

Guam Legislature Clerks <clerks@guamlegislature.org>

Messages and Communications

1 message

Speaker's Office <speaker@guamlegislature.org>
To: Clerks Office <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>

Wed, Oct 28, 2020 at 5:16 PM

10/28/20	4:24 PM	10/28/20	Reporting Requirements for Board of Directors Regular Meetings from January 2020 to September 2020.	Guam Environmental Protection Agency	35GL-20-2359
10/28/20	4:24 PM	08/12/20	Board of Directors Regular Meeting for July 2020.	Guam Environmental Protection Agency	35GL-20-2360
10/28/20	4:24 PM	10/01/20	Board of Directors Regular Meeting for August 2020.	Guam Environmental Protection Agency	35GL-20-2361
10/28/20	4:24 PM	10/28/20	Board of Directors Regular Meeting for September 2020.	Guam Environmental Protection Agency	35GL-20-2362
10/28/20	4:24 PM	10/28/20	Board of Directors Regular Meeting for October 2020.	Guam Environmental Protection Agency	35GL-20-2363

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910
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speaker@guamlegislature.org

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

5 attachments

- **GEPA-Rep. Req. for BOD Reg. Mtgs.from 01-2020 to 09-2020.pdf** 847K
- **GEPA-BOD Reg. Mtg. for July 2020.pdf** 3078K
- **GEPA-BOD Reg. Mtg. for August 2020.pdf** 2358K
- **GEPA_BOD Reg. Mtg. for September 2020.pdf** 5404K
- **GEPA-BOD Reg. Mtg. for October 2020.pdf** 2961K

GUAM ENVIRONMENTAL PROTECTION AGENCY • *AHENSIAN PRUTEKSIÓN LINA'LA' GUÅHAN*
LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

35GL-20-2362
Speaker Tina Rose Muña Barnes

October 28, 2020

Honorable Tina Rose Muña-Barnes
Speaker
I Mina'trentai Singko na Liheslaturan Guåhan
163 Chalan Santo Papa
Hagåtña, Guam 96910

OCT 2 8 2020
Time 4:24 ( )AM (✓)PM
Received By:

RE: 5 GCA 8113.1 Reporting Requirements for Board of Directors Regular Meeting – September 2020

Hafa Adai Madam Speaker,

Transmitted herewith are the minutes and other required documents from the Guam Environmental Protection Agency (Guam EPA) Board of Directors Regular Meetings for December 2019, in accordance with 5 GCA §8113.1.

Should you have any questions or if the Agency can be of any assistance to you and your office, please feel free to contact the Agency at 300-4751.

Respectfully,

Arlene S. Acfalle
Guam EPA Board Secretary

cc: **Guam EPA Administrator**
Guam EPA Board Chair

GUAM ENVIRONMENTAL PROTECTION AGENCY • *AHENSIAN PRUTEKSIÓN LINA'LA' GUÅHAN*
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Guam EPA Board of Directors regular meeting agenda

Thursday, September 17, 2020 – 4:00 p.m.
Location: Google Meet: https://meet.google.com/kag-wkvo-phm

Pursuant to Executive Order 2020-07 Item 4, meeting announcement published on:
oagguam.org/govguam-meetings/

Meeting will live stream on youtube.com/guamepa and facebook.com/guamepa

I. Call to Order

II. Approval of Agenda

III. Approval of August 13, 2020 Meeting Minutes

IV. Old Business:
- RRF, fund balance and budget bill

V. New Business
- In the case of *R&R Distributors, Inc.*, Petitioner v. *Guam Environmental Protection Agency*, Respondent, GEPA Case No. 2020-1. GEPA Stop-Sale and Removal from Sale Orders on SDS Blockers

VI. Next regular scheduled meeting date; adjournment of regular meeting; proceed to call the start of the Special Meeting scheduled today at 4:05 p.m.

GUAM ENVIRONMENTAL PROTECTION AGENCY • *AHENSIAN PRUTEKSIÓN LINA'LA' GUÄHAN*
LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

Guam EPA Board of Directors special meeting agenda

Thursday, September 17, 2020 – 4:05 p.m.
Location: Google Meet: https://meet.google.com/kag-wkvo-phm

Pursuant to Executive Order 2020-07 Item 4, meeting announcement published on:
oagguam.org/govguam-meetings/

Meeting will live stream on youtube.com/guamepa and facebook.com/guamepa

I. Call to Order

II. Approval of Agenda

III. Contested evidentiary hearing (and possibly deliberation thereon, time-permitting) on the merits of an appeal of a GEPA Stop-Sale and Removal From Sale Orders on SDS Blockers, in the case of *R&R Distributors, Inc.*, Petitioner v. *Guam Environmental Protection Agency*, Respondent, GEPA Case No. 2020-1.

IV. Adjournment and possible entry of Order of Adjournment of contested hearing on *R&R Distributors, Inc.*, Petitioner v. *Guam Environmental Protection Agency*, Respondent, GEPA Case No. 2020-1 for completion on new date, if needed, to be set at the end of the contested hearing in such Order of Adjournment.

