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**CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM**

IN THE MATTER OF:

**ETHICS INVESTIGATION OF MS.
CONCHITA TAITANO,
Air and Land Division Chief**

**GUAM ENVIRONMENTAL
PROTECTION AGENCY**

DECISION AND JUDGEMENT

THIS MATTER CAME BEFORE the Civil Service Commission (hereinafter "CSC" for hearing on November 29, 2007. The Ethics Investigation was conducted in regards to the role of Ms. Conchita Taitano, Air and Land Division Chief at the Guam Environmental Protection Agency, as to whether Ms. Taitano's action led to any a conflict of interest. Commissioner Techaira indicated that since he knew the employee involved and had retired from that agency, he conflicted himself out to avoid any appearance of conflict.

The ethics violation results were presented by Mr. Juan K. Calvo, Personnel Management Administrator who oversaw the work of Ms. Elaine Faculo-Gogue, Personnel Management Analyst III, who is no longer with the CSC. The acting administrator of the Guam Environmental Protection Agency (GEPA), Ms. Lorilee Chrisostomo was present in the audience while Ms. Taitano and her husband with their respective attorneys.

**I.
BACKGROUND**

On August 18, 2006, the CSC received a memorandum from the Acting Administrator for GEPA that documents received indicated a possible conflict of interest for one GEPA employee, namely Ms. Conchita Taitano. The documents submitted consisted of a

1 correspondence from Unitech Environmental-Guam to Peter Cruz, Environmental Health
2 Section supervisor at GEPA, an annual report of Otte Consulting for 2005 and copies of E-
3 mails from one employee of GEPA to another.

4
5 **II.**
6 **ISSUES BEFORE THE CSC**

7 Whether the facts presented shows that an actual conflict of interest occurred to which the
8 employee benefited from such violation?

9 If there was any violation of 5 GCA Chapter 5, what is the appropriate administrative remedy
10 against the employee?

11
12 **III.**
13 **FACTS**

14
15 No evidence has been presented that Otte Consulting was awarded either a contract directly
16 by GEPA or a subconsultant contract based upon the Conchita Taitano's action.

17 employee benefited from such violation?

18
19 **IV.**
20 **HOLDING**

21 By a vote of 6-0, the CSC recognized that the employee was aware that a possible conflict
22 was there based upon the testimony of the employee and other members of the office, and she
23 took some steps to ensure that she was in compliance with the ethics requirements.
24 Unfortunately, she was unable to produce the written letter she indicated was submitted
25 earlier to GEPA. Her recent submission of February 27, 2007 points out that she intended to
26 comply with the law.

1 GEPA and the employee should ensure all conflicts are noted and appropriate steps are taken
2 to ensure that this does not occur in the future as stated in the staff recommendation which is
3 adopted and attached decision.

4
5 **V.**

6 **JURISDICTION**

7 The CSC has jurisdiction to hear this matter pursuant to 5 GCA §5601 which provides a
8 standard of conduct for both the employees and non-employees.

9 Further, 5 GCA§15404 which provides for Disciplinary Action for violations of the law, rules
10 and regulations.

11
12 **VI.**

13 **FINDINGS**

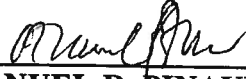
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15 The CSC makes the following findings of facts and conclusion of law based upon the
16 evidence:

- 17 1. The CSC adopts the findings and recommendation of the CSC's staff report
18 submitted as evidence (attached hereto as Exhibit A).
- 19 2. Ms. Conchita Taitano is the Air and Land Division Chief at GEPA.
- 20 3. Ms. Conchita Taitano has "Direct or Indirect" participation because of her
21 involvement in the overall decision, approval, recommendation, preparation of
22 any part of the establishment for work.
- 23 4. Ms. Taitano is a share holder of her husband's company which wins
24 subcontracting work from companies which wins awards from GEPA.
- 25 5. Ms. Taitano has indicated that she had filed on or about 1991 a Disclosure of
26 Conflict with GEPA and has recused herself on any matter in which her husband's
27 company was involved in, i.e. Shell.
- 28 6. However such written document was not found. And on February 2007, Ms.
Taitano again filed another recusal notice which shows an attempt to comply with
the law.

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SO ADJUDGED THIS 10th DAY OF January 2008.

