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SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



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PROPOSED

Public Notice of Proposed Amendments to NMIAC Chapter 155-10
to Update the Schedule of Fees and Adoption of Provisions

Department of Public Works..... 050603

ORDERS

PUA Case No. 23-0237

Subject: Administrative Decision Granting
Appellant's Request for Dismissal

In the Matter of: Jagdish C. Roy v. CNMI Department of Labor,
Division of Employment Services-PUA

Department of Labor 050628

PUA Case No. 23-0242

Subject: Administrative Order Granting
Appellant's Request for Dismissal

In the Matter of: Susan R. Fujihira v. CNMI Department of Labor,
Division of Employment Services-PUA

Department of Labor 050629

Labor Case No. 23-012

Subject: Administrative Decision Partially
Dismissing Claims

In the Matter of: Rubel v. Asia Pacific, Inc.

Department of Labor 050630

Labor Case No. 23-025

Subject: Administrative Decision Dismissing Claims
for Failure to State a Claim and Lack of
Subject Matter Jurisdiction

In the Matter of: MD Al Min v. SPN-US Corporation

Department of Labor 050633

Labor Case No. 23-026
Subject: Administrative Decision Dismissing Claims
for Failure to State a Claim and Lack of
Subject Matter Jurisdiction
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In the Matter of: Herbert E. Samson v. Mahilum Enterprises
Department of Labor **050639**

Enf. Inv. Case No. 23-003-05
Compl. Agency No. 23-005
Subject: Administrative Decision Granting Enforcement’s
Request to Voluntarily Dismiss Remaining Claims
In the Matter of: Dept. of Labor, Enf. & Compl. v. C Pacific Corp.
Department of Labor **050640**

Enf. Inv. Case No. 23-003-05
Compl. Agency No. 23-005
Subject: Administrative Decision Partially Dismissing
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Department of Labor **050642**

Enf. Inv. Case No. 23-008-06
Compl. Agency No. 23-003
Subject: Administrative Decision Granting Enforcement’s
Request for Dismissal
In the Matter of: Dept. of Labor, Enf. & Compl. v. Saipan Long Shun
Corp. Db a Island Hotel
Department of Labor **050649**

Enf. Inv. Case No. 23-02-08T
Compl. Agency No. 23-002(T)
Subject: Administrative Decision Dismissing Violations
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Department of Labor **050651**

Compl. Agency No 23-006
Sec. Appeal No. 23-004
Subject: Final Agency Decision
In the Matter of: Dept. of Labor, Enf. & Compl. v. B&R Corp.
Db a B&R Auto Shop
Department of Labor **050655**



Commonwealth of the Northern Mariana Islands
Office of the Secretary of Public Works
2nd floor - Oleai Joeten Commercial Center
Saipan, MP 96950



Ray N. Yumul
Secretary

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO NMIAC CHAPTER 155-10
TO UPDATE THE SCHEDULE OF FEES AND ADOPTION OF PROVISIONS

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Public Works, Division of Building Safety Code intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The Agency, the Department of Public Works, through its Secretary, is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the statute governing his activities. 1 CMC § 2404. Under the Building Safety Code, "[t]he building safety official shall issue regulations as required under 2 CMC § 7153." 2 CMC § 7122 (h). However, under the Flood Plain Management Program, the Secretary "shall promulgate such regulations as are necessary to bring the Commonwealth of the Northern Mariana Islands into full compliance with the provisions of the National Flood Insurance Act of 1968 [42 U.S.C. § 4001 et seq.]." 2 CMC § 7148 (b).

THE TERMS AND SUBSTANCE: The Rules and Regulations provide that the Building Safety Code Regulation update the schedule of fees and adoption of provisions.


THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations:


1. Add new word with definitions for Non-conversion agreement under § 155-10.2-005;
2. Update and change Inspection, Fees and compliance under § 155-10.2-025 (a) Inspection, (b) Fee Schedule (permit/certification), (c) Fee Schedule (others), (d) Table of Fines, § 155-10.2-105 Building Requirement and Procedures;
3. Delete provisions for Designation of the Building Safety Official under § 155-10.2-101, Delegation of Responsibilities under § 155-10.2-125;
4. Amended language for Flood Hazards Mitigation Plan under § 155-10.2-020,


DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1)).

TO PROVIDE COMMENTS: Send or deliver your comments to Mr. Ray N. Yumul, Secretary of Public Works Attn: *Building Safety Code Division-Floodplain Management Section*, at the above address, fax or email address, with the subject line "Flood Damage Prevention Regulations". Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).


These proposed regulations were approved by the Secretary on December 23, 2023.

Submitted by: 
RAY N. YUMUL
SECRETARY OF DPW
DATE 11/13/2023

Received by: 
OSCAR M. BABAUTA, SAA
OFFICE OF THE GOVERNOR
DATE 11/13/23

Filed and Recorded by: 
ESTHER R.M. SAN NICOLAS
Commonwealth Registrar
DATE 11/17/2023

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 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) (publication of rules and regulations). Dated the 17 day of November, 2023.


EDWARD MANIBUSAN
Attorney General

0 NOPR proposed regs on computer software P&S.wpd



Commonwealth gi Sankattan na Islas Mariáñas
Ofisinan Sekretárium Public Works
2nd floor - Oleai Joeten Commercial Center
Saipan, MP 96950



Ray N. Yumul
Sekretáriu

NUTISIAN PUBLIKU PUT I MANMAPROPONI NA TINILAIKA GI NMIAC PÁTTI 155-10 PARA U MANA'PRISENTI I ISKETYU NU ÁPAS YAN ADAPTASIÓN NU PRIBENSIÓN SIHA

I AKSIÓN NI MA'INTENSIONA PARA U MA'ADÁPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sankattan na Islas Mariáñas, Dipáttamentun Public works, gi Dibisióon Building Safety Code ha intensiona para u adápta komu petmanienti na regulasióon siha i manñechettun Manmaproponi na Regulasion siha, sigun gi procedures nu i Ákton Administrative Procedure, 1 CMC § 9104(a). I Regulasion siha siempri umifektibu gi halum dies (10) dihas dispues di i adáptasion yan publikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b))

ATURIDÁT: I Ahensia, i Dipáttamentun Public Works, ginen i Sekretáriuun-ñiha, ma'infuetsa ni i Lehlislatura para u adápta i areklamentu yan regulasióon siha para i atministrasion yan i implimentasióon nu i lai ni gubebietna i aktibidát i sekretáriu siha. 1 CMC § 2404. Pápa' i Building Safety Code, "i ufisiát sináfu' i bibienda siempri manná'i regulasióon komu madimánda gi pápa' 2CMC § 7153." 2 CMC § 7122 (h). Láo, i pápa' i Flood Plain Management na Prugráma, i Sekretáriu "siempri ha cho'gui tátkomu regulasióon siha komu mannisissáriu para u mana'táttiya i Commonwealth gi Sankattan na Islas Mariáñas yan i tinilaika siha gi Ákton National Flood Insurance nu 1968 [42 U.S.C. § 4001 et seq.]." 2 CMC § 7148 (b).

I TEMA YAN SUSTÁNSIA I PALÁBRA SIHA: I Areklamentu yan Regulasion siha prinibeni na i Regulasióon Building Safety Code ha na'prisenti i isketyu nu ápas yan adaptasióon nu pribensióon siha.

I SUHETU NI MASUMÁRIA YAN ASUNTU NI MANTINEKKA: Este na Areklamentu yan Regulasion:

1. Na'yiyi nuebu na palábra yan definisióon siha gi pápa para Non-conversion na kuntráta gi pápa' § 155-10.2-005;
2. Na'prisenti yan tulaika i inspeksióon, Ápas yan i tináttiya siha gi pápa' § 155-10.2-025 (a) Inspeksióon, (b) Ápas Isketyu' (ottru siha), (lisensia/settifikasióon), (c) Ápas Isketyu' (ottru siha), (d) Listan Mutta siha, § 155-10.2-105 Dinimándan Bibienda yan Manera siha;
3. Funas i pribensióon siha para Disiknasióon nu i Building Safety Official gi pápa' § 155-10.2-101, Deligasióon nu Responsibilidát siha gi pápa' § 155-10.2-125;


4. Ma'amenda i lingguâhi para Flood Hazards Mitigation Plan gi pâpa' § 155-10.2-020.

DIREKSION PARA U MA'POLU YAN MAPUPBLIKA: Este i Manmaproponi na Regulasion siha debi na u mapupblisa gi halum i Rehistran Commonwealth gi hâlum i seksiona gi manmaproponi yan i nuebu na regulasion ni ma'adâpta siha (1 CMC § 9102(a)(1)) yan u mapega gi hâlum i mankumbienti na lugât siha giya i civic center yan gi hâlum ufisinan gubietnu siha gi hâlum distritun senadot parehu Inglis yan gi lingguâhin natibu. (1 CMC § 9104 (a)(1)).

PARA U MAPRIBENIYI UPIÑON SIHA: Na'hânao pat na'hâlum i upiñon siha guatu as Siñot Ray N. Yumul, Sekretâriun Public Works *Attension: Building Safety Code Division-Floodplain Management Section*, ayu i sanhilu' na address, fax pat email address, yan i râyan suhetu "Flood Damage Prevention Regulation". I upiñon ma'ekspekta gi hâlum trenta (30) dihas ginen i fetcha i publikasion nu esti na nutisia. Put fabot na hâlum i infotmasion, rinibisa pat agumentu siha. (1 CMC § 9104 (a)(2)).

Esti i manmaproponi na regulasion siha manma'aprueba ginen i Sekretâriu gi Disembri 23, 2023.

Nina Hâlum as: 
RAY N. YUMUL
Sekretâriun DPW
11/13/2023
FETCHA

Rinisibi as: 
OSCAR M. BABAUTA, SAA
UFISINAN GUBIETNU
11/13/23
FETCHA

Pine'lu yan Ninota as: 
ESTHER R.M. SAN NICOLAS
REHISTRAN COMMONWEALTH
11/17/2023
FETCHA

Sigun i 1 CMC § 2153(e) (I Abugâdu Henerât ha aprueba i regulasion siha na para u macho'gui kumu fotma) yan i 1 CMC § 9104(a)(3) hentan inaprueban Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligat i CNMI Abugâdu Henerât yan debi na u mapuplika, 1 CMC § 2153(f) (publikasion areklamentu yan regulasion siha).