V. Next Meeting Date, Continuance or Adjournment

AHENSIAN PRUTEKSION LINA'LA GUÂHAN

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

Guam Environmental Protection Agency
Virtual Board of Director's Meeting
Thursday, August 13, 2020
And Continuance Meeting
Monday, August 20, 2020
Via Google meet platform

MINUTES

I. **Call to Order**: Chairman Robert Perron called the Board of Director's meeting to order at 4:01 p.m. The following individuals were present during the virtual board meeting via Google meet **Board Members**: Robert Perron-*Chairman*, Florida Sanchez, Ann Roth, Nicholas Pape, Steven Carbullido, Steve Carrera and Nonito Blas **Guam EPA Staff**: Michelle Lastimoza-*Deputy Administrator*, Arlene S Acfalle, Nic Lee, Jesse Cruz, Sabrina Sablan, Kristan Finney, Connie Aflleje, Conchita Taitano, Brian Bearden and Michael O'Mallan. **General Public:** Former Board of Director, Moneka De Oro.

II. **Approval of Agenda**: Chairman asked that we can add the selection of a Vice Chair under New Business. Agreed upon by Director Carbullido. He also inquired with Deputy Administrator if she will be discussing the RRF transferring to the Zero Waste. Deputy advised that the Administrator had to leave and asked that we table the Administrators report till next week. Chairman asked to include the discussion of RRF to Zero Waste to New Business. Director Roth asked to include the NOV/Stop Sale Order under Old Business. Board Secretary advised it was a NOA (Notice of Appeal) and not a NOV (Notice of Violation) for record purpose. D*irector Roth* made a motion to approve the agenda, to include the selection of Vice Chair to New Business and the Notice of Appeal to Old Business, seconded by *Director Pape*. All voted in favor, zero (0) opposed and motion passed.

III. **Approval of Minutes**: D*irector Roth* made a motion to approve the minutes seconded by *Director Pape*. All voted in favor, zero (0) opposed and motion passed.

IV. **Administrator's Report:** Please refer back to Approval of Agenda where Deputy advised that the Administrator had to leave and asked that we table the Administrators report till next week.

V. **Old Business**:

- Active NOV's
  - Safe Drinking Water NOV's update (Lin's Hardware, Su & Zheng Corp and Feiyang Construction & Engineering) – Brian updated that they are still trying to figure out how to close out this NOV. He hopes to have an update by next board meeting.
  - Smithbridge – Per Brian, they were able to figure out what we were doing wrong. Water Division has been working with legal council, Kristan, to try and close out the NOV and collect the penalty amounts.
  - Piti failed septic system update – Brian updated again that the property owner left Guam and they are still trying to figure out how to close out the NOV.
  - Contract Watts update – Water Division has been working with legal council, Kristan, to try and close out the NOV and collect the penalty amounts.

- Dusit Thani update – Brian advised that the beach erosion has not been occurring lately, which is good news.
- Sand Castle update – DPW proposed that they will clean out the storm drains which they have been working on to clear out the storm drains of any debris and sediments, per Brian.
- Verona & Old Royal Palm Garage update – Deputy reported that she received updates from Glenn in regards to Royal Palm Garage. Currently there are no progress on this clean up. Glenn is still trying to locate a POC. The new owners are being represented by Cabot Mantanona, LLC. Deputy asked Kristan if she advised Glenn to issue an NOV to the new owners. Per Kristan she does not recall the full conversation and would need time to go through it again. She was not prepared to speak on this issue. Update on Verona was also provided by the Deputy. Owner is still in Hong Kong and no update on this clean up.
- GWA NOVs (UST) update – Conchita advised this was Issued on February 5, 2020. GWA paid the penalty amount of $14,692 within fifteen (15) days of the issuance of enforcement action. GWA responded with corrective actions as well.
- Settlement Agreement with UOG (NOV UST 18-00) – Mike O'Mallan advised they have been meeting with UOG representatives virtually and over the phone. UOG provided a SEP proposal however, there is no nexus between the violation and the SEP. Per guidance from the Administrator he asked if UOG can find a way to incorporate any part of Chapter 76 which is to restore the regulated substances underground and above ground. This is targeted to farmers to apply pesticides. We are still working with UOG and hopefully we can move forward with the SEP.

➢ Underground Storage Tank Rules and Regulations Update – Per Conchita in regards to the UST, this was sent to the OAG. Kristan updated that the revised version was submitted to the OAG and it was received. It should be on its way through their system and the AG would have to give his final approval.

➢ Plastic Bag Initiative update – Per Conchita there was a public hearing and our agency participated. The written testimony was prepared by Nic. Nic advised there was a virtual hearing on August 4th in regards to the revision of the Plastic Bag Initiative. Some of the things conveyed were related to the fines to be levied on the establishments which were caught in violation. We requested that the fines go to the Solid Waste Fund as opposed to the Recycling Revolving Funds so that we can use that funding to augment the administrative cost that would be associated with enforcement. Another thing we talked about was consideration for either the use of paper bags or reusable bags only to stop distribution at the point of sale. Senator Lee office will keep us informed on this issue. Chairman asked if comment period is still open. Nic advised he would need to verify. Per Nic some of the stakeholders spoke about wanting to do their part to reduce waste and illegal dumping. Former Board Member Moneka said there are options for reusable bags but it would need to be purchased. She also mentioned how she would like to see the agency do a more public campaign in regards to this initiative.

