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**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 16-001

**THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Procurement Appeal of  
MORRICO EQUIPMENT, LLC,  
Appellant.

**NOTICE OF PROCUREMENT  
APPEAL**

Docket No. OPA-PA \_\_\_\_\_

**Appellant Information:**

Morrico Equipment, LLC ("Morrico")  
197 Ypao Road  
Tamuning, Guam 96931

Tel: 649-1946  
Fax: 649-1947

**Appeal Information:**

- A) Guam Solid Waste Authority ("GSWA"), Under the Management of Federal Receiver, Gershman, Brickner & Bratton, Inc.
- B) Invitation for Bid No. GSWA0002-16; a procurement solicitation for rear loader packer bodies.
- C) Decisions being appealed are the GSWA's Denial of Procurement Protests, dated December 23, 2015.
- D) Appeal is made from decisions on protest of method, solicitation or award.
- E) Names of competing bidders:  
Far East Equipment Company, LLC ("Far East").

ORIGINAL

**Form and Filing:**

1. On or about August 18, 2015, the GSWA let GSWA 004-15, an Invitation for Bid for rear loader refuse packer bodies (the "Prior IFB"). On September 14, 2015, Morrico submitted its bid on the Prior IFB. The GSWA conducted a bid opening on that same date. The only other bidder on the Prior IFB was Far East. The GSWA Abstract of Bids for Far East illustrated that it failed to submit the descriptive literature required by the IFB. On September 24, 2015, Morrico received a document titled "Bid Status", that informed Morrico that its bid was rejected for failing to meet the 90 day delivery time specification in the IFB and that the IFB would be re-bid.

On September 28, 2015, Morrico filed a protest with respect to the GSWA's rejection of its bid on the Prior IFB. Morrico based its protest on the fact that the GSWA could not reject Morrico's bid for failure to meet a ninety (90) day delivery specification, without otherwise complying with the provisions of 5 GCA § 5010. In a letter dated November 22, 2015, but received by Morrico's counsel on November 23, 2015, the GSWA denied Morrico's protest over the rejection of its bid because it believed the protest was untimely. GSWA also advised that the protest was moot because the GSWA was going to cancel the Prior IFB. Morrico appealed the denial of its protest to the OPA on December 7, 2015.

In a letter dated November 24, 2015, but received by Morrico on November 25, 2015, the GSWA purported to cancel the Prior IFB. The ostensible reason for the cancellation was that "in the best judgment of the Receiver continuing with the procurement would unreasonably delay the progress in meeting the mandates of the Consent Decree by endangering GSWA's immediate capacity to provide services to its customers thus endangering the revenue of GSWA. This revenue is essential to meeting the mandates of the Consent Decree."

In a letter dated December 7, 2015, and served on the GSWA on December 9, 2015, Morrico protested the GSWA's cancellation of the Prior IFB because it was issued while a stay of procurement was in effect under 5 GCA § 5425(g) as a result of Morrico's prior protest over the rejection of its bid and its appeal of the GSWA's denial of that protest to the OPA. In a letter dated December 10, 2015, and served on Morrico's counsel on December 11, 2015, the GSWA denied Morrico's protest over the cancellation of the Prior IFB. Morrico appealed that protest denial to the OPA on December 24, 2015.

On December 4, 2015, the GSWA let GSWA0002-16, another Invitation for Bid for rear loader refuse bodies (the "IFB"). See, **Exhibit A**. On December 16, 2015, Morrico filed its protest regarding the IFB because it was issued while a stay of procurement was still in effect due to the pendency of Morrico's appeal to the OPA of the Prior IFB and because Morrico's protest of GSWA's cancellation of the Prior IFB was still pending as well. See, **Exhibit B**. On December 17, 2015, Morrico filed another protest regarding the IFB based on the 90 day delivery time specification, which the GSWA had extended to 120 days by way of an IFB addendum. See, **Exhibit C**. The 120 day delivery time is an improper specification which restricts competition.

On December 23, 2015, GSWA served Morrico's counsel with two letters denying both protests. *See, Exhibits D and E.* In those letters, GSWA states that it is no longer following Guam procurement law. Rather, it claims that it is empowered to disregard Guam's procurement law based on the authority of the receiver in *United States of America v. Government of Guam*, District Court of Guam Civil Case No. 02-00022. GSWA further argued that "[t]he mandates of the Consent Decree simply cannot be met if GSWA is unable to reasonable and timely procure equipment necessary for its operations."

The GSWA's reliance on the status of GBB as a federal receiver and the necessity to timely comply with the Consent Decree is unfounded and does not override local Guam procurement law. Although the GSWA argues that this IFB is of great importance to its ability to timely meet the mandates of the Consent Decree, it was not even important enough to include in the latest quarterly report that GBB filed with the District Court of Guam on October 21, 2015. *See, Exhibit F.* GBB did discuss other procurement issues in that report, but not the IFB at issue here. If the Receiver's neglect of GWSA vehicles was so severe as to jeopardize completion of Consent Decree projects, one would expect the receiver to so advise the District Court. Also, in the GSWA's September 4, 2015, letter denying Morrico's protest of the Prior IFB, it nowhere stated that the procurement of rear loader packer bodies was necessary to meet the mandates of the Consent Decree. *See, Exhibit G.*

In addition, the subject Consent Decree required that the government of Guam close the Ordot Dump, construct a cover so no further pollutants were discharged into waters of the United States, and construct an environmentally compliant new landfill. *See, Exhibit H.* The Ordot Dump is closed, work to seal it has progressed to near completion and a new environmentally sound landfill has been opened. The acquisition of rear loader packer bodies simply does not appear related to the fulfillment of the mandates of the Consent Decree, which have largely been met. Even if the rear loader packer bodies were necessary to meet the mandates of the Consent Decree, the express terms of the Consent Decree require that the projects mandated thereunder be performed in accordance with the procurement laws of the government of Guam. *See, e.g., Exhibit H, p. 11, ¶ 9(h)* ("DPW shall award a construction contract for the new MSWLF in accordance with applicable procurement rules and policies of the Government of Guam.").

Additionally, federal law governing receiverships expressly requires that a receiver operate the receivership property in conformance with local law, which would obviously include Guam's procurement law. *See, 28 USC section 959(b)* ("a ... receiver appointed in any cause pending in any court of the United States ... shall manage and operate the property in his possession as such ... receiver ... according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner of possessor thereof would be bound to do if in possession thereof."). Because a federal receiver is required to comply with local law, the GSWA, even if run by a federal receiver, cannot unilaterally trump the will of Congress in its

enactment of federal law requiring that a receiver operate the receivership property in compliance with local law.

2. Notwithstanding Morrico's protests and OPA appeals related to the GSWA's procurement of rear loader packer bodies, Morrico learned on December 30, 2015, that the GSWA proceeded with a bid opening on December 22, 2015. The GSWA conducted the bid opening one day before it served Morrico with its December 23<sup>rd</sup> letters denying its protests regarding the IFB. The GSWA had previously respected the stay under 5 GCA section 5425(g), at least in part. It became clear that the GSWA felt a stay was dissolved when a protest was denied. However, it had never failed to observe the stay previously, at least to Morrico's knowledge.

Knowing that it was not going to observe the stay, and knowing that Morrico's protests and OPA appeals were still pending, the GSWA waited until after the bid opening to advise Morrico that its protests were denied and that it would no longer respect the stay or Guam procurement law. And, in its letters denying Morrico's protests, it did not even advise that it had proceeded with a bid opening the day before.

Given the foregoing, Morrico requests that the OPA immediately proceed to enforce the stay of procurement arising under 5 GCA § 5425(g).

3. Morrico further requests that the Office of Public Auditor ("OPA") rule that the GSWA's denial of Morrico's protests was unreasonable, arbitrary, capricious and an abuse of discretion.

4. Morrico has attached all supporting documents as exhibits hereto.


**Declaration regarding court action:**

Morrigo confirms that an action in court has not been commenced.

Dated this 4<sup>th</sup> day of January, 2016.

DOOLEY ROBERTS & FOWLER LLP

By:

  
\_\_\_\_\_  
**KEVIN J. FOWLER**  
Attorneys for Appellant  
Morrico Equipment, LLC

**VERIFICATION**

I, **Torgun Smith**, Executive Vice President for Appellant Morrico, hereby declare under penalty of perjury under the laws of Guam that I have read the foregoing Notice of Appeal and that it is true and correct of my own knowledge, except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 4<sup>th</sup> day of January, 2016.



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**TORGUN SMITH**



INVITATION FOR BID

ISSUING OFFICE

R. Chace Anderson  
GBB Receivership

DATE ISSUED: \_\_\_\_\_  
BID INVITATION NO: GSWA002-16  
BID FOR: REAR LOADER REFUSE PACKER BODY (3 UNITS)  
SPECIFICATION: SEE ATTACHED  
DESTINATION: GUAM SOLID WASTE AUTHORITY  
REQUIRED DELIVERY DATE: 90 DAYS

INSTRUCTION TO BIDDERS:

INDICATE WHETHER:  INDIVIDUAL  PARTNERSHIP  CORPORATION

INCORPORATED IN: \_\_\_\_\_

This bid shall be submitted in duplicate and sealed to the issuing office above no later than (Time) 10:00 a.m. Date: Tuesday December 22, 2015 and shall be publicly opened. Bid submitted after the time and date specified above shall be rejected. See attached General Terms and Conditions, and Sealed Bid Solicitation for details.

The Guam Solid Waste Authority (GSWA) is currently under the authority of the appointed Federal Receiver by the District Court of Guam in CIVIL CASE NO. 02-0022 United States of America v. Government of Guam. The Court's Order appointing the Receiver enumerates the specific authority of the Receiver. Relevant to this procurement is the following: "the Receiver shall have the authority required or necessary for the complete management and control of the Consent Decree projects, including but not limited to: ... (c) The entering into future contracts deemed necessary. In awarding any future contracts, the Receiver shall follow the procedures required in Guam's statutes and regulations, unless, in the best judgment of the Receiver, such compliance would unreasonably delay the progress in meeting the mandates of the Consent Decree;" The services GSWA provides to its customers are important for both to the health of the community and the environment. Compliance with the Consent Decree is required through Orders of the District Court and to comply with federal law. The Government of Guam has decided to finance both the operations of GSWA and certain aspects of the Consent Decree through fees charged to the customers of GSWA. The revenue generated by GSWA is vital to completion of the Consent Decree projects. Given that maintaining a fleet of trash collection vehicles is vital to the operations of GSWA and thus vital to the revenue necessary to complete the Consent Decree, the Receiver is invoking its authority to depart from Guam Law for this procurement as it relates to protests by bidders or prospective bidders and any other provision of Guam Law or regulation that would, in the best judgment of the Receiver unreasonably delay meeting the mandates of the Consent Decree. With respect to protests by bidders or prospective bidders, the Receiver will consider any protest that is filed within 20 days of receipt of this Invitation for Bid, however, for this procurement, decisions of the Receiver on any protest, will be final.

