MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
TWENTY-NINTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

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October 15, 2007

The Honorable Felix P. Camacho
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 32(EC), 39(EC), 41(EC), 49(EC), 102(LS), 106(EC), 130(EC), 139(EC); and Substitute Bill Nos. 33(EC), 65(EC), 78(LS), 105(EC), 109(EC), 115(EC), 116(EC) & 132(EC) which were passed by *I Mina'Bente Nuebi Na Liheslaturan Guåhan* on October 10, 2007.

Sincerely,

RAY TENORIO
Senator and Secretary of the Legislature

Enclosures (16)

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

FILE COPY

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

This is to certify that **Bill No. 130 (EC), "AN ACT TO *REPEAL* AND *REENACT* CHAPTER 50 OF TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO THE GUAM PESTICIDES ACT,"** was on the 10th day of October 2007, duly and regularly passed.

Edward J.B. Calvo
Acting Speaker

Attested:

Ray Tenorio
Senator and Secretary of the Legislature

This Act was received by *I Maga'lahen Guåhan* this 15th day of Oct, 2007, at 12:45 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. 130 (EC)
As amended by the Committee
on Judiciary, Natural Resources,
Infrastructure and Cultural Affairs.

Introduced by: James V. Espaldon
Frank F. Blas, Jr.
Edward J.B. Calvo
Mark Forbes
Judith Paulette Guthertz
Frank T. Ishizaki
J. A. Lujan
Tina Rose Muña Barnes
A. B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
David L.G. Shimizu
Ray Tenorio
A. R. Unpingco
J. T. Won Pat

AN ACT TO *REPEAL* AND *REENACT* CHAPTER 50 OF TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO THE GUAM PESTICIDES ACT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that since the passage of Public Law 14-22 in 1977 there has been a general increase in the importation of pesticides on Guam. During this time, there has also been illegal importation of banned pesticides and foreign manufactured pesticides. Also, with an increase in the farming population and an estimate of one thousand two hundred (1200) farms of various sizes, there has been an increase in the use of pesticides island-wide. Of growing concern is the misuse and misapplication of

pesticides. Additionally, many of the larger farming operations are located over the northern aquifer. Pesticide contamination of Guam's groundwater and surface water, which represent nearly ninety-eight percent (98%) of Guam's raw drinking water, is of particular concern. The increased use of pesticides has contributed to a loss of biodiversity and possible health effects of authorized pesticides include, immunological effects, endocrine disrupting effects, neurotoxicological disorders and various types of cancer. Further exacerbating the situation are the attempts to smuggle illegal and highly dangerous pesticides from foreign countries. Guam Customs and Quarantine Agency, together with the Guam Environmental Protection Agency, has been successful in intercepting shipments into Guam of illegal pesticides, however it is also unknown if some foreign pesticides have eluded authorities and made their way into the island and onto plants, soil, our water resources and into food products.

Reducing the use of, and dependence on, pesticides is necessary in order to minimize problems relating to pest resistance, secondary pest problems and the depletion of agricultural soils. *I Liheslaturan Guåhan* further finds that improving the knowledge of the individual pesticide users is an essential prerequisite for changing behavior and practices. Hence, training, education and the dissemination of information should be a crucial element of the thematic strategy and for the training of agricultural commodity applicators and occupational applicators (farmers and operators) a comprehensive framework/guidelines are needed. It is the intent of *I Liheslatura* to strengthen the Guam Pesticide Act in order to address current pesticide challenges and sustain our environment. In light of our current need to protect human health and the environment, it is critical that *I Liheslaturan Guåhan* update the Pesticide Control Act to reflect the challenges of today.

Section 2. Chapter 50 of Title 10 Guam Code Annotated is hereby *repealed* and *reenacted* to read as follows:

"CHAPTER 50.

GUAM PESTICIDES ACT.

§50101. Title and Purpose.

§50102. Definitions.

§50103. Powers and Duties of the Agency and the Board.

§50104. Powers and Duties of the Administrator.

§50105. Experimental Use Permits.

§50106. Special Local Need Registration (SLN).

§50107. Licensing, Importation and Sale of Restricted Use Pesticides, Certification and Record Keeping.

§50108. Labeling Requirements.

§50109. Coloration of Certain Pesticides.

§50110. Prohibited Acts.

§50111. Seizures: Stop-Sale and Removal from Sale Orders "Stop Sale", "Use", "Removal", and "Seizure".

§50112. Notice of Arrival of Pesticides and Devices.

§50113. Arrival of Shipment.

§50114. Shipments Arriving without the Notice of Arrival.

§50115. Release of Shipment *or* Entry Refused.

§50116. Authority to Inspect.

§50117. Hearings.

§50118. Penalties and Enforcement.

§50119. Pesticide Management Fund.

§50120. Pesticide Enforcement Program Additional Staff.

