# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



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### **COMMONWEALTH REGISTER**

VOLUME 31 NUMBER 1

**JANUARY 28, 2009** 

## **COMMONWEALTH REGISTER**

#### VOLUME 31 NUMBER 1

**JANUARY 27, 2009** 

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## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial Governor

Timothy P. Villagomez
Lieutenant Governor

#### EXTENSION OF EMERGENCY Volcanic of Anatahan

WHEREAS, On May 13, 2003, a Declaration of Emergency was issued with respect to volcanic activity on the island of Anatahan; and

WHEREAS, said Declaration declared the island of Anatahan as unsafe for human habitation and restricted all travel to said island with the exception of scientific expeditions; and

NOW, THEREFORE, I, BENIGNO R. FITIAL, by the authority vested in me as Governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, and in accordance with the Emergency Management Office, Commonwealth of the Northern Mariana Islands and US Geological Survey, do hereby extend a state of disaster emergency in the Commonwealth with the respect of the island of Anatahan under the same terms and conditions as are contained in the original Declaration.

This Extension of Emergency shall remain in effect for thirty (30) days, unless the Governor shall, prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been revoked or further exteded for a like term, and giving reasons for extending the emergency.

Dated this 30th of December 2008,

BENIGNO R. FITIAL

Governor

Cc:

Lt. Governor (Fax: 664-2311) Senate President (Fax: 664-8803) House Speaker (Fax: 664-8900)

Mayor of the Northern Islands (Fux: 664-2710)

Executive Assistant for Carolinian Affairs (Fax: 235-5088)

Attorney General (Fax: 664-2349) Secretary Of Finance (Fax: 664-1115)

Commissioner of Public Safety (Fax: 664-9027)

Special Assistant for Management and Budget (Fax: 664-2272)
Special Assistant for Programs and Legislative Review (Fax: 664-2313

Press Secretary (Fax: 664-2290) United States Coast Guard (236-2968)

# Commonwealth of the Northern Mariana Islands Department of Public Health Joseph Kevin P. Villagomez, Secretary Lower Navy Hill Saipan, MP 96950

Tel 670-234-8950; Fax 670-234-8930 jkvsaipan@aol.com

# PUBLIC NOTICE OF EMERGENCY REGULATIONS WHICH ARE AMENDMENTS TO THE COMMONWEALTH HEALTH CENTER'S SCHEDULE OF FEES

**EMERGENCY ADOPTION AND IMMEDIATE EFFECT:** The Commonwealth of the Northern Mariana Islands Department of Public Health Secretary ("Secretary") finds that:

- (1) The attached amendment to the Commonwealth Health Center's Schedule of Fees shall be adopted immediately on an emergency basis because the public interest so requires, for the reasons stated below (1 CMC § 9104(b), (c); 1 CMC § 9105(b)(2)); and
- (2) The same regulations shall be adopted, after a proper notice and comment period, as permanent regulations pursuant to the attached Notice of Proposed Rules and Regulations and the Administrative Procedure Act, 1 CMC § 9104(a).

AUTHORITY: The Secretary is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the statute governing his activities. 1 CMC § § 2557 (rules and regulations). See also Executive Order 94-3 (effective August 23, 1994, reorganizing the Executive branch).

The Administrative Procedure Act provides that an agency may adopt an emergency regulation upon fewer than 30 days' notice if it states its reasons in writing:

- (b) If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days' notice, an states in writing its reasons for that finding, it may, with the concurrence of Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt and emergency regulation. The regulation may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.
- (c) No regulation adopted is valid unless adopted in substantial compliance with this section...

1 CMC § 9104 (b), (c).

THE TERMS AND SUBSTANCE: These Rules and Regulations provide for the adoption of new and amended rates for the services and procedures provided at the Commonwealth Health Center. Specifically, they provide that services and procedures are priced for billing purpose.

THE SUBJECTS AND ISSUES INVOLVED: These Rules and Regulations:

1. Amend and add the attached rates in the Commonwealth Health Center's Schedule of Fees.

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The Secretary has followed the procedures of 1 CMC § 9104(b) to adopt these Proposed Regulations on an emergency basis for 120 days.

REASON FOR EMERGENCY ADOPTION: The Secretary finds that the public interest requires adoption of these regulations on an emergency basis, for the following reasons:

- The Current Procedural Terminology (CPT) Codes determine the structure of the fees at the Commonwealth Health Center. Recent changes make it necessary for CHC to make amendments to their Schedule of Fees, as described by the CPT structure.
- 2. CHC physicians do not necessarily perform services listed in the CPT Manual. Therefore, when physicians find services and procedures are necessary for the medical care of the patient, CHC must price them and include them in the Schedule of Fees.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and Regulations shall be published in the Commonwealth Register in the section/s on emergency and proposed regulations (see 1 CMC § 9102(a)(1) and posted in convenient places in the civic center and in local government offices in each senatorial district. (1 CMC § 9104 (a) (1))

The Secretary shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them (1 CMC 9105(b)(2)).

IMMEDIATE EFFECT: These emergency rules and regulations become effective immediately upon filing with the Commonwealth Register and delivery to the Governor. (1 CMC § 9105 (b) (2)) This is because the Secretary has found that this effective date is required by the public interest or is necessary because of imminent peril to the public health.

TO PROVIDE COMMENTS: No comments are required for these emergency rules and regulations. However, the related Notice of Proposed Rules and Regulations will

specify comment procedures. Please see the notice regarding theses emergency regulations being presented as proposed regulations, in the February 2009 Commonwealth Register.

These emergency regulations were approved by the Secretary on January 26, 2009.

Submitted by:	12 x D	1/23/09
	Joseph Kevin P. Villagomez Secretary of Public Health	Date
Received by:	Esther S. Fleming Special Asst. for Administration	(28/09 Date
Concurred by:	Benigno R. Fitial Governor	1/5-8/09   Date
Filed and Recorded by:	Smolos	01.28.09

Esther M. San Nicolas

Commonwealth Register

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104 (a) (3), the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153 (f).

Gregory Baka

**Acting Attorney General** 

<u>1-27-09</u> Date Date

Feb-09

Page 1 of 5		Physician/Professional	Technical/Facility
CPT/HCPCS	Description	Fee/Component (	Fee/Component
27269	Optx thigh fx	1442.89	5.00
32020	Insertion of chest tube	178.29	5.00
32421	Thoracentesis for aspiration	194.00	n/a
32551	Insertion of chest tube	410.00	5.00
32602	Thoracoscopy, diagnostic	333.65	5.00
32650	Thoracoscopy, surgical	685.72	5.00
35207	Repair Blood Vessel Lesion Direct; Hand, Finger	1427.07	5:00
37607	Ligation of a-v fistula	540.24	5:00
44126	Enterectomy w/o taper, cong	2172.24	5.00
45378	Diagnostic Colonoscopy	465.00	n/a
49421	Insert Abdominal Drain, Permanent	427.03	5.00
49904	Omental flap, extra-abdom	1450.79	5:00 E
49905	Omental flap, intra-abdom	425.38	5.00, 300, 300, 41
58300	Insertion of IUD	95.00	n/a
59020	Fetal contract stress test	39.24	1.(4.81
59025	Fetal non-stress test	32.13	107.70
59030	Fetal scalp blood sample	118.19	213.32
59400	Obstetrical care	1803.03	2563.00
59409	Obstetrical care	803.00	1169.00
59410	Obstetrical care	924.07	1325.00
59412	Antepartum manipulation	108.21	161.00
59614	Vbac care after delivery	1211.17	1475.00
59899	Manual Replacement of Inverted Uterus	233.30	n/a
61312	Open skull for drainage	2361.55	5.00
62141	Repair of skull defect	1328.63	5.00 :

