

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam.

DEC 12 2018

Honorable Therese M. Terlaje
Acting Speaker
I Mina'trentai Kudttro Na Liheslaturan Gudhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Speaker Therese M. Terlaje
3461L - 18 - 2018
DEC 19 2018
Time: 10:42
Received by: *Chamira*

2018 DEC 19 AM 11:36
[Signature]

Dear Madam Speaker:

Transmitted herewith is Bill No. 236-34 (COR), "AN ACT TO ADD A NEW CHAPTER 76A TO DIVISION 3 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO ABOVEGROUND STORAGE OF REGULATED SUBSTANCES," which was signed on December 12, 2018, as Public Law 34-140.

Senseramente,


EDDIE BAZA CALVO

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN
2018 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÁHEN GUÁHAN*

This is to certify that Bill No. 236-34 (COR), "AN ACT TO ADD A NEW CHAPTER 76A TO DIVISION 3 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO ABOVEGROUND STORAGE OF REGULATED SUBSTANCES," was on the 30th day of November 2018, duly and regularly passed.



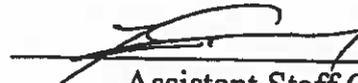
Therese M. Terlaje
Acting Speaker

Attested:



Régine Bistoe Lee
Legislative Secretary

This Act was received by *I Maga'láhen Guáhan* this 30 day of NOV,
2018, at 7:45 o'clock P.M.



Assistant Staff Officer
Maga'láhi's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'láhen Guáhan

Date: DEC 12 2018

Public Law No. 34-140

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

Bill No. 236-34 (COR)

As amended by the Committee on Environment,
Land, Agriculture and Procurement Reform.

Introduced by:

Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Michael F.Q. San Nicolas
Therese M. Terlaje
Mary Camacho Torres

**AN ACT TO *ADD* A NEW CHAPTER 76A TO DIVISION 3
OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE
TO ABOVEGROUND STORAGE OF REGULATED
SUBSTANCES.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that Guam imports, stores, and distributes large quantities of oil. Petroleum-based
4 oil is used as a major source of fuel for our power plants, and various modes of
5 transportation. To meet the demand, Guam imports, stores, and distributes over one
6 hundred fifty million (150,000,000) gallons of oil and other petroleum products.

1 With millions of gallons of oil being stored throughout the island, preventing and
2 responding to oil spills is an overwhelming challenge. The potential threat for an oil
3 spill is significant, and the effects of spilled oil poses serious threats to human health
4 and the environment.

5 *I Liheslaturan Guåhan* finds and declares that the ground and surface water
6 of Guam are essential and significant natural resources. Actual failures in the past of
7 storage tanks and ancillary equipment from the improper storage and handling of
8 petroleum liquids, related sludge, and other hazardous substances resulted in
9 contamination of these natural resources and posed a hazard to the public.

10 *I Liheslaturan Guåhan* finds that the federal Clean Water Act (CWA) does
11 not provide the United States Environmental Protection Agency (USEPA) with the
12 authority to authorize states to implement the Spill Prevention, Control and
13 Countermeasures (SPCC) rule program in its place. Consequently, to ensure that
14 petroleum facility owners and operators are meeting the SPCC requirements,
15 USEPA regional personnel inspect regulated facilities to determine their compliance
16 with regulations. Because of personnel constraints, inspections may be delayed or,
17 in the event of actual incidences, not timely.

18 *I Liheslaturan Guåhan* finds that by establishing Spill Prevention, Control and
19 Countermeasure rules, which are consistent with or more stringent than that
20 contained in the Clean Water Act (CWA) § 311(j)(1)(c), more specifically 40 CFR
21 112, the Guam Environmental Protection Agency (GEPA) would be able to more
22 effectively carry out its responsibilities and roles in oil spill prevention, preparedness
23 and response for the inland waterways of Guam.

24 Therefore, *I Liheslaturan Guåhan* intends to establish local Spill Prevention,
25 Control and Countermeasure rules to enable GEPA to more effectively carry out its
26 responsibilities and roles in oil spill prevention, preparedness and response for the
27 inland waterways of Guam.

1 § 76A123. Applicability to Government Agencies.

2 § 76A124. Penalties.

3 § 76A125. RESERVED.

4 § 76A126. RESERVED.

5 § 76A127. RESERVED.

6 § 76A101. Title.

7 This Chapter *shall* be known as the “Aboveground Storage of Regulated
8 Substances Act.”

9 § 76A102. Statement of Purpose.

10 The purpose of this Chapter is to:

11 (a) establish a program to provide requirements and classifications
12 for aboveground storage tank systems and inter-terminal pipelines that store
13 regulated substances in order to minimize the occurrence and environmental
14 risks of releases and discharges to groundwater, surface water and/or soils;

15 (b) ensure that newly-constructed aboveground storage tank systems
16 and inter-terminal pipelines meet appropriate standards;

17 (c) ensure that each new or replaced aboveground storage tank or
18 piping connected to any such new or replaced tank complies with the wellhead
19 protection area and must be approved by the Administrator;

20 (d) ensure that existing aboveground storage tank systems and inter-
21 terminal pipelines be properly maintained, inspected, and tested by licensed
22 and certified professionals; and

23 (e) enact and establish regulations, guidelines, standards, and
24 policies that ensure consistent cleanup of regulated substances and mitigation
25 of the damage they cause.

