



*Territory of Guam*  
*Toroloxion Guam*

6-12-90

OFFICE OF THE GOVERNOR  
LFSINAN I MAGA LAHI  
AGANA GUAM 96910 USA

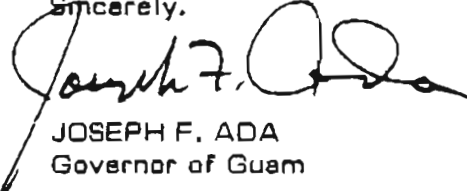
MAY 12 1990

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

Dear Mr. Speaker:

Transmitted herewith is Bill No. 1398, which has been designated as Public Law 20-182.

Sincerely,



JOSEPH F. ADA  
Governor of Guam

Attachment

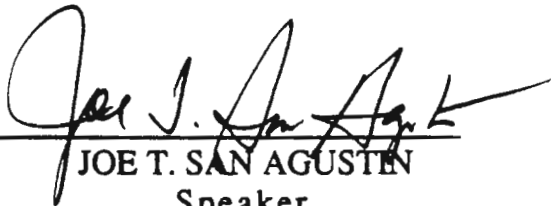


Commonwealth Now!

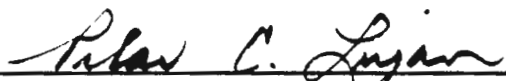
TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Substitute Bill No. 1398 (LS), "AN ACT TO ADD A NEW CHAPTER 41 TO TITLE 10, GUAM CODE ANNOTATED, TO COMPENSATE THOSE EXPOSED TO CERTAIN CHEMICAL SUBSTANCES, TO CITE THE CHAPTER AS THE TOXIC SUBSTANCES EXPOSURE COMPENSATION ACT OF 1990, AND TO REPEAL AND REENACT AND AMEND CERTAIN SECTIONS AND THE TITLE OF CHAPTER 88, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO HAZARDOUS SUBSTANCES," returned to the Legislature without the approval of the Governor was, in accordance with the Organic Act of Guam, reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 23rd day of May, 1990, agree to pass said bill notwithstanding the objections of the Governor by a vote of two-thirds of all members thereof, to wit: by a vote of seventeen members.

  
\_\_\_\_\_  
JOE T. SAN AGUSTEN  
Speaker

Attested:

  
\_\_\_\_\_  
PILAR C. LUJAN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 25<sup>th</sup> day of May, 1990, at  
4:00 o'clock p.m.

  
\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

Public Law No. 20-182

TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

Bill No. 1398 (LS)  
As substituted by Committee  
on Rules

Introduced by:

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

AN ACT TO ADD A NEW CHAPTER 41 TO TITLE 10, GUAM CODE ANNOTATED, TO COMPENSATE THOSE EXPOSED TO CERTAIN CHEMICAL SUBSTANCES, TO CITE THE CHAPTER AS THE TOXIC SUBSTANCES EXPOSURE COMPENSATION ACT OF 1990, AND TO REPEAL AND REENACT AND AMEND CERTAIN SECTIONS AND THE TITLE OF CHAPTER 88, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO HAZARDOUS SUBSTANCES.

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

2 Section 1. A new Chapter 41 is hereby added to Title 10, Guam Code  
3 Annotated, to read:

4 "Chapter 41

5 Toxic Substances Exposure Compensation Act

6 "§41101. Legislative Findings. The Legislature finds that:

7 (1) Residents of Guam are being constantly exposed to a large  
8 number of dangerous chemical substances and mixtures;

9 (2) Among the many chemical substances and mixtures which  
10 are being developed and produced, there are some whose manufacture,  
11 processing, distribution in commerce, use, or disposal may present an  
12 unreasonable risk or injury to human health or the environment;

13 (3) Individuals have a well-grounded fear of injury or illness  
14 arising from exposure to such dangerous chemical substances and  
15 mixtures;

16 (4) Because of the toxicity of certain chemical substances and  
17 mixtures, no definite testing of the effects of these chemical  
18 substances and mixtures on humans is available;