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CPT/HCPCS	Description	Physician/Professional Fee/Component	Technical/Facility Fee/Component
		240.00	100.00
62270	lumbar puncture		Alexander State
64721	Carpal Tunnel Surgery	467.10	5.00
65420	Removal of eye lesion	975.00	5.00
65426	Removal of eye lesion	1049.00	5.00
69000	Drainage external ear, simple	140.00	5.00
69005	Drainage external ear, complex	190.00	5.00
69020	Drainage, ext. auditory canal	175.00	5.00
69220	Debridement, mast, simple	78.00	5.00
69222	Debridement, mast, complex	168.00	5.00
69320	Reconstruction,external aud	1346.00	5.00
69420	Myringotomy w/o anesthesia	139.00	5.00
69421	Myringotomy w/ anesthesia	179.00	5.00
69424	Ventilating tube removal	81.00	5.00
69433	Tympanostomy, local anesth	148.00	5.00
69436	Tympanostomy, general anes	201.00	5.00
69440	Middle ear exploration	655.00	5.00
69501	Transmastoid antrotomy	749.00	5;00 ***
69502	Mastoidectomy, complete	996.00	5.00
69505	Mastoidectomy, mod.radical	1050.00	5.00
69511	Mastoidectomy, radical	1101.00	5.00
69540	Excision aural polyp	147.00	5.00
69604	Mastoid surgery revision	1280.18	5.00
69610	Tympanic memb repair	359.00	5.00
69620	Myringoplasty	478.00	5,00
69631	Tympanoplasty w/out ossicular	815.00	5.00

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CPT/HCPGS	Description	Physician/Professional Fee/Component	Technical/Facility Fee/Component
		1029.00	
69632	Tympanoplasty, ossicular	1011.00	5:00
69641	Tympanoplasty, middle ear	945.00	5.00
69660	Stapedectomy	945.00	5:00:
69720	Decompression facial nerve	1155.00	5.00
69960	Decompression, internal canal	2060.00	5.00
72285	X-ray c/t spine disk	58.84	738:00
90945	Dialysis procedure, with single MD eval	n/a	174.15
90947	Dialysis procedure, with repeated MD eval	n/a	280.64
92552	Pure tone audiometry, air	22.07	135:00
92557	Comprehensive Hearing Test	48.75	108:00
92567	Tympanometry	24.47	48.00
92586	Auditor evoke potent, limit	81.45	83:55
92587	Evoked auditory test	7.77	116.16
92950	Cardiopulmonary Resuscitation	177.36	49.15
92975	Coronary Thrombolysis, intracoronary	393.19	156,81
92977	Coronary Thrombolysis, intravenous	286.20	298.80
		n/a	
93005	Electrocardiogram, tracing	251.44	60.00 n/a
93012	Transmission of ecg	6.96	17000
93041	Rhythm ECG, tracing	55.65	440.00
93225	ECG monitor/record, 24 hrs	64.12	110.00
93231	Ecg monitor/record, 24 hrs	n/a	135:16
93236	ECG monitor/report, 24 hrs	338.47	230:60 n/a .
93268	ECG record/review	46.80	
93270	ECG recording		223.00
93271	Ecg/monitoring and analysis	263.40	n/a

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		Physician/Professional	
CPT/HCPCS	Description	Fee/Component	Fee/Component
94002	Continuous Inhaler, 1st hour	n/a	90:00
94003	Continuous Inhaler, Add'l Hour	n/a	70.00
94010	Breathing capacity test	8.53	115.00
94060	Wheezing evaluation/Breathing Capacity Test	60.00	160.00
94150	Vital capacity test	n/a	80.75
94375	Respiratory flow volume loop	15.50	78.65
94640	Airway inhalation treatment	14.79	28.50
94642	Airway inhalation, pentamidine	n/a	60:00
94644	Airway inhalation treatment	41.37	40:00
94645	Airway inhalation treatment	15.69	40.00
94660	Pos airway pressure, CPAP	38.19	55 28
94664	Evaluate pt use of inhaler	15.87	30.25
94667	Chest wall manipulation	25.04	51.39
94668	Chest wall manipulation	21.00	85.50
94750	Pulmonary compliance study	11.81	962.77
94762	Measure blood oxygen level	27.93	1430.71
94770	Exhaled carbon dioxide test	7.29	42.32
96422	Chemo ia infusion up to 1 hr	n/a	551.00
96423	Chemo ia infuse each addl hr	n/a	220.50
96521	Refill/maint, portable pump	156.77	n/a
96522	Refill/maint pump/resvr syst	139.40	n/a
96523	Refill/main pump	n/a	33.65
		n/a	
97001	Physical Therapy, Evaluation	n/a	95.00
97002	Physical Therapy, Re-Evaluation	n/a	50.00
97802	Medical nutrition, indiv, in		82.50

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CPT/HCPCS	Description	Physician/Professional Fee/Component	Technical/Facility /Fee/Component
97803	Med nutrition, indiv, subseq	n/a	82.50
97804	Medical nutrition, group	n/a	32.00
99143	Mod cs by same phys, < 5 yrs	69.42	n/a
99144	Mod cs by same phys, 5 yrs +	103.51	n/a
99145	Mod cs by same phys add-on	25.76	n/a
99195	Phlebotomy	n/a	78 60
99341	Home Visit, Straightforward, NEW	120.00	n/a
99342	Home Visit, Low complexity, NEW	155.00	n/a
99343	Home Visit, Moderate, NEW	225.00	n/a ****
99344	Home Visit, comprehensive, NEW	260.00	n/a
99345	Home Visit, comp. High complxity, NEW	325.00	n/a
99347	Home Visit, EST, problem focused	95.00	n/a
99348	Home Visit, EST, expanded	135.00	n/a
99349	Home Visit, EST, detailed	205.00	n/asse,
99350	Home Visit, EST, comprehensive	298.00	n/a
G0101	CA Screen; pelvic/breast exam	39.21	38:55

#### Notes:

- 1. Physician/Professional Fee is a fee for the services of a medical professional
- 2. Facility Fee fees for the services of the hospital/outpatient facility
- 3. Both Professional and Facility fees are charged when the medical professional is an *employee* of CHC. or if the medical professional is contracted to provide services for CHC
- 4. If the medical professional is working for a private clinic, the patient will receive a bill from CHC for the facility fee only and will receive a separate bill from the private clinic for the professional component.
- 5. Some procedures may only have either the professional component or the facility component and therefore, will only have one of the components with a fee.

#### COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

#### COMMONWEALTH PORTS AUTHORITY

Efrain F. Camacho, P.E., Executive Director Main Office: SAIPAN INTERNATIONAL AIRPORT, 2nd Floor Arrival Bldg. P.O. Box 501055, Saipan, MP 96950

> Tel. (670) 237-6500 Fax. (670) 234-5962 E-mail Address: cpa.admin@pticom.com

#### PUBLIC NOTICE OF EMERGENCY REGULATIONS AMENDING THE RULES AND REGULATIONS OF THE **COMMONWEALTH PORTS AUTHORITY RE:**

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The Commonwealth Ports Authority ("CPA"), by and through its Executive Director finds as follows:

- 1. The attached rules and regulations regarding the Terminal Tariff shall be adopted immediately on an emergency basis because the public interest so requires, for the reasons stated below (1 CMC §9104(b), (c); 1 CMC § 9105(b)(2); and
- 2. CPA intends that same Rules and Regulations shall be adopted as permanent regulations and is separately publishing notice thereof.

AUTHORITY: Pursuant to 2 CMC 2122 (g) CPA has the statutory authority to determine the charges or rentals for the use of any property under its management and control, and the terms and conditions under which the property may be used.

Charges shall be reasonable and uniform for the same class of service, and established with due regard to the value of the property and improvements used and the expense of the operation of the authority. The Authority shall have and may enforce liens to enforce the payment of any such charges through appropriate judicial proceedings. The right to levy charges or rentals for the use of the property under its management shall be exclusively that of the Authority and all such charges and rentals as well as other revenues of the authority shall be and remain revenues of the Authority to be applied as herein set forth.