26 § 76A103. Definitions.

1 (a) *Aboveground Storage Tank (AST)* means any storage tank fifty-
2 five (55) gallons or more containing a regulated substance in which greater
3 than ninety percent (90%) of the tank volume, including volume of the piping,
4 is not below the surface of the ground; or any storage tank fifty-five (55)
5 gallons or more containing a regulated substance situated in an underground
6 area, such as a basement, shaft, tunnel, or vault, if the storage tank is situated
7 upon or above the surface of the floor.

8 (b) *Administrator* means the Administrator of the Guam
9 Environmental Protection Agency.

10 (c) *Agency* means the Guam Environmental Protection Agency.

11 (d) *Ancillary Equipment* means any devices, including, but not
12 limited to, such as piping, fittings, flanges, valves, and pumps used to
13 distribute, meter, or control the flow of regulated substances to and from an
14 AST.

15 (e) *Board* means the Board of Directors of the Guam Environmental
16 Protection Agency.

17 (f) *CERCLA* means the Comprehensive Environmental Response,
18 Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), as amended.

19 (g) *Chapter* means the Aboveground Storage of Regulated
20 Substances Act (Chapter 76A, Title 10 GCA).

21 (h) *Corrective Action* means the investigation and cleanup of
22 contamination from solid and hazardous waste sites, and includes action taken
23 to minimize or mitigate the impact of a release from an AST or tank system.

24 (i) *Facility* means any mobile or fixed, onshore or offshore building,
25 property, parcel, lease, structure, installation, equipment, pipe, or pipeline
26 (other than a vessel or a public vessel) used in oil well drilling operations, oil
27 production, oil refining, oil storage, oil gathering, oil processing, oil transfer,

1 oil distribution, oil waste treatment, or in which oil is used. The boundaries of
2 a facility depend on several site-specific factors, including, but not limited to,
3 the ownership or operation of buildings, structures, and equipment on the
4 same site, and types of activity at the site. Contiguous or non-contiguous
5 buildings, properties, parcels, leases, structures, installations, pipes, or
6 pipelines under the ownership or operation of the same person may be
7 considered separate facilities.

8 (j) *Gathering Lines* means any pipelines, equipment, facility, or
9 building used in the transportation of oil or gas during oil or gas production
10 or gathering operations.

11 (k) *Guarantor* means any person, other than the owner or operator,
12 who provides evidence of financial responsibility for the AST.

13 (l) *Hazardous Substance Aboveground Storage Tank or Hazardous*
14 *Substance Aboveground Storage Tank System* means an AST or tank system
15 that contains a hazardous substance, as defined in Section 101(14) of
16 CERCLA, but not including any substance regulated as a hazardous waste
17 under Subtitle C of the federal Resource Conservation and Recovery Act
18 (RCRA), as amended, or any mixture of such substances and petroleum, and
19 which is not a petroleum AST or tank system.

20 (m) *Installation* means the addition or replacement of equipment.

21 (n) *Installation Permit* means a written approval from the
22 Administrator to construct, install, or put into place, an AST system.

23 (o) *Inter-terminal Pipelines* means pipelines that cross public and
24 private properties, streets, highways, railroads and utility rights-of-way and
25 connect installations.

26 (p) *Maintenance* means the operational upkeep to prevent an AST
27 system from releasing product.

1 (q) *Motor Fuel* means a petroleum or petroleum-based substance
2 that is motor gasoline, aviation gasoline, No.1 or No. 2 diesel fuel, any grade
3 of gasohol, any grade of ethanol, or any grade of bio-diesel, and that is used
4 to operate a motor engine.

5 (r) *Non-transportation-related Facility* means a facility that stores,
6 processes, refines, uses, or consumes oil; a facility that is not exclusively
7 covered by the Department of Interior (DOI) or Department of Transportation
8 (DOT) and can reasonably be expected to discharge oil in quantities that may
9 be harmful into or upon the navigable waters of the U.S. or adjoining
10 shorelines.

11 (s) *Oil* means oil of any kind or in any form, including, but not
12 limited to: fats, oils, or greases of animals, fish, or marine mammal origin;
13 vegetable oils, including oils from seeds, nuts, fruits, or kernels; and other oils
14 and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils,
15 oil refuse, or oil mixed with wastes other than dredged spoil.

16 (t) *Operate* means to control or direct the function of an AST.

17 (u) *Operator* means any person in control of, or who is responsible
18 for, the daily operation of an AST.

19 (v) *Owner* means any person who owns an AST system used for the
20 storage, use or dispensing of regulated substances.

21 (w) *Permit* means an Installation and/or Operation Permit.