19 (5) Tests conducted on animals indicate that certain chemical  
20 substances and mixtures are very harmful to animals and may cause  
21 harm to humans;

22 (6) The effective protection of the physical and mental health  
23 of Guam's residents and their ability to enjoy life requires that those  
24 exposed to certain chemical substances and mixtures be compensated  
25 by those responsible for the manufacture and distribution of those  
26 substances; and

27 (7) For a variety of reasons, including lack or ambiguity of  
28 data, the long lead time between exposure and illness, and the presence  
29 of disease from other causes, case law in other jurisdictions has  
30 created an unacceptable burden on persons exposed to toxic substances  
31 to prove causation and the likelihood of harm.

32 §41102. Policy. It is declared to be the policy of Guam that:

1 (a) The statutory and common law of Guam shall  
2 facilitate the compensation of those exposed to certain chemical  
3 substances and mixtures;

4 (b) Persons exposed to toxic substances shall be entitled  
5 to compensation for all damages arising from exposure to such  
6 substances.

7 §41103. Definitions. As used in this Chapter, the following  
8 terms are defined to mean:

9 (1) "Toxic substances" shall mean polychlorinated biphenols,  
10 dioxins, furans or halogenated chlorofluoroalkanes.

11 (2) "Exposure" shall mean any contact from any source with  
12 skin, eyes, ears, hair or other part of the human body, including but not  
13 limited to contact through ingestion or breathing.

14 (3) "Federally permitted levels of exposure" shall mean the  
15 maximum levels of exposure of humans as determined by federally  
16 regulatory agencies, including but not limited to the Environmental  
17 Protection Agency, the Occupational Safety and Health Administration,  
18 and the National Institute for Occupational Safety and Health. In the  
19 case of conflicting maximum permissible exposure levels, the lowest  
20 maximum permissible exposure level shall apply. For exposure in the  
21 work place, the eight-hour work place exposure level shall be  
22 considered the "federally permitted level of exposure". If no eight-hour  
23 work place exposure level exists, the lowest applicable maximum  
24 permissible exposure level shall apply.

25 (4) "Persons" shall mean and include individuals, governmental  
26 entities, including but not limited to the United States or the  
27 government of Guam, whichever the case may be, and corporations,  
28 partnerships and other business entities.

29 §41104. Liability for exposure to toxic substances. (1) Any  
30 person who has been exposed to toxic substances at a level above  
31 federally permitted levels of exposure shall be entitled to bring an  
32 action for damage against:

33 (a) The manufacturer of the toxic substances or any  
34 person who incorporates a toxic substance in the manufacture of

1 a product. Such persons shall be strictly liable for all damages  
2 resulting from human exposure to toxic substances at levels  
3 above federally permitted levels of exposure.

4 (b) Any other person who is responsible for the claimant's  
5 exposure to the toxic substances. Such other persons shall be  
6 liable for damages under this Chapter if their negligence results  
7 in the claimant's exposure to toxic substances.

8 (i) Persons responsible for exposure shall include  
9 any person who controls the toxic substance after its  
10 manufacture or who controls any product which contains a  
11 toxic substance; provided, that such person is negligent in  
12 the use, storage, disposal, cleanup or other control of the  
13 toxic substance. Violations of federal cleanup regulations  
14 shall constitute negligence per se for the purposes of this  
15 Chapter.

16 (2) Recoverable damages shall include injury, increased risk of  
17 illness or injury, lost income, medical expenses, pain and suffering,  
18 emotional distress (attributed to the exposure), loss of ability to enjoy  
19 life, loss of consortium, loss of ability to procreate, medical expenses  
20 for treatment or monitoring, and any other direct or indirect effects of  
21 exposure.

22 (3) Punitive damages shall be recoverable under this Chapter  
23 against any person who conceals the harmful effects of toxic substance  
24 or against any person who acts with reckless indifference to human  
25 health in the manufacture, use, storage or cleanup of toxic substances.

