



Territory of Guam
Territorio Guam

OFFICE OF THE GOVERNOR
OFISINAN I MAGALAHI
AGANA, GUAM 96910 U.S.A.

RECEIVED
OFFICE OF THE SPEAKER
DATE: 9/28/93
TIME: 2:00
RECD BY: [Signature]

SEP 28 1993

The Honorable Joe T. San Agustin
Speaker, Twenty-Second Guam Legislature
155 Hesler Street
Agana, Guam 96910

**REFER TO
LEGISLATIVE SECRETARY**

[Handwritten mark]

Dear Mr. Speaker:

Transmitted herewith is Bill No. 458 which I have signed into law this date as
Public Law 22-38.

Sincerely yours,

Joseph F. Ada
JOSEPH F. ADA
Governor of Guam

220372

Attachment

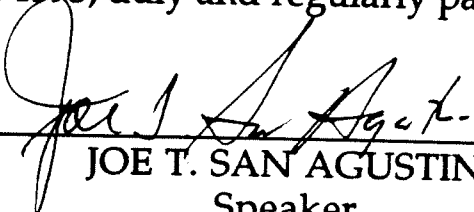


Commonwealth Now!

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

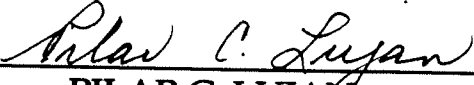
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 458 (LS), "AN ACT TO ADD A NEW CHAPTER 54A TO TITLE 10, GUAM CODE ANNOTATED, CONSTITUTING THE GUAM OIL SPILL RESPONDER IMMUNITY ACT," was on the 15th day of September, 1993, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



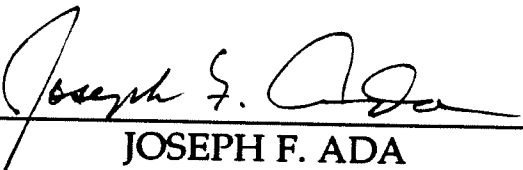
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 17th day of September,
1993, at 10:25 o'clock A.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: September 28, 1993

Public Law No. 22-38

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 458 (LS)

As amended by the Committee on Health,
Ecology & Welfare and as substituted by
the Committee on Rules

Introduced by:

D. L. G. Shimizu
M. D. A. Manibusan
E. P. Arriola
D. F. Brooks
H. D. Dierking
T. S. Nelson
T. C. Ada
J. P. Aguon
M. Z. Bordallo
C. T. C. Gutierrez
P. C. Lujan
V. C. Pangelinan
D. Parkinson
E. D. Reyes
J. T. San Agustin
J. G. Bamba
A. C. Blaz
F. P. Camacho
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO ADD A NEW CHAPTER 54A TO TITLE 10,
GUAM CODE ANNOTATED, CONSTITUTING THE
GUAM OIL SPILL RESPONDER IMMUNITY ACT.

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

2 **Section 1. Legislative findings.** Rapid response and immediate and
3 decisive action are critical to oil spill removal or containment, just as in
4 response to a natural disaster such as fire, typhoon or earthquake. In any of

1 these circumstances responders must take immediate action based on very
2 limited information, attacking the problem quickly if there is to be any realistic
3 chance of mitigating the worst harm. Limited immunity for firefighters has
4 long been recognized because of these circumstances, and this Act extends
5 similar protection to oil spill responders. Without similar immunity, the
6 enormous financial risks and liability exposures associated with oil spill
7 response will deter those persons who are not responsible for the initial spill,
8 such as cleanup contractors, fishermen and barge owners, from prompt
9 aggressive cleanup, or from any response at all. The liability for damages
10 resulting from the oil spill clean-up efforts falls on the party responsible for
11 the initial discharge, not on the persons trying to help clean up or mitigate the
12 damage.

13 **Section 2. Legislative intent.** It is the intention of the Legislature to
14 make Guam law consistent with new Federal oil spill legislation that
15 provides limited immunity from liability for removal costs and damages for
16 those persons responding to an oil spill or threat of an oil spill. The immunity
17 applies if those activities are performed in a manner consistent with the
18 Federal National Contingency Plan or at the direction of an on-site
19 coordinator, Federal On-Scene Coordinator, the Coast Guard, or the
20 Governor of Guam. Since prompt and incisive action is often critical to the
21 success of an oil spill cleanup or the prevention of an oil spill, actions which
22 are substantially consistent with established plans or at the direction of an
23 on-site or On-Scene Coordinator are deemed to fall within the scope of this
24 Act. In addition, immunity for responders is limited. It does not extend to
25 actions for personal injury or wrongful death, or for actions that rise to the
26 level of gross negligence or willful misconduct. It is further the intention of
27 the Legislature that victims of oil spill damage have a means of

1 compensation. They may recover from the person responsible for the initial
2 discharge or, where the responsible party is unidentified or unable to pay,
3 from the Federal Oil Pollution Fund and under any other applicable laws of
4 Guam.

5 **Section 3.** A new Chapter 54A is added to Title 10, Guam Code
6 Annotated, to read:

7 "CHAPTER 54A

8 GUAM OIL SPILL RESPONDERS ACT

9 §45300. **Title.** This chapter shall be known as the "Guam Oil Spill
10 Responder Act".

