

I Mina'Trentai Kuåttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
236-34 (COR)	Thomas C. Ada	AN ACT TO ADD A NEW CHAPTER 76A, TO DIVISION 3 OF TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO ABOVEGROUND STORAGE OF REGULATED SUBSTANCES.	1/31/18 8:47 a.m.						

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

Bill No. 236-34(COR)

Introduced By:

Thomas C. Ada 

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

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that Guam imports, stores, and distributes large quantities of oil. Petroleum-based oil is used as a major source of fuel for our power plants, and various modes of transportation. To meet the demand, Guam imports, stores, and distributes over 150 million gallons of oil and other petroleum products. With millions of gallons of oil being stored throughout the island, preventing and responding to oil spills is an overwhelming challenge. The potential threat for an oil spill is significant, and the effects of spilled oil poses serious threats to human health and the environment.

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

I Liheslaturan Guåhan finds that the Federal Clean Water Act (CWA) does not provide the United States Environmental Protection Agency (USEPA) with the

1 authority to authorize states to implement the Spill Prevention, Control and
2 Countermeasures (SPCC) rule program in its place. Consequently, to ensure that
3 petroleum facility owners and operators are meeting the SPCC requirements,
4 USEPA regional personnel inspect regulated facilities to determine their
5 compliance with regulations. Because of personnel constraints, inspections may be
6 delayed or, in the event of actual incidences, not timely.

7 *I Liheslaturan Guåhan* finds that by establishing a *Spill Prevention, Control,*
8 *and Countermeasure*, which is consistent with or more stringent than that
9 contained in the Clean Water Act (CWA) §311(j)(1)(c) more specifically 40 Code
10 of the Federal Regulations Part 112, Guam Environmental Protection Agency
11 (Guam EPA) would be able to more effectively carry out its responsibilities and
12 roles in oil spill prevention, preparedness and response for the inland waterways of
13 Guam,

14 *I Liheslaturan Guåhan* intends to establish local Spill Prevention, Control,
15 and Countermeasure rules to enable Guam EPA to more effectively carry out its
16 responsibilities and roles in oil spill prevention, preparedness and response for the
17 inland waterways of Guam,

18 **Section 2.** A new Chapter 76A is hereby added to Division 3 of Title 10, Guam
19 Code Annotated, to read as follows:

20 **“CHAPTER 76A**

21 **ABOVE GROUND STORAGE OF REGULATED SUBSTANCES**

22 **SECTION ONE**

23 § 76A101. Title.

24 § 76A102. Statement of Purpose.

25 § 76A103. Definitions.

26 § 76A104. Power and Duties of the Administrator.

1 § 76A105. Notification Requirement.
2 § 76A106. Tank Standards.
3 § 76A107. Secondary Containment System – Release Prevention
4 and Release Detection Standards.
5 § 76A108. Delivery Prohibition Requirements.
6 § 76A109. Operator Training.
7 § 76A110. Leak Detection and Record Maintenance.
8 § 76A111. Public Participation.
9 § 76A112. Notification and Reporting Requirements on Releases.
10 § 76A113. Corrective Action.
11 § 76A114. Aboveground Storage Tank Management Fund.
12 § 76A115. Financial Responsibility.
13 § 76A116. Closure.
14 § 76A117. Permit Requirements.
15 § 76A118. Inspection and Entry.
16 § 76A119. Confidentiality of Records.
17 § 76A120. Notice.
18 § 76A121. Hearings.
19 § 76A122. Injunction.
20 § 76A123. Applicability to Government Agencies.
21 § 76A124. Penalties.

22 SECTION TWO

23 § 76A125. RESERVED.
24 § 76A126. RESERVED.
25 § 76A127. RESERVED.

26 **§ 76A101. Title.**

1 This Chapter shall be known as the Aboveground Storage of Regulated
2 Substances Act. This Chapter will provide requirements for aboveground storage
3 tank (AST) systems.

4 § 76A102. Statement of Purpose.