EDWARD MANIBUSAN
Abugâdu Henerât
11/17/2023
FETCHA



Commonwealth Téel Falúw kka Efáng Ilól Marianas
Bwulasiyol Sekkretóoriyol Public Works
2nd floor - Oleai Joeten Commercial Center
Saipan, MP 96950



Ray N. Yumul
Sekkretooriyol

ARONGORONGOL TOULAP REEL PPWOMMWOL LIIWEL NGÁLI NMIAC
CHAPTER 155-10 REEL REBWE FFÉÉRÚ SEFÁÁLIY MILLE SCHEDULE OF
FEES ME ADÓPTÁÁLI PROVISIONS

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI PPWOMMWOL
ALLÉGH ME MWÓGHUTUGHUT: Commonwealth Téel Falúw kka Efáng Ilól
Marianas, Bwulasiyol Public Works, Division-il Building Safety Code re
mángemángil rebwe adóptááli reel ebwe lléghló Ppwommwol Mwóghutughut ikka
e appasch, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC §
9104(a). Ebwe bwunguló Mwóghutughut kkaal Ilól seigh ráál mwiril aal adóptááli
me akkatééwowul me Ilól Commonwealth Register. (1 CMC § 9105(b))

BWÁNGIL: Agengy, iye Bwulasiyol Public Works, sáangi layúr Sekkretóoriyo,
eyoor bwángil sáangi Legislature reel rebwe adóptááli allégh me mwóghutughut
ngáli administration me lemeli ghatchul mwóghutughut kkaal. 1 CMC § 2404. Faal
Building Safety Code, “male e lo bwe safety official ebwe isiisiwow mwóghutughut
ikka e fil faal 2 CMC § 7153.” 2 CMC § 7122 (h). Bwete, faal mille Progróomal
Flood Plain Management, Sekkretóoriyo “ebwe aronga mwóghutughut ikka e fil
reel Commonwealth Téel Falúw ebwe angúúngú fengál me provision-il National
Flood Insurance Act-il 1968 [42 U.S.C § 4001 et seq.]” 2 CMC § 7148(b).

KKAPASAL ME WEEWEL: Allégh me Mwóghutughut kkaal e ayoorá ngáli
Mwóghutughutúl Building Safety Code rebwe fféerú sefááliy mille schedule of fees
me adóptáá provisions.

KKAPASAL ME AUTOL: Allégh me mwóghutughut kkaal:

1. Aschuulong ffél kkapas fengál me weewel ngáli Non-conversion agreement
faal § 155-10.2-005;
2. Fféerú sefááliy me siiweli Inspection, Fees and compliance faal § 155-10.2-
025 (a) Inspection, (b) Fee Schedule (permit/certification), (c) Fee Schedule
(ákkááw), (d) Table of Fines, § 155 10.2-105 Building Requirements me
Procedures;
3. Amwóyló provision ngáli Designation reel Building Safety Official faal §
155-10.2-101, Delegation of Responsibilities faal § 155-10.2-125;
4. Liiweli kkapasal Plónol Flood Hazards Mitigation Fall § 155-10.2-020,

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Ppwommwol Mwóghutughut kkaal me llól Commonwealth Register llól táilil ppwommwol me ffél mwóghutughut ikka ra adóptáali (1 CMC § 9102(a)(1)) me ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch. (1 CMC § 9104(a)(1)).

REEL ISIISILONGOL KKPAS: Afanga ngare bwughilól yóomw ischil kkapas ngáli Mr. Ray N. Yumul, Sekkretóoriyol Public Works *Attn: Building Safety Code Division-Floodplain Management Section*, reel bwuláy iye e ki weiláng, fax ngare email address, fengál wóól subject line bwe “Flood Damage Prevention Regulations”. Ebwe toolong kkapas llól eliigh ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóomw data, views ngare angiingi. (1 CMC §9104(a)(2)).

Aa átirow ppwommwol mwóghutughut kkaal sáangi Sekkretóoriyo wóól Tumwur 23, 2023.

Isáliyalong:

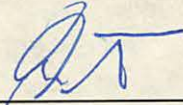


RAY N. YUMUL
SEKKRETÓÓRIYOL DPW

11/13/2023

RAÁL

Bwughiyal:



OSCAR M. BABAUTA, SAA
BWULASIYOL SOULEMELEM

11/13/23

RAÁL

Ammweilil:

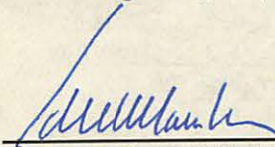
for 

ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

11/17/2023

RAÁL

Sáangi 1 CMC § 2153(e) (átirowal AG reel mwóghutughut reel ebwe arongowow igha aa fil reel fféerúl) me 1 CMC § 9104(a)(3) (sáangi átirowal AG) reel ppwommwol mwóghutughutikka e appasch bwe ra takkal amwuri ghatchúw me átirowa reel igha aa fil reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalapa CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (akkatééwowul allégh me mwóghutughut). Ghikkill wóól 17 ráalil November, 2023.



EDWARD MANIBUSAN
Soulemeleuil Allégh Lapalap

*****WITH MODIFICATION OR ADDITIONS*****

TITLE 155
DEPARTMENT OF PUBLIC WORKS

Chapters

- 155-10 Building Safety Code Division
 - 155-10.1 Building Safety Code Rules and Regulations
 - 155-10.2 Flood Damage Prevention Regulations

CHAPTER 155-10
BUILDING SAFETY CODE DIVISION

Subchapters

- 155-10.1 Building Safety Code Rules and Regulations
- 155-10.2 Flood Damage Prevention Regulations

SUBCHAPTER 155-10.2
FLOOD DAMAGE PREVENTION REGULATIONS

Part 001 General Provisions

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- § 155-10.2-005 Definitions
- § 155-10.2-010 Lands to Which These Regulations Apply
- § 155-10.2-015 Basis for Establishing the Areas of Special Flood Hazards
- § 155-10.2-020 Flood Hazards Mitigation Plan
- § 155-10.2-025 Inspection, Fees and Compliance
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- § 155-10.2-035 Interpretation
- § 155-10.2-040 Warning and Disclaimer of Liability
- § 155-10.2-045 Severability

Part 100 Administration

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- § 155-10.2-205 Standards for Storage of Materials and Equipment
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- § 155-10.2-215 Coastal High Hazard Areas
- § 155-10.2-220 Standards for Subdivisions
- § 155-10.2-225 Standards for Manufactured Homes
- § 155-10.2-230 Standards for Recreational Vehicles

Part 300 Variance and Appeal Procedures

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- § 155-10.2-305 Variance Factors

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- § 155-10.2-401 Records

Part 001 - General Provisions

§ 155-10.2-001 Statement of Purpose

It is the purpose of the regulations in this subchapter to promote the public health, safety, and general welfare of the residents of the Commonwealth of the Northern Mariana Islands, and to minimize public and private economic and physical losses due to flood conditions in specific areas by provisions designed to:

- (a) Protect human life and health;
- (b) Minimize expenditure of public money for costly flood projects;
- (c) Minimize damage to public facilities and utilities;
- (d) Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (e) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 155-10.2-005 Definitions

- (a) "Appeal" means a request for a review of an official interpretation of any provision of the regulations in this subchapter or a request for a variance.
- (b) "Appurtenant structure" means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

(c) “Area of shallow flooding” means a designated zone with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(d) “Area of special flood hazard” is the land in the flood plain within the Commonwealth of the Northern Mariana Islands subject to a one percent or greater chance of flooding in any given year.

(e) “Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year also known as the “100 year flood.”

(f) “Basement” means any area of a building having its floor subgrade (below ground level) on all sides.

(g) “Coastal high hazard area” means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is an area subject to high velocity waters, including coastal and tidal inundation or tsunamis.

(h) “Critical feature” means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the system would be compromised.

(i) “Curvilinear line” means the border on either a flood hazard area or consists of a curved or contour line that follow the topography.

(j) “Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment and materials.

(k) “Encroachment” means the advancement or infringement of uses, plant growth, fill excavation, buildings; permanent structures or development into a flood plain which may impede or alter the flow capacity of a flood plain.

(l) “Erosion” means the process of the gradual wearing away of land masses. This is not covered under the National Flood Insurance program (“NFIP”).

(m) “Existing manufactured home park or subdivision” means a manufacture home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

- (n) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).
- (o) "Fill" is the placement of fill material at a specified location to bring the ground surface up to a desired elevation.
- (p) "Fill material" can be natural sand, dirt, soil, or rock. For the purposes of flood plain management, fill materials may include concrete, cement, brick, or similar material on a case by case basis.
- (q) "Flood, flooding, or floodwater" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
- (1) The overflow of inland or tidal waters;
 - (2) The unusual or rapid accumulation or runoff of surface waters from any source; or
 - (3) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or current of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or an abnormal tidal surge, or by similarly unusual and unforeseeable event which results in flooding as defined in subsection (q)(1) of this definition.
- (r) "Flood elevation determination" means a determination by the building safety official ("Administrator") of the Department of Public Works that the flood level has a one percent or greater chance of occurrence in any given year.
- (s) "Flood Insurance Rate Map" (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazard and the risk premium zones applicable to the Commonwealth of the Northern Mariana Islands.
- (t) "Flood plain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and flood plain management regulations.
- (u) "Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of an area of special flood hazard.

(v) “Flood proofing” means any combination of structural and non-structural additions, changes, or adjustments which reduce or eliminate flood damage to real estate or improved real property; water and sanitary facilities; or any structures and their contents.

(w) “Flood related erosion” means a condition that exists in conjunction with a flooding event that alters the shoreline or bank of a watercourse, or one that increases the possibility of loss of the land adjacent to the shoreline or watercourse through erosion.

(x) “Functionally dependent use” means a use which cannot be performed unless it is located or carried out in close proximity to the water. The term includes only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, ship building and ship repair facilities.

(y) “Hazard mitigation plan” means a plan that incorporates a process whereby the potential of future loss due to flooding can be minimized by planning and implementing alternatives for flood plain management throughout the Commonwealth of the Northern Mariana Islands.

(z) “Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(aa) “Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of applicable non-elevation design requirements.

(bb) “Mangrove stand” means an assemblage of mangrove trees which are mostly low trees noted for a copious development adventitious roots above the ground and which contain one or more of the following species: black mangrove (*Avicennia nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Languncularia racemosa*); and buttonwood (*Conocarpus erecta*).

(cc) “Map” means the Flood Insurance Rate Map (FIRM) of the Commonwealth of the Northern Mariana Islands.

(dd) “Mean sea level” means for purposes of the NFIP the National Geodetic Vertical Datum (NGVD) or other datum to which base flood elevations shown on the Commonwealth’s FIRM are referenced.

(ee) “New construction” means for flood plain management purposes structures for which the start of construction commenced on or after the effective date of a flood plain management regulation adopted by the Commonwealth.

(ff) **“Non-conversion Agreement” is an agreement by the building owner not to make any future conversions that deviates from the NFIP requirements and local ordinances. The National Flood Insurance Program was created by the US Congress in 1968 to provide insurance to help reduce the socio-economic impacts of floods. Flood insurance is a separate policy that can cover buildings, the contents in the building, or both. The NFIP provides insurance to property owners, renters, and businesses, and having this coverage helps them recover faster when flood waters recede. The NFIP is a public-private partnership between the Federal government, the property and casualty insurance industry, state, local officials, lending institutions, and property owners. The NFIP is administered by FEMA, while insurance policies are sold and services by a network of insurance companies and NFIP Direct.**

(gg) **~~(ff)~~** **“Parcel” means any contiguous quantity of land in the possession of, owned by, or recorded as the property of the same claimant, person, or company.**

(hh) **~~(gg)~~** **“Person” includes any individual or group of individuals, corporation, partnership, association, or any other entity including the Commonwealth of the Northern Mariana Islands government.**

(ii) **~~(hh)~~** **“Recreational vehicle” means a vehicle which is**

- (1) Built on a single chassis;**
- (2) 400 square feet or less when measured at the largest horizontal projection;**
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and**
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.**

(jj) **~~(ii)~~** **“Regulatory floodway” means the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a desired height.**

(kk) **~~(jj)~~** **“Special flood hazard area” means an area having special flood and/or flood related erosion hazards as shown on the FIRM.**

(ll) **~~(kk)~~** **“Standard flood insurance policy” means the flood insurance policy issued by the federal Administrator, or an insurer pursuant to an arrangement with the federal Administrator, pursuant to federal statutes* and regulations.**

*** So in original.**

(mm) **~~(ll)~~** **“Start of construction” includes substantial improvement and means the date the building permit was issued provided the actual start of construction, repair reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such**

as the pouring of the slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation. Permanent construction does not include:

- (1) Land preparation, such as clearing, grading and filling;
- (2) The excavation of basements, footings, piers, or foundations;
- (3) The erection of temporary forms; or,
- (4) The installation of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(nn) ~~(mm)~~ "Structure" means for flood plain management purpose, a walled or roofed building, including a gas or liquid storage tank, that is principally above ground land affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, unless such materials are within an enclosed building on the premises.

