

Office of the Speaker  
ANTONIO R. UNPINGCO  
Date: 6-20-97  
Time: 2 pm  
Received By: myf  
Initial Name: Honorable Speaker

JUN 20 1997

The Honorable Antonio R. Unpingco  
Speaker  
Twenty-Fourth Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY  
KNOWLEDGMENT RECEIPT

Received By: [Signature]  
Time: 3:35 pm  
Date: 6-20-97

Dear Speaker Unpingco:

Enclosed please find a copy of Substitute Bill No. 176 (COR), "AN ACT TO REPEAL AND RE-ENACT CHAPTER 49 OF TITLE 10 OF THE, GUAM CODE ANNOTATED, RELATIVE TO AIR POLLUTION CONTROL.", which I have signed into law today as **Public Law No. 24-40**.

This legislation brings the local Guam law into line with the federal law, Title V of the Clean Air Act. It provides for the Guam Environmental Protection Agency (GEPA) to develop a permitting program that is more flexible than that required of other states.

The new program provides for the following:

1. replaces pre-construction and permit programs with a streamlined process;
2. ensures that costs are kept down while still preserving air quality;
3. provides technical assistance to community with program workshops, surveys and other mechanisms rather than merely regulating;
4. establishes a revolving fund to cover the operating costs of the program; the money comes from the permit application fees, annual emission charges, and federal grants. Since most emissions come from local and federal government agencies, a

fee structure would be altered from the typical Title V program;

5. minimizes the burden on island residents and businesses in the application and compliance of federal and local rules.

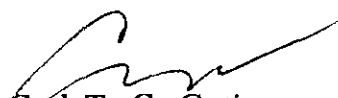
The annual cost of the program is no more than \$250,000.

There appear to be several places where perhaps a line is dropped in the typing of the passed version of the legislation and perhaps these areas can be corrected at a later time. The missing language appears to be the following:

1. On page 8, line 6-7, Subsection (r) was omitted from the transmitted legislation, which reads: "(r) to exercise all incidental powers necessary to carry out the purposes of this Chapter."
2. On page 13, line 10-11, the following line was omitted: "impact of the proposed action, any diverse environmental".
3. On page 26, after the word "Agency", insert the following line which was omitted: "to be maintained by the person pursuant to this Chapter, or who fails".

This legislation furthers the Administration's goals of providing for the environmental protection of our island's important natural resources and quality of life.

Very truly yours,



Carl T. C. Gutierrez  
Governor of Guam

Attachment


282

cc: The Honorable Joanne M. S. Brown  
Legislative Secretary


TWENTY-FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

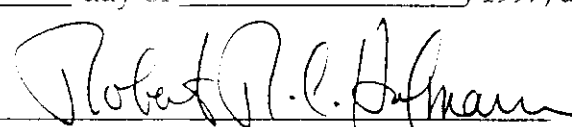
This is to certify that Substitute Bill No. 176 (COR), "AN ACT TO REPEAL AND RE-ENACT CHAPTER 49 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO AIR POLLUTION CONTROL," was on the 7th day of June, 1997, duly and regularly passed.

  
\_\_\_\_\_  
ANTONIO R. UNPINGCO  
Speaker

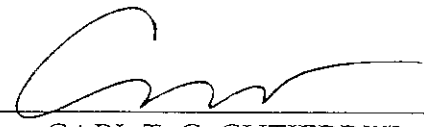
Attested:

  
\_\_\_\_\_  
JOANNE M.S. BROWN  
Senator and Legislative Secretary

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This Act was received by the Governor this 11<sup>th</sup> day of June, 1997, at  
2:07 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
\_\_\_\_\_  
CARL T. C. GUTIERREZ  
Governor of Guam

Date: 6-20-97

Public Law No. 24-40

—  
TWENTY-FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session

Bill No. 176 (COR)

As substituted by the Committee  
on Natural Resources, and as further  
substituted on the Floor, and amended.

Introduced by:

Mark Forbes  
Committee on Rules, Government  
Reform and Federal Affairs

By request of the Governor in  
Accordance with the Organic Act  
of Guam.

T. C. Ada  
F. B. Aguon, Jr.  
E. Barrett-Anderson  
A. C. Blaz  
J. M.S. Brown  
Felix P. Camacho  
Francisco P. Camacho  
M. C. Charfauros  
E. J. Cruz  
W. B.S.M. Flores  
L. F. Kasperbauer  
A. C. Lamorena, V  
C. A. Leon Guerrero  
L. Leon Guerrero  
V. C. Pangelinan  
J. C. Salas  
A. L.G. Santos  
F. E. Santos  
A. R. Unpingco  
J. Won Pat-Borja

—

AN ACT TO REPEAL AND RE-ENACT CHAPTER 49  
OF TITLE 10 OF THE GUAM CODE ANNOTATED,  
RELATIVE TO AIR POLLUTION CONTROL.

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

**Section 1. Legislative Findings.** The Guam Legislature finds it necessary for the repeal and re-enactment of Chapter 49 of Title 10 of the Guam Code Annotated, to provide statutory authority for the Guam Environmental Protection Agency in developing a new air permitting program. While the present Air Pollution Control Act provides for the control of air pollution, this new Chapter is designed to expand the air pollution permit program and make corrections and clarifications to the previous language. This Chapter, based on the operating permit program described in Title V of the Federal Clear Air Act, includes modifications that meet both the Federal requirements, and yet allow the flexibility necessary to best meet the needs of Guam.

**Section 2.** Chapter 49 of Title 10 of the Guam Code Annotated is repealed and re-enacted to read:

"CHAPTER 49.

AIR POLLUTION CONTROL.

**Section 49101. Title.** This Chapter shall be known as the 'Air Pollution Control Act'.

**Section 49102. Statement of Policy.** It is hereby declared to be the public policy of this Territory and the purpose of this Chapter to achieve and maintain the levels of air quality that will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people,

1 promote the economic and social development of this Territory and  
2 facilitate the enjoyment of the natural attractions of this Territory.

3 To these ends, it is the purpose of this Chapter to provide for a  
4 coordinated Territory-wide program of air pollution prevention,  
5 abatement, and control and to provide a framework within which all  
6 values may be balanced in the public interest.

7 **Section 49103. Definitions.** As used in this Chapter:

8 (a) **'Administrator'** means the Administrator of the Guam  
9 Environmental Protection Agency, or the Administrator's designee.

10 (b) **'Agency'** means the Guam Environmental Protection Agency.

11 (c) **'Air Pollutant'** means any air pollution agent or combination  
12 of such agents, including any physical; chemical; biological; radioactive,  
13 inclusive of source material special nuclear material, and byproduct  
14 material; substance; or matter which is emitted or otherwise enters the  
15 ambient air. The term includes any precursors to the formation of any  
16 pollutant, to the extent that the agent or combination of such agents is  
17 identified in any Federal or Territory rules as precursors.

18 (d) **'Air Pollution'** means the presence in the outdoor atmosphere  
19 of one (1) or more substances in such quantities and duration as is, or tends  
20 to be, injurious to human health, welfare, plant life, animal life, or property,  
21 or would unreasonably interfere with the enjoyment of life or property.

