

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOVERNMENT OF GUAM,

Defendant.

Civil Case No. 02-00022

**ORDER RE: QUARTERLY
STATUS HEARING; OFFICIAL
CLOSURE OF ORDOT DUMP;
AND OFFICIAL OPENING OF
LAYON LANDFILL**

1 This matter came before the court on August 31, 2011, for a quarterly status hearing. At that
2 time, the Receiver, Gershman, Brickner & Bratton, Inc. (“the Receiver”) provided an update on the
3 progress of Consent Decree projects and on the operations of the Solid Waste Management Division
4 (“SWMD”). *See* Dkt. No. 794.

5 After approximately three years and five months since its appointment, the Receiver has
6 effectively dealt with many challenges to reach two major milestones under the Consent
7 Decree—the closing of the Ordot Dump and the opening of the Layon Landfill. The court
8 commends the Receiver for its efforts and the tremendous progress it has made thus far. To illustrate
9 how much progress has been made, the court provides a brief background of the case before
10 reaching the substance of the Quarterly Report.

11 **I. BACKGROUND**

12 **A. THE ORDOT DUMP**

13 The starting date for the use of the Ordot site as a dump is not documented. However, it is
14 known that the Ordot Dump was in use during World War II. After the liberation of Guam, the

1 United States Navy continued to use the site as a disposal area. The U.S. Navy transferred
2 ownership of the Ordot Dump to the Government of Guam in 1950.

3 The Government of Guam has owned and operated the dump since the 1950 transfer. *See*
4 Dkt. No. 218 at 1. When the dump was started, there were no environmental safeguards
5 implemented to ensure against possible contamination; most notably, the dump is unlined at its
6 bottom and uncapped at its top. *Id.* at 2. As a result of this, the dump acts like a sponge, absorbing
7 rain water and releasing it after it has percolated through the dump and picked up contaminants. *Id.*

8 Although it reached capacity in 1986, the dump continued to receive virtually all of the
9 industrial and municipal waste from the civilian population of Guam. *Id.* at 1. As a result, what was
10 once a valley is now a 341-foot mountain of trash. *Id.*

11 **B. CLEAN WATER ACT VIOLATIONS**

12 The Ordot Dump has had a long history of operational and environmental problems. In
13 1982, the dump was declared a Superfund site by the U.S. EPA. *See* Dkt. No. 49 at 3. In 1986,
14 the United States Environmental Protection Agency (“U.S. EPA”) issued an administrative order
15 under the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1387, directing the Guam Department
16 of Public Works (“DPW”) to cease the discharge of leachate from the Ordot Dump by May 1,
17 1987; DPW failed to comply with this order. *See* Dkt. No. 55 at ¶ 4. U.S. EPA then made
18 several more attempts to deal with the problem administratively, but these attempts also proved
19 fruitless and leachate continued to be discharged from the dump. *See* Dkt. No. 218 at 2.

20 As a last resort, the United States initiated the instant action on August 7, 2002. *See* Dkt.
21 No. 1. In the complaint, the United States sought an injunction that would require the
22 Government of Guam to comply with the CWA, and prayed for over \$50 million in civil
23 penalties from the Government of Guam for the violations of the CWA. *See id.* at 6. Ultimately,
24 by filing the suit, the United States wanted to avoid further environmental degradation of Guam
25 by forcing the Government of Guam to close the Ordot Dump and open a new municipal solid
26 waste landfill (“MSWLF”) that complied with federal environmental laws and regulations. Dkt.

1 No. 218 at 3.

2 **C. THE CONSENT DECREE**

3 Beginning in November 2002, the parties participated in settlement conferences
4 facilitated by the court. *Id.* In December 2003, after approximately one year of negotiating, the
5 parties lodged the Consent Decree with the court. *Id.* On February 11, 2004, following
6 publication on the Federal Register and a period of public comment, the court approved and
7 entered the Consent Decree. *See* Dkt. No. 55.

8 Among other things, the Consent Decree established a schedule for the closure of the
9 Ordot Dump and the construction and operation of a new, CWA-compliant MSWLF. *See id.*
10 The Government of Guam, however, consistently failed to meet the deadlines set forth in the
11 Consent Decree. *See* Dkt. No. 218 at 4. Most significantly, the Government of Guam did not
12 meet the deadline for the closure of the Ordot Dump or the deadlines for submitting plans for the
13 new Layon Landfill. *Id.*; Dkt. No. 56 at 7.

14 The lack of progress was partly attributable to Section 98 of Guam Public Law 29-19,
15 which was passed by the Legislature in September 2007. *See* Dkt. No. 218 at 4. Essentially,
16 Section 98 prohibited the expenditure of funds for any landfill site that the Government of Guam
17 did not own. As a result, the Government of Guam could not purchase the Layon land for the
18 new MSWLF or conduct the requisite studies for the new site. *See id.* The court held that
19 Section 98 was unconstitutional and ordered the Government of Guam to allocate funds to
20 condemn the Layon land and for necessary site preparation. *See id.* at 8.

21 However, despite the removal of the impeding legislation, the Government of Guam
22 continued to make only minimal progress on the Consent Decree. *See* Dkt. No. 239 at 2–3.

23 **D. THE APPOINTMENT OF THE RECEIVER**

24 In March 2008, the court found that “there [was] an historical . . . lack of commitment by
25 the island’s leaders in addressing [the] solid waste crisis,” and that “[t]he problem of a highly
26 dysfunctional, largely mismanaged, overly bureaucratic, and politically charged solid waste

1 system, . . . [was] beyond correction by conventional methods.” Dkt. No. 239 at 1. Accordingly.
2 after much deliberation and upon consideration of the complete record in this case, the court
3 appointed the Receiver to manage SWMD and vested it with the power and authority to enforce
4 the terms of the Consent Decree. *See id.* at 1, 15.

5 **E. THE INITIAL CONDITION OF SWMD AND OTHER CHALLENGES**

6 In April 2008, when the Receiver took over the reigns of SWMD, it was plagued by a
7 host of operational and financial problems. *See* Dkt. No. 272 at 4. To illustrate, SWMD:

- 8 • had only one working trash truck to collect nine daily routes;
- 9 • rented two trash trucks from the private sector that often failed mechanically;
- 10 • operated a three-shift day during which the sole working trash truck operated
11 nearly around the clock in order to collect customers’ trash;
- 12 • had no reliable, accurate way to calculate the tonnage of trash disposed at the
13 Ordot Dump;
- 14 • spent as much as \$11,000 a day[—that is, approximately \$4 million on an
15 annualized basis—]to furnish rental equipment and contract operators because its
16 equipment was broken,;
- 17 • was organizationally hamstrung by the poor credit management . . . ; and
- 18 • had exceptionally low employee morale, poor working conditions, and minimal
19 accountability.

20 Dkt. No. 538-1 at 10. Additionally, SWMD’s billing system was unreliable, and for years,
21 SWMD collected the trash of over 4,000 nonpaying customers for free. *See* Dkt. No. 557-1 at
22 13.

23 Beyond administrative matters, the Receiver needed to obtain the requisite environmental
24 permits and zoning approvals to begin the Layon Landfill construction and find a way to
25 increase the life span of the Ordot Dump, which was on course to reach its maximum capacity by
26 September 2009. *See* Dkt. No. 250-1 at 14–15.

27 The Receiver also faced many external obstacles. The court recalls the following challenges:

- 28 • The uncertainty of the Government of Guam’s legal title to the Layon Landfill site
29 and difficulty obtaining the requisite zoning approvals (*see* Dkt. Nos. 270 at 1; 272

1 at 5);

- 2 • The Government of Guam's prolonged inability to pass a workable funding plan,
3 followed by its noncompliance with the court's order to make payments to fund the
4 Consent Decree projects (*see e.g.*, Dkt. Nos. 312 at 3; 330; 340; 372; 388; 403);
- 5 • Efforts to interfere with Guam Environmental Protection Agency's compliance with
6 the court-ordered permitting process for the Layon Landfill (*see* Dkt. Nos. 449, 450);
- 7 • The discovery of a colony of the Guam Tree Snail (*Partula radiolata*) at the Ylig
8 Bridge project site and the accompanying measures needed to relocate the locally-
9 listed endangered species (*see* Dkt. Nos. 461 at 3; 464 at 1);
- 10 • The discovery of ancient remains within the right-of-way of the Access Road (*see*
11 Dkt. No. 715-1 at 9);¹
- 12 • The discovery of an unexploded ordinance at the Ylig Bridge project site;
- 13 • The Treasurer of Guam's unauthorized withdrawal of approximately \$4.7 million in
14 excess of SWMD's expenditures from the SWMD bank account (*see* Dkt. No. 649
15 at 3-4); and
- 16 • The recent discovery of illegal dumpsites in the vicinity of the Ordot Dump that
17 could complicate the final closure process (*see* Dkt. No. 740).

18 Despite these challenges, the Receiver has turned the formerly defunct SWMD into an
19 efficient, reliable, and self-financing government entity. Under the Receiver's direction, SWMD
20 has implemented new trash cart and billing systems, which have contributed to an increase in the
21 number of paying customers from 12,589 to more than 17,000. *See* Dkt. No. 715-1 at 3.
22 Furthermore, the Receiver reduced the number of SWMD employees by 45%, while providing more
23 reliable services to customers, as illustrated by the on-time-trash-collection rate of 99.7%. *See* Dkt.
24 No. 794-1 at 2, 14. The Receiver has also expanded services: a curbside recycling pilot program is

¹ Winzler & Kelly worked with the Guam Historic Preservation Office of the Department of Parks and Recreation and SWCA (an archaeological consultant) to prepare a mitigation plan and remove the remains pursuant to the plan. *See* Dkt. No. 715-1 at 10.

1 currently in place; a bulky and metallic item collection program slated to begin this month, and as
2 required under the Consent Decree, a plan for a household hazardous waste facility is under works.
3 *Id.* at 2, 17. All this, while operating at 46% below the SWMD budget and with funds derived solely
4 from user fees. *Id.* at 19

5 In addition to the improvements at SWMD, the Receiver has made significant strides in
6 fulfilling the requirements of the Consent Decree. Most recently, after almost two decades of CWA
7 noncompliance, the Receiver closed the Ordot Dump and opened the Layon Landfill.² The long
8 overdue closing of the dump and the opening of the landfill are monumental achievements for the
9 Receiver, the employees of SWMD, and the entire island of Guam.

10 Based on the foregoing, the court hereby orders that the Ordot Dump stop receiving trash,
11 *nunc pro tunc* to August 31, 2011, and that all trash be taken to the Layon Landfill, *nunc pro tunc*
12 to September 1, 2011. The court notes that the new Layon Landfill is fully compliant with the
13 CWA. Additionally, the Receiver shall continue to work on finalizing the closure of the Ordot
14 Dump and fulfilling the remaining requirements of the Consent Decree.

15 **II. THE QUARTERLY REPORT**

16 Pursuant to the concerns raised at the Hearing and in the Report, the following items are
17 **ORDERED:**

18 ***Fiscal Year 2012 Operating Budget***

19 At the hearing, the Receiver proposed a Fiscal Year 2012 (“FY 2012”) operating budget
20 to the court, noting that the budget needed to be significantly increased as it is the first year that the
21 system will be fully operational with all of its new components.

22 The FY 2012 operating budget proposal is as follows:

² The Receiver was able to achieve these milestones with the help of many others, including the employees of SWMD, the contractors and subcontractors involved with the Consent Decree projects, DPW, Guam Environmental Protection Agency, U.S. EPA, and the parties. The court commends the efforts of those listed and all of the others that contributed to closing the Ordot Dump and opening the Layon Landfill.

Layon Landfill	\$3,760,190
GSWA Personnel	\$2,602,805
Commercial Transfer Station	\$2,747,614
Debt Service	\$4,497,097
Reserves	\$3,729,546
Other Expenses (including fuel, fleet maintenance, capital outlay, utilities, equipment, and the Receiver cost)	\$4,211,764
TOTAL FY 2012 OPERATING BUDGET	\$21,549,016

The court finds that the budget is reasonable and hereby approves the proposed FY 2012 operating budget. Furthermore, the court notes that there are some costs that the Receiver cannot estimate precisely at this time, and hereby authorizes the Receiver to modify the FY 2012 operating budget to address additional needs that may arise during the year.

Delinquent Commercial Hauler Accounts

The Receiver reported that collecting payments from commercial haulers continues to be problematic. Following the last quarterly hearing, the court approved an incentive approach to the delinquency problem. Under the incentive approach, commercial haulers were offered a ten percent discount if they: (1) paid electronically via ACH, (2) paid on time, and (3) refrained from relying on Public Law 25-93 to reduce the amount owed.

Of the five commercial haulers, Mr. Rubbishman was the only hauler to qualify for the incentive discount in July 2011, and is the only hauler that is current with its payments. The other four commercial haulers remain in arrears. The largest unpaid balance is \$1,379,500, and the most delinquent account is 465 days behind.³

To deal with the delinquency problem the Receiver proposed the following policy:

Delinquent bills, discontinuance of service, service charges: Any unpaid balance after sixty (60) days shall be considered delinquent and shall result

³ That is 465 days in excess of the 60-day grace period provided by Guam law.

1 in a letter notifying the commercial hauler that service will be discontinued
2 unless the account is paid in full within thirty (30) days of the date on the
3 letter. If the account is not paid in full within thirty (30) days of the date of
4 the letter, the account will enter a 30-day termination period. At the
5 beginning of the 30-day termination period, a public announcement will be
6 made of the pending termination to allow the customers of the terminating
7 hauler to make other arrangements for the proper disposal of their trash.
8 Termination will be accomplished by barring the delinquent commercial
9 hauler from using the disposal facilities.

10 **Restoration of service following collection of the account:** Whenever any
11 delinquent commercial hauler whose service has been terminated pays the
12 account balance in full and posts a payment bond equivalent to the total
13 billing to the account for the 12 months prior to the account's termination and
14 a service fee of \$1,000 to defer the cost of restoring their service, service
15 shall be restored.

16 Liability of the commercial hauler for payment of all unpaid bills remains the
17 responsibility of the commercial hauler even if service is not restored.
18 Delinquent commercial haulers shall also be responsible for any reasonable
19 collection costs incurred.

20 The court recognizes that this is a significant problem since over 60% of SWMD's revenue
21 is derived from commercial billings. Accordingly, the court hereby approves the proposal on an
22 interim basis, pending a full rate and policy review and approval by the Public Utilities Commission.

23 *Military Participation*

24 The Receiver reported that it is working on finalizing an agreement for the Military's
25 participation as a customer of the Layon Landfill and the new commercial transfer station. The court
26 hereby orders the Receiver and the Government of Guam, including the Governor and the Attorney
27 General, to work together to finalize the agreement with the Military. Military participation shall
28 be based on the rate of \$156 per ton as previously approved by this court for other commercial
29 customers. The \$156 rate per ton shall remain in effect until such time as it is modified by this court
30 or the Guam Public Utilities Commission adopts a schedule of rates for solid waste services.

31 Furthermore, the court finds that time is of the essence for this matter as the Military requires
32 trash service by October 1, 2011. Accordingly, the Receiver and the Government of Guam shall
33 make it a priority to finalize the agreement with the Military.

1 ***Guam Solid Waste Authority Act***

2 On April 18, 2011, the Guam Legislature passed the Guam Solid Waste Authority Act (“the
3 Act”). *See* 10 GUAM CODE ANN. Ch. 51A. The Act named the Guam Solid Waste Authority
4 (“GSWA”), an autonomous agency, as the successor of SWMD. *See* 10 GUAM CODE ANN. §
5 51A103 (“The Solid Waste Management Division, a sub-entity of the Department of Public Works
6 shall continue in existence as *an autonomous, public corporation* now referred to as the Guam Solid
7 Waste Authority (GSWA).”) (emphasis added). Accordingly, the court hereby vests the Receiver
8 with full power and authority over GSWA, to the full extent of its previously granted authority over
9 SWMD. *See* Dkt. No. 239.

10 Furthermore, the court notes that the Receiver raised some issues concerning the Act with
11 the Office of the Attorney General. The Attorney General is hereby ordered to respond to the issues
12 raised by the Receiver on or before October 15, 2011. If the Attorney General finds that this date
13 is impractical, the Attorney General shall work with the Receiver to determine a reasonable date.

14 ***Government of Guam's Motion for Order Authorizing Receiver to pay Capital Cost***
15 ***Expenses from Bond Proceeds***

16 Finally, the court acknowledges that the Government of Guam filed a Motion for an Order
17 Authorizing Receiver to pay Capital Cost Expenses from Bond Proceeds. *See* Dkt. No. 790. The
18 United States shall file its response to the motion by September 30, 2011, and the Government of
19 Guam shall file its reply by October 14, 2011. The Receiver shall also file its position on the motion
20 by September 30, 2011.

21 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Sep 02, 2011