5 The purpose of this Chapter is to:

6 (a) Establish a program to provide requirements and
7 classifications for aboveground storage tank systems and inter-
8 terminal pipelines that store regulated substances in order to
9 minimize the occurrence and environmental risks of releases and
10 discharges to groundwater, surface water and/or soils;

11 (b) Ensure that newly constructed aboveground storage tank
12 systems and inter-terminal pipelines meet appropriate standards;

13 (c) Ensure that each new or replaced aboveground storage
14 tank or piping connected to any such new or replaced tank complies
15 with the wellhead protection area and must be approved by the
16 Administrator;

17 (d) Ensure that existing tank systems and inter-terminal
18 pipelines be properly maintained, inspected, and tested by licensed
19 and certified professionals; and

20 (e) Enact and establish regulations, guidelines, standards, and
21 policies that ensure consistent cleanup of regulated substances and
22 mitigation of the damage they cause.

23 § 76A103. Definitions.

24 (a) Aboveground Storage Tank (AST) means any storage tank 55
25 gallons or more containing a regulated substance in which greater than
26 ninety percent (90%) of the tank volume, including volume of the piping, is

1 not below the surface of the ground; or any storage tank 55 gallons or more
2 containing a regulated substance situated in an underground area, such as
3 basement, shaft, tunnel, or vault, if the storage tank is situated upon or above
4 the surface of the floor.

5 (b) Administrator means the Administrator of the Guam
6 Environmental Protection Agency.

7 (c) Agency means the Guam Environmental Protection Agency.

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

12 (e) Board means the Board of Directors of the Guam
13 Environmental Protection Agency.

14 (f) CERCLA means the Comprehensive Environmental Response,
15 Compensation, and Liability Act Public Law 96-510, commonly called
16 Superfund, which was enacted by congress in December 11, 1980 and
17 amended by the Superfund Amendments and Reauthorization Act of 1986
18 (SARA) Public Law 99-499 on October 17, 1986.

19 (g) Chapter means Aboveground Storage Tank of Regulated
20 Substances (Chapter 76A).

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 vessel or a public vessel) used in oil well drilling operations, oil

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

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

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

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

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

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

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

1 (p) Maintenance means the operational upkeep to prevent an AST
2 system from releasing product.

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

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

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

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

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

20 (v) Owner shall mean any person who owns an AST system used
21 for the storage, use or dispensing of regulated substances;

22 (w) Permit means Installation and/or Operation Permit.

23 (x) Person means an individual, trust, firm, corporation, partnership,
24 consortium, joint venture, joint stock company, political subdivision of a state,
25 any interstate body, commercial entity, association, or agency, department,

1 instrumentality of the Federal government or the government of Guam,
2 including autonomous agencies or any other legal entity.

3 (y) Petroleum means crude oil, or a fraction thereof, that is liquid at
4 60 degrees Fahrenheit temperature and 14.7 pounds per square inch absolute
5 pressure (normal atmospheric pressure at sea level).

6 (z) Petroleum-based Liquid Fuels shall mean:

7 (1) Aviation fuels (including jet, turbine and piston fuels)

8 (2) Automotive and other petroleum-based internal
9 combustion engine fuels

10 (3) Fuel oils and distillates fuels (turbine, boiler, and other
11 types)

12 (4) Heating oil and distillates

13 (5) Illuminating (e.g., lamp) oils

14 (6) Gasoline and other fuel blending stocks

15 (7) Petroleum-based lubricating, tapping, seal, penetrating
16 machining, and road oils and greases (including waste oil)

17 (8) Petroleum distillates

18 (9) Petroleum or petroleum-distillate based additives
19 (including fuel oil, ink and paint additives)

20 (10) Petroleum solvents

21 (11) Petroleum spirits (e.g., mineral spirits, Stoddard solvent,
22 paint thinners, etc.)

