

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.	2/9/18 10:07 a.m.	Committee on Appropriations and Adjudication	4/6/18 9:00 a.m.	10/16/18 4:35 p.m.	Fiscal Note Request 2/9/18	
				2/26/18	Re-referred : Committee on Environment, Land, Agriculture, and Procurement Reform		As amended by the Committee on Environment, Land, Agriculture and Procurement Reform.	Fiscal Note 2/23/18	



Sen. Thomas Ada

Chairman

Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuattro Na Liheslaturan Guåhan • 34th Guam Legislature

October 15, 2018

The Honorable Therese M. Terlaje

Acting Speaker

I Mina Trentai Kuattro Na Liheslaturan Guåhan

163 Chalan Santo Papa

Hagåtña, Guam 96910

VIA: The Honorable Regine Biscoe Lee

Chairperson, Committee on Rules

RBL

RE: Committee Report on Bill No. 236-34 (COR), As Amended by the Committee on Environment, Land, Agriculture and Procurement Reform.

Håfa Adai Acting Speaker Terlaje,

Transmitted herewith is the Committee Report on Bill No. 236-34 (COR), As Amended by the Committee on Environment, Land, Agriculture and Procurement Reform, **"AN ACT TO ADD A NEW CHAPTER 76A TO DIVISION 3 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO ABOVEGROUND STORAGE OF REGULATED SUBSTANCES."**

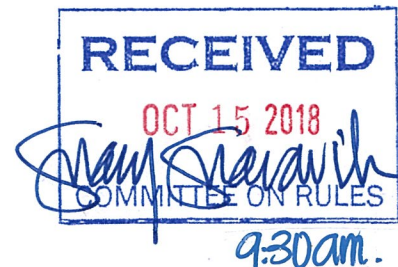
Committee votes are as follows:

 3 TO DO PASS
 TO NOT PASS
 1 TO REPORT OUT ONLY
 TO ABSTAIN
 TO PLACE IN INACTIVE FILE

Si Yu'os ma'åse',

Thomas C. Ada

Thomas C. Ada



2018 OCT 16 PM 4:35



Sen. Thomas Ada

Chairman

Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuâtro Nà Libeslaturan Guåhan • 34th Guam Legislature

COMMITTEE REPORT ON

Bill No. 236-34 (COR),
As Amended by the Committee on Environment,
Land, Agriculture and Procurement Reform.

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



Sen. Thomas Ada

Chairman


Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuåtro Na Libeslaturan Guåhan • 34th Guam Legislature

October 15, 2018

MEMORANDUM

To: **All Members**
Committee on Environment, Land, Agriculture and Procurement Reform

From: **Senator Thomas C. Ada**, Committee Chairperson 

Subject: **Committee Report on Bill No. 236-34 (COR), As Amended by the Committee on Environment, Land, Agriculture and Procurement Reform.**

Transmitted herewith for your consideration is the Committee Report on Bill No. 236-34 (COR), As Amended by the Committee on Environment, Land, Agriculture and Procurement Reform, **"AN ACT TO ADD A NEW CHAPTER 76A TO DIVISION 3 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO ABOVEGROUND STORAGE OF REGULATED SUBSTANCES."**

This report includes the following:

- COR Referral Memorandum
- COR Re-referral Memorandum
- Notice of Public Hearing
- Public Hearing Agenda
- Public Hearing Sign-in Sheet
- Written Testimonies
- Committee Vote Sheet
- Committee Report Digest
- Copy of Bill No. 236-34 (COR), As Introduced
- COR Pre-Referral Checklist
- Copy of Bill No. 236-34 (COR), As Amended by the Committee on Environment, Land, Agriculture and Procurement Reform.
- Fiscal Note

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Senator Thomas C. Ada,
Vice Chairperson

Speaker Benjamin J.F. Cruz,
Member

Vice Speaker Therese M. Terlaje,
Member

Senator Frank B. Aguon, Jr.,
Member

Senator Telenia C. Nelson,
Member



Senator Dennis G. Rodriguez, Jr.,
Member

Senator Joe S. San Agustin,
Member

Senator Michael F.Q. San Nicolas,
Member

Senator James V. Espaldon,
Member


Senator Mary Camacho Torres,
Member

COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR
SIKRITARIAN LIHESLATURAN GUAHAN
(MINA'TRENTA) KUATTRO NA LIHESLATURAN GUAHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

February 26, 2018

MEMO

To: **Rennae Meno**
Clerk of the Legislature
Attorney Julian Aguon
Legislative Legal Counsel

From: **Senator Régine Biscoe Lee** 
Chairperson, Committee on Rules

Re: **Re-Referral of Bill No. 236-34 (COR)**

Buenas yan Háfa adai.

As per my authority as Chairperson of the Committee on Rules, I am forwarding the re-referral of **Bill No. 236-34 (COR)**.

Please ensure that the subject bill is re-referred, in my name, to **Senator Thomas C. Ada, Chairperson of the Committee on Environment, Land, Agriculture, and Procurement Reform.**

I also request that the same be forwarded to the prime sponsor of the subject bill.

If you have any questions or concerns, please feel free to contact Jean Cordero, Committee on Rules Director at 472-2461.

Thank you for your attention to this important matter.





Office of the Speaker
BENJAMIN J.F. CRUZ
I Mina'trentai Kuåtro na Liheslaturan Guåhan
Committee on Appropriations and Adjudication

February 26, 2018

MEMORANDUM

To: Senator Régine Biscoe Lee
Chairperson, Committee on Rules

From: Speaker Benjamin J.F. Cruz

Re: Committee Action on Bill No. 236-34 (COR)

Håfa Adai!

In accordance with Section 6.01(d)(1), Rule VI, Part B of *I Mina'trentai Kuåtro na Liheslaturan Guåhan*, the Committee on Appropriations and Adjudication (Committee), with the assistance of the Office of Finance and Budget, has reviewed **Bill No. 236-34 (COR)**.

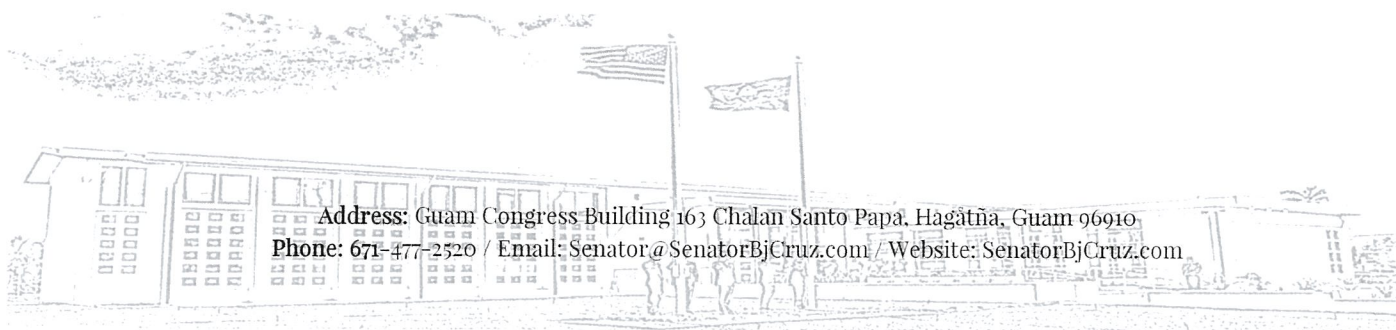
Based on this review, Bill No. 236-34 (COR), is hereby re-referred to the **Committee on Environment, Land, Agriculture, and Procurement Reform**.

Si Yu'os ma'åse'



Benjamin J.F. Cruz

cc: Clerks
Senator T.C. Ada



I Mina'Trentai Kuattro Na Liheslaturan
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				2/26/18	Re-referred : Committee on Environment, Land, Agriculture, and Procurement Reform				

Senator Thomas C. Ada,
Vice Chairperson

Speaker Benjamin J.F. Cruz,
Member

Vice Speaker Therese M. Terlaja,
Member

Senator Frank B. Aguon, Jr.,
Member

Senator Telena C. Nelson,
Member



COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR

SIKRITARIAN LIHESLATURAN GUAHAN
I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUAHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

Senator Dennis G. Rodríguez, Jr.,
Member

Senator Joe S. San Agustín,
Member

Senator Michael E.Q. San Nicolas,
Member

Senator James V. Espaldon,
Member

Senator Mary Camacho Torres,
Member

February 8, 2018

MEMO

To: Rennie Mena
Clerk of the Legislature

Attorney Julian Aguon
Legislative Legal Counsel

From: Senator Régine Biscoe Lee
Chairperson, Committee on Rules

Re: Referral of Bill No. 236-34 (COR)

Buenas yan Háfa adai.

As per my authority as Chairperson of the Committee on Rules and subject to § 6.01(d)(1), Rule VI of our Standing Rules (see B(1)(2)(3) of the pre-referral checklist), I am forwarding the referral of Bill No. 236-34 (COR).

Please ensure that the subject bill is referred, in my name, to Speaker Benjamin J.F. Cruz, Chairperson of the Committee on Appropriations and Adjudication. I also request that the same be forwarded to the prime sponsor of the subject bill.

After committee review, the subject bill may be further referred by the Committee on Appropriations to the Principal Committee of subject matter jurisdiction, pursuant to § 6.01(d)(1), Rule VI of our Standing Rules. If the Committee on Appropriations determines that a subsequent referral is in order, the Committee on Rules respectfully advises that the subject bill be referred to Senator Dennis G. Rodríguez, Jr., Chairperson of the Committee on Health, Tourism, Military Affairs, and Senior Citizens.

Attached, please see the COR pre-referral checklist for your information, which shall be attached as a committee report item to the bill.

If you have any questions or concerns, please feel free to contact Jean Cordero, Committee Director at 472-3455.

Thank you for your attention to this important matter.

Respectfully,

Senator Régine Biscoe Lee
Chairperson, Committee on Rules



Senator Thomas C. Ada,
Vice Chairperson

Speaker Benjamin J.F. Cruz,
Member

Vice Speaker Therese M. Teraja,
Member

Senator Frank B. Aguon, Jr.,
Member

Senator Telenia C. Nelson,
Member



Senator Dennis G. Rodriguez, Jr.,
Member

Senator Joe S. San Agustin,
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Senator Michael F.Q. San Nicolas,
Member

Senator James V. Espaldon,
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Senator Mary Camacho Torres,
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COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR
SIKRITARIAN LIHESLATURAN GUAHAN
I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUAHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

February 8, 2018

MEMO

To: Rennae Meno
Clerk of the Legislature

From: Senator Régine Biscoe Lee
Chairperson, Committee on Rules

Re: Letter of Explanation – Bill No. 236-34 (COR)

Buenas yan Háfa adai.

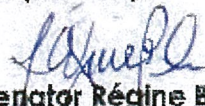
As per my authority as Chairperson of the Committee on Rules and pursuant to COR decision during COR meeting on April 3, 2017, this letter serves as an explanation of non-completion of pre-referral of checklist on **Bill No. 236-34 (COR)**.

Response from Legal Bureau's portion of the pre-referral (A)(1)(2) was received on February 8, 2018 and was subsequently processed through the Committee on Rules.

Should you have any questions or concerns, please feel free to contact Jean Cordero, Committee Director at 472-3455.

Thank you for your attention to this important matter.

Respectfully,


Senator Régine Biscoe Lee
Chairperson, Committee on Rules



I Mina'Trentai Kuåttro Na Liheslaturan

BILL STATUS

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1st Notice of Public Hearing: Friday, April 6, 2018 at 9:00 a.m.

Charlene Flores <flores@senatorada.org>

Thu, Mar 29, 2018 at 12:16 PM

To: Media <media@senatorada.org>, Shawntel Techaria <shawntel@keysguam.com>, DLMDIR <dlmdir@land.guam.gov>, Michael Borja <michael.borja@land.guam.gov>, pikapilarfejeran@gmail.com, ruth.sakuma@land.guam.gov, Stephanie.Duenas@land.guam.gov, Walter Leon Guerrero <walter.leonguerrero@epa.guam.gov>, Yvette Cruz <Yvette.cruz@epa.guam.gov>, Vincent Pereira <vincent.pereira@epa.guam.gov>, Michael O'Mallan <michael.omallan@epa.guam.gov>, Don Quinata <don.quinata@epa.guam.gov>, Mevany Hecita <mevany.hecita@epa.guam.gov>, b.bamba@ipehq.com, joonhahn@sppcorp.com, guam.ob@exxonmobil.com, info@guamchamber.com.gu, ccastro@guamchamber.com.gu, rdelgado@guamchamber.com.gu, Stephanie.Jones@fe.navy.mil, Adam.Perrins@fe.navy.mil, Gary.Koerber@fe.navy.mil, Robert.Dobrowolski@fe.navy.mil, John.F.Salas@fe.navy.mil, John.Masterson@fe.navy.mil, Karianne.Camacho@fe.navy.mil, info@ghra.org, zaldy.tugade@gmha.org, MCOG Secretary Elaine <mcogadmin@teleguam.net>, MELISSA SAVARES <melissa.savares@gmail.com>, frankabenavente17@gmail.com, "Mayor Louise C. Rivera" <mayorlcrivera.tatuha@gmail.com>, "Vice Mayor Ken C. Santos" <vicemayorksantos.tatuha@gmail.com>, Mayor Rudy <yigomayorsoffice@gmail.com>, Anthony Sanchez <yigovice@gmail.com>, asanmainamayor@gmail.com, theo_chargualaf@nps.gov, majellyn.calceta@jcamcd.com, Daniel D Swavely <dds@guam.net>, ceo@guamrealtors.com, garadmin@guamrealtors.com, Ken Leon-Guerrero <kenleonguerrero@yahoo.com>, harry.gutierrez@yahoo.com, jrojas@investguam.com, mstaijeron@investguam.com, ltoves@investguam.com, matt.sablan@agriculture.guam.gov, jessie.palican@gmail.com, "Ronald T. Laguana" <ronbo.laguana@gmail.com>, joseph.santos@hra.guam.gov, rkarabao@mac.com, Hope Cristobal <hcrisobalmom@gmail.com>, John Limtiaco <jlimtiaco@fareastequipment.com>, fcaguam@gmail.com, Erica Pangelinan <northernnguamswcd@gmail.com>, tcbbluepac1@gmail.com, phnotice@guamlegislature.org

March 29, 2018

MEMORANDUM

To: All Senators, Stakeholders and Media

Fr: Senator Thomas C. Ada, *Chairperson*

Subject: **1st Notice of Public Hearing: Friday, April 6, 2018 at 9:00 a.m.**

The Committee on Environment, Lands, Agriculture, and Procurement Reform will be conducting a public hearing on **Friday, April 6, 2018 at 9:00 a.m.** This hearing will take place in *I Liheslaturan Guahan*, Public Hearing Room. The agenda is as follows:

9:00 am

Executive Appointment of Ms. Shawntel L. Techaira to serve as a **member** of the **Chamorro Land Trust**

Commission.

Bill No.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.

Bill No.254-34 (LS), Thomas C. Ada - An act to authorize the sale of a 438 ± square meter irregular remnant portion of the *Old Agana-Yigo Road* fronting Lot 2118-1E-1 in the Municipality of *Tamuning*.

Bill No. 255-34(LS), As Corrected by the Prime Sponsor, Thomas C. Ada - An act to authorize a land exchange in the municipality of Asan involving 1,183 (±) SM of an abandoned and unused portion of the *Old Piti-Agaña Road*, for (a) 112 (±) SM of Lot 292-7-1, where a GWA sewer facility is encroaching, and (b) 1,072 SM of Lot 293 beachfront property for a public park to be put under the administrative jurisdiction of the Mayor of the Municipality of *Asan*.





Bill No.256-34 (LS), Thomas C. Ada - An act to extend the leasehold on Lot 10154-4, Municipality of *Dededo and Yigo* to *Manhita Farms LLC* for a period of twenty-six (26) years, and to provide for up to five (5) renewal options of ten (10) years each.


Testimony on **Executive Appointment of Ms. Shawntel L. Techaira, Bill No. 236-34 (COR), Bill No. 254-34 (LS), Bill No. 255-34 (LS) and Bill No. 256-34 (LS)** should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Guam Congress Building at 163 Chalan Santo Papa, *Hagåtña*, Guam 96910, via email to office@senatorada.org, or via facsimile to (671) 473-3303 no later than 4pm April 9, 2018.


In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Tom Ada at 473-3301.

--
Charlene Flores
Policy Analyst
Office of Senator Thomas C. Ada
I Mina'trentai Kuåttro na Liheslaturan Guåhan - 34th Guam Legislature
671-473-3301

6 attachments

-  **1st Notice .pdf**
325K
-  **Doc. No. 34GL-18-1551.pdf**
922K
-  **Bill No. 236-34 (COR).pdf**
1809K
-  **Bill No. 254-34 (LS).pdf**
438K

 **Bill No. 255-34 (LS) as corrected.pdf**
646K

 **Bill No. 256-34 (LS).pdf**
2000K



Sen. Thomas Ada


Chairman

Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuâtro Na Libeslaturan Guåhan • 34th Guam Legislature

March 29, 2018

MEMORANDUM

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9:00 am

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Bill No. 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.

Bill No. 254-34 (LS), Thomas C. Ada - An act to authorize the sale of a 438 ± square meter irregular remnant portion of the *Old Agana-Yigo Road* fronting Lot 2118-1E-1 in the Municipality of *Tamuning*.

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Shringi: Not the sales tax the chamber was talking about

By Kevin Kerrigan
kevin@postguam.com

The past chairman of the Guam Chamber of Commerce is concerned about the new tax law because it does not "phase out" the old business privilege tax when it "phases in" the new sales tax.

Under the new law, the business privilege tax will rise one percentage point, to 5 percent on April 1. It'll stay that way until Sept. 30 when it reverts to 4 percent. Then on Oct. 1, a new 2 percent

sales tax takes effect.

That's the problem, said Bobby Shringi. The "2 percent sales tax will be established on top of the 4 percent BPT.

"This isn't exactly the sales tax that the chamber has been talking about," he said.

A golden opportunity

However, Shringi said this could be "a golden opportunity" for the chamber to work with lawmakers and the governor to come up with other options.

There has been a flurry of new reve-



Bobby Shringi

nue bills introduced by lawmakers in the wake of the fiscal crisis.

He mentioned Sen. Michael San Nicolas' Bill 262-34, which proposes repealing the 2 percent sales tax.

"This is an opportunity for the chamber to work with all the parties to assure that maybe a conversion (from BPT to sales tax) can take place," he said.

Shringi expressed reservations, however, with Speaker Benjamin Cruz's "sin" tax and property tax bills. Bill 260-34 increases the tax on alcohol and tobacco products with the proceeds going to Guam Memorial Hospital. However, Shringi said increasing costs outside the military bases "fence could drive even more consumers to purchase their goods on base, hurting island retailers."

He also expressed concern about the

speaker's Bill 261-34, which would, in some cases, nearly double property taxes.

"So we need to make sure we work with lawmakers," said Shringi, to make sure that "if something does pass, it's palatable." Shringi is also a manager at Moylan's Insurance.

Missing from the debate

One major concern that is missing from the debate, Shringi said, is "fixing the leaking buckets" at the Department of Revenue and Taxation.

