



Office of the Governor of Guahan

P.O. Box 2950 Hagåtña, GU 96932
Tel: (671) 472-8931 • Fax: (671) 477-4826 • Email: governor@guam.gov

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

3 DEC 2010

3 DEC 15 PM 3:42 X

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

Hafa Adai! Pursuant to §3131, Division 1, Chapter 3 of Title 5 GCA, the Department of Public Health and Social Services submits its proposed amendments to the existing rules governing the issuance of Sanitary Permits. The proposed rules seek to revise the current fee schedule to reflect the actual cost incurred by the department in issuing permits to those facilities regulated by its Division of Environmental Health.

Should you have any questions regarding this matter, please contact Mr. J. Peter Roberto, ACSW, the Director of the Department of Public Health and Social Services, at 735-7101.

Sins eru yan Magåhet,

FELIX P. CAMACHO
I Maga'lahen Guahan
Governor of Guahan

Enclosures

30-10-1077

Office of the Speaker
Judith T. Won Pat, Ed.D.
30-12-15-10



GOVERNMENT OF GUÅHAN



DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES

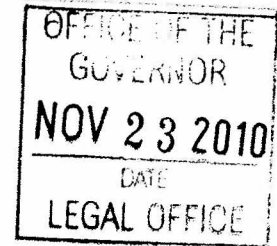
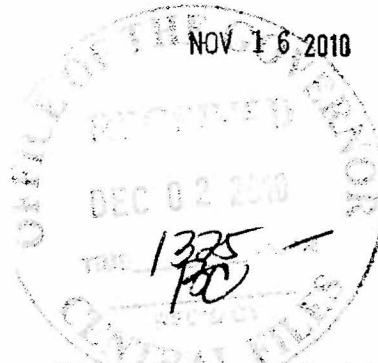
DIPATTAMENTON SALUT PUPBLEKO YAN SETBISION SUSIAT

123 Chalan Kareta, Mangilao, Guåhan 96913-6304

Felix P. Camacho
Governor

J. Peter Roberto, A.C.S.W.
Acting Director

Michael W. Cruz, M.D.
Lieutenant Governor



MEMORANDUM

TO: Governor of Guåhan

ATTN: Mr. Ray C. Haddock, Esq.
Assistant Legal Counsel

FROM: Acting Director, Department of Public Health and Social Services

SUBJECT: Proposed Repeal and Re-enactment of the Rules and Regulations Governing the Issuance of Sanitary Permit

Hafa Adai! Pursuant to §3131, Division 1, Chapter 3 of Title 5 GCA, the Division of Environmental Health (DEH) of this Department held a public hearing to receive public comments on the division’s proposed amendments to the “Rules and Regulations Governing the Issuance of Sanitary Permit.” The hearing was held on February 16, 2010 from 1:00 p.m. to 2:00 p.m. at the Castle Mall, Mangilao. The most notable changes to the regulations are the increase in the fee schedule, which reflect the cost incurred by the department to issue Sanitary Permits to businesses regulated by DEH. The proposal has been reviewed by Mr. Ray Haddock and the necessary revisions have been made to the document.

The procedures provided in the Administrative Adjudication Law (Title 5 GCA Chapter 9, Article 3) were followed in notifying and conducting the public hearing. A notice of public hearing was announced in the local newspaper on February 5, 2010 and February 15, 2010.

An Economic Impact Statement (EIS) was prepared for the proposed fee change for the issuance of Sanitary Permit. The total impact of the proposed fee change, summing the revenue from the existing fee schedule with the proposed fee increase, is anticipated to be \$850,380 to the 3,133 permitted health-regulated establishments. The difference between the revenue from the existing fees and the proposed fees is estimated at \$431,690. The estimated increase per health-regulated establishment with less than 103 employees is \$155.

No oral or written testimony was received from the public for the proposed fee increase in the issuance of Sanitary Permits. We have attached the following materials:

- Public hearing notices that were printed in the Marianas Variety on February 5, 2010 and February 15, 2010;
- Proposed “Rules and Regulations Governing the Issuance of Sanitary Permit” with the noted amendments;
- Economic Impact Statement for the Sanitary Permit Fee Increase;
- Minutes of the February 16, 2010 public hearing;
- Draft transmittance letter to Legislative Secretary Tina Muna-Barnes of the 30th Guam Legislature; and
- CD with electronic copy of the attached regulations and the draft transmittance letter to the Legislative Secretary, Senator Tina Muna-Barnes.

For any questions you may have in this matter, please contact Mr. M. Thomas Nadeau, the Administrator of the Division of Environmental Health, at 735-7221/7209. *Dangkolo Na Si Yu'os Ma'ase!*


J. PETER ROBERTO, ACSW

Attachments



GOVERNMENT OF GUAM
 DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES
 (DIPATTAMANTON SALUT, PUPBEKOYAN SETBISION, SUSATI)
 123 Chalan Kareta, Mangilao, Guam 96913-6204

NOTICE OF PUBLIC HEARING

PURSUANT TO §3131, DIVISION 1, CHAPTER 3, TITLE 5, GCA, ALL AGENCIES OF THE GOVERNMENT OF GUAM ARE REQUIRED TO ANNUALLY CONDUCT A PUBLIC HEARING ON THEIR FEE SCHEDULES. THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES WILL BE ACCEPTING PUBLIC COMMENTS ON THE EXISTING AND PROPOSED FEE SCHEDULES OF THE DIVISION OF ENVIRONMENTAL HEALTH:

- SANITARY PERMIT (1,000 PM)
- HEALTH CERTIFICATE (2,000 PM)
- DEBRATING CERTIFICATE (3,000 PM)
- GUAM CONTROLLED SUBSTANCES REGISTRATION CERTIFICATE (4,000 PM)

DATE: FEBRUARY 16, 2010
 TIME: 1:00 PM TO 5:00 PM
 PLACE: DIVISION OF SENIOR CITIZENS CONFERENCE ROOM, CASTLE MALL, MANGILAO

Copies of current and proposed fee schedules of the Division of Environmental Health (DEH) may be picked up at DEH of the Department of Public Health & Social Services in Mangilao. Please call DEH at 735-7221 for questions and assistance.

