

**AUDIT OF CHUUK STATE
ENVIRONMENTAL PROTECTION AGENCY (CEPA)
FISCAL YEARS 2010-2011**

Report 2012-02



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FEDERATED STATES OF MICRONESIA

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His Excellency Manny Mori, President
Honorable Members, FSM Congress

Executive Summary – Audit of Chuuk Environmental Protection Agency

The Office of the National Public Auditor (ONPA) announces the release of Audit Report No. 2012-02, Audit of the Chuuk Environmental Protection Agency (CEPA). A digital copy of the report is available for public review online at www.fsmopa.fm and printed copies of the report is available at the ONPA's offices in Palikir, Pohnpei and Weno, Chuuk. The audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States.

The CEPA was created pursuant to Chuuk State Law (CSL) No. 2-94-01 that was enacted in 1993 to implement Section 1, Article IV of the State Constitution. The Agency has a five member board that is regionally represented who are nominated by the Governor with the advice and consent of the Legislature. The board was set up to govern the affairs of the agency and it hired an executive director (ED) to be the administrator of the agency's functions.

The scope of the audit included review of the activities of the CEPA for the fiscal years 2010 and 2011.

The objectives of our audit were to determine if:

1. Chuuk State environmental goals and objectives were in alignment with the Federated States of Micronesia (FSM) Strategic Development Plan (SDP) and key global environmental initiatives and issues;
2. the top environmental issues affecting Chuuk were within the control of the CEPA office, and, if so, were they being managed effectively;
3. the CEPA results, as stated on required quarterly performance reports, were compared to targeted goals and objectives, and corrective actions identified and implemented if targets were not being met; and
4. the CEPA funds were being administered and expended in compliance with laws, regulations, policies, procedures and terms and conditions of grants.

The auditors found:

1. CEPA had not initiated activities for 6 of the 9 Strategic Goals identified in the SDP and further documented in the Five Year Environment Sector Plan. Therefore, the surrounding environment in Chuuk continued to be at risk for adverse environmental conditions.
2. There was a general lack of enforcement of the environmental laws and regulations, and the environmental conditions for the state of Chuuk were not improving significantly.

3. Performance was not monitored effectively and the 3 (of 9) Sector Plan Goals being pursued by CEPA were not being achieved.
4. Procurement was not being conducted in accordance with the laws and regulations. Purchases were made with conflict of interest from retail stores owned by CEPA Management or their family members. Additionally, the ED received more than \$8,000 of regular salary during a period of 5 months while he was absent from the state altogether. The same employee received housing allowance of over \$6,000 despite the fact his request had been denied by the Board. However, the housing allowance was included in the CEPA budget and because the Board failed to review the budget proposals before submission, the budget was approved.

The audit report discusses the detail findings along with the recommendations made to facilitate corrective improvement. The CEPA Board and Management responses are included in the report. The Board's response was appropriate and seeks improvement. Management's response, however, did not respond to the recommendations made.

Respectfully yours,



Haser Hainrick
National Public Auditor

XC: Vice President
Director, FSM Office of Environment & Emergency Management
Governor, Chuuk State
Lt. Governor, Chuuk State
President, Chuuk Senate
Speaker, Chuuk House of Representatives
Director, Chuuk Environmental Protection Agency
Chairman & Members, CEPA Board of Directors
Director, Dept. of Administrative Services
Compact Funds Control Commission

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INTRODUCTION

On February 14, 2011, the executive director of the Chuuk Environmental Protection Agency (CEPA) requested, in a letter to the FSM National Public Auditor, that an audit be conducted as a requirement to qualify for a Japanese Grassroots Grant awarded to CEPA. The National Public Auditor determined that the grant amount was not material enough, by itself, to warrant a full audit. However, since CEPA had been in existence since 1993, and had been receiving sector grant funds for a number of years, an audit of the overall operations of CEPA for the fiscal years 2010 and 2011 was conducted. This report is the result of that audit.

Background

The Chuuk State Constitution in Section I, Article IV states that “existing Chuukese custom and tradition shall be respected. The Legislature may prescribe by statute for their protection.”¹ In 1993, Chuuk State Law No. 2-94-01 (the Act) was enacted to implement Section 1, Article IV of the State Constitution and thus created the CEPA, along with its governing Board of Directors (Board or board). The five member board is to be regionally represented and members of the board are nominated by the Governor with the advice and consent of the Legislature. The board hired a full time executive director to lead and manage the affairs of CEPA. The Agency was given the “powers and duties to control and prohibit pollution of air, land, and water in accordance with the Act and with regulations adopted and promulgated pursuant to the Act, and for this purpose, is further empowered to adopt, approve, amend, revise, promulgate, and repeal regulations or effect the purpose of this Act and enforce such regulations which shall have the force and effect of this law”²

In 2004, the Federated States of Micronesia (FSM) Environment and Sustainability Development unit, with consultation with the State EPAs and other related entities, created the Environment Sector of the Strategic Development Plan (SDP) along with the 9 strategic goals (see Appendix 1) enumerated in the FSM SDP as the framework for all the State EPAs. Each of the EPAs and agencies whose funds were provided from the US/FSM amended Compact Environment Sector were expected to develop their proposed plans of activities and accomplishments from this framework.

During the 2004-2009 time period, there was little progress in accomplishing the 9 SDP Strategic Goals despite Sector Grant funding. In August of 2009, a detailed five year Environment Sector Plan was submitted by the Division of Environment and Sustainable Development, from the Office of Environment and Emergency Management (OEEM), to the Office of Statistics, Budget, Overseas Funding, and Compact Management (SBOC). This Five Year Environment Sector Plan was agreed to by the respective states and CEPA was again responsible to work toward accomplishment of all 9 strategic goals. (See Appendix 2)

The CEPA is staffed with 11 employees, inclusive of the Executive Director (ED) and Deputy Director. Its mission is to serve the whole State of Chuuk, which has a total population of

¹ Chuuk State Constitution

² Chuuk Public Law No. 2-94-01

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approximately 50,000³, and is made up of 11 mangrove-fringed islands and a series of 14 low islands and atolls outside of the lagoon. The CEPA has four divisions:

1. Conservation/Natural Resources;
2. Water & Waste Water;
3. Solid Waste & Hazardous Waste; and,
4. Technical Support/Public Awareness.

Division managers of CEPA are responsible for planning the activities of each respective division, based on strategic goals from the environmental sector of the FSM SDP. Each quarter, the CEPA division managers were required to submit quarterly reports to the grant managers at the Department of the Interior (DOI) Office of the Insular Affairs (OIA) in Honolulu. The quarterly reports were meant to summarize the accomplishments by division with regard to its strategic goals. The total budgets for the fiscal years 2010 and 2011 were \$285,242 and \$349,273 respectively (see Appendix 3 on page 21 for budget breakdown). Both fiscal years were funded from US environment sector grants. From fiscal year 2005 through 2011, CEPA's total budget funded from the Environment Sector grant was \$3,060,805 (see Appendix 4 on page 22).

Objective, Scope, Methodology

Objectives: We performed the audit to determine whether the:

1. Chuuk State environmental goals and objectives were in alignment with the FSM SDP and key global environment initiatives and issues.
2. Top several environmental issues affecting Chuuk were within the control of the CEPA Office and, if so, were they being managed effectively.
3. CEPA operating results, as stated in the required quarterly performance reports, were compared to targeted goals and objectives, and corrective actions identified and implemented if targets were not being met.
4. CEPA funds were being administered and expended in compliance with laws, regulations, policies, procedures, and terms and conditions of grants.