"One thing we're noticing that is not under discussion is compliance," Shringi said.

"There's a lot of money out there that's not being collected."

If we address those problems, "maybe you don't have to increase taxes because there are taxes that are not being collected," he said.

"This is where, really, the chamber has to come in. This is where the voices have to step up."

Mayors no longer want to cut grass for schools

By Louella Losinio
louella@postguam.com

Should the Legislature grant their request, the responsibility of grass maintenance for public schools will transfer from the Mayors' Council of Guam to the Guam Department of Education by Oct. 1.

During a regular board meeting Tuesday night, Guam Education Board Chairman Mark Mendiola notified the rest of the board about a March 22 letter from the Mayors' Council of Guam to education Superintendent Jon Fernandez.

In the letter, council Executive Director Angel Sablan said mayors have requested that the Legislature's

Committee on Appropriations and Adjudication remove funding for school grass maintenance from the council's fiscal year 2019 budget.

The council had requested \$481,957 for school grass maintenance this coming fiscal year.

Board member Robert Cristostomo asked if the matter required immediate response from the board. He said he does not want the responsibility to revert back to GDOE.

Mendiola passed the matter to board member James Lujan, whose committee handles the school maintenance concerns.

The superintendent suggested that the board come up with feedback on the

proposal and present it at the mayors' council meeting next month.

Sablan stated the council will be assuming the oversight and responsibility of three federally funded programs from the Department of Public Health and Social Services, effective April 1. With the added responsibility, the mayors have to give up the grass maintenance duties at the schools.

"We feel that since your agency has a division solely mandated to provide accounting and procurement services for your operations — that decision can adequately maintain the grass maintenance for schools appropriation," Sablan wrote.

"If not for the additional responsibilities of assuming operation control of the Adult Day Care Services, the Case Management Services, the In-Home Services Program, we would not have come to this decision on the grass main-

tenance for schools."

January meeting

Temper flared in a January education board meeting, during which the education board and the mayors' council discussed grass maintenance at the schools.

Board Vice Chairwoman Maria Gutierrez arrived at the meeting armed with a survey rating each mayor on the level of his or her office's grass-cutting services, from poor to excellent. The ratings were provided by each school principal.

While most principals were satisfied on some level, others said they face complaints from parents because of the length of the grass and that they have resorted to asking school staff to cut grass.

Gutierrez added that some mayors have pointed to deficiencies in funding but, if this is the case, "then it should be brought up at the Legislature."

NOTICE OF 2018 PUBLIC MEETINGS

The Western Pacific Regional Fishery Management Council announces the following public meetings on fisheries management in offshore waters of Hawaii, American Samoa, Guam, Commonwealth of the Northern Mariana Islands and Pacific Remote Island Areas. For more information and complete agendas, go to www.wpcouncil.org or contact the Council by email at info.wpcouncil@noaa.gov, by fax at (808) 522-8226 or by phone at (808) 522-8220.

Marine Planning and Climate Change Committee (MPCCC)

Council office, 1164 Bishop St., #1400, Honolulu
April 10 and 11 (T and W) 1 p.m. to 5 p.m. (HST) & by teleconference
Major agenda items: Island area updates; Projections of risk and vulnerability to fisheries infrastructure, coastal planning and disaster preparedness; and Fishery Ecosystem Plan (FEP) Stock Assessment and Fishery Evaluation (SAFE) Reports.

Protected Species Advisory Committee (PSAC)

Council office, 1164 Bishop St., #1400, Honolulu
April 19 and 20 (Th and F) 9 a.m. to 5 p.m.
Major agenda item: Draft 2017 annual SAFE Reports for the Pacific Pelagic FEP, American Samoa Archipelago FEP, Hawaii FEP, Mariana Archipelago FEP and Pacific Remote Island Areas FEP; and updates on matters related to fishery management.

Archipelagic FEPs Plan Team

Council office, 1164 Bishop St., #1400, Honolulu
April 30 and May 1 (M and T) 8:30 a.m. to 5 p.m.
Major agenda items: 2017 Annual SAFE Reports; Evaluating 2017 catches to their respective 2017 annual catch limits; Ecosystem component amendment; Omnibus amendment to establish an aquaculture management program; Main Hawaiian Islands bottomfish fishery; and Monitoring and updating priorities.

Special Accommodations: Host sites are physically accessible to people with disabilities. Sign language interpretation or other auxiliary aid requests should be directed to Kitty Simonds, ph. (808) 522-8220 or (808) 522-8226 (fax), at least 5 days prior to the meeting.



Sen. Thomas Ada
Committee on Environment, Land,
Agriculture, and Procurement Reform

Public Hearing Notice Friday, April 6, 2018

I Liheslaturan Guahan, Public Hearing Room

AGENDA

2:00pm

Executive Appointment of Ms. Shawntel L. Tcheira to serve as a member of the Chamorro Land Trust Commission.

Bill No. 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.

Bill No. 254-34 (LS), Thomas C. Ada - An act to authorize the sale of a 438± square meter irregular remnant portion of the *Old Agaña-Yigo Road* fronting Lot 2118-1B-1 in the Municipality of *Tamuning*.

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Individuals requiring special accommodations should submit request to Rick Salas at 473-3301.
Paid for by Committee funds. www.senatorada.org



2nd Notice of Public Hearing: Friday, April 6, 2018 at 9:00 a.m.

Richard Salas <rsalas@senatorada.org>

Wed, Apr 4, 2018 at 8:34 AM

To: Media <media@senatorada.org>, Shawntel Techaria <shawntel@keysguam.com>, DLMDIR <dlmdir@land.guam.gov>, Michael Borja <michael.borja@land.guam.gov>, pikapilarfejeran@gmail.com, ruth.sakuma@land.guam.gov, Stephanie.Duenas@land.guam.gov, Walter Leon Guerrero <walter.leonguerrero@epa.guam.gov>, Yvette Cruz <Yvette.cruz@epa.guam.gov>, Vincent Pereira <vincent.pereira@epa.guam.gov>, Michael O'Mallan <michael.omallan@epa.guam.gov>, Don Quinata <don.quinata@epa.guam.gov>, Mevany Hecita <mevany.hecita@epa.guam.gov>, b.bamba@ipehq.com, joonhahn@sppcorp.com, guam.ob@exxonmobil.com, info@guamchamber.com.gu, ccastro@guamchamber.com.gu, rdelgado@guamchamber.com.gu, Stephanie.Jones@fe.navy.mil, Adam.Perrins@fe.navy.mil, Gary.Koerber@fe.navy.mil, Robert.Dobrowolski@fe.navy.mil, John.F.Salas@fe.navy.mil, John.Masterson@fe.navy.mil, Karianne.Camacho@fe.navy.mil, info@ghra.org, zaldy.tugade@gmha.org, MCOG Secretary Elaine <mcogadmin@teleguam.net>, MELISSA SAVARES <melissa.savares@gmail.com>, frankabenavente17@gmail.com, "Mayor Louise C. Rivera" <mayorlcrivera.tatuha@gmail.com>, "Vice Mayor Ken C. Santos" <vicemayorsantos.tatuha@gmail.com>, Mayor Rudy <yigomayorsoffice@gmail.com>, Anthony Sanchez <yigovice@gmail.com>, asanmainamayor@gmail.com, theo_chargualaf@nps.gov, majellyn.calceta@jcamcd.com, Daniel D Swavely <dds@guam.net>, ceo@guamrealtors.com, garadmin@guamrealtors.com, Ken Leon-Guerrero <kenleonguerrero@yahoo.com>, harry.gutierrez@yahoo.com, jrojas@investguam.com, mstaijeron@investguam.com, ltoves@investguam.com, matt.sablan@agriculture.guam.gov, jessie.palican@gmail.com, "Ronald T. Laguana" <ronbo.laguana@gmail.com>, joseph.santos@hra.guam.gov, rkarabao@mac.com, Hope Cristobal <hcristobalmom@gmail.com>, John Limtiaco <jlimtiaco@fareastequipment.com>, fcaguam@gmail.com, Erica Pangelinan <northernguamswcd@gmail.com>, tcbbluepac1@gmail.com, phnotice@guamlegislature.org

April 4, 2018

MEMORANDUM

To: All Senators, Stakeholders and Media

Fr: Senator Thomas C. Ada, *Chairperson*

Subject: **2nd Notice of Public Hearing: Friday, April 6, 2018 at 9:00 a.m.**

The Committee on Environment, Lands, Agriculture, and Procurement Reform will be conducting a public hearing on **Friday, April 6, 2018 at 9:00 a.m.** This hearing will take place in *I Liheslaturan Guahan*, Public Hearing Room. The agenda is as follows:

9:00 am

Executive Appointment of Ms. Shawntel L. Techaira to serve as a **member** of the **Chamorro Land Trust**

Commission.

Bill No.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.

~~**Bill No.254-34 (LS), Thomas C. Ada** - An act to authorize the sale of a 438 ± square meter irregular remnant portion of the *Old Agana-Yigo Road* fronting Lot 2118-1E-1 in the Municipality of *Tamuning*.~~

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Testimony on **Executive Appointment of Ms. Shawntel L. Techaira, Bill No. 236-34 (COR), ~~Bill No. 254-34 (LS)~~, Bill No. 255-34 (LS) and Bill No. 256-34 (LS)** should be addressed to Senator Thomas C. Ada, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Guam Congress Building at 163 Chalan Santo Papa, *Hagåtña*, Guam 96910, via email to office@senatorada.org, or via facsimile to (671) 473-3303 no later than 4pm April 9, 2018.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Tom Ada at 473-3301.

--

Thank You,
Richard Salas
Policy Analyst
Office of Senator Thomas C. Ada
I Mina'trentai Kuåttro na Liheslaturan Guåhan - 34th Guam Legislature
Office (671) 473-3301

5 attachments



2nd Notice copy.pdf
82K



Doc. No. 34GL-18-1551.pdf
922K



Bill No. 236-34 (COR).pdf
1809K



Bill No. 255-34 (LS) as corrected.pdf
646K



Sen. Thomas Ada

Chairman


Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuatro Na Liheslaturan Guahan • 34th Guam Legislature

April 4, 2018

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Savings from fire station closures questioned

By Kevin Kerrigan
kevin@postguam.com

Speaker Benjamin Cruz questioned the accuracy of the Calvo-Tenorio administration's claim that \$400,000 was saved by the 23-day closure of two fire stations.

During the Special Economic Service meeting Tuesday at the Guam Congress Building, he said, "somebody stepped on something, in trying to inflate the numbers to justify the closure."

He admonished the governor's fiscal team, telling them to "make sure that they clear all the numbers ... so that zeros don't get added so that it looks good."

The speaker said, "it just undermines your entire credibility."

SES meeting

This latest SES meeting was scheduled following the administration's

submission last week of a revised fiscal realignment plan that cuts \$30 million from the current budget and two days after a new tax law took effect.

Lester Carlson, acting director of the Bureau of Budget and Management Research, thanked the lawmakers, saying that "with the cost-cutting and the inclusion of the BPT revenue," the administration was able to reduce the cuts to police and fire services "down to \$800,000 and 900,000, respectively."

"The impact to those agencies was minimized," he said, "due in great part in being able to project the \$24.6 million that we expect to collect in the rest of the fiscal year."

Vendor payables reduced

Acting Director of the Department of Administration Edward Birn said vendor payables have been reduced to roughly \$34 million, from \$41 million in February.

Unspent fed funds no longer \$31M, governor says

The information the governor's financial team provided to a Department of the Interior conference in December 2017 - that \$31 million in federal grant money was left unspent - has been updated. The governor's office yesterday stated the updated number is \$2.5 million because more funds were used.

Edward Birn, Department of Administration acting director, said the \$2.5 million primarily represents Medicare amounts.

"The Medicare monies were incentives available for private medical providers. Not all providers chose to utilize these funds to upgrade systems and the allocation had to be returned," Birn stated in a press release. (Daily Post Staff)

Agriculture Department clarifies grants

By Kevin Kerrigan
kevin@postguam.com

The Department of Agriculture has submitted a corrective action

plan in response to a critical federal audit released last week by the U.S. Department of the Interior Office of Inspector General.

Matthew Sablan, director of the Guam Department of Agriculture, told The Guam Daily Post he is waiting for the Inspector General to respond to the plan.

The auditors noted that, of the \$7.2 million in grants received by the department between Oct. 1, 2014, and Sept. 30, 2016, only \$4.5 million had been claimed by the Division of Aquatic and Wildlife Resources, the beneficiary of the grants.

"There is always an amount that isn't obligated," said Celestino "Tino" Aguon, the acting chief of the Division of Aquatic and Wildlife Resources. Funds are sometimes held in reserve because "we foresee other expenses coming down the pike."

On other occasions, he said, there are expenses that haven't yet been processed. For example, he cited a second-floor addition to a department building, which cost more than \$300,000.

Both Sablan and Aguon said most of the unclaimed funds are still available for use, as the grants have not expired. However, they were not able to say just how much of the funding was still available for use.

CARGO AGENT continued from page 1

On May 5, 2017, the U.S. Postal Inspection Service investigated thefts occurring at the Micronesian Air Cargo facility on Guam. They met with O'Mallan about the thefts at the Guam Customs and Quarantine Agency K-9 office, where he admitted to stealing various items in the mail at the worksite.

O'Mallan admitted to stealing vape juice, a Sony PlayStation console, a drone, computer graphics cards and two laptop computers. He said he stole them while employed as a ramp agent with Micronesian Air and placed the items into a bag at his worksite and took them to his vehicle, court documents state.

He intended to deprive the owners, permanently, of their use and benefit,

the plea agreement states. He also agreed to cooperate fully with the investigation.

O'Mallan also told authorities he received two G-Shock watches from his co-worker that he knew had been stolen from the U.S. mail. He said he gave one of the watches to a friend and returned the other watch to law enforcement. O'Mallan said he sold one of the laptop computers and provided the other items that were stolen.

The items were valued at \$3,314.64.

The co-worker was identified in the plea agreement but there are no records of any criminal charges filed against him.

The case was kept confidential until the judge unsealed the documents Tuesday.

O'Mallan is scheduled to be sentenced on July 2.

TOURISM continued from page 1

market, he said, at a meeting Tuesday of the governor's financial advisers and certain lawmakers in the budget committee. United Airlines also significantly reduced flights out of Guam, but that was partially offset by the start of a second daily flight by Japan Airlines.

"So coming off that with the news of Delta pulling out and all the seat reductions, we landed at this projection of negative 7.8 percent ... The bad news is ... or the challenge is ... we're

right on track to finish at that number."

In March, tourist arrivals were down 5.4 percent compared to the same month last year.

"March is usually our peak season," he said, along with August.

'Some progress' with Japan market

"I do want to note, though, that we have had some progress with the Japan market," Fujikawa said. "And March is the first time in a while where Japan is our top primary country again, for visitor arrivals."

That is due largely to charter flights, he added.



PUBLIC NOTICE ANNOUNCEMENT

The Guam Visitors Bureau will hold a Regular Meeting of the Board of Directors on **Thursday, April 12, 2018 at 3:30 p.m. in GVB's Main Conference Room.** Any individuals needing special accommodations are requested to contact GVB at 646-5278 for assistance.

This ad was paid for by the GVB Membership Fund.

PUBLICATION NOTICE

In accordance with the provisions of Guam Code Annotated, Title XI, Chapter III, Section 3315, notice is hereby given that:

VELASCO, ELIZABETH GULAY

dba: Tsibugan Grill N. Resto Pub

has applied for a Class: 4 / General On-Sale Alcoholic Beverage License said premises being marked as Lot: 5110 NEW R1 958 N. Marine Corps Dr., Tumon



Sen. Thomas Ada
Committee on Environment, Land, Agriculture, and Procurement Reform

Public Hearing Notice Friday, April 6, 2018

Lihestaturan Guahan, Public Hearing Room

AGENDA

9:00 am

Executive Appointment of Ms. Shawntel L. Techaira to serve as a member of the Chamorro Land Trust Commission.

Bill No. 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.

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Sen. Thomas Ada

Chairman

Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuatro Na Liheslaturan Guahan • 34th Guam Legislature

AGENDA

PUBLIC HEARING

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Sen. Thomas Ada

Chairman

Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuatro Na Liheslaturan Guahan • 34th Guam Legislature

Public Hearing

Friday, April 6, 2018, 9am

I Liheslaturan Guahan, Public Hearing Room

Bill No. 236-34 -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.

NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT INFORMATION
JOEL CATUPIG	TRISTAR			X		727 6707
Walter S. Leon Guerrero	GEDA	X	X	X		300-4751
V. Perera	GERA			*		
Mervyn Hecita	Guam EPA			X		300-4763
Don Quintana	GUAM EPA			X		300-4751
Michael O'Mallan	Guam EPA			✓		300-4751
MARK MERLINE	MEGANNUM					777-9379



Sen. Thomas Ada

Chairman

Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuatro Na Libeslaturan Guahan • 34th Guam Legislature

Public Hearing

Friday, April 6, 2018, 9am

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NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT INFORMATION
SZ/25, WZ/12	self					486-1517
Philippe GERLING	GAADA/NISSAN		✓		✓	647 7260



NISSAN MOTOR CORP. IN GUAM

1012 North Marine Corps Drive
Tamuning, Guam 96913, USA
Tel: (671) 647-7261 (NISSAN1)
Fax: (671) 647-7269 (NISSAN9)
Website: www.nissanguam.com

April 6, 2018

The Honorable Thomas C. Ada
I Mina'trentai Kuattro Na Liheslaturan Guahan
Chair, Committee on Environment, Land, Agriculture, and Procurement Reform
Ste. 207, Ada Plaza Ctr.
173 Aspinal Ave.
Hagåtña, GU 96910

RE: Bill 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.

Dear Chairman Ada,

Thank you for the opportunity to submit our testimony for Bill 236-34(COR).

Nissan Motor Corporation In Guam has an established record of conducting business mindful of its responsibilities to protect the environment on our island. Thus, our philosophy of doing business is to operate at the highest levels of professionalism and integrity.

Our record with the Guam Environmental Protection Agency speaks for itself. We have been compliant with the mandates that come with the business we have done for the past 30 years. In many cases we have gone above and beyond the basic requirements. For instance, we have installed a car wash that allows water recovery and re-use to reduce our impact of water use on the environment. Also, we work closely with our petroleum product suppliers to ensure that our facilities have the latest equipment to prevent environmental damage – in fact we recently replaced our underground tanks and required piping to meet the most current EPA standards.

All of this doesn't come free of course. Yet, we do feel that it is in the interest of our community and our staff and management for Nissan Guam to apply the highest standards of environmental standards across our operations.