22 (e) **'Air Pollution Emission Source'** means property, real or  
23 personal, which emits, or may emit, air pollution. -

24 (f) **'Applicable Requirements'** means any standard or other  
25 requirement, term or condition, adopted by the Administrator through

1 regulation.

2 (g) 'Clean Air Act' means the Federal Clean Air Act of 1963, as  
3 amended.

4 (h) 'Compliance Plan' means a plan which includes a description  
5 of how a source proposes to comply with all applicable requirements  
6 pursuant to this Chapter, and includes a schedule of compliance and a  
7 schedule under which the permittee will submit progress reports to the  
8 Agency.

9 (i) 'Emission' means a release of air pollutants into the outdoor  
10 atmosphere.

11 (j) 'Fugitive Emissions' means those emissions which could not  
12 reasonably pass through a stack, chimney, vent or other functionally  
13 equivalent opening.

14 (k) 'Hazardous Air Pollutant' means those hazardous air  
15 pollutants listed in §112(b) of the Clean Air Act, as amended, 42 United  
16 States Code §7412(b), and any other pollutant designated by Federal or  
17 Territory rules as hazardous.

18 (l) 'Major Source' means any air pollution emission source, or any  
19 group of sources, that is located on one (1) or more contiguous properties  
20 or adjacent properties, and is under common control of the same person or  
21 persons, and that emits or has the potential to emit, considering controls:

22 (1) any hazardous air pollutant, except radionuclides, in the  
23 aggregate if ten (10) tons per year or more, including fugitive  
24 emissions, or twenty-five (25) tons per year or more of any  
25 combination, including fugitive emissions or such lesser quantity as

the Administrator may establish by rule; or

(2) one hundred (100) tons per year or more of any air pollutant belonging to a single major industrial grouping, including fugitive emissions, as established by the Administrator by rule; or

(3) for radionuclides, major source shall have the meaning specified by the United States Environmental Protection Agency ("USEPA") Administrator by rule.

(m) 'Owner or Operator' means any person who owns, leases, operates, controls or supervises an air pollution emission source.

(n) 'Permit' means written authorization from the Administrator to construct, modify, relocate or operate an air pollution emission source.

A permit authorizes the permittee to cause or allow the emission of an air pollutant in a specified manner or amount, or to do any act, not forbidden by this Chapter or by rules adopted pursuant to the Chapter.

(o) 'Person' means any individual, partnership, firm, association, municipality, public or private corporation, subdivision, or agency of the Territory, trust, estate or any other legal entity.

(p) 'Pollution Prevention' means the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source.

(q) 'USEPA Administrator' means the Administrator of the United States Environmental Protection Agency, or his designee.

**Section 49104. Powers and Duties of the Agency.** -The Agency is authorized and directed to:

(a) hold hearings related to any aspect of, or matter in the



1 administration of, this Chapter, and in connection therewith, compel the  
2 attendance of witnesses and the production of evidence;

3 (b) require access to records relating to emissions, which cause or  
4 contribute to air pollution;

5 (c) prepare and develop a comprehensive plan for prevention,  
6 abatement and control of air pollution in this Territory;

7 (d) encourage voluntary cooperation by persons and affected  
8 groups to achieve the purposes of this Chapter;

9 (e) encourage and conduct studies, investigations, and research  
10 relating to air pollution and its causes, effects, prevention, abatement and  
11 control;

12 (f) determine, by means of field studies and sampling, the degree  
13 of air contamination and air pollution in the Territory;

14 (g) establish ambient air quality standards for the Territory;

15 (h) collect and disseminate information and conduct educational  
16 and training programs relating to air pollution;

17 (i) delegate those responsibilities and duties, as appropriate for the  
18 purpose of administering the requirements of this Chapter;

19 (j) advise, consult, contract and cooperate with other agencies of  
20 the Territory, industries, the Federal government and with interested  
21 persons or groups;

22 (k) consult, upon request, with any person proposing to construct,  
23 install, or otherwise acquire, an air pollutant source, device or system on  
24 the air pollution problem, which may be related to the source, device or  
25 system. Nothing in any consultation shall be construed to relieve any

1 person from compliance with this Chapter, or any other provision of law;

2 (l) carry out a program of inspection and testing of all modes of  
3 transportation, to enforce compliance with applicable emission standards  
4 when necessary and practicable, and to control or limit the operation of  
5 motor vehicles and other modes of transportation, when in the opinion of  
6 the Agency, the modes of transportation are producing, or pose an  
7 immediate danger of producing, unacceptable levels of air pollutants;

8 (m) establish and administer a Territory-wide air pollution control  
9 permit program;

10 (n) delay or prevent any construction, modification or operation of  
11 air pollution sources and modifications which, in the opinion of the  
12 Agency, would cause the ambient air pollution level in the locality of  
13 construction, modification or operation, to exceed limit for ambient  
14 concentration established by the Territory of Guam implementation plan  
15 promulgated pursuant to the Clean Air Act, or which construction,  
16 modification or operation would, in the opinion of the Agency, violate any  
17 provision of any land use plan established by the Territory of Guam  
18 implementation plan;

19 (o) prepare, adopt, promulgate, amend, rescind, repeal and enforce  
20 any other rules and regulations as may be necessary to establish additional  
21 requirements which may be at least equivalent to, or more stringent or  
22 broader in scope than, the requirements of the Clean Air Act and  
23 regulations promulgated pursuant to the Clean Air Act that are applicable  
24 to Guam;

25 (p) do all things necessary and convenient to prepare and submit

1 a plan, or plans, for the implementation, maintenance and enforcement of  
2 each primary and secondary ambient air quality standard for any pollutant  
3 established pursuant to the Clean Air Act;

4 (q) establish and collect fees for conducting inspections and  
5 laboratory analyses, as necessary, for the purpose of carrying out this  
6 Chapter.

7 **Section 49105. Powers and Duties of the Administrator.** The  
8 Administrator shall have and may exercise the following powers and  
9 duties:

10 (a) to consider actions of the agency as set forth in §49104 of this  
11 Chapter, and shall take actions as necessary to protect human health,  
12 welfare or the environment;

13 (b) to issue, amend, rescind and enforce orders as may be necessary  
14 to ensure compliance with any of the provisions of this Chapter, or of any  
15 rules and regulations issued pursuant to this Chapter including, but not  
16 limited to, the issuance of an administrative penalty order and requiring  
17 the taking of whatever remedial measures may be necessary or appropriate  
18 to implement or effectuate the provisions and purposes of this Chapter;

19 (c) to establish an effective enforcement system for the prevention,  
20 control and abatement of air pollution, including specific requirements  
21 under the air pollution control permit program through all appropriate  
22 administrative and judicial courses of action;

23 (d) to issue, continue in effect, modify, revoke, reissue or deny  
24 permits as the Agency may prescribe;

25 (e) to assure compliance by all sources required to have a permit

1 with each applicable standard, regulation or requirement provided by  
2 Federal or Territorial statutes or rules; and

3 (f) to accept, receive and administer grants and other funds or fees  
4 from public and private agencies, including the Federal government, for  
5 carrying out any of the purposes of this Chapter.