The undersigned offers and agrees to furnish within the time specified, the article and services at the price stated opposite the respective items listed on the schedule provided, unless otherwise specified by the bidder. In consideration to the expense of the Government in opening, tabulating, and evaluating this and other bids, and considerations, the undersigned agrees that this bid remain firm and irrevocable within 60 calendar days from the date opening to supply any or all the items which prices are quoted.

NAME AND ADDRESS OF BIDDER: \_\_\_\_\_ SIGNATURE AND TITLE OF PERSON  
AUTHORIZED TO SIGN THIS BID: \_\_\_\_\_

AWARD: CONTRACT NO.: \_\_\_\_\_ AMOUNT: \_\_\_\_\_ DATE: \_\_\_\_\_

ITEM NO(S). AWARDED : \_\_\_\_\_

CONTRACTING OFFICER:

\_\_\_\_\_  
GBB Receivership

NAME AND ADDRESS OF CONTRACTOR: \_\_\_\_\_ SIGNATURE AND TITLE OF PERSON  
AUTHORIZED TO SIGN THIS CONTRACT: \_\_\_\_\_

Gershman, Brickner & Bratton, Inc, Receiver  
8550 Arlington Boulevard, Suite 203  
Fairfax, Virginia 22031-4620

<http://www.guamsolidwastereceiver.org/>

Exhibit A



INVITATION FOR BID NO.: GSWA002-16

DESCRIPTION:

SPECIFICATION REMINDER TO PROSPECTIVE BIDDERS

Bidders are reminded to read the Sealed Bid Solicitation and Instructions, and General Terms and conditions attached to the IFB to ascertain that all of the following requirements checked below are submitted in the bid enveloped, in duplicate, at the date and time for bid opening.

- ( x ) BID GUARANTEE (15% of Bid Amount) May be in the form of;  
**Reference # on the General Terms and Conditions**
  - a. Cashier's Check or Certified Check
  - b. Letter of Credit
  - c. Surety Bond - Valid only if accompanied by:
    - 1. Current Certificate of Authority issued by the Insurance Commissioner ;
    - 2. Power of Attorney issued by the Surety to the Resident General Agent;
    - 3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.
  
- ( x ) BROCHURES/DESCRIPTIVE LITERATURE;
  
- ( x ) AFFIDAVIT OF DISCLOSURE OF MAJOR SHAREHOLDERS - Must comply with the following requirements :
  - a. Date of signature of the person authorized to sign the bid and the notary date must be the same.\*
  
- ( ) OTHER REQUIREMENTS:

\_\_\_\_\_  
\_\_\_\_\_

**This reminder must be signed and returned in the bid envelope together with the bid. Failure to comply with the above requirements may be cause for disqualification and rejection of the bid.**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, I, \_\_\_\_\_, authorized representative of \_\_\_\_\_ acknowledge receipt of this special reminder to prospective bidders with the above referenced IFB.

\_\_\_\_\_  
**Bidder Representative's Signature**

Gershman, Brickner & Bratton, Inc, Receiver  
8550 Arlington Boulevard, Suite 203  
Fairfax, Virginia 22031-4620  
<http://www.quamsolidwastereceiver.org/>



**GOVERNMENT OF GUAM**

**SEALED BID SOLICITATION INSTRUCTIONS**

1. **BID FORMS:** Each bidder shall be provided with two (2) sets of Solicitation forms. Additional copies may be provided upon request. Bidders requesting additional copies of said forms will be charged per page in accordance with 2 GAR Division 4 § 2109(f)(1) of the Government Code of Guam. All payments for this purpose shall be by cash, certified check or money order and shall be made payable to the Solid Waste Management Division.
2. **PREPARATIONS OF BIDS:**
  - a) Bidders are required to examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at bidder's risk.
  - b) Each bidder shall furnish the information required by the Solicitation. The bidder shall sign the solicitation and print or type his name on the Schedule. Erasures or other changes must be initiated by the person signing the bid. Bids signed by an agent are to be accompanied by evidence of this authority unless such evidence has been previously furnished to the issuing office.
  - c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the amount column of the Schedule for each item offered. In case of discrepancies between a unit price and extended price, the unit price will be presumed to be correct.
  - d) Bids for supplies or services other than those specified will not be considered. Time, if stated as a number of days, means calendar days and will include Saturdays, Sundays, and holidays beginning the day after the issuance of a Notice to Proceed. Time stated ending on Saturday, Sunday or Government of Guam legal holiday will end at the close of the next business day.
3. **EXPLANATION TO BIDDERS:** Any explanation desired by a bidder regarding the meaning or interpretation of the Solicitation, drawings, specifications, etc., must be submitted in writing and with sufficient time allowed for a written reply to reach all bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a Solicitation will be furnished to all prospective bidders in writing as an amendment to the Solicitation if such information would be prejudicial to uninformed bidders.
4. **ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS:** Receipt of an amendment to a Solicitation by a bidder must be acknowledged by signing an acknowledgement of receipt of the amendment. Such acknowledgement must be received prior to the hour and date specified for receipt of bids.
5. **SUBMISSION OF BIDS:**
  - a) Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the Solicitation. The bidder shall show the hour and date specified in the Solicitation for receipt, the Solicitation number, and the name and address of the bidder on the face of the envelope.
  - b) Electronic bids will not be considered unless authorized by the Solicitation. However, bids may be modified or withdrawn by written or electronic notice, provided such notice is received prior to the hour and date specified for receipt (see paragraph 6 of these instructions).
  - c) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Solicitation.
  - d) Samples or descriptive literature should not be submitted unless it is required by this solicitation. Regardless of any attempt by a bidder to condition the bid, unsolicited samples or descriptive literature will not be examined or tested at the bidder's risk, and will not be deemed to vary any of the provisions of this Solicitation.
6. **FAILURE TO SUBMIT BID:** If no bid is to be submitted, do not return the solicitation documents unless otherwise specified. A letter or postcard shall be sent to the issuing office advising whether future Solicitations for the type of supplies or services covered by this Solicitation are desired.



7. LATE BID, LATE WITHDRAWALS, AND LATE MODIFICATIONS:
- a) Definition: Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late (Guam Procurement Regulations Section 3109(k))
  - b) Treatment: No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of territorial personnel directly serving the procurement activity.
8. DISCOUNTS:
- a) Notwithstanding the fact that prompt payment discounts may be offered, such offer will not be considered in evaluating bids for award unless otherwise specified in the Solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.
  - b) In connection with any discount offered, time will be computed from date of delivery and acceptance of the supplies to the destination as indicated in the purchase order or contract. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.
9. GOVERNMENT FURNISHED PROPERTY: No material, labor or facilities will be furnished by the Government unless otherwise provided for in the Solicitation.
10. SELLER'S INVOICES: Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall be "certified true and correct" and shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended total. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.
11. RECEIPT, OPENING AND RECORDING OF BIDS: Bids and modifications shall be publicly opened in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be read aloud and recorded, or otherwise made available. The names and addresses of required witnesses shall be recorded at the opening. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in accordance with Section 12, below. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary (Guam Procurement Section 3109(1)(2)).
12. CONFIDENTIAL DATA: The Procurement Officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data.



**GUAM SOLID WASTE AUTHORITY**  
**GENERAL TERMS AND CONDITIONS**  
**SEALED BID SOLICITATION AND AWARD**

1. **GENERAL INTENTION:** Unless otherwise specified, these General Terms and conditions are intended for the bidder to provide the Guam Solid Waste Authority (GSWA) with specified services or with materials, supplies or equipment completely assembled and ready for use.
2. **TAXES:** Bidders are cautioned that they are subject to Guam Income Taxes as well as all other taxes on Guam transactions. Specific information on taxes may be obtained from the Director of Revenue and Taxation.
3. **LICENSING:** Bidders are cautioned that GSWA will not consider for award any offer submitted by a bidder who has not complied with the Guam Licensing law. Specific information on licenses may be obtained from the Director of Revenue and Taxation.
4. **LOCAL PROCUREMENT PREFERENCE:** All procurement of supplies and services where possible, will be made from among businesses licensed to do business on Guam.
5. **COMPLIANCE WITH SPECIFICATIONS AND OTHER SOLICITATION REQUIREMENTS:** Bidders shall comply with all specifications and other requirements of the Solicitation.
6. **INDEPENDENT PRICE DETERMINATION:** The bidder, upon signing the Invitation for Bid, certifies that the prices in his bid were derived without collusion, and acknowledges that collusion and anti-competitive practices are prohibited by law. Violations will be subject to the provision of Section 5651 of that of the Guam Procurement Act. Other existing civil, criminal or administrative remedies are not impaired and may be in addition to the remedies in Section 5651 of the Government code. By submitting a bid, the bidder certifies that its price was independently arrived at without collusion.
7. **BIDDER'S PRICE:** The Government will consider not more than two (2) (basic and Alternate) item prices and the bidder shall explain fully each price if supplies, materials, equipment, and/or specified services offered comply with specifications and the products origin. Where basic or alternate bid meets the minimum required specification, cost and other factors will be considered. Failure to explain this requirement will result in rejection of the bid.
8. **BID ENVELOPE:** Envelope shall be sealed and marked with the Bidder's name, Bid number, time, date and place of Bid opening.
9. **BID GUARANTEE REQUIREMENT:** Bidder is required to submit a Bid Guarantee Bond or standby irrevocable Letter of Credit or Certified Check or Cashier's Check in the same bid envelope to be held by the Government pending delivery of items being procured. The Bid Guarantee Bond, Letter of Credit, Certified Check or cashier's check must be issued by any local surety or banking institution licensed to do business on Guam and made payable to the Treasurer of Guam in the amount of fifteen percent (15%) of the total bid offer. The Bid Bond must be submitted on Government Standard Form BB-1 (copy enclosed). Personal Checks will not be accepted as Bid Guarantee. If a successful Bidder (contractor) withdraws from the bid or fails to enter into contract within the prescribed time, such Bid guarantee will be forfeited to the Government of Guam. Bids will be disqualified if not accompanied by Bid Bond, Letter of Credit, Certified Check or Cashier's Check. Bidder must include in his/her bid, valid copies of a Power of Attorney from the Surety and a Certificate of Authority from the Government of Guam to show proof that the surety company named on the bond instrument is authorized by the Government of Guam to be qualified to do business on Guam. For detailed information on bonding matters, contact the Department of Revenue and Taxation. Failure to submit a valid Power of Attorney and Certificate of Authority on the surety is cause for rejection of bid. Pursuant to 5 GCA Section 5212, all competitive sealed bidding for the procurement of supplies or services exceeding \$25,000 must be accompanied by bid security in the amount of 15% of the total bid price. **PERFORMANCE BOND REQUIREMENT:** The Bidder may be required to furnish a Performance Bond on government Standard Form BB-1 or standby irrevocable Letter of Credit or Certified Check or Cashier's Check payable to the Treasurer of Guam issued by any of the local banks or Bonding Institution in the amount equal to one hundred Percent (100%) of the contract prices as security for the faithful performance and proper fulfillment of the contract. In the event that any of the provisions of this contract are violated by the contractor, the Chief Procurement Officer shall serve a written notice upon both the contractor and the Surety of its intention to terminate the contract. Unless shall serve satisfactory arrangement or correction is made with ten (10) days of such notice the contract shall cease and terminate upon the expiration of the ten (10) days. In the event of any such termination, the Chief Procurement Officer shall immediately serve notice thereof upon the Surety. The Surety shall have the right to take over and perform the contract, provided, however, that if the Surety does not commence performance thereof within 10 days from the date of the mailing of notice of termination, the Government may take over and prosecute the same to complete the contract or force account for the account and at the expense of the contractor, and the contractor and his Surety shall be liable to the Government for any excess cost occasioned the Government thereby.