(oo) ~~(nn)~~(1) "Substantial improvement" means any repair, reconstruction, or improvement of structure, the cost of which equals or exceeds 50 percent of the market value or replacement value, whichever is lower of the structure either

- (i) Before the improvement or repair is started or
- (ii) If the structure has been damaged and is being restored, before the damage occurred.

(2) For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not include any project for improvement of a structure to comply with existing federal, local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or Commonwealth inventory of historic places.

(pp) ~~(oo)~~ "Variance" means a grant of relief from the requirements of the regulations in this subchapter which permit construction in a manner that would otherwise be prohibited by these regulations.

(qq) ~~(pp)~~ "Watercourse" means a channel cut by running water, through which at least periodically.*

*So in original.

(rr) ~~(qq)~~ "Water surface elevation" means the height in relation to the (NGVD) of 1929*, of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

§ 155-10.2-010 Lands to Which These Regulations Apply

The regulations in this subchapter shall apply to all areas of special flood hazard within the Commonwealth of the Northern Mariana Islands.

§ 155-10.2-015 Basis for Establishing the Areas of Special Flood Hazards

The areas of special flood hazard identified by the Federal Insurance Administration ("FIA"), through the Federal Emergency Management Agency ("FEMA") in a scientific and engineering report entitled "The Flood Insurance Study for the Commonwealth of the Northern Mariana Islands," dated April 30, 1990, with the accompanying FIRM and any amendment thereto is hereby adopted as reference and declared to be a part of the regulations in this subchapter. The flood insurance study and FIRM are on file at the Building Safety Official Office, Department of Public Works ("DPW").

§ 155-10.2-020 Flood Hazards Mitigation Plan

The Floodplain Administrator ~~building safety official~~ ("Administrator") of the Department of Public Works shall create a flood hazards mitigation plan for prevention of flood damage within the Commonwealth. The plan shall be completed and submitted to the Governor for approval within a reasonable time not to exceed six months from the promulgation of the regulations in this subchapter. The Floodplain Administrator ~~building safety official~~ shall use all appropriate federal, state, local, and other information to provide for orderly building and development within special hazard areas while also preventing flood damage. The plan shall not be inconsistent with federal or Commonwealth law or regulations.

§ 155-10.2-025 Inspection, Fees and Compliance

(a) Inspection: All Construction within a Special Flood Hazard Area (SFHA) shall be subject to inspection by the Building Safety Official, or his designated representative(s).

(b) Fees Schedule (permit/certification):

1. Floodplain Permit Application (minor structures within SFHA): \$25.00

2. Floodplain Development Permit Review: \$100.00-\$500.00 (depending on size and use of structure)

3. Substantial Improvement/Substantial Damage Review: \$50.00

4. Certificate of Elevation Review: \$25.00

5. No Rise Certification Review: \$50.00

6. Flood Determination/Certification: \$25.00

7. Inspection fee per inspection:

A. Residential: \$25.00

B. Non-residential with floor area not exceeding 5000 square feet: \$35.00

C. Non-residential with floor area more than 5000 square feet: \$50.00

(c) Fee Schedule (Others)

<u>Description</u>	<u>Fee</u>
<u>Copy of permit, certificate and other documents less than 10 pages (10% of the fee amount will be charged to the 11th and succeeding sheet).</u>	<u>Black & White-\$5.00</u> <u>Color-\$10.00</u> <u>Mixed-\$7.00</u> <u>Electronic/digital copy-\$10.00</u>
<u>Maps</u>	<u>Paper size</u> <u>\$/Sheet</u>
<u>A. Black & White</u>	<u>Letter (8.5x11)</u> <u>\$1.00</u>
	<u>Legal (8.5x14)</u> <u>\$2.00</u>
	<u>Tabloid (11x17)</u> <u>\$3.00</u>
	<u>Arch C (18x24)</u> <u>\$5.00</u>
	<u>Arch D. (24x36)</u> <u>\$7.00</u>
<u>B. Colored</u>	<u>Letter (8.5x11)</u> <u>\$3.00</u>
	<u>Legal (8.5x14)</u> <u>\$5.00</u>
	<u>Tabloid (11x17)</u> <u>\$7.00</u>
	<u>Arch C (18x24)</u> <u>\$10.00</u>
	<u>Arch D. (24x36)</u> <u>\$15.00</u>

No structure or land shall be constructed, located, extended converted*, or altered without full compliance of the regulations in this subchapter. Violators shall be subject to penalties as outlined in 2 CMC § 7126.

(d) Tables of Fines

<u>Reference</u>	<u>Violations</u>	<u>Fines</u>
<u>CNMI Administrative Code</u>		
<u>Part 200, §155-10.2-201</u>	<u>Start Construction without Elevation Certificate</u>	<u>\$100.00</u>
<u>Part 200, §155-10.2-201</u>	<u>Using materials that are not flood-resistant as shown in the plans</u>	<u>\$200.00</u>
<u>Part 200, §155-10.2-201</u>	<u>Non-conformance to the provisions for flood hazard reduction construction methods</u>	<u>\$200.00</u>

§ 155-10.2-030 Abrogation and Greater Restrictions

The regulations in this subchapter are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where there exists another

rule, easement, or deed restriction which imposes a more stringent application of these regulations, it shall apply.

§ 155-10.2-035 Interpretation

In the interpretation and application of the regulations in this subchapter, all provisions shall be:

- (a) Considered as minimum requirements.
- (b) Liberally construed in favor of the governing body.
- (c) Deemed neither to limit nor repeal any other powers granted under Commonwealth or federal law.

§ 155-10.2-040 Warning and Disclaimer of Liability

The degree of flood protection required by the regulations in this subchapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural uses. These regulations do not imply that land outside such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the Commonwealth of the Northern Mariana Islands government, any officials thereof or the Federal Insurance Administration for any flood damage that results from reliance on these regulations or any administrative decision lawfully made under these regulations.

§ 155-10.2-045 Severability

The regulations in this subchapter and the various parts thereof are hereby declared to be severable. Should any section be declared by the courts to be invalid, such decision shall not affect the validity of the regulations as a whole, or any portion thereof other than that section so declared invalid.

Part 100 - Administration

~~§ 155-10.2-101 Designation of the Building Safety Official~~

~~The building safety official is hereby designated to administer and implement the regulations in this subchapter by granting or denying building or development permits in accordance with the provisions herein.~~

§ 155-10.2-105 Building Permit Required Requirements and Procedures

A building permit shall be obtained before construction, subdivision, or development begins within any area of special flood hazard. Application for a building or development permit shall be made to the building safety official and will follow DPW's Building Safety Code guidelines for application. The application will specifically include:

- (a) Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; the elevation of the highest adjacent grade and proposed elevation of the lowest floor of all structures.
- (b) Proposed elevation in relation to mean sea level to which any structure will be flood proofed.
- (c) Certification by a CNMI licensed professional land surveyor, engineer or architect that the flood proofing methods for any non-residential structure meets the flood proofing criteria in § 155-10.2-201, including the elevation to which the structure is flood proofed.
- (d) Description of the extent to which any watercourse shall be altered or relocated as a result of the proposed development.

§ 155-10.2-110 Duties and Responsibilities

The duties and responsibilities of the building safety official shall include but are not limited to:

- (a) Permit Review. The building safety official shall:
 - (1) Review all building, subdivision, and other development permit applications to determine that the requirements of the regulations in this subchapter have been satisfied, and all other Commonwealth and federal permits have been obtained.
 - (2) Review all permit applications to determine if the building sites are reasonably safe from flooding, and that the proposed development is consistent with the need to minimize or eliminate flood damage.
 - (3) Review all building, subdivision, and other development permit applications to determine if the proposed development will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be:
 - (i) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (ii) Constructed with materials resistant to flood damage;
 - (iii) Constructed by methods and practices that minimize flood damages; and,

(iv) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Review all subdivision and development permit applications to determine that adequate drainage is provided to reduce exposure to flood hazards.

(b) Use of other Flood Data. The building safety official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from federal or other sources as criteria for requiring that new construction, substantial improvements or other development meet the requirements of the regulations in this subchapter.

(c) Information to Be Obtained and Maintained. The building safety official shall promulgate, periodically up date, and make available as needed, flood insurance policies and procedures covering the following:

- (1) The certified elevation required in § 155-10.2-201 (residential);
- (2) The certification required in § 155-10.2-201 (shallow flooding);
- (3) The flood proofing certification required in § 155-10.2-201 (non-residential);
- (4) The flood proofing certification required in § 155-10.2-201 (subdivision); and
- (5) The coastal high hazard certification required in part 200. (coastal).

(d) When an area of special flood hazard has been designated, the building safety official shall prohibit encroachments, including fill, new construction, substantial improvement, and other development which would cause an increase in flood elevations of more than one foot during the occurrence of a base flood.

§ 155-10.2-115 Interpretation of Firm Boundaries

The building safety official shall make interpretations as to the exact location of the boundaries of the areas of special flood hazard. A person contesting the location of a boundary shall be given a reasonable opportunity to appeal the interpretation.

§ 155-10.2-120 Alteration of Watercourse

Prior to the issuance of a permit for the alteration or relocation of a watercourse within a special hazard area the person seeking the alteration or relocation shall:

(a) Have the written permission of the building safety official and submit copies of that permission to FEMA, FIA.

(b) Ensure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained and not lessened.

~~§ 155-10.2-125 — Delegation of Responsibilities~~

~~The Director of the Department of Public Works is hereby empowered to delegate authority granted herein, including the authority to promulgate rules and any regulations as hereinafter set forth in § 1(b), PL 8-7. Any duty prescribed herein to be performed by the Director is hereby assigned and charged to the Building Safety Code Division and the building safety official (Administrator) may designate one member of his staff as floodplain administrator or create a new position of floodplain administrator.~~

Part 200 - Provision for Flood Hazard Reduction

§ 155-10.2-201 Standards of Construction

In all areas of special flood hazard, the following standards are required that all structures shall conform to all portions of Commonwealth Public Law 6-45.

(a) Anchoring

All new construction, including manufactured homes, and new improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic or hydrostatic loads, including the effects of buoyancy.

(b) Construction Materials and Methods

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall use methods and practices that minimize flood damage.

(3) All electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding, provided that none of the service facilities shall be located below the base flood elevation or depth number specified on the FIRM.

(c) Elevation and Flood Proofing

(1) New construction and substantial improvement of any structure shall have the lowest floor, including the basement, elevated to or above the base flood elevation. Non-residential structures may meet the standards of this section. Upon completion of the structure, the elevation of the lowest floor including basement shall be certified by a CNMI licensed professional land surveyor, engineer or architect and verified by the local building inspector that elevation requirements have been met. Notification of compliance shall be in writing to the building safety official.

