

*Secretary of Guam*  
*President of Guam*

OFFICE OF THE GOVERNOR  
LORINAM I MALA LAHI  
AGANA, GUAM 96910

OCT 1 1989



*Reg Sy*

The Honorable Joe T. San Agustin  
Speaker, Twentieth Guam Legislature  
Post Office Box CB-1  
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 284, which I have signed into law this date as  
Public Law 20-106.

Sincerely,

*Joseph F. Ada*  
JOSEPH F. ADA  
Governor

Enclosure

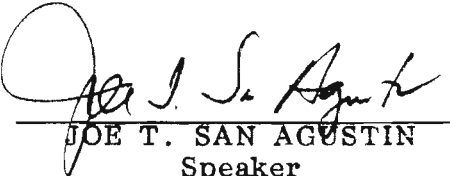
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TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

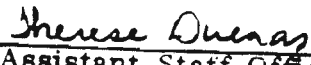
This is to certify that Substitute Bill No. 284 (LS), "AN ACT TO ADD A NEW CHAPTER 88 TO TITLE 10, GUAM CODE ANNOTATED, TO PROVIDE FOR THE UNDERGROUND STORAGE OF HAZARDOUS MATERIALS," was on the 28th day of September, 1989, duly and regularly passed.

  
JOE T. SAN AGUSTIN  
Speaker

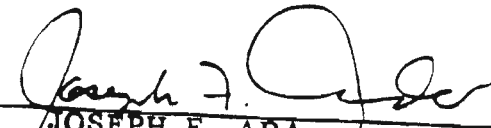
Attested:

  
PILAR C. LUJAN  
Senator and Legislative Secretary

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This Act was received by the Governor this 4th day of Oct., 1989  
at 4:20 o'clock p.m.

  
Therese Oueras  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
JOSEPH F. ADA  
Governor of Guam

Date: October 16, 1989

Public Law No. 20-106

TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

Bill No. 284 (LS)  
As substituted by the Committee on  
Health, Welfare & Ecology, and further  
substituted by the Committee on Rules

Introduced by: M. D. A. Manibusan  
J. G. Bamba  
M. C. Ruth

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T. S. Nelson  
D. F. Brooks  
T. V. C. Tanaka  
J. P. Aguon  
E. P. Arriola  
M. Z. Bordallo  
H. D. Dierking  
E. R. Duenas  
E. M. Espaldon  
C. T. C. Gutierrez  
P. C. Lujan  
G. Mailloux  
D. Parkinson  
F. J. A. Quitugua  
E. D. Reyes  
M. C. Ruth  
J. T. San Agustin  
F. R. Santos  
A. R. Unpingco

AN ACT TO ADD A NEW CHAPTER 88 TO  
TITLE 10, GUAM CODE ANNOTATED, TO  
PROVIDE FOR THE UNDERGROUND STORAGE  
OF HAZARDOUS MATERIALS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2 Section 1. A new Chapter 88 is added to Title 10, Guam Code  
3 Annotated, to read as follows:  
4 "Chapter 88  
5 Storage of Hazardous Materials  
6 "§88101. Title. This Chapter shall be known as the  
7 "Underground Storage of Hazardous Substances Act".

§88102. Findings of Necessity and Statement of Purpose.

(a) The people of Guam find that:

(1) Substances hazardous to the public health and safety, and to the environment, are stored prior to use in hundreds of underground locations in the territory.

(2) Underground tanks used for the storage of hazardous substances are potential sources of contamination of the ground, underlying sole sources aquifer, surface or marine waters, and may pose other dangers to public health and the environment.

(3) In several states, underground storage has resulted in undetected and uncontrolled releases of hazardous substances into the ground. These releases have contaminated public drinking water supplies and created a potential threat to the public health and to the waters of these states.

(4) Current laws do not specifically govern the construction, maintenance, testing, and use of underground tanks used for the storage of hazardous substances for the purposes of protecting the public health and the environment.

(5) The protection of the public from releases of hazardous substances is an issue of territorial concern.

(b) It is hereby declared to be the purpose of this Chapter to:

(1) Establish a continuing program for preventing contamination from, and improper storage of, hazardous substances stored underground;

(2) Establish orderly procedures that will ensure that newly constructed underground storage tank meet appropriate standards;

(3) Establish orderly procedures that will ensure that existing tanks be properly maintained, inspected, and tested so that the health, property, and resources of the people of Guam will be protected.

§88103. Definitions. For the purpose of this Chapter, the following definitions apply:

(a) "Administrator" shall mean the Administrator of the Guam Environmental Protection Agency or his designee.

(b) "Agency" shall mean the Guam Environmental Protection Agency.

(c) "Board" shall mean the Board of Directors of the Guam Environmental Protection Agency.

(d) "Guarantor" shall mean any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.

(e) "Operator" shall mean any person in control of, or having responsibility for, the daily operation of an underground storage tank.

(f) "Owner" shall mean:

(1) In the case of an underground storage tank in use or brought into use on or after the effective date of this Chapter, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and

(2) In the case of an underground storage tank in use before the effective date of this Chapter, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

(g) "Person" shall mean an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, consortium, joint venture, commercial entity, association, a political subdivision of Guam, interstate body, or any agency, department, or instrumentality of the Federal government or government of Guam, or any other legal representative, agency or assigns.

(h) "Regulated Substance" or "Hazardous Substance" shall mean any element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. The term includes:

(1) Any substance defined in Section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, as amended, (but not

including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976, also known as Public Law 94-580, as amended); or

(2) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and

(3) Any other substance as designated by the Administrator.

(i) "Release" includes, but is not limited to, any spilling, leaking, emitting, discharge, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

(j) "Underground Storage Tank" shall mean any one (1) or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. "Underground Storage Tank" does not include any of the following:

(1) Septic tank;

(2) Pipeline facility (including gathering lines) regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended;

(B) The Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;

(3) Surface impoundment, pit, pond, or lagoon;

(4) Storm water or waste water collection system;

(5) Flow-through process tank;

(6) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(7) Storage tank situated in an underground area (such as a basement, cellar, shaft, or tunnel) is the storage tank is situated upon or above the surface of the floor.

§88104. Powers and Duties. The Agency shall have the responsibility to

(a) Develop and administer a underground storage tank program for Guam pursuant to the provisions of this Chapter;

(b) Study, investigate, or cause to be studied and investigated, pollution from underground storage tanks and causes, prevention, control, and abatement thereof, as deemed necessary to protect human health and the environment;

(c) Provide technical assistance to local and federal agencies, and other persons, and cooperate with appropriate local agencies and private organizations in carrying out the provisions of this Chapter;

(d) Serve as Guam's official representative for all purposes of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and for the purpose of such other Guam or federal legislation as may hereafter be enacted to assist in the management of underground storage tanks;

(e) Prepare, adopt, promulgate, modify, update, repeal, and enforce rules and regulations governing underground storage tank design, construction, installation, release detection and inventory control, compatibility, record maintenance, reporting, corrective action, closure, and financial responsibility in order to conserve the land and water resources of Guam, protect the health, prevent environmental pollution and public nuisances, and enable it to carry out the purposes and provisions of this Chapter;

(f) Establish the procedures for review and issuance of permits governing the design, operation, and closure of underground storage tanks;

(g) Prepare, issue, modify, revoke and enforce orders for compliance with any of the provisions of this Chapter or of any rules and regulations issued pursuant thereto and requiring the taking of such remedial measures for underground storage tank management as

may be necessary or appropriate to implement or effectuate the provisions and purposes of this Chapter;

(h) Prepare, adopt, promulgate, modify, update, repeal, and enforce such other rules and regulations as may be necessary to establish an underground storage tank program which meets the requirements of Section 904 of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and regulations promulgated pursuant thereto.

§88105. Notification Requirements.

(a) Any owner who brings into use an underground storage tank after the effective date of this Chapter shall notify the Agency within thirty days of such action. Notices shall include, but not limited to, at least the following specifications:

- (1) The date the tanks was taken out of operation;
- (2) The age of the tank on the date taken out of operation;
- (3) The size, type, and location of the tank; and
- (4) The type and quantity of substances left stored in the tank on the date taken out of operation or removed.

§88106. New Tank Standards.

(a) From and after the effective date of this Chapter until the effective date of new tank performance standards promulgated thereunder, no person may install an underground storage tank unless the tank meets all of the following requirements:

- (1) The tank will prevent releases of the stored regulated substances due to corrosion or structural failure for the operational life of the tank;
- (2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and
- (3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

(b) Notwithstanding Subsection (a), if the Administrator determines that soils at an installation location are not corrosive



1 enough to cause an underground storage tank to have a release during  
2 its operating life and the Administrator determines that the tank is  
3 adequately protected, a storage tank without corrosion protection may  
4 be installed at that location.

5 (c) The performance for new underground storage tanks shall  
6 include, but are not limited to, design, construction, installation,  
7 release detection, and compatibility standards.

8 §88107. Leak Detection and Record Maintenance.

9 (a) The owner or operator of an underground storage tank shall  
10 maintain a leak system, an inventory control system, and tank testing  
11 system, or a comparable system or method designed to identify releases  
12 in a manner consistent with the protection of human health and the  
13 environment.

14 (b) The owner or operator shall maintain systematic and complete  
15 records of the information obtained from Subsection (a).

16 §88108. Reporting Requirements.

17 (a) The owner and operator of an underground storage tank  
18 shall notify the Agency of each release from the tank as soon as  
19 practicable but no later than twenty-four (24) hours after the release  
20 is detected. The owner may contract with the operator to assume the  
21 obligations created by this Section.

22 (b) The operator of an underground storage tank shall notify  
23 the owner of each release from the tank as soon as practicable but no  
24 later than twelve (12) hours after the release is detected.

25 (c) Notice by the operator and owner may be made orally or in  
26 writing but shall be followed within fourteen (14) days by a written  
27 report to the Agency that a release has been detected. The written  
28 report shall include, but not be limited to, the nature of the release,  
29 the period of time over which the release occurred and the corrective  
30 action taken as of the date of the report and anticipated to be taken  
31 subsequent to the date of the report.

32 §88109. Corrective Action.

(a) When a release is discovered the owner or operator of an underground storage tank shall take immediate action to stop the release.

(b) The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank in a manner consistent with future protection of human health and the environment, and restoration of the environment to a condition and quality acceptable to the Agency. The Agency may require the owner or operator to undertake such investigations, monitoring, surveys, testings and other information gathering as the Agency considers necessary or appropriate to:

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

(2) Identify the source and nature of the hazardous substance involved; and

(3) Evaluate the extent of danger to human health, safety, welfare or the environment.

(c) If the owner or operator does not take immediate action to stop a release from an underground storage tank or immediately commence and promptly and adequately complete the cleanup of a release, the Agency may stop the release or cleanup the release, or contract to stop the release or contract for cleanup of the release.

(d) Whenever, the Agency is authorized to act under subsection (c) of this section, the Agency directly or by contract may undertake such investigations, monitoring, surveys, testing and other information gathering as it may deem appropriate to identify the existence and extent of the release, the source and nature of the hazardous substance involved and the extent of danger to human health, safety, welfare or the environment. In addition, the Agency directly or by contract may undertake such planning, fiscal, economic, engineering and other studies and investigations as it may deem appropriate to plan and direct cleanup actions, to recover the costs thereof and legal costs.

§88110. Hazardous Substance Emergency Response and Remedial Action Fund.

(a) There is established a fund to be known as the Hazardous Substance Emergency Response and Remedial Action Fund (the "Action Fund") which shall be used by the Agency as a nonlapsing, revolving fund. The Legislature shall make an initial, one time appropriation of Twenty Thousand Dollars (\$20,000) to the Action Fund. All fees, reimbursements, assessments, fines, bail forfeitures, and other funds collected or received pursuant to this Chapter shall be deposited in the Action Fund.

(b) The Administrator shall administer the Action Fund and make disbursements from the fund for the following purposes:

(1) Funding actions and activities authorized under Section 88109 of this Chapter.

(2) Training of Agency employees involved in regulation of underground storage of hazardous substances or response to release of hazardous substances from underground storage tanks

(3) Providing for the general administration and implementation of this Chapter, including the purchase of equipment and payment of personnel costs of the Agency.

§88111. Financial Responsibility.

(a) The owner or operator of an underground storage tank shall maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of an underground storage tank.