In light of this, Nissan Guam does take issue with Bill 236-34(COR) because:



NISSAN MOTOR CORP. IN GUAM

1012 North Marine Corps Drive
Tamuning, Guam 96913, USA
Tel: (671) 647-7261 (NISSAN1)
Fax: (671) 647-7269 (NISSAN9)
Website: www.nissanguam.com

- 1) Federal EPA regulations are in place to handle the same SPCC regulations. Nissan Guam's position is that the Guam EPA's stricter regulations are burdensome, costly and unjustified;
- 2) Bill 236-34(COR) proposes to add substantial cost to companies that already meet or exceed the Federal EPA requirements as evidenced in their current record with GEPA;
- 3) Bill 236-34(COR) adds a compounded tax on top of the just increased BPT increase of 25%. Moreover, the expected increase in sales tax on October 1, 2018 will cause a direct impact resulting in an anticipated decrease in business as our economy is not prepared to absorb the successive tax increases which the 34th Guam Legislature has voted into law;
- 4) The permit and insurance requirements contained in the proposed bill are a compounded tax burden that offers no benefit at all to either Guam consumers or compliant operators;
- 5) The increased cost of doing business under the proposed terms of Bill 236-34(COR) will have an inflationary effect on the cost of goods and services provided to the citizens of Guam. This, in turn, will cause a reduction in sales in our business and thus a direct effect in a reduction of BPT revenue to the Government of Guam.

It is Nissan Guam's view that Bill 236-34(COR) direct impact will be to have negative outcomes for our fellow residents who are affected by increased taxation, for the economy due to the inflationary impact of the proposed financial imposition it creates and also for the Government of Guam in the form of anticipated decreased BPT collections.

As a corporate citizen paying our fair share of taxes to the Government of Guam, we do ask that Bill 236-34(COR) be rescinded and the Federal SPCC regulations be kept as the guiding regulation for SPCC on Guam to meet GEPA's mandate of protecting our environment.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Philippe Gerling".

Philippe Gerling
General Manager



March 13, 2018

Honorable Senator Tony C. Ada
Chairman Committee on Environment, Land, Agriculture, and Procurement Reform
34th Guam Legislature

Subject: Written Testimony regarding Bill 236-34 (COR)

Dear Senator Ada,

Thank you for the opportunity to comment on the Bill 236-34.

IP&E does not object with the intent of Bill 236-34 which imposes a permitting fee for existing and newly installed Above Ground Storage Tanks (ASTs). We would like to offer comment for consideration with respect Section 76A103, Subsection (a), page 4, lines 24, 25, and 26; and page 5, lines 1, 2, 3 and 4; specific to the volume classification of an AST; and the unintended consequences this may have on the import, storage and sale of lubricants on Guam.

The potential impact to the lubricant trade as the bill is written, could be construed to require that every 55 gallon drum of lubricant have an individual secondary containment and also charged a permitting fee.

IP&E imports, stores and distributes several thousand drums of lubricants annually to keep the engines of Government and Private sector commerce moving. Assessing a permitting fee or requiring individual secondary containment on a per drum basis would dramatically and unnecessarily increase costs for both the end user and supplier to the point of making lubricant distribution impracticable. In this regard we believe the bulk requirements provide sufficient protection without expending the requirements to an individual drum. We hope that the legislation can be modified to clarify this point.

Additionally, IP&E would like to draw attention to section 76A103, Subsection (z), Sub Subsection 7, page 8 lines 15 and 16; which defines lubricants as 'Hazardous' material. We note that Lubricants are not classified as hazardous goods by either the U.S. EPA or U.S. DOT and do not believe they should be defined as such locally.

Concerning the balance of the legislation, IP&E has no issues with requiring secondary containment at third party sites that store and consume lubricants; compliance of current GEPA secondary containment standards for Lubricant Terminals and compliance of current GEPA secondary containment standards for bulk fuel and lubricant ASTs greater than 660 gallons.

IP&E Holdings, LLC.

dba: IP&E Guam

Suite 100, 643 Chalan San Antonio

Tamuning, Guam 96913-3644

Tel: 671-647-0000 | Fax: 671-649-4353

Email: corporate@ipehq.com



Shell Licensee



In closing IP&E is supportive of Bill 236-34's intent to protect the environment and provide resources for GEPA compliance efforts. However, we are concerned with the bills language redefining an AST as a unit of 55 U.S. Gallons; and its impact to IP&E or any supplier's ability to bring critically required lubricants to Guam.

Respectfully,

Steven Carrara
General Counsel

CC: Brian J. Bamba

Shell trademarks used under license

IP&E Holdings, LLC.

dba: IP&E Guam

Suite 100, 643 Chalan San Antonio

Tamuning, Guam 96913-3644

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Email: corporate@ipehq.com



Shell Licensee



April 6, 2018

The Honorable Thomas C. Ada
I Mina'trentai Kuattro Na Liheslaturan Guahan
Chair, Committee on Environment, Land, Agriculture, and Procurement Reform

RE: Testimony in opposition to Bill 235-34 (COR) An act to add a new chapter 76A to division 3 of title 10 Guam code annotated relative to above ground storage of regulated substances.

Dear Chairman Ada,

Thank you for the opportunity to submit testimony regarding Bill 236-34(COR).

The Guam Automobile Dealers Association represents the six new car franchise dealers on Guam and the thousands of Guamanians that are supported by the sale, servicing and parts supply of new vehicles on Guam. The GADA has serious concerns about Bill 235-34 and its impact on our industry and the people that rely on it for their livelihood.

Of primary concern to GADA is the unreasonable additional expense that will be incurred by our dealers in an effort to comply with these additional regulations. Classifying a 55 gallon drum in the same way as a tank that holds hundreds or even thousands of gallons creates a burden of expense and manpower on our industry

that far outweighs the potential benefits. The new car dealers of Guam do not present any significant environmental risk based on past history. As a rule, our dealers have invested millions in modern facilities and equipment to ensure compliance with Federal and Guam Environmental Protection Agency standards and are arguably amongst the most environmentally conscious corporate citizens on Guam. In our estimation, the only significant impact these new regulations will have is to increase our cost of doing business which will mean fewer industry jobs and higher vehicle prices for consumers.

GADA is of the opinion that current federal guidelines are sufficient to regulate our industry and serve the purpose of protecting our environment without unnecessarily burdensome requirements. In the end, regulations that treat a simple 55 gallon drum in the same way as a bulk storage tank will only serve to stifle economic activity, reducing our dealers' ability to invest in our economy and help to create a vibrant island community. An ability already significantly challenged by recent increases in taxation that will take more money from the pockets of our fellow Guamanians.

Sincerely

A handwritten signature in dark ink, appearing to be "Jay B. Jones", written over a horizontal line.

Guam Automobile Dealers Association

For Jay B Jones
President

Mobil Oil Guam Inc.

642 EAST MARINE CORPS DRIVE
HAGATNA, GUAM 96910
TEL. (671) 648-3600
FACSIMILE (671) 648-3780

March 12, 2018

RECEIVED by the
Office of Senator
Thomas C. Ada

3/13/2018 *RG*

To: Senator Thomas C. Ada, Chairperson
Committee on Environment, Land, Agriculture, and Procurement Reform

Re: **Written statement in opposition to Bill No. 236-34 (COR)**

Dear Mr. Chairperson:

Thank you for the opportunity to submit our written statement on Bill No. 236-64 (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. Mobil has been a major supplier of petroleum products in this region since 1950, and a chief goal of ours has always been to protect the environment in the communities in which we operate. Although we support the intent and spirit of this bill, we have major concerns as it is drafted. We would like to take this opportunity to address several concerns.

Wait and See

Our first concern is that this bill is premature. Currently, the United States Environmental Protection Agency ("EPA") regulates companies that handle, store, transport, or process oil, but there are no specific EPA requirements covering companies that do the same for hazardous substances. Bill No. 236-64 (COR) is comprehensive, creating requirements affecting companies that deal with oil and hazardous substances. Developing new and comprehensive requirements such as these is not an easy task. Those familiar with these types of spill prevention, control and countermeasures requirements will appreciate the complexity of this undertaking and the compliance challenges it will create for companies. Crafting these requirements involves the collection and study of highly technical information, input from experts and those in the trade, understanding the efficacy of existing best industry practices, and the examination of the interplay of statutes and requirements already imposed under other regulatory programs. Based on our review of the bill, we question whether this has been done here.

We urge this Committee to wait for the EPA's guidance on how best to comprehensively address these areas. The EPA is currently in the process of developing rules and regulations affecting companies that handle, store, transport or process hazardous substances. It issued its letter of intent to initiate rulemaking on this matter in February 2016, and the rulemaking process is well underway. In the next six months, the EPA expects to work on issue papers, briefing materials, background documents, language, and administrative requirements needed to develop the regulations. We suggest that this Committee wait for this expert guidance and for EPA's final rules.

Compliance Challenges

We are also concerned that the bill, as drafted, creates compliance challenges. The bill requires compliance from its effective date, yet regulations have not yet been developed. See, for example, Section 76A107(a) ("The Administrator shall develop and implement a program . . . for secondary containment"); Section 76108 ("The Administrator shall develop and implement a delivery prohibition program with processes and procedures that meet the requirements set forth in this Chapter and regulations enacted hereto"); Section 76A110 ("The owner and operator shall maintain systematic and complete records to demonstrate compliance set forth in this Chapter and regulations enacted hereto"); Section 76115 ("An owner or operator of an AST system shall designate . . . in accordance with rules and regulation promulgated by the Agency"); Section 76118 ("The Administrator may inspect all ASTs at reasonable times to take corrective action or to ensure compliance with this Chapter and the rules and regulations enacted pursuant hereto"). How are companies to comply when regulatory gaps remain throughout the statutes?

Additionally, the bill does not provide ample time for companies to comply with certain standards for existing ASTs. Section 76A106 requires existing ASTs to immediately comply with certain standards, leaving no time for companies to gradually bring existing ASTs into compliance. We note that certain requirements for existing ASTs, such as cathodic protection, is costly and will require a company's significant investment.

Section 76A107(b) also requires major investment and endeavor. It requires existing connected piping to have a secondary containment system. Mobil proposes an exemption for existing connected piping until such time that the connected piping is modified.

Another unfeasible requirement is at Section 76A113, requiring an AST owner or operator to stop a release within 12 hours of knowing about it. This 12 hour stoppage requirement cannot apply in all scenarios, considering some releases happen in critical zones that are more challenging to fix. Coming up with a response plan and containing the release within that time period would be more feasible.

The bill does not account for industry standards. Sections 76A103(a)(3) and 76A107(a)(2) categorize 55 gallon tanks as an AST. Under industry standards, 55 gallon tanks are typically considered portable containers. AST requirements should be limited to fixed equipment. The bill should include an exclusion for portable equipment.

Conclusion


The issues we have addressed above touch upon our immediate and critical concerns with the bill. However, there are still other areas that require revision. For these reasons, we oppose the bill, as drafted. Respectfully, we urge this Committee to not act upon this bill in haste and recommend that it waits for the EPA's guidance on how best to comprehensively regulate these areas.

Thank you once again for allowing us to submit statement on Bill No. 236-34 (COR).
We invite the Committee to continue to engage us throughout this legislative process.

Respectfully yours,



Garet Olivares
Director



GUAM ENVIRONMENTAL PROTECTION AGENCY

AHENSIAN PRUTEKSION LINA'LA GUAHAN

EDDIE BAZA CAIVO
GOVERNOR OF GUAM

RAY TENORIO
LT. GOVERNOR OF GUAM

17-3301 MARINER AVENUE TIYAN, BARRIGADA, GUAM 96913-1617

FIND US ONLINE AT EPA.GUAM.GOV

**Testimony of
Walter S. Leon Guerrero, Administrator
Guam Environmental Protection Agency**

On Legislature Bill No. 236-34 (COR)
Before the Committee on Environment, Land, Agriculture, &
Procurement Reform
Guam

April 6, 2018

Introduction:

Buenas Yan Hafa Adai, Everyone! My name is Walter S. Leon Guerrero, Administrator of Guam Environmental Protection Agency. Thank you for the opportunity to testify this morning on the Legislature Bill No. 236-34 (COR), the Aboveground Storage of Regulated Substances Act 2018.

I would like to begin by recognizing the leadership of Senator Thomas C. Ada, chairman for the Committee on Environment, Land, Agriculture, and Procurement Reform in introducing this Bill. Our island's waters are a unique and very important resources, providing drinking water, recreational, and commercial uses to over thousands of residents and tourists. Also, countless species of animals and plants must have clean fresh water to survive and flourish. In protecting our environment against oil pollution, the passage of this Bill will allow Guam Environmental Protection Agency (Guam EPA) to create regulations that would establish procedures, methods, equipment and requirements to prevent discharges of oil from non-transportation-related onshore facilities and to contain such discharges. This legislation will establish the criteria and sets the priorities for the aboveground storage tanks program.

Background:

The Guam EPA provides an integrated and comprehensive framework of environmental protection throughout the island and its waters.

The Agency's framework is designed to facilitate the improvement and maintenance of a high quality environment at all times to guarantee an enjoyable life for the people of Guam at present and in the future and to ensure that environmental degradation of the quality of land, water and air by any pollutants, including all physical, chemical and biological agents, should not be allowed. The framework is organized under six divisions and one management group, which implement sixteen permanent programs.

The Agency's ability to provide a high quality environment is directly related to the capacity of individuals to contribute exceptional work effort and a dedicated team of professionals.

The Clean Water Act prohibits the discharge of oil and hazardous substances into or upon U.S. navigable waters or adjoining shorelines and directs the President to issue regulations establishing procedures, methods, and equipment requirements to prevent such discharges. The President subsequently delegated this responsibility to Environmental Protection Agency (EPA). In 1973, to meet this responsibility as it relates to oil discharges, EPA issued the Oil Pollution Prevention Regulation-also referred to as the SPCC rule-which outlined the actions oil storage facilities that store greater than certain quantities of oil must take to prevent, prepare for, and respond to oil spills before they reach U.S. navigable waters or adjoining shorelines. In 1974, the SPCC rule took effect and EPA initiated the SPCC program. Under this program, regulated facilities must implement procedures and methods and have certain equipment to prevent oil discharges from reaching U.S. navigable waters and adjoining shorelines. SPCC requires facilities to prepare oil spill prevention plans that spell out (1) design, operation, and maintenance procedures to prevent spills from occurring and (2) countermeasures to control, contain, clean up, and mitigate the effects of an oil spill.

EPA delegates implementation of the program to its 10 regional offices, which carry out inspection programs to ensure that the facilities are in compliance with the SPCC regulations.

Unlike EPA regulations promulgated under some other statutes, SPCC regulations have not been delegated to states for implementation or enforcement. Section 311 of the Clean Water Act (CWA) does not provide authority to delegate SPCC authority to states. Therefore, enforcement of the program is performed by the EPA regional office (USEPA Region IX for Guam) though currently Guam EPA staff conduct review and site inspections for USEPA. By passing this Bill, Guam EPA will be able to develop its own regulatory programs that will address oil storage units on island. This regulatory program does not replace USEPA's authority or responsibility, but rather enables Guam EPA the ability to enforce Guam's AST regulations as well as continue to assist USEPA in their oversight.

The Federal Water Pollution Control Act (FWPCA) of 1970 directed the President to issue regulations that would establish procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related on shore facilities to the EPA in 1970.

In 1973, EPA issued the Oil Pollution Prevention Regulation, which is codified at 40 Code of the Federal Regulation (CFR) Part 112, to address the oil spill prevention provisions contained in the Clean Water Act of 1972. The regulation forms the basis of EPA's Oil Spill Prevention, Control, and Countermeasures, or SPCC, program, which seeks to prevent oil spills from certain aboveground storage tanks.

The use of Aboveground Storage Tanks (AST) and its ancillary systems are widespread in Guam and across the country. The majority of ASTs are used for the storage and distribution of fuels including gasoline and petroleum. In Guam, there are no current requirements to permit or register ASTs containing regulated substances. The following are some major spills that have occurred on Guam:

- Guam Power Authority Tanguisson underground piping oil leaked that occurred between periods of 1981 to 1985. It was estimated that approximately 892,000 gallons of oil were loss from the underground piping. The first estimate was based on the plant operating data. The second estimate was made from a large number of investigation test wells. This estimate was that 682,000 or more, gallons of fuel oil were released to the

subsurface. In 1986, test pits were dug and approximately 50,000 gallons of oil was recovered from the test pits. A report prepared by TRC Environmental Consultants dated June 2015, revealed that approximately 579,143 gallons of oil have been extracted.

- The August 8, 1993 earthquake caused the fuel inlet pipe at the Orote Power Plant, Naval Base Guam's 220,000 gallon aboveground storage tank to rupture, spilling approximately 59,000 gallons of diesel fuel. Approximately 57,000 percolated through the bottom of the earthen berm into the groundwater.
- In 1992, Guam Oil and Refinery Company (GORCO) could not account for and suspected a release of approximately 180,000 gallons Jet Propulsion 5 fuel from the 55-foot high Tank 1901 at their Agat Terminal facility.

Guam EPA held publically advertised stakeholders meetings on the AST statutes on March 18 and 23, 2017. Feedback from these hearings guided the Hazardous Waste Management Program in developing the proposed statutes and after careful review; the Guam EPA Board of Directors adopted a motion on July 27, 2017, to recommend the adoption.

The passage of this Bill will require the Agency to compile an inventory of aboveground storage tanks in the territory of Guam, requiring registration and permits, authorizing certain fees, requiring Guam EPA to develop a regulatory program for aboveground storage tanks no later than one year after the enactment of this Bill; authorizing inspections, monitoring, testing, and certification of the tanks; requiring evidence of financial assurance, corrective action and spill prevention response plan.

Conclusion:

As you can see, Guam EPA has made tremendous progress in implementing the important statutory requirements of the CWA even though the Agency has not been delegated to enforce these requirements. We are confident that the public health and environment are benefiting from these improvements. In recent years, we have worked especially hard in educating the regulated community and the public about the importance of oil spill prevention and effective response, through publication and outreach materials, and similar public forum. Each year, up to 20,000 oil spills are reported to the National Response Center, with half or more in EPA's jurisdiction in the inland zone. These spills typically pollute our waters with up to or more than that of the Exxon Valdez spill each year.

We look forward to continuing our efforts to protect human health and the environment by minimizing the impact of oil spills on our island inland fresh waters through effective prevention and response. Thank you for providing me the opportunity to comment on this legislation and thank you once again, Senator Thomas C. Ada, for your continued leadership on this issue and the environment.