Scope: The audit scope included the review of the activities of the CEPA for the fiscal years 2010 and 2011. We conducted this audit pursuant to Title 55, FSMC Chapter 5, which states in part:

“.....the Public Auditor shall inspect and audit transactions, accounts, books, and other financial records of every branch, department, office, and agency, board of the National Government and of other public legal entities, including, but not limited to, States, subdivisions thereof, and nonprofit organization receiving public funds from the National Government.....” and:

³ Sources: www.sboc.fm and <http://fsminvest.fm>

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“...The Public Auditor shall have the discretion to perform audits.....”

Methodology: We designed our audit procedures to test whether CEPA operated in accordance with Chuuk state laws, regulations, policies and program requirements.

1. To determine if Chuuk State environmental goals and objectives were in alignment with the FSM SDP and key global issues, the audit team interviewed the Director of OEEM to discuss alignment of key global issues and initiatives to the FSM environmental objectives. The team further conducted interviews with the staff from SBOC and CEPA. The team analyzed CEPA approved performance budgets for fiscal year 2010 and 2011 and discussed the results with the staff and Director at CEPA.
2. To determine if the top several environmental issues affecting Chuuk were within the control of CEPA and, if so, if they were being managed effectively, the audit team conducted interviews and observations. We interviewed the CEPA Director and Division Managers, the CEPA Board of Directors Chairman, the Chief Executive Officer of the Chuuk Public Utilities Corporation, the Chuuk State Attorney General, the Director of Marine Resources, and the Director of Agriculture. In addition, the audit team obtained copies of laws, regulations, policies and performed observations of selected environmental conditions known to exist primarily on the island of Weno.
3. To determine if the CEPA operating results, as stated in the required quarterly performance reports, were compared to targeted goals and objectives, and corrective actions identified and implemented if targets were not being met, the team obtained CEPA quarterly reports, analyzed them and interviewed staff from SBOC, the Chuuk State Budget Officer, the CEPA ED and Division Managers.
4. To determine if the CEPA funds were being administered and expended in compliance with laws, regulations, policies, procedures and terms and conditions of grants, the audit team requested a judgmental sample of 72 payment vouchers for review and analysis. The team also obtained policies and procedures, grant terms and conditions, the Fiscal Procedure Agreement (FPA) under the Amended Compact, the FSM Financial Management Regulations (FMR), and the Chuuk FMR. The team then interviewed the staff at the Finance Office, Department of Administrative Services (DAS), the Compact Fund Control Commission (CFCC) officials, and the CEPA administrative officer and discussed the results of the analysis.

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*, July 2007 revision, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

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Prior Audit Coverage

This is the first audit conducted of the CEPA Office by the FSM Office of the National Public Auditor. We reviewed the single audit reports for Chuuk state for fiscal years 2009 and 2010 and found no findings related to our audit objectives.

Conclusion

Based on our audit, we concluded that CEPA was not effectively managing the top environmental concerns for the people of the state of Chuuk. Consequently, the following weaknesses existed.

- CEPA had not initiated activities for 6 of the 9 Strategic Goals identified in the SDP and further documented in the Five Year Environment Sector Plan. Therefore, the surrounding environment in Chuuk continued to be at risk for adverse environmental conditions.
- There was a general lack of enforcement of the environmental laws and regulations, and the environmental conditions for the state of Chuuk were not improving significantly.
- Performance was not monitored effectively and the 3 (of 9) Sector Plan Goals being pursued by CEPA were not being achieved.
- Procurement was not being conducted in accordance with the laws and regulations. Purchases were made with conflict of interest from retail stores owned by CEPA Management or their family members. Additionally, the ED received more than \$8,000 of regular salary during a period of 5 months while he was absent from the state altogether. The same employee received housing allowance of over \$6,000 despite the fact his request had been denied by the Board. However, the housing allowance was included in the CEPA budget and because the Board failed to review the budget proposals before submission, the budget was approved.

The CEPA Board and Management have failed to enforce the applicable laws and regulations that were created to improve the environmental conditions for the state of Chuuk.

The findings and recommendations are discussed in detail in the following pages.

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FINDINGS AND RECOMMENDATIONS

Finding 1: CEPA has not initiated actions for 6 of the 9 SDP Strategic Goals

Chuuk State Five Year Environment Sector Plan

The Five Year Environment Sector Plan lists nine strategic goals, objectives and associated projects for 2010-2014 (See Appendix 1 on page 17 for a description of all nine strategic goals). Following are the 6 SDP Goals not initiated by CEPA. The condition and the effect are included as part of the finding elements.

**Table 1
6 of 9 SDP Strategic Goals Not Yet Initiated By CEPA**
(Not included are SDP Goals #2, 5, and 6 since CEPA has initiated action on these.)

SDP Sector Strategic Goal 1:	"Mainstream environmental considerations, including climate change, in national policy and planning as well as in all economic development activities. <i>Desired Goal Outcomes:</i> 1." Environmental Impact Assessments (EIA) carried out for 100% of all government and nongovernment development activities to minimize adverse impacts of development on the environment." 2. "100% of environmental violations successfully prosecuted by 2010."
<i>Condition:</i>	CEPA has not initiated the projects specified in the Sector Plan for Strategic Goal 1.
<i>Effect:</i>	The environment continues to be adversely impacted. See examples in Finding 2.
SDP Sector Strategic Goal 3:	"Reduce energy use and convert to renewable energy sources/Minimize emissions of GHG (greenhouse gases)." <i>Desired Goal Outcomes:</i> 1. "Design and construction of rural renewable energy systems."
<i>Condition:</i>	CEPA has not initiated projects for Strategic Goal 3.
<i>Effect:</i>	The environment continues to be at risk concerning the lack of renewable energy sources.
SDP Sector Strategic Goal 4:	"Enhance the benefits of sustainable use of the FSM's genetic resources and ensure benefits derived are fairly shared amongst stakeholders." <i>Desired Goal Outcomes:</i> 1. "Fully document traditional knowledge and practices pertaining to FSM's genetic resources by 2020."
<i>Condition:</i>	CEPA has not initiated the Strategic Goal 4.
<i>Effect:</i>	The environment continues to be at risk of lack of sustainability of genetic resources.

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SDP Sector Strategic Goal 7:	“Establish biosecurity (border control, quarantine,..) programs to effectively protect FSM’s biodiversity from impacts of alien species.”
<i>Condition:</i>	CEPA has not initiated the Strategic Goal 7
<i>Effect:</i>	The environment continues to be at risk of the introduction of alien species
SDP Sector Strategic Goal 8:	“Create sustainable financial mechanisms for environmental and sustainable resource initiatives.” <i>Desired Goal Outcomes:</i> 1. “Access to outside funding and technical assistance by the government and non-government conservation agencies increased 100 % by 2010”
<i>Condition:</i>	CEPA has not initiated the Strategic Goal 8.
<i>Effect:</i>	The environment continues to be at risk for sustainability.
SDP Sector Strategic Goal 9:	“Enhance and employ in-country technical capacity to support environmental programs.” <i>Desired Goal Outcomes:</i> 1. “Staff of state government and non-government environmental organizations will be technically competent and highly capable to deal with all environmental challenges facing the nation by 2010.”
<i>Condition:</i>	CEPA has not initiated the Strategic Goal 9.
<i>Effect:</i>	The environment continues to be at risk concerning lack of technical capacity.

