

GUAM ENVIRONMENTAL PROTECTION AGENCY

AHENSIAN PRUTEKSION LINA'LA GUAHAN



EDDIE BAZA CALVO
GOVERNOR OF GUAM

RAY TENORIO
LT. GOVERNOR OF GUAM

ERIC M. PALACIOS
ADMINISTRATOR, GUAM EPA, ENERGY OFFICE

P.O. Box 22439 BARRIGADA, GU 96921

EPA.GUAM.GOV

MEMORANDUM

TO: Guam Legislature
FROM: Guam Environmental Protection Agency (GEPA) Board of Directors
SUBJECT: Transmittal of GEPA Board Operation Rule

32.13.753
Aug 15 2013
9.4.13
4:07 PM
Received by: [Signature]
SEP 4 11:15 AM '13

The Guam Environmental Protection Agency Board of Directors hereby transmits to the Legislature the attached rule for approval. The new rule is 22 GAR Division 10 (Board of Directors – Organization – Operation – Information), Chapter 46 (Board of Directors – Organization – Operation – Information).

This rule is transmitted to the Legislature for approval pursuant to 10 G.C.A. Ch. 45, section 45106.

The rule was enacted by the GEPA Board of Directors on 07/18/2013 [date].

As part of this rule promulgation process, attached please find a Memorandum of Economic Impact Statement by the GEPA Administrator.

If you have any questions regarding this matter, please contact GEPA's Board Secretary, Ms. Maria Duenas, at 300-4759 or at maria.duenas@epa.guam.gov; or AAG R. Happy Rons at 475-3324 (x 3085) or at hrons@guamag.org. Thank you.

Office of the Legislative Secretary
Senator Tina Rosa Mufia Barnes
Date 9-04-13
Time 4:00
Received by: [Signature]

Robert Perron
ROBERT PERRON, Chairman
GEPA Board of Directors

cc: Ms. Maria Duenas, GEPA Board Secretary
R. Happy Rons, Assistant Attorney General

Attachments: 22 GAR Division 10, Chapter 46

GUAM LEGISLATURE Memorandum of Economic Impact Statement
FISCAL OFFICE

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ACKNOWLEDGEMENT RECEIPT
Received by: AB
Time: 11:49
9/4/13

SEP 04 2013

TIME: 1:30 [] AM; [X] PM
RECEIVED BY: [Signature]



GUAM ENVIRONMENTAL PROTECTION AGENCY



AHENSIAN PRUTEKSION LINA'LA GUAHAN

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P.O. Box 22439 GMF • BARRIGADA, GUAM 96921
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RAY TENORIO
LT. GOVERNOR OF GUAM

May 11, 2012

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ACKNOWLEDGEMENT RECEIPT

MEMORANDUM

Received by: AB
Time: 11:49
Date: 9/9/13

TO: Guam Environmental Protection Agency
Rule making file on 22 GAR Div.10, Ch.46, section 46100, et seq.

FROM: Administrator, Guam Environmental Protection Agency

RE: Determination of No Need for Economic Impact Statement
under 5 GCA Ch.9, section 9301(i)

The enactment of the above referenced rule for Guam Environmental Protection Agency (Guam EPA) does not require the preparation of an economic impact statement because the annual economic impact of this rule will not be more than \$500,000.

The essence of this proposed rule is a description of the Guam EPA Board of Directors organization and operation, and in particular, to set a *regular meeting time* for monthly meetings of the Guam EPA Board of Directors. The Board already conducts such monthly meetings. However, the Board does not have a "set" regular meeting day/date and time for those meetings.

The Open Government Law (5 GCA Ch.8, section 8106, Regular Meetings) requires that a public agency shall by appropriate administrative action rules provide for the **time** for holding an agency's regular meetings.

Other than the cost of the rule-making process itself (i.e., publishing notice of a public hearing on the proposed rule, recording the hearing, holding the hearing), there is no anticipated cost resulting from the adoption of this proposed rule. The rule merely sets a pre-existing time for meetings which are already occurring on a regular basis.

Agency. The Board's meetings are governed by Guam's Open Government Law and Roberts Rules of Order.

C. How Notice of Regular Meetings Is Given

Public notice of regular meetings is given in accordance with the Open Government Law, which includes two public notices of five working days and forty-eight hours prior to the start of the meeting, and notice of compliance with Title II of the Americans with Disabilities Act ("ADA"). The ADA provides for the opportunity for individuals requiring special accommodations, auxiliary aids or services to submit their request to the Agency.

D. When Special Meetings Occur

A special meeting may be called at any time by the Guam Environmental Protection Agency.