GUAM AST DATA

Federal Facilities

- 1. Andersen Air Force Base, Guam – 69,853,765 gallons (243 ASTs)**
- 2. Naval Base, Guam – 63,041,630 gallons (155 ASTs)**

Government of Guam

- 3. Guam Power Authority – 24,322,445 gallons (37 ASTs)**
- 4. Guam Waterworks Authority – 152,929 gallons (123 ASTs)**
- 5. Aggreko Power Plant, Yigo – 52,830 gallons (10 ASTs)**
- 6. TEMES Power Plant, Piti – 160,770 gallons (5 ASTs)**
- 7. Marianas Energy Company (MEC), Piti – 946,052 gallons (23 ASTs)**
- 6. USN NAVSUP FLCY Site Marianas –**
 - Pipelines – 22.7 miles Sasa Valley to Andersen Air Force Base, Guam**
 - 2 - 10-inch diameter pipelines from Sasa Valley to Tiyan**
Approximately 7.5 miles = 161,168 gallons/pipeline (323,136 gallons)
 - 1 - 10 inch diameter pipeline from Tiyan to AAFB, Guam**
Approximately 15.2 miles = 327,445 gallons/pipeline
 - Total Volume of Fuel – 650,581 gallons**
- 7. Cabras to Shell TriStar (Santa Rita)**
 - 2 - 24-inch diameter pipelines**
Approximately 2.5 miles = 310,211 gallons/pipeline (620,422 gallons)
 - 1 - 16-inch diameter pipeline (1-16-inch pipeline abandoned in-place)**
Approximately 2.5 miles = 137,871 gallons/pipeline
 - Total Volume of Fuel = 758,293 gallons**
- 8. Supreme (Guam International Airport Authority – Fuel Supplier)**
 - 3 ASTs – 420,000 gallons each Jet A-1 Fuel (1,260,000 gallons total)**
 - 1-16-inch diameter pipeline**
Approximately 1.5 miles = 32,314 gallons
- 9. Commercial Businesses/Companies**
 - Approximately 192 ASTs – 8,472,741 gallons**

**HAZARDOUS WASTE MANAGEMENT PROGRAM
ABOVEGROUND STORAGE TANK PROGRAM IMPLEMENTATION
COST ESTIMATE**

1. PROJECTED EXPENSES

A. STAFFING

Position	Base Salary	Benefits	Subtotal	FTE Hours	TOTAL
EHS III (Grade N)	45,014	20,768	65,782	1.00	65,782
EHS II (Grade M)	40,762	19,868	60,630	1.00	60,630
Program Supervisor (Grade O)	60,094	19,867	79,961	0.25	19,990
Division Administrator (Grade R)	82,029	28,899	110,928	0.10	11,093
TOTAL					157,495

B. PROGRAMATIC ACTIVITIES

Activity	FTE and Hours							
	EHS III	Subtotal	EHS II	Subtotal	Program Supervisor	Subtotal	Division Administrator	Subtotal
Permitting	0.25	16,446	0.15	9,095	0.025	1,999	0.020	2,219
Rulemaking	0.15	9,867	0.10	6,063	0.105	8,396	0.025	2,773
Regulations Development	0.10	6,578	0.15	9,095	0.100	7,996	0.025	2,773
Compliance Inspections	0.25	16,446	0.30	18,189	0.010	800	0.015	1,664
Enforcement	0.25	16,446	0.30	18,189	0.010	800	0.015	1,664
Total FTE	1	65,782	1	60,630	0.25	19,990	0.10	11,093

C. CAPACITY BUILDING

Training	Cost	Frequency	Total
STI/SPFA Sp001 Inspector training certification	5,000	2	10,000
API 653 Training Certification	5,000	2	10,000
Cathodic Protection Training and Certification	5,000	2	10,000
National Institute for Storage Tank Management Training/Conference	5,000	1	5,000
Spill Prevention Control and Counter Measures (SPCC) Training	5,000	1	5,000
Facility Response Plan (FRP) Training for Managers	5,000	1	5,000
40-Hour HazWoper	1,000	2	2,000
8-Hour Hazwoper Refresher	300	2	600
TOTAL			47,600

D. CONTRACTUAL & SUPPLIES

Item	Each	Cost Per Unit	Total
Vehicle	1	40,000	40,000
Computer	2	5,000	10,000
Softwares (Word, Excel, Adobe)	1	2,000	2,000
Printer	1	1,500	1,500
Ipad (plus accessories)	2	1,500	3,000
Camera	1	1,000	1,000
Supplies	1	1,500	1,500
TOTAL			59,000

TOTAL ESTIMATED EXPENSES	\$264,095
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2. PROJECTED INCOME - INTERIM FEE

INTERIM ANNUAL FEE				
Aboveground Storage Tanks (AST) ≥ 500 Gallons	Cost per Tank	Number of Tanks		Permit Cost
Note: Guam's AST universe has not been completely determined	100	500		50,000

IN THE MATTER OF A PERMANENT RULEMAKING OF GUAM ENVIRONMENTAL
PROTECTION AGENCY BILL NO. 236-34(COR), ABOVEGROUND STORAGE OF
REGULATED SUBSTANCES

BILL IMPACT STATEMENT

These statutes Impact Statement addresses the proposed law for the Guam Environmental Protection Agency (Guam EPA) Aboveground Storage of Regulated Substance Act Bill No. 236-34(COR).

- I. The proposed laws will establish a Spill Prevention, Control, and Countermeasures (SPCC) regulations, which is consistent with or more stringent than that contained in the Clean Water Act (CWA) §311(j)(1)(c) more specifically 40 Code of the Federal Regulations Part 112. The passage of this Bill would enable Guam EPA to more effectively carry out its responsibilities and roles in oil spill prevention, preparedness and response on the island's surface water, groundwater, and/or soils, and inland waterways. It will also enhance owner/operator diligence and strengthen early release detection and help protect human health, safety and the environment.

In addition, the proposed laws will allow the Administrator of Guam EPA to:

- a. Establish a program to provide requirements and classifications for aboveground storage tank system and inter-terminal pipelines that stores regulated substances in order to minimize the occurrences and environmental risks of releases and discharges to groundwater, surface water and/or soils and inland waterways;
- b. Ensure that newly constructed aboveground storage tank system and inter-terminal pipelines meet appropriate standards;
- c. Ensure that each new or replaced aboveground storage tank or piping connected to any such new or replaced tank complies with the wellhead protection area and must be approved by the Administrator;
- d. Ensure that existing tank systems and inter-terminal pipelines be are properly maintained, inspected, and tested by licensed and certified professionals; and
- e. Enact and establish regulations, guidelines, standards, and policies that ensure consistent cleanup of regulated substances and mitigation of the damage they cause.

- II. *Classes of persons who will most likely be affected by the proposed laws, including classes which will bear the cost of the proposed laws*

The classes of those affected include owners and operators of aboveground storage tanks doing business within the island of Guam. The classes affected will bear the cost, if any, of these proposed laws. The proposed laws will impact owners/operators of ASTs whose tanks are

500 gallons or greater or whose containers at the facility equals 500 gallons or greater total aggregate to obtain a permit.

The proposed rulemaking would affect approximately 800 storage tanks at over 200 storage tank facilities. Industry sectors potentially affected by the proposed rulemaking include retail motor fuel sales, commercial, institutional, manufacturing, transportation, communications and utilities, and agriculture. Federal, state and local government operations would also be affected.

Tank installers and inspectors certified by the Agency would likely have the capacity to provide the increased testing and inspections that would be required by the proposed rulemaking. Owners of existing storage tank systems would be provided with timeframes in which to comply with certain requirements. Owners of new storage tank systems would need to comply with the requirements upon the effective date of the final rulemaking.

III. Classes of persons benefiting from the proposed laws

The classes benefitting from the proposed rules include regulated entities, owners/operators of aboveground storage tanks doing business within the island of Guam.

IV. Probable economic impact of affected classes of persons, including all fees changes with justifications

It is anticipated that there be minimal adverse economic impact upon the affected parties. The proposed laws will not adversely impact other political subdivision of the island of Guam.

Guam EPA does not consider the proposed laws ultimately having a material adverse effect on small business; and as such, the rule making will comply with Guam's and EPA's requirements.

V. Impact on small business – Aboveground Storage Tank Owners and Operators

The proposed law will have minimal impact on the class of small business aboveground storage tank owners and operators who operate compartmentalized storage tank system and/or who have temporarily out of use storage tanks in Guam. It is estimated that there are approximately 150 small businesses of the total group of owners and operators of storage tanks that might be impacted by these laws. *The impact on small businesses cannot be completely determined since the Agency does not have a complete universe of owners and operators of aboveground storage tanks in Guam.*

VI. Probable cost and benefits to the Agency and to any other agency to implement and enforce the proposed laws, the source of revenue to be used for implementation and enforcement of

the proposed laws and any anticipated effect on the islands revenues, including a net loss or gain in such revenues if it can be projected by the Agency.

Guam EPA anticipated that its current staff is adequate in both number and training to develop the proposed rules and that there will be no immediate increase in the Agency's expense as results of the laws.

Federal or local agencies or jurisdictions that by law enforces their own regulatory authority over hazardous substances tanks concurrently with Guam EPA, including Guam Fire Department and the United States Environmental Protection Agency (USEPA) will not in any way enforce or implement the proposed laws. Accordingly, there will be no cost to them.

VII. *Measures the Agency has taken to minimize compliance and less costly or less intrusive methods for achieving the purposes of the proposed laws.*

During the process of developing the proposed statutes, Guam EPA conducted two stakeholders meeting which were attended by petroleum distributors, federal and local government agencies and interested parties. In addition, electronic copies of the proposed laws were provided to USEPA Region IX for their comments.

VIII. *Conformance with Federal Standards*

Currently EPA is solely responsible for ensuring that facilities comply with the Spill Prevention, Control, and Countermeasures (SPCC) regulations, a number of states have established their own parallel regulations and programs whose goal – preventing leaks from aboveground hazardous substances storage tanks.

IX. *Risk if not implemented*

If the proposed laws are not passed, Guam EPA will not be able to effectively carry out its responsibilities and roles in hazardous substances spill prevention, preparedness and response for the island of Guam's surface water, groundwater and/or soil and inland waterways.

State Regulations Each state has its own regulatory organization charged with developing and implementing environmental regulations. Where federal sovereign immunity has been waived, state laws and their implementing regulations may apply to federal installations. When the EPA approves a state's program, the state has "primacy" for that particular program. Under the authority of many federal environmental statutes (for example, CWA, RCRA, and CAA), state and local regulators take the lead in promulgating environmental regulations and in enforcing environmental requirements. Many state regulations parallel federal environmental regulations; some are more stringent. This Guide is not large enough

to summarize all state regulations. It is command responsibilities to ensure that the installation's environmental staff stays abreast of, and in compliance with, federal, state, and any applicable local or host-nation regulations.

Office of the Legislative Secretary
Senator Tina Rose Mufia Barnes
Date 08.16.13
Time 3:20 PM
Received by [Signature]

EXEMPTION FROM ECONOMIC IMPACT STATEMENT

The implementation of the following proposed rules and regulations will not have an economic impact to the public of more than Five Hundred Thousand Dollars (\$500,000.00) annually. As provided in § 9301(i) of Title 5 Guam Code Annotated, Chapter 9, Article 3, an economic impact statement is not required for these proposed rules and regulations.

OFFICE OF FINANCE AND BUDGET

Committee on Appropriations and Adjudication
ofb@guamlegislature.org | www.ofbguam.org



I Mina'trentai Kuåtto na Liheslaturan Guåhan

THE 34TH GUAM LEGISLATURE

163 Chalan Santo Papa, Hagåtña, Guam 96910

T: (671) 477-2520/1 | F: (671) 477-2522

February 26, 2018

MEMORANDUM

To: Speaker Benjamin J.F. Cruz
Chairman, Committee on Appropriations and Adjudication

From: Artemio R. A. Hernandez
Director, Office of Finance and Budget

Re: Funding Availability Note: Bill No. 236-34 (COR)

Håfa Adai Speaker Cruz!

Pursuant to the Standing Rules of the 34th Guam Legislature¹, the Committee on Appropriations and/or the Office of Finance and Budget (OFB) shall determine in writing if the funding source cited in Appropriation or Authorization for Appropriations bills are sufficient.

The OFB has reviewed **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.

Bill No. 236-34 (COR) establishes a new Special Revenue Fund called the Aboveground Storage Tank Management Fund (Fund) and appropriates all amounts collected from such Fund. Because the revenue source for the Fund is from newly created fees, reimbursements, assessments, fines, forfeitures, and other funds collected pursuant to the newly established Chapter entitled, Above Ground Storage of Regulated Substances, the funding source cited in **Bill No. 236-34 (COR)** has been determined to be sufficient.

Si Yu'os ma'åse'!

¹ Section 6.01(d)(1), Rule VI, Part B of the Standing Rules of the 34th Guam Legislature



Office of
Senator Tom Ada

Charlene Flores <flores@senatorada.org>

Fwd: AST Statutes

tom@senatorada.org <tom@senatorada.org>
To: Borja Joe <JBorja@senatorada.org>
Cc: Flores Charlene <flores@senatorada.org>, rsalas@senatorada.org

Sun, Oct 14, 2018 at 1:20 PM

FYI

Tom Ada

Sent from my iPhone

Begin forwarded message:

From: Vincent Pereira <vincent.pereira@epa.guam.gov>
Date: October 14, 2018 at 1:04:17 PM GMT+10
To: Tom Ada <tom@senatorada.org>
Subject: AST Statutes

Hafa Adai Senator,

Below is an email that I got from Mr. Whittle regarding the authority for California to conduct inspections and enforcement on federal facilities. This is the same information that I got from USEPA Region IX's attorney. It is under Section 311 of the Clean Water Act.

I am attaching the Testimony that Walter was suppose to read during the Public Hearing on April 6.

Let me know if you need more information.

Kindest Regards,

Vince

Vincent,

Sorry for the delayed response. I was able to get these details from the Office of the State Fire Marshal. Don't think I can add any more to what is stated below.

Jim Whittle

530-225-5406

APSA, Federal SPCC rule and CWA... they're all tied together... The APSA definition of a person includes federal facilities to the extent authorized by federal law; the applicability section 25270.5(a) is where federal facilities are regulated under APSA. The extent authorized by federal law is that these federal facilities have the potential threat of discharge of oil into/upon navigable water/adjoining shoreline. Other APSA tank facilities are not bound to this location requirement, but rather the threshold of 1320 gallons or more of petroleum.

Federal SPCC rule explicitly mentions departments, agencies, and instrumentalities of the Federal government to be subject to 40 CFR 112 as provided in section 313 of the Clean Water Act (ref. 40 CFR 112.1(c)). Also, a facility's SPCC Plan is required to conform with applicable requirements and other effective discharge prevention and containment procedures listed in 40 CFR 112 or any applicable more stringent State rules, regulations and guidelines (ref. 40 CFR 112.7(j)).

Federal SPCC rule obtains its authority from Section 311 of the Clean Water Act. Under Section 313 of the Clean Water Act, Federal agencies are subject to State requirements related to the control of water pollution. Specifically, Section 313 of the Clean Water Act (33 U.S.C.A. 1323) provides that "(a) each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property of facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, ... shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges."

--

Vincent J. Pereira

Supervisor, Hazardous Waste Management Program - Guam EPA

vincent.pereira@epa.guam.gov

671.300-4757

epa.guam.gov - facebook.com/GuamEPA - twitter.com/GuamEPA



Guam Automobile Dealers Association (GADA) Testimony	HWMP Response
<p>The Guam Automobile Dealers Association (GADA) represents the six new car franchise dealers on Guam and the thousands of Guamanians that are supported by the sale, servicing and parts supply of new vehicles on Guam. The GADA has serious concerns about Bill 235-34 and its impact on our industry and the people that rely on it for their livelihood.</p>	
<p>Of primary concern to GADA is the unreasonable additional expense that will be incurred by our dealers in an effort to comply with these additional regulations. Classifying a 55 gallon drum in the same way as a tank that holds hundreds or even thousands of gallons creates a burden of expense and manpower on our industry that far outweighs the potential benefits. The new car dealers of Guam do not present any significant environmental risk based on past history. As a rule, our dealers have invested millions in modern facilities and equipment to ensure compliance with Federal and Guam Environmental Protection Agency standards and are arguably amongst the most environmentally conscious corporate citizens on Guam. In our estimation, the only significant impact these new regulations will have is to increase our cost of doing business which will mean fewer industry jobs and higher vehicle prices for consumers.</p>	<p>USEPA defines an "Aboveground Storage Tank" is tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground. In addition, it is the minimum tank size used to calculate the storage capacity for a tank facility. The SPCC rules (40 CFR 112) only requires secondary containment for a single 55 gallon AST. For example, Bill 236-34 (COR) will require a permit for an aggregate of ten (10) 55 gallons, which is equivalent to an aggregate capacity of 500 gallons or more with a secondary containment.</p> <p>Based on the information provided in this testimony, GADA's members should be in compliance with the federal SPCC Regulations and Guam's interim regulations.</p> <p>Under the proposed statutes, a permit fee of one hundred dollars (\$100) would be required for a single AST with a storage capacity of oil that is ≥ 500 gallons or facility whose containers aggregate of oil is ≥ 500 gallons.</p>
<p>GADA is of the opinion that current federal guidelines are sufficient to regulate our industry and serve the purpose of protecting our environment without unnecessary burdensome requirements. In the end, regulations that treat a simple 55 gallon drum in the same way as a bulk storage tank will only serve to stifle economic activity, reducing our dealer's ability to invest in our economy and help to create a vibrant island community. An ability already significantly challenged by recent increase in taxation that will take more money from the pocket of our fellow Guamanians.</p>	<p>The intent of the proposed statutes and subsequent regulations that will follow shortly emphasizes the purpose of secondary containment to prevent a release from a 55 gallon drum or a large bulk storage container. Containment must be sized to contain the largest single oil compartment or container plus "sufficient freeboard" to contain precepitation.</p>

IP&E Testimony	HWMP Response
<p>Thank you for the opportunity to comment on the Bill 236-34. IP&E does not object with the intent of Bill 236-34 which imposes a permitting fee for existing and newly installed Above Ground Storage Tanks (ASTs). We would like to offer comment for consideration with respect Section 76A103, Subsection (a), page 4, lines 24, 25, and 26; and page 5, lines 1, 2, 3 and 4; specific to the volume classification of an AST; and the unintended consequences this may have on the import, storage and sale of lubricants on Guam.</p>	<p>IP&E Jacob Guerrero submitted comments in response to the AST Stakeholders meeting. This testimony is a reflection of the comments submitted on 5/23/17. The program sent a response via email to Jacob Guerrero on 7/6/17. Since then, there have been no response or rebuttal from IP&E.</p>
<p>The potential impact to the lubricant trade as the bill is written, could be construed to require that every 55 gallon drum of lubricant have an individual secondary containment and also charged a permitting fee.</p>	<p>a) Bill 236-34 (COR) Section 76A107 (a)(2) Aboveground storage in a single container is equal to or greater than fifty-five (55) gallons, or aggregate storing capacity is equal to or greater than five hundred (500) gallons. The language on this section states that a secondary containment is required for a single 500 gallon or more AST. ASTs are portable containers (55 gallon drums, IBC containers), shop fabricated, or field erected. Or, a secondary containment is required for an aggregate storage of ASTs 500 gallons or more. Aggregate meaning, combining a total number of several units (55 gallon drums X 10 units = 550 gallons). Section 76A117 (a)AST, total aggregate of 500 gallons or more.... The language on this section reflects language on secondary containment.</p> <p>b) Guam Water Quality Standards §51104 (H)(1) Petroleum Storage Facilities states "Any facility storing fifty-five (55) gallons or more of petroleum products or hazardous materials in any single above-ground container shall be provided with secondary containment to protect Guam's groundwater resources and navigable waters from potential threat from oil or hazardous materials discharges."</p> <p>c) 40 CFR §112.1(d)(2)(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For purposes of this exemption, only containers of oil with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes the capacity of a container that is "permanently closed," as defined in § 112.2.</p>
<p>IP&E imports, stores and distributes several thousand drums of lubricants annually to keep the engines of Government and Private sector commerce moving. Assessing a permitting fee or requiring individual secondary containment on a per drum basis would dramatically and unnecessarily increase costs for both the end user and supplier to the point of making lubricant distribution impracticable. In this regard we believe the bulk requirements provide sufficient protection without expending the requirements to an individual drum. We hope that the legislation can be modified to clarify this point.</p>	<p>Reference Section 76A107 above. IP&E should be in existing compliance requirements under the Clean Water Act (CWA) for storing 55 gallon drum require secondary containment. IP&E states they "import, store and distributes several thousand of drums of lubricants....to keep engines of Government and Private sector commerce moving."</p> <p>Reference SPCC Guidance for Region Inspections Chapter 2: Applicability Table 2-1 Examples of some oil-related activities that may be regulated under 40 CFR part 112. Drilling, Producing, Gathering, Storing, Processing, Refining, Transferring, Distributing, Using, Consuming. For example, under Distributing - Selling or marketing oil for further commerce or moving oil....</p>
<p>Additionally, IP&E would like to draw attention to section 76A103, Subsection (z), Sub Subsection 7, page 8 lines 15 and 16; which defines lubricants as 'Hazardous' material. We note that Lubricants are not classified as hazardous goods by either the U.S. EPA or U.S. DOT and do not believe they should be defined as such locally.</p>	<p>For the purpose of this Bill 236-34 (COR) The definition of Petroleum-based Liquid Fuels does not state "hazardous material".</p>
<p>Concerning the balance of the legislation, IP&E has no issues with requiring secondary containment at third party sites that store and consume lubricants; compliance of current GEPA secondary containment standards for Lubricant Terminals and compliance of current GEPA secondary containment standards for bulk fuel and lubricant ASTs greater than 660 gallons.</p>	<p>IP&E states they have NO issues with requiring secondary containment at third party sites. Then, the SPCC requirements they are following should apply for all their facilities. Bill 236-34 (COR) will be at the state level for Guam requiring 500 gallons rather than the federal level of 660 gallons.</p>

