



Print: NEIL ESPINO

Sign: *[Signature]*

Date: 2-19-19

AHENSAN PRUTEKSION LINA'LA GUÁHAN

LOURDES A. LEÓN GUERRERO, GOVERNOR OF GUAM • JOSHUA F. TENORIO, LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEÓN GUERRERO, ADMINISTRATOR

FEB 14 2019

Mr. Neil Espino
General Manager
Ben N' Yan Mini Mart & Washland
P.O. Box 21443
Barrigada, Guam 96921

Re: Notice of Violation/Order of Compliance/Administrative Penalty Order (PP- 0918-NOV/OC-003)

Hafa Adai Mr. Espino:

You are hereby advised that this Notice of Violation and Order of Compliance/Administrative Penalty Order (NOV/OC/APO) is being issued to your facility, Ben N' Yan Mini Mart and Washland, for the illegal importation of pesticides.

According to the Guam Customs and Quarantine Interception Report, Control Number 5A-0029-18 & PECO Number 06-2018-140 ("Interception Report"), misbranded pesticides were discovered in a Container Number TEMU4170818 with Container Seal Number MELCN290971 and Customs Seal Number 09246 dated August 28, 2018.

BACKGROUND

On August 28, 2018, the Guam Environmental Protection Agency (Guam EPA) was notified by the Guam Customs and Quarantine Agency (Guam C&Q) that Guam C&Q had confiscated three hundred and sixty (360) boxes of Baygon Mosquito Coils, forty-eight (48) bottles of Zonrox Bleach Original and one-hundred and twenty (120) bags of Albatross Mothballs imported from Philippines. These products are pesticides subject to the Guam Pesticides Act and the Federal Insecticide, Fungicide, Rodenticide Act. According to the Interception Report, the products were confiscated based on Chapter 50, 10 GCA. The Interception Report identified the importer as Mr. Neil Espino, general manager of Espino LLC DBA - Ben N' Yan. PECO Section of the Guam Customs and Quarantine typically stores any confiscated or misbranded and unregistered pesticides in their storage room at the Guam Won Pat International Airport.

According to the Interception Report, Mr. Espino imported the pesticides products described above on (Vessel) Tacoma Trader Voyage Number 306 E, which left the Philippines and arrived on Guam on August 22, 2018 at approximately 5:45pm.

Mr. Espino was interviewed on September 18, 2018 at around 10:15am at Benn N' Yan restaurant located within the same building as Benn N' Yan Washland. Mr. Espino stated that he had brought the products from the Philippines to be sold at his establishment and that they have imported the products several times in the past. According to the Interception Report, the questionable products were imported into Guam for Ben N' Yan's Mini Mart & Washland located on Lot 5015-1-R2 &

5047-1-R5 2211 Army Dr., in the municipality of Tamuning. The specified products are not registered with the United States Environmental Protection Agency ("USEPA") required by 10 GCA §50110 and/or federal law requiring registration.

NOTICE OF VIOLATION

Guam EPA is charged with the responsibility of implementing the Guam Pesticides Act, Title 10, Guam Code Annotated (GCA), Chapter 50 as amended by Public Law No. 30-197, which also adopted the Guam Pesticide Regulations, Title 22, GARR, Division III, Chapter 15.

It is unlawful for any person to import, distribute, sell, or offer for sale in Guam "any pesticide or device which is not registered with USEPA or whose registration has been cancelled or suspended." 10 GCA §50110(1). You imported the pesticides described above, which are not registered with USEPA.

Under 10 GCA 50104(c), the Guam EPA Administrator is empowered to "take actions necessary to protect human health, welfare, or the environment." The Administrator further has the power to "issue, amend, rescind, and enforce orders as may be necessary to ensure compliance with any provision of [10 GCA Chapter 50], 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." 10 GCA §50104(i).