LUIS R. BAZA
Chairman



MANUEL R. PINAUI
Vice Chairman

JOAQUIN T. ANGOCO
Commissioner



PRISCILLA T. TUNCAP
Commissioner



JOSE L.G. TECHAIRA
Commissioner



LOURDES HONGYEE
Commissioner



JOHN SMITH
Commissioner

**CIVIL SERVICE COMMISSION
POST AUDIT REPORT
STAFF REPORT**

**Prepared by: Elaine Faculo-Gogue
Personnel Management Analyst III
March 2007**

**SUBJECT: Ethics Investigation of GEPA Employee
Re: Ms. Conchita Taitano, Air & Land Division Chief**

I. BACKGROUND:

On August 18, 2006, the Commission received a memorandum from the Acting Administrator of the Guam Environmental Protection Agency (GEPA) that attached documents allege possible conflict of interest for one of their employees. The attached documents were a correspondence dated April 8, 2006 addressed to Mr. Peter Cruz, EHS Supervisor, GEPA from the President of Uniteck Environmental-Guam, a copy of an Annual Report of Otte Corporation DBA Otte Consulting for 2005 and copies of e-mail messages from Peter Cruz to Alejandro Soto.

II. AUTHORITY:

5 GCA §5650. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards (b) Supplemental Remedies.

"In addition to existing remedies from breach of the ethical standards of this Chapter or regulations promulgated hereunder, the Civil Service Commission may in connection with employees of the Government of Guam, direct the appointing authority to issue any one or more of the following:

- (1) oral or written warnings or reprimands;
- (2) suspension with or without pay for specified periods of time; and
- (3) termination of employment...

5 GCA §5675. *Ethics: Non-Employees.*

"In addition to the authority and duties of the Policy Office established under §5105 of this Chapter with regard to non-employees and the Civil Service Commission is hereby given the functions required with regard to the employees."

5 GCA §5601. *et seq. Ethics in Public Contracting.*

This section provides the "standards of conduct" for both the employees and non-employees, remedies for the violation of these standards and the enforcement.

4 GCA §15301. et seq. Guam Ethics Commission

On December 30, 1982, Public Law 16-124, established the ethical obligations under the jurisdiction of the Civil Service Commission.

On July 8, 1996, Public Law 23-105 created the Guam Ethics Commission.

On September 26, 1996, the Attorney General's Office issued an opinion (Attorney General Informational Opinion Ref: DPR 96-0932) that P.L. 23-105 is so flawed as to make it unenforceable.

On December 30, 2004, Public law 27-141 amended P.L. 23-105, on the composition and reestablishment of the Guam Ethics Commission; however, it did not address the point raised by the Attorney General's Office. Therefore, the applicability of the Civil Service Commission's role in addressing employee's procurement ethics is suspect.

5 GCA, Guam Procurement Law, Articles 11, Ethics in Public Contracting, is still in effect. 4 GCA §15404 Disciplinary Action for Violation, granted the authority to the Civil Service Commission, to take disciplinary action against employees for procurement violations. As a result, the Civil Service Commission maintains its jurisdiction over employee ethical procurement violations.

III. APPLICABLE LAW, RULES AND POLICY:

Government of Guam, Guam Procurement Act, Chapter 11 Ethics Regulations, adopted by the Civil Service Commission Board.

IV. METHODOLOGY:

The staff reviewed relevant documents and interviewed Mr. Jon Jocson, Acting Administrator for GEPA, Ms. Sandra Paulino, Administrative Services Officer, Ms. Conchita Taitano, Air and Land Program Administrator, Ms. Barbara Torres, EHS Supv. Messrs. Peter Cruz, EHS Supvr., Betwin Alokooa, EHS Supv., Michael O'Mallan, EHS III, Mr. Jesse Cruz, Acting Adm. of Environmental Monitoring and Analytical Services Division. Also interviewed were Mr. LeRoy Moore, President of Unitek Environmental Resources, Inc., and Mr. Bill Curry of South Pacific Environmental L.L.C.

V. FINDINGS:

1. On August 18, 2006, a correspondence from Mr. LeRoy Moore, President of Unitek Environmental-Guam was submitted to Mr. Alejandro D. Soto, Acting Administrator of GEPA. This letter referenced a conflict of interest for a GEPA Employee, Conchita Taitano, Air, Land Division Chief.

His letter brought up the issue of Ms. Taitano's direct and indirect influence over all activities and personnel within the air and land division of GEPA. The direct

Ethics Investigation of GEPA Employee
RE: Ms. Conchita Taitano, Air & Land Division Chief

influence includes regulatory review and oversight as well as procurement activities and contractor selection as division chief.