<p>In closing IP&E is supportive of Bill236-34's intent to protect the environment and provide resources for GEPA compliance efforts. However, we are concerned with the bills language redefining an AST as a unit of 55 U.S.Gallons; and its impact to IP&E or any supplier's ability to bring critically required lubricants to Guam.</p>	<p>a) In 1973, the regulation applied to Facilities which have an aggregate storage of 1320 gallons or less of oil, provided no single container has a capacity in excess of 660 gallons.(40 CFR 112.1(d)(2)) The Federal Register explains that tanks of 660 gallons are the normal domestic code size for nonburied heating oil tanks, and buildings could have two such tanks. More info can be found on the first page of the December 11, 1973 FR - https://www.epa.gov/sites/production/files/2015-03/documents/fr121173_no_cover_page.pdf At that point, there was no minimum container size for aggregating toward threshold. In 2002, the minimum container size was introduced, and 55 gallons was chosen due to its wide use as a commercial bulk container. Minimum size container is discussed starting on page 47066 of the July 17, 2002 FR - https://www.gpo.gov/fdsys/pkg/FR-2002-07-17/pdf/02-16852.pdf (Reference from Janice Witul USEPA Region 9) b) https://www.epa.gov/sites/production/files/2014-05/documents/bulk_storage_container_integrity-testing-factsheet.pdf</p>
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Nissan Motor Corp. In Guam Testimony	HWMP Response
<p>Nissan Motor Corporation In Guam has an established record of conducting business mindful of its responsibilities to protect the environment on our island. Thus, our philosophy of doing business is to operate at the highest levels of professionalism and integrity.</p> <p>Our record with the Guam Environmental Protection Agency speaks for itself. We have been compliant with the mandates that come with the business we have done for the past 30 years. In many cases we have gone above and beyond the basic requirements. For instance, we have installed a car wash that allows water recovery and re-use to reduce our impact of water use on the environment. Also, we work closely with our petroleum product suppliers to ensure that our facilities have the latest equipment to prevent environmental damage- in fact we recently replaced our underground tanks and required piping to meet the most current EPA standards.</p> <p>All of this doesn't come free of course. Yet, we do feel that it is in the interest of our community and our staff and management for Nissan Guam to apply the highest standards of environmental standards across our operations.</p>	
<p>In light of this, Nissan Guam does take issue with Bill 236-34(COR) because:</p> <p>1) Federal EPA regulations are in place to handle the same SPCC regulations. Nissan Guam's position is that the Guam EPA's stricter regulations are burdensome, costly and unjustified;</p>	<p>There are no additional changes or alterations with the current Federal EPA regulations. Guam EPA's Bill 236-34 (COR) is more stringent in order to capture the entire AST universe on island that requires a permit for a single AST of 500 gallons or an aggregate storage capacity ≥ 500 gallons.</p> <p>The purpose of the Bill is to allow Guam EPA to conduct inspections and issue enforcement actions for SPCC violations on facilities and the effect that they might have on the environment in protecting our sole source aquifer from oil contamination. Currently, Guam EPA can not issue a violation under 40 CFR 112 for not having an SPCC Plan or for an inadequate SPCC Plan.</p> <p>Only USEPA can enforce SPCC Regulations. USEPA has not delegated authority to the states, therefore in those instances, the state can only verify that an SPCC Plan is in place.</p>

<p>2) Bill 236-34(COR) proposes to add substantial cost to companies that already meet or exceed the Federal EPA requirements as evidenced in their current record with GEPA;</p>	<p>Facilities such as Nissan Motor Corp struggle to understand the importance of an SPCC plan and they see it as another costly regulatory hoop they must jump through. Therefore, Nissan Motor Corp stated they already meet or exceed Federal EPA requirements that is in current record with Guam EPA and Bill 236-34 (COR) is a small investment that will protect the facility at a smaller scale. Since, Federal EPA conducts joint inspections with Guam EPA at facilities at a larger scale.</p> <p>Guam EPA does not have a complete database of facilities with Aboveground Storage Tanks. The purpose of this Bill will enable Guam EPA to require owners and operators of ASTs to submit information in order for the Agency to conduct inspections and enforcement on SPCC violations, and ensure facilities are in compliance before issuing a permit.</p>
<p>3) Bill 236-34(COR) adds a compounded tax on top of the just increased BPT increase of 25%. Moreover, the expected increase in sales tax on October 1, 2018 will cause a direct impact resulting in an anticipated decrease in business as our economy is not prepared to absorb the successive tax increases which the 34th Guam Legislature has voted into law;</p>	<p>Business Privilege Tax (BPT) is not a function or mandate of Guam EPA, therefore the Agency does not have any comment on this statement.</p>
<p>4) The permit and insurance requirements contained in the proposed bill are a compounded tax burden that offers no benefit at all to either Guam consumers or compliant operators;</p>	<p>The benefit of the permit allows Guam EPA to monitor and inspect facilities to better prepare the facility owners and operators with SPCC requirements. The benefit of insurance gives the facility protection and coverage, should an oil spill occur it would be detrimental to the business, human health, and the environment. The penalties or violations will be much greater than a tax burden, especially if USEPA gets involved because the violations that occurred could not be resolved at the state or local level if Guam EPA does not have authority to permit ASTs and implement the SPCC rule.</p>
<p>5) The increased cost of doing business under the proposed terms of Bill 236-34(COR) will have an inflationary effect on the cost of goods and services provided to the citizens of Guam. This, in turn, will cause a reduction in sales in our business and thus a direct effect in a reduction of BPT revenue to the Government of Guam.</p>	<p>Based on your earlier statement, you stated that you are already in compliance with the Federal SPCC regulations. Therefore, the only additional burden Nissan Motor Corp might have is to register and obtain a permit for his tanks.</p>



Sen. Thomas Ada

Chairman

Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuatro Na Libeslaturan Guahan • 34th Guam Legislature

COMMITTEE VOTE SHEET

Bill No. 236-34 (COR), As Amended by the Committee on Environment, Land, Agriculture and Procurement Reform, "AN ACT TO *ADD* A NEW CHAPTER 76A TO DIVISION 3 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO ABOVEGROUND STORAGE OF REGULATED SUBSTANCES."

COMMITTEE MEMBERS	SIGNATURE AND DATE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
SENATOR THOMAS C. ADA Chairperson	10/15/18 <i>Thomas C. Ada</i>	✓				
SENATOR JAMES V. ESPALDON Vice Chairperson	<i>James V. Espaldon</i>			✓		
SENATOR MICHAEL SAN NICOLAS Member						
SENATOR RÉGINE BISCOE LEE Member						
SENATOR THOMAS A. MORRISON Member						
SENATOR WILLIAM M. CASTRO Member	<i>William M. Castro</i>	✓				
SENATOR JOE S. SAN AGUSTIN Member	<i>Joe S. San Agustin</i> 10/15/18	✓				



Sen. Thomas Ada

Chairman

Committee on Environment, Land, Agriculture, and Procurement Reform

I Mina Trentai Kuåtro Na Liheslaturan Guåhan • 34th Guam Legislature

COMMITTEE REPORT DIGEST

I. OVERVIEW

Bill No. 236-34 (COR) was introduced on January 31, 2018 by Senator Thomas C. Ada and was subsequently referred on February 9, 2018 by the Committee on Rules to the Committee on Appropriations and Adjudication. Bill No. 236-34 (COR) was then re-referred on February 26, 2018 to the Committee on Environment, Land, Agriculture, and Procurement Reform.

The Committee convened a public hearing on April 6, 2018 at 9:00am at *I Liheslaturan Guåhan*.

Public Notice Requirements

Public Hearing notices were disseminated via email to all senators and all main media broadcasting outlets and published in the Guam Daily Post, a newspaper of general circulation, on March 29, 2018 (5-Day Notice) and again on April 4, 2018 (48-Hour Notice), fulfilling the Open Government Law requirement.

Senators Present

Senator Thomas C. Ada	<i>Committee Chairperson</i>
Senator James V. Espaldon	<i>Committee Vice-Chairperson</i>
Senator Tommy Morrison	<i>Committee Member</i>
Senator William M. Castro	<i>Committee Member</i>
Senator Régine Biscoe Lee	<i>Committee Member</i>
Vice Speaker Therese M. Terlaje	<i>Legislative Member</i>
Senator Mary Camacho Torres	<i>Legislative Member</i>

The public hearing was Called-to-Order at 9:00am.

II. SUMMARY OF TESTIMONY AND DISCUSSION

Chairperson Ada called up those who signed up to testify and reads the title of Bill No. 236-45 (COR).

Walter Leon Guerrero, *Administrator, Guam Environmental Protection Agency*: Reads a portion of this testimony, in favor of Bill No. 236-34 (COR).

The purpose of the statute to create these regulations is for Guam EPA to oversee the storage of petroleum products in aboveground storage tanks. We also provided a listing of what we have currently, as far as the large facilities and pipelines, the different things that show what the universe of the regulated community can be. In looking at that list, you'll see the enormity of how much oil is stored in aboveground storage tanks. US EPA does have regulations,

unfortunately it's one of those programs that does not provide primacy but that does not preclude the state/local government from having their own requirements and regulations, so that we can oversee the aboveground storage tanks.

Currently, Guam EPA is the eyes and ears for US EPA. We help function the environmental oversight, but we don't control it, the federal agency controls it. This law will allow us to develop the regulations so locally we can control what we have. Much like what was discussed in previous forums, federal law does not always address specifically what Guam has to deal with. That is the importance of why Guam EPA is requesting these aboveground storage tanks statutes get passed into law. We feel the federal law does not mandate environmental oversight to the degree that Guam needs it to be. We have one sole source aquifer which is very specific for Guam. The federal regulations cover all aspects, but it does not cover something that provides 80% of our drinking water. That is why Guam EPA is more stringent than the federal and it gives us the authority to receive the finding and develop our program internally and not be at the whim of the federal government to decide what they want to do.

Philippe Gerling, *General Manager, Nissan Motor Corp, in Guam*: Reads the testimony of Guam Automobile Dealers Association (GADA), in opposition of Bill No. 236-34 (COR).

Chairperson Ada: GADA has submitted testimony that they are not in favor of the bill, but we have also received testimony from Mobil Oil, who indicated in their testimony that they are not in favor of the bill. IP&E indicated they are in support of the bill but with changes and clarifications made. There is also the testimony from Nissan, who is a part of GADA. Those are the position statements we have received so far.

As a frame of reference, according to the EPA's statistics there are about 788 aboveground storage tanks with the capacity to store about 170 million gallons of petroleum and about 50 miles of pipeline in place to transport the petroleum from terminal to terminal. With all these 788 aboveground storage tanks with many built years ago for Shell, Mobil or the smaller operations, before they were put into operation, what standards were they complying with? Were there federal standards that they had to comply with before they were allowed to operate those tanks or were they just doing it on their own?

Vincent Pereira, *Supervisor, Hazardous Waste Program, Guam EPA*: Guam EPA had interim regulations under 22 GAR, Chapter 5, Water Quality Standards. Section H, petroleum storage facilities states "55-gallon tank requirements." It is required to have secondary containment. These are existing regulations that have been in place. The facilities are required to have storage facility spillage prevention for petroleum products that are stored 666 gallons. In addition to that they are required to inform the agency. There are a few requirements that are in this section. There are existing interim regulations requiring owners and operators of aboveground storage tanks.

Chairperson Ada: The aboveground storage tanks that are currently in operations are doing so in compliance with certain governmental rules that have been put in place. By enactment of Bill 236 are we putting on new requirements?

Mr. Pereira: I don't think so.

Mr. Leon Guerrero: There are currently regulations in water quality that Vince had mentioned. There is also US EPA SPPC program that also does that. Again, as referenced earlier, these regulations are general in fact. They are not specific as to the type of tanks and the type of containers being regulated. That's where this bill hopefully turns into law and enable us to have a better and more specific regulatory oversight over the community. The federal requirements have a set number of gallons that they regulate. Ours is significantly less, 50 or so gallons is the regulated tank size that the feds use. We are proposing 55-gallon drums. Reasons are because the water quality standards dictate that any contamination from a petroleum product hitting the water is a major pollution and a major indiscretion against those regulations. It allows Guam EPA to conduct oversight or recommend that we have oversight of even 55-gallons. That is probably the regulated communities biggest fear. If we are regulating 55-gallon drums that changes the oversight community but not by that much.

Vice-Speaker Terlaje: We have existing regulations for 50-gallon tanks, but this is now going to regulate 55-gallon drums? Or are you already regulating 55-gallon drums?

Mr. Pereira: Yes, the current interim regulation does mention 55-gallon drums. The proposed statute includes 55-gallon drums, for a basis for us to regulate. The 55-gallon capacity drum for petroleum product is a basis for the federal requirements to calculate the SPPC requirement. That is what I am looking at as far as Guam EPA using the capacity of drum to regulate our proposed regulation. During the drafting of the regulation we will probably have some orders to discuss this once the statute is passed.

Vice-Speaker Terlaje: What are you requiring differently going forward for 55-gallon drums that is not currently required? What are they going to have to do?

Mr. Leon Guerrero: The requirements are secondary containments and 110% storage capacity. In case of a spill, the contents of the container has the capability to contain the spill plus 10% overboard, in case it's raining or other facts to cause an overspill. We are trying to prevent those overspills from hitting the environment.

Senator Castro: First of all, I am not a being fan of regulation or over regulation in general but because certain facts were made public this morning, I want to commend the Chairperson and his team for the research. I want to draw attention to one of the letters by the Administrator of the well documented cases. We are not talking about minimum spillage, we are talking about atrocities against the environment and our lands and the only ones we have. I want to draw attention to one of the letter submitted by one of the dealers. It explicitly states that they have invested heavily in meeting most requirements. It also states that it brings you into compliance with most EPA standards. Will passage of this bill bring you into full compliance with the EPA standards?

Mr. Gerling: I cannot speak for every member of the GADA but I can speak for Nissan. We've kept our standards to the highest level to comply with all environmental regulations including containment to prevent spillage. We don't have aboveground tanks, we have underground tanks and we've just replace them about a year and a half ago to be in full compliance with the latest standards EPA requires. We've condemned an alternate, the oil and water separator tank in our

shop because there was a risk there of possible spillage. All of our used oil products goes into underground tanks and get pumped and transported for proper disposal. We have insurance that protect us from any risk that may come from spillage. Just to be clear, in reading the bill that Guam EPA proposed, we did not see any new standards, other than fees and requirements for additional insurance. That is a financial burden on business. But basically, what they were taking was federal regulations and adopting them to Guam. Maybe some regulations may change but we didn't see any major changes other than an added cost.

Senator Castro: Guam EPA does not have the statutory authority to enforce the Clean Water Act, is that what your letter says?

Mr. Leon Guerrero: No sir, what we are indicating here is that Guam EPA doesn't have the statutory authority to enforce aboveground storage tanks.

Senator Espaldon: Guam EPA does not have the authority to inspect or regulate above storage tanks?

Mr. Leon Guerrero: Currently, through our water regulations, we have the authority to oversee impacts to the water. The main governing forces for the aboveground storage tank is the federal regulations, which we are only the eyes and ears for US EPA. If we conduct the inspection for aboveground storage tank, those reports would generally go back to US EPA and fines will come from them in lieu of local ability. What we are trying to do is when we do our oversight, even with the assistance or even with teaming with US EPA, if there are fines or misusages of the aboveground storage tanks, then the money stays local instead of going to the federal bank. We are trying to give the authority to the local agency, keep the money on Guam instead of it having to go to the federal bank.

Senator Espaldon: We have heard through the news that the President is really looking at changing the US EPA regulations. The argument is that it would weaken the US EPA. Is this legislation in response to the potential that US EPA regulations maybe weakened and thus negatively affecting Guam EPA in terms of its ability to monitor and oversee environmental regulations?

Mr. Leon Guerrero: It's my understanding, what the President is trying to do with US EPA, his goal is to let the regulated authority go to the states and territories and pull it back from the federal agency. In his eyes it is less money that the federal agency would require. Our agency at this point that is roughly 97-98% federally funded to mandate what we do. It is something that we have looked at for a while. We have currently moved this program, aboveground storage, from our water division to our air and land division, in our emphasis to be the local regulator. It just so happened to coincide with what Administrator Pruitt and President Trump are trying to do, which is tell the regulated states and territories manage yourself and don't rely so much on the federal US EPA.

Senator Espaldon: The statement that you made basically included a fact that Guam EPA is funded by US EPA probably about 97% funding level? Bottom line is that your funding come from US EPA at the time. How many employees does Guam EPA have at this time?

Mr. Leon Guerrero: Roughly 55 people.

Senator Espaldon: With implementation of this legislation is there a need to grow?

Mr. Leon Guerrero: Yes sir, we've already dedicated within our organizational chart a manager for this program. With the implementation of this, we look to grow the program. If that program grows internal for Guam EPA to conduct proper oversight on Guam and if that results in us needing more people, then we will work that finance into our organization chart.

Senator Espaldon: Any idea how? Or how much growth you are looking at to be required to sustain this? One of the requirements under here requires operator training. *"The Administrator shall develop and administer an operator training program with processes and procedures that meet the requirements set forth in this chapter."* In other words, do you have the man power to develop the program and then you have to administer the program? I'm not sure what administer means and so I needed to understand what the full scope is. If the potential is there that the US EPA is downsized and doesn't get required funding, I would imagine that would hurt the funding for Guam EPA. Then we go down the road of reasoning even more if we start creating our own and this requires an expanded Guam EPA that has less funding from US EPA. I'm trying to understand how this all comes together considering there are new mandates that are placed upon you.