(b) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal bankruptcy law, or if jurisdiction in any Guam, state, or Federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of such action against a guarantor, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action

1 had been brought against the owner or operator by the claimant and  
2 which would have been available to the guarantor if an action had been  
3 brought against the guarantor by the owner or operator.

4 (c) The total liability of a guarantor shall be limited to the  
5 aggregate amount which the guarantor has provided as evidence of  
6 financial responsibility to the owner or operator under this section.  
7 The subsection does not limit any other Guam or Federal statutory,  
8 contractual, or common law liability of a guarantor to its owner or  
9 operator, including, but not limited to, the liability of the guarantor  
10 for bad faith in negotiating or in failing to negotiate the settlement of  
11 any claim. This subsection does not diminish the liability of any  
12 person under sections 107 or 111 of the Comprehensive Environmental  
13 Response, Compensation and Liability Act of 1980, Public Law 96-516,  
14 as amended, or other applicable law.

15 §88112. Closure. Closure of an underground storage tank shall be  
16 accomplished in a manner which prevents future releases of regulated  
17 substances.

18 §88113. Tank Permit Requirements.

19 (a) No person shall own, install, or operate an underground  
20 storage tank unless a permit is obtained from the Agency and upon  
21 payment of a fee to be prescribed by regulations. All such permits  
22 shall be non-transferable and conditioned upon the observance of the  
23 laws of Guam and such rules and regulations.

24 (b) Each permit holder shall apply for the renewal of each  
25 permit held, upon forms provided by the Agency, not less than sixty  
26 (60) days prior to the expiration of such undergrounds storage tank  
27 permit to be renewed.

28 (c) Each permit application and each permit renewal application  
29 shall be submitted with evidence of financial responsibility, in a sum  
30 established by the Administrator and conditioned on the fulfillment by  
31 the permit holder of the requirements of this Chapter and the rules  
32 and regulations authorized herein.

33 §88114. Inspection and Entry. The Agency is hereby authorized to  
34 inspect all underground storage tanks at all reasonable times to insure

1 compliance with the laws of Guam, the provisions of this Chapter, and the  
2 rules and regulations authorized herein. This authority shall include, but  
3 not limited to, obtaining from any owner or operator of an underground  
4 storage tank, upon request information relating to such tanks, their  
5 associated equipment, and their contents; conducting monitoring and testing  
6 of tanks or surrounding soils, air, surface water or groundwater;  
7 inspecting and copying all records relating to tanks; and inspecting and  
8 obtaining samples of regulated substances contained in tanks.

9 §88115. Confidentiality of Records. Records or other information  
10 furnished to or obtained by the Administrator concerning regulated  
11 substances are available to the public, except that any records and  
12 information which relate to trade secrets, processes, operations, style of  
13 work or apparatus or to the identity, confidential statistical data, amount or  
14 source of any income, profits, losses or expenditures of any person are  
15 only for the confidential use of the Agency in the administration of this  
16 Chapter unless the owner or operator expressly agrees to their publication  
17 or availability to the public. This section does not prohibit the publishing  
18 of quantitative and qualitative statistics pertaining to the storage of  
19 regulated substances. Notwithstanding provisions to the contrary in this  
20 section, information regarding the nature and quality of releases from  
21 underground storage tanks otherwise reportable pursuant to this Chapter  
22 shall be available to the public.

23 §88116. Notice. Any notice, order or other official correspondence  
24 affecting the rights of any person under this Chapter shall be delivered by  
25 personal service, or sent by registered mail with a return receipt to the  
26 address of such person as shown by the records of the Agency. The  
27 return receipt, signed by the addressee, or his agent, shall be conclusive  
28 proof of delivery.

29 §88117. Hearings.

30 (a) Any person who received an order from the Administrator as  
31 authorized by this Chapter and any person whose permit application is  
32 disapproved by the Administrator may, within fifteen (15) days of the  
33 date of receipt of such order or disapproval, file a notice of intent to

1 appeal with the Board, setting forth in such notice a verified petition  
2 outlining the basis for such appeal.

3 (b) The Board shall, not more than sixty (60) days after receipt  
4 of such notice of appeal, hold a public hearing at which time the  
5 person appealing may appear and present evidence in person or  
6 through counsel in support of this petition.

7 (c) The Board is hereby authorized to administer oaths and to  
8 issue subpoenas to compel the attendance of witnesses and the  
9 production of evidence in all such hearings. Transcripts may be made  
10 by either the Agency or the person appealing.

11 (d) The Board shall affirm, modify or revoke any action which is  
12 appealed and shall notify the appellant of its decision not more than  
13 thirty (30) days after the conclusion of the hearing. Such notice shall  
14 be in writing and shall state the reasons for the decision.

15 (e) Any person may appeal such decision to the Superior Court  
16 of Guam by filing with the Agency a written notice of such intent to  
17 appeal within ten (10) days of the notice of subsection (d) of this  
18 section and shall have a transcript of the proceedings upon request.  
19 The person making the appeal shall pay the Agency for the expenses  
20 associated with the preparation of the requested transcript.

21 §88118. Injunction. The Agency may maintain an action to restrain  
22 any violation or threatened violation of the provisions of this Chapter or  
23 the rules and regulations authorized herein. Such right to injunctive relief  
24 is in addition to any other powers or penalties conferred by this Chapter.

25 §88119. Applicability to Government Agencies. Agencies of the  
26 government of Guam and of the Government of the United States shall  
27 comply with all provisions of this Chapter including permit requirements  
28 with the exception of Sections 88111 and 88113(c).

29 §88120. Penalties.

30 (a) Any person who violates any underground storage tank  
31 provisions of this Chapter, or any valid underground storage tank  
32 rule or regulation promulgated under this Chapter, or who refuses or  
33 neglects to comply with any lawful order issued by the Administrator  
34 in carrying out the provisions of this chapter shall forfeit and pay the

government of Guam a civil penalty not less than Ten Thousand Dollars (\$10,000) for each tank for each day of violation.

(b) Any person with an interest, which is or may be adversely affected by a violation of this Chapter, may intervene as a matter of right in any civil action brought by the Agency to require compliance with the provisions of this Chapter.

(c) Any person who knowingly fails to notify or makes any false statement or representation in any underground storage tank notification, permit application, or other document filed, maintained, or used for purposes of compliance with the provisions of this Chapter, upon conviction, shall be imprisoned not less than six (6) months or be fined not less than Ten Thousand Dollars (\$10,000) per day for each violation, or both."

TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. 284

Date: 9/28/89

Resolution No. \_\_\_\_\_

QUESTION: \_\_\_\_\_

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. P. Aguon	✓			
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks	✓			
H. D. Dierking	✓			
E. R. Duenas				✓
E. M. Espaldon	✓			
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux	✓			
M. D. A. Manibusan	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua				✓
E. D. Reyes	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco	✓			

19

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JAN 04 '89

BILL NO. 284(LS)

Introduced by:

*M.D. Manibusan*  
M.D.A. Manibusan

*JB*  
*M. RUTH*  
*WLB*  
*Chapman*

AN ACT CREATING A NEW CHAPTER 88 OF TITLE 10, GUAM  
CODE ANNOTATED PROVIDING FOR THE UNDERGROUND STORAGE  
OF HAZARDOUS MATERIALS.

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

Section 1. Act. This Act shall be known as the "Underground  
Storage of Hazardous Substances Act".

Section 2. Findings of Necessity and Statement of Purpose.

(a) The people of this Territory find:

- (1) Substances hazardous to the public health and  
and safety, and to the environment, are stored  
prior to use in hundreds of underground locations  
in the territory.
- (2) Underground tanks used for the storage of hazardous  
substances are potential sources of contamination  
of the ground, underlying sole source aquifer,  
surface or marine waters, and may pose other  
dangers to public health and the environment.
- (3) In several states, underground storage has resulted  
in undetected and uncontrolled releases of hazardous  
substances into the ground. These releases have  
contaminated public drinking water supplies and  
created a potential threat to the public health  
and to the waters of these states.
- (4) Current laws do not specifically govern the  
construction, maintenance, testing, and use of  
underground tanks used for the storage of hazardous  
substances for the purposes of protecting the public  
health and the environment.

- (5) The protection of the public from releases of hazardous substances is an issue of territorial concern.
- (b) It is hereby declared to be the purpose of this Chapter to:
  - (1) Establish a continuing program for preventing contamination from, and improper storage of, hazardous substances stored underground.
  - (2) Establish orderly procedures that will ensure that newly constructed underground storage tanks meet appropriate standards.
  - (3) Establish orderly procedures that will ensure that existing tanks be properly maintained, inspected, and tested so that the health, property, and resources of the people of the territory will be protected.

Section 03. Definitions. For the purpose of this Chapter, the following definitions apply:

- (a) "Administrator" shall mean the Administrator of the Guam Environmental Protection Agency or his designee.
- (b) "Agency" shall mean the Guam Environmental Protection Agency.
- (c) "Board" shall mean the Board of Directors of the Guam Environmental Protection Agency.
- (d) "Guarantor" shall mean any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.
- (e) "Operator" shall mean any person in control of, or having responsibility for, the daily operation of the underground storage tank.
- (f) "Owner" shall mean:
  - (1) In the case of an underground storage tank in use or brought into use on or after the effective date of this Chapter, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and
  - (2) In the case of an underground storage tank in use before the effective date of this Chapter, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

- (g) "Person" shall mean an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, consortium, joint venture, commercial entity, association, a political subdivision of the Territory, interstate body, or any agency, department, or instrumentality of the Federal Government or Government of Guam, or any other legal representative, agency or assigns.
- (h) "Regulated Substance" or "Hazardous Substance" shall mean any element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. The term includes:
- (1) Any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, as amended, [but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended]; or
  - (2) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and
  - (3) Any other substance as designated by the Administrator.
- (i) "Release" includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.
- (j) "Underground Storage Tank" shall mean any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent or more beneath the surface of the ground. "Underground Storage Tank" does not include any of the following:
- (1) Farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
  - (2) Septic tank;
  - (3) Pipeline facility (including gathering lines) regulated under:
    - (A) The Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended;
    - (B) The Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;

- (4) Surface impoundment, pit, pond, or lagoon;
- (5) Storm water or waste water collection system;
- (6) Flow-through process tank;
- (7) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (8) Storage tank situated in an underground area (such as a basement, cellar, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

Section 04. Powers and Duties. The Agency shall have the responsibility to:

- (a) Develop and administer a territorial underground storage tank program pursuant to the provisions of this Chapter;
- (b) Study, investigate, or cause to be studied and investigated, pollution from underground storage tanks and causes, prevention, control, and abatement thereof, as deemed necessary to protect human health and the environment;
- (c) Provide technical assistance to local and federal agencies; and other persons, and cooperate with appropriate local agencies and private organizations in carrying out the duties of this Chapter;
- (d) Serve as the official territorial representative for all purposes of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and for the purpose of such other territorial or federal legislation as may hereafter be enacted to assist in the management of underground storage tanks;
- (e) Prepare, adopt, promulgate, modify, update, repeal, and enforce rules and regulations governing underground storage tank design, construction, installation, release detection and inventory control, compatibility, record maintenance, reporting, corrective action, closure, and financial responsibility in order to conserve the land and water resources of the Territory, protect the public health, prevent environmental pollution and public nuisances, and enable it to carry out the purposes and provisions of this Chapter;
- (f) Establish the procedures for review and issuance of permits governing the design, operation, and closure of underground storage tanks;
- (g) Prepare, issue, modify, revoke and enforce orders for compliance with any of the provisions of this Chapter or of any rules and regulations issued pursuant thereto and requiring the taking of such remedial measures for underground storage tank management as may be necessary or appropriate to implement or effectuate the provisions and purposes of this Chapter;

- (h) Prepare, adopt, promulgate, modify, update, repeal, and enforce such other rules and regulations as may be necessary to establish an underground storage tank program which meets the requirements of Section 9004 of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and regulations promulgated pursuant thereto.

#### Section 05. Notification Requirements.

- (a) Any owner who brings into use an underground storage tank after the effective date of this Chapter shall notify the Agency within thirty (30) days after the tank is brought into use and specify information including, but not limited to, the age, size, type, location, and uses of the tank. Notice shall be made on an approved form of notice provided by the Agency.
- (b) The owner of an existing underground tank taken out of operation or removed from the ground after the effective date of this Chapter shall notify the Agency within thirty (30) days of such action. Notices shall include, but not limited to, at least the following specifications:
  - (1) The date the tank was taken out of operation;
  - (2) The age of the tank on the date taken out of operation;
  - (3) The size, type, and location of the tank; and
  - (4) The type and quantity of substances left stored in the tank on the date taken out of operation or removed.