Pursuant to 2 CMC § 2141 the Authority may promulgate, adopt and enforce appropriate regulations based upon the Authority's own safety requirements to prevent hazards and obstructions which may interfere with the mooring, loading or unloading by any seacraft from any seaport owned or operated by the authority within the Commonwealth. To such end, all appropriate boards, commissions, the Governor, and

other agencies of the government shall cooperate with the Authority in coordinating their actions, plans and programs, and in enforcing such appropriate regulations. Source: PL 2-48, § 24; 2 CMC § 2141.

Pursuant to 2 CMC § 2142 rules and regulations shall be in full force and effect 30 days after the publication of the notice hereby required, and ignorance thereof is not a defense to a prosecution for the enforcement of a penalty. After required publication, the rules and regulations shall be judicially recognized by the courts as valid civil ordinances of the Commonwealth. Source: PL 2-48, § 17; 2 CMC § 2142.

Pursuant to 2 CMC § 2143 any person substantially interested or affected in his or her rights as to person or property by a rule or regulation adopted by the authority may petition the authority for a reconsideration of the rule or regulation, or for an amendment, modification, or waiver thereof. The petition shall set forth a clear statement of the facts and grounds upon which reconsideration, amendment, modification, or waiver is sought. The authority shall grant the petitioner a public hearing within 30 days after filing the petition and the authority's decision upon the petition shall be publicly released not more than 20 days after the final public hearing held upon the petition. Source: PL 2-48, § 18; 2 CMC § 2143.

Pursuant to 2 CMC § 2144 in addition to the notice of adoption of rules or regulations relative to civil penalties, a substantive statement shall be published, in condensed form, along with the notice, so as to afford an intelligent direction of the mind to the act forbidden by the civil rules or regulations. One notice may embrace any number of rules and regulations. The notice must advise that breach of the particular rules or regulations will subject the violator to a civil penalty as set by the board in the adoption of the rules and regulations. The notice must also state that the full text of the rules and regulations are on file at the principal office of the authority, where the same may be read by any interested person during reasonable business hours. 2 CMC § 2144.

Pursuant to 2 CMC § 2146 the CPA Executive Director shall enforce rules and regulations of the authority governing the assessment of civil penalties.

- (a) The rules and regulations shall provide for a reasonable time, not less than 10 days, for due notice to the person assessed of the nature of the violation committed, and during which the person assessed may answer the assessment by denying liability, by offering a compromise to the executive director, or by paying the assessment.
- (b) The rules and regulations shall also provide notice that failure to pay the final civil penalty assessed by the time set in the rules and regulations may result in collection of the penalty through the Commonwealth Trial Court or the U.S. District Court.

2 CMC § 2146.

In addition to CPA's statutory authority through its enabling act, 2 CMC §§ 2101 et seq., and the Administrative Procedure Act provide that an agency may adopt an emergency regulation upon fewer than 30 days' notice if it states its reasons in writing:

If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days' notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulation may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.

(c) No regulation adopted is valid unless adopted in substantial compliance with this section. A judicial proceeding for a declaratory judgment to contest any regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation.

1 CMC § 9104(b), (c).

TERMS AND SUBSTANCE OF THE TERMINAL TARIFF: These Rules and Regulations provide for the immediate increase of fees that will allow CPA to generate sufficient revenues to maintain the 1 25% revenue-to-bond-payment-ratio at all times for the duration of the bond.

CPA is compelled by its Bond Indenture Agreement with the Bank of Guam for the Seaport Revenue Bonds to pledge its revenue from its operations toward debt service.

SUBJECTS AND ISSUES INVOLVED: Seaport Terminal Tariff: Analysis of the most recent seaport financial condition compels a 90% increase in the terminal tariff to meet the requirements of the bond indenture.

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The CPA Board has approved the terminal tariff increase on January 14, 2009.

COMPELLING REASONS FOR EMERGENCY ADOPTION: The CPA Board and Management finds that the public interest compels the adoption of these regulations on an emergency basis for the following reasons:

1. CPA is directed by statute to determine the charges or rentals for the use of any property under its management and control, and the terms and conditions under which the property may be used.

- 2. CPA is authorized to pledge its assets and revenues toward revenue bonds for the construction, renovation and development of its facilities.
- 3. In 1998 and 2005, CPA and the Bank of Guam, as the Bond Trustee, signed the Seaport Revenue Bonds committing CPA's revenue to service the principal and interest in return for financing for the seaport construction and renovation.
- 4. The Bond Indenture Agreement requires CPA to have sufficient revenue to service the debt. Section 6.11 of the Bond Indenture Agreement requires CPA to have a debt service ratio of net revenues of 1.25 at all times. Whenever that ratio falls below the established rate, CPA is compelled to hire a Bond Consultant to undertake a rate study and whose recommendations shall be implemented by CPA.
- 5. In July 2008 CPA commissioned BST Associates, Inc., to undertake a rate study of the terminal tariff based on historical data. And in December 2008 CPA commissioned a financial consultant to review and analyze the most recent data and recommend the terminal tariff increase that would enable the Authority to comply with the bond requirements.
- 6. Following the standard procedure of publishing notice and comment would further delay the implementation of the terminal tariff. The Bond Trustee has impressed upon CPA's Board the urgent need to implement all cost recovery in the form of rate increases and charges. These new rates are therefore necessary immediately.
- 7. Any further delay in cost recovery for any rates or fees would threaten the public welfare with the specter of a default and acceleration of the balance of approximately \$35 million due and/or a takeover in management of the Saipan Seaport resulting in even more increased fees, more detrimental to the public.
- 8. CPA's present fees are insufficient for cost recovery. These new fees were approved by the CPA Board on January 14, 2009. As of the release of the FY 2007 Audit, August 5, 2008, CPA's debt service ratio is .843 and so CPA must immediately implement cost recovery measures.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and Regulations shall be published in the Commonwealth Register in the section on emergency and proposed regulations, 1 CMC § 9102(a)(1), and posted at each CPA office, including the Airport Administration Office and Port of Saipan Office, in convenient places in the Courthouse, in local government offices, and in each senatorial district.

CPA shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them, including: all vessel agents; Port of Saipan vessels; tenants at the Port of Saipan; all Foreign Vessel operators; and all law

enforcement agencies, including the Drug Enforcement Administration; CNMI Department of Public Safety; and CNMI Division of Customs.

IMMEDIATE EFFECT: These emergency rules and regulations become effective immediately upon filing with the Commonwealth Register and delivery to the Governor. 1 CMC § 9105(b)(2).

PUBLIC COMMENTS: No comments are required for these emergency rules and regulations. However, the Notice of Proposed Rules and Regulations and CPA's statutory requirements set forth above specify comment procedures for the proposed regulations. Please see the notice regarding these emergency regulations being presented as proposed regulations.

SUBMITTED BY:	EFRAIN F. CAMACHO, P.E. CPA Executive Director	<u>0//2//09</u> Date
CONCURRED BY:	BENIGNO R. FITIAL Governor	01/38/09 Date
FILED AND RECORDED BY:	ESTHER M. SAN NICOLAS Commonwealth Register	<u>01.28.0</u> 9 Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) (approval by Attorney General required) the emergency regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published.

