GBB
SOLID WASTE
MANAGEMENT
CONSULTANTS
RECEIVER

November 7, 2011

Mr. Ivan C. Quinata
Administrator
Guam Environmental Protection Agency
P.O. Box 22439 GMF
Barrigada, Guam 96921

Mr. Patrick Mason
Deputy Attorney General
Office of the Attorney General
287 West O'Brien Drive
Hagåtña, Guam 96910

RE: GRRP Permit for Guatali Municipal Solid Waste Landfill

Dear Messrs. Quinata and Mason:

Thank you for providing us with the materials that support the proposed permit for the proposed Guatali Municipal Solid Waste Landfill issued to Guam Resource Recovery Partners (GRRP). We would like to provide you with comments and questions related to the proposed permit. Please consider this information pursuant to the public comment period currently underway with regard to this permit. We have addressed the letter to both of you since some of the issues and questions are primarily legal and will need to be addressed by the Office of the Attorney General and others are technical and must be addressed by the Guam Environmental Protection Agency (GEPA).

Our comments and questions fall into two categories: first, we have concerns about the financial assurance provisions of the proposed permit and the Chamorro Land Trust Commission License Agreement; and second, we have several technical questions and concerns.

Financial Assurance

Financial assurance is defined by Guam Law as "a financial guarantee assuring that funds are available to pay for the design, construction, operation and closure of a solid waste landfill facility, for rendering post-closure at a solid waste landfill facility, for corrective action and to compensate third parties for bodily injury and property damage caused by sudden and non-

sudden accidents related to the operation of a solid waste landfill facility." Guam Law further states that "Each permit application and each permit renewal application shall be submitted with proof of financial assurance, of a type and in a sum established by the Administrator conditioned on the fulfillment by the permit holder of the requirements of this Chapter and the rules and regulations authorized therein. No financial assurance mechanism required under this Chapter may be canceled by the guarantor unless the Administrator has received written notice thereof and there has been a lapse of one hundred twenty (120) days between receipt of notice and cancellation date."

A financial guarantee requires that the party making the guarantee have sufficient financial resources to pay the guarantee if it is required to do so and must provide a non-cancellable and enforceable commitment to provide these financial resources if properly called upon to do so. The amounts required to provide the financial assurance required for such a landfill are substantial. Based on our Guam experience, we believe the total financial assurance guarantee would exceed $50 million for the GRRP project. The materials presented by GRRP provide neither a guarantee nor even a qualified source for a guarantee.

The materials relative to meeting the financial assurance provisions of Guam Law are included in Exhibit 8 to GRRP's permit application and consist of GRRP's summary of the rules related to financial assurance and copies of a financial statement for Guam Power, Inc. (GPI), one of the general partners participating in GRRP; a financial statement from Waste Management, Inc. (WM), parent company of Wheelabrator Technologies, Inc.(WTI), a wholly owned subsidiary of Waste Management, Inc. and the other general partner in GRRP; and a 2008 annual report from NANA, the apparent owner of NANA Services, LLC, an Alaska Limited Liability Company intended, pursuant to a 2009 MOU, to be the General Contractor for construction of the landfill and the operator of the landfill.

It is not clear why the NANA Annual Report and the MOU with NANA Services, LLC is included since these documents do not obligate these organizations to providing any financing or financial guarantees.

The financial statement of Guam Power, Inc. shows current assets of only $290. The non-current assets appear to relate to costs already incurred in the Company's effort to develop the landfill, clearly not a source of the financial assurance required by Guam Law.

The financial statements of Waste Management, Inc., the parent company of Wheelabrator Technologies, Inc., appear to be the basis of the representation made by the applicant that it has met the financial assurance requirement. However, the inclusion of a 2008 report that is available to anyone over the Internet does not constitute a financial guarantee as required by Guam Law.