6 **Section 49106. Monitoring and Reporting Required.** The  
7 Administrator may require an owner or operator of any source, on a  
8 continuous, periodic or one-time basis to:

- 9 (a) establish, maintain and submit records;  
10 (b) draft reports;  
11 (c) install, use and maintain monitoring equipment, and use audit  
12 procedures or methods;  
13 (d) sample emissions in accordance with such procedures or  
14 methods at such location, at such intervals, during periods and in the  
15 manner prescribed by the Administrator;  
16 (e) keep records on the source and the control equipment  
17 parameters, production variables or other indirect data when direct  
18 monitoring is impractical;  
19 (f) sample and analyze the composition of the fuel, waste, or other  
20 products being burned or incinerated;  
21 (g) submit compliance certifications; and  
22 (h) provide other information as the Agency may require.

23 **Section 49107. Air Pollution Control Permit Program.** (a) **Program**  
24 **Applicability.** (1) The Administrator shall determine which air pollution  
25 emission sources shall be obligated to apply for, and obtain, air pollution

1 control permits. At a minimum the Administrator shall require a permit  
2 for any air pollution emission source that is classified as a major source, or  
3 is required to obtain a permit by any applicable standard, regulation or  
4 requirement provided by Federal or Territory statutes or rules.

5 (2) Beginning thirty (30) days after the effective date of the  
6 revised Guam Air Pollution Control Standards and Regulations pursuant  
7 to this Section, any person who sells any air pollution emission source,  
8 which must be permitted pursuant to the Guam Air Pollution Control  
9 Standards and Regulations, shall notify the purchaser of the permit  
10 requirements pursuant to this Chapter.

11 (3) Provided a permit is required, no person may begin or  
12 continue construction, reconstruction, modification, relocation, nor begin  
13 or continue operation of an air pollution emission source, without first  
14 applying for, and obtaining, a valid air pollution control permit from the  
15 Administrator.

16 (4) Permits being renewed shall be subject to the same  
17 procedural requirements that apply to initial permit issuance, including the  
18 procedures of Federal oversight and public participation.

19 (5) Permit expiration terminates the source's right to operate,  
20 unless a timely and complete renewal application is submitted to the  
21 Agency. To be deemed complete, an application must provide all  
22 information required or requested by the Administrator.

23 (6) If a timely and complete renewal application is submitted,  
24 the source's ability to operate without a permit after the expiration date is  
25 conditioned on the owner or operator acting consistently with the permit

1 previously granted, or in accordance with the plans, specifications and  
2 other information submitted as a part of the renewal application. The  
3 previous permit terms and conditions will remain enforceable by the  
4 Administrator.

5 (7) If, while processing an application that has been  
6 determined or deemed to be complete, the Agency determines that  
7 additional information is necessary to evaluate, or take final action on that  
8 application, the Agency will inform the source of the additional  
9 information required and set a reasonable deadline for a response. Failure  
10 to submit the information within the specified time period may result in  
11 denial of the permit.

12 (b) **Permit Applications.** (1) Every application shall contain  
13 sufficient information for the Administrator to determine and impose all  
14 applicable requirements. Every application shall include a compliance  
15 certification, plan and, if applicable, a schedule. The Agency may require  
16 that permit applications be accompanied by other plans, specifications,  
17 meteorological monitoring data, ambient air quality monitoring data, and  
18 other information necessary to identify the source, air emissions and the air  
19 quality impacts to determine whether the proposed installations,  
20 modification or operation will be in accordance with applicable rules and  
21 standards.

22 (2) The Agency, by regulation, will specify when a proposed  
23 permit offered for public comment shall be subject to Federal oversight and  
24 public participation.

25 (c) **Permit Conditions.** (1) The Administrator shall issue a permit,

1 if it is determined that the sources will comply with all requirements of this  
2 Chapter, and the rules and standards adopted pursuant to this Chapter.

3 (2) Each permit shall contain and require compliance with all  
4 applicable Federal requirements, and must contain monitoring, record  
5 keeping and reporting requirements sufficient to assure compliance with  
6 applicable Federal requirements. Each limitation, control and requirement  
7 in the permits shall be permanent, quantifiable and otherwise enforceable  
8 as a practical matter. The permit may also be subject to such additional  
9 reasonable conditions as the Administrator may prescribe to ensure  
10 compliance, including emission limitations, and control technology  
11 requirements.

12 (3) The Administrator may require pollution prevention  
13 audits, or the implementation of pollution prevention measures to ensure  
14 that emissions are reduced or eliminated when feasible.

15 (d) **Other Permit Actions.** (1) The Administrator, on the  
16 Administrator's own initiative or the application of any person, may  
17 terminate, modify, suspend, or revoke and reissue any permit if, after  
18 affording the permittee an opportunity for a public hearing, the  
19 Administrator determines that:

20 (A) the permit contains a material mistake made in  
21 establishing the emissions limitations or other requirements of the  
22 permit;

23 (B) permit action is required to assure compliance with  
24 the applicable requirements of this Chapter, the Clean Air Act, or any  
25 other applicable Federal or Territory statutes or rules;

1 (C) there is a violation of any condition of the permit;

2 (D) the permit was obtained by misrepresentation or  
3 failure to disclose fully all relevant facts;

4 (E) there is a change in any condition that requires  
5 either a temporary or permanent reduction or elimination of the  
6 permitted discharge;

7 (F) more frequent monitoring or reporting by the  
8 permittee is required; or

9 (G) such is in the public interest. In determining the  
10 public interest, the Administrator shall consider the environmental  
11 effects, which cannot be avoided should the action be implemented;  
12 the alternatives to the proposed action; the relationship between local  
13 short-term uses of the environment and the maintenance and  
14 enhancement of long-term productivity; irreversible and irretrievable  
15 commitments of resources, which would be involved in the proposed  
16 action should it be implemented; and any other factors which the  
17 Administrator may by rule prescribe, provided that any  
18 determination of public interest shall promote the optimum balance  
19 between economic development and environmental quality.

20 (2) The Administrator may revise a permit administratively  
21 if the revision:

22 (A) corrects typographical errors;

23 (B) identifies a change in the name, address or phone  
24 number of any person identified in the permit, or provides a similar  
25 minor administrative change at the source;



(C) allows for a change in ownership or operational control of a source where the Agency determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility coverage, and liability between the current and new permittees has been submitted to the Agency; or

(D) makes any other change that the Agency determines to be similar to those in §§49107(d)(2)(a) through (c), inclusive.

(3) The Administrator may take other permit actions as may be established by regulation.

(e) **Fees.** (1) The Administrator shall establish fees for permits issued pursuant to this Chapter to be paid by the applicant prior to the issuance of the permit, and thereafter on a schedule established by the Agency.

(2) All monies collected as fees shall be deposited in the Air Pollution Control Special Fund established under Subsection (f) of §49107 of this Chapter.