**Acting Attorney General** 

Pursuant to Public Law 2-48 codified at 2 CMC § 2101 et. seq. (the Commonwealth Ports Authority Act); the Commonwealth Ports Authority Terminal Tariff specifically at Parts III through VIII; and the 1998 Seaport Bond Indenture Agreement at Section 6.11, the Commonwealth Ports Authority through its Executive Director hereby gives notice of the following:

PARTS III THROUGH VIII OF THE CPA TERMINAL TARIFF ARE HEREBY AMENDED AS FOLLOWS:

#### "PART III. WHARFAGE

A. Wharfage Rates. Wharfage rates shall be charged on the basis of a revenue ton. Wharfage for all cargo other than liquid petroleum products off-loaded or on-loaded by pipeline shall be:

Wharfage for liquid petroleum products which includes, gasoline, diesel, bunkers and other liquid petroleum products off-loaded or on-loaded by pipeline shall be:

B. Limitations. Provided the ocean bill-of-lading reads transshipment, and the cargo does not leave the control of the inward or outward carriers at the port while awaiting transshipment, and the second carrier's bill-of-lading provided by the agent involved indicates the first carrier vessel's name, voyage number, and other pertinent information, and (a) if the final destination of the cargo is a port outside the Commonwealth, the wharfage rates specified in Paragraph A of this Part III shall not apply.

Instead, the wharfage rates for such cargo shall be \$2.38 per revenue ton. The minimum charge per bill-of-lading shall be \$2.38; or (b) if the final destination of the cargo is a port within the Commonwealth, the wharfage rates specified in Paragraph A of this Part III shall apply provided that cargo upon which wharfage charges have been paid at the port of transshipment shall not be subject to a wharfage charge at the port of final destination. Alternatively, the Executive Director may provide for the collection of wharfage charges at the port of final destination.

- C. [unchanged]
- D. [unchanged]

#### PART V. PORT ENTRY FEE

All vessels (except military and government-owned vessels) shall pay a Port Entry Fee as indicated in the schedule below when entering a CNMI port, or refueling within the territorial waters of the Commonwealth of the Northern Mariana Islands.

Α.	For vessels of	1,000 registered	gross tons or less.	•	\$220.40
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- C. For vessels over 2,000 registered gross tons . \$438.90

Plus an additional charge of \$220.40 for each 2,000 registered gross tons or fraction thereof in excess of 2,000 registered gross tons.

#### PART V. DOCKAGE

- A. [unchanged]
- B. [unchanged]
- C. [unchanged]
- D. Dockage Rates shall be as follows:

#### Overall Length of Vessel in Feet

Over	But Not Over	Charge per 24-Hours or Fraction Thereof
0	100	\$199.50
100	150	\$252.70
150	200	\$307.80
200	300	\$528.20
300	350	\$798.00
350	400	\$967.10
400	450	\$1,130.50
450	500	\$1,297.70
500	550	\$1,463.00
550 and Over		\$2,065.30

The Commonwealth Ports Authority declares that the commercial docks and wharves of the Commonwealth are intended for active loading and unloading of vessels. It is therefore the policy of the Authority to discourage inefficient use of the limited space at the commercial docks and wharves by providing surcharge for vessels moored or docked when they are not actively engaged in loading or unloading.

[Paragraphs 1 through 4 remain unchanged]

#### PART VI. MISCELLANEOUS CHARGES

- A. [unchanged]
- B. [unchanged]
- C. Bunker Fee. A charge of \$0.86 per barrel for residual oil and \$1.43 per barrel for diesel fuel, will be assessed all suppliers of oil for bunkering at the port.
- D. Home Port Fee. Rates and fees for vessels operating in the territorial waters of the Commonwealth on a continuing and long-term basis may be established by agreement, exclusive of this Terminal Tariff, pursuant to the powers conferred upon CPA by law. In the absence of such an agreement, all of the rates and fees set forth in this Terminal Tariff and elsewhere in the Harbor Regulations shall apply, except that the rates shall be as follows:

#### At the Commercial Ports of Saipan and Tinian

Overall Length of Vessel in Feet:		Charge Per Month or Fraction Thereof:
Over	But Not Over	
0	25	\$93.10
25	75	\$155.80
75	100	\$475.00
100	150	\$636.50
150		\$750.00
At the C	ommercial Port of Rota	
Overall Length of		Charge Per Month
Vessel in Feet:		or Fraction Thereof:
Over	But Not Over	
0	10	\$22.80
10	12	\$30.40
12	14	\$38.00
	0	

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14	16	\$45.60
16	18	\$62.70
18	20	\$76.00
20	22	\$83.60
22	24	\$91.20
24	26	\$100.70
26	75	\$210.90
75	100	\$319.20
100	150	\$425.60
150		\$525.00

- E. Port Special Service /Vessel Traffic Control Fee. Vessels shall pay a special service fee of \$40.00 for services rendered after normal working hours during the week, weekends, and holidays.
- F. Passenger Fee. Unless otherwise agreed to by the Commonwealth Ports Authority, there shall be a charge of \$16.76 for every person that boards a vessel through any port or harbor in the Commonwealth which CPA exercises the various powers conferred upon it by law. Crew members of U.S. military vessels as well as crew members of vessels under contract by the U.S. military are exempt from paying the passenger fee.

#### G. [unchanged]

- H. Public Parking Fees. A Public Parking Fee Schedule is hereby instituted at the Port of Saipan in order to generate additional revenue to assist the Commonwealth Ports Authority meet its seaport operating expenses and revenue bond obligations that were issued in order to redevelop and make major improvements to the Port of Saipan. The following public parking fees and provisions shall apply:
  - 1. All vehicles owned by members of the general public shall park in designated-parking areas only and shall pay a public parking fee per vehicle as follows:

a.	One Hour or Less (minimum fee)	\$1.00
b.	Hourly Rate	\$1.00
c.	Each Additional or Fraction Thereof .	\$1.00
d.	Maximum Daily Rate	\$10.00
	(more than 10 hours for each 24-hour period	)
e.	Fee for Lost Parking Ticket per Day .	\$10.00

2. Buses or any vehicle with a seating capacity in excess of 25 seats that drop off and pick up passengers at the Port of Saipan shall pay a monthly fee of \$125.00 per vehicle. Any vehicle with a seating capacity of 25 or less shall pay a monthly fee of \$100.00. Because of the limited parking space at the Port of

Saipan for buses, such vehicles may only drop off and pick up passengers. If any bus parks at the limited bus-parking stalls, however, it shall pay an additional fee of \$10.00 per hour.

- 3. Each taxicab shall pay a fee of \$15.00 per month beginning the effective date of the Terminal Tariff, as amended, and shall end on January 30, 2010. After January 30, 2010, each taxicab shall pay a fee of \$25.00. The taxicabs shall park at the taxicab-designated parking stalls.
- 4. Seaport tenants who park at the Port of Saipan public parking stalls shall pay an annual fee of \$35.00 per vehicle.
- 5. Exemptions. The following vehicles are exempted from paying the parking fees: CPA-owned vehicles and vehicles owned by CPA officials and employees; CNMI Government vehicles; and U.S. government vehicles (including U.S. military).
- 6. Vehicles parked in violation of the parking regulations will be towed away from the port premises at the owner's expense.
- 7. Color-coded decals may be issued to identify the various categories of vehicles covered by these regulations.
- 8. Frequent Commuter Parking Permit Fee. Travelers who commute to and from Saipan on a frequent basis may obtain a Frequent Commuter Parking Permit from the Commonwealth Ports Authority upon paying in advance the prescribed fee. Such permit shall be prominently displayed inside the vehicle on the dashboard while parked and shall be presented to the parking attendant when exiting. Such permit shall allow for unlimited parking during the specified period.

(a) Annual Fee . . . \$400.00

(b) Semi-Annual Fee . . \$250.00

PART VII. [unchanged]"



#### COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Department of Public Safety



Benigno R. Fitial Governor

Timothy P. Villagomez Lieutenant Governor

#### PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF THE BUREAU OF MOTOR VEHICLES.

#### PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED REGULATIONS

Volume 30 Number 12 pp 028972 - 028983 of December 22, 2008.