11 §45301. **Definitions.** For the purposes of this chapter, the terms:

12 (1) "Damages" means damages of any kind for which liability
13 may arise under the laws of Guam or the common law resulting from,
14 arising out of, or related to the discharge or threatened discharge of oil;

15 (2) "Discharge" means any emission (other than natural
16 seepage), intentional or unintentional, and includes, but is not limited
17 to, spilling, leaking, pumping, pouring, emitting, emptying or dumping;

18 (3) "Federal On-Scene Coordinator" means the Federal official
19 predesignated by the U.S. Environmental Protection Agency or the U.S.
20 Coast Guard to coordinate and direct removal under Subpart E of the
21 National Contingency Plan;

22 (4) "National Contingency Plan" means the National
23 Contingency Plan prepared and published under section 311(d) of the
24 Federal Water Pollution Control Act (33 U.S.C. 1321(d)), as amended by
25 the Oil Pollution Act of 1990 (33 U.S.C. 2701);

1 (5) "Oil" means oil of any kind or in any form, including, but not
2 limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with
3 wastes other than dredged spoil;

4 (6) "Oil Spill Response Organization" means an organization of
5 private persons which is established for the primary purpose and
6 activity of preventing or rendering care, assistance, equipment or
7 advice in response to a discharge or threatened discharge of oil;

8 (7) "Person" means an individual, corporation, partnership,
9 association, Federal agency, state, territory, municipality, commission,
10 or political subdivision of a state or territory;

11 (8) "Removal costs" means the costs of removal that are incurred
12 after a discharge of oil has occurred or, in any case in which there is a
13 substantial threat of a discharge of oil, the costs to prevent, minimize,
14 or mitigate oil pollution from such an incident;

15 (9) "Responsible party" means the following:

16 (a) Vessels.—In the case of a vessel, any person owning,
17 operating, or demise chartering the vessel.

18 (b) Onshore facilities.—In the case of an onshore facility
19 (other than a pipeline), any person owning or operating the facility,
20 **except** a Federal agency, a state, territory, municipality,
21 commission, or political subdivision of a state or territory, or any
22 interstate body, that as the owner transfers possession and right to
23 use the property to another person by lease, assignment, or permit.

24 (c) Offshore facilities.—In the case of an offshore facility
25 (other than a pipeline or a deepwater port licensed under the
26 Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or
27 permittee of the area in which the facility is located or the holder of

1 a right of use and easement granted under applicable state or
2 territorial law or the Outer Continental Shelf Lands Act (43 U.S.C.
3 1301-1356) for the area in which the facility is located (if the holder
4 is a different person than the lessee or permittee), except a Federal
5 agency, state, territory, municipality, commission, or political
6 subdivision of a state or territory, or any interstate body, that as
7 owner transfers possession and right to use the property to another
8 person by lease, assignment, or permit.

9 (d) Deepwater ports.—In the case of a deepwater port
10 licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-
11 1524), the licensee.

12 (e) Pipelines.—In the case of a pipeline, any person owning or
13 operating the pipeline.

14 (f) Abandonment.—In the case of an abandoned vessel,
15 onshore facility, deepwater port, pipeline, or offshore facility, the
16 persons who would have been responsible parties immediately
17 prior to the abandonment of the vessel or facility.

18 **§45302. Exemption from liability for persons responding to discharges**
19 **of oil.**

20 (a) No person, including but not limited to an oil spill response
21 organization, its agents, subcontractors and employees, shall be liable
22 under the laws of Guam or the common law to any person for costs,
23 damages, and any other claims and expenses as a result of actions taken
24 or omitted to be taken in the course of rendering care, assistance and
25 advice consistent with the National Contingency Plan, or at the
26 direction of an on-site coordinator, Federal On-Scene Coordinator or
27 the U.S. Coast Guard or as otherwise directed by the President, or the

1 Governor of Guam, in response to a discharge or threatened discharge
2 of oil.

3 (b) Subsection (a) of this §45302 shall **not** apply:

4 (1) To a responsible party;

5 (2) To actions for personal injury or wrongful death;

6 (3) If the person commits acts of gross negligence or willful
7 misconduct in connection with the cleanup of a discharge of oil.

8 (c) A responsible party is liable for any removal costs and
9 damages that another person or oil spill response organization is
10 relieved of under subsection (a) of this §45302."

TWENTY-SECOND GUAM LEGISLATURE

1993 (FIRST) Regular Session

Date: 9/15/93

VOTING SHEET

Bill No. 458

Resolution No. _____

Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George	✓			
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.	✓			
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.	✓			
NELSON, Ted S.	✓			
PANGELINAN, Vicente	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francisco R.				
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL

20



June 1, 1993

The Honorable
Joe T. San Agustin
Speaker, 21st Guam Legislature
Agana, Guam



TWENTY SECOND
GUAM LEGISLATURE

via: Committee on Rules

Dear Mr. Speaker:

The Committee on Health, Ecology & Welfare, to which was referred the **Bill 458: AN ACT TO ADD A NEW ARTICLE TO TITLE 10 GCA CHAPTER 45 RELATIVE TO ESTABLISHING THE OIL SPILL RESPONDER IMMUNITY ACT FOR THE TERRITORY OF GUAM,** herein reports back and recommends **Bill 458 to Do Pass as Substituted.**

Dr. DAVID L.G. SHIMIZU
Senator

CHAIRMAN:
Committee on
Health,
Ecology
and
Welfare

Votes of committee members are as follows:

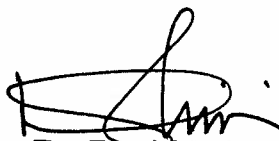
- 9 To Pass
- 0 Not To Pass
- 0 To The Inactive File
- 0 Abstained
- 0 Off-Island
- 0 Not Available

324 West Soledad Ave.
Suite 202,
Agaña, Guam
96910

Telephone:
(671)472-3543/44/45

Facsimile:
(671)472-3832

Sincerely,


Dr. David L.G. Shimizu

attachments



VOTE SHEET

Committee on Health, Ecology & Welfare

Substitute Bill 458: AN ACT TO ADD A NEW ARTICLE TO TITLE 10 GCA CHAPTER 45 RELATIVE TO ESTABLISHING THE OIL SPILL RESPONDER IMMUNITY ACT FOR THE TERRITORY OF GUAM.