#### Section 06. New Tank Standards.

- (a) From and after the effective date of this Chapter and until the effective date of new tank performance standards promulgated thereunder, no person may install an underground storage tank unless the tank meets all of the following requirements:
  - (1) The tank will prevent releases of the stored regulated substances due to corrosion or structural failure for the operational life of the tank;
  - (2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and
  - (3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

- (b) Notwithstanding Subsection (a), if soil tests conducted by the owner in accordance with ASTM Standard G57-78, or a similar standard, show that soil resistivity in an installation location is twelve thousand (12,000) ohm/cm or more and provided the Administrator determines the tank is adequately protected, a storage tank without corrosion protection may be installed in that location.
- (c) The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.

Section 07. Leak Detection and Record Maintenance.

- (a) The owner or operator of an underground storage tank shall maintain a leak detection system, an inventory control system, and tank testing system, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
- (b) The owner or operator shall maintain systematic and complete records of the information obtained from Subsection (a).

Section 08. Reporting Requirements.

- (a) The owner and operator of an underground storage tank shall notify the Agency of each release from the tank as soon as practicable but no later than twenty-four (24) hours after the release is detected. The owner may by contract with the operator to assume the obligations created by this Section.
- (b) The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than twenty-four (24) hours after the release is detected.
- (c) Notice by the operator and owner may be made orally or in writing but shall be followed within fourteen (14) days by a written report to the Agency that a release has been detected. The written report shall include, but not be limited to, the nature of the release, the regulated substance released, the quantity of the release, the period of time over which the release occurred and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report.

Section 09. Corrective Action.

- (a) When a release is discovered the owner or operator of an underground storage tank shall take immediate action to stop the release.

- (b) The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank in a manner consistent with future protection of human health and the environment, and restoration of the environment to a condition and quality acceptable to the Agency.

Section 10. Financial Responsibility.

- (a) The owner or operator of an underground storage tank shall maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of an underground storage tank.
- (b) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.
- (c) The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not 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 the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-516, as amended, or other applicable law.

Section 11. Closure. Closure of an underground storage tank shall be accomplished in a manner which prevents future releases of regulated substances.

Section 12. Tank Permit Requirements.

- (a) No person shall own, install, or operate an underground storage tank unless a permit is obtained from the Agency and upon payment of a fee to be prescribed by regulations. All such permits shall be non-transferable and conditioned upon the observance of the laws of the territory and rules and regulations.
- (b) Each permit holder shall apply for the renewal of each permit held, upon forms provided by the Agency, not less than sixty (60) days prior to the expiration date of such underground storage tank permit to be renewed.
- (c) Each permit application and each permit renewal application shall be submitted with evidence of financial responsibility, in a sum established by the Administrator and conditioned on the fulfillment by the permit holder of the requirements of this Chapter and the rules and regulations authorized therein.

Section 13. Inspection and Entry. The Agency is hereby authorized to inspect all underground storage tanks at all reasonable times to insure compliance with the laws of the Territory, the provisions of this Chapter, and the rules and regulations authorized herein. This authority shall include obtaining from any owner or operator of an underground storage tank, upon request, information relating to such tanks, their associated equipment, and their contents; conducting monitoring and testing of tanks or surrounding soils, air, surface water or groundwater; inspecting and copying all records relating to tanks; and inspecting and obtaining samples of regulated substances contained in tanks.

Section 14. Confidentiality of Records. Records or other information furnished to or obtained by the Administrator concerning regulated substances are available to the public, except that any records and information which relate to trade secrets, processes, operations, style of work or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of the Agency in the Administration of this Chapter unless the owner or operator expressly agrees to their publication or availability to the public. This Section does not prohibit the publishing of quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary in this Section, information regarding the nature and quality of releases from underground storage tanks otherwise reportable pursuant to this Chapter shall be available to the public.

Section 15. Notice. Any notice, order or other official correspondence affecting the rights of any person under this Chapter shall be delivered by personal service, or sent by registered mail with a return receipt to the address of such person as shown by the records of the Agency. The return receipt, signed by the addressee, or his agent, shall be conclusive proof of delivery.



Section 16. Hearings.

- (a) Any person who received an order from the Administrator as authorized by this Chapter and any person whose permit application is disapproved by the Administrator may, within fifteen (15) days of the date of receipt of such order or disapproval, file a notice of intent to appeal with the Board, setting forth in such notice a verified petition outlining the basis for such appeal.
- (b) The Board of Directors shall, not more than sixty (60) days after receipt of such notice of appeal, hold a public hearing at which time the person appealing may appeal and present evidence in person or through counsel in support of this petition.
- (c) The Board is hereby authorized to administer oaths and to issue subpoenas to compel the attendance of witnesses and the production of evidence in all such hearings. Transcripts may be made by either the Agency or the person appealing.
- (d) The Board shall affirm, modify or revoke any action which is appealed and shall notify the appellant of its decision not more than thirty (30) days after the conclusion of the hearing. Such notice shall be in writing and shall state the reasons for the decision.
- (e) Any person may appeal such decision to the Superior Court of Guam by filing with the Agency a written notice of such intent to appeal within ten (10) days of the notice in Subsection (d) of this Section and shall have a transcript of the proceedings upon request.

Section 17. Injunction. The Agency shall maintain an action to restrain any violation or threatened violation of the provisions of this Chapter or the rules and regulations authorized herein. Such right to injunctive relief is in addition to any other powers or penalties conferred by this Chapter.

Section 18. Applicability to Government Agencies. Agencies of the Government of Guam and Government of the United States shall comply with all provisions of this Chapter including permit requirements with the exception of Sections 10 and 12 (c).

Section 19. Penalties.

- (a) Any person who violates any underground storage tank provisions of this Chapter, or any valid underground storage tank rule or regulation promulgated under this Chapter, or who refuses or neglects to comply with any lawful order issued by the Administrator in carrying out the provisions of this chapter shall forfeit and pay the Government of Guam a civil penalty of not to exceed Ten Thousand Dollars (\$10,000) for each tank for each day of violation.

- (b) Any person with an interest, which is or may be adversely affected by a violation of this Chapter, may intervene as a matter of right in any civil action brought by the Agency to require compliance with the provisions of this chapter.
- (c) Any person who knowingly fails to notify or makes any false statement or representation in any underground storage tank notification, permit application, or other document filed, maintained, or used for purposes of compliance with the provision of this Chapter, upon conviction, shall be imprisoned not to exceed six (6) months or be fined no more than Ten Thousand Dollars (\$10,000) per day for each violation, or both.



# TWENTIETH GUAM LEGISLATURE

163 Chalan Santo Papa  
 Agana, Guam 96910  
 Tel: 472-3425/3426/3427

*Senator*  
*Madeleine Z. Bordallo*

August 22, 1989

CHAIRPERSON

COMMITTEE ON  
 HEALTH, WELFARE  
 & ECOLOGY

VICE CHAIRPERSON:

COMMITTEE ON  
 HOUSING & COMMUNITY  
 DEVELOPMENT

COMMITTEE ON  
 ECONOMIC DEVELOPMENT

MEMBER:

Committee on Energy,  
 Utilities & Consumer  
 Protection

Committee on  
 General Governmental  
 Operations

Committee on  
 Justice, Judiciary &  
 Criminal Justice

Committee on  
 Youth, Human Resources,  
 Senior Citizens &  
 Cultural Affairs

Committee on Rules

Legislative Member  
 Commission on  
 Self-Determination

Honorable Joe T. San Agustin  
 Speaker, Twentieth Guam Legislature  
 163 Chalan Santo Papa  
 Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Health, Welfare and Ecology, to which was referred Bill No. 284, AN ACT CREATING A NEW CHAPTER 88 OF TITLE 10, GUAM CODE ANNOTATED PROVIDING FOR THE UNDERGROUND STORAGE OF HAZARDOUS MATERIALS does recommend that the Bill, as Substituted, be Passed by the Twentieth Guam Legislature.

Votes of the Committee members are as follow:

To Pass	<u>12</u>
To Not Pass	<u>0</u>
To Report Out Only	<u>0</u>
To Place In The Inactive File	<u>0</u>
Abstained	<u>0</u>
Off-Island	<u>0</u>
Not Available	<u>0</u>

Respectfully submitted,

*Madeleine Z. Bordallo*  
 MADELEINE Z. BORDALLO

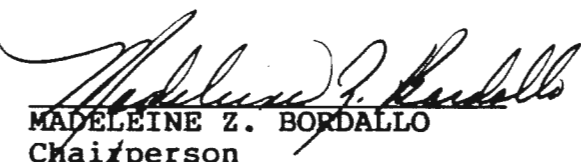
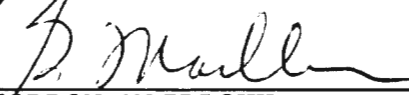
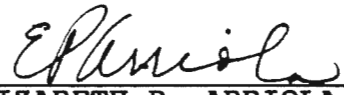

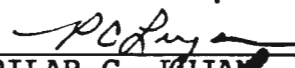
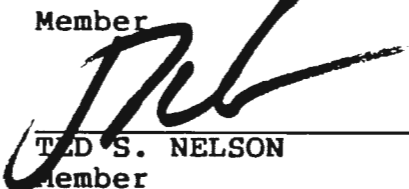
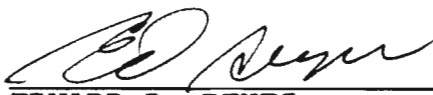
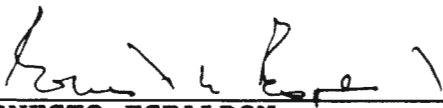
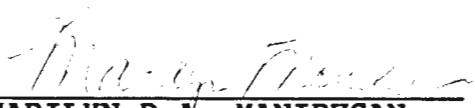
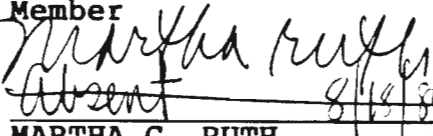
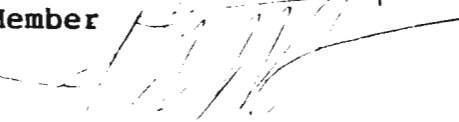

Enclosures

COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

VOTING SHEET

BILL NO. 284, AS SUBSTITUTED.

"AN ACT CREATING A NEW CHAPTER 88 OF TITLE 10, GUAM CODE ANNOTATED  
PROVIDING FOR THE UNDERGROUND STORAGE OF HAZARDOUS MATERIALS."

<u>COMMITTEE MEMBER</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO REPORT OUT ONLY</u>	<u>TO PLACE IN INACTIVE FILE</u>
 MADELEINE Z. BORDALLO Chairperson	<input checked="" type="checkbox"/>			
 GORDON MAILLOUX Vice-Chairperson	<input checked="" type="checkbox"/>			
 ELIZABETH P. ARRIOLA Member	<input checked="" type="checkbox"/>			
 HERMINIA D. DIERRING Member	<input checked="" type="checkbox"/>			
 PILAR C. KUJAN Member	<input checked="" type="checkbox"/>			
 TED S. NELSON Member	<input checked="" type="checkbox"/>			
 EDWARD D. REYES Member	<input checked="" type="checkbox"/>			
 ERNESTO ESPALDON Member	<input checked="" type="checkbox"/>			
 MARILYN D.A. MANIBUSAN Member	<input checked="" type="checkbox"/> 8/18/89			
 Absent 8/18/89 MARTHA C. RUTH Member	<input checked="" type="checkbox"/> 8/22/89			
 TOMMY TANAKA Member	<input checked="" type="checkbox"/>			
 ANTONIO R. UNPINGCO Member	<input checked="" type="checkbox"/>			

**COMMITTEE ON HEALTH, WELFARE AND ECOLOGY**

**COMMITTEE REPORT ON BILL NO. 284, AS SUBSTITUTED.**

**"AN ACT CREATING A NEW CHAPTER 88 OF TITLE 10, GUAM CODE ANNOTATED PROVIDING FOR THE UNDERGROUND STORAGE OF HAZARDOUS MATERIALS."**

**PREFACE**

A Public Hearing on Bill No. 284 was conducted by the Committee on Health, Welfare and Ecology on June 20, 1989 at 8:00 a.m. in the Legislative Session Hall.