Emergency (24 hrs.) 911

DPS Main Switchboard (670) 664-9000

664-9022

Police Division 664-9001

Fire Division 664-9003

Bureau of Motor Vehicle 664-9066

Training and Development 664-9094

Administrative Support Tel: 664-9000

Office of Special Services 664-9120

Rota DPS Tel: (670) 532-9433 Fax: (670) 532-9434

Tinian DPS Tel: (670) 433-9222 Fax: (670) 433-9259

ACTION TO ADOPT PROPOSED REGULATIONS: The Department of Public Safety, Bureau of Motor Vehicles, HEREBY ADOPTS AS PERMANENT regulations Office of the Commissioner the Proposed Regulations which were published in the Commonwealth Register at Volume 30, Number 12, pp 028972-028983, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Bureau of Motor Vehicles announced that it intended to adopt them as permanent, and now does so. A true copy is attached. I also certify by signature below as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations and that they are being adopted without modification or amendment, except as state as followed:

1.	Proposed Regulations:
	Einaar Drintina

Finger Printing		
Firearms	\$10.00	\$20.00
	Set of 2	Set of 2
Employment	\$10.00	\$20.00
	Set of 2	Set of 2
Teachers	\$24.00	\$48.00
	Set of 2	Set of 2
Taxicab	\$24.00	\$48.00
	Set of 2	Set of 2

#### 2. These Regulations:

Finger Printing		
Firearms	\$5.00	\$10.00
	Set of 1	Set of 1
Employment	\$5.00	\$10.00
	Set of 1	Set of 1
Teachers	\$24.00	\$48.00
	Set of 1	Set of 1
Taxicab	\$24.00	\$48.00
	Set of 1	Set of 1

The changes are non-material because they lower the fees to the public and thereby benefit the public.

Page 1 of 3

PRIOR PUBLICATION: The prior publication was as stated above.

AUTHORITY: The Department of Public Safety is required by the Legislature to adopt rules and regulations regarding those matters over which the Department of Public Safety has jurisdiction, including its regulation of the increased service fees, Public Law 16-2 the "Various Government Fees".

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC § 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC Sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for modified regulations: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE, under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 23rd day of January, 2009, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Santiago F. Tudela Commissioner

Page 2 of 3

Date: 01/27/09

The AG's signature, and this paragraph, is necessary ONLY if there have been changes. Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3)(obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations).

Dated the 2) 1 day of January, 2009

GREGORY BAKA,

Acting Attorney General (F0199)

Filed and

Recorded by:

Date: 01.27.09

Commonwealth Register

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#### COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS THE ZONING BOARD

	,	
In the Matter of	)	Docket No. 08-02
Big Bang Entertainment, LLc.	)	Appeal of Administrator Order No
	)	2008-1020-NOV
	)	
	)	Final Opinion and Order
	j	Date filed: Jan. 10, 2009

Final Opinion and Order After Hearing

#### Introduction and Purpose

This Opinion and Order embodies the Zoning Board's ("the Board's") final decision in this case. After hearing all the evidence and receiving the parties' legal arguments, the Board finds and concludes that the permitee, Big Bang Entertainment, LLc. ("BB"), has violated the terms of its permit and should be fined civilly. The Notice of Violation is upheld and the unlawful use for this location - the use of gambling machines - shall cease.

#### Facts and Procedure

The Zoning Law's imposition of zoning requirements for new uses became effective February 1, 2008, with the effectiveness of the new Zoning Law. Zoning Law of 2007, § 1201. Thereafter, every use had to conform to its zone, or receive regulatory permission to do otherwise.

Pursuant to statute, the Zoning Board has enacted zoning requirements for Garapan that prohibit poker machines and other forms of gambling. The recent re-adoption of the Zoning Law of 2008, reaffirms those gambling-free zones. The only allowable gambling for the Garapan zone would be that for a prior nonconforming use. This is embodied in BB's permit, Ex. S-1.

The petitioner/appellant, BB, is an Llc business (Ex. BB-1) which runs a video entertainment business in Garapan. BB applied for, and received on June 26, 2008, a permit to run an indoor amusement, non-gambling, business, a video horse-race entertainment shop; and it was so permitted. (Ex. S-1).

The essence of this case is that adult gambling businesses are not permitted for Garapan, and that Big Bang was not in business prior to February 1, 2008, as a lawful brior nonconforming gambling use.

The Zoning Officer's photos of October 23, 2008 (Ex. S-2), and the Notice of Violation's ("NOV") allegations (Ex. S-6), if true, show a full-scale gambling parlor, complete with licensed machines. If true, this would be a violation of the explicit conditions of the permit, and unlawful. The NOV also ordered the respondent to cease and desist from the allegedly un-permitted use. BB petitions and appeals the NOV to the Zoning Board.

On May 23, 2008, Mr. Du Young Jang visited the offices of the Zoning Administrator with the intention to start a new business in Garapan, at the Millennium Plaza, close to the intersection of Coffee Tree Mall and Royal Palm Avenue, behind Tony Roma's. (See Ex. S-3). The location is within one or two blocks of the Paseo outdoor mall, the Fiesta Hotel and the Hyatt Hotel and, in the other direction Garapan Elementary School. The Board's zoning maps show that it is also within walking distance of homes, American Memorial Park, the Joeten shopping plaza, and, of course the Garapan beaches The BB application was dated May 28, 2008. (See Ex. S-5.)

Mr. Jang explained that he wanted to install a new-to-Saipan, high performance video amusement game for horse-racing. A very large, very expensive LCD screen would display a horse race. The players, sitting at their electronic consoles, would bet on the horse race. This game was very popular with Koreans and Japanese, both large tourist populations for Saipan. The game, which would be open for business during days and nights, would fill an entertainment gap that was well understood for Saipan – lots to do during the days, not much to do at night.

Another advantage of the plan, according to BB's expert witnesses, Edward DeLeon Guerrero and Steven Sanchez Delacruz, was that the gambling game would be located in Garapan, away from the island's villages. It would enhance tourism and nearby properties, they added. Mr. Jang also pointed out, during the hearing, that locals are not used to the game and do not appear to favor it over the much simpler computer poker.

Mr. Tilley advised Mr. Jang orally and in writing on June 16, 2008, (Ex. S-5), that BB could not lawfully conduct the business as a gambling enterprise, with payouts in cash. Only an amusement "use" would be allowed.

Mr. Jang returned to the Administrator with a written business plan, explaining how this "amusement" would offer its winnings in food, drink, coupons for purchases at local businesses and frequent player cards. (Letter of June 24, 2008, fr DY Jang to ST Zoning Administrator) (Ex. S-4). Based on that representation, the Administrator issued a permit. The terms of the permit were explicit, prohibiting gambling machines:

- A. . . . . findings of fact:
- 1. The applicant proposes a video horse-race business in the Millennium Plaza's first floor. These game machines are for entertainment purpose only and are not 'adult gambling machines'.
- 2. An indoor amusement business is a permitted use in the Garapan Core Zoning District.

- B. Therefore, the Zoning Administrator hereby approves this Zoning Permit with the following conditions:
- 1. Standard Conditions

- 2. Special Conditions
- a. The applicant will submit a sign permit application at a later date.
- b. Adult gambling machine business is not permitted.

- D. Appeal and violations
- 1. Violation of this permit shall be grounds for suspension or revocation (Saipan Zoning Law Section 1312).
- 2. Violation of this permit is subject to penalties of up to \$1,000 per day (Zoning Code, 2 CMC Section 7254).

(Zoning Permit No. 2008-1020-ZP (June 26, 2008), pp 1-2)(Ex. S-1). (Emphasis added)

According to the testimony of Mr. Jang and Tony Muna, of CM Investment, Inc. (see Ex. BB-5), subsequently Mr. Jang entered into a business arrangement with Tony Muna and Ms. Crisostomo for the lease or license of 12 horse-racing gambling machines, to be used on the BB premises. The latter two had a total of 43 machines on their property, but the licensing for them all, at \$6,000 per machine, would be too expensive for BB.