§50121. Severability.

§50101. Title and Purpose. This Chapter may be cited as the "***Guam Pesticides Act of 2007"*** and has the following purposes:

(a) To regulate the importation, production, sale, distribution, use and application of pesticides in the interest of public safety and to ensure that all pesticides sold, stored, distributed and used on Guam are registered with USEPA;

(b) To implement and enforce a comprehensive regulatory and enforcement program in the public interest, for the proper, safe, and efficient use of pesticides and for the protection of human health and the environment, and to provide effective implementation and enforcement of such comprehensive programs;

(c) To protect the consumer by requiring that pesticides sold in Guam be correctly labeled with appropriate warnings and adequate directions for use;

(d) To control, restrict, suspend *or* ban the importation, receipt, sale and the use of any pesticide *or* pesticide devices;

(e) To protect, maintain, and improve the quality of Guam's environment and public health;

(f) To protect people and the environment from adverse effects of pesticides;

(g) To prevent pesticide pollution of the ground waters and surface waters of Guam; and

(h) To assure safe conditions for people in places where pesticides are present.

§50102. Definitions. As used in this Chapter unless the content clearly requires otherwise:

(1) *Active Ingredients shall* mean:

(a) In the case of a pesticide other than a plant growth regulator, defoliant *or* desiccant, an ingredient which will prevent, destroy, repeal *or* mitigate any pest;

(b) In the case of a plant growth regulator, defoliant *or* desiccant, an ingredient which, through physiological action, will accelerate *or* retard the rate of growth *or* rate of maturation *or* otherwise alter the behavior of ornamental *or* crop plants *or* the produce thereof.

(2) *Administrator shall* mean the Administrator of the Guam Environmental Protection Agency.

(3) *Adulterated shall* apply to any pesticide if its strength *or* purity falls below the professed standard of quality as expressed on its labeling under which it is sold, *or* if any substance has been substituted *or* abstracted wholly *or* in part for the pesticide, *or* any valuable constituent of the pesticide has been wholly *or* in part abstracted.

(4) *Agency shall* mean the Guam Environmental Protection Agency.

(5) *Agriculture Commodity shall* mean any and all plants and animals produced in Guam for commercial purposes (not for personal consumption).

(6) *Animal shall* mean all vertebrate and invertebrate species, including, *but not limited to,* man and other mammals, birds, fish and shellfish.

(7) *Board shall* mean Board of Directors of the Guam Environmental Protection Agency.

(8) *Carrier shall* mean every description of craft, whether aircraft, surface craft *or* other contrivance used *or* capable of being used as a means of transportation in the air *or* water. The person responsible for the carrier *shall* be the owner, *or* his agent, including the operator having the command of the carrier.

(9) *Certified Pesticide Applicator shall* mean any individual who is certified under regulations promulgated under this Chapter to use *or* to supervise the use of restricted use pesticides, and *shall* include, but *not be limited to*:

(a) *Private applicator shall* mean a certified applicator who uses *or* supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned *or* leased by the applicator *or* the applicator's employer *or* (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person;

(b) *Commercial applicator shall* mean an applicator who uses *or* supervises the use of any pesticide which is classified for restricted use for any purpose *or* on any property other than as provided in 9(a).

(10) *CFR shall* mean the Code of Federal Regulations.

(11) *Core Training shall* mean the prerequisite training toward having a certified pesticide license for application of restricted use pesticides *or* for applying general use pesticides as required under §50107 (d) of this Act.

(12) *Custom Officer shall* mean the Chief of Customs under the Customs and Quarantine Agency *or* his authorized representative.

(13) *Defoliant shall* mean any substance or mixture of substances intended to cause the foliage to drop from a plant, with *or* without causing abscission.

(14) *Desiccant shall* mean any substance *or* mixture of substances intended for artificially accelerating the drying of plant tissues.

(15) *Device shall* mean any instrument *or* contrivance (other than a firearm) intended for trapping, destroying, repelling *or* mitigating pests *or* any other form of plant *or* animal life; but *not* including equipment used for the application of pesticides when sold separately.

(16) *Environment* includes water, air, land and animals living therein, all plants and man and the interrelationships which exist among them.

(17) *Experimental Use Permit shall* mean a permit which is issued by the Administrator only for bona fide research programs under the supervision of public officials.

(18) *Facility shall* mean a farm, building, room, nursery, golf course, landscaper, *or* any other type of location where pesticides are stored, used, sold, *or* disposed of.

(19) *FIFRA shall* mean the Federal Insecticide, Fungicide, Rodenticide Act and its amendments.

(20) *Fungus shall* mean all nonchlorophyll-bearing thallophytes including rusts, smuts, mildews, molds and yeasts, except

those on *or* living in man *or* other animals and those on *or* in processed foods, beverages *or* pharmaceutical.