**Members Present:** Chairperson Senator Madeleine Z. Bordallo; Senators Martha C. Ruth, and Tony R. Unpingco

**Witnesses Heard:** Senator Marilyn Manibusan, James L. Canto for Guam Environment Protection Agency, Roland Solivio for Guam Environmental Protection Agency

**SUMMARY OF TESTIMONY**

The bill is necessary to allow GEPA to enforce existing Federal law, to control and monitor possible releases from about 630 underground storage tanks on Island. Witnesses agreed with sponsor on technical amendments to Bill 284 as introduced. There is a Federal grant of \$50,000 for personnel costs. The bill also creates a fund for necessary equipment and legal action.

**COMMITTEE FINDINGS/RECOMMENDATIONS**

The Committee finds this bill, as substituted, to be a positive measure to safeguard Guam's freshwater aquifer and shorelines.

The Committee recommends Bill No. 284, as Substituted, to be Passed by the Twentieth Guam Legislature.

**ATTACHMENTS**

1. Committee Voting Sheet on Bill No. 284, As Substituted.
2. Bill No. 284 as Substituted by the committee.
3. Bill No. 284 as referred to committee.
4. Testimony of Guam Environmental Protection Agency.
5. Testimony of Sponsor.
6. Letter from Sponsor to GEPA, March 2, 1989.
7. Fiscal Note from BBMR.
8. Committee Members Attendance Sheet.
9. Witnesses Attendance Sheet.

TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) REGULAR SESSION

Bill No. 284  
As Substituted by the Committee on Health,  
Welfare and Ecology

INTRODUCED BY:

M.D.A. MANIBUSAN *mdm*

J.G. BAMBA

M. RUTH *mruth*

*[Signature]*  
D.F. BROOKS

T. TANAKA

**"AN ACT CREATING A NEW CHAPTER 88 OF TITLE 10, GUAM CODE ANNOTATED  
PROVIDING FOR THE UNDERGROUND STORAGE OF HAZARDOUS MATERIALS."**

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

2 Section 1. A new Chapter 88 of Title 10 is hereby added to  
3 read as follows:

4 § 88101. Act. This Act shall be known as the "Underground  
5 Storage of Hazardous Substances Act".

6 § 88102. Findings of Necessity and Statement of Purpose.

7 (a) The people of this Territory find:

8 (1) Substances hazardous to the public health and  
9 safety, and to the environment, are stored prior to use in hundreds  
10 of underground locations in the territory.

11 (2) Underground tanks used for the storage of  
12 hazardous substances are potential sources of contamination of the  
13 ground, underlying sole sources aquifer, surface or marine waters,  
14 and may pose other dangers to public health and the environment.

15 (3) In several states, underground storage has  
16 resulted in undetected and uncontrolled releases of hazardous  
17 substances into the ground. These releases have contaminated  
18 public drinking water supplies and created a potential threat to  
19 the public health and to the waters of these states.

20 (4) Current laws do not specifically govern the  
21 construction, maintenance, testing, and use of underground tanks

used for the storage of hazardous substances for the purposes of protecting the public health and the environment.

(5) The protection of the public from releases of hazardous substances is an issue of territorial concern.

(b) It is hereby declared to be the purpose of this Chapter:

(1) Establish a continuing program for preventing contamination from, and improper storage of, hazardous substances stored underground.

(2) Establish orderly procedures that will ensure that newly constructed underground storage tanks meet appropriate standards.

(3) Establish orderly procedures that will ensure that existing tanks be properly maintained, inspected, and tested so that the health, property, and resources of the people of the territory will be protected.

§ 88103. Definitions. For the purpose of this Chapter, the following definitions apply:

(a) "Administrator" shall mean the Administrator of the Guam Environmental Protection Agency or his designee.

(b) "Agency" shall mean the Guam Environmental Protection Agency.

(c) "Board" shall mean the Board of Directors of the Guam Environmental Protection Agency.

(d) "Guarantor" shall mean any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.

(e) "Operator" shall mean any person of control of, or having responsibility for, the daily operation of the underground storage tank.

(f) "Owner" shall mean:

(1) In the case of an underground storage tank in use or brought into use on or after the effective date of this Chapter, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and

(2) In the case of an underground storage tank in use before the effective date of this Chapter, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

(g) "Person" shall mean an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, consortium, joint venture, commercial entity, association, a political subdivision of the Territory, interstate body, or any agency, department, or instrumentality of the Federal Government or Government of Guam, or any other legal representative, agency or assigns.

(h) "Regulated Substance" or "Hazardous Substance" shall mean any element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. The term includes:

(1) Any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, as amended, (but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976 also known as Public Law 94-580, as amended); or

(2) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch



absolute); and

(3) Any other substance as designated by the Administrator.

(i) "Release" includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

(j) "Underground Storage Tank" shall mean any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent or more beneath the surface of the ground. "Underground Storage Tank" does not include any of the following:

(1) Septic tank;

(2) Pipeline facility (including gathering lines) regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended;

(B) The Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;

(3) Surface impoundment, pit, pond, or lagoon;

(4) Storm water or waste water collection system;

(5) Flow-through process tank;

(6) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(7) Storage tank situated in an underground area (such as a basement, cellar, shaft, or tunnel) is the storage tank is situated upon or above the surface of the floor.

§ 88104. Powers and Duties. The Agency shall have the

responsibility to:

(a) Develop and administer a territorial underground storage tank program pursuant to the provisions of this Chapter;

(b) Study, investigate, or cause to be studied and investigated, pollution from underground storage tanks and causes, prevention, control, and abatement thereof, as deemed necessary to protect human health and the environment;

(c) Provide technical assistance to local and federal agencies, and other persons, and cooperate with appropriate local agencies and private organizations in carrying out the duties of this Chapter;

(d) Serve as the official territorial representative for all purposes of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and for the purpose of such other territorial or federal legislation as may hereafter be enacted to assist in the management of underground storage tanks;

(e) Prepare, adopt, promulgate, modify, update, repeal, and enforce rules and regulations governing underground storage tank design, construction, installation, release detection and inventory control, compatibility, record maintenance, reporting, corrective action, closure, and financial responsibility in order to conserve the land and water resources of the Territory, protect the public health, prevent environmental pollution and public nuisances, and enable it to carry out the purposes and provisions of this Chapter;

(f) Establish the procedures for review and issuance of permits governing the design, operation, and closure of underground storage tanks;

(g) Prepare, issue, modify, revoke and enforce orders for

1 compliance with any of the provisions of this Chapter or of any  
2 rules and regulations issued pursuant thereto and requiring the  
3 taking of such remedial measures for underground storage tank  
4 management as may be necessary or appropriate to implement or  
5 effectuate the provisions and purposes of this Chapter;

6 (h) Prepare, adopt, promulgate, modify, update, repeal,  
7 and enforce such other rules and regulations as may be necessary to  
8 establish an underground storage tank program which meets the  
9 requirements of Section 9004 of Subtitle I of the Resource  
10 Conservation and Recovery Act of 1976 (Public Law 94-580) as  
11 amended, and regulations promulgated pursuant thereto.

12 § 88105. Notification Requirements.

13 (a) Any owner who brings into use an underground storage  
14 tank after the effective date of this Chapter shall notify the  
15 Agency within thirty (30) days after the tank is brought into use  
16 and specify information including, but not limited to, the age,  
17 size, type, location, and uses of the tank. Notice shall be made  
18 on an approved form of notice provided by the Agency.

19 (b) The owner of an existing underground tank taken out  
20 of operation or removed from the ground after the effective date of  
21 this Chapter shall notify the Agency within thirty (30) days of  
22 such action. Notices shall include, but not limited to, at least  
23 the following specifications:

24 (1) The date the tanks was taken out of operation;

25 (2) The age of the tank on the date taken out of  
26 operation;

27 (3) The size, type, and location of the tank; and

28 (4) The type and quantity of substances left stored  
29 in the tank on the date taken out of operation or removed.

30 § 88106. New Tank Standards.

(a) From and after the effective date of this Chapter and until the effective date of new tank performance standards promulgated thereunder, no person may install an underground storage tank unless the tank meets all of the following requirements:

(1) The tank will prevent releases of the stored regulated substances due to corrosion or structural failure for the operational life of the tank;

(2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and

(3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

(b) Notwithstanding Subsection (a), if the Administrator determines that soils at an installation location are not corrosive enough to cause an underground storage tank to have a release during its operating life and the Administrator determines that the tank is adequately protected, a storage tank without corrosion protection may be installed at that location.

(c) The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.

**§ 88107. Leak Detection and Record Maintenance.**

(a) The owner or operator of an underground storage tank shall maintain a leak detection system, an inventory control system, and tank testing system, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

(b) The owner or operator shall maintain systematic and

complete records of the information obtained from Subsection (a).

§ 88108. Reporting Requirements.

(a) The owner and operator of an underground storage tank shall notify the Agency of each release from the tank as soon as practicable but no later than twenty-four (24) hours after the release is detected. The owner may contract with the operator to assume the obligations created by this Section.

(b) The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than twelve (12) hours after the release is detected.

(c) Notice by the operator and owner may be made orally or in writing but shall be followed within fourteen (14) days by a written report to the Agency that a release has been detected. The written report shall include, but not be limited to, the nature of the release, the period of time over which the release occurred and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report.

§ 88109. Corrective Action.

(a) When a release is discovered the owner or operator of an underground storage tank shall take immediate action to stop the release.

(b) The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank in a manner consistent with future protection of human health and the environment, and restoration of the environment to a condition and quality acceptable to the Agency. The Agency may require the owner or operator to undertake such investigations, monitoring, surveys, testings and other information gathering as the Agency considers

1 necessary or appropriate to:

2 (1) Identify the existence and extent of the  
3 release;

4 (2) Identify the source and nature of the hazardous  
5 substance involved; and

6 (3) Evaluate the extent of danger to human health,  
7 safety, welfare or the environment.

8 (c) If the owner or operator does not take immediate  
9 action to stop a release from an underground storage tank or  
10 immediately commence and promptly and adequately complete the  
11 cleanup of a release, the Agency may stop the release or cleanup  
12 the release, or contract to stop the release or contract for  
13 cleanup of the release.

14 (d) Whenever the Agency is authorized to act under  
15 subsection (c) of this section, the Agency directly or by contract  
16 may undertake such investigations, monitoring, surveys, testing and  
17 other information gathering as it may deem appropriate to identify  
18 the existence and extent of the release, the source and nature of  
19 the hazardous substance involved and the extent of danger to human  
20 health, safety, welfare or the environment. In addition, the  
21 Agency directly or by contract may undertake such planning, fiscal,  
22 economic, engineering and other studies and investigations as it  
23 may deem appropriate to plan and direct cleanup actions, to recover  
24 the costs thereof and legal costs.

25 § 88110. Hazardous Substance Emergency Response and Remedial  
26 Action Fund.

27 (a) There is established a fund to be known as the  
28 Hazardous Substance Emergency Response and Remedial Action Fun,  
29 hereafter referred to as the "Action Fund" which shall be used by  
30 the Agency as a nonlapsing, revolving fund. The Legislature shall

1 make an initial, one time appropriation of Twenty Thousand Dollars  
2 (\$20,000.00) to the Action Fund. All fees, reimbursements,  
3 assessments, fines, bail forfeitures, and other funds collected or  
4 received pursuant to this Chapter shall be deposited in the Action  
5 Fund.

6 (b) The Administrator shall administer the Action Fund  
7 and make disbursements from the fund for the following purposes:

8 (1) Funding actions and activities authorized under  
9 Section 09 of this Chapter.

10 (2) Training of Agency employees involved in  
11 regulation of underground storage of hazardous substances or  
12 response to release of hazardous substances from underground  
13 storage tanks.

14 (3) Providing for the general administration and  
15 implementation of this Chapter, including the purchase of equipment  
16 and payment of personnel costs of the Agency.

17 § 88111. Financial Responsibility.

18 (a) The owner or operator of an underground storage tank  
19 shall maintain evidence of financial responsibility for taking  
20 corrective action and compensating third parties for bodily injury  
21 and property damage caused by sudden and non-sudden accidental  
22 releases arising from the operation of an underground storage tank.