In addition, GBB has followed Waste Management, Inc. closely over the years in the normal course of its solid waste consulting. GBB President Harvey Gershman knows Jack Ristau, who

is the Director of Business Development for Wheelebrator Technologies, Inc. Mr. Gershman has inquired through Mr. Ristau, if either Wheelabrator Technologies, Inc. or Waste Management, Inc. is participating in GRRP's landfill proposal in Guam. Mr. Ristau has responded that "WTI and WM are not parties or plan on being a parties [sic] to the proposed landfill." The email exchange on this matter between Mr. Ristau and Mr. Gershman is attached to this letter.

On March 3, 2011, Mr. Quinata submitted a sworn declaration to the U.S. District Court of Guam stating "GEPA has not and will not cause a notice of intention to issue GRRP an operations permit to be published in a major local newspaper(s) and broadcast over radio station(s) unless and until the conditions to the draft permit are established as required by Guam statutes and regulations and met by GRRP." None of the information provided even comes close to providing the "proof of financial assurance" that "shall" be submitted with each permit application. If there was additional information submitted with the application that provides the required proof of financial assurance, please provide it to us at your earliest convenience.

Chamorro Land Trust Commission License Agreement

As we read the license agreement, it began in 2002 and must end no later than 2023. We understand that under Guam Law, the license agreement cannot be extended beyond 2023. Given this constraint, how is it possible to hold the permittee responsible through the 30-year post closure period?

Guam Law authorizes license agreements such as the one under which GRRP is seeking the landfill permit, for land under the authority of the Chamorro Land Trust Commission, as follows:

> The Commission is authorized to grant licenses for terms of not to exceed twenty-one (21) years in each case, to public utility companies, or corporations as telephone lines, electric power and light lines, gas mains, and the like. The Commission is also authorized to grant licenses for lots within a village in which lands are leased under the provisions of this section, to:
>
> (1) churches, hospitals, public schools, post offices, and other improvements for public purposes;
> (2) theaters, garages, service stations, markets, stores, and other mercantile establishments (all of which shall be owned by lessees of the Commission or by organizations formed and controlled by said lessees).

Under what part of the legal authority outlined above, or other legal authority, may the Chamorro Land Trust Commission enter into a license to allow the use of the land under its control for a landfill?

Section VI of the License Agreement states: "Licensee shall ensure closure of the landfill is closed pursuant to all applicable federal guidelines and convey the property back to the Licensor in such manner that it may be immediately upon its return (emphasis added), as either a natural community park, or other public designated use as deemed appropriate by the Chamorro Land Trust Commission." This seems to require that the land be available for public use on the day the license agreement ends. How does the permitting process address this significant restriction on the use of the land?

Technical Comments and Questions

In Ivan Quinata's Declaration filed with the U.S. District Court of Guam on March 3, 2011, it is stated that "GEPA lacks the independent technical assistance it received in the Layon permitting process" to address the many technical issues that must be addressed in any landfill permitting process. The following comments and questions seek clarification about how that technical expertise was obtained and other technical issues that appear to have been handled in a significantly different and less rigorous way than was the case with the Layon Landfill.

1. Did GEPA obtain the services of a technically competent Geologist / Hydrogeologist, or Professional Engineer in this field, to review and approve the Preliminary Hydrogeologic Characterization and Confirmation Work Plan?
2. It appears that no on-site hydrogeologic data were gathered and presented as part of the Landfill Permit Application for this site. For the Layon Landfill, 31 monitoring wells were installed and sampled as well as 7 surface water sampling locations for the cell area at Layon. This was required to be performed before the draft permit was issued for review. Was a comparable set of on-site data gathered and presented for the Guatali Site? If not, why?
3. For the Layon Landfill permit process, 31 boreholes, 32 test pits, 4 percolation test pits, 437 samples and 482 test results were performed as required for 22 acres of the cell area at the Layon Landfill site before the draft permit was issued for review. For the Guatali Site, it appears that only 5 onsite instances of probing with a hand-operated cone penetrometer, reaching an average depth of 3 feet, was required, and no soil samples were collected for geotechnical testing. Why the difference? Who determined that this was technically adequate to characterize the 15 acres of cell area?
4. Did GEPA obtain the technical competency of a Geologist/Hydrogeologist, or Professional Engineer in this field, to confirm that the revisions agreed upon between GEPA and permit applicant on 11/25/08 (as indicated on page iv of Appendix A, Exhibit 4 (Environmental Impact Assessment) were properly incorporated into the document as stated?
5. GEPA appears to have accepted information from Parcel A to support this permit on Parcel B. The information on Parcel A was gathered for a possible landfill site whose site center is approximately 5000 feet away from the Parcel B landfill site and in a separate watershed. We believe that any geotechnical engineer would require a new and