10. **PERFORMANCE GUARANTEE:** Bidders who are awarded a contract under this solicitation, guarantee that goods will be delivered or required services performed within the time specified. Failure to perform the contract in a satisfactory manner may be cause for suspension or debarment from doing business with the Government and for enforcement of Section 23 of these General Terms and Conditions. In addition, the Government will hold the Vendor liable and will enforce the requirements as set forth in Section 41 of these General Terms and Conditions.
11. **SURETY BONDS:** Bid and Performance Bonds coverage must be signed or countersigned in Guam by a foreign or alien surety's resident general agent. The Surety must be an Insurance Company, authorized by the Government of Guam and qualified to do business in Guam. Bids will be disqualified if the Surety Company does not have a valid Certificate of Authority from the Government of Guam to conduct business in Guam.
12. **COMPETENCY OF BIDDERS:** Bids will be considered only from the such bidders who, in the opinion of the Government, can show evidence of their ability, experience, equipment, and facilities to render satisfactory service.
13. **DETERMINATION OF RESPONSIBILITY OF BIDDERS:** The GSWA - Receiver reserves the right for securing from bidders information to determine whether or not they are responsible and to inspect plant site, place of business; and supplies and services as necessary to determine their responsibility in accordance with Section 15 of these General Terms and Conditions.
14. **STANDARD FOR DETERMINATION OF LOWEST RESPONSIBLE BIDDER:** In determining the lowest responsible offer, the Solid Waste Management Division - Receiver shall be guided by the following:
- a) Price of items offered.
  - b) The ability, capacity, and skill of the Bidder to perform.
  - c) Whether the bidder can perform promptly within the specified time.
  - d) The quality of performance of the Bidder with regards to awards previously made to him.
  - e) The previous and existing compliance by the Bidder with laws and regulations relative to procurement.
  - f) The sufficiency of the financial resources and ability of the Bidder to perform.
  - g) The ability of the bidder to provide future maintenance and services for the subject of the award.
  - h) The compliance with all of the conditions to the Solicitation.
15. **TIE BIDS:** If the bids are for the same unit price or total amount in the whole or in part, the GSWA Receiver will determine award based on Section 3109(0)(2) of Guam Procurement Regulations, or to reject all such bids.
16. **BRAND NAMES:** Any reference in the Solicitation to manufacturer's Brand Names and number is due to lack of a satisfactory specification of commodity description. Such preference is intended to be descriptive, but not restrictive and for the sole purpose of indicating to prospective bidders a description of the article or services that will be satisfactory. Bids on comparable items will be considered provided the bidder clearly states in his bid the exact articles he is offering and how it differs from the original specification.
17. **DESCRIPTIVE LITERATURE:** Descriptive literature(s) as specified in this solicitation must be furnished as a part of the bid and must be received at the date and time set for the opening Bids. The literature furnished must clearly identify the item(s) in the Bid. The descriptive literature is required to establish for the purpose of evaluation and award details of the product(s) the bidder proposes to furnish including design, materials, components, performance characteristics, methods of manufacture, construction, assembly or other characteristics which are considered appropriate. Rejection of the Bid will be required if the descriptive literature(s) do not show that the product(s) offered conform(s) to the specifications and other requirements of this solicitation. Failure to furnish the descriptive literature(s) by the time specified in the Solicitation will require rejection of the bid.
18. **AWARD, CANCELLATION, & REJECTION:** Award shall be made to the lowest responsible bidder, whose bid is determined to be the most advantageous to the Government, taking into consideration the evaluation factors set forth in this solicitation. No other factors or criteria shall be used in the evaluation. The right is reserved as the interest of the Government may require to waive any minor irregularity in bid received. The Solid Waste Management Division - Receiver shall have the authority to award, cancel, or reject bids, in whole or in part for any one or more items if he determines it is in the public interest. In case of an error in the extension of prices, unit price will govern. It is the policy of the Government to award contracts to qualified local bidders. The Government reserves the right to increase or decrease the quantity of the items for award and make additional awards for the same type of items and the vendor agrees to such modifications and additional awards based on the bid prices for a period of thirty (30) days after original award.
19. **SCHEDULE FOR DELIVERY:** Successful bidder shall notify the GSWA - Receivership, Telephone No. 646-3111 at least twenty-four (24) hours before delivery of any item under this solicitation.
20. **BILL OF SALE:** Successful supplier shall render Bills of Sale for each item delivered under this contract. Failure to comply with this requirement will result in rejection of delivery. The Bill of Sale must accompany the items delivered but will not be considered as an invoice for payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
21. **MANUFACTURER'S CERTIFICATE:** Successful bidder is required, upon delivery of any item under this solicitation, to furnish a certificate from the manufacturer indicating that the goods meet the specifications. Failure to comply with this request will result in rejection of delivery or payment. Supplier shall bill the Government in accordance with billing instructions as indicated on the Purchase Order.
22. **INSPECTION:** All supplies, materials, equipment, or services delivered under this contract shall be subject to the inspection and/or test conducted by the Government at destination. If in any case the supplies, materials, equipment, or services are found to be defective in material, workmanship, performance, or otherwise do not conform with specifications, the Government shall have the right to reject the items or require that they be corrected. The number of days required for correction will be determined by the Government.
23. **SAFETY INSPECTIONS:** All motor vehicles delivered under this contract must pass the Government of Guam Vehicle Inspection before delivery at destination.

24. **GUARANTEE:**

a) **Guarantee of Vehicle Type of Equipment**

The successful bidder shall guarantee vehicular type of equipment offered against defective parts, workmanship, and performance, for a period of not less than one (1) year after date of receipt of equipment. Bidder shall also provide service to the equipment for at least one (1) year. Service to be provided shall include, but will not be limited to tune ups (change of spark plugs, contact points and condensers) and lubrication (change of engine and transmission oil). All parts and labor shall be at the expense of the bidder. All parts found defective and not caused by misuse, negligence or accident within the guarantee period shall be repaired, replaced, or adjusted within six (6) working days after notice from the Government and without cost to the Government. Vehicular type of equipment as used in this context shall include equipment used for transportation as differentiated from tractors, backhoes, etc.

b) **Guarantee of Other Type of Equipment:**

The successful bidder shall guarantee all other types of equipment offered, except those mentioned in 31a, above, against defective parts, workmanship, and performance for a period of not less than three (3) months after date of receipt of equipment. Bidder shall also provide service to the equipment for at least three (3) months. All parts found within that period shall be repaired or replaced by the Contractor without cost to the Government. Repairs, adjustments or replacements of defective parts shall be completed by the contractor within six (6) working days after notice from the Government.

(c) **Compliance with this Section is a condition of this Bid.**

25. **REPRESENTATION REGARDING ETHICS IN PUBLIC PROCUREMENT:** The bidder or contractor represents that it has not knowingly influenced and promises that will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth on Chapter 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

26. **REPRESENTATION REGARDING CONTINGENT FEES:** The contractor represents that it has not retained a person to solicit or secure a Government contract upon and agreement or understanding for a commission-, percentage, brokerage, or contingent fee, except for retention of bona fide employees of bona fide established commercial selling agencies for the purpose of securing business.

27. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractors shall not discriminate against any employee or applicant of employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that employees are treated equally during employment without regards to their race, color, religion, sex, or national origin.

28. **COMPLIANCE WITH LAWS:** Bidders awarded a contract under this Solicitation shall comply with the applicable standard, provisions, and stipulations of all pertinent Federal and/or local laws, rules, and regulations relative to the performance of this contract and the furnishing of goods.

29. **CHANGE ORDER:** Any order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-03.1 of the Guam Procurement Regulations.

30. **STOP WORK ORDER:** Any stop work order issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6-101-04.1 of the Guam Procurement Regulations.

31. **TERMINATION FOR CONVENIENCE:** Any termination order for convenience of the Government issued relative to awards made under this solicitation will be subject to and in accordance with the provisions of Section 6101(10) of the Government Procurement Regulations.

32. **TIME FOR COMPLETION:** It is hereby understood and mutually agreed by and between the contractor and the Government that the time for delivery to final destination or the timely performance of certain services is an essential condition of this contract. If the contractor refuses or fails to perform any of the provisions of this contract within the time specified in the Purchase Order (from the date Purchase Order is acknowledged by the vendor), then the contractor is in default. Defaults will be treated subject to and in accordance with the provisions of Section 6101(8) of the Guam Procurement Regulations.

33. **JUSTIFICATION OF DELAY:** Bidders who are awarded contracts under this Solicitation, guarantee that the goods will be delivered to their destination or required services rendered within the time specified. If the bidder is not able to meet the specified delivery date, he is required to notify the Solid Waste Management Division - Receiver of such delay. Notification shall be in writing and shall be received by the Solid Waste Management Division - Receiver at least twenty-four (24) hours before the specified delivery date. Notification of delay shall include an explanation of the causes and reasons for the delay including statement(s) from supplier or shipping company causing the delay. The Government reserves the right to reject delay justification if, in the opinion of GSWA, such justification is not adequate.