➢ Code of Conduct or Ethics training for the Board of Directors update – Kristan advised we were trying to get something scheduled with the OAG but they have been swamped. Chairman advised we may not be able to get 100% attendance. Kristan advised that hopefully the training can be recorded for whoever is not able to participate.

Board Secretary inquired on the phone number that joined the virtual meeting for record purpose. Chairman asked if they can state their name. Per Conchita it looked like it was Sabrina Cruz-Sablan

➢ NOA/ Case for R&R Distributors update: Chairman updated that our Administrative Hearing Officer, Happy Rons, AAG, is still off-island and had requested for an extension or delay from both council's Attorney Randy Cunliffe and Kristan Finney. This has been agreed upon by both parties. So we are awaiting a hearing date.

VI. New Business:

➢ RRF to ZERO WASTE FUND: Deputy advised that the Administrator was the one who testified at the hearing on August 4th. She advised she was still in quarantine. Chairman advised that GSWA through Andrew Gayle, made an appeal to assist with their recycling. He also mentioned that UOG through Austin Shelton made an appeal for $500K for the Center for Island Sustainability. Mr. Shelton also went through the legislature and this request is now included as a rider in the budget bill. Deputy advised UOG might be trying to obtain a Sea Grant in the amount of $20M. Sabrina chimed in that she personally does not support the request of $500K and how this request will negatively impact our ability to roll out the

agency's initiatives. Ms. Moneka agreed that the process on how Mr. Shelton went about this was problematic and he should have reached out to the agency to collaborate how the funds were allocated. The Deputy did clarify that Mr. Shelton did approach the Administrator and herself prior to the Island Sustainability conference. At such time they did inform Mr. Shelton what was allowable within the statute and what we are authorized to fund which is the MCOG and the incentives. The number that Mr. Shelton threw out to the Governor, at the Island Sustainability conference, was $300K and the Governor stated "she will find that money", said the Deputy.

Director Carrera asked for clarification that when we approved the Rules & Regs for the RRF, this was to stop individuals or entities from tapping into this account/fund. Chairman advised this is correct however the legislature can trump it by making new legislation.

Sabrina suggested we come up with a position on the Board level. Chairman inquired if the Board would like to prepare a position statement opposing this request. Director Ann stated that the Chairman should prepare the position statement letter to be sent to the committee to oppose the transfer of $500K to UOG. Director Carbullido stated there were programs identified already and he agrees that going through the budget process is disagreeable. Director Sanchez stated she agrees the opposition letter since we have already identified how the RRF will be spent. Director Blas has nothing to add to this matter. Director Carrera agrees with opposition letter. Director Pape's thoughts are that we are opposing the process and procedure and what is the incentive for other entities going forward. He also agrees with opposition letter.Director Roth made a motion for the Chairman to prepare the opposition letter which incorporates all the Board of Directors comments. Director Pape inquired if we can have a special meeting to go over the letter once the Chairman is done. Kristan stated we do not have to have a special meeting. We can have a continuance meeting to discuss this matter. Chairman agreed to the continuance meeting. Continuance meeting schedule for Monday, August 17th at 4pm via Google meet platform.

- Amendments to Chapter 45 to allow the Board of Directors of Guam EPA to establish fees for the agency. – Kristan advised there is a provision in Chapter 45 for the Board to adopt rules and regulations. There are a bunch of different fees that the agency has identified it could charge, but we are not charging at this time. We are trying to propose amendments to allow the board to adopt a fee for all the different chapters. Also to adopt a process where the board has a hearing with public comments but not necessarily the exact steps on the Administrative Adjudication Act but with the same protections. Brian echoed Kristan's statement and added that the main advantage by doing it this way is we can amend all the chapters all at once instead of one by one. Brian also mentioned this was prompted by Administrators direction to help try and update our regulations where we can be self-supporting and not rely on federal funds. Director Roth moved to approve the Amendments to Chapter 45 seconded by Director Carrera. All in favor and motion approved.

Board Secretary inquired if the Board was going to vote on the Vice Chairperson. Per Chairman we can vote on this on the continuance meeting.

Director Blas inquired on the relation between Guam EPA and USEPA in regards to the air quality suite. Conchita did not want to comment too much on this issue. She did mention GPA has a stipulated order in regards to the consent decree and she leaves that between GPA and USEPA. Kristan concurred with Conchita's comment and added that as far as Guam is concerned we are enforcing the air quality laws.

Meeting was recessed till Monday, August 17th at 4pm.