substantial investigation to characterize the new site. When the Layon Landfill design was shifted less than 1,000 feet, the GEPA Hydrogeologist required an additional 16 monitoring wells and 8 test pits to further characterize the site. What is the explanation for this apparent lower standard?

6. From the documents made available to us, it appears that GEPA has allowed the submission of professional design documents, analysis and reports to be provided as part of the permit application that have not been properly sealed and signed by a professional engineer consistent with the requirements of the Layon permit documents. Is this correct? If yes, why?
7. It appears that GEPA has allowed engineering data, analysis and recommendations from Parcel A that are 13 to 16 years old and not performed under the supervision and direction of the landfill design Engineer of Record for the Guatali Site to be made part of the design report for the landfill and a part of the permit application supporting documents. Is this correct? Why was this allowed?
8. The Layon Landfill permit applicant was required to perform a complete slope stability and earthquake analaysis as a part of the application process. It appears that GEPA agreed that the application for the Guatali Site was technically adequate without a slope stability and earthquake analysis? Is this correct? Why was this allowed?
9. The Geotechnical Report for the Guatali Site (Appendix H of Exhibit 4 – Environmental Impact Assessment) and recommendations appear to be based on the 2007 design plans and a different cell footprint. Design drawings have now been updated twice, March 2008 and January 2011, with the footprint of the cell shifting and enlarging substantially. Why has the Geotechnical Report not been concurrently updated?
10. The Design Report states the size of Cell 1 is based on waste to be generated from the Marines in 2013 as well as all the civilian waste that is presently generated on the island. This is not an accurate basis of design since waste on the island is either recycled or is sent to the Layon Landfill. All Military waste on Guam that is acceptable waste for the Layon Landfill, is now contractually committed to the Layon Landfill until October 2016. How can the issuance of a permit to operate a landfill, that causes permanent impact to the island's environment, be allowed when the basis of design no longer is supported by the present conditions on the island?
11. How was the application determined to be technically adequate given the presence of a Flood Zone on the property very near the Cell 1 footprint (see FEMA map 6600010132D effective date 9/28/2007)?
12. The Design Report (see page 13, part 4.4) calculates the volume of excavation in the cell area and claims that the material excavated is soil but the preliminary geotechnical investigation performed in 2007 in the cell area indicates competent rock below 0.1-0.2 meters (4-8 inches). It is unlikely that this site will provide 384,800 cubic yards of soil required for protective cover, daily cover and final cover for the life of the landfill. That means soil will need to be imported, creating more noise and a greater environmental impact, and that is not addressed in the Environmental Impact Assessment. Does GEPA recognize the lack of soil on the site? Is GEPA allowing the permittee to use the rock as

daily and interim cover? Is there going to be a rock crushing operation at the site and therefore a quarry established?