34. **LIQUIDATED DAMAGES:** When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one fourth of one percent (1%) of outstanding order per calendar day from date set for cure until either the territory reasonable obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Section 6101(8), liquidated damages shall not be due the territory. The contractor remains liable for damages other than by delay.

- 35. **PHYSICAL LIABILITY:** If it becomes necessary for the Vendor, either as principal, agent or employee, to enter upon the premises or property of the Government of Guam in order to construct, erect, inspect, make delivery or remove property hereunder, the Vendor hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against occurrence of any accidents, injuries or damages to any person or property during the progress of the work herein covered, and to be responsible for, and to indemnify and save harmless the Government of Guam from the payment of all sums of money by reason of all or any such accidents, injuries, or damages that may occur upon or about such work, and fines, penalties and loss incurred for or by reasons of the violations of any territorial ordinance, regulations, or the laws of Guam or the United States, while the work is in progress. Contractor will carry insurance to indemnify the Government of Guam against any claim for loss, damage or injury to property or persons arising out of the performance of the Contractor or its employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Government of Guam when required.
  
- 36. **CONTACT FOR CONTRACT ADMINISTRATION:** If your firm receives a contract as a result of this Solicitation, Please designate a person whom we may contact for prompt administration.
  
- 37. **GRATUITIES AND KICKBACKS:** The bidder must represent that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in Section 11107 of the Procurement Regulations.
  
- 38. **PROHIBITION AGAINST EMPLOYMENT OF SEX OFFENDERS:** The bidder warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of the bidder relative to this procurement. If a bidder is awarded a contract, and any person employed by the bidder providing services under the resulting contract is subsequently convicted, then the bidder warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under the resulting contract. If the bidder is found to be in violation of any of the provisions of this paragraph, then the Government shall give notice to the bidder to take corrective action. The bidder shall take corrective action within twenty-four hours of notice from the Government, and the bidder shall notify the Government when action has been taken. If the bidder fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any resulting contract.
  
- 39. **WAGES AND BENEFITS PAID TO BIDDER'S EMPLOYEES:** The bidder shall pay its employees who deliver a direct service to the Government under this solicitation wages and benefits in accordance with the Wage Determination for Guam issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the Government. A copy of the current determination is attached for your information.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



SOLID WASTE  
MANAGEMENT  
CONSULTANTS  
RECEIVER

**GOVERNMENT OF GUAM**

BID BOND  
NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_, as Principal Hereinafter called the Principal, and (Bonding Company), \_\_\_\_\_ A duly admitted insurer under the laws of the Territory of Guam, Surety, hereinafter called the Surety are held firmly bound unto the Territory of Guam for the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for Payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for (identify project by number and brief description)

\_\_\_\_\_

\_\_\_\_\_

NOW, THEREFORE, if the Territory of Guam shall accept the bid of the Principal and the Principal shall enter into a contract with the Territory of Guam in accordance with the terms of such bid, and give such bond or bonds as may be specified in bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Territory of Guam the difference not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Territory of Guam may in good faith contract with another part to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
(PRINCIPAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(MAJOR OFFICER OF SURETY)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(RESIDENTIAL GENERAL AGENT)

**SEE INSTRUCTIONS IN BACK PAGE FOR SUPPORTING DOCUMENTS REQUIRED.**



**INSTRUCTION TO PROVIDERS:**

NOTICE to all Insurance and Bonding Institutions:

The Bond requires the signatures of the Vendor, two (2) major Officers of the Surety and Resident General Agent, if the Surety is a foreigner or alien surety.

When the form is submitted to the Solid Waste Management Division – Receivership, it should be accompanied with copies of the following:

1. Current Certificate of Authority to do business on Guam Issued by the Department of Revenue and Taxation.
2. Power Of Attorney issued by the Surety to the Resident General Agent.
3. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

Bonds, submitted as Bid Guarantee, without signatures and supporting documents are invalid and Bids will be rejected.



**SPECIAL PROVISION  
FOR  
MAJOR SHAREHOLDERS DISCLOSURE AFFIDAVIT**

All bidders are required to submit a current affidavit as required below, failure to do so will mean disqualification and rejection of the bid.

Excerpt from P.L. 18-44

Section 44.a new Section 6961.3 is added to the Government Code to read.

"Section 6961.3 . Disclosure of major shareholders. As a condition of bidding, any partnership, sole proprietorship or corporation doing business with the Government of Guam shall submit an affidavit executed under oath that lists the name and address of any person who has held more than ten percent (10%) of outstanding interest or shares in said partnership, sole proprietorship or corporation at any time during the twelve (12) month period immediately preceding submission of a bid. The affidavit shall contain the number of shares or the percentage of all assets of such partnership, sole proprietorship or corporation which have been held by each person during the twelve (12) month period. In addition, the affidavit shall contain the name and address of any person who has received or is entitled to receive a commission, gratuity or other compensation for the procuring or assisting in obtaining business related to the bid for the bidder and shall also contain the amounts of any such commission, gratuity or other compensation. The affidavit shall be open and available to the public for inspection and copying.

**NOTE: If the affidavit is a copy, indicate the Bid No. and where it is filed.**





SOLID WASTE  
 MANAGEMENT  
 CONSULTANTS  
 RECEIVER

**AFFIDAVIT DISCLOSING OWNERSHIP AND COMMISSIONS**

CITY OF \_\_\_\_\_ )

) SS.

STATE OF \_\_\_\_\_ )

A. I, the undersigned, being first duly sworn, depose and say that I am an authorized representative of the offeror and that *[please check only one]*.

The offeror is an individual or sole proprietor and owns the entire (100%) interest in the offering business.

The offeror if a corporation, partnership, joint venture, or association known as \_\_\_\_\_ *[Please state name of offeror company]*, and the persons, companies, partners, or joint ventures who have held more than 10% of the shares or interest in the offering business during the 365 days immediately preceding the submission date of the proposal are as follows *[if none, please so state]*:

<u>Name</u>	<u>Address</u>	<u>% of Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Further, I say that the persons who have received or are entitled to receive a commission, gratuity or other compensation for procuring or assisting in obtaining business related to the bid or proposal for which this affidavit is submitted are as follows *[if none, please so state]*:

<u>Address</u>	<u>% of Interest</u>
_____	_____

C. If the ownership of the offering business should change between the time this affidavit is made and the time an award is made or a contract is entered into, then I promise personally to update the disclosure required by 5 GCA § 5233 by delivering another affidavit to the government.

\_\_\_\_\_  
 Signature of one of the following:

- Offeror, if the Offeror is an Individual;
- Partner, if the Offeror is a Partnership;
- Officer, if the Offeror is a Corporation.

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, 201\_\_-

\_\_\_\_\_  
 NOTARY PUBLIC  
 My Commission Expires: \_\_\_\_\_

Gershman, Brickner & Bratton, Inc, Receiver  
 8550 Arlington Boulevard, Suite 203  
 Fairfax, Virginia 22031-4620  
<http://www.quamsoldwastereceiver.org/>



SOLID WASTE  
 MANAGEMENT  
 CONSULTANTS  
 RECEIVER

**AFFIDAVIT RE NON-COLLUSION**

CITY OF \_\_\_\_\_ )  
 ) SS.  
 STATE OF \_\_\_\_\_ )

\_\_\_\_\_ [state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering company or individual is [state name of company]

2. The proposal for the solicitation identified above is genuine and not collusive or a sham. The offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any other offeror or person, to put in a sham proposal or to refrain from making an offer. The offeror has not in any manner, directly or indirectly, sought by an agreement or collusion, or communication or conference, with any person to fix the proposal price of offeror or of any other offeror, or to fix any overhead, profit or cost element of said proposal price, or of that of any other offeror, or to secure any advantage against the government of Guam or any other offeror, to secure any advantage against the government of Guam or any person interested in the proposed contract. All statements in the affidavit and in the proposal are true to the best of the knowledge of the undersigned. This statement is made pursuant to 2 GAR Division 4 § 3126 (b).

3. I make this statement on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

\_\_\_\_\_  
 Signature of one of the following:

- Offeror, if the Offeror is an Individual;
- Partner, if the Offeror is a Partnership;
- Officer, if the Offeror is a Corporation.

Subscribed and sworn to before me  
 this \_\_\_\_\_ day of \_\_\_\_\_, 201 \_\_\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC  
 My Commission Expires: \_\_\_\_\_.



SOLID WASTE  
MANAGEMENT  
CONSULTANTS  
RECEIVER

**AFFIDAVIT RE NO GRATUITIES OR KICKBACKS**

CITY OF \_\_\_\_\_ )  
 ) SS.  
STATE OF \_\_\_\_\_ )

\_\_\_\_\_ [state name of affiant signing below], being first duly sworn, deposes and says that:

1. The name of the offering firm or individual if [state name of offeror company] \_\_\_\_\_ Affiant if \_\_\_\_\_ [state one of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal.

2. To the best of affiant's knowledge, neither affiant, nor any offeror's officers representative, agents, subcontractors, or employees have violated, are violating the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 § 11107 (e). Further, affiant promises, on behalf of offeror, not to violate the prohibition against gratuities and kickbacks as set forth in 2 GAR Division 4 § 11107 (e)

3. To the best of affiant's knowledge, neither affiant, nor any of the offeror's officers representatives, agents, subcontractors, or employees have offered, given or agreed to give, any government of Guam employee or former employee, any payment, gift, kickback, gratuity or offer of employment in connection with the offeror's proposal.

4. I make the statements on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

\_\_\_\_\_  
Signature of one of the following :

- Offeror, if the Offeror is an Individual;
- Partner, if the Offeror is a Partnership;
- Officer, if the Offeror is a Corporation.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 201 \_\_\_\_.

NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_.



**AFFIDAVIT RE ETHICAL STANDARDS**

CITY OF \_\_\_\_\_ )  
 ) SS.  
STATE OF \_\_\_\_\_ )

\_\_\_\_\_ [state name of affiant signing below], being first duly sworn, deposes and says that:

The affiant if \_\_\_\_\_ [state name of the following: the offeror, a partner of the offeror, an officer of the offeror] making the foregoing identified bid or proposal. To the best of affiant's knowledge, neither affiant nor any agencies, representatives, agents, subcontractors or employees of offeror having knowingly influenced any government of Guam employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11. Further, affiant promises that neither he or she, nor any officer, representative, agent, subcontractor, or employee of offeror will knowingly influence any government of Guam employee to breach any ethical standards set forth in 5 GCA Chapter 5, Article 11. These statements are made pursuant to 2 GAR Division 4 § 11103 (b).

