



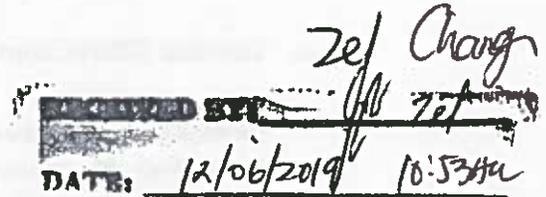
AHENSIAN PRUTEKSION LINA'LA GUÅHAN

LOURDES A. LEON GUERRERO, GOVERNOR OF GUAM • JOSHUA F. TENORIO, LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO, ADMINISTRATOR

DEC 06 2019

GEPA RECEIPT COPY

Mr. Mark S. Baldyga, CEO
Baldyga Group
1199 Pale San Vitores Road
Tamuning, GU 96913
Tel. No. 671-646-8000



Subject: Notice of Violation and Compliance Order

It is the stated policy of Guam, pursuant to the Water Pollution Control Act (10 GCA Chapter 47), to protect, maintain, and improve the quality of its water resources for several beneficial uses including but not limited to recreational and other uses. Guam's Water Quality Standards (22 GAR Chapter 5) supports the implementation of this policy through the establishment of water quality criteria and other regulatory provisions that provide for the prevention, abatement, and control of new and existing water pollution sources. As described herein, the Guam Environmental Protection Agency (GEPA) finds that Baldyga Group ("Respondent") has violated the Guam Water Quality Standards and is ordered to undertake remedial action(s).

BACKGROUND

Respondent owns and operates SandCastle Guam located at 1199 Pale San Vitores Road, Tamuning, Guam, 96913. GEPA received a complaint on November 28, 2019, concerning the discharge of pumped flood water from SandCastle Guam onto the public sidewalk and into the public street (Pale San Vitores Road) and public storm drain system fronting the facility. The complaint was received in the form of a video provided to GEPA showing water being discharged from a pump onto the public sidewalk in front of SandCastle Guam, and showing visitors attempting to jump over and/or walk through the flowing discharge. GEPA staff visited SandCastle Guam on December 5, 2019, and observed the pipe used to discharge stormwater from the other side of the property to the public sidewalk, as well as visual evidence of the discharge including flattened grass and deposited debris. A copy of the inspection report is attached.

NOTICE OF VIOLATION

Based on the facts described above, GEPA finds that Respondent violated the following provisions of the Guam Water Quality Standards, 22 GAR Chapter 5:

1. 22 GAR §5104(f)(1)(J) "Prohibited Discharges" *"No Person Shall Cause or Permit ... any discharge which is in conflict with an approved Guam plan"*.

Respondent discharged flood water from SandCastle Guam onto a public sidewalk and into a public street and public storm drain system. This caused a public health and safety hazard in addition to nuisance conditions for residents and visitors alike. These conditions conflict with the following provisions of approved Guam plans:

a. Tourism 2020 (Guam Visitors Bureau, 2014)

Objective 1 "Improve Quality and Yield" (pages 28 & 29; **emphasis added**)

From Page 28: Improve Quality by Maintaining and Upgrading Public Areas. Eradicate Tumon graffiti, choking bus exhaust, Tumon street flooding, unlawful signage, illegal touts, shoddy landscaping, and poorly-maintained public restrooms in the airport and in public places. Improve visitor safety, security, multi-language signage, airport cleanliness, the wait time at immigration and customs lines, expedited processing options, and so forth. There is a long list that will require a great deal of effort, a reasonable but modest amount of funding and a method of enforcement.

2. 22 GAR §5104(a)(9) "Effluent Limitations" *"No effluent shall, alone, or in combination with other sources, cause a violation of any applicable water quality standard. If the Agency finds that a discharge which complies with treatment requirements under the Authority of §5103(a) of these standards would cause, or is causing, a violation of water quality standards, the Administrator shall take appropriate action under § 47109 of the Water Pollution Control Act to require the discharge to meet whatever effluent limits are necessary to ensure compliance with the water quality standards."*

"Effluent" is defined under 22 GAR §5105(a)(30) as "The liquid waste that is discharged directly or indirectly, into a waterbody, storm drain or sewage system."

Flood waters discharged from SandCastle Guam by Respondent meet the definition of an "effluent" pursuant to 22 GAR §5105(a)(30). The act of discharging this effluent across a public sidewalk and into a public storm drain, creating a public health and safety hazard and nuisance condition, caused the violation of water quality standards for "prohibited discharges" under 22 GAR §5104(f)(1)(J), as described in Violation 1.

COMPLIANCE ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and 22 GAR Chapter 5, Respondent is **HEREBY ORDERED** to undertake the following remedial actions:

1. **Immediately upon receipt of this order:** Cease all discharge of flood water to the public sidewalk fronting SandCastle Guam, and submit to GEPA a written acknowledgment of this requirement and statement that such discharge has ceased and will not resume.
2. **Within three (3) days of receipt of this order:** Provide to GEPA a written plan detailing how Respondent intends to discharge flood water in a manner that does not create a public health and safety hazard or nuisance conditions. Written approval of the plan must be obtained from GEPA in order to be determined in compliance with this item.
3. **Within sixty (60) days of receipt of this order:** Submit a written plan outlining the steps and timetable required to implement a permanent solution to Respondent's flooding problems at the SandCastle Guam property, in a manner that is fully consistent with Guam law.
4. **Within one hundred eighty (180 days) of receipt of this order:** Complete construction or implementation of the solution detailed under Item 3, and request GEPA inspection for final approval.

Requests for extension of time must be submitted in writing, and will be evaluated based on the merits of the request. *If the corrective actions specified above are not completed within the specified time (or within an alternative time frame as amended by a written time extension from GEPA), this matter may be referred to the Office of the Attorney General for appropriate action. Any person who violates 10 GCA Chapter 47 or 22 GAR Chapter 5 may be charged with a misdemeanor and subject to a fine not to exceed \$1000 per violation per day.*

You may file within ten (10) days of the date of your receipt of this Notice of Violation/Compliance Order, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA's Board of Directors.

Unless a written request for a hearing signed by or on behalf of the person, agency or business entity named above in this Notice of Violation/Compliance Order is hand delivered or mailed to GEPA within ten (10) days after the Notice of Violation/Compliance Order was personally served on you or mailed to you, GEPA may proceed upon the Notice of Violation/Compliance Order without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:

Guam Environmental Protection Agency Board of Directors
C/o Administrator Guam Environmental Protection Agency
Building 17-3304 Mariner Avenue
Tiyan Barrigada, Guam 96913

If you file a Notice of Intent to Appeal/Notice of Defense, the GEPA's Board of Directors shall hold a public hearing, at which time you may appear and present evidence in person or through counsel in support of this petition.

Failure to file a Notice of Intent to Appeal within the period specified above will constitute a waiver of your right to a hearing. If you waive your rights to a hearing the Notice of Violation/Compliance Order will become final, and GEPA may proceed upon the Order without a hearing and without further notice to you.

Should you have questions or need additional information please contact the Water Pollution Control Program or Water Division Chief Engineer, CDR Brian Bearden, P.E., BCEE at Tel# 3004779 and 3004786 respectively.

Dated this 6th day of December, 2019.


WALTER S. LEON GUERRERO
Administrator



Guam Environmental Protection Agency
 P.O. Box 22439, GMF,
 Barrigada, Guam 96921



NOTICE OF INTENT TO APPEAL (AKA NOTICE OF DEFENSE)

I, _____, have received your Notice of Violation, Order of Compliance and/or Administrative Penalty Order dated _____, charging me for violations and/or imposing penalties and/or other orders, and I wish to:
 (Please check appropriate sections)

A. Request for a hearing and

- 1. Object to the accusation on the ground that it does not state acts or omissions upon which the Agency can proceed.
- 2. Object to the form of the accusation on the ground that it is so indefinite or ambiguous that I cannot identify the infraction or prepare my defense.
- 3. Wish to prepare new matter in my defense.
- 4. Admit to the accusation in part.

B. Admit to the accusation in whole.

C. Verified Petition: Under penalty of perjury I hereby declare that the following constitutes my legal and factual basis for this appeal:

[please continue on blank sheet of paper if more space is needed and attach to this paper]

My mailing address is:

SIGNATURE

DATE

GUAM EPA CASE NO.: _____



AHENSIAŃ PRUTEKSION LINA'LA GUÁHAN

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WALTER S. LEON GUERRERO, ADMINISTRATOR

**SANDCASTLE, INC. (THE)
DBA: SANDCASTLE SHOWROOM
LOT 5078-5-R1 #1199 PALE SAN VITORES RD. TUMON, GUAM**



12/05/2019: Starting point of the PVC pipe leading out to the road being used to drain the backside parking area that gets flooded with rainwater.



12/05/2019: PVC pipe leading out to the main road.



GUAM EPA | 17-3304 Mariner Avenue Tiyan Barrigada, Guam 96913-1617 | (671) 300.4751/2 | (671) 300.4531 | epa.guam.gov

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12/05/2019: Discharge pipe from the SandCastle.



12/05/2019: Direction of flow from the discharge pipe to the adjacent stormdrain.