23 (b) If the owner or operator is in bankruptcy,  
24 reorganization, or arrangement pursuant to the federal bankruptcy  
25 law, or if jurisdiction in any state or federal court cannot be  
26 obtained over an owner or operator likely to be solvent at the time  
27 of judgment, any claim arising from conduct for which evidence of  
28 financial responsibility. In the case of action all rights and  
29 defenses which would have been available to the owner or operator  
30 if any action had been brought against the owner or operator by the

1 claimant and which would have been available to the guarantor if an  
2 action had been brought against the guarantor by the owner or  
3 operator.

4 (c) The total liability of a guarantor shall be limited  
5 to the aggregate amount which the guarantor has provided as  
6 evidence of financial responsibility to the owner or operator under  
7 this subsection. This subsection does not limit any other  
8 territorial or federal statutory, contractual, or common law  
9 liability of a guarantor to its owner or operator, including, but  
10 not limited to, the liability of the guarantor for bad faith in  
11 negotiating or in failing to negotiate the settlement of any  
12 claim. This subsection does not diminish the liability of any  
13 person under section 107 or 111 of the Comprehensive Environmental  
14 Response, Compensation and Liability Act of 1980, Public Law  
15 96-516, as amended, or other applicable law.

16 § 88112. Closure. Closure of an underground storage tank  
17 shall be accomplished in a manner which prevents future releases of  
18 regulated substances.

19 § 88113. Tank Permit Requirements.

20 (a) No person shall own, install, or operate an  
21 underground storage tank unless a permit is obtained from the  
22 Agency and upon payment of a fee to be prescribed by regulations.  
23 All such permits shall be non-transferable and conditioned upon the  
24 observance of the laws of the territory and rules and regulations.

25 (b) Each permit holder shall apply for the renewal of  
26 each permit held, upon forms provided by the Agency, not less than  
27 sixty (60) days prior to the expiration date of such undergrounds  
28 storage tank permit to be renewed.

29 (c) Each permit application and each permit renewal  
30 application shall be submitted with evidence of financial



responsibility, in a sum established by the Administrator and conditioned on the fulfillment by the permit holder of the requirements of this Chapter and the rules and regulations authorized therein.

§ 88114. Inspection and Entry. The Agency is hereby authorized to inspect all underground storage tanks at all reasonable times to insure compliance with the laws of the Territory, the provisions of this Chapter, and the rules and regulations authorized herein. This authority shall include, but not be limited to, obtaining from any owner or operator of an underground storage tank, upon request, information relating to such tanks, their associated equipment, and their contents; conducting monitoring and testing of tanks or surrounding soils, air, surface water or groundwater; inspecting and copying all records relating to tanks; and inspecting and obtaining samples of regulated substances contained in tanks.

§ 88115. Confidentiality of Records. Records or other information furnished to or obtained by the Administrator concerning regulated substances are available to the public, except that any records and information which relate to trade secrets, processes, operations, style of work or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of the Agency in the administration of this Chapter unless the owner or operator expressly agrees to their publication or availability to the public. This Section does not prohibit the publishing of quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary in this Section, information regarding the nature and quality of releases from underground storage tanks

otherwise reportable pursuant to this Chapter shall be available to the public.

§ 88116. Notice. Any notice, order or other official correspondence affecting the rights of any person under this Chapter shall be delivered by personal service, or sent by registered mail with a return receipt to the address of such person as shown by the records of the Agency. The return receipt, signed by the addressee, or his agent, shall be conclusive proof of delivery.

§ 88117. Hearings.

(a) Any person who received an order from the Administrator as authorized by this Chapter and any person whose permit application is disapproved by the Administrator may, within fifteen (15) days of the date of receipt of such order or disapproval, file a notice of intent to appeal with the Board, setting forth in such notice a verified petition outlining the basis for such appeal.

(b) The Board of Directors shall, not more than sixty (60) days after receipt of such notice of appeal, hold a public hearing at which time the person appealing may appear and present evidence in person or through counsel in support of this petition.

(c) The Board is hereby authorized to administer oaths and to issue subpoenas to compel the attendance of witnesses and the production of evidence in all such hearings. Transcripts may be made by either the Agency or the person appealing.

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

1           (e) Any person may appeal such decision to the Superior  
2 Court of Guam by filing with the Agency a written notice of such  
3 intent to appeal within ten (10) days of the notice of Subsection  
4 (d) of this Section and shall have a transcript of the proceedings  
5 upon request. The person making the appeal shall pay the Agency  
6 for the expenses associated with the preparation of the requested  
7 transcript.

8           § 88118. Injunction. The Agency may maintain an action to  
9 restrain any violation or threatened violation of the provisions of  
10 this Chapter or the rules and regulations authorized herein. Such  
11 right to injunctive relief is in addition to any other powers or  
12 penalties conferred by this Chapter.

13          § 88119. Applicability to Government Agencies. Agencies of  
14 the Government of Guam and Government of the United States shall  
15 comply with all provisions of this Chapter including permit  
16 requirements with the exception of Sections 11 and 13(c).

17          § 88120. Penalties.

18           (a) Any person who violates any underground storage tank  
19 provisions of this Chapter, or any valid underground storage tank  
20 rule or regulation promulgated under this Chapter, or who refuses  
21 or neglects to comply with any lawful order issued by the  
22 Administrator in carrying out the provisions of this chapter shall  
23 forfeit and pay the Government of Guam a civil penalty not less  
24 than Ten Thousand Dollars (\$10,000) for each tank for each day of  
25 violation.

26           (b) Any person with an interest, which is or may be  
27 adversely affected by a violation of this Chapter, may intervene as  
28 a matter of right in any civil action brought by the Agency to  
29 require compliance with the provisions of this Chapter.

30           (c) Any person who knowingly fails to notify or makes any

1 false statement or representation in any underground storage tank  
2 notification, permit application, or other document filed,  
3 maintained, or used for purposes of compliance with the provisions  
4 of this Chapter, upon conviction, shall be imprisoned not less than  
5 six (6) months or be fined not less than Ten Thousand Dollars  
6 (\$10,000) per day for each violation, or both.

Introduced

JAN 04 '89

BILL NO. 284/LS/

Introduced by:

*M.D.A. Manibusan*  
M.D.A. Manibusan

AN ACT CREATING A NEW CHAPTER 88 OF TITLE 10, GUAM  
CODE ANNOTATED PROVIDING FOR THE UNDERGROUND STORAGE  
OF HAZARDOUS MATERIALS.

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

Section 1. Act. This Act shall be known as the "Underground  
Storage of Hazardous Substances Act".

Section 2. Findings of Necessity and Statement of Purpose.

(a) The people of this Territory find:

- (1) Substances hazardous to the public health and  
and safety, and to the environment, are stored  
prior to use in hundreds of underground locations  
in the territory.
- (2) Underground tanks used for the storage of hazardous  
substances are potential sources of contamination  
of the ground, underlying sole source aquifer,  
surface or marine waters, and may pose other  
dangers to public health and the environment.
- (3) In several states, underground storage has resulted  
in undetected and uncontrolled releases of hazardous  
substances into the ground. These releases have  
contaminated public drinking water supplies and  
created a potential threat to the public health  
and to the waters of these states.
- (4) Current laws do not specifically govern the  
construction, maintenance, testing, and use of  
underground tanks used for the storage of hazardous  
substances for the purposes of protecting the public  
health and the environment.

- (5) The protection of the public from releases of hazardous substances is an issue of territorial concern.
- (b) It is hereby declared to be the purpose of this Chapter to:
  - (1) Establish a continuing program for preventing contamination from, and improper storage of, hazardous substances stored underground.
  - (2) Establish orderly procedures that will ensure that newly constructed underground storage tanks meet appropriate standards.
  - (3) Establish orderly procedures that will ensure that existing tanks be properly maintained, inspected, and tested so that the health, property, and resources of the people of the territory will be protected.

Section 03. Definitions. For the purpose of this Chapter, the following definitions apply:

- (a) "Administrator" shall mean the Administrator of the Guam Environmental Protection Agency or his designee.
- (b) "Agency" shall mean the Guam Environmental Protection Agency.
- (c) "Board" shall mean the Board of Directors of the Guam Environmental Protection Agency.
- (d) "Guarantor" shall mean any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.
- (e) "Operator" shall mean any person in control of, or having responsibility for, the daily operation of the underground storage tank.
- (f) "Owner" shall mean:
  - (1) In the case of an underground storage tank in use or brought into use on or after the effective date of this Chapter, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and
  - (2) In the case of an underground storage tank in use before the effective date of this Chapter, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

- (g) "Person" shall mean an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, consortium, joint venture, commercial entity, association, a political subdivision of the Territory, interstate body, or any agency, department, or instrumentality of the Federal Government or Government of Guam; or any other legal representative, agency or assigns.
- (h) "Regulated Substance" or "Hazardous Substance" shall mean any element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. The term includes:
  - (1) Any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, as amended, [but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended]; or
  - (2) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and
  - (3) Any other substance as designated by the Administrator.
- (i) "Release" includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.
- (j) "Underground Storage Tank" shall mean any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent or more beneath the surface of the ground. "Underground Storage Tank" does not include any of the following:
  - (1) Farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
  - (2) Septic tank;
  - (3) Pipeline facility (including gathering lines) regulated under:
    - (A) The Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended;
    - (B) The Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;

- (4) Surface impoundment, pit, pond, or lagoon;
- (5) Storm water or waste water collection system;
- (6) Flow-through process tank;
- (7) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (8) Storage tank situated in an underground area (such as a basement, cellar, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

Section 04. Powers and Duties. The Agency shall have the responsibility to:

- (a) Develop and administer a territorial underground storage tank program pursuant to the provisions of this Chapter;
- (b) Study, investigate, or cause to be studied and investigated, pollution from underground storage tanks and causes, prevention, control, and abatement thereof, as deemed necessary to protect human health and the environment;
- (c) Provide technical assistance to local and federal agencies; and other persons, and cooperate with appropriate local agencies and private organizations in carrying out the duties of this Chapter;
- (d) Serve as the official territorial representative for all purposes of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and for the purpose of such other territorial or federal legislation as may hereafter be enacted to assist in the management of underground storage tanks;
- (e) Prepare, adopt, promulgate, modify, update, repeal, and enforce rules and regulations governing underground storage tank design, construction, installation, release detection and inventory control, compatibility, record maintenance, reporting, corrective action, closure, and financial responsibility in order to conserve the land and water resources of the Territory, protect the public health, prevent environmental pollution and public nuisances, and enable it to carry out the purposes and provisions of this Chapter;
- (f) Establish the procedures for review and issuance of permits governing the design, operation, and closure of underground storage tanks;
- (g) Prepare, issue, modify, revoke and enforce orders for compliance with any or the provisions of this Chapter or of any rules and regulations issued pursuant thereto and requiring the taking of such remedial measures for underground storage tank management as may be necessary or appropriate to implement or effectuate the provisions and purposes of this Chapter;



- (h) Prepare, adopt, promulgate, modify, update, repeal, and enforce such other rules and regulations as may be necessary to establish an underground storage tank program which meets the requirements of Section 9004 of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and regulations promulgated pursuant thereto.

Section 05. Notification Requirements.

- (a) Any owner who brings into use an underground storage tank after the effective date of this Chapter shall notify the Agency within thirty (30) days after the tank is brought into use and specify information including, but not limited to, the age, size, type, location, and uses of the tank. Notice shall be made on an approved form of notice provided by the Agency.
- (b) The owner of an existing underground tank taken out of operation or removed from the ground after the effective date of this Chapter shall notify the Agency within thirty (30) days of such action. Notices shall include, but not limited to, at least the following specifications:
  - (1) The date the tank was taken out of operation;
  - (2) The age of the tank on the date taken out of operation;
  - (3) The size, type, and location of the tank; and
  - (4) The type and quantity of substances left stored in the tank on the date taken out of operation or removed.

Section 06. New Tank Standards.

- (a) From and after the effective date of this Chapter and until the effective date of new tank performance standards promulgated thereunder, no person may install an underground storage tank unless the tank meets all of the following requirements:
  - (1) The tank will prevent releases of the stored regulated substances due to corrosion or structural failure for the operational life of the tank;
  - (2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and
  - (3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

- (b) Notwithstanding Subsection (a), if soil tests conducted by the owner in accordance with ASTM Standard G57-78, or a similar standard, show that soil resistivity in an installation location is twelve thousand (12,000) ohm/cm or more and provided the Administrator determines the tank is adequately protected, a storage tank without corrosion protection may be installed in that location.
- (c) The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.

