



Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

24 JUN 2009

2009 JUN 25 AM 9:57

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Transmitted herewith is Bill No. 80(COR) "AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS " which I signed into law on June 19, 2009 as Public Law 30-36.

Sinseru yan Magåhet,

[Handwritten signature of Felix P. Camacho]

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy of Bill

30-09-0743
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 6/24/09
Time 3:24
Received by [initials]

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

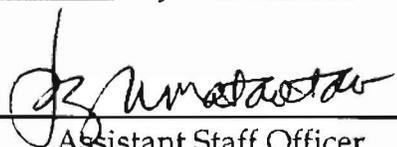
This is to certify that Substitute Bill No. 80 (COR), "AN ACT TO REPEAL AND RE-ENACT CHAPTER 76 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE STORAGE OF HAZARDOUS MATERIALS," was on the 29th day of May 2009, duly and regularly passed.

Attested:


Benjamin J.F. Cruz
Acting Speaker


vicente e. pangelinan
Acting Legislative Secretary

This Act was received by I Maga'lahaen Guåhan this 9 day of June, 2009, at
2:05 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: 19 JUNE 2009

Public Law No. 30-36

1 **§76102. Statement of Purpose.** The purpose of this Chapter is

2 to:

- 3 (a) establish a program to prevent contamination from substances
4 stored underground;
- 5 (b) ensure that newly constructed underground storage tanks meet
6 appropriate standards;
- 7 (c) ensure that existing tanks be properly maintained, inspected,
8 and tested by licensed and certified professionals; and
- 9 (d) enact and establish regulations, guidelines, standards, and
10 policies that ensure consistent cleanup of regulated substances and
11 mitigation of the damage they cause.

12 **§76103. Definitions.**

- 13 (a) *Administrator* means the Administrator of the Guam
14 Environmental Protection Agency.
- 15 (b) *Agency* means the Guam Environmental Protection Agency.
- 16 (c) *Board* means the Board of Directors of the Guam Environmental
17 Protection Agency.
- 18 (d) *CERCLA* means the Comprehensive Environmental Response,
19 Compensation, and Liability Act, commonly called Superfund, which
20 was enacted by Congress on December 11, 1980, and amended by the
21 Superfund Amendments and Reauthorization Act (SARA) on October
22 17, 1986.
- 23 (e) *Corrective Action* means the investigation and cleanup of
24 contamination from solid and hazardous waste sites, and includes
25 action taken to minimize or mitigate the impact of a release from an
26 Underground Storage Tank (UST) or tank system.

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

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

6 (h) *Hazardous Substance Underground Storage Tank or Hazardous*
7 *Substance Underground Storage Tank System* means a UST or tank
8 system that contains a hazardous substance, as defined in Section
9 101(14) of the federal Comprehensive Environmental Response,
10 Compensation, and Liability Act (CERCLA) of 1980, as amended, but
11 not including any substance regulated as a hazardous waste under
12 Subtitle C of the federal Resource Conservation and Recovery Act
13 (RCRA), as amended, or any mixture of such substances and
14 petroleum, and which is *not* a petroleum UST or tank system.

15 (i) *Installation* means to add or replace equipment.

16 (j) *Installation Permit* means a written approval from the
17 Administrator to construct, install, or put into place, a UST system.

18 (k) *Maintenance* means the operational upkeep to prevent a UST
19 system from releasing product.

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

24 (m) *Operate* means to control or direct the function of a UST.

25 (n) *Operator* means any person in control of, or who is responsible
26 for, the daily operation of a UST.

1 (o) *Owner* means:

2 (1) in the case of a UST system in use on November 8,
3 1984, or brought into use on or after that date, any person who
4 owns a UST system used for the storage, use or dispensing of
5 regulated substances; and

6 (2) in the case of a UST system in use before
7 November 8, 1984, but no longer in use after that date, any
8 person who owned such UST system immediately before the
9 discontinuation of its use.

10 (p) *Permit* means Installation Permit.

11 (q) *Person* means an individual, trust, firm, corporation,
12 partnership, consortium, joint venture, joint stock company, political
13 subdivision of a state, any interstate body, commercial entity,
14 association, or agency, department, instrumentality of the Federal
15 government or the government of Guam, including, autonomous
16 agencies or any other legal entity.

17 (r) *Petroleum Marketing Facilities* means all facilities at which
18 petroleum is produced or refined and all facilities from which
19 petroleum is sold or transferred to other petroleum marketers or to the
20 public.

21 (s) *Pipe or Piping* means a hollow cylinder or the tubular conduit
22 constructed of non-earthen materials. Pipe or Piping includes elbows,
23 couplings, unions, valves, or other inline fixtures, that contain and
24 convey regulated substances from a UST to a dispenser.