Cause

CEPA management did not staff the operations and did not initiate budget proposals for full implementation of all 9 SDP Goals. The ED indicates the CEPA strategy was to implement 3 of the 9 SDP Goals which are still in progress and following completion other goals would be initiated.

Recommendations

We recommend that CEPA management should:

- Include all 9 SDP Strategic Goals in the goals, objectives, activities and budget proposals;
- Follow the Five Year Environment Sector Plan; and,
- Effectively perform their primary duties of planning, organizing, leading and controlling to ensure that the actions performed fulfill the objectives and goals.

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Finding 2: Lack of enforcement of environmental laws and regulations

CSL 2-94-01 Chuuk Environmental Protection Act

Section 5: Powers and Duties of the Agency:

“The Agency shall have the powers and duties to control and prohibit pollution of air, land, and water in accordance with this Act.....”

Section 6: Environment Impact Statement

“A person shall submit an environment impact statement to the Agency, in accordance with regulations established by the Agency, prior to taking any major action which may substantially affect the quality of the environment.”

Section 8: Violation Subject to Enforcement

“Any person who violates any provision of this Act, or of any permit, regulation, standard, or order issued or promulgated hereunder, shall be subject to enforcement action by the Agency.”

The auditors found some instances of "cease and desist" orders being issued by CEPA for offenses, but CEPA did not follow through to ensure compliance or to levy fines and penalties - throughout the two years tested by the auditors and likely for much longer.

- The public has continued to dump trash haphazardly without regard to the environment.
- Oil spills have continued to flow from the power plant down to the main public roads and into private lands.
- Sewage raw materials pollute at various places.
- Private companies have continued to dredge in the sea water without proper environmental impact assessment.
- The people continued to “dynamite fish”.

As a result:

- There are piles of illegal dumping of trash. See Pictures 1 & 2 of the Tunnuk causeway on Weno.
- There are oil spills. See Picture 3 of the oil pool in the open trench at Tupinion, and Picture 4 of the oil spills from the power plant.
- Health hazards from raw sewage continue unabated. See Picture 5 outflow of sewer pipes (by KP Circle).
- The impact to the environment of dredging may be unknown until it is too late to take corrective actions. When driving up the road from Iras village to Mechitiw, an ongoing dredging as well as land expansion is underway on the left side of the road. (See Picture 6)

Potential environmental impacts include:

- Disease to humans from rat infestations that thrive from illegal dumping of garbage,

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- Sea life is threatened or killed when sea water is contaminated from oil spills,
- Biodiversity currently under preservation, or that could otherwise be preserved for future generations, can be harmed or destroyed by wrongful dredging.

CEPA's lack of enforcement of existing laws and regulations allows businesses and private individuals to degrade the environment without regard for consequences.

Picture 1—Illegal Trash Dump—Tunnuk Causeway



Picture 2—Illegal Trash Dump – Tunnuk Causeway



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Picture 3–Oil Spills unknown source. Open trench at Tupinion



Picture 4–Oil Spills from Power Plant



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Picture 5–Raw Sewage backflow close to KP Circle



Picture 6–Land Expansion and Dredging at Mechitiw



Cause

CEPA did not effectively carry out its duties and responsibilities to enforce existing environmental laws and regulations. This may be due to any of several reasons: lack of accountability, lack of effective use of governance authority, lack of leadership, lack of control.

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Recommendations

We recommend that the Board and Management work cooperatively together to ensure that the CEPA goals and objectives are achieved efficiently, effectively and competently for the betterment of the citizens' welfare in Chuuk State. Evidence of implementation of this recommendation will be in the substance of Board meeting minutes and ultimately in the results achieved as documented in the quarterly performance reports (see finding 3 below).

We also recommend that CEPA Management should exhibit a stronger will to:

- Educate the public for better awareness to the benefits of a clean environment:
 - Plan and develop methods of communicating these benefits
 - Document details of the activities performed
- Enforce the existing laws by imposing fines and penalties as required.

Finding 3: Quarterly performance reports were not used effectively

FSM/US – Fiscal Procedures Agreement, Article VI – Post Award Requirements

Program Monitoring, Performance Reports and Records Retention: Item 2.3

"...Performance reports for each Grant shall contain a summary of the following...

- i. A comparison of actual accomplishments to the objectives and indicators established for the period;*
- ii. Any positive events that accelerate performance outcomes;*
- iii. Any problems or issues encountered, reasons, and impact on Grant activities and performance measures;*
- iv. Additional pertinent information including, when appropriate, an analysis and explanation of cost overruns....*

4. The Government of the Federated States of Micronesia shall require performance reports from its Sub-Grantees."

Chuuk State Law (CSL): 2-94-01 provides that the CEPA office

"...use all practical means and measures, including financial and technical assistance, to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Chuuk State."

The auditors found:

- Quarterly reports were compiled by the division managers and forwarded to the state and then national (SBOC) budget offices. SBOC consolidated the reports and forwarded to the grant managers at US OIA. CEPA upper management did not review or sign-off on the reports and the FSM OEEM was not consulted, and not included in the distribution.
- Significant issues facing Chuuk were not reported in the quarterly reports. For instance, the reports showed that activities were only concentrated on Weno and a few of the

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lagoon islands. Coverage of the issues for significant portions of the population not located on Weno and a few local islands were not included in the activities reported.

- Performance of activities, that were designed to fulfill goals and activities, were unrealistic. For instance, one of the activities to be performed by the division of Water and Water Waste was the testing of water quality, yet the island-wide power outages which were constant throughout the two years that we audited, caused the test results to be meaningless.
- Goals were not being achieved and corrective actions were not taken to improve results.

As a result:

- Management may not detect whether the divisions achieve their targets in meeting their goals and objectives in protecting the environment.
- The chance for the division of environment in the OEEM to ensure compliance to the FSM SDP was ignored in the routing of report submission and therefore resulted in the lack of coordinating and monitoring all CEPA's activities with the National government as well as integrating newly formulated or proposed policies.
- Additionally, management may not be able to detect the needs of its staff to be trained for better performance.

Cause

Weak management in monitoring the activities of the CEPA office by the Board and the ED was evident in that very little management oversight took place. There was no evidence that the quarterly reports were reviewed by the ED or by the Board prior to forwarding them to the Chuuk Budget Office.

Also, copies of the reports were not forwarded to OEEM for their comment and input, or review.

Recommendations

We recommend the ED, deputy director and the Board should:

1. Regularly monitor and measure the performance of the CEPA activities to determine if the activities performed are actually achieving the desired goals and objectives.
2. Ensure that the quarterly performance reports go through the OEEM office that could then analyze the input to help assure alignment with the SDP and fulfillment before or after submitting to the SBOC office for consolidation and forwarding to the OIA of all the state's inputs.
3. Ensure that the activities and targets are practical, sensible and achievable to better the environment. Practical, sensible and achievable performance activities would more likely improve existing environmental conditions.

