

I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN

2014 (SECOND) Regular Session

Bill No. 337-32 (COR)

Introduced By:

T.C. Ada *TC*
R.J. Respicio *RJR*

AN ACT TO AMEND §§ 76114, 76116, AND 76124 OF CHAPTER 76
TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO THE
UNDERGROUND STORAGE TANK MANAGEMENT FUND,
CLOSURE, AND ASSOCIATED PENALTIES.

2014 MAY -9 PM 4:41
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1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guáhan*
3 finds that the underground storage of liquid petroleum or other regulated
4 substances poses a threat to the environment. Specifically, potential leaks
5 from underground storage tanks (UST) and pipelines, which may result from
6 faulty installation, earthquakes, or inadequate operating and maintenance
7 procedures, may seep into the soil and contaminate groundwater sources.
8 The cost of remediation to rectify damages resulting from a leak can be very
9 costly.

10 *I Liheslatura* finds that there are over three hundred (300) regulated
11 Underground Storage Tanks (USTs), with a total capacity of ninety (90)
12 million gallons, currently in use to store gasoline, diesel, and residual oil,

1 and approximately fifty-five (55) miles of buried pipeline, with a static
2 holding capacity of three (3) million gallons, used to transport these
3 products. These facilities are owned by commercial, private, local and
4 federal government entities located at 136 different sites which include gas
5 stations, residential estates, commercial and industrial buildings, hotels, golf
6 courses, resorts, and federal and local government agencies.

7 *I Liheslatura* finds that during the period 2000 to 2013, there were a
8 total of 139 releases from underground tanks in Guam. The majority of
9 incidences have occurred in northern Guam where the island's sole-source
10 aquifer is located. *I Liheslatura* further finds the vast majority of these
11 releases, 118 or 84%, have been completely cleaned up. Of the remainder,
12 21 are subject to ongoing clean up, remediation and/or monitoring to ensure
13 that conditions continue to improve.

14 *I Liheslatura* further finds that the number of incidences has been
15 decreasing annually, due to more stringent construction and operating
16 requirements, the threat to the environment posed by these tanks remains. *I*

17 *I Liheslatura* finds that the Guam UST program was established and
18 codified under Chapter 76 of Title 10 of the Guam Code Annotated. The
19 existing USTs on Guam have largely been upgraded to meet current
20 standards, and 100% of the facilities with active tanks meet regulatory
21 standards for corrosion protection and leak detection systems.

22 *I Liheslatura* intends to increase the maximum civil penalty per tank
23 per day, for each violation of a requirement or standard from eleven
24 thousand dollars (\$11,000) to sixteen thousand dollars (\$16,000) in order to
25 adequately fund mitigation activities and subsequent related actions in
26 accordance with Chapter 76 of Title 10 Guam Code Annotated and Chapter

1 50 of Division 10, Title 22 of the Guam Administrative Rules and
2 Regulations.

3
4 **Section 2. §76114 of Chapter 76, Title 10 Guam Code Annotated is**
5 **hereby *amended* to read as follows:**

6 “§76114. Underground Storage Tank Management Fund.

7 There is hereby established a fund to be known as the “Underground
8 Storage Tank Management Fund”, hereafter referred to as the UST-LUST
9 Fund, a non-lapsing, revolving Fund which shall be maintained separate and
10 apart from any other funds of the government of Guam.

11 (a) ~~Notwithstanding the Central Accounting Act, a~~All fees,
12 reimbursements, assessments, fines, forfeitures, and other funds
13 collected or received pursuant to this Chapter, shall be deposited in
14 the UST-LUST Fund and shall not lapse at the end of the fiscal year,
15 but shall rollover into the next fiscal year or until expended.

16 Independent records and accounts shall be maintained in connection
17 therewith. This Fund shall be kept in a bank licensed to do business on
18 Guam, and funds shall be paid out only upon a request for payment or
19 requisition submitted by the ~~Director or Administrator and~~
20 countersigned by the ~~Chairman of the Board.~~ All monies in this Fund
21 shall require legislative appropriation. in the fund are hereby
22 appropriated to the Guam Environmental Protection Agency (GEPA)
23 to be expended in accordance with this part and are not subject to I
24 Maga'låhi's transfer authority. The Administrator shall comply with
25 all existing reporting requirements by issuing a quarterly accounting
26 of the Fund to I Maga'låhen Guåhan, I Liheslaturan Guåhan and the

1 Office of Public Accountability. The Administrator shall ensure the
2 UST-LUST Fund is in compliance with all existing statutes, rules and
3 regulations, codes, executive orders, and any other authority which is
4 applicable to GEPA and the use of the funds in the UST-LUST fund
5 pursuant to this Chapter.