(21) *General Use Pesticide shall* mean a pesticide other than one designated as a restricted pesticide.

(22) *Imminent Hazard shall* mean a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would likely result in unreasonable adverse effects on the environment, *or* would involve unreasonable hazards to the survival of a species declared endangered by the Secretary of the Interior under the Federal Endangered Species Act *or* the Endangered Species Act of Guam, Title 5 GCA, Chapter 63, Article 2, and their amendments.

(23) *Importer shall* mean the person who initially receives incoming pesticides to Guam.

(24) *Importation shall* mean importing *or* bringing of chemical pesticides *or* devices.

(25) *Inert Ingredient shall* mean an ingredient which is not an active ingredient and as such does not act as a pesticide.

(26) *Ingredient Statement shall* mean:

(a) A statement of the chemical name and common name where applicable of each active ingredient, together with the name and percentage of each and the total percentage of inert ingredients, *if* any, in the pesticide;

(b) Whenever the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elementary arsenic.

(27) *Insect shall* mean invertebrate animals belonging to the class *Insecta* including, beetles, bugs, bees, flies and other allied classes of arthropods, including spiders, mites, ticks, centipedes and wood lice.

(28) *Label shall* mean the written, printed *or* graphic matter on *or* attached to the pesticide *or* device, *or* any of its containers *or* wrappers.

(29) *'Labeling'* means all labels and other written, printed *or* graphic matter accompanying the pesticide *or* device at any time *or* to which reference is made on the label *or* in literature accompanying the pesticide *or* device, except for current official publications of the U.S. Environmental Protection Agency, the United States Department of Agriculture, the United States Department of Interior, the United States Department of Health, Education and Welfare, the state experiment stations, the state *or* territorial agriculture colleges *or* other similar Federal, state *or* territorial institutions *or* agencies authorized by law to conduct research in the field of pesticides.

(30) *Misbranded shall* mean any pesticide *or* device if:

(a) Its labeling bears any statement, design *or* graphic representation relative thereto *or* to its ingredients which is false *or* misleading in any particular;

(b) It is contained in a package *or* other container *or* wrapping which does not conform to the standards established by the Board pursuant to §50108;

(c) It is an imitation of and is offered for sale under the name of another pesticide *or* device;

(d) Its labeling does not bear the Federal registration and establishment number for pesticides *or* establishment number for pesticide devices;

(e) Any advertisement by means of newspaper, leaflet, radio *or* television is false *or* misleading in any particular;

(f) The labeling accompanying it does not contain instructions for use which are necessary, proper and adequate for the protection of the public;

(g) The label does not contain warning *or* caution statements which may be necessary and if complied with, together with any requirements imposed under §3(d) FIFRA is adequate to protect health and the environment;

(h) The label does not bear an ingredient statement on the immediate container;

(i) Any word, statement *or* other information required by *or* under this Chapter to appear on the labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(j) In the case of a plant growth regulator, defoliant *or* desiccant when used as directed it is injurious to living man *or* other vertebrate animals, *or* vegetation to which it is applied, *or* to the person applying such pesticides; provided that physical *or* physiological effects on plants *or* parts thereof *shall* not be deemed to be injurious when this is the purpose for which the

plant growth regulator, defoliant *or* desiccant was applied, in accordance with the label claims and recommendations.

(31) *Nematode shall* mean invertebrate animals of the Phylum *Nemathelminthes* and the class *Nematoda* including unsegmented round worms with elongated *fusiform or* sac-like bodies covered with cuticle and inhabiting soil, water, plants *or* plant parts.

(32) *Notice of Arrival shall* mean a legal document authorized under §50112 for the purpose of collecting information concerning the importation and consignment of pesticides on Guam.

(33) *Person shall* mean the territory of Guam *or* any instrumentality thereof, *or* any individual, firm, corporation, association *or* partnership, *or* any organized group of persons whether incorporated *or* not.

(34) *Pest shall* mean any insect, rodent, nematode, fungus, weed *or* any other form of terrestrial *or* aquatic plant *or* animal life *or* virus, bacteria *or* other microorganism, except viruses, bacteria *or* other microorganisms on *or* in living man *or* other living animals which the Board declares to be a pest under §50103.

(35) *Pesticide shall* mean:

(a) Any substance *or* mixture of substances intended for preventing, destroying, repelling *or* mitigating any pest;

(b) Any substances *or* mixture substances intended for use as a plant growth regulator, defoliant *or* desiccant.

(36) *Plant Growth Regulator shall* mean any substance *or* mixture of substances intended through physiological action, for accelerating *or* retarding the rate of growth *or* rate of maturation, *or* for otherwise altering the behavior of plants *or* the produce thereof,

but not including substances that are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(37) *Produce shall* mean to manufacture, prepare, propagate, compound *or* process any pesticide, any active ingredient, *or* device *or* to package, repackage, label *or* re-label *or* otherwise change the container of any pesticide *or* device.