13. Section 10105 (8)(6) of the Guam Soil Erosion and Sediment Control Regulations require benching of the sideslopes where fills or cuts are greater than 15 feet in depth. The site plans show no benching on the outside perimeter road slopes to control stormwater drainage in the slope areas between Sta. 17+25 to Sta. 19+75, between Sta. 9+00 and 10+00, nor have they been provided for the stockpiles at Sta 38+00 and near the entrance facility. Has there been a variance or exception given to this project's grading plans? If yes, why? If no, how is this issue being addressed?
14. If slope stabilization is to be used as shown on sheet CO19A, detail A for a 2:1 CUT slope in soil areas that are not competent rock, regulations require the Soils Report to include the stability analysis and design computations. These calculations are not in the information GEPA provided to us. Were these calculations provided to GEPA? If not, how was the permit application determined to be technically adequate?
15. The Drainage Plan shows a significant portion of the watershed diverted from the wetland on site to the detention basin. This prevents the wetland from receiving its normal volume of surface water supply. As this is an onslope wetland - it stays wet primarily from surface flow water. This is now being cut off by the perimeter road and cell. Why has GEPA allowed drainage to this wetland to be diverted that is likely to adversely impact the documented wetland and yet no mitigation has been provided in the application?
16. The Design Report makes mention of future cells? Where are the future cells planned to be located? The Layon Landfill permit applicant was required to clearly show the location of future cells. It is critical that the public understand where these cells may be and their size. Why is this information not included in the Design Plan?
17. An application for air permit was not submitted for this landfill. How did GEPA determine it was not necessary for the permittee to provide an application when it required Layon Landfill to apply for an air permit?
18. The Design Report assumes an existing water pressure in the Guam Waterworks Authority (GWA) system to supply the site with water at 45 psi; therefore, the water system and fire flow water supply were designed without actual system data from GWA. For such a large development and potential water use, GEPA/GWA typically require actual water pipe pressure data to be gathered so that the design is based on actual data not assumptions.
19. No Stormwater Pollution Prevention Plan for operations was included in the information provided to the public with the application. GEPA required the Layon Landfill permit application to contain a Stormwater Pollution Prevention Plan. Why did GEPA not require a plan for the Guatali Site?
20. No Spill Prevention Countermeasures Control (SPCC) Plan for operations was provided with the application. GEPA required the Layon Landfill permit application to contain an SPCC Plan. Why did GEPA not require a plan for the Guatali Site?
21. Design Report, Part 1.3 – At the time the Draft Environmental Impact Statement (DEIS) was prepared, GEPA did not have primacy for their Solid Waste Program; therefore,

USEPA provided review of the DEIS, which they found significantly flawed based on the comments USEPA provided on that document. It is also our understanding that the DEIS was prepared for Parcel A. Were the USEPA comments ever addressed and confirmed by USEPA to have been addressed at that time? Unless the flaws noted by USEPA have been addressed to EPA's satisfaction, how does GEPA justify allowing this DEIS to be used?

22. Design Report, Part 2.2 – The report indicates that Parcel B is located in the municipality of Piti. This is inaccurate, as Department of Land Management (DLM) records show the parcel to be located in Santa Rita. This calls into question the parcel on which the applicant is trying to establish a landfill. It is unclear from the supporting documentation if the report is addressing Parcel A or Parcel B. Is it clear to GEPA which parcel is addressed by the Design Report?
23. Design Report, Part 2.2 - This location description fails to mention the single family subdivision that is contiguous with the property, Tract 173, Blk 1, 2 and 3 (as yet undeveloped). Why was this not considered in the EIA and Noise Study as a possible receptor?
24. Design Report, Part 2.4 - states that a site specific hydrogeologic investigation is being performed currently. Is this true? Why doesn't GEPA wait until such investigation is completed before issuing a Draft Permit, as was done with the Layon Landfill?
25. Design Report, Part 3.2 – The proposed side slope for the cell excavation, and therefore the liner slope, is a 2:1, horizontal to vertical. This is an extremely steep slope and not typical for cell side slopes. Why have no preliminary stability analysis and interface shear strengths been provided for the liner interfaces and the subgrade to show that it will be stable under design loads?
26. Design Report, Part 3.3 – The narrative describes a ditch along the perimeter of the cell bottom, about 10 feet above it, to provide drainage control; however, no details are provided in the plans as to how this will work and is configured. This in an important detail, as stormwater management is critical in Guam. Why was the detail not provided?
27. Design Report, Part 4.1 – This states that a 100-foot buffer has been established along the perimeter in the design; however, clearly on the design plans, the buffer is only 60 feet wide for more than 2,000 linear feet, or 50% of the perimeter. How can this statement be true?
28. Design Report, Part 4.5, page 15, third paragraph – This states that the native soil at the site is fine grained silty clay. The makeup of the soil cannot be confirmed without taking soil samples and performing lab tests. There is no indication that this was done. Were soil samples taken and properly tested? If not, why not?
29. Design Report, Part 4.6.3, last paragraph - includes the following statement:

"There is a chance that during the startup and initial operation of the disposal cell the amount of leachate generated will not allow for recirculation to the refuse due to the limited amount of refuse located in the cell."

