



Speaker Won Pat <speaker@judiwonpat.com>

Messages and Communications

Speaker Won Pat <speaker@judiwonpat.com>  
To: Guam Legislature Clerks Office <clerks@guamlegislature.org>

Thu, Feb 5, 2015 at 10:44 AM

2/5/2015 2/5/2015 Cabot MANTANONA LLP

District Court of Guam ; Case No. CV 02-000-22;  
United States' Response RE Communications with 33-15-0149  
Guam EPA

----- Forwarded message -----  
From: **Stacy C Cuasito** <sc@cmlaw.us>  
Date: Thu, Feb 5, 2015 at 8:34 AM  
Subject: USA v. GovGuam 02-00022  
To: "speaker@judiwonpat.com" <speaker@judiwonpat.com>  
Cc: "tmterlaje@gmail.com" <tmterlaje@gmail.com>

Dear Speak Wonpat:

Please see the attached filing in the above matter.

Thank you.  
Stacy Cuasito

**Stacy C. Cuasito**, *Legal Secretary for*  
*Rgwfen M.T. Mantanona & Matthew S. Kane*  
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929 South Marine Corps Drive  
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**33-15-0149**

Office of the Speaker  
Judith T. Won Pat, Ed.D

Date: **02/5/15**  
Time: **10:44 AM**  
Received By: **DAVE SANCHEZ**


2015 FEB -5 AM 11:38  
*JS*

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**0149**

Ufisinan I Etmás Ge'helo'Gi Liheslaturan Guáhan  
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 **United States' Response Re Communications with Guam EPA ECF 1514.pdf**  
1155K

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13 Attorneys for United States of America  
14

15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE TERRITORY OF GUAM  
17

18 UNITED STATES OF AMERICA,	)	CIVIL CASE NO. 02-00022
	)	
19 Plaintiff,	)	
	)	
20 v.	)	UNITED STATES' RESPONSE RE
	)	COMMUNICATIONS WITH GUAM
21 GOVERNMENT OF GUAM,	)	EPA
	)	
22 Defendant.	)	
23 _____	)	

1 At an evidentiary hearing regarding funding for the Dero Road project on February 4,  
2 2015, the Court directed the United States to file a copy of e-mail communications between  
3 Angel Marquez, the Guam Environmental Protection Agency (“Guam EPA”) Acting Chief  
4 Engineer, and Phillip Slagel, who had worked at the GHD firm at the time of this e-mail  
5 exchange in February 2013. These communications reflect Guam EPA’s involvement in  
6 ensuring that the Dero Road project complied with federal and Guam law regarding storm water  
7 discharges. A copy of the e-mails is attached as Exhibit 1 to this response.

8 At the February 4 hearing, Eric Palacios, the Administrator of Guam EPA, testified that  
9 Guam EPA was waiting for a response from Karen Ueno of U.S. EPA before Guam EPA acted  
10 to remediate the Lujan site. Consistent with Mr. Palacios’ statement, the Government of Guam  
11 repeatedly stated the following in its bi-weekly status reports on dump sites filed in this Court  
12 over the past year:

13 Guam EPA Administrator Eric M. Palacios will meet with the agency's Consent Decree  
14 team to determine what the best next step is relative to the July 31, 2012 waste  
15 characterization of the site. The Solid Waste Management Program had recommended  
16 that the site be closed as a hardfill, but the U.S. Environmental Protection Agency  
17 indicated that the U.S. Dept. of Justice requested that further review be conducted.

18 See, e.g., ECF Nos. 1293 at 3, 1508 at 3.

19 On December 13, 2013, Ms. Ueno communicated to Guam EPA to clarify the federal  
20 government’s role at the Lujan site, stating that U.S. EPA encouraged Guam EPA to ““continue  
21 appropriate compliance efforts with respect to all illegal dumps that have been identified,  
22 including Lujan[.]”” A copy of her e-mail and attachments to it is included as Exhibit 2 to this  
23 response.