(3) The fees shall be at a set rate to ensure that the Air Pollution Control Special Fund has enough money to adequately support and administer the Air Pollution Control Permit Program.

(f) **Air Pollution Control Special Fund.** There is established a fund to be known as the, 'Air Pollution Control Special Fund,' which shall be maintained separate and apart from any other funds of the government of Guam, and shall be administered by the Administrator. Independent

1 records and accounts shall be maintained in connection with the Fund. All  
2 permit application fees, annual emission fees, and other funds collected or  
3 received pursuant to this Chapter shall be deposited in the Air Pollution  
4 Control Special Fund, and used only for the costs of administration and  
5 implementation of this Chapter; for providing staff and resources to assist  
6 permit applicants with the application process; review and act upon permit  
7 applications; write permits; implement and enforce permit conditions,  
8 including legal support; prepare guidance and rules; prepare emission  
9 inventories; monitor air quality; inspect facilities to ensure compliance and  
10 offer assistance with pollution prevention alternatives; provide technical  
11 assistance to permittees; administer the Fund; and any other duties needed  
12 to administer this Chapter.

13 (g) **Public Participation.** Where public participation is deemed  
14 appropriate by the Administrator, or is required, the Administrator shall  
15 provide for notice and opportunity for public comment as follows:

16 (1) The Administrator shall make available for public  
17 inspection in at least one (1) location:

18 (A) information on the subject matter;

19 (B) all information submitted by the applicant, except  
20 for that deemed confidential;

21 (C) the Agency's analysis and draft permit; and

22 (D) other information and documents deemed  
23 appropriate by the Agency.

24 (2) The Administrator shall notify the public of the  
25 availability of information listed in §49107(g)(1). Notification shall be

1 published in a newspaper which is printed and issued at least twice  
2 weekly.

3 (3) Public notice shall be mailed to any person, group or  
4 Agency upon request.

5 (4) The Administrator shall provide a period of not less than  
6 thirty (30) days following the date of the public notice, during which time  
7 interested persons may submit written comments on the subject matter,  
8 application, the Agency's analysis and draft permit, and other appropriate  
9 considerations. The period for comment may be extended at the sole  
10 discretion of the Administrator.

11 (5) The Administrator, at the Administrator's sole discretion,  
12 may hold a public hearing if the public hearing would aid in the  
13 Administrator's decision.

14 **Section 49108. Inspections, Testing and Sampling.** (a) Any duly  
15 authorized officer, employee or representative of the Agency may enter  
16 and inspect any property, premise or place on or at which an air pollutant  
17 source is located or is being constructed, installed or established at any  
18 reasonable time for the purpose of ascertaining the state of compliance with  
19 this Chapter and rules and regulations in force pursuant thereto. No  
20 person shall refuse entry or access to any authorized representative of the  
21 Agency who requests entry for purposes of inspection, and who presents  
22 appropriate credentials; nor shall any person obstruct, hamper or interfere  
23 with any inspection. If requested, the owner or operator of the premises  
24 shall receive a report setting forth all facts found which relate to  
25 compliance status.

(b) The Agency may conduct tests and take samples of air pollutants, fuel, process materials or other materials which affect or may affect emission of air pollutants from any source. Upon request of the Agency, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and any other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission of air pollutants. If an authorized employee of the Agency, during the course of an inspection, obtains a sample of air pollutant, fuel, process material or other material, he or she shall give the owner or operator of the equipment or fuel facility a receipt for the sample obtained.

(c) The Administrator may withhold any information obtained from an inspection while an investigation is pending. Upon completion of the case, this information will be available to the public for inspection.

**Section 49109. Emission Control Requirements.** (a) The Agency shall establish the emission control requirement, by rule or regulation, necessary to prevent, abate or control air pollution. The requirements may be for the Territory as a whole, or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this Chapter, and in order to take account of varying local conditions.

(b) The Agency may require the owner or operator of any air pollution emission source, discharging air pollutants, to install monitoring equipment or devices, conduct whatever tests the Agency may prescribe, and submit periodic reports on the nature and amount of discharges to the Agency.

1           **Section 49110. Variances.** (a) Any person who owns or who is in  
2 control of any plant, building, structure, establishment, process or  
3 equipment, may apply to the Agency for a variance from the rules and  
4 regulations. The Agency may grant a variance, but only after public  
5 hearing on due notice, if it finds that:

6                   (1) the emissions occurring, or proposed to occur, do not  
7 endanger or tend to endanger human health or safety; and

8                   (2) compliance with the rules and regulations from which  
9 variance is sought would produce serious hardship without greater  
10 benefits to the public.

11           (b) No variance shall be granted pursuant to this Section until the  
12 Agency has considered the relative interests of the applicant, other owners  
13 of property likely to be affected by the discharges and the general public.

14           (c) Any variance or renewal thereof shall be granted within the  
15 requirements of Subsection (a) of this Section and for time periods and  
16 under conditions consistent with the reasons therefor, and within the  
17 following limitations:

18                   (1) If the variance is granted on the ground that there is not  
19 practicable means known or available for the adequate prevention,  
20 abatement or control of the air pollution involved, it shall be only until the  
21 necessary means for prevention, abatement or control become known and  
22 available, and subject to the taking of any substitute or alternate measures  
23 that the Agency may prescribe.

24                   (2) If the variance is granted on the ground that compliance  
25 with the particular requirement from which variance is sought will

necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed the reasonable time, as in the view of the Agency, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this Item (2) of Subsection (c) of this Section shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Items (1) and (2) of this Subsection (c) of §49110 of this Chapter, it shall be for not more than one (1) year.

(d) Any variance granted pursuant to this Section may be renewed on terms and conditions and for periods, which would be appropriate on initial granting of a variance. If complaint is made to the Agency on account of the variance, no renewal thereof shall be granted, unless, following public hearing on the complaint on due notice, the Agency finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application must be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Agency shall give public notice of the application in accordance with rules and regulations of the Agency.

(e) A variance or renewal shall not be a right of the applicant or holder thereof, but shall be in the discretion of the Agency.

(f) Nothing in this Section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the

1 emergency provisions and procedures of §49113 of this Chapter to any  
2 person or property.

3 **Section 49111. Hearings.** (a) Any person who received an order  
4 from the Administrator, as authorized by this Chapter, and any person  
5 whose permit application is disapproved or denied by the Administrator,  
6 may within fifteen (15) days of the date of receipt of the order or  
7 disapproval, file a notice of intent to appeal with the Board, setting forth in  
8 the notice the basis for the appeal.

9 (b) The Board shall, not more than sixty (60) days after receipt of  
10 the notice of appeal, hold a public hearing consistent with the  
11 Administrative Adjudication Law.

12 (c) The Board shall either affirm, modify or revoke any action  
13 which is appealable, or issue an appropriate order or orders for the  
14 prevention, abatement or control of the emission involved or for the taking  
15 of any other corrective action as may be appropriate to prevent, abate or  
16 control air pollution.