\_\_\_\_\_  
Signature of one of the following :

- Offeror, if the Offeror is an Individual;
- Partner, if the Offeror is a Partnership;
- Officer, if the Offeror is a Corporation.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 201 \_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_.



**AFFIDAVIT RE CONTINGENT FEES**

CITY OF \_\_\_\_\_ )  
 ) SS.  
STATE OF \_\_\_\_\_ )

\_\_\_\_\_ [state name of affiant signing below], being first  
duly sworn, deposes and says that:

1. The name of the offering company or individual is [state name of company]

2. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract. This statement is made pursuant to 2 GAR Division 4 § 11108 (f).

3. As a part of the offering company's bid or proposal, to the best of my knowledge, the offering company has not retained a person to solicit or secure a contract with the government of Guam upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. This statement is made pursuant to 2 GAR Division 4 § 11108(h).

4. I make these statements on behalf of myself as a representative of the offeror, and on behalf of the offeror's officers, representatives, agents, subcontractors, and employees.

\_\_\_\_\_  
Signature of one of the following:

- Offeror, if the Offeror is an Individual;
- Partner, if the Offeror is a Partnership;
- Officer, if the Offeror is a Corporation.

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 201 \_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_.



**DECLARATION RE COMPLIANCE WITH U.S. D.O.L. WAGE DETERMINATION**

Procurement No: \_\_\_\_\_

Name of Offeror Company: \_\_\_\_\_

I, \_\_\_\_\_ hereby certify under penalty of perjury:

(1) That I am \_\_\_\_\_ [please select one: the offeror, a partner of the offeror, an officer of the offeror] making the bid or proposal in the foregoing identified procurement;

(2) That I have read and understand the provisions of 5 GCA § 5801 and § 5802 which read:

**§ 5801. Wage Determination Established.**

In such cases where the government of Guam enters into contractual arrangements with a sole proprietorship, a partnership or a corporation ("contractor") for the provision of a service to the government of Guam, and in such cases where the contractor employs a person(s) whose purpose, in whole or in part, is the direct delivery of service contracted by the Government of Guam, then the contractor shall pay such employee(s) in accordance with the Wage Determination for Guam and the Northern Mariana Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct delivery of contract deliverables to the government of Guam.

The Wage Determination most recently issued by the U.S. Department of Labor at the time a contract is awarded to a contractor by the government of Guam shall be used to determine wages, which shall be paid to employees pursuant to this Article. Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be made stipulations contained in that contract for applying the Wage Determination, as required by this Article, so that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply.

**§ 5802. Benefits.**

In addition to the Wage Determination detailed in this Article, any contract to which this Article applies shall also contain provisions mandating health and similar benefits for the employees covered by this Article, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee.

(3) That the offeror is in full compliance with 5 GCA § 5801 and § 5802, as may be applicable to the procurement referenced herein;

(4) That I have attached the most recent wage determination applicable to Guam issued by the U.S. Department of Labor. (*INSTRUCTIONS – Please attach.*)

\_\_\_\_\_  
**SIGNATURE**

Invitation For Bid: GSWA002-16  
Rear Loader Refuse Packer Body

General: These specifications have been written to describe the minimum equipment and performance requirements to be supplied by the equipment manufacturer bidding.

Reasonable test may be conducted upon delivery prior to acceptance of the delivery. The successful bidder shall furnish all necessary and desirable information with instructions for the proper operation of the equipment.

The Guam Solid Waste Authority (GSWA) reserves the right to accept and/or reject any and all bids, to waive any defects, irregularities, or specification discrepancies and to award the bid as deemed to be in the best interest of the government.

The contract that results from this procurement will be in effect for a period of three (3) years. The Guam Solid Waste Authority (GSWA) expects to purchase a minimum of three (3) units with the possibility of purchasing others during the term of the contract upon need and availability of funding.

This equipment furnished under this contract shall be new, unused and the same as the manufacturer's current production model. Accessories not specifically mentioned herein, but necessary to furnish a complete unit ready for use, shall also be included. Unit shall conform to the best practice known to the body trade in design, quality of material and workmanship. The equipment furnished shall conform to current ANSI Safety Standard Z245-1.

The bidder shall complete every space in the Bidders Proposal column with a check mark to indicate if the item being bid is exactly as specified. If any check marks are place in the "NO" column, a detailed and complete description of the deviation from specification must be supplied on a separate sheet labeled, "Deviations from Specifications".

Time Line:

The following is the expected timeline for this procurement. All times and days listed below are based in Guam.

- Bid Released on: Friday, December 4, 2015,
- Written Questions Submitted deadline: **Friday, December 11, 2015**  
**12:00 p.m. Noon time**
- Written Responses to Questions deadline: Wednesday,, December 16, 2015
- Bid Due: **Tuesday, December 22, 2015, 10:00 a.m.**
- **Electronic bids via email will be accepted.**
- Bid Award
- Pre-Bid Teleconference: Participants can call into the teleconference with the following information:  
Phone Number: **671 645-4482**  
Conference ID: **334241**



MINIMUM REQUIREMENTS: Indicate on each line of the technical specifications whether or not each item complies with the specification or an exception is being taken. If additional space is required to fully explain bid exceptions, attach additional typed page(s) to the bid submittal indicating the section number and subsection that has the exception, and provide explanation. Note: Failure to provide all of the required information does not relieve the bidder of the responsibility of supplying all of the necessary items and/or complying with all of the conditions of this proposal

Specification:

Packer Body:

Comply: No:

Refuse Body to be a minimum of 25 cubic yard capacity

Hopper capacity to be a minimum of 3.6 cubic yards capacity

Packer body shall meet ANSI standard Z-245.1

The structural integrity of the body shall be designed to withstand load densities of up to 1,000 lbs. per cubic yard of compaction

Hydraulic packer controls at rear of packer body. All control levers for the valves must conform to ANSI Z245-1.


Body Construction:

Comply: No:

Body Side: 10 ga-80,000 psi minimum

Body Roof: 10 ga-80,000 psi minimum

Body Floor: 3/16" – 50,000 psi minimum

Body may include a channel shaped floor member that provides height above the chassis frame for the axle deflection. This channel member will run the full length of the body from front to rear; or the body may be of a flat one piece floor with no channel with a height above chassis for axle deflections to provide by 8" x 3" rectangle tube sills, full length.


Packing Mechanism Construction:

Comply: No:

Total cycle time no more than: 20 seconds

Total re-load time no more than 5 seconds

Riding, non-skidding steps and grab handles on each side of the hopper will be Supplied

Tailgate latches shall be hydraulically operated working in conjunction with the tailgate lift cylinders or tailgate latches to work independently of the tail gate cylinders.

Manual or auxiliary automated latch systems.


Ejection System:

Comply: No:

Full ejection unloading method only; Dump style bodies are not acceptable.

The ejector panel shall travel on urethane guide shoes. Rollers are not acceptable

No portion of the ejector panel can extend beyond the rear body plane.


Control/Lighting:

Comply: No:

Two (2) Flashing red lights at rear of packer body

Four (4) flood lights to be installed at rear of packer body

Two (2) to be mounted at the top of the tail gate

Two (2) to be mounted above rear packer controls and riding steps.

Controls to be mounted at rear by packer control.

These lights are to be grommet mount style for shock absorbance and ease of maintenance.


Color:

Comply: No:

Packer Body shall be white

--	--

Painting:

Comply: No:

Two coats of automotive grade primer and enamel shall be applied to provide an extra barrier against rust and corrosion.

--	--

Required Feature:

Comply: No:

Two (2) roll cart lifters installed on rear hopper with controls on driver and curbside of the body. Lifters must be compatible for use with 95 gallon carts.

--	--

Warranty:

Comply: No:

Complete packer body to be covered for 24 months minimum

--	--

MANUFACTURER: \_\_\_\_\_ MODEL: \_\_\_\_\_

Unit Price: \_\_\_\_\_ Total: \_\_\_\_\_

Delivery Time: \_\_\_\_\_

Approved By:



R. Chace Anderson, GBB Operations Manager

DOOLEY ROBERTS & FOWLER LLP  
ATTORNEYS AT LAW

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TIM ROBERTS  
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Of Counsel:  
MELINDA C. SWAVELY

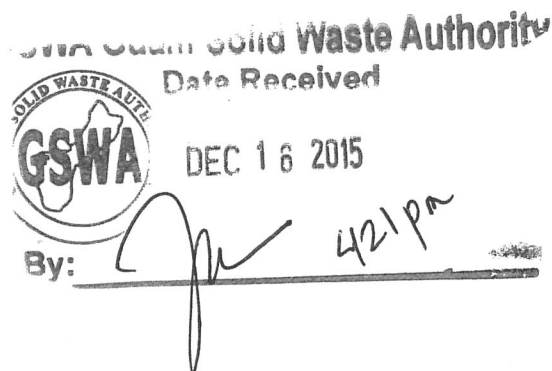
Writer's Direct Email:  
Fowler@GuamLawOffice.com

December 16, 2015

**PROCUREMENT PROTEST**

**VIA FACSIMILE TRANSMISSION**  
**and HAND DELIVERY**

David Manning  
Chace Anderson  
Gershman, Brickner & Bratton, Inc.  
Head of Purchasing Agency  
**GUAM SOLID WASTE AUTHORITY**  
Under the Management of Federal Receiver:  
Gershman, Brickner & Bratton, Inc.  
542 North Marine Corps Drive  
Tamuning, Guam 96911  
Facsimile: (671) 649-3777



**RE: GSWA0002-16 – Rear Loader Packer Body**

Dear Mr. Manning, Mr. Anderson and Gershman, Brickner & Bratton, Inc.:

This office represents Morrigo Equipment, LLC (“Morrigo”), 197 Ypao Road, Tamuning, Guam 96913, with respect to GSWA0002-16, a procurement solicitation for rear loader packer bodies (the “IFB”).

Morrigo hereby files its protest with respect to the above-referenced procurement. We have addressed this letter to the three addressees above because in Superior Court of Guam Civil Case No. CV0185-15, the GSWA has alternatively claimed that each may be the head of the purchasing agency, GSWA. The reasons for this protest are as follows.