24 Dated: February 4, 2015

25 /s/ Robert D. Mullaney  
26 ROBERT D. MULLANEY  
27 Environmental Enforcement Section  
28 United States Department of Justice

OF COUNSEL:  
Laurie Williams  
Assistant Regional Counsel  
U.S. Environmental Protection Agency

# EXHIBIT 1

## United States' Response Re Communications with Guam EPA

**From:** Chris Lund  
**Sent:** Wednesday, February 27, 2013 8:59 AM  
**To:** [vincent.pereira@epa.guam.gov](mailto:vincent.pereira@epa.guam.gov)  
**Cc:** [angel.marquez@epa.guam.gov](mailto:angel.marquez@epa.guam.gov); eric palacios; Conchita SN Taitano; Susan Marquez; Phillip Slagel ([Phil.Slagel@ghd.com](mailto:Phil.Slagel@ghd.com))  
**Subject:** RE: Dreo Rd. 60% GEPA Review Meeting Draft Minutes

Vince,

I thank you for pulling this meeting together to finalize comments from GEPA on the 60% design. When can we expect the comments to be provided in written form?

As you know it is critical to maintain our schedule so that this project can be constructed in concert with the Ordot Closure as part of the Consent Decree and minimize the duration the Ordot community is exposed to the disruption construction causes on community life.

Over the next few months we will be finalizing the Dero Road design to ready it for submission to DPW for a building permit and for putting it out to bid for construction. As our designer, GHD, has indicated and I will reiterate, final design will reflect the requirements of the required manuals and DPW's requirement for compliance with MS4.

I will be back in Guam from March 11 thru March 18 and look forward to meeting with you and others at GEPA to address any concerns you have as we proceed to complete this Consent Decree work.

Dangkulo na si Yu'os Ma'ase.

Chris

**From:** Angel Marquez [<mailto:angel.marquez@epa.guam.gov>]  
**Sent:** Wednesday, February 27, 2013 12:15 AM  
**To:** Phil Slagel  
**Cc:** Vincent Pereira; eric palacios; Chris Lund; Conchita SN Taitano; Susan Marquez  
**Subject:** Re: Dreo Rd. 60% GEPA Review Meeting Draft Minutes

Hafa Adai Phillip,

The issues brought by Susan during the meeting are recommendations based on her technical knowledge and experience. GEPA's position is to comply with the requirements of the "Guam Transportation Stormwater Drainage Manual" pursuant to Executive Order No. 2012-02 and the Guam Soil Erosion and Sediment Control Regulations (PL 24-27). In the design of outfall or discharges outside the perimeter of road right of ways, DPW has the obligation to make determination for compliance with the Federal Mandates "Municipal Separate Storm Sewer Systems (MS4s) which is now in effect to Guam under DPW. The consultant/contractor must design the storm water management both pre-construction and post construction (BMPs) based on the above mentioned Regulations and Manual.

Pursuant to " **Section 10105(B)(b) Guam Soil Erosion and Sedimentation Control Regulations** " states ....*All drainage facilities shall be designed to carry surface water run-off to a storm drain that will discharge to a catchment facility within the project site. The Administrator may require such drainage structures and pipes*

*to be constructed or installed, which in his opinion, are necessary to prevent erosion damage and to adequately carry off surface waters. The flow of any existing and known natural underground drainage shall not be impeded or changed so as to cause damage to adjoining property.*

This agency will provide an amended 60% design review comment based on the discussion during the coordination meeting between GEPA and GHD and to alleviate confusions concerning the Dero Road project with the Land Fill Closure projects in which I was confused and mis-guided when preparing the final draft of GEPA's staff consolidated comments.

Should you have questions please contact me at (671) 300-4796.

Sincerely,

ANGEL MARQUEZ  
Acting Chief Engineer

On Wed, Feb 27, 2013 at 12:50 PM, Phil Slagel <[Phil.Slagel@ghd.com](mailto:Phil.Slagel@ghd.com)> wrote:

Vince/Angel/Susan,

Please review the below summary of our Dero Rd. meeting this morning and kindly provide feedback/comments.