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Finding 4: \$8,000 of potentially unlawful payroll payments for time not worked

Board Chairman (Paraphrase): *The chairman states in a letter (dated July 18, 2011) that he directed the administrative officer not to process payroll payments to the ED while he was off-island.*

Truk Manual of Administration Part III: Policy and Procedures

- a. *Vacation Leave: Exempt employees do not accrue vacation leave as such but shall be eligible for 15 work days vacation leave with pay per year.*
- b. *Sick Leave: An exempt employee shall be eligible up to thirty work days off with pay for personal illness per work year.*

The auditors found the ED was classified as an exempt employee and was not subject to the PSSR. The ED did not have an employment contract, therefore his employment conditions were at the discretion of the CEPA Board. Payroll reports for the ED were submitted to Finance as 80 regular hours worked for approximately 5 months while the ED was living in Hawaii.

As a result:

- \$8,000 was paid inappropriately to the ED for approximately 5 months while he was living in Hawaii and was not working.
- Public trust was betrayed.

This has been referred to the ONPA Compliance Investigation Division for further review.

Causes

The deputy director signed the payroll reports for payment to the ED even though it was disapproved by the Board. The Board's disapproval was ignored or bypassed by the deputy director and the staff. The Board was bypassed by CEPA staff and management for approvals, authorizations and other management issues.

Recommendations

We recommend that the:

1. Board make its directions, policies and procedures very clear to the staff and management.
2. Board should take appropriate disciplinary action when its directions are not executed;
and,
3. ED should reimburse any inappropriate payroll payments.

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Finding 5: \$6,000 of unauthorized payments for housing allowance

Chuuk State Law 2-94-01 - Section 4: 6

“The Board shall designate a full time executive director who shall be administrator of the functions of the Agency and shall have such duties and responsibilities as maybe delegated to him by the Board..... Employees thereof shall be governed under the Public Service System, or may join a merit system created by the Board thereof.”

Letter from Chairman of the Board

Paraphrase: Per the letter the Board did not authorize, and in fact denied, the housing allowance to the ED.

The auditors found:

- The ED was not eligible to receive housing allowance because the CEPA Board had denied his request.
- The ED received a total amount of housing allowance of \$6,000 during the period from October to September of the Fiscal Year 2011.
- The Board did not review the proposed budgets and therefore was not informed of the housing allowance being received.

As a result, the \$6,000 inappropriately spent on the housing allowance was not available for the other obligations of CEPA.

Cause

The housing allowance was included in the approved budget and although the Board did not want to include housing allowance, \$6,000 was paid to the ED. Controls were not adequate to prevent the housing allowance payment.

Recommendations

We recommend that the Board should:

- Review annual budget proposals prior to submission to the Budget Review Committee as part of their duty to approve and monitor.
- Review the \$6,000 housing allowance payment and decide whether the ED should reimburse.

We also recommend that the CEPA management and staff should abide by the Board's decisions and directives and not bypass the Board concerning approvals and authorizations, and if not followed -- the Board should take appropriate disciplinary action.

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Finding 6: Expenditures involved conflict of interest

Title 11 FSM Code Section 512 Conflict of Interest.

“2. A public official has a conflict of interest in a matter if the public official or a family member could benefit directly or indirectly from a decision on a matter over which that public official has influence or control, or if a matter over which that public official has influence or control relates in any way to:

- (a) a business or property the public official directly or indirectly owns or controls;*
- (b) a business or property owned or controlled, directly or indirectly, by a family member of the public official; or*
- (c) a business or property in which the public official has a beneficial interest of any kind, whether through a trust or otherwise.”*

Chuuk FMR Section 6.42 Conflict of Interest.

“If any person with the State Government has a conflict of interest, either directly, or indirectly, or is an officer or employee of, or has an ownership interest in any firm, company, or corporation which is directly or indirectly interested in procurement with the State, the said person shall disclose such interest in writing to those reviewing the contract on behalf of the State, and said person shall not participate on any committee, board or staff in reviewing or deciding on said contract.”

The total number of expenditure vouchers for all of FY 2010 and through June for FY 2011 was 109 for a total amount of \$174,005. The audit team used a judgmentally selected test sample of 72 vouchers and found vouchers totaling \$22,367.44 involved “conflict of interest.”

**Table 2
Vouchers Involving Conflict-of-Interest of Sample of 72**

Date of Payment	Vendor*	Voucher Amount	Vendor Owner*
05/23/11	A	\$2,543.00	Manager A
04/06/11	A	\$5,027.45	Manager A
03/23/11	A	\$1,470.00	Manager A
02/25/11	A	\$3,526.99	Manager A
03/10/11	B	\$3,000.00	Manager B
05/20/11	B	\$1,500.00	Manager B
07/22/11	B	\$1,500.00	Manager B
10/06/10	C	\$270.00	Manager C
09/10/10	C	\$1,080.00	Manager C
05/21/11	D	\$1,550.00	Manager A
03/17/11	D	\$900.00	Manager A
Total:		\$22,367.44	

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*Instead of using actual names, letter codes are used for vendor and vendor owner.

In table 2 above, Manager A either owns or has family interests in Vendor A and D. Manager B either owns or has family interests in Vendor B and Manager C either owns or has family interests in Vendor C.

The documentation for the purchases and contract did not indicate that the ownership and family relations to the managers were made known. In addition, the rationale for the purchases such as price comparison, quality and availability of the goods was not documented to justify vendors' preference and/or selection.

As a result, a total of \$22,367.44 in expenditures was made with businesses in which conflict of interest was involved. Such practices diminish public trust in Chuuk Government institutions.

This has been referred to the ONPA Compliance Investigation Division for further review.

Causes

There was a general lack of internal controls in the daily activities of the CEPA office, as well as little or no awareness of effective management practices. Thus, an environment was created that greatly increased the potential for waste, abuse and fraud.

Recommendations

We recommend that the ED, under the guidance of the Board, should design and implement effective internal controls which, following implementation, should be regularly monitored for consistent execution in the daily activities.

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APPENDIX 1:

Strategic Development Plan (2004-2023) The Next 20 Years: Achieving Economic Growth & Self-Reliance, Volume I: Policies and Strategies, Volume II: Strategic Planning Matrices and Appendices

List of nine Strategic Goals of the Environment Sector of the FSM Strategic Development Plan:

1. Mainstream environmental considerations, including climate change, in national policy and planning as well as in all economic development activities.
2. Improve and enhance the human environment (improve waste management and pollution control).
3. Reduce energy use and convert to renewable energy sources/minimize emission of greenhouse gases.
4. Make FSM's genetic resources accessible for utilization and ensure benefits derived are equitably shared amongst stakeholders.
5. Manage and protect natural resources/protect, conserve, and sustainably manage a full [functional] representation of the FSM's marine, freshwater, and terrestrial ecosystem.
6. Improve Environmental awareness and education and increase involvement of citizenry of the FSM in conserving their country's natural resources.
7. Establish effective bio-security (border control, quarantine and eradication) programs to effectively protect the FMS's biodiversity from impacts of alien invasive species.
8. Create sustainable financing mechanisms for environmental and sustainable resource initiatives.
9. Enhance and employ in-country technical capacity to support environmental programs.

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APPENDIX 2:

Statements from the Five Year Environment Sector Plan, (For amended Compact funding source), Prepared for OEEM, FSM National Government, Dated December 2008.