Section 07. Leak Detection and Record Maintenance.

- (a) The owner or operator of an underground storage tank shall maintain a leak detection system, an inventory control system, and tank testing system, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
- (b) The owner or operator shall maintain systematic and complete records of the information obtained from Subsection (a).

Section 08. Reporting Requirements.

- (a) The owner and operator of an underground storage tank shall notify the Agency of each release from the tank as soon as practicable but no later than twenty-four (24) hours after the release is detected. The owner may by contract with the operator to assume the obligations created by this Section.
- (b) The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than twenty-four (24) hours after the release is detected.
- (c) Notice by the operator and owner may be made orally or in writing but shall be followed within fourteen (14) days by a written report to the Agency that a release has been detected. The written report shall include, but not be limited to, the nature of the release, the regulated substance released, the quantity of the release, the period of time over which the release occurred and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report.

Section 09. Corrective Action.

- (a) When a release is discovered the owner or operator of an underground storage tank shall take immediate action to stop the release.

- (b) The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank in a manner consistent with future protection of human health and the environment, and restoration of the environment to a condition and quality acceptable to the Agency.

Section 10. Financial Responsibility.

- (a) The owner or operator of an underground storage tank shall maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of an underground storage tank.
- (b) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.
- (c) The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not 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 the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-516, as amended, or other applicable law.

Section 11. Closure. Closure of an underground storage tank shall be accomplished in a manner which prevents future releases of regulated substances.

## Section 12. Tank Permit Requirements.

- (a) No person shall own, install, or operate an underground storage tank unless a permit is obtained from the Agency and upon payment of a fee to be prescribed by regulations. All such permits shall be non-transferable and conditioned upon the observance of the laws of the territory and rules and regulations.
- (b) Each permit holder shall apply for the renewal of each permit held, upon forms provided by the Agency, not less than sixty (60) days prior to the expiration date of such underground storage tank permit to be renewed.
- (c) Each permit application and each permit renewal application shall be submitted with evidence of financial responsibility, in a sum established by the Administrator and conditioned on the fulfillment by the permit holder of the requirements of this Chapter and the rules and regulations authorized therein.

Section 13. Inspection and Entry. The Agency is hereby authorized to inspect all underground storage tanks at all reasonable times to insure compliance with the laws of the Territory, the provisions of this Chapter, and the rules and regulations authorized herein. This authority shall include obtaining from any owner or operator of an underground storage tank, upon request, information relating to such tanks, their associated equipment, and their contents; conducting monitoring and testing of tanks or surrounding soils, air, surface water or groundwater; inspecting and copying all records relating to tanks; and inspecting and obtaining samples of regulated substances contained in tanks.

Section 14. Confidentiality of Records. Records or other information furnished to or obtained by the Administrator concerning regulated substances are available to the public, except that any records and information which relate to trade secrets, processes, operations, style of work or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of the Agency in the Administration of this Chapter unless the owner or operator expressly agrees to their publication or availability to the public. This Section does not prohibit the publishing of quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary in this Section, information regarding the nature and quality of releases from underground storage tanks otherwise reportable pursuant to this Chapter shall be available to the public.

Section 15. Notice. Any notice, order or other official correspondence affecting the rights of any person under this Chapter shall be delivered by personal service, or sent by registered mail with a return receipt to the address of such person as shown by the records of the Agency. The return receipt, signed by the addressee, or his agent, shall be conclusive proof of delivery.

## Section 16. Hearings.

- (a) Any person who received an order from the Administrator as authorized by this Chapter and any person whose permit application is disapproved by the Administrator may, within fifteen (15) days of the date of receipt of such order or disapproval, file a notice of intent to appeal with the Board, setting forth in such notice a verified petition outlining the basis for such appeal.
- (b) The Board of Directors shall, not more than sixty (60) days after receipt of such notice of appeal, hold a public hearing at which time the person appealing may appeal and present evidence in person or through counsel in support of this petition.
- (c) The Board is hereby authorized to administer oaths and to issue subpoenas to compel the attendance of witnesses and the production of evidence in all such hearings. Transcripts may be made by either the Agency or the person appealing.
- (d) The Board shall affirm, modify or revoke any action which is appealed and shall notify the appellant of its decision not more than thirty (30) days after the conclusion of the hearing. Such notice shall be in writing and shall state the reasons for the decision.
- (e) Any person may appeal such decision to the Superior Court of Guam by filing with the Agency a written notice of such intent to appeal within ten (10) days of the notice in Subsection (d) of this Section and shall have a transcript of the proceedings upon request.

Section 17. Injunction. The Agency shall maintain an action to restrain any violation or threatened violation of the provisions of this Chapter or the rules and regulations authorized herein. Such right to injunctive relief is in addition to any other powers or penalties conferred by this Chapter.

Section 18. Applicability to Government Agencies. Agencies of the Government of Guam and Government of the United States shall comply with all provisions of this Chapter including permit requirements with the exception of Sections 10 and 12 (c).

## Section 19. Penalties.

- (a) Any person who violates any underground storage tank provisions of this Chapter, or any valid underground storage tank rule or regulation promulgated under this Chapter, or who refuses or neglects to comply with any lawful order issued by the Administrator in carrying out the provisions of this chapter shall forfeit and pay the Government of Guam a civil penalty of not to exceed Ten Thousand Dollars (\$10,000) for each tank for each day of violation.

- (b) Any person with an interest, which is or may be adversely affected by a violation of this Chapter, may intervene as a matter of right in any civil action brought by the Agency to require compliance with the provisions of this chapter.
- (c) Any person who knowingly fails to notify or makes any false statement or representation in any underground storage tank notification, permit application, or other document filed, maintained, or used for purposes of compliance with the provision of this Chapter, upon conviction, shall be imprisoned not to exceed six (6) months or be fined no more than Ten Thousand Dollars (\$10,000) per day for each violation, or both.



# GUAM ENVIRONMENTAL PROTECTION AGENCY

AHENSIAH PRUTEKSION LINA'LA GUAHAN

POST OFFICE BOX 2999 AGANA, GUAM 96910 TELEPHONE: (671) 646-8863/64/65 FAX: 646-9402

JUN 15 1989

Honorable Madeleine Z. Bordallo  
Chairperson, Committee on Health  
Welfare and Ecology  
Twentieth Guam Legislature  
163 Chalan Santo Papa  
Agana, Guam 96910

Dear Senator Bordallo:

We have reviewed Bill No. 284 relative to creating a new Chapter 88 of Title 10 GCA relative to the underground storage of hazardous substances.

We are very supportive of the intent of Bill No. 284 in that it will enable the Guam EPA to control the installation and operation of underground storage tanks containing petroleum and other hazardous substances. However, we wish to substitute Bill No. 284 with our enclosed amended version of this Bill. Guam EPA's amended version has deleted Subsection 03(j)(1); added Subsections 09(c) and (d) to Section 09; added a new Section 10; amended Subsections 06(b) and 08(b), Section 17, Subsections 19(a) and 19(c).

We appreciate the opportunity provided our Agency to review Bill No. 284. Should you have any questions or require further clarification on our substitute Bill, I will be happy to provide your Committee with further information.

Sincerely yours,

*Rolando E. Solivio*  
ROLANDO E. SOLIVIO  
Acting Administrator

Enclosure

"ALL LIVING THINGS OF THE EARTH ARE ONE"

CHAPTER \_\_\_\_\_

UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES

- Section 01 . Act
- Section 02 . Findings of Necessity and Statement of Purpose
- Section 03 . Definitions
- Section 04 . Powers and Duties.
- Section 05 . Notification Requirements.
- Section 06 . New Tank Standards.
- Section 07 . Leak Detection and Record Maintenance.
- Section 08 . Reporting Requirements.
- Section 09 . Corrective Action.
- Section 10 . Hazardous Substance Emergency Response and Remedial Action Fund
- Section 11 . Financial Responsibility.
- Section 12 . Closure.
- Section 13 . Tank Permit Requirements.
- Section 14 . Inspection and Entry.
- Section 15 . Confidentiality of Information.
- Section 16 . Notice.
- Section 17 . Hearings.
- Section 18 . Injunction.
- Section 19 . Applicability to Government Agencies.
- Section 20 . Penalties.

Section 01. Act. This Act shall be known as the "Underground Storage of Hazardous Substances Act".

Section 02. Findings of Necessity and Statement of Purpose.

(a) The people of this Territory find:

- (1) Substances hazardous to the public health and safety, and to the environment, are stored prior to use in hundreds of underground locations in the territory.
- (2) Underground tanks used for the storage of hazardous substances are potential sources of contamination of the ground, underlying sole source aquifer, surface or marine waters, and may pose other dangers to public health and the environment.
- (3) In several states, underground storage has resulted in undetected and uncontrolled releases of hazardous substances into the ground. These releases have contaminated public drinking water supplies and created a potential threat to the public health and to the waters of these states.
- (4) Current laws do not specifically govern the construction, maintenance, testing, and use of underground tanks used for the storage of hazardous substances for the purposes of protecting the public health and the environment.



- (5) The protection of the public from releases of hazardous substances is an issue of territorial concern.
- (b) It is hereby declared to be the purpose of this Chapter to:
  - (1) Establish a continuing program for preventing contamination from, and improper storage of, hazardous substances stored underground.
  - (2) Establish orderly procedures that will ensure that newly constructed underground storage tanks meet appropriate standards.
  - (3) Establish orderly procedures that will ensure that existing tanks be properly maintained, inspected, and tested so that the health, property, and resources of the people of the territory will be protected.

Section 03. Definitions. For the purpose of this Chapter, the following definitions apply:

- (a) "Administrator" shall mean the Administrator of the Guam Environmental Protection Agency or his designee.
- (b) "Agency" shall mean the Guam Environmental Protection Agency.
- (c) "Board" shall mean the Board of Directors of the Guam Environmental Protection Agency.
- (d) "Guarantor" shall mean any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.
- (e) "Operator" shall mean any person in control of, or having responsibility for, the daily operation of the underground storage tank.
- (f) "Owner" shall mean:
  - (1) In the case of an underground storage tank in use or brought into use on or after the effective date of this Chapter, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and
  - (2) In the case of an underground storage tank in use before the effective date of this Chapter, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

- (g) "Person" shall mean an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, consortium, joint venture, commercial entity, association, a political subdivision of the Territory, interstate body, or any agency, department, or instrumentality of the Federal Government or Government of Guam, or any other legal representative, agency or assigns.
- (h) "Regulated Substance" or "Hazardous Substance" shall mean any element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. The term includes:
- (1) Any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, as amended, [but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976 (Public Law 94-380) as amended]; or
  - (2) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and
  - (3) Any other substance as designated by the Administrator.
- (i) "Release" includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.
- (j) "Underground Storage Tank" shall mean any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent or more beneath the surface of the ground. "Underground Storage Tank" does not include any of the following:
- (1) Septic tank;
  - (2) Pipeline facility (including gathering lines) regulated under:
    - (A) The Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended;
    - (B) The Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;
  - (3) Surface impoundment, pit, pond, or lagoon;

- (4) Storm water or waste water collection system;
- (5) Flow-through process tank;
- (6) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
- (7) Storage tank situated in an underground area (such as a basement, cellar, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

Section 04. Powers and Duties. The Agency shall have the responsibility to:

- (a) Develop and administer a territorial underground storage tank program pursuant to the provisions of this Chapter;
- (b) Study, investigate, or cause to be studied and investigated, pollution from underground storage tanks and causes, prevention, control, and abatement thereof, as deemed necessary to protect human health and the environment;
- (c) Provide technical assistance to local and federal agencies, and other persons, and cooperate with appropriate local agencies and private organizations in carrying out the duties of this Chapter;
- (d) Serve as the official territorial representative for all purposes of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) as amended, and for the purpose of such other territorial or federal legislation as may hereafter be enacted to assist in the management of underground storage tanks;
- (e) Prepare, adopt, promulgate, modify, update, repeal, and enforce rules and regulations governing underground storage tank design, construction, installation, release detection and inventory control, compatibility, record maintenance, reporting, corrective action, closure, and financial responsibility in order to conserve the land and water resources of the Territory, protect the public health, prevent environmental pollution and public nuisances, and enable it to carry out the purposes and provisions of this Chapter;
- (f) Establish the procedures for review and issuance of permits governing the design, operation, and closure of underground storage tanks;
- (g) Prepare, issue, modify, revoke and enforce orders for compliance with any of the provisions of this Chapter or of any rules and regulations issued pursuant thereto and requiring the taking of such remedial measures for underground storage tank management as may be necessary or appropriate to implement or effectuate the provisions and purposes of this Chapter;

- ~~CONFIDENTIAL~~
- (h) Prepare, adopt, promulgate, modify, update, repeal, and enforce such other rules and regulations as may be necessary to establish an underground storage tank program which meets the requirements of Section 9004 of Subtitle I of the Resource Conservation and Recovery Act of 1976 (Public Law 94-530) as amended, and regulations promulgated pursuant thereto.