(2) New construction and substantial improvement of new structure in zone AO shall have the lowest floor, including basement, elevated to or above the depth specified on the FIRM's highest adjacent grade. If there is no depth number on the FIRM then the lowest floor including the basement shall be elevated to a depth of at least two feet above

the highest adjacent grade. Non-residential structures may meet standards in subsection (c)(3). Upon completion, the structures compliance shall be certified by a CNMI licensed professional land surveyor, engineer or architect and verified by the local building inspector. Notification shall be in writing to the building safety official.

(3) Non-residential construction shall either be elevated in conformance with subsection (c)(1) or together with attendant utility and sanitary facilities shall be flood proofed so that below the base flood level the structure shall

- (i) Be watertight with walls substantially impermeable to the passage of water,
- (ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy and
- (iii) Be certified by a licensed professional engineer or architect that the design and methods of construction of the structure are in accordance with accepted standards of practice for meeting the requirements of this subsection.

(d) Construction Methods

(1) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a CNMI licensed professional engineer or meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, the bottom of all openings may be equipped with screens, louvers, or other coverings provided that they permit the automatic entry and exit of floodwaters.

(2) All new construction and substantial improvements in the coastal high hazard area (if base flood elevation data available on the FIRM) shall be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level, and the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall have a one percent chance of being equaled or exceeded in any given year (100 year mean recurrence interval). A CNMI licensed professional engineer shall develop or review the structural design, specifications, and plans for construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection. Pilings used as structural support shall be designed and anchored so as to withstand all impact forces and buoyancy factors of a base flood. There shall be no fill used for structural support of buildings.

(3) If breakaway walls are used, such enclosed space or storage shall not be used for human habitation.

(4) Prior to construction, plans of any structure with breakaway walls must be approved by the building safety official.

(5) Compliance with this section shall be certified by a CNMI licensed professional land surveyor, engineer or architect and that certification shall be forwarded to the building safety official of the Department of Public Works.

(e) **Drainage.** All new construction and substantial improvements shall have adequate drainage paths around structures on slopes, to guide flood water around, from, and away from proposed structures.

§ 155-10.2-205 Standards for Storage of Materials and Equipment

The storage or processing of materials that are in times of flooding buoyant, flammable, explosive, or could be injurious to persons or the environment is prohibited. Storage of other materials or equipment may be allowed if not subject to damage by flooding and firmly anchored or readily removable from the sea within the time available after flood warning.

§ 155-10.2-210 Standards for Utilities

All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

§ 155-10.2-215 Coastal High Hazard Areas

Coastal high hazard areas are located within the areas of special flood hazard established in § 155-10.2-015. These areas have special flood hazards associates with high velocity waters from coastal and/or tidal inundation, and tsunamis and the following provisions shall apply therein:

- (a) **Location of structures**
 - (1) All building or structures shall be located landward and out of reach of mean high tide.
 - (2) Man-made alterations of sand dunes or mangrove stands which would increase flood damage are prohibited.

§ 155-10.2-220 Standards for Subdivisions

- (a) All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood.
- (b) All subdivision plans will provide the elevation of proposed structure(s) and pad(s). If the site is filled above the base flood elevation, the final first floor and pad elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

- (c) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (d) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (e) All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

§ 155-10.2-225 Standards for Manufactured Homes

- (a) All manufactured homes that are placed or substantially improved, within zones AI-30, AH, and AE on the community's Flood Insurance Rate Map, on sites located
 - (1) Outside of a manufactured home park or subdivision,
 - (2) In a new manufactured home park or subdivision,
 - (3) In an expansion to an existing manufactured home park or subdivision, or
 - (4) In an existing manufactured home park or subdivision on a site upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation (the CNMI Building Safety Code recommends at least one foot above the base flood elevation) and be securely anchored to an adequately anchored foundation system to resist flotation collapse and lateral movement.
- (b) All manufactured homes that are placed or substantially improved on sites located within zones V1-30, V, and VE on the community's Flood Insurance Rate Map will meet the requirements of § 155-10.2-215 and subsection (a) of this section.
- (c) All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within zones AI-30, AH, AE, V1-30, V, and VE on the community's Flood Insurance Rate Map that are not subject to the provisions of § 155-10.2-315(a) will be elevated so that either the
 - (1) Lowest floor of the manufactured home is at or above the base flood elevation (CNMI Building Safety Code recommends at least one foot above the base flood elevation), or
 - (2) Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

§ 155-10.2-230 Standards for Recreational Vehicles

(a) All recreational vehicles placed on sites within zones AI-30, AH, and AE on the community's Flood Insurance Rate Map will either:

(1) Be on the site for fewer than 180 consecutive days,

(2) Be fully licensed and ready for highway use – a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions, or

(3) Meet the permit requirements of part 100 of this subchapter and the elevation and anchoring requirements for manufactured homes in § 155-10.2-215.

(b) Recreation vehicles placed on sites within zones V1-30, V and VE on the community's Flood Insurance Rate Map will meet the requirements of subsection (a) of this section and § 155-10.2-215.

Part 300 - Variance and Appeal Procedures

§ 155-10.2-301 Variance Procedures

No variance shall be granted by the building safety official unless he finds that:

(a) A showing of good and sufficient cause such as a renovation, rehabilitation or reconstruction, a determination that a failure to grant the variance would result in exceptional hardship to the applicant, a determination that the granting of a variance shall not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud or a conflict with existing federal or Commonwealth laws or regulations.

(b) Reasons of economic considerations, aesthetics, or because variances have been issued in the past are not good or sufficient cause.

§ 155-10.2-305 Variance Factors

In deciding upon variance applications the building safety official shall consider all technical evaluations and all relevant factors and standards specified in other sections of the regulations in this subchapter, including but not limited to:

(a) The danger that materials may be swept into floodwaters and cause injury to others;

(b) The danger to life and property due to flooding or erosion damage;

(c) The importance of the services provided by the proposed facility to the community;

(d) The availability of alternative locations;

- (e) The compatibility of the proposed use with existing and anticipated development;
- (f) The safe access of ordinary and emergency vehicles in times of floods; and
- (g) The cost of providing governmental services during and after flood conditions, including repair and maintenance of public utilities, streets, and bridges.

§ 155-10.2-310 Variance Conditions

- (a) Upon consideration of the factors above and the purpose of the regulations in this subchapter the Director may attach such additional conditions to the granting of variances as he deems necessary to further the purposes of these regulations.
- (b) Variances shall not be issued within any designated floodway if any increase in flood levels during a base flood discharge would result.
- (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard to afford relief.
- (d) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places or a Commonwealth listing of historic places without regard to the procedures set forth in the remainder of this part.

§ 155-10.2-315 Variance Decisions

- (a) Upon granting or denying an application for a variance, the building safety official shall provide all parties concerned the written decision which shall include the reason for said decision. No granted variance shall be operative until such written decision has been provided.
- (b) When a variance application has been granted, the building safety official shall notify in writing that
 - (1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
 - (2) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required by § 155-10.2-401.

Part 400 - Miscellaneous Provisions

§ 155-10.2-401 Records

The building safety official shall maintain the records of all variance applications. The decisions rendered thereon shall also be maintained and shall be provided to FEMA and to any Commonwealth agencies that so request, as well as to the general public at a nominal cost for copying. All CNMI flood control records shall be considered public documents open to the public for inspection during regular working hours.



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

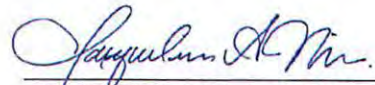
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In Re Matter of:)	PUA Case No. 23-0237
)	
Jagadish C. Roy,)	
)	
Appellant,)	ADMINISTRATIVE DECISION
	)	GRANTING APPELLANT'S REQUEST
v.	)	FOR DISMISSAL
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
Appellee.)	

On October 27, 2023, Appellant with counsel filed a written request to voluntarily dismiss his appeal. In the request, Appellant represented the three determinations on appeal have been resolved. The Department has no objections to the dismissal.

In consideration of above, the undersigned finds that there are no pending issues to resolve and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for November 1, 2023 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **30th** day of October, 2023.



JACQUELINE A. NICOLAS
 Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	PUA Case No. 23-0242
)	
Susan R. Fujihira,)	
)	
Appellant,	)	ADMINISTRATIVE ORDER GRANTING
	)	APPELLANT'S REQUEST FOR
v.	)	DISMISSAL
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
Appellee.)	

On October 27, 2023, the parties were ordered to clarify the pending request for dismissal. Based on the joint statement filed, the undersigned finds:

1. Appellant was not eligible for PUA benefits from December 20, 2020 to December 26, 2020;
2. Appellant no longer opposes the determination; and
3. Appellant was overpaid in the amount of \$6,843 and has agreed to repay all amounts not waived.

In consideration of the foregoing, the undersigned finds there are no other issues to resolve and dismissal is appropriate. Accordingly, this appeal is **DISMISSED**. The Department's Disqualifying Determination, dated May 18, 2023 is hereby **FINAL**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 9th day of November, 2023.

JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	Labor Case No. 23-012
)	
Rubel,)	
)	
Complainant,	)	ADMINISTRATIVE DECISION
	)	PARTIALLY DISMISSING CLAIMS
v.)	
)	
Asia Pacific, Inc.,)	
)	
Respondent.)	
)	

I. INTRODUCTION AND BACKGROUND

On June 9, 2023, Complainant filed the above-captioned labor case alleging unpaid wages from June 2016 to February 2023. Additionally, Complainant sought repayment of various processing fees that he alleges Respondent unlawfully charged him.¹ On June 23, 2023, the complaint was referred to Enforcement for investigation. Upon review of the Determination, Enforcement was ordered to clarify their findings in an amended determination. Moreover, Complainant was ordered to show cause why claims should not be dismissed for failure to state a claim and lack of jurisdiction. On October 17, 2023, Complainant provided further explanation and itemized the relief sought. On October 23, 2023, Enforcement filed an amended determination finding unpaid wages within the six-month statute of limitations.² Additionally, Enforcement recommended dismissal of the claim for processing fees for lack of jurisdiction.

II. APPLICABLE LAW

Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following

¹ Specifically, Complainant alleges that Respondent charged him to process his Pandemic Unemployment Assistance (PUA) Application, his Stimulus Application, and his CW-1 renewal fees.

² The Amended Determination did not clearly identify the compensable days worked or the amount owed.

1 grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person;
2 (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim
3 upon which relief can be granted. *See also* NMIAC § 80-20.10485(b).

4 III. DISCUSSION

5 Upon review, the undersigned finds that partial dismissal of the labor case is appropriate.

6 1. The unpaid wage claim is partially time-barred.

7 Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the
8 date of the last occurring event is the subject of the complaint, except in cases where the actionable
9 conduct was not discoverable upon the last-occurring event.” *See also* 4 CMC § 9246. “If a
10 complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.”
11 NMIAC § 80-20.1-465(e) (emphasis added).

12 Complainant fails to show cause why the claims outside the six-month statute of limitations
13 should not be dismissed. Specifically, Complainant knew he was owed wages every two weeks
14 but waited to file a complaint. Accordingly, any unpaid wages accrued before December 9, 2022
15 is outside the six-month statute of limitations and time-barred.