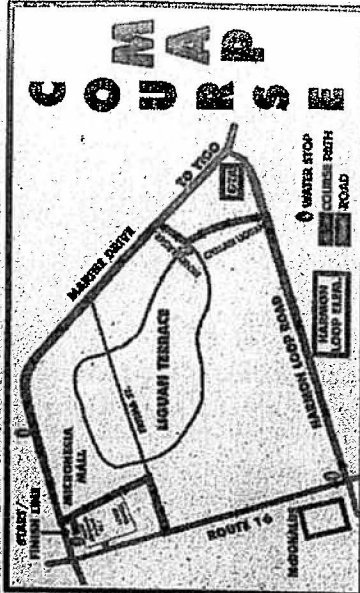
This ad has been paid by the Environmental Health Fund of the Department of Public Health & Social Services.
J. PETER ROBERTO, ACSW

HERTZ • Reliable Builders • LOHAS Chiropractic Clinic • National Office Supply • DICEOMO Holiday Resorts & Spa
 Youth for Youth Live • Personal Finance Center • GTA • Hawaiian Rock Products • International Distributors, Inc.

For more information, contact:

Marie Bordinho: 632-0257/483-0257
 Arlene Bordinho: 483-38819, Rebecca Rispicchio: 735-5033
 Marie Benito: 646-8648, Leonor Espiritu: 475-7907/653-2556
 Angelina Quibene: 789-2127/789-1535 x1478
 Dr. Joseph Dimallanta: 649-4671, Jennifer Flores: 777-6728
 Diana Dungsor: 688-3426, Grace Doralitsani: 727-0000

Sponsored by:



That soldiers carry the flags of participating nations who have joined forces for an annual combined military exercise in Rayong province, Thailand. The U.S. military has begun its largest war games in the Pacific region on annual training exercise with

—nearly always the mother —set Japan apart from most other developed countries. They also leave most fathers, including foreigners, unable to see their children until they are grown.

Don't miss another issue of

Pacific Islands

Stay informed with the latest local, regional, national and international headlines with a **home or office** subscription to the **Marianas Variety**.

CALL 649-1924
or send an email to
suscribe@mvguam.com

SORRY
SOLD OUT!

Marianas Variety

The officials also said there was one death indirectly caused by Rene – a 50-year-old man died after falling from a two-story building while boarding it up to protect it from the storm.

declare to the postal clerks whether his/her parcel was being sent was for personal consumption or for commercial reasons.



Feder P. Camacho
GOVERNOR
Michael W. Cruz
LEUTENANT GOVERNOR

GOVERNMENT OF GUAM
DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES
(DIPATTAMENTON SALUT PUPBEKO YAN SETBISION SUSIAT)
123 Chalan Kareta, Mangilao, Guam 96913-6304



J. Peter Roberto, ACSW
DIRECTOR

NOTICE OF PUBLIC HEARING

PURSUANT TO 53.131, DIVISION 1, CHAPTER 3 TITLE 5 GCA, ALL AGENCIES OF THE GOVERNMENT OF GUAM ARE REQUIRED TO ANNUALLY CONDUCT A PUBLIC HEARING ON THEIR FEE SCHEDULES. THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES WILL BE ACCEPTING PUBLIC COMMENTS ON THE EXISTING AND PROPOSED FEE SCHEDULES OF THE DIVISION OF ENVIRONMENTAL HEALTH:

- SANITARY PERMIT (1:00 PM)
- HEALTH CERTIFICATE (2:00 PM)
- DERATTING CERTIFICATE (3:00 PM)
- GUAM CONTROLLED SUBSTANCES REGISTRATION CERTIFICATE (4:00 PM)

DATE: FEBRUARY 16, 2010
TIME: 1:00 P.M. TO 5:00 P.M.
PLACE: DIVISION OF SENIOR CITIZENS CONFERENCE ROOM, CASTLE MALL, MANGILAO

Copies of current and proposed fee schedules of the Division of Environmental Health (DEH) may be picked up at DEH of the Department of Public Health & Social Services in Mangilao. Please call DEH at 735-7221 for questions and assistance.

This ad has been paid by the Environmental Health Fund of the Department of Public Health & Social Services.

J. PETER ROBERTO, ACSW

1 Title 26 Guam Administrative Rules and Regulations, Chapter 4, Article 5 is hereby repealed in
2 its entirety and re-enacted to read as follows:
3
4
5
6
7
8
9
10
11
12
13

14 **“RULES AND REGULATIONS GOVERNING**
15 **THE ISSUANCE OF SANITARY PERMIT”**

16 **DIVISION OF ENVIRONMENTAL HEALTH**
17 **DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES**
18 **123 CHALAN KARETA**
19 **MANGILAO, GUAM 96910-6304**
20
21

26 GAR – PUBLIC HEALTH & SOCIAL SERVICES
DIV. 1 – DIRECTOR OF PUBLIC HEALTH & SOCIAL SERVICES

Article 5
Sanitary Permit Rules and Regulations

- 1
2
3
4 §4501. Purpose.
5 §4502. Authority.
6 §4503. Title.
7 §4504. Definitions.
8 §4505. Applications.
9 §4506. Fees.
10 §4507. Suspension or Revocation of Sanitary Permit.
11 §4508. Hearing.
12 §4509. Suspension without Hearing.
13 §4510. Effective Date.
14 §4511. Separability.
15
16

