GBB
SOLID WASTE
MANAGEMENT
CONSULTANTS
RECEIVER

June 10, 2010

Ms. Karen Ueno
Mr. Christopher Lichens
Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Dear Ms. Ueno and Mr. Lichens:

With the construction of the Layon Landfill progressing in an orderly fashion, the Receiver is turning its attention to the next major phase of our work, the closure of the Ordot Dump. While the permit process for the opening of a new landfill was clear, it is not clear to us what permits are required for the closure work. We are requesting your assistance in this matter.

Please advise us as soon as possible what permits or other formal approvals are required from the United States Environmental Protection Agency for the planning and construction of the closure for the Ordot Dump. We have made a similar request of the Government of Guam to advise us on permits or other formal approvals that are required from the Guam Environmental Protection Agency, Department of Public Works, or other governmental agencies.

We look forward to your response in this important matter.

Thank you.

Sincerely,

David L. Manning
Receiver Representative

Mr. John McCarrol
Mr. Robert D. Mullaney
Ms. Laurie Williams

Government of Guam
Department of Public Works, Solid Waste Management Division
542 North Marine Corps Drive, Tamuning, Guam 96913
Phone: (671) 646-4379, Ext. 201 or 212
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94618

July 1, 2010

VIA EMAIL ONLY
David Manning
Gershman, Brickner & Bratton, Inc.
8550 Arlington Blvd. #304
Fairfax, VA 22031

Re: Consent Decree in Case No. 02-00022 - Ordot Dump and Layon Landfill
Response to GBB's April 8, 2010 Proposed SOW for Ordot Investigation
Response to GBB's June 10, 2010 Correspondence re: federal requirements

Dear Mr. Manning,

This letter provides the United States Environmental Protection Agency's ("EPA's") response to both your April 8, 2010 proposed Scope of Work ("SOW") for a Facility Investigation of the Ordot Dump and your June 10, 2010 correspondence requesting information on all federal permits or other formal approvals that will be required for planning and constructing appropriate closure facilities for the Ordot Dump. In addition, this letter comments on the need for storm water compliance at the new Layon Landfill. We have appreciated the chance to meet with Mr. Lund on June 28, 2010 as well as GBB's proactive approach as Receiver, since its appointment by the Court to assume the responsibilities of the Solid Waste Management Division of the Guam Department of Public Works with respect to the Consent Decree. Consistent with our recent discussions, we will send you an email proposing potential times for a monthly conference call with you and Guam Environmental Protection Agency ("GEPA") representatives. The purpose of the call would be to help assure expeditious progress toward opening Layon in July 2011 and achieving a complying closure of the Ordot Dump as promptly as possible. In our first meeting, Region 9 would plan to answer any questions you may have about this letter and the requirements described below, as well as to discuss the development of an appropriate schedule for Ordot closure planning and construction.

We have divided our responses into the following seven segments: (1) comments on the SOW, (2) Resource Conservation and Recovery Act ("RCRA") compliance, (3) Clean Water Act ("CWA") compliance, (4) Wetlands Mitigation, (5) Clean Air Act compliance ("CAA"), (6) the impact of eminent domain and inverse condemnation issues arising from potential intrusion of the perimeter of the dump onto adjacent private property, and (7) unexploded ordnance concern. While some of the sections below address overlapping requirements, we do not anticipate any conflict among the requirements or any need for duplicative activities. Rather a full understanding of the requirements in advance should facilitate an integrated process that will satisfy all requirements in a complementary and efficient way.

I. Comments on the Proposed SOW dated April 8, 2010

As requested at our June 28th technical meeting with the Receiver, EPA is providing general comments on the SOW and our input on the path forward for Ordot closure, including requirements for the development of a Closure Plan and a Post-Closure Care Plan. Initial priority activities for closure are outlined, below, under Section II. RCRA. These are based on the Consent Decree and EPA's minimum criteria for Municipal Solid Waste Landfills ("MSWLF") at 40 C.F.R. Part 258, and include design and installation of the final cover system and associated control systems.