22 (x) *Person* means an individual, trust, firm, corporation, partnership,
23 consortium, joint venture, joint stock company, political subdivision of a state,
24 any interstate body, commercial entity, association, or agency, department,
25 instrumentality of the federal government or the government of Guam,
26 including autonomous agencies, or any other legal entity.

1 (y) *Petroleum* means crude oil, or a fraction thereof, that is liquid at
2 sixty (60) degrees Fahrenheit temperature, and 14.7 pounds per square inch
3 absolute pressure (normal atmospheric pressure at sea level).

4 (z) *Petroleum-based Liquid Fuels* shall mean:

5 (1) aviation fuels (including jet, turbine and piston fuels);

6 (2) automotive and other petroleum-based internal
7 combustion engine fuels;

8 (3) fuel oils and distillates fuels (turbine, boiler, and other
9 types);

10 (4) heating oil and distillates;

11 (5) illuminating (e.g., lamp) oils;

12 (6) gasoline and other fuel blending stocks;

13 (7) petroleum-based lubricating, tapping, seal, penetrating
14 machining, and road oils and greases (including waste oil);

15 (8) petroleum distillates;

16 (9) petroleum or petroleum-distillate based additives
17 (including fuel oil, ink and paint additives);

18 (10) petroleum solvents;

19 (11) petroleum spirits (e.g., mineral spirits, Stoddard solvent,
20 paint thinners, etc.);

21 (12) hydrocarbon liquids

22 (A) naphthas and naphthalenes of all types;

23 (13) olefins, alkanes, alkylates, aromatics;

24 (14) petroleum-based inks and ink extenders;

25 (15) oil-based paints, coatings, thinners and solvents;

26 (16) petroleum extender oils; and

27 (17) mineral oils (derived from petroleum).

1 (aa) *Petroleum Marketing Facilities* means all facilities at which
2 petroleum is produced or refined, and all facilities from which petroleum is
3 sold or transferred to other petroleum marketers or to the public.

4 (bb) *Pipe* or *Piping* means a hollow cylinder or the tubular conduit
5 constructed of non-earthen materials. Pipe or Piping includes elbows,
6 couplings, unions, valves, or other inline fixtures that contain and convey
7 regulated substances from an AST to a dispenser.

8 (cc) *Pipeline Facility* (including gathering lines) means new and
9 existing pipe rights-of-ways, and any associated equipment, facilities, or
10 buildings.

11 (dd) *RCRA* means the federal Solid Waste Disposal Act of 1980, as
12 amended by the Resource Conservation and Recovery Act of 1984, as
13 amended (*Public Law 94-580, October 21, 1976, Public Law 87-272, Title II,*
14 *§9001, as added Public Law 98-616, Title VI, §601(a), November 8, 1984, 98*
15 *Stat. 3277, and amended Public Law 99-499, Title II, §205(a), October 17,*
16 *1986, 100 Stat. 1696; Public Law 102-508, Title III, §302, October 24, 1992,*
17 *106 Stat. 3307; Public Law 103-429, §7(d), October 31, 1994, 108 Stat. 4389;*
18 *Public Law 109-58, Title XV, §1532(a), 1533(1), August 8, 2005, 119 Stat.*
19 *1104, 1105; 42 U.S.C. §6991c, et. seq.*), and regulations promulgated pursuant
20 thereto.

21 (ee) *Regulated Substance* means any element, compound, mixture,
22 solution, or substance that, when released into the environment, may create
23 substantial danger to the public health, welfare, or the environment. They
24 include:

25 (1) any substance defined in Section 101(14) of CERCLA, but
26 not including any substance regulated as a hazardous waste under
27 Subtitle C of RCRA;

- 1 (2) petroleum-based liquid fuels;
- 2 (3) any grade of gasohol, ethanol, or bio-diesel; and
- 3 (4) any other substance as designated by the Administrator.

4 (ff) *Release* means the spill, leak, emission, discharge, escape,
5 leaching, or disposing of a regulated substance from an AST.

6 (gg) *Secondary Containment* means a component of a secondary
7 containment system, and means an AST and its piping having inner and outer
8 barriers.

9 (hh) *Tank* means an aboveground storage tank (AST).

10 (ii) *Wellhead Protection Area* means the surface and subsurface area
11 of any existing community water system or any existing potable drinking
12 water well, underground injection system, or groundwater monitoring well,
13 and is within a one thousand (1,000)-foot radius.

14 **§ 76A104. Power and Duties of the Administrator.**

15 The Administrator *shall*:

16 (a) develop and administer an AST program for Guam pursuant to
17 this Chapter;

18 (b) provide technical assistance to local and federal agencies, and
19 other persons, and cooperate with appropriate local agencies and private
20 organizations in enforcing this Chapter;

21 (c) enact, modify, update, repeal, and enforce rules and regulations
22 governing AST design, construction, installation, release detection and
23 inventory control, compatibility, record maintenance, reporting, corrective
24 action, closure, and financial responsibility in order to enforce this Chapter;

25 (d) establish the procedures for the issuance and review of permits
26 governing the design, operation, and closure of ASTs;