23 (12) Hydrocarbon liquids

24 (A) Naphthas and naphthalenes of all types

25 (13) Olefins, alkanes, alkylates, aromatics

26 (14) Petroleum-based inks and ink extenders

1 (15) Oil-based paints, coatings, thinners and solvents

2 (16) Petroleum extender oils

3 (17) Mineral oils (derived from petroleum)

4 (aa) Petroleum Marketing Facilities means all facilities at which
5 petroleum is produced or refined and all facilities from which petroleum is
6 sold or transferred to other petroleum marketers or to the public.

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

11 (cc) Pipeline Facility (Including gathering lines) means new and
12 existing pipe rights-of-ways and any associated equipment, facilities, or
13 buildings.

14 (dd) RCRA means the federal Solid Waste Disposal Act of 1980 as
15 amended by the Resource Conservation and Recovery Act of 1984, as
16 amended. (Public Law 94-580, October 21, 1976, Public Law 87-272, Title
17 II, §9001, as added Public Law 98-616, Title VI, §601(a), November 8, 1984,
18 98 Stat. 3277, and amended Public Law 99-499, Title II, §205(a), October 17,
19 1986, 100 Stat. 1696; Public Law 102-508, Title III, §302, October 24, 1992,
20 106 Stat. 3307; Public Law 103-429, §7(d), October 31, 1994, 108 Stat. 4389;
21 Public Law 109-58, Title XV, §1532(a), 1533(1), August 8, 2005, 119 Stat.
22 1104, 1105; 42 U.S.C. §6991c, et. Seq.), and regulations promulgated
23 pursuant thereto.

24 (ee) Regulated Substance means any element, compound, mixture,
25 solution, or substance that, when released into the environment, may create

1 substantial danger to the public health, welfare, or the environment. They
2 include:

3 (1) Any substance defined in Section 101(14) of CERCLA,
4 but not including any substance regulated as a hazardous waste under
5 Subtitle C of RCRA; or

6 (2) Petroleum-based liquid fuels;

7 (3) Any grade of gasohol, ethanol, or bio-diesel;

8 (4) Any other substance as designated by the Administrator.

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

11 (gg) Secondary Containment means a component of a secondary
12 containment system and means an AST and its piping having inner and outer
13 barriers.

14 (hh) Tank means aboveground storage tank (AST).

15 (ii) Wellhead Protection Area means the surface and subsurface
16 area of any existing community water system or any existing potable
17 drinking water well, underground injection system, or groundwater
18 monitoring well and is within a 1,000 foot radius.

19 § 76A104. Power and Duties of the Administrator.

20 The Administrator shall:

21 (a) Develop and administer an AST program under the
22 Hazardous Waste Management Program pursuant to this Chapter;

23 (b) Provide technical assistance to local and federal agencies,
24 and other persons, and cooperate with appropriate local agencies and
25 private organizations in enforcing this Chapter;

1 (c) Enact, modify, update, repeal, and enforce rules and
2 regulations governing AST design, construction, installation, release
3 detection and inventory control, compatibility, record maintenance,
4 reporting, corrective action, closure, and financial responsibility in
5 order to enforce this Chapter;

6 (d) Establish the procedures for the issuance and review of
7 permits governing the design, operation, and closure of ASTs;

8 (e) Enact and enforce other rules and regulations as necessary
9 to establish an AST program which is as stringent and/or broader in
10 scope than the requirements of the United States Environmental
11 Protection Agency (USEPA) Title 40 Code of Federal Regulations, Part
12 112, Oil Pollution Prevention;

13 (f) Issue, amend, rescind, and enforce orders as necessary to
14 ensure compliance with this Chapter or any rules and regulations
15 enacted pursuant hereto, including, but not limited to:

16 (1) Administrative penalty orders;

17 (2) Require corrective actions as may be necessary or
18 appropriate to this Chapter; and

19 (3) Commence civil actions in the Superior Court of
20 Guam, including actions for a temporary or permanent injunction
21 as needed to enforce this Chapter.