17 **§4501. Purpose.** The purpose of these rules and regulations is to govern the issuance of
18 sanitary permits and the assessment of necessary fees for the operation of health-regulated
19 establishments.
20

21 **§4502. Authority.** Sections 20105 and 21102 of Title 10 Guam Code Annotated
22 authorizes the Director of the Department of Public Health and Social Services to promulgate
23 rules and regulations necessary to carry out the provisions of the law governing the sanitary
24 operations of health-regulated establishments.
25

26 **§4503. Title.** These rules and regulations shall also be known and cited as the *Sanitary*
27 *Permit Rules and Regulations*.
28

29 **§4504. Definitions.** As used in these rules and regulations:

30
31 (a) ~~Chemical Toilet means any facility as defined in Chapter 39 shall mean a building~~
32 ~~or structure housing one (1) or more water-tight containers of liquid chemical disinfectants~~
33 ~~intended to receive and hold human excrement.~~

34 (b) ~~‘Commercial Animal Establishment’ means any facility as defined in Chapter 34,~~
35 ~~Article 2~~

36 (e)(b) ~~Cosmetic Establishment means any facility as defined in Chapter 27 shall mean~~
37 ~~any premises or portion thereof, wherein any of the following is practiced for compensation:~~

38 (1) ~~shaving, clipping, trimming, or cutting human hair;~~

39 (2) ~~singeing, shampooing, arranging, adorning, dressing, curling, waving,~~
40 ~~permanent waving, tinting, applying tonic to or dyeing human hair;~~

41 (3) ~~giving facial, scalp, neck or body massages or treatments with oils,~~
42 ~~creams, lotions, or other preparations either by hand or mechanical appliances;~~

43 (4) ~~applying cosmetic preparations, antiseptics, powders, oils, clays, lotions,~~
44 ~~or other preparations to scalp, face, neck, or hands; or~~

45 (5) ~~manicuring or pedicuring.~~

26 GAR – PUBLIC HEALTH & SOCIAL SERVICES
DIV. 1 – DIRECTOR OF PUBLIC HEALTH & SOCIAL SERVICES

1 ~~(d)~~(c) *Department means shall mean* the Department of Public Health and Social Services
2 of the Government of Guam;

3 ~~(e)~~(d) *Director means shall mean* the Director of the Department of Public Health and
4 Social Services, or his designated representative;

5 (e) *Dry cleaning shall mean any place, building, structure, room, premises, or portions*
6 *thereof, used in the business of dry cleaning and dyeing of wearing apparel, house-hold linens*
7 *and other articles, including coin-operated dry cleaning establishments;*

8 ~~(f) *Eating and Drinking Establishment means any facility as defined in Chapter 23 shall*~~
9 *mean any food service establishment, mobile food service establishment, or vending machine;*

10 ~~(g) *Edible Garbage Feeding Establishment means any facility where garbage is used as*~~
11 *animal feed as referenced in Chapter shall mean swill or leavings of food or any abandoned,*
12 *spoiled, condemned meat, fish, fowl, vegetable matter or offal from slaughtered animals, liquid or*
13 *solid, which is free of toxic, or deleterious substances, and is deemed by the Director as being*
14 *suitable for use solely as animal feed;*

15 (h) *Employee means shall mean* any individual, including the owner, operator,
16 manager or other person performing any function in a health-regulated establishment, whether
17 for compensation or otherwise;

18 ~~(i) *Food Establishment means any facility as defined in Chapter 24 shall mean and*~~
19 *includes every establishment or place which is used or occupied as a baker, confectionary,*
20 *cannery, dairy, creamery, packing house, grocery, supermarket, meat or poultry market, fruit or*
21 *vegetable market, delicatessen, beverage plant, slaughter house, poultry processing plant, fish*
22 *processing plant, frozen food processing plant, ice plant, ice cream or frozen dessert plant, public*
23 *market, food warehouse or for the production, processing, manufacture, preparation for sale,*
24 *canning, bottling, packing, packaging, storage, sale, or distribution of any food;*

25 (j) *Health-Regulated Establishment means shall mean* any (1) eating and drinking
26 establishment; (2) food establishment; (3) institutional facilities; (4) hotels; (5) cosmetic
27 establishment; (6) laundry and dry cleaning establishment; (7) public swimming pool; (8)
28 mortuary; (9) edible garbage feeding establishment; ~~(10) commercial animal establishment;~~
29 ~~(11) chemical toilet;~~ and ~~(12) any other establishment required to possess a Sanitary Permit~~
30 ~~issued by the Department;~~

31 ~~(k) *Hotel means any facility as defined in Chapter 26 shall mean any structure or any*~~
32 *portion of any structure, including any lodging house, rooming house, dormitory (including a*
33 *dormitory housing for contract employees), health spa, bachelor hotel, studio hotel, motel,*
34 *private club, containing four (4) or more guests, whether rent is paid in money, goods, labor, or*
35 *otherwise, or whether with or without meals. It does not include any penal institution, hospital,*
36 *clinic, nursing home, school, laboratory, or child care facility;*

37 ~~(l) *Institutional Facility means any facility as defined in Chapter 25 shall mean any*~~
38 *structure or any portion of any structure operating as a child care facility, penal institution,*
39 *school, hospital, clinic, nursing home, or laboratory as defined Title 10 GCA, Chapter 25;*

40 ~~(m) *Laundry and Dry Cleaning Establishment means any facility as defined in*~~
41 *Chapter 28 shall mean any place, building, structure, room establishment premises, or portions*
42 *thereof, used in the business of making, sorting, washing, drying, starching, or ironing, or*
43 *wearing apparel, household linens and other articles, including any establishment providing*
44 *laundrying equipment for use by customers for a fee known by various terms such as*
45 *Laundromat, wash-o-mat, or launderette;*

