

CHAPTER 22

BEVERAGE CONTAINER REGULATIONS

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NOTE: Public Law 17-46:1 enacted 10 GCA Chapter 54, the Territorial policy with regard to beverage containers, and in §54109 gave the Guam Environmental Protection Agency Board authority to enact rules and regulations necessary to implement the provisions thereof.

These regulations were filed with the Legislative Secretary on August 16, 1984.

§22101. Purpose and Objective. The proper management of no-deposit beverage adverse effects of litter caused by these containers to the health, safety and welfare of the citizens of Guam. Beverage containers are the most rapidly growing segment of the islandwide waste stream, imposing a heavy burden on the government and citizens of Guam for their collection and proper disposal.

It is therefore the purpose of these regulations to preserve Guam's natural and land environment and other resources and to protect, maintain and improve the aesthetic quality of such attributes for the propagation of wildlife and for the promotion of public health and welfare, and the enhancement of recreational and tourist facilities, as well as for agricultural and other beneficial uses. In order to fulfill this purpose, it is the primary objective of these regulation to provide a comprehensive enforcement program for prevention, abatement and control of beverage container littering and pollution within the Territory and the effective means in carrying out such a program.

§22102. Definitions. For the purpose of these regulations the following definitions shall apply:

(a) *Administrator* shall mean the Administrator of the Guam Environmental Protection Agency or his duly authorized agent, officer or inspector.

(b) *Agency* shall mean the Guam Environmental Protection Agency.

(c) *Beverage* shall mean beer, ale, malt liquor, and soft drinks; provided, however that for the purposes of these regulations the term beverage shall not include items sold in a non-liquid, or frozen form or liquid intended for medicinal purposes only, or unadulterated, natural or reconstituted fruit or vegetable juices.

(d) *Beverage Container* shall mean an individual, separate aluminum can containing a beverage but does not include a glass bottle, plastic bottle, or paper or styrofoam cup or carton.

(e) *Board* shall mean the Board of Directors of the Guam Environmental Protection Agency.

(f) *Consumer* shall mean every person who purchases a beverage in a beverage container for use or consumption.

(g) *Dealer* means every person who engages in the sale of beverages or beverage containers to a consumer for consumption off the premises.

(h) *Distributor* means every person who engages in the sale or distribution of beverages in beverage containers to a dealer in this territory, including any manufacturer who engages in such sales.

(i) *Manufacturer* means every person canning, or otherwise filling beverage containers for sale to distributors or dealers.

(j) *Metal Salvage Contractor* means any person who engages in the purchase and resale of beverage

containers in order to make a profit from the metal value of the containers.

(k) *Person* means an individual, corporation, company, association, partnership, or department, agency and instrumentality of the Federal Government or Government of Guam.

§22103. Prohibitions on Certain Types of Containers. No beverage container may be sold or offered for sale for consumer consumption by a distributor, dealer or any person in the Territory which is designed and constructed partially or completely of; (a) a metal other than aluminum; and (b) contains any part which is detachable in opening of the container.

§22104. Temporary Variances. (a) A manufacturer, distributor, or dealer may apply to the Administrator for a temporary variance from §22103 of these regulations. The Administrator may grant such temporary variances; (1) to allow reasonable time for depletion of accumulated inventories of prohibited beverage containers after the effective date of these Regulations, (2) when approved beverage containers are not available from aluminum can manufacturers, or (3) whenever compliance with §22103 would produce serious hardship without equal or greater benefit to the public.

(b) A variance granted herein shall include a timetable for full compliance with §22103 and shall be conditioned in adherence to such timetable.

§22105. Permits. (a) **Permit Required.** A permit is required for any person engaged in collection, storage, processing or disposal of beverage containers after purchase for resale in order to make a profit from the metal value of the containers. A permit is not required for collection or storage of beverage containers for sale to a metal salvage contractor. The approval of a permit shall be contingent upon the applicant's demonstration of his capability to comply with these regulations and evidence of a valid business license issued by the Government of Guam.

(b) **Application for Permit**

(1) Application for a permit shall be completed on forms furnished by the Administrator and shall include the following information:

(A) Detailed plans and specifications for the facility utilized in collection, storage and processing of beverage containers.

(B) Certification of compliance with zoning requirements and local ordinances by the Department of Land Management, Department of Public Works and Guam Environmental Protection Agency.

(C) An operations plan detailing the proposed method and length of operation, quantity and source of containers received, the type of equipment to be used, method of process residue removal and disposal, and emergency operating procedures.

(2) The applicant shall have sixty (60) calendar days after the effective date of these regulations to submit the application to the Agency. An extension may be granted if a written request with justification is submitted to the Agency and approved by the Administrator before the deadline.

(3) Each application shall be signed by the owner and shall constitute an agreement that the owner will assume responsibility for the construction or modification and operation of the facility in accordance with these regulations. If the owner is a partnership or group other than a corporation, the application shall be signed by one individual who is a member of the group. If the owner is a corporation, the application shall be signed by an officer of the corporation or general manager of the facility.

(c) Action on the Application

(1) The Administrator shall evaluate the permit application and act upon it within thirty (30) calendar days after receipt of the application and shall notify the applicant in writing of the action taken.