On August 18, 2015, the GSWA let GSWA004-15, for rear loader refuse packer bodies (the “Prior IFB”). On September 28, 2015, Morrigo protested the GSWA’s rejection of its bid on the Prior IFB. In a letter dated November 22, 2015, but received by Morrigo’s counsel on November 23, 2015, the GSWA denied Morrigo’s protest. On December 7, 2015, Morrigo

David Manning  
Chace Anderson  
Gershman, Brickner & Bratton, Inc.  
Head of Purchasing Agency  
**GUAM SOLID WASTE AUTHORITY**  
December 16, 2015

appealed the GSWA's denial of Morrigo's protest to the Office of Public Accountability ("OPA"). That appeal is still pending before the OPA.

In addition, in a letter dated November 24, 2015, but received by Morrigo on November 25, 2015, the GSWA purported to cancel the Prior IFB. On December 7, 2015, Morrigo protested the GSWA's cancellation of the Prior IFB. In a December 10, 2015, letter received by Morrigo's counsel on December 11, 2015, the GSWA denied Morrigo's protest over the cancellation of the Prior IFB. In that letter, the GSWA took the position that "continuing with the procurement would unreasonably delay the progress in meeting the mandates of the Consent Decree by endangering GSWA's immediate capacity to provide services to its customers thus endangering the revenue of GSWA." This appears unfounded as the Prior IFB was not even important enough to include in the latest quarterly report that GBB filed with the District Court of Guam on October 21, 2015. In addition, the terms of the Consent Decree required that construction of the new landfill must be done in accordance with the procurement laws of the government of Guam. *See*, Consent Decree, p. 11, ¶ 9(h) ("DPW shall award a construction contract for the new MSWLF in accordance with applicable procurement rules and policies of the Government of Guam."). Finally, the repurposing of vehicles upon closure of the Dededo Residential Transfer Station is not a consent decree project.

On December 4, 2015, the GSWA let GSWA0002-16, by which the GSWA again seeks to procure rear loader packer bodies. Morrigo protests this IFB as it was issued while a stay was in effect due to the pendency of Morrigo's appeal to the OPA of the Prior IFB. In addition, Morrigo's protest of GSWA's purported cancellation of the Prior IFB is still pending, and Morrigo also intends to appeal the GSWA's denial of that protest to the OPA. While the GSWA appears to be of the belief that the automatic stay arising upon the filing of a protest under 5 GCA § 5425(g) is terminated when that protest is denied by the procuring agency, this is incorrect.

The Guam Supreme Court has held that the administrative stay arising upon the protest of a procurement solicitation remains in effect until the final resolution of the protest, to include appeals to the Superior Court of Guam and the Supreme Court of Guam. *See, Teleguam Holdings, LLC v. Territory of Guam*, 2015 Guam 13, ¶ 31 (2015) ("we hold that in a procurement controversy under 5 GCA § 5425, the automatic stay set forth in section 5425(g) remains in effect during the fourteen day period following OPA's decision and commencement of a civil suit within the Superior Court and continues until final resolution of the action by the Superior Court."). *See, also, In the Appeal of JMI Edison*, Appeal No: OPA-PA-13-010, September 20, 2013, Order Granting Motion Re Automatic Stay ("JMI filed a timely Procurement Protest and thereafter filed a timely Notice of Appeal to the Office of Public Accountability ("OPA"). By doing so, an automatic stay is triggered and remains in effect until final resolution of JMI's

David Manning  
Chace Anderson  
Gershman, Brickner & Bratton, Inc.  
Head of Purchasing Agency  
**GUAM SOLID WASTE AUTHORITY**  
December 16, 2015

protest. The automatic stay is triggered upon the filing of a timely protest; the filing of a timely appeal to the OPA; and the filing of a timely appeal to the Superior Court of Guam. ... Final resolution of a protest includes the time period of an appeal after protest.”).

Accordingly, because there is a stay of procurement in effect arising out of the Prior IFB and Morrico’s protest of the GSWA’s purported cancellation of the Prior IFB, the GSWA may not lawfully proceed with the current IFB, GSWA0002-16.

Please be advised that pursuant to the Guam Procurement Law you are not to proceed further with the procurement or award of a procurement contract prior to resolution of this bid protest. *See*, 5 G.C.A. § 5425. Furthermore, a receiver appointed by a federal court must comply with local law. *See*, 28 USCS § 959.

I look forward to your resolution of this protest expeditiously.

Sincerely,

DOOLEY ROBERTS & FOWLER LLP



Kevin J. Fowler

KJF: tg/M-278.21

DOOLEY ROBERTS & FOWLER LLP  
ATTORNEYS AT LAW

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Of Counsel:  
MELINDA C. SWAVELY

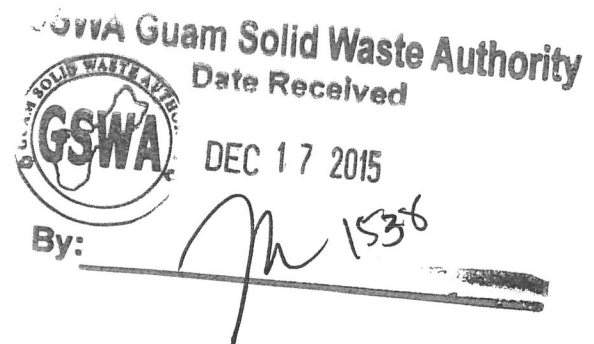
Writer's Direct Email:  
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December 17, 2015

**PROCUREMENT PROTEST**

**VIA FACSIMILE TRANSMISSION**  
**and HAND DELIVERY**

David Manning  
Chace Anderson  
Gershman, Brickner & Bratton, Inc.  
Head of Purchasing Agency  
**GUAM SOLID WASTE AUTHORITY**  
Under the Management of Federal Receiver:  
Gershman, Brickner & Bratton, Inc.  
542 North Marine Corps Drive  
Tamuning, Guam 96911  
Facsimile: (671) 649-3777



**RE: GSWA0002-16 – Rear Loader Packer Body**

Dear Mr. Manning, Mr. Anderson and Gershman, Brickner & Bratton, Inc.:

This office represents Morrico Equipment, LLC (“Morrico”), 197 Ypao Road, Tamuning, Guam 96913, with respect to GSWA0002-16, a procurement solicitation for rear loader packer bodies (the “IFB”).

Morrico hereby files its protest with respect to the above-referenced procurement. We have addressed this letter to the three addressees above because in Superior Court of Guam Civil Case No. CV0185-15, the GSWA has alternatively claimed that each may be the head of the purchasing agency, GSWA. The reasons for this protest are as follows.

We filed a protest on this procurement yesterday based on the fact that a stay of procurement is in effect. We also hereby protest the 90 day delivery time specification of this IFB. We also acknowledge that by way of an addendum to the IFB, GSWA has extended its delivery time specification to 120 days. This extension of the delivery timeframe is still outside reasonable commercial time frames for manufacture and delivery of the product sought by the GSWA. A commercially reasonable time frame would be at least 180 days.

Exhibit     C

David Manning  
Chace Anderson  
Gershman, Brickner & Bratton, Inc.  
Head of Purchasing Agency  
**GUAM SOLID WASTE AUTHORITY**  
December 17, 2015

The development of product specifications is statutorily geared toward increasing competition among potential vendors. *See*, 5 GCA § 5265 (“All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Territory’s needs, and shall not be unduly restrictive.”). Further, “[s]pecifications shall not include requirements, such as but not limited to restrictive dimensions, weights or materials, which unnecessarily restrict competition, and shall include only the essential physical characteristics and functions required to meet the Territory’s minimum needs.” *See*, 5 GCA § 5268(a). Similarly, “[p]urchase descriptions shall describe the salient technical requirements or desired performance characteristics of supplies or services to be procured without including restrictions which do not significantly affect the technical requirements or performance characteristics.” *See*, 5 GCA § 5268(c). The GSWA specifications discussed above are restrictions that do not “significantly affect the technical requirements or performance characteristics” of the product to be acquired. The GSWA’s specifications are unduly restrictive and are designed to reduce competition.

The Office of the Public Auditor has issued a Decision holding unlawful the attempt by the Guam General Services Agency to restrict price competition through the use of a shortened delivery time. I am attaching the Decision in Appeal No. OPA-PA-13-001, in which “[t]he Public Auditor finds that the IFB’s specification for a two-hundred-forty (240) day delivery time is invalid because it violates 5 G.C.A. § 5268(a) and 2 G.A.R., Div. 4, Chap. 4, § 4109(a) and § 4103(b)(1)(c), and 5 G.C.A. § 5010.” For the same reasons, the GSWA’s 90 day (now 120 day) delivery time specification in this IFB is invalid. Morrico requests that the GSWA amend the IFB specifications to allow for a delivery time frame of at least 180 days.

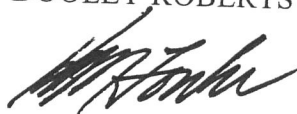
Morrico submits this protest without waiver of its pending protests and OPA appeals related to the GSWA’s improper solicitation of the rear loader packer bodies in GSWA004-15, and the GSWA’s improper cancellation of that IFB.

Please be advised that pursuant to the Guam Procurement Law you are not to proceed further with the procurement or award of a procurement contract prior to resolution of this bid protest. *See*, 5 G.C.A. § 5425. Furthermore, a receiver appointed by a federal court must comply with local law. *See*, 28 USCS § 959.

I look forward to your resolution of this protest expeditiously.

Sincerely,

DOOLEY ROBERTS & FOWLER LLP



Kevin J. Fowler





**SOLID WASTE  
MANAGEMENT  
CONSULTANTS  
RECEIVER**

December 23, 2015

Mr. Kevin J. Fowler  
Attorney at Law  
865 South Marine Corps Drive  
Suite 201  
Tamuning, Guam 96913

Re: **GSWA0002-16 – Rear Loader Packer Body**

Dear Mr. Fowler:

This letter is in response to your protest letter dated December 17, 2015 on behalf of your client Morrico Equipment, LLC ("Morrico"). After consideration of the grounds for the protest set forth in your letter, GSWA hereby denies Morrico's protest. The reasons for the denial are based on advice of legal counsel and are set forth below.

Your December 16, 2015 letter reiterates the same arguments Morrico made in its First and Protest of IFB GSWA004-15 dated September 1, 2015. GSWA responded to this letter on September 4, 2015. Therefore, as an initial matter, this appears to be an appeal of GSWA's September 4, 2015 decision on Morrico's First Protest of IFB GSWA004-15, not a protest of IFB GSWA0002-16. On that basis, GSWA denies the relief sought in Morrico's December 17, 2015 letter. Even if Morrico's December 17, 2015 letter could be interpreted as a protest on a matter of first impression, GSWA's reasoning would be the same as set forth in its September 4, 2015 letter regarding the ninety (90) day delivery time specification. This is a final, unappealable decision of GSWA under the management of the Federal Receiver.