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

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

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

18 (1) Any substance defined in Section 101(14) of
19 CERCLA, Public Law 96-510, as amended, but *not* including
20 any substance regulated as a hazardous waste under Subtitle C
21 of RCRA, also known as Public Law 94-580, as amended;

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

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

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

3 (w) *Release* means the spill, leak, emission, discharge, escape,
4 leaching, or disposing of a regulated substance from a UST.

5 (x) *Secondary Containment* refers to a component of a secondary
6 containment system and means a UST and its piping having inner and
7 outer barriers.

8 (y) *Tank* means underground storage tank (UST).

9 (z) *Underground Storage Tank or UST* means any one (1) or
10 combination of tanks, including underground pipes connected thereto,
11 used to contain an accumulation of regulated substances, and the
12 volume of which, including the volume of the underground pipes
13 connected thereto, is ten percent (10%) or more beneath the surface of
14 the ground or water.

15 **§76104. Power and Duties of the Administrator.**

16 The Administrator *shall*:

17 (a) develop and administer a UST program for Guam
18 pursuant to this Chapter;

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

22 (c) serve as Guam's official representative for all purposes of
23 Subtitle I of RCRA, also known as Public Law 94-580, as
24 amended, and for the purpose of any Guam or federal
25 legislation that regulates USTs;

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

6 (e) establish the procedures for the issuance and review of
7 permits governing the design, operation, and closure of USTs;

8 (f) enact and enforce other rules and regulations as necessary
9 to establish a UST program, which meets the requirements of
10 Section 9004 of Subtitle I of RCRA;

11 (g) issue, amend, rescind, and enforce orders as necessary to
12 ensure compliance with this Chapter or any rules and
13 regulations enacted pursuant hereto, including, but *not* limited
14 to:

15 (1) administrative penalty orders;

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

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

21 (h) establish an effective enforcement system (that includes,
22 at a minimum, a field citation program) for the prevention,
23 control and abatement of UST pollution, including, specific
24 conditions under the permit requirements and delivery
25 prohibition of product to ineligible USTs and through all
26 appropriate administrative and judicial courses of action;

- 1 (i) establish a delivery prohibition program that describes, at
2 a minimum, the criteria and mechanism for prohibiting the
3 delivery, deposit, and acceptance of product to any UST
4 system;
- 5 (j) develop and establish operator training program
6 requirements in cooperation with UST owners and operators;
- 7 (k) issue, continue in effect, modify, revoke, reissue, or deny
8 permits;
- 9 (l) ensure that all permit holders comply with applicable
10 requirements mandated by Federal and Guam statutes or rules;
11 and
- 12 (m) establish, accept, receive, and administer grants and other
13 funds or fees from public and private agencies, including the
14 Federal government, for carrying out any purpose of this
15 Chapter.

16 **§76105. Notification Requirement.**

17 (a) Except as otherwise provided in this Section, each owner
18 of an underground storage tank *shall* notify the Agency in writing and
19 *shall* specify the tank's age, size, type, location, and use.

20 (b) For an underground storage tank that was taken out of
21 operation on or before January 1, 1974, regardless of whether the tank
22 was removed from the ground, the owner is exempt from giving
23 notice.

24 (c) For an underground storage tank that was taken out of
25 operation after January 1, 1974, but before November 8, 1984, and

1 that was removed from the ground before May 8, 1986, the owner is
2 exempt from giving notice.

3 (d) For an underground storage tank that was taken out of
4 operation after January 1, 1974, but before November 8, 1984, and
5 that was *not* removed from the ground before May 8, 1986, the owner
6 *shall* specify the type and quantity of the substances that were stored
7 in the tank immediately before it was taken out of operation. These
8 requirements are in addition to the requirements for the notice
9 prescribed in Subsection (a).

10 (e) For an underground storage tank that was taken out of
11 operation after November 8, 1984, but before December 22, 1988, the
12 Administrator *shall* require the owner to specify the age, size,
13 location, and use of the tank, the type and quantity of the substances
14 that were stored in the tank immediately before it was taken out of
15 operation, and the date the UST ceased operation.

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

19 (g) A person who sells a tank for use as an underground
20 storage tank *shall* notify the purchaser of the notice requirements of
21 Subsection (f).

22 (h) The notice required by this Section *shall* be made on
23 forms prescribed by the Agency.

24 **§76106. Tank Standards.**

25 From the effective date of this Chapter until the effective date of new
26 UST standards enacted hereunder, all new and existing USTs *shall*:

- 1 (a) prevent release of stored regulated substances due to corrosion
2 or structural failure for the operational life of the tank;
- 3 (b) be cathodically protected against corrosion, constructed of non-
4 corrosive material, or designed to prevent the release of the stored
5 regulated substance; and
- 6 (c) be constructed and lined with materials compatible with the
7 substance stored.

