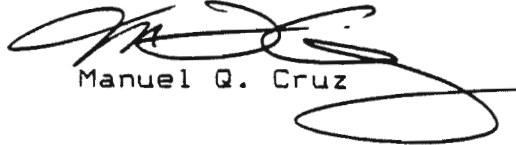
8. In the amended Section 37012, it is not clear who should give notice of an injury or exposure or death to the Workmen's Compensation Commissioner and to the employer. It is presumed to be the Department of Public Health and Social Services.

9. Section 37013 sets the time for filing claims. It appears that the statute of limitation of 2 years is not applicable in Bill No. 259. In other words, an exposure could have occurred many years ago, but since there was no "medical knowledge" of the disability or death, there was no need to file. However, once this "medical knowledge" becomes apparent, the exposed person can then file within one (1) year. We have serious difficulties in understanding the legal ramifications of such a timeframe.

Other than the comments mentioned above, again we want to express our support of Bill No. 259. All employees, not only with the Government of Guam, need to be protected from any and all toxic or hazardous substances on Guam.

Thank you for the opportunity to comment on Bill No. 259. I will be available to respond to any questions you or any Committee members may have. Si Yuus Maase!

Sincerely,



Manuel Q. Cruz



Martha Cruz Ruth
SENATOR

20th Guam Legislature
163 Chalan Santo Papa
Agana, Guam, U.S.A. 96910
Telephone: 472-3447/8

June 20, 1989

The Honorable Madeleine Bordallo
Chairperson
Committee on Health, Welfare & Ecology
20th Guam Legislature
Agana, Guam

Re: Testimony in support of Bill 259, enacting a Hazardous
Substance Protection Act.

Dear Madam Chairperson:

I wish to thank you for giving me the opportunity of testifying in
support of Bill 259, enacting a Hazardous Substance Protection Code.

Madam Chairperson, since 1979, there have been no less than
nineteen separate chlorine gas leaks around the island - many of
them near schools and heavily populated residential areas. Today,
there are nearly 400 known cases of asbestos poisoning on Guam.
According to the General Accounting Office - not one - but a number
of PCB leaks have occurred at the Navy Piti Power Plant. In addition,
PCB spills have been reported at the George Washington High School
in 1988, a transformer containing leaking PCBs was discovered at
the University of Guam in 1983, and the Guam Power Authority has
yet - to my knowledge - been able to document its full inventory of
transformers containing PCBs.

Nevertheless, the Government of Guam carries no liability insurance
to protect itself from litigation arising out of its use of, or
exposure to, toxic or hazardous substances. Nor does the Department
of Public Health presently offer toxic or hazardous substance
testing to the people of Guam.

Asbestosis, chlorine gas poisoning and PCBs (to name but a few of
the more infamous hazardous substances) are lethal.

MEMBER:

Committee on Tourism, Transportation and Communication • Committee on Energy, Utilities and Consumer Protection • Committee on
Justice, Judiciary and Criminal Justice • Committee on Health, Welfare and Ecology • Committee on Youth, Human Resources, Senior Citizens
and Cultural Affairs • Committee on Ways and Means • Committee on Ethics and Standards

Medical research has determined a direct link between certain kinds of cancers and various toxic or hazardous substances. What is particularly tragic is that the deadly effects of many of these toxic or hazardous substances may not show up for years after the exposure occurred. This means that victims of such exposure stand little chance of collecting damages from those responsible or having the necessary funds to pay for expensive medical care because the statute of limitations in which to file an action in Court or with the Workers' Compensation is just one year.

Bill 259 seeks to correct these inequities. First, the Bill mandates the Government of Guam insure itself against liability associated with toxic or hazardous substances. Although such insurance is expensive, it must be pointed out that a single successful legal action could bankrupt the General Fund. Secondly, unlike the mainland, where many of the utilities are privately operated, the Government of Guam actually owns many of the facilities containing hazardous substances such as asbestos, chlorine gas and PCBs. Therefore, we are particularly vulnerable to legal action in the event an accident occurs.