With respect to the SOW, we encourage the collection of data that is needed to support the proper design of the final cover, control, and environmental monitoring systems required by RCRA (see below), such as the collection of geologic and hydrogeologic data, as appropriate. We support the installation and performance of environmental monitoring, including groundwater monitoring and explosive gas control. Finally, EPA agrees that it is appropriate to investigate potential off-site migration; however, EPA recommends thoughtful scheduling of this investigation.

II. RCRA – Federal Minimum Criteria and Guam's Approved Permit Program

Below we provide an outline of priority closure activities. As you are aware, Guam has an approved RCRA Subtitle D program for issuing solid waste permits. As noted in the Consent Decree, you will need to ensure compliance with the relevant Guam regulations at 22 G.A.R. Section 23101 et seq. The minimum federal criteria for MSWLFs are at 40 C.F.R. Part 258. Consistent with the Consent Decree, this will involve:

Closure Plan:

- Design of a final cover system that will minimize infiltration and erosion
    - Determine cover system (including documentation of waste footprint)
    - Develop final grading plan
    - Develop appropriate designs for final cover system (40%; 100%)
    - Develop appropriate designs for leachate management system (40%; 100%)
    - Develop appropriate designs for run-on/run-off control system (40%; 100%)
    - Develop appropriate designs for gas collection and control system (see CAA discussion below)
    - Determine and obtain data needed for design;

- Develop a written Closure Plan that describes all activities and steps necessary to close all units in accordance with the cover design requirements and all applicable legal requirements (40%; 100%);

- Develop a schedule for implementation of all activities in the Closure Plan;

- Install environmental monitoring systems and perform environmental monitoring, including for groundwater and explosive gas control;

- Evaluate landfill gas for energy generation as part of closure. Any such plan should prohibit overdraw of the Gas Collection and Control System, which could potentially create a situation conducive to combustion, as has occurred at some other locations;

- Draft Wetlands Mitigation Plan; and

- Draft and final specifications.

Post-Closure Care Plan:

- Post-closure care and monitoring plan (100%) and

- Final plan and schedule to implement post-closure

III. CWA – National Pollution Discharge Elimination System – Leachate Control at Ordot - Stormwater Compliance at Ordot and Layon

Ordot will require both leachate control and stormwater control plans to address CWA requirements. The applicable federal requirements for leachate will depend in part on what will be done with captured leachate. As noted above, if the leachate is piped or trucked to a Publicly Owned Treatment Works ("POTW") then the Receiver will need to obtain approval from GWA to accept those discharges and this will likely require treatment prior to discharging to the sewer system. On the other hand, if leachate is treated on-site and the resulting treated wastewater is proposed to be discharged to the Lonfit River, then the Receiver will need to obtain an NPDES permit from EPA.

For storm water compliance, both Ordot and Layon will need coverage under EPA's 2008 Multi-Sector General Permit ("MSGP") for Storm Water Discharges associated with Industrial Activity. (See http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf)

Compliance deadlines and requirements for Ordot differ from those for Layon. Layon will be considered a "new discharger" when it is operational. However, Ordot would fall under the category of "other eligible dischargers." See Table 1-2 of MSGP.

To comply with the MSGP, the first step will be to select, design, install and implement control measures in accordance with Part 2.1 of the MSGP to meet the numeric effluent limits for run-

off from non-hazardous waste landfills. (See 40 C.F.R. Part 445 Subpart B for non-hazardous waste landfill, and Part 8.L.10 of the MSGP - "Effluent Limitations Based on Effluent Limitations Guidelines.")

Next, the Receiver, as a prospective permittee, must submit a complete and accurate Notice of Intent (NOI) using either EPA's electronic NOI (eNOI) system (available at: www.epa.gov/npdes/eNOI) or using paper forms found in Appendix G of the MSGP.

Prior to receiving authorization to discharge, the Receiver must develop a Storm Water Pollution Prevention Plan ("SWPPP") according to the requirements of Part 5 of the MSGP. Such requirements include appropriate run-on and run-off controls. Key dates, including the discharge authorization date for "New Dischargers," would run either (i) 30 days after EPA posts the facility's NOI on the Internet, if the Receiver posts its SWPPP on the Internet, or (ii) 60 days after EPA posts the facility's NOI, if the SWPPP is not posted on the Internet.