As stated in his letter, Ms. Taitano is married to Mr. Fred Otte, President and primary shareholder of Otte Consulting. Otte Consulting is a competitor to Unitek Environmental Guam. Otte Consulting also subcontracts and is subcontracted by other competitors to Unitek including Pacific Environmental Resources, Inc. and South Pacific Environmental Resources, Inc. and South Pacific Environmental, LLC.

Because of the relationship between Ms. Taitano and Mr. Otte, the conflict of interest is apparent during procurement activities. As division chief, Ms. Taitano is directly involved with the contractor selection and had influence both direct and indirect, over other GEPA personnel on the selection team. Otte Consulting and its subcontractors, or contractors who hire Otte Consulting therefore have an unfair advantage during the selection process with Ms. Taitano's presence on the selection board as awards to any of the firms can be viewed as having indirect or direct financial gain to Otte Consultant and therefore Ms. Taitano. To their knowledge, Ms. Taitano and/or GEPA has never disclosed this potential conflict of interest to any potential impacted firm. It is for this reason that Mr. Moore feels that Ms. Taitano should withdraw from any activity where her influence can appear to have direct or indirect financial gain to Otte consulting and the above listed environmental firms who either subcontract or are subcontracted by Otte Consulting. **(see letter dated 8/18/06)**

2. On August 18, 2006, a letter from Mr. Alejandro D. Soto, Acting Administrator of GEPA was received by Mr. Vernon Perez, Executive Director of Civil Service Commission (CSC) requesting an investigation into the matter. Attached to the letter was an Annual Report of Otte Corporation DBA Otte Consulting for 2005 reflecting Ms. Conchita Taitano as Vice President and Secretary of the Corporation. Also attached was an e-mail document (4 pages) from Peter Q. Cruz to Alejandro Soto dated August 18, 2006.
3. Based on the Air & Land Program Administrator's class standard, the position administers environmental health programs relating to Solid/Hazardous Waste management, oil spill prevention and control, pesticide control and air pollution control.

One of the duties include developing and administering the programs and activities of a regulatory division; reviews and coordinates major regulatory actions, compliance plans and cooperative agreements with business, government and military officials **(See Class Standards)**.

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RE: Ms. Conchita Taitano, Air & Land Division Chief

4. On September 20, 2006, Ms. Conchita Taitano was interviewed and provided the following information.
- She oversees four (4) programs: Air Pollution Control, Solid Waste Management Program, Hazardous Waste, and Pesticide Enforcement.
 - She currently has thirteen (13) subordinates.
 - When a Request for Proposal (RFP) is submitted
 - The Program Manager (EH Supervisor) writes up the Scope of Work.
 - They would work with the Administrative Service Officer, obtain information and discuss the matter.
 - A selection committee is organized and they would review the scope of work and criteria for judging the requirements.
 - Submit it to the Department head of their recommendation.
 - And then contract negotiations are done by the Program Manager and the Legal Counsel.
 - The agency never oriented her about the Guam Procurement Law, Article 11 relating to Ethics in Public Contracting. In fact, she got a copy of it herself.
 - Her husband has never directly or indirectly been given a contract by GEPA.
5. On October 17, 2007, Mr. Peter Cruz, Environmental Health Specialist Supervisor was interviewed and provided the following information:
- When an RFP is requested, the following process takes place.
 - The Program Manager (EHS Supervisor) develops the Proposal on RFP.
 - The Division Head (Air & Land Program Administrator) has to approve or disapprove the RFP.
 - The Program Manager then goes through the process of announcing it in the Media, etc...
 - A review group usually composed of individuals within their own section goes over the criteria.
 - A recommendation is made.
 - It then goes back to the Division Head (Air/Land Program Administrator) Ms. Taitano for her review.
 - It is then given to the Department Head or Administrator for his selection.
 - To his knowledge, GEPA awarded a contract to Pacific Environmental Resources, Inc and South Pacific Environmental L.L.C. who then sub-contracted some of the work to Otte' Consulting firm. **(See Unitek Memo)**

Ethics Investigation of GEPA Employee
RE: Ms. Conchita Taitano, Air & Land Division Chief