The second thing that Bill 259 does is to require the Department of Public Health to offer hazardous substance testing to the people of Guam. Section 5 of the Bill gives the Director 45 days to report to the Legislature recommendations for funding this program.

Finally, the Bill seeks to force the Government of Guam to "clean up its act" with respect to hazardous substance protection. Section 88104 (d) places the burden of proof on the Government to prove that it was not negligent when an exposure above a particular level is reported and a person files for compensation under the Act.

Under Bill 259 anyone who is exposed to a hazardous substance above a particular level where the Government of Guam is negligent and no medical disability is immediately apparent, is entitled to compensation in the amount equal to 1% of that person's future earnings as computed using his or her whole life factor and average annual earnings as defined in the Act. An initial \$250,000 is appropriated to a Fund (to be administered by the Workers' Compensation Commission) for this purpose.

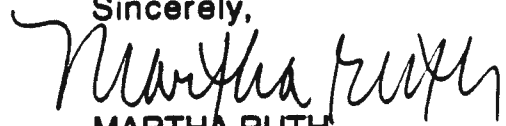
Furthermore, the Government Code is amended to extend the statute of limitations from one year from the date of exposure - to one year after medical knowledge of disability or death. Under Bill 259, a person would have 30 days from the date of exposure to file a notice with Workers' Compensation. He or she could then collect unlimited medical benefits from Workers' Compensation any time thereafter, when and if it is medically proven that an actual medical disability has occurred. An initial \$250,000 is appropriated to a Fund set up for this purpose.

Finally, Section 88110 seeks to protect Government of Guam employees, who, in the line and scope of their duties, are called in assist or test exposed persons. Under this Section, the employee would be eligible for hazardous pay if it is determined that an exposure above a particular level took place.

Madam Chairperson, we are talking about people's lives here. In researching the issue, my staff contacted knowledgeable sources in the Federal Government as to examples of exposure legislation. We were informed that there are none. However, it was pointed out to my office that should Guam pioneer this legislation, it is possible that the Federal Government - for once - might take its cue from the people of Guam. Officials reported to my staff that the need to address those exposed to hazardous or toxic substances is a very real one. Bill 259, I believe, is a workable solution to the problem.

On behalf of myself and the hundreds of victims of hazardous substance exposure, I again want to thank you for holding a public hearing on this important legislation.

Sincerely,


MARTHA RUTH
Senator



GUAM ENVIRONMENTAL PROTECTION AGENCY

AHENSIAN PRUTEKSION LINA'LA GUAHAN

POST OFFICE BOX 2999 AGANA, GUAM 96910 TELEPHONE: (871) 646-8883/84/85 FAX: 646-9402

Darryl M.

JUN 26 1989
Vivian Rosar
4:00pm

Honorable Madeleine Z. Bordallo
Chairperson, Committee on Health
Welfare and Ecology
Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

JUN 26 1989

Dear Senator Bordallo:

As mentioned during our testimony on Bill 259 on June 20, 1989 during a public hearing conducted by your committee, herewith is a copy of "Territory of Guam Hazardous Materials Emergency Operations Plan".

This is a draft plan submitted to Federal Emergency Management Agency (FEMA) as required under Title III (Emergency Planning and Community Right-To-Know) of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

This draft plan was prepared by the Local Emergency Planning Committee (LEPC) under the authority of the State Emergency Response Commission (SERC) in which Dr. George Boughton was elected as Chairman by the members.

If you need additional information please contact Dr. Boughton at the Civil Defense Office.

Sincerely yours,

Roland H. Solivio
ROLAND H. SOLIVIO
Acting Administrator

"ALL LIVING THINGS OF THE EARTH ARE ONE"

FISCAL NOTE
BUREAU OF BUDGET & MANAGEMENT RESEARCH

BBMR-F7

Bill No. 259 Date Received 6-14-89

Amendatory Bill Yes No Date Reviewed 6-14-89

Department/Agency Affected: N/A

Department/Agency Head: N/A

Total Fiscal Year Appropriation: N/A

Bill Title (concise): AN ACT TO ADD A NEW CHAPTER 88 TO TITLE 10 GCA RELATIVE TO ENACTING A HAZARDOUS SUBSTANCE PROTECTION ACT.