17 (d) Any person adversely affected by a decision of the Agency may  
18 have judicial review by filing a petition with the Superior Court of Guam  
19 in accordance with the Administrative Adjudication Law, and by  
20 simultaneously sending a copy of the filing by serving the Administrator.  
21 The petitioner shall reimburse the Agency for the expenses associated with  
22 the preparation of the record for judicial review.

23 **Section 49112. General Enforcement.** (a) Whenever the Agency  
24 determines that there is probable cause based upon an investigation that  
25 a violation of any provision of this Chapter or rule or regulation pursuant

thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of this Chapter or rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order specifying the necessary corrective action to be taken and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Any order under this Section shall become final unless, no later than fifteen (15) days after the date the notice and order are served, the person or persons named therein request in writing a hearing before the Agency. Upon such a request, the Agency shall hold a hearing pursuant to §49111 of this Chapter. In lieu of an order, the Agency may require that the alleged violator, or violators, appear before the Agency for a hearing at a time and place specified in the notice and answer the charges complained of, or the Agency may initiate action pursuant to §49116 of this Chapter.

(b) No order issued under this Chapter shall prevent the Administrator from assessing any penalties, nor otherwise effect or limit the Administrator's authority to enforce under other provisions of this Chapter or rule or regulation, nor affect any person's obligation to comply with any Section of this Chapter or rule or regulation, or with a term or condition of any permit issued.

(c) Nothing in this Chapter shall prevent the Agency from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.



1           **Section 49113. Emergency Orders.** (a) Notwithstanding any other  
2 law, if the Administrator determines that a pollution source or combination  
3 of sources is creating an imminent and substantial endangerment to the  
4 public health, welfare or the environment, the Administrator, with the  
5 concurrence of the Governor, shall order any person causing, or  
6 contributing to the release of any air pollutants or combination of air  
7 pollutants, to immediately reduce or discontinue the release. Any order  
8 under this Section shall fix a place and time, not later than seventy-two (72)  
9 hours thereafter, for a hearing to be held before the Agency.

10           (b) If the Administrator finds that emissions from the operation of  
11 one (1) or more air pollution sources is causing imminent danger to human  
12 health or safety, he or she may order the person responsible for the  
13 operation in question to immediately reduce or discontinue emissions,  
14 without regard to the provisions of §49111 of this Chapter. In such event,  
15 the requirements for hearing set forth in Subsection (a) of this Section shall  
16 apply.

17           (c) Nothing in this Section shall be construed to limit any power,  
18 which the Governor or any other officer may have to declare an emergency  
19 and act on the basis of that declaration, if that power is conferred by statute  
20 or constitutional provision, or inheres in the office.

21           **Section 49114. Confidentiality of Information.** (a) Any records,  
22 reports, or information obtained under §§49106, 49107 and 49108 of this  
23 Chapter shall be available to the public, except that upon a showing  
24 satisfactory to the Agency by any person that records, reports or  
25 information, or particular part thereof, other than emission data, to which

1 the Agency has access under §§49106, 49107 and 49108 of this Chapter, if  
2 made public, would divulge production, sales figures, methods, processes  
3 or production unique to the person, or would otherwise tend to effect  
4 adversely the competitive position of the person by revealing trade secrets,  
5 the Agency shall consider the record, report, information or particular  
6 portion thereof, confidential in the administration of this Chapter. The  
7 contents of an air pollution control permit itself shall not be entitled to  
8 confidentiality protection.

9 (b) Nothing in the Section shall be construed to prevent the use of  
10 records or information by the Agency in compiling or publishing analyses  
11 or summaries relating to the general condition of the outdoor atmosphere,  
12 provided that these analyses or summaries do not identify any owner or  
13 operator or reveal any information otherwise confidential under this  
14 Section.

15 (c) Nothing in this Section shall be construed to prevent disclosure  
16 of whatever report, record or information to Federal, Territorial or local  
17 representatives as is necessary for purposes of administration of any  
18 Federal, Territorial or local air pollution control laws, or when relevant, in  
19 any proceeding under this Chapter.

20 **Section 49115. Injunction.** The Agency may maintain an action to  
21 restrain any violation or threatened violation of the provisions of this  
22 Chapter, or the rules and regulations authorized. The right to injunctive  
23 relief is in addition to any other powers or penalties conferred by this  
24 Chapter.

25 **Section 49116. Penalties. (a) Administrative Penalties.** The

1 Administrator may issue an administrative order against any person and  
2 assess a civil administrative penalty of up to Ten Thousand Dollars  
3 (\$10,000.00) per day per violation not to exceed a total penalty of Two  
4 Hundred Thousand Dollars (\$200,000.00).

5 (1) Before issuing an administrative order, the Administrator  
6 shall give written notice to the person to be assessed an administrative  
7 penalty of the Administrator's intent to issue the order, and provide the  
8 person an opportunity to request a hearing on the proposed administrative  
9 penalty order, within thirty (30) days of the date the notice of intent is  
10 received by the person. If a hearing is requested, it will be conducted  
11 pursuant to §49111 of this Chapter. If no hearing is requested within the  
12 period specified, the administrative penalty to be assessed will  
13 automatically be imposed and deemed final.

14 (2) The Administrator may settle, modify or release, with or  
15 without conditions, any administrative penalty which may be imposed  
16 under this Subsection (a) of §49116 of this Chapter.

17 (3) Any person against whom a civil administrative penalty  
18 is assessed may seek judicial review in accordance with §49111 of this  
19 Chapter and the Administrative Adjudication Law.

20 (4) If any person fails to comply with an administrative  
21 penalty order after the assessment has become final, or after a court in an  
22 action brought under Subsection (3) of this Section has entered a final  
23 judgment in favor of the Administrator, the Attorney General of Guam  
24 shall bring a civil action to enforce the order or to recover the amount  
25 ordered or assessed, plus current interest rates from the date of the final

1 order or decision or the date of the final judgment, as the case may be. In  
2 this action, the validity, amount and appropriateness of the order or  
3 assessment shall not be subject to review. The Administrator need only  
4 show that:

5 (A) notice was given;

6 (B) a hearing was held, or the time granted for requesting a  
7 hearing has run without a request for a hearing;

8 (C) the penalty was imposed; and

9 (D) the penalty remains unpaid.

10 (b) **Civil Penalties.** Any person who violates any provision of this  
11 Chapter, any rule or regulation promulgated under this Chapter, refuses,  
12 or neglects to comply with any final order issued by the Administrator in  
13 carrying out the provisions of this Chapter, shall, in addition to other  
14 sanctions, pay a civil penalty not to exceed Ten Thousand Dollars  
15 (\$10,000.00) per day for each violation or non-compliance.

16 (c) **Criminal Penalties.**

17 (1) Any person who knowingly violates any of the air  
18 pollution control permit rules adopted by the Agency pursuant to this  
19 Chapter, including any condition in a permit or any fee or filing  
20 requirement, shall be punished by a fine not to exceed Ten Thousand  
21 Dollars (\$10,000.00), or by imprisonment not to exceed five (5) years, or  
22 both.