- According to an e-mail dated April 20, 2006, Ms. Taitano acknowledged that she did submit a copy of recusal over 15 years ago to management, (Submitted by Mr. Cruz on October 17, 2006).
6. On October 18, 2006, Mr. Leroy Moore of Unitek Environmental-Guam and President of the company provided the following information:
- The last time his company was awarded his contract was in 2003.
 - He is aware that South Pacific Environmental LLC has subcontracted some of its work to Otte' Consulting firm.
 - Mr. Moore's concern is that there has never been any disclosure that Ms. Conchita Taitano is married to Fred Otte' who owns a consulting business and just wants to be treated fairly when it comes to procurement.
 - Guam Power Authority is overseen by Guam Environmental Protection Agency who sub-contract their work to Otte's Consulting firm for several years.
 - Ms. Taitano who is in the regulatory division would not cite her own company, and this is one of the issues that would appear to be a conflict of interest.
7. On November 07, 2006, Mr. Dave Taitano, Vice President of Pacific Environmental Resources, Inc. provided the following information:
- His company has sub-contracted some of its work to Otte' Consulting.
 - His company disposes of used oil, collection recycling, tank cleaning, they provide services, not technical functions.
 - They started providing contractual services to GEPA in FY 2005-2006 and less than \$15,000.00 in contractual services.
 - They select sub-contractors by their reputation, who can do the job, their prices, they don't hire their competitors. Otte' Consulting does their technical support.
8. On November 08, 2006, Mr. Bill Curry of South Pacific Environmental (SPE) provided the following information:
- His company has been doing business on Guam for the past seven (7) years.
 - They provide services such as hazardous household clean-up, tank and pipe line cleaning, sell environmental supplies and provide emergency cleanup.
 - They provide services to GEPA in 2005 and have sub-contracted some of their projects to Otte' Consulting business.

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RE: Ms. Conchita Taitano, Air & Land Division Chief

- Otte' Consulting provides "White Collar" services, technical/engineering tasks, i.e. soil/air sampling.
 - Pacific Environmental Resources, Unitek and Otte' Consulting Corporation all provide basic engineering services, among the three, Otte' may have better personnel, i.e. P.E. degrees.
9. On January 30, 2007, Ms. Barbara Torres, EHS Supervisor for the Solid Waste Section was interviewed and provided the following information:
- They have procured contractual services in the past five (5) years catering to household hazardous waste events.
 - Her immediate supervisor is Conchita Taitano.
 - Her supervisor reviews whatever Request for Proposal she initiates, helps with the design, and provide comments as needed.
 - She is not aware of any projects within her division wherein Otte' Consulting provided services to GEPA as a sub-contractor.
 - Under the debris Management Program, Ms. Taitano wrote up the Grant and then the Contractor put together the Debris Program.
10. On January 22, 2007 Mr. Jesse Cruz, Biologist IV provided the following information:
- His division provides monitoring support services, such as analytical, environmental, technical, and chemistry.
 - His division has very little to do with the Air and Land Section.
11. On January 22, 2007, Mr. Betwin Alokoa provided the following information:
- He is under the Pesticides section that provides chemical spill services and works closely with farmers.
 - He was hired as a Special Projects Coordinator to handle Program on Disaster Debris, then was hire back at GEPA as an EHS Supervisor.
 - He has been with GEPA for 12 years.
12. On January 30, 2007, Ms. Sandra Paulino, ASO for GEPA provided the following information:
- She is not familiar with the Ethics Regulations.
 - She is not aware of any employee other than Mr. Randel Sablan who submitted one for consulting services but never went through with it. This was told to her verbally.

Ethics Investigation of GEPA Employee
RE: Ms. Conchita Taitano, Air & Land Division Chief

- She is not aware of any Disclosure Form ever being submitted by Ms. Conchita Taitano.
 - Ms. Conchita Taitano has verbally and via e-mail recused herself from certain activities she felt she should not be a part of.
13. On January 30, 2007, Mr. Michael O'Mallan EHS III provided the following information:
- Ms. Conchita Taitano oversees this program.
 - Ms. Taitano reviews all documents (incoming and outgoing).
 - His responsibilities includes inspecting all PCB handlers, hazardous waste handler and underground storage tanks.
 - Otte' Consulting does a lot of work. When a new tank is to be installed, they do the work, submit plans, oversees the phases of the installation.
 - Ms. Taitano has recused herself because of the affiliation with Otte' Consulting verbally, but he is not sure if any written document was ever submitted.
14. On February 28, 2007, Ms. Conchita Taitano, Air and Land Division Administrator submitted a recusal update stating the following:
- She is a share holder and officer of the Otte' Corporation and is operated by her husband, Frederick E. Otte, P.E.
 - The Corporation provides engineering and environmental services.
 - She is not employed or subcontracted by Otte' Consulting.
 - Otte' Consulting has never provided any contractual services for Guam EPA.
 - Furthermore, all environmental transactions involving Otte' Consulting (i.e. permit application work plans, etc...) are processed solely by technical staff and all decisions are issued by the Administrator.
 - She has recused herself from all meetings and discussions regarding clients handled by Otte' Consulting.
 - Staff and Administrator are verbally advised of my recusal of participating or engaging in any discussion or decision making processes directly related to clients of Otte' Consulting.
 - She initially submitted a recusal letter in the early 1990's for all Shell Guam Inc. issues. To date, she does not participate in any activities involving Shell Incorporated (See letter of December 28, 2007).