The Department of Finance, Revenue & Tax Division, licensed BB for the business of screen video horse race amusement" on July 2, 2008, and issued a tax i.d. number. (Ex. BB-2) DPW's building inspection division issued a certificate of occupancy for "B2-Video Amusement" on July 17, 2008. (Ex. BB-3)

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Big Bang did not open for business until after its machines were inspected and licensed by the Department of Finance's Rev & Tax Division as gambling machines. The cost of each license on each machine was, and is, \$6,000 per year. By contrast, the license cost for an amusement machine is \$150.00 per year.

On October 3 Mr. Jang brought a machine, and the screen setup, out onto the floor of BB's premises for review by the Rev & Tax representatives. They needed to inspect the set-up, he explained, because it was new to Saipan, and they were unsure how to classify it. Rev & Tax placed stickers on the machines that day, Mr. Jang paid the \$6,000 licensing fee for 12 of them the same day, October 3, 2008, (Ex. BB-4), and Mr. Jang immediately opened BB for business.

Shortly thereafter, Jeffrey Dela Cruz, Zoning Officer, heard from Rev & Tax that BB had opened its gambling machine business in Garapan. On October 23, 2008, he visited BB. Mr. Jang was not in, but there were signs welcoming the public, the doors were open, and a cashier stood at ready as Mr. Dela Cruz entered. Mr. Dela Cruz identified himself explained his reason for the visit, the cashier bowed welcome, and Mr. Dela Cruz began his inspection. During his visit he took interior and exterior photos. The photos show what Mr. Dela Cruz testified to: There were signs prohibiting the entry of minors and explaining that cash winnings would be taxable. (Ex. S-2) (Big Bang also offered 16 photographs of the premises, the machines, and their license stickers. Ex.'s BB-6 and -7.)

The Administrator shortly thereafter issued a Notice of Violation ("NOV") against Big Bang Entertainment, Inc., 2007[sic]-1020-NOV, on October 30, 2008. (The Board has corrected this typographical error and re-captioned the NOV as "2008"-1020-NOV.)

BB, the Respondent, timely appealed to the Board. After BB requested, and was granted a one-month continuance on the hearing date, BB asked for another. This was denied and the case went to hearing on January 5, 2009. The hearing lasted for approximately 5 hours, from about 7 p.m. to midnight.

At the hearing, the parties appeared through counsel – Ms. Meaghan Hassel-Shearer for the Zoning Administrator's Staff and Mr. Victorino Torres, for BB. Each party offered exhibits and witnesses' testimony. Staff offered six exhibits. All were admitted, including Staff's photos of BB over BB's objection. Staff offered the testimony of Mr. Jeffrey Dela Cruz, the Zoning Officer, and Therese Ogumoro, Acting Zoning Administrator. The testimony of Mr. Dela Cruz was allowed over BB's objection. BB offered 7 exhibits. All were admitted. BB offered the testimony of three witnesses, all of which was allowed: Mr. Du Young Jang, BB's proprietor; Mr. Tony Muna, a lessee of the premises and an owner of BB's horse-racing machines; and Edward DeLeon Guerrero, an expert witness. BB also offered the written statement of Steven Sanchez Delacruz, which was admitted without objection. (Ex. BB-6)

The witnesses testified to the above facts, and other facts.

1 2

#### Other facts

Mr. Jang has worked on Saipan since 1989. He has a family here, including a son in high school. He speaks and writes English.

The Big Bang enterprise has a complicated and confusing relationship with local, Chamorro residents. As one of them, Mr. Tony Muna, testified, that he and his partner, Ms. Crisostomo, leased the premises from the owner of the building. They also own the machines which Big Bang uses. Apparently BB rents from Muna and Crisostomo. But, says Muna, he and she are not partners in Big Bang. Because the Board is not concerned with, for instance tax or tort matters, it is not important to this Opinion and Order at this time precisely who owns what with respect to the real estate and the BB enterprise.

There were a total of 42 machines "at their house", testified Mr. Jang, referring to either Mr. Muna's or Ms. Crisostomo's place.. But he was using only 12 machines, due to the high cost of licensing them – \$6,000 per gambling machine per year.

#### Discussion and Findings of Fact

The Board has carefully reviewed this matter. We have listened to the testimony and reviewed every exhibit. We are fully advised in this matter.

We must emphasize that it is the public policy of the Commonwealth to move all gambling out of Garapan and turn Garapan into a "family friendly" tourist venue. This is the community's decision. There have been extensive public hearings on this matter. The Local Delegation of the Legislature has twice affirmed this in the Zoning Law, most recently in November, with passage of the Zoning Law of 2008 (signed by Governor B.R. Fitial 12/5/2008), codified by reference at 10 CMC § 3511, SLL 16-6. The Zoning Board and the Staff have been trying faithfully to carry out the will of the community.

It is, therefore, disturbing, when a business knowingly violates the will of the community. That is the situation the Board faces today.

We conclude that Big Bang violated its permit, knew it was violating its permit, and continues to violate its permit. The evidence demonstrated that Mr. Jang had in mind the use of the horse-racing machines as a gambling business when he applied for a permit.

For whatever reason, the "business plan" he submitted to the Administrator, showing only a zoning-compliant "amusement" business, but no gambling, was a non-starter. In effect it was a fiction, intended to induce the Administrator to issue a permit which BB could then take to other agencies in order to open its gambling business.

Apparently Rev & Tax did not notice the restriction on the permit, if, indeed, BB ever showed the permit to Rev & Tax. And, we are not sure that Rev & Tax has a duty to determine whether businesses which apply to the agency for licensing, are properly situated within zones set by the Zoning Law and the Board. We would prefer that Rev & Tax did take our permits into account.

We appreciate the efforts of very able counsel for the two parties in this case. They each presented the cases for their clients excellently. But, as for the testimony of the BB witnesses, we must state the following: We find Mr. Jang less than credible. His business plan for a non-gambling amusement business appears to be a deliberate effort to mislead the Staff of the Zoning Administrator. Mr. Muna's explanation of the relationships among him, Mr. Jang, Ms. Crisostomo and Big Bang was, at best, confusing and apparently less than candid.

We are inclined to exert the full power of our offices, assess the full civil penalty of \$1,000 per day since the NOV, October 30, 2008, and "lift the corporate veil" to assess it against the true principals in this business.

But we are proceeding more gently. This is a case of first impression. The testimony might be seen as supporting a misunderstanding, or a mid-course change in the BB business plan. Our present objective is to get this non-conforming, unlawful business shuttered, or changed into something that fits the zoning permit.

