

22 GAR – GUAM ENVIRONMENTAL PROTECTION AGENCY
DIV. 2 – WATER CONTROL
CH. 10 – GUAM SOIL EROSION AND SEDIMENT CONTROL

CHAPTER 10
GUAM SOIL EROSION AND SEDIMENT CONTROL
REGULATIONS

SOURCE: Adopted pursuant to P.L. 25-152:2 (July 10, 2000), effective Oct. 1, 2000. Subsection designations altered/added pursuant to the authority granted by 1 GCA § 1606.

2019 NOTE: Past publications of the GAR included the following annotation:

NOTE: Rule-making authority cited for formulation of Erosion and Sediment Control regulations by the Guam Environmental Protection Agency, 10 GCA Chapter 45.

Regulatory power for the control of water pollution was originally vested in the Water Pollution Control Commission pursuant to § 47101-47112 10 GCA. Subsequently, all powers of the Water Pollution Control Commission were transferred to the Guam Environmental Protection Agency through §§ 45101-45110 10 GCA Article 1, Chapter 45.

The regulations are reprinted here in form as exact as possible to those filed with the Legislative Secretary. The substance of the regulations has not been changed. However, for the purpose of uniformity and ease of use, a new system of numbering has been adopted by the Editor.

The annotation refers to the regulations being filed with the Legislative Secretary; however, there is no indication of the date of filing.

According to the gubernatorial transmittal letter for P.L. 25-152, the original version of the rules was transmitted to the Legislature on January 25, 2000 and went into effect on July 5, 2000. However, pursuant to the 90-day period established by the Administrative Adjudication Law (codified at 5 GCA Chapter 9, Article 3), the rules would have been effective on April 24, 2000. Nevertheless, any prior submitted version would be superseded by P.L. 25-152:2.

- § 10101. Authority.
- § 10102. General Provisions: Purpose, Scope, Applicability and Exemptions.
- § 10103. Definitions.
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- § 10106. Erosion and Sediment Control Plans and Measures.
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- § 10108. Project Completion.
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- § 10112. Suspension or Revocation of Permit.
- § 10113. Inspections.
- § 10114. Enforcement.
- § 10115. Penalties, Liability, and Severability Clause.

§ 10101. Authority.

10 GCA Chapter 47 - “Water Pollution Control Act.”

§ 10102. General Provisions: Purpose, Scope, Applicability and Exemptions.

(a) Purpose. Whereas soil erosion and sedimentation resulting from the construction of sub-divisions, industrial and commercial developments, highways and other activities requiring excavation and filling can affect the purity of wetlands, streams and marine waters on Guam and thereby may cause unreasonable damage to aquatic and marine life in general; and whereas, the pollution of wetlands, streams and marine waters must be controlled to ensure a reasonably clean environment for the people of Guam; and whereas, the Guam Environmental Protection Agency has been vested with the responsibility to maintain at all times a high quality of environment to guarantee an enjoyable life for all people at present and in the future; and, whereas, the environmental degradation of the quality of land, water and air by any pollutants, including all physical, chemical and biological agents, should not be allowed; and, whereas, the Guam Environmental Protection Agency has been vested with the responsibility to conserve surface and groundwater resources and to protect, maintain and improve the quality and potability thereof;

(1) it is declared that the purpose of these regulations is to control accelerated soil erosion, thereby preventing the pollution of Guam's waters from fertilizers, pesticides,

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sediments and other polluting substances carried by sediment, and to protect property and to promote the public health, safety and welfare by regulating grading, clearing, grubbing and stockpiling, and by setting minimum standards for erosion and sedimentation control for the island of Guam.

(2) It is also the purpose of these regulations to manage nonpoint source pollution consistent with the latest “Guam Nonpoint Source Program”, the “Guam Erosion & sedimentation. Manual” guidelines and recommendations, the comprehensive approach set forth in Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990, “Protecting Coastal Waters”, codified as 16 U.S.C. §1455(b), and the “Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters” (EPN840-B-92-002, dated January 1993) issued under the authority of Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 recommendations.

(b) Scope. The provisions of these regulations impose requirements on those earth-moving activities which create accelerated erosion or a danger of accelerated erosion and which require planning and implementation of effective soil conservation measures. These regulations set forth requirements for the control of grading, clearing and grubbing, and stockpiling, set limits for erosion and sedimentation, establish administrative procedures and minimum requirements for issuance of permits and provide for the enforcement of such rules and regulations.

(c) Applicability. Regulations apply to all clearing, grubbing, grading, embankment or filling, excavating, stockpiling or other earth-moving operations on Guam which require a permit as provided for in 21 Guam Code Annotated, Chapter 66 (as amended). Such applicable clearing or earth-moving operations include those performed by private and governmental sectors, including, the government of Guam and federal agencies on Guam. The Administrator shall review every application for a permit for earth-moving operations in order to determine applicability or exemption, as provided for in Section, Sub-Section D, below.

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(d) Exemptions. An application for a clearing, grubbing, grading, embankment or filling, excavating or other earth-moving activity shall be submitted to the Agency for review, and approved before the activity is started. The following earth-moving activities may be exempted from these regulations if the Administrator, in writing, determines that the scope or size of the activity will not create either an erosion or other hazard to surface or marine waters of Guam:

(1) Clearing, grading and filling for the purpose of constructing a house, pad or driveway for a one-or two-family residence;

(2) Grading in an isolated, self contained area;

(3) An excavation for basements, footings, retaining walls or other structures which are authorized by a valid building permit. Such exemptions shall not include any excavation where dewatering is undertaken, any fill is made with the excavated material, or any unsupported excavation of more than five (5) feet deep is excavated after the completion of such structures.

(4) Clearing and grubbing individual cemetery graves or plots without using heavy equipment.

(5) Excavations for wells, tunnels or utilities, which are permitted under different rules and regulations.

(6) Exploratory excavations for wells or for the purpose of soils testing, provided that no clearing and grubbing or grading is to be performed.

(7) Any excavation which is less than two feet in depth or which creates a cut slope less than five feet in height and no steeper than a slope ratio of 1-1/2 horizontal to 1 vertical for coralline type soil and 3:1 slope for clay type soil, provided that all slopes and open areas are stabilized and vegetated.

(8) Any fill which is less than one foot in height and placed on undisturbed terrain with existing topography of a ratio less than five (5) horizontal to one (1) vertical and which

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does not obstruct a drainage course, provided the area of the property does not exceed five thousand (5,000) sq. ft. and open areas are properly stabilized and vegetated.

(9) Field plowing and normal tilling operations, or clearing land for agricultural purposes provided these activities or operations do not cause sediment and runoff water to move beyond the edge of the farm boundaries and degrade the water quality of the receiving water bodies. Initial field plowing or clearing land for agricultural purposes must be performed in accordance with the implementation of a conservation management system that meets minimum standards contained in the U.S. Field Office Technical Guides and approved by either the appropriate Soil and Water Conservation District created by 5 GCA Chapter 63, in accordance with an approved USDA Soil Conservation Service “Conservation Plan” or the Director of the Guam Department of Agriculture.

(10) Clearing and grubbing of land for the purpose of making topographic surveys, and hand clearing of trails for survey lines and for access for soil exploration equipment.

(e) Certain Rules of Word Usage.

(1) Words used in the present tense include the future tense, and the singular includes the plural unless the context clearly indicates the contrary.

(2) The term “shall” is always mandatory and not discretionary; and the word “may” is permissive.

(3) A word or term not interpreted or defined by this article shall be used with a meaning of common or standard utilization.

§ 10103. Definitions.

(a) Meanings of words and terms. The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

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(1) Accelerated erosion: The removal of the surface of the land through the combined action of man's activities and natural processes at a rate greater than would occur because of the natural process alone.

(2) Administrator: The Administrator of the Guam Environmental Protection Agency or his authorized representative.