SENATOR TO PASS TO PASS ABSTAIN FILE

David Shimizu
Shimizu, David L.G.

✓

Elizabeth Arriola
Arriola, Elizabeth P.

✓

J.P. Agon
Agon, J.P.

✓

Madeleine Z. Borallo
Borallo, Madeleine Z.

✓

Doris F. Brooks
Brooks, Doris F.

✓

Anthony Blaz
Blaz, Anthony

✓

Felix P. Camacho
Camacho, Felix P.

✓

Herminia Dierking
Dierking, Herminia

✓

Marilyn D.A. Manibusan
Manibusan, Marilyn D.A.

✓ 5/29/93
manibusan

INVENTORY OF ATTACHMENTS:

Pursuant to §7.03.02 of the 22nd Guam Legislature Standing Rules on formal reports by Standing Committees on legislation:

- fiscal note
- purpose and essential elements of bill
- testimony digest
- evidence of those testifying

TWENTY-SECOND GUAM LEGISLATURE
1993 (First) Regular Session

Bill No. 458 As Substituted by HEW Committee
Introduced by:

D.L.G. Shimizu *Shimizu*
M Manibusan *Manibusan*
EP Arriola *Arriola*
DF Brooks *Brooks*
H Dierking *Dierking*

AN ACT TO ADD A NEW ARTICLE TO TITLE 10 GCA CHAPTER 45
RELATIVE TO ESTABLISHING THE OIL SPILL RESPONDER
IMMUNITY ACT FOR THE TERRITORY OF GUAM.

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

1 Section 1. Legislative Findings. Rapid response and immediate and
2 decisive action are critical to oil spill removal or containment, just as with
3 response to a natural disaster such as fire, typhoon or earthquake. In any
4 of these circumstances responders must take immediate action based on
5 very limited information, attacking the problem quickly if there is to be any
6 realistic chance of mitigating the worst harm. Limited immunity for
7 firefighters has long been recognized because of these circumstances, and
8 this bill extends similar protection to oil spill responders. Without similar
9 immunity, the enormous financial risks and liability exposures associated
10 with oil spill response will deter those persons who are not responsible for
11 the initial spill, such as cleanup contractors, fishermen and barge owners
12 from prompt aggressive cleanup, or from any response at all. The liability
13 for damages resulting from the oil spill clean-up efforts falls on the party
14 responsible for the initial discharge, not on the persons trying to help clean
15 up or mitigate the damage.

16 Section 2. Legislative Intent. It is the intention of the Legislature to make
17 Guam law consistent with new Federal oil spill legislation that provides
18 limited immunity from liability for removal costs and damages for those
19 persons responding to an oil spill or threat of an oil spill. The immunity
20 applies if those activities are performed in a manner consistent with the

1 Federal National Contingency Plan or at the direction of an onsite
 2 coordinator, Federal On-Scene Coordinator or the Coast Guard. Since
 3 prompt and incisive action is often critical to the success of an oil spill
 4 cleanup or the prevention of an oil spill, actions which are substantially
 5 consistent with established plans or on-site or On-Scene Coordinator
 6 direction are deemed to fall within the scope of this Act. It is further the
 7 intention of the Legislature that victims of oil spill damage will have a
 8 means of compensation. They may recover from the person responsible for
 9 the initial discharge or, where the responsible party is unidentified or
 10 unable to pay, from the federal Oil Pollution Fund and any other
 11 applicable laws of Guam. In addition, immunity for responders is limited.
 12 It does not extend to actions for personal injury or wrongful death, or for
 13 actions that rise to the level of gross negligence or willful misconduct.

14 Section 3. A new Article is added to Title 10 GCA Chapter 45:

15 "§45300. Title. This Act shall be known as the Guam Oil Spill Responder
 16 Act.

17 §45301. Definitions. For the purposes of this Act the terms:

- 18 (1) "damages" means damages of any kind for which liability may arise
 19 under the laws of Guam or the common law resulting from, arising
 20 out of, or related to the discharge or threatened discharge of oil;
- 21 (2) "discharge" means any emission (other than natural seepage),
 22 intentional or unintentional, and includes, but is not limited to,
 23 spilling, leaking, pumping, pouring, emitting, emptying or dumping;
- 24 (3) "Federal On-Scene Coordinator" means the federal official
 25 predesignated by the U.S. Environmental Protection Agency or the
 26 U.S. Coast Guard to coordinate and direct removal under Subpart E
 27 of the National Contingency Plan;
- 28 (4) "National Contingency Plan" means the National Contingency Plan
 29 prepared and published under section 311(d) of the Federal Water
 30 Pollution Control Act (33 U.S.C. 1321(d)), as amended by the Oil
 31 Pollution Act of 1990, 33 U.S.C. 2701;
- 32 (5) "oil" means oil of any kind or in any form, including, but not limited
 33 to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes
 34 other than dredged spoil;
- 35 (6) "Oil Spill Response Organization", means an organization of
 36 private persons which is established for the primary purpose and

1 activity of preventing or rendering care, assistance, equipment or
2 advice in response to a discharge or threatened discharge of oil;

3 (7) "person" means an individual, corporation, partnership,
4 association, federal agency, state, Territory, municipality,
5 commission, or political subdivision of a State or Territory;

6 (8) "removal costs" means the costs of removal that are incurred after a
7 discharge of oil has occurred or, in any case in which there is a
8 substantial threat of a discharge of oil, the costs to prevent,
9 minimize, or mitigate oil pollution from such an incident;

10 (9) [~~"responsible party" means a responsible party as defined under~~
11 ~~Section 1001 of the Oil Pollution Act of 1990, (33 U.S.C. 2701 (32)).]~~

12 "responsible party" means the following:

13 (a) Vessels.—In the case of a vessel, any person owning, operating,
14 or demise chartering the vessel.