1 (e) enact and enforce other rules and regulations as necessary to
2 establish an AST program which is as stringent and/or broader in scope than
3 the requirements of 40 CFR 112, Oil Pollution Prevention;

4 (f) issue, amend, rescind, and enforce orders as necessary to ensure
5 compliance with this Chapter, or any rules and regulations promulgated
6 pursuant to this Chapter, including but not limited to:

7 (1) administrative penalty orders;

8 (2) requiring corrective actions as may be necessary or
9 appropriate to this Chapter; and

10 (3) commencing civil actions in the Superior Court of Guam,
11 including actions for a temporary or permanent injunction as needed, to
12 enforce this Chapter;

13 (g) establish an effective enforcement system (that includes, at a
14 minimum, a field citation program) for the prevention, control and abatement
15 of AST pollution, including specific conditions under the permit
16 requirements, and delivery prohibition of product to ineligible ASTs, and
17 through all appropriate administrative and judicial courses of action;

18 (h) establish a delivery prohibition program that describes, at a
19 minimum, the criteria and mechanism for prohibiting the delivery, deposit,
20 and acceptance of product to any AST system;

21 (i) develop and establish training program requirements in
22 cooperation with AST owners and operators set forth in this Chapter and rules
23 and regulations promulgated pursuant to this Chapter;

24 (j) issue, continue in effect, modify, revoke, reissue, or deny
25 permits;

26 (k) ensure that all permit holders comply with applicable
27 requirements mandated by federal and Guam statutes and rules;

1 (l) establish, accept, receive, and administer grants and other funds
2 or fees from public and private agencies, including the federal government,
3 for carrying out any purpose of this Chapter; and

4 (m) recover costs associated with Agency personnel responding to
5 AST releases, to include, but not limited to, labor hours (overtime), materials,
6 and other expenses.

7 **§ 76A105. Notification Requirement.**

8 (a) Except as otherwise provided in this Section, each owner of an
9 aboveground storage tank *shall* notify the Agency in form(s) prescribed by
10 the Agency, and *shall* specify the tank's age, size, type, location, and use.

11 (b) For an aboveground storage tank that was taken out of operation
12 on or before the effective date of this Chapter, regardless of whether the tank
13 was removed from the facility, the owner is exempt from giving notice.

14 (c) For an aboveground storage tank that was taken out of operation
15 after the effective date of this Chapter, and that was not removed from the
16 facility before the effective date of this Chapter, the owner *shall* specify the
17 type and quantity of the substances that were stored in the tank immediately
18 before it was taken out of operation. These requirements are in addition to the
19 requirements for the notice prescribed in Subsection (a) of this Section.

20 (d) An owner who brings an aboveground storage tank into
21 operation *shall* meet the notification requirements of this Section within thirty
22 (30) calendar days after the tanks are brought into operation.

23 (e) A person who sells a tank for use as an aboveground storage tank
24 *shall* notify the purchaser of the notice requirements of this Section.

25 (f) The notice required by this Section *shall* be made on forms
26 prescribed by the Agency.

27 **§ 76A106. Tank Standards.**

1 From the effective date of this Chapter until the effective date of any
2 new AST standards enacted hereunder, all new and existing ASTs *shall*:

3 (a) prevent release of stored regulated substances due to corrosion
4 or structural failure for the operational life of the tank;

5 (b) be cathodically protected against corrosion, constructed of non-
6 corrosive material, or designed to prevent the release of the stored regulated
7 substance; and

8 (c) be constructed and/or lined with materials compatible with the
9 substance stored.

10 **§ 76A107. Secondary Containment System - Release Prevention and**
11 **Release Detection Standards.**

12 (a) The Administrator *shall* develop and implement a program that
13 requires secondary containment for ASTs that at least meets the minimum
14 requirements under the Oil Pollution Prevention of the Clean Water Act.
15 These requirements apply to owners and operators of facilities engaged in
16 drilling, production, gathering, storing, processing, refining, transferring or
17 consuming petroleum or petroleum products, provided:

18 (1) the facility is non-transportation-related;

19 (2) aboveground storage in a single container is equal to or
20 greater than fifty-five (55) gallons, or aggregate storing capacity is
21 equal to or greater than five hundred (500) gallons;

22 (3) facilities, which, due to their location could reasonably
23 expect spilled oil to reach surface waters and ground waters of Guam
24 and the United States.

25 (b) The Administrator *shall* require secondary containment on all
26 existing, new or replaced AST and connected piping.

1 (c) The Administrator *shall* require under-dispenser containment on
2 all motor fuel dispenser systems.

3 (d) The Administrator *shall* require that each existing, new, or
4 replaced AST and piping have a secondary containment system, and be
5 monitored for leaks.

6 **§ 76A108. Delivery Prohibition Requirements.**

7 (a) The Administrator *shall* develop and implement a delivery
8 prohibition program with processes and procedures that meet the requirements
9 set forth in this Chapter and rules and regulations promulgated pursuant to this
10 Chapter.

11 (b) The Administrator *shall* prohibit the delivery, deposit, or
12 acceptance of regulated substances to an AST for both equipment and
13 operational violations.

