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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOVERNMENT OF GUAM,

Defendant.

CIVIL CASE NO. 02-00022

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

1 On January 8, 2020, the parties submitted a Joint Report Regarding Receiver's
2 Remaining Tasks ("Joint Report"). ECF 1908. The Joint Report was submitted pursuant to the
3 Court's Order (ECF 1905) requiring the parties to address tasks that remain before the Court can
4 terminate the Receivership: (a) the time needed to complete remaining work; (b) the amount of
5 time needed by U.S. Environmental Protection Agency ("U.S. EPA") and Guam Environmental
6 Protection Agency ("Guam EPA") to review and approve the Post Closure Care Plan ("PCCP");
7 and (c) selection of a Post Closure Care Financial Assurance Trustee ("Trustee").

8 **A. Status of Remaining Work and Review and Approval of the PCCP.**

9 The Ordot Dump operations continue during this time, and appropriate COVID-19
10 protocols have been implemented and are being followed. The COVID-19 pandemic has caused
11 problems with nearly all forms of shipping. Groundwater samples from the Ordot Dump must be
12 shipped off the island of Guam for laboratory analysis. These are time sensitive samples that the
13 laboratory must, for most methods, prepare within 7 days and/or analyze within 14 days of
14 collection. The shipper can no longer guarantee the shipping time of these samples because of
15 the implications of COVID-19, which greatly impacts the potential usability of the sample
16 results. Consequently, the Receiver informed U.S. EPA that ground water sampling needed to be
17 discontinued until such time the shipper can guarantee delivery that enables the laboratory
18 sufficient time to properly prepare/analyze the samples.

19 The Joint Report included an attachment entitled "Technical Path to Ordot PCCP
20 Approval and Issuance of Post-Closure Permit Target Completion Dates Flowchart" marked as
21 Exhibit A ("Target Completion Dates Flowchart"). The Target Completion Dates Flowchart
22 estimated the Target Completion Date for the approval of the PCCP and issuance of the Post
23 Closure Permit to be July 30, 2020, and following the issuance of the Post Closure Permit
24 ("Original Completion Date"), the Receivership would be terminated.

25 On May 16, 2020, the Parties met and discussed whether the Target Completion Date of
26 July 30, 2020 was achievable. The original Target Completion Date is delayed due to events
27 beyond the control of the parties. The global COVID-19 pandemic, resulting in the lockdown
28 and closure of all non-essential business and in impediments to performance of local and federal

1 Government agency operations since early March 2020, prevented the parties from proceeding
2 with the required work to achieve the original Target Completion Date. In addition, U.S. EPA
3 determined that in order for the Receiver to appropriately address any need for surface water
4 monitoring in the “Comprehensive SAP for all water matrices” (see ECF 1908 Exhibit A), it was
5 necessary to document, as required by the Consent Decree, that leachate point source discharges
6 to the Lonfit River have ceased. The U.S. EPA, in consultation with the Receiver, determined
7 that the best method to demonstrate the cessation of leachate point source discharges is through a
8 submission of a Technical Memorandum (see Exhibit A). The work and coordination
9 restrictions caused by COVID-19 and the need for an additional Technical Memorandum to
10 demonstrate that leachate discharges to the Lonfit River have ceased and to inform the
11 Comprehensive SAP, pushes out the Target Completion Date from July 30, 2020 to November
12 25, 2020.

13 The U.S. EPA, in consultation with the Receiver, has prepared a Revised Technical Path
14 to Ordot PCCP Approval and Issuance of the Post-Closure Permit Target Completion Dates
15 Flowchart which shows a Target Completion date of November 25, 2020. See Exhibit A
16 (Revised completion dates flowchart). Given ongoing uncertainties, this date may require further
17 revision, in which case we will update the Court. The revised completion dates flowchart
18 includes these new Target Dates: August 25, 2020 for submission of the PCCP and Permit
19 Application to Guam EPA, September 17, 2020 for EPA acceptance, September 24, 2020 for
20 Guam EPA issuance of a draft permit and initiation of the required 45-day public comment
21 period, and November 25, 2020 for Guam EPA issuance of a final permit and termination of the
22 Receivership.

23 **B. Selection of ODP Trustee to Manage Post Closure Funds**

24 As reported in the Joint Report, the Receiver received two (2) proposals. One proposal
25 was from BNY Mellon and the second proposal was from the Bank of Guam. The Receiver
26 determined that the Bank of Guam’s proposal offers the most favorable terms. The Receiver
27 intended to issue a formal notice of award after the scheduled January 15, 2020 hearing. Due to
28 the rescheduling of the January 15th hearing, the Receiver deferred the notice of award until the

1 next Court hearing. The Parties agree that the Receiver will continue to review and approve the
2 invoices from the operator of the Ordot Dump post-closure facility until such time as the PCCP
3 is approved, the PC Permit has been issued by Guam EPA, the ODP Trustee is in place, and the
4 Court has ordered the transfer of the Ordot Dump Post-Closure Care Reserve funds to the ODP
5 Trust Fund account. **ECF No. 1881 at 6.**

6 **C. The Ordot Post-Closure Fund**

7 The Ordot Dump Post-Closure account administered by the Receiver with the Bank of
8 Guam has been receiving the monthly deposits of \$166,667.00 as required. The Receiver
9 continues to process appropriate payments as they are submitted, reviewed, and approved for
10 payment. The available balance in the account as of June 20, 2020 was \$5,381,457.90.

11 **D. Status of Construction of Cell 3**

12 Although the construction of Cell 3 at the Layon Landfill is under the authority of the
13 Government of Guam and managed by the Guam Solid Waste Authority (GSWA) and no longer
14 under the management of the Receivership, the parties decided because of that cell's importance
15 to the environmental and financial health of the island it would be wise to update the Court on
16 the cell's construction.

17 The construction of Layon Landfill Cell 3 construction was awarded to Core Tech
18 International Corp. ("CTI"). On October 1, 2019, the Notice to Proceed was issued to Core Tech
19 International (CTI) for the construction of Cell 3 at the Layon Landfill. The project kickoff
20 meeting was held on the same day. On November 11, 2019, the construction contract was
21 assigned by the Receiver to GSWA. Weekly construction meetings have been held since the
22 kickoff meeting.

23 The construction is proceeding on schedule. As of the current date the status is as
24 follows:

- 25
- 26 • The new road and utilities are expected to be completed by the fourth week of July;
 - 27 • The new stormwater pond has been constructed and is in the final phase of erosion
28 control measures;
 - The mass excavation for the cell is continuing and will include the removal of the old

1 road once the new road is complete;

- 2 • Different types of excavated materials have been tested for future use on site and placed
- 3 in corresponding stock piles;
- 4 • The stormwater culverts and Cell 3 subdrain is expected to be completed the last quarter
- 5 of June 2020;
- 6 • The liner material is currently being delivered and will continue delivery for the next
- 7 several weeks; and
- 8 • The liner subcontractor is currently scheduled to mobilize in October weather permitting.

9 **E. Status of Joint Meetings**

10 The parties are aware of the importance the Court has placed on regular meetings by
11 representatives of the regulatory agencies and the Receiver on the many and complicated
12 projects the Court has asked the Receiver to complete. In hearings the Court has continued to
13 urge all such parties to keep regular dialogue by jointly held telephone conferences.

14 In response, the Receiver, U.S. EPA, and Guam EPA held bi-weekly permitting and
15 weekly technical teleconferences during the majority of the Receivership until approximately
16 fifteen months ago. Although the Receiver, U.S. EPA, and Guam EPA have maintained separate
17 communication with each other for the duration of the Receivership, we wish to inform the Court
18 that the coordinated bi-weekly calls among all parties have resumed as of June 2020.

19 The counsel for the Government of Guam requires an additional day to review this report
20 having received a draft today, and will respond or join in the report by June 24, 2020.

21
22 **CIVILLE & TANG, PLLC**

23 Dated: June 23, 2020

24 **By:** /s/ Joyce C.H. Tang

25 **JOYCE C.H. TANG**

26 *Attorneys for Gershman, Brickner & Bratton, Inc.*
27 *as Federal Receiver for the Guam Solid Waste*
28 *Authority*

**UNITED STATES DEPARTMENT
OF JUSTICE**

Dated: June 23, 2020

By: /s/ Valerie K. Mann
VALERIE K. MANN
Environmental Enforcement Section

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EXHIBIT A

REVISED EXHIBIT A*

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

06/2020

* Due to Covid-19 and related impacts on project logistics, workloads, and resources.

PRIMARY ROOT REFERENCE DOCUMENTS

EPA comments of 9/22/17 filed with the Court; EPA comments of 11/27/17 on leachate spills;
Joint Report Regarding Receiver Transition Issues filed 5/7/19; U.S. Status Report filed 7/16/19

