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

SHALON VILLAVERDE

RECEIVED BY: _____

DATE: 12-6-2019 11:48 AM

Mr. Dean Huntsman,
General Manager
Dusit Thani Guam Resort
1225 Pale San Vitores Road Ste. 255
Tamuning, GU 96913
Tel. No. 671-648-8000

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 Dusit Thani Guam Resort ("Respondent") has violated the Guam Water Quality Standards and is ordered to undertake remedial action(s).

BACKGROUND

Respondent operates the Dusit Thani Guam Resort located at 1227 Pale San Vitores Road, Tamuning, Guam, 96913. GEPA staff observed a discharge of water to the beach from the south side of the hotel during an inspection conducted on November 27, 2019. This inspection was conducted on the basis of prior complaints received by GEPA concerning erosion of the beach and foul odors associated with the discharge from Respondent's property. A copy of the inspection report is attached. During the November 27 inspection, GEPA staff observed water discharging to the beach, which had caused erosion in the form of a channel. Water from Respondent's property was observed to be discharging through the erosion channel directly to marine waters in the nearby lagoon. GEPA staff followed the discharge upstream to a vertical pipe which was connected to Respondent's building, which appeared to be the primary source of the water discharging to the beach. GEPA staff collected three water samples: one from the outlet of the pipe where the discharge originated, and two from the marine waters to both sides of the erosion channel. All three samples were found to be contaminated with both E. coli and Enterococci, indicating the presence of human fecal material. The two samples taken from the lagoon exceeded the marine water quality criteria contained in 22 GAR §5103(c).

NOTICE OF VIOLATION

Based on the facts described above, GEPA finds that Respondent violated the following provisions of the Water Pollution Control Act (10 GCA Chapter 47) and the Guam Water Quality Standards (22 GAR Chapter 5):

1. 10 GCA §47106(a) "Pollution Unlawful: Permits." *"It shall be unlawful for any person to cause the pollution, as defined herein, of any waters of the territory."*

   "Pollution" is defined under 10 GCA §47103(e) as *"the alteration of the physical, chemical or biological properties of any waters of the territory which adversely and unreasonably impairs the water quality of the territory or which renders said waters hazardous to human health or harmful or detrimental to their most beneficial uses"*

   Water discharged from Respondent's property directly entered the marine waters of Tumon Bay and caused pollution in the form of human fecal bacteria indicator species E. Coli and Enterococci, as measured by GEPA and found to be in excess of that allowable under the Water Quality Standards at 22 GAR §5103(c).

2. 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".*

   Water is discharged from Respondent's property in quantities and velocities sufficient to erode a channel into the public beach and to allow for the direct discharge of runoff to the lagoon, in an area that is heavily used by the public. This has 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. North and Central Guam Land Use Plan (Guam Bureau of Statistics and Plans, March 2009)

      Policy NS2 (page 5-2; **emphasis added**):
      Protect marine water quality through appropriate shoreline area land use designations and development standards such as discouraging construction below the mean high tide mark, including sea or retaining walls, allowing natural beach development processes to prevail, ***controlling erosion from shoreline development*** *and ensuring that wastewater infrastructure is appropriately set back from marine waters.*

   b. Tourism 2020 (Guam Visitors Bureau, 2014)

      Objective 1 "Improve Quality and Yield" (pages 28 & 29; in general)

3. 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."*

   Water discharged from Respondent's property to the beach and lagoon meets the definition of an "effluent" pursuant to 22 GAR §5105(a)(30), and violated water quality standards for fecal bacteria indicators under 22 GAR §5103(c). In addition, the discharge of this effluent and subsequent channel erosion caused to the public beach has created a public health and safety hazard and nuisance condition, in violation of water quality standards for "prohibited discharges" under 22 GAR §5104(f)(1)(J), as described in Violation 2.

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. **Within three (3) days of receipt of this order:** Provide to GEPA a written inspection report which identifies the source of the fecal contamination coming from your building in the runoff discharged to the beach, along with a written report detailing the measures taken to eliminate the source of this contamination. Photographs of the source of contamination and of the final, corrected condition must be included in the report. GEPA must be provided with an opportunity to inspect and verify Respondent's findings in person.

2. **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 halt Respondent's discharge to the beach, in a manner that stops beach erosion, prevents future contamination and nuisance conditions, and that is fully consistent with Guam law and GEPA's Soil Erosion and Sedimentation Control Regulations at 22 GAR Chapter 10, and Executive Order 2012-02, which adopted the 2006 CNMI and Guam Stormwater Management Manual. Written approval of the plan must be obtained from GEPA in order to be determined in compliance with this item.