26 GAR – PUBLIC HEALTH & SOCIAL SERVICES
DIV. 1 – DIRECTOR OF PUBLIC HEALTH & SOCIAL SERVICES

1 (n) *Mortuary* ~~means any facility as defined in Chapter 30~~ shall mean any place used
2 for such activities as are incident, convenient, or related to the preparation and arrangements for
3 the funeral, transportation, burial, cremation, or other disposition of dead human bodies;

4 ~~(p)(o)~~ *Public swimming pool* ~~means any facility as defined in Chapter 29~~ shall mean any
5 artificial structure, basin, chamber, or tank constructed or impervious material used or intended
6 to be used for swimming, diving, wading, or recreational bathing, except it does not include
7 conventional bath-tubs where the primary purposes is the cleaning of the body or individual
8 therapeutic tubs, and that is available for public use, whether for fee or free of charge; or any
9 business, partnership, corporation or person for the use of their customers, clients, guests or
10 employees including but not limited to a commercial pool, a community pool or a pool at a hotel,
11 motel, resort, auto park, trailer park, apartment house, or other multiple rental unit, private club,
12 public club, public or private school, gymnasium or health establishment;

13 ~~(p)~~ *Sanitary Permit* ~~means~~ shall mean the official document issued by the Department
14 of Public Health and Social Services authorizing a health-regulated establishment to operate its
15 business; and

16 (q) *Temporary Food Service Establishment* ~~means~~ shall mean any eating and drinking
17 establishment which operates at a fixed location for a period of time not exceeding six (6)
18 months in conjunction with a carnival, fair, circus, exhibition, or other transitory gathering not of
19 a permanent structure.

20
21 **§4505. Applications.** (a) All applications for sanitary permits shall be in a form
22 prescribed by the Director.

23
24 (b) A non-refundable deposit of Twenty Dollars (\$20.00) shall be made to the
25 'Treasurer of Guam' at the time the application for Sanitary Permit is submitted to the
26 Department. Upon completion and processing of the application, the deposit amount shall be
27 deducted from the appropriate fee listed in §4506.

28
29 (c) Any application that remains inactive for sixty (60) consecutive days shall be
30 considered permanently inactive, removed from the file for processing, and then destroyed, and
31 the non-refundable Twenty Dollars (\$20.00) deposit shall be automatically forfeited.

32
33 (d) An applicant who wishes to re-apply after his or her application has become
34 permanently inactive under the provision of §4505(c) shall be considered a new applicant and
35 shall re-submit the application and supporting documents and pay all required fees, including the
36 Twenty Dollars (\$20.00) non-refundable deposit fee.

37
38 (e) The expiration date of a Sanitary Permit issued for a temporary food service
39 establishment shall be the final date of the temporary event.

40
41 **§4506. Fees.** Fees for the issuance of a Sanitary Permit shall be as follows:

42
43 (a) The Sanitary Permit fee for the following health-regulated establishments shall be
44 ~~One Hundred Thirty Five Dollars (\$135.00)~~ Two Hundred Ninety Dollars (\$290) if the
45 establishment has 1 to 10 employees, and Five Dollars (\$5.00) for each additional employee
46 thereafter, ~~but not to exceed a total payment of Six Hundred Dollars (\$600.00);~~

26 GAR – PUBLIC HEALTH & SOCIAL SERVICES
DIV. 1 – DIRECTOR OF PUBLIC HEALTH & SOCIAL SERVICES

- 1 (1) Eating and drinking establishments, excluding vending machines and
2 temporary food service establishments;
3 (2) Food establishments;
4 (3) Institutional facilities;
5 (4) Hotels;
6 (5) Cosmetic establishments;
7 (6) Laundry and dry cleaning establishments;
8 (7) Public swimming pools;
9 (8) Mortuaries;
10 (9) Edible garbage feeding establishments;
11 (10) Commercial animal establishments; and
12 (11) Any other establishment required to obtain a Sanitary Permit from the
13 Department not explicitly mentioned in these rules and regulations.

14
15 (b) The Sanitary Permit fee for temporary food service establishments shall be:

- 16 (1) One Hundred Dollars (\$100.00) for those operating for less than six (6)
17 months, but more than three (3) days; and
18 (2) Fifty Dollars (\$50.00) for those operating for three (3) days or less.

19
20 (c) The Sanitary Permit fee for vending machines shall be:

- 21 (1) ~~One Hundred Thirty Five Dollars (\$135.00)~~ Two Hundred Ninety Dollars
22 (\$290) per vending machine for each of the first style or model of vending machine; and
23 (2) Five Dollars (\$5.00) for each additional vending machine.

24
25 (d) The Sanitary Permit fee for chemical toilet operator shall be Five Hundred Dollars
26 (\$500.00) regardless of the number chemical toilets possessed by the operator.

27
28 (e) Issuance of a duplicate Sanitary Permit shall be Ten Dollars (\$10.00).

29
30 (f) Amendments to an existing Sanitary Permit shall be Ten Dollars (\$10.00).

31
32 (g) An applicant for a Sanitary Permit may request for the permit to be expedited and
33 processed on the same day the request is submitted. The Department may grant such requests
34 provided the applicant has met all the requirements of the Department to obtain a Sanitary Permit,
35 including the requirement for the pre-operational structural inspection. The Department shall
36 assess a fee of ~~Fifty Dollars (\$50.00)~~ Seventy-Five Dollars (\$75) for expedited processing in
37 addition to the regular processing fee. Applications for a Sanitary Permit for temporary food
38 service establishments which are submitted one day or less prior to the event will automatically
39 be assessed an expedited processing fee.