Further, the automatic stay simply does not apply. IFB GSWA002-16 was issued pursuant to the authority of the Federal Receiver under District Court of Guam in CIVIL CASE NO. 02-0022 United States of America v. Government of Guam, not Guam Procurement Law. The authority of the Federal Receiver under District Court of Guam in CIVIL CASE NO. 02-0022 United States of America v. Government of Guam is abundantly clear. This grant of authority is well within the District Court of Guam's equitable powers to ensure that the mandates of the Consent Decree are met. The mandates of the Consent Decree simply cannot be met if GSWA is unable to reasonably and timely procure equipment necessary for its operations. Yet, Morrico continues to argue the very regulations from which the District Court authorizes relief.

Dooley Roberts & Fowler LLP

DEC 23 2015

Exhibit     D    

2:13pm T&F

Mr. Kevin J. Fowler  
December 23, 2015  
Page 2 of 2

Pursuant to the authority of the Federal Receiver under District Court of Guam in CIVIL CASE NO. 02-0022 United States of America v. Government of Guam, Bid No. GSWA002-16 will continue to proceed.

Thank you.

Sincerely,



David L. Manning  
Receiver Representative

c.c. Vanessa L. Williams, Esq.





**SOLID WASTE  
MANAGEMENT  
CONSULTANTS  
RECEIVER**

December 23, 2015

Mr. Kevin J. Fowler  
Attorney at Law  
865 South Marine Corps Drive  
Suite 201  
Tamuning, Guam 96913

Re: **GSWA0002-16 – Rear Loader Packer Body**

Dear Mr. Fowler:

This letter is in response to your protest letter dated December 16, 2015 on behalf of your client Morrico Equipment, LLC ("Morrico"). After consideration of the grounds for the protest set forth in your letter, GSWA hereby denies Morrico's protest. The reasons for the denial are based on advice of legal counsel and are set forth below.

Your December 16, 2015 letter reiterates the same arguments Morrico made in its Third Protest of IFB GSWA004-15 dated December 7, 2015. GSWA responded to this letter on December 10, 2015 (receipt was acknowledged by your office on December 11, 2015). Therefore, as an initial matter, this appears to be an appeal of GSWA's December 10, 2015 decision, not a protest. On that basis, GSWA denies the relief sought in Morrico's December 16, 2015 letter. This is a final, unappealable decision of GSWA under the management of the Federal Receiver.

Even if Morrico's December 16, 2015 letter could be interpreted as a protest on a matter of first impression, GSWA's reasoning would be the same as set forth in its December 16, 2015 letter. The automatic stay simply does not apply. IFB GSWA004-15 has been cancelled and is not proceeding. IFB GSWA002-16 was issued pursuant to the authority of the Federal Receiver under District Court of Guam in CIVIL CASE NO. 02-0022 United States of America v. Government of Guam, not Guam Procurement Law. The authority of the Federal Receiver under District Court of Guam in CIVIL CASE NO. 02-0022 United States of America v. Government of Guam is abundantly clear. This grant of authority is well within the District Court of Guam's equitable powers to ensure that the mandates of the Consent Decree are met. The mandates of the Consent Decree simply cannot be met if GSWA is unable to reasonably and timely procure equipment necessary for its operations. Yet, Morrico continues to argue the very regulations from which the District Court authorizes relief.

Dooley Roberts & Fowler LLP

DEC 23 2015

Exhibit     E    

2:13pm TG

Mr. Kevin J. Fowler  
December 23, 2015  
Page 2 of 2

Pursuant to the authority of the Federal Receiver under District Court of Guam in CIVIL CASE NO. 02-0022 United States of America v. Government of Guam, Bid No. GSWA002-16 will continue to proceed.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "David L. Manning".

David L. Manning  
Receiver Representative

c.c. Vanessa L. Williams, Esq.

# Quarterly Report of the Receiver

Civil Case No. 02-00022  
United States of America v. Government of Guam  
Guam Solid Waste Authority

Prepared for:



U.S. District Court of Guam

Submitted by:



Gershman, Brickner & Bratton, Inc.  
8550 Arlington Blvd, Suite 304  
Fairfax, Virginia 22031

October 21, 2015

Printed on recycled paper

**Quarterly Report of the Receiver  
October 21, 2015**

**Civil Case No. 02-00022  
United States of America v Government of Guam**

**Guam Solid Waste Authority**

Pursuant to the Order of the District Court of Guam (Court), dated March 17, 2008, appointing Gershman, Brickner & Bratton, Inc. (GBB) as Receiver for the Solid Waste Management Division (SWMD) of the Department of Public Works (DPW) of the Government of Guam (now the Guam Solid Waste Authority [GSWA]), we are pleased to submit to the Court this Quarterly Report ("Report"); covering the second and third quarters of FY 2015. The purpose of this Report is to describe to the Court the progress made toward compliance with the Consent Decree for the reporting period January 1, 2015, to June 30, 2015, and to outline the Receiver's recommendations for achieving compliance with the Consent Decree. As an integral part of this Report, the Receiver is also submitting the attached presentation entitled "Quarterly Report of the Receivership for the Government of Guam, Guam Solid Waste Authority" (see Tab 2).

**Introduction**

During the six months covered in this Report, the work to achieve compliance with the Consent Decree has continued. The Receiver has made construction progress and continued construction management oversight for the Ordot Dump Closure and Dero Road sewer improvement throughout the reporting period to ensure that the Ordot Dump is no longer a source of future pollution. The Receiver also continued to oversee operations at the state-of-the-art, environmentally sound Layon Landfill, constructed pursuant to the Consent Decree, and continued to operate solid waste and recycling programs and services for GSWA's customers, ensuring they are served in a timely and cost-effective manner.

Despite a series of challenging weather events, including three named storms in March; Typhoon Dolphin in May; and, Typhoon Chan Hom in early July, major progress continued during the reporting period toward the environmental closure of the Ordot Dump. Construction completion of the Dero Road sewer line system, installation of a majority of the covering systems over the eastern and western half of the dump surface area, the initiation of leachate collection and treatment, the continued stabilization and covering of slopes, and the installation of leachate, stormwater management and perimeter security fencing systems all progressed. By the end of these two quarters, construction of the east side cover system, along with substantial progress on the installation of the west side cover system and gas control systems occurred. In addition, environmental monitoring activities continued, including Layon groundwater and gas monitoring, leachate and marine water monitoring, and gas monitoring at the Ordot Dump.

Also during the reporting period, GSWA's residential customer base increased to 17,558 at the end of June 2015. GSWA staff performed 442,717 residential trash collections, of which 99.79 percent were on time. The GWSA also operated the three residential transfer stations and staffed both scale houses at the Hauler-only (commercial) Transfer Station and the Layon Landfill. On January 23, 2015, GSWA opened the new Harmon Residential Transfer Station and Household Hazardous Waste Facility. At the request of the Governor of Guam's office, the Dededo Residential Transfer Station was closed at the end of June 2015. GSWA customer service staff responded to customer requests and account issues, and sent courtesy notices to customers behind in their payments. In the Island-wide Curbside Recycling Program, GSWA collected 1,178.20 tons of material for recycling during the reporting period. The Bulky Item Collection Program, launched in September 2011, continues to be well received; during the reporting period, GSWA staff collected 2,285 items in response to 825 appointments. The GSWA Board of Directors held three meetings during the reporting period.

During the reporting period, procurement activities for GSWA were primarily related to its appeal of the Office of Public Accountability's (OPA) decision to overturn GSWA's decision to procure for cab-over or flat nosed trash trucks but should instead purchase marginally less expensive conventional or long nosed cab trucks. GSWA has appealed the OPA's decision to the Superior Court of Guam because the flat nosed trucks in urban residential settings provide better sight viewing for the road which provides greater safety than a long nosed cab. Significant time was also required to respond to Maeda Pacific Corporation's effort to avoid paying the liquidated damages required under the contract due to its failure to adhere to the contractually agreed upon schedule for delivering the Household Hazardous Waste Facility to GSWA.

In the financial area, GSWA operating results for both three-month reporting periods were strong, with revenue exceeding the budget and expenses coming in under the budget for both reporting periods. GSWA's cash position also remained strong during the reporting periods. The fund balance is estimated by the Receiver to have increased during both reporting periods.

Thanks to the hard work of GSWA staff, the residential delinquency rate remained low during both reporting periods and the number of customers taking advantage of the GSWA's online billing and payment options continued to grow. Throughout the reporting period, we have monitored the Department of Public Works' (DPW) bridge and roadway repairs and replacements and collected data on the tonnage of waste disposed. Waste disposal from all customers increased 3.1 percent. All categories of waste disposal experienced growth, except for Government. The decline in the category of waste coming from the Government was due to operations issues within GWA causing a significant decline in the amount of biosolids disposed.

In this Report, we present the following updates for January 1, 2015, to June 30, 2015:

- 1. Ordot Dump Closure**
- 2. Layon Landfill and Consent Decree Projects**
- 3. Operations of the Guam Solid Waste Authority**
- 4. Contract Management and Procurement**
- 5. Financial Issues and Capital Funding**

## **6. Financial Plan for Additional Projects and Ordot Post-Closure Care**

### **7. Next Steps**

#### **1. Ordot Dump Closure (January 2015 – June 2015)**

The Ordot dump closure construction has two planned phases. Phase I is the construction of the cover system over the eastern half of the dump and the construction of the Dero Road sewer line system. Phase II is the construction of the remaining cover system over the western half of the dump.

Phase I construction activities that continued or were completed throughout this reporting period included the following:

- Completed the Dero Road sewer line system and began its operation;
- Completed the Dero Road sewer lateral lines to adjacent properties;
- Completed installation of soil foundation layer for cover system;
- Completed installation of geomembrane layer of the cover system;
- Completed gas collection system;
- Continued placement of geocell and coralline limestone ballast cover;
- Continued construction of stormwater management systems;
- Continued material submittal review, procurement and logistics;
- Continued all construction quality assurance of the cover system; and
- Continued weekly construction progress meetings.