Change in Law: _____

Bill Attempts to:	Bill is for:
<input type="checkbox"/> Increase Program Funding	<input type="checkbox"/> Operations
<input type="checkbox"/> Decrease Program Funding	<input type="checkbox"/> Capital Improvement
<input type="checkbox"/> Reallocate Present Program Funding	<input type="checkbox"/> Other

FINANCIAL/PROGRAM IMPACT

<u>PROGRAM CATEGORIES</u>	<u>Minimum Estimated Required Funds (For Five Years)</u>		
	<u>GENERAL FUND</u>	<u>FEDERAL</u>	<u>OTHER</u>
<u>Health & Welfare</u>	<u>See Comments</u>	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
<u>GRAND TOTAL</u>	_____	_____	_____

ESTIMATED MULTI-YEAR FUND REQUIREMENTS

<u>SOURCES</u>	<u>1st</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>
<u>General Fund</u>	<u>See Comments</u>	_____	_____	_____	_____
<u>Federal Fund</u>	_____	_____	_____	_____	_____
<u>Other Fund</u>	_____	_____	_____	_____	_____
<u>GRAND TOTAL</u>	_____	_____	_____	_____	_____

ESTIMATED MULTI-YEAR REALIZED REVENUES

<u>SOURCES</u>	<u>1st</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>
<u>General Fund</u>	<u>See Comments</u>	_____	_____	_____	_____
<u>Federal Fund</u>	_____	_____	_____	_____	_____
<u>Other Fund</u>	_____	_____	_____	_____	_____
<u>GRAND TOTAL</u>	_____	_____	_____	_____	_____

Catherine U. Leon Guerrero
Catherine U. Leon Guerrero
PROGRAM ANALYST

Michael J. Reidy
MICHAEL J. REIDY

Date Review Terminated: 6-14-89

Comments on Bill No. 259

Bill No. 259 is an Act to add a New Chapter 88 to Title 10 GCA relative to enacting a Hazardous Protection Act.

If enacted, Bill 259 will establish a hazardous substance testing site within the Department of Public Health and Social Services. The purpose of the site is to offer this type of service to the people of Guam since one is not available to the public at this time. The Bureau, however, is unable to secure the cost breakdown from PHSS for creation of such a testing site due to the unavailability of information. Such cost factors which would need to be ascertained would be: personnel costs, supplies and materials and equipment necessary to implement the intent of the legislation.

The fiscal impact of Bill 259 entails the creation of a Hazardous Substance Expense Fund to be administered by the Workman's Compensation Commission at the Department of Labor for purposes of paying those exposed and inflicted by a hazardous substance. Bill 259, further appropriates the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to initially set up the Fund. According to Bill Delfin from the Workman's Compensation Commission, \$250,000 is adequate to initially establish the Fund. Furthermore, the fund revenues will be augmented by contributions from agencies who handle, manage, dispose or transport a hazardous substance amounting to 1% of their total annual payroll to the fund. Funds in the Hazardous Substance Expense Fund will be paid out by the Treasurer of Guam upon authorization from the Workman's Compensation Commission.


MICHAEL J. REIDY

ATTENDANCE SHEET

COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

DATE: 26 June 1987

Bill No. 259

Respirators Substance

Protection

NAME

TESTIMONY

AGENCY / INTEREST GROUP

COMMENT

PRINT:

SIGN:

WRITTEN:

ORAL:

FAVOR:

AGAINST:

Senator Martha Kates

Legislature

JAMES L. CANTO

J. J. Canto

GEPA

ROLAND SOLIVU

R. A. Solivuu

GEPA

ATTENDANCE SHEET

COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

DATE: 20 June 1984

Bill No. 259

Hazardous Substance

Protection

NAME

TESTIMONY

AGENCY / INTEREST GROUP

COMMENT

PRINT:

SIGN:

WRITTEN:

ORAL:

FAVOR:

AGAINST:

KAREN CRUZ

DPHSS