

*I Mina'Trentai Kuáttro Na Liheslaturan*  
**BILL STATUS**

| BILL NO.     | SPONSOR            | TITLE  | DATE INTRODUCED       | DATE REFERRED | CMTE REFERRED | PUBLIC HEARING DATE | DATE COMMITTEE REPORT FILED | FISCAL NOTES | NOTES |
|--------------|--------------------|--|-----------------------|---------------|---------------|---------------------|-----------------------------|--------------|-------|
| 372-34 (COR) | Therese M. Terlaje | AN ACT TO AMEND § 45105 OF CHAPTER 45, TITLE 10, GUAM CODE ANNOTATED; TO ADD A NEW SUBSECTION (p) AND (q) TO § 50104 OF CHAPTER 50, TITLE 10, GUAM CODE ANNOTATED; AND TO ADD A NEW SUBSECTION (g) AND (h) TO § 22107, CHAPTER 22, TITLE 22, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO THE TIMELY PUBLICATION OF ALL NOTICES OF VIOLATION, ORDERS OF COMPLIANCE, NOTICES OF DEFENSE, VOLUNTARY COMPLIANCE AGREEMENTS AND REFERRALS TO THE OFFICE OF ATTORNEY GENERAL FOR PROSECUTION, ISSUED BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY AND TO REQUIRING THAT ALL VOLUNTARY COMPLIANCE AGREEMENTS BE SUBJECT TO THE FINAL REVIEW, APPROVAL AND AMENDMENT BY THE GEPA BOARD OF DIRECTORS. | 11/13/18<br>3:00 p.m. |               |               |                     |                             |              |       |

***I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÅHAN***  
**2018 (SECOND) Regular Session**

Bill No. 1372-34 (COR)

Introduced by:

Therese M. Terlaje



**AN ACT TO *AMEND* § 45105 OF CHAPTER 45, TITLE 10, GUAM CODE ANNOTATED; TO *ADD* A NEW SUBSECTION (p) AND (q) to § 50104 OF CHAPTER 50, TITLE 10, GUAM CODE ANNOTATED; AND TO *ADD* A NEW SUBSECTION (g) AND (h) TO § 22107, CHAPTER 22, TITLE 22, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO THE TIMELY PUBLICATION OF ALL NOTICES OF VIOLATION, ORDERS OF COMPLIANCE, NOTICES OF DEFENSE, VOLUNTARY COMPLIANCE AGREEMENTS AND REFERRALS TO THE OFFICE OF ATTORNEY GENERAL FOR PROSECUTION, ISSUED BY THE GUAM ENVIRONMENTAL PROTECTION AGENCY AND TO REQUIRING THAT ALL VOLUNTARY COMPLIANCE AGREEMENTS BE SUBJECT TO THE FINAL REVIEW, APPROVAL AND AMENDMENT BY THE GEPA BOARD OF DIRECTORS**

2018 NOV 13 PM 3:00 C.S.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
3 that better communication of potential health risks associated with violations of  
4 environmental regulations is important to protecting the health of the community  
5 and ensuring compliance of environmental laws and regulations. Notices of  
6 Violation (NOV), Orders of Compliance, Notices of Defense, Voluntary  
7 Compliance Agreements and referrals to the Office of the Attorney General for

1 prosecution are enforcement procedures put in place by the Guam Environmental  
2 Agency's (GEPA) to uphold compliance with Guam Environmental laws and  
3 regulations.

4 *I Liheslaturan Guåhan* finds that GEPA is not mandated by law to inform  
5 the public of violations, unless a violation poses an immediate threat to the health  
6 and safety of the community. Presently, public inquiries for GEPA Notice of  
7 Violations require a formal request to the GEPA Administrator or the submission  
8 of a Freedom of Information Act (FOIA) request. However, GEPA, in an effort  
9 towards transparency and open governance, announced on their website that  
10 starting October 01, 2018, all Notices of Violations issued by the agency will be  
11 published on the agency website. *I Liheslaturan Guåhan* finds that to support  
12 GEPA's commitment towards increased transparency and open governance and to  
13 encourage compliance with Guam Environmental laws and regulations, the timely  
14 publication of NOV's, Orders of Compliance, Notices of Defense, Voluntary  
15 Compliance Agreements and referrals to the Office of the Attorney General for  
16 prosecution, should be a standard operating procedure.