22 (g) Establish an effective enforcement system (that includes,
23 at a minimum, a field citation program) for the prevention, control and
24 abatement of AST pollution, including specific conditions under the
25 permit requirements and delivery prohibition of product to ineligible

1 ASTs and through all appropriate administrative and judicial courses of
2 action;

3 (h) Establish a delivery prohibition program that describes, at
4 a minimum, the criteria and mechanism for prohibiting the delivery,
5 deposit, and acceptance of product to any AST system;

6 (i) Develop and establish training program requirements in
7 cooperation with AST owners and operators set forth in this Chapter
8 and regulations enacted hereto;

9 (j) Issue, continue in effect, modify, revoke, reissue, or deny
10 permits;

11 (k) Ensure that all permit holders comply with applicable
12 requirements mandated by Federal and Guam statutes or rules;

13 (l) Establish, accept, receive, and administer grants and other
14 funds or fees from public and private agencies including the Federal
15 government, for carrying out any purpose of this Chapter; and

16 (m) Recover cost associated with Agency personnel
17 responding to AST releases to include but not limited to labor hours
18 (overtime), materials, and other expenses.

19 § 76A105. Notification Requirement.

20 (a) Except as otherwise provided in this section, each owner of an
21 aboveground storage tank shall notify the Agency in form(s) prescribed by the
22 agency and shall specify the tank's age, size, type, location, and use.

23 (b) For an aboveground storage tank that was taken out of operation
24 on or before the date of this act, regardless of whether the tank was removed
25 from the facility, the owner is exempt from giving notice.

1 (c) For an aboveground storage tank that was taken out of operation
2 after the date of this act, and that was not removed from the facility before the
3 date of this act, the owner shall specify the type and quantity of the substances
4 that were stored in the tank immediately before it was taken out of operation.
5 These requirements are in addition to the requirements for the notice
6 prescribed in Section 76A105 (a).

7 (d) An owner who brings an aboveground storage tank into
8 operation shall meet the notification requirements of this section within thirty
9 (30) calendar days after the tanks are brought into operation.

10 (e) A person who sells a tank for use as an aboveground storage tank
11 shall notify the purchaser of the notice requirements of Section 76A105.

12 (f) The notice required by this section shall be made of forms
13 prescribed by the Agency.

14 § 76A106. Tank Standards.

15 From the effective date of this Chapter until the effective date of a new
16 AST standards enacted hereunder, all new and existing ASTs shall:

17 (a) Prevent release of stored regulated substances due to corrosion
18 or structural failure for the operational life of the tank;

19 (b) Be cathodically protected against corrosion, constructed of non-
20 corrosive material, or designed to prevent the release of the stored regulated
21 substance; and

22 (c) Be constructed and/or lined with materials compatible with the
23 substance stored.

24 § 76A107. Secondary Containment System – Release Prevention and
25 Release Detection Standards.

1 (a) The Administrator shall develop and implement a program that
2 requires secondary containment for ASTs that at least meets the minimum
3 requirements under the Oil Pollution Prevention of the Clean Water Act.
4 These requirements apply to Owners and Operators of facilities engaged in
5 drilling, production, gathering, storing, processing, refining transferring or
6 consuming petroleum or petroleum products, providing:

7 (1) The facility is non-transportation related,

8 (2) Aboveground storage in a single container is equal to or
9 greater than fifty-five (55) gallons, or aggregate storing capacity is
10 equal to or greater than five hundred (500) gallons.

11 (3) Facilities, which, due to their location could reasonably
12 expect spilled oil to reach surface waters and ground waters of Guam
13 and the United States.

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

16 (c) The Administrator shall require under-dispenser containment
17 on all motor fuel dispenser systems.

18 (d) The Administrator shall require each existing, new, or replaced
19 AST and piping have a secondary containment system and be monitored for
20 leaks.

21 § 76A108. Delivery Prohibition Requirements.

22 (a) The Administrator shall develop and implement a delivery
23 prohibition program with processes and procedures that meet the requirements
24 set forth in this Chapter and regulations enacted hereto.

1 (b) The Administrator *shall* prohibit the delivery, deposit, or
2 acceptance of regulated substances to AST for both equipment and
3 operational violations.

