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Guam Environmental  
Protection Agency

November 14, 2007

Ref: GEPA 07-0582

OPINION

To: Administrator, Guam Environmental Protection Agency  
From: Attorney General *AKK*  
Subject: Changing Policies, Fees by GEPA Board

OFFICE OF THE  
GOVERNOR  
12 JUN 2008  
DATE 1:12pm  
LEGAL OFFICE

The Administrator has asked that we give an Opinion answering two questions. The first is:  
1. Whether the Board may create policies that eliminate or amend statutes and regulations of the Guam Environmental Protection Agency (GEPA), and  
2. Whether the Board may legally eliminate or amend provisions in Guam EPA's statutes and regulations.

The answer to your first question is that **only** the Legislature may add, repeal or amend statutes (laws). The Governor may submit bills to the Legislature for their consideration, but may not enact laws. Under the Organic Act, the Governor may issue Executive Orders not inconsistent with any existing law. However, the GEPA may amend, adopt or repeal its own rules and regulations, and fees, but only through the procedures required by the Administrative Adjudication Law (AAL).

This is what has taken place in order to adopt your present schedule of fees. Public Law 24-40 repealed and re-enacted Chapter 49 of Title 10 of the Guam Code Annotated, relative to Air Pollution Control, which authorized rules and regulations and certain fees, especially emission control fees. These were adopted by the GEPA and Public Law 24-322 with this statement in Section 1:

*I Liheslaturan Guahan* agrees with these regulations as presented and seeks to approve said regulations, attached hereto as *Exhibit A*.

These are your present regulations and fee structure. Since they are approved as regulations, you may treat them as such and amend them as the Board sees fit, utilizing the AAL procedure.

The term, *rule*, is defined in 5 GCA §9107 as:

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Senator Tina Rose Muña Barnes

JUN 12 2008

By: *[Signature]*

Date: 6-12-08

Date: *11/26/07*

Time: 1:30

Time:

Received by: *E. McDonald*

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*original 11/26/07*

The word rule means any rule, regulation, standard, classification, procedure or requirement of any agency designed to have or having the effect of law or interpreting, supplementing or implementing any law enforced or administered by it, including any regulation under which the agency makes charges for services it provides, or to govern its organization or procedure, but does not include regulations, resolutions or directions relating solely to internal policy, internal agency organization or internal procedure which do not directly affect the rights of or procedures available to the public and does not include administrative adjudication.

Therefore, this policy would repeal, amend or add to what is in your rules and regulations, it can be passed only through the AAL process. However, a policy to waive fees during a stated amnesty period, we believe, would be within the realm of policies that do not require the AAL process and may be adopted. This would be similar to the amnesty periods declared from time to time by the Department of Revenue & Taxation on enforcement of certain taxes.

If you have any questions, please do not hesitate to call. Please refer to the reference number above. This is an Opinion of the Attorney General and is intended to be an interpretation of the law as it applies to all agencies and departments of the Government of Guam.

*Charles H. Troutman*

CHARLES H. TROUTMAN  
Assistant Attorney General