- “The SDP laid the ambitious direction for the FSM to allocate resources to attain its goals in socioeconomic development including, among others the needed infrastructure to support development and protection of its environmental resources.”
- “The FSM SDP served also to satisfy requirements of the amended compact with the United States Government. The SDP was ratified by FSM Congress and accepted by the US Government.”
- “The environment sector in the SDP contained nine (9) strategic goals with numerous activities to be undertaken to achieve such goals.”
- “This FSM Environment Sector Five Year Plan is being put forward as a more focused plan for yearly projects for the five governments (FSM, Chuuk, Kosrae, Pohnpei, Yap) to undertake to move the nation/states forward in accomplishing targeted outcomes in a systematic approach.”
- “The priorities of the five governments reflect the different level of environmental needs and issues facing each government. It also reflects the role that such government plays in the planning and implementation of environmental issues. Finally, the messages from the heads of each respective government attested to the fact that the list of priorities is endorsed by each of them.”

See next page for Chuuk’s matrix of responsibilities from the Five Year Plan.

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FIVE YEAR ENVIRONMENT SECTOR PLAN

GOVERNMENT: Chuuk State

DEPARTMENT: Environmental Protection Agency

Strategic Goal 1: Mainstream environmental considerations, including climate change changes, into national policy and planning as well as in all economic development activities.					
Outcome: Environmental Impact Assessments (EIA) carried out for 100% of all government and non-government development activities to minimize adverse impacts of development on the environment					
Outcome: 100% of environmental violations successfully prosecuted by 2010					
PROJECTS BY TITLES	10	11	12	13	14
Environmental Review & Permitting Project (monitoring, EA, EIA, enforcement, technical support)	x	x	x	x	x
Upgrading Laws and Regs Project	x	x			
Development & Application of GIS in Environment Planning and Monitoring	x	x	x	x	x
Sub Total					
Strategic Goal 2: Improve/enhance human environment and pollution control					
Outcomes: (2.3&4) Solid waste reduced (3Rs), solid waste disposal sites designated, established and managed...					
Outcomes: (2.8) 100% of FSM communities will have ample access to safe drinking water supplies by 2020					
Outcomes : (2.7) Coastal marine water quality improved (fecal coliforms) in urban centers by 100% by 2020					
PLANNED PROJECTS BY TITLES	10	11	12	13	14
Fresh & Coastal Water Analysis and Management (Testing, Compliance, Public Notice, Permitting)	x	x	x	x	x
Solid & Hazardous Wastes Management (Compliance, Monitoring, Storage, Removal)	x	x	x	x	x
Water and Wastewater Compliance, Enforcement, Design and Awareness Project	x	x	x	x	x
Training in Water/Wastewater and Solid/Haz waste	x			x	
Strategic Goal 3: Reduce Energy use and convert to renewable energy sources/Minimize emissions of GHG					
PLANNED PROJECTS BY TITLES	10	11	12	13	14
Design and Construction of Rural Renewable Energy Systems(Matching)	x	x	x	x	x
Strategic Goal 4: Enhance the benefits of sustainable use of the FSM's genetic resources and ensure benefits derived are fairly shared amongst stakeholders					
Outcomes: (2). Fully document traditional knowledge and practices pertaining to FSM's genetic resources by 2020					
PLANNED PROJECTS BY TITLES	10	11	12	13	14

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Strategic Goal 5: Manage and Protect the Nation's Natural Environment/Protect, conserve, and sustainably manage a full and functional representation of the FSM's marine, freshwater and terrestrial ecosystems					
Outcome: 5(ii) Conservation areas contribute to the total national economy through successful compatible enterprises including ecotourism, non-timber forest products and mariculture					
PLANNED PROJECTS BY TITLES	10	11	12	13	14
Development of Conservation Sites Management Plans (1/year)	x	x	x	x	x
Conduct & monitor protocol for marine and terrestrial sites linked to NOAA & US Forest Service	x	x	x	x	x
REAs in Selected Terrestrial and Coastal Sites	x		x		x
Sub Total					
Strategic Goal 6: Improve environmental awareness and education and increase involvement in citizenry of FSM in conserving natural resources					
Outcomes No.2 Community environment awareness improved and citizen involvement in conservation and environment activities increase to 100% by 2010					
Environmental Educational Project (Conference, schools, publication, Radio programs, Environmental Days, etc)	x	x	x	x	x
SUB-TOTAL					
Strategic Goal 7: Establish biosecurity (border control, quarantine..) programs to effectively protect FSM's biodiversity from impacts of alien species					
PLANNED PROJECTS BY TITLES	10	11	12	13	14
Strategic Goal 8: Create sustainable financial mechanisms for environmental and sustainable resource initiatives (FSMES, NBSAP)					
Outcome: Access to outside funding and technical assistance by the government and non-government conservation agencies increased 100% by 2010					
Activity 8.3: Provide legal and financial incentives to encourage NGO fund-raising and development.					
PLANNED PROJECTS BY TITLES	10	11	12	13	14
Capacity Development to Access ODAs	x	x	x	x	x
Strategic Goal 9: Enhance and employ in-country technical capacity to support environmental programs					
Outcome (i). Staff of state government and non-government environmental organizations will be technically competent and highly capable to deal with all environmental challenge facing the nation by 2010					
PLANNED PROJECTS BY TITLES	10	11	12	13	14
Annual Environment Conference	x	x	x	x	x
Assessment of Training Needs & Implementation	x	x	x	x	x

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APPENDIX 3

Fiscal Years 2010 & 2011 Budgets/Actual for CEPA

Fiscal Year 2010

	Appropriation	Allotments	Actual
Personnel	\$135,831.00	\$135,831.00	\$122,831.08
Travel	7,500.00	7,500.00	3,837.00
OCE	74,831.00	74,831.00	103,916.58
Contractual Services	44,900.00	44,900.00	17,225.00
Fixed Asset	22,180.00	22,180.00	14,087.02
Total:	\$285,242.00	\$285,242.00	\$261,896.68

Fiscal Year 2011

	Appropriation	Allotment	Actual
Personnel	\$162,428.00	\$162,432.00	\$138,440.82
Travel	9,600.00	9,600.00	250.00
OCE	80,200.00	80,200.00	105,720.86
Contractual Services	90,045.00	90,045.00	45,114.77
Fixed Asset	7,000.00	7,000.00	1,884.97
Total:	\$349,273.00	\$349,277.00	\$291,411.42

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APPENDIX 4

Fiscal Years 2005 - 2011 Approved Budgets for CEPA

Categories	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	Totals
Personnel	\$ 96,077	\$153,032	\$158,259	\$250,313	\$191,126	\$135,831	\$162,428	\$1,147,066
Travel	\$ 11,002	\$ 20,387	\$ 27,426	\$ 40,243	\$ 26,230	\$ 7,500	\$ 9,600	\$ 142,388
Contractual Services	\$150,500	\$199,875	\$172,000	\$ 86,650	\$159,400	\$ 44,900	\$ 90,045	\$ 903,370
Other Current Expenditures	\$46,000	\$54,806	\$130,000	\$128,024	\$ 94,500	\$ 74,831	\$ 80,200	\$ 608,361
Fixed Assets	\$ 34,150	\$ 60,500	\$ 46,630	\$ 33,000	\$ 56,160	\$ 22,180	\$ 7,000	\$ 259,620
Total:	\$337,729	\$488,600	\$534,315	\$538,230	\$527,416	\$285,242	\$349,273	\$3,060,805

APPENDIX 5

Office of Environment and Emergency Management

The Office of Environment and Emergency Management (OEEM) was created by Executive Order NO. 1 as amended in April 2008. The Office was created to coordinate efforts at the national level to ensure that environmental considerations are integrated into the strategic policies formulation process. Of its many functions and duties, the OEEM, specifically the division of environment, is responsible to “coordinate and where appropriate manage and maintain environmental protection, water quality and other related activities in the FSM in close consultation with the State EPA and appropriate authorities; and in coordination with the States, to set national standards in environmental science, research, education and assessment reports.”

