



GUAM ENVIRONMENTAL PROTECTION AGENCY • AHENSIAN PRUTEKSIÓN LINA'LA' GUÁHAN

LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM
MICHELLE C. R. LASTIMOZA • ADMINISTRATOR

**Guam Environmental Protection Agency
Board of Directors' Regular Meeting
Thursday, September 21, 2023**

MINUTES

- **Call to Order:** Chairman Carbullido called the Board of Director's meeting to order at 4:05p.m via the Guam EPA Conference Room. Roll call was done by Acting Board Secretary, Arlene Acfalle, as follows:

Board Members:

Chairman Steven Carbullido	- Present Guam EPA Conference Room
Vice Chairman Steve Carrara	- Present attending virtually from Tamuning
Director Steven Hollister	- Present attending virtually from Agat
Director Fran Castro	- Present attending virtually from Ipan, Talofofo
Director Dave Duenas	- Present attending virtually from Dededo
Director Danny Taitingfong	- Present Guam EPA Conference Room

**Quorum has been established.*

Guam EPA Staff: Nic Lee, Arlene Acfalle, Connie Afleje, Roland Gutierrez, CAPT. Brian Bearden (USPHS), Romeo Zacarias

General Public: Frank San Nicolas (Guam Daily Post), George Lujan, Jesse Chargualaf, Jr. (Office of Senator Sabina Perez)

- **Approval of Agenda:** Director Castro made a motion to approve the agenda, seconded by Director Hollister. All voted in favor, zero (0) opposed and motion passes.
- **Approval of August 2023 Minutes:** Director Castro made a motion to approve the meeting minutes seconded by Director Hollister. All voted in favor, zero (0) opposed and motion passes.
- **Administrator's Report** (Provided by the Nicholas Lee for Administrator Lastimoza)

Administrative:

Personnel:

- Air & Land Administrator selection made – Air Pollution Control Program Manager Roland Gutierrez, Jr. was selected.
- EHS Supervisor certification list received from DOA – Interviews are forthcoming
- Agency continues to review resumes for recruitment for temporary and limited term appointments.



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Budget/Procurement:

- Continued progress made to obtain FEMA Public Assistance through our Program Delivery Manager to complete Agency's application for FEMA PA for: Asset/equipment replacement, Force Account Labor and other recovery-associated
- Agency received its FY2024 award in the amount of \$23,457,167 which kicks off the new 5 year grant cycle, general breakdown:
 - \$18M is for Emergent Contaminant
 - Award is from Emerging Contaminants for Disadvantaged Communities and is worth approximately \$47.2M throughout the cycle
 - Grant funding earmarked for agency administrative costs, facilities, lab capacity, equipment, training, IPAs, monitoring and outreach for PFAS, dieldrin and other emerging contaminants.
 - \$572,065 from Solid Waste Infrastructure for Recycling Grant Program
 - All other remaining funds are for Guam EPA Consolidated Grant Programs

Agency Headquarters:

- Met with DOI and USACE officials to discuss next steps in obtaining an authorization to proceed use of capital improvement project funding for architectural and engineering design work. The NEPA process for DOI is still underway

EPA Region 9 Program Manager Visit – Carl Goldstein, September 18th

- Working with agency on criteria, reporting requirements and compliance with grant conditions

Policy:

Bill 151-37: "Nuclear Energy Prohibition Act of 2023," relative to prohibiting the production and use of nuclear energy on Guam – Heard on September 5

- Agency did not state a position on supporting or opposing the Act, but stated that nuclear energy production on Guam would be serious business and can lead to serious environmental catastrophe - with nearly irreparable damage to the island if we do not have the proper capacity to manage every element of this program.
- Agency reminded the legislature that while we are regulatory, it is the Nuclear Regulatory Commission (NRC) has the oversight on civilian nuclear energy production
- Based on the NRC, Guam is considered a "non-agreement" territory with only limited jurisdiction over radioactive materials which are not derived from nuclear reactors like x-ray equipment and naturally occurring radioactive materials

Bill 171-37 - An act to increase fines for substantial littering on Guam

- Introduced September 20 – no hearing date set at this time
- Defines "Substantial Littering" as litter with a gross weight equal to/greater than 20lbs



- Litter citations issued for litter not considered significant remain the same: \$200/\$300/\$500 for first thru third offenses and beyond
- New fines will be issued for littering which meet/exceed the definition of substantial littering:
 - \$1,000 for litter weighing 20lbs., up to 100 lbs.
 - \$5,000 for litter weighing greater than 100 lbs., up to 5,000lbs.
 - \$10,000 for litter weighing greater than 5,000 lbs., and an additional \$10,000 for each 1,000lbs, above 5,000 lbs.
 - Fines may be converted to community service by taking the fine dollar amount and dividing it by \$12 (Fine ÷ \$12.00)
- Violators responsible for fine and cleanup costs
- Fines will be deposited into the Litter Control Revolving Fund

Programs/Projects/Partnerships:

Guam EPA awarded \$572,065 under Solid Waste Infrastructure for Recycling Grant Program

- Hire trainers and partner up with a non-profit organization to conduct sessions on how to compost and to conduct the training and follow-up activities
- Training modules will include two sessions in each village per year on creating compost, amending soil with compost, and using compost to grow produce
- Guam will improve their data collection activities by measuring tons of residential food and yard waste diverted annually from the landfill into compost
- Goal for establishing this training and technical assistance program is to promote using wasted food to benefit the residents of Guam through improved soil to grow fresh and local produce

Guam EPA Water Division participates at AWWA 2023 Western Pacific Water and Wastewater Conference – September 6-8

- Agency presentations presented on PFAS and typhoon emergency response
- Panel for public water system planning for potential upcoming regulation on PFAS

Administrator accompanies Lt. Gov. to Guam Contractors Association (GCA) meeting

- Lt. Gov. spoke about plans for Guam's electronic permitting system, and highlighted our Agency's electronic system which allows for concurrent plan/application review

Chairman Carbullido opened the floor for discussion and comments.

Director Castro inquired on Bill 171-37, if passed what agency will be enforcing the citations and if Guam EPA has enforcement officers. Mr. Roland Gutierrez advised our staff are not law enforcement but peace officers. Guam EPA staff have taken the training administered by the court and are trained to issue litter citations. Mr. Gutierrez also advised that although the agency has litter citation booklets we do not have a scale available for the purpose of weight and measure.



Mr. Nic Lee advised that there is hasn't been a date set for the public hearing so the agency would have a chance to come up with our public comments for the hearing. Mr. Lee also advised that there are 9 other agencies that can issue these litter citations to include the village Mayors.

○ **Outstanding Notices of Violations**

- Primo's Heavy Equipment – Chairman Carbullido provided update that he spoke to the hearing officer at OAG and it is noted that after Guam EPA (the agency) is done coordinating with counsel for Primo's, the agency will inform the Board that they are ready for a hearing.
- Samsung – Chairman Carbullido provided update that he spoke to the hearing officer at OAG and it is noted that after Guam EPA (the agency) is done coordinating with counsel for Samsung, the agency will inform the Board that they are ready for a hearing.
- JJ Pacific Development– No update – status quo. (Last status: CAPT. Bearden advised penalty has not been paid. Letter has been issued to make payment. JJ Pacific missed the opportunity to request a hearing. Ms. Finney advised we will see what we can do)
- Lin's Hardware – Status quo. No update
- GPPC, Inc. (Crown Plaza project) – Status quo. No update.
- Upper Tumon Property (Mr. Park) – No update. Status quo. (Last status: CAPT. Bearden advised the NOV that was issued assessed a fine of \$1.7Mil. Owner has been unresponsive. CAPT. Bearden advised assistance is needed from OAG to collect payment)
- Old Royal Palm Garage update – No update. Status quo. (Last status: Roland was to verify with Administrator Lastimoza and Ms. Finney if the agency is going to further pursue Mr. David Su)
- Verona – Status quo – No update.
- Cardona – Status Quo – No update.
- CHK Core-Tech, Hawaiian Dredging, Kajima JV) NOV – Chairman Carbullido provided update that he spoke to the hearing officer at OAG and it is noted that after Guam EPA (the agency) is done coordinating with counsel for CHK Core-Tech, the agency will inform the Board that they are ready for a hearing.
- Humåtak (Umatac) Mayor Office – Status quo (Last status: CAPT. Bearden advised a stop work order was issued on July 10, 2023 for excessive clearing without a permit during the emergency and way past post typhoon response)
- US Navy water system NOV – CAPT. Bearden advised this is no longer a violation and a Return to Compliance was issued.

○ **New Notice of Violations**

- Navy Fuel Farm - Compliance Evaluation Inspection in regards to monitoring, record keeping and pressure testing.



- **Guam EPA's Proposal for RRF Funding for FY24** – Newly appointed Air & Land Administrator, Mr. Roland Gutierrez, Jr. reported that two weeks ago the Legislature passed a new budget bill allowing the MCOG to rollover the funding. Mr. Gutierrez inquired with Mrs. Connie Afleje, ASO, on the outstanding funds that have not been reconciled. Ms. Afleje advised she does not have the updated information readily available but the last time she checked MCOG had a 2-3 thousand dollar balance. Ms. Afleje also shared the law states that the funds that are not obligated can rollover until exhausted. So whatever PO's that are going to expire, MCOG should be deobligating so that those funds can rollover and be used again.

Roland advised he spoke to Mrs. Sabrina Cruz-Sablan and the agency is requesting we table this discussion as MCOG has not submitted the operations and expenditure plan for the recommended \$1.5Million for FY24. The agency would like to engage with MCOG and Administrator Lastimoza to discuss other issues that are pending. Mrs. Afleje agreed with Mr. Gutierrez that we should table the discussion till such time.

Chairman Carbullido inquired if there is still action needed for FY21 & FY22. Mrs. Afleje noted that MCOG has not de-obligated the funds and the agency is trying to deobligate the FY21 & FY22 funds ourselves. Mrs. Afleje advised she is working closely with DOA pending concurrence from Mr. Angel Sablan that there is no outstanding claims as MCOG has not provided the Release of Claims from the vendors. Mrs. Afleje stated the agency does not want to fall into any prior year obligations with any vendor from the MCOG.

Chairman Carbullido inquired if there is anything in the law that specifies funding for FY24. Mr. Gutierrez advised it was up to \$1.5Million however it's whatever the board approves. Chairman advised Mr. Gutierrez to verify what amount the law allows the board to consider and agreed to table this discussion till next board meeting. Chairman Carbullido also added that MCOG would normally submit their operation plan by now it seem they are comfortable with the remaining \$300K for the next couple of months.

Mr. Gutierrez added that he and Sabrina still needs to meet with Administrator Lastimoza to discuss the RRF funding and also funding that DPW is allowed to use out of the RRF for environmental clean-up.

- **Discussion on septic system lot sizes and potential changes to laws and regulations** – Chairman Carbullido inquired with the rest of the board if they had any other questions on the agency's recommendation 1 & 2 before proceeding on with the discussion from the September board meeting. Director Hollister chimed in and inquired with Brian on his comments about our current regulations holding up people from developing on their property. Director Hollister wanted clarification if those were individual property owners or developers. CAPT. Bearden stated it might be both and it is really hard to tell as people don't identify whether they are the property owner or developer. There are



definitely some individuals who have decedent lots that are looking to build but are not able to right now. CAPT. Bearden added that properties are often distributed through probate without consultation from Land Management. These properties then get issued the heirs and are much smaller than what our regulations require and are unable to obtain a permit to build a septic system.

Director Hollister inquired if 19,000sf is equivalent to a one acre property in which CAPT. Bearden advised it's more like half-acre and one acre is normally 43,560sf.

Director Hollister continued on by asking CAPT. Bearden why is this recommendation to change the toilets a good thing. CAPT. Bearden advised it all fits into the overall plan which is to improve the situation that we have right now. The situation is that Guam EPA since 1997 has been allowing one-quarter acre parental subdivision lots to be developed with a regular septic system. Last year in FY22 when the agency started keeping records on this, the majority of the newer septic systems that we have permitted over the aquifer were these smaller one-quarter acre parental subdivision lots. CAPT. Bearden stated the agency is concerned that it is too great of a load for the aquifer to bear which will result in the nitrate levels rising above levels of concern potentially approaching the MCL and we want to improve that. CAPT. Bearden also stated the bigger picture is that the agency would want, not to stop the practice of allowing these parental lots to be developed, but to require them to be developed using a higher degree of treatment with a nitrogen reducing system. Following the NSF 245 standard would mean it has been third party tested and evaluated to provide at least a 50% reduction of nitrate. CAPT. Bearden advised the agency's position is that requiring this for the quarter acre lots is a much better situation than we have right now by allowing them to develop, with the previous Guam EPA policy, using a regular septic system.

Director Hollister inquired if the type 4 system would have to be pumped out regularly. CAPT. Bearden advised that the type 4 system is a mechanical system. The changes to the type 2 definition would be to adopt the definition from the International Private Sewage Disposal Code (IPSDC) which allows for a regular septic system, an advanced treatment system, a holding tank or even a composting toilet. The holding tank system would need to be pumped out on a routine basis and often a necessary option for certain situations but not a desirable option in many situations because it would need to be pumped out every week however, it is something the agency wants to see as an option as it is necessary in certain situations. Chairman Carbullido chimed in to state it may be necessary in certain locations but not the best situation for the whole island. Chairman Carbullido inquired if the agency can have verbiage in place restricting it to certain uses. CAPT. Bearden advised we can and also stated when the draft bill was previously being worked on with Senator Perez there was interim permitting section that would allow the agency to start permitting these right away. The only verbiage for that is that if anyone wants to have a holding tank in place they would have to provide a one year economic analysis showing the cost to pump out that system and a letter signed by owner of the building stating



this is what it's going to cost to operate this holding tank. CAPT. Bearden added the agency's biggest fear is that these holding tanks are subject to abuse which is why there will be a requirement to have an operation permit in place. The operating permit forces the owners to submit to the agency their pumping truck records and GWA water bills on a regular basis to determine that they are pumping it out and running it properly. If not, the agency would then have the opportunity to step and correct the situation.

Director Hollister asked if this all gets placed into law, would the agency allow endless number of quarter acre lots to be developed above the northern aquifer. CAPT. Bearden clarified that we are only talking about parental subdivision lots and decedent lots and it will be up to the board to decide. Guam EPA's current policy which goes back to 1997 allowed this exception for parental subdivisions only. CAPT. Bearden added that the individuals that are not able to build their homes are the ones with decedent lots. The agency recommends to include decedent lots in this policy as well.

CAPT. Bearden advised mathematically is sort of works where you have two homes on a half-acre lot where normally you would have had one. But those two homes at 50% of the pollutant wastewater loading are roughly equivalent to the single septic system that would be there if it were a half acre lot. In theory it would be a net zero change but a 50% decrease compared to our current practice and that is what the agency is trying to address.

Director Hollister noted the Memorandum dated August 17, 2023 page 2, paragraph 5 where it stated *Guam EPA recognizes systemic abuse in the parental subdivision policy*. Director Hollister inquired if it is under the agency's purview to monitor this. CAPT. Bearden advised it is not and the reason this was brought up is because the agency wanted to justify limiting this to just the decedent and parental subdivision lots. The agency also does not think it would be wise to open this up to everybody. What the agency has seen, over the last year, is that the large majority of these lots appear to have been developed by off-island investors not by people who live in Guam.

Director Hollister continued on by asking if the regulations, as written, allows Guam EPA control of how many homes can be built. CAPT. Bearden advised the current situation right now is if you don't have a subdivided lot you can build on a half-acre lot with a septic system on the Northern Guam Aquifer. However, if you do have a parental subdivided lot you can build on a quarter-acre lot with a regular septic system.

Director Hollister shared that his fear is that a developer is going to get a hold of these properties, subdivide to quarter-acre lots, and build houses on them. Director Hollister also noted that during his confirmation hearing he was asked "what is his biggest concern about Guam in which he responded "unregulated development. Development by people who don't care about Guam and he just wants to make sure the agency has personnel to regulate it and stated



this is a big concern for him. CAPT. Bearden responded stating he shared Director's Hollister's concern but that is outside of Guam EPA's jurisdiction. This falls under the purview of Dept. of Lands Management (DLM) who enforces the subdivision rules. CAPT. Bearden stated although we cannot control the subdivision of properties we can control the amount of pollution going into the ground and this is why the agency is proposing this rule to make sure whatever happens on these parental subdivision lots is done in a way that provides less pollution to the aquifer than what is happening right now. This also makes it equivalent to the half-acre rule which we have on our regulations. CAPT. Bearden also stated that any developer that comes in and does 5 lots without providing infrastructure is in violation of Guam's subdivision law. Anything larger than 5 lots is a subdivision and triggers the requirement under Guam law, which is enforced by DLM, to provide water, sewer and storm water development. What Guam EPA is trying to do is slow down the degradation of what we are seeing right now.

Chairman Carbullido added that these are all things that are written in the law, so the law has to change. The Legislature and the Governor would have to pass a bill and sign the law for any of this to move forward.

CAPT. Bearden also noted that as of now the agency can only enforce a stop work order or a misdemeanor criminal charge and that is why we wanted to add additional enforcement measures. The ability to shut off water utility service comes straight out of the International Private Sewage Disposal Code which was adopted by Guam in 2010 under the building law. It is currently now in use because of the conflict with Guam EPA's law but it is a standard provision anywhere. It is also used in a situation where a septic system has failed and discharging sewage to the ground surface.

Continuing on with the agency's final recommendation of amendments, CAPT. Bearden advised that to make it clear within the law, in order to develop anything smaller than a one half-acre lot, within the Groundwater Protection Zone (GPZ), would only be allowable with the use of the type 4 nitrogen reducing system. In the last version of the law, there is a debate with the realtors and our agency in regards to the lot sizes. The parental subdivision law allows the realtors to go below 7,200sf for a lot which would be 6 homes per acre. CAPT. Bearden stated the agency does not agree with that, but we recognize that we can also get around that by not talking about lot sizes but instead talk about density. The agency provided Senator Perez with alternate language that talked about number of homes per acre rather than square feet. CAPT. Bearden stated the question is whether or not the board wanted to include the decedent lots as well. The agency's recommendation is to include the decedent lots because there are people who cannot build on their properties right now and are suffering. CAPT. Bearden went on to say it's hard to quantify what type of additional load this would have on the aquifer except that we would be providing them with this higher degree of treatment.



Chairman Carbullido recapped the Memorandum:

- Recommendation 1 was to include holding tanks and other systems provided in the International Private Sewage Disposal Code.
- Recommendation 2 - Providing expanded enforcement and permitting options, requiring operating permits, and making available sewage disposal technology options.
- Recommendation 3- to add a type 4 which includes the nitrogen reducing system. A change in the law to allow the type 4 system.
- Recommendation 4 - to expand the enforcement options to Guam EPA.
- Recommendation 5 - to require type 4 system (nitrogen reducing system) on parental and decedent lots that are smaller than the one-half acre, over the aquifer.

Director Hollister asked CAPT. Bearden how confident he was to be sure that the agency enforces the holding tank in which he stated the burden would be on the applicant/homeowner to come in to the agency to submit the renewal each year. The draft bill is structured to be light on Guam EPA as possible but it is an additional work and we need to hire additional staff.

Chairman Carbullido asked in regards to the holding tanks is that just for residential or does it include government and commercial entities as well. CAPT. Bearden advised it's mostly for residential or small facility options but he has seen military permits come through with holding tanks for remote facilities that are far away from public sewer. CAPT. Bearden advised this would not be a good option for an apartment complex as there will be too much wastewater produced.

Director Castro made a motion to adopt the agency recommendations on the Memorandum dated August 17, 2023 seconded by Director Duenas. Chairman Carbullido recommends we state that Guam EPA will use its tools and resources to work with its stakeholders, the legislature and Governor to draft a bill to address the rise in the nitrates level, conduct economic assessments as necessary and to continue the dialog for non-compliance and allow discussion for operating permits, based on the agency's recommendations.

CAPT. Bearden inquired on what economic assessments the board is asking for as it may slow the process down. Both CAPT. Bearden and Mr. Nic Lee stated the economic analysis will have to be done anyway when the agency goes through the AAA process.

Director Castro made a motion to amend the earlier motion to include that "Guam EPA will use its tools and resources to work with its stakeholders, the legislature and Governor to draft a bill to address the rise in the nitrates level, evaluate the economics of the onsite treatment, continue the dialog for non-compliance and allow discussion for operating permits" based on the agency's recommendations. Chairman Carbullido seconded the amended motion. All voted in favor, with the exception of Director Hollister (no vote due to power outage), zero (0) opposed and motion passed.



Chairman Carbullido advised it was brought to the boards attention that AAG Kristan Finney had a conflicting board meeting today. Chairman will verify with Administrator Lastimoza and AAG Finney if the third Thursday of the month is still a feasible date for our Guam EPA board meetings.

New Meeting Date/Adjournment: Next meeting was set for October 19, 2023 at 4pm. Director Castro made a motion to adjourn the meeting and seconded by Vice Chairman Carrara. All in favor, zero (0) opposed, and regular meeting adjourned at 5:23pm.


Arlene Acfalle
Acting Board Secretary



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