4 § 76A109. Operator Training

5 The Administrator shall develop and administer an operator training
6 program with processes and procedures that meet the requirements set forth
7 in this Chapter and regulations enacted hereto.

8 § 76A110. Leak Detection and Record Maintenance.

9 (a) The owner or operator of an AST shall maintain a leak detection
10 system that identifies releases dangerous to human health and the
11 environment.

12 (b) The owner or operator shall maintain systematic and complete
13 records to demonstrate compliance set forth in this Chapter and regulations
14 enacted hereto.

15 § 76A111. Public Participation.

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

22 (b) Any person may maintain an action for declaratory and equitable
23 relief to restrain any violation of this chapter. On a prima facie showing of a
24 violation of this chapter, a preliminary injunction shall be issued to restrain
25 any further violation of the chapter. No bond is required for an action under
26 this subsection.

1 § 76A112. Notification and Reporting Requirements on Releases.

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

9 § 76A113. Corrective Action.

10 (a) The owner or operator of an AST shall stop or control a
11 confirmed release within twelve (12) hours of confirmation or knowledge that
12 a release occurred. The owner or operator shall take corrective action in
13 response to a release to protect human health and the environment, and shall
14 restore the environment and the AST and/or Pipeline Facility to a condition
15 acceptable to the Administrator.

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

19 (1) Identify the existence and extent of the release;

20 (2) Identify the source and nature of the regulated substance
21 involved;

22 (3) Evaluate the extent of the danger to human health, safety,
23 welfare, and the environment; and

24 (4) Develop and implement a corrective action plan.

25 (c) If the owner or operator does not take immediate action to
26 complete actions under this section and adequately complete the cleanup of a

1 release or fails to comply with an order of the Administrator, the
2 Administrator may cleanup the release or contract with a private entity to do
3 so.

4 (d) If the Administrator is authorized to act under Section 76A113
5 (b) hereof, he/she may undertake such investigation, monitoring, surveying,
6 testing, and other information gathering as he/she deems appropriate to
7 identify the existence and extent of danger to human health, safety, welfare,
8 and the environment. In addition, the Administrator may undertake or contract
9 with a private entity to undertake such planning, fiscal, economic,
10 engineering, and other studies and investigation he/she deems appropriate to
11 plan and direct cleanup actions, and to recover the costs and legal costs
12 thereof.

13 § 76A114. Aboveground Storage Tank Management Fund.

14 There is hereby established a fund to be known as the Aboveground
15 Storage Tank Management Fund, hereinafter referred to as the AST Fund, a
16 non-lapsing, revolving fund which shall be maintained separate and apart
17 from any other funds of the government of Guam.

18 (a) All fees, reimbursement, assessment, fines, forfeitures,
19 and other funds collected or received pursuant to this Chapter shall be
20 deposited in the AST Fund and shall not lapse at the end of the fiscal
21 year, but shall rollover into the next fiscal year or until expended.
22 Independent records and accounts shall be maintained in connection
23 therewith. The AST Fund shall be kept in a bank licensed to do business
24 in Guam, and funds shall be paid out only upon a request for payment
25 or requisition submitted by the Administrator. All monies in the AST
26 fund are hereby appropriated to the Guam Environmental Protection

1 Agency (Guam EPA) to be expended in accordance with this part and
2 are *not* subject to *I Maga'låhi's* transfer authority. The Administrator
3 shall comply with all existing reporting requirements by issuing a
4 quarterly account of the AST Fund to *I Maga'låhi*, *I Liheslaturan*
5 *Guahan*, and the Office of Public Accountability. The Administrator
6 shall ensure the AST Fund is in compliance with all existing statutes,
7 rules and regulations, codes, executive orders, and any other authority
8 which is applicable to Guam EPA and the use of the funds in the AST
9 Fund pursuant to this Chapter.