E. How Notice of Special Meetings Is Given

Notice of special meetings may be given by delivering written notice to each board member of the Agency personally, by mail or e-mail.

Notice shall also be given to each newspaper of general circulation and broadcasting station which airs a regular local news program within Guam. Notice of special meetings is given in accordance with the Open Government Law which includes two public notices of five working days and forty-eight hours prior to the start of the meeting, delivered personally, by mail, or upon agreement of the media by email. The Open Government Law also requires notice of compliance with Title II of the Americans with Disabilities Act ("ADA"). The ADA provides for the opportunity for individuals requiring special accommodations, auxiliary aids or services to submit their request to the Agency.

The Agency is not required to give notice of its meetings by paid advertisements in any newspaper or over any broadcasting station. Written notice may be dispensed with as to any member who at, prior to or subsequent to the time the meeting convenes, files with the clerk or secretary of the Agency a written waiver of notice. Such written notice may be dispensed with as to any member who is actually present at a meeting at the time it convenes.

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F. How Agendas for Special Meetings Differ From Regular Meetings

Only matters appearing on the agenda may be considered in a special meeting.

G. Requirement of Minutes of Board Meetings

The minutes of all regular and special meetings of the Board are kept by the Secretary. Such minutes are promptly and fairly recorded, and are open to public inspection. They include but are not limited to a record of all motions, proposals and resolutions offered, the results of any votes taken and a record of individual votes in event of roll call.

H. How Disturbances May Be Handled

If a person willfully interrupts a meeting so that a meeting of the Agency may not be conducted in an orderly fashion, the person may be removed. If a person willfully interrupts a meeting of the Agency so that the meeting may not be conducted in an orderly fashion and order cannot be restored by the removal of the person who is willfully interrupting the meeting, the Board may order the meeting room cleared and continue in session. Duly accredited news reporters and photographers shall be allowed to attend any special meetings, unless the person causing the disturbance is a news reporter or photographer, in which event they may be removed in the same manner as any other person.

I. Additional Information About Specific Meetings

Information about specific meetings may be obtained at the Board office located at 17-3304 Mariner Avenue, Tiyan, Guam 96913; Telephone: 671-475-1622.

Section 46103. Conduct of Administrative Law Hearings

A. The Board or a Hearing Officer May Hear A Case

The Guam Environment Protection Agency Board of Directors ("Board) may, under the Administrative Adjudication Law, hear an administrative hearing case with a hearing officer or have the hearing officer hear the case alone.

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Date: 11/4/13

3. The Secretary – How The Secretary Is Appointed and Their Role

The Secretary of the Board is appointed by the Administrator and confirmed by the Board. The Secretary is responsible for keeping records of meetings and actions of the Board.

B. Purpose of the Agency

The Guam Environmental Protection Agency is responsible for the implementation of the Guam Beverage Container Recycling Act of 2010, Ch. 44; the Water Resources Conservation Act, 10 GCA Ch.46; the Water Pollution Control Act, 10 GCA Ch.47; the Toilet Facilities and Sewage Disposal Act, 10 GCA Ch. 48; the Air Pollution Control Act, 10 GCA Ch. 49; the Guam Pesticides Act, 10 GCA Ch.50; the Solid Waste Management and Litter Control Act, 10 GCA Ch. 51; the Water and Waste Water Operator's Mandatory Certification Act, 10 G.C.A. Ch. 52; the Safe Drinking Water Act, 10 GCA Ch.53; the Guam Lead Ban Act, Ch. 53A; the Environmental Pollution Control Act, 10 GCA Ch.54; the Guam Oil Spill Responders Act, 10 GCA Ch.54A; and the Underground Storage of Regulated Substances Act, 10 GCA Ch.76.

C. Applicability of These Rules To the Board's Business

These regulations apply to the conduct of the Board's business.

Section 46102. Conduct of Meetings

A. Location of Board Meetings

The Board's regular meetings take place at the Guam Environmental Protection Agency, Administrative Office Building, Main Office Conference Room, located at 17-3304 Mariner Avenue, Tiyan, Guam 96913; Telephone: 671-475-1622.

B. When Regular Meetings Occur

Regular meetings occur on the third Thursday of each month at 4:00 p.m. If a quorum is not available for that day, then an alternate date will be chosen and properly noticed. If at any time a regular meeting falls on a holiday, such regular meeting shall be held on the next business day unless continued until some other publicly announced date by action of the agency. If, by reason of an emergency, it shall be unsafe to meet at the time designated, the meetings may be held for the duration of the emergency at such other time as is designated by the Administrator of the Guam Environmental Protection

Title 22 – Guam Environmental Protection Agency

Division 10 – Board of Directors – Organization - Operation - Information

Chapter 46. Board of Directors – Organization - Operation – Information

NOTE: Rule-making authority cited for Guam Environmental Protection Agency Board, 10 G.C.A., Ch.45, §45106.