16 2. Complainant fails to establish jurisdiction for returning paid fees.

17 With respect to employment of foreign national workers, the Administrative Hearing Office
18 has jurisdiction over “*all actions* involving alleged violations of the labor and wage laws of the
19 Commonwealth” 3 CMC § 4942 (emphasis added). *See* NMIAC § 80-20.1-450(b).
20 “Whenever it appears by suggestion of the parties or otherwise that the agency lacks jurisdiction
21 of the subject matter, the agency shall dismiss the action.” NMIAC § 80-20.2-145(c).

22 As a preliminary matter, the undersigned does not condone the alleged use of threat and
23 coercion against a vulnerable employee. However, Complainant fails to show cause why the
24 claims for processing fees should not be dismissed. Specifically, the payments for processing his
25 PUA application, Stimulus application, and CW-1 Renewal application were separate transactions
26 between the parties unrelated to unpaid wages. Further, while the petitioning employer may be
27 responsible to pay for the CW-1 processing fees, those federal regulations are not promulgated
28 and enforced by the CNMI Department of Labor. For that reason, the Administrative Hearing
Office does not have jurisdiction or authority over a claim to return these paid fees. Accordingly,
Complainant fails to state a claim in which relief can be granted for claims of renewal charges
and fees.

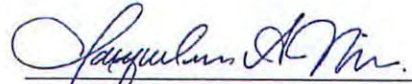
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IV. CONCLUSION

Based on the foregoing, all claims except the unpaid wages accruing from December 9, 2022 to June 9, 2023 are **DISMISSED**.

Any person or party aggrieved of this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.

So ordered this **8th** day of November, 2023.



JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	Labor Case No. 23-025
)	
MD Al Amin,)	
)	
Complainant,	)	ADMINISTRATIVE DECISION
	)	DISMISSING CLAIMS FOR FAILURE
v.	)	TO STATE A CLAIM AND LACK OF
	)	SUBJECT MATTER JURISDICTION
SPN-US Corporation,)	
)	
Respondent.)	
)	

I. INTRODUCTION

Upon review of the pleadings, Complainant was ordered to show cause why the complaint should not be dismissed.

II. APPLICABLE LAW

Pursuant to 3 CMC § 4947(a), “the hearing office may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim upon which relief can be granted. *See also* NMIAC § 80-20.1-485(b).

III. BACKGROUND

On September 5, 2023, Complainant initiated a labor case against Respondent for unpaid wages, violation of employment preference law, and unlawful reduction in force. Therein, Complainant alleged that (1) Respondent failed to provide work; (2) Respondent charged him \$1,300 for employment renewal; and (3) Respondent did not provide workmen’s compensation. However, Complainant failed to provide any allegations with respect to the employment preference violation and unlawful reduction in force. Additionally, Complainant fails to provide proof that he is lawfully authorized to work in the CNMI. Upon review of the legal deficiencies

1 in the Complaint, Complainant was ordered to show cause why complaint should not be dismissed
2 for failure to state a claim within the six-month statute of limitations and failure to state a claim
3 for employment preference and unlawful reduction in force.

4 In response to the Order to Show Cause, on October 16, 2023, Complainant filed an amended
5 complaint. The amended complaint alleges a violation of: (1) the Employment Rules and
6 Regulations; (2) breach of contract; and (3) 20 CFR § 655.423(f). In support of the amended
7 complaint, Complainant included: (1) a CW-1 approval notice demonstrating that Complainant
8 was lawfully authorized to work for Respondent from October 1, 2022 to September 30, 2023;
9 (2) the corresponding Job Vacancy Announcement (#22-05-95426) ; (3) a Renewal Notice dated
10 September 23, 2022; (4) an accounting of supposed hours and expected pay from October 3, 2022
11 to September 29, 2023; and (5) a copy of 20 CFR § 655.423 regarding assurances and obligations
12 of CW-1 employers.

12 IV. DISCUSSION

13 Based on a review of the filings and applicable law, the undersigned finds:

14 **1. Complainant fails to submit a timely response to the Order to Show Cause.**

15 On September 18, 2023, Complainant was ordered to Show Cause why the Complaint should
16 not be dismissed for lack of jurisdiction and failure to state a claim. Upon granting Complainant's
17 request for a deadline, the deadline to file was extended to October 13, 2023, close of business.
18 Here, Complainant filed a late response on October 16, 2023.

19 **2. Complainant fails to state a claim for a violation of the Employment Rules and
20 Regulations.**

21 The Amended Labor Complaint claims a violation of the Employment Rules and Regulations.
22 However, Complainant does not identify the violated regulations or include any factual support
23 to demonstrate a violation. Accordingly, the undersigned finds that Complainant fails to state a
24 claim for a violation of the Employment Rules and Regulations.

25 **3. Complainant fails to state a claim upon which relief can be granted.**

26 The undersigned recognizes that the Employment Rules and Regulations provide: “[a]ny
27 employer or employee may file a complaint with the Administrative Hearing Office regarding ...
28 any breach of employment contract.” NMIAC § 80-20.1-455(g). However, this provision is with
regards to Department approved employment contracts for umbrella permit holders. *See* NMIAC
§§ 80-20.10315 et. seq. Since the transition of federal immigration, the Department has no

1 authority or jurisdiction to approve foreign labor matters and the regulations regarding umbrella
2 permits have become obsolete. Since the breach of contract claim is in reference to obsolete
3 provisions for umbrella permit holders, Complainant fails to state a claim upon which relief can
4 be granted.

5 **4. The Department does not have subject matter jurisdiction over claims regarding**
6 **assurances and obligations of CW-1 employers under 20 CFR 655.423.**


7 As counsel should know, 20 CFR Part 655 are federal regulations promulgated by the US
8 Department of Labor, Employment and Training Administration. While 20 CFR 655.423
9 establishes assurances and obligations of CW-1 employers in the Commonwealth, nothing in
10 these regulations designate or authorize the CNMI Department of Labor to review alleged
11 violations.¹ Clearly, the CNMI Department of Labor has no subject matter jurisdiction over this
12 issue. Accordingly, filing this claim with the CNMI Department of Labor is frivolous and without
13 merit.

14 **V. CONCLUSION**

15 Based on the foregoing, Complainant failed to show cause why the claims against Respondent
16 should not be dismissed for lack of jurisdiction and failure to state a claim. Accordingly, the case
17 is hereby **DISMISSED**.

18 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
19 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
20 this Order.

21 So ordered this **30th** day of October, 2023.

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23 **JACQUELINE A. NICOLAS**
24 Chief Administrative Hearing Officer

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28 ¹ Aside from the employer's requirement to advertise a job vacancy with the CNMI Department of Labor under 20
CFR 655.442 – the CNMI Department of Labor has no role in the temporary labor certification process for
Commonwealth Transitional Workers.



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

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5 In Re Matter of:) **Labor Case No. 23-026**
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7 Mohammad Abu Hassan Chowdhury,)
8)
9 Complainant,) **ADMINISTRATIVE DECISION**
10) **DISMISSING CLAIMS FOR FAILURE**
11 v.) **TO STATE A CLAIM AND LACK OF**
12) **SUBJECT MATTER JURISDICTION**
13 Brother & Sister Corporation,)
14)
15 Respondent.)
16)

I. INTRODUCTION

17 Upon review of the pleadings, Complainant was ordered to show cause why the complaint
18 should not be dismissed.

II. APPLICABLE LAW

19 Pursuant to 3 CMC § 4947(a), “the hearing office may, after notice and an opportunity to be
20 heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to
21 be without merit.” Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following
22 grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person;
23 (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim
24 upon which relief can be granted. *See also* NMIAC § 80-20.1-485(b).

III. BACKGROUND

25 On September 6, 2023, Complainant initiated a labor case against Respondent for unpaid
26 wages, violation of employment preference law, and unlawful reduction in force. Upon review,
27 the undersigned found: (1) Complainant failed to establish jurisdiction by showing that he was
28 lawfully authorized to work for Respondent; (2) Complainant’s employment ended in January of
2023 and the requested arrearages are outside the sixth month statute of limitations; (3)
Complainant failed to demonstrate a violation of employment preference; and (4) Complainant
failed to demonstrate an unlawful reduction in force. Accordingly, Complainant was ordered to

1 show cause why complaint should not be dismissed for lack of jurisdiction and failure to state a
2 claim.

3 In response to the Order to Show Cause, on October 16, 2023, Complainant filed an Amended
4 Complaint. This response is deficient. First, the response is untimely. Second, the Amended
5 Complaint does not fully address or adequately respond to the legal deficiencies noted in the
6 Order to Show Cause. While it is understood that Complainant no longer wishes to pursue the
7 claims for a violation of employment preference or unlawful reduction in force, the Amended
8 Complaint does not address jurisdiction or timeliness issues with respect to the named respondent.
9 Third, without leave, the Amended Complaint names a second employer. This second employer
10 only confuses the issues considering the issues, evidence, terms of employment are different, and
11 requested relief are different.

11 IV. DISCUSSION

12 Based on a review of the filings and applicable law, the undersigned finds:

13 **1. Complainant fails to submit a timely response to the Order to Show Cause.**

14 On September 18, 2023, Complainant was ordered to Show Cause why the Complaint should
15 not be dismissed for lack of jurisdiction and failure to state a claim. Upon granting Complainant's
16 request for a deadline, the deadline to file was extended to October 13, 2023, close of business.
17 Here, Complainant filed a late response on October 16, 2023.

18 **2. Complainant fails to establish jurisdiction with respect to employment with
19 Respondent, Brother & Sister Corporation.**

20 With respect to employment of foreign national workers, the Administrative Hearing Office
21 has jurisdiction over "*all actions* involving alleged violations of the labor and wage laws of the
22 Commonwealth...." 3 CMC § 4942 (emphasis added); *see also* NMIAC § 80-20.1-450(b).
23 importantly, "[t]he Administrative Hearing Office does not have jurisdiction with respect to
24 claims of tourists. Those claims are pursuant in the Commonwealth Superior Court." NMIAC §
25 80-20.1-450(e); *see also* PL 15-108, § 2 ("It is the intent of the Legislature that this Act shall not
26 apply to persons admitted to the Commonwealth as tourists, or to persons employed illegally...").

27 As discussed above, there is no showing that Complainant was lawfully authorized to work
28 for Respondent. Instead, Complainant filed a CW-1 approval notice to work for a different
29 employer. Thus, Complainant fails to establish jurisdiction.

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3. Complaint fails to state a claim within the six months statute of limitations.

“No labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event.” 3 CMC § 4962. “If complaint is not timely filed, the hearing officer *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added.

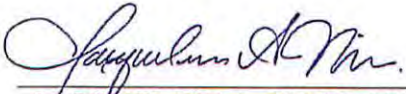
Based on filings, Complainant was supposed to be paid on a biweekly basis. Instead of filing a complaint when the wages were due, Complainant chose to accept partial payments every month. Complainant’s last date of employment was January 26, 2023. On September 6, 2023, Complainant filed the complaint for the unpaid wages accruing sometime between October 1, 2022 to January 26, 2023. The owed wages were discoverable when they were due. However, Complainant failed to act within six months of when the wages were due. Accordingly, this claim is barred by the statute of limitations.