15 (b) Onshore Facilities.—In the case of an onshore facility (other than
16 a pipeline), any person owning or operating the facility, except a
17 Federal agency, State, municipality, commission, or political
18 subdivision of a State, or any interstate body, that as the owner
19 transfers possession and right to use the property to another
20 person by lease, assignment, or permit.

21 (c) Offshore Facilities.—In the case of an offshore facility (other than
22 a pipeline or a deepwater port licensed under the Deepwater Port
23 Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the
24 area in which the facility is located or the holder of a right of use
25 and easement granted under applicable State law or the Outer
26 Continental Shelf Lands Act (43 U.S.C. 1301-1356) for the area in
27 which the facility is located (if the holder is a different person than
28 the lessee or permittee), except a Federal agency, State,
29 municipality, commission, or political subdivision of a State, or
30 any interstate body, that as owner transfers possession and right
31 to use the property to another person by lease, assignment, or
32 permit.

33 (d) Deepwater Ports.—In the case of a deepwater port licensed
34 under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), the
35 licensee.

36 (e) Pipelines.—In the case of a pipeline, any person owning or

operating the pipeline.

(f) Abandonment.— In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

§45302. Liability for Persons Responding to Discharges of oil.

(a) No person, including but not limited to an oil spill response organization, its agents, subcontractor and employees, shall be liable under the laws of Guam or the common law to any person for costs, damages, and other claims and expenses as a result of actions taken or omitted to be taken in the course of rendering care, assistance and advice consistent with the National Contingency Plan, or at the direction of an onsite coordinator, Federal On-Scene Coordinator or the Coast Guard in response to a discharge or threatened discharge of oil.

(b) Subsection (a) of §45302 shall not apply:

(1) to a responsible party;

(2) to actions for personal injury or wrongful death;

(3) to immunize a person or oil spill response organization for liability for acts of gross negligence or willful misconduct in connection with the cleanup of a discharge of oil.

(c) A responsible party is liable for any removal costs and damages that another person or oil spill response organization is relieved of under Subsection (a) of §45302.

(d) ~~[Except for the responsible party,]~~ Membership in an oil spill response organization shall not, in and of itself, be grounds for liability resulting from cleanup activities of the oil spill response organization."

//

///

////

////////////////////////////////////



BUREAU OF BUDGET & MANAGEMENT RESEARCH
OFFICE OF THE GOVERNOR, Post Office Box 7950, Agaña, Guam 96910

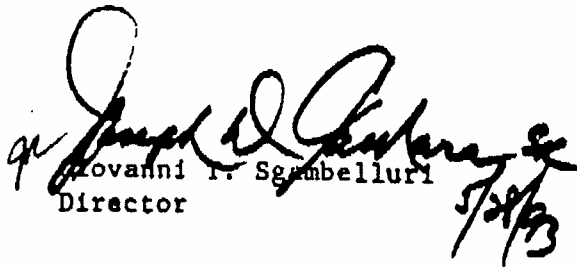


GIOVANNI T. SGAMBELLURI
Director

JUN 02 1993

The Bureau requests that Bill Nos. 458 be granted a waiver pursuant to Public Law 12-229 for the following reason(s).

Bill No. 458 intends to add a new article to Title 10 GCA Chapter 45 relative to establishing the Oil Spill Responder Immunity Act for the Territory of Guam. The proposed measure poses no financial impact on the General Fund given the language of the bill.


Giovanni T. Sgambelluri
Director

COMMITTEE REPORT
HEALTH, ECOLOGY & WELFARE

Bill 458:

AN ACT TO ADD A NEW ARTICLE TO TITLE 10 GCA CHAPTER 45
RELATIVE TO ESTABLISHING THE OIL SPILL RESPONDER IMMUNITY
ACT FOR THE TERRITORY OF GUAM.

PUBLIC HEARING

The Health, Ecology & Welfare Committee held a public hearing on Friday, May 21, 1993 at 9 a.m. to hear testimonies on Bill 458:

The hearing was called to order by the HEW Chairman, Dr. David LG Shimizu. Committee members present were Senators Anthony Blaz.

PURPOSE

It is the purpose of Bill 458 to make Guam law consistent with new Federal oil spill legislation that provides limited immunity from liability for removal costs and damages for those persons responding to an oil spill or threat of an oil spill. The immunity applies if those activities are performed in a manner consistent with the Federal National Contingency Plan or at the direction of an onsite coordinator, Federal On-Scene Coordinator or the Coast Guard. Since prompt and incisive action is often critical to the success of an oil spill cleanup or the prevention of an oil spill, actions which are substantially consistent with established plans or on-site or On-Scene Coordinator direction are deemed to fall within the scope of this Act.

Rapid response and immediate and decisive action are critical to oil spill removal or containment, just as with response to a natural disaster such as fire, hurricane or earthquake. In any of these circumstances responders must take immediate action based on very limited information, attacking the problem quickly if there is to be any realistic chance of mitigating the worst harm. Limited immunity for fire fighters has long been recognized because of these circumstances, and Bill 458 extends similar protection to oil spill responders.

