I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN

2018 (SECOND) Regular Session

LEGISLATIVE SESSION VOTING RECORD

Bill No. 236-34 (COR) As amended by the Committee on Environment, Land, Agriculture and Procurement Reform.	**Speaker Antonio R. Unpingco Legislative Session Hall** **November 30, 2018**					
NAME	**Aye**	**Nay**	**Not Voting/ Abstained**	**Out During Roll Call**	**Absent**	**Excused**
Senator Thomas C. **ADA**	✓					
Senator FRANK B. **AGUON, JR.**					✓	✓
Senator William M. **CASTRO**	✓					
Senator James V. **ESPALDON**	✓					
Senator Fernando Barcinas **ESTEVES**			✓			✓
Senator Régine Biscoe **LEE**	✓					
Senator Tommy **MORRISON**	✓					
Senator Louise B. **MUÑA**	✓					
Senator Telena Cruz **NELSON**	✓					
Senator Dennis G. **RODRIGUEZ, Jr.**					✓	✓
Senator Joe S. San **AGUSTIN**	✓					
Senator Michael F.Q. **SAN NICOLAS**					✓	✓
Acting Speaker Therese M. **TERLAJE**	✓					
Senator Mary Camacho **TORRES**	✓					

TOTAL:	**10**		**1**		**3**	**4**
	Aye	**Nay**	**Not Voting/ Abstained**	**Out During Roll Call**	**Absent**	**Excused**

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

I = Pass

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

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

*

Introduced by: Thomas C. Ada

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

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that Guam imports, stores, and distributes large quantities of oil. Petroleum-based oil is used as a major source of fuel for our power plants, and various modes of transportation. To meet the demand, Guam imports, stores, and distributes over one hundred fifty million (150,000,000) gallons of oil and other petroleum products. With millions of gallons of oil being stored throughout the island, preventing and responding to oil spills is an overwhelming challenge. The potential threat for an oil spill is significant, and the effects of spilled oil poses serious threats to human health and the environment.

I Liheslaturan Guåhan finds and declares that the ground and surface water of Guam are essential and significant natural resources. Actual failures in the past of storage tanks and ancillary equipment from the improper storage and handling of

petroleum liquids, related sludge, and other hazardous substances resulted in contamination of these natural resources and posed a hazard to the public.

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

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

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

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

"**CHAPTER 76A**

ABOVEGROUND STORAGE OF REGULATED SUBSTANCES

§ 76A101. Title.

§ 76A102. Statement of Purpose.

§ 76A103. Definitions.

§ 76A104. Power and Duties of the Administrator.
§ 76A105. Notification Requirement.
§ 76A106. Tank Standards.
§ 76A107. Secondary Containment System – Release Prevention and Release Detection Standards.
§ 76A108. Delivery Prohibition Requirements.
§ 76A109. Operator Training.
§ 76A110. Leak Detection and Record Maintenance.
§ 76A111. Public Participation.
§ 76A112. Notification and Reporting Requirements on Releases.
§ 76A113. Corrective Action.
§ 76A114. Aboveground Storage Tank Management Fund.
§ 76A115. Financial Responsibility.
§ 76A116. Closure.
§ 76A117. Permit Requirements.
§ 76A118. Inspection and Entry.
§ 76A119. Confidentiality of Records.
§ 76A120. Notice.
§ 76A121. Hearings.
§ 76A122. Injunction.
§ 76A123. Applicability to Government Agencies.
§ 76A124. Penalties.
§ 76A125. RESERVED.
§ 76A126. RESERVED.
§ 76A127. RESERVED.

§ 76A101. Title.

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

§ 76A102. Statement of Purpose.

The purpose of this Chapter is to:

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

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

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

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

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

§ 76A103. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) heating oil and distillates;

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

(6) gasoline and other fuel blending stocks;

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

(8) petroleum distillates;

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

(10) petroleum solvents;

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

(12) hydrocarbon liquids

(A) naphthas and naphthalenes of all types;

(13) olefins, alkanes, alkylates, aromatics;

(14) petroleum-based inks and ink extenders;

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

(16) petroleum extender oils; and

(17) mineral oils (derived from petroleum).

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

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

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

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

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

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

(2) petroleum-based liquid fuels;

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

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

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

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

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

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

§ 76A104. Power and Duties of the Administrator.

The Administrator *shall*:

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

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

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

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

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

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

(1) administrative penalty orders;

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

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

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

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

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

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

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

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

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

§ 76A105. Notification Requirement.

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

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

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

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

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

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

§ 76A106. Tank Standards.

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

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

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

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

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

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

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

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

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

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

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

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

§ 76A108. Delivery Prohibition Requirements.

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

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

§ 76A109. Operator Training.

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

§ 76A110. Leak Detection and Record Maintenance.

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

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

§ 76A111. Public Participation.

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

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

§ 76A112. Notification and Reporting Requirements on Releases.

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

§ 76A113. Corrective Action.

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

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

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

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

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

(4) develop and implement a corrective action plan.

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

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

§ 76A114. Aboveground Storage Tank Management Fund.