Thank you,

**Phillip Slagel, PE**

**GHD**

T: [671 472 6792](tel:6714726792) | F: [671 477 6229](tel:6714776229) | C: [671 777 0651](tel:6717770651) | E: [Phil.Slagel@GHD.com](mailto:Phil.Slagel@GHD.com)  
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Dero Rd. Improvements

Guam EPA 60% Design Review

Attendees:

Vincent Pereira

Angel Marquez

Susan Marquez

Aaron Sutton

Phil Slagel

Vincent lead a brief discussion regarding the separation of the Dero Rd. project from the overall Ordot Dump project, including jurisdictional issues, and then facilitated the following discussion:

- On Sheet DR-01 Susan asked if the culvert at approximate sta. 103+20 was discharging onto private property  
The answer was yes, because this is the natural historic drainage pattern and we are only perpetuating the current situation (the existing contours on the plan sheet are a bit mis-leading and we will have them updated)  
Susan then asked if we were detaining the flow and if we have calculations for this drainage feature as they were not included in the submittal.  
Aaron answered that there is a small detention feature that utilized all of the space available. We also told Susan that we did have drainage calculations and that we would forward them to her without waiting for the next submittal (calculations will include drainage basin delineations)
- On Sheet DR-02; Susan had concerns with regard to drainage discharge to the stream (approximate location Sta. 115+20)  
Aaron & Phil explained that on the north side the runoff is treated in a bio-swale and on the south side natural dispersion (filter strip) provided treatment prior to discharge into the stream.  
Susan was also concerned about increased flow into the stream (if any). Aaron replied that the BMPs described earlier did help to detain/infiltrate some of the flow but he will finalize his calculations and provide this information to Susan.  
Phil also pointed out that the stream culvert had to be lengthened to address safety concerns.
- At this point Angel pointed out that the DPW Roadway Drainage Manual was to be followed concerning these issues on stormwater treatment and if we can demonstrate that we followed the manual, the design will be acceptable.
- Phil pointed out a drainage area north of the roadway at approximate Sta. 175+50. There is some legal question as to the ownership status of this property (behind the shopping center) however this is the natural drainage area (low point) for a large watershed area including a portion of the Dero Rd. project. Recently acquired additional topo data in the area revealed that the drainage area included a large natural drainage



basin type feature and that it was approximately 8 to 10 feet below the surrounding ground in elevation. This area was not readily apparent previously due to thick vegetation. It is our intention to propagate this area as the recipient of stormwater runoff for the existing watershed (including a portion of Dero Rd.). We received this additional topography recently and will check to insure that this area does indeed provide positive flow, if conveyed by a proper design, for stormwater runoff from the roadway as well as runoff originating from outside of the project area and subsequently flowing through the project area to this discharge location .

Susan pointed out that stormwater treatment should be applied prior to discharge and Aaron acknowledged this requirement.

Susan asked if we planned to excavate in this low area, Phil responded that was previously the plan however if the existing area (defined by the recently acquired topography data, can accommodate the runoff we will simply provide a much more efficient discharge path to the area than the current condition which is; ponding on the roadway until sufficient elevation is reached by the water to spill into the existing ponding area.

Susan asked how we were going to deal with the private property (understanding that it may not be private property) and we said that we will expand the required easement to complete the conveyance needed for roadway and off-site runoff to reach the pond.

- The last discussion centered around permitting and Angel stressed that specs requiring the contractor to develop the EPP, ECP, & SWPPP need to be included.

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This e-mail has been scanned for viruses by MessageLabs.

## EXHIBIT 2

# United States' Response Re Communications with Guam EPA

-----Original Message-----

From: Ueno, Karen

Sent: Friday, December 13, 2013 11:58 AM

To: Conchita Taitano

Cc: Bellamy, Kandice; Lichens, Christopher; Mann, Michael

Subject: Additional Clarification of Federal Role at Lujan Dump

Dear Conchita,

In providing clarification of the federal government's role at the Lujan dump transmitted to you electronically on November 26, 2013 (see below and attachments), I inadvertently neglected to attach U.S. EPA's October 12, 2011 letter to Mr. Ivan Quinata in response to the latter's request for technical assistance at Lujan and other illegal dumpsites. Consequently, I have attached the letter to this transmittal.