40
41 (h) The cost of the structural inspection, also known as a pre-operational inspection,
42 is included in the initial payment for the Sanitary Permit. However, a fee of ~~Twenty Five Dollars~~
43 ~~(\$25.00)~~ Fifty Dollars (\$50) an hour shall be assessed for all subsequent inspections, ~~with an~~
44 ~~additional Ten Dollars (\$10.00) for every hour after the first hour.~~ With the exception of the first
45 hour, fractional hours shall be rounded up to the nearest whole hour if more than 0.5 hour, and
46 rounded down if less than 0.5 hour.

26 GAR – PUBLIC HEALTH & SOCIAL SERVICES
DIV. I – DIRECTOR OF PUBLIC HEALTH & SOCIAL SERVICES

1
2 (i) Requests for an expedited structural inspection may be granted as determined by
3 the Director if such inspection does not cause the disruption of any pre-existing inspections
4 scheduled for other applicants. The fee for expedited structural inspections shall be ~~One Hundred~~
5 ~~Dollars (\$100.00)~~ One Hundred Fifty Dollars (\$150) in addition to all other required fees
6 established in these rules and regulations.

7
8 (j) Any establishment whose Sanitary Permit is suspended under the provisions of
9 Title 10 GCA, Chapter 21, §21109, and who is granted reinstatement by the Department as set
10 out in Title 10 GCA, Chapter 21, §21110, shall first pay a re-opening fee of ~~Fifty Dollars~~
11 ~~(\$50.00)~~ One Hundred Dollars (\$100) before the permit is returned or re-issued.

12
13 **§4507. Suspension or Revocation of Sanitary Permit.** The Director may suspend or
14 revoke any Sanitary Permit under the provisions of Title 10 GCA, Chapter 21, §21107(2)(d) or
15 upon any violation by a health-regulated establishment or by any of its employees for any
16 environmental health violation under Title 10 of the Guam Code Annotated, Chapters 20 through
17 40, or any rules and regulations promulgated concerning Sanitary Permits.

18
19 **§4508. Hearing.** (a) Any health-regulated establishment whose Sanitary Permit is to be
20 suspended or revoked shall be notified by the Director in writing of the Department's intention
21 and the reasons therefore.

22
23 (b) Any health-regulated establishment that receives a notice of violation with intent
24 to suspend or revoke as described in subsection (a) of this §4508 and that wishes to contest shall
25 request a hearing with the Director in writing no later than fifteen (15) calendar days after receipt
26 of the notice, and shall state the grounds for objecting to the intended suspension or revocation.
27 The Administrative Adjudication Law's hearing procedure applies.

28
29 (c) Upon completion of a hearing, the Director shall make a written determination
30 concerning the violation and whether a suspension or revocation is to be imposed.

31
32 **§4509. Suspension without Hearing.** (a) In accordance to Title 10 GCA, Chapter 21,
33 §§21107(d) and 21109(a) and (b), a Sanitary Permit may be suspended without prior hearing:

- 34
35 (1) When the demerit score of the establishment is more than forty (40);
36 (2) At the discretion of the Director for violating any provisions of Title 10
37 GCA, Chapters 20 through 40; and
38 (3) For twice violating the same requirement deemed critical under the
39 applicable rules and regulations of the Department within any six-month period, in which
40 case, it shall not exceed five (5) days.

41
42 (b) A suspension without prior hearing may remain in effect until the violation is
43 corrected by the establishment, or resolved after a hearing in accordance with the Administrative
44 Adjudication Law. The Director shall have the discretion to decide whether the suspension shall
45 be continued pending a hearing.

26 GAR – PUBLIC HEALTH & SOCIAL SERVICES
DIV. 1 – DIRECTOR OF PUBLIC HEALTH & SOCIAL SERVICES

1 **§4510. Effective Date.** These rules and regulations shall become effective immediately
2 after ninety (90) calendar days have elapsed from the date of filing with the Legislative
3 Secretary, pursuant to Title 5 GCA, Chapter 9, Article 3, unless the Legislature takes other
4 action within the ninety-day period. At that time, all other rules and regulations or parts of other
5 rules and regulations that conflict with these rules and regulations are repealed.

6
7 **§4511. Separability.** If any provision or application of any provision of these rules and
8 regulations are held invalid, such invalidity shall not affect the other provisions or applications
9 of these rules and regulations.”

Title 5 Guam Code Annotated, Chapter 9, Article 3
ECONOMIC IMPACT STATEMENT
SANITARY PERMIT FEE INCREASE

SUMMARY

The Department of Public Health and Social Services (DPHSS) is proposing to revise the existing fee schedule for the issuance of Sanitary Permit to those establishments regulated by the department. The fee increase will have a direct financial impact of less than \$500,000 to the ~3,000 permitted facilities. Therefore, this proposal may qualify for exemption from the economic impact statement, as provided in Section 9301(i) of Title 5 GCA Chapter 9. However, because the implementation of the proposed fee increase may have an overall financial impact that may exceed \$500,000, an economic impact statement was prepared by DPHSS, pursuant to Article 3 of Title 5 GCA Chapter 9, using available data.

If the proposal is adopted and implemented:

- The existing base fee of \$135.00 for establishments with 1-10 employees will be increased to \$290. The \$5.00 fee for every employee after 10 will remain the same; however, existing cap of \$600.00 will be removed.
- Expedited, one-day processing of completed Sanitary Permit application fee will be raised from \$50.00 to \$75.00. The \$75.00 fee will now be inclusive of those applicants of Temporary Food Service Establishment who submit their applications one day or less prior to the event.
- Priority scheduling of pre-operation inspection will no longer be \$100.00 but \$150.00.
- Follow-up pre-operation inspection rate will be increasing from \$25.00 per hour to \$50.00 per hour.

DPHSS issues approximately 3,000 Sanitary Permits annually. In FY 2009, 3,087 permits were issued to various businesses for the following categories: Eating and Drinking Establishment, Food Establishment, Institutional Facility, Hotel/Motel, Public Swimming Pool, Mortuary, Cosmetic Establishment, and Laundry/Dry Cleaner. The figure includes temporary food service establishments.