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

(a) All fees, reimbursements, assessments, fines, forfeitures, and other funds collected or received pursuant to this Chapter, *shall* be deposited in the AST Fund and *shall not lapse* at the end of the fiscal year, but *shall* rollover into the next fiscal year or until expended. Independent records and accounts *shall* be maintained in connection therewith. The AST Fund *shall* be

kept in a bank licensed to do business on Guam, and funds *shall* be paid out only upon a request for payment or requisition submitted by the Administrator. All monies in the AST fund are hereby appropriated to the Agency to be expended in accordance with this Chapter, and are *not* subject to *I Maga'låhi's* transfer authority. The Administrator *shall* comply with all existing reporting requirements by issuing a quarterly account of the AST Fund to *I Maga'låhi, I Liheslaturan Guåhan,* and the Office of Public Accountability. The Administrator *shall* ensure that the AST Fund is in compliance with all existing statutes, rules and regulations, codes, executive orders, and any other authority that is applicable to the Agency, and the use of the funds in the AST Fund pursuant to this Chapter.

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

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

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

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

§ 76A115. Financial Responsibility.

(a) All owners or operators of AST systems, within one hundred eighty (180) days of the effective date of this Chapter, *shall* establish and maintain evidence of financial responsibility, as provided for in this Section, for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation

of aboveground storage tanks in at least the following per occurrence amounts:

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

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

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

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

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

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

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

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

(2) qualification as a self-insurer;

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

(4) any other reasonable and economically practicable means.

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

(1) are valid and enforceable;

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

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

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

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

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

the Administrator may retain and use such amounts for the purposes for which the financial assurance was established.

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

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

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

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

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

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

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

(h) Any claim costs incurred by the Agency for taking emergency, preventive, corrective or enforcement action may be filed directly against the

bonding company, the insurer, the guarantor, or any other person providing evidence of financial responsibility. Any amount collected or awarded under this Subsection *shall* be paid into Guam Environmental Protection Agency's AST Fund.

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

§ 76A116. Closure.

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

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

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

written approval to be abandoned in-place, and were properly abandoned in-place.

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

§ 76A117. Permit Requirements.

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

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

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

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

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

§ 76A118. Inspection and Entry.

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

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

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

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

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

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

§ 76A119. Confidentiality of Records.

Reports and records submitted to the Agency by any person on the ownership, installation, or operation of aboveground storage tanks or tank systems *shall* be made available for inspection by the public during established office hours, except as provided in this Section. Upon a showing

satisfactory to the Agency that public disclosure of records, reports, or information, or a particular part thereof, to which the Agency's representative has access to under this Section would divulge information entitled to protection under Guam's Sunshine Reform Act of 1999, the Agency *shall* consider the information or particular portion thereof to be confidential. No confidential information secured pursuant to this Section by any official or employee of the Agency within the scope of the official's or employee's employment in the prevention, control, or abatement of releases from aboveground storage tanks or tank systems, *shall* be disclosed by the official or employee with following exceptions: the document or information may be disclosed to officers, employees, or authorized representatives of Guam or of the United States, including county government entities, who have been charged with carrying out this Chapter, or when relevant in any proceeding under this Chapter. Where such information constitutes confidential business information under federal or local law, it *shall* be submitted as such to federal or local entities.

§ 76A120. Notice.

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

§ 76A121. Hearings.

(a) Any person who received an order from the Administrator pursuant to this Chapter, or any person whose permit application is disapproved by the Administrator, may, within fifteen (15) calendar days after

receipt thereof, file with the Board a notice of intent to appeal and a verified petition describing the basis of such appeal.

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

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

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

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

§ 76A122. Injunction.

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

§ 76A123. Applicability to Government Agencies.

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

§ 76A124. Penalties.

(a) A person who violates any provisions of this Chapter, or rules or regulations promulgated pursuant to this Chapter, or who refuses or neglects to comply with an order issued by the Administrator to require compliance with this Chapter, *shall* be guilty of a civil violation and *shall* be subject to a penalty of up to Twenty-five Thousand Dollars ($25,000) for each tank for each day of each violation.

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

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

(d) Any person who denies, obstructs, or hampers the entrance, inspection, or conduct or release response activity by a representative of the Agency at any building, place, site, facility, vehicle, or structure that the representative is authorized to enter or inspect, or who fails to provide information requested by the Agency representative pursuant to § 76A110 of this Chapter *shall* be guilty of a civil violation and *shall* be subject to a penalty of up to Twenty-five Thousand Dollars ($25,000) for every day the person denies, obstructs or hinders the acquisition of, or fails to provide, the information requested, as determined in a civil action in the Superior Court of Guam.

(e) Each separate civil violation *shall* be subject to the following penalties: for the first, second, and third offense, the violator *shall* be subject to a penalty of up to Twenty-five Thousand Dollars ($25,000) per tank per

day for each separate violation. Second, third, and fourth offenses are defined as offenses within twelve (12) months from the first, second, and third offenses respectively. For any fourth violation of this Chapter, the violator *shall* be guilty of a misdemeanor, and may be subject to imprisonment for up to twelve (12) months, and fined up to Twenty-five Thousand Dollars ($25,000) per day for each violation, or both.

§ 76A125. Reserved.

§ 76A126. Reserved.

§ 76A127. Reserved."

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