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

28 UNITED STATES OF AMERICA, ) CIVIL CASE NO. 02-00022  
29 )  
30 Plaintiff, )  
31 ) **FIFTH JOINT REPORT**  
32 v. )  
33 )  
34 GOVERNMENT OF GUAM, )  
35 )  
36 Defendant. )  
37 \_\_\_\_\_ )  
38 )

1 This Joint Report is submitted pursuant to the Court’s January 11, 2023, Order (“1/11/23  
2 Order”).<sup>1</sup> The parties have complied with the 1/11/23 Order requiring the parties to continue  
3 their meet and confer meetings. The 1/11/23 Order requires this report to include a baseline  
4 schedule for the seeps, leachate and meter calibration investigations; determination of an  
5 estimate for post closure care expenses and proposed funding options and possible alternatives;  
6 and proposed schedule for full termination of the Receivership. *See* ECF 1971. The Court also  
7 ordered the Guam Solid Waste Agency (“GSWA”) to continue its efforts to seek a rate  
8 adjustment for leachate treatment from the Guam Waterworks Authority (“GWA”). The  
9 Receiver also provides an update on events since the December 2022 status conference.

10 **1. Update on Ordot Dump Field Work and Seeps Reconnaissance**

11 As stated in the Fourth Joint Report (ECF 1964), the investigation of sources of the  
12 increase in leachate and the plan to address will proceed in three phases. From November 14,  
13 2022 to November 17, 2022, as part of the first steps in the Phase 1 work, the Receiver’s team  
14 members conducted field work including a reconnaissance for locating seeps<sup>2</sup>, a visual  
15 inspection of the cover and drainage systems, an inspection of the stormwater and leachate  
16 manholes along the east and the west perimeter roads, and a perimeter reconnaissance along  
17 Dero Road. (See ECF 1964 at 3.) Since filing the Fourth Joint Report, the Receiver has  
18 completed the work described below:

19 (A) Four (4)<sup>3</sup> seeps were identified during the November 2022 reconnaissance and  
20 were sampled in December 2022. The samples were sent to an off-island laboratory for analysis  
21 to determine if the seeps are leachate impacted. The laboratory results were received by the  
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24 <sup>1</sup> The due date for this report in the 1/11/23 Order was extended from March 14, 2023 to May 3, 2023. (See ECF  
25 1980.)

26 <sup>2</sup> A seep is a surface expression of groundwater. Upon surfacing, groundwater becomes surface water. If a seep at  
27 Ordot Dump is impacted by leachate, it could, consequently, become an unpermitted discharge to waters of the U.S.

28 <sup>3</sup> The Receiver stated that two (2) of the four (4) seeps identified are the same two seeps identified during  
construction in 2016.

1 Receiver in January 2023, and were sent to Technical Representatives<sup>4</sup> on February 4, 2023.  
2 These laboratory results were preliminarily discussed with the Technical Representatives on  
3 February 9, 2023. Additional seep sampling and analysis in the 2023 dry season and subsequent  
4 wet season is warranted. It is noted by the Receiver that during the period of January 1, 2023  
5 through March 31, 2023, no seepage has been observed from the four seep locations identified in  
6 November 2022 because there was no flow as it is currently the dry season and no seeps were  
7 observed on the days inspected; thus, at this time no additional data have been collected or  
8 analyzed from the seeps. Leachate samples, however, were collected from the Leachate  
9 Collection Removal System and analyzed. These are not seep samples and do negate the need to  
10 collect and analyze seep samples when available.

11 (B) The Receiver is continuing its evaluation of the entire area between the Ordot  
12 Dump and Dero Road as a potential source of excess groundwater that could be or have been  
13 impacting Ordot leachate volumes. Transducers, which automatically and continuously collect  
14 groundwater level data and replace some of the manual weekly groundwater level measurements,  
15 were installed on January 23 and 24, 2023, in the monitoring wells. Manual measurements  
16 continue at the soil vapor extraction monitoring wells along Dero Road. The Technical  
17 Representatives have agreed that groundwater data will need to be collected through the dry and  
18 wet seasons of 2023. The data will be reviewed and informal status updates will be routinely  
19 provided to the Technical Representatives, including data and plots in Excel.

20 Beginning not later than January 2024, all collected data will be analyzed as to whether  
21 additional seasonal data need to be collected to help assess the source of excess groundwater and  
22 increasing volumes of leachate. It was agreed by the Technical Representatives that potential  
23 source(s) of increased leachate will be narrowed using an investigative data-supported process of  
24 confirmation and/or elimination.

25 (C) The Receiver continues to manually collect data from the leachate tank volumes

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27 <sup>4</sup> The members of the technical representatives include representatives from GEPA, USEPA, GSWA and the  
28 Receiver (“Technical Representatives”).

1 to help identify changes in leachate flow volumes from the Perimeter Leachate Collection  
2 Trench and from the Western Leachate Interceptor Trench, and to calculate total leachate flow.  
3 The leachate flow and rainfall data are plotted and routinely provided to the Technical  
4 Representatives.

5 (D) In response to a letter from the Receiver to GWA requesting that it investigate  
6 potential leaks in the vicinity of the Ordot Dump facility,<sup>5</sup> GWA confirmed it initiated leak  
7 investigations in the last week of December 2022 and discovered several leaks in lateral lines  
8 connected to the GWA distribution waterline located along the north side of Dero Road. The  
9 GWA distribution waterline is one of the waterlines located on Dero Road. GWA promptly  
10 reported that it repaired the line to stop the leaks and subsequently reported location information  
11 on January 19, 2023 to USEPA, which, in turn, promptly provided the information to the  
12 Technical Representatives. After GWA finished repairing the leaks on or about December 30,  
13 2022, groundwater levels in the area between the Ordot Dump and Dero Road showed rapid  
14 drops of several feet, and leachate levels also were reduced. Specific leachate volumes and  
15 precipitation amounts and percentage changes in those amounts for the first three months of 2022  
16 and 2023 are set forth in the following table.

17 **Comparison of Monthly Leachate and Precipitation between 2022 and 2023**

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Month	Jan 2022	Jan 2023	% chg	Feb 2022	Feb 2023	% chg	Mar 2022	Mar 2023	% chg
Leachate (mil gpd)	2.9	2.4	-17.2	2.5	0.91	-63.6	2.7	0.67	-75.2
Precipitation (monthly in inches)	6.01	7.59	+26.3	1.25	2.96	+136.8	2.24	4.91	+119.2

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23 As the above table indicates, for the first three months of 2023, leachate volumes have  
24 been decreasing month by month despite substantial increases in precipitation. The Receiver  
25 believes that the correlations between the decreased leachate volumes and the repair of leaks  
26 show the possibility that there may be a causal relationship between them. However, at this

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28 <sup>5</sup> In the Fourth Joint Report, the Receiver indicated that there might be a leak in a nearby GWA waterline which may be causing an increase in leachate volumes.

1 time, there is not enough data to confirm that the GWA leaks and associated repairs are the only  
2 cause of either the increased or decreased leachate volumes, respectively.

3 (E) The operations and monitoring of the Ordot Dump have identified meter reading  
4 discrepancies of the GWA leachate flow meter when compared with quality control checks by  
5 the operations staff based on leachate tank filling rate. Due to these discrepancies and calibration  
6 adjustments, the Receiver has installed a separate calibration meter at a permanent location  
7 within Ordot Dump to cross-check the GWA meter. The calibration meter was installed in late  
8 March 2023. The location of the calibration meter was coordinated with GWA to facilitate  
9 agreement with calibration testing of GWA's flow meter and GWA's acceptance of the  
10 calibration meter's readings. The completion of the meter calibration work and replacement of  
11 some faulty parts and commencement of its operation is targeted for late April 2023.

12 (F) GWA has indicated that it is amenable to a "rate rebate" from previous invoices  
13 for increased charges caused by its faulty meter and increased leachate if attributable to GWA.

14 GSWA also has been in discussions with GWA concerning a potential rate specific to  
15 leachate treatment. GSWA has corresponded with GWA on October 24, 2022 (hand delivered  
16 October 7, 2022, EA Engineering report justifying rate reduction), December 15, 2022, January  
17 17, 2023, and February 8, 2023. Each time, GSWA has requested GWA to consider the EA  
18 Engineering report of October 7, 2022, and change the rate charged to Ordot Dump from the  
19 published 2022 Commercial 3 rate (\$27.42 per 1,000 gallons) to Commercial 1 rate (\$8.11 per  
20 1,000 gallons). No response from GWA has been received by GSWA to date. While there have  
21 also been verbal discussions regarding a rate based on "Cost of Service plus additional," GWA  
22 has not initiated the process needed to set a new rate on this basis.

## 23 **2. Baseline Schedule for Seeps and Leachate Investigations**

24 The Receiver has developed a proposed schedule for investigating the seeps in and near  
25 the Ordot Dump, investigating the source of increasing leachate volumes, and installing and  
26 operating the leachate meter for calibration. The schedules for the leachate and seeps  
27 investigation are estimated for Phase 1. The parties now agree that it would be premature to  
28 develop a specific schedule for subsequent phases such as a feasibility study of mitigation

remedies (Phase 2), and implementation and operation of selected remedies (Phase 3), pending confirmation of the source(s) and amounts of the changing leachate volumes, and the presence of any leachate-impacted seeps. These later phases of the plan of action can begin to be developed, as appropriate, as data is collected and analyzed in Phase 1. The scope includes developing potential approaches for mitigation, cost estimates, and a timeline for implementation of potential mitigation remedies. After the source(s) of the increased leachate has been identified, potential mitigation remedies that are proposed can be assessed, and if appropriate, implemented.

The completion of Phase 1 will need to await seasonal data collection and analysis through 2023 and could potentially be completed in early-to-mid 2024. A more detailed breakdown of Phase 1 activities and schedule follows:

<b>Phase 1 Description of Activity</b>	<b>Preliminary Schedule</b>
<p>Investigation of Source of Increasing Leachate Volume</p> <ol style="list-style-type: none"> <li>1. Collect groundwater level data, leachate volume data, and rainfall data. Data will be routinely provided to the Technical Representatives throughout the data collection period.</li> <li>2. Initial review and analysis of all data collected, and determine whether additional data is needed. Data will be routinely provided to the Technical Representatives throughout the data collection period.</li> </ol>	<p>November 2022 through December 2023</p> <p>January through March 2024</p>
<p>Seeps Investigation</p> <ol style="list-style-type: none"> <li>1. Identify seeps, collect samples for field and laboratory analysis.</li> <li>2. Initial review of seep data and determine whether additional data is needed.</li> <li>3. Ongoing sampling and analysis of seeps during the 2023 dry and wet seasons.</li> </ol>	<p>November 2022 through January 2023 (Completed)</p> <p>February 2023</p> <p>January 2023 – December 2023</p>

<p>1 Frequency of wet season sampling to be reviewed and discussed with the Technical Representatives.</p>	
<p>3 Leachate Meter Calibration</p> <p>4 1. Procure meter and associated parts for meter installation</p> <p>5</p> <p>6 2. Confirmed with GWA meter location for acceptance of calibration data</p> <p>7</p> <p>8 3. Contract with subcontractor for installation</p>	<p>February – March 2023 (Completed)</p> <p>February 2023 (Completed)</p> <p>March 2023 (Completed)</p>

10 Collection of automated groundwater level data from the installed transducers has  
11 commenced. Manual measurements of groundwater levels where there are no transducers and of  
12 leachate volumes continue, together with automatic collection of rainfall data. Informal status  
13 reports, hydrographs, and leachate volume and rainfall plots will be routinely provided to the  
14 Technical Representatives as data is consolidated. An initial data analysis report of the source of  
15 increased leachate volumes is expected to be issued not later than the end of March 2024.  
16 Sampling and analysis of seeps is ongoing through the wet season 2023, although, according to  
17 the Receiver, all four seeps remain dry as of March 31, 2023 based on the days inspected. As  
18 U.S. EPA has indicated, this data and analysis are critical for supporting the certification of  
19 cessation of discharges required by the consent decree.

20 **3. Update Regarding Estimate for Post-Closure Costs and Funding Sources**

21 As required by GEPA and federal regulations requiring a detailed written cost estimate in  
22 current dollars to conduct post-closure care, the Receiver included a cost estimate in the post-  
23 closure care plan (PCCP) it submitted to GEPA in October 2021. GEPA approved the PCCP  
24 cost estimate in issuing the post-closure permit on January 11, 2022. The GEPA-approved cost  
25 estimate is \$27,740,327 (“GEPA-approved Cost Estimate”). In compliance with the GEPA post-  
26 closure permit, the PCCP, and both GEPA Solid Waste Disposal Regulations and minimum  
27 federal criteria for Municipal Solid Waste Landfills, the GEPA-approved Cost Estimate must be  
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1 annually adjusted for inflation<sup>6</sup> and the amount of financial assurance appropriately adjusted.  
2 Pursuant to Section 11 of the GEPA-approved PCCP, “Financial Assurance Mechanism,” the  
3 annual adjustment for inflation is based on the annual Implicit Price Deflator for Gross National  
4 Product (“GNP Deflator”) as published annually by the U.S. Department of Commerce in its  
5 Survey of Current Business. Since the cost estimate was in 2021 dollars, two (2) years of GNP  
6 Deflator need to be applied. The inflation adjusted 2022 cost estimate is \$29,435,260.98, and the  
7 annual inflation adjustment amount due is \$1,694,933.98. The GEPA calculation of the inflation  
8 adjusted 2023 cost estimate is \$31,322,061.21 and the annual inflation adjustment amount due is  
9 \$1,886,800.23. In addition, the permit requires the cost estimate to be updated comprehensively  
10 at a minimum, every five (5) years.

11 The GEPA regulations provide for the adjustment of the post-closure cost estimate if  
12 changes in the post-closure plan or Municipal Solid Waste Landfills (“MSWLF”) unit conditions  
13 increase the maximum costs of post-closure care.<sup>7</sup> However, at this time, the parties  
14 acknowledge that significant changes to the cost estimate (including costs related to leachate)  
15 should await the forthcoming data collection and analysis, including to identify the source(s) of  
16 the increased leachate volume, potential mitigation, the apparent decreasing volume of leachate,  
17 the significance of the GWA leak repair, potential GWA rate reduction and rebate for past  
18 leachate charges, and the presence of leachate-impacted seeps.

19 The initial amount set aside for Ordot Dump Post Closure Trust Account in April 2019  
20 was \$7.166 million. *See* ECF 1879 at 4. In calendar year 2022, the Receiver processed payments  
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24 <sup>6</sup> The GEPA Solid Waste Disposal Regulations (“GEPASWDR”) state that the “owner or operator must annually  
adjust the post-closure cost estimate for inflation.” (Sec. 23703(2)). *See also* 40 C.F.R. 258.72(a)(2).

25 <sup>7</sup> The GEPASWDR state: “The owner or operator must increase the post-closure care cost estimate and the amount  
26 of financial assurance ... if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs  
of post-closure,” and “[t]he owner or operator may reduce the post-closure cost estimate and the amount of financial  
27 assurance ... if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure  
care period. The owner or operator must notify the Administrator that the justification for the reduction of the post-  
28 closure cost estimate and the amount of financial assurance has been placed in the operating record.” (Secs.  
23703(3) and (4).) *See also* 40 C.F.R. 258.72(a)(3) and (4).



1 for \$2,741,337.24 compared to deposits totaling \$2 million. The Trust Fund balance as of March  
2 31, 2023 was \$4,503,486.40. GSWA is also required to continue its monthly payments (totaling  
3 \$2 million per year) as set forth in the existing financing plan through August 2026, which  
4 GSWA has been doing diligently.

5 GSWA is in discussion with appropriate representatives of the Government of Guam to  
6 determine how to best meet and fund, at a minimum, the required annual inflation adjustments  
7 for 2022 and 2023 (“Inflation Adjustment Payments”). The Receiver recommends that GSWA  
8 pay the Inflation Adjustment Payments totaling \$3,581,734.21 on or before September 30, 2023  
9 and continue paying the monthly payments per the current financing plan order from April 2019.  
10 However, as U.S. EPA has stated, the 2022 inflation payment was due in 2022 and is now  
11 overdue.

12 As the Court is aware, the Government of Guam has brought a cost recovery case against  
13 the United States Department of the Navy with regard to the Ordot Dump. *Government of Guam*  
14 *v. United States Department of Navy*, 1:17-cv-2487-JMC (D.D.C.) (“CERCLA Case”). The case  
15 is still pending in federal district court in Washington, D.C. The Receiver believes that it is  
16 appropriate for any future cost recovery paid by the United States from the CERCLA Case to be  
17 deposited by GovGuam in the Ordot Dump Post-Closure Trust Fund. The case is still pending  
18 and, therefore, it is speculative to include any recovery therefrom as a source of funding. For  
19 this reason, GovGuam does not believe it appropriate for the Receiver to suggest speculative  
20 sources of funding as this is not in keeping with the Court's directive to the parties.  
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#### 22 **4. Proposed Schedule to Terminate Receivership**

23 The parties have discussed the tasks that the Receiver needs to complete before  
24 termination of the Receivership. The Government of Guam and the United States have  
25 proposed, at a minimum, these tasks include the submission of an acceptable Supplemental  
26 Environmental Project (SEP) completion report and certification relating to the construction of  
27 the household hazardous waste facility; the certification that Ordot Dump no longer receives  
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1 municipal solid waste for disposal; the execution of the Ordot Dump Post-Closure Facility  
2 Custodial Trust Agreement, which the parties agreed should be consistent with 40 CFR 264.151  
3 “Wording of the instruments,” the transfer of funds from the current Ordot Dump Post-Closure  
4 Account into the Post-Closure Trust Fund, and the transfer by the Receiver of contracts to the  
5 Government of Guam, including to GSWA and GEPA, as appropriate. The Receiver believes  
6 that an agreed upon funding method and financial assurance terms need to be in place before the  
7 transfer of the funds to the Post-Closure Trust Fund. The United States does not necessarily  
8 agree with Receiver’s position on this, and believes this merits further discussion among the  
9 parties.

10           The Receiver will be responsible for submitting, at a minimum, the portion of the SEP  
11 completion report related to the construction of the household hazardous waste facility and  
12 associated certification, and for certifying that Ordot Dump no longer receives municipal solid  
13 wastes. This proposal would leave GSWA /GovGuam with the responsibility for certifying that  
14 discharges to waters of the United States from the Ordot Dump have ceased, and leave GEPA  
15 with completing the SEP report and SEP certification not associated with the construction of the  
16 household hazardous waste facility. Subject to the approval of the Court, based on these  
17 minimum tasks, the Receivership could terminate within a year or less.

18           The parties suggest a three-to-six month transition period with GSWA/GovGuam, and  
19 GEPA as appropriate, for all matters related to the Receiver’s responsibilities concerning the  
20 Ordot Dump. The Receiver suggests that the transition period should commence after the  
21 Receiver certifies the facility portion of the SEP, the certification that Ordot Dump is no longer  
22 receiving MSW, and finalization of the new Trust Agreement. The United States instead  
23 suggests there should be further discussion on when and how the transition period should  
24 commence, with emphasis on GSWA taking over technical matters as soon as possible. Upon  
25 completion of the above minimum tasks and the transition period, the Parties would request that  
26 the Court decide when termination of the Receivership is appropriate.  
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1           **5. Next Joint Status Report**

2           The parties propose that the next joint status report be filed upon completion of Phase 1  
3 of the investigation of the seeps and source of increasing leachate, or when the items set out in  
4 Section 4 as requisites for terminating the receivership are nearing completion, whichever date is  
5 earlier.

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7           Submitted this 3rd day of May, 2023.

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9                                   **UNITED STATES DEPARTMENT**  
10                                  **OF JUSTICE**

11                                  By:           /s/ Valerie K. Mann            
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