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as Federal Receiver for the Guam Solid Waste Authority

**IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM**

UNITED STATES OF AMERICA

Plaintiff,

v.

GOVERNMENT OF GUAM

Defendant.

Civil Case No. 02-00022

**SPECIAL REPORT OF THE
RECEIVER PURSUANT TO ORDER
DATED AUGUST 28, 2019**

This Special Report is submitted in response to the Court's Order dated October 4, 2019 In response to the Court's Order dated August 28, 2019 (ECF No. 1883), requiring the Receiver to provide an update on the following matters: (1) the status of the post-closure of the Ordot Dump, including work related to the three projects discussed in the U.S. EPA's Status Report filed on July 16, 2019; (2) the status of the draft Trust Agreement, and, if the Receiver's negotiation efforts with a prospective trustee; (3) the status of negotiations with an independent engineer who will provide Guam EPA with the technical expertise necessary to review and approve invoices post-Receivership; (4) the award of the contract for construction of Cell 3 and the negotiation for construction management services with GHD, Inc.; and (5) the status of the Ordot Dump Post-Closure Account. The Receiver will address these matters *seriatim*.

1. Status of Post-Closure of the Ordot Dump and Related Projects.

The Court authorized the Receiver to oversee and administer all post-closure work related to the Ordot Dump. The Receiver was also tasked with paying for such services to complete the post-closure work. (ECF No. 1883 at 1.)

A. Soil Vapor Extraction System

As the Court is well aware, a landfill gas collection system was placed into the Ordot Post Closure Facility. This system collects the methane gas, which is a natural by-product of decomposing organic matter, generated from material buried in the closed Ordot Dump. Landfill gas is made up of roughly fifty percent methane and fifty percent carbon dioxide. According to the U.S. EPA, landfills without a gas collection system “are the third largest source of human-related methane emissions in the United States....”¹ Emission of this gas is harmful to the environment and the Court ordered the Receiver to implement a plan approved by U.S. EPA that included a landfill gas collection system to keep such emission of harmful gas from being released into the environment.

Federal EPA regulations require facilities which emit methane levels exceeding 5% at the facility boundary to mitigate the methane emissions. A Soil Vapor Extraction (SVE) System was constructed at the perimeter of the Ordot Dump which has been operating since 2018 to remediate the methane emissions. It was discovered that water in the SVE wells was obstructing the efficient collection of methane gas, and in response, the Receiver implemented a dewatering mitigation plan. As noted in the United States’ Status Report filed July 16, 2019 (ECF No. 1887), the Receiver would monitor and evaluate the effectiveness of the dewatering plan through July 31, 2019, and would propose corrective action, if needed, to improve performance. *Id* at 2. Based on these evaluations, the Receiver determined that the dewatering plan was not consistently effective. Therefore, in early August 2019, the Receiver issued a change order to IAN Construction, the original contractor, to provide corrective measures to include the installation of

¹ <https://www.epa.gov/lmop/basic-information-about-landfill-gas>

additional sumps and corrective measures to restore the pipe slopes. The corrective work is near completion and the system is anticipated to be in operation by the end of October this year.

Previously, the U.S. EPA and the Receiver identified problems with the operation of the landfill gas control system under the Ordot Dump's closure cap. This was noted in the United States' Status Report as well. (ECF No. 1887 at 2). These were actually inconsistencies in the actual operations relative to the Operations & Maintenance Plan for the landfill gas control system, which has since been addressed and revisions to the operating plan will be made and included in the Post Closure Plan.

B. Leachate Management

For decades, the leachate discharge from the Ordot Dump, which contains chemicals and harmful constituents from the accumulated trash, had been allowed to pollute the Lonfit River. The environmental closing of the Ordot Dump included a leachate collection system that captures this fluid and delivers it to a waste treatment plant via a sewer system.

The three storms in 2017 and 2018 caused discharges of leachate to the Ordot storm water ponds. In response to these leachate overflows, the U.S. EPA required a root cause analysis and evaluation of leachate management design capacity. The Receiver conducted the root cause analysis and evaluation of the leachate management design capacity, based on existing available information, and submitted this report on March 23, 2019 to U.S. EPA. U.S. EPA requested additional data from the Receiver and an expanded leachate monitoring program was initiated in August 2019 to collect crucial data to help determine root cause of overflows, including data on two recent storm events which were analyzed and discussed with EPA experts.

The goal of this effort is to determine if the leachate system, as designed, is capable of managing higher leachate flows, determine source of flows and quality of flows, and, if practicable, complete the root cause analysis and evaluation of leachate management design capacity before the end of the Receivership. If this is not practicable, the Receiver will propose a step-by-step process for completing data collection, for evaluating leachate management design capacity, and for developing and evaluating options if design capacity is not adequate. U.S. EPA

also directed that the Receiver:

- Continue collection of leachate data, including at least two storm events;
- Prepare a root cause report and/or path forward if data inadequate
- Prepare a path forward report/discussion to evaluate leachate management design

capacity, and to develop and evaluate options for remediation.

This information will allow the Receiver to complete its assessment of the adequacy of the leachate management system, and to evaluate whether additional work is required. The Receiver is also preparing a Storm Water Pollution Prevention Plan needed for a general storm water permit application, which will be submitted in October 2019, and anticipates receiving a permit from U.S. EPA in that same month.

C. Groundwater Monitoring

Groundwater monitoring at the Ordot Dump is required by both Guam EPA and U.S. EPA regulations to ensure that leachate from the Dump is not migrating off site. In the on-going process to develop this work, U.S. EPA provided comments to the Receiver identifying data gaps, changes required for the Sampling and Analysis Plan (“SAP”), and requirements for the submission of an updated Conceptual Site Model (CSM) for review. Sufficient data and an adequate SAP and CSM are required to enable the Receiver’s contractor to conduct the statistical analysis needed to select background wells, determine the quality of background groundwater, and establish monitoring locations and standards for groundwater protection. By mid-August 2019, the Receiver had completed all but a small portion of results that were being held up by a nationwide backup on radio-nuclides analytes. These were completed in early September 2019 and a complete data set was submitted on September 11, 2019 with the minimum necessary groundwater monitoring data as required by U.S. EPA, and a preliminary validation of the data was completed by the end of September 2019. Based on a revised SAP and an updated CSM, we will then validate the data according to the SAP, perform the required statistical analysis, and propose a compliant groundwater monitoring program.

The current status of the project is:

- Comprehensive SAP is being developed; additional data validation for data quality objectives will be required to ensure data useable for Ground Water Management program
- Updated CSM being completed; agreement in principle on background well locations and determining background concentrations
- Permit, drill, construct, develop and sample four new groundwater monitoring wells prior to the end of the Receivership, as required by U.S. EPA, to provide additional monitoring data
- Statistical analysis to determine background concentrations submitted September 30, 2019 for U.S. EPA review
- Statistical analysis to determine if downgradient wells exceed background concentrations submitted September 30, 2019 for U.S. EPA review
- GW protection standards are being proposed for analytes that exceed background concentrations submitted September 27, 2019 for U.S. EPA review
- Statistical analysis to determine if analytes exceed Ground Water protection standards submitted September 30, 2019 for U.S. EPA review

Once the above information is collected and reviewed and accepted, a Ground Water Management program, including assessment of need for installation of additional downgradient Ground Water Management compliance well will be submitted to Guam EPA and U.S. EPA.

2. Status of Trust Agreement.

To meet the federal regulations regarding financial assurances for post-closure at the Ordot Dump, the Court approved a financial plan that will include replacing the Receiver's role in the care of the Ordot facility. This plan calls for replacing the Receiver with a RCRA compliant trustee ("RCRA Trustee") which will manage the funds and pay the expenses to keep the Ordot facility compliant with all environmental regulations, and be accountable to the Court. Since the Trustee will inevitably be a fiduciary and not an environmental specialist, an

Independent Engineer, with the necessary expertise, has been procured to monitor the work of the current operator at the Ordot facility and to provide a third-party evaluation of the operator's work and review of the operator's invoices. Once the RCRA Trustee is in place, Guam EPA will manage the Independent Engineer and approve all invoices before sending them to the RCRA Trustee to be paid.

The United States provided a draft RCRA trust agreement to the Government of Guam on May 1, 2019, for review and comment. (ECF 1881).² The Government of Guam responded on August 21, 2019 that it did "...not see any problems with the draft trustee agreement at this time. You can go ahead and proceed to finalize it."

The Receiver recommended minor changes to the document and provided a revised draft to the DOJ and U.S. EPA on September 6, 2019. The Receiver hopes to finalize the RCRA Trust before the October 11, 2019 hearing.

After the RCRA Trust is in final form, the Receiver will solicit proposals from local and off-island banks. U.S. EPA has provided a list of financial institutions that serve or have served as Trustee RCRA trust agreements.³

3. Independent Engineer.

The Court ordered the Receiver to negotiate and directly contract with the Independent Engineer. *See* 6/11/19 Order (ECF 1883 at 2) On August 16, 2019 the Receiver executed a contract with EA Engineering, Science, and Technology, Inc., PBC (EA) for the Independent Engineer scope of services. The contract language relative to the compensation amount and terms were reviewed and accepted by both the Government of Guam and the US DOJ. The contract amount over the initial contract period of five (5) years is \$488,365.50. There shall be

² The executed contract between the Independent Engineer and Receiver may be reviewed and downloaded from <http://www.guamsolidwastereceiver.org/pdf/Ordot-Independent-Engineer-Contract-Fully-Executed-with-Attachments.pdf>

³ The list of off-island banks are: US Bank, The Bank of New York, Borel Bank, City National Bank, Wells Fargo Bank, West America Bank, and Union Bank of California.

two separate options to extend the contract term for two additional 2-year periods, but not to exceed a total of four (4) additional years. An assignment agreement has been drafted to assign this agreement to Guam EPA upon the conclusion of the Receivership in accordance with Order dated June 6, 2019.⁴ (ECF 1883)

The Court previously ordered the Receiver to pay for any required services from consultants and contractors performing work associated with the post-closure of the Ordot Dump. *Id.* at 1. Furthermore, after the receivership, Guam EPA “will be responsible for reviewing and approving invoices related to post-closure care of the Ordot Dump and for directing the trustee to pay approved invoices.” *Id.* at 2. Consistent with the Court’s 6/11/19 Order, post-receivership, Guam EPA will review the invoices of consultants, including the invoices of the Independent Engineer, and direct the Trustee to pay these invoices. *Id.*

The Receiver requests an order confirming Guam EPA’s responsibilities to review and approve the Independent Engineer’s invoices, and to direct the trustee to pay such invoices.

4. Award of Cell 3 Layon Landfill Construction Contract.

As stated in the Court’s Order of June 11, 2019 (ECF No. 1883), the Court and the parties agreed that the construction of Cell 3 at the Layon Landfill is a time-sensitive project. On July 15, 2019, GovGuam reported to the court that General Obligation Bonds were to be priced July 16, 2019 to finance the construction. *See* ECF 1886. On the same day the Receiver went forward with the issuance of the Notice of Award to contract to Core Tech International Corp. (CTI) and initiated review of the contract for final contract negotiations.

On September 3, 2019, the contract was signed by the Receiver and CTI, and on the following day, the Receiver issued the Notice to Proceed (NTP) *on or before Oct 1, 2019* with a 638-calendar day contract period from NTP. Following the issuance of the NTP, the Receiver scheduled a construction kick-off meeting held on September 27, 2019, which was attended by

⁴ Contract between the Independent Engineer and the Receiver can be found at <http://www.guamsolidwastereceiver.org/pdf/Ordot-Independent-Engineer-Contract-Fully-Executed-with-Attachments.pdf>

the GSWA representatives, CTI, and GHD, the construction manager. The kick-off meeting is the first meeting of the project team and GSWA, which is to establish the coordination and communication necessary to carry out the planning and construction activities under the approved schedule that will meet the contract period deadlines for the completion of all work contemplated under the contract.

The Receiver has drafted the assignment agreement which would facilitate the assignment and transfer of control of the CTI contract from the Receiver to GSWA's control. The assignment is being reviewed by GSWA and CTI. It is anticipated the assignment will be executed in the next two weeks pending final comments.

The Department of Public Works issued its construction permit on September 26, 2019, and aside from getting temporary stockpile permits from GEPA, the contractor has the necessary permits to proceed with work activities.⁵

The final Contract price for the construction of Cell 3 is \$27,210,579.57.⁶ As we have done in the past, the day-to-day oversight of the construction of Cell 3 will be performed by a construction manager. GHD, as the construction manager, will provide construction management services which include, but are not limited to: daily inspection, quality control, schedule management, and administrative control of construction activities with contractual/design oversight support. The Receiver entered into negotiations with GHD to perform these tasks while consulting with GSWA. The Receiver reviewed and negotiated a construction management Task Order (Task Order No. 2019-33) with GHD for the construction management of Cell 3, and had G HD sign and provide it to GSWA on June 11, 2019. GSWA signed the GHD Task Order for the construction management services on September 13, 2019. (ECF 1883 at 3)

⁵ The building permit issued by the Department of Public Works can be found at <http://www.guamsolidwastereceiver.org/pdf/Building-Permit-B18000931.pdf>

⁶ Contract between the builder of cell 3 and the Receiver can be found at www.guamsolidwastereceiver.org/pdf/Layon-Cell-3-Contract-Fully-Executed.pdf

5. Post-Closure Care Cost Estimate and Status of Funding of Post-Closure Account.

A cost estimate is required and needed to secure initial funds for 30 years of post-closure care and to enable the successor agency to update future cost estimates. The cost estimate for purposes of initially funding trust fund was established with the concurrence of U.S. EPA and provided to the Court. (ECF 1668 at 9-16 & 1880 at 2) This cost estimate is not expected to change for purposes of initially funding the trust fund.

The current status is this cost estimate will be updated to include underlying assumptions to enable GovGuam to properly update the next required cost estimate during the post-closure care period. That update will include updated costs for the independent engineer, the independent trustee, the operation of the SVE system, any revisions to the leachate control system, and the revised groundwater monitoring program.

The Ordot Dump Post-Closure Account continues to be held at the Bank of Guam (BOG) and remains under the control of the Receiver. Deposits to the account by GSWA have been made regularly for the agreed upon monthly amounts. A summary of the transactions from April through August 2019 are summarized in the table below.

BOG Statement Date	Previous Balance (\$)	Deposits/Credits (\$)	Withdrawals/Debits (\$)	Interest Paid (\$)	Current Balance (\$)
4/30/2019	6,275,139.34	166,667.00	205,700.60	652.34	6,236,757.75
5/31/2019	6,236,757.75	166,667.00	0.00	678.66	6,404,103.41
6/30/2019	6,404,103.41	166,667.00	70,892.24	669.63	6,500,647.80
7/31/2019	6,500,647.80	166,667.00	0.00	705.53	6,667,920.33
8/31/2019	6,667,920.33	166,667.00	172,050.75	716.81	6,663,253.39
9/30/2019	6,663,253.39	166,667.00	990,576.77	666.65	5,840,010.27

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The following table provides a listing of the withdrawals made from the Ordot Post Closure Reserve account from April 1, 2019 through September 30, 2019:

Statement Date	Withdrawals/Debits (\$)	Company Name	Requisition Amounts	Payment Date
4/30/2019	205,700.60	EA Science and Technology	\$13,252.06	4/10/2019
		Brown and Caldwell Constructors	\$192,448.54	4/25/2019
5/31/2019	0	N/A	N/A	N/A
6/30/2019	70,892.24	Guam Waterworks Authority	\$62,288.52	6/18/2019
		GHD	\$8,591.22	6/18/2019
7/31/2019	0	N/A	N/A	N/A
8/31/2019	172,050.75	EA Science and Technology	\$9,276.48	20-Aug-19
		Brown and Caldwell	\$161,011.79	20-Aug-19
		GHD	\$1,762.48	20-Aug-19
9/30/2019	990,576.77	Brown and Caldwell Constructors	\$219,722.15	10-Sep-19
		Brown and Caldwell Constructors	\$604,857.58	23-Sep-18
		Brown and Caldwell	\$165,033.99	26-Sep-18
		EA Science and Technology	\$963.05	26-Sep-18

Respectfully submitted this 4th day of October, 2019.

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/s/ Joyce C.H. Tang

By: _____

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