6 (b) The Administrator *shall* administer the UST-LUST Fund
7 and make disbursements from the Fund:

8 (1) to fund implementation of actions authorized by §
9 76113 of this Chapter;

10 (2) to train Agency employees in the regulation of USTs
11 and response to release of regulated substances from USTs; or

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

16 **Section 3. §76116 of Chapter 76, Title 10 Guam Code Annotated**
17 **is hereby *amended* to read as follows:**

18 **“§76116. Closure.**

19 “(a) The owner or operator *shall* close a UST so as to prevent future
20 releases of regulated substances. The owner and operator shall comply with
21 the release response provisions in this Chapter and other requirements
22 promulgated by the Administrator before and during removals of the USTs
23 and tank systems. The Administrator *shall* adopt requirements for change-in-
24 service and temporary closure and permanent closure of USTs and tank
25 systems.

1 (b) No later than one hundred twenty (120) calendar days following
2 submission to the Guam Environmental Protection Agency of a *Notice of*
3 *Intent* for permanent closure, all USTs containing regulated substances must
4 be physically removed from below ground surface.

5 (c) An exception may be considered based on extreme extenuating
6 circumstances, which may warrant abandonment in place for the UST. The
7 extenuating circumstances such as, but not limited to, compromising the
8 structural integrity of public infrastructure, must be requested in written
9 form and submitted to the Administrator for consideration.

10 (d) Any UST, which had been previously approved or discovered to
11 be abandoned in-place during construction-related activities, shall be
12 removed as soon as reasonably possible, but not to exceed thirty (30)
13 calendar days or as may be deemed reasonable by GEPA Administrator.”

14
15 **Section 4. §76124 of Chapter 76, Title 10 Guam Code Annotated**
16 **is hereby amended to read as follows:**

17 **“§76124. Penalties.**

18 (a) A person who violates any provisions of this Chapter, or rules
19 or regulations enacted pursuant hereto, or refuses or neglects to comply
20 with an order issued by the Administrator to require compliance with
21 this Chapter, *shall* be guilty of ~~pay the Agency~~ a civil violation and
22 shall be subject to a penalty up to ~~Eleven Thousand Dollars (\$11,000)~~
23 Sixteen Thousand Dollars (\$16,000) for each tank for each day of each
24 violation.

25 (b) Any person with an interest that may be adversely affected by
26 a violation of this Chapter may intervene as a matter of right in any

1 civil action brought by the Administrator to require compliance with
2 this Chapter.

3 (c) A person who knowingly fails to notify the Administrator
4 pursuant to §§ 76105 or 76112, or who makes any false statement or
5 representation in any UST notification, permit application, or other
6 document filed, maintained, or used for compliance with this Chapter,
7 *shall* be guilty of a civil violation, misdemeanor and may be subject to
8 imprisonment for up to twelve (12) months and fined up to Eleven
9 Thousand Dollars (\$11,000) per day for each violation, or both.

10 (d) Any person who denies, obstructs, or hampers the entrance,
11 inspection, or conduct or release response activity by a representative of
12 the Agency at any building, place, site, facility, vehicle, or structure that
13 the representative is authorized to enter, or any inspector who fails to
14 provide information requested by the agency representative as pursuant
15 to § 76110 *shall* be guilty of a civil violation and shall be subject to a
16 penalty of ~~fined up to Eleven Thousand Dollars (\$11,000)~~ Sixteen
17 Thousand Dollars (\$16,000) for every day the person he denies,
18 obstruct or hinders the acquisition of, or fails to provide, the
19 information requested, as determined in a civil action in the Superior
20 Court of 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
23 subject to a penalty of up to sixteen thousand dollars (\$16,000) per tank
24 per day for each separate violation. Second, third, and fourth offenses
25 are defined as offenses within twelve months from the first, second and
26 third offenses respectively. For any fourth violation of this Part, the

1 violation shall be guilty of a misdemeanor and may be subject to
2 imprisonment for up to twelve (12) months and fined up to ~~Eleven~~
3 ~~Thousand Dollars (\$11,000) Sixteen Thousand Dollars (\$16,000) per~~
4 day for each violation, or both.

5
6 **Section 5. Severability.** If any provision of this Law or its application
7 to any person or circumstance is found to be invalid or contrary to law, such
8 invalidity shall not affect other provisions or applications of this Law which
9 can be given effect without the invalid provisions or application, and to this
10 end the provisions of this Law are severable.

11
12 **Section 6. Effective Date.** This Act shall be effective upon
13 enactment.