Without similar immunity, the enormous financial risks and liability exposures associated with oil spill response will deter those persons who are not responsible for

the initial spill, such as cleanup contractors, fishermen and barge owners from prompt aggressive cleanup, or from any response at all. The Federal Oil Pollution Act of 1990 recognized the need to provide this limited immunity. However Congress did not preempt State and Territorial liability laws so a similar provision is required. Virtually all of the coastal States and Hawaii have adopted some form of immunity statute to encourage response by parties not responsible for the oil spill. Bill 458 seeks to bring Guam into the community of those that have done so. Passage of the bill should be considered part of the overall oil spill response plan of Guam for the protection of its waters and environment. Because Guam has very limited oil spill response resources it will be heavily reliant upon third parties, both volunteer and professional, to provide response.

The liability for damages resulting from the oil spill clean-up efforts falls on the party responsible for the initial discharge, not on the persons trying to help clean up or mitigate the damage. Under Bill 458 victims of oil spill damage will have a means of compensation. They may recover from the person responsible for the initial discharge or, where the responsible party is unidentified or unable to pay, from the federal Oil Pollution Fund and any other applicable laws of Guam. In addition, immunity for responders is limited. It does not extend to actions for personal injury or wrongful death, or for actions that rise to the level of gross negligence or willful misconduct.

Bill 458 provides encouragement for persons and organizations, to provide services to Guam which currently do not exist or are inadequate to deal with the potential threat. It does not diminish the entitlement of those persons who have been damaged to compensation but focuses the responsibility for compensation on the proper party; the person who caused the spill and not those assisting in the resolution of the problem.

TESTIMONY

Written testimonies in favor of Bill 458 were submitted by the following:

- Guam Environmental Protection Agency — Joanne Brown, deputy director
- Guam Power Authority — John M. Benavente, general manager
- COMNAVMAR — E.K. Kristensen, Rear Admiral, USN

The following companies and their representatives offered oral testimonies in favor of the bill:

- Mobil Oil Guam Inc. — Benjamin AH Lacson

- Esso Eastern Inc. — Jim McDonald
- Shell Guam — Victor F. Cruz
- US Coast Guard — Lt. Vance Bennett

GEPA supported the bill. The agency recommended that the definition of responsible party be included in §45301 (9).

GPA supported the bill with a recommendation to delete the phrase "except for the responsible party" in §45302 (d).

COMNAVMAR testimony supported the bill and recommended that they be included in the definitions under §45301 (7) by adding federal agency.

COMMITTEE FINDINGS

Responder immunity legislation has been passed by 26 coastal states including Hawaii and Alaska. This provision is essential in the implementation of the Oil Spill Area Plan on August 1993.

In addition, response provider companies have indicated interest in servicing Guam only if an immunity legislation is in place.

- Earl Development Project
33 Pioneer Road, Level 2, Jurong
Singapore 2262

"As you know, East Asia Response Pte Ltd. (EARL) should be fully operational by the beginning of the 3rd Quarter 1993. ... However, there is another matter that we believe is critical to EARL's ability to respond to spills in Guam. That critical matter is a need to have appropriate responder immunity provisions written into the laws and statutes of Guam in order to protect EARL from liability arising from actions taken during a spill response."

- Clean Islands Council
Pier 8, Gallery 5, Aloha Tower
Honolulu, HI 96813-4810

"As you are aware, the Clean Islands Council (CIC) has agreed to provide assistance to your organization, as requested, in the event of an oil spill involving one of your

member companies. ... I trust this legislation will be passed prior to the implementation of the OPA'90 response plan requirements on August 18, 1993."

- Cabras Marine Corporation
Commercial Port, Apra Harbor
Ste 114, 1026 Cabras Highway, Piti
Guam 96925

"While we are eager to participate as an OSRO we have been looking at the latent liability due to the lack of immunity to the responders to an oil spill under Territorial law. For Cabras Marine Corp. to become an OSRO we would require such immunity."

- Guam Tugs
POB 12187 Tamuning
Guam 96931

"Should such a legislation be enacted by the Guam Legislature, we would of course, enthusiastically assist in clean up operations, in any way possible."

COMMITTEE RECOMMENDATION:

On Bill 458: AN ACT TO ADD A NEW ARTICLE TO TITLE 10 GCA CHAPTER 45 RELATIVE TO ESTABLISHING THE OIL SPILL RESPONDER IMMUNITY ACT FOR THE TERRITORY OF GUAM, the Health, Ecology & Welfare Committee hereby recommends **TO DO PASS AS SUBSTITUTED.**

TWENTY-SECOND GUAM LEGISLATURE
1993 (First) Regular Session

Bill No. 458

Introduced by:

D.L.G. Shimizu *Shimizu*

AN ACT TO ADD A NEW ARTICLE TO TITLE 10 GCA CHAPTER 45
RELATIVE TO ESTABLISHING THE OIL SPILL RESPONDER
IMMUNITY ACT FOR THE TERRITORY OF GUAM.

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

1 Section 1. Legislative Findings. Rapid response and immediate and
2 decisive action are critical to oil spill removal or containment, just as with
3 response to a natural disaster such as fire, typhoon or earthquake. In any
4 of these circumstances responders must take immediate action based on
5 very limited information, attacking the problem quickly if there is to be any
6 realistic chance of mitigating the worst harm. Limited immunity for
7 firefighters has long been recognized because of these circumstances, and
8 this bill extends similar protection to oil spill responders. Without similar
9 immunity, the enormous financial risks and liability exposures associated
10 with oil spill response will deter those persons who are not responsible for
11 the initial spill, such as cleanup contractors, fishermen and barge owners
12 from prompt aggressive cleanup, or from any response at all. The liability
13 for damages resulting from the oil spill clean-up efforts falls on the party
14 responsible for the initial discharge, not on the persons trying to help clean
15 up or mitigate the damage.