26 (4) Persons who recover damages under this Chapter shall  
27 receive interest on all amounts recovered, from the date of injury until  
28 the date paid, at the rates set out in 26 U.S.C. §6621(a)(1), plus  
29 attorneys' fees, and costs of suit.

30 (5) In proving increased likelihood of injury, the following  
31 rules shall apply:

32 (a) Once a showing of exposure of a toxic substance above  
33 federally permitted levels has been made, the parties responsible

1 for the exposure shall have the burden of disproving an increased  
2 likelihood of disease or injury to the exposed person;

3 (b) All doubts shall be resolved in favor of the exposed  
4 person; and

5 (c) Studies indicating harmful effects of exposure on  
6 animals shall create a presumption that exposure of humans will  
7 also be harmful and will cause similar results.

8 (6) A cause of action for exposure under this Chapter shall  
9 accrue at the time of exposure, regardless of whether physical  
10 manifestation of injury has occurred. Any action under this Chapter  
11 must be brought within four (4) years of the date of the last exposure,  
12 or within two (2) years of the date of discovery of the harm caused by  
13 the exposure, whichever is later.

14 §41105. Application of this Chapter. This Chapter shall apply to  
15 all claims which are not reduced to final judgment as of the effective  
16 date of this Chapter.

17 §41106. Severability. If any provision of this Chapter, or the  
18 application of any provision of this Chapter to any person or  
19 circumstances is held invalid, the application of such provision to  
20 other circumstances and the remainder of this Chapter shall not be  
21 affected thereby."

22 §41107. This Chapter may be cited as the "Toxic Substance  
23 Exposure Compensation Act of 1990".

24 **Section 2.** The title to Chapter 88 of Title 10, Guam Code Annotated,  
25 enacted by Public Law 20-106 is hereby amended to read:

26 "Chapter 88

27 Underground Storage of Hazardous Substances"

28 **Section 3.** §88105 of Title 10, Guam Code Annotated, is hereby  
29 repealed and reenacted to read:

30 "§88105. Notification requirements. (a) Any owner who brings  
31 into use an underground storage tank after the effective date of this  
32 Chapter shall notify the Agency within thirty (30) days after the tank is  
33 brought into use and specify information including, but not limited to,

1 the age, size, type, location, and uses of the tank. Notice shall be made  
2 on an approved form of notice provided by the Agency.

3 (b) The owner of an existing underground tank taken out of  
4 operation or removed from the ground after the effective date of this  
5 Chapter shall notify the Agency within thirty (30) days of such action.  
6 Notice shall include, but not limited to, at least the following  
7 specifications:

8 (1) The date the tank was taken out of operation;

9 (2) The age of the tank on the date taken out of operation;

10 (3) The size, type, and location of the tank; and

11 (4) The type and quantity of substances left stored in the  
12 tank on the date taken out of operation or removed."

13 **Section 4.** Paragraph (c) of §88106 of Title 10, Guam Code Annotated,  
14 is hereby amended to read:

15 "(c) The performance standards for new underground storage  
16 tanks shall include, but are not limited to, design, construction,  
17 installation, release detection, and compatibility standards."

18 **Section 5.** Paragraph (a) of §88107 of Title 10, Guam Code Annotated,  
19 is hereby amended to read:

20 "(a) The owner or operator of an underground storage tank shall  
21 maintain a leak detection system, an inventory control system, and tank  
22 testing system, or a comparable system or method designed to identify  
23 releases in a manner consistent with the protection of human health  
24 and the environment."

25 **Section 6.** Paragraph (c) of §88108 of Title 10, Guam Code Annotated,  
26 is hereby amended to read:

27 "(c) Notice by the operator and owner may be made orally or in  
28 writing but shall be followed within fourteen (14) days by a written  
29 report to the Agency that a release has been detected. The written  
30 report shall include, but not be limited to the nature of the release, the  
31 regulated substances released, the quantity of the release, the period of  
32 time over which the release occurred and the corrective action taken as  
33 of the date of the report and anticipated to be taken subsequent to the  
34 date of the report."