The existing fee schedule generated \$418,690 in FY 2009. The implementation of the proposed increase is expected to have a direct monetary impact of additional \$431,690 to the regulated facilities. Thus, summing the revenue from existing fee schedule with the proposed fee increase would result in the combined direct, monetary impact of \$850,380 to the 3,087 health-regulated establishments.

The financial cost to the public would be minimal, if at all. The affected establishments would likely absorb the fee increase rather than transmitting the cost down to the consumers. If an establishment chooses to recover the exact \$155 increase by passing down the cost to its consumers, it would be necessary for the business to assess its service or goods so that \$12.92 is recouped monthly, or 42¢ a day.

The cost of living and employment are not expected to be impacted adversely by the fee increase, nor conducting business on island. On the other hand, DPHSS suspects the implementation of the fee increase will have a beneficial impact to the economy as the department anticipates reduction in food-borne disease incidents as more food inspections will be conducted through the recruitment of additional personnel. The funding for additional personnel will derive from the proposed fee increase that will be deposited into the Environmental Health Fund, which was established for the sole use by the division that conducts sanitation inspections.

Preventing the hospitalization of even a single case of salmonellosis, a type of food-borne illness, has been estimated to save the economy \$536 to \$11,072, mostly from treatment costs. For hospitalization that results in the death from the same disease, the economic impact is a staggering \$5,633,181. Economic impacts for other food-borne diseases are nearly the same. Thus, preventing a single death from food-borne illness will have significant cost benefit to the economy.

I. Purpose and Need

The lawful operation of certain businesses requires the acquisition of a Sanitary Permit from the Department of Public Health and Social Services (DPHSS) pursuant to Title 10 GCA Chapter 21. The issuance of a Sanitary Permit enables DPHSS to regulate the affected establishments to ensure these facilities are sanitary and operate in such manner to prevent the transmission of communicable disease to the public. By obtaining the Sanitary Permit, the businesses are authorizing the access and inspection of its facilities by DPHSS. The inspections are conducted by the Division of Environmental Health of DPHSS. The Division of Environmental Health (DEH) performs such sanitation inspections to confirm the compliance of laws and adopted rules and regulations and to investigate suspected violations. Section 21104 of Chapter 21, Title 10 GCA empowers DPHSS to conduct inspections as often as deemed necessary and at least one every three months.

The establishments requiring a Sanitary Permit are Eating and Drinking Establishment (ex: restaurants, bars, stall stands), Food Establishment (ex: food manufacturers, grocery stores, delicatessens), Institutional Facility (ex: school buildings, childcare facilities), Hotel and Temporary Workforce Housing (includes motels and student dormitories), Cosmetic Establishment (ex: massage establishments, beauty shops), Laundry and/or Dry Cleaner (includes coin-operated machines), Public Swimming Pool (includes pools in condominiums and apartments), and Mortuary. All Sanitary Permits are renewed annually on June 30th.

All fees collected pursuant to laws or rules and regulations enforced by the Division of Environmental Health (DEH) of DPHSS are deposited in the Environmental Health Fund as mandated by §20199 of Chapter 21, Title 10 GCA. In addition to Sanitary Permit fees, monies collected from the issuance of Health Certificates and vessel sanitation certificates are also deposited into the Environmental Health Fund. The revenue from the Sanitary Permit fee makes up nearly 65% of the entire EH Fund. The monies in the Environmental Health Fund (EH Fund) are legislatively appropriated to DEH for the sole support of the

operation of the division. For FY 2010, the EH Fund provides approximately half (\$673,718) of all funding of the Division of Environmental Health, with the remaining half deriving from the General Fund (\$588,026). The EH Fund supports 12 of 23 funded positions in DEH.

The existing fee schedule for Sanitary Permit was established in Fiscal Year 2005 and implemented in the beginning of Fiscal Year 2006. The fee schedule was established to recoup the cost incurred by the Department in the issuance of the permit for that time period based on the salaries of applicable employees, time spent by these employees, cost of materials and supplies utilized, and the adverse impact sustained in the operation of the division for issuing permits for applicants requesting expedited services. The proposed fee increase reflects the current cost to issue the same permit in 2010.

II. Financial Impact

The existing base fee of \$135.00 for regulated establishments with 1 to 10 employees will be increased to the amount of \$290.00; an increase of \$155.00. A fee of \$5.00 for every employee thereafter will remain the same; however, there will be no cap to the maximum amount an establishment may be assessed. Furthermore, the cost for expedited processing of the Sanitary Permit application, in addition to the base fee, will be raised from the current fee of \$50.00 to the new fee of \$75.00. The same will be assessed for applicants of temporary food service establishments that submit their applications one day or less prior to the event. An establishment requiring a follow-up pre-operation inspection will be assessed \$50.00 per hour instead of the current \$25.00 an hour. Priority scheduling of any pre-operation inspection will no longer be \$100.00 but \$150.00.

The significant increase is attributed to the inclusion of the calculated cost to conduct four yearly sanitation inspections of these regulated establishments as required by Title 10 GCA, Chapter 21, §21104. The existing fee schedule did not incorporate such mandated inspections.

In assessing the direct financial impact the proposed increase will have on the affected establishments, FY 2009 data was utilized. The total cost to all regulated establishments would be approximately \$850,380 if the proposal is adopted. The figure is based on the following:

- In Fiscal Year 2009, DPHSS generated \$418,690 from the issuance of renewal Sanitary Permits. The cost of each individual establishment's permit was determined by the number of employees in each establishment.
- A listing of each Sanitary Permit renewal issued during FY 2009 and new Sanitary Permits issued during FY 2010, up to February 5, 2010, was generated.
- The proposed fee was applied to each permitted establishment on this list, based on the number of employees listed on the applications of the permitted establishments. The implementation of the proposal was thus calculated to be \$431,690 in additional fee.