V. CONCLUSION

Based on the foregoing, Complainant failed to show cause why the claims against Respondent should not be dismissed for lack of jurisdiction and failure to state a claim. Accordingly, the case is hereby **DISMISSED**. Furthermore, considering Complainant did not have leave to amend the complaint to include a second employer, the undersigned will not consider allegations against the second employer part of this complaint. In the event Complainant wishes to pursue claims against the second employer, Complainant must file a new complaint and pay the applicable filing fee.

Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.

So ordered this 30th day of October, 2023.



JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	Labor Case No. 23-001(T)
)	
Herbert E. Samson,)	
)	
Complainant,	)	ADMINISTRATIVE DECISION
	)	APPROVING SETTLEMENT
v.	)	AGREEMENT AND STIPULATED
	)	DISMISSAL
Mahilum Enterprises,)	
)	
Respondent.)	
)	

On October 30, 2023, the parties filed an executed Settlement Agreement and Stipulation to dismiss the above-captioned matter. The Settlement Agreement states that Respondent will pay Complainant \$3,000.00, \$1,500 for back wages, and \$1,500 for liquidated damages, within 24 hours of the execution of the Settlement Agreement.

Upon review, the undersigned finds that the terms of the Settlement Agreement are fair under the circumstances and the parties have knowingly and voluntarily agreed to it. Therefore, the Settlement Agreement is approved and accepted for the purposes of dismissal. The terms of the Settlement Agreement are hereby incorporated into this Order. There are no further issues to discuss. Accordingly, this complaint is hereby **DISMISSED** and the Prehearing Conference scheduled for November 16, 2023 at 9:00 a.m. is **VACATED**.

So ordered this **31st** day of October, 2023.

JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

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5 In Re Matter of:) Enforcement Investigation No. 23-003-05
6 Department of Labor, Enforcement and) Compliance Agency Case No. 23-005
7 Compliance,)
8 Complainant,) ADMINISTRATIVE DECISION
9 v.) GRANTING ENFORCEMENT'S
10 C Pacific Corporation,) REQUEST TO VOLUNTARILY DISMISS
11 Respondent.) REMAINING CLAIMS
12)

I. INTRODUCTION

13
14 This matter came for an Administrative Hearing on October 31, 2023 at 9:00 a.m. at the
15 Administrative Hearing Office in Saipan. Complainant CNMI Department of Labor,
16 Enforcement, Monitoring, and Compliance Section ("Enforcement") was present and represented
17 by Labor Law Enforcement Specialist III Arlene Rafanan and Acting Director Jeffrey Camacho.
18 Respondent C Pacific Corporation ("Respondent") was present and represented by President
19 Freddie Cataluna and Company Consultant John Reyes.

II. DISCUSSION

20 Enforcement's investigation began after a labor case for unpaid wages and unlawful
21 deductions was referred from the Administrative Hearing Office on March 22, 2023.¹ On August
22 3, 2023, after the labor case was resolved, Enforcement filed a Determination and Notice of
23 Violation to initiate the present agency case against the employer. Therein, Enforcement alleged
24 69 violations of 3 CMC §4967 for failure to provide required records, one violation of 3 CMC §
25 4931 and NMIAC § 80-20.1-330 for unpaid wages, one violation of 3 CMC § 4931 for unlawful
26 deductions, one violation for 3 CMC § 4525 and NMIAC § 80-20.1-210 for failure to meet
27 workforce participation requirement, two violations of 3 CMC § 4963 for unauthorized
28

¹ See *Resurreccion v. C Pacific Corporation*, LC-23-001.

1 employment, three violations of NMIAC § 80-20.1-235 for failure to file an employer declaration,
2 and two violations of 3 CMC § 4521 for failure to give job preference.² Enforcement sought \$500
3 for each of the 69 violations for failure to provide required records, and the maximum fine of
4 \$2,000 for the remaining violations.

5 In response to the alleged violations and fines, Respondent explained that they are working
6 towards compliance with all labor laws. Additionally, Respondent stated that the requested fines
7 were excessive.

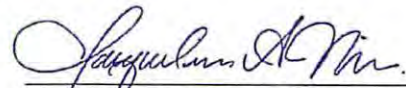
8 During the Administrative Hearing, the undersigned heard testimony from Enforcement that
9 demonstrated a number of violations were not timely filed or sufficiently pled. Accordingly, the
10 undersigned took the matter under advisement and postponed further testimony. On November
11 6, 2023, the undersigned dismissed all claims but for violations of unauthorized employment and
12 failure to give job preference. Further, Enforcement was ordered to show cause why said
13 violations should not be dismissed for failure to show it was timely filed and for failure to state
14 sufficient facts to demonstrate a violation occurred. In response, Enforcement filed a request to
15 voluntarily withdraw the remaining violations.

16 III. CONCLUSION

17 Based on the foregoing, Enforcement's request is hereby **GRANTED**. The violations of
18 unauthorized employment and failure to give job preference are hereby **DISMISSED**.

19 Any person or party aggrieved of this Order may appeal by filing the Notice of Appeal form
20 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
21 this Order.

22 So ordered this 7th day of November, 2023.



23 **JACQUELINE A. NICOLAS**

24 Chief Administrative Hearing Officer

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28 ² During the Administrative Hearing, Enforcement indicated that they no longer want to pursue sanctions for
Respondent's failure to meet the workforce participation requirement.



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

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In Re Matter of:)	Enforcement Investigation No. 23-003-05
)	Compliance Agency Case No. 23-005
Department of Labor, Enforcement and Compliance,)	
	)	ADMINISTRATIVE DECISION
Complainant,	)	PARTIALLY DISMISSING NOTICE OF VIOLATION AND ORDER TO SHOW CAUSE
v.)	
C Pacific Corporation,)	
Respondent.)	

I. INTRODUCTION

This matter came for an Administrative Hearing on October 31, 2023 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant CNMI Department of Labor, Enforcement, Monitoring, and Compliance Section (“Enforcement”) was present and represented by Labor Law Enforcement Specialist III Arlene Rafanan and Acting Director Jeffrey Camacho. Respondent C Pacific Corporation (“Respondent”) was present and represented by President Freddie Cataluna and Company Consultant John Reyes.

II. JURISDICTION

“The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of the labor and wages laws of the Commonwealth, including but not limited to any violation of this [act] and regulations promulgated thereunder.” 3 CMC § 4942. “The Administrative Hearing Office shall have jurisdiction to conduct adjudicative proceedings with respect to all issues of fact and law arising under labor laws applicable in the Commonwealth.” NMIAC § 80-20.1-450.

Here, Enforcement has alleged a number of labor and wage violations under the CNMI statutes and Department regulations. Accordingly, jurisdiction is established.

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III. BACKGROUND AND ISSUES

Enforcement’s investigation began after a labor case for unpaid wages and unlawful deductions was referred from the Administrative Hearing Office on March 22, 2023.¹ On August 3, 2023, after the labor case was resolved, Enforcement filed a Determination and Notice of Violation to initiate the present agency case against the employer. In this case, Enforcement alleges 69 violations of 3 CMC §4967 for failure to provide required records, one violation of 3 CMC § 4931 and NMIAC § 80-20.1-330 for unpaid wages, one violation of 3 CMC § 4931 for unlawful deductions, one violation for 3 CMC § 4525 and NMIAC § 80-20.1-210 for failure to meet workforce participation requirement, two violations of 3 CMC § 4963 for unauthorized employment, three violations of NMIAC § 80-20.1-235 for failure to file an employer declaration, and two violations of 3 CMC § 4521 for failure to give job preference.² Enforcement seeks \$500 for each of the 69 violations for failure to provide required records, and the maximum fine of \$2,000 for the remaining violations.

In response to the alleged violations and fines, Respondent explains that they are working to be in compliance with all labor laws. Additionally, Respondent states that the maximum fine is excessive and requests leniency in light of their good faith efforts.

The matter was scheduled for a hearing to determine:

1. Whether the Department has met their burden to show that the case was timely filed;
2. Whether the Department has met their burden to establish each violation alleged; and
3. Whether the Department has shown that the requested sanction or fine is appropriate.

During the Administrative Hearing, the undersigned heard testimony from Enforcement that demonstrated a number of violations were not timely filed or sufficiently pled. Accordingly, the undersigned took the matter under advisement and postponed further testimony.

IV. APPLICABLE LAW

The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) has authority to conduct investigations and inspect worksites to enforce the applicable labor laws, ensure lawful working conditions, employer-supplied benefits, and the health and safety of foreign national workers. 3 CMC §§ 4939-4940. When appropriate, “the [Enforcement] may

¹ See *Resurreccion v. C Pacific Corporation*, LC-23-001.

² During the Administrative Hearing, Enforcement indicated that they no longer want to pursue sanctions for Respondent’s failure to meet the workforce participation requirement.

1 commence an action against an employer or a foreign national worker for an alleged violation of
2 the labor or wage laws of the Commonwealth. 3 CMC § 4941(b); *see* NMIAC§ 80-20.1-455(i).³

3 The regulations specify:

4 If upon inspection a violation is found of any provision of the
5 Commonwealth Employment Act of 2007, as amended, the
6 Minimum Wage and Hour Act, as amended, or the Department
7 regulations promulgated pursuant to Commonwealth law, the
8 investigator may, *within thirty days*:

9 (a) Warning.

10 Issue a warning to the responsible party to correct the violation. If
11 the responsible party does not comply within ten days and correct
12 the violation, the Chief of the Enforcement Section may issue a
13 notice of violation.

14 (b) Notice of violation.

15 Issue a notice of violation to the responsible party. Upon issuance of
16 a notice of violation, an action is opened in the Administrative
17 Hearing Office with the Chief of the Enforcement Section as the
18 complainant. If the notice of violation is issued in circumstances
19 where the complaint has been filed with the Administrative Hearing
20 Office by an individual complainant, the caption on the case may be
21 amended to reflect the Chief of the Enforcement Section as the
22 complainant.

23 NMIAC § 80-20.1-435 (emphasis added).⁴

24 V. ANALYSIS

25 In consideration of the above findings and applicable law, the undersigned concludes:

26 **1. Enforcement failed to file a determination and initiate an agency case within 30 days
27 of discovering the records violations.**

28 Pursuant to their authority under NMIAC § 80-20.1-455,⁵ Enforcement issued a Request for
Production of Documents⁶ on March 23, 2023. Thereunder, Enforcement requested Respondent's

³ In practice, Enforcement has filed a Determination or Notice of Violation to initiate an agency case at the Administrative Hearing Office.

⁴ *Compra* NMIAC § 80-20.2-110 (“Within ten days of the initiation of an investigation the Chief of Labor or his designee shall either: (a) issue a warning and request to correct the violation . . . or (b) issue a notice of violation and conduct a hearing pursuant to 1 CMC § 9109.”)

⁵ Enforcement has the powers to inspect and make copies of any records that an employer is required to keep.

⁶ *See* Department Exhibit 1.

1 2022 Total Workforce Listing,⁷ 2022 Quarterly Withholding Tax,⁸ 2022 payroll records for all
2 employees,⁹ and 2022 personnel records for all employees.¹⁰ Employer's deadline to submit the
3 requested documents was April 3, 2023. Upon request, the deadline was extended to April 6,
4 2023. Respondent did not timely submit all the requested records. While Respondent has
5 subsequently submitted some documents, the submission is still incomplete.