14 **§ 76A109. Operator Training.**

15 The Administrator *shall* develop and administer an operator training
16 program with processes and procedures that meet the requirements set forth
17 in this Chapter and rules and regulations promulgated pursuant to this
18 Chapter.

19 **§ 76A110. Leak Detection and Record Maintenance.**

20 (a) The owner or operator of an AST *shall* maintain a leak detection
21 system that identifies releases dangerous to human health and the
22 environment.

23 (b) The owner or operator *shall* maintain systematic and complete
24 records to demonstrate compliance as set forth in this Chapter and rules and
25 regulations promulgated pursuant to this Chapter.

26 **§ 76A111. Public Participation.**

1 (a) Upon timely application, any person whose interests may be
2 adversely affected by a release or threatened from an AST system *shall* be
3 allowed to intervene as a right in any civil action when the applicant claims
4 an interest relating to the property or transaction which is subject of the action,
5 and the applicant is so situated that the disposition of the action may as a
6 practical matter impair or impede the applicant's ability to protect that interest.

7 (b) Any person may maintain an action for declaratory and equitable
8 relief to restrain any violation of this Chapter. On a prima facie showing of a
9 violation of this Chapter, a preliminary injunction *shall* be issued to restrain
10 any further violation of the Chapter. No bond is required for an action under
11 this Subsection.

12 **§ 76A112. Notification and Reporting Requirements on Releases.**

13 No later than twenty-four (24) hours after he/she suspects a release from
14 a tank or ancillary equipment has occurred, the owner or operator of an AST
15 *shall* notify the Agency orally or in writing. Within fourteen (14) days after
16 he/she suspects a leak, the owner or operator *shall* report to the Agency, in
17 writing, regarding the substance released, the quantity released, the cause of
18 the release, the time when the release occurred, and the corrective action taken
19 as of the date of the report.

20 **§ 76A113. Corrective Action.**

21 (a) The owner or operator of an AST *shall* stop or control a
22 confirmed release within twelve (12) hours of confirmation or knowledge that
23 a release occurred. The owner or operator *shall* take corrective action in
24 response to a release to protect human health and the environment, and *shall*
25 restore the environment, and the AST and/or Pipeline Facility, to a condition
26 acceptable to the Administrator.

1 (b) The Administrator may require the owner or operator to
2 undertake corrective action, and the investigation, monitoring, surveying,
3 testing, and research necessary and appropriate to:

4 (1) identify the existence and extent of the release;

5 (2) identify the source and nature of the regulated substance
6 involved;

7 (3) evaluate the extent of the danger to human health, safety,
8 welfare, and the environment; and

9 (4) develop and implement a corrective action plan.

10 (c) If the owner or operator does not take immediate action to
11 complete actions under this Section and adequately complete the cleanup of a
12 release, or fails to comply with an order of the Administrator, the
13 Administrator may undertake cleanup of the release, or contract with a private
14 entity to do so.

15 (d) If the Administrator is authorized to act under § 76A113(b) of
16 this Chapter, he/she may undertake such investigation, monitoring, surveying,
17 testing, and other information gathering as he/she deems appropriate to
18 identify the existence and extent of danger to human health, safety, welfare,
19 and the environment. In addition, the Administrator may undertake or contract
20 with a private entity to undertake such planning, fiscal, economic,
21 engineering, and other studies and investigation he/she deems appropriate to
22 plan and direct cleanup actions, and to recover the costs and legal costs
23 thereof.

24 **§ 76A114. Aboveground Storage Tank Management Fund.**

25 There is hereby established a Fund to be known as the Aboveground
26 Storage Tank Management Fund, hereinafter referred to as the AST Fund, a

1 non-lapsing, revolving fund which *shall* be maintained separate and apart
2 from any other funds of the government of Guam.

3 (a) All fees, reimbursements, assessments, fines, forfeitures, and
4 other funds collected or received pursuant to this Chapter, *shall* be deposited
5 in the AST Fund and *shall not lapse* at the end of the fiscal year, but *shall*
6 rollover into the next fiscal year or until expended. Independent records and
7 accounts *shall* be maintained in connection therewith. The AST Fund *shall* be
8 kept in a bank licensed to do business on Guam, and funds *shall* be paid out
9 only upon a request for payment or requisition submitted by the
10 Administrator. All monies in the AST fund are hereby appropriated to the
11 Agency to be expended in accordance with this Chapter, and are *not* subject
12 to *I Maga'låhi's* transfer authority. The Administrator *shall* comply with all
13 existing reporting requirements by issuing a quarterly account of the AST
14 Fund to *I Maga'låhi, I Liheslaturan Guåhan*, and the Office of Public
15 Accountability. The Administrator *shall* ensure that the AST Fund is in
16 compliance with all existing statutes, rules and regulations, codes, executive
17 orders, and any other authority that is applicable to the Agency, and the use
18 of the funds in the AST Fund pursuant to this Chapter.