The financial impact to the public from the proposed fee increase can occur if the affected establishments decide to pass on the fee increase to the consumers by raising the cost of the services or goods they provide. The department suspects this may not occur; the establishments would likely absorb the cost of the increase. An establishment's attempt to recoup the cost of the \$155 annual increase, when distributed over the entire year, would equate to \$12.92 a month, or 42¢ a day. When this amount is distributed among all the establishment's customers, it would be even much less per customer. The impact could be significant if the increase was applied to Temporary Food Service Establishments (TFSE) since these businesses operate for a period of less than 4 days; however, such increase to TFSE is not included in the proposal. In the most extreme situation, the fee increase could possibly force few establishments to not renew its permit and operate unlawfully, or cease its business altogether. However, such scenario would likely apply to only those businesses already enduring financial difficulties with or without the fee increase.

The most significant impact to the public is the likely decrease in the incidences of food-borne illness, which should subsequently (1) reduce costs expended by the community in the treatment of food diseases; (2) increase work production and wages from decrease of absenteeism that results from food disease; and (3) decrease the pain and suffering attributed to the illness. This will occur as DEH will be able to conduct more compliance inspections of retail food establishments and food manufacturers, better regulate imported food commodities, and conduct more food safety education. The increase in such activities would arise from the recruitment of more personnel with the ensuing increase of the fee that will be deposited into the EH Fund.

Six entry-level Environmental Health Specialists (EHS) can be recruited utilizing half of the anticipated, additional revenue generated from the fee increase:

- 50% of anticipated revenue from fee increase = $\$431,690 \div 2 = \$215,845$
- Salary to recruit 1 entry-level Environmental Health Specialist = \$36,100
- Number of EHS recruitment = $\$215,845 \div \$36,100 = 5.97 \approx 6$

If half of all inspections by the 6 newly recruited EHS are focused on food-related establishments, then additional 2,625 sanitation inspections can be conducted a year:

- Average number of inspections conducted per day per inspector = 3.5
- Number of GovGuam work days per year = 250
- Total number of sanitation inspections per year per inspector = $3.5 \times 250 = 875$
- Total number of annual inspections by 6 inspectors = $875 \times 6 = 5,250$
- Total number of food inspections by 6 inspectors per year = $5,250 \div 2 = \mathbf{2,625}$

The number of inspections can be doubled to 5,250 if the EHS are to conduct sanitation inspections full-time or if the entire amount of the fee increase is utilized for recruitment. Assuming the latter, and all 12 EHS conduct sanitation inspections full-time, the inspection number can be as much as 10,500 a year.

According the U.S. Centers for Disease Control and Prevention (CDC), it is estimated that there are 76 million cases of food-borne disease in the U.S. annually, with over 325,000 hospitalizations and about 5,000 deaths (Mead et al., 2000). In the 1996 report by Buzby et.

al., the cost of human illness, through food consumption, caused by six bacterial pathogens found in animal products was estimated to be \$2.9 billion - \$6.7 billion annually. For Guam, the University of Guam estimated that the annual impact of food-borne illness on island to be approximately 39,000 incidences, 3 deaths, and 167 hospitalizations, with an economic cost of \$5.1 to \$42.6 million dollars (Yang, 2010).

The Economic Research Service (ERS) of the U.S. Department of Agriculture has estimated the economic cost of five significant food pathogens in the U.S. based on assumptions of disease incidence, outcome of severity, and the level of medical, productivity, and disutility costs. One pathogen in particular, *Salmonella*, which is estimated by CDC to cause nearly 1.4 million illnesses a year in the U.S., has been determined by ERS to cost the economy about \$536 and \$11,072 per case for physician visits and hospitalization, respectively. Hospitalization resulting in death would have a staggering economic impact of \$5,633,181 per case, which includes medical costs, time lost from work, and the cost of premature death.

From the period of 2000-2009, there have been 90 food-borne illness outbreaks reported on Guam (DPHSS, 2010). These outbreaks, involving multiple individuals per event, were cases that were documented as result of medical treatments they had received; it did not include cases which were not seen by local clinic or hospital and thus never reported. It is not uncommon for food-borne illnesses to have gone unreported if the symptoms were not severe enough for the afflicted individuals to seek medical treatment. Therefore, the figure provided above is believed to be significantly less than the actual number of cases on island.

In one of the largest food-borne illness outbreaks documented on Guam, over 100 elementary school students became ill at a local school in 2006. The investigation alone cost DEH several hundred man-hours of work and the loss of 1-2 instructional days for over 200 students. The school cafeteria, regulated by DEH, which served lunch at the school, was implicated as the source of the outbreak.

Although increasing food inspections does not guarantee the prevention of salmonellosis, or any other food-borne illness, it can enable DEH to more readily inspect facilities or food items that can potentially cause serious food-borne disease. The 2,625 additional food inspections that can possibly be performed by DEH with additional 6 personnel funded by the proposed fee increase will more than double the current output of the division. In addition to the positive financial impact the fee increase could have to the public by potentially reducing medical costs and increasing productivity from decreased absenteeism, the emotional toll of a food-borne illness can be minimized as well.

III. Potential Increase or Decrease to Cost of Living or Price of good or service

The direct cost to the majority of individual businesses will be an additional \$155 a year, or \$12.92 a month, if the proposal is adopted. It is unlikely the fee increase will be passed down to the employees, or customers as noted above. Businesses with larger number of employees will incur greater cost than those with fewer numbers of employees. However,

such cost is equitably distributed since number of employees at a business should be directly proportional to the revenues generated.

Any reduction in the cost of living that may result because of the fee increase could be attributed to the decrease in the incidences of food-borne illness, or other diseases, caused by increased compliance inspections of regulated facilities. However, the confirmation of such consideration may require more thorough analysis.