6 Here, the violations occurred when Respondent failed to timely submit the requested records.
7 Notwithstanding the fact that the Total Workforce Listing was due to the Department prior to the
8 Request for Production of Document, Respondent had until April 6, 2023 to submit the required
9 records requested by Enforcement. Considering that Enforcement set this deadline to submit and
10 has been following up with Respondent for submission, Enforcement immediately knew or should
11 have known a violation occurred when Respondent did not submit the records on April 6, 2023.
12 However, Enforcement did not file the Determination / Notice of Violation for a records violation
13 until August 3, 2023. Accordingly, Enforcement failed to act within 30 days of discovering the
14 violation.

15 **2. Enforcement failed to file a determination and initiate an agency case within 30 days**
16 **of discovering the unpaid wages violation.**

17 Notably, this agency case stems from a labor dispute for unpaid wages between a former
18 employee and Respondent. The labor case was filed on February 17, 2023, referred to
19 Enforcement on March 21, 2023, and assigned to the investigator on March 22, 2023. In the labor
20 case, Enforcement submitted a Determination reporting underpaid wages and unlawful
21 deductions on May 12, 2023. After a hearing, judgment was entered against Respondent for
22 unpaid wages and unlawful deductions. Payment was made and the labor case was closed. Now,
23 Enforcement is pursuing an agency violation and sanctions based on unpaid wages issue.

24 In consideration of above, Enforcement knew there was a violation of unpaid wages when
25 they first conducted their interviews and submitted a determination in the above-mentioned labor
26 case. However, Enforcement failed to initiate a consolidated agency case at that time. Instead,

27 ⁷ See NMIAC § 80-20.1-505.

28 ⁸ See 3 CMC § 4967 and NMIAC § 80-20.1-501(d).

⁹ Notably, Enforcement's request for payroll records for all employees exceeds their authority. Pursuant to 3 CMC § 4967(b), required records are limited to payroll records for each foreign national worker.

¹⁰ Again, Enforcement's request for personnel records for all employees exceeds their authority. Pursuant to 3 CMC § 4967(a), required records are limited to personnel records for each foreign national worker.

1 Enforcement filed the Determination / Notice of Violation in the agency case on August 3, 2023.
2 Accordingly, Enforcement failed to act within 30 days of discovering the violation.

3 **3. Enforcement failed to file a determination and initiate an agency case within 30 days**
4 **of discovering the unlawful deductions violation.**

5 As discussed above, this agency case stems from a labor dispute for unpaid wages between a
6 former employee and Respondent. Again, the labor case was filed on February 17, 2023, referred
7 to Enforcement on March 21, 2023, and assigned to the investigator on March 22, 2023. In the
8 labor case, Enforcement submitted a Determination reporting underpaid wages and unlawful
9 deductions on May 12, 2023. After a hearing, judgment was entered against Respondent for
10 unpaid wages and unlawful deductions. Payment was made and the labor case was closed. Now,
11 Enforcement is pursuing an agency violation and sanctions based on the unlawful deductions
12 issue.

13 In consideration of above, Enforcement knew there were unlawful deductions when they first
14 conducted their interviews and submitted a determination in the above-mentioned labor case.
15 However, Enforcement failed to initiate a consolidated agency case at that time. Instead,
16 Enforcement filed the Determination / Notice of Violation in the agency case on August 3, 2023.
17 Accordingly, Enforcement failed to act within 30 days of discovering the violation.

18 **4. The alleged violations for failure to submit employer declarations are dismissed.**

19 On April 6, 2023, Enforcement received a referral from the Department's Division of
20 Employment Services (DES).¹¹ Therein, DES informed Enforcement that Respondent failed to
21 file an Employer Declaration for three responses on two different Job Vacancy Announcements
22 (JVAs).¹² For JVA 23-02-100736,¹³ Respondent announced five vacancies for bakers from
23 February 20, 2023 to March 13, 2023. There were two applicants for this JVA – one applicant
24 responded on February 21, 2023 and another applicant responded on March 2, 2023. For JVA 23-
25 02-100736,¹⁴ Respondent announced 3 vacancies for Automotive Service Technicians and

26 ¹¹ See Department's Exhibit 19.

27 ¹² *"In the event that a citizen, CNMI permanent resident, or US permanent resident was not hired, within fourteen*
28 *days after publication, the employer shall file a declaration on a standard form in digital format with respect to the*
citizens and permanent residents who applied for the job, the action taken on each applicable, and a short statement
of the reasons for rejecting any applicant who was referred. No declaration is required is a citizen or permanent
resident is hired." NMIAC § 80-20.1-235 (emphasis added).

¹³ Department Exhibit 20.

¹⁴ Department Exhibit 21.

1 Mechanics from February 20, 2023 to March 13, 2023. One applicant responded to this JVA on
2 March 6, 2023.

3 **(a) There is no showing that a declaration was due.**

4 Notably, the Department has not shown all the elements to demonstrate a violation of this
5 regulation. Specifically, based on the information provided, it is not clear whether a citizen, CNMI
6 permanent resident, or US permanent resident was hired. For that reason, it is unknown whether
7 a declaration is due. Clearly, if a declaration was not due, there was no violation.

8 **(b) If a declaration was due, the Department failed to file the alleged violation within 30
9 days of discovering the issue.**

10 If a declaration was due, Respondent should have submitted the declaration 14 days after each
11 JVA closed—March 27, 2023. The matter was referred to Enforcement on April 6, 2023 after
12 DES already found a compliance issue. Enforcement conducted interviews and opened an
13 investigation on May 22, 2023. However, Enforcement did not file their Determination and Notice
14 of Violation until August 3, 2023. Whether the Department discovered the violation when it was
15 referred or when they opened their investigation, Enforcement failed to act within 30 days.

16 **5. Enforcement fails to meet their burden to show timeliness of the unauthorized
17 employment violations and employment preference violations.**

18 As the initiating party, it is Enforcement’s burden to show that their case was timely filed, to
19 establish a violation occurred, and to demonstrate that their requested sanction is appropriate
20 under the circumstances. It is unclear whether Enforcement meets their burden with respect to the
21 unauthorized employment violations¹⁵ and the employment preference violations.¹⁶

22 Specifically, Enforcement initiated their investigation on May 22, 2023 and filed their
23 determination on August 3, 2023. Upon inquiry, Enforcement could not definitively state when
24 they discovered either violation but claimed sometime in “mid-July.” How Enforcement conducts
25 their investigations is problematic and concerning for many reasons. Specifically, there is no
26 uniform policy or procedure on how to manage important information, how cases are processed
27 or investigated in accordance with necessary timelines and deadlines, and no quality control to

28 ¹⁵ “An employer shall not employ a person who is not a citizen or permanent resident and who has entered the
Commonwealth without authorization to work.” 3 CMC § 4963

¹⁶ “Employers shall give qualified citizens, CNMI permanent residents, and US permanent resident preference for
employment in the private sector workforce in the Commonwealth over foreign national workers, transitional
workers, and nonimmigrant aliens.” NMIAC §80-20.1-220; see 3 CMC § 4521.

1 demonstrate a firm understanding and fair application of relevant labor laws. This leads to unfair
2 and prejudicial results. To avoid perpetuating this injustice, the undersigned must require
3 Enforcement to meet their burden.

4 VI. CONCLUSION


5 Ultimately, Enforcement exceeded their authority by asking for records beyond their
6 limitations, failed to timely act upon referrals, and failed to meet their burden. Based on the
7 foregoing, Enforcement failed to act and dismissal for the above-mentioned alleged violations is
8 appropriate. It is hereby **ORDERED**:

- 9 1. The 69 record violations are hereby dismissed for untimeliness;
- 10 2. The unpaid wages violation is hereby dismissed for untimeliness;
- 11 3. The unlawful deductions violation is hereby dismissed for untimeliness;
- 12 4. The workforce participation objective violation was withdrawn by Enforcement and
13 hereby dismissed for mootness;
- 14 5. The employer declaration violation is hereby dismissed for failure to state a claim, or in
15 the alternative, for untimeliness.

16 Further, in the event Enforcement wants to pursue their remaining claims, Enforcement is
17 Ordered to Show Cause why the alleged violations for unauthorized employment and job
18 preference should not be dismissed for failure to demonstrate it was timely filed and for failure
19 to state a claim. Enforcement's response to the Order to Show Cause is due on or before
20 **November 30, 2023**.

21 Any person or party aggrieved of this Order may appeal by filing the Notice of Appeal form
22 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
23 this Order.

24 So ordered this **6th** day of November, 2023.

25 
26 _____
27 JACQUELINE A. NICOLAS
28 Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR

ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	Enforcement Investigation No. 23-008-06
	)	Compliance Agency Case No. 23-003
Department of Labor, Enforcement and Compliance,)	
Complainant,	)	ADMINISTRATIVE DECISION
v.	)	GRANTING ENFORCEMENT'S
	)	REQUEST FOR DISMISSAL
Saipan Long Shun Corporation Db a Island Hotel,)	
Respondent.)	

I. INTRODUCTION

This matter came for an Administrative Hearing on November 7, 2023 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant CNMI Department of Labor, Enforcement, Monitoring, and Compliance Section (“Enforcement”) was present and represented by Acting Director Jeffrey Camacho. Respondent Saipan Long Shun Corporation Db a Island Hotel (“Respondent”) was present and represented by Secretary Jianqin Huang.

II. BACKGROUND AND ISSUES

On June 16, 2023, Enforcement filed a Determination and Notice of Violation alleging one violation of NMIAC § 80-20.1-240 (c) for failure to notify the Department of the reduction in force or closure of business, one violation of NMIAC § 80-20.1-505(a) for failure to update the quarterly submission of records, and one violation of NMIAC § 80-20.1-225(a) for failure to post a JVA. Enforcement seeks the maximum fine of \$2,000 for all violations.

The matter was scheduled for a hearing. During the Administrative Hearing, Enforcement moved to orally dismiss all violations. There were no objections from the Respondent.

III. CONCLUSION

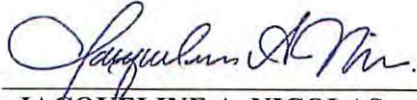
Based on the foregoing, dismissal is appropriate. Enforcement’s oral request is hereby **GRANTED** and the alleged violations are **DISMISSED**.

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Any person or party aggrieved of this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.

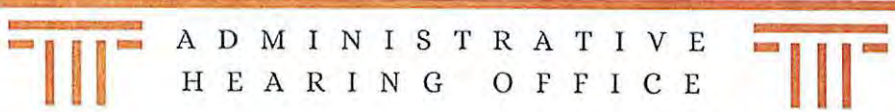
So ordered this 7th day of November, 2023.



JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR



ADMINISTRATIVE HEARING OFFICE

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In Re Matter of:)	Enforcement Investigation No. 23-02-08T
)	Compliance Agency Case No. 23-002(T)
Department of Labor, Enforcement and Compliance,)	
)	
Complainant,	)	ADMINISTRATIVE DECISION
	)	DISMISSING VIOLATIONS FOR
v.	)	ENFORCEMENT'S FAILURE TO FILE
	)	WITHIN 30 DAYS
Kalayaan, Inc.,)	
)	
Respondent.)	

I. INTRODUCTION

This matter came for a Status Conference on November 15, 2023 at approximately 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant CNMI Department of Labor, Enforcement, Monitoring, and Compliance Section (“Enforcement”) was present and represented by Labor Law Enforcement Specialist III Ramona Viches. Respondent Kalayaan, Inc. (“Respondent”) was present and represented by Registered Agent Eleanor Alinas and Counsel Michael Evangelista.