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MANAGEMENT RESPONSE



ENVIRONMENTAL PROTECTION AGENCY
P.O. Box 586
Weno, Chuuk State
Federated States of Micronesia 96942



March 26, 12

Mr. Haser Hainrick
National Public Auditor
ONPA Chuuk Field Office
P.O. Box 760
Weno, FM 96942

Haser
4.2.2012



Dear Mr. Hainrick:

Contained herewith are my comments on the findings and recommendations in the draft Audit Report of the Chuuk State Environmental Protection Agency. These comments are based on the contents of the draft report, and the discussions during the Exit Conference.

Finding 1. CEPA has not initiated action for six of the nine SDP Goals.

I totally agree with finding # 1 and the recommendations.

Finding 2. Failure to enforce environmental laws and regulations.

I agree with finding # 2, but not totally agree with the Cause and part of the recommendations. It is stated under Cause that CEPA did not effectively carry out its duties and responsibilities to enforce existing environmental laws and regulations. I believe that we do not have good or enforceable environmental laws and regulations. We need a legal person to guide the Board in making environmental regulations, and to draft proposed legislations for the Legislature to pass into laws. We need environmental laws and regulations with "teeth" so they will be effective.

One of the recommendations is enforce the existing laws by imposing fines and penalties as required. I believe under the existing laws and regulations, the penalties are too much making the laws ineffective. \$100,000 per day of violation of a Cease and Desist order is totally unenforceable in Chuuk. There is a need for reasonable fines and penalties, but stiff enough to discourage continuous violation of environmental laws and regulations.

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Finding 3. Quarterly performance reports were not used effectively.

I totally agree with finding #3 and the recommendations.

Finding 4: \$8,000 of potentially unlawful payroll for time not worked.

1. As the former chairman, I personally told the Administrative Officer (AO) to charge sick leave for the ED. The AO knowingly, and intentionally disobeyed the advise by the chairman and put down regular hours for the ED on the timesheets. I suggest the AO The ED stated that he was very sick, and later claimed that he monitored the activities of the Agency from Hawaii daily. This I know is false because I was in contact with the Agency I learned of no such interactions. If true, what evidence does he have to support such claim? Can he provide detailed phone billings from Hawaii to substantiate this claim of a long--distance management?
2. To make a short comment, the Board controls the CEPA , and in the absence of the Board's decision, the Chairman acts on its behalf. Unless decisions by the chairman violated the laws of the state, and/or regulations of the Agency, his decision is the authority. The claim that the governor controls the Agency is in contradiction with the law that created the CEPA Board and the Agency.

I totally agree with all three recommendations in the draft report. I also encourage the ONPA Compliance Investigation Division to do a further review and inform the Board of its findings.

Finding 5. \$6,000 of unauthorized payments for housing allowance.

1. Although not specifically stated, the Board may authorize other benefits for the ED, but the Board has to ensure that the ED is eligible for such benefit first. These benefits are not automatic. In this case, neither the Board nor the Chairman authorizes the housing allowance. In fact, the chairman refused to sign the lease agreement.
2. The Chairman refused to sign the lease agreement because the owner was the wife. If a spouse owns a house within the commuting distance, the employed spouse is not entitled to housing allowance. It just doesn't make sense for a husband to rent a house from his wife for them to use.
3. After the Chairman refused to sign the lease agreement, the AO processed another one without the signature of the Chairman. In fact, she bypassed the Chairman. The AO willingly and knowingly executed a lease agreement, which she knew was wrong because the Chairman already told her. I recommend that the

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AO be reprimanded or fired for such illegal acts. This is intentionally and knowingly stealing money from the government.

4. The claim that the governor determines who get housing allowance; therefore, once signed on the ED lease agreement made it legal, is in contradiction with the law that created the CEPA Board and the Agency.

I totally agree with the recommendations.

Finding 6. Expenditures involved conflict of interest and personal gain.

I do not know who the vendors are, and do not know the details of the transactions.

I agree with the recommendations. I also encourage the ONPA Compliance Investigation Division to do further review and inform the Board of its findings.

These are my comments, and I hope they do not make me look like a fool.

Sincerely,


Kind K. Kanto
CEPA Board Member

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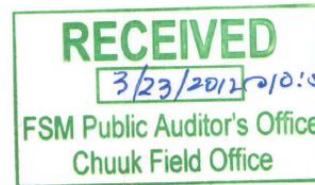


ENVIRONMENTAL PROTECTION AGENCY
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March 23, 2012

Office of the National Public Auditor
P.O. Box PS-05, Palikir, Pohnpei 96941



Subject: Management Response To ONPA Audit Report

Dear National Public Auditor:

On behalf of the Chuuk Environmental Protection Agency, of which I am the current Director, I would like to welcome this opportunity to respond to the audit report your Office has just concluded on the Chuuk Environmental Protection Agency.

At the outset, Management would like to express its regret that perhaps, the contents of this response may be at odds with some of the findings and recommendations outlined in the audit report.

SCOPE OF AUDIT

Fundamentally, from CEPA's perspective, which I believe is consistent with that of the general public, ONPA is to carry out its audit function strictly within the scope of its authority as conferred by law, and in that light, it pains us to note that, with respect to this particular audit of the CEPA, ONPA has gone outside of the scope of its responsibility when it conducted audit or inspection of CEPA transactions or activities or performances that have no connection with an identified public fund received from the National Government. Title 55, FSMC Chapter 5, in provides in pertinent part:

“ . . . the Public Auditor shall inspect and audit transactions, accounts, books, and other financial records of every branch, department, office, and agency, board of the National Government and of other public legal entities, including, but not limited to States, subdivisions thereof, and nonprofit organization receiving public funds from the National Government. . . “

The gist of such statutory undertaking has to do with public funds. When public funds are received from the National Government, those funds are required to be audited by the National Public Auditor. The focus of inspection is on the financial records relevant to the identified public funds.

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The audit report identifies no specific public funds, aside from Compact funds, which necessitated the audit that was undertaken on CEPA, but instead, refuses to carry out the audit CEPA had requested regarding specific foreign assistance received from the Government of Japan.

In view of the matters audited on CEPA, there appears to be no benefit or value gained by the public to justify the expenditure incurred from the audit. For example, there is no point to determine whether CEPA's goals and objectives are in line with the FSM SDP and key global issues, because it is apparent that even if the environmental priorities are aligned or not, constraints or disparity in terms of resources will continue to prevent a common pace, but instead will yield different pace toward the accomplishments of those goals and objectives.