1           Section 7. Paragraph (c) of §88111 of Title 10, Guam Code Annotated,  
2 is hereby amended to read:

3           "(c) The total liability of a guarantor shall be limited to the  
4 aggregate amount when the guarantor has provided as evidence of the  
5 financial responsibility to the owner or operator under this section.  
6 This subsection does not limit any other Guam or Federal statutory,  
7 contractual, or common law liability of a guarantor to its owner or  
8 operator, including, but not limited to, the liability of the guarantor for  
9 bad faith in negotiating or in failing to negotiate the settlement of any  
10 claim. This subsection does not diminish the liability of any person  
11 under Sections 107 or 111 of the Comprehensive Environmental  
12 Response, Compensation and Liability Act of 1980, Public Law 96-516,  
13 as amended, or other applicable law."

TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. \_\_\_\_\_

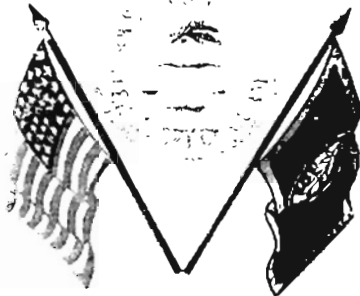
Date: 5/23/90

Resolution No. \_\_\_\_\_

QUESTION: B 1398

	<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	✓			

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*Territory of Guam*  
*Territorio de Guam*

OFFICE OF THE GOVERNOR  
LEONANT MAGALLANI  
AGANA, GUAM 96911 USA

MAY 18 1990

The Honorable Joe T. San Agustin  
Speaker, 20th Guam Legislature  
155 Hernan Cortez St.  
Agana, Guam 96910

Dear Mr. Speaker:

Enclosed is Substitute Bill 1398 which I have vetoed this date.

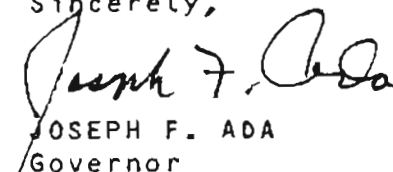
Two months ago when faced with a similar measure, I offered to meet with the sponsors and other members of the Legislature to address the concerns that I had then. While the Legislature has addressed the scope of this legislation it has not addressed other critical defects of this measure.

Unfortunately, Substitute Bill 1398 was passed without a public hearing or an opportunity for the executive branch to testify on this measure. Of critical concern is the waiver of the territory's immunity for tort actions. Unlike the Government Claims Act, this measure has no cap on the government's liability. It is possible that this measure could bring about the bankruptcy of Guam Power Authority and the government of Guam. Reasonable limits should be imposed.

Further, some of the provisions that substantially change tort law include requiring the payment of interest retroactively from the time of injury, requiring proof of a negative, and use of studies on animals to establish similar effects on humans.

Again, I urge the sponsors to join me in an effort to address this problem. Our commitment to those persons who have been injured by toxic substances is unwaivering. Next week I will submit for your consideration a draft bill. I hope that we are able to work together on this issue.

Sincerely,

  
JOSEPH F. ADA  
Governor

200936

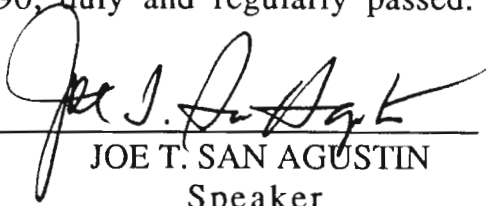


Commonwealth Now!