As further discussed below and based on applicable law and evidence presented, the alleged violations in the Determination are hereby **DISMISSED** for failure to file within the 30 days of the known violation, in accordance with NMIAC § 80-20.1-435.

II. JURISDICTION

“The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of the labor and wages laws of the Commonwealth, including but not limited to any violation of this [act] and regulations promulgated thereunder.” 3 CMC § 4942. “The Administrative Hearing Office shall have jurisdiction to conduct adjudicative proceedings with respect to all issues of fact and law arising under labor laws applicable in the Commonwealth.” NMIAC § 80-20.1-450.

Here, Enforcement has alleged a number of labor and wage violations under the CNMI statutes and Department regulations. Accordingly, jurisdiction is established.

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III. APPLICABLE LAW

The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) has authority to conduct investigations and inspect worksites to enforce the applicable labor laws, ensure lawful working conditions, employer-supplied benefits, and the health and safety of foreign national workers. 3 CMC §§ 4939-4940. When appropriate, “the [Enforcement] may commence an action against an employer or a foreign national worker for an alleged violation of the labor or wage laws of the Commonwealth. 3 CMC § 4941(b). To commence an action, Enforcement must comply with the procedure in NMIAC§ 80-20.1-435. The regulation provides:

If upon inspection a violation is found of any provision of the Commonwealth Employment Act of 2007, as amended, the Minimum Wage and Hour Act, as amended, or the Department regulations promulgated pursuant to Commonwealth law, the investigator may, *within thirty days*:

(a) Warning.
Issue a warning to the responsible party to correct the violation. If the responsible party does not comply within ten days and correct the violation, the Chief of the Enforcement Section may issue a notice of violation.

(b) Notice of violation.
Issue a notice of violation to the responsible party. Upon issuance of a notice of violation, an action is opened in the Administrative Hearing Office with the Chief of the Enforcement Section as the complainant. If the notice of violation is issued in circumstances where the complaint has been filed with the Administrative Hearing Office by an individual complainant, the caption on the case may be amended to reflect the Chief of the Enforcement Section as the complainant.

NMIAC § 80-20.1-435 (emphasis added).¹ In addition to filing within thirty days, Enforcement has the burden to prove their case in a hearing.² Pursuant to 3 CMC § 4947 and NMIAC § 80-20.1-485, each proven violation is subject to \$2,000 in fines or other sanctions.

¹ *Compra* NMIAC § 80-20.2-110 (“Within ten days of the initiation of an investigation the Chief of Labor or his designee shall either: (a) issue a warning and request to correct the violation . . . or (b) issue a notice of violation and conduct a hearing pursuant to 1 CMC § 9109.”)

² Unless otherwise provided by statute, the proponent of an administrative order or decision has the burden of proof. 1 CMC § 9109(i). *In re San Nicolas*, 1 NMI 329 (1990). Burden of proof in an adjudicatory proceeding is the burden of going forward with the evidence on all substantive issues. *In re San Nicolas*, 1 NMI 329 (1990).

IV. ANALYSIS

1 On September 13, 2023, Enforcement filed a Notice of Violation/Determination with the
2 Administrative Hearing Office. Therein, Enforcement alleged a violation of 3 CMC § 4967 for
3 failure to submit required records, 3 CMC § 4963(j) for unauthorized employment, 3 CMC §
4 4963(d) for providing false statements, 3 CMC § 4522 for failure to post JVA, 3 CMC § 4521 for
5 failure to give job preference, and 3 CMC § 4523 for failure to make a good faith effort.
6 Enforcement sought the maximum fine of \$2,000 for each of the alleged violations.

7 Upon notice to the parties, a status conference was scheduled to discuss how to proceed on a
8 number of procedural issues and deficiencies related to the Notice of Violation/Determination.
9 Based on the applicable law and arguments presented, the undersigned finds:

10 **1. Enforcement's Determination and Notice of Violation is untimely.**

11 This investigation began when Enforcement received an anonymous tip about unauthorized
12 workers at Respondent's worksite. On May 3, 2023, Enforcement inspected the worksite and
13 issued a production of documents to a staff of the Respondent. Respondent's original deadline to
14 submit records was May 15, 2023. On May 18, 2023, Enforcement issued a Notice of Warning
15 but gave Respondent extension(s) to submit required records. Based on the investigation,
16 Enforcement opened a compliance agency case on August 18, 2023. Subsequently, on September
17 13, 2023, Enforcement filed the Notice of Violation/Determination to the Administrative Hearing
18 Office.

19 As demonstrated above, an inspection was held on May 3, 2023. Approximately four months
20 after the inspection, Enforcement failed to file a Notice of Violation/Determination. When
21 questioned why the Notice of Violation/Determination was filed late, Enforcement indicated they
22 granted Respondent a number of extensions to submit requested records. Enforcement had no
23 other arguments. In response, Respondent argued the Department's failure to timely act has
24 burdened the company and finality is needed. Upon inquiry, neither party requested additional
25 time to fully brief or submit written arguments.

26 Based on above, Enforcement clearly failed to file the Notice of Violation/Determination
27 within 30 days of the inspection. Accordingly, the Notice of Violation/Determination is untimely.
28 While the undersigned recognizes that Enforcement requested leniency and granted extensions in
an attempt to work with Respondent, it is insufficient basis to ignore established deadlines,
regulations, and appropriate procedures. Accordingly, dismissal is appropriate.

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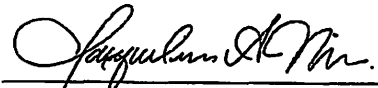
2. Respondent's objections and other arguments are moot.

Among other things, Respondent's counsel argued that Enforcement lacks subject matter jurisdiction and federal law pre-empted the Department from enforcing the above-cited statutes. In light of the dispositive timeliness issue, the undersigned finds this issue moot.

V. CONCLUSION

Based on the foregoing, Enforcement failed to comply with NMIAC § 80-20.1-435. Accordingly, this case is **DISMISSED**. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.

So ordered this **15th** day of November, 2023.



JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



CNMI DEPARTMENT OF LABOR

OFFICE OF THE
SECRETARY

In Re Matter of:	)	Compliance Agency Case No. 23-006
	)	Secretary Appeal No. 23-004
Department of Labor, Enforcement and)	
Compliance,)	
)	
Complainant,	)	FINAL AGENCY DECISION
)	
v.)	
)	
B & R Corporation Db a B & R Auto Shop,)	
Respondent.)	

I. INTRODUCTION

On April 4, 2023, the Appellant conducted a compliance inspection of B & R Corporation Db a B & R Auto Shop pursuant to NMIAC §80-20.1-445. A request for the Production of Documents was issued to the Appellee during this inspection. Appellee was given (10) ten calendar days or until April 14, 2023, to submit documents. Appellee failed to submit documents on that date. On April 28, 2023, Appellant reminded the Appellee to submit the requested documents, but there was no callback. On May 2, 2023, the Appellant called again to request for the documents, and was told by Appellee they could not produce the documents at this time because there was no accountant. Appellant informed the Appellee that a notice of violation would be forthcoming. The Appellant issued a Determination, Notice of Violation on August 14, 2023 at the Administrative Hearing Office. On August 17, 2023, the Notice of Hearing was issued. On September 19, 2023 the Order to Show Cause hearing was held with both parties present.

II. LEGAL STANDARD

“An appeal is commenced by filing a notice of appeal on the standard form provided by the Department and payment of the fee...” NMIAC 80-20.1-490(a). “The record before the Secretary consists of the complaint, pleadings filed, exhibits, and order of the hearing officer.” NMIAC § 80-20.1-490(c).

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2 “When the Secretary is exercising jurisdiction over appeals from final orders of the
3 Administrative Hearing office, the Secretary shall have all the powers and responsibilities of a
4 hearing officer. No hearing or oral argument on an appeal is required.” NMIAC 80-20.1-490(d).
5 “In a review on appeal, the Secretary may restrict review to the existing record, supplement the
6 record with new evidence, hear oral argument, or hear the matter de novo pursuant to 1 CMC
7 §9109 and §9110. Upon completion of review, the Secretary shall affirm, reverse or modify the
8 findings, decision, or order of the hearing office.” NMIAC § 80-20.1-490(e).

8 III. DISCUSSION

9 1. **Appellant fails meet the regulatory deadline set forth in NMIAC §80-20.1-435.** The
10 regulation states:

11 If upon inspection a violation is found in any provision of the Commonwealth
12 Employment Act of 2007, as amended, the Minimum Wage and Hour Act, as
13 amended or the Department Regulations promulgated pursuant to
14 Commonwealth law, the Investigator may, *within thirty days*:

15 (a) Warning

16 Issue a warning to the responsible party to correct the violation. If the
17 responsible party does not comply within ten days and correct the violation,
18 the Chief of the Enforcement Section may issue a notice of violation.

19 (b) Notice of Violation

20 Issue a notice of violation to the responsible party. Upon issuance of a
21 notice of violation, an action is opened in the Administrative Hearing office
22 with the Chief of the Enforcement Section as the Complainant. If the notice
23 of violations is issued in circumstances where the complaint has been filed
24 with the Administrative Hearing Office by an individual complainant, the
25 caption on the case may be amended to reflect the Chief of the Enforcement
26 Section as the complainant.

27 NMIAC §80-20.1-435 (emphasis added).¹

28 ¹ *Compra* NMIAC §80-20.2-110 (“Within ten days of the initiation of an investigation the Chief of Labor or his
designee shall either: (a) issue a warning and request to correct the violation... or (b) issue a notice of violation and
conduct a hearing pursuant to 1CMC §9109.”)

1 Work site inspections are the triggering device that begins the thirty day timeline. In this
2 case, the Appellant conducted the first site inspection on April 4, 2023. On that date, the Appellee
3 was given ten days to comply with the request for the Production of Documents. On April 15,
4 2023, the day after the due date for the Production of Document, is when the 30-day window to
5 issue either a warning or a Notice of Violation should have commenced. May 15, 2023 would
6 have been the last day for the Appellant to issue a Warning or a Notice of Violation for this
particular issue.

7 If DOL enforcement finds a violation and does not either issue a warning or a notice of
8 violation within 30 days, it is prohibited from pursuing a complaint. However, DOL is not barred
9 from pursuing subsequent inspections of an employer's premises. When it does, and a violation
10 is found during the subsequent inspection(s), a new thirty-day timeline begins. Proper
11 documentation of all visits is required to monitor these timelines.

12 Conversely, opening an investigation, without having conducted an initial worksite inspection
13 does not trigger the thirty-day timeline. Only during the course of an investigation, that a worksite
14 inspection is performed, would it activate the thirty-day timeline at issue.

15 IV. CONCLUSION

16 Accordingly, pursuant to NMIAC § 80-20.1-490(e), the Administrative Hearing Officer's
decision is **AFFIRMED**.

17 This Order constitutes a **FINAL AGENCY DECISION**. In the event a party aggrieved by
18 this Order would like to dispute or contest this decision, said party may seek judicial review with
19 the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All
20 forms, filings fees, and filing deadlines for judicial review will be as established by the applicable
21 law and court rule.

22 So ordered this **8th** day of November, 2023.

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24 

25 **LEILA F. STAFFLER**
26 Secretary of Labor
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28