8 **§76107. Secondary Containment System – Release Prevention**
9 **and Release Detection Standards.**

10 (a) The Administrator *shall* develop and implement a
11 program that at least meets the minimum requirements of the “Grant
12 Guidelines to States for Implementing the Secondary Containment
13 Provision of the Energy Policy Act of 2005” (EPA-510-R-06-001,
14 November 2006) published by U.S. EPA and any subsequent
15 modifications thereto.

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

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

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

23 **§76108. Delivery Prohibition Requirements.**

24 (a) The Administrator *shall* develop and implement a delivery
25 prohibition program with processes and procedures that at least meets the
26 requirements set forth in “Grant Guidelines to States for Implementing the

1 Delivery Prohibition Provision of the Energy Policy Act of 2005” (EPA-
2 510-R-06-003, August 2006) published by U.S. EPA and any subsequent
3 modification thereto.

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

7 **§76109. Operator Training.**

8 The Administrator *shall* develop and administer an operator training
9 program that is at least as stringent as the requirements set forth in the
10 “Grant Guidelines to States for Implementing the Operator Training
11 Provision of the Energy Policy Act of 2005” (EPA-510-D-07-002, August
12 2006) published by U.S. EPA and any subsequent modification thereto.
13 Operators *shall* participate in the UST operator training programs.

14 **§76110. Leak Detection and Record Maintenance.**

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

18 (b) The owner or operator *shall* maintain systematic and
19 complete records to demonstrate compliance with this Chapter and
20 regulations enacted hereto.

21 **§76111. Public Participation.**

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

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

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

8 **§76112. Notification and Reporting Requirements on**
9 **Releases.**

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

17 **§76113. Corrective Action.**

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

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

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

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

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

21 **§76114. Underground Storage Tank Management Fund.**

22 There is hereby established a fund to be known as the “Underground
23 Storage Tank Management Fund”, hereinafter referred to as the UST-LUST
24 Fund, a non-lapsing, revolving fund.

25 (a) Notwithstanding the Central Accounting Act, all fees,
26 reimbursements, assessments, fines, forfeitures, and other funds

1 collected or received pursuant to this Chapter, *shall* be deposited in
2 the UST-LUST Fund. This Fund *shall* be kept in a bank licensed to
3 do business on Guam, and funds *shall* be paid out *only* upon a request
4 for payment or requisition submitted by the Director or Administrator
5 and countersigned by the Chairman of the Board. All monies in this
6 Fund *shall* require legislative appropriation.

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

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

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

14 (3) to fund the administration, purchase of equipment,
15 supplies, and payment of personnel costs arising from
16 enforcement of this Chapter.

17 **§76115. Financial Responsibility.**

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

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

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

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

15 (1) For owners or operators of four (4) or fewer tanks,
16 an annual aggregate amount of \$1,000,000.

17 (2) For owners or operators of five (5) or more tanks,
18 an annual aggregate amount of \$2,000,000.

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

23 (c) Subject to the approval of the Administrator, an owner or
24 operator of a UST *shall* establish evidence of financial responsibility
25 by any one, or a combination of, the following methods in accordance
26 with the rules and regulations promulgated by the Administrator:

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

3 (2) qualification as a self-insurer as specified in
4 Subsection (f) of this Section;

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

6 (4) any other reasonable and economically practicable
7 means.

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

11 (1) are valid and enforceable;

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

14 (3) do *not* permit cancellation without allowing the
15 Administrator to draw funds;

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

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

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

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

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

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

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

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

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

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

21 (3) The owner or operator *shall* meet the requirements
22 set forth in 40 CFR 280.95.

23 (g) The total liability of any guarantor is limited to the
24 aggregate amount that the guarantor has provided as evidence of
25 financial responsibility to the UST system owner or operator under
26 this Section. Nothing in this Subsection *shall* be construed to limit

1 any other territorial or federal statutory, contractual or common law
2 liability of a guarantor to its owner or operator, including, but *not*
3 limited to, the liability of such guarantors for bad faith either in
4 negotiating or in failing to negotiate the settlement of any claim. For
5 the purpose of this Subsection, the term “guarantor” means any
6 person, other than the owner or operator, who provides evidence of
7 financial responsibility for an owner or operator pursuant to this
8 Section.

9 (h) Any claim costs incurred by the Agency for taking
10 emergency, preventive, corrective or enforcement action may be filed
11 directly against the bonding company, the insurer, the guarantor, or
12 any other person providing evidence of financial responsibility. Any
13 amount collected or awarded under this Subsection *shall* be paid into
14 the Guam Environmental Protection Agency’s UST-LUST Fund.

