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

31 UNITED STATES OF AMERICA,)

CIVIL CASE NO. 02-00022

32)
33 Plaintiff,)

34 v.)

**JOINT REPORT REGARDING
RECEIVER'S REMAINING TASKS**

35 GOVERNMENT OF GUAM,)

36)
37 Defendant.)

38 _____)

1 In its December 9, 2019 order, **ECF 1905**, the Court asked for the time needed by U.S.
2 Environmental Protection Agency (“U.S. EPA”) and Guam Environmental Protection Agency
3 (“Guam EPA”) to review and approve the Post Closure Care Plan (“PCCP”). U.S. EPA expects
4 to formally accept the PCCP by May 21, 2020. GEPA’s proposed timeframe for approving the
5 PCCP and issuing the post-closure permit (“PC permit”) is July 30, 2020. The United States
6 maintains its position that the Receivership should not be terminated until Guam EPA issues the
7 PC permit. The projected dates in this report contemplate the Receiver’s assistance in ensuring
8 the timely completion of the PCCP work, addressing any complications of the permit process,
9 including responding to technical public comments on the PCCP, answering technical questions
10 from the community on the PCCP, and revising the PCCP in response to public comment if
11 requested by Guam EPA. The United States contemplates that the Receiver’s assistance also is
12 necessary to enable a smooth transition period for Guam Solid Waste Authority (“GSWA”) to
13 take over the PCCP work from the Receiver, and that the projected dates in this report allow for
14 such transition period. The Receiver was asked previously by the Court whether GBB would
15 agree to work directly for the Government of Guam on the completion of the PCCP Work and
16 the PC permit. GBB’s position has not changed – it will continue working on this project only as
17 the Receiver under the auspices of this Court.

18 The Court issued an Order re Partial End of Receivership on April 29, 2019, turning over
19 the day-to-day operation of the Guam Solid Waste Authority (“GSWA”) from the Receiver to
20 GSWA. **ECF No. 1880**. On May 7, 2019 the parties filed a Joint Report Regarding Receiver
21 Transition. **ECF No. 1881**. As reflected in that May 2019 Joint Report, the Parties agreed that
22 until: (1) the PCCP is approved by the appropriate regulators; (2) a PC permit attaching the
23 approved PCCP has been issued by Guam EPA; (3) an Ordot Dump Post-Closure (“ODP”) Trust
24 Agreement has been signed by GSWA and the ODP Trustee; and (4) funds have been transferred
25 from the Ordot Dump Post-Closure Care Reserve Account (managed by the Receiver) to the
26 ODP Trust Fund pursuant to a Court Order, the Receiver will continue to oversee the operator
27 performing post-closure work at the Ordot Dump, and will also complete the technical work
28 relating to the PCCP. **ECF No. 1881 at 1**. As part of the PCCP, the Receiver is to provide an

1 updated cost estimate and provide the basis for such estimate. *Id.* In addition, the May 2019
2 Joint Report stated that the Receiver is to work on revising and obtaining acceptance of the
3 PCCP by U.S. EPA and approval by Guam EPA, and work to apply for and obtain an ODP
4 Permit from Guam EPA. *Id.*

5 On December 9, 2019, the Court scheduled a status hearing to be held on January 15,
6 2020 and ordered the parties to submit a joint status report no later than January 8, 2020, that
7 includes specific details regarding the tasks that remain before the Court can terminate the
8 Receivership. **ECF No. 1905**. The report is to include a proposed time frame for completion of
9 all remaining work, including the time needed by U.S. EPA and Guam EPA to review and
10 approve the PCCP prepared by the Receiver. *Id.*

11 The Parties submit this Joint Report regarding the remaining tasks discussed below.

12 **1. Technical Path to Approval of Ordot Dump Post-Closure Care Plan and**
13 **Issuance of Post-Closure Permit.**

14 A flowchart is attached to this filing of the technical path to PCCP approval and issuance
15 of a PC Permit, as further described below. *See Technical Path to Ordot PCCP Approval and*
16 *Issuance of Post-Closure Permit Target Completion Dates Flowchart* marked and attached as
17 **Exhibit A**. The approval of the PCCP and the issuance of the Post-Closure Permit is currently
18 estimated to be achieved on or before July 30, 2020.

19 **A. Leachate Management System.**

20 In response to U.S. EPA's concerns, the Receiver commenced enhanced leachate
21 monitoring in August 2019 and tracked four wet season storm events ending with the storm
22 event of November 27, 2019. The Receiver now has the minimum data necessary to evaluate the
23 as-built design capacity of the Leachate Collection and Removal System (LCRS). Pending
24 deliverables are the LCRS As-Built Design Capacity Evaluation Technical Memorandum
25 ("TM") to include leachate flow and rainfall data collected since August 2019 through the high
26 precipitation storm event in late November 2019, a Corrective Measures Plan and Schedule if
27 needed, and an updated LCRS Operations and Management and Contingency Plan for
28 Precipitation.

1 **B. Compliant Groundwater Monitoring Program.**

2 During the Receiver's update of the Conceptual Site Model (CSM), the Receiver, in
3 conjunction with EPA, determined that additional groundwater monitoring wells were needed to
4 establish sufficient representative groundwater monitoring locations as required by the Resource
5 Conservation and Recovery Act (RCRA). In response, the Receiver installed four new
6 groundwater wells: one upgradient (background well) and three downgradient (compliance
7 wells). Due to the limited availability of the drillers on Guam the last of the four wells was
8 installed on December 8, 2019. Now that the four wells have been drilled, pending tasks include
9 the performance of one sampling, analysis, and data validation event for each of the new wells,
10 and the submission of those results and well logs. Deliverables also include submission of a
11 RCRA-Compliant Groundwater Monitoring Program TM that is based on the validated data and
12 statistical analysis of that data, exclusive of the four new wells, a Conceptual Site Model updated
13 with the four new wells, and a Comprehensive Sampling and Analysis Plan for leachate,
14 groundwater, and surface water monitoring.

15 **C. Soil Vapor Extraction (SVE) and Landfill Gas.**

16 As required by U.S. EPA (*see* United States' Status Report **ECF No. 1887** filed July 16,
17 2019), the Receiver completed the evaluation of a dewatering mitigation plan by July 31, 2019,
18 and determined that construction repair work was necessary to mitigate the water problem in the
19 SVE wells. The construction repair work and the resumption of the SVE system was completed
20 on October 16, 2019. Pending deliverables include the as-built design of the repair work, an
21 updated Operations Maintenance and Monitoring Plan (OMMP) for the remediation effort,
22 including post-remediation SVE monitoring network at the perimeter, and a revised plan for the
23 infill Gas Collection and Control System.

24 **D. Post-Closure Care Cost Estimate.**

25 After the Receiver has completed the work relating to the three projects discussed above
26 and worked with U.S. EPA to finalize all associated deliverables, the Receiver will need to
27 submit a revised post-closure care cost estimate that includes costs for the independent engineer,
28 the trustee, the operation and monitoring of the SVE system, any revisions to operation and

1 monitoring of the LCRS, and the RCRA-compliant groundwater monitoring program. The
2 pending deliverable is an updated post-closure cost estimate and the basis for the estimate
3 finalized in consultation with U.S. EPA.

4 **E. The Revised PCCP.**

5 After the Receiver has completed the work relating to the three projects discussed above,
6 the Receiver needs to integrate the technical information into the PCCP, and also include any
7 standard procedures (SOPs) to facilitate uninterrupted post-closure care and maintenance.
8 Pending deliverables are any necessary SOPs and an updated PCCP narrative, developed in
9 consultation with U.S. EPA, that integrates the completed work, above.

10 **F. Proposed Timing For PCCP Approval and PC Permit Issuance.**

11 Guam EPA received approval of its solid waste permitting program from U.S. EPA in
12 2000, and is responsible for implementing and enforcing its approved program. The permit is
13 the enforceable mechanism by which Guam EPA approves the PCCP and can require and
14 enforce the PCCP, and enable public participation prior to final approval of the PCCP and PC
15 permit issuance. The dates proposed herein reflect streamlined requirements, deliberate speed
16 by the parties, and assume quality deliverables and timely and clear regulatory direction, as
17 appropriate. The proposed target date for the Receiver to work with U.S. EPA to reach final
18 versions of the deliverables listed above is March 31, 2020. Thereafter, the Receiver is to work
19 with U.S. EPA to update the PCCP narrative, with the target completion date for the submission
20 of the final PCCP and PC permit application of April 30, 2020. Upon this submission of the
21 final PCCP, Guam EPA will require a minimum of 3 weeks to achieve formal U.S. EPA
22 acceptance of the PCCP, with a target date of May 21, 2020. Already familiar with the
23 application due to its involvement with the draft application, Guam EPA is expected to prepare a
24 draft permit that incorporates the PCCP, and will include the formal U.S. EPA acceptance letter
25 in the administrative record, with a target date of issuance of a draft permit of May 28, 2020.
26 This will be followed by the requisite 45-day public comment period ending July 12, 2020,
27 during which Guam EPA with assistance from U.S. EPA and the Receiver, as appropriate, will
28 perform public outreach regarding the draft permit and PCCP. Assuming minimal public

1 comments, the target date for Guam EPA to respond to any comments on the draft PC permit,
2 approve the PCCP, and issue a PC permit is July 30, 2020.

3 **2. RCRA Post-Closure Care Financial Assurance/Trust AG.**

4 On November 27, 2019, the Receiver contacted six (6) banking institutions requesting a
5 proposal to act as the Trustee for management of the post closure funds as provided in the Trust
6 Agreement, by no later than December 10, 2019. The Receiver received two (2) proposals. One
7 proposal was from BNY Mellon and the second proposal was from the Bank of Guam. After
8 reviewing and considering the proposals based on the price and terms offered, the Receiver
9 determined that the Bank of Guam's proposal offers the most favorable terms. The Receiver will
10 issue a formal notice of award after the January 15, 2020 hearing.

11 As stated in the May 2019 Joint Report, the Parties agreed that the Receiver will continue
12 to review and approve the invoices from the operator of the Ordot Dump post-closure facility
13 until such time as the PCCP is approved, the PC Permit has been issued by Guam EPA, the ODP
14 Trustee is in place, and the Court has ordered the transfer of the Ordot Dump Post-Closure Care
15 Reserve funds to the ODP Trust Fund account. **ECF No. 1881 at 6.**

16 **3. Construction of Cell 3.**

17 On November 11, 2019, the Receiver assigned the Layon Landfill Cell 3 construction
18 contract with Core Tech International Corp. (CTI) to GSWA. The construction process has
19 already started. GSWA has weekly construction meetings with CTI.

20 **4. Bond Financing for Cell 3.**

21 On July 16, 2019, the Government of Guam successfully sold General Obligation Bonds
22 ("Bond") to fund the new cell at the Layon Landfill at a true interest rate of 3.25% after all costs.
23 Guam's offering was well received, with initial interest rates being reduced by 25 basis points
24 from pre-pricing levels and an oversubscription by investors of 12.9 times. Such investor interest
25 in the Bond led to the ability to reduce annual debt service to \$2.998 million from the originally
26 projected \$3.155 million contained in the original financial projections filed with the US District
27 Court. This is an annual savings of approximately \$157,000 for the Government of Guam and
28 the Guam Solid Waste Authority. The bond payments will be made for the next 12 years with

1 final payment due on November 15, 2031. The proceeds of the bonds will be used to fund the
2 Layon Landfill Cell 3 project. The Bond documents were finalized on July 25, 2019 with
3 construction proceeds of \$31,004,991.86 deposited into the Bond Construction Account held
4 with the Bond Trustee.

5 On July 1, 2019, the Government of Guam and the GSWA entered into a Continuing
6 Covenant Agreement in which GSWA committed to paying the debt service of the bonds using
7 all lawfully available gross income and other amounts received by or on behalf of GSWA as
8 revenues of the system so long as any Bonds are outstanding.

9
10 **CIVILLE & TANG, PLLC**

11 Dated: 1/8/2020

/s/ Joyce C.H. Tang
By: _____

JOYCE C.H. TANG

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as Federal Receiver for the Guam Solid Waste
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15
16 **UNITED STATES DEPARTMENT
OF JUSTICE**

17 Dated: 1/8/2020

/s/ Valerie K. Mann
By: _____

VALERIE K. MANN

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21 **OFFICE OF THE ATTORNEY GENERAL
Chief Deputy Attorney General**

22 Dated: 1/8/2020

/s/ Shannon Taitano
By: _____

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EXHIBIT A

EXHIBIT A
TECHNICAL PATH TO ORDOT PCCP APPROVAL AND ISSUANCE OF POST-CLOSURE PERMIT
TARGET COMPLETION DATES FLOWCHART