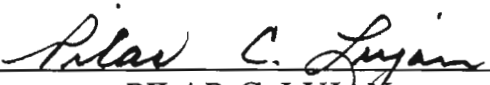
TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

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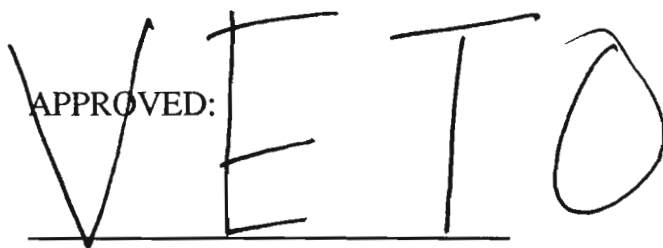
  
\_\_\_\_\_  
JOE T. SAN AGUSTIN  
Speaker

Attested:

  
\_\_\_\_\_  
PILAR C. LUJAN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 1<sup>st</sup> day of May, 1990, at  
4:48 o'clock P.m.

  
\_\_\_\_\_  
Theresa A. Duenas  
Assistant Staff Officer  
Governor's Office

APPROVED:  
  
\_\_\_\_\_  
JOSEPH F. ADA  
Governor of Guam

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

Bill No. 1398 (LS)  
As substituted by Committee  
on Rules

Introduced by:

T. S. Nelson  
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3 Annotated, to read:

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6 "§41101. Legislative Findings. The Legislature finds that:

7 (1) Residents of Guam are being constantly exposed to a large  
8 number of dangerous chemical substances and mixtures;

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10 are being developed and produced, there are some whose manufacture,  
11 processing, distribution in commerce, use, or disposal may present an  
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14 arising from exposure to such dangerous chemical substances and  
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16 (4) Because of the toxicity of certain chemical substances and  
17 mixtures, no definite testing of the effects of these chemical  
18 substances and mixtures on humans is available;

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20 substances and mixtures are very harmful to animals and may cause  
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23 of Guam's residents and their ability to enjoy life requires that those  
24 exposed to certain chemical substances and mixtures be compensated  
25 by those responsible for the manufacture and distribution of those  
26 substances; and

27 (7) For a variety of reasons, including lack or ambiguity of  
28 data, the long lead time between exposure and illness, and the presence  
29 of disease from other causes, case law in other jurisdictions has  
30 created an unacceptable burden on persons exposed to toxic substances  
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10 dioxins, furans or halogenated chlorofluoroalkanes.

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12 skin, eyes, ears, hair or other part of the human body, including but not  
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14 (3) "Federally permitted levels of exposure" shall mean the  
15 maximum levels of exposure of humans as determined by federally  
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19 case of conflicting maximum permissible exposure levels, the lowest  
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21 work place, the eight-hour work place exposure level shall be  
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4 (b) Any other person who is responsible for the claimant's  
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8 (i) Persons responsible for exposure shall include  
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10 manufacture or who controls any product which contains a  
11 toxic substance; provided, that such person is negligent in  
12 the use, storage, disposal, cleanup or other control of the  
13 toxic substance. Violations of federal cleanup regulations  
14 shall constitute negligence per se for the purposes of this  
15 Chapter.

16 (2) Recoverable damages shall include injury, increased risk of  
17 illness or injury, lost income, medical expenses, pain and suffering,  
18 emotional distress (attributed to the exposure), loss of ability to enjoy  
19 life, loss of consortium, loss of ability to procreate, medical expenses  
20 for treatment or monitoring, and any other direct or indirect effects of  
21 exposure.

22 (3) Punitive damages shall be recoverable under this Chapter  
23 against any person who conceals the harmful effects of toxic substance  
24 or against any person who acts with reckless indifference to human  
25 health in the manufacture, use, storage or cleanup of toxic substances.

26 (4) Persons who recover damages under this Chapter shall  
27 receive interest on all amounts recovered, from the date of injury until  
28 the date paid, at the rates set out in 26 U.S.C. §6621(a)(1), plus  
29 attorneys' fees, and costs of suit.

