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OFFICE OF THE ATTORNEY GENERAL

September 3, 2013

LEGAL MEMORANDUM **GEPA 13-0622**

TO: Administrator, Guam Environmental Protection Agency

FROM: **Attorney General**

SUBJECT: **Public Law 30-184; Mobil Oil Guam's Request for Clarification**
In re: transshipping automotive diesel oil through Guam

Background of Request

Mobil Oil Guam, Inc. told you that it is interested in transshipping automotive diesel oil ("ADO") through Guam to other jurisdictions throughout Micronesia and the Marshall Islands. In particular Mobil is interested in transshipping ADO which does not necessarily meet the US EPA standard for ultra-low sulfur diesel fuel ("ULSD"), because those other jurisdictions have not yet mandated use of ULSD.

Request for clarification re: Guam P.L. 30-184

You asked this office to review Mobil Oil Guam, Inc.'s (hereinafter referred to as "Mobil") request for clarification of its interpretation of Guam Public Law 30-184. That law, which is now codified as 10 G.C.A. § 49119 provides, in a nutshell, that all diesel fuel imported to Guam effective January 1, 2011 for the purpose of sale and distribution in Guam shall meet the US EPA standards for ultra-low sulfur diesel fuel.

Request for confirmation re: applicability of US EPA ULSD regulations

Mobil also asked for confirmation that presently the only prohibition applicable to Guam is the local Guam statutory prohibition against sale and distribution within Guam of ADO which does not meet the US EPA standard for ultra-low sulfur diesel fuel. Or in other words, Mobil asked for confirmation that Guam remains exempt from US EPA's ULSD regulations.

Legal Questions

Question of Importation of ADO which is non-ULSD compliant

Mobil said that its reading of 10 G.C.A. § 49119 is that importing diesel fuel other than ULSD into Guam is prohibited only when the fuel is imported for the purpose of sale and distribution in Guam. Mobil posited that importation into Guam and storage in Guam of ADO for purposes of transshipment to areas outside of Guam for sale and distribution is not prohibited by 10 G.C.A. § 49119, and asked for confirmation of that position.

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Question of Guam's Exemption from US EPA's ULSD regulations

Mobil further asserted that it believed Guam remained exempt from US EPA's ULSD regulations; and that the only prohibition applicable to Guam is the local Guam statutory prohibition against sale and distribution of non-ULSD within Guam. Mobil asked for confirmation of that position as well.

Short Answers

1. 10 G.C.A. § 49119 only requires that all diesel fuel imported to Guam for the purpose of sale and distribution **"in Guam"** shall meet the US EPA standards for ultra-low sulfur diesel fuel. Therefore, fuel that is in the process of being transshipped to other destinations, such as Micronesian islands other than Guam, the Marshall Islands, etc., does not need to meet the US EPA standards for ultra-low sulfur diesel fuel.

2. Mobil is correct that Guam remains exempt from US EPA's ULSD regulations; and that the only prohibition regarding ULSD applicable to Guam is the local Guam statutory prohibition against sale and distribution of non-ULSD within Guam.

Discussion

Question 1 – Requirement of diesel fuel being imported to Guam for sale and distribution in Guam meeting US EPA standards for ultra-low sulfur diesel fuel.

The language of 10 G.C.A. § 49119 is plain and clear on its face. It states in relevant part that "[E]ffective January 1, 2011 all diesel fuel imported to Guam for the purpose of sale and distribution in Guam *shall* meet the US EPA standards for *ultra-low sulfur diesel fuel.*"

Some confusion arises from the 2010 Note, following 10 G.C.A. § 49119, which states that P.L. 30-184:5 (which is the public law from which 10 G.C.A. § 49119 is codified) provides, in relevant part: "**Section 5.** All bulk storage tanks used to store diesel fuel intended for sale or re-sale *shall* be sampled and tested in accordance with 40 CFR, Part 80, Subpart I for the purpose of certifying that the fuel meets the required ultra-low sulfur diesel (ULSD) content of 15ppm or less."

The language in the note omits the language in section 49119 of "...for the purpose of sale and distribution **in Guam**..." [emphasis added].

