



GUAM ENVIRONMENTAL PROTECTION AGENCY • AHENSIAN PRUTEKSIÓN LINA'LA' GUÁHAN

LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

FEB 24 2023

Aline Batuin
Branch Manager
SM Guam, Inc., DBA Pet Express
302 Rt. 4 STE 168 Agana Shopping Center Rt. 4
Hagatna, Guam 96910

ALINE F. BATUIN 2/24/23
BRANCH MANAGER

RE: Notice of Violation, Order of Compliance and Administrative Penalty Order No. PEP 23-001

Hafa Adai Ms. Banal,

Buenas yan Saluda. You are hereby advised that this Notice of Violation, Order of Compliance, and Administrative Penalty Order (NOV/OC/APO) PEP 23-001 is being issued to the company, SM Guam, Inc., DBA Pet Express (Pet Express), located at Lot. No. 82-1-5 Rt. 10 STE 168 Agana Shopping Center Rt. 4 in Hagatna.

The Guam Environmental Protection Agency (Guam EPA) is responsible for implementing and enforcing the Guam Pesticides Act, Chapter 50 of Title 10, Guam Code Annotated (GCA), Public Law No. 29-026, and the Guam EPA's Pesticide Regulations, Chapter 15 of Title 22, Division III, Public Law No. 30-197.

This NOV/OC/APO is based on a Compliance Evaluation Inspection (CEI) conducted on November 30, 2022 by representatives from Guam EPA due to a complaint the Pet Express was selling unregistered pesticides.

Guam EPA has the authority to issue, amend, 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 or 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).

Guam EPA also has the authority to "impose and collect penalties against any person for the violation of any of its rules, regulations or compliance orders issued under 10 GCA, Chapter 50.

Any person who knowingly violates any pesticides provision of this Chapter, or any valid pesticides 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, in addition to cleanup costs and other damages, forfeit and pay a civil penalty of not more than \$10,000.00 per day for each violation or non-compliance as stated on 10 GCA §50118(b).

Each day of continued violation of 10 GCA Chapter 50 or Title 22, Guam Administrative Rules and Regulations (GAR), Division III, Chapter 15 Rules and Regulations authorized under this Chapter is deemed a separate violation.

The Guam EPA Administrator is also directed to enforce orders necessary to ensure compliance with 10 GCA Chapter 50 and any rules and regulations enacted pursuant to 22 GAR, Division III, Chapter 15, including any other administrative or judicial remedies 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) and (b).

On November 30, 2022, Guam EPA representatives Maria Duenas and Rebecca Menge met with Ms. Marissa Banal, the Sales Manager of Pet Express. After proper introductions and explaining the purpose of the inspection, Ms. Banal accompanied the Guam EPA representatives during the inspection. The inspection revealed that Pet Express sells a variety of products that contain pesticides for cats and dogs. There were four (4) pesticide products identified that were registered and comply with the Guam Pesticide Act, however, no Notice of Arrival was submitted to Guam EPA for these products prior to their arrival, as required by 10 GCA Chapter 50, §50112.

The inspection further revealed that there were fifty-eight (58) different pesticide products that are not United States Environmental Protection Agency (USEPA) registered products, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The Guam EPA representatives inquired where the products originated and Ms. Banal stated that the company ordered the products from the Philippines and didn't know that they were pesticides. Ms. Duenas asked Ms. Banal for copies of all the documents for the shipments that arrived to include all copies of stamped documents approved by Guam Customs and Quarantine, bill of lading, invoices, and any other documents pertaining to the importation of the products. Ms. Banal stated that she would provide them to Guam EPA as soon as possible. Twenty Three (23) Stop-Sale Orders were issued and the products were placed in boxes, secured and labeled and put in the back storage of Pet Express. The fifty-eight (58) products that were imported are not registered with USEPA as required by 10 GCA, Ch. 50, §50110 (a)(1).

A Guam EPA detailed CEI report and photo evidence collected in the investigation conducted at the site are enclosed. In addition, photos of the products seized at the site are also included.

NOTICE OF VIOLATION

Based on the investigation, SM Guam, Inc., DBA Pet Express are in violation of the following requirements Pursuant to 10 Guam Code Annotated, Chapter 50, Guam Pesticides Act:

1. "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." 10 GCA §50110(a)(1).