10 (b) The Administrator shall administer the AST Fund and
11 make disbursements from the fund:

12 (1) to fund actions authorized by §76A113 of this
13 Chapter;

14 (2) to train Agency employees in the regulation of
15 ASTs and response to release of regulated substances from
16 ASTs; or

17 (3) to fund the administration and implementation of
18 this Chapter, including but not limited to, purchase of
19 equipment, supplies, public outreach, trainings/conferences and
20 payment of personnel costs and service contracts arising from
21 enforcement of this Chapter.

22 § 76A115. Financial Responsibility.

23 (a) All owners or operators of AST systems, within 180 days of the
24 effective date of this chapter, shall establish and maintain evidence of
25 financial responsibility, as provided for in this section, for taking corrective
26 action and compensating third parties for bodily injury and property damage

1 caused by accidental releases arising from the operation of aboveground
2 storage tanks in at least the following per occurrence amounts:

3 (1) For all owners or operators of petroleum aboveground
4 storage tanks that are located at petroleum marketing facilities or that
5 own or operate five or more tanks or that handle an average of more
6 than 10,000 gallons of petroleum per month based on annual
7 throughput for the previous calendar year, \$2,000,000.

8 (2) For all other owners or operators of petroleum
9 aboveground storage tanks: \$500,000.

10 (b) Owners or operators of petroleum aboveground storage tanks
11 shall demonstrate financial responsibility for taking corrective action and for
12 compensating third parties for bodily injury and property damage caused by
13 accidental release arising from the operation of petroleum aboveground
14 storage tanks in at least the following annual aggregate amounts:

15 (1) For owners or operators of four or fewer tanks, an annual
16 aggregate amount of \$1,000,000.

17 (2) For owners or operators of five or more tanks, an annual
18 aggregate amount of \$2,000,000.

19 (3) For owners or operators of 10 or more tanks, an annual
20 aggregate amount of at least \$2,000,000 or such other higher
21 aggregate amount as set forth in regulations promulgated by the
22 Administrator.

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

1 (1) Commercial or private insurance, including risk retention
2 group;

3 (2) Qualification as a self-insurer;

4 (3) A guarantee, surety bond, or letter of credit; or

5 (4) Any other reasonable and economically practicable
6 means.

7 (d) The Administrator shall not approve any financial responsibility
8 method or combination of methods, unless the owner or operator has
9 demonstrated that such method(s):

10 (1) Are valid and enforceable;

11 (2) Are issued by a provider that is qualified or licensed in
12 Guam;

13 (3) Do not permit cancellation without the Administrator's
14 approval;

15 (4) Shall only be directly used for corrective action and 3rd
16 party liability costs; and

17 (5) Require the provider to notify the owner or operator and
18 the Administrator of any circumstances that would impair or suspend
19 coverage.

20 (e) Surety bonds shall be payable to the Guam Environmental
21 Protection Agency, to include costs and expenses of the cleanup of any
22 release, as well as damages incurred by the Government, consistent with the
23 provisions of this chapter. Any bond filed with the Agency must be issued by
24 a bonding company authorized to do business within the territory. The Guam
25 EPA is authorized to establish a special account, escrow, standby trust, or
26 other trust or account mechanism into which funds established as financial

1 assurance may be deposited when needed. Notwithstanding any other
2 provision of law, the Administrator may retain and use such amounts for the
3 purposes for which the financial assurance was established.

4 (f) To qualify as a self-insurer the AST system owner or operator
5 shall:

6 (1) Demonstrate a tangible net worth of at least ten times:

7 (A) The total of the aggregate amount required in
8 subsection (b) of this section;

9 (B) The sum of the corrective action cost estimates, the
10 current closure and post-closure care cost estimates, and the
11 amount of liability coverage required under this chapter; and

12 (C) The sum of plugging and abandonment cost
13 estimates in effect for which a financial test is used to
14 demonstrate financial responsibility under this chapter.

15 (2) The owner or operator shall have a tangible net worth of
16 at least \$10,000,000.