19 (b) The Administrator *shall* administer the AST Fund and make
20 disbursements from the Fund:

- 21 (1) to fund actions authorized by § 76A113 of this Chapter;
22 (2) to train Agency employees in the regulation of ASTs, and
23 the response to release of regulated substances from ASTs; or
24 (3) to fund the administration and implementation of this
25 Chapter, including, but not limited to, purchase of equipment, supplies,
26 public outreach, trainings/conferences, and payment of personnel costs
27 and service contracts arising from the enforcement of this Chapter.

1 **§ 76A115. Financial Responsibility.**

2 (a) All owners or operators of AST systems, within one hundred
3 eighty (180) days of the effective date of this Chapter, *shall* establish and
4 maintain evidence of financial responsibility, as provided for in this Section,
5 for taking corrective action and compensating third parties for bodily injury
6 and property damage caused by accidental releases arising from the operation
7 of aboveground storage tanks in at least the following per occurrence
8 amounts:

9 (1) For all owners or operators of petroleum aboveground
10 storage tanks that are located at petroleum marketing facilities, or that
11 own or operate five (5) or more tanks, or that handle an average of more
12 than ten thousand (10,000) gallons of petroleum per month based on
13 annual throughput for the previous calendar year: Two Million Dollars
14 (\$2,000,000).

15 (2) For all other owners or operators of petroleum
16 aboveground storage tanks: Five Hundred Thousand Dollars
17 (\$500,000).

18 (b) Owners or operators of petroleum aboveground storage tanks
19 *shall* demonstrate financial responsibility for taking corrective action and for
20 compensating third parties for bodily injury and property damage caused by
21 accidental release arising from the operation of petroleum aboveground
22 storage tanks in at least the following annual aggregate amounts:

23 (1) For owners or operators of four (4) or fewer tanks, an
24 annual aggregate amount of One Million Dollars (\$1,000,000).

25 (2) For owners or operators of five (5) or more tanks, an
26 annual aggregate amount of Two Million Dollars (\$2,000,000).

1 (3) For owners or operators of ten (10) or more tanks, an
2 annual aggregate amount of at least Two Million Dollars (\$2,000,000),
3 or such other higher aggregate amount as set forth in regulations
4 promulgated by the Administrator.

5 (c) Subject to the approval of the Administrator, an owner or
6 operator of an AST may establish evidence of financial responsibility by any
7 one, or a combination of, the following methods:

8 (1) commercial or private insurance, including risk retention
9 group;

10 (2) qualification as a self-insurer;

11 (3) a guarantee, surety bond, or letter of credit; or

12 (4) any other reasonable and economically practicable means.

13 (d) The Administrator *shall not* approve any financial responsibility
14 method or combination of methods, unless the owner or operator has
15 demonstrated that such method(s):

16 (1) are valid and enforceable;

17 (2) are issued by a provider that is qualified or licensed in
18 Guam;

19 (3) do not permit cancellation without the Administrator's
20 approval;

21 (4) *shall* only be directly used for corrective action and third
22 party liability costs; and

23 (5) require the provider to notify the owner or operator and the
24 Administrator of any circumstances that would impair or suspend
25 coverage.

26 (e) Surety bonds *shall* be payable to the Guam Environmental
27 Protection Agency, to include costs and expenses of the cleanup of any

1 release, as well as damages incurred by the government, consistent with the
2 provisions of this Chapter. Any bond filed with the Agency must be issued by
3 a bonding company authorized to do business within Guam. The Agency is
4 authorized to establish a special account, escrow, standby trust, or other trust
5 or account mechanism into which funds established as financial assurance
6 may be deposited when needed. Notwithstanding any other provision of law,
7 the Administrator may retain and use such amounts for the purposes for which
8 the financial assurance was established.

9 (f) To qualify as a self-insurer, the AST system owner or operator
10 *shall*:

11 (1) demonstrate a tangible net worth of at least ten (10) times:

12 (A) the total of the aggregate amount required in
13 Subsection (b) of this Section;

14 (B) the sum of the corrective action cost estimates, the
15 current closure and post-closure care cost estimates, and the
16 amount of liability coverage required under this Chapter; and

17 (C) the sum of plugging and abandonment cost
18 estimates in effect for which a financial test is used to
19 demonstrate financial responsibility under this Chapter; and

20 (2) the owner or operator *shall* have a tangible net worth of at
21 least Ten Million Dollars (\$10,000,000).

22 (g) The total liability of any guarantor is limited to the aggregate
23 amount that the guarantor has provided as evidence of financial responsibility
24 to the AST system owner or operator under this Section. Nothing in this
25 Subsection may be construed to limit any other territorial or federal statutory,
26 contractual or common law liability of a guarantor to its owner or operator
27 including, but not limited to, the liability of such guarantors for bad faith either

1 in negotiating or in failing to negotiate the settlement of any claim. For the
2 purposes of this Subsection, the term “guarantor” means any person, other
3 than the owner or operator, who provides evidence of financial responsibility
4 for an owner or operator pursuant to this Section.