As part of this process, the Receiver will need to ensure compliance with eligibility requirements in Section 1.1, including the Endangered Species Act and National Historic Preservation Act compliance.

For additional Guidance, please consult http://cfpub.epa.gov/npdes/stormwater/msgp.cfm.

IV. Wetlands Mitigation – U.S. Army Corps Consultation/Approval

As provided in the Consent Decree, GovGuam shall "submit to GEPA, U.S. EPA and the U.S. Army Corps of Engineers a 90% Draft Wetland Mitigation Plan for closure of the Ordot Dump. An approved Wetland Mitigation Plan, including a viable financial plan, shall be required . . . ." Consent Decree Paragraph 8.c.iii. As discussed at the June 28th meeting, EPA will contact with the Army Corps of Engineers on this issue. EPA suggests that development of the Wetland Mitigation Plan be guided by EPA's Compensatory Mitigation Guidance, available at http://epa.gov/wetlandsmitigation/. Please let us know if you have specific questions in this regard.

V. CAA Compliance – Need for Title V Permit

Summary of CAA Submittals: In order to meet federal requirements for Clean Air Act compliance at the Ordot Dump, GBB will need to submit the following to Region 9: (1) Gas Collection and Control System ("GCCS") Design Plan; (2) Title V Permit Application; and (3) Startup, Shutdown and Malfunction ("SSM") Plan. We understand that GBB has already obtained a Title V permit for Layon.

The Ordot Dump is subject to the following federal standards and requirements: (1) the Standards of Performance for Municipal Solid Waste Landfills, 40 C.F.R. Part 60, Subpart WWW, §§ 60.750–60.759 ("Landfill NSPS"); (2) National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, 40 C.F.R. Part 63, Subpart AAAA, §§ 63.1930

- 1990 ("Landfill NESHAP"); and (3) permitting requirements under Title V of the CAA and 40 C.F.R. Part 71. These standards and requirements are discussed in turn.

A. Landfill NSPS

As we have discussed, EPA Region 9 has determined that the volume of waste at Ordot makes it subject to the Landfill NSPS. As a result, the Receiver must submit a design plan for a GCCS to EPA for review and approval or disapproval or a request for additional information. *See* 40 C.F.R. §§ 60.752(b)(2)(i) and 60.757(c). The GCCS must comply with design specifications for an active or passive GCCS as referenced in 40 C.F.R. § 60.752(b). An active GCCS must have an open flare, enclosed combustion device (closed flare) or other control system, or a system for energy recovery. A closed flare must be designed and operated to reduce non-methane organic compounds ("NMOC") by 98% by weight or reduce the outlet NMOC concentration to less than 200 parts per million ("ppm") by volume. See 40 C.F.R. § 60.752(b)(2)(iii)(B).

Therefore, the Department of Public Works of the Government of Guam ("GovGuam"), as the owner and operator of the Ordot Dump, is required to submit a GCCS design plan, prepared by a professional engineer, to Region 9 for review and approval. GovGuam must also construct and operate a compliant GCCS. EPA Region 9 will work with the Receiver to develop the earliest practically achievable schedule for development of the GCCS design plan and for construction and operation of the GCCS as part of the final cover for the Ordot Dump.

B. Landfill NESHAP

EPA Region 9 has determined that the volume of waste at Ordot also makes it subject to the Landfill NESHAP. The Landfill NESHAP contains the same requirements as the Landfill NSPS, with the additional requirements of, *inter alia*, preparing an SSM Plan, and submitting reports bi-annually instead of annually. *See* 40 C.F.R. §§ 63.1945(f), 63.1960 and 63.1980. Accordingly, EPA expects a realistic deadline for development of an SSM Plan to be incorporated into the critical path schedule.

C. Title V of the Act

The Receiver should work with GovGuam to submit a complete Part 71 permit application at the earliest opportunity. Region 9's review of the Part 71 permit application will be facilitated if the application is submitted after the Region has received, evaluated and approved a GCCS design plan. A Part 71 permit application and related information are available at http://www.epa.gov/air/oaqps/permits/p71forms.html.