(38) *Producer sha*ll mean any person who manufactures, prepares, compounds, propagates, processes any pesticide *or* device, any active ingredient, *or* device *or* to package, repackage label *or* re-label *or* otherwise change the container of any pesticide *or* device.

(39) *Producing Establishment shall* mean any place where a pesticide *or* device *or* active ingredient is produced *or* repackaged.

(40) *Protect Health and the Environment or Protection of Health and the Environment shall* mean protection against any injury to man and protection against any unreasonable adverse effects on the environment taking into account the public interest, including benefits from the use of the pesticide.

(41) *Registrant shall* mean a person who has registered any pesticide *or* device pursuant to this Chapter.

(42) *Restricted Use Pesticide shall* mean:

(a) Any pesticide so designated by regulation under §3(d) of FIFRA and so designated on its label; or

(b) A pesticide determined by the Board to be unsafe for use by persons other than a certified applicator, and so designated by inclusion on a list of restricted use pesticides adopted by the Board.

(43) *Sell or Distribute shall* mean to distribute, solicit, sell, offer for sale, hold for sale, transport *or* deliver for transportation between points within Guam.

(44) *To Use Any Pesticide in a Manner Inconsistent with its Labelling shall* mean to use any pesticide in a manner not permitted by the labelling.

(45) *USEPA shall* mean the United States Environmental Protection Agency.

(46) *Under the Direct Supervision of a Certified Applicator shall* mean that the certified applicator is physically present at the time and place the pesticide is mixed and applied.

(47) *Unreasonable Adverse Effects on the Environment shall* mean any unreasonable risk to man *or* the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(48) *Use shall* mean mixing, loading, application, and storage of pesticides, containers and devices, disposal of pesticides, containers and devices, and transportation of containers.

(49) *Weed shall* mean any plant which grows where not wanted.

§50103. Powers and Duties of the Agency and the Board. The Agency *shall* be responsible for the implementation of this Chapter. All authority vested in the Board by virtue of this Chapter may, with like force and effect, be exercised by such employees of the Agency as the Board may from time to time designate for the purpose. The Board *shall* have the authority to:

(a) Adopt, promulgate, amend, rescind, and repeal rules and

regulations, in accordance with the Administrative Adjudication Law:

(1) As may be necessary to implement and effectuate the provisions and regulations of this Chapter;

(2) As may be necessary to establish additional requirements, which may be at least equivalent to *or* more stringent *or* broader in scope than the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and regulations promulgated pursuant to the FIFRA;

(3) Designate restricted use pesticides;

(4) Suspend *or* ban certain pesticides *or* specific uses of certain pesticides;

(5) Require keeping of and access to records relating to importation, receipt, sale, production, use, storage, *or* disposal of pesticide and pesticide device;

(b) Only after holding a public hearing, with at least ten (10) days prior public notice:

(1) Declare as a pest any form of plant *or* animal life (other than bacteria, a virus, *or* other micro-organisms on *or* in living humans *or* living animals) which is injurious to health *or* the environment;

(2) Designate restricted use pesticides *or* devices;

(3) Suspend *or* ban certain pesticides *or* specific uses of certain pesticides;

(4) The Agency *shall* promulgate rules and regulations regarding any action taken under this subsection within twelve (12) months of any action taken; and

(5) Revoke a permit, license *or* certification.

(6) Require coloration of a pesticide and to exempt from coloration specific uses of certain pesticides.

(c) Hold hearings related to any aspect of, *or* matter in the administration of, this Chapter, and in connection therewith, administer oaths, examine witnesses and issue subpoenas to compel the attendance of witnesses and the production of evidence;

(d) Hear and decide appeals of orders issued by the Administrator.

(e) Deny a permit, license, registration, *or* certification.

(f) Establish procedures, conditions, and fees for pesticide registration and permits, and for licenses and certification, under this Chapter.

(g) Establish procedures and standards, and fees for the collection and examination of samples of pesticides *or* devices, for coloring of pesticides, and for storage and disposal.