Mr. Leon Guerrero: I'll leave it to the staff about how much we think we need for the team. Maybe you're looking at it the wrong way. If US EPA downsizes, this is the reason why we need this legislature to pass this bill into law. It will give us, Guam EPA, the local authority, the ability to oversight and procure what we need to conduct this. If US EPA downsizes and money is removed, then we need the authority to ensure all these tanks are regulated correctly. What I heard from you is that if US EPA downsizes then we lose the money, we lose the ability. That would be correct and that is why this bill is important. If we lose that ability and that money from US EPA this enables Guam EPA to make a self-sufficient program.

Senator Lee: My question is about the penalty section of the bill, § 76A124. How did you arrive at the \$25,000 figure that is cited in sub-sections (a), (d), and (e)? *"The violator shall be subject to a penalty of up to \$25,000 per tank per day for each separate violation.... That includes any person who denies, obstructs or hampers the entrance, inspection, or conduct or release response activity by a representative of the Agency at any building..."* I just want to know how you arrived at that \$25,000 figure?

Mr. Pereira: Looking at other states that had their own statute and regulate adopted, that is basis of the \$25,000 amount.

Senator Lee: The basis of the language is written that they would be fined up to \$25,000. Who would determine the final amount?

Conchita Taitano, Air and Land Administrator, Guam Environmental Protection Agency: The final amount will always come from the Administrator. What the staff would normally do, as with the rest of our regulations, we have an enforcement matrix that we take into consideration the risk posed

to human health and the environment. From that a number is generated and we have a range from low, medium to high, we explain everything to Administrator and he makes the final decision.

Senator Lee: Is the enforcement matrix available to the public? And where would this money go?

Ms. Taitano: Generally, the enforcement matrix is not available to the public, it is an internal document. The statute authorized the creation of a special fund. Whatever funds, fines or fees, it is to go into that special fund. It is the aboveground storage tank fund.

Senator Lee: That would be administered and managed by Guam EPA?

Ms. Taitano: Administered by the Administrator, correct.

Vice-Speaker Terlaje: It looks to me like the point of this bill is to fund this operation with a \$100 fee per tank. That is not a fee that is currently being charged? How much to you expect that to bring in?

Mr. Pereira: Based on our inventory, we are looking at about \$50,000.

Vice-Speaker Terlaje: It also put a mandate in addition to \$100 fee per tank, it requires you to insure. Is this insurance something that the automobile industry is not doing at this point?

Mr. Gerling: I am very sure that all the dealerships have insurance, it is mandated for underground tanks. We haven't explored the additional cost of insurance for aboveground tank.

Vice-Speaker Terlaje: It is possible that there might be an increase in insurance?

Mr. Gerling: Definitely will be. If I had an aboveground tank there would be an additional fee for insurance. It is an addition to the existing policy.

Vice-Speaker Terlaje: Because those are not currently covered. You've stated the primary objection is the cost, that would be from the additional insurance and \$100 fee per tank? Can you give an idea of what the impact would be on one automobile dealer?

Mr. Gerling: Yes, for the additional insurance and fee. Each dealer operates differently, in our case we have a bulk aboveground tank for lubricants that get pumped to the different work bays for the technicians to change the oil. That bulk tank is in a containment room, should there be a spill its completely contained. But now we would need to get a permit and additionally insurance for what has been in place for the better of 25-30 years. It is difficult to make sense of it, we just got hit with an increase in business privilege tax, sales tax is coming up. All the costs are going up and this is adding to cost of business, which ultimately the consumer, the Guam resident consumer is going to have to pay. What we anticipate is that the community of effect of this is going to reduce the amount if business we do and therefore, the business privilege tax income for GovGuam will be reduced. You can give Guam EPA more money through permitting and other requirements, but it will have an effect on other parts of government naturally. Every dealership has certain

requirements, certain set-up, some buildings are new, some are old, we don't operate all the same way. So, I cannot speak for all the members of GADA.

Senator Espaldon: When we start talking about above storage tanks we have now, 37 tanks at Guam Power Authority (24 million gallons), Aggreko 10 ASTs (52,000 gallons), Guam Waterworks Authority 123 ASTs (152,000 gallons), so forth and so forth. For an operation that has one 55-gallon drum and to be treated equally as those who have million-gallon facilities, is there equity in that?

Mr. Pereira: The 55-gallon drum containment for any product is just the basis for secondary containment, it is not for the \$100 permit. The permit is required for anyone who has 500 gallons capacity or an aggregate of 500 gallons, that is contained in your permit. That is the basis for the \$100. The 55-gallon is just a requirement for secondary containment. That is part of the initial interim regulation that I mentioned earlier.

Senator Espaldon: This will not give you the authority to inspect federal facilities. Andersen Air Force Base 243 ASTs (69 million gallons). I know Guam EPA has trouble accessing the bases just to look at other issues. Does it or does it not allow you to inspect those facilities?

Mr. Pereira: I am currently in communication with US EPA regarding the ability for Guam EPA to go into federal facilities. One of the information I got back was that we could go in through Executive Order 12088. We are looking into that issue right now, so once we find out from them we will get back to you on that information.

Mr. Leon Guerrero: You are correct in making that statement. In my multi-years in this agency, during different times, with the different JAGS at DOD, we've had sometimes where DOD has taken stance that they will only listen to Guam EPA when we have primacy. At this time, it is not like that maybe because they are doing the military buildup. We are getting more cooperation with DOD at this time. That maybe something that we can add on, I don't know what our state/territory laws can help in oversight with DOD. I would leave that for you guys to tell me if we could do that as the legislature. But that is defiantly something I think the legislature should look into. How to make DOD follow all of our local laws? You've hit something very specific and very true. When they don't want to, they only follow what the federal government says is ours to oversee.

Chairperson Ada: Does Guam EPA go on base to do any kind of inspection on storage tank related issues?

Mr. Pereira: We do the underground storage tank and we are authorized to go in and inspect their facility.

Chairperson Ada: As an agent of US EPA the authority comes from federal regulations? Is that the basis for you being able to get in there?

Mr. Pereira: Yes

Chairperson Ada: Even if this bill was passed, this won't give you any kind of authorization to go on base?

Mr. Pereira: Not right now, but I am in communication with US EPA. The person I am talking to is a lawyer at Region 9 and she is in communication with the headquarters, to determine what authority can we get to do this. In addition to that, I've also reached out with the various states to find out what authority they are using to go into their federal facilities in their state. I am waiting for some responses from those states.

Senator Espaldon: The way the AST is defined in this legislation, that would include the pipe fuel and according to the data we have in front of us, the US Naval supply has 22 miles from Sasa Valley to Andersen Air Force Base. Can we interpret that to mean that it is really federal property?

Mr. Leon Guerrero: The pipeline is their property, but we can oversee it because it is outside the fence. There is one thing I want to add to that, most pipeline are under the jurisdiction of US DOT. The territories through DOI have been excluded from US DOT regulations. Our pipeline, even though many consider it small, doesn't have US DOT pipeline regulations overseeing it. That's why we initiated under the water quality, those interim regulations because the pipeline. That is one of those things that doesn't have any regulations on Guam without that. This will also strengthen our ability to oversee the pipeline that does run through Guam.

Senator Espaldon: The Guam Power Authority is proposing to put new generators up in the mall area, I would imagine that would require a pipeline. I think that is built in by using that pipeline. This still remains under your purview with or without this legislation.

Mr. Pereira: Under our underground storage regulations, we can probably enforce and release from those pipelines. There are certain requirements that we have to calculate, if the source is so much and the static pressure in the pipeline with the fuel, we can regulate that under a different regulation.

Chairperson Ada adjourned the public hearing on Bill No. 236-34 (COR).

Written Testimonies:

Garet Olivares, Director, Mobil Oil Guam Inc.

Steven Carrara, General Counsel, IP&E

Walter Leon Guerrero, Administrator, Guam Environmental Protection Agency

Jay B. Jones, President, Guam Automobile Dealers Association

Philippe Gerling, General Manager, Nissan Motor Corp. in Guam

III. FINDINGS AND RECOMMENDATION

The Committee on Environment, Land, Agriculture and Procurement Reform finds that the following opinions have come about during the public hearing and have been responded to by Guam EPA:

- Mobil Oil Guam – Urge the Committee to wait for the EPA’s guidance on how best to comprehensively address these areas. The bill requires compliance from its effective date, yet regulations have not yet been developed. The bill does not provide sample time for companies to comply with certain standards and requires major investment and endeavor. Guam EPA responded that Mobil Oil Guam should not have issues with compliance challenges as they are currently and should be following the SPPC rule as mandated by EPA Region 9.
- IP&E - Assessing a permitting fee or requiring individual secondary containment on a per drum basis would dramatically and unnecessarily increase costs for both the end user and supplier to the point of making lubricant distribution impracticable. Lubricants are not classified as hazardous goods by either the US. EPA or US DOT and should not be defined as such locally. Guam EPA responded, the definition of Petroleum-based Liquid Fuels does not state “hazardous material”, for the purpose of this Bill 236-34 (COR).
- Guam Automobile Dealers Association - Classifying a 55-gallon drum in the same way as a tank that holds hundreds or even thousands of gallons creates a burden of expense and manpower in our industry that far outweighs the potential benefit. Guam EPA cited Guam Water Quality Standards §51104 (H)(1) Petroleum Storage Facilities states “Any facility storing fifty-five (55) gallons or more of petroleum products or hazardous materials in any single above-ground container shall be provided with secondary containment to protect Guam’s groundwater resources and navigable waters from potential threat from oil or hazardous materials discharges.” Guam EPA also cited 40 CFR §112.1(d)(2)(ii), the aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For purposes of this exemption, only containers of oil with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes the capacity of a container that is “permanently closed,” as defined in § 112.2.
- Nissan Motor Corp, in Guam - The permit and insurance requirements contained in the proposed bill are a compounded tax burden that offers no benefit at all to wither Guam consumers or compliant operators. Guam EPA’s stricter regulations are burdensome, costly and unjustified.

The Committee on Environment, Land, Agriculture and Procurement Reform further finds that Bill No. 236-34 (COR) only implements 2 new requirements. The first is requiring a permit from Guam EPA, which would apply a fee for storage of 500 gallons or more. The second is the requirement of secondary containment for a single 55-gallon container or aggregate storing capacity of 500 gallons. These will be the only addition to the requirements. Other issues brought out during the public hearing are already required by US EPA SPPC. Regulations are already in place by SPPC but Bill No. 236-34 (COR) gives the authority to Guam EPA.

The Committee on Environment, Land, Agriculture and Procurement Reform, hereby reports out **Bill No. 236-34 (COR), As Amended by the Committee**, with the recommendation to REPORT OUT ONLY.

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

Bill No. *230-34(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

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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.

Senator Thomas C. Ada
Vice Chairperson

Speaker Benjamin J.F. Cruz,
Member

Vice Speaker Therese M. Terlaje,
Member

Senator Frank B. Aguan, Jr.,
Member

Senator Telena C. Nelson,
Member



Senator Dennis G. Rodriguez, Jr.,
Member

Senator Joe S. San Agustin,
Member

Senator Michael F.G. San Nicolas,
Member

Senator James V. Espaldon,
Member

Senator Mary C. Torres,
Member

COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR
SIKRITARIAN LIHESLATURAN GUAHAN
I MINA'TRENTAI KUATRO NA LIHESLATURAN GUAHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

PRE-REFERRAL CHECKLIST

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. — sponsor: Thomas C. Ada		
(A) Legal Bureau	<p>(1) One subject matter? [SR § 6.01(a), 2 GCA § 2108(a)] <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (Return to Prime Sponsor)</p> <p>(2) Conform to Standing Rules as to form and style? [SR §§ 6.02(b) and (d), 6.03(d)] <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (Return to Prime Sponsor)</p>	<p>Notice to Legal Bureau: <u>Wed. 1-31-18 @ 9:53 a.m.</u></p> <p>Completed by Legal Bureau: <u>Thurs. 2-8-18 @ 2:06 p.m.</u></p>
(B) Office of Finance & Budget (OFB)	<p>(1) Does the Bill contain appropriations or authorizations for appropriations from any fund sources? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>(2) Does the Bill contain an authorization to expend government funds? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A</p> <p>(3) Does the Bill contain provisions that have <u>potential</u> fiscal impacts on the government of Guam budget? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A</p>	<p>Notice to OFB: <u>Wed. 1-31-18 @ 9:53 a.m.</u></p> <p>Completed by OFB: <u>Tues. February 6, 2018 @ 2:49 pm</u></p>
COR Action	<p>Is the fiscal impact revenue negative to the government of Guam budget? <input checked="" type="checkbox"/> YES (Refer to Committee on Appropriations) <input type="checkbox"/> NO <input type="checkbox"/> N/A</p>	<p>Completed by: <u>[Signature] 2-8-18 @ 2:30 pm</u></p>

PRE-REFERRAL CHECKLIST

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. – sponsor: Thomas C. Ada		
(C) DEBT		
(1) SR § 6.01 (b)(1)(A) Land, Infrastructure, Building Projects, Capital Improvement Projects	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> YES <input type="checkbox"/> NO (Return to Prime Sponsor)	Received by: (Signature, Date & Time) 2-8-18 @ 2:30pm.
(2) SR § 6.01 (b)(1)(B) Refinancing of existing debt (not less than 2%)	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> YES <input type="checkbox"/> NO (Return to Prime Sponsor)	Completed by: (Signature, Date & Time) 2-8-18 @ 2:30pm.
(3) SR § 6.01 (b)(2) Authorize public debt to fund operations of agency, instrumentality, public corporation	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> YES (Return to Prime Sponsor) <input type="checkbox"/> NO <input type="checkbox"/> Waived (per official state of emergency, as attached)	2-8-18 @ 2:30pm.
COR Action	<input type="checkbox"/> Return to Prime Sponsor <input checked="" type="checkbox"/> Refer to: Cmte on Appropriations and Adjudication (BJFC); Subseq. referral to Cmte on Health (DHR).	Date & Time: 2-8-18 @ 2:30pm.
For COR Office Use Only	Pursuant to COR decision (COR Meeting, April 3, 2017): Completed within five (5) working days? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Initial: 2-8-18 @ 2:30pm. If NO: Provide letter of explanation (see attached).

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

**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 one hundred fifty million (150,000,000) 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.

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

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

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

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

21 **“CHAPTER 76A**

22 **ABOVEGROUND STORAGE OF REGULATED SUBSTANCES**

23 § 76A101. Title.

24 § 76A102. Statement of Purpose.

25 § 76A103. Definitions.

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

27 § 76A105. Notification Requirement.

1 § 76A106. Tank Standards.

2 § 76A107. Secondary Containment System – Release Prevention and
3 Release Detection Standards.

4 § 76A108. Delivery Prohibition Requirements.

5 § 76A109. Operator Training.

6 § 76A110. Leak Detection and Record Maintenance.

7 § 76A111. Public Participation.

8 § 76A112. Notification and Reporting Requirements on Releases.

9 § 76A113. Corrective Action.

10 § 76A114. Aboveground Storage Tank Management Fund.

11 § 76A115. Financial Responsibility.

12 § 76A116. Closure.

13 § 76A117. Permit Requirements.

14 § 76A118. Inspection and Entry.

15 § 76A119. Confidentiality of Records.

16 § 76A120. Notice.

17 § 76A121. Hearings.

18 § 76A122. Injunction.

19 § 76A123. Applicability to Government Agencies.

20 § 76A124. Penalties.

21 § 76A125. RESERVED.

22 § 76A126. RESERVED.

23 § 76A127. RESERVED.

24 **§ 76A101. Title.**

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

27 **§ 76A102. Statement of Purpose.**

1 The purpose of this Chapter is to:

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

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

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

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

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

17 **§ 76A103. Definitions.**

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

25 (b) *Administrator* means the Administrator of the Guam
26 Environmental Protection Agency.

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

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

5 (e) Board means the Board of Directors of the Guam
6 Environmental Protection Agency.

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

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

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

15 (i) Facility means any mobile or fixed, onshore or offshore
16 building, property, parcel, lease, structure, installation, equipment, pipe, or
17 pipeline (other than a vessel or a public vessel) used in oil well drilling
18 operations, oil production, oil refining, oil storage, oil gathering, oil
19 processing, oil transfer, oil distribution, oil waste treatment, or in which oil
20 is used. The boundaries of a facility depend on several site-specific factors,
21 including, but not limited to, the ownership or operation of buildings,
22 structures, and equipment on the same site, and types of activity at the site.
23 Contiguous or non-contiguous buildings, properties, parcels, leases,
24 structures, installations, pipes, or pipelines under the ownership or operation
25 of the same person may be considered separate facilities.

1 (j) Gathering Lines means any pipelines, equipment, facility, or
2 building used in the transportation of oil or gas during oil or gas production
3 or gathering operations.

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

6 (l) Hazardous Substance Aboveground Storage Tank or Hazardous
7 Substance Aboveground Storage Tank System means an AST or tank system
8 that contains a hazardous substance, as defined in Section 101(14) of
9 CERCLA, but not including any substance regulated as a hazardous waste
10 under Subtitle C of the federal Resource Conservation and Recovery Act
11 (RCRA), as amended, or any mixture of such substances and petroleum, and
12 which is not a petroleum AST or tank system.

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

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

16 (o) Inter-terminal Pipelines means pipelines that cross public and
17 private properties, streets, highways, railroads and utility rights-of-way and
18 connect installations.

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

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

25 (r) Non-transportation-related Facility means a facility that stores,
26 processes, refines, uses, or consumes oil; a facility that is not exclusively
27 covered by the Department of Interior (DOI) or Department of

1 Transportation (DOT) and can reasonably be expected to discharge oil in
2 quantities that may be harmful into or upon the navigable waters of the U.S.
3 or adjoining shorelines.

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

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

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

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

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

15 (x) Person means an individual, trust, firm, corporation,
16 partnership, consortium, joint venture, joint stock company, political
17 subdivision of a state, any interstate body, commercial entity, association, or
18 agency, department, instrumentality of the federal government or the
19 government of Guam, including autonomous agencies, or any other legal
20 entity.

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

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

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

26 (2) automotive and other petroleum-based internal
27 combustion engine fuels;

1 (3) fuel oils and distillates fuels (turbine, boiler, and other
2 types);

3 (4) heating oil and distillates;

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

5 (6) gasoline and other fuel blending stocks;

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

8 (8) petroleum distillates;

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

11 (10) petroleum solvents;

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

14 (12) hydrocarbon liquids

15 (A) naphthas and naphthalenes of all types;

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

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

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

19 (16) petroleum extender oils; and

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

21 (aa) Petroleum Marketing Facilities means all facilities at which
22 petroleum is produced or refined, and all facilities from which petroleum is
23 sold or transferred to other petroleum marketers or to the public.

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

1 (cc) Pipeline Facility (including gathering lines) means new and
2 existing pipe rights-of-ways, and any associated equipment, facilities, or
3 buildings.