16 Section 2. Legislative Intent. It is the intention of the Legislature to make
17 Guam law consistent with new Federal oil spill legislation that provides
18 limited immunity from liability for removal costs and damages for those
19 persons responding to an oil spill or threat of an oil spill. The immunity
20 applies if those activities are performed in a manner consistent with the
21 Federal National Contingency Plan or at the direction of an onsite
22 coordinator, Federal On-Scene Coordinator or the Coast Guard. Since
23 prompt and incisive action is often critical to the success of an oil spill
24 cleanup or the prevention of an oil spill, actions which are substantially

1 consistent with established plans or on-site or On-Scene Coordinator
2 direction are deemed to fall within the scope of this Act. It is further the
3 intention of the Legislature that victims of oil spill damage will have a
4 means of compensation. They may recover from the person responsible for
5 the initial discharge or, where the responsible party is unidentified or
6 unable to pay, from the federal Oil Pollution Fund and any other
7 applicable laws of Guam. In addition, immunity for responders is limited.
8 It does not extend to actions for personal injury or wrongful death, or for
9 actions that rise to the level of gross negligence or willful misconduct.

10 Section 3. A new Article is added to Title 10 GCA Chapter 45:

11 "§45300. Title. This Act shall be known as the Guam Oil Spill Responder
12 Act.

13 §45301. Definitions. For the purposes of this Act the terms:

14 (1) "damages" means damages of any kind for which liability may arise
15 under the laws of Guam or the common law resulting from, arising
16 out of, or related to the discharge or threatened discharge of oil;

17 (2) "discharge" means any emission (other than natural seepage),
18 intentional or unintentional, and includes, but is not limited to,
19 spilling, leaking, pumping, pouring, emitting, emptying or dumping;

20 (3) "Federal On-Scene Coordinator" means the federal official
21 predesignated by the U.S. Environmental Protection Agency or the
22 U.S. Coast Guard to coordinate and direct removal under Subpart E
23 of the National Contingency Plan;

24 (4) "National Contingency Plan" means the National Contingency Plan
25 prepared and published under section 311(d) of the Federal Water
26 Pollution Control Act (33 U.S.C. 1321(d)), as amended by the Oil
27 Pollution Act of 1990, 33 U.S.C. 2701;

28 (5) "oil" means oil of any kind or in any form, including, but not limited
29 to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes
30 other than dredged spoil;

31 (6) "Oil Spill Response Organization", means an organization of
32 private persons which is established for the primary purpose and
33 activity of preventing or rendering care, assistance, equipment or
34 advice in response to a discharge or threatened discharge of oil;

35 (7) "person" means an individual, corporation, partnership,
36 association, state, Territory, municipality, commission, or political

subdivision of a State or Territory;

(8) "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

(9) "responsible party" means a responsible party as defined under Section 1001 of the Oil Pollution Act of 1990, (33 U.S.C. 2701 (32)).

§45302. Liability for Persons Responding to Discharges of oil.

(a) No person, including but not limited to an oil spill response organization, its agents, subcontractor and employees, shall be liable under the laws of Guam or the common law to any person for costs, damages, and other claims and expenses as a result of actions taken or omitted to be taken in the course of rendering care, assistance and advice consistent with the National Contingency Plan, or at the direction of an onsite coordinator, Federal On-Scene Coordinator or the Coast Guard in response to a discharge or threatened discharge of oil.

(b) Subsection (a) of §45302 shall not apply:

(1) to a responsible party;

(2) to actions for personal injury or wrongful death;

(3) to immunize a person or oil spill response organization for liability for acts of gross negligence or willful misconduct in connection with the cleanup of a discharge of oil.

(c) A responsible party is liable for any removal costs and damages that another person or oil spill response organization is relieved of under Subsection (a) of §45302.

(d) Except for the responsible party, membership in an oil spill response organization shall not, in and of itself, be grounds for liability resulting from cleanup activities of the oil spill response organization."

//

///

////

//////////



U.S. PACIFIC FLEET
COMMANDER NAVAL FORCES MARIANAS
PSC 489
FPO AP 96536-0051

21 MAY 1993

Dear Senator Shimizu:

Thank you very much for your invitations to the public hearing on Bill 458 to Commanders Hunter and Moran of my staff. They will be unable to attend the hearing, however, I would like to officially comment on the proposed legislation. The Navy fully supports the intent of the proposed legislation and believes it will promote more immediate and willing response by various parties. However, I would like to propose one small, but important change.

In any significant oil spill scenario in Apra Harbor or the offshore waters of Guam, the Coast Guard and Navy would be among the most likely responders to render "care, assistance, equipment or advice." Therefore, it is requested that under Section 3., §45301. Definitions, (7) "person" be amended to read "individual, corporation, partnership, association, federal agency, state, Territory, municipality, commission, or political subdivision....".

This proposed change is necessary to assure equitable treatment for all potential responders to an oil spill.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. K. Kristensen".