23 (2) Any person who knowingly makes a false statement,  
24 representation or certification in any form, in any notice or report required  
25 by an air pollution control permit, or who knowingly renders inaccurate

any monitoring device or method required by the Agency to report as required by this Chapter, shall be punished by a fine not to exceed Ten Thousand Dollars (\$10,000.00) for each day of violation or by imprisonment not to exceed two (2) years, or both, for each instance of violation.

(3) Any person who negligently releases into the ambient air any hazardous air pollutant, and who at the time negligently places another person in imminent danger of death or serious bodily injury, upon conviction, shall be punished by a fine not to exceed Ten Thousand Dollars (\$10,000.00) or imprisonment not to exceed one (1) year, or both. If a conviction of any person under this Subsection (c) of §49116 of this Chapter is for a violation committed after a first conviction of the person under this Subsection, the maximum punishment shall be doubled with respect to both amount of fine and term of imprisonment.

(4) Any person who knowingly releases into the ambient air any hazardous air pollutant, and who knows at the time that another person is thereby placed in imminent danger of death or serious bodily injury, upon conviction, shall be punished by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or imprisonment of not more than fifteen (15) years, or both. Any organization which violates this Item (4) of Subsection (c) of §49116 shall be subject to a fine not to exceed One Million Dollars (\$1,000,000.00). If a conviction of any person under this Item (4) is for a violation committed after a first conviction of the person under this Item (4), the maximum punishment shall be doubled with respect to both amount of fine and term of imprisonment.

**(d) Penalty Assessment Criteria.**

1           (1) The Administrator, or the court as the case may be, in  
2 determining the amount of any penalty to be assessed, shall take into  
3 consideration, in addition to any other factors as justice may require, the  
4 size of the business, the violator's full compliance history and good faith  
5 efforts to comply, the duration of the violation, payment by the violator of  
6 penalties previously assessed for the same violation, economic benefit of  
7 non-compliance and the seriousness of the violation.

8           (2) It is presumed that the violator's economic and financial  
9 condition allows payment of the penalty, and the burden of proof to the  
10 contrary is on the violator.

11           (3) A penalty may be assessed for each day of violation. For  
12 purposes of determining the number of days of violation for which a  
13 penalty may be assessed, if the Administrator has notified the source of the  
14 violation and makes a prima facie showing that the conduct or events  
15 giving rise to the violation are likely to continue or recurred past the date  
16 of the notice, the days of violation shall be presumed to include the date of  
17 the notice and each and every day thereafter until the violator establishes  
18 that continuous compliance has been achieved.

19           (4) Each day of continued violation of this Chapter or rules  
20 and regulations promulgated pursuant to this Chapter shall be deemed a  
21 separate violation or offense.

22           **(e) Disposition of Collected Fines and Penalties.** Fines and  
23 penalties collected under this Section related to the air pollution control  
24 permit program shall be deposited into the Air Pollution Control Special  
25 Fund pursuant to Subsection (f) of §49107 of this Chapter.

1           **Section 49117. Motor Vehicle Pollution Control.** (a) As the state of  
2 knowledge and technology relating to the control of emission from motor  
3 vehicles may permit or make appropriate, and in furtherance of the  
4 purpose of this Chapter, the Agency may provide rules and regulations for  
5 the control of emissions from motor vehicles. These rules and regulations  
6 may prescribe requirements for the installation and use of equipment  
7 designed to reduce or eliminate emissions and for the proper maintenance  
8 of such equipment and vehicles. Any rules and regulations pursuant to  
9 this Section shall be consistent with provisions of Federal law, if any,  
10 relating to control of emission from the vehicles concerned.

11           (b) Except as permitted or authorized by law, no person shall fail  
12 to maintain in good working order or remove, dismantle or otherwise  
13 cause to be inoperative any equipment or feature constituting an  
14 operational element of the air pollution control system or mechanism of a  
15 motor vehicle required by rules or regulations of the Agency to be  
16 maintained in or on the vehicle. Any failure to maintain in good working  
17 order or removal, dismantling, or causing of inoperability shall subject the  
18 owner or operator to suspension or cancellation of the registration of the  
19 vehicle by the Department of Revenue and Taxation, or penalties not to  
20 exceed One Thousand Dollars (\$1,000.00) per day of violation. The vehicle  
21 shall not be eligible for registration until all parts and equipment  
22 constituting operational elements of the motor vehicle have been restored,  
23 replaced or repaired and in good working order. —

24           (c) The Agency may carry out a program of inspection and testing  
25 of motor vehicles to enforce compliance with applicable emission standards

1 or may carry out the inspection and testing jointly with another  
2 government of Guam agency.

3 (d) The Agency shall not require, as a condition precedent to the  
4 initial sale of a vehicle or vehicular equipment, the inspection, certification  
5 or other approval of any feature or equipment designed for the control of  
6 emissions from motor vehicles, if the feature or equipment has been  
7 certified, approved or otherwise authorized pursuant to Federal law.

8 (e) The remedies and penalties provided in this Section shall apply  
9 to violations hereof, and no provision of §49116 of this Chapter shall apply  
10 thereto.

11 (f) As used in this Section, 'Motor Vehicle' shall mean any vehicle  
12 with an internal combustion engine used on public roads and highways for  
13 the purpose of transportation.

14 **Section 49118. Timeframe and Implementation.** (a) This Law  
15 shall go into effect one hundred eighty (180) days after enactment. During  
16 that initial one hundred eighty (180) day period, the Administrator of the  
17 Guam Environmental Protection Agency shall educate the public about the  
18 new law and generally prepare for implementation. Education of the  
19 public shall include the provision of educational materials and  
20 presentations to those holding permits and conducting public presentations  
21 of information about this new regulation.

22 (b) When the one hundred eighty (180) day period described above  
23 ends, the Administrator and other law enforcement officials shall enforce  
24 the law as mandated herein.

25 **Section 49119. Severability.** The provisions of this Chapter are



1 severable and if any of the provisions of this Chapter are held invalid or  
2 unconstitutional or the application thereof to any person or circumstance  
3 is held inapplicable, such invalidity, unconstitutionality, or inapplicability  
4 shall not affect or impair the remaining provisions or application of this  
5 Chapter."



Office of Senator  
**Joanne M. Salas Brown**  
*Twenty-Fourth Guam Legislature*



May 23, 1997

Honorable Antonio R. Unpingco  
Speaker  
Twenty-Fourth Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Natural Resources Committee wishes to report their findings and recommendations:

**Bill 176: An Act to Repeal and Reenact Chapter 49 of Title 10, Guam Code Annotated, Relative to Air Pollution Control**

The Committee's voting record on the Joint Oversight Hearing is as follows:

To Do Pass	<u>10</u>
Not To Pass	<u>      </u>
To Abstain	<u>      </u>
To Place in the Inactive File	<u>      </u>
Not Voting	<u>      </u>

The recommendation of the Committees is To Do Pass. A copy of the voting sheet, report and testimonies are enclosed for your information.

