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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

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

This is to certify that **Bill No. 337-32 (COR), "AN ACT TO *AMEND* §§ 76114, 76116 AND 76124 OF CHAPTER 76, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE UNDERGROUND STORAGE TANK MANAGEMENT FUND, CLOSURE, AND ASSOCIATED PENALTIES,"** was on the 3rd day of October, 2014, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 6 day of Oct, 2014, at 6:32 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

Bill No. 337-32 (COR)
As amended by the Committee on Rules, Federal, Foreign and Micronesian Affairs, Human and Natural Resources, and Election Reform.

Introduced by: T. C. Ada
R. J. Respicio
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §§ 76114, 76116 AND 76124 OF CHAPTER 76, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE UNDERGROUND STORAGE TANK MANAGEMENT FUND, CLOSURE, AND ASSOCIATED PENALTIES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the underground storage of liquid petroleum or other regulated substances poses a threat to the environment. Specifically, potential leaks from underground storage tanks (UST) and pipelines, which may result from faulty installation, earthquakes, or inadequate operating and maintenance procedures, may seep into

the soil and contaminate groundwater sources. The cost of remediation to rectify damages resulting from a leak can be very costly.

I Liheslatura also finds that there are over three hundred (300) regulated underground storage tanks (UST), with a total capacity of ninety (90) million gallons, currently in use to store gasoline, diesel, and residual oil, and approximately fifty-five (55) miles of buried pipeline, with a static holding capacity of three (3) million gallons, used to transport these products. These facilities are owned by commercial, private, local and federal government entities located at one hundred thirty-six (136) different sites, which include gas stations, residential estates, commercial and industrial buildings, hotels, golf courses, resorts, and federal and local government agencies.

I Liheslatura finds that during the period 2000 to 2013, there were a total of one hundred thirty-nine (139) releases from underground tanks on Guam. The majority of incidences have occurred in northern Guam where the island's sole-source aquifer is located. *I Liheslatura* further finds the vast majority of these releases, one hundred eighteen (118), or eighty-four percent (84%), have been completely cleaned up. Of the remainder, twenty-one (21) are subject to ongoing clean up, remediation and/or monitoring to ensure that conditions continue to improve.

I Liheslatura further finds that although the number of incidences has been decreasing annually due to more stringent construction and operating requirements, the threat to the environment posed by these tanks remains.

I Liheslatura finds that the Guam UST program was established and codified under Chapter 76 of Title 10, Guam Code Annotated. The existing USTs on Guam have largely been upgraded to meet current standards, and one hundred percent (100%) of the facilities with active tanks meet regulatory standards for corrosion protection and leak detection systems.

I Liheslatura intends to increase the maximum civil penalty per tank per day, for each violation of a requirement or standard, from Eleven Thousand Dollars ($11,000) to Sixteen Thousand Dollars ($16,000) in order to adequately fund mitigation activities and subsequent related actions in accordance with Chapter 76 of Title 10, Guam Code Annotated, and Chapter 50 of Division 10, Title 22, Guam Administrative Rules and Regulations.

Section 2. § 76114 of Chapter 76, Title 10, Guam Code Annotated, is hereby *amended* to read as follows:

"§ 76114. Underground Storage Tank Management Fund.

There is hereby established a fund to be known as the "Underground Storage Tank Management Fund", hereafter referred to as the UST-LUST 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 UST-LUST 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 UST-LUST 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 UST-LUST Fund are hereby appropriated to the Guam Environmental Protection Agency (GEPA) to be expended in accordance with this part and are *not* subject to *I Maga'låhi's* transfer authority. The Administrator *shall* comply with all existing reporting requirements by issuing a quarterly accounting of the UST-LUST Fund to *I Maga'lahen Guåhan, I Liheslaturan*

Guåhan, and the Office of Public Accountability. The Administrator *shall* ensure the UST-LUST Fund is in compliance with all existing statutes, rules and regulations, codes, executive orders, and any other authority which is applicable to GEPA and the use of the funds in the UST-LUST Fund pursuant to this Chapter.

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

(1) to fund the implementation of actions authorized by § 76113 of this Chapter;

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

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

Section 3. § 76116 of Chapter 76, Title 10, Guam Code Annotated, is hereby *amended* to read as follows:

"**§ 76116. Closure.**

(a) The owner *shall* close a UST 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 removals of the USTs and tank systems. The Administrator *shall* adopt requirements for change-in-service and temporary closure and permanent closure of USTs and tank systems.

(b) *No later than* one hundred eighty (180) calendar days following submission to the Guam Environmental Protection Agency of a *Notice of Intent* for permanent closure, all USTs containing regulated substances must be physically removed from below ground surface.

(c) An exception to requirements for removal may be considered based on extenuating circumstances, which may warrant abandonment in-place for the UST. The extenuating circumstances such as, but *not* limited to, compromising the structural integrity of public infrastructure, must be requested in written form and submitted to the Administrator for consideration. Any exception granted by the Administrator *shall* relieve the owner of future liability, *unless* otherwise stated in the written exception to requirements.

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

(e) Any UST discovered to have been abandoned in-place without written approval from GEPA *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 GEPA Administrator; and any soil and/or groundwater

contamination found to be caused by a release from the UST *shall* be mitigated as soon as reasonably possible. If ownership of the UST is unknown, uncertain, and disputed, the current owner of the land where the UST has been found *shall* be responsible for removal of the UST and any required mitigation. Nothing herein, however, shall prohibit the owner of such land from pursuing any remedies available in equity or at law against the party which previously owned and abandoned in-place the UST in question if such party is subsequently identified."

Section 4. § 76124 of Chapter 76, Title 10, Guam Code Annotated, is hereby *amended* to read as follows:

"**§ 76124. Penalties.**

(a) A person who violates any provision of this Chapter, or rules or regulations enacted pursuant hereto, or 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 Sixteen Thousand Dollars ($16,000) 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 §§ 76105 or 76112, or who makes any false statement or representation in any UST 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 any inspector who fails to provide information requested by the agency representative pursuant to § 76110 *shall* be guilty of a civil violation and shall be subject to a penalty of up to Sixteen Thousand Dollars ($16,000) 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 Sixteen Thousand Dollars ($16,000) 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 Part, the violator *shall* be guilty of a misdemeanor, and may be subject to imprisonment for up to twelve (12) months and fined up to Sixteen Thousand Dollars ($16,000) per day for each violation, or both."

Section 5. Severability. *If* any provision of this Law 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 Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.

Section 6. Effective Date. This Act *shall* be effective upon enactment.