§50104. Powers and Duties of the Administrator. The Administrator *shall* the have the following powers and duties:

(a) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this Chapter;

(b) Establish an effective enforcement program for the implementation of this Chapter;

(c) In implementing the provisions of this Chapter, take actions necessary to protect human health, welfare, *or* the environment;

(d) Issue, continue in effect, modify, revoke, reissue, *or* deny permits, licenses, certifications, *or* registrations;

(e) Collect and disseminate information;

(f) Conduct educational, certification, and training programs;

(g) Refuse the importation of any pesticide *or* pesticide devices;

(h) Issue letters of warning to violators as appropriate;

(i) Issue, amend, rescind, and enforce orders as may be necessary to ensure compliance with any provision of this Chapter, *or* of any rules, regulations, license, certification, registration, standards, *or* requirements issued pursuant to this Chapter including, *but not limited to*, an administrative penalty order, "*not limited to*" an emergency order, an administrative penalty *or* order requiring whatever remedial measures may be necessary *or* appropriate to implement *or* effectuate the provisions and purposes of this Chapter;

(j) Hold hearings related to any aspect of, *or* matter in the administration of, this Chapter, and in connection therewith, administer oaths, examine witnesses and issue subpoenas to compel the attendance of witnesses and the production of evidence;

(k) Seize certain pesticides, pesticide devices, *or* ban specific uses of certain pesticides;

(l) Suspend certain pesticides *or* specific uses of certain pesticides;

(m) Consult, upon request, with any person proposing to import, distribute, produce, *or* manufacture any pesticide *or* pesticide devices. Nothing in any consultation *shall* be construed to relieve any person from compliance with this Chapter, *or* any other provision of the law;

(n) Accept, receive, and administer grants and other funds *or*

fees from public and private agencies, including the federal government, for carrying out any of the purposes of this Chapter;

(o) Cooperate with *or* enter into agreements with any person for purposes of implementing the provisions of this Chapter.

§50105. Experimental Use Permits. (a) Issuance. Any person who already has received appropriate approval under FIFRA from U.S. EPA for an experimental use permit that includes experimental use of a pesticide in Guam must apply to the Administrator for an experimental use permit for the pesticide prior to experimental use of the pesticide in Guam. The Administrator may issue an experimental use permit *if* he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under FIFRA *or* under this Chapter.

(b) Temporary Tolerance Level. *If* the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on *or* in food *or* feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

(c) Use Under Permit. Use of a pesticide under an experimental use permit *shall* be under the supervision of the Administrator, and *shall* be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

(d) Studies. When any experimental use permit is issued for a pesticide containing any chemical *or* combination of chemicals which has not been included, in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause unreasonable adverse effects on the environment. All results of such studies *shall* be reported to the Administrator before such pesticide may be registered under this Chapter.

(e) Revocation. The Administrator may revoke any experimental use permit, at any time, *if* he finds that its terms *or* conditions are being violated, *or* that its terms or conditions are inadequate to avoid unreasonable adverse effects on the environment.

(f) Permit *shall* be under the supervision of the Administrator, and *shall* be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit, including, *but not limited to,* conditions that require the permittee to obtain written permission of the property owner and the substantial participation in the experimental use by an experienced pesticide researcher approved by the Administrator. All costs involved with the permit process *shall* be the responsibility of the permittee.

§50106. Special Local Need (SLN) Registration. (a) Any federally registered pesticide for which the Administrator has determined has an additional use which meets special local needs in accordance with FIFRA, may be registered with the USEPA Administrator, provided that the federal registration for the pesticide *or* the device has not previously been denied, suspended, disapproved, *or* cancelled by the Administrator of USEPA.

(b) The Administrator, whenever he deems it necessary in the administration of this part, may require the submission of the complete formula of any pesticide.

(c) *If* it appears to the Administrator that the composition of the article and its labeling and other material required to be submitted comply with the requirements of this Chapter and §24(c) of FIFRA, he may register the article.

(d) Any person who applies for a Special Local Need Registration

shall pay all costs relating to the Agency's review thereof.

(e) The following requirements must be addressed when applying for *or* approving a SLN registration:

(1) The area where the pesticide is to be applied:

(A) must not be within an endangered species location;

(B) must be approved by the immediate landowner; and

(C) must not contain any imminent environmental threat.

(2) A public notice concerning the proposed Special Local Need registration has been provided.

(3) A determination has been made that there are no other available pesticides that can be used for this specific pest problem.

§50107. Licensing, Importation and Sale of Restricted Use Pesticides, Certification and Record Keeping. (a) Licensing. Every person who imports, sells *or* distributes restricted use pesticides *shall* obtain an annual license from the Agency. Requirements, procedures and fees for licenses *shall* conform to the regulations promulgated under this Chapter.

(b) Importation and Sale of Restricted Use Pesticides. Every person who imports, sells, *or* distributes restricted use pesticides *shall* have a certified sales manager *or* a manager employed by the company who has passed one (1) of the certification trainings covering pesticide laws and regulations, pesticide hazards, proper usage, safe storage, distribution and disposal methods.

(c) Certification. Every person who applies restricted use pesticides *shall* obtain certification from the Agency, which *shall* be valid for three (3) years. Every person who applies any restricted use pesticides

and who is not a certified applicator must be under the direct supervision of a certified applicator.