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

19 (j) The financial responsibility amounts required by this
20 Section, or any portion of such amount, may be satisfied by utilization
21 of the Guam Environmental Protection Agency’s UST-LUST Fund.

22 **§76116. Closure.**

23 The owner or operator *shall* close a UST so as to prevent future
24 releases of regulated substances. The owner and operator shall comply with
25 the release response provisions in this Chapter and other requirements
26 promulgated by the Administrator before and during removal of the USTs.

1 The Administrator *shall* adopt requirements for change-in-service and
2 temporary and permanent closure of USTs and tank systems.

3 **§76117. Permit Requirements.**

4 (a) No person shall own, install, or operate a UST without a permit
5 issued by the Administrator. An applicant for a permit *shall* pay a permit
6 processing fee prescribed by the regulations.

7 For the purpose of this Chapter, and until such rules and regulations
8 describing the UST Fee Schedule has been adopted, an interim annual fee of
9 Two Hundred Fifty Dollars (\$250.00) per tank *shall* be established as the
10 permit fee and *shall* go into effect one hundred eighty (180) days after
11 enactment of this Chapter.

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

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

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

20 **§76118. Inspection and Entry.**

21 The Administrator may inspect all USTs at reasonable times to take
22 corrective action or to ensure compliance with this Chapter and the rules and
23 regulations enacted pursuant hereto. The Administrator's authority to
24 inspect *shall* include, but is *not* limited, to the following:

1 (a) requesting and obtaining from any owner or operator, and
2 deliverer and guarantor of a UST, information relating to such tanks,
3 their associated equipment, and their contents;

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

7 (c) inspecting and copying all records relating to the USTs;

8 (d) inspecting and obtaining samples of regulated substances
9 contained in the USTs; and

10 (e) taking corrective action or performing site assessment
11 activities at the location of the UST.

12 **§76119. Confidentiality of Records.**

13 Reports and records submitted to the Agency by any person on the
14 ownership, installation, or operation of underground storage tanks or tank
15 systems *shall* be made available for inspection by the public during
16 established office hours, except as provided in this Section. Upon a showing
17 satisfactory to the Agency that public disclosure of records, reports, or
18 information, or a particular part thereof, to which the Agency's
19 representative has access to under this Section would divulge information
20 entitled to protection under 5GCA Chapter 10, Freedom of Information, the
21 Agency *shall* consider the information or particular portion thereof to be
22 confidential. *No* confidential information secured pursuant to this Section
23 by any official or employee of the Agency within the scope of, and of the
24 official's or employee's employment in the prevention, control, or abatement
25 of releases from underground storage tanks or tank systems, shall be
26 disclosed by the official or employee, with the following exceptions: the

1 document or information may be disclosed to officers, employees, or
2 authorized representatives of the government of Guam or of the United
3 States, including, county government entities, who have been charged with
4 carrying out this Chapter or Subtitle I of the Federal Resource Conservation
5 and Recovery Act, or when relevant in any proceeding under this Chapter.
6 Where such information constitutes confidential business information under
7 federal law, it *shall* be submitted as such to federal entities.

8 **§76120. Notice.**

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

14 **§76121. Hearings.**

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

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

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

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

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

9 **§76122. Injunction.**

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

14 **§76123. Applicability to Government Agencies.**

15 All agencies of the government of Guam, and of the Government of
16 the United States, *shall* comply with all of the provisions of this Chapter
17 pursuant to U.S. Public Law 94-580, RCRA, including permit requirements,
18 with the exception of §§76114 and 76117(d).

19 **§76124. Penalties.**

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

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

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

12 (d) Any person who denies, obstructs, or hampers the
13 entrance, inspection, or conduct of release response activity by a
14 representative of the Agency at any building, place, site, facility,
15 vehicle, or structure that the representative is authorized to enter, or
16 any inspector who fails to provide information requested by the
17 agency representative as pursuant to §76110 shall be fined up to
18 Eleven Thousand Dollars (\$11,000.00) for every day he denies,
19 obstructs or hinders the acquisition of, or fails to provide, the
20 information requested, as determined in a civil action in the Superior
21 Court of Guam.”

22 **Section 2. Rules and Regulations.** The Guam Environmental Protection
23 Agency *shall* establish the applicable regulations, guidelines, standards and
24 policies *no later than* three hundred sixty-five (365) days of enactment of this Act,
25 during which time the Administrator shall make available to the Board a tri-annual

1 report of the milestones reached as related to the Regulation of Underground
2 Storage Tanks on Guam.

3 **Section 3. Severability.** *If* any provision of this law, *or* the application
4 thereof to any person or circumstance, is held invalid or contrary to law, such
5 invalidity *shall not* affect any other provision *or* application of this law which can
6 be given effect without the invalid provision *or* application, and to this end the
7 provisions of this law are severable.