30 (5) In proving increased likelihood of injury, the following  
31 rules shall apply:

32 (a) Once a showing of exposure of a toxic substance above  
33 federally permitted levels has been made, the parties responsible



1 for the exposure shall have the burden of disproving an increased  
2 likelihood of disease or injury to the exposed person;

3 (b) All doubts shall be resolved in favor of the exposed  
4 person; and

5 (c) Studies indicating harmful effects of exposure on  
6 animals shall create a presumption that exposure of humans will  
7 also be harmful and will cause similar results.

8 (6) A cause of action for exposure under this Chapter shall  
9 accrue at the time of exposure, regardless of whether physical  
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11 must be brought within four (4) years of the date of the last exposure,  
12 or within two (2) years of the date of discovery of the harm caused by  
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14 §41105. Application of this Chapter. This Chapter shall apply to  
15 all claims which are not reduced to final judgment as of the effective  
16 date of this Chapter.

17 §41106. Severability. If any provision of this Chapter, or the  
18 application of any provision of this Chapter to any person or  
19 circumstances is held invalid, the application of such provision to  
20 other circumstances and the remainder of this Chapter shall not be  
21 affected thereby."

22 §41107. This Chapter may be cited as the "Toxic Substance  
23 Exposure Compensation Act of 1990".

24 **Section 2.** The title to Chapter 88 of Title 10, Guam Code Annotated,  
25 enacted by Public Law 20-106 is hereby amended to read:

26 "Chapter 88

27 Underground Storage of Hazardous Substances"

28 **Section 3.** §88105 of Title 10, Guam Code Annotated, is hereby  
29 repealed and reenacted to read:

30 "§88105. Notification requirements. (a) Any owner who brings  
31 into use an underground storage tank after the effective date of this  
32 Chapter shall notify the Agency within thirty (30) days after the tank is  
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1 the age, size, type, location, and uses of the tank. Notice shall be made  
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3 (b) The owner of an existing underground tank taken out of  
4 operation or removed from the ground after the effective date of this  
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6 Notice shall include, but not limited to, at least the following  
7 specifications:

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9 (2) The age of the tank on the date taken out of operation;

10 (3) The size, type, and location of the tank; and

11 (4) The type and quantity of substances left stored in the  
12 tank on the date taken out of operation or removed."

13 **Section 4.** Paragraph (c) of §88106 of Title 10, Guam Code Annotated,  
14 is hereby amended to read:

15 "(c) The performance standards for new underground storage  
16 tanks shall include, but are not limited to, design, construction,  
17 installation, release detection, and compatibility standards."

18 **Section 5.** Paragraph (a) of §88107 of Title 10, Guam Code Annotated,  
19 is hereby amended to read:

20 "(a) The owner or operator of an underground storage tank shall  
21 maintain a leak detection system, an inventory control system, and tank  
22 testing system, or a comparable system or method designed to identify  
23 releases in a manner consistent with the protection of human health  
24 and the environment."

25 **Section 6.** Paragraph (c) of §88108 of Title 10, Guam Code Annotated,  
26 is hereby amended to read:

27 "(c) Notice by the operator and owner may be made orally or in  
28 writing but shall be followed within fourteen (14) days by a written  
29 report to the Agency that a release has been detected. The written  
30 report shall include, but not be limited to the nature of the release, the  
31 regulated substances released, the quantity of the release, the period of  
32 time over which the release occurred and the corrective action taken as  
33 of the date of the report and anticipated to be taken subsequent to the  
34 date of the report."

1           **Section 7.** Paragraph (c) of §88111 of Title 10, Guam Code Annotated,  
2 is hereby amended to read:

3           "(c) The total liability of a guarantor shall be limited to the  
4 aggregate amount when the guarantor has provided as evidence of the  
5 financial responsibility to the owner or operator under this section.  
6 This subsection does not limit any other Guam or Federal statutory,  
7 contractual, or common law liability of a guarantor to its owner or  
8 operator, including, but not limited to, the liability of the guarantor for  
9 bad faith in negotiating or in failing to negotiate the settlement of any  
10 claim. This subsection does not diminish the liability of any person  
11 under Sections 107 or 111 of the Comprehensive Environmental  
12 Response, Compensation and Liability Act of 1980, Public Law 96-516,  
13 as amended, or other applicable law."