In short, ONPA's finding that CEPA has not initiated activities for 6 of the 9 Strategic Goals identified in the FSM SDP is of little or no value at all, especially, to justify the expenditure of public funds ONPA chose to expend in order to conduct the audit of the CEPA. Moreover, it is utterly unreasonable for ONPA to measure or evaluate CEPA's performance using the FSM SDPs as the framework because Chuuk has not adopted those SDPs. And even if Chuuk has adopted them, when did this adoption take place? The timeframe or date of adoption is material and must be included in the audit findings, because the audit is making the case that despite over 3 Million in funding, two thirds of the SDPs remain un-activated. If Chuuk has in fact adopted these SDPs as insisted by ONPA, but only recently as opposed to a much more earlier past, and given that the timeframe of adoption was omitted, the argument that 6 of the 9 SDPs have not been activated despite over 3 Million in funding appears to be misleading, if not an intentional distortion.

With these concerns, CEPA management hereby respectfully invites the FSM Congress and State authorities to be vigilant with respect to the audit priorities of ONPA, and the manner in which it undertakes its statutory function.

FACTUAL FINDINGS CLEARLY ERRONEOUS

Despite the exit conference between ONPA auditors and CEPA management, factual findings of ONPA which are clearly erroneous remain undeleted or uncorrected in the audit report. This indicates that the underlying purpose for ONPA to conduct the audit of the CEPA was to defame, distort, or otherwise destroy any confidence that the public may have in CEPA, notwithstanding ONPA's insistence that it conducted the audit for the purpose of setting matters on the right course.

For example, lets consider the following findings by ONPA:

LACK OF ENFORCEMENT.

The audit report points out that the environmental conditions for the state of Chuuk were not improving significantly, due to lack of enforcement of environmental laws. This finding assumes that the environmental laws of Chuuk are adequate to carry out effective environmental enforcement, but that there is just no enforcement being undertaken. Yet, if ONPA had done a diligent review of Chuuk's environmental laws, it would note that the enforcement aspect of the law is very vague and inadequate, and thus, ineffective as an enforcement tool. See C.S.L. 2-95-06. Moreover, in subjectively concluding that the environmental conditions of the state of Chuuk were not improving significantly, without referencing Chuuk's environmental conditions then as compared to the

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present, or during the period that CEPA has been in existence, is misleading and serves no useful purpose to trigger or stimulate the willingness to improve Chuuk's environmental condition through CEPA. The pictures attached in the report depicted environmental conditions that are only temporary in nature as they existed only by reasons of the road project currently being under construction and other easily abatable causes. But all of the environmental conditions shown in the pictures have already been eradicated completely, long before the completion of the audit.

POTENTIALLY UNLAWFUL PAYROLL PAYMENTS/TIME NOT WORKED.

It was also the finding of ONPA that payroll payments were made for time not worked, and accordingly, repayment has been recommended. Factually and legally, this finding is clearly erroneous. The payroll payments in issue were consistent with the general practice of the Chuuk State Government regarding a director's sick leave entitlement and management practices applied in circumstances when physical presence on the job is impracticable. The proper standard of review regarding the application of such management practices should be the abuse of discretion standard.

Unfortunately, the audit did not probe into whether it was an abuse of discretion for the Director to maintain the management of the CEPA without being physically present on the job site, or whether the circumstances do not warrant managing the CEPA without being physically present on the job site. For ONPA to deem this as time not worked, and thereby conclude that payroll payments for this periods were unlawful is not only erroneous but unreasonable, and it is entirely irresponsible for the audit to recommend repayment, without bothering to review whether such management practice was an abuse of discretion as a matter of policy.

UNAUTHORIZED PAYMENTS FOR HOUSING ALLOWANCE.

This legal conclusion that housing allowance was unauthorized is another irresponsible finding, erroneously inferred from the undisputed fact that the FY 2010 budget was not approved by the CEPA Board of Directors. First of all, approval of the CEPA budget by the CEPA BOD is immaterial for purposes of determining whether payments for housing allowance was unlawful when the housing allowance was already part of the CEPA budget that was ultimately approved by law. If the entire CEPA budget was enacted into the budget law of Chuuk State without the CEPA Board of Director's prior approval, the point of inquiry should turn on whether any budget item on CEPA's budget can be legally expended, irrespective of the lack of approval by the CEPA BOD? If so, then what is the point for the audit to tell the public that this particular housing allowance payment was unlawful, other than to mislead the public? If the entire CEPA budget was void as a matter of law because it was not approved by the CEPA BOD, why is this one line item regarding housing allowance being singled out, while the rest of the line items that have been expended not mentioned by the ONPA audit report?

The public must demand to know the motive of ONPA in singling out or isolating this housing allowance matter and charactering it as unlawful expenditure, when it is obvious that it is part of the approved budget, which has been approved in accordance with the Budget Act of Chuuk State.

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EXPENDITURES INVOLVED CONFLICT OF INTEREST AND PERSONAL GAIN.

That expenditures involved conflict of interest and personal gain, is an erroneous legal finding. All of the expenditure vouchers cited in the report were properly routed through the purchase requisition system which is in use and under the control of Chuuk State DAS and CFCC, and no public official employed by the CEPA directly or indirectly has any role in it. There are no factual findings cited in the report which show that any of the expenditure vouchers did not comply with the government's purchase requisition system. If any of the expenditure vouchers had involved conflict of interest of the kind contemplated under the conflict of interest provisions cited in the audit report, it would have been rejected. But since none of the expenditure vouchers were found to be inconsistent with the purchase requisition requirements, any connection between the requesting agency and the vendor is immaterial, especially considering that every vendor should have equal right to be government purchases. Thus, the conclusion or finding that expenditures of CEPA involved conflict of interest and personal gain is misleading and erroneous as a matter of fact and law.

The above discussion sums up the response of CEPA management. This response is obviously in stark contrast with the audit report in terms of the audit's objective, motive, approach, usefulness, and over-all conduct in carrying out its audit function. As a public agency, CEPA management stands ready, and therefore, reserves the right to defend its position in a court of law, should it be deemed necessary.

Submitted by:



Ismael Mikel, Director
Chuuk Environmental Protection Agency

Cc: Governor, Chuuk State
Office file

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ONPA EVALUATION OF MANAGEMENT RESPONSE

ONPA COMMENTS REGARDING CEPA BOARD OF DIRECTOR RESPONSES

CEPA Board of Directors (Board): The response received from the Board stated agreement with all of the recommendations in the audit, with a small exception: there was not total agreement with the cause and a part of the recommendation of finding 2 (see comments below).

“I believe that we do not have good or enforceable environmental laws and regulations. We need a legal person to guide the Board in making environmental regulations, and to draft proposed legislations for the Legislature to pass into laws. We need environmental laws and regulations with “teeth” so they will be effective.”

“One of the recommendations is enforce the existing laws by imposing fines and penalties as required. I believe under the existing laws and regulations, the penalties are too much making the laws ineffective. \$100,000 per day of violation of a Cease and Desist order is totally unenforceable in Chuuk. There is a need for reasonable fines and penalties, but stiff enough to discourage continuous violation of environmental laws and regulations.”

ONPA: ONPA believes that the use of a legal person to help CEPA draft proposed legislations is something the board has the discretion to do. Concerning the \$100,000 being too high a penalty; the law reads “*up to \$100,000 for each day of the violation*”. This should give the agency the flexibility to set a lower penalty within the law.