3. **Within one hundred eighty (180 days) of receipt of this order:** Complete construction or implementation of the solution detailed under Item 2, 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: <u>Under penalty of perjury I hereby declare</u> 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.: _____

AHENSIAN PRUTEKSION LINA'LA GUÂHAN

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

Inspection Form

Report #: MP002 **EMAS FY** '20 **Date:** 11/27/2019

Inspector(s): B. Salas, K. Narcis, R. Schnabel Crisostomo

Complainant: **Time:** 1320

Type of Inspection: Discharge water and shoreline sampling for bacteria

Land/Business Owner: Dusit Thani Guam Resort

(Address/Phone) 1227 Pale San Vitores Rd, Tamuning, 96913, Guam

Location: Pipe discharge and shoreline at the Dusit Thani Guam Resort

Existing Land Use	
☐	Undeveloped Land
☐	Residential
✓	Commercial
☐	Industrial

Inspection Findings: Post tropical Storm Kammuri assessment in the area of Dusit Thani (DT), observed eroded sand (Photo A) and noticed water discharge from DT and tracked where the source is coming from (Photo B). Our findings warranted taking three (3) samples, at the source, and then the recreational Beach water directly out from discharge, and ~100 ft North of of discharge area. Results of sampling was positive for e. coli and enterococci.

Corrective Action: Referral to Water pollution control to further investigate the source feeding into the storm drain pipe. More photos can be provided at your request.

Acknowledge:

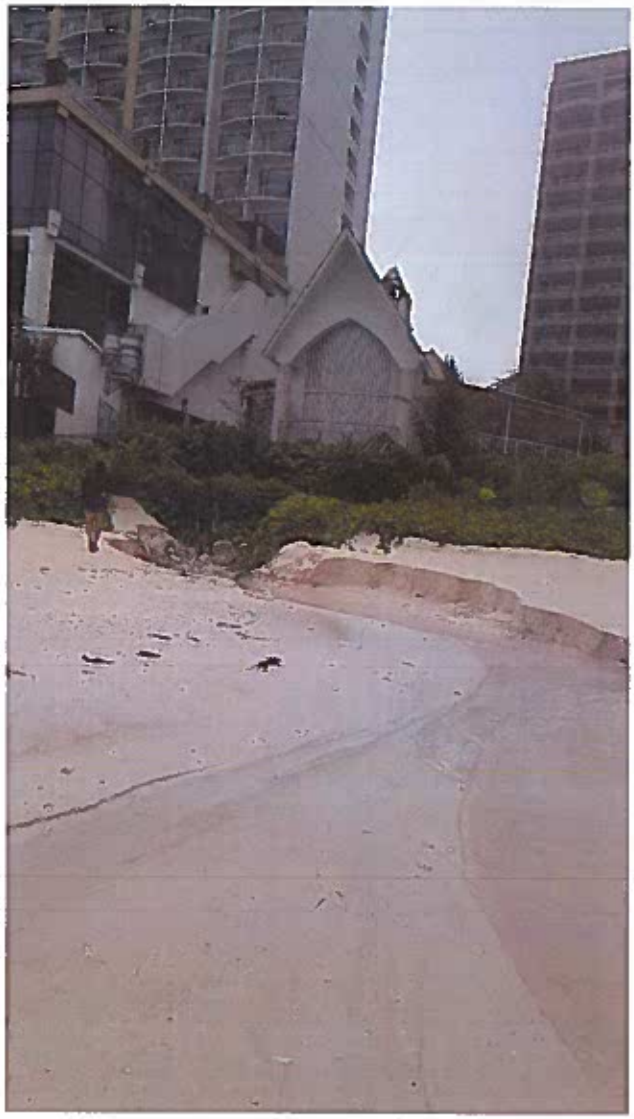
Inspector's Signature: E. Salas

Digitally signed by E. Salas
DN: cn=E. Salas, o=Guam EPA, ou, email=bob.salas@epa.guam.gov, c=US
Date: 2019.12.05 08:40:19 +10'00'

Dusit Thani Guam Resort

Discharge water Inspection 11-27-2019

Photo A



Dusit Thani Guam Resort – Hotel Runoff

Photo B

Dusit Thani Guam Resort – discharge source of Hotel Runoff

Photos taken 11/27/2019 by B. Salas.