IV. Direct or Indirect Impact of Employment

The fee increase is nominal when considering the dollar amount covering a 12 month period, which should not adversely impact the employment of staff of various impacted establishments.

Additional revenue collected from the fee increase for the issuance of Sanitary Permit will be deposited into the Environmental Health Fund, which was established for the use and access by the Division of Environmental (DEH) of the Department of Public Health and Social Services. DEH conducts sanitation inspections of these facilities obtaining Sanitary Permits. Therefore, it is expected that there would be additional staff to DEH as a result of staff recruitment utilizing the increased revenue generated from the fee increase.

V. Increase or decrease in cost of business

Any increase in cost of business of those facilities directly impacted by the fee increase should be minimal, if at all.

VI. Adverse or beneficial economic impact

The increase of fees for the issuance of Sanitary Permit should have beneficial impact to the economy and the population of Guam from the anticipated reduction in the number of foodborne illness incidents on the island. Based on existing national figure and calculation model, the cost of treating food-borne illness can be enormous. Preventing even a single hospitalization from the disease will be significant. The Division of Environmental Health hopes to have a beneficial economic impact with the fee increase so that it may prevent injuries, diseases, disabilities, and deaths through implementation of governing laws and providing education to empower the public from protecting themselves from environmental hazards.

REFERENCE

Buzby, J.C., T. Roberts, C.T. J. Lin, and J.M. MacDonald. *Bacterial Foodborne Disease: Medical Costs and Productivity Losses*. Agricultural Economics Report No. (AER741) 100 pp, August 1996.

Haddock, R. 2010. *Recorded outbreaks of Foodborne Illness, 2000-2009*. DPHSS Office of Epidemiology and Research, Government of Guam.

Mead, P.S., L. Slutsker, V. Dietz, L.F. McCaig, J.S. Bresee, C. Shapiro, P.M. Griffin, and R.V. Tauxe. 2000. *Food-Related Illness and Death in the United States*. Centers for Disease Control and Prevention, Atlanta, Georgia, USA.

Yang, J. 2010. Written testimony submitted for public hearing held on Feb. 11, 2010 in support of Bill 272.

Foodborne Illness Cost Calculator. U.S. Department of Agriculture, Economic Research Service <http://www.ers.usda.gov/data/foodborneillness>.

MINUTES OF PUBLIC HEARING
Proposed Fees for Sanitary Permit
February 16, 2010; 1:00 P.M
Division of Senior Citizens Conference Room
Castle Mall, Mangilao

TOPICS	DISCUSSIONS	REMARKS AND ACTIONS TO BE TAKEN
I. Attendance	There were 2 representatives from the Department of Public Health & Social Services of the Division of Environmental Health present.	<u>DPHSS Representatives Present:</u> M. Thomas Nadeau, Administrator, DEH Cynthia Naval, Planner IV, DEH
II. Opening Remarks	M. Thomas Nadeau, Administrator, provided opening remarks.	<p>Hafa, Adai, My name is M. Thomas Nadeau; I am the Administrator of the Department of Public Health & Social Services and present today we have Ms. Cindy Naval, Planner IV. I welcome you to this public hearing on the proposed fees for the issuance of Sanitary Permit by the Division of Environmental Health. A Sanitary Permit is required of all establishments regulated by the Division of Environmental Health, such as Eating & Drinking Establishments, Food Establishments, Institutional Facilities, Hotels, Cosmetic Establishments, Laundries and Dry Cleaners, Swimming Pools, Edible Garbage Establishments, and Mortuaries as defined in Chapters 23-30, and 33 of Title 10 GCA. Today's public hearing is held pursuant to Section 3131, Division 1, Chapter 3, of Title 5 GCA, which requires all Government of Guam agencies to seek public comments on their existing fee schedules, regularly adjust existing fees, pursuant to the Administrative Adjudication Act, or implement new fees for the purpose of cost recovery.</p> <p>The fee schedule for the Sanitary Permit was established through the adoption of "Rules and Regulations Governing the Issuance of Sanitary Permit" on September 12, 2005. Section 21103 of Title 10 GCA, Chapter 21 authorizes the Department of Public health and Social Services to promulgate regulations to assess fees for the issuance of the permit. The fee schedule is established to recoup the cost incurred by the Department in the issuance of the permit based on the salaries of applicable employees, time spent by these employees, cost of materials and supplies utilized, and adverse impact sustained in the operation of the division issuing the permit for applicants requesting expedited services. The proposed increase is to reflect current cost to issue the same permit in 2010.</p> <p>The existing base fee of \$135.00 for regulated establishments with 1 to 10 employees will be increased to the amount of \$290.00. A fee of \$5.00 for every employee thereafter will remain the same; however, there will be no cap to the maximum amount an establishment may be assessed. Furthermore, the cost for expedited processing of the Sanitary Permit application in addition to the base fee will be raised from the current fee of \$50.00 to the new fee of \$75.00. The same will be assessed for applicants of temporary food service establishments that submit their applications one day or less prior to the event. An</p>

		<p>establishment requiring a follow-up pre-operation inspection will be assessed \$50.00 per hour instead of the current \$25.00 an hour. Priority scheduling of any pre-operation inspection will no longer be \$100.00 but \$150.00.</p> <p>The significant increase is attributed to the inclusion of the calculated cost to conduct four yearly sanitation inspections of these regulated establishments as required by Title 10 GCA, Chapter 21, §21104. The existing fee schedule did not incorporate such mandated inspections.</p> <p>We will now formally accept any written or oral testimonies on the proposed fee schedule for the Sanitary Permit. Dangkolo Na Si Yu'os Ma'ase!</p>
<p>III. Written or Oral Testimonies</p>		<p>No written or oral testimonies were given due to no public audience.</p>