(d) Basic Training. Any farmer, owner of a business *or* any person who applies general use pesticide as part of his/her job *or* duties, *shall* be required to take the core training and pass the examination. Upon successful completion of the core training and exam, a Basic Training Identification card will be issued by the Agency. Examples of applicators who must complete the basic training requirements, pay the applicable fees and conform to regulations promulgated under this Paragraph include (*but are not limited to*) the following: pesticide control companies, golf courses, landscaping companies, maintenance companies and farm operations that raise agricultural commodities

(e) Record Keeping. Any person issued a license, certification, *or* permit for RUPs under the provisions of this Chapter *shall* be required by the Administrator to keep accurate records for at least two (2) years from the date of importation *or* sale and containing the following information:

(1) The delivery, movement, holding, *or* storage of any pesticide *or* device including quantity and name and registration number;

(2) The date received, name of consignor and consignee;

(3) Any other information necessary for the enforcement of this Chapter as prescribed by the Administrator;

(4) In the case of pesticide use, the name, registration number, quantity of pesticide and solution used.

(5) The Administrator *shall* have access to such records and at any reasonable time make copies of such records for the purpose of carrying out the provisions of this Chapter. Unless required for the

enforcement of this Act, such information *shall* be confidential and, *if* summarized, *shall* not identify an individual person.

§50108. Labeling Requirements. *Each container of pesticides which is offered for sale and distribution shall* bear thereon *or* attached thereto in a conspicuous place, a plainly written *or* printed label in the English language. Pesticide Importers *shall* assist Guam EPA on the development and translation of public outreach materials to ensure that pesticide applicators understand all requirements as deemed necessary by the Administrator. The label must provide all information required under FIFRA, applicable federal regulations, and required by USEPA, including the following:

(1) Name, brand *or* trademark under which the pesticide is sold *or* distributed;

(2) Ingredient statement;

(3) Direction for use which *if* complied with will adequately protect the health and environment;

(4) Warning *or* caution statements as specified by regulation;

(5) Weight *or* measure of content;

(6) EPA registration number;

(7) EPA establishment number; and

(8) Classification statement.

§50109. Coloration of Certain Pesticides. (a) Pesticides known as standard lead arsenate, basic lead arsenate, sodium arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate *or* barium fluosilicate *shall* be distinctly colored as specified by regulation.

§50110. Prohibited Acts. (a) It *shall* be unlawful for any person to import, distribute, sell, *or* offer for sale in Guam:

(1) Any pesticide *or* device which is not registered with USEPA *or* whose registration has been cancelled *or* suspended;

(2) Any pesticide that is misbranded;

(3) Any pesticide that is not produced in an EPA registered pesticide-producing establishment;

(4) Any registered pesticide if the composition differs from its registered composition at the time of its distribution *or* sale;

(5) Any registered pesticide if the claims made for it *or* any of the directions for its use differ in substance from the representations made in connection with its registration under this Chapter *or* FIFRA;

(6) Any pesticide that is not in the producer's, re-filler's, registrant's, *or* the manufacturer's original unbroken immediate container;

(7) Any restricted pesticide to any person other than a certified pesticide applicator *or* licensed dealer;

(8) Any pesticide whose coloration is not in conformity with under this Chapter;

(9) Any pesticide which is adulterated *or* misbranded;

(10) Any pesticide in any manner that has been suspended *or* banned;

(11) Any experimental use pesticide that has not been registered with U.S. EPA and Guam EPA; or

(12) Any pesticide that has *not* been registered under the special local needs provisions of this Act.

(b) To use, apply, store, transport, mix, dispose, discard *or* supervise the use of an application of a pesticide *or* device inconsistent with its labelling or restrictions imposed by the Administrator.

(c) To use, store, transport, mix, dispose *or* discard any pesticide *or* the containers of any pesticide *or* device in any manner that could have adverse effects on the environment.

(d) To use, store, transport, mix, apply, *or* as determined by GEPA, improperly dispose *or* discard any pesticides *or* devices that are not registered with USEPA

(e) To use, store, transport, mix, dispose *or* discard any pesticide *or* device which is under an experimental use permit inconsistent to the provision of such permit.

(f) To use, store, transport, mix, dispose, discard *or* apply any restricted pesticide *or* device unless the person is a certified pesticide applicator *or* is acting under the immediate supervision and control of a current certified pesticide applicator with a valid certificate issued pursuant to regulations adopted under this Chapter.

(g) To use, store, transport, mix, dispose, discard *or* apply any pesticide *or* device in any manner that has been suspended *or* banned pursuant to this Chapter *or* any pesticide whose registration has been cancelled *or* suspended by USEPA *or* an experimental use permit *or* special local need registration that has been cancelled *or* suspended by the Agency.

(h) To detach, alter, deface *or* destroy, in whole, *or* in part, any label *or* alter any labelling of the pesticide *or* device unless such action is taken with the approval of the Administrator to correct an improper label *or* labelling.