D. Guam Local Air Regulations

In addition to EPA's CAA requirements, Guam's air pollution regulations may require additional permitting for the Ordot Dump closure. We understand that Guam Environmental Protection Agency and/or the Guam Office of the Attorney General will provide a definitive determination concerning whether GBB should apply for air permits for the Ordot Dump under these or any other Guam requirements. However, we note the following potentially applicable Guam requirements:

> **Section 1102 – General Requirements**
>
> **Section 1102.1. Prohibition of air pollution.** No person, including any public body, shall engage in any activity which causes air pollution or causes or allows the emission of any regulated or hazardous air pollutant without first securing an approval in writing from the Administrator when required by these Standards and Regulations.
>
> **Section 1106 – Standards of Performance for Air Pollution Emission Sources.**
>
> **Section 1106.1.** Source Applicability….(b) No air pollution emission source or modification to which the requirements of this Section apply shall begin or continue construction, reconstruction, modification, relocation, or operation without an air pollution control permit which states that the air pollution emission source or modification would meet the requirements of this Section.

VI. Eminent Domain/Inverse Condemnation Concerns

You have mentioned that the current perimeter of the Ordot Dump may have encroached on neighboring private property. We understand that efforts to identify possible encroachment issues and to negotiate appropriate financial settlements with private property owners will be an important step, but we believe that this effort can be pursued concurrently with other closure tasks. We do not expect these activities to delay progress toward appropriate closure of the Ordot Dump. Please let us know if you have any continuing concerns about how to integrate this effort into your planning.

VII. Unexploded Ordnance ("UXO") Concern

As noted in the draft SOW, there have been reports of the possibility of live UXO still in the Dump. It is crucial to alert all contractors to the potential for explosions that could be caused by any drilling and to have explicit plans for avoiding this danger.

In closing, EPA believes that all of the requirements noted above can be met in an integrated fashion. We remain available to address your concerns about the appropriate sequencing of activities and to help facilitate an efficient and technically sound closure of the Ordot Dump that complies with all federal and Guam requirements.

Please feel free to contact Karen Ueno at (415) 972-3317 or Christopher Lichens at (415) 972-3149 with any technical questions, and to contact me at (415) 972-3867 with any legal questions. We appreciate your continued cooperation and look forward to working with you.

Sincerely,

Original signed by

Laurie Williams
Assistant Regional Counsel

cc: Kathy Fokas, Guam AG
Bradley Dunnigan, Guam EPA
Robert Mullaney, US DOJ
Chris Lund, GBB

GBB
SOLID WASTE
MANAGEMENT
CONSULTANTS
RECEIVER

June 10, 2010

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

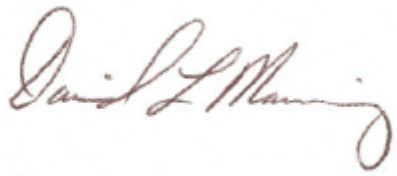
Dear Mr. Mason:

With the construction of the Layon Landfill progressing in an orderly fashion, the Receiver is turning its attention to the next major phase of our work, the closure of the Ordot Dump. While the permit process for the opening of a new landfill was clear, it is not clear to us what permits are required for the closure work. We are requesting your assistance in this matter.

Please advise us as soon as possible what permits or other formal approvals are required from the Guam Environmental Protection Agency, Department of Public Works, or any other agency of the Guam Government for the planning and construction of the closure for the Ordot Dump.

Thank you.

Sincerely,



David L. Manning
Receiver Representative

Administrator Lorilee Crisostomo, Guam Environmental Protection Agency
Director Andrew Leon Guerrero, Department of Public Works

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David Manning <dmanninggbb@gmail.com>

FW: Closure of Ordot Dump URGENT Request for permitting information

1 message

Kathy Fokas <kfokas@guamattorneygeneral.com> **31 July 2010 23:10**
To: David Manning <dmanninggbb@gmail.com>

David, Attached is the permitting information relating to the Ordot closure which I just received.

From: Helen Gumataotao [mailto:helen.gumataotao@epa.guam.gov]
Sent: Friday, July 30, 2010 3:35 PM
To: Kathy Fokas; karen ueno; michael wolfram; john mccarroll
Subject: Closure of Ordot Dump URGENT Request for permitting information

Hafa Adai,

Here is the electronic copy of the "Closure of Ordot Dump URGENT request for permitting information" that was delivered to the AG's Office. From Mr. Ivan C. Quinata P.E., Chief Engineer Guam EPA Water Division.