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

14 (ee) Regulated Substance means any element, compound, mixture,
15 solution, or substance that, when released into the environment, may create
16 substantial danger to the public health, welfare, or the environment. They
17 include:

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

21 (2) petroleum-based liquid fuels;

22 (3) any grade of gasohol, ethanol, or bio-diesel; and

23 (4) any other substance as designated by the Administrator.

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

1 (gg) Secondary Containment means a component of a secondary
2 containment system, and means an AST and its piping having inner and
3 outer barriers.

4 (hh) Tank means an aboveground storage tank (AST).

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

9 **§ 76A104. Power and Duties of the Administrator.**

10 The Administrator shall:

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

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

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

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

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

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

1 (1) administrative penalty orders;
2 (2) requiring corrective actions as may be necessary or
3 appropriate to this Chapter; and
4 (3) commencing civil actions in the Superior Court of Guam,
5 including actions for a temporary or permanent injunction as needed,
6 to enforce this Chapter;
7 (g) establish an effective enforcement system (that includes, at a
8 minimum, a field citation program) for the prevention, control and
9 abatement of AST pollution, including specific conditions under the permit
10 requirements, and delivery prohibition of product to ineligible ASTs, and
11 through all appropriate administrative and judicial courses of action;
12 (h) establish a delivery prohibition program that describes, at a
13 minimum, the criteria and mechanism for prohibiting the delivery, deposit,
14 and acceptance of product to any AST system;
15 (i) develop and establish training program requirements in
16 cooperation with AST owners and operators set forth in this Chapter and
17 rules and regulations promulgated pursuant to this Chapter;
18 (j) issue, continue in effect, modify, revoke, reissue, or deny
19 permits;
20 (k) ensure that all permit holders comply with applicable
21 requirements mandated by federal and Guam statutes and rules;
22 (l) establish, accept, receive, and administer grants and other funds
23 or fees from public and private agencies, including the federal government,
24 for carrying out any purpose of this Chapter; and
25 (m) recover costs associated with Agency personnel responding to
26 AST releases, to include, but not limited to, labor hours (overtime),
27 materials, and other expenses.

1 **§ 76A105. Notification Requirement.**

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

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

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

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

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

21 (f) The notice required by this Section shall be made on forms
22 prescribed by the Agency.

23 **§ 76A106. Tank Standards.**

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

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

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

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

6 **§ 76A107. Secondary Containment System - Release Prevention and**
7 **Release Detection Standards.**

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

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

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

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

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

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

25 (d) The Administrator shall require that each existing, new, or
26 replaced AST and piping have a secondary containment system, and be
27 monitored for leaks.

1 **§ 76A108. Delivery Prohibition Requirements.**

2 (a) The Administrator *shall* develop and implement a delivery
3 prohibition program with processes and procedures that meet the
4 requirements set forth in this Chapter and rules and regulations promulgated
5 pursuant to this Chapter.

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

9 **§ 76A109. Operator Training.**

10 The Administrator shall develop and administer an operator training
11 program with processes and procedures that meet the requirements set forth
12 in this Chapter and rules and regulations promulgated pursuant to this
13 Chapter.

14 **§ 76A110. Leak Detection and Record Maintenance.**

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

18 (b) The owner or operator shall maintain systematic and complete
19 records to demonstrate compliance as set forth in this Chapter and rules and
20 regulations promulgated pursuant to this Chapter.

21 **§ 76A111. Public Participation.**

22 (a) Upon timely application, any person whose interests may be
23 adversely affected by a release or threatened from an AST system shall be
24 allowed to intervene as a right in any civil action when the applicant claims
25 an interest relating to the property or transaction which is subject of the
26 action, and the applicant is so situated that the disposition of the action may

1 as a practical matter impair or impede the applicant's ability to protect that
2 interest.

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

8 **§ 76A112. Notification and Reporting Requirements on Releases.**

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

16 **§ 76A113. Corrective Action.**

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

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

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

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

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

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

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

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

20 **§ 76A114. Aboveground Storage Tank Management Fund.**

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

25 (a) All fees, reimbursements, assessments, fines, forfeitures, and
26 other funds collected or received pursuant to this Chapter, shall be deposited
27 in the AST Fund and shall not lapse at the end of the fiscal year, but shall

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

14 (b) The Administrator shall administer the AST Fund and make
15 disbursements from the Fund:

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

17 (2) to train Agency employees in the regulation of ASTs, and
18 the response to release of regulated substances from ASTs; or

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

24 **§ 76A115. Financial Responsibility.**

25 (a) All owners or operators of AST systems, within one hundred
26 eighty (180) days of the effective date of this Chapter, shall establish and
27 maintain evidence of financial responsibility, as provided for in this Section,

1 for taking corrective action and compensating third parties for bodily injury
2 and property damage caused by accidental releases arising from the
3 operation of aboveground storage tanks in at least the following per
4 occurrence amounts:

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

11 (2) For all other owners or operators of petroleum
12 aboveground storage tanks: Five Hundred Thousand Dollars
13 (\$500,000).

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

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

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

23 (3) For owners or operators of ten (10) or more tanks, an
24 annual aggregate amount of at least Two Million Dollars
25 (\$2,000,000), or such other higher aggregate amount as set forth in
26 regulations promulgated by the Administrator.

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

4 (1) commercial or private insurance, including risk retention
5 group;

6 (2) qualification as a self-insurer;

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

8 (4) any other reasonable and economically practicable
9 means.

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

13 (1) are valid and enforceable;

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

16 (3) do not permit cancellation without the Administrator's
17 approval;

18 (4) shall only be directly used for corrective action and third
19 party liability costs; and

20 (5) require the provider to notify the owner or operator and the
21 Administrator of any circumstances that would impair or suspend
22 coverage.

23 (e) Surety bonds shall be payable to the Guam Environmental
24 Protection Agency, to include costs and expenses of the cleanup of any
25 release, as well as damages incurred by the government, consistent with the
26 provisions of this Chapter. Any bond filed with the Agency must be issued
27 by a bonding company authorized to do business within Guam. The Agency

1 is authorized to establish a special account, escrow, standby trust, or other
2 trust or account mechanism into which funds established as financial
3 assurance may be deposited when needed. Notwithstanding any other
4 provision of law, the Administrator may retain and use such amounts for the
5 purposes for which the financial assurance was established.

6 (f) To qualify as a self-insurer, the AST system owner or operator
7 shall:

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

10 (A) the total of the aggregate amount required in
11 Subsection (b) of this Section;

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

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

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

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

1 “guarantor” means any person, other than the owner or operator, who
2 provides evidence of financial responsibility for an owner or operator
3 pursuant to this Section.

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

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

14 **§ 76A116. Closure.**

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

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

25 (c) The Agency shall cause the owner of any previously-approved
26 AST, which is discovered to have been improperly abandoned in-place, to
27 remove the improperly abandoned AST and any soil and/or groundwater

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

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

19 **§ 76A117. Permit Requirements.**

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

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

1 the permit fee, and *shall* go into effect sixty (60) calendar days after
2 enactment of 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
6 he/she holds, upon forms provided by the Administrator, *not less than* sixty
7 (60) 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
7 representative has access to under this Section would divulge information
8 entitled to protection under Guam's Sunshine Reform Act of 1999, the
9 Agency shall consider the information or particular portion thereof to be
10 confidential. No confidential information secured pursuant to this Section by
11 any official or employee of the Agency within the scope of and of the
12 official's or employee's employment in the prevention, control, or abatement
13 of releases from aboveground storage tanks or tank systems, shall be
14 disclosed by the official or employee with following exceptions: the
15 document or information may be disclosed to officers, employees, or
16 authorized representatives of Guam or of the United States, including county
17 government entities, who have been charged with carrying out this Chapter,
18 or when relevant in any proceeding under this Chapter. Where such
19 information constitutes confidential business information under federal or
20 local law, it shall be 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
26 agent, 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
4 after receipt thereof, file with the Board a notice of intent to appeal and a
5 verified 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)
14 calendar days after the hearing. Said notice shall be in writing and shall state
15 the reasons for the decision.

16 (e) Any person may appeal such decision by filing a verified
17 petition in the Superior Court of Guam within ten (10) calendar days after
18 he/she receives the notice required by Subsection (d) of this Section. The
19 petitioner 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
2 this Chapter.

3 **§ 76A124. Penalties.**

4 (a) A person who violates any provisions of this Chapter, or rules
5 or regulations promulgated pursuant to this Chapter, or who refuses or
6 neglects to comply with an order issued by the Administrator to require
7 compliance with this Chapter, shall be guilty of a civil violation and shall be
8 subject to a penalty of up to Twenty-five Thousand Dollars (\$25,000) for
9 each tank for 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
12 action 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
24 penalty of up to Twenty-five Thousand Dollars (\$25,000) for every day the
25 person 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
27 of 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
15 invalidity shall not affect other provisions or applications of this Act that can be
16 given effect without the invalid provision or application, and to this end the
17 provisions of this Act are severable.

COMMITTEE MARKUP

I MINA'TRENTAI KUATTRO 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

**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 one
hundred fifty million (150,000,000) 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.

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

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

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

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

CHAPTER 76A

ABOVEGROUND STORAGE OF REGULATED SUBSTANCES

23 § 76A101. Title.

24 § 76A102. Statement of Purpose.

25 § 76A103. Definitions.

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

27 § 76A105. Notification Requirement.

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§ 76A106. Tank Standards.

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

§ 76A108. Delivery Prohibition Requirements.

§ 76A109. Operator Training.

§ 76A110. Leak Detection and Record Maintenance.

§ 76A111. Public Participation.

§ 76A112. Notification and Reporting Requirements on Releases.

§ 76A113. Corrective Action.

§ 76A114. Aboveground Storage Tank Management Fund.

§ 76A115. Financial Responsibility.

§ 76A116. Closure.

§ 76A117. Permit Requirements.

§ 76A118. Inspection and Entry.

§ 76A119. Confidentiality of Records.

§ 76A120. Notice.

§ 76A121. Hearings.

§ 76A122. Injunction.

§ 76A123. Applicability to Government Agencies.

§ 76A124. Penalties.

§ 76A125. RESERVED.

§ 76A126. RESERVED.

§ 76A127. RESERVED.

§ 76A101. Title.

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

§ 76A102. Statement of Purpose.

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COMMITTEE MARKUP

The purpose of this Chapter is to:

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

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

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

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

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

§ 76A103. Definitions.

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

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

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

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

5 (e) Board means the Board of Directors of the Guam Environmental
6 Protection Agency.

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

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

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

14 (i) Facility means any mobile or fixed, onshore or offshore building,
15 property, parcel, lease, structure, installation, equipment, pipe, or pipeline
16 (other than a vessel or a public vessel) used in oil well drilling operations, oil
17 production, oil refining, oil storage, oil gathering, oil processing, oil transfer,
18 oil distribution, oil waste treatment, or in which oil is used. The boundaries of
19 a facility depend on several site-specific factors, including, but not limited to,
20 the ownership or operation of buildings, structures, and equipment on the
21 same site, and types of activity at the site. Contiguous or non-contiguous
22 buildings, properties, parcels, leases, structures, installations, pipes, or
23 pipelines under the ownership or operation of the same person may be
24 considered separate facilities.

25 (j) Gathering Lines means any pipelines, equipment, facility, or
26 building used in the transportation of oil or gas during oil or gas production
27 or gathering operations.

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

3 (l) Hazardous Substance Aboveground Storage Tank or Hazardous
4 Substance Aboveground Storage Tank System means an AST or tank system
5 that contains a hazardous substance, as defined in Section 101(14) of
6 CERCLA, but not including any substance regulated as a hazardous waste
7 under Subtitle C of the federal Resource Conservation and Recovery Act
8 (RCRA), as amended, or any mixture of such substances and petroleum, and
9 which is not a petroleum AST or tank system.

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

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

13 (o) Inter-terminal Pipelines means pipelines that cross public and
14 private properties, streets, highways, railroads and utility rights-of-way and
15 connect installations.

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

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

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

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

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

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

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

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

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

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

(z) Petroleum-based Liquid Fuels shall mean:

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

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

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

(4) heating oil and distillates;

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

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- (6) gasoline and other fuel blending stocks;
- (7) petroleum-based lubricating, tapping, seal, penetrating machining, and road oils and greases (including waste oil);
- (8) petroleum distillates;
- (9) petroleum or petroleum-distillate based additives (including fuel oil, ink and paint additives);
- (10) petroleum solvents;
- (11) petroleum spirits (e.g., mineral spirits, Stoddard solvent, paint thinners, etc.);
- (12) hydrocarbon liquids
- (A) naphthas and naphthalenes of all types;
- (13) olefins, alkanes, alkylates, aromatics;
- (14) petroleum-based inks and ink extenders;
- (15) oil-based paints, coatings, thinners and solvents;
- (16) petroleum extender oils; and
- (17) mineral oils (derived from petroleum).
- (aa) *Petroleum Marketing Facilities* means all facilities at which petroleum is produced or refined, and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.
- (bb) *Pipe or Piping* means a hollow cylinder or the tubular conduit constructed of non-earthen materials. Pipe or Piping includes elbows, couplings, unions, valves, or other inline fixtures that contain and convey regulated substances from an AST to a dispenser.
- (cc) *Pipeline Facility* (including gathering lines) means new and existing pipe rights-of-ways, and any associated equipment, facilities, or buildings.

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

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

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

(2) petroleum-based liquid fuels;

(3) any grade of gasohol, ethanol, or bio-diesel; and

(4) any other substance as designated by the Administrator.

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

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

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

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

§ 76A104. Power and Duties of the Administrator.

The Administrator *shall*:

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

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

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

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

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

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

(1) administrative penalty orders;

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

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

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

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

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

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

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

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

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

§ 76A105. Notification Requirement.

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COMMITTEE MARKUP

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

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

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

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

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

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

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§ 76A106. Tank Standards.

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

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

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

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

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

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

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

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

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

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

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

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

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§ 76A108. Delivery Prohibition Requirements.

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(a) The Administrator shall develop and implement a delivery prohibition program with processes and procedures that meet the requirements

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1 set forth in this Chapter and rules and regulations promulgated pursuant to this
2 Chapter.

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

6 **§ 76A109. Operator Training.**

7 The Administrator *shall* develop and administer an operator training
8 program with processes and procedures that meet the requirements set forth
9 in this Chapter and rules and regulations promulgated pursuant to this
10 Chapter.

11 **§ 76A110. Leak Detection and Record Maintenance.**

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

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

18 **§ 76A111. Public Participation.**

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

25 (b) Any person may maintain an action for declaratory and equitable
26 relief to restrain any violation of this Chapter. On a prima facie showing of a
27 violation of this Chapter, a preliminary injunction *shall* be issued to restrain

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1 any further violation of the Chapter. No bond is required for an action under
2 this Subsection.

3 **§ 76A112. Notification and Reporting Requirements on Releases.**

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

11 **§ 76A113. Corrective Action.**

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

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

- 21 (1) identify the existence and extent of the release;
22 (2) identify the source and nature of the regulated substance
23 involved;
24 (3) evaluate the extent of the danger to human health, safety,
25 welfare, and the environment; and
26 (4) develop and implement a corrective action plan.

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

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

15 **§ 76A114. Aboveground Storage Tank Management Fund.**

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

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

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

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

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

12 (2) to train Agency employees in the regulation of ASTs, and
13 the response to release of regulated substances from ASTs; or

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

18 **§ 76A115. Financial Responsibility.**

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

26 (1) For all owners or operators of petroleum aboveground
27 storage tanks that are located at petroleum marketing facilities, or that

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1 own or operate five (5) or more tanks, or that handle an average of more
2 than ten thousand (10,000) gallons of petroleum per month based on
3 annual throughput for the previous calendar year: Two Million Dollars
4 (\$2,000,000).

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5 (2) For all other owners or operators of petroleum
6 aboveground storage tanks: Five Hundred Thousand Dollars
7 (\$500,000).

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

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

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

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

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

24 (1) commercial or private insurance, including risk retention
25 group;

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26 (2) qualification as a self-insurer;

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

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(4) any other reasonable and economically practicable means.

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

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(1) are valid and enforceable;

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(2) are issued by a provider that is qualified or licensed in

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Guam;

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

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

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

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(e) Surety bonds shall be payable to the Guam Environmental Protection Agency, to include costs and expenses of the cleanup of any release, as well as damages incurred by the government, consistent with the provisions of this Chapter. Any bond filed with the Agency must be issued by a bonding company authorized to do business within Guam. The Agency is authorized to establish a special account, escrow, standby trust, or other trust or account mechanism into which funds established as financial assurance may be deposited when needed. Notwithstanding any other provision of law, the Administrator may retain and use such amounts for the purposes for which the financial assurance was established.

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

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

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

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

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

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

(g) The total liability of any guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to the AST system owner or operator under this Section. Nothing in this Subsection may be construed to limit any other territorial or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantors for bad faith either in negotiating or in failing to negotiate the settlement of any claim. For the purposes of this Subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to this Section.

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

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

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§ 76A116. Closure.

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

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

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(c) The Agency shall cause the owner of any previously-approved AST, which is discovered to have been improperly abandoned in-place, to remove the improperly abandoned AST and any soil and/or groundwater contamination found to be caused by a release from the AST; and shall be mitigated by the owner as soon as reasonably possible, but not to exceed one eighty (180) calendar days, or as may be deemed reasonable by the Administrator. This shall not apply to any ASTs that previously received written approval to be abandoned in-place, and were properly abandoned in-place.

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(d) Any AST discovered to have been abandoned in-place without written approval from the Agency shall be removed as soon as reasonably possible, but not to exceed one hundred eighty (180) calendar days, or for a

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longer time as may be deemed reasonable by the Administrator, and any soil and/or groundwater contamination found to be caused by a release from the AST *shall* be mitigated as soon as reasonably possible. If ownership of the AST is unknown, uncertain, and disputed, the current owner of the land where the AST has been found *shall* be responsible for removal of the AST and required mitigation. Nothing herein, however, shall prohibit the owner of such land from pursuing any remedies available in equity or at law against the party which previously owned and abandoned in-place the AST in question if such party is subsequently identified.

§ 76A117. Permit Requirements.

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

For the purpose of this Chapter and until such rules and regulations describing the AST Fee Schedule has been adopted, an interim annual permit fee of ~~One Hundred Dollars (\$100.00)~~ per tank *shall* be established as the permit fee, and *shall* go into effect sixty (60) calendar days after enactment of this Chapter.

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

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

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

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1 **§ 76A118. Inspection and Entry.**

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

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

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

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

13 (d) inspecting and obtaining samples of regulated substances
14 contained in the ASTs; and

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

17 **§ 76A119. Confidentiality of Records.**

18 Reports and records submitted to the Agency by any person on the
19 ownership, installation, or operation of aboveground storage tanks or tank
20 systems shall be made available for inspection by the public during
21 established office hours, except as provided in this Section. Upon a showing
22 satisfactory to the Agency that public disclosure of records, reports, or
23 information, or a particular part thereof, to which the Agency's representative
24 has access to under this Section would divulge information entitled to
25 protection under Guam's Sunshine Reform Act of 1999, the Agency shall
26 consider the information or particular portion thereof to be confidential. No
27 confidential information secured pursuant to this Section by any official or

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1 employee of the Agency within the scope of and of the official's or
2 employee's employment in the prevention, control, or abatement of releases
3 from aboveground storage tanks or tank systems, *shall* be disclosed by the
4 official or employee with following exceptions: the document or information
5 may be disclosed to officers, employees, or authorized representatives of
6 Guam or of the United States, including county government entities, who have
7 been charged with carrying out this Chapter, or when relevant in any
8 proceeding under this Chapter. Where such information constitutes
9 confidential business information under federal or local law, it *shall* be
10 submitted as such to federal or local entities.