5 (h) Any claim costs incurred by the Agency for taking emergency,
6 preventive, corrective or enforcement action may be filed directly against the
7 bonding company, the insurer, the guarantor, or any other person providing
8 evidence of financial responsibility. Any amount collected or awarded under
9 this Subsection *shall* be paid into Guam Environmental Protection Agency’s
10 AST Fund.

11 (i) An owner or operator of an AST system *shall* designate a person
12 within Guam as his/her resident agent for service of process, and such
13 designation *shall* be filled in accordance with rules and regulations
14 promulgated by the Agency.

15 **§ 76A116. Closure.**

16 (a) The owner or operator *shall* close an AST so as to prevent future
17 releases of regulated substances. The owner and operator *shall* comply with
18 the release response provisions in this Chapter, and other requirements
19 promulgated by the Administrator, before and during removal of the ASTs.
20 The Administrator *shall* adopt requirements for change in-service and
21 temporary and permanent closure of ASTs and tank systems.

22 (b) *No later than* one hundred eighty (180) calendar days following
23 submission to the Agency of a *Notice of Intent* for permanent closure, all ASTs
24 containing regulated substances must be physically removed from the site and
25 properly disposed.

26 (c) The Agency *shall* cause the owner of any previously-approved
27 AST, which is discovered to have been improperly abandoned in-place, to

1 remove the improperly abandoned AST and any soil and/or groundwater
2 contamination found to be caused by a release from the AST; and *shall* be
3 mitigated by the owner as soon as reasonably possible, but *not to exceed* one
4 eighty (180) calendar days, or as may be deemed reasonable by the
5 Administrator. This *shall not* apply to any ASTs that previously received
6 written approval to be abandoned in-place, and were properly abandoned in-
7 place.

8 (d) Any AST discovered to have been abandoned in-place without
9 written approval from the Agency *shall* be removed as soon as reasonably
10 possible, but *not to exceed* one hundred eighty (180) calendar days, or for a
11 longer time as may be deemed reasonable by the Administrator, and any soil
12 and/or groundwater contamination found to be caused by a release from the
13 AST *shall* be mitigated as soon as reasonably possible. If ownership of the
14 AST is unknown, uncertain, and disputed, the current owner of the land where
15 the AST has been found *shall* be responsible for removal of the AST and
16 required mitigation. Nothing herein, however, shall prohibit the owner of such
17 land from pursuing any remedies available in equity or at law against the party
18 which previously owned and abandoned in-place the AST in question if such
19 party is subsequently identified.

20 **§ 76A117. Permit Requirements.**

21 (a) No person shall own, install, or operate an AST, with a total
22 aggregate of five hundred (500) gallons or more, without a permit issued by
23 the Administrator. An applicant for a permit *shall* pay a permit processing fee
24 prescribed by the regulations.

25 For the purpose of this Chapter and until such rules and regulations
26 describing the AST Fee Schedule has been adopted, an interim annual permit
27 fee of One Hundred Dollars (\$100.00) per tank *shall* be established as the

1 permit fee, and *shall* go into effect sixty (60) calendar days after enactment of
2 this Chapter.

3 (b) Said permit *shall* be non-transferable and conditioned upon the
4 observance of the laws of Guam and related rules and regulations.

5 (c) A permit holder *shall* apply for the renewal of each permit he/she
6 holds, upon forms provided by the Administrator, *not less than* sixty (60)
7 calendar days prior to the permit's expiration.

8 (d) Each permit application and permit renewal application *shall* be
9 submitted with evidence of financial responsibility, and an application fee in
10 a sum established by the Administrator by regulation.

11 **§ 76A118. Inspection and Entry.**

12 The Administrator may inspect all ASTs at reasonable times to take
13 corrective action or to ensure compliance with this Chapter and the rules and
14 regulations promulgated pursuant to this Chapter. The Administrator's
15 authority to inspect *shall* include, but is not limited to, the following:

16 (a) requesting and obtaining from any owner or operator and
17 deliverer and guarantor of an AST, information relating to such tanks, their
18 associated equipment, and their contents;

19 (b) conducting any study or performance of monitoring, and testing
20 of tanks, their associated equipment, or surrounding soils, air, surface water,
21 or groundwater;

22 (c) inspecting and copying all records relating to the ASTs;

23 (d) inspecting and obtaining samples of regulated substances
24 contained in the ASTs; and

25 (e) taking corrective action or performing site assessment activities
26 at the location of the AST.

27 **§ 76A119. Confidentiality of Records.**

1 Reports and records submitted to the Agency by any person on the
2 ownership, installation, or operation of aboveground storage tanks or tank
3 systems *shall* be made available for inspection by the public during
4 established office hours, except as provided in this Section. Upon a showing
5 satisfactory to the Agency that public disclosure of records, reports, or
6 information, or a particular part thereof, to which the Agency's representative
7 has access to under this Section would divulge information entitled to
8 protection under Guam's Sunshine Reform Act of 1999, the Agency *shall*
9 consider the information or particular portion thereof to be confidential. No
10 confidential information secured pursuant to this Section by any official or
11 employee of the Agency within the scope of the official's or employee's
12 employment in the prevention, control, or abatement of releases from
13 aboveground storage tanks or tank systems, *shall* be disclosed by the official
14 or employee with following exceptions: the document or information may be
15 disclosed to officers, employees, or authorized representatives of Guam or of
16 the United States, including county government entities, who have been
17 charged with carrying out this Chapter, or when relevant in any proceeding
18 under this Chapter. Where such information constitutes confidential business
19 information under federal or local law, it *shall* be submitted as such to federal
20 or local entities.