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

ROLL CALL SHEET

Bill No. 1398

Date: 5/1/90

Resolution No. \_\_\_\_\_

QUESTION: \_\_\_\_\_

	AYE	NAY	NOT VOTING	ABSENT
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	✓			

20

1

**Introduced**

TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

APR 23 '90

Bill No. 1398(LS)

Introduced by:

T. S. Nelson  
C. T. C. Gutierrez  
J. T. San Agustin  
H. D. Dierking  
E. P. Arriola  
D. Parkinson  
F. R. Santos

AN ACT TO ADD A NEW CHAPTER 41 TO TITLE 10, GUAM CODE ANNOTATED, TO COMPENSATE THOSE EXPOSED TO CERTAIN CHEMICAL SUBSTANCES, TO CITE THE CHAPTER AS THE TOXIC SUBSTANCES EXPOSURE COMPENSATION ACT OF 1989, AND TO REPEAL PUBLIC LAW 20-110.

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

2 **Section 1.** A new Chapter 41 is hereby added to Title 10, Guam Code  
3 Annotated, to read:

4 "Chapter 41

5 Toxic Substances Exposure Compensation Act

6 "§41101. Legislative Findings. The Legislature finds that:

7 (1) Residents of Guam are being constantly exposed to a large  
8 number of dangerous chemical substances and mixtures;

9 (2) Among the many chemical substances and mixtures which  
10 are being developed and produced, there are some whose manufacture,  
11 processing, distribution in commerce, use, or disposal may present an  
12 unreasonable risk or injury to human health or the environment;

13 (3) Individuals have a well-grounded fear of injury or illness  
14 arising from exposure to such dangerous chemical substances and  
15 mixtures;

16 (4) Because of the toxicity of certain chemical substances and  
17 mixtures, no definite testing of the effects of these chemical  
18 substances and mixtures on humans is available;

1 (5) Tests conducted on animals indicate that certain chemical  
2 substances and mixtures are very harmful to animals and may cause  
3 harm to humans;

4 (6) The effective protection of the physical and mental health  
5 of Guam's residents and their ability to enjoy life requires that those  
6 exposed to certain chemical substances and mixtures be compensated  
7 by those responsible for the manufacture and distribution of those  
8 substances; and

9 (7) For a variety of reasons, including lack or ambiguity of  
10 data, the long lead time between exposure and illness, and the presence  
11 of disease from other causes, case law in other jurisdictions has  
12 created an unacceptable burden on persons exposed to toxic substances  
13 to prove causation and the likelihood of harm.

14 §41102. Policy. It is declared to be the policy of Guam that:

15 (a) The statutory and common law of Guam shall  
16 facilitate the compensation of those exposed to certain chemical  
17 substances and mixtures;

18 (b) persons exposed to toxic substance shall be entitled  
19 to compensation for all damages arising from exposure to such  
20 substances.

21 §41103. Definitions. As used in this Chapter, the following  
22 terms are defined to mean:

23 (1) "Toxic substance" shall mean polychlorinated biphenols,  
24 dioxins, furans or halogenated chlorofluoroalkanes.

25 (2) "Exposure" shall mean any contact from any source with  
26 skin, eyes, ears, hair or other part of the human body, including but not  
27 limited to contact through ingestion or breathing.

28 (3) "Federally permitted levels of exposure" shall mean the  
29 maximum levels of exposure of humans as determined by federally  
30 regulatory agencies, including but not limited to the Environmental  
31 Protection Agency, the Occupational Safety and Health Administration,  
32 and the National Institute for Occupational Safety and Health. In the  
33 case of conflicting maximum permissible exposure levels, the lowest  
34 maximum permissible exposure level shall apply. For exposure in the  
35 work place, the eight-hour work place exposure level shall be  
36 considered the "federally permitted level of exposure". If no eight-hour

1 work place exposure level exists, the lowest applicable maximum  
2 permissible exposure level shall apply.