VII. ISSUE:

Did Ms. Conchita Taitano, Air and Land Program Administrator violate any Ethics Regulations provided for in Chapter 5, Guam Procurement Law, and Article II Ethics in Public Contracting?

VIII. SUMMATION:

1. *Under 5601.* Definitions (d) Direct or Indirect Participation means involvement through decision, approval, disapproval, recommendation, preparation on any part of a purchase request, influencing the content of any specification or procurement standard, rendering the advise, investigation, auditing or in any other advisory capacity.

(e) Financial Interest means:

(3) Holding a position in a business such as an Officer, director, trustee, partner, employee, or the like, or holding any position of management. (See Annual Report of Otte' Consulting 2005)

Based on the information provided by those interviewed, it is difficult to acknowledge that Ms. Conchita Taitano, Air and Land Program Administrator for the Regulatory Branch would not be directly or indirectly involved with activities that pertains to her husband's business. Additionally, because she is the Vice President of the corporation, there exists a financial interest that is beneficial to the business.

2. *Under §5628. Employee Conflict of Interest*

(a) Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

- (1) the employee or any member of the employee's immediate family has a financial interest pertaining to procurement,
- (2) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement;

(b) Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.

Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may at the same time,

apply to the Civil Service Commission in accordance with §5676.

- (c) Of this chapter for an advisory opinion as to what further transaction, if any, the employee may have in the transaction.

Ms. Taitano had submitted an updated conflict of interest memorandum on February 27, 2007 to the Administrator, Guam Environmental Protection Agency (GEPA).


IX. RECOMMENDATION:

The facts indicated that the employee was aware that a possible conflict was there based upon the testimony of herself and other members of the office, and that she took some steps to ensure compliance with the law regarding any ethical requirements. Unfortunately she has been unable to produce the written letter that she indicated was submitted years ago to the Agency. Her recent submission of recusal dated February 27, 2007, points out that she intended to comply with the law.

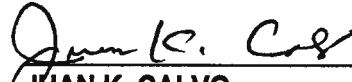
The CSC Staff therefore recommends the following:

1. The GEPA Administrator shall conduct a meeting immediately with all staff to ensure that when conflicts arise, that the entire agency is aware of who has a conflict and the appropriate steps are taken to ensure that the employee involved is not subject to reviewing, recommending, investigating, auditing or any other action on that matter.
2. All communications direct or indirect by Ms. Taitano (on behalf of GEPA) and the Otte' Consulting Firm shall be channeled through the GEPA Administrator for review and decision making.
3. In the event that the Otte' Consulting Firm is involved directly or indirectly with any primary contractor who procures projects with or is monitored by GEPA, the GEPA Administrator shall immediately assign or designate a project supervisor other than Ms. Taitano to handle the matter.
4. Ms. Taitano must also take affirmative steps to ensure that no actions involving possible GEPA acquisition through procurement which might benefit her husband's company be reviewed by her. That any such guidelines established by her be subject to approval by the Agency's Administrator in addition to those set forth by the agency itself.


Ethics Investigation of GEPA Employee
RE: Ms. Conchita Taitano, Air & Land Division Chief



ELAINE FACULO-GOGUE
Personnel Management Analyst III



JUAN K. CALVO
Personnel Management Administrator



VERNON P. PEREZ
Executive Director

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HS: Host send
HR: Host receive
WS: Waiting send

PL: Polled local
PR: Polled remote
MS: Mailbox save

MP: Mailbox print
CP: Completed
FA: Fail

TU: Terminated by user
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FROM: La Bianca

REFERENCE: Francis Daman v. GEPP, et al. Ethics Investigation
of Mrs. Conchita Talaro.

FOR YOUR INFORMATION AS PER YOUR REQUEST

COMMENTS: _____

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SENT BY: jad DATE: 1/14/07 DAY: Monday

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Abbreviations:

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|------------------|-------------------|-------------------|--------------------------|
| HS: Host send | PL: Polled local | MP: Mailbox print | TU: Terminated by user |
| HR: Host receive | PR: Polled remote | CP: Completed | TS: Terminated by system |
| WS: Waiting send | MS: Mailbox save | FA: Fail | RG: Report |
| | | | G3: Group 3 |
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