17 (g) The total liability of any guarantor is limited to the aggregate
18 amount that the guarantor has provided as evidence of financial responsibility
19 to the AST system owner or operator under this section. Nothing in this
20 subsection may be construed to limit any other territorial or federal statutory,
21 contractual or common law liability of a guarantor to its owner or operator
22 including, but not limited to, the liability of such guarantors for bad faith either
23 in negotiating or in failing to negotiate the settlement of any claim. For the
24 purpose of this subsection, the term “guarantor” means any person, other than
25 the owner or operator, who provides evidence of financial responsibility for
26 an owner or operator pursuant to this section.

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

7 (i) An owner or operator of an AST system shall designate a person
8 within Guam as his/her resident agent for service of process, and such
9 designation shall be filled in accordance with rules and regulation
10 promulgated by the Agency.

11 § 76A116. Closure.

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

18 (b) No later than one hundred-eighty (180) calendar days following
19 submission to Guam EPA of a Notice of Intent for permanent closure, all ASTs
20 containing regulated substances must be physically removed from the site and
21 properly disposed.

22 (c) Guam EPA shall cause the owner of any previously approved
23 AST which is discovered to have been improperly abandoned in-place to
24 remove the improperly abandoned AST and any soil and/or groundwater
25 contamination found to be caused by a release from the AST; and shall be
26 mitigated by the owner as soon as reasonably possible, but not to exceed one

1 eighty (180) calendar days or as may be deemed reasonable by the
2 Administrator. This shall not apply to any ASTs that previously received
3 written approval to be abandoned in-place, and were properly abandoned in-
4 place.

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

17 § 76A117. Permit Requirements.

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

22 For the purpose of this Chapter and until such rules and regulations
23 describing the AST Fee Schedule has been adopted, an interim annual permit
24 fee of one hundred dollars (\$100.00) per tank shall be established as the permit
25 fee and shall go into effect sixty (60) calendar days after enactment of this
26 Chapter.

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

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

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

9 § 76A118. Inspection and Entry.

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

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

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

20 (c) Inspecting and copying all records relating to the ASTs;

21 (d) Inspecting and obtaining samples of regulated substances
22 contained in the ASTs; and

23 (e) Taking corrective action or performing site assessment
24 activities at the location of the AST.

25 § 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 and of the official's or
12 employee's employment in the prevention, control, or abatement of releases
13 from aboveground storage tanks or tank systems, shall be disclosed by the
14 official or employee with following exceptions: the document or information
15 may be disclosed to officers, employees, or authorized representatives of the
16 territory or of the United States, including county government entities, who
17 have been charged with carrying out this Chapter or when relevant in any
18 proceeding under this Chapter. Where such information constitutes
19 confidential business information under federal or local law, it shall be
20 submitted as such to federal 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.

1 Section 76A121. Hearings.

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

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

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

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

17 (e) Any person may appeal such decision by filing a verified petition
18 in Superior Court of Guam within ten (10) calendar days after he/she receives
19 the notice required by Section 76A121 (d) hereof. The petitioner shall make a
20 transcript of the proceeding at his/her expense.

21 § 76A122. Injunction.

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

26 § 76A123. Applicability to Government Agencies.

1 All agencies of the Government of Guam and of the Government of the
2 United States shall comply with all provisions of this Chapter including permit
3 requirements with the exception of Sections 76A115 and 76A117(d).

4 § 76A124. Penalties.

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

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

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

19 (d) Any person who denies, obstructs, or hampers the entrance,
20 inspection, or conduct or release response activity by a representative of the
21 Agency at any building, place, site, facility, vehicle, or structure that the
22 representative is authorized to enter or inspect, or who fails to provide
23 information requested by the Agency representative as pursuant to Section
24 76A110 shall be guilty of a civil violation and shall be subject to a penalty of
25 up to twenty-five thousand dollars (\$25,000) for every day the person denies,

1 obstructs or hinders the acquisition of, or fails to provide, the information
2 requested, as determined in a civil action in the Superior Court of Guam.

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

12 SECTION TWO

13 § 76A125. Reserved.

14 § 76A126. Reserved.

15 **§ 76A127. Reserved.**

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