



Philippine Sea. The plant operates under a National Pollutant Discharge Elimination System ("NPDES") permit that, per Section 301(h) of the Clean Water Act, exempts it from complying with the Act's secondary treatment requirements. On October 1, 2009, the EPA Regional Director entered two separate Final Decisions, effective November 5, 2009 denying GWA's requests to continue the variance.

The history of the plant's permit is as follows:

Petitioner's NDPEs permit with a 301(h) waiver expired in 1991. The Public Utility Agency of Guam ("PUAG"), the legal entity that predated the Guam Waterworks Authority submitted a timely permit renewal application in December 1990. In March of 1991, the Guam Environmental Protection Agency ("GEPA") concurred with the 301(h) waiver.

PUAG operated under an administrative extension for six years until April 15, 1997, when the U.S. Environmental Protection Agency ("EPA") sent PUAG a letter informing them that they intended to issue a tentative denial of the secondary treatment waiver and offered PUAG the opportunity to resubmit their permit application, stating that in order to receive the treatment waivers, the deep ocean outfall would need to be extended. In June, 1997, EPA sent a letter acknowledging Petitioner's intent to submit a revised application. On October 6, 1997, USEPA sent Petitioner an approval of the proposed baseline surveys for the proposed outfall. On March 27, 1998, Petitioner resubmitted their application and included projects to extend the outfall. Additional information was provided in a June 30, 2000 supplemental submittal. Petitioner submitted additional data between 2001 and 2003.

In the basis for the tentative decision, EPA stated that Petitioner's application was deficient, but acknowledges that Petitioner submitted additional information to support the application, and that all information submitted through 2001 was considered in the determination. Petitioner

received no further communications from EPA after 1998 regarding submittal requirements or deficiencies in its permit applications. In a June 17, 2009 email, Richard Remigio of USEPA confirmed that no other correspondence from USEPA to Petitioner was included in the determination.

By EPA's own admission, the "window" for submittal of additional information closed in 2001. Had the EPA issued a permit in 2001, the permit would have expired in 2006, and Petitioner would be a year away from preparing another renewal application. As noted by a Honouliuli commenter, the timely response expectation certainly gives all the outward appearances of being a one way street and constitutes nothing more than an arbitrary denial. *See e.g.*, Consolidated Petition for Review No. 09-01 filed with EAB.

In 2001, Guam passed Public Law 26-76 creating the Guam Consolidated Commission of Utilities ("CCU"). This act replaced the appointed Board of Directors with an elected board and converted Petitioner into a Guam Public Corporation instead of a legislative line agency subject to political interference. In December of 2002, the USEPA sued Petitioner for noncompliance with the Clean Water Act and the Safe Drinking Water Act. The first elected board took office on June 1, 2003 and at that time Petitioner had a debt of \$60M and extensive non-compliance under both the Clean Water and Safe Drinking Water Acts.

In June of 2003, Petitioner and the U.S. EPA entered into a Stipulated Order for Preliminary Relief ("SO") in Guam District Court of Guam Civil Case No. 02 – 00035 to address the non-compliance that was the subject of the 2002 suit. In 2006, the Stipulated Order was amended by the consent of both parties. The Amended SO did not mention secondary treatment despite the fact it was five years after EPA determined the window to provide data were closed.

Since 2003 Petitioner has made enormous strides in our compliance and reporting, a fact acknowledged by the USEPA itself in its November 9, 2007 brief in District Court of Guam Case No. 02-00022 at page 6. Most recently Petitioner has been focusing its attention and limited resources fully on the items and issues identified in the Stipulated Order and the Water Resources Master Plan which Petitioner is required to implement.

In the six (6) years since the CCU took office in 2003 the USEPA has not requested in writing any additional information regarding the renewal requests.

### **ISSUES PRESENTED FOR REVIEW**

The issues presented for review are as follows:

1. Whether the Regional Administrator's timing of the decision Final Determination is lawful or factually correct due to the fact the Administrator failed to consider the existence of other federally driven directives, statements and actions including, but not limited to, the Stipulated Order, the 2006 Amended Stipulated Order, Petitioner's Water Resources Master Plan and the pending military buildup.
2. Whether the Regional Administrator properly considered the changes that the Petitioner was undertaking at the direction of EPA that would have an effect on its sewage discharges from the plant and that Denying the 301(h) waiver was an lawful or factually correct in light of said circumstances.
3. Whether the Regional Administrator adequately considered and properly responded to Petitioner's concerns regarding scientific facts relative to non-point source pollution and septage discharges as compared to data which shows that Petitioner's primary treatment plants do not in fact pose a danger to the environment.

4. Whether the Regional Administrator arbitrarily, fairly and/or lawfully concluded that the EPA's standards for the affordability of secondary treatment are irrelevant.

5. Whether the Regional Administrator had an adequate basis for refusing to consider the scientific bases of Petitioner's responses to the 2008 Tentative Determination.

6. Whether the Regional Administrator properly considered all of Petitioner's non-industrial source control programs.

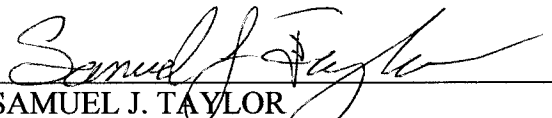
7. Whether the Regional Administrator presented accurate and factual information in the Final Decision and its associated documentation.

8. Whether the USEPA gave adequate reasons and had an adequate basis, for the EPA's change in position on several important and relevant subjects. The Regional Administrator did not give adequate reasons, and did not have an adequate basis to change their position and Petitioner was entitled to rely on EPA's prior actions and statements.

### CONCLUSION

As will further be explained in the supplemental brief (or briefs if the Motion to Consolidate is not granted), Petitioner will file on or before December 7, 2009, the Final Decisions of the Regional Administrator should be reversed and remanded for further consideration in light of the errors identified above.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of November, 2009.



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**CERTIFICATE OF SERVICE**

I, Samuel J. Taylor, hereby certify that on November 4, 2009, Wednesday, I will cause to be served a true and correct copy of the foregoing Consolidated Petitions for Review as well as a Motion to Consolidate Petitions for Review in Docket No. CWA 309(a)-09-030, via Federal Express courier to the below listed persons.

Clerk of the Board  
United States Environmental Protection Agency  
Environmental Appeals Board  
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Washington, D.C. 20005

Laura Yoshii  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Dated this 4th day of November, 2009.

  
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SAMUEL J. TAYLOR