#### Conclusion and relief

The Board now, being fully advised in the premises, HEREBY FINDS, CONCLUDES and ORDERS THAT:

- 1. The Acting Administrator issued a Notice of Violation ("NOV") of permit conditions to Big Bang Entertainment, Inc. ("BB") on October 30, 2008.
- BB's zoning permit, issued on June 26, 2008, unambiguously prohibited a gambling-machine-based business on BB's premises.
- 3. Big Bang timely appealed the Notice of Violation.
- 4. The NOV sets out a civil penalty of \$1,000 per day for each day that the asserted violation continues.
- 5. The Board held a hearing for this matter on January 5, 2009, at which BB

- participated.
- 6. Big Bang conceded through counsel and by its principal's, Mr. Jang's, testimony, that it had violated the terms of the zoning permit.
- Independently of BB's concession, it is clear that BB violated the terms of the zoning permit.
- 8. The Board investigator properly and lawfully sought entry of BB's premises by approaching during business hours, identifying himself and requesting permission to look around, and received a nonverbal assent from the BB agent at the entrance, a bow.
- 9. The Board investigator's evidence his photographs and his testimony of what he saw establishes conclusively that BB was and is engaged in a gambling machine-based business.
- 10. This evidence was lawfully gathered and developed.
- 11. The testimony of BB's witnesses Jang and Muna established independently that BB knowingly employed gambling machines on its premises, in violation of the express terms of its zoning permit.
- 12. It is also clear that BB knew on October 3, 2008, the day that it opened its premises for business, that its operation of the horse-racing gambling machines was in violation of the zoning permit.
- 13. BB's payment of the Revenue and Tax standard gambling machine license fee of \$6,000 per year for each horse-racing machine establishes independently that BB knowingly sought to violate, and did violate, its zoning permit.
- At the time of the hearing BB was still in violation of the permit.
- 15. BB has indicated no intention to voluntarily cease the operation of its horseracing gambling machine business on the permitted premises.
- 16. The Zoning Administrator's Notice of Violation is upheld, and the appeal is denied.
- 17. The Board is justified in assessing a civil penalty against BB in the amount of \$1,000 times the number of days since the October 30 Notice of Violation, or \$82,000.
- 18. However, for a number of reasons it is reasonable and appropriate for the Board to assess the **civil penalty as follows**: From the date of the Notice of Violation

through the date of the scheduled hearing, November 13, 2008, or \$14,000, plus going forward from the date of this Opinion and Order. Except that it is reasonable for the Board to provide relief from this penalty during the appeal period of 30 days, so that no additional civil penalty shall be incurred from today's date through the 30<sup>th</sup> date thereafter.

- 19. The Board's counsel, an Assistant Attorney General, and the Attorney General and his Office, are authorized and requested to take all court and other action needed to stop BB from violating the permit and the zoning of Garapan.
- 20. BB shall cease doing business on the permitted premises in violation of the zoning permit, immediately.
- 21. A copy of this Order shall be distributed to the Administrator and to Big Bang, through their counsel, by electronic or other means.

A party seeking to appeal this Order is directed to the Administrative Procedure Act, 1 CMC §9112(b), which provides for judicial review of final orders within 30 days in the Commonwealth Superior Court. (2 CMC sec. 7221(I)). The Board believes that this IS a final Order.

ELIZABETH D. RECHEBEI,

Quil D. Rec

Acting Chair

David L. Igitol, Member Herminia M. Fusco, Member Joseph Limes, Member

ZoningBoard@zoning.gov.mp.

Approved as to form.

/s

Alan J. Barak, Assistant Attorney General And Counsel to the Board

#### **CERTIFICATE OF SERVICE**

The undersigned, Assistant Attorney General, being a member of the CNMI bar, hereby certifies that he served the following person(s) with the following paper(s) by the following method(s) (Com. R. Civ. Pro. 5(d)):

Document served: The foregoing: Final Opinion and Order

Persons served:

Staff: Meaghan Hassel-Shearer, counsel for the Zoning Administrator Counsel for Petitioner/Apellant Big Bang: Victorino Torres, Esq.

Method and date: by causing electronic service of a copy to the above counsel, by emailing to counsel at

their chail addresses on Jan. (1, 2009.

/s/

Alan J. Barak, Assistan Attorney General (# F0350)

0 Final order after hearing.wpd



#### COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial Governor

Timothy P. Villagomez
Lieutenant Governor

#### **EXECUTIVE ORDER 2009-01**

DECLARATION OF A STATE OF DISASTER EMERGENCY:
COMMONWEALTH UTILITIES CORPORATION'S
IMMINENT GENERATION AND OTHER FAILURE AND THE NEED
TO PROVIDE IMMEDIATE RELIABLE POWER DURING REPAIRS

**CONTINUATION #6** 

I, BENIGNO R. FITTAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

This Executive Order is intended to, and does, continue in effect my preceding disaster emergency declarations on this matter, EO 2008-10, -13, -17, -20 through -22. As more fully stated below, this Executive Order shall expire on the 31st day following the date of my signature. The following findings and conclusions further support continuation.

Declaration of Disaster Emergency: CUC Continuation 6

I find that:

- 1. All findings and conclusions of EO 2008-10, -13, -17, -20 through -22 are incorporated by reference.
- 2. CUC's contractor, Aggreko, has commissioned approximately 15 MW of temporary, dieselfired power generators, pursuant to CUC contract # CUC-PG-08-CO16. This generation has meant the difference between rolling blackouts and generally continuous electric service to CUC customers. Because unforeseen technical issues have arisen periodically, there have been some forced outages. Although the Aggreko installation is professionally managed, events can occur which require the attention of non-CUC personnel, including security, pipe-fitters, and the related personnel, materials and supplies. Other issues may arise that will require rapid attention by CUC contractors and the securing of materials and supplies.
- 3. Although CUC desires to comply in advance with environmental and land use regulations, the lack of permits and the permitting process would have postponed or eliminated the in-service date and uninterrupted service provided by the Aggreko power generating equipment. In particular, taking Aggreko's units off line, while undergoing the time and expense of computer modeling of the emissions of Lower Base power plants, would have triggered renewed rolling blackouts for Saipan. Eliminating the declaration would place CUC, Aggreko, and their employees and contractors, in the position of violating CNMI environmental regulations, thereby effecting a shut-down of this required 15 MW of capacity.
- 4. The CUC is facing additional challenges due to the failure of its electric production and distribution facilities. In particular, the transformer feeding the Chalan Kiya distribution transformer requires immediate maintenance. Its failure could plunge the south end of Saipan into lengthy blackouts, including the water wells in the Airport area and the Agingan Point sewage treatment facilities. CUC suffered 30 hours of distribution system failures during December, one of which created a one-hour blackout to the entire island of Saipan on December 22. During January, to date, Saipan has experienced 22 hours of partial blackouts and one 4-hour whole-island blackout.
- 5. CUC has determined that its Tank 104 used oil facility is structurally unsound and must be emptied of its used oil in advance of severe weather, particularly a serious typhoon, to avoid any potential harm to the Commonwealth's waters, including the Lagoon. Further, there are 2,800 scaled barrels of used oil nearby which must also be removed. The removal must comply with federal environmental law. CUC lacks the internal capability to carry out the removal and must

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contract for these services. A related concern is the effect on the structural integrity of Tank 104 which drawing down its contents will create; suggesting that the proper plan and contractor are critical. In the meantime, CUC is trying to reduce its 2800 drums of used oil through incineration.

- 6. CUC continues to occasionally lose generation capacity, which creates intermittent blackouts on portions of its system. During the month of November CUC lost more than 4 MW to scheduled maintenance at Power Plant #4 and forced outages at Power Plant #1. The Island of Saipan lost power on January 10 when poorly maintained protective devices in the distribution system failed, and protective relays at Power Plant #1's busbar also failed, thereby exposing the generators to a transient, causing the generators' own relays to trip. CUC knows that these devices can protect its capacity and the customers' equipment, and that proper equipment can manage such issues in seconds, but it lacks the equipment and the manpower for a proper protective system. CUC continues to rehabilitate Power Plant #1 engine/unit No. 7 with their own staff and are preparing units 5 and 1 for rehab by ordering the parts and services required. Meanwhile CUC tries to maintain the operating units to adequately meet load. CUC has lacked the funds to buy all needed parts to avoid such outages, and lacked the contractors or in-house staff to carry out complete maintenance and repair. There is no indication that this situation will be resolved in the next month.
- 7. The water/wastewater division has been negatively impacted during the past month, and no relief is in sight for the next month: CUC cannot serve all of its customers because it lacks water pumps, for which a request for quotations is pending. Sewage lines have been blocked by customers flushing grease and oil, and CUC lacks the proper equipment to remove the blockages. CUC lacks sewage pipes, so that there are gaps in its sewage transport system. The transfer switches that keep the wastewater system's pumps going are largely inoperable, due to age, lack of maintenance or deliberate damage. The two wastewater treatment plants have been effectively compromised due to age and lack of maintenance. Hundreds of recently-installed water meters which were to allow CUC to properly bill for actual usage have failed due to their insufficiency for humid, saline climates. While the well-respected supplier, Severn-Trent, has agreed to replace the failed meters, this replacement will take time. There is no indication that this situation will be resolved in the next month.
- 8. The U.S. Department of Justice (DoJ), Environment and Natural Resources Division has sued CUC in federal court to come into compliance with critical water and sewage treatment requirements. USA v. CUC & CNMI, Civ. No. 08-0051 (D.N.M.I. filed Nov. 19, 2008), comment period extended to Jan. 31, 2009 (Order of Dec. 23, 2008), as reported in 73 Fed. Reg. 80427 (No. 251; 12/31/2008). See also http://www.usdoj.gov/enrd/Consent\_Decrees.html. In July 2008 CUC, the CNMI and (in September 2008) the U.S. Environmental Protection Agency