Section 05. Notification Requirements.

- (a) Any owner who brings into use an underground storage tank after the effective date of this Chapter shall notify the Agency within thirty (30) days after the tank is brought into use and specify information including, but not limited to, the age, size, type, location, and uses of the tank. Notice shall be made on an approved form of notice provided by the Agency.
- (b) The owner of an existing underground tank taken out of operation or removed from the ground after the effective date of this Chapter shall notify the Agency within thirty (30) days of such action. Notices shall include, but not limited to, at least the following specifications:
  - (1) The date the tank was taken out of operation;
  - (2) The age of the tank on the date taken out of operation;
  - (3) The size, type, and location of the tank; and
  - (4) The type and quantity of substances left stored in the tank on the date taken out of operation or removed.

Section 06. New Tank Standards.

- (a) From and after the effective date of this Chapter and until the effective date of new tank performance standards promulgated thereunder, no person may install an underground storage tank unless the tank meets all of the following requirements:
  - (1) The tank will prevent releases of the stored regulated substances due to corrosion or structural failure for the operational life of the tank;
  - (2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and
  - (3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

- (b) Notwithstanding Subsection (a), if the Administrator determines that soils at an installation location are not corrosive enough to cause an underground storage tank to have a release during its operating life and the Administrator determines that the tank is adequately protected, a storage tank without corrosion protection may be installed at that location.
- (c) The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.

Section 07. Leak Detection and Record Maintenance.

- (a) The owner or operator of an underground storage tank shall maintain a leak detection system, an inventory control system, and tank testing system, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
- (b) The owner or operator shall maintain systematic and complete records of the information obtained from Subsection (a).

Section 08. Reporting Requirements.

- (a) The owner and operator of an underground storage tank shall notify the Agency of each release from the tank as soon as practicable but no later than twenty-four (24) hours after the release is detected. The owner may contract with the operator to assume the obligations created by this Section.
- (b) The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than twelve (12) hours after the release is detected.
- (c) Notice by the operator and owner may be made orally or in writing but shall be followed within fourteen (14) days by a written report to the Agency that a release has been detected. The written report shall include, but not be limited to, the nature of the release, the regulated substance released, the quantity of the release, the period of time over which the release occurred and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report.

Section 09. Corrective Action.

- (a) When a release is discovered the owner or operator of an underground storage tank shall take immediate action to stop the release.

- (b) The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank in a manner consistent with future protection of human health and the environment, and restoration of the environment to a condition and quality acceptable to the Agency. The Agency may require the owner or operator to undertake such investigations, monitoring, surveys, testings and other information gathering as the Agency considers necessary or appropriate to:
  - (1) Identify the existence and extent of the release;
  - (2) Identify the source and nature of the hazardous substance involved; and
  - (3) Evaluate the extent of danger to human health, safety, welfare or the environment.
- (c) If the owner or operator does not take immediate action to stop a release from an underground storage tank or immediately commence and promptly and adequately complete the cleanup of a release, the Agency may stop the release or cleanup the release, or contract to stop the release or contract for cleanup of the release.
- (d) Whenever the Agency is authorized to act under subsection (c) of this section, the Agency directly or by contract may undertake such investigations, monitoring, surveys, testing and other information gathering as it may deem appropriate to identify the existence and extent of the release, the source and nature of the hazardous substance involved and the extent of danger to human health, safety, welfare or the environment. In addition, the Agency directly or by contract may undertake such planning, fiscal, economic, engineering and other studies and investigations as it may deem appropriate to plan and direct cleanup actions, to recover the costs thereof and legal costs.

Section 10. Hazardous Substance Emergency Response and Remedial Action Fund

- (a) There is established a fund to be known as the Hazardous Substance Emergency Response and Remedial Action Fund, hereafter referred to as the "Action Fund" which shall be used by the Agency as a nonlapsing, revolving fund. The Legislature shall make an initial, one time appropriation of Twenty Thousand Dollars (\$20,000.00) to the Action Fund. All fees, reimbursements, assessments, fines, bail forfeitures, and other funds collected or received pursuant to this Chapter shall be deposited in the Action Fund.

(b) The Administrator shall administer the Action Fund and make disbursements from the fund for the following purposes:

- (1) Funding actions and activities authorized under Section 09 of this Chapter.
- (2) Training of Agency employees involved in regulation of underground storage of hazardous substances or response to releases of hazardous substances from underground storage tanks.
- (3) Providing for the general administration and implementation of this Chapter, including the purchase of equipment and payment of personnel costs of the Agency.

Section 11. Financial Responsibility.

- (a) The owner or operator of an underground storage tank shall maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of an underground storage tank.
- (b) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.
- (c) The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not 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 the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-516, as amended, or other applicable law.

Section 12. Closure. Closure of an underground storage tank shall be accomplished in a manner which prevents future releases of regulated substances.

Section 13. Tank Permit Requirements.

- (a) No person shall own, install, or operate an underground storage tank unless a permit is obtained from the Agency and upon payment of a fee to be prescribed by regulations. All such permits shall be non-transferable and conditioned upon the observance of the laws of the territory and rules and regulations.
- (b) Each permit holder shall apply for the renewal of each permit held, upon forms provided by the Agency, not less than sixty (60) days prior to the expiration date of such underground storage tank permit to be renewed.
- (c) Each permit application and each permit renewal application shall be submitted with evidence of financial responsibility, in a sum established by the Administrator and conditioned on the fulfillment by the permit holder of the requirements of this Chapter and the rules and regulations authorized therein.

Section 14. Inspection and Entry. The Agency is hereby authorized to inspect all underground storage tanks at all reasonable times to insure compliance with the laws of the Territory, the provisions of this Chapter, and the rules and regulations authorized herein. This authority shall include, but not be limited to, obtaining from any owner or operator of an underground storage tank, upon request, information relating to such tanks, their associated equipment, and their contents; conducting monitoring and testing of tanks or surrounding soils, air, surface water or groundwater; inspecting and copying all records relating to tanks; and inspecting and obtaining samples of regulated substances contained in tanks.

Section 15. Confidentiality of Records. Records or other information furnished to or obtained by the Administrator concerning regulated substances are available to the public, except that any records and information which relate to trade secrets, processes, operations, style of work or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of the Agency in the administration of this Chapter unless the owner or operator expressly agrees to their publication or availability to the public. This Section does not prohibit the publishing of quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary in this Section, information regarding the nature and quality of releases from underground storage tanks otherwise reportable pursuant to this Chapter shall be available to the public.



~~RESTRICTED BY GOVERNMENT POLICIES~~

Section 16. Notice. Any notice, order or other official correspondence affecting the rights of any person under this Chapter shall be delivered by personal service, or sent by registered mail with a return receipt to the address of such person as shown by the records of the Agency. The return receipt, signed by the addressee, or his agent, shall be conclusive proof of delivery.

Section 17. Hearings.

- (a) Any person who received an order from the Administrator as authorized by this Chapter and any person whose permit application is disapproved by the Administrator may, within fifteen (15) days of the date of receipt of such order or disapproval, file a notice of intent to appeal with the Board, setting forth in such notice a verified petition outlining the basis for such appeal.
- (b) The Board of Directors shall, not more than sixty (60) days after receipt of such notice of appeal, hold a public hearing at which time the person appealing may appear and present evidence in person or through counsel in support of this petition.
- (c) The Board is hereby authorized to administer oaths and to issue subpoenas to compel the attendance of witnesses and the production of evidence in all such hearings. Transcripts may be made by either the Agency or the person appealing.
- (d) The Board shall affirm, modify or revoke any action which is appealed and shall notify the appellant of its decision not more than thirty (30) days after the conclusion of the hearing. Such notice shall be in writing and shall state the reasons for the decision.
- (e) Any person may appeal such decision to the Superior Court of Guam by filing with the Agency a written notice of such intent to appeal within ten (10) days of the notice in Subsection (d) of this Section and shall have a transcript of the proceedings upon request. The person making the appeal shall pay the Agency for the expenses associated with the preparation of the requested transcript.

Section 18. Injunction. The Agency may maintain an action to restrain any violation or threatened violation of the provisions of this Chapter or the rules and regulations authorized herein. Such right to injunctive relief is in addition to any other powers or penalties conferred by this Chapter.

Section 19. Applicability to Government Agencies. Agencies of the Government of Guam and Government of the United States shall comply with all provisions of this Chapter including permit requirements with the exception of Sections 11 and 13 (c).

Section 20. Penalties.

- (a) Any person who violates any underground storage tank provisions of this Chapter, or any valid underground storage tank rule or regulation promulgated under this Chapter, or who refuses or neglects to comply with any lawful order issued by the Administrator in carrying out the provisions of this chapter shall forfeit and pay the Government of Guam a civil penalty not less than Ten Thousand Dollars (\$10,000) for each tank for each day of violation.
- (b) Any person with an interest, which is or may be adversely affected by a violation of this Chapter, may intervene as a matter of right in any civil action brought by the Agency to require compliance with the provisions of this Chapter.
- (c) Any person who knowingly fails to notify or makes any false statement or representation in any underground storage tank notification, permit application, or other document filed, maintained, or used for purposes of compliance with the provisions of this Chapter, upon conviction, shall be imprisoned not less than six (6) months or be fined not less than Ten Thousand Dollars (\$10,000) per day for each violation, or both.



## Twentieth Guam Legislature

163 Chalan Santo Papa Street

Agana, Guam 96910

PHONE NOS. 472-3450/3451

June 20, 1989

MARILYN D.A. MANIBUSAN

SENATOR

The Honorable Madeleine Bordallo

Chairperson

Committee on Health, Welfare & Ecology

20th Guam Legislature

Agana, Guam

Re: Testimony in support of Bill 284 - Underground Storage of  
Hazardous Substances Act.

Dear Madam Chairperson:

First of all, I wish to thank you for holding a public hearing on Bill 284 - an Act relative to the underground storage of hazardous substances. I am also grateful to this Committee for giving me the opportunity to testify in support of the Bill.

Madam Chairperson, the tragic oil spill in Alaska has been widely publicized. Lives have been ruined, businesses closed and thousands of fish and other wildlife killed. Likewise, on the mainland, environmentalists have been battling to protect Florida's reefs and beaches from leaking oil. I mention this to illustrate the danger hazardous substances can - and do - pose to the environment.

Imagine what kind of damage leaking oil or hazardous chemicals could have on the island's water supply if immediate action is not taken to monitor underground storage of these potentially lethal substances?

As the primary sponsor of Bill 284, I introduced this legislation in an effort to protect the people of Guam and the island's water supply from contamination by hazardous substances which are stored underground.

This legislation is desperately needed. Early in 1989, it was reported that portions of the northern aquifer may have been contaminated by the United States Air Force when it buried World War II wastes in the north.

Since the island's water supply is underground, there is a very real danger that any leakage of drums containing chemicals or hazardous substances could filter down into the water supply, thereby injuring or tragically killing the unsuspecting people of Guam. There is also a danger of contamination from gasoline or oil stored in underground drums. I know that this is something the Guam Environmental Protection Agency is particularly concerned about.

Madam Chairperson, Bill 284 is modeled on Federal legislation. In March 1989, I submitted testimony on the measure to the GEPA Board (see attached), and, I have been informed that Region Nine has given its stamp of approval on the Bill with certain modifications.

With the Committee's indulgence, I would ask that the following amendments be made to Bill 284 in order to be consistent with Federal legislation and the concerns of the Guam Environmental Protection Agency:

**Section 3(j)(1)** includes as an exclusion to the Underground Storage Tank definition "Farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes". This should be deleted.