(3) Agency: The Guam Environmental Protection Agency (GEPA).

(4) Board: Board of Directors, Guam Environmental Protection Agency.

(5) Building pad: The compacted land area on which a structure is to be built.

(6) Building permit: The official document issued by the Building Official, Government of Guam, authorizing specific construction activities.

(7) Channel: A natural stream that conveys water; a ditch excavated for the flow of water.

(8) Check dam: A structure used to reduce or prevent excessive erosion by reduction of velocities in water courses.

(9) Chutes/flumes: Channels of concrete or comparable material that are used to conduct storm runoff down slopes where concentrated runoff would cause slope erosion.

(10) Clearing and grading permit: An official document issued by the Building Official, Department of Public Works, government of Guam, authorizing specified earth-moving operations. Such a permit requires the approval of the Director of Land Management and the Administrator of the Guam Environmental Protection Agency, unless otherwise exempted by the prevailing regulations, before its issuance by the Building Official.

(11) Clearing and grubbing: The removal of vegetation, including trees, timber, shrubbery, and plants, when said

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vegetation is dislodged or uprooted from the surface of the ground.

(12) Compaction: The densification of a fill by mechanical means.

(13) Crimping: A method used to secure fiber mulches. The operation is performed by a crimping machine which partially punches the mulch into the soil.

(14) Deflection Structures: Stones, or concrete or wooden groins placed in a river or stream at an angle outward from the shore in a downstream direction to deflect the current away from a critical area of the bank.

(15) Denuded: Bare; naked; stripped.

(16) Developer: Any person who is engaged in land development.

(17) Dissipate: To scatter; disperse; cause to vanish.

(18) Diversion: To change the accustomed course of all or part of a stream or of sheet runoff.

(19) Diversion dike: A temporary ridge of soil constructed at the top of a cut or fill slope to divert overland flow from small area away from unstabilized slopes.

(20) Diversion ditch: A ditch constructed to channel stream or sheet runoff into desired directions, and may also be referred to as Interceptor Channel.

(21) Diversion terrace: A channel or dike constructed up slope of an area for the purpose of diverting storm water runoff.

(22) Earth material: Any rock, coral, sand, gravel, natural soil or fill/or any combination thereof.

(23) Earth-moving operations: Human caused alterations to the existing topography. Any construction or other activity which disturbs the surface of the land including, but not limited to, clearing, grading, excavation, embankment, construction, and development, subdivision

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development, mineral extraction, sand mining, and the moving, depositing or storing of soil, rock or earth.

(24) Embankment: A placement of soil, rock, or other material by man.

(25) Engineer: A person duly registered as a professional civil and/or structural engineer on Guam.

(26) Engineer's Soils Report: A report on soils conditions prepared by a professional engineer qualified in the practice of civil and/or structural engineering.

(27) Environmental Impact Statement: A comprehensive and systematic assessment of environmental impacts which would likely result from a human activity or action. Its purpose is to provide, in part, a basis for making decisions which will affect the human condition as well as the purely biological or natural conditions of our environment. It should provide a reasonable set of alternatives and a preferred option which appropriately balances various environmental concerns, including financial, social or cultural concerns. The assessment should rely on proven assessment methods both scientific and political.

(28) Environmental Protection Plan: A document describing, for a proposed development, the methods/equipment selected for use, expected environmental problems during and after construction, and methods and equipment chosen to avoid, mitigate or control potential adverse effects on the environment.

(29) Erosion:

(A) The wearing away of the land surface by water, wind, or other geological agents.

(B) Detachment and movement of soil or rock fragments by water, wind or gravity.

(30) Erosion check: A slit trench filled with porous matter that is oriented perpendicular to the direction of flow

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in a ditch or swale to prevent the formation of rills and gullies.

(31) Erosion and sediment control: The control of solid material, both mineral and organic, during an earth-moving operation, intended to prevent its transport out of the operation area by means of air, water, or gravity.

(32) Excavating: Lowering the existing ground elevation by earth-moving operations.

(33) Excavation or cut: A cavity formed by digging, cutting, quarrying, uncovering, displacing or relocating soil or rock.

(34) Existing grade: The grade prior to grading.

(35) Fill: A placement of soil, rock, or other material by man to raise the existing ground elevation.

(36) Finish grade: The final grade of the site which conforms to the approved plan.

(37) Grading: Establishing a topographical profile by earth-moving operations involving cuts and fills or excavation or other earth work activities.

(38) House pad: The compacted land area on which a dwelling structure is to be built.

(39) Interceptor channel: A channel or dike constructed across a slope for the purpose of intercepting storm water, reducing the velocity of flow, and diverting it to outlets where it can be disposed.

(40) Interceptor dike: A temporary ridge of compacted soil across a graded right-of-way that is not subject to vehicular traffic, designed to intercept and divert storm runoff to temporary outlets where it can be disposed of with minimal erosion.

(41) Intermittent stream: A stream or portion of a stream that flows only in direct response to precipitation and receives little or no water from springs other sources.

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(42) Jute Netting: A heavy woven jute mesh laid directly over seedbeds to minimize soil erosion in critical areas until vegetation can become firmly established. Due to its thick fibrous composition, it also functions as a mulch to conserve soil moisture, insulate against solar insolation, dissipate energy from falling raindrops and reduce erosion caused by overland flow.

(43) Key: A designed compacted fill placed in an earthen trench excavated beneath the toe of a proposed fill slope.

(44) Land developer: Any person who is engaged in land development.

(45) Land development: The constructing, installing, placing, planting, or building of surface structures, utility lines, shopping centers and malls, golf courses, apartment complexes, schools, roads, highways, parking areas, or any other similar activity.

(46) Level spreader: An outlet constructed at zero grade across a slope to collect concentrated runoff and covert it into sheet flow with non-erosive velocities onto areas stabilized by existing vegetation.

(47) Mulch: A natural or artificial layer of plant residue (fiber mulches) other materials, such as sand or paper, on the soil surface.

(48) Mulch blanket: Blanket type materials used in the establishment of vegetation on swales, ditches and steep slopes where fiber mulch products do not provide sufficient levels of protection during germination and early growth.

(49) Netting: A method of securing fiber mulches through the use of jute, plastic, paper or fiberglass nets on steep exposed slopes where crimping is not possible and tacking will not perform satisfactorily.

(50) Outcrop: To come to, or be exposed on the surface.

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(51) Permeability: The property of a porous material which permits the passage or seepage of fluids, such as water for example, or air through its interconnection voids.

(52) Permeable: Having a texture through which water can move.

(53) Permit: An official document or certificate issued by the Building Official, government of Guam, authorizing the performance of a specified activity.

(54) Permittee: The recipient of an approved permit issued by the Building Official, government of Guam.

(55) Person: Any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the island of Guam or the Federal Government, trust, estate or any other legal entity.

(56) pH: A numerical measure of the acidity or hydrogen ion activity of a soil. (The neutral point is pH= 7.0. All pH values below 7.0 are acid and all above 7.0 are alkaline).

(57) Right-of-way: Right of passage over another person's land; a route that is lawful to use; a strip of land acquired for transport or utility construction.

(58) Riprap: Broken rock, cobbles or boulders placed on earth surfaces such as the face of a dam or the bank of a stream, for protection against the action of water or waves; also applied to brush or pole mattresses, or brush and stone, or other similar materials used for soil erosion control.

(59) Rough grade: The stage at which the grade approximately conforms to the approved plan.

(60) Runoff: Water from rain or irrigation that flows over the ground to surface, marine or ground waters. It can collect pollutants from air or land and carry them to the receiving waters. Also, that part of the precipitation which runs off the surface of a drainage area and reaches a stream, body of water, drain or sewer.

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(61) Sandbag sediment barrier: Temporary barriers or diversions that are constructed of sandbags.

(62) Sectional down drain: A prefabricated sectional conduit of half-round, bituminized fiber pipe or other material used to conduct storm runoff from one elevation to another without erosion of slope.