Arlene S Acfalle
Board Secretary

Continuance Meeting
August 17, 2020
4:05pm

I. **Call to Order**: Chairman Robert Perron called the Board of Director's meeting to order at 4:05 p.m. via the Google meet platform. (Roll call taken for record) The following individuals were present during the virtual board meeting via Google meet **Board Members**: Robert Perron-*Chairman*, Florida Sanchez, Ann Roth, Nicholas Pape, Steven Carbullido, and Nonito Blas **Guam EPA Staff**: Michelle Lastimoza- *Deputy Administrator*, Arlene S Acfalle, Nic Lee, Sabrina Cruz-Sablan, Kristan Finney, Connie Aflleje, and Conchita Taitano

II. First order of Business from original meeting.

- Voting of Vice Chairperson – Chairman advised the Vice-Chairperson would have to sign the Opposition Letter due to he is recusing himself due to his business as a recycler. Chairman advised he consolidated all the opinions of the board members in regards to the budget bill.
  Chairman inquired if there any nominations for the position of Vice Chair or if anyone would like to serve in that capacity. Director Roth inquired if anyone would like to serve and asked Director Carbullido if he would like to accept position, Director Carbullido declined. Chairman asked if Director Roth would like to accept position. Director Roth stated she will accept if no other board member would like to serve as Vice Chairperson. Director Pape added it should be someone who has more tenure, experience and knowledge of the Board. Chairman Perron nominated Director Roth, seconded by Director Sanchez. All in favor and motion passed.

- Opposition letter: Newly appointed Vice Chairman Roth inquired if there are any questions? Vice Chair Roth stated she has a comment. She would like to add to the end of the letter, Furthermore, the withdrawal of the $500K may impact future programs indicated in PL 35-37 (such as Integrated Solid Waste Management and The Guam Beverage Container). Director Pape indicated it is a good suggestion and also suggested that we should spell out the RRF, Revolving Recycling Fund. Motion made by Director Pape to send letter with corrections, second by Director Blas. All in favor and motion approved. Board Secretary to prepare letter with corrections and submit to Vice Chair Roth for approval and signature. Chairman asked if the letter can be emailed due to the Legislature is closed in light of PCOR1 COVID Pandemic. GEPA Legal Council Kristan advised it can be emailed. Chairman advised to email letter to Senator Joe San Agustin office, Committee Chair.

III. **New Meeting Date/ Adjournment**: Next meeting set for September 17, 2020 at 4pm via Google meet platform. *Vice Chair Roth* made motion to adjourn meeting and seconded by *Director Pape*. All voted in favor and meeting adjourned at 4:20 p.m.

Arlene S Acfalle
Board Secretary

GUAM
ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF INSPECTION

Pesticides Enforcement Program

INSPECTOR INFORMATION

Inspector Name: Betwin Alokoa / Maria Dueas Inspector Title: Program Manager / EHS II

FACILITY/INDIVIDUAL INFORMATION

Name of Individual: Lena Calvo-Rodriguez Title: owner

Telephone No.: 787-1573 Email: rrdguam@gmail.com

Company/Business Name: R&R Distributors

Lot No.: 2118-3-A-New Street: 759 South Marine Corps Dr. Village: Tamuning

Mailing Address: 759 South Marine Corps. Drive Tamuning GU 96913

INSPECTION DATA

Reason for Inspection: ☐ ROUTINE ☑ FOR CAUSE ☐ FOLLOW UP START TIME: 10:10am END TIME: _____ DATE: 6/01/2020

☐ *For the purpose of inspecting sites where pesticides have been used, are currently being used, or reported to have been used in order to obtain documentation, including samples/ records on their use and to determine whether they are used consistent with their label/labeling. Guam Pesticide Act (Chapter 40) and the Guam Pesticide Regulations.*

☐ *For the inspection and obtaining samples of any pesticides and devices packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides and devices, in places where pesticides or devices are held for distribution or sale. Guam Pesticide Act (Chapter 40) and the Guam Pesticide Regulations.*

☐ *For the purpose of inspecting and obtaining copies of those records, specified in the Guam Pesticide Act (Chapter 50) and the Guam Pesticide Regulations FIFRA Sec. 8 and 4- CFR Part 169 (Sec. 8 & 12(a)(2_(b)).*

Remarks

6/1/2020
Lena Calvo-Rodriguez

BUSINESS/FACILITY/REPRESENTATIVE SIGNATURE TITLE DATE AND TIME

EHS II 6/01/2020

INSPECTOR SIGNATURE TITLE DATE AND TIME

AHLNSIAN PRUTEKSION LINA'LA GUÅHAN

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

PESTICIDES ENFORCEMENT PROGRAM

STOP-SALE AND REMOVAL FROM SALE ORDERS

Date: 06/01/2020 Time: 10:35 am

Guam EPA Representative Printed Name: Betwin Alokoa / Maria Duenas

Contact Number(s): 787-1573

Company/Market: R & R Distributors

Owner/Company's Representative Name and Signature: Lena Calvo-Rodriguez

Contact Number(s): 787-1573

Physical Address: Lot 2118-3-A-NEW 759 South Marine Corps Dr. Tamuning

Mailing Address: # 759 South Marine Corps. Drive Tamuning Gu 96913

Description and Quantity of Item(s) Removed from Sale: SDS Blockers

Please be advised that under Guam's Pesticide Act Section 50111. Stop-Sale and Removal From Sale Orders, "Stop Sale", "Use", "Removal", "Seizure", the Administrator (Guam Environmental Protection Agency Administrator) is authorized to issue "Stop-Sale or "Removal from Sale" Orders as to any pesticide or device which violates or fails to comply with the provisions of the Act and may place written or printed "Stop-Sale" or "Removal from Sale" notices on any such pesticide or device.