Section 46100. Authority.

10 G.C.A. Ch. 45, §45106 – “Rules and Regulations.” 5 G.C.A. Ch.8, §8106 – “Regular Meetings.” 5 G.C.A. Ch. 9, § 9221 - “Hearing Officer: Powers, Duties.”; § 9230 – “Hearing Before Agency.” 5 G.C.A. § 9232 – “Decision.”

Section 46101. General Provisions: Organization, Operation, Purpose, Applicability.

A. Organization and Operation

1. The Board of Directors – How The Board Is Appointed and Its’ Composition and Role

Management of the Guam Environmental Protection Agency is vested in a Board of Directors consisting of nine (9) members appointed by the Governor with the advice and consent of the Legislature. Members serve for a period of three (3) years each, except that any member appointed to fill a vacancy prior to the expiration of the term for which his/her predecessor was appointed, shall be appointed for the remainder of such term. A majority of the members of the Board shall not be employees of the government of Guam. A chairman is elected from among the members, and a vice chairman may be elected from among the members.

2. The Administrator – How The Administrator Is Appointed and Their Role

The Board appoints an Administrator to administer matters of the Agency under the supervision of the Board. The Administrator is not a member of the Board and shall not have a right to vote.

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Date: 9/21/13
Via: _____

B. The Board of Directors Decides Every Case

The Board of Directors shall make the ultimate decision on every case, regardless of whether the Board hears the case with a hearing officer, or the hearing officer hears the case alone.

C. The Hearing Officer Must Be Present for Consideration of the Case When The Officer Presides at the Hearing

When a case is heard by the Board with a hearing officer who presided at the hearing, the hearing officer shall be present during the consideration of the case, and if requested by the Board, shall assist and advise the Board.

D. Formal Requirements for a Decision When a Hearing Occurs Before Only a Hearing Officer

If a contested case is heard by a hearing officer alone, the hearing officer shall prepare a proposed decision, in such form that it may be adopted by the Board as the decision in the case. The proposed decision shall include findings of fact, determination of the issues, conclusions of law, a decision, a penalty if any, and an order, if appropriate. A copy of the decision shall be filed by the agency as a public record.

E. Options for the Board With Regard to a Proposed Decision by a Hearing Officer

When a hearing officer prepares a proposed decision for the Board, the Board has several options, which include the following.

1. The Board may adopt the proposed decision in its entirety; or
2. The Board may reduce the proposed penalty and adopt the balance of the proposed decision.
3. If a proposed decision is not adopted as provided in the preceding paragraph, each party shall be furnished with a copy of the proposed decision.
4. The Board may then decide the case upon the record, including the transcript, with or without taking additional evidence; or
5. The Board may refer the case to the same or another hearing officer to take additional evidence.

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Date: 9/4/13

6. If the case is assigned to a hearing officer to take additional evidence, the hearing officer shall prepare a new proposed decision upon the additional evidence, and upon the transcript and other papers which are part of the record of the prior hearing. A copy of the new proposed decision shall be furnished to each party.

F. Form of Argument Before the Board

Whether or not additional evidence is taken, the Board shall not decide the case without affording the parties the opportunity to present either oral or written argument before the Board. The Board determines what form of argument may be made (i.e., oral or written).

G. Bases for Board Decision When Case is Heard by Hearing Officer Alone

Board members may decide the case upon the record, including any transcript, with or without taking additional evidence.

H. Board Vote is Limited to Board Members Who Hear the Evidence

Only Board members who hear the evidence may vote on the decision.

I. Methods of Delivery of Decision

Copies of the decision shall be delivered to the parties personally or by certified, return receipt requested mail.

Section 46104. Severability clause.

If any provision of these rules, or their application to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of these rules, shall not be affected thereby.

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4/4/2013

There is no financial impact upon the people or the economy of Guam, resulting from the passage of such rule. There is no direct or indirect impact on employment on Guam, nor in availability of a particular job or jobs in general. There is no increase or decrease in the cost of doing business as an enterprise or industry on Guam, nor in doing business in general. There is no adverse or beneficial economic impact resulting from the passage of this rule.


ERIC M. PALACIOS

GUAM LEGISLATURE
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Received by

AB J

Date

11/4/13