E. K. KRISTENSEN
Rear Admiral, U.S. Navy

Honorable David L.G. Shimizu
Senator
Twenty-Second Guam Legislature
324 West Soledad Ave., Suite 202
Agana, Guam 96910

FRED M. CASTRO
Administrator

JOANNE M. BROWN
Deputy Administrator

GUAM ENVIRONMENTAL PROTECTION AGENCY



D-107 HARMON PLAZA, 130 ROJAS ST., HARMON, GUAM 96911 TEL. No. 646-8863/5 FAX: 646-9402
AHENSIAN PRUTEKSION LINA'LA GUAHAN

Senator David L.G. Shimizu
Chairman, Committee on Health,
Ecology and Welfare
22nd Guam Legislature
324 West Soledad Ave.
Suite 202
Agana, Guam 96910

MAY 20 1993

Dear Senator Shimizu:

This Agency has reviewed Bill No. 458 relative to establishing the Oil Spill Responder Immunity Act for the Territory of Guam.

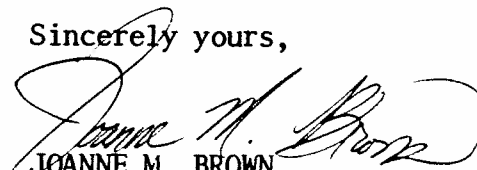
Guam EPA concurs with the proposed Bill 458 which would limit liability to companies, individuals, or employees responding to the containment and eventual clean-up of an oil spill on Guam's navigable waters. This limit of liability would apply only if actions are taken under the guidance and advice of the On-Scene Coordinator/Commander.

It is this Agency's understanding that local emergency response/oil spill Companies, foreign Companies with response capabilities, or the local Oil Spill Co-Op, may not offer their services during an actual oil spill if they could become liable for damages or claims resulting from actions taken at the direction of the OSC. Should this occur, the island will not have any response capabilities and the environmental damage that may occur is horrendous.

The Agency however, believes that if actions are taken contrary to the OSC's advice, then the person who has taken such actions should become liable for damages, claims or related expenses.

Guam EPA would also like to recommend that the definition of a responsible party be included in Section 45301 of the Bill.

Sincerely yours,


JOANNE M. BROWN
Acting Administrator

(30) "remove" or "removal" means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(31) "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

(32) "responsible party" means the following:

(A) **VESSELS.**—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(B) **ONSHORE FACILITIES.**—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(C) **OFFSHORE FACILITIES.**—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(D) **DEEPWATER PORTS.**—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), the licensee.

(E) **PIPELINES.**—In the case of a pipeline, any person owning or operating the pipeline.

(F) **ABANDONMENT.**—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

(33) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(34) "tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) is a vessel of the United States;

(B) operates on the navigable waters; or

(C) transfers oil or hazardous material in a place subject to the jurisdiction of the United States;

(35) "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the

coast which
marking the
ward a dist
(36) "Uni
the United
of Puerto
r.i.



May 20, 1993

Dr. David L. G. Shimizu
Chairman, Committee on Health,
Ecology and Welfare
Twenty-Second Guam Legislature
324 West Soledad Avenue
Suite 202
Agana, Guam 96910

RE: Bill No. 458

Dear Senator Shimizu:

Except as noted below, Guam Power Authority endorses Bill 458, **AN ACT TO ADD A NEW ARTICLE TO TITLE 10 GCA CHAPTER 45 RELATIVE TO ESTABLISHING THE OIL SPILL RESPONDER IMMUNITY ACT FOR THE TERRITORY OF GUAM.**

The provisions of proposed Section 45302 (a), (b), and (c) would appear to be consistent with similar "Good Samaritan" provisions enacted by other jurisdictions and serve the worthy purpose of encouraging, or at least not discouraging, the formation of local response organizations.

We do question, however, the meaning and effect of Section 45302 (d), specifically the words "Except for the responsible party".

The Oil Pollution Act of 1990, 33 U.S. Code Section 2702 contains elements of liability and Section 2703 provides for defenses for liability. While on the one hand Bill No. 458 is intended to encourage membership in oil spill response organizations, subsection (d) otherwise may discourage such membership since membership alone, as opposed to conduct, may have the effect of increasing the liability of a responsible party beyond that otherwise provided by law if he is a member of an oil spill response organization but not increase it if he is not a member. Accordingly, we recommend deleting from subsection (d) the words "Except for the responsible party".

Sincerely,


John M. Benavente
General Manager

/yac



ESSO EASTERN INC.

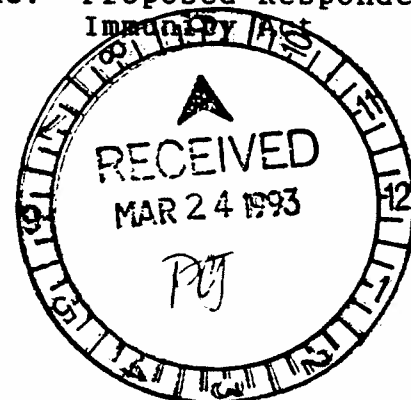
267 SO. MARINE DRIVE • UIU BLDG. • SUITE 3A • TAMUNING, GUAM 96911
TEL: (671) 649-5620-23 • TELEX: 732-6172 • FAX: (671) 649-5615



March 24, 1993

Re: Proposed Responder
Immunity Act

Senator David L.G. Shimizu
Committee on Health, Ecology & Welfare
Quan's Apparel Building
Agana, Guam 96910



Dear Senator Shimizu:

I appreciated the opportunity to meet with you today on behalf of the oil industry on Guam to discuss the need for oil spill responder immunity. The Oil Pollution Act of 1990 (OPA '90) mandated response preparation in American waters including Guam. Due to our remote location and limited resources, we will be highly dependent on outside resources to support the laudable aims of the OPA '90 legislation.

We can only rely on this outside support if the likely responders are protected under Guam law from the threat of legal liability resulting from their best efforts to clean up a spill. All other coastal states have passed legislation similar to what we are proposing. Attached to this letter is a copy of the proposed legislation and an explanatory statement describing the Act's intent.