3 (4) "Persons" shall mean and include individuals, governmental  
4 entities, including but not limited to the United States or the  
5 government of Guam, whichever the case may be, and corporations,  
6 partnerships and other business entities.

7 §41104. Liability for exposure to toxic substances. (1) Any  
8 person who has been exposed to toxic substances at a level above  
9 federally permitted levels of exposure shall be entitled to bring an  
10 action for damage against:

11 (a) The manufacturer of the toxic substances or any  
12 person who incorporates a toxic substance in the manufacture of  
13 a product. Such persons shall be strictly liable for all damages  
14 resulting from human exposure to toxic substances at levels  
15 above federally permitted levels of exposure.

16 (b) Any other person who is responsible for the claimant's  
17 exposure to the toxic substances. Such other persons shall be  
18 liable for damages under this Chapter if their negligence results  
19 in the claimant's exposure to toxic substances.

20 (i) Persons responsible for exposure shall include:

21 (A) Any person who controls the toxic  
22 substance after its manufacture who controls any  
23 product which contains a toxic substance, provided  
24 that such person is negligent in the use, storage,  
25 disposal, cleanup or other control of the toxic  
26 substance. Violations of federal cleanup regulations  
27 shall constitute negligence per se for the purposes of  
28 this Chapter.

29 (2) Recoverable damages shall include injury, increased risk of  
30 illness or injury, lost income, medical expenses, pain and suffering,  
31 emotional distress (whether or not accompanied by physical  
32 manifestation or illness), loss of ability to enjoy life, loss of  
33 consortium, loss of ability to procreate, medical expenses for  
34 treatment or monitoring, and any other direct or indirect effects of  
35 exposure.

1 (3) Punitive damages shall be recoverable under this Chapter  
2 against any person who conceals the harmful effects of toxic substance  
3 or against any person who acts with reckless indifference to human  
4 health in the manufacture, use, storage or cleanup of toxic substances.

5 (4) Persons who recover damages under this Chapter shall  
6 receive interest on all amounts recovered, from the date of injury until  
7 the date paid, at the rates set out in 26 U.S.C. §6621(a)(1), plus  
8 attorneys' fees, and costs of suit.

9 (5) In proving increased likelihood of injury, the following  
10 rules shall apply:

11 (a) Once a showing of exposure of a toxic substance above  
12 federally permitted levels has been made, the parties responsible  
13 for the exposure shall have the burden of disproving an increased  
14 likelihood of disease or injury to the exposed person;

15 (b) All doubts shall be resolved in favor of the exposed  
16 person;

17 (c) It shall not be necessary for an exposed person to  
18 prove that he has suffered or will suffer a particular illness or  
19 injury because of the exposure; instead, it shall be sufficient that  
20 there is statistical association between exposure and the  
21 incidence of a particular illness or injury; and

22 (d) Studies indicating harmful effects of exposure on  
23 animals shall create a presumption that exposure of humans will  
24 also be harmful and will cause similar results.

25 (6) A cause of action for exposure under this Chapter shall  
26 accrue at the time of exposure, regardless of whether physical  
27 manifestation of injury have occurred. Any action under this Chapter  
28 must be brought within four (4) years of the date of the last exposure,  
29 or within two (2) years of the date of discovery of the harm caused by  
30 the exposure, whichever is later.

31 §41105. Application of this Chapter. This Chapter shall apply to  
32 all claims which are not reduced to final judgement as of the effective  
33 date of this Chapter.

34 §41106. Severability. If any provision of this Chapter, or the  
35 application of any provision of this Chapter to any person or  
36 circumstances is held invalid, the application of such provision to



1 other circumstances and the remainder of this Chapter shall not be  
2 affected thereby."

3 §41107. This Chapter may be cited as the "Toxic Substance  
4 Exposure Compensation Act of 1989".

5 **Section 2.** Public Law 20-110 is hereby repealed.