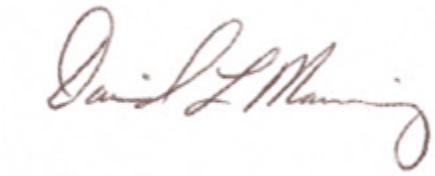
This potential is likely to occur. There is no indication in the information presented that GRRP has a written agreement with GWA for proper leachate disposal should the

proposed recirculation plan fail. For the Layon Landfill, GEPA required a written agreement from GWA to accept leachate before the permit was issued. There is no such written agreement included in this documentation nor is there even a GEPA condition in the draft permit to require it. Why was this important issue not addressed?

30. Design Report, Part 6.3 - No Site Specific Groundwater Monitoring Plan was provided or required to be submitted as part of this application. It was required in the Layon Landfill permit application, and there was a further requirement that the groundwater at the Layon Landfill Site be monitored for one year (eight events) before waste could be placed at the site. Why is this not a requirement for the Guatali Site?
31. Design Report, Specifications Section 2300, 2.7 Rock Fill - This specification section was not used. We find this surprising given that rock has been found 4-8 inches below ground surface of Parcel B, and with deep excavations required for the cell it is the predominant material to be excavated and used for fill.
32. Design Report, Specifications – Soil Cement - A significant specification is provided for the use of soil cement and its application for site slopes; however, there are no recommendations provided in the Geotechnical Soils Report as to its use. What analysis was performed to justify its use and stability in an earthquake? How did GEPA determine its applicability without supporting documentation?
33. Design Report – No Help Model analysis results are provided as documentation. Why did GEPA not require this to be provided?

We appreciate your attention to these important issues, and we look forward to your response.

Sincerely,



David L. Manning
GBB's Receiver Representative

Attachment

c.c. Assistant Attorney General Kathy Fokas
Ms. Conchita Taitano, GEPA
Assistant United States Attorney Mikel Schwab
Mr. Robert D. Mullaney, U.S. Department of Justice
Ms. Laurie Williams, USEPA
Ms. Karen Ueno, USEPA
Mr. Harvey Gershman
Mr. Chris Lund

RE: GRRP Application for Guatali Municipal Solid Waste Landfill Operating Permit

Harvey Gershman <HGershman@gbbinc.com> **Tue, Nov 1, 2011 at 4:04 PM**
To: "Ristau, Jack" <jristau@wm.com>
Cc: "David L. Manning" <dmanninggbb@gmail.com>

Jack:

Thanks for taking my call today to discuss this matter. You mentioned that this matter has been referred to your internal legal counsel. And, you also mentioned to me during our call that:

1. GRRP has accurately represented its relationship with Wheelabrator;

2. GRRP presents the wrong impression of Wheelabrator's involvement in GRRP's proposed landfill project in Guam; and

3. Wheelabrator has no involvement, and plans no involvement, in GRRP's proposed landfill in Guam.

Am I summarizing your comments to me correctly? I very much appreciate you providing these clarifications.

Regards,

Harvey
Harvey W. Gershman, President
Gershman, Brickner & Bratton, Inc.

From: "Ristau, Jack" <jristau@WM.COM<mailto:jristau@WM.COM>>
Date: November 2, 2011 8:59:29 AM EDT
To: Harvey Gershman <HGershman@gbbinc.com<mailto:HGershman@gbbinc.com>>, "O'Friel, Michael" <mofriel@wm.com<mailto:mofriel@wm.com>>
Subject: Re: GRRP Application for Guatali Municipal Solid Waste Landfill Operating Permit

Harvey. I can only be positive regarding #3 below. WTI and WM are not parties or plan on being a parties to the proposed landfill.

Since I have not reviewed the entire LF application I am not in a position to confirm items you have given in items #2 and #3 below.

If you need any further clarifications please contact me.

Sent from my BlackBerry Wireless Device