(63) Sedimentation: The depositing of sediments.

(64) Sediment retention basin: A temporary darn or basin, or a combination of both, that will trap and store sediment produced on exposed areas and delivered to the structure by storm runoff.

(65) Sediments: Mineral or organic solid materials that settle to the bottom of water.

(66) Site: The spacial location, under the same ownership, of an actual or planned structure or structures, or earth-moving activity.

(67) Slope: An inclined ground surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

(68) Soil: The unconsolidated mineral and organic material found on the earth's upper layer, that may be dug or plowed and in which plants can grow.

(69) Soil engineering: The application of the principles of soil mechanics in the investigation, evaluation and design of civil works involving the use of earth materials, and the inspection and/or testing of the construction thereof.

(70) Soil erodibility factor (k): A measure of the susceptibility of soil particles to detachment and transport by rainfall and runoff.

(71) Soil slopes: All denuded cut, fill or natural soil constituted slopes.

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(72) Stabilization: The proper placing, grading and/or covering of soil, rock or earth to insure its resistance to erosion, sliding, or other movements.

(73) Stockpiling: Temporary open storage of earth materials upon any premises where a grading permit has been issued for the purpose of using the materials at some other premises at a future time.

(74) Storm water management: The practice of using detention measure to reduce the impact of minor storms which cause accelerated erosion of stream channels and drainage ways (not to be confused with control of flood flows).

(75) Storm water runoff: Rain that is not absorbed when it comes in contact with the soil and thus runs downhill into waters of Guam. This runoff may carry soil with it.

(76) Strip planting: The planting of strips of wet soil tolerant, high erosion resistant vegetation in the critical area near the waterline of a major waterway, and the planting of conventional robust rooted grasses and legumes above the critical zone.

(77) Subdivision: The division, re-division or change of lot lines of a lot, tract, or parcel of land for the purpose of leasing, transferring ownership, or development, either immediately or in the future.

(78) Tacking: A method of securing mulches by the application of an asphalt or chemical binder which binds the individual fibers together to form a resistant blanket.

(79) Temporary stabilization: Protecting soil from excessive erosion for a short period of time. Usually, temporary stabilization is designed to last for less than one year.

(80) Terrace: A relatively level step constructed in the face of a grade slope surface for drainage and maintenance purposes.

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(81) Territory: The Island of Guam, United States of America.

(82) Tetrahedron: Solid figure with four (4) triangular surfaces.

(83) Uniform Building Code (UBC): The most recent edition of minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures within Guam, as published by the International Conference of Building Officials.

(84) Waters of Guam: All shore waters streams, lakes, wells, springs, irrigation systems, wetlands, sinkholes, marshes, swamps, watercourses, waterways, drainage systems and other bodies of water, surface and underground, natural or artificial, publicly or privately owned, on or surrounding Guam.

(85) Watershed: For any river, stream or other water body, the drainage area that contributes water to that water body.

(86) Watershed divide: The line that follows the ridges or summits forming the exterior boundary of a drainage basin and separates one drainage basin from another.

(87) Waterway: A natural course or constructed channel for the flow of water.

§ 10104. Permit Issuance and Denials.

(a) Permits Required.

(1) Unless exempted, no person shall commence or perform any grading, clearing, grubbing, embankment, filling, excavation or other earth-moving activity without a grading permit;

(2) Unless exempted, no person shall commence or perform any stockpiling without a stockpiling permit.

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(b) Permit Application Process. An applicant shall obtain the required application from the Building Permit Section, Department of Public Works located at the One-Stop Permit Center, and shall complete and submit the application to the One-Stop Permit Center for review and approval of all concerned agencies, including the Guam Environmental Protection Agency.

(c) Permit Application Contents.

(1) A description of the proposed activity, including its purpose, proof of land ownership (title, deed or authorized letter) and other pertinent information as may be required by the Administrator.

(2) A vicinity map or plan of the site indicating:

(A) Site information. The location, including names and locations of streets, roadways, and rights-of-way; property line locations, dimensions and azimuths, easements and setbacks of property; the location of any utility and utility lines, buildings, structures and improvements on or within 100 feet of the site; prominent visible rock out-cropping; elevations, dimensions, location, extent and slopes of all proposed earth-moving activities shown by contours and/or other means; the area in square feet of the land to be affected; and the quantities of excavation and fill involved.

(B) Water course information. Locations, dimensions and flow of springs, rivers, wetlands, wells and streams; natural drainage depressions, basins and sinks; flood plains on the project site and downstream locations which will undergo changes due to the proposed earth-moving operations; and existing and proposed water quality monitoring stations located on or nearby the project site.

(C) Vegetation information. Location and type of existing trees with a diameter of 12 inches and greater.

(3) Required maps will be prepared and signed by a licensed land surveyor. Grading plans and specifications will

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be prepared and signed by an engineer. Required maps should conform to the latest Zoning Code of Guam's Land Use Plan and subdivision Jaw. The scale shall be no smaller than 1 inch= 50 feet or 1 inch= 5 meters.

(4) An application for a stockpiling permit shall include:

(A) a plot plan showing the property boundaries; easements, setbacks, and location of the proposed stockpiles;

(B) quantities;

(C) height of stockpile;

(D) the kind/source of the material to be stockpiled;

(E) expected life of the stockpile, and

(F) any other information required by the Administrator to control dust, drainage or sedimentation problems.

Where stockpiling is for the purpose of surcharging to stabilize or consolidate an area, the permittee shall submit an engineer's soil report which shall include data on the effect such surcharging will have on adjacent buildings or structures.

(5) Required Plans.

(A) Erosion and Sediment Control Plan; This plan is required for clearing, grading, grubbing, embankment or filling, excavation or other earth-moving operations not otherwise exempted by these regulations.

(B) Storm Water Runoff Drainage System Plan. This plan, in addition to the Erosion and Sediment Control Plan, is required when the area to be graded is more than five thousand (5,000) square feet or a proposed cut or fill is greater than five (5) feet in height.

(C) Both the Erosion and Sediment Control and Storm Water Runoff Drainage Systems Plans shall:

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(i) be prepared and signed by an engineer in accordance with these regulations, and the best management practices (BMP) guidance manual or other application of BMPs; and

(ii) show the method to be used for controlling erosion and disposal of storm water runoff prior to and post construction, including drainage devices such as terraces, berms, ditches culverts, subsurface drains, sedimentation basins, and the estimated runoff quantities of the areas served by each drain and drainage structure.

(D) Environmental Protection Plan will be required depending on the intensity and scope of the project. This plan will describe the methods and equipment to be used on site: expected or anticipated environmental problems during and after construction: and the methods and equipment that may be used to avoid, mitigate or control potential adverse effects on the environment.

(6) When a proposed cut or fill is greater than five (5) feet or the proposed grading is on land with slopes exceeding five percent (5%), or when any fill is to be placed in a gully, or when the fill material will be a highly plastic clay, the applicant shall submit to the Administrator for the Agency's evaluation and review, an engineer's soils report signed by an engineer and approved by the owner. The soils report shall include data regarding the nature of the distribution and engineering characteristics of existing soils, and the subsurface conditions at the site. It shall recommend the limits for the proposed grading, the fill material to be used, the geotechnical calculations for the cut or fill area, and the manner of placing, including the heights and slopes of cut and fill sections.

(7) When an activity or project is located within an environmentally sensitive area (e.g.; areas that affect seashore, rivers and streams, wetlands, critical habitats, and aquifers), an Environmental Impact Assessment (EIA) must

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be submitted, unless the Administrator determines in writing that the activity is exempted from EIA requirements.