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Helen Gumataotao
SPC
Guam EPA
Tel: (671)475-1628 Fax: (671)475-8006
Email: helen.gumataotao@epa.guam.gov

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GUAM ENVIRONMENTAL PROTECTION AGENCY

AHENSIAN PRUTEKSION LINA'LA GUAHAN

FELIX P. CAMACHO
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P.O. BOX 22439 GMF • BARRIGADA, GUAM 96921
TEL: 475-1658/9 • FAX: 475-8007

MICHAEL W. CRUZ
LT. GOVERNOR OF GUAM

July 28, 2010

Kathy A. Fokas, Esq.
Assistant Attorney General
Office of the Attorney General
287 West O'Brien Dr
Hagatna, Guam 96910

Subject: Closure of Ordot Dump
URGENT Request for Permitting Information

Hafa Adai Ms. Fokas:

This letter is in response to your July 6, 2010 letter requesting for GEPA to provide information on all Guam EPA permits or other formal approvals that will be required for planning and constructing appropriate closure facilities for the Ordot Dump.

Guam EPA has been coordinating closely with the Receiver to address their proposed scope of work for a consultant to prepare the Ordot Dump Closure and Post Closure Plan.

Guam EPA statutes that need to be addressed include, but not necessarily limited to:

- **10 GCA Chapter 45 – "Guam Environmental Protection Agency Act", PL 11-191 and PL 12-191**
- **10 GCA Chapter 46 – "Water Resources Conservation Act", PL 17-87**
- **10 GCA Chapter 47 – "Water Pollution Control Act", PL 17-87**
- **10 GCA Chapter 48 – "Toilet Facilities and Sewage Disposal Act", PL 17-87**
- **10 GCA Chapter 49 – "Air Pollution Control Act" PL 24-40:2**
- **10 GCA Chapter 51 Division II - "Solid Waste Management and Litter Control", PL 17-87 and PL 23-64**
- **10 GCA Chapter 52 – "Water and Waste Water Operator's Mandatory Certification Act", PL 14-31**
- **10 GCA Chapter 53 – "Safe Drinking Water Act", PL 14-90**
- **10 GCA Chapter 53A – "Guam Lead Ban Act", PL 25-51:2**
- **10 GCA Chapter 54 – "Environmental Pollution Control Act", PL 17-46 and PL 19-55:2**

In addition, the following Guam EPA regulations will need to be addressed, to include but not necessarily limited to:

- **GRADING PERMIT (22 GAR Division II Chapter 10 – "Guam Soil Erosion and Sediment Control REGULATIONS" § 10108 B)**
- **CLEARING PERMIT (22GAR Division II Chapter 10 – "Guam Soil Erosion and Sediment Control Regulations" §10108 D)**
- **STOCKPILING PERMIT (22GAR Division II Chapter 10 – "Guam Soil Erosion and Sediment Control Regulations" § 10108 E)**
- **WELL DRILLERS LICENSE (22GAR Division II Chapter 7 – "Water Resource Development and Operating Regulations" Part II §7104 (6) (b)**
- **WELL DRILLING PERMITS (22GAR Division II Chapter 7 – "Water Resource Development and Operating Regulations" Part II §7105 (4) (b)**
- **WELL OPERATING PERMIT ((22GAR Division II Chapter 7 – "Water Resource Development and Operating Regulations" Part II §7106**
- **INJECTION WELLS (22GAR Division II Chapter 9 – "Underground Injection Control Regulations" Part II §7111 (6) (b)**
- **WELLHEAD PROTECTION (22GAR Division II Chapter 7 – "Water Resource Development and Operating Regulations" Part II §7130**

Should you have any questions, please feel free to contact Mr. Ivan Quinata, Chief Engineer, at 475-1658/9 or at Ivan.Quinata@epa.guam.gov.

Sincerely,

B. Dunagan

BRADLEY DUNAGAN
Acting Administrator

Cc: Karen Ueno, USEPA, John McCarroll, USEPA