The law requires any person desiring to import pesticides into Guam to submit a "Notice of Arrival" (NOA) form to the Guam EPA Administrator no later than ten (10) calendar days prior to the arrival of the shipment in Guam. 22 GAR § 15401(a). You failed to present a completed Notice of Arrival form for the pesticides described above.

Based on the facts and law cited above, Guam EPA has reasonable grounds to believe that you have violated the Guam Pesticides Act and Rules and Regulation provisions of 10 GCA, Chapter 50 of the Guam Pesticides Act and therefore, are subject to administrative penalties and orders.

ORDER OF COMPLIANCE – CORRECTIVE MEASURES

You are hereby ordered to comply with the Guam Pesticides Act and Regulations and to take the following remedial measures:

1. Immediately ensure that you submit a Notice of Arrival Form to Guam EPA for approval prior to the arrival of any future pesticide shipments into Guam.
2. Within thirty (30) days upon receipt of this NOV/OC, either export the misbranded pesticides back to the point of origin or place of manufacture and provide Guam EPA with receipts to show that the pesticides have been exported, or dispose of the pesticides at a Guam EPA licensed disposal facility.

PENALTY ORDER

In addition to this Notice of Violation/Order of Compliance, the Guam EPA Administrator, pursuant to 10 GCA § 50118, hereby imposes an administrative penalty in the amount of six thousand seven hundred and fifty (\$6,750) dollars.

NOTICE OF RIGHT TO APPEAL

You may file within fifteen (15) calendar days of the receipt of this NOV/OC, a *Notice of Intent to Appeal* (also known as a Notice of Defense) with the Guam EPA's Board of Directors, setting forth in such notice a verified petition outlining the legal and factual basis for such an appeal. A copy of the Notice of Intent to Appeal, also known as a Notice of Defense, is attached for your convenience.

Unless a written request for a hearing signed by or on behalf of the person named above in this Notice of Violation/Order of Compliance is hand delivered or mailed to Guam EPA within fifteen (15) days after the Notice of Violation/Order of Compliance was personally served or mailed to you, Guam EPA may proceed upon the Notice of Violation/Order of Compliance without a hearing.

The request for hearing may be made by delivering or mailing the enclosed form entitled "Notice of Intent to Appeal" or by delivering or mailing a notice of defense as provided in 5 GCA § 9205 to Guam Environmental Protection Agency, 3304 Mariner Avenue, Tiyan Barrigada, Guam 96932.

If you file a Notice of Intent to Appeal/Notice of Defense, the Guam EPA's Board shall then hold a public hearing not more than sixty (60) calendar days after receipt of such Notice of Intent to Appeal/Notice of Defense, at which time you may appear and present evidence in person or through counsel in support of this petition. Failure to file a Notice of Intent to Appeal and verified petition within the period specified above, or failure to attend or to participate in a hearing that you have requested, will constitute a waiver of your right to a hearing. If you waive your right to a hearing, the Order of Compliance and Administrative Penalty Order will become final and Guam EPA may proceed upon the orders without a hearing and without further notice to you.

The Guam EPA's Board shall then hold a public hearing, not more than sixty (60) days after receipt of such Notice of Defense, at which time you may appear and present evidence in person or through counsel in support of your verified petition supporting your appeal.

PENALTY SETTLEMENT OPTIONS

In addition to your right to appeal described above, you may enter into a Voluntary Compliance Agreement pursuant to 22 GAR §15802. To enter into a Voluntary Compliance Agreement, you must immediately notify Guam EPA of your intent, and an agreement with Guam EPA must be reached within ten working days of your receipt of this NOV/OC.

If you have any questions regarding the technical aspect of the investigation report or this letter, please contact Darry J. Guzman 300-3187.

Si Yu'us Ma'ase.



WALTER S. LEON GUERRERO
Administrator

Enclosures:

Notice of Intent to Appeal (Notice of Defense) Form
Copy of Interception Report
Photographs

cc: Mr. Carl Goldstein, USEPA Region IX, Guam Program Manager
Ms. Sonam Gill, USEPA Region IX, Guam Pesticide Project Officer