Your support for this legislation would be appreciated. Any suggestions you have for improving the proposed legislation would likewise be welcome.

Thank you again for the opportunity to meet with you.

Sincerely,

Douglas C. Lenz
Branch Manager

DCL:imc:3493U/9

Attachments

TWENTY-SECOND GUAM LEGISLATURE
1993 (First) Regular Session

MAY 19 '93

Bill No. 458 (LS)

Introduced by:

D.L.G. Shimizu 

AN ACT TO ADD A NEW ARTICLE TO TITLE 10 GCA CHAPTER 45
RELATIVE TO ESTABLISHING THE OIL SPILL RESPONDER
IMMUNITY ACT FOR THE TERRITORY OF GUAM.

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

1 Section 1. Legislative Findings. Rapid response and immediate and
2 decisive action are critical to oil spill removal or containment, just as with
3 response to a natural disaster such as fire, typhoon or earthquake. In any
4 of these circumstances responders must take immediate action based on
5 very limited information, attacking the problem quickly if there is to be any
6 realistic chance of mitigating the worst harm. Limited immunity for
7 firefighters has long been recognized because of these circumstances, and
8 this bill extends similar protection to oil spill responders. Without similar
9 immunity, the enormous financial risks and liability exposures associated
10 with oil spill response will deter those persons who are not responsible for
11 the initial spill, such as cleanup contractors, fishermen and barge owners
12 from prompt aggressive cleanup, or from any response at all. The liability
13 for damages resulting from the oil spill clean-up efforts falls on the party
14 responsible for the initial discharge, not on the persons trying to help clean
15 up or mitigate the damage.

16 Section 2. Legislative Intent. It is the intention of the Legislature to make
17 Guam law consistent with new Federal oil spill legislation that provides
18 limited immunity from liability for removal costs and damages for those
19 persons responding to an oil spill or threat of an oil spill. The immunity
20 applies if those activities are performed in a manner consistent with the
21 Federal National Contingency Plan or at the direction of an onsite
22 coordinator, Federal On-Scene Coordinator or the Coast Guard. Since
23 prompt and incisive action is often critical to the success of an oil spill
24 cleanup or the prevention of an oil spill, actions which are substantially

1 consistent with established plans or on-site or On-Scene Coordinator
2 direction are deemed to fall within the scope of this Act. It is further the
3 intention of the Legislature that victims of oil spill damage will have a
4 means of compensation. They may recover from the person responsible for
5 the initial discharge or, where the responsible party is unidentified or
6 unable to pay, from the federal Oil Pollution Fund and any other
7 applicable laws of Guam. In addition, immunity for responders is limited.
8 It does not extend to actions for personal injury or wrongful death, or for
9 actions that rise to the level of gross negligence or willful misconduct.

10 Section 3. A new Article is added to Title 10 GCA Chapter 45:

11 "§45300. **Title.** This Act shall be known as the Guam Oil Spill Responder
12 Act.

13 **§45301. Definitions.** For the purposes of this Act the terms:

- 14 (1) "damages" means damages of any kind for which liability may arise
15 under the laws of Guam or the common law resulting from, arising
16 out of, or related to the discharge or threatened discharge of oil;
- 17 (2) "discharge" means any emission (other than natural seepage),
18 intentional or unintentional, and includes, but is not limited to,
19 spilling, leaking, pumping, pouring, emitting, emptying or dumping;
- 20 (3) "Federal On-Scene Coordinator" means the federal official
21 predesignated by the U.S. Environmental Protection Agency or the
22 U.S. Coast Guard to coordinate and direct removal under Subpart E
23 of the National Contingency Plan;
- 24 (4) "National Contingency Plan" means the National Contingency Plan
25 prepared and published under section 311(d) of the Federal Water
26 Pollution Control Act (33 U.S.C. 1321(d)), as amended by the Oil
27 Pollution Act of 1990, 33 U.S.C. 2701;
- 28 (5) "oil" means oil of any kind or in any form, including, but not limited
29 to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes
30 other than dredged spoil;
- 31 (6) "Oil Spill Response Organization", means an organization of
32 private persons which is established for the primary purpose and
33 activity of preventing or rendering care, assistance, equipment or
34 advice in response to a discharge or threatened discharge of oil;
- 35 (7) "person" means an individual, corporation, partnership,
36 association, state, Territory, municipality, commission, or political

subdivision of a State or Territory;

(8) "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;

(9) "responsible party" means a responsible party as defined under Section 1001 of the Oil Pollution Act of 1990, (33 U.S.C. 2701 (32)).

§45302. Liability for Persons Responding to Discharges of oil.

(a) No person, including but not limited to an oil spill response organization, its agents, subcontractor and employees, shall be liable under the laws of Guam or the common law to any person for costs, damages, and other claims and expenses as a result of actions taken or omitted to be taken in the course of rendering care, assistance and advice consistent with the National Contingency Plan, or at the direction of an onsite coordinator, Federal On-Scene Coordinator or the Coast Guard in response to a discharge or threatened discharge of oil.

(b) Subsection (a) of §45302 shall not apply:

(1) to a responsible party;

(2) to actions for personal injury or wrongful death;

(3) to immunize a person or oil spill response organization for liability for acts of gross negligence or willful misconduct in connection with the cleanup of a discharge of oil.

(c) A responsible party is liable for any removal costs and damages that another person or oil spill response organization is relieved of under Subsection (a) of §45302.

(d) Except for the responsible party, membership in an oil spill response organization shall not, in and of itself, be grounds for liability resulting from cleanup activities of the oil spill response organization."

//

///

////

////////////////////