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(EPA) stipulated to two orders lodged with the U.S. District Court on the date the Complaint was filed. These orders require CUC to implement a series of improvements to its water and wastewater systems that respond to years of neglect, for which it presently lacks the funds and the complete technical capability. CUC requires a constant supply of electricity to run its water and wastewater treatment systems. CUC has very limited on-site emergency generation capability for only portions of these systems. CUC's ability to buy and install needed parts and materials rests on its ability to continue to generate revenue; it cannot afford to shut down or lose the revenues from any of its services. While CUC intends to do everything it can to comply with the federal requirements, there is no indication that this situation will be resolved in the next month.

- 9. CUC faces additional, critical challenges in the water/wastewater area. Failures of key aspects of the systems could harm our people and our ability to meet our commitments to the EPA and the federal district court. As of this writing, 16 pumps are out of service at CUC water wells. CUC staff are trying to diagnose the problems and develop immediate solutions. Also, during January, the wastewater collection mains and laterals failed at over 20 points due primarily to grease, bundles of rags, and other debris. While some materials come from users, other materials have entered through pipe failure. Pipe failures result from age (some over 30 years old) and undue corrosion. For instance, the iron pipe for the main pumping station to the Agingan Point Wastewater Treatment Plant failed completely after only six years of service. Sewage lift stations are vulnerable. While CUC staff are working hard to fix these problems, CUC lacks the manpower or available funding to fully address these conditions. Present water rates cannot fund the electricity required to run the combined system, let alone the needed fixes.
- 10. The Commonwealth Public Utility Commission (CPUC), upon the stipulation of its consulting staff, Georgetown Consulting Group, and CUC, issued a partial rate case opinion and order on December 19. Investigation of the Commonwealth Utilities Corporation's Electric Rate Structure and Related Matters, Decision and Order (CPUC Dec. 19, 2008). The order, in effect, freezes CUC's rates for three-to-six months, including CUC's fuel clause rates. The order provides for collection of revenue to cover: diesel oil purchases at a delivered price of 17 cents/kwh; some volatility in the market for CUC's sole fuel, diesel oil; development of a 30-day inventory fuel "cushion"; and development of a restricted reserve to be used solely to improve the efficiency of CUC's power plants. If the Commission order's estimated oil price rate is too low, CUC could be prevented from purchasing needed supplies and material, including oil, during the period between the perceived price rise and the entry of a CPUC emergency order. Such a contingency would impede CUC's ability to power all of its generators, including the generators of its three IPPs, Telesource, PMIC and Aggreko, and to begin steps to meet the above-referenced federal consent order. CUC must continue to pay cash for oil, often weekly. CUC will not begin to develop cash reserves pursuant to the rate order until 45 days after the first month's new fuel rate levels are in effect.

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- 11. The CPUC order also provides for the Commission's advance review and approval of CUC procurements in excess of \$350,000 and for each year's aggregate capital budget. The order provides that currently active procurements will not be affected by the advance approval requirement. In some circumstances such advance review and approval could impede CUC's resolution of an emergency.
- 12. This Declaration is still necessary to protect the health and safety of our children, our senior citizens, businesses and all other CNMI residents and visitors.

Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat facing the Commonwealth of the Northern Mariana Islands.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

- (f) In addition to any other powers conferred upon the Governor by law, the Governor may, during a state of disaster emergency:
  - (1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;
  - (2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;
  - (3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

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3 CMC § 5121(f)(1)-(3).

I direct:

Directive 1: CUC shall comply with CUC Procurement Regulations and the CNMI Procurement Regulations applicable to CUC, except as follows:

Upon a finding by the CUC Executive Director that such compliance is not feasible for purposes of responding to the State of Disaster Emergency, the CUC Procurement Regulations and the CNMI Procurement Regulations applicable to CUC, if any, are suspended as to such CUC procurements. CUC must fully document all such procurement activity for Executive, PUC, Public Auditor, and Legislative review.

Directive 2: The Commonwealth Public Utility Commission Act of 2006, Pub. L. 15-35, as amended, and the new CUC Act, Pub. L. 16-17, are hereby suspended insofar as they would require the PUC's advance review or approval of CUC contracts and other measures relating to the supply of power or the operation and maintenance of CUC's system during the State of Disaster Emergency.

Directive 3: CUC is specifically empowered to execute any wholesale generation power contract it has negotiated with an independent power producer for a period of two years or less.

Directive 4: All regulatory statutes and regulations relating to the Agrekko temporary wholesale generation power contract, # CUC-PG-08-CO16, which CUC determines in writing will interfere with the deployment, in-service dates, and/or operation of the temporary power production facilities, are hereby suspended, except that CUC must within 30 days provide to me in writing its plan for compliance, and a copy of each agency's permits or a complete explanation why compliance has not yet been achieved and how it will be achieved.

Directive 5: CUC shall notify as soon as possible by email after each procurement governed by Directive 1, at least the following persons, advising of at least the following matters:

a: Persons: The Governor, President of the Senate, Speaker of the House, Public Auditor; and

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b: Matters: Subject of the procurement; contractors and/or suppliers; amounts involved; the extent to which competitive bids or proposals were used; and short description of the reason for the action.

Directive 6: CUC shall procure as soon as practicable the necessary technical expertise and other labor, parts and materials to remedy the failings of its Chalan Kiya-related distribution facilities.

Directive 7: CUC shall procure with all deliberate speed the contractors necessary to remove used oil from Tank 104 and the hundreds of nearby barrels; and, in particular, shall take every measure to insure that a typhoon shall not cause any of that oil to pollute the Lagoon.

As stated in EO 2008-10, Pub. L. 16-9 removed substantial impediments to CUC's securing by contract immediate, reliable, and cost-effective temporary power from an independent, non-utility power producer. That law amends the Commonwealth PUC Act of 2006, specifically requiring a gubernatorial declaration of disaster emergency pursuant to 3 CMC § 5121, so that CUC might sign an emergency wholesale power generation contract for two years or less without pre-review of the PUC or the PUC's issuance of a certificate of convenience and necessity. Each of these PUC decisions would have taken so long to investigate and make that the conditions discussed above may have developed in the meantime.

I determined that, if CUC could immediately execute such a contract, it could quickly have temporary replacement generators placed into service and then shut down the dangerous Power Plant #1 engines. By disaster declaration EO-2008-10 I intended to enable CUC, within the definitions of Pub. L. 16-9, to sign a power contract with the appropriate "person".

By today's disaster emergency declaration, I intend to enable CUC, within the intent of Pub. L. 16-9, to continue to implement the temporary power contract which it signed. The purpose is to make the electric system as reliable as practicable, as soon as practicable, during the period of repair of CUC's generators. I also intend that government leaders be kept informed as to the operation of the temporary power equipment into service.

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This Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

Done this 30th day of January 2009.

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