The legislative history of P.L. 30-184 seems to bear out that the omission was inadvertent. The history is replete with mention of concerns for the impacts of Guam's conversion to ULSD on outer islands.

Some examples include: (at p. 40 of the P.L. 30-184 legislative history Findings/Recommendation) – "Further, there exists additional concern regarding the impact of Guam's conversion to ULSD use on the Marianas region, as Guam is a fuel distribution point for the outerlying islands."

At p. 41, a new Section 3 was added to the bill to accomplish certain things, including a task force to study various issues, such as "...the exemptions in place for Guam and the regional islands".

At page 43, a new Section 3 (i.e., § 49104(r)) was added to 10 G.C.A. Ch. 49, creating such a task force.

Also at p.41, section 49119 was amended to read "[A]ll diesel fuel imported to Guam for the purpose of sale and distribution **in Guam**....". [emphasis added]

At page 35 of the Committee Report on the bill, Senator Respicio asked if the issue was regional distribution: "[D]o you think these petroleum companies have the capacity for holding tanks to hold both the high sulfur diesel and the ultra low sulfur diesel because I'm trying to think outside the box because we're waiting for how the outer islands would react and respond..." The Senator goes on to say "[B]ut we could still probably accommodate the need for the outer islands if they're not ready to transition if the petroleum companies wanna make the investment and have an additional holding tank or retrofit their business to provide for both types where one would be distributed to the outer islands and the others will be used for Guam."

At page 36 of the Committee Report, Senator Ada suggests that "[M]aybe a third provision is to allow for that fuel company to bring over, 'cos normally a lot of the ships they have different compartments to bring in the quantity that they feel is needed for the outlying islands."

The Governor's transmittal letter of October 11, 2010 in which he indicates he is signing the law into effect states in part that of particular concern is how this law will impact the other islands of the region. The Governor goes on to say that the assigned committee has been working diligently to come up with a comprehensive impact assessment that will give the people of Guahan and other impacted islands the assurances that they need that the effects of this transition will not have unintended consequences and will not drastically increase the cost of power or transportation in these affected areas.

Based on the plain and clear language of 10 G.C.A. § 49119, together with the legislative history and the Governor's transmittal letter, both of which reflect an intent to avoid adverse impacts resulting from the passage of this law on other impacted islands, it appears that the omission of the words "in Guam" in the 2010 Note following 10 G.C.A. § 49119, was an error of omission.

Only diesel fuel being imported into Guam **for sale and distribution in Guam** is required to meet Guam's statutory requirements for ULSD fuel. Diesel fuel being transshipped through Guam to other jurisdictions, which is not going to be sold or distributed on Guam, does not need to meet Guam's statutory requirements for ULSD fuel.

<u>Question 2 – Guam law governs importation of diesel fuel for sale and distribution on Guam; Guam is currently exempt from federal law</u>

On May 7, 1993 the Governor of Guam petitioned US EPA for exemption from federal requirements regarding diesel and gasoline fuel limits for sulfur. On September 21, 1993 US EPA granted Guam permanent exemption from federal diesel and gasoline fuel limits for sulfur. 40 CFR 80.608.

Therefore, Guam is exempt from compliance with federal regulations governing ULSD fuel and thus Guam may regulate non- ULSD as it see fit.

Separate storage of fuel

Please be advised that the law does require that regulated fuel introduced into Guam must be kept separate from exempt fuel. 40 CFR 80.382(d).

Conclusion

In sum, Guam statutory law requires, effective January 1, 2011, that all diesel fuel imported into Guam for purpose of sale and distribution in Guam must meet the US EPA standards for ultra-low sulfur diesel fuel. Mobil Oil is not prohibited from transshipping diesel fuel which does not meet the US EPA standards (codified in Guam law) for ultra-low sulfur diesel through Guam to other jurisdictions, as long as that diesel fuel is not sold or distributed on Guam.

Guam remains exempt from federal regulations governing diesel and gasoline fuel limits for sulfur until such time as the Governor of Guam requests in writing a reversal from such exemption from US EPA, and such reversal is granted.

Regulated fuel introduced to Guam must be kept separate from exempt fuel.

R. Happy Rons
Assistant Attorney General

cc: Conchita Taitano, Air and Land Administrator
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