Sincerely,

JOANNE M. SALAS BROWN  
Chairperson  
Committee on Natural Resources

Enclosures



Office of Senator  
**Joanne M. Salas Brown**  
*Twenty-Fourth Guam Legislature*

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May 20, 1997

MEMORANDUM

To: Committee Members

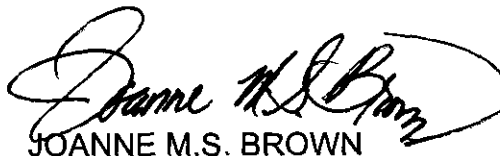
From: Chairperson, Committee on Natural Resources

Subject: Committee Report on Bill 176: An Act to Repeal and Reenact Chapter 49 of Title 10, Guam Code Annotated, Relative to Air Pollution Control

Transmitted herewith for your consideration and action is our Committee Report on the above subject matter.

Please indicate your choice on the attached Voting Sheet and return the documents to my office for transmittal to the other members.

Your attention and cooperation in this matter is greatly appreciated.

  
JOANNE M.S. BROWN

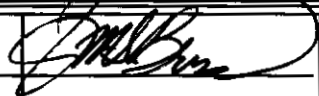

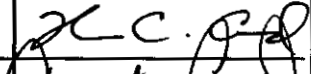
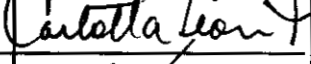

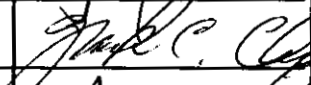
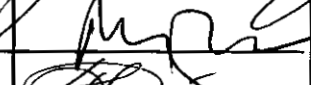
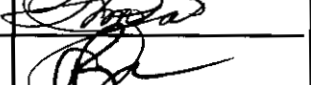


Attachments

# COMMITTEE ON NATURAL RESOURCES

Joanne M. Salas Brown  
Chairperson

## VOTING SHEET

**Bill 176: An Act to Repeal and Reenact Chapter 49 of Title 10, Guam Code Annotated, Relative to Air Pollution Control**

Committee Members	To Do Pass	Not to Pass	Abstain	To Place in Inactive File	Signature
Joanne M.S. Brown Chairperson	✓				
Tony Lamorena Vice Chairman					
E. Barrett-Anderson Member	✓				
Tom Ada Member	✓				
C. Leon Guerrero Member	✓				
Mark Forbes Member	✓				
Francis Santos Member	✓				
M. Charfauros Member	✓				
Anthony Blaz Member	✓				
J. WonPat-Borja Member	✓				
A.R. Unpingco Speaker Ex-Officio Member	✓				

**FISCAL NOTE**  
**BUREAU OF BUDGET AND MANAGEMENT RESEARCH**

**BBMR-F7**

Bill Number: 176 (COR) Date Received: May 07, 1997  
 Amendatory Bill: Yes Date Reviewed: May 15, 1997

Department/Agency Affected: Guam Environmental Protection Agency  
 Department/Agency Head: Jesus Salas  
 Total FY Appropriation to Date: \$1,215,359 (General Fund)

Bill Title (preamble): AN ACT TO REPEAL AND REENACT CHAPTER 49 OF TITLE 10, GUAM CODE, ANNOTATED, RELATIVE TO AIR POLLUTION CONTROL.

Change in Law: Repeals and reenacts Chapter 49 of Title 10

Bill's Impact on Present Program Funding:  
 Increase \_\_\_\_\_ Decrease \_\_\_\_\_ Reallocation \_\_\_\_\_ No Change XXX

Bill is for:  
 Operations XXX Capital Improvement \_\_\_\_\_ Other \_\_\_\_\_

**FINANCIAL/PROGRAM IMPACT**

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
	1/		

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL	1/					
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? N/A -- IF NO, ADD'L AMOUNT REQUIRED \$ \_\_\_\_\_  
 AGENCY/PERSON/DATE CONTACTED: \_\_\_\_\_

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND	N/A					
OTHER						
TOTAL						

ANALYST [Signature] DATE 5/15/97 DIRECTOR Joseph E. Rivera DATE MAY 21 1997  
 Joseph E. Rivera, Acting

FOOTNOTES: 1/ Bill Number 176 (COR) is an act to repeal and reenact Chapter 49 of Title 10, CCA, relative to air pollution control. The passage of this Bill may pose a fiscal impact on the department affected, however, such an impact should be absorbed by the budget of the agency involved.

# **COMMITTEE ON NATURAL RESOURCES**

**May 16, 1997  
Public Hearing**

## **COMMITTEE REPORT**

### **Bill 176**

**An Act to Repeal and Reenact Chapter 49 of Title 10, Guam Code Annotated,  
Relative to Air Pollution Control**

**Senators present:** Joanne M. Salas Brown, Chairperson  
Tom Ada  
Mark Charfauros  
Judith WonPat-Borja  
Angel Santos  
Vicente Pangelinan

**Individuals testifying:** Jesus Salas, Guam Environmental Protection Agency  
Joaquin Cruz, Guam Environmental Protection Agency  
Conchita Taitano, Guam Environmental Protection Agency  
Ben Machol, Guam Environmental Protection Agency

Senator Brown continued the public hearing by requesting testimony on Bill 176.

Mr. Jesus Salas submitted written testimony in favor of Bill 176. In Mr. Salas' testimony he noted several areas which he felt would need modifications in the language. The air permit pollution control program would be expanded. This bill is designed to meet federal requirements described in Title V of the federal Clean Air Act. Modifications were made to best meet the needs of the territory of Guam. In November 1996 U.S. Environmental Protection Agency granted a waiver allowing the local agency to develop an alternate air permitting program that would be more appropriate for the territory. Guam E.P.A. will also provide technical assistance under an alternate program to support, rather than just regulate, the local community. Formation of a Fund will be established to utilize fees in support of the functions of the program. A modification on page 13, line 23, it would be better to change the minimum comment period of 60 days to 30 days was noted. In federal regulations a 30 day requirement is imposed. The Administrator has the discretion to change the comment period to correspond with the project. (See attached testimony)

Senator Brown noted that major sources of air pollution is regulated. In regards to vehicular emissions, there is a problem, especially with buses. She inquired if a fine could be imposed on offenders of exceeding emission levels. Mr. Salas noted that there is a

which required medical treatment. The family had requested assistance with regards to fugitive dust particles from the quarry operations which were coming into their home over a considerable length of time. Hawaiian Rock was operating on an expired permit and was in violation of air pollution control standards. Senator Santos questioned E.P.A. officials if the Agency has met up with their mandate to protect the island's environment.

Mr. Salas stated that E.P.A. is the watchdog for the territory with regards to protecting the citizens' environmental health. Under the current law the Agency has taken the appropriate steps allowed in ascertaining if violations occurred. Inspections were conducted by the Guam Environmental Protection Agency and the asphalt batching operations were closed down. Eventually the concrete batching plant was also closed down. Senator Santos' main concerns were the length of time it took for inspections to be conducted and the closure of plant operations. He continued by questioning the clear violation of air pollution control measures with fugitive dust particles entering a adjacent property. What is Guam E.P.A.'s role in protecting the property owners?

