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GUAM WATER WORKS

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ENVIR. APPEALS BOARD

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To: Eurika Durr
Clerk of the Board, EAB
USEPA**From:** Samuel J. Taylor
Legal Counsel
Guam Waterworks Authority**Fax:** (202) 233-0121**Pages:** Five (5) including cover sheet**Phone:** (202) 233-0110**Date:** November 16, 2010**Re:** GWA NDSTP and ASTP;
NPDES Appeal Nos. 09-15 and 09-16**CC:** **Urgent** **For Review** **Please Comment** **Please Reply** **Please****Recycle****• Comments:**

As directed during today's hearing, please find a copy of the September 3, 2010 letter addressed to the Honorable Jackalyne Pfannenstiel, Assistant Secretary of the Navy from Jared Blumenfeld of USEPA.

Sincerely,

Ann Dueñas Borja,
Legal Secretary/Admin. Asst. to
Samuel J. Taylor
GWA Legal Counsel
578 North Marine Corps Drive
Tamuning, Guam 96913
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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San Francisco, CA 94105-3901

**OFFICE OF THE
REGIONAL ADMINISTRATOR**

SEP 3 2010

Honorable Jackalyne Pfannenstiel
Assistant Secretary of the Navy
for Energy, Installations and Environment
100 Navy Pentagon
Washington, D.C. 20350-1000

**Subject: EPA comments on the final Environmental Impact Statement (EIS) for the Guam
and CNMI Military Relocation**

Dear Secretary Pfannenstiel:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. EPA is a cooperating agency on the project EIS and has worked closely with the Department of Defense (DoD) to review and comment on the project since 2007. As a cooperating agency we have continued to work with DoD on the draft Record of Decision (ROD) for this project and the Civil-Military Coordination Council(Council) draft initial charter (charter). EPA's recommendations outlined below should be incorporated into these documents as they are finalized.

Based on our review of the final EIS, the document identifies processes to address the major concerns EPA raised in our review of the draft EIS. EPA rated the draft EIS as "Environmentally Unsatisfactory – Inadequate Information" because the EIS: 1) did not adequately address the wastewater system capacity limitations and potential water supply shortfall resulting from construction workers and induced population growth, and 2) did not provide sufficient analysis of impacts to coral reefs from the Carrier Nuclear Vessel (CVN) project in Apra Harbor or address an adequate plan to mitigate these impacts. EPA, DoD, and many other agencies worked closely over the last several months to address significant concerns.

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As a result of this interagency process, EPA finds that DoD's EIS is adequate for purposes of NEPA because it includes an adequate discussion of environmental impacts and proposes a mitigation plan. Further, if the mitigation proposed in the EIS is successfully implemented, the project will avoid unsatisfactory public health and environmental impacts, making the project environmentally satisfactory. As a result, EPA does not intend to refer the EIS to the Council on Environmental Quality.

For the project to be environmentally satisfactory, however, DoD must ensure that the mitigation plan is implemented successfully. Specifically, DoD commits to three major mitigation measures that are critical in avoiding unsatisfactory environmental impacts: 1) to seek funding for drinking water and wastewater system infrastructure; 2) to manage construction and the arrival of military personnel to not cause significant environmental impacts or exceed existing infrastructure limitations through Adaptive Program Management (APM); and 3) to undertake an additional assessment of coral in Apra Harbor so that a site-specific determination on the location of the CVN berth can be properly informed through a supplemental NEPA process.

The following commitments are necessary to ensure the above measures are implemented successfully:

First, as the EIS stated, \$1.3 billion needs to be secured for the drinking water and wastewater system improvements that are necessary to accommodate the impact of the military build-up over the next five years. DoD is pursuing \$600M in Government of Japan (GOJ) funding to cover a portion of the required \$1.3 billion funding, and has provided leadership via the Economic Adjustment Committee to assess the needs of Guam's infrastructure and identify funding source amongst the federal agencies. To date, no funding has been secured for these upgrades, and failure to secure funding will require DoD to decrease the construction tempo of the military relocation. We expect the ROD to include DoD's commitment to seek funds through all available mechanisms and a reasonable plan for pursuing the remaining \$700 million.

Second, the APM needs to be developed from the concept described in the EIS to an implementable mitigation tool. Monitoring and adaptation are the essential elements of any adaptive management program. DoD's identified APM as the primary approach for mitigating significant environmental impacts during the construction phase, but APM has never before been implemented at this scale. Therefore, successful implementation of the steps DoD laid out in the EIS is key. EPA seeks DoD's commitment to fund additional monitoring, including equipment and installation, identified by the Council as necessary to successfully implement DoD's APM process. DoD should commit to provide resources (e.g., technical assistance and funding) to implement mutually agreed upon actions as environmental and public health conditions approach "tipping points" related to the military expansion. Slowing construction tempo or construction sequencing are extreme measures that may be necessary, but other rapid, interim actions may suffice rather than allowing a situation to approach consideration of slowing construction tempo or construction sequencing. Without monitoring and adaptation, APM will not be successful.