(8) If wetlands exist on the property to be cleared and grubbed, graded or used for stockpiling of earth materials, the wetlands must be identified with both field markings and by mapping on the site and/or grading plan(s). Wetlands cannot be cleared, grubbed, graded or otherwise be used as a stockpiling site without first obtaining both a valid Guam Wetland Development Permit and a U.S. Army Corps of Engineers Section 404 fill or discharge permit.

(9) The Administrator may require that wetlands, on the property to be cleared, grubbed or used for stockpiling of earth materials, be officially delineated, in whole or in part, when conditions such as slope, soil stability, proximity of work or other performance related conditions warrant an official delineation. Individuals required to delineate wetlands in accordance with this provision shall apply the mapping requirements of the Guam Environmental Protection Agency Wetlands Mapping Policy, revised November 9,1995.

(10) Other permits, plans or approvals associated with and issued for the proposed project shall be submitted with the permit application. Activities described in the permit application shall be consistent with these permits, plans or approvals. Such documents include, but are not limited to:

(A) Any required conditional use seashore clearance, wetland, Section 401 WQC, Section 404 permits (CWA), and planned development approvals, height variances, plan review use approvals, or rezoning under the Guam Zoning Regulations;

(B) Sub-division approvals, when an application includes the grading of a development that is to be subdivided, pursuant to the Guam Subdivision Rules and Regulations;

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(C) Conditional use approvals from Territorial Land Use Commission, when the area to be graded or excavated will be used as quarry, and extracted materials used to fill a different area or sold as a fill material by the owner.

(d) Permit Conditions.

(1) No permit for earth-moving operations will be issued that will cause erosion and sediment loads or cause pollution to the waters of Guam, as defined by the latest Guam Water Pollution Control Act and the Water Quality Standards, unless an Environmental Protection Plan and an Erosion and Sediment Control Plan have been approved by the Agency.

(2) The Administrator may attach such conditions as may be reasonably necessary to ensure that any grading work is for a use or structure permitted in accordance with zoning requirements, and to prevent creation of a nuisance or hazard to public or private property, health or welfare. Such conditions may include but are not limited to:

(A) improvements of any existing grading to bring it up to the standards of these regulations;

(B) requirements for fencing of excavation or fill to minimize hazards;

(C) requirements for retaining walls or other earth retention structures to prevent loss of, support to, erosion of, and interference with natural drainage patterns on adjacent properties;

(D) requirements involving clean-up of an area; and

(E) limitations on the months, days and hours of permitted work.

(3) The issuance of a grading permit shall constitute an authorization to do only that work which is described in the

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permit and in the plans and specifications approved by the Administrator.

(4) Permits issued under these regulations shall not relieve the permittee of the responsibility for securing permits or approvals for work to be done which is regulated by any federal laws or other laws of Guam, or by department, or division of the governing agencies of the government of Guam.

(5) Permits issued under these regulations shall be consistent with other permits, plans or approvals associated with the proposed project.

(6) Where any operations are delayed for any reason, a revised work schedule shall be submitted to the Administrator which describes any required modifications to the temporary storm water drainage system and to the Erosion and Sediment Control Plan, and other information the Administrator may require.

(7) A copy of the permit, plans and specifications for grading, clearing and grubbing, or stockpiling shall be maintained at the job-site during the progress of the work.

(e) Permit Denials. The Administrator shall deny a clearing and grubbing, grading or stockpiling permit if there is reasonable cause for concern that the work as proposed by the applicant may present a risk or endangerment to public health or the environment. Factors to be considered in determining probability of dangerous conditions include, but are not limited to:

- (1) possible saturation of ground by rain;
- (2) dangerous geological conditions or flood hazards;
- (3) undesirable surface water runoff; and
- (4) subsurface conditions such as the stratification and faulting of rock, nature and type of soil or rock.

§ 10105. Erosion and Sediment Control Plans.

(a) General Requirements.

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(1) All earth-moving activities on Guam shall be conducted in such a way as to prevent accelerated erosion and the resulting sedimentation. To accomplish this all persons engaged in earth-moving activities shall design, implement, and maintain erosion and sediment control measures which effectively prevent accelerated erosion and sedimentation. These erosion and sediment measures must be as set forth in Erosion and Sediment Control Plans submitted, reviewed and approved by GEPA.

(2) All clearing, grading, embankment or filling, excavating and other earth-moving operations shall proceed only in accordance with an Erosion and Sediment Control Plan, prepared in accordance with the requirements set forth in these regulations, and duly approved by the Agency.

(3) An approved Erosion and Sediment Control Plan does not abrogate a permittee's responsibility to comply with all other applicable Guam and federal laws and regulations.

(b) Agency approval of Erosion and Sediment Control Plans.

(1) Four (4) copies of a proposed Erosion and Sediment Control Plan shall be submitted to the Agency with the permit application for earth-moving operations.

(2) The Agency shall have thirty (30) working days to approve or disapprove of such plan.

(c) Compliance.

(1) All clearing, grading, embankment or filling, excavating and other earth-moving operations, except those otherwise exempted from these regulations by the Administrator, must proceed in accordance with a duly approved Erosion and Sediment Control Plan.

(2) Earth-moving operations in progress, other than quarrying, shall comply with these regulations within fifteen (15) calendar days of the effective date of these regulations. Quarrying operations shall comply with these regulations within thirty (30) calendar days of the effective date of these regulations.

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§ 10106. Erosion and Sediment Control Plans and Measures.

(a) General policies for Erosion and Sediment Control.

(1) All earth-moving operations on Guam shall be conducted in a manner that prevents accelerated land erosion, transportation of sediment to and along highways, or siltation of rivers, estuaries and marine waters.

(2) The area affected by earth-moving operations shall be kept to a minimum by either selective clearing, increment phases of development or other effective means. The Erosion and Sediment Control Plan must contain measures that ensure that each phase of any proposed large development affects less than twenty (20) acres.

(3) All earth-moving operations shall be scheduled during periods of expected low rainfall.

(4) Any earth-moving operations authorized under these regulations shall be performed so as not to violate applicable provisions of the latest Guam Water Quality Standards.

(5) No person shall perform any earth-moving operation so as to cause falling rocks, soil or debris in any form to fall, slide or flow onto adjoining properties or waters of Guam.

(6) All work areas shall be maintained so as to minimize dust which may cause a nuisance or hazard to others, and in conformance with the Guam Air Pollution Control Standards and regulations.

(7) Where construction equipment will make frequent crossings of a natural drainage course, plans shall provide for temporary culverts or bridge structures to be installed. The required clearances from concerned agencies shall be obtained before any construction of temporary crossing access begins.

(8) The erosion and sediment control measures set forth in this Section are required, unless the Erosion and Sediment Control Plan shows that the alteration of these measures and

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facilities or inclusion of other measures and facilities will better prevent accelerated erosion and sedimentation.

(b) Required Contents of Erosion and Sediment Control Plans.

(1) Description of the Project. The plan shall include a detailed narrative description, with photographs and construction drawings, of the proposed project.

(2) Project Site Plan.

(A) The necessary information is that which is required in Section 10103.C. Permit Application Contents. Plan sheet size shall not be smaller than eighteen (18) inches x twenty-four (24) inches and not larger than thirty (30) inches x forty-two (42) inches. Plan sheet sizes shall not vary.

(B) Soil description including: soil classification by USDA Natural Resources Conservation Service “Soil Taxonomy Classification System”; soil erodibility factor; soil permeability and percolation rates; type and extent of out-croppings; depth of soil; capability for establishing vegetation; and coefficient of runoff.