(2) Additional information necessary to clarify any part of the submitted permit application may be requested by the Administrator. The permit evaluation period shall begin upon receipt of the requested information.

(3) There are three responses possible to an application:

(A) **Approval** - the applicant may proceed as indicated in the application and in compliance with applicable regulations and laws.

(B) **Conditional Approval** - the applicant may proceed with operations but is required to comply with conditions as delineated by the Administrator.

(C) **Denial** - the applicant who is not allowed a permit may pursue the following course of action:

(i) The applicant may submit questions, provide further information or make a request for consideration, in writing and in duplicate, in response to the action taken on the permit application. The Administrator will consider these and shall within ten (10) working days of their receipt notify the applicant in writing of the final decision on the application.

(ii) The applicant shall then have the opportunity to appeal the Administrator's decision at a hearing before the Board. The request for a hearing must be submitted to the Board within fifteen (15) working days after the applicant's receipt of the Administrator's final decision. The request must state the reason(s) for the appeal. Procedures for conducting the hearing shall be in accordance with the Administrative Adjudication Act of the Government Code of Guam.

(4) The Administrator shall approve the license if it is sufficiently demonstrated in the application and in supporting information that the issuance thereof does not pose a threat to the environment or public health and welfare, and that the facility is designed, constructed and equipped so as to operate without causing a violation of applicable rules and regulations.

(d) **Duration of Permit.** The Administrator shall grant a permit for two (2) years following the date of issuance and upon application may renew a permit.

(e) **Modification, Suspension or Revocation of Permit.**

(1) The Agency may, on its own motion or by the application of any person, modify, suspend or revoke a Permit if, after affording the permit holder a hearing, it is determined that any condition of the permit or any regulations of the Agency has been violated, or that such action is deemed in public interest. Modification, suspension or revocation of a permit shall become final fifteen (15) days after service of notice of the final decision to modify, suspend or revoke, on the holder of the permit.

(2) The permit holder may request an appeal by submitting written justification to the Board within fifteen (15) days after notification of action on the license.

(3) Procedures for conducting a hearing shall be in accordance with the Administrative Adjudication Act of the Government Code of Guam.

(f) **Transfer of Permit.** The permit is not transferable, whether by operation of law or otherwise, either from one location to another, from one facility to another or from one person to another, without the written permission of the Administrator.

(g) **Reporting Termination.** Sixty (60) days prior to closure any applicant issued a permit shall report the permanent termination of a facility for which the permit has been issued to the Administrator and

within thirty (30) days after closure shall surrender the license to the Administrator.

(h) **Posting of Permit.** Upon granting an approval for a permit, the Administrator shall issue to the applicant a permit which shall be posted in a conspicuous place at or near the operation site for which the license was issued.

(i) **Falsifying or Altering Permit.** No person shall willfully deface, alter, forge counterfeit, or falsify a permit. Any such activity shall bring about immediate revocation of the permit.

§22106. Posting of Container Refund Value. A metal salvage contractor or any person engaging in the purchase and resale of containers shall post the current redemption price for beverage containers in a conspicuous place at their place of business and in full view of consumers.

§22107. Enforcement Procedures. (a) All procedures shall comply with the Administrative Adjudication Act of the Government Code of Guam.

(b) **Inspection and Entry.** The Administrator shall have the authority to enter at a reasonable time upon any private or public property for the purpose of inspecting and investigating conditions relating to these regulations.

(c) **Notice of Violation.** If from an inspection or investigation there appears to be a violation of these regulations, a Notice of Violation in writing shall be sent to the person against whom criminal proceedings are contemplated stating the violation, and giving him fifteen (15) days to correct the problem. The Notice shall state the manner in which the alleged violator fails to meet the requirements of these regulations and what should be done to correct the problem.

(d) **Order.** After termination of the fifteen (15) day period, if no action has been taken by the recipient to respond to the Notice of Violation, an Order in writing shall be sent via registered mail or personally served upon the recipient, charging him with the violation. If

the recipient has responded to the Notice of Violation, the case will be discussed and either dropped or, if the recipient is still found to be in violation, the fifteen (15) day time period before sending of the Order maybe extended so as to count the period as starting from the time the case was discussed, rather than the date of receipt of the Notice.

(e) **Notice of Defense.** A Notice of Defense shall be included with the Order, which will allow the recipient fifteen (15) days to request a hearing by the GEPA Board of Directors. If a Notice of Defense is received by the GEPA Board, further action upon the case will be suspended until the hearing has been concluded.

(f) **Prosecution.** If no action has been taken to correct the violation after a period of fifteen (15) days from receipt of the Order, or for those cases requesting a hearing, after a time period as specified by the GEPA Board, the violation shall be referred to the Attorney General's Office for prosecution.

§22108. Severability. If any provision of these regulations, or the application thereof to any person or circumstance, is held to be invalid, then such invalidity shall not affect other provisions or the application of any part of these regulation which can be given effect without the invalid provision or application. It is to these ends that the provisions of these regulations and various applications thereof are declared to be severable.

§22109. Application. All parts of these Regulations apply to the Territory of Guam and shall become effective forty-five (45) calendar days after the date they are officially submitted to the Guam Legislature, or upon the date of approval by the Guam Legislature if such approval occurs within the forty-five days.