Upon receipt of such Orders, the alleged violator shall correct the violation and effect full compliance therewith. Such articles shall not thereafter be sold, offered for sale, transferred or disposed of except upon authorization by the Administrator.

No person shall remove, deface, or tamper with any "Stop-Sale" or "Removal from Sale" notices.

BETWIN ALOKOA
Pesticide Program Supervisor

MARIA DUENAS
Pesticide Enforcement Officer

Doc. No. 35GL-20-2362.*

LAW OFFICES
CUNLIFFE & COOK
210 Archbishop Flores St., Ste. 200
Hagåtña, GU 96910-5189
Telephone: (671) 472-1824
Telecopier: (671) 472-2422

Attorneys for: Petitioner

RECEIVED
JUN 15 2020 @ 3:28
Guam Environmental Protection Agency

BEFORE THE
GUAM ENIRONMENTAL PROTECTION AGENCY

R&R DISTRIBUTORS, INC., Petitioner, vs. GUAM ENVIRONMENTAL PROTECTION AGENCY, Respondent.	**CASE NO.** _____ **NOTICE OF APPEAL**

COMES NOW, R&R DISTRIBUTORS, INC., (hereafter "Petitioner"), through counsel, **CUNLIFFE & COOK,** A Professional Corporation, by F. Randall Cunliffe., Esq., and hereby appeals the Stop-Sale and Removal From Sale Orders issued on June 1, 2020 taken against Petitioner by the **GUAM ENVIRONMENTAL PROTECTION AGENCY** (hereafter "Respondent") pursuant to 10 GCA §50117.

Dated this 12 day of June, 2020.

CUNLIFFE & COOK
A Professional Corporation
Attorneys for Petitioner
R&R Distributors, Inc.

By _____
F. RANDALL CUNLIFFE, ESQ.

ORIGINAL

LAW OFFICES
CUNLIFFE & COOK
210 Archbishop Flores St., Ste. 200
Hagåtña, GU 96910-5189
Telephone: (671) 472-1824
Telecopier: (671) 472-2422

Attorneys for: Petitioner

RECEIVED
JUN 15 2020
Guam Environmental Protection Agency

BEFORE THE
GUAM ENIRONMENTAL PROTECTION AGENCY

R&R DISTRIBUTORS, INC., Petitioner, vs. GUAM ENVIRONMENTAL PROTECTION AGENCY, Respondent.	**VERIFIED PETITION**

Petitioner R&R DISTRIBUTORS, INC. (hereafter "Petitioner R&R DISTRIBUTORS"), through counsel, law offices of **CUNLIFFE & COOK**, A Professional Corporation, by F. Randall Cunliffe, Esq., and hereby appeals the Stop-Sale and Removal From Sale Orders issued on June 1, 2020, pursuant to 10 GCA §50117.

1. On June 1, 2020, members of the Pesticide Protection Program came to Petitioner R&R Distributors' location and issued a Stop-Sale and Removal From Sale Orders.

2. The description of the item is SDS Blockers.

3. The notice provides that the order is made pursuant to 10 GCA §50111.

ORIGINAL

4. The items in question, SDS Blockers, are not pesticides as defined in 10 GCA Chapter 50. In 10 GCA §50102(34), it provides as follows:

> **Pest shall mean any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, <u>except</u> viruses, bacteria or other microorganisms on or in living man or other living animals which the Board declares to be a pest under §50103.**
>
> Subparagraph "hh" Pesticide shall mean:
>
> 1. **any substance or mixture of substances intended for preventing, destroying or repelling or mitigating any pest; ...**
>
> 2. **any substance or mixture of substances intended for use as a plant growth regulator, or defoliant or desiccant.**

5. The Guam statute, and definition set forth therein, closely mirrors the federal EPA Standards.

6. A pest therefore does not include the viruses on or in a living man or other living animal.

7. Under the federal regulations, the federal government has enacted the Code of Federal Regulations. Under 40 CFR §152.6, it excludes certain items from the federal statutes. Specifically §152.6(c), "Human Drugs. Fungi, bacteria, viruses or other microorganisms in or on living man are "pest", as defined in §2(t) of the FIFRA (the Federal Law). Products intended and labeled for use against such organisms are human drugs, subject to the regulation of the FDA under FFDCA."