21 **§ 76A120. Notice.**

22 Any notice or other official correspondence affecting the rights of any
23 person under this Chapter *shall* be delivered by personal service, or sent by
24 certified mail with a return receipt to the address of such person as shown by
25 the Agency records. The return receipt, signed by addressee, or his/her agent,
26 *shall* be conclusive proof of delivery.

27 **§ 76A121. Hearings.**

1 (a) Any person who received an order from the Administrator
2 pursuant to this Chapter, or any person whose permit application is
3 disapproved by the Administrator, may, within fifteen (15) calendar days after
4 receipt thereof, file with the Board a notice of intent to appeal and a verified
5 petition describing the basis of such appeal.

6 (b) The Board *shall*, not more than sixty (60) calendar days after
7 receipt of such notice of intent to appeal, hold a public hearing at which the
8 appellant may appear and present evidence supporting the petition.

9 (c) The Board may administer oaths and issue subpoenas to compel
10 the attendance of witnesses and the production of evidence in all such
11 hearings.

12 (d) The Board *shall* affirm, modify, or revoke the action appealed,
13 and *shall* notify the appellant of its decision not more than thirty (30) calendar
14 days after the hearing. Said notice *shall* be in writing and *shall* state the
15 reasons for the decision.

16 (e) Any person may appeal such decision by filing a verified petition
17 in the Superior Court of Guam within ten (10) calendar days after he/she
18 receives the notice required by Subsection (d) of this Section. The petitioner
19 *shall* make a transcript of the proceeding at his/her expense.

20 **§ 76A122. Injunction.**

21 The Administrator may, in addition to the other powers conferred on
22 him/her by this Chapter, file an action in the Superior Court of Guam to
23 immediately restrain any violation or threatened violation of this Chapter, or
24 rules and regulations promulgated pursuant to this Chapter.

25 **§ 76A123. Applicability to Government Agencies.**

26 All agencies of the government of Guam and of the government of the
27 United States *shall* comply with all provisions of this Chapter, including

1 permit requirements, with the exception of §§ 76A115 and 76A117(d) of this
2 Chapter.

3 **§ 76A124. Penalties.**

4 (a) A person who violates any provisions of this Chapter, or rules or
5 regulations promulgated pursuant to this Chapter, or who refuses or neglects
6 to comply with an order issued by the Administrator to require compliance
7 with this Chapter, *shall* be guilty of a civil violation and *shall* be subject to a
8 penalty of up to Twenty-five Thousand Dollars (\$25,000) for each tank for
9 each day of each violation.

10 (b) Any person with an interest that may be adversely affected by a
11 violation of this Chapter may intervene as a matter of right in any civil action
12 brought by the Administrator to require compliance with this Chapter.

13 (c) A person who knowingly fails to notify the Administrator
14 pursuant to §§ 76A105 or 76A112 of this Chapter, or who makes any false
15 statement or representation in any AST notification, permit application, or
16 other document filed, maintained, or used for compliance with this Chapter,
17 *shall* be guilty of a civil violation.

18 (d) Any person who denies, obstructs, or hampers the entrance,
19 inspection, or conduct or release response activity by a representative of the
20 Agency at any building, place, site, facility, vehicle, or structure that the
21 representative is authorized to enter or inspect, or who fails to provide
22 information requested by the Agency representative pursuant to § 76A110 of
23 this Chapter *shall* be guilty of a civil violation and *shall* be subject to a penalty
24 of up to Twenty-five Thousand Dollars (\$25,000) for every day the person
25 denies, obstructs or hinders the acquisition of, or fails to provide, the
26 information requested, as determined in a civil action in the Superior Court of
27 Guam.

1 (e) Each separate civil violation *shall* be subject to the following
2 penalties: for the first, second, and third offense, the violator *shall* be subject
3 to a penalty of up to Twenty-five Thousand Dollars (\$25,000) per tank per
4 day for each separate violation. Second, third, and fourth offenses are defined
5 as offenses within twelve (12) months from the first, second, and third
6 offenses respectively. For any fourth violation of this Chapter, the violator
7 *shall* be guilty of a misdemeanor, and may be subject to imprisonment for up
8 to twelve (12) months, and fined up to Twenty-five Thousand Dollars
9 (\$25,000) per day for each violation, or both.

10 § 76A125. Reserved.

11 § 76A126. Reserved.

12 § 76A127. Reserved.”

13 **Section 3. Severability.** If any provision of this Act or its application to
14 any person or circumstance is found to be invalid or contrary to law, such invalidity
15 shall not affect other provisions or applications of this Act that can be given effect
16 without the invalid provision or application, and to this end the provisions of this
17 Act are severable.