U.S. EPA's October 12, 2011 letter reiterated Michael Mann's on-island discussion with Mr. Quinata denying Guam EPA's request for technical assistance. It also reiterated Guam EPA's regulatory responsibility at the Lujan dump. At the request of the Guam Attorney General's Office, copies of the letter were sent to various Guam EPA staff. In addition, a copy was filed with the Federal District Court of Guam (DN 826).

Consistent with our October 12, 2011 letter, U.S. EPA encourages Guam EPA to "continue appropriate compliance efforts with respect to all illegal dumps that have been identified, including Lujan[.]"

Thank you!

-----Original Message-----

From: Ueno, Karen

Sent: Tuesday, November 26, 2013 10:43 AM

To: conchita.taitano@epa.guam.gov

Cc: Bellamy, Kandice; Lichens, Christopher

Subject: Clarification of Federal Government's Role at Lujan Dump and Observations from November 2012 Site Visit With Guam EPA

Dear Conchita,

As the designated Ordot team leader for Guam EPA and my point of contact on such matters, I am transmitting the attached to you. There have been apparent misunderstanding and/or misperception of the federal government's role at the Lujan dump site as related to the Federal District Court of Guam's order. The attached provides U.S. EPA's clarification on the matter, and as requested by Guam EPA, transmits observations U.S. EPA, through its contractor, made at the Lujan dump during a site visit with Guam EPA on November 11, 2012. For Guam EPA's convenience, I have also attached the joint U.S.EPA/Receiver comments (transmitted October 9, 2012) concerning Guam EPA's characterization investigation at the Lujan dump and conclusion to allow the illegal dump to close as a hardfill.

Thank you!



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94106

October 12, 2011

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

Via electronic mail; hard copy not to follow

Re: United States v. Government of Guam – Case No. 02-00022 (Ordot Dump)

Dear Mr. Quinata,

This is in response to Kathy Fokas' September 22, 2011 email request, on behalf of Guam EPA, and Guam EPA's August 25, 2011 email request to Michael Mann of U.S. EPA, for technical assistance from U.S. EPA.

During an on-island meeting on September 14, 2011, Michael Mann informed Guam EPA that U.S. EPA could not provide the requested technical assistance. This approach is consistent with the order of the federal district court, which stated in part, "[i]n regard to GEPA's request to reduce the illegal dump site search area, the court will consider such a request in the future if GEPA demonstrates, to the satisfaction of USEPA, that a reduction in the search area is reasonable and will not negatively affect the closure of the Ordot Dump," (DN 780, filed 8/5/11). Therefore, Guam EPA needs to make the technical demonstration, which U.S. EPA will then review for acceptance.

U.S. EPA and U.S. DOJ have discussed Guam EPA's request for technical assistance with the Receiver. We have advised the Receiver that we intend to recommend to the court that further efforts to assess the potential impact on Ordot from the illegal dumpsites identified by Guam EPA should be deferred until Ordot closure investigatory work by the Receiver's contractor indicates that: (1) there is some evidence of releases of contaminants to groundwater and surface water, and (2) the hydrogeologic conceptual site model is further refined. The Receiver is in agreement.

Notwithstanding any deferral to assess the potential impact of these illegal dumps on Ordot, Guam EPA has an obligation to ensure compliance with its regulatory and statutory requirements and to fulfill its responsibilities as an approved state program for both solid and hazardous wastes. Consequently, Guam EPA should continue appropriate compliance efforts with respect to all illegal dumps that have been identified, including Lujan Salvage and Towing, and sites on Route 8 in Barrigada, Nimitz Hill, and Yona. U.S. EPA looks forward to discussing this with you and the Receiver on our upcoming telephone call on October 13/14.

Per Ms. Fokas' request, I have copied all of the Guam EPA staff listed in her email. Please have Ms. Fokas contact Laurie Williams at (415) 972-3867 if she has any questions. You or Guam EPA staff may contact me, as appropriate.