8. 40 CFR §152.10 Products that Are Not Pesticides Because They Are not Intended for Pesticidal Purposes provides:

> **A product that is not intended to prevent, destroy, repel or mitigate a pest or defoliate, desiccate or regulate the growth of plants, is not considered to be a pesticide.**
>
> **The following types of products or articles are not considered to be pesticides unless the pesticidal claim is made on their label or in connection with their sale or distribution:**
>
> **a. Deodorizers, bleaches, and cleaning agents;**
>
> **b. Products not containing toxicants, intended only to attract pest for survey or detection purposes and labeled accordingly;**
>
> **c. Products that are intended to exclude pest only by providing a physical barrier against pest access and which contain no toxicants such as certain pruning paints on trees.**

9. As can be seen from the Federal Regulations, citing to the Federal Statute which was copied by Guam, the SDS Blockers is not labeled as a pesticide, and is exempted from the definition of pest under 10 GCA §50102(34).

10. As SDS Blockers does not mean the definition of "pest", and is not a pesticide, it is not subject to the Stop-Sale and Removal From Sale Orders issued by the Guam Environmental Protection Agency on June 1, 2020.

11. There are rules on Guam contained in 22 GAR Chapter 15. These rules have a list of Restricted Pesticides. This list does not include Chlorine Dioxide. A copy of the rules are attached hereto and incorporated herein by this reference as Exhibit "1".

///

PRAYER

WHEREFORE, Petitioner R&R DISTRIBUTORS requests the following from this body:

(1) That Stop-Sale and Removal From Sale Orders issued on June 1, 2020 be vacated.

(2) For such further and other relief as the agency deems appropriate.

CUNLIFFE & COOK
A Professional Corporation
Attorneys for Appellant

DATED: June 12, 2020

By _____
F. RANDALL CUNLIFFE, ESQ.

APPELLANT:

R&R DISTRIBUTORS, INC.

DATED: June 12, 2020

By _____
LENA CALVO-RODRIGUEZ
Its Duly Authorized Representative

GUAM ENVIRONMENTAL PROTECTION AGENCY • *AHENSIAN PRUTEKSIÓN LINA'LA' GUÅHAN*
LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

August 26, 2020

R&R Distributors, Inc.
759 S. Marine Corps Dr.
Tamuning, Guam 96913

Re: Amended Notice of Hearing

Hafa Adai R&R Distributors, Inc.,

You are hereby notified that a hearing will be held before the Guam Environmental Protection Agency (Guam EPA) Board of Directors and the Administrative Hearing Officer, Ms. Happy Rons, AAG, via the Google Meet platform on the 17th day of September 2020, at the hour of 4:00pm, upon your appeal of the charges made in the accusation previously served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to issuance of subpoenas to compel the attendance of witnesses, and the production of books, documents or other things by applying to Guam Environmental Protection Agency. SOURCE: GC § 24116.

It is the responsibility of both parties' counsel, Mr. Cunliffe & Ms. Finney, to provide us within five days of receipt of this Amended Notice of Hearing your email addresses, email addresses for your clients and all witnesses you intend to call at the hearing. Failure to do so will result in them not receiving the link for the hearing and they will not be able to participate.

If you should have questions or concerns, please contact me at 777-5320 or via email at rperron@ite.net or Arlene Acfalle, Board Secretary, at 300-4759 or via email at arlene.acfalle@epa.guam.gov.

Thank you,

Robert Perron
Chairman, Board of Directors
Guam EPA

cc: Walter Leon Guerrero, GEPA Administrator
AAG Kristan Finney, GEPA Legal Counsel
AAG Happy Rons, Administrative Hearing Officer
F. Randall Cunliffe, Attorney for Respondent

BEFORE THE GUAM ENVIRONMENTAL PROTECTION AGENCY BOARD OF DIRECTORS

R&R DISTRIBUTORS, INC., Petitioner, vs. GUAM ENVIRONMEMTAL PROTECTION AGENCY, Respondent.	Case No:_____ **PRE-HEARING ORDER**

TO: RANDAL CUNLIFFE, Attorney for R&R Distributors, Inc., Petitioner; and KRISTAN FINNEY, Assistant Attorney General for the Government of Guam for Guam Environmental Protection Agency, Respondent; and Guam Environmental Protection Agency Board of Directors Chairman, Mr. Robert Perron.

Comes now R. Happy Rons, the designated hearing officer in the above entitled matter, and does hereby order, adjudge, and decree as follows:

1. The parties shall respond by email followed by hardcopy to the hearing officer; Raena San Nicolas; Mr. Robert Peron, chairman of the Guam Environmental Protection Agency board, and to each other, by August 4, 2020, to the hearing officer's request for a continuance of the hearing to August 27 or some other mutually agreeable date thereafter.

2. The parties shall file and serve by email, and subsequent hardcopy, all parties, the hearing officer (happyrons@protonmail.com); Raena San Nicolas (rsannicolas@oagguam.org); and Guam Environmental Protection Agency Board of Directors Chairman, Robert Perron

(perron.bobguam@gmail.com) — a short trial brief, stating the issues and applicable law thereon, no later than two business days prior to trial.

3. The parties shall file and serve the same entities listed in paragraph two above, with witness lists and exhibit lists, no later than two business days prior to trial.