ONPA COMMENTS REGARDING RESPONSE FROM THE CEPA EXECUTIVE DIRECTOR

In his letter of response dated March 23, the executive director did not reply to any of the recommendations made. The audit findings and recommendations were discussed fully during the exit conference in his office on March 9, 2012.

- **CEPA Executive Director:** *“...ONPA is to carry out its audit function strictly within the scope of its authority as conferred by law....”*

ONPA: CEPA is a recipient of the environment sector grant and therefore falls within the jurisdiction of ONPA’s audit function. Under the Fiscal Procedure Agreement of the Amended Compact, the President of FSM is the allottee of all sector grants and the states are sub-allottees or sub-grantees. This, therefore, qualifies ONPA to conduct audits and inspections of the recipients of sector grants under the Amended Compact.

- **CEPA Executive Director:** *ONPA disregarded request to audit grant from the Government of Japan.*

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ONPA: In response to the Executive Director’s request to audit the grant from Japan in your letter dated February 14, 2011, on March 14, 2011, a letter was forwarded to you that informed you of the need to structure the audit to include the other segments of the Chuuk EPA operations in addition to the Japan Grant. This was necessary to be more cost effective since the total amount of \$97,000 from the Japan grant was too small for an audit. Therefore, ONPA conducted an audit based on your request and the other segments of CEPA’s operations in order to better allocate audit resources in accordance with Title 55.

FSM SDP

- **CEPA Executive Director:** *“.... it is utterly unreasonable for ONPA to measure or evaluate CEPA’s performance using the FSM SDPs as the framework because Chuuk has not adopted those SDPs.”*

ONPA: Before the National Government and any States access sector grants funds, a development plan must be formulated and submitted to the United States Government. Under the Amended Compact Fiscal Procedure Agreement, Article V, Pre-Award Requirements, 1, Planning As a Requirement of Economic Assistance: (a) No later than 90 days after the effective date of Title Two of the Compact, as amended, and thereafter at appropriate intervals, the Government of the Federated States of Micronesia shall prepare and submit to the Government of the United States a “Multi-Year Rolling Development Plan” pursuant to section 211(f) of Title Two of the Compact, as amended (the “Development Plan”) The Development Plan shall be strategic in nature and continuously reviewed and updated through the annual budget process. All of the states, and the National Government have received funding from the sector grants, meaning a plan, the FSM Development Plan, was formulated by **representatives from all the states**. These state representatives that endorsed the plan ranged from non-profit organizations to all leaders from various types and levels of governments and the private sectors.

CEPA should pursue all 9 SDP goals as enumerated in the sector plan and thus obtain funding for the 6 not yet initiated. To facilitate funding for the 6 not initiated, the sector grant managers and JEMCO will likely require CEPA management to be more responsible, more effective in pursuing their duties.

- **Assertion by the Executive Director: “Factual findings clearly erroneous”**

1. Lack of enforcement:

CEPA Executive Director: *“.... The enforcement aspect of the law is very vague and inadequate, and thus, ineffective as an enforcement tool.”*

ONPA: CEPA did not enforce the environmental laws. Cited as criteria for this finding were CSL:2-94-01 commonly known as the Chuuk Environmental Protection ACT, CSL

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191-33 commonly known as the "Littering" law, and CSL 06-01-07 Section 2.1. Lack of enforcement is evident by the continuity of the public trash piles on the island, private individuals dredging without proper environmental impact assessment being made, oil from time to time being spilled and currently by the road side at the Agriculture Department office area. Any vagueness or other inadequacy of the laws are not the primary issues because if such does exist, the law (CSL 2-94-01) gives CEPA broad powers to draft regulations. This has not been done. CEPA is not fulfilling its mandate despite the broad powers granted it by the Chuuk Legislature. To be effective, the executive director and the Board must exercise its authority and fulfill its duties responsibly. Hence, the finding is "lack of enforcement by CEPA."

2. Potentially Unlawful Payroll Payments/Time Not Worked

CEPA Executive Director: *"The payroll payments in issue were consistent with the general practice of the Chuuk State Government regarding a director's sick leave entitlement and management practices applied in circumstances when physical presence on the job is impracticable."*

ONPA: It is ONPA's belief that the payrolls issued were potentially unlawful because they were not approved by the Board and because they were charged as regular hours, which was incorrect.

3. Unauthorized Payments For Housing Allowance

CEPA Executive Director: *" approval of the CEPA budget by the CEPA BOD is immaterial for purposes of determining whether payments for housing allowance was unlawful when the housing allowance was already part of the CEPA budget that was ultimately approved by law."*

ONPA: The line item for housing allowance was not approved by the Board. According to the former chairman of the CEPA Board, the house in which the executive director was going to rent belongs to his current wife, which is unethical, and the reason the chairman did not approve it.

4. Expenditures Involved Conflict of Interest and Personal Gain

CEPA Executive Director: *" If any of the expenditure vouchers had involved conflict of interest of the kind contemplated under the conflict of interest provisions cited in the audit report, it would have been rejected. "*

ONPA: 11 FSMC 512 states:

"A public official has a conflict of interest in a matter if the public official or a family member could benefit directly or indirectly from a decision on a matter over which that

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public official has influence or control, or if a matter over which that public official has influence or control relates in any way to:

- (a) A business or property that public official directly or indirectly owns or controls;
- (b) A business or property owned or controlled, directly or indirectly, by a family member of the public official; or
- (c) A business or property in which the public official has beneficial interest of any kind, whether through a trust or otherwise.”

It’s the direct responsibility of the requestor to disclose any “conflict of interest” relationships that a requesting agency might have with a vendor, and to document that disclosure and explain why the vendor should be selected. There was no evidence this was done.

It is not the responsibility of the approving organizations to detect "conflict of interest". ONPA rejects the inference that if not rejected, then it's okay. ONPA believes the executive director would agree that public officials have a duty to abide by the law regardless.

The executive director makes a broad statement of "factual findings are erroneous," and then proceeds to list out 5 of the 6 findings as noted above. The finding not specifically included in the executive director's response is "Quarterly performance reports were not used effectively." We hope that the executive director's lack of response to this finding does not indicate a lack of interest in the finding.

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NATIONAL PUBLIC AUDITOR'S COMMENT

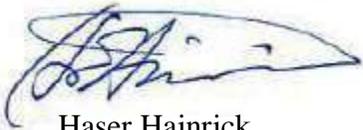
We would like to thank the Board of Directors, Management and staff at the CEPA for their assistance and cooperation during the course of the review.

The ONPA may perform a follow-up review within the next 9-18 months to ensure that CEPA has taken corrective measures to address all of the findings and recommendations provided in this report.

In conformity with general practice, we presented our draft findings and recommendations to the CEPA Board of Directors and the Executive Director for comments.

We have provided copies of the final report to the President and Members of Congress for their use and information. We also provided copies to the Governor of Chuuk State, Members of Chuuk House of Senate and Representatives, Director of Chuuk Department of Administrative Services, Compact Funds Control Commission and the Director of Office of Environment and Emergency Management. We will make copies available to other interested parties upon request.

If there are any questions or concerns regarding this report, please do not hesitate to contact our office. Contact information for the office is listed on the last page of this report, along with the ONPA staff who made major contributions to this report.



Haser Hainrick
National Public Auditor

May 7, 2012

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