Sincerely,



Karen Ueno  
U.S. EPA Ordof Team

Cc: Kathy Fokas, Guam Attorney General's Office  
Conchita Taitano, Guam EPA  
Roland Guterrez, Guam EPA  
Don Quinata, Guam EPA  
Laurie Williams, U.S. EPA  
Chris Lichens, U.S. EPA  
Michael Mann, U.S. EPA  
Rob Mullaney, U.S. DOJ  
David Manning, GBB  
Chris Lund, GBB

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U.S. EPA's Clarifications Concerning the Federal Government's Role at the Lujan Dump Site  
And Observations From November 2012 Lujan Dump Site Visit with Guam EPA  
November 26, 2013

There have been some apparent misunderstanding and/or misperception about the federal government's role at the Lujan dump site. This provides U.S. EPA's clarification on the matter, and as requested by Guam EPA, transmits observations U.S. EPA, through its contractor, made at the Lujan dump during a site visit with Guam EPA on November 11, 2012.

1. Lujan is a site for which Guam EPA has the enforcement authority and responsibility, as confirmed by the three prior Notices of Violation (2004, 2006, and 2007) Guam EPA issued to the facility for environmental infractions and illegal dumping. Guam EPA has indicated that these NOVs are outstanding and relevant. While U.S. EPA may comment on issues related to Subtitle D sites, we are not generally involved in these matters.
2. Although U.S. EPA had some responsibility to report to the Federal District Court of Guam on the Lujan dump, U.S. EPA's responsibility was separate and distinct from that of Guam EPA's, as ordered by the Court. It was never U.S. EPA's role to provide Guam EPA with technical assistance or direction on the matter. Moreover, the Court subsequently suspended U.S. EPA's responsibility at Lujan pending further direction from the Court.
3. Given the Court's interest in Lujan, however, on October 9, 2012, U.S. EPA, in consultation with the Federal Receiver, issued joint "Comments/Questions" to Guam EPA concerning its characterization investigation (conducted on July 31, 2012) and conclusion (stated in September 10, 2012 correspondence) to allow the illegal dump at Lujan to be closed as a hardfill. A copy of the jointly issued comments is attached. In sum, U.S. EPA and the Receiver's primary concerns were as follow:
  - There was no clear technical basis for the methodology used for Guam EPA's characterization investigation, nor a clear demonstration that the characterization investigation supported Guam EPA's recommendations. For Guam EPA's consideration, a copy of CalRecycles' Site Assessment Form was attached as a reference for the information typically needed to first assess a dump, and then to proceed with an investigation.
  - Allowing the illegal dump at Lujan to close as a "hardfill," did not appear to be supported by or consistent with Guam EPA's regulations.
4. Due to a lack of time, U.S. EPA was not able visit the Lujan dump as planned last November. Consequently, U.S. EPA requested that our contractor be allowed to visit the site on our behalf. This was not an inspection, but a site visit to provide some observations for U.S. EPA's use and information, with a focus on the concerns that had been raised by U.S. EPA and the Receiver in the jointly issued comments, above.
5. Roland Gutierrez of Guam EPA accompanied U.S. EPA's contractor on the site visit, which occurred on November 11, 2012.
6. In response to Guam EPA's request, U.S. EPA is providing, below, a list of the primary observations made by U.S. EPA through its contractor during the November 11, 2012 site visit with Roland Gutierrez.

Please note that these observations contain no information that was not already known to Guam EPA at the time of this visit:

- Guam EPA staff confirmed that its “solid waste characterization investigation,” conducted on July 31, 2012 and reported on August 31, 2012, was limited to the shallow surface of the illegally filled area, away from the steep edges. Guam EPA also indicated that its investigation was based on visual observations and no samples were taken for field or laboratory analysis.

Based on the above, and as was already raised in the U.S.EPA/Receiver joint comments of October 9, 2012, it does not appear that Guam EPA followed a clear technical methodology that would result in data to support a comprehensive understanding of the nature and extent of waste that was illegally dumped at the site.

- According to Guam EPA staff, the volume and areal extent of the illegal dump site have not been provided or documented by either Guam EPA or the site owner.