Mr. Salas stated that with the passage of Bill 176 there will be stipulation for enforcement of penalties. If a complaint is filed after enactment of Bill 176, the situation will be reassessed. Action will be taken based on findings.

Senator Santos questioned the Administrator that in future cases of valid violations of the standards that E.P.A. personnel advocating enforcement of the set standards would not be reprimanded for their actions. Mr. Salas stated that if an employee maintains the position of Guam E.P.A.'s' mandate he will not be reprimanded. He maintained that the Agency has a staff of environmentally-conscious personnel and take their mandate very seriously. Response time is essential.

Senator Santos felt that there is a "blanket of fear" within the Agency in regards to speaking out when they see a violation being committed. Mr. Salas stated that he has an open door policy.

Senator Brown asked the Administrator about the Board membership. Mr. Peter C. Perez was to fill one of two vacancies and with his withdrawal a concern of quorum was noted. Mr. Salas stated that without Mr. Perez's acceptance of membership there is still a quorum. He continued to note that there are several Board members stating interest in resigning from their positions because of the disclosure requirement. In that case, there would not be enough members and new members would have to be appointed to have a working Board in place.

Mr. Joseph Duenas, Director of the Department of Revenue and Taxation, submitted written testimony supporting the passage of Bill 176. He did suggest that funding be identified for the training of personnel and procurement of testing equipment. (See attached testimony)

The Committee incorporated the change on Subsection 49110. Variances. as requested

# REVENUE AND TAXATION

GOVERNMENT OF GUAM

JOSEPH T. DUENAS, Director    CARL E. TORRES, Deputy Director

May 14, 1997

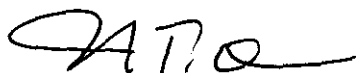
Honorable Joanne M. Salas Brown  
Chairperson  
Committee on Natural Resources  
**TWENTY FOURTH GUAM LEGISLATURE**  
155 Hesler Street  
Agana, Guam 96910

Dear Senator Brown:

Thank you for allowing me to comment on Bill 176(Cor), an Act to Repeal and Reenact Chapter 49 Title 10GCA. My concerns are specifically on Section 49117(a) thru (f) which pertains to Motor Vehicle Pollution Control.

I am in support on the changes made relative to the increase of penalty fines, however, I would like to suggest that a provision be included to set aside funding for the procurement of testing equipment to calibrate the testing machines, and most importantly, to train the government employees who will be tasked with the responsibility of regulating the inspection stations that would be providing such services.

Sincerely,



**JOSEPH T. DUENAS**  
Director





# GUAM ENVIRONMENTAL PROTECTION AGENCY



AGENSIA PRUTEKSION LINA'LA GUAHAN

P.O. BOX 22439 GMF • BARRIGADA, GUAM 96921 • TEL: 472-8863 • FAX: 477-9402

16 May 1997

## Testimony of Jesus T. Salas for Bill No. 176

The Air Pollution Control Act (Act), 10 Guam Code Annotated, Chapter 49 provides for the control of air pollution by regulating stationary and mobile sources. Bill No. 176 would amend and update the existing Act by expanding the air pollution permit program and making minor corrections and clarifications.

The permit program described in Bill No. 176 is designed to meet federal requirements and is based on the operating permit program described in Title V of the federal Clean Air Act. However the program includes modifications to best meet the needs of the Territory of Guam.

For a typical Title V program, the federal government requires Territories and States to issue one air pollution control permit per facility. That permit must include conditions that ensure compliance with all applicable federal and local regulations. In this way, Territories and States have the responsibility of administering all federal and local air pollution laws, including the federal Clean Air Act air toxics program. Under Title V, the federal government also requires that agencies collect enough fees to fully cover the costs of setting up and operating the permit program.

In November, 1996 US EPA approved Guam's waiver request from portions of Title V. The waiver allows Guam to develop an alternate air permitting program that would be more appropriate for the territory. The alternate program will replace GEPA's current pre-construction and operating permit program with a streamlined program. The new program will ensure costs are kept as low as possible while still providing enough local authority to preserve the ambient air quality through control and minimization of air pollution emissions. GEPA will also provide technical assistance under the alternate program to support, rather than just regulate, the local community.

**"ALL LIVING THINGS OF THE EARTH ARE ONE"**

Another component of the alternate program will be the formation of a revolving fund. This fund would be set up to provide GEPA with the resources necessary to issue permits on a timely basis, thereby preventing impacts to Guam businesses' construction and operation schedules. Since most of the air pollution emissions on Guam come from Government of Guam agencies and by the federal government, the fee structure would be altered from that of a typical Title V program. Some funds may come from permit application fees and annual emissions charges as in a typical program, but other funding resources (e.g. federal grants) will be utilized as well. The revolving fund will be used to run the program and all of its necessary components (e.g. periodic air quality modeling, air emission monitoring, and technical assistance).

Larger sources will be required to conduct pollution prevention audits of their facilities. The findings of the audit will be reviewed by the permittee and Guam EPA during the permit renewal process.

To ensure that permitted facilities comply with their permits, GEPA will conduct periodic inspections. The inspections will also serve as an opportunity to provide technical assistance on pollution prevention and air pollution control options to the permitted facilities.

In order to minimize the program's burden on the residents and businesses of Guam, Bill No. 176 allows an application process and compliance procedures that can be kept as simple as possible and still meet the requirements of the federal Clean Air Act and the needs of Guam.

I recommend one minor modification to the Bill as written. On Page 13, Line 23, it would be better to change the minimum comment period of 60 days to 30. 30 days is all that is required in federal regulations, and it gives the agency more flexibility. There will be many times when large, non-controversial projects are on a tight schedule. In such cases, it would be preferable to have the shorter, thirty day, comment period. I will still have the discretion to increase the comment period for all projects. This, and other, more minor suggested changes, are described on the attachment.



JESUS T. SALAS

ADMINISTRATOR

## **Attachment**

### **Suggested Changes to Draft Bill No. 176**

1. Page 9, Line 17: Add a comma after the word "certification." A compliance plan is different from a compliance certification and a compliance schedule.
2. Page 13, Line 23: Change "Sixty (60)" to "Thirty (30)." Thirty days is all that is required in federal regulations, and it gives the agency more flexibility. There will be many times when large, non-controversial projects are on a tight schedule. In these cases, it would be preferable to have the shorter, thirty day, comment period. The Administrator will always have the discretion to increase the comment period.
3. Page 15, Line 7: The word "stationary" can be changed to "air pollution emission" for consistency.
4. Page 16, Line 10: Delete the first word, "as."
5. Page 18, Line 11: Delete "making a" and replace with "such" (or equivalent). As it is now written, it appears that the agency, not an individual, will be requesting a hearing.
6. Page 18, Line 18: Change "affect" to "effect."
7. Page 19, Line 24: Change "affect" to "effect."
8. Page 19, Line 27: Add "of" after the word "administration."
9. Page 22, Line 14: Delete "for each day of violation."
10. Page 24, Line 2: Change "the Clean Air Act" to "this Chapter."