**Section 6(b)** provides that "if soil tests conducted by the owner in accordance with ASTM Standard G57-78, or similar standard, show that soil resistivity in an installation location is twelve thousand (12,000) ohm/cm or more and provided the Administrator determines that the tank is adequately protected, a storage tank without corrosion protection may be installed at that location." This should be amended to read as follows: "[if soil tests conducted by the owner in accordance with ASTM Standard G57-78, or similar standard, show that soil resistivity in an installation location is twelve thousand (12,000) ohm/cm or more] if the Administrator determines that soils at an installation location are not corrosive enough to cause an underground storage tank to have a release during its operating life and provided the Administrator determines that the tank is adequately protected, a storage tank without corrosion protection may be installed at that location."

**Section 8(a)** has a typographical error in the last sentence. The word "by" should be deleted.

**Section 8(b)** gives the operator of an underground storage tank 24 hours to notify the owner of a release. This should be amended to "12 hours".

**Section 9(b)** simply provides that the owner or operator of an underground storage tank shall take corrective action in response to a release. This is amended by the attached - which would empower the Agency to conduct investigations, and take action to stop a release or cleanup of same if the owner or operator does not do so.

**Section 10** should be added to include a \$20,000 "Action Fund" for emergency responses. Please see the attached for a new Section 10. All other Sections would then have their number increased by one.

**Section 13** (which would become Section 14 if the above amendment is adopted) provides in the second sentence that "This authority shall include obtaining from any owner or operator" information relating the tanks. This should be amended to "This authority shall include but not be limited to, obtaining from any owner or operator...".

**Section 16(e)** (which would become Section 17(e)) provides that any person may appeal to the Superior Court and have a transcript of the proceedings on request. The following sentence should be added: "The person making the appeal shall pay the Agency for the expenses associated with the preparation of the requested transcript."

**Section 18** cites Sections 10 and 12(c). If the Committee adopts my amendment adding a new Section 10, the cited Section should be changed to 11 and 13(c).

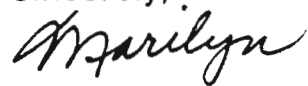
**Section 19(a)** has a typographical error on the third line from the bottom. "of" needs to be deleted. Therefore the sentence would read that anyone who violates this Act "shall forfeit and pay to the Government of Guam a civil penalty [of] not to exceed Ten Thousand Dollars (\$10,000) for each tank for each day of violation."

**Section 19(c)** has a typographical error on the third line from the bottom. "s" should be added to "provision".

In conclusion, I wish to thank you once again, Madam Chairperson, for holding a public hearing on Bill 284. I am confident that this Committee will act expeditiously on the measure with a recommendation to "pass".

We cannot and must not allow what has happened in Alaska and Florida - on the ocean's surface - to occur below ground on Guam.

Sincerely,



MARILYN MANIBUSAN  
Senator

## AMENDMENT TO SECTION 9

By Senator Marilyn Manibusan

### Section 09. Corrective Action.

- (a) When a release is discovered the owner or operator of an underground storage tank shall take immediate action to stop the release.
- (b) The owner or operator of an underground storage tank shall take corrective action in response to the release of regulated substances from the tank in a manner consistent with future protection of human health and the environment, and restoration of the environment to a condition and quality acceptable to the Agency. The Agency may require the owner or operator to undertake such investigations, monitoring, surveys, testings and other information gathering as the Agency considers necessary or appropriate to:
  - (1) Identify the existence and extent of the release;
  - (2) Identify the source and nature of the hazardous substance involved; and
  - (3) Evaluate the extent of danger to human health, safety, welfare or the environment.
- (c) If the owner or operator does not take immediate action to stop a release from an underground storage tank or immediately commence and promptly and adequately complete the cleanup of a release, the Agency may stop the release or cleanup the release, or contract to stop the release or contract for cleanup of the release.
- (d) Whenever the Agency is authorized to act under subsection (c) of this section, the Agency directly or by contract may undertake such investigations, monitoring, surveys, testing and other information gathering as it may deem appropriate to identify the existence and extent of the release, the source and nature of the hazardous substance involved and the extent of danger to human health, safety, welfare or the environment. In addition, the Agency directly or by contract may undertake such planning, fiscal, economic, engineering and other studies and investigations as it may deem appropriate to plan and direct cleanup actions, to recover the costs thereof and legal costs.

AMENDMENT ADDING A NEW SECTION 10

By Senator Marilyn Manibusan

Section 10. Hazardous Substance Emergency Response and Remedial Action Fund

- (a) There is established a fund to be known as the Hazardous Substance Emergency Response and Remedial Action Fund, hereafter referred to as the "Action Fund" which shall be used by the Agency as a nonlapsing, revolving fund. The Legislature shall make an initial, one time appropriation of Twenty Thousand Dollars (\$20,000.00) to the Action Fund. All fees, reimbursements, assessments, fines, bail forfeitures, and other funds collected or received pursuant to this Chapter shall be deposited in the Action Fund.
- (b) The Administrator shall administer the Action Fund and make disbursements from the fund for the following purposes:
  - (1) Funding actions and activities authorized under Section 09 of this Chapter.
  - (2) Training of Agency employees involved in regulation of underground storage of hazardous substances or response to releases of hazardous substances from underground storage tanks.
  - (3) Providing for the general administration and implementation of this Chapter, including the purchase of equipment and payment of personnel costs of the Agency.





# Twentieth Guam Legislature

163 Chalan Santo Papa Street

Agana, Guam 96910

PHONE NOS. 472-3450/3451

MARILYN D.A. MANIBUSAN  
SENATOR

March 2, 1989

Mr. Fred Castro  
Administrator  
Guam Environmental Protection Agency  
Tamuning, Guam

Re: Testimony in support of a proposed Bill relating to Under-  
ground Storage of Hazardous Substances.

Dear Mr. Castro:

I'm writing to express my support for GEPA's proposed Bill to establish a continuing program for preventing contamination and improper storage of hazardous substances underground, as well as establishing procedures to ensure that new underground storage tanks are constructed in accordance with appropriate standards.

As you know, I recently introduced Bill 284 into the 20th Guam Legislature in an effort to protect the community from potentially lethal contamination of the island's underground water supply. Bill 284 incorporates most of the provisions contained in GEPA's proposed legislation. Furthermore, I have been informed that Region IX is expected to endorse the Bill because enforcement standards to be adopted are equal to, or, exceed those of the Federal Government. In fact, Section 19 of the Bill mandates compliance by both the Government of Guam and the United States Government.

I am particularly supportive of the Notification and Reporting requirements contained therein. Section 7 of the Bill provides that the owners or operators of underground storage tanks must maintain a leak detection system or method of identifying releases into the environment. In addition, tank owners or operators must maintain a systematic and complete set of records detailing any leaks so detected. These are extremely important provisions - given the difficulty of tracing contaminants. Considering the highly toxic nature of numerous hazardous substances, the people of Guam must be assured of their absolute protection - regardless of who owns or operates the tanks.

Finally, I believe the Bill has the necessary "teeth" to enable GEPA to enforce the provisions of the Act. Requiring tank owners to post bond or insure themselves against potential suits will not only protect the owners, but will safeguard the public - guaranteeing there will be sufficient funds to cover medical treatment and other damages.

I want to thank the Guam Environmental Protection Agency for giving me the opportunity of testifying in support of this proposed legislation. I am optimistic that it will receive speedy and favorable action by my colleagues in the 20th Guam Legislature.

Sincerely,



MARILYN MANIBUSAN

FISCAL NOTE  
BUREAU OF BUDGET & MANAGEMENT RESEARCH

BBMR-F7

Bill No. 284(LS) Date Received \_\_\_\_\_  
Mandatory Bill Yes ☒ No ☐ Date Reviewed \_\_\_\_\_  
Department/Agency Affected: GEPA  
Department/Agency Head: Fred Castro  
Total Fiscal Year Appropriation: \$1,583,225  
Bill Title (concise): AN ACT CREATING A NEW CHAPTER 88 OF TITLE 10, GUAM CODE ANNOTATED  
PROVIDING FOR THE UNDERGROUND STORAGE OF HAZARDOUS MATERIAL

Change in Law: \_\_\_\_\_

Bill Attempts to:

Bill is for:

- ☐ Increase Program Funding  
☐ Decrease Program Funding  
☐ Reallocate Present Program Funding

- ☐ Operations  
☐ Capital Improvement  
☒ Other

FINANCIAL/PROGRAM IMPACT

<u>PROGRAM CATEGORIES</u>	<u>Minimum Estimated Required Funds (For Five Years)</u>		
	<u>GENERAL FUND</u>	<u>FEDERAL</u>	<u>OTHER</u>
Health and Welfare	See Comments		
GRAND TOTAL			

ESTIMATED MULTI-YEAR FUND REQUIREMENTS

<u>SOURCES</u>	<u>1st</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>
General Fund	See Comments				
Federal Fund					
Other Fund					
GRAND TOTAL					

ESTIMATED MULTI-YEAR REALIZED REVENUES

<u>SOURCES</u>	<u>1st</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>
General Fund	See Comments				
Federal Fund					
Other Fund					
GRAND TOTAL					

*Catherine U. Leon Guerrero*  
CATHERINE U. LEON GUERRERO  
PROGRAM ANALYST

*Michael J. Reidy*  
MICHAEL J. REIDY

Date Review Terminated: 6-16-87

COMMENTS ON BILL NO. 284(LS)

Bill No. 284 is an Act creating a new Chapter 88 of Title 10, Guam Code Annotated providing for the Underground Storage of Hazardous Materials.

The purpose of this Act is to establish guidelines and regulations which will govern the underground storage of hazardous substances. If enacted, the proposed legislation will provide a revenue-generating source for the General Fund through the penalties established. However, the Bureau is unable to ascertain the fiscal impact, at this time due the unavailability of information. It is uncertain at this time whether the revenues to be generated would be sufficient to offset the cost of environmental damage that may result from improper storage of hazardous substances.



MICHAEL J. REIDY

ATTENDANCE SHEET

TWENTIETH GUAM LEGISLATURE  
COMMITTEE ON HEALTH, WELFARE, AND ECOLOGY

PUBLIC HEARING DATE: 20 June 1989 ON Bill No. 284

INITIAL

- |     |                                     |                             |
|-----|-------------------------------------|-----------------------------|
| 1.  | SPEAKER SAN AGUSTIN, JOE T          | _____                       |
| 2.  | SENATOR AGUON, JOHN P.              | _____                       |
| 3.  | SENATOR ARRIOLA, ELIZABETH P. (M)   | _____                       |
| 4.  | SENATOR DIERKING, HERMINIA D. (M)   | _____                       |
| 5.  | SENATOR GUTIERREZ, CARL T.C.        | _____                       |
| 6.  | SENATOR LUJAN, PILAR C. (M)         | _____                       |
| 7.  | SENATOR MAILLOUX, GORDON (M)        | _____                       |
| 8.  | SENATOR NELSON, TED S. (M)          | _____                       |
| 9.  | SENATOR PARKINSON, DON              | _____                       |
| 10. | SENATOR QUITOGUA, FRANKLIN J.A.     | _____                       |
| 11. | SENATOR REYES, EDWARD D. (M)        | _____                       |
| 12. | SENATOR SANTOS, FRANK R.            | _____                       |
|     |                                     |                             |
| 13. | SENATOR BAMBA, GEORGE J.            | _____                       |
| 14. | SENATOR BROOKS, DORIS F.            | _____                       |
| 15. | SENATOR DUENAS, EDDIE R.            | _____                       |
| 16. | SENATOR ESPALDON, ERNESTO (M)       | _____                       |
| 17. | SENATOR MANIBUSAN, MARILYN D.A. (M) | _____                       |
| 18. | SENATOR RUTH, MARTHA C. (M)         | <u>                    </u> |
| 19. | SENATOR TANAKA, TOMMY (M)           | <u>                    </u> |
| 20. | SENATOR UNPINGCO, TONY R. (M)       | <u>                    </u> |

COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

ATTENDANCE SHEET

DATE: 11/11/71

James L. Cantu  
Richard Salvo  
Sen. Marilyn Maubach

NAME

PRINT:

SIGN:

WRITTEN:

ORAL:

AGENCY / INTEREST GROUP

COMMENT

FAVOR:

AGAINST:

Sen. Marilyn Maubach

JAMES L. CANTU

RICHARD SALVO

J. L. Cantu

Richard Salvo

GEPA

CEPA

Legislature

✓

✓