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11 **§ 76A120. Notice.**

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

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17 **§ 76A121. Hearings.**

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

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

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

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

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

§ 76A122. Injunction.

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

§ 76A123. Applicability to Government Agencies.

All agencies of the government of Guam and of the government of the United States *shall* comply with all provisions of this Chapter, including permit requirements, with the exception of §§ 76A115 and 76A117(d) of this Chapter.

§ 76A124. Penalties.

(a) A person who violates any provisions of this Chapter, or rules or regulations promulgated pursuant to this Chapter, or who refuses or neglects to comply with an order issued by the Administrator to require compliance with this Chapter, *shall* be guilty of a civil violation and *shall* be subject to a

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1 penalty of up to Twenty-five Thousand Dollars (\$25,000) for each tank for
2 each day of each violation.

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

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

11 (d) Any person who denies, obstructs, or hampers the entrance,
12 inspection, or conduct or release response activity by a representative of the
13 Agency at any building, place, site, facility, vehicle, or structure that the
14 representative is authorized to enter or inspect, or who fails to provide
15 information requested by the Agency representative pursuant to § 76A118 of
16 this Chapter shall be guilty of a civil violation and shall be subject to a penalty
17 of up to Twenty-five Thousand Dollars (\$25,000) for every day the person
18 denies, obstructs or hinders the acquisition of, or fails to provide, the
19 information requested, as determined in a civil action in the Superior Court of
20 Guam.

21 (e) Each separate civil violation shall be subject to the following
22 penalties: for the first, second and third offense, the violator shall be subject
23 to a penalty of up to Twenty-five Thousand Dollars (\$25,000) per tank per
24 day for each separate violation. Second, third and fourth offenses are defined
25 as offenses within twelve (12) months from the first, second and third offenses
26 respectively. For any fourth violation of this Chapter, the violator shall be
27 guilty of a misdemeanor, and may be subject to imprisonment for up to twelve

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(12) months, and fined up to Twenty-five Thousand Dollars (\$25,000) per day
for each violation, or both.

§ 76A125. Reserved.

§ 76A126. Reserved.

§ 76A127. Reserved.”

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

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Senator Thomas C. Ada,
Vice Chairperson

Speaker Benjamin J.F. Cruz,
Member

Vice Speaker Therese M. Terlaje,
Member

Senator Frank B. Aguon, Jr.,
Member

Senator Telena C. Nelson,
Member



COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR

SIKRITARIAN LIHESLATURAN GUAHAN
I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÁHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

Senator Dennis G. Rodriguez, Jr.,
Member

Senator Joe S. San Agustin,
Member

Senator Michael F.Q. San Nicolas,
Member

Senator James V. Espaldon,
Member

Senator Mary Camacho Torres,
Member

February 23, 2018

MEMO

To: Rennae Meno
Clerk of the Legislature

From: Senator Régine Biscoe Lee
Chairperson, Committee on Rules

Re: Fiscal Notes

Buenas yan Háfa adai.

Attached, please find the fiscal notes for the following bills:

Bill No. 231-34 (LS)

Bill No. 236-34 (COR)

Bill No. 240-34 (COR)

Bill No. 245-34 (COR)

Please forward the same to Management Information Services (MIS) for posting on our website.

For any questions or concerns, please feel free to contact Jean Cordero, Committee on Rules Director, at 472-2461.

Thank you for your attention to this important matter.



**Bureau of Budget & Management Research
Fiscal Note of 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.

Department/Agency Appropriation Information	
Dept./Agency Affected: Guam Environmental Protection Agency	Dept./Agency Head: Walter Leon Guerrero, Administrator
Department's General Fund (GF) appropriation(s) to date:	-
Department's Other Fund (Specify) appropriation(s) to date: Guam Environmental Trust Fund, Tourist Attraction Fund, Pesticide Management Fund, Solid Waste Operations Fund, Water Protection Fund, Water Research and Development Fund, Air Pollution Control Fund, and Recycling Revolving Fund	4,287,344
Total Department/Agency Appropriation(s) to date:	\$4,287,344

Fund Source Information of Proposed Appropriation			
	General Fund:	(Specify Special Fund):	Total:
FY 2017 Unreserved Fund Balance		\$0	\$0
FY 2018 Adopted Revenues	\$0	\$0	\$0
FY 2018 Appro. (P.L. 34-42 thru)	\$0	\$0	\$0
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
Total:	\$0	\$0	\$0

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2018 (if applicable)	FY 2019	FY 2020	FY 2021	FY 2022
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Aboveground Storage Tank Management Fund I/	\$264,095	\$132,048	\$214,095	\$206,913	\$206,913	\$206,913
Total	\$264,095	\$132,048	\$214,095	\$206,913	\$206,913	\$206,913

- | | | | |
|---|----------|-------------------|-----------------|
| 1. Does the bill contain "revenue generating" provisions?
If Yes, see attachment | | /X/ Yes | // No |
| 2. Is amount appropriated adequate to fund the intent of the appropriation?
If no, what is the additional amount required? \$ _____ | /X/ N/A | // Yes | // No |
| 3. Does the Bill establish a new program/agency?
If yes, will the program duplicate existing programs/agencies?
Is there a federal mandate to establish the program/agency? | // N/A | /X/ Yes
// Yes | // No
/X/ No |
| 4. Will the enactment of this Bill require new physical facilities? | | // Yes | /X/ No |
| 5. Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason:
// Requested agency comments not received by due date | / Other: | /X/ Yes | // No |

Analyst: <u>Jared N.C. Perez</u> Date: <u>2/19/18</u> Jared Perez, Budget and Management Analyst	Director: <u>Lester L. Carlson, Jr.</u> Date: <u>FEB 23 2018</u> Lester L. Carlson, Jr., Acting Director
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Footnotes:

I/ See attached comments for details.

Bureau of Budget & Management Research
Attachment to Fiscal Note No. 236-34 (COR)
(for revenue generating provisions)

Projected Multi-Year Revenues					
	Year 1	Year 2	Year 3	Year 4	Year 5
General Fund	\$0	\$0	\$0	\$0	\$0
Aboveground Storage Tank Management Fund 1/	<u>\$250,000</u>	<u>\$250,000</u>	<u>\$250,000</u>	<u>\$250,000</u>	\$250,000
Total	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000

Comments:

1/ See attached comments for details.

Comments on Bill No. 236-34 (COR)

The intent of Bill 236-34 (COR) is to establish a program to provide requirements for "aboveground storage tank systems and interterminal pipelines that store regulated substances in order to minimize the occurrence and environmental risks of releases and discharges to groundwater, surface water, and/or soils." The Bill mandates the Administrator of the Guam Environmental Protection Agency (GEPA) to develop and administer a program for aboveground storage tanks. It also sets up some initial regulations and fees along with a new Aboveground Storage Tank (AST) Management Fund.

The AST Management Fund would be a new non-lapsing Special Revolving Fund that shall be maintained separate and apart from any other funds of the Government of Guam. All fees, fines, forfeitures, and other funds collected as a result of this program will be deposited in the AST Fund. All monies in the AST Fund are appropriated to the GEPA for the administration of the AST program.

Should Bill 236-34 (COR) be enacted, the GEPA provides the following potential costs associated with the first year of the program.

Table 1: First Year Program Cost Breakdown

Staffing	Estimated Cost	Notes
Environmental Health Specialist III	\$65,782	Grade N, new hire
Environmental Health Specialist II	\$60,630	Grade M, onboard with a federal program
Program Supervisor	\$19,990	Partially funded
Division Administrator	\$11,093	Partially funded
Total Staffing	\$157,495	

Operations	Estimated Cost	Notes
Travel	\$5,000	National Institute for Storage Tank Management Training/Conference
Contracts	\$42,600	Certifications and Training
Equipment	\$10,000	2 Computers
Supplies	\$9,000	Cameras, printers, etc.
Capital Outlay	\$40,000	1 vehicle used for inspections
Total Operations	\$106,600	

Total Program Cost	\$264,095	Total without Equipment and Capital Outlay is \$214,095. (see below)
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All costs are to be funded under the proposed AST Management Fund. For operations, the costs for the vehicle and equipment are not anticipated to be incurred annually, but on an as needed basis. Travel for certifications and contracts are required annually. As far as staffing, the cost of the Program Supervisor and Division Administrator are partially funded due to the current incumbents of the positions being used for Federal Government programs, and as a result being paid through Federal Government funding. The amount of cost associated to the AST Management Fund anticipates the amount of time spent on this local program. The

amount of \$132,048 (half of the costs in Table 1) is the estimated cost for the remainder of FY 2018, and then \$214,095 annually. The projected costs associated with this program are similar to other GEPA programs.

The Bill also sets up an initial permit fee of \$100 annually as well as fines up to \$25,000 for each tank for each day of each violation. The fee and fines, along with all initial regulations set up in this Bill, are subject to change pending the plan developed by the GEPA. The GEPA estimates 500 ASTs in Guam. This number will be used to project annual permit fees. The GEPA did not project any violations, however, for the purpose of this fiscal note the maximum fine of \$25,000 on two tanks for four days every year will be assumed. The number of violations and the length is simply based on a number that is determined to be reasonable. See the calculations below:

- $500 \text{ (assumed AST facilities in Guam)} \times \$100 \text{ (proposed permit fee)} = \$50,000 \text{ (total estimated fees)}$
- $2 \text{ (assumed ASTs in violation)} \times \$25,000 \text{ (proposed initial fine)} = \$50,000 \text{ (total per day of violation)} \times 4 \text{ (assumed days for each violation)} = \$200,000 \text{ (projected violation fees)}$
- $\$50,000 \text{ (total estimated fees)} + \$200,000 \text{ (total estimated fines)} = \$250,000 \text{ (total projected revenue)}$

It should be noted that the timing of this funding is highly dependent on the actual collection of fees and fines, as a result, it is difficult to determine when the fund will fully cover program costs.

Senator Thomas C. Ada,
Vice Chairperson

Acting Speaker Therese M. Terlaje,
Member

Senator Frank B. Aguon, Jr.,
Member

Senator Telena C. Nelson,
Member



Senator Dennis G. Rodriguez, Jr.,
Member

Senator Joe S. San Agustin,
Member

Senator Michael F.Q. San Nicolas,
Member

Senator James V. Espaldon,
Member

Senator Mary Camacho Torres,
Member

COMMITTEE ON RULES
SENATOR RÉGINE BISCOE LEE, CHAIR

SIKRITARIAN LIHESLATURAN GUÅHAN

IMINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN

LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

COMMITTEE REPORT CHECKLIST

Part 1 / 1

BILL NO. 236-34 (COR)

As amended by the Committee on Environment, Land, Agriculture, and Procurement Reform.
AN ACT TO ADD A NEW CHAPTER 76A TO DIVISION 3 OF TITLE 10, GUAM CODE ANNOTATED,
RELATIVE TO ABOVEGROUND STORAGE OF REGULATED SUBSTANCES.

Introduced by: Thomas C. Ada

RE-REFERRED TO:

Senator Thomas C. Ada

Committee on Environment, Land, Agriculture, and Procurement Reform

**(A) FISCAL NOTE or
WAIVER**

(1) Requested by COR

☒ YES ☐ NO

Date & Time:

Fri., February 9, 2018 @ 11:06 a.m.

(2) Received by COR

☒ YES ☐ NO

Date & Time:

Fri., February 23, 2018 @ 10:40 a.m.

(3) Waived by COR

☐ YES ☒ NO

Date & Time:

**(4) Bill contains appropriations or
authorizations for appropriations
from any fund sources?**

☒ YES ☐ NO

If YES:

**(4/5)(a) Funding Availability Note/Waiver
(OFB) attached?**

☒ YES ☐ NO (Unable to file CMTE Report)

(4/5)(b) Funding source identified?

2 GCA § 9101
☒ YES ☐ NO (Proceed to (A)(6))

(4/5)(c) Funds available and sufficient?

2 GCA § 9101
☒ YES ☐ NO (Proceed to (A)(6))

**(6) Restrictions Against Unfunded
Appropriations (2 GCA § 9101)**

- ☐ Identifies specific alternate funding source
- ☐ De-appropriates from previous appropriation with available funds and fiscal note
- ☐ Written certification by CMTE Chair that a situation exists which "threatens the safety, health and welfare of the community"

If no boxes checked:

**UNABLE TO PLACE ON SESSION
AGENDA**

2 GCA § 9102



Committee Report Checklist on
 Bill No. 236-34 (COR)
 As amended by the Committee on
 Environment, Land, Agriculture, and Procurement Reform.
 Part 1 / 1

(B) PUBLIC HEARING	(1) HEARING NOTICES SR §§ 6.04(a)(1) and 6.04(a)(2), Open Government Law (5 GCA, Ch. 8)	
	<input checked="" type="checkbox"/> (a) Five (5) working days prior (A L Senators & ALL Media)	Date and Time of Notice: <i>Thurs., March 29, 2018 @ 12:17 pm.</i>
	<input checked="" type="checkbox"/> (b) Forty-eight (48) hours prior (ALL Senators & ALL Media)	Date and Time of Notice: <i>Wed., April 4, 2018 @ 9:35 a.m.</i>
	(2) Date and Time of Hearing: <i>Fri., April 6, 2018 @ 9 a.m.</i>	or (4) HEARING WAIVED by Speaker in case of emergency SR § 6.04(a)(1) <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A If YES: Attach memo indicating WAIVER
	(3) Location: Public Hearing Room, Guam Congress Building	
	(5) AMENDMENTS or SUBSTITUTIONS BY COMMITTEE SR § 6.04(b)	
<i>amend</i> (a) Committee elects to substitute bill? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	If YES: Date and Time: <i>10.15.18 @ 9:30 a.m.</i> (a)(1) Vote sheet affirmative? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (a)(2) Preliminary report filed with COR? SR § 6.04(b)(2) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (a)(3) Public Hearing noticed? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
(b) Bill materially different after committee amendment or substitution? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	If YES: SECONDARY PUBLIC HEARING MAY BE REQUIRED SR § 6.04(c)(3) <input type="checkbox"/> YES <input type="checkbox"/> NO <hr/> COR Chair	

Committee Report Checklist on
 Bill No. 236-34 (COR)
 As amended by the Committee on
 Environment, Land, Agriculture, and Procurement Reform.
 Part 1 / 1

(C) COMMITTEE REPORT	(1) Committee Report filed with COR? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If YES: Date & Time: Mon., October 15, 2018 @ 9:30 a.m.		Notes: "As amended by the CMTE on Environment, Land, Agriculture, and Procurement Reform"	If NO: INABLE TO PLACE ON SESSION AGENDA SR § 6.04(d)(1)
	(1)(a) Secondary CMTE Report filed with COR? <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A If YES: Date & Time:			
	(2) LAND LEGISLATION			
	(a) Bill involves government taking, transfer, purchase, or lease of land? <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A		If YES: ATTACH TWO (2) PROPERTY APPRAISALS TO CMTE REPORT SR § 6.04(c)(4) 2 GCA § 2107(b)	
	(a)(1) Please indicate on both columns: <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;"> (i) Type of transaction: <input type="checkbox"/> Taking <input type="checkbox"/> Transfer <input type="checkbox"/> Purchase <input type="checkbox"/> Lease </td> <td style="width: 50%;"> (ii) Type of entity: <input type="checkbox"/> Government <input type="checkbox"/> Non-government </td> </tr> </table>			
	(i) Type of transaction: <input type="checkbox"/> Taking <input type="checkbox"/> Transfer <input type="checkbox"/> Purchase <input type="checkbox"/> Lease	(ii) Type of entity: <input type="checkbox"/> Government <input type="checkbox"/> Non-government		
	(b) Bill involves legislative land rezoning? <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A		If YES: INCLUDE Land Zoning Consideration Report 2 GCA § 2110	
	(b)(1) Bill involves legislative rezoning of property zoned Agricultural (A)? <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A		If YES: INCLUDE Agricultural Consideration Report (Dept. of Agriculture) 2 GCA § 2110 [Proceed to (b)(2)]	
(b)(2) Proof of Agricultural consideration report reviewed by Guam Land Use Commission? 21 GCA § 61637 <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A				

Committee Report Checklist on

Bill No. 236-34 (COR)

As amended by the Committee on

Environment, Land, Agriculture, and Procurement Reform.

Part 1 / 1

(D) COMMITTEE REPORT (continued)	(3) G.A.R.R. LEGISLATION SR § 6.04(c)(1) 5 GCA §§ 9301 and 9303	
	a) Bill involves approving or amending Rules and Regulations? <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A	If YES: INCLUDE Economic Impact Statement 5 GCA §§ 9301(d), 9301(e), 9301(f)
	(4) COMMITTEE REPORT COMPONENTS	
	(a) Front Page Transmittal to Speaker	X
	(a)(1) COR Chair Signature Line	X
	(b) Title Page	X
	(c) Committee Chair Memo to All Committee Members	X
	(d) COR Referral Memorandum + <u>Re-referral Memo</u>	X
	(e) Notice of Public Hearing & Other Correspondence	X
	(f) Public Hearing Agenda	X
	(g) Public Hearing Sign-in Sheet	X
	(h) Written Testimonies & Additional Documents	X
	(i) Committee Vote Sheet(s)	X
	(j) Committee Report Digest(s)	X
	(k) Bill History	X
	(k)(1) Copy of Bill as introduced	X
	(k)(2) COR Pre-Referral Checklist	X
	(k)(3) Copy of Bill as corrected by Prime Sponsor (if applicable)	<input type="checkbox"/> N/A
	(k)(4) Copy of Bill as <u>amended</u> substituted by Committee (if applicable)	X
	Substitute/Amended Mark-Up Version	X
	Substitute/Amended Word-Version Emailed to COR?	X
	(l) <u>Fiscal Note</u> /Waiver and Funding Availability Note (OFB) <u>BBMR</u>	X
	(m) Two (2) Property Appraisals (if applicable)	<input type="checkbox"/> N/A
	(n) Related News Reports (optional)	<input type="checkbox"/> N/A
	(o) Miscellaneous (optional)	<input type="checkbox"/> N/A
	(p) Committee Report Checklist(s)	X
	Originals	X
	Single-Sided	X
	Letter Size	X
	No Staples/ Paper Clips	X
(E) COR Action	<input checked="" type="checkbox"/> CMTE Report duly filed; Available for Placement on Session Agenda <input type="checkbox"/> CMTE Report non-conforming for acceptance; Return to Committee	COR CHAIR (Signature, Date & Time) <u><i>[Signature]</i></u> <u>10.10.18 @ 5pm.</u>