



Guam SOLID WASTE RECEIVER



Eighth Joint Status Report to the United States District Court of Guam

Presented by
Gershman, Brickner & Bratton, Inc.
September 11, 2024





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Eighth Joint Status Report Topics

- I. Claim Against GWA
- II. Leachate Flow and Seep Investigations
- III. SEP Completion Report
- IV. Post-Closure Care Funding and Trust Agreement
- V. Termination of Receivership
- VI. Other Matters Related to the Ordot Dump
 - A. Performance of Ordot Dump Post-Closure Facility January 2024 through July 2024
 - B. The GeoSyntec Report Prepared for GovGuam (Kelley Drye) in the CERCLA Litigation
 - C. Receiver's Accounts
 - D. GSWA Response to Chace Anderson Report and Findings (GSWA)





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I. Claim Against GWA

August 21, 2024

Mr. Miguel C. Bordallo
Guam Waterworks Authority
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913

RE: GWA Calculation of Damages Report

Dear Mr. Bordallo:

The Receiver has prepared the attached GWA Calculation of Damages Report to support the claim for excessive leachate charges and cost incurred between 2018 to 2022. The Receiver has calculated the total damages from the excessive leachate charges and related costs to be \$4,407,241.20 ("GWSA Damages"), which is broken down as follows:

Report Section	Description of Cost	Amount
1	Original claim based on letter dated 8/16/23	\$2,650,222.00
2	Additional Leachate Quantities (01/01/23 - 10/31/23)	\$60,075.02
3	BC Work Orders (2018 - Current)	\$650,543.00
4	Estimated Receiver's Cost 2018 - 05/31/2024	\$737,595.19
5	Detry Truck Charges	\$187,214.12
6	Pump Power Costs	\$95,007.86
7	Repair Work Costs	\$26,584.01
	Total	\$4,407,241.20



Innovative, Sustainable Solutions
for Solid Waste Management



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Vienna, VA 22182

Receiver sent letter to GWA with Calculation of Damages Report for excessive leachate charges and costs of **\$4.4 million**

(ECF 2078-1)



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Reports Supporting the Claim Against GWA

1. Brown & Caldwell Report (ECF No. 2059-1)

Confirms that 99,406,234 gallons of additional leachate was attributed to the GWA Dero Road waterline leak

2. GK2, Inc. Evaluation of Contribution of Waterline Leaks on Dero Road to Ordot Dump Leachate Flow and Volume Report (ECF No. 2078-5)

Confirms that 88,541,589 gallons of leachate was attributed to the GWA Dero Road waterline leak; validates the order of magnitude calculation within 10%



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"Based on investigation conducted by the Receiver and ... the [GWA Waterline Leak Report] ... prepared by its independent engineer, Terangue Gillham (GK2 Inc.), the Receiver has determined that the water emanated from the GWA Dero road waterline leaks, which is up-gradient from the Ordot Dump facility, resulted in groundwater flow that substantially contributed to and increased the volume of leachate that required treatment by GWA."



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GSWA/GovGuam's Statements

1. "GSWA has financially realized the effects of the GWA rate reduction and repair of the GWA waterline in December 2022."
2. "GSWA supports the Receivers' interpretation of the data collected to date, which indicates dramatic reduction in base flows and little to no impact of rainfall on leachate production."
3. "...surface water intrusion, and its potential pathways into the closed Ordot facility is of a lesser priority....and should be performed by [GSWA] who is interested in the resolution of this outcome."
4. GSWA has experience in closed unlined landfills and the technical expertise. GSWA can investigate and resolve this issue itself.
5. Participation of the Receiver in a legal recovery effort "is not welcome or needed."



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Receiver to Lead Pursuit of GWA Claim

21 2023) at 1, ECF No. 1971. At the most recent status hearing, Irvin Slike, the General Manager
22 for Guam Solid Waste Authority (“GSWA”) informed the court that he spoke with Miguel
23 Bordallo, GWA’s General Manger, in January 2023 regarding (1) a possible rate reduction for
24 leachate treatment and (2) a “rate rebate” for increased charges caused by GWA’s faulty flow
25 meter and increased leachate levels possibly attributable to leaks in GWA’s distribution lines
26 along Dero Road, which Mr. Slike estimated could be in the range of \$2.2 million. Mr. Slike
27 said that the court should order the Receiver to take the lead on discussing these
28 matters with GWA so that these issues can be timely resolved. Additionally, the court sets a

Court Order
(5/10/23)
ECF No. 1992

meter and increased leachate levels possibly attributable to leaks in GWA’s distribution lines
along Dero Road, which Mr. Slike estimated could be in the range of \$2.2 million. Mr. Slike

1 The court is concerned that GSWA has not aggressively pursued these matters, particularly
2 because of the significant impact a rate reduction and rate rebate would have on the post-closure
3 costs for the Ordot Dump. The court orders the Receiver to take the lead on discussing these
4 matters with GWA so that these issues can be timely resolved. Additionally, the court sets a
5 status hearing on these matters for the date of the next status hearing. The court sets a
6 date at the hearing to discuss these issues.

costs for the Ordot Dump. The court orders the Receiver to take the lead on discussing these
matters with GWA so that these issues can be timely resolved. Additionally, the court sets a



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U.S. EPA's Statements

- If GWA is considering a dye test at Pond 4, US EPA does not believe the results of that dye test impacts the Dero Road leaks and associated leachate volume associated with the leaks.
- U.S. EPA recommends that GSWA lead future dye test after GSWA resumes having owner/operator responsibility and in consultation with the U.S.EPA.



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GWA Claim Next Steps

1. Receiver review GWA insurance policies to determine policy coverage and whether a direct action can be brought against the insurance company
2. Requested meeting with GWA to discuss claim





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II. Leachate Flow and Seep Investigations

A. Brown and Caldwell Report Dated May 3, 2024

- U.S. EPA currently reviewing and anticipates a response by September 13, 2024
- U.S. EPA notes that the B&C Report does not include the certification required by Paragraph 42 of the Consent Decree but concludes that “discharges have ceased” and states that “to the extent that the Receiver would like to complete the certification requirement, it need only provide the statement required by Paragraph 42 of the Consent Decree”
- The Receiver is consulting with the U.S. EPA/DOJ regarding the final form and content of the Certification that is a requirement of the Consent Decree





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III. SEP Completion Report

A. Status of Receiver SEP Report

- The Receiver and U.S. EPA worked closely together to advance the June 29, 2023 submission to final
- On July 9, 2024, the U.S. EPA accepted the Receiver's Revised SEP Completion Report
- This completes one of the requirements of the Consent Decree

B. Status of GEPA's SEP Report

- U.S. EPA has not yet completed its review of the GEPA SEP





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IV. Post-Closure Care Funding and Trust Agreement

- \$30+ million settlement proceeds transferred from Kelley Drye to Department of Administration Account
- U.S. EPA, the Receiver, and GSWA have agreed to set up a new RCRA compliant trust agreement with GSWA as the Grantor and transaction authorizations requiring both GSWA and the Receiver
- Bank of Guam has agreed to this agreement and its 2019 cost proposal as well
- GSWA is in the process of transferring the settlement proceeds to this new account
- The Receiver plans to deposit the balance so that full funding of \$32.5 million post-closure cost estimate is reached on or before December 31, 2024





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IV. Post-Closure Care Funding and Trust Agreement (cont'd)

- GSWA passed required resolutions to move forward with this on September 4, 2024 special Board meeting
- Once the Trust is in place and fully funded with the amount of the post-closure-cost-estimate, GSWA's \$2 million per year (paid monthly) and the escalation payments can be suspended
- Upon termination of the Receivership, the Receiver's signature authorization will be dropped
- Estimated future interest income may be adequate to cover future annual escalation payments





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V. Termination of Receivership

A. GSWA Transition Plan

- The Court has ordered GSWA General Manager to work cooperatively with the Receiver to develop a management and operational plan for assuming full responsibility for Ordot Dump post closure activities
- GSWA has provided a draft on August 7, 2024
- The Receiver also is working on components to incorporate into the GSWA draft





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V. Termination of Receivership (cont'd)

A. GSWA Transition Plan

- Receiver expects transition plan to encompass the following and possibly other matters:
 - Work obligations for the closed Ordot Dump
 - Work related to fulfilling permit requirements and reports
 - Remaining financial obligations and steps necessary to fulfill them
 - GSWA Board plan to address how GSWA staff will assume the additional workload
 - The plan to address current and future GSWA staff and/or contractors to be assigned for the additional workload
 - The Receiver and the GSWA Board will endeavor to agree on a joint transition plan





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V. Termination of Receivership (cont'd) A. GSWA Transition Plan

- Three of four tasks have or are about to be completed that are a requirement for completion in the Consent Decree, as follows:
 - Certification of the Receiver portion of the SEP report - done
 - Certification that Ordot Dump no longer receives MSW – done
 - Finalization of a RCRA-compliant Trust Agreement and fully funded Trust account for post closure costs – about to be done
 - Receiver certification that discharges to waters of the U.S. have ceased – Receiver will be submitting this certification to U.S. EPA. Receiver, U.S. EPA and DOJ have been collaborating about the final form, content, and timing of the submittal of the certification.



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VI. Other Matters Related to the Ordot Dump

- A. Performance of Ordot Dump Post-Closure Facility January 2024 through July 2024
- It operates in full compliance with all applicable permits
 - Leachate Collection and Removal System has been hardened for more resiliency and reliable performance during severe weather events
 - Leachate production continues to decline





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Annual Leachate Quantity 2016 through 2023

Year	Leachate (Gallons)
2016	7,397,019
2017	8,518,884
2018	18,658,285
2019	23,952,805
2020	27,748,045
2021	30,040,379
2022	40,976,930
2023	15,870,700
2024	1,803,997 (6 mos.)





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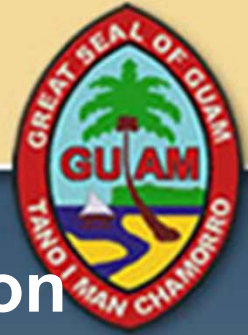
Leachate Quantity and GWA Charges 2023 to July 31, 2024

Month/Year	Leachate (Gallons)	Charges
Jan-23	2,230,800	\$73,069.93
Feb-23	907,400	\$27,163.84
Mar-23	658,900	\$19,726.16
Apr-23	584,500	\$17,498.71
May-23	718,100	\$21,497.17
Jun-23	1,335,200	\$39,970.73
Jul-23	1,041,800	\$31,186.96
Aug-23	1,619,100	\$24,668.05
Sep-23	2,758,200	\$42,022.24
Oct-23	2,223,400	\$33,972.34
Nov-23	1,114,600	\$17,030.34
Dec-23	678,700	\$10,369.83
Jan-24	492,800	\$7,530.05
Feb-24	318,600	\$4,867.93
Mar-24	246,200	\$3,761.81
Apr-24	241,900	\$3,695.30
May-24	227,800	\$3,480.79
Jun-24	276,700	\$4,228.04
Jul-24	401,786	\$6,139.03
Aug-24	730,489	\$11,162.05 (approx.)





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B. The GeoSyntec Final Report Investigation of Leachate Flow

- The GeoSyntec Report was prepared for Kelley Drye to support GovGuam's damages in the CERCLA litigation.
- GovGuam provided to the Receiver on 5/6/2024 and sent by Receiver to Meet and Confer group for comments.
- On same day (5/6/2024) GovGuam filed the CV24-00011 lawsuit attaching the GeoSyntec Report.
- Parties in the meet and confer were requested to provide comments. No one responded to the Receiver's request.
- U.S. EPA position: "[I]t takes no position on any of the statements in the filings in the Contractor Dispute, the briefs regarding the motion, or any attachments thereto."





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Brown & Caldwell's Review of the GeoSyntec Report

1. Report appears to be based on limited datasets, reports and design documents issued by B&C, and incomplete monitoring data from the Ordot Dump
2. GeoSyntec does not appear to have adequate understanding of the parameters and purpose of the Ordot dump project
3. GeoSyntec's analysis did not consider prior studies at the Ordot dump facility that was not aligned with or benefit the goal of the report (e.g., it did not consider the conceptual hydrogeologic model presented in the closure design report which states the reasons the Leachate Collection and Removal System was accepted by US EPA and GEPA.





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Cont'd: Brown & Caldwell's Review of the GeoSyntec Report

4. The Report relies on a highly flawed analysis in calculating the "excess" leachate because GeoSyntec's analysis regarding the "expected" leachate flow is based on study of *lined landfills* in the United States, not *unlined landfills* like the Ordot Dump.
5. The Report does not fully address the impacts of the waterline leaks as the contributing influence on the Leachate Collection and Removal System





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Receiver's Position

GeoSyntec's avoidance of the impact of the GWA Dero Road waterline leak in its Report is at odds with the information shared with GovGuam and the parties (e.g. B&C Report and GWA Dero Road Leak information), which calls into question the completeness and credibility of the Report.

GovGuam's Position

GovGuam does not think it is appropriate to include Brown & Caldwell's review of the GeoSyntec Report or the GeoSyntec Report in this Joint Report, and disagrees with Brown & Caldwell's comments



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C. The Receiver's Accounts

- Trust Account #1 – earns essentially no interest income
 - Current balance as of 8/27/2024 - \$930,386.18
- Trust Account #2 – earns significant interest income @ ~5% per annum rate
 - Current balance as of 8/27/2024 - \$7,289,306.87
- Total - \$8,219,693.05
- Trust Account #2 investments made with review and consent of the GSWA Controller
- Deposits: \$1,351,353.28
- Expenses: \$958,728.50





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D. GSWA Response to Chace Anderson Report and Findings (GSWA)

- GSWA currently tracking implementation of the recommendations





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CONSULTANTS

Gershman, Brickner & Bratton, Inc.