Such information is critical to properly understand the magnitude of the site and the potential environmental and public health and safety impact it poses, and to determine appropriate closure method and need for environmental monitoring and maintenance.

- Guam EPA staff reported that based on staff observation of a marker tree at the dump site, the fill had settled approximately “15 to 20 feet” since Guam EPA’s investigation of July 31, 2012.

Such settlement could be indicative of the waste compacting itself under the weight of its overburden, waste decomposition, and/or waste mass movement. Any of these possibilities could be an indication of additional engineering, remediation, and monitoring that are needed at the site.

- As pointed out by Guam EPA staff during the visit, the illegal dump area appears to have slope stability and drainage problems.

Uncompacted fill, ungraded slopes, and lack of drainage controls pose environmental and public health and safety concerns. It is U.S. EPA’s understanding that the owner neglected to compact the fill when placed, leading to an unstable fill mass and sideslopes, and to greater differential settlement of the fill. Surface drainage was not controlled and rutting was apparent.

- Consistent with the concern raised in the joint U.S.EPA/Receiver comments of October 9, 2012, organic waste observed in the fill can decompose and generate landfill gas and leachate. Water that comes into contact with decomposing solid waste forms leachate. There were no apparent stormwater controls to divert stormwater away from the waste, or to prevent erosion and contact with the waste.

7. Per the Receiver’s quarterly report to the Court last May, the Ordot investigation did not find that any off-site constituents of concern had migrated onto the Ordot site. Accordingly, U.S. EPA is no



longer involved in tracking the Lujan dump site. We encourage Guam EPA to continue appropriate response and/or enforcement under Guam law to ensure the protection of public health and the environment.

Attachment (U.S. EPA/Receiver Joint Comments transmitted on October 9, 2012)

Comments/Questions from U.S. EPA and the Federal Receiver, GBB  
"Solid Waste Characterization Investigation" at the Lujan Towing and Auto Parts Facility  
Prepared by Guam EPA, July 31, 2012

U.S. EPA appreciates receiving a copy of the above referenced report, transmitted electronically on September 9, 2012. The waste characterization investigation activity was referenced in Guam EPA's bi-weekly report to the federal district court, along with Guam EPA's recommendation that the Lujan site be closed as a "hardfill." These bi-weekly reports are submitted to the court in response to the court's order of May 27, 2011 (DN 740). For Guam EPA's convenience, consolidated comments and questions from the U.S. EPA and the federal Receiver are provided, below.

1. There does not appear to be a clear technical basis for the methodology used for the characterization investigation, nor is there a clear demonstration that Guam EPA's characterization investigation supports its recommendation. Typically, a characterization of an illegal dump would be designed to gather data for determining the nature and extent of waste. The work performed at Lujan does not appear to be consistent with such an approach. Some of our specific questions on the methodology include but are not limited to, whether the test pits reached native ground, the locations of the test pits relative to the initial discovery of MSW, the size and limits of the area investigated, the average thickness of waste encountered, and the sampling and analysis protocol used. In addition, it not clear how Guam EPA's investigation approach and results support the recommendation to close Lujan as a hardfill.

Attached for your reference is a copy of CalRecycle's (formerly the California Integrated Waste Management Board) generic site assessment form. Although the form should not be construed as an endorsement for specific use at the Lujan site, it does illustrate the types of information typically needed to first assess a dump, and then proceed with an investigation.

2. Although mentioned in Guam EPA's email of September 10, 2012, the report itself neither references the "20% of putrescible waste or garbage" benchmark nor the regulation or policy allowing such benchmark to enable closure as a "hardfill." It is our understanding that pursuant to Guam EPA's regulations, a hardfill is for waste "not constituting a health or nuisance hazard." MSW, including the "putrescible" portion of MSW can produce, among other potential environmental and public health hazards, methane gas and leachate. In addition to MSW, Guam's report indicates that the waste characterization investigation revealed "materials consistent with automobile junkyard scrap material." Wastes associated with automobiles also can contribute to environmental releases. Moreover, it is not clear that Guam's regulations allow the disposal of such wastes at hardfills.

Attachment (CalRecycle Site Assessment Form)