(C) Evaluation of subsurface information. Subsurface investigations shall consist of drilling, excavations, or observations of naturally exposed soil and bedrock exposures at sufficient intervals and depths to indicate the type of material or condition to be encountered at final grading. The person or firm making the investigation shall submit a written report of their findings and recommendations. This information is required where the stability will be lessened by proposed grading or filling, where any other weaknesses are found, or where any of the following conditions are discovered or proposed:

(i) At locations where a fill slope is to be placed above or a cut slope;

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(ii) At proposed cuts exceeding fifteen (15) feet in height unless in competent rock as determined by an engineer;

(iii) At locations of proposed fills exceeding fifteen (15) feet in height;

(iv) Where sides of hill fills are to be placed on existing slopes steeper than fifteen percent (15%);

(v) Wherever groundwater from either the grading project or adjoining properties is likely to reduce stability;

(vi) At zones of trapped water or high water table; or

(vii) Where the topography is indicative of landslides, as determined by an engineer.

(D) Site Assessment. Consider the detrimental effects of construction of the site as it pertains to: erosion and loss of sediments; slope stability; water quality; plant communities; wildlife and aquatic life; and condition of marine waters and reef flats which will receive storm water runoff, either directly or indirectly, from the project site.

(3) Grading Plan. It is the purpose of this paragraph to ensure that minimum grading is performed and that natural contours and topography will be retained wherever feasible.

(A) Grading shall be designed and implemented so as to blend in with the surrounding area.

(B) All grading plans and specifications shall show, using contours, cross sections, spot elevations or other means, the condition of the land before and after grading.

(C) The grading plan shall provide information regarding the location and source of imported fill

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material, and the location for disposal of excess excavation material.

(D) Where a grading activity is to occur in increments or phases, the plan shall also include the plan for future site development and the proposed grading of future increments.

(4) Construction Schedule.

(A) Construction increments shall be described in detail and identified on the project plan.

(B) The schedule will indicate completion dates for each construction increment and the construction sequence of erosion and sediment control measures. Each increment phase of work shall have an approved Environmental Protection Plan and Soil Erosion and Sedimentation Control Plan from the Agency.

(C) The Agency shall check the adequacy of the schedule with respect to short term and long term erosion anticipated on the project site. The construction schedule shall be checked to ensure prompt establishment of protective vegetation with full recognition of climatic and other factors that influence its establishment.

(5) Storm water Drainage System and Control of Site Water Runoff.

(A) The proposed temporary and permanent, natural and man-made, storm water drainage systems shall be depicted in detail in the drawing plans, including, but not limited to, dimensions, alignments and elevations of all structures as well as the anticipated volume and velocity of the storm water. Design calculations for the drainage systems and siltation basins, best management practices, and other pertinent structures, shall be submitted. The following shall also be provided:

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(i) The runoff to be expected during and after the proposed development;

(ii) The size of drainage areas above cuts and slopes;

(iii) Estimate soil loss volume;

(iv) The methods for trapping sediments, reducing erosion of drainage ways, and for controlling the collection and discharge of storm water during and after construction.

(v) The method and schedule of construction of waterway crossings. Sediment control structures for natural waterways shall be scheduled for installation prior to any earth-moving operations.

(B) Adequate provisions shall be made to prevent surface waters from damaging the cut face of an excavation or the sloped surfaces of a fill. Positive drainage shall be provided to prevent the accumulation or retention of surface water in pits, gullies, holes or similar depressions. All drainage facilities shall be designed to carry surface water runoff to a storm drain that will discharge to a catchment facility within the project site. The Administrator may require such drainage structures and pipes to be constructed or installed, which in his opinion, are necessary to prevent erosion damage and to adequately carry off surface waters. The flow of any existing and known natural underground drainage shall not be impeded or changed so as to cause damage to adjoining property.

(C) During construction, all storm sewer inlets shall be protected with silt traps.

(D) If a project to be developed is covered under the Federal Storm Water Regulations (40 CFR Parts 122 & 123), a notice of intent to discharge storm water to surface and marine waters of Guam must be submitted to US Environmental Protection Agency and a copy

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furnished GEPA. An NPDES permit which authorizes the discharge must also be secured.

(E) Structural measures such as berms, dikes, traps, basins, shall be installed prior to any other grading, clearing, or disturbance of the existing surface of the site.

(F) Diversion Terraces.

(i) Diversion terraces shall be constructed up-grade of a project area to convey runoff around the project area. For temporary diversions, the channel shall have capacity to convey 1.6 cubic feet per second per acre of land tributary to it. For permanent diversions, the channel shall have capacity to convey 2.75 cubic feet per second per acre of land tributary to it.

(ii) Diversion terraces shall be grassed or lined with erosion resistant material to prevent accelerated erosion within the channel.

(iii) Outlet structures shall be designed to maintain a discharge velocity of less than 2.0 feet per second and all areas affected by the construction activity shall be stabilized before the outlet structures shall be used.

(G) Interceptor Channels.

(i) Interceptor channels may be used within the project area to reduce the velocity of the flow and thus prevent accelerated erosion.

(ii) Water collected by interceptor channels shall be conveyed to sedimentation basins or to vegetated areas but not directly to streams.

(iii) Outlets to vegetated areas shall be designed to maintain an outlet velocity of less than 2.0 feet per second. Outlet structures shall be

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screened to lower the amount of suspended solids in the discharge water.

(H) Channels of Conveyance. All channels used to convey water through a project area shall be designed to have a velocity of less than 1.5 feet per second. Where this is not possible, the channel shall be grassed or lined with erosion resistant material.

(I) Sedimentation Basins.

(i) The basin shall be cleaned when the storage capacity of the basin is reduced to five thousand (5,000) cubic feet per acre of project area tributary to the basin.

(ii) Water from a sedimentation basin shall not be discharged to a natural waterway. Designs of sediment basins must provide for enough storage to give time for runoff water to be leached into the ground.

(iii) Outlets of sedimentation basins shall be screened and designed in a manner which does not discourage regular maintenance.

(iv) Sedimentation basins shall be structurally sound and properly secured to protect them from unauthorized acts of third party activities.

(6) Cut and Fill.

(A) The conditions of the following subsections may be modified by the Administrator based on a supportive engineer's soils report, and receipt of approvals from the owner and concerned agencies:

(i) Height. Where a cut or fill is greater than fifteen (15) feet in height, terraces, or benches shall be constructed at vertical intervals of fifteen (15) feet except where only one bench is required, the single bench shall be constructed at the midpoint. The minimum width of such terraces or benches

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shall be at least eighteen (18) feet and provided with drainage provisions to control erosion on the slope and face and bench surface.

(ii) Cut Slopes. Under the following conditions, no cut may be steeper in slope than the ratio of its horizontal to its vertical distance as shown below:

(aa) 2 horizontal to 1 vertical in unweathered rock or mudrock;

(bb) 2 horizontal to 1 vertical in decomposed rock; or

(cc) 2 horizontal to 1 vertical in soils of low plasticity for cuts of any height in highly plastic soils. The engineer's soils report shall include the recommended slope design, and design calculations necessary to demonstrate slope stability.

(iii) Fill slopes shall not be steeper than the ratio 3 horizontal to 1 vertical except that fill using highly plastic clays shall have slopes specifically recommended in the engineer's soils report signed by a professional civil engineer, and approved by the owner. The engineer's soils report shall include the recommended slope design, and design calculations necessary to demonstrate slope stability.

(aa) Fill material shall be selected to meet the requirements and conditions of the particular fill for which it is to be used. The fill material shall not contain vegetation or organic matter. Where rocks, concrete, or similar materials of greater than eight (8) inches in diameter are incorporated into the fill, they shall be placed in accordance with

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the recommendation of the professional civil engineer.

(bb) Before placing fill or stockpiling, the natural ground surface shall be prepared by removing the vegetation and, shall be notched by a series of benches and/or subsurface drains installed.

(cc) No fill shall be placed over any waters of Guam (e.g.; spring, marsh, wetlands), refuse dumps, or soft, soggy or springy foundations. The plan must highlight possible wetland characteristics on the site and adjacent properties.

(dd) Fill materials shall be spread and compacted in a series of eight (8) inch to 5 ten (10) inch layers, unless otherwise recommended by the professional civil engineer. For slopes, the fill shall be compacted to ninety five percent (95%) maximum density as determined by the most recent ASTM Soil Compaction Test D1557. The engineer's soils report shall include the recommended slope design, and design calculations necessary to demonstrate slope stability.

(ee) Distance from property line. The following requirements may be modified by the Administrator when cuts or fills are supported by retaining walls or when the permittee submits an engineer's soils report stating that the soil conditions will permit a lesser horizontal distance without causing damage or danger to the adjoining property. The engineer's soils report shall include the recommended slope design, and design calculations necessary to demonstrate slope

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stability. The horizontal distance from the top of a cut slope or the bottom of a fill slope to the adjoining property line shall not be less than as follows:

Heights of cut or fill	Distance from property line (in feet)
Zero feet to 4 feet	4
More than 4 feet to 10 feet	6
More than 10 feet to 15 feet	8
More than 15 feet	10

(7) Maintenance Procedures.

(A) A maintenance program for the erosion and sedimentation control structures and facilities shall be established. The program shall include, but not be limited to, a schedule for inspecting the facilities and for removing and disposing of sediment materials from the control structures, or project area, and specific duties of the designated maintenance personnel.

(B) If the original owner has sold the property, the subsequent owner shall be responsible for maintaining the permanent measures that have been installed on the property.

(8) Disposal of Spoil Materials. The information concerning the disposal of spoil materials shall include the following: type of spoil material; location of disposal area; method for processing and disposing of spoil materials; procedures for preventing soil loss to adjacent watercourses; and, if intending to burn spoil materials, burning procedures

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for combustible spoil material. Burning requires a permit from the Guam Fire Department.

(9) Stockpiles. The following information shall be provided: source of stockpile material; location, slope, and height of stockpile; duration that the material is to be stockpiled; provisions to prevent erosion and sediment loss from rain and wind action; plan for removing stockpiles at project completion.

(10) Stabilization of Affected Areas.

(A) Stabilization of slopes, channels, ditches, berms, diversions, silt darns, or any disturbed areas shall begin as soon as possible and no later than thirty (30) calendar days after the final grade or final earth-moving activities has been completed.

(B) Electric power, and telephone trenches are to be stabilized as soon as possible and no later than thirty (30) days after backfill.

(C) Stabilization of stream banks shall be scheduled during periods of expected low rainfall.

(D) Where it is not possible to permanently stabilize a disturbed area immediately after the final earth-moving has been completed or where the activity ceases for more than thirty (30) calendar days, interim or temporary stabilization measures shall promptly be implemented and enforced.

(E) Any disturbed area not paved, sodded or built shall be seeded and mulched with vegetative cover appropriate to the soil type, as recommended by an engineer, or the condition of the area based on soil test analysis done by a laboratory. This condition does not prohibit the use of matting, gabion, armor coating on erodible surfaces or other type of vegetative cover that will minimize erosion.

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(F) All structural sediment control measures are to remain in place until permission for their removal has been obtained from the Agency.

(11) Protection and Removal of Native Vegetation.

(A) In order to protect native vegetation from construction impacts, the following information shall be provided: location and description of native vegetation whose root zone will be affected by compaction, fills, trenches, and changes in the groundwater table; measures which will prevent conditions damaging to vegetation; and criteria used to determine removal;

(B) Whenever feasible, natural vegetation should be retained. If their removal is necessitated, they shall not be stored or deposited along banks of streams, rivers or natural water courses after being uprooted, or displaced from the ground by excavation, clearing or grubbing. Removed vegetation shall be disposed of at a disposal site approved by the Administrator, and removed from the site within a reasonable time, not to exceed one (1) month from date of removal.

(12) Establishment of Vegetation.

(A) Where the establishment of vegetation is required on slopes of cut and fill, graded areas, and watercourses, etc., the following information shall be provided:

- (i) Location and areas to be vegetated;
- (ii) An indication of whether vegetation is to be temporary or permanent;
- (iii) Type and quantity of seeds or plants;
- (iv) Ground conditions, including: soil surface condition, pH, permeability, size distribution, slope angle, slope length, and aspect, nutrients;
- (v) Type and quantity of mulch;

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- (vi) Type and quantity of fertilizer;
- (vii) Method and schedule of seeding, mulching, planting, and fertilizing;
- (viii) Irrigation schedule.

(B) The plan shall provide for the revisiting of the location every three (3) months to verify that vegetation has been successfully established. If not successful the site must be revegetated until the area is successfully revegetated.

(13) Certification. The Plan shall be stamped and signed an engineer.

§ 10107. Special Requirements.

(a) Protection of adjoining properties. Any person performing or causing to be performed any excavation or fill shall, at his own expense, provide the necessary means to prevent the movement of earth to the adjoining properties, and to maintain the existing natural grade of adjoining properties.

(b) Protection of public utilities. Any person performing or causing to be performed any excavation or fill shall be responsible for the maintenance or restoration of street pavements, sidewalks and curbs, and improvements of public utilities which may be affected. Such maintenance shall be in accordance with the requirements of the Department of Public Works, Government of Guam agencies and affected public utilities. At cuts fronting any street, a suitable and adequate barrier shall be installed to provide protection to the public.

(c) Removal of silt or other debris. Any person depositing or causing to be deposited, any silt or debris in ditches, water courses, drainage facilities, and public roadways, shall remove such silt or other debris. In case such person shall fail, neglect or refuse to comply with the provisions of this Section within forty-eight (48) hours after written notice served upon him, either by mail or by personal service, the Administrator may proceed to remove the silt and other debris or to take any other action he

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deems appropriate. The costs incurred for any action taken by the Administrator shall be payable by such person.

(d) Safety precautions. At any stage of the grading, grubbing, or stockpiling, if the Administrator finds that further work as authorized by an existing permit is likely to create soil erosion problems or to endanger life, limb or property, he may require safety precautions. These precautions may include but are not limited to: flattening exposed slopes; constructing additional silting or sediment basins, providing drainage facilities or benches; removing rocks, boulders, debris and other dangerous objects which, if dislodged, are likely to cause injury or damage; or constructing fences or other suitable protective barriers.

(e) Creation of individual building sites. Hillside lots shall be graded in such a manner that any parcels which may be created, including all separate building sites which may be contained within said parcels, can be satisfactorily graded and developed as individual building sites.

(f) Protection of Sink Holes. Earth-moving operations shall not be performed in sink holes or in such close proximity as to threaten their viability, function or the conveyance of surface water into such features unless specifically authorized by the administrator. In the event a developer proposes to modify or use a sinkhole, an environmental and hydrogeologic assessment must be performed to ensure adverse effects will not result, including but not limited to the displacement of groundwater, interference with well production, significant changes to groundwater recharge, flooding, or the threat or introduction of any pollutant to groundwater, regardless of zone or category.

§ 10108. Project Completion.

(a) Products to be submitted.

(1) As-built/graded plan, prepared by an engineer or land surveyor, upon completion of an earth-moving operation covering an area of greater than one (1) acre;

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(2) Soils report, when earth-moving operations involve cuts or fills for which an engineer's soils report is required. The report shall contain:

(A) A description of materials used in the fill and its moisture content at the time of compaction;

(B) The procedures used in depositing and compacting the fill;

(3) A description of the preparation of the original ground surface before making the fill, but not limited to benching and subsurface drainage;

(4) A plan or tabulation showing the general location and elevation of compaction tests made in the fill together with a tabulation of relative compaction densities obtained at each location, the location of sub-drains, and other pertinent features of the fill necessary for its stability; and

(5) Certification that the work was done in conformity with these regulations, the approved plans and specifications, and the engineer's soils report.

(b) Final inspection and approval. The permittee or his agent shall notify the Administrator or his representative when the earth-moving operation is ready for final inspection. Final approval shall not be given until all approved work has been completed. Final approval shall be dependent on installation of all drainage structures and their protective devices, establishment of a healthy vegetation growth in conformance with the approved plans and specifications, and submittal of any required reports.

§ 10109. Permit Fees.

(a) Applicability. All applicants (e.g.; private individuals, federal agencies, and government of Guam agencies or departments, including autonomous and semi-autonomous agencies) for earth-moving operations permits, shall pay required permit fees.

(b) Grading permits.

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(1) Before issuing a grading permit clearance, the Administrator shall collect site grading plan review fees based on the volume of excavation or fill measured in place according to the following schedules:

TABLE A - GRADING PLAN REVIEW FEES

50 cubic yards or less	No Fee
51 to 100 cubic yards	\$15.00
1 to 1,000 cubic yards	\$22.50
1,001 to 10,000 cubic yards	\$30.00
10,001 to 100,000 cubic yards	\$30.00 for the first 10,000 cubic yards, plus \$15.00 for each additional 10,000 cubic yards or fraction thereof.
100,001 to 200,000 cubic yards	\$165.00 for the first 100,000 cubic yards, plus 9.00 for each additional 10,000 cubic yards or fraction thereof.
200,001 cubic yards or more	\$225.00 for the first 200,000 cubic yards, \$4.50 for each additional 10,000 cubic yards or fraction thereof.

(2) The fee for a grading permit authorizing additional work to that under a valid permit shall be the difference between the fee paid for the original permit and the fee shown for the entire project.

(c) Fees for additional plan reviews. Additional plan reviews required for any changes, additions or revisions to approved plans are Thirty Dollars (\$30.00) per hour, or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include

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those associated with supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

(d) Clearing and grubbing permits. Before issuing a clearing and grubbing permit clearance, the Administrator shall collect a clearance fee of Twenty Dollars (\$20.00) for clearing and grubbing areas greater than fifteen thousand (15,000) square feet plus Two Dollars (\$2.00) per each additional one thousand (1,000) square feet or fraction thereof. No fee shall be charged for clearing and grubbing less than fifteen thousand (15,000) square feet.

(e) Stockpiling permits. Before issuing a stockpiling permit clearance, the Administrator shall collect a permit clearance fee of Seven Dollars and fifty cents (\$7.50) for stockpiling in excess of the one hundred (100) cubic yards, plus One Dollar and fifty cents (\$1.50) for each additional one hundred (100) cubic yards or fraction thereof.

(f) Work occurring without a permit. Where work for which a permit is required by these regulations has commenced or has been accomplished without a permit, a permit shall be obtained, and two times the fees specified above shall be assessed, provided that such work complies with or may be made to comply with the requirements of these regulations. If the grading/clearing/stockpiling/grubbing work accomplished or commenced cannot be made to comply with the provisions of these regulations, the person or persons responsible for the initiation or accomplishment of such grading work shall restore the land to its original condition and shall obtain a certificate of completion thereof from the Administrator. Notwithstanding the above, the person or persons responsible for such grading/clearing/grubbing/stockpiling shall be deemed to have violated the provisions of these regulations by performing such activity(ies) without a permit.

(g) Water Protection Fund.

(1) All permit fees, monetary charges, fines, and penalties assessed, collected or received by GEPA pursuant to this regulation and other regulations promulgated under the Water Pollution Control Act, as well as contributions and

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assets made for the purpose of improving water quality or preventing water pollution shall be deposited into the Water Protection Fund.

(2) The Water Protection Fund shall be established as a non-lapsing, revolving fund, separate and apart from any other funds of the Government of Guam, and shall be administered by the Administrator. The Administrator shall submit a proposed budget for the upcoming fiscal year to the Board of Directors of the Guam Environmental Protection Agency, which shall include how such funds are being used in the implementation of this Chapter.

(3) Independent records and accounts shall be maintained in connection therewith. The funds shall be used for the administration and implementation and enforcement of the Water Pollution Control Act and regulations promulgated from said Act, for educational programs and grants for research and development, advertisement promotions, and inspections of facilities to prevent or minimize erosion that contributes to pollution of the waters. All monies in the Water Protection Fund are hereby appropriated, and shall continue to be deemed appropriated, to the Guam Environmental Protection Agency (GEPA) to be expended in accordance with this Chapter. The Water Protection Fund shall not be subject to the transfer authority of *I Maga'hågan Guåhan*.

SOURCE: Adopted pursuant to P.L. 25-152:2 (July 10, 2000), effective Oct. 1, 2000. Subsection (g) amended by P.L. 36-075:5 (Feb. 9, 2022).

§ 10110. Permit Expiration.

(a) Grading, clearing and grubbing and stockpiling permits. All grading, clearing and grubbing or stockpiling permits shall expire and become null and void under the following circumstances:

(1) If permitted work is not started within one hundred eighty (180) calendar days after the date of issuance of the permit; or

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(2) If work is suspended or abandoned any time after the work is commenced for a minimum period of sixty (60) days; or

(3) If work is continued without interruption for one (1) year, beginning with the date of issuance of the permit, or is completed within the time frame provided in the approved permit application, whichever comes first.

(b) Stockpiling permits. Every stockpiling permit shall expire and become null and void one (1) year after the date of issuance. Prior to the expiration of the stockpile permit, all stockpiled material temporarily stored on the premises shall be removed from the premises or used on the premises as fill material under a grading permit for fill.

(c) Permit expiration. Once a permit has expired, the owner/applicant shall pay the required fees and obtain a new permit pursuant to these regulations, before beginning new work. If the owner begins work without obtaining a new permit, the owner shall pay the necessary penalty fees pursuant to these regulations.

§ 10111. Stop Work Order.

(a) Unacceptable Conditions. Whenever the Administrator determines that any permitted clearing and grubbing, grading, or stockpiling is or may become unstable or dangerous, endangers property, adversely affects the safety, use, or stability of a public way or drainage channel, or results in a violation of the Guam Water Quality Standards, the owner of the property, or other person or agent in control of the property, on receipt of notice in writing from the Administrator, shall abate the danger, implement necessary corrective measures, and shall conform with the requirements of these regulations. The administrator, or his authorized representative, shall have the authority to enter the property and investigate, and enforce the provisions of this Section. A hearing will be held as required under 10 GCA Section 47109.

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(b) Stop Work Order Procedures. If the Administrator determines that the work must stop due to unstable or dangerous conditions, the Administrator shall issue a stop work order to the owner/contractor of the property and transmit a copy of the order to the Department of Public Works Building Permit Section. Both GEPA and the Department of Public Works shall jointly enforce the stop work order.

(c) Work Occurring Without a Permit. Notwithstanding the above, if an earth-moving operation is occurring without a valid permit the Agency can order the operation to immediately cease and either require the violator to obtain an after the fact permit, or if the operation cannot be permitted, to have the violator take corrective measures to return the land to its previous condition.

§ 10112. Suspension or Revocation of Permit.

(a) Criteria for Suspending or Revoking Permits. The Administrator shall, in writing, suspend or revoke a permit issued under the provisions of these regulations whenever: the permit has been issued on the basis of incorrect information supplied by the permittee; existing site conditions are found not to be in accordance with the terms and conditions of the permit; it is determined that the permittee has not complied with a provision of any other applicable law, ordinance rule or regulation of Guam; the clearing and grubbing, grading or stockpiling discloses conditions that are objectionable or unsafe; or an immediate danger exists in a downstream/adjacent area.

(b) Process for Recommencing Work. When a permit has been suspended the permittee may submit details and proposals for compliance with the provisions of these regulations, and any other applicable laws, rules or regulations of Guam. Upon approval of such plans and proposals by the Administrator, the Administrator shall authorize the permittee, in writing, to proceed with the work.

(c) Non-Compliance. Non-compliance with the correction notice or stop work order issued for the construction of the sediment and erosion control practices, and/or the construction of

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storm water management facilities may result in the revocation of the issued permit.

§ 10113. Inspections.

Access to the site. Each permit issued under these regulations shall be deemed to include the right of the Administrator or his authorized representative to enter at reasonable time upon any property to inspect the clearing and grubbing, grading, or stockpiling operations. Such inspections may take place before, during and after any earth change activity for which a permit has been issued to ensure that control measures are properly installed or performed and maintained at the expense of the applicant.

§ 10114. Enforcement.

(a) Corrective Measures. If the Agency determines that a person is conducting operations which are causing or are likely to cause pollution, the Administrator may order the owner or operation to take corrective measures needed to prevent or cease the pollution.

(b) Stop Work Order. If the operation is causing or is likely to cause alteration of physical, chemical, or biological properties to the waters of Guam, resulting from sediment, deposition presenting an imminent and substantial danger to the public health, safety or welfare, or the health of animals, fish or aquatic life, to a public water supply or to other reasonable uses of water, the Administrator can issue an order requiring the cessation of relevant activities and implementation of corrective measures. In emergency situation, any order issued by the Administrator shall become final no later than twenty-four (24) hours after the date of the notice and order served.

(c) Voluntary Compliance. Nothing in these regulations shall prevent the Agency from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

(d) Permit Violations. Whenever the Agency has reason to believe that a violation of any Section of these regulations has occurred, it shall cause written notice to be served upon the

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alleged violator or violators. The notice shall specify the provision of these regulations alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a specified time. Any such order shall become final unless, no later than fifteen (15) days after the date of the notice and order served, the person or persons named therein request in writing a hearing before the Agency. Upon such a request, the Agency shall hold a hearing. In lieu of an order, the Agency shall require that the alleged violator or violators appear before the Agency for a time and place specified in the notice and answer the charges complained of, or the Agency may initiate action pursuant to Section 10114 of these regulations.

(e) Corrective Actions from Hearing. If, after a hearing is held pursuant to this Section, the Agency finds that a violation or violations have occurred, it shall affirm or modify the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the erosion or sedimentation involved or for the taking of such other corrective action as may be appropriate. If, after hearing on an order contained in a notice, the Agency finds that no violation has occurred or is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling soil erosion.

(f) Court Appeal. No later than fifteen (15) days after the issuance of the final order of the Agency, an appeal to the Superior Court of Guam may be made against any decision of the Agency by any person who is or may be adversely affected thereby.

(g) Corporate Liability.

(1) A corporation may be found liable or convicted for

(A) any violation or offense committed in furtherance of its affairs on the basis of conduct performed, authorized, requested, commanded or recklessly tolerated by

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- (i) the board of directors;
 - (ii) a managerial agent acting in the scope of his employment; or
 - (iii) any other person for whose conduct the statute defining the violation or offense provides responsibility;
- (B) failure to perform a duty imposed by law;
- (C) any 3 violation or offense committed by an agent of the corporation acting in the scope of his employment in furtherance of its affairs.

(2) As used in this Section, managerial agent means an agent of the corporation having duties of such responsibility that his conduct may fairly be found to represent the policy of the corporation.

(h) Emergency Procedures.

(1) Any other provisions of law to the contrary notwithstanding, if the Administrator finds that a generalized condition of pollution exists, and that it creates an emergency requiring immediate action to protect the intended uses of the water as designated in the Standards of Water Quality for Waters of Guam, or to protect human health or safety, the Administrator, with the concurrence of *I Maga'lahi*, shall order persons causing or contributing to the pollution to reduce or discontinue immediately the pollutants, and such order shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the Agency. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the Agency shall affirm, modify or set aside the order of the Administrator.

(2) In the absence of a generalized condition of pollution of the type referred to in Subsection (1), but if the Administrator finds that pollutants from the operation of one or more polluting sources is causing imminent danger to the intended uses of the water as designated in the Standards of

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Water Quality for Waters of Guam or is causing imminent danger to human health or safety, he may order the person or persons responsible for the operation or operations in question to reduce or discontinue pollutants immediately, without regard to the provision of Subsection (a) of § 47109, Chapter 47, 10 GCA of this Act. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in Subsection (1) of this Section apply.

§ 10115. Penalties, Liability, and Severability Clause.

(a) Penalties.

(1) Field Citations. Any person violating the Water Pollution Control Act or these regulations may be served by the officer or inspector with a pollution citation.

(A) Water Pollution citation violations shall be settled by amount of no less than One Hundred Fifty Dollars (\$150.00) per violation and not more than Three Thousand Dollars (\$3,000.00) per violation.

(B) Cost to take corrective action and community service in lieu of all or a portion of the fine may be accepted by the Board. The Agency will establish a scale amount to assist in determining the penalty amount for settlement.

(C) The Board must hold a public hearing to establish and notify the public of the monetary citation fines under this subsection before fines can be imposed.

(D) The citation will provide that the violator can request a hearing with the Guam Environmental Protection Agency Board of Directors (the “Board”).

(E) The Board can impose a fine up to Three Thousand Dollars (\$3,000.00) per violation noted in the citation. Costs of corrective action and community service in lieu of all or a portion of the fine may be accepted by the Board.

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(F) Fines imposed and collected under this Section will be deposited into the Water Protection Fund. Judicial review may be had of any Board decision by any party affected adversely by it.

(G) If the Board decision is not in accordance with law or not supported by substantial evidence, the Court shall remand the Board to take action according to law or the evidence.

(2) Administrative. Whenever on the basis of any information available the Administrator reasonably determines that any person has violated the provisions of these rules and regulations or a lawful order, or has violated any permit condition or limitation, the Administrator may assess a civil penalty that may not exceed Ten Thousand Dollars (\$10,000.00) per day per violation that the violation continues.

(A) Before issuing an order assessing a civil penalty, the Administrator shall give to the person to be assessed such penalty, written notice of the Administrator's proposal to issue such order and the opportunity to request, within thirty (30) days of the date the notice is received by such person, a hearing on the proposed order. Hearing will be conducted as provided under the Administrative Adjudication Law (AAL). In lieu of an order, the Agency may require that alleged violator or violators appear before the Agency for a hearing at a time and place specified in the notice and answer the charges complained of, or the Agency may initiate action pursuant to Section 10114 of these regulations.

(i) If, after a hearing held pursuant to the AAL, the Board finds that a violation or violations have occurred, it shall affirm or modify the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the pollution or discharges involved or for the

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taking of such other correction action as may be appropriate.

(ii) If, after hearing on an order contained in a notice, the Board finds that no violation has occurred or is occurring, it shall rescind the order.

(iii) Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease may prescribe timetables for the necessary action in preventing, abating or controlling the pollution or discharge.

(B) In determining the amount of any penalty assessed, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings if any resulting from the violation, and such other matters as justice may require.

(C) If any person fails to pay an assessment of a civil penalty after the order making the assessment has become final, or after a Court in an action has entered a final judgment in favor of the Administrator, the Administrator shall request the Attorney General to bring a civil action to recover the amount assessed. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(D) The Administrator may settle, modify or release, with or without conditions, any administrative penalty which may be imposed under this Section.

(b) Liability. The provisions of these regulations shall not be construed to relieve or alleviate the liability of any person for damages resulting from performing, or causing to be performed, by grading, grubbing or stock-piling operation. The government

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of Guam, GEPA, its officers and employees shall be free from any liability, cost or damage which may accrue from any grading, grubbing or stockpiling or any work connected therewith, authorized by these regulations.

(c) Severability Clause. If any provisions of these rules, or its application to any person or circumstances, is held invalid, the application of such provision to other persons or circumstances, and the remainder of these rules, shall not be affected thereby.

SOURCE: Adopted pursuant to P.L. 25-152:2 (July 10, 2000), effective Oct. 1, 2000. Subsection designations altered/added pursuant to the authority granted by 1 GCA § 1606. Subsection (a)(2) amended by P.L. 36-060:1 (Oct. 18, 2021).