- *SM Guam, Inc., DBA Pet Express imported and offered for sale unregistered pesticide products. There are fifty-eight unregistered pesticides identified in the inspection report.*
- 2. “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.” 10 GCA, Ch. 50, §50112
- *SM Guam, Inc., DBA Pet Express failed to submit a Notice of Arrival form for pesticides prior to the arrival of the pesticides into Guam. There are four (4) EPA registered pesticides and fifty-eight (58) unregistered pesticide products identified in the inspection report.*

Based on facts and law cited above, Guam EPA has reasonable grounds to believe that SM Guam, Inc., DBA Pet Express has violated the 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

Based on the violations cited above, Guam EPA hereby requires SM Guam, Inc., DBA Pet Express to take the following remedial measures and ensure compliance with the Guam Pesticides Act.

1. Submit to Guam EPA a Notice of Arrival (NOA) form for the four (4) USEPA registered pesticides imported without a NOA.
2. Ensure that the company submits NOA forms for all pesticides and pesticide devices that are imported into Guam.
3. Ensure that the company does not import, distribute, see, or offer for sale any pesticide or pesticide device that is not registered with USEPA or whose registration has been canceled or suspended.
4. Arrange to have the unregistered pesticide products shipped back to their point of origin and provide documentation to Guam EPA of the returned unregistered pesticide products.

Nothing in this Order of Compliance limits the ability of Guam EPA to enforce any provisions of applicable Guam laws and regulations. Guam EPA does not waive any rights or remedies available to it. Failure to comply with this Compliance Order may subject you to additional administrative, civil, or criminal penalties.

ADMINISTRATIVE PENALTY ORDER

In addition to this Notice of Violation and Order of Compliance, the Administrator of Guam EPA, pursuant to 10 GCA Chapter 50, Section § 50118 (a), (b) and (c) hereby imposes an administrative penalty.

The maximum administrative penalty for the pesticide violations is up to ten thousand dollars (\$10,000.00) per day for each violation of non-compliance or twenty thousand dollars (\$20,000) for 2 violations of 10 GCA Chapter 50, §50110 (a)(1) and §50112. This is in addition to any clean-up cost, returns, and damages.

The Administrator also considered the following factors in determining the administrative penalties:

1. No previous Pesticide violations with Guam EPA;
2. Sense of urgency and Good Faith: Immediate action taken to abate the violation, and correct any conditions resulting from the violation, in the shortest possible amount of time.
3. The seriousness of the violation; and
4. The risk to human health and the environment.

Therefore, the Administrator assesses a penalty of three thousand three hundred dollars (\$3,300.00) for the violation of §50110(a)(1) and a penalty of two hundred dollars (200.00) for the violation of §50112 for one day of violation. You are presumed under the law to be able to pay the penalty under 10 GCA Chapter 50.

NOTICE OF RIGHT TO APPEAL

You may file within fifteen (15) calendar days from the receipt of this Notice of Violation/Order of Compliance/Administrative Penalty Order, 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 of Intent to Appeal/Notice of Defense, a verified petition outlining the legal and factual bases for such an appeal. A copy of the Notice of Intent to Appeal/Notice of Defense is attached for your convenience.

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

A request for a hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as a Notice of Defense," or by providing a notice of defense as provided in 5 GCA §9205, to the following address:

Guam Environmental Protection Agency Board of Directors
c/o Administrator
Attn: Air & Land Division
Guam Environmental Protection Agency
Building 17-3304 Mariner Avenue. Tiyan
Barrigada, Guam 96913

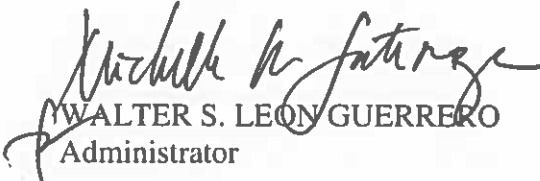
If you file a Notice of Intent to Appeal/Notice of Defense, the Guam EPA's Board of Directors shall hold a public hearing, not more than sixty (60) calendar days after receipt of such Notice of Intent to Appeal/Notice of Defense, at which time you may appear and present evidence in person or through counsel in support of this Petition.

Failure to file a Notice of Intent to Appeal and Verified Petition within the specified period will constitute a waiver of your right to a hearing. If you waive your rights 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 further notice to you.

Should you have any questions regarding this notice, please contact Mr. Roland T. Gutierrez Jr., Acting Air and Lands Programs Administrator at (671) 300-4751 or by email at roland.gutierrez@epa.guam.gov.

Dangkolu na si Yu'us ma'åse'.

Senseramente,


WALTER S. LEON GUERRERO
Administrator

Enclosures