Phase II construction activities progress from the west side of the south slope toward the west and north slopes of the cover system. The work activities continued or completed in the reporting period included the following:

- Completed relocation and consolidation of waste on south and west slopes;
- Completed western leachate interceptor trench;
- Completed construction of stormwater management system on west side;
- Completed construction of pond 2 detention basin;
- Completed installation of soil foundation layer on south side;
- Continued installation of all geo-synthetic cover layers (geocomposite, geomembrane and geocell);
- Continued installation of gas collection system;
- Continued western perimeter leachate collection system;
- Continued mass earthworks along west side slopes for perimeter roadway development;
- Continued construction of stormwater management system on south and west cover areas; and,
- Continued construction of perimeter security fencing.

Work during the reporting period also included the continued erosion and sediment control efforts to manage stormwater and monitoring for unexploded ordnance (UXO) on the construction site, and safety monitoring of the site and village roadways. The following sections describe the construction progress and coordination accomplished during the reporting period.



## **Closure Construction – Ordot Dump and Dero Road Sewer Improvements**

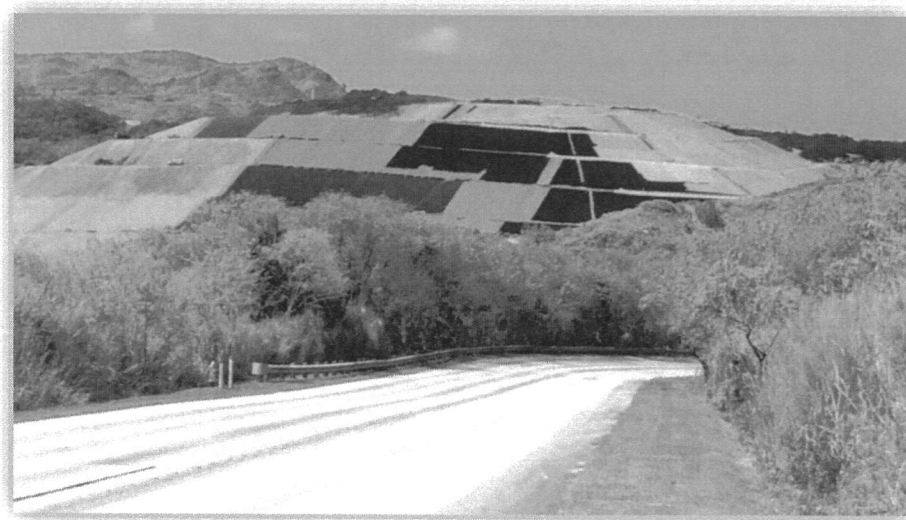
**Closure Construction** – This period of reporting is the driest part of the year and yet there was a total of twelve named storms by the end of June—and of those, five became typhoons. Three storm periods, one in March, one in May (Typhoon Dolphin), and one in early July (Typhoon Chan Hom) brought damaging wind and rain to the project. These unfavorable weather events have caused the pace of construction to slow and the need to purchase additional material to replace material damaged by the storms. The contractor has worked to make up for the weather delays by working more labor hours during favorable weather but the delays caused by weather have extended construction into the wet season. Notwithstanding the ongoing unpredictable weather, construction tasks of Phase I were substantially completed in this period and progress was pushed closer to completion on Phase II work activities. The weather necessitated an increase in labor resources to have on hand so that when favorable weather occurred, additional resources could be immediately put to work to allow the contractor to catch up some of the time lost due to poor weather conditions and repair damaged construction.

For the period ending June 30, 2015, several major construction tasks, as listed above for Phase I and II, were completed, nearing completion, or had made significant progress.

### **PROGRESS PHOTOS**

In the first progress photo, it can be seen that there was still waste to be covered at the upper levels on the south side, and across the entire south slope. Construction status ranged from just the initial soil protection layer installed over the waste (on the left side of photo) in Phase II, to a completely installed cover system with geocell being infilled with coral gravel in Phase I on the right half of the slope.

**Figure 1 MARCH 2015 – South Slope of Dump from LeoPalace Road**



In this second progress photo from late June, there is substantial progress on the south slope. Phase I, the right side of the south slope, has coral gravel installed in the majority of the geocell and stormwater swales and down drains are in place across the slope. On the left side of the south slope, Phase II, all geo-

synthetics have been installed and the majority of the geocell is in place with coral gravel infill as well as several locations with stormwater down chutes completed.

**Figure 2 JUNE 2015 – South Slope of Dump from LeoPalace Road**



**Leachate Collection and Dero Road Sewer Line** – The Dero Road sewer line was completed in late January 2015. It delivers leachate collected from the dump to the leachate collection tanks to be pumped to the Dero Road sewer line. Through June 30, 2015, more than 2.5 million gallons of leachate has been captured and diverted from being discharged into the environment from the east side of the dump. When the Phase II leachate collection system is fully complete on the west side of the system, the sewer line will deliver all leachate from the entire Ordot Dump to the Hagatna Wastewater Treatment Plant for proper disposal.

The leachate quality and quantity is reported quarterly to GWA as well as to the Guam Environmental Protection Agency (GEPA) and the United States Environmental Protection Agency (EPA). As of this reporting, the leachate quality has met GWA discharge standards to the public sewer system and flow volumes have been within the anticipated design targets. After consulting with the Director of Public Works, it was decided to defer pavement patchwork until the Dero Road improvement project is undertaken. This decision saves \$190,000 that would otherwise have been required for this project.

Also of note is an incident in May in which the new Dero Road GWA pump station was vandalized with several gunshots to the backup generator system. GWA's storm routine system checks uncovered the vandalism and reported it to the Receiver. The Receiver had the necessary repairs completed and the system fully operational before the storm events.

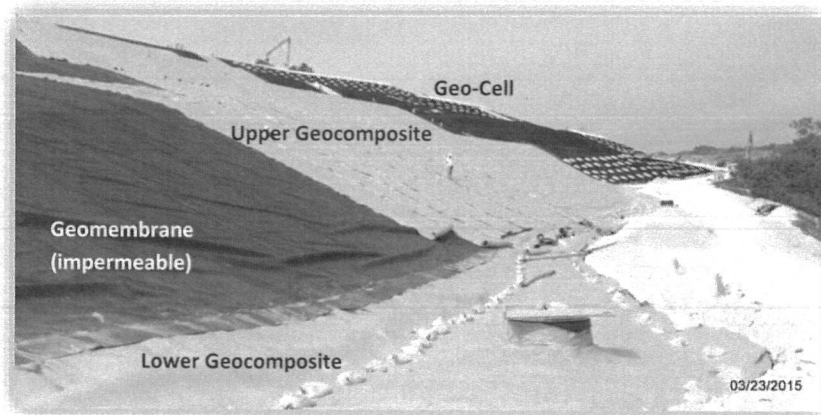
**Cover Installation (Eastern Half)** – Coinciding with the installation of the leachate and sewer systems described above, the cover over the eastern half of the dump progressed substantially in all aspects with the 60 mil polyethylene membrane in place and the majority of the component layers nearly completed by the end of June 2015. Again, weather delays substantially impact these critical path tasks and backed up further progress on Phase II tasks. The cover system is composed of the following:

- 6- and 8-inch geocell infilled with coralline limestone gravel;
- 250 mil Geocomposite drainage layer;
- 60 mil Low Linear Density Polyethylene (LLDPE) membrane barrier;
- 300 mil Geocomposite drainage layer; and,
- 18 inch coralline limestone gravel protection layer.

**Figure 3 Landfill cover layers as they are constructed**



**Figure 4 Landfill cover construction sequencing**



**Stormwater Management Systems for Phase I and II** – Immediately following and concurrent with the cover installation is the construction of the systems to manage the stormwater on the site. The conveyance channels are shown in Figure 5. The stormwater is conveyed to the four constructed stormwater detention ponds, which treat the stormwater by settling suspended sediments and store the stormwater, allowing it to slowly enter the environment as required by applicable environmental regulations. These systems are used throughout the construction activities as they are completed in Phase I and II and, after the cover system, are the remaining major facility structures to complete.

**Figure 5 Down drain to box culvert conveyance to Pond No. 1**

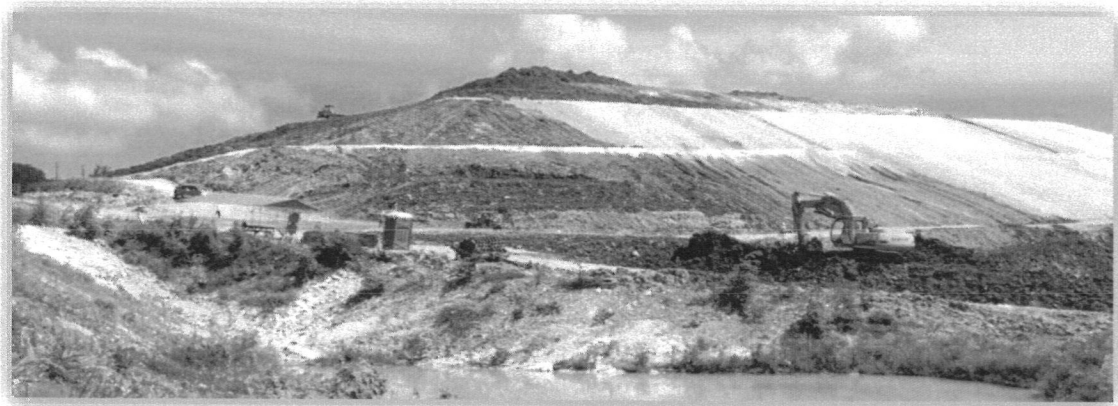
*(Note: visible in this photo are a ladder, sandbags, and some silt fence which washed into the channel from a large storm event.)*



Additionally, Black Construction Corporation (BCC) has continued construction of Phase II work tasks as outlined above, concentrating on earthworks around ponds, perimeter roadways, and cover bench swales to direct site stormwater into the final design watershed areas. The schedule for this work has also been hampered by the storm events throughout the reporting period.

**Earthworks and Waste Relocation** – The first major step in the cover installation is to reshape much of the surface of each dump slope to create a uniform surface to accept the cover system, and a stable configuration for long term stability. That work in Phase II, on the west side, was substantially complete in this reporting period (See Figure 6 and 7) as the cover system quickly followed (see Figure 7). At the same time, the perimeter road waste shaped along the Western Channel Relocation area to allow stabilization and vegetative establishment (Figure 9). This work advanced significantly in this reporting period.

**Figure 6 West side soil protection layer (Late January 2015)**



**Figure 7 West side soil protection layer complete (March 2015)**



Figure 8 West side cover system installation all layers ongoing (June 