4. The parties shall meet and confer for the purpose of designating joint exhibits prior to trial.

5. The parties shall prepare an agreed joint exhibits binder, with exhibits numbered with joint exhibit number both on the bottom of each document and correspondingly numbered side tabs, and a list of the joint exhibits at the front of the binder, and submit electronic copies of the proposed joint exhibits and joint exhibit list, and submit electronic copies of the joint exhibits and list by email to the same entities set forth in paragraph two above; and hardcopies submitted to the same parties set forth in paragraph two above — no later than two days prior to trial.

6. The parties shall prepare separate exhibit binders for any exhibits not mutually agreed-upon, and follow the same procedure regarding those binders as set forth in paragraph five above here.

7. There shall be a pre-trial settlement conference of the case either two days before trial if the parties agree to continue the hearing date to August 27 or some other mutually agreed-upon date thereafter; or on the day of trial if the parties do not agree to a continuance.

So ordered this 3rd day of August, 2020.

By: /s/
R. HAPPY RONS
Administrative Hearing Officer

BEFORE THE GUAM ENVIRONMENTAL PROTECTION AGENCY BOARD OF DIRECTORS

R&R DISTRIBUTORS, INC., Petitioner, vs. GUAM ENVIRONMEMTAL PROTECTION AGENCY, Respondent.	) Case No: 2020-1)) **SECOND PRE-HEARING ORDER**

TO: RANDAL CUNLIFFE, Attorney for R&R Distributors, Inc., Petitioner; and KRISTAN FINNEY, Assistant Attorney General for the Government of Guam for Guam Environmental Protection Agency, Respondent; and Guam Environmental Protection Agency Board of Directors Chairman, Mr. Robert Perron.

Comes now R. Happy Rons, the designated hearing officer in the above entitled matter, and does hereby order, adjudge and decree, pursuant to the Guam Environmental Protection Agency ("EPA") Board's Amended Hearing Notice of August 26, 2020 re-scheduling of the administrative appeal hearing in this matter to September 17, 2020, as follows:

1. The parties shall file and serve by email, all parties, the hearing officer (happyrons@protonmail.com); Raena San Nicolas (rsannicolas@oagguam.org); and Guam Environmental Protection Agency Board of Directors Chairman, Robert Perron (perron.bobguam@gmail.com), and the Board Secretary, Arlene Acfalle (arelene.acfalle@epa.guamgov) – a short trial brief, stating the issues and applicable law thereon,

no later than close of business on September 7, 2020. The Board's Secretary, Arlene Acfalle, shall email said brief to all other members of the Guam EPA Board no later than close of business on September 8, 2020. This provision supersedes the prior pre-hearing order provision of August 3, 2020 regarding trial briefs.

2. The parties shall file and electronically serve the same entities listed in paragraph one above, with witness lists and exhibit lists, including a joint exhibit list, and exhibits, no later than close of business on September 7, 2020. The Board's Secretary, Arlene Acfalle, shall email said witness lists, exhibit lists and joint exhibit list, and exhibits to all other members of the Guam EPA Board no later than close of business on September 8, 2020. This provision supersedes the prior pre-hearing order provision of August 3, 2020 regarding exhibit lists and witness lists, joint witness list and exhibits. As the hearing will occur remotely through Google Meet, no hard copies nor binders will be required.

3. The parties shall meet and confer telephonically or virtually (e.g., Google Meet or Zoom) for the purpose of designating joint exhibits -- by no later than 1:00 p.m. September 4, 2020. If either party objects to the admissibility of any of the other parties' exhibits, the objecting party(s) must electronically file and serve their objections and grounds therefor, on the entities listed in paragraph one above, by no later than close of business on September 7, 2020. The Board's Secretary, Arlene Acfalle, shall email said list of objections and grounds therefor, to all other members of the Guam EPA Board no later than close of business on September 8, 2020.

4. The Petitioner shall label and identify Petitioner's exhibits as P1, P2, etc. The Respondent shall label and identify Respondent's exhibits as R1, R2, etc. Joint Exhibits shall be labeled and identified as J1, J2, etc.

5. The parties shall file and serve on the same entities listed in paragraph one above, proposed findings of fact and conclusions of law, by no later than close of business on September 14, 2020. The Board's Secretary, Arlene Acfalle, shall email said proposed findings of fact and conclusions of law, to all other members of the Guam EPA Board no later than close of business on September 15, 2020.

6. No pre-trial settlement conference will occur. This provision supersedes the prior pre-hearing order provision of August 3, 2020 regarding a pre-trial settlement conference.

So ordered, this 31st day of August, 2020.

By: _____/s/_____
R. HAPPY RONS
Administrative Hearing Officer

LAW OFFICES
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Attorneys for: Petitioner

BEFORE THE GUAM ENIRONMENTAL PROTECTION AGENCY
BOARD OF DIRECTORS

R&R DISTRIBUTORS, INC., Petitioner, vs. GUAM ENVIRONMENTAL PROTECTION AGENCY, Respondent.	CASE NO. **2020-1** **STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE**

IT IS HEREBY STIPULATED TO by and between the parties to the above-captioned action, by and through their respective counsels of record, that the Verified Petition and Notice of Appeal filed in this matter be **DISMISSED WITHOUT PREJUDICE**. Each party to bear its own costs and attorney's fees incurred herein.