(i) To add any substance to *or* take any substance from a pesticide *or* device in a manner that may defeat the purpose of this Chapter, unless the pesticide in question is properly registered as required under FIFRA and the establishment where the pesticide is produced is registered as required under FIFRA.

(j) To use for a person's own advantage *or* to reveal any information relative to formulas of products acquired in the administration of this Chapter to persons other than to proper officials *or* employees of the Agency, *or* any courts in response to a subpoena *or* to physicians or in emergencies to pharmacists and other qualified persons for use in the preparation of practical treatment.

(k) To falsify any report *or* record required to be made *or* maintained *or* to fail to file reports required by the Agency.

(l) To submit to the Agency data known to be false.

(m) To violate any provision of this Chapter *or* any rule, regulation, standard, permit, certificate, license *or* order issued pursuant to this Chapter.

(n) Violate any rule, regulation, standard, *or* order issued *or* promulgated by USEPA under FIFRA.

(o) To use, store, transport, mix, dispose *or* discard a pesticide in any way inconsistent with the Federal Worker Protection Standards (WPS) found at 40 CFR Part 170 and under this Chapter.

(p) To import any pesticides to Guam without an approved Notice of Arrival (NOA) prior to the arrival of the pesticide product.

§50111. Seizures: Stop-Sale and Removal from Sale Orders "Stop Sale", "Use", "Removal", and "Seizure". (a) Whenever a pesticide *or* device is found by the Administrator *or* his designated agent and there is reason to believe that the pesticide *or* device has been *or* is intended to be

distributed, used, sold *or* disposed of in violation of this Chapter, the Administrator may:

(1) Issue a written *or* printed order to stop the importation, distribution, sale, use, storage, *or* improper disposal, and to remove the pesticide in accordance with this Chapter, and;

(2) Seize the pesticide *or* device.

(b) Any pesticide *or* device seized hereunder *shall*, after entry of decree, be disposed of *or* sold as the Court directs. Proceeds, if sold, *shall* be paid to the Pesticide Management Fund, provided that the pesticide *or* device *shall* not be sold contrary to the provisions of this Chapter, and provided that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide *or* device *shall* not be disposed of unlawfully, the Court may direct the pesticide *or* device to be delivered to the owner thereof.

(c) When a decree of condemnation is entered against the pesticide *or* device, court costs, fees, storage and other proper expenses *shall* be awarded against the person, *if* any, intervening as claimant of the pesticide *or* device.

§50112. Notice of Arrival of Pesticides and Devices. An importer desiring to import any pesticides *or* devices as defined in this Act into Guam *shall* submit to the Administrator a completed Agency's Notice of Arrival form prior to the arrival of the shipment. Upon receipt, the Administrator *shall* complete said form, indicating the disposition to be made of the shipment of pesticides *or* devices upon its arrival in Guam and *shall* return the form to the importer *or* his agent.

§50113. Arrival of Shipment. Upon arrival of a shipment of pesticides *or* devices, the importer *or* his agent *shall* submit to the Customs

Officer at the port of first arrival, the Notice of Arrival completed by the Administrator and indicating to Customs the action to be taken on the shipment of pesticides *or* devices. The Customs Officer at the port of arrival *shall* immediately notify the Agency of such arrival of shipment and compare documents for the shipment of pesticides *or* devices and certify its agreement therewith.

§50114. Shipments Arriving without the Notice of Arrival. When a shipment of pesticides *or* devices arrives in Guam without the submission by the importer *or* his agent of the Notice of Arrival, such shipment *shall* be refused entry by the Customs Officer. Any expenses incident to the handling, storage *or* transfer of pesticides *or* devices refused entry into Guam *shall* be at the carrier's risk and expense.

§50115. Release of Shipment *or* Entry Refused. *If* the completed Notice of Arrival directs the Customs Officer to release the shipment of pesticides *or* devices and from examination *if* it appears to be in compliance, the shipment *shall* be released to the importer. *If* the completed Notice of Arrival directs the Customs Officer to refuse entry of a shipment and from examination of the shipment it appears to violate provisions of this Act such shipment *shall* be refused entry and *shall* be treated as a prohibited importation.

§50116. Authority to Inspect. (a) The Agency *or* any authorized representative *or* employee of the Agency may enter upon any public *or* private property, according to law at any reasonable time to examine and inspect application methods and equipment, to examine and collect documentary and environmental evidence (including, *but not limited to,* sample of plants, soil and other materials) and to perform any other act for the purpose of carrying out and effectuating the purposes of this Act,

regulations developed under this Act, FIFRA and federal pesticide regulations. This includes, but is *not limited to*, the following locations: where pesticides *or* devices are used, imported *or* exported, produced, distributed, held for distribution *or* offered for distribution, sold, held for sale, *or* offered for sale, stored, disposed; where handlers and workers, as defined under the federal Worker Protection Standard(WPS), are present. GEPA should have the authority to take necessary enforcement action (s) as specified in this Act.