EPA believes the operation and structure of the Council needs to be clearly laid out in the charter that will be included in the ROD. In addition, EPA's elevation authority as discussed in the EIS needs to be included in the ROD. Specifically, "if, during the implementation of the project, EPA anticipates that the pace of the movement of construction workers and military personnel and families, and project related induced growth will exceed the availability of needed waste water and/or water supply infrastructure such that unsatisfactory environmental or public health impacts may occur, EPA retains the authority to exercise its responsibility under Section 309 of the Clean Air Act to refer the matter to an appropriate agency in the Executive Office of the President."

The timing and implementation of APM is crucial and should be reflected in the charter. The ROD must reflect this specific statement: "During the development of the final charter for the CMCC, DoD will not implement its realignment construction program in a manner that causes significant environmental impacts or exceeds existing infrastructure limitations on Guam." We expect the ROD to include a schedule for standing-up the Council and implementation of AMP before significant construction is underway. Furthermore, we expect the ROD to clarify who the decision-makers are, whom the Council is advising, and the process for making decisions provided through the Council.

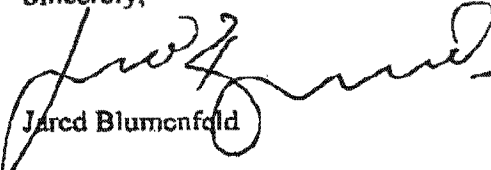
Third, implementation of the June 25, 2010 *Final Scope of Work Elements for Marine Surveys of the CVN Transient Berth Project Area, Potential Mitigation Sites, and Habitat Equivalency Analysis (SOW)* should start this fiscal year. This work will be used to further analyze coral reef impacts and to identify potential mitigation of sufficient scale to result in measurable and maximum benefits to coral reefs. Results from the SOW will be used for supplemental NEPA requirements to support site-specific Clean Water Act permitting. The ROD will need to commit to implement the SOW and to defer selection of a specific location for the CVN berth until adequate supplemental NEPA review is completed. As such, the identification of Polaris Point in the FEIS as the Least Environmentally Damaging Practicable Alternative is premature.

The FEIS includes a new diesel particulate matter analysis that is incomplete. EPA recommends that DOD commit to quantitatively analyze diesel particulate matter emissions before significant construction activities are underway. Emissions could be reduced through successful implementation of a recent bill approved by the Governor of Guam requiring the use of ultra low sulfur diesel (ULSD). However, the military realignment is going to increase emissions in a medically underserved community with a higher percentage of children and could cause adverse public health effects. An accurate analysis that can identify hotspots from construction or increases in traffic volumes in proximity to sensitive communities, especially before island wide ULSD availability, is useful for decision-makers and can guide efforts to reduce these impacts.

The military relocation to Guam is a long-term federal investment. EPA is committed to working with DoD, the Government of Guam, and other federal agencies to ensure the environmental acceptability of this project. EPA appreciates the opportunity to have worked

on this project to collaboratively identify solutions in support of "One Guam." Considerable work lies ahead of us. EPA will continue engagement on the Clean Water Act and Clean Air Act regulatory issues and processes for this proposed action. Our detailed comments are enclosed. We look forward to our continued coordination with DoD, the Government of Guam, and other federal agencies in this endeavor. If you have any questions, please contact Enrique Manzanilla, Director, Communities and Ecosystems Division at (415) 972-3843 or via email at manzanilla.enrique@epa.gov.

Sincerely,



Jared Blumenfeld

Enclosure
Detailed Comments

cc: Cecilia Munoz, Director, White House Office of Intergovernmental Affairs
Dorothy Robyn, Deputy Under Secretary of Defense, Environment and Installations
David F. Bice, Executive Director, Joint Guam Program Office
Debra Walker, Assistant Secretary of the Air Force Installations, Environment and Logistics
Tony M. Babauta, Assistant Secretary of the Interior for Insular Areas
Victor Vasquez, Deputy Undersecretary for Rural Development, USDA
Robert Nabors, Deputy Director, Office of Management and Budget
Bill Corr, Deputy Secretary, Health and Human Services
Eileen Sobock, Assistant Secretary for Fish, Wildlife, and Parks, U.S. Fish and Wildlife Service
Michael Ensck, Chief Operations Division, U.S. Army Corps of Engineers
Monica Medina, Deputy Under Secretary for Oceans and Atmosphere, NOAA
Greg Nadcau, Deputy Administrator, Federal Highways Administration
Peggy Gilligan, Associate Administrator, Federal Aviation Administration
Madeleine Z. Bordallo, Congresswoman, Guam
Gregorio Kilili Camacho Sablan, Congressman, CNMI
Felix Camacho, Governor, Guam
Benigno Fitial, Governor, CNMI