SO STIPULATED:

DATED: September 10, 2020
CUNLIFFE & COOK
Attorneys for Petitioner

By _____
F. RANDALL CUNLIFFE, ESQ.

DATED: September 11, 2020
OFFICE OF THE ATTORNEY GENERAL
Attorneys for Respondent

By _____
KRISTAN FINNEY, Assistant Attorney General

SO ORDERED: 12 September 2020, conditioned on and subject to subsequent ratification by the Guam EPA Board of Directors.

_____
R. HAPPY RONS
Administrative Hearing Officer

ORIGINAL

BEFORE THE GUAM ENVIRONMENTAL PROTECTION AGENCY
BOARD OF DIRECTORS

R&R DISTRIBUTORS, INC., Petitioner, vs. GUAM ENVIRONMEMTAL PROTECTIONAGENCY, Respondent.	Case No: 2020-1 **ORDER OF RATIFICATION OF STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE**

TO: RANDAL CUNLIFFE, Attorney for R&R Distributors, Inc., Petitioner; and
TO: KRISTAN FINNEY, Assistant Attorney General for the Government of Guam for Guam Environmental Protection Agency, Respondent; and
TO: ALL PARTIES AND WITNESSES HEREIN; and
TO: ALL MEMBERS OF THE PUBLIC

Comes now ROBERT PERRON, Chairman of the Guam Environmental Protection Agency Board of Directors, and The Guam Environmental Protection Agency Board members hearing this matter at the duly noted Special Board Meeting on September 17, 2020; and

WHEREAS the Chairman has taken roll call and noted on the record that a quorum of the Board of Directors is present at the hearing; and

WHEREAS the Chairman has called this matter for hearing, and in particular has called the matter of the parties' proposed Stipulation and Order for Dismissal Without Prejudice for consideration; and

WHEREAS the Board has had and taken sufficient time to consider and deliberate on the entry of said Stipulation and Order; and

WHEREAS the assigned Administrative Hearing Officer has previously signed off for entry on the Stipulation and Order for Dismissal Without Prejudice on September 12, 2020, "conditioned on and subject to subsequent ratification by the Guam EPA Board of Directors;" and

WHEREAS the Chairman called the matter for a vote on the question of ratification of entry by the Board of the Stipulation and Order for Dismissal Without Prejudice; and

WHEREAS a majority of the quorum of the Board voted in favor of entry of the Stipulation and Order for Dismissal, the names of the Board members so voting being reflected below with the sign "/s/" appearing on their signature line below;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED by the Guam Environmental Protection Agency Board of Directors that the Stipulation and Order for Dismissal Without Prejudice is hereby approved and entered this 17th day of September, 2020, and the matter is hereby dismissed without prejudice.

____/s/_____
ROBERT PERRON, Chairman

_____/s/_____
ANN ROTH, Vice Chairman

____/s/_____
FLORIDA SANCHEZ, Board Member

____/s/_____
STEVE CARRERA, Board Member

___/s/_____
NICOLAS PAPE, Board Member

_____/s/_____
NONITO BLAS, Board Member

__[not yet reconfirmed for Board]_____
STEVE HOLLISTER, Board Member

___ [self-recused for conflict of interest]___
STEVEN CARBULLIDO, Board Member

BEFORE THE GUAM ENVIRONMENTAL PROTECTION AGENCY
BOARD OF DIRECTORS

R&R DISTRIBUTORS, INC., Petitioner, vs. GUAM ENVIRONMEMTAL PROTECTIONAGENCY, Respondent.	Case No: 2020-1 **ORDER OF ADJOURNMENT AND CONTINUANCE**

TO: RANDAL CUNLIFFE, Attorney for R&R Distributors, Inc., Petitioner; and
TO: KRISTAN FINNEY, Assistant Attorney General for the Government of Guam for Guam Environmental Protection Agency, Respondent; and
TO: ALL PARTIES AND WITNESSES HEREIN; and
TO: ALL MEMBERS OF THE PUBLIC

Comes now ROBERT PERRON, Chairman of the Guam Environmental Protection Agency Board of Directors, and The Guam Environmental Protection Agency Board hearing this matter along with its designated hearing officer herein in the above entitled matter, R. Happy Rons, AAG, and do hereby order, adjudge and decree, pursuant to 5 G.C.A. §§ 8108, 8109, and 8110, that the Special Meeting for the contested hearing and/or deliberations thereon, in the above

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matter, not having been completed at the initial Special Meeting scheduled therefor on September 17, 2020, be simultaneously adjourned and continued for hearing and/or deliberations thereon to _____ at _____p.m..

SO ORDERED this 17th day of September, 2020.

_____	_____
ROBERT PERRON, Chairman	ANN ROTH, Vice Chairman
_____	_____
FLORIDA SANCHEZ, Board Member	STEVE CARRERA, Board Member
_____	_____
NICOLAS PAPE, Board Member	NONITO BLAS, Board Member
_____	_____
STEVE HOLLISTER, Board Member	STEVEN CARBULLIDO, Board Member

_____

R. HAPPY RONS, AAG
Administrative Hearing Officer