(b) Should entry be denied to any place where entry is sought, the Agency *or* any authorized representative *or* employee of the Agency may apply to any court of competent jurisdiction for a search warrant authorizing entry. The Court may, upon a showing by the Administrator that there is reason to believe that the provisions of this Act have been violated, issue a search warrant.

§50117. Hearings. (a) Any person who receives an order from the Administrator as authorized by this Chapter and any person whose license, certification, permit, registration *or* Notice of Arrival is disapproved by the Administrator may, within fifteen (15) days of the date of receipt of such order *or* disapproval, file a Notice of Intent to appeal with the Board, setting forth in such notice a verified petition outlining the legal and factual basis for such appeal.

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

(c) The Agency is hereby authorized to administer oaths, examine witnesses and issue subpoenas to compel the attendance of witnesses and the

production of evidence relevant to the matter involved in the hearing.

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

(e) Any person may appeal such decision to the Superior Court of Guam by filing with the Agency a written notice of such intent to appeal within ten (10) days of the notice in subsection (d) of this Section and *shall* have a transcript of the proceedings upon request and payment of the expense of preparation and certification of the transcript, and filling out a petition with the Superior Court of Guam within thirty (30) days of the notice in subsection (d) of this Section.

§50118. Penalties and Enforcement. (a) Criminal Penalties. Any person who knowingly violates any provision of this Chapter, *or* any valid rule *or* regulation promulgated under this Chapter, *or* who refuses *or* neglects to comply with any lawful license, certification, permit, registration, Notice of Arrival, *or* order issued by the Administrator in carrying out the provisions of this Chapter *shall*, upon conviction, be guilty of a felony and sentenced to imprisonment for a term *not to exceed* five (5) years and be fined *not more than* Ten Thousand Dollars ($10,000) per day for each violation *or* non-compliance and *shall* make restitution.

(b) Civil Penalties. Any person who violates any provision of this Chapter, *or* any valid rule *or* regulation promulgated under this Chapter, *or* refuses *or* neglects to comply with any lawful license, certification, permit, registration, Notice of Arrival, *or* order issued by the Administrator in carrying out the provisions of this Chapter *shall*, in addition to clean-up cost and other damages, forfeit and pay a civil penalty of *not more than* Ten

Thousand Dollars ($10,000) per day for each violation *or* non-compliance.

(c) Administrative Penalties. In addition to any other administrative *or* judicial remedy provided by this Chapter, *or* by rules adopted under this Chapter, the Administrator is authorized to impose by order the penalties specified in §50118(a-b). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator. In any proceeding to recover the civil penalty imposed, the Administrator need only show that notice was given, a hearing was held *or* the time granted for requesting a hearing has expired without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(d) The Agency may institute and maintain a judicial action to enforce the provisions of this Chapter, *or* any valid rule *or* regulation promulgated under this Chapter, *or* any lawful license, certification, permit, registration, Notice of Arrival, *or* order issued by the Administrator in carrying out the provisions of this Chapter, by injunction, receivership *or* other appropriate remedy. The rights in this Section are in addition to any other rules *or* penalties conferred by this Chapter.

(e) Nothing in this Chapter *shall* be construed to abridge, limit, impair, create, enlarge, *or* otherwise affect substantively *or* procedurally the right of any person to damages *or* other relief on account of injury to person *or* property and to maintain any action of other appropriate proceeding therefore.

§50119. Pesticide Management Fund. There is established a non-lapsing, revolving fund, hereafter referred to as the "Pesticide Management Fund", which *shall* be maintained separate and apart from any other funds of the government of Guam, and *shall* be administered by the Administrator of the Guam Environmental Protection Agency. Independent records and accounts *shall* be maintained in connection therewith. All fees, reimbursements, assessments, fines, bail forfeitures, and other funds collected *or* received pursuant to this Chapter *shall* be deposited in this Fund and used for the administration and implementation of this Chapter including, *but not limited to*, purchase of equipment, payment of personnel costs, public outreach, training, contracts, and disposal of confiscated pesticides and devices.

§50120. Pesticide Enforcement Program Additional Staff.

(a) Enforcement. There is hereby established within the Agency's Pesticide Enforcement Program under the Air and Land Division, two (2) additional staff for the purpose of implementing and enforcing this Act and related environmental activities relative to the functions of the Agency.

(b) Staff. The Program *shall* include two (2) additional staff as follows:

One (1) Environmental Health Specialist III, and

One (1) Environmental Health Specialist II.

(c) Funding. The funding *shall* be submitted through *I Maga'lahen Guåhan* for a budget request within ninety (90) days upon enactment, *or I Maga'lahen Guåhan* may use his transfer authority for funding source.

§50121. 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 which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable."