


Guam SOLID WASTE RECEIVER

Ninth Joint Status Report to the United States District Court of Guam (Receiver's Presentation of its Position)



Presented by
Gershman, Brickner & Bratton, Inc.
December 18, 2024



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MANAGEMENT
CONSULTANTS

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Ninth Joint Status Report Topics

- I. Leachate Flow and Seep Investigations
- II. Claim Against the Guam Waterworks Authority
- III. SEP Completion Reports
- IV. Post-Closure Care Funding and Trust Agreement
- V. Transition Plan and Termination of Receivership




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I. Leachate Flow and Seep Investigations

Two Topics Being Presented

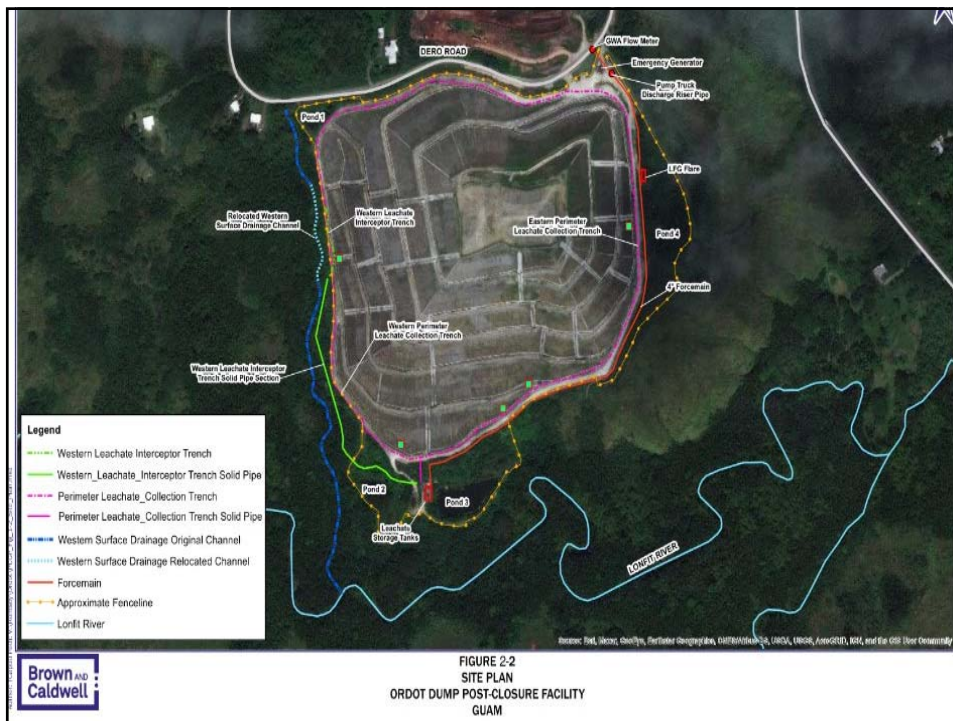
- A. Overview of Ordot Dump Performance: Pre-Closure and Post-Closure
- B. What is Covered in the Joint Status Report by the Receiver



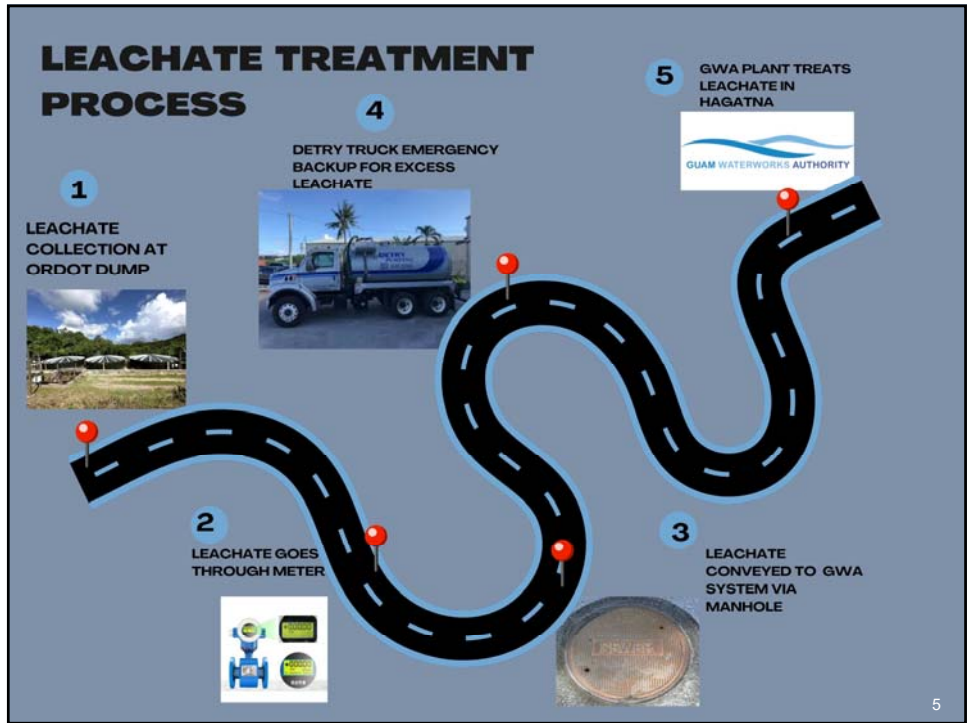
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I. Leachate Flow and Seep Investigations (cont'd)

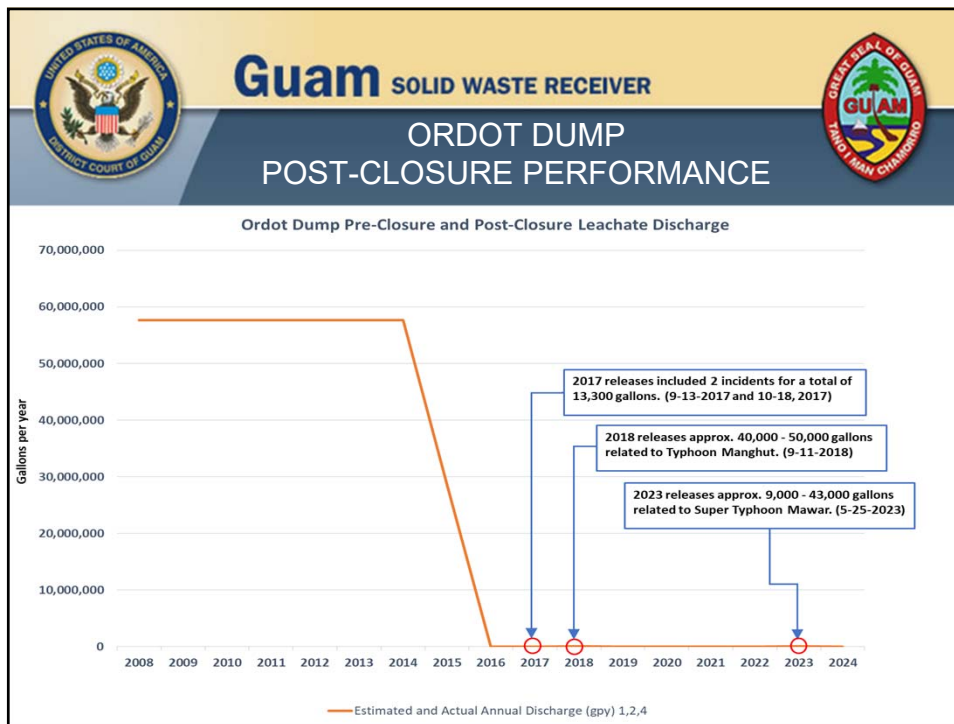
A. Overview of Ordot Dump Performance:

1. Pre-Closure Facility Performance Review
 - Uncontrolled discharge of approximately 58 million gallons every year of untreated leachate into waters of the U.S.
2. Post-Closure Facility Performance Overview
 - Leachate Collection and Removal System (LCRS) operates in compliance with all applicable permits
 - LCRS has been hardened for more resiliency and reliable performance during severe weather events
 - Leachate production continues to decline annually



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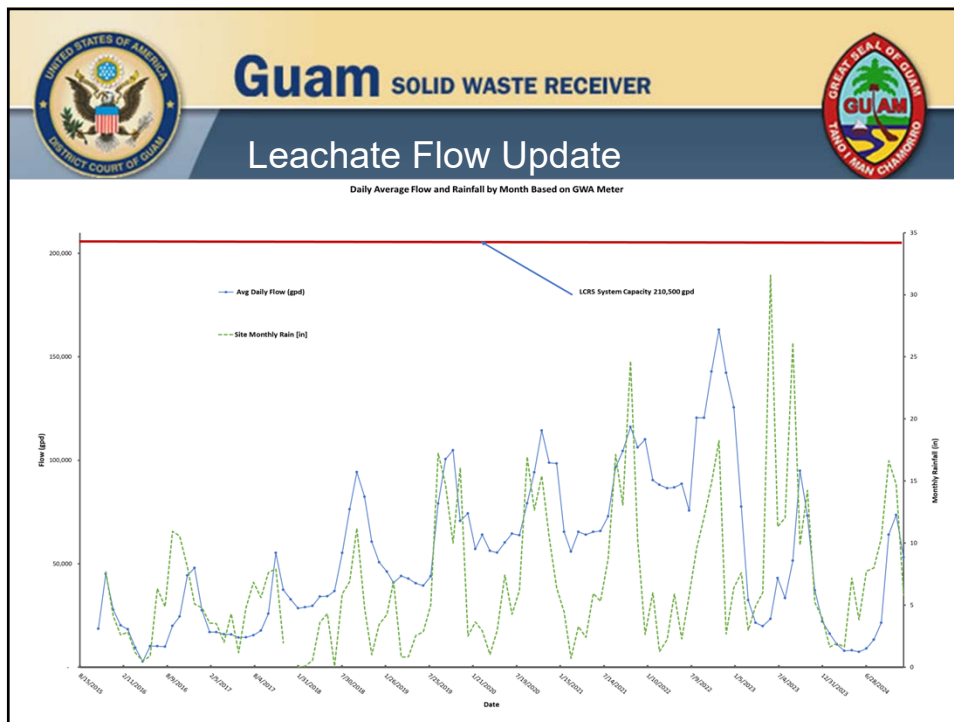
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ORDOT DUMP POST-CLOSURE PERFORMANCE

Release Event Date	Estimated Release (Gallons)	Percentage of Release relative to Pre-Closure Annual Discharge
Sept. 13, 2017 (4-inch HDPE force-main leak)	6,000	0.01034%
Oct. 18, 2017 (GPA power outage and excessive rain)	7,300	0.01259%
Sep. 11, 2018 (Typhoon Manghut)	40,000 – 50,000	0.08621%
May 25, 2023 (Super Typhoon Mawar)	9,000 – 43,000	0.07414%
Pre-Closure Annual Discharge is estimated to be 58,000,000 Gallons		

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Leachate Flow Update (cont'd)

With eleven (11) months behind us in 2024, leachate rate approaching level of 2016 and 2017 flows now that GWA Dero Road leaks no longer impact the Ordot Dump Facility


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	(GWA leaks repaired in Dec.)
	40,976,930
2023	15,870,700
2024 (11 months)	8,615,694

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Leachate Flow Update (cont'd)

GWA Leachate Treated and Charges


Year	Leachate (Gallons)	Charges
2022	40,976,930	\$1,126,653.88
2023	15,870,700	\$358,176.30
2024 (11 months)	8,615,694	\$137,445.53




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POST-CLOSURE PERFORMANCE

Ordot Dump Closure Facility - Total Leachate Collected and Treated by Year (Through 11-30-2024)

Year	Annual Leachate caused by GWA	Annual Leachate Collected (gal)
2015	0	~6,000,000
2016	0	~7,000,000
2017	0	~8,000,000
2018	~9,000,000	~9,000,000
2019	~15,000,000	~8,000,000
2020	~20,000,000	~7,000,000
2021	~21,000,000	~9,000,000
2022	~33,000,000	~8,000,000
2023	~3,000,000	~13,000,000
2024	0	~8,000,000

■ Annual Leachate caused by GWA
 ■ Annual Leachate Collected (gal)

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GK2, Inc. Independent Report



- Corroborates findings of B&C report
- Evaluated GWA Waterline Leaks impact on Dero Road to Ordot Dump Leachate Flow
- Found leachate flow driven by rainfall trends
 - since landfill is unlined
 - trends should match but during 2017 to 2023 leachate flow much more than projected, trend lines separated
 - Only in 2023, after the December 2022 leak fixes were completed did trend lines closely match again



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I. Leachate Flow and Seep Investigations (cont'd)

B. What is Covered in the Joint Status Report by the Receiver

Brown and Caldwell Report Dated May 3, 2024:



- Brown and Caldwell Report concluded, based on sufficient data collection culminates the investigations on all data, that discharges have ceased
- U.S. EPA provided comments on this report on November 15, 2024
- The Receiver and Brown and Caldwell are reviewing the comments and plan to discuss with EPA in the very near future
- The Receiver will consult with the U.S. EPA/DOJ regarding the final form and content of the Cessation Certification required by the Consent Decree



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II. Claim Against the GWA



- Court directed Receiver to take the lead and to pursue the GWA Claim
- Receiver has provided regular updates to the Court regarding the progress and next steps
 - 5/10/23 Status Hearing (ECF 1992)
 - 5/8/2024 Status Hearing (ECF 2068)
 - 9/11/24 Status Hearing (ECF 2094)
- Receiver has provided monthly updates to the GSWA Board at the GSWA board meetings (May 2024-November 2024) (ECF 2136, Exhibits A-G)



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Receiver's Efforts to Settle with GWA Relating to Dero Road Waterline Leaks



- 8/13/2023 Receiver's Request for Compensation for Dero Road Waterline Leaks for \$2.65MM (**rejected by GWA and requested an additional year of leachate collection data**)
- 8/21/2024 Letter with Calculation of Damages Report from Dero Road (with additional year of data) for \$4.4MM with supporting reports and calculations
 - *Brown & Caldwell Report on Leachate Flow Evaluation and Cessation of Discharges to Waters of the U.S.*
 - *GK2, Inc.'s Evaluation of Contribution of GWA Waterline Leaks on Dero Road to Ordot Dump Leachate Flow & Volume Report*



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II. Claim Against the GWA Cont'd



- Receiver's counsel made seven (7) requests for a settlement meeting with GWA between 8/21/24 to 10/16/2024. (**GWA did not agree to meet**)
- 9/11/24 Receiver informed the Court that if matter cannot be settled then a lawsuit would have to be brought against GWA (ECF 2092 at 24:1-5)
- 9/17/24 Letter from Receiver's Counsel to DB Insurance Co., Ltd. notifying insurance company of claim against GWA insurance policies – attached the 8/21/2024 Letter with Calculation of Damages Report (**No response from DB Insurance**)
- 10/17/24 Receiver informed GSWA Board regarding GWA's lack of response and that Receiver will be filing lawsuit against GWA (ECF 2136 Exhibit F&I) (**no objections from the Board**)



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II. Claim Against the GWA Cont'd


- 10/31/2024 Receiver filed Complaint as Federal Receiver for GSWA against Guam Waterworks Authority and DB Insurance Co., Ltd. in the Superior Court of Guam (CV593-24) (ECF 2136, Exhibit H)
 - Claim for negligence for failure to construct and maintain its distribution waterlines safely and in according with good engineering practices
 - Direct action against DB Insurance under GWA commercial general policies which cover liability of GWA to pay damages in the GWA Lawsuit
 - Claim for breach of contract for overbilling leachate treatment cost generated by GWA from Dero road waterline leaks
- 11/20/24 Receiver informed the GSWA Board regarding filing of the GWA Lawsuit (ECF 2136, Exhibit G)




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Breakdown of Damages Against GWA (ECF 2078-1)



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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 ("GSWA 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



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Innovative, Sustainable Solutions for Solid Waste Management



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\$1 Million Credit Settlement Disclosed at 9/11/24 Status Conference



"I worked out an agreement before the PUC on a credit – million dollar credit, which I have been pursuing with Miguel [GWA General Manager]."

Irv Slike (GSWA GM, 9/11/24 Status Conference)



- Not disclosed or discussed with Receiver or GSWA Board
- No documents presented regarding this settlement
- Discount of \$3.4 Million (75%) from \$4.4 Million GWA Claim
- Credit not cash payment – GWA has the cash to pay
- PUC approval not required if GWA rates are not impacted
- Bad deal for GSWA



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GWA Lawsuit Next Steps



- Settling for \$1 million credit is not in the best interest of GSWA.
- According to GWA counsel, the Office of the Attorney General defends this lawsuit unless a Special AG is appointed. Settlements requires the Attorney General's approval.
- Liability for Dero Road Leaks has not been disputed by GWA and is well substantiated in GK2, Inc. and B&C Reports
- The Receiver will continue pursuing the claims against GWA in the Superior Court, including mediation and arbitration (if GWA/OAG agrees) if so ordered.



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III. SEP Completion Report



- Receiver has completed its portion of the SEP Completion Report and U.S. EPA approved it on July 9, 2024 (see ECF 1995-2)



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IV. Post-Closure Care Funding and Trust Agreement



- In September 2024, the GSWA Board approved the new RCRA Trust Agreement
- The Department of Administration transferred the \$30+ million settlement proceeds into a new RCRA compliant trust set up with the Bank of Guam per the requirements of the U.S. EPA
- The Receiver augmented the funds with \$1.7+ million deposit the balance so that full funding of \$32.5 million post-closure cost estimate has been reached
- GSWA monthly deposits for the \$2 million per year funding have been suspended



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



- Transaction authorizations require both GSWA and the Receiver while the Receivership is still active
- 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
- The Receiver has approximately \$6.7 million in the custodial accounts adequate to fund approximately 5 years of currently estimated post-closure costs



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V. Transition Plan and Termination of Receivership



- The Receiver and GWSA filed their signed transition plan with the Court on October 31, 2024
- The transition plan estimates that once the Court has ordered transition to occur, transition could be done within 60 days
- In the transition plan, GSWA is required to provide a written opinion from the Attorney General's office confirming that GSWA can amend its engineering consultant's contract for Layon Landfill services to add the Ordot Dump Post-Closure Facility
 - That has yet to be provided
 - When provided, the transition plan will be ready for implementation



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

- The Receiver is of the opinion that GSWA and GovGuam are not committed to pursuing the full amount of the damages the Receiver has alleged in the GWA and DB lawsuit
- The Receiver believes it is in the best position to continue pursuing the claim until it is fully resolved
 - Gov Guam disagrees, and engaged in negotiation GSWA without the Receiver's knowledge or agreement
- The Consent Decree requirements remaining to be met are:
 1. GEPA Portion of the SEP Completion Report accepted by US EPA
 2. Certification of Cessation of Discharges to US waters filed and accepted by the US EPA



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