17 *I Liheslaturan Guåhan* further finds that the GEPA Administrator is  
18 authorized to enter into voluntary compliance agreements with persons found in  
19 violation of environmental laws and regulations. The purpose of this agreement is  
20 to resolve the Notice of Violation/Order of Compliance without appealing to the  
21 GEPA Board of Directors or the referral process with the Attorney General of  
22 Guam. It is the intent of *I Liheslaturan Guåhan* to increase the level of checks and  
23 balances at GEPA in order to promote community compliance to environmental  
24 laws, regulations and penalties by requiring that all Voluntary Compliance  
25 Agreements be subject to the final review, approval and amendment by the GEPA  
26 Board of Directors.

1           **Section 2.** § 45105 of Chapter 45, Title 10, GCA is hereby amended to  
2 read:

3           **“ § 45105. Powers and Duties.**

4           The Guam Environmental Protection Agency *shall* be responsible for  
5 the implementation of the Guam Beverage Container Recycling Act of 2010,  
6 Chapter 44 of the Title; Water Resources Conservation Act, Chapter 46 of this  
7 Part; the Water Pollution Control Act, Chapter 47 of the Part; Toilet Facilities and  
8 Sewage Disposal Act, Chapter 48 of this Part; the Air Pollution Control Act,  
9 Chapter 49 of the Part; the Guam Pesticides Act, Chapter 50 of the Part; and Solid  
10 Waste, Chapter 51 of this part.

11           The Guam Environmental Protection Agency shall publish all Notices of  
12 Violation, Orders of Compliance, Notices of Defense, Voluntary Compliance  
13 Agreements and Referrals to the Office of Attorney General for Prosecution issued  
14 to any agency or persons in violation of any of the acts on its website and shall  
15 report to GEPA Board of Directors, all Notices of Violation, Orders of  
16 Compliance, Notices of Defense, Voluntary Compliance Agreements and Referrals  
17 to the Office of Attorney General for Prosecution, no later than five (5) working  
18 days from issuance.”

19           **Section 3.** A new § (p) and (q) is hereby added to §50104 of Chapter 50,  
20 Title 10, GCA to read:

21           **“ § 50104. Powers and Duties of the Administrator.**

22           The Administrator *shall* ~~the~~ have the following powers and duties:

- 23           a) Encourage voluntary cooperation by persons and affected groups to  
24           achieve the purpose of this Chapter.
- 25           b) Establish an effective enforcement program for the implementation of  
26           this Chapter;

- 1 c) In implementing the provisions of this Chapter, take actions necessary  
2 to protect human health, welfare, or the environment;
- 3 d) Issue, continue in effect, modify, revoke, reissue, or deny permits,  
4 licenses, certifications, or registrations;
- 5 e) Collect and disseminate information;
- 6 f) Conduct educational, certification, and training programs;
- 7 g) Refuse the importation of any pesticide or pesticide devices;
- 8 h) Issue letters of warning to violators as appropriate;
- 9 i) Issue, amend, rescind, and enforce orders as may be necessary to  
10 ensure compliance with any provisions of this Chapter, of any rules,  
11 regulations, license, certification, registration, standards, or  
12 requirements issued pursuant to this Chapter including, but not limited  
13 to, an administrative penalty or order requiring whatever remedial  
14 measure may be necessary or appropriate to implement or effectuate  
15 the provisions and purposes of this Chapter;
- 16 j) Hold hearings related to any aspect or, or matter in the administration  
17 of, this Chapter, and in connection therewith, administer oaths,  
18 examine witnesses and issue subpoenas to compel the attendance of  
19 witnesses and the production of evidence;
- 20 k) Seize certain pesticides, pesticide devices, or ban specific uses of  
21 certain pesticides;
- 22 l) Suspend certain pesticides or specific uses of certain pesticides;
- 23 m) Consult, upon request, with any person proposing to import,  
24 distribute, produce, or manufacture any pesticide or pesticide devices.  
25 Nothing in any consultation *shall* be construed to relieve any person  
26 from compliance with this Chapter, or any other provision of the law;

- 1 n) Accept, receive, and administer grants and other funds or fees from  
2 public and private agencies, including the federal government, for  
3 carrying out any of the purposes of this Chapter;
- 4 o) Cooperate with or enter into agreements with any person for purposes  
5 of implementing the provisions of this Chapter.
- 6 p) Publish all Notices of Violation, Orders of Compliance, Notices of  
7 Defense, Voluntary Compliance Agreements and Referrals to the  
8 Office of Attorney General for Prosecution issued to any agency or  
9 persons in violation of any of the acts on its website and shall report  
10 to GEPA Board of Directors, all Notices of Violation, Orders of  
11 Compliance, Notices of Defense, Voluntary Compliance Agreements  
12 and Referrals to the Office of Attorney General for Prosecution, no  
13 later than five (5) working days from issuance.
- 14 q) Enter into Voluntary Compliance Agreements with any person in  
15 violation of GEPA environmental laws and regulations for the  
16 purpose of resolving the Notice of Violation/Order of Compliance. All  
17 Voluntary Compliance Agreements shall be subject to the final  
18 review, approval and amendment of the GEPA Board of Directors.”

19 **Section 4.** A new (g) and (h) is hereby added to § 22107 of Chapter 22, Title  
20 22 Division, GARR to read:

21 “ **§ 22107. Enforcement Procedures.** (a) All procedures shall comply with  
22 the Administrative Adjudication Act of the Government Code of Guam.

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

26 (c) **Notice of Violation.** In from an inspection or investigation there appears  
27 to be a violation of these regulations, a Notice of Violation in writing shall be sent

1 to the person against whom criminal proceedings are contemplated stating the  
2 violation, and giving him fifteen (15) days to correct the problem. The Notice shall  
3 state the manner in which the alleged violator fails to meet the requirements of  
4 these regulations and what should be done to correct the problem.

5 (d) **Order.** After termination of the fifteen (15) day period if not action has  
6 been taken by the recipient to respond to the Notice of Violation, an Order in  
7 writing shall be send via registered mail or personally served upon the recipient,  
8 charging him with the violation. If the recipient had responded to the Notice of  
9 Violation, the case will be discussed and either dropped or, if the recipient is still  
10 found to be in violation, the fifteen (15) day time period before sending of the  
11 Order may be extended so as to count the period as stating from the time the case  
12 was discussed, rather than the date of receipt of the Notice.

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

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

21 (g) **Public Notice.** The Guam Environmental Protection Agency  
22 Administrator shall publish all Notices of Violation, Orders of Compliance,  
23 Notices of Defense, Voluntary Compliance Agreements and Referrals to the Office  
24 of Attorney General for Prosecution issued to any agency or persons in violation of  
25 any of the acts on its website and shall report to GEPA Board of Directors, all  
26 Notices of Violation, Orders of Compliance, Notices of Defense, Voluntary

1 Compliance Agreements and Referrals to the Office of Attorney General for  
2 Prosecution, no later than five (5) working days from issuance.

3 (h) **Voluntary Compliance Agreement.** Voluntary Agreement made and  
4 entered between the Guam Environmental Protection Agency and person/s in  
5 violation of GEPA rules and regulations for the purpose of resolving the Notice of  
6 Violation/Order of Compliance. All Voluntary Compliance Agreements *shall* be  
7 subject to the final review, approval and amendment by the GEPA Board of  
8 Directors.”

9 **Section 5. Severability.** If any provision of this Act or its application to any  
10 person or circumstance is held invalid, the invalidity *shall not* affect other  
11 provisions or applications of this Act which can be given effect without the invalid  
12 provision or application, and to this end the provisions of this Act is severable.

13 **Section 6. Effective Date.** This Act shall become effective upon enactment.