2
3
1

- Guam Environmental Protection Agency -

EMAS Laboratory

P.O. Box 22439, GMF

Barrigada, Guam 96921

TEL (671) 475 - 1658, FAX (671) 477 - 9402

Date of Report: 29-Nov-19

To: GEPA - EMAS Monitoring Program
Jesse Cruz

Project: Dusit Thani Aft Kammuri

Attached are the analytical results for sample(s) listed below.

Lab Sample Number	Field Sample ID	Station Location
03271-001	1	Drain area
03271-002	2	Shore from outlet
03271-003	3	100 ft. North from outlet
03271-004	1 LD	Drain area (Lab duplicate)
03271-005	LB	Laboratory Blank

If you have any questions regarding this report, please contact the Guam EPA EMAS Administrator. When making inquiries, please reference the Lab Sample Number which appears in the upper right corner of each report page.

Analyst

EMAS Administrator

- Guam Environmental Protection Agency -

EMAS Laboratory

Date of Report: 29-Nov-19

Field ID:	1	**Lab Sample Number:**	**03271-001**
Submitter:	GEPA - EMAS Monitoring Program	**Date Sample Collected:**	27-Nov-19
Type of Sample:	water	**Date Sample Received:**	27-Nov-19

Parameter Name	Analytical Method	Date Analyzed	Analyst	MDL	Result	Units
Coliform, E. coli	**(Dilution Factor: 10)**					
Coliform, E.coli	SM 9223B	11/27/19	EY/RP	10	41	MPN/100ml
Enterolert	**(Dilution Factor: 10)**					
Enterococci	ASTMD6503-99	11/27/19	EY/RP	10	935	MPN/100ml

Lab Qualifiers: J = Value is greater than or equal to the method detection limit (MDL) but less than the practical quantitation limit (PQL).

- Guam Environmental Protection Agency -

EMAS Laboratory

Date of Report: 29-Nov-19

Field ID:	2	**Lab Sample Number:**	03271-002
Submitter:	GEPA - EMAS Monitoring Program	**Date Sample Collected:**	27-Nov-19
Type of Sample:	water	**Date Sample Received:**	27-Nov-19

Parameter Name	Analytical Method	Date Analyzed	Analyst	MDL	Result	Units
Coliform, E. coli	**(Dilution Factor: 10)**					
Coliform, E.coli	SM 9223B	11/27/19	EY/RP	10	1153	MPN/100ml
Enterolert	**(Dilution Factor: 10)**					
Enterococci	ASTMD6503-99	11/27/19	EY/RP	10	146	MPN/100ml

Lab Qualifiers: J = Value is greater than or equal to the method detection limit (MDL) but less than the practical quantitation limit (PQL).

- Guam Environmental Protection Agency -

EMAS Laboratory

Date of Report: 29-Nov-19

Field ID:	3	**Lab Sample Number:**	03271-003
Submitter:	GEPA - EMAS Monitoring Program	**Date Sample Collected:**	27-Nov-19
Type of Sample:	water	**Date Sample Received:**	27-Nov-19

Parameter Name	Analytical Method	Date Analyzed	Analyst	MDL	Result	Units
Coliform, E. coli	**(Dilution Factor: 10)**					
Coliform, E.coli	SM 9223B	11/27/19	EY/RP	10	2909	MPN/100ml
Enterolert	**(Dilution Factor: 10)**					
Enterococci	ASTMD6503-99	11/27/19	EY/RP	10	185	MPN/100ml

Lab Qualifiers: J = Value is greater than or equal to the method detection limit (MDL) but less than the practical quantitation limit (PQL).

- Guam Environmental Protection Agency -

EMAS Laboratory

Date of Report: 29-Nov-19

Field ID:	1 LD	Lab Sample Number:	03271-004
Submitter:	GEPA - EMAS Monitoring Program	Date Sample Collected:	27-Nov-19
Type of Sample:	water	Date Sample Received:	27-Nov-19

Parameter Name	Analytical Method	Date Analyzed	Analyst	MDL	Result	Units
Coliform, E. coli	**(Dilution Factor: 10)**					
Coliform, E.coli	SM 9223B	11/27/19	EY/RP	10	20	MPN/100ml
Enterolert	**(Dilution Factor: 10)**					
Enterococci	ASTMD6503-99	11/27/19	EY/RP	10	1073	MPN/100ml

Lab Qualifiers: J = Value is greater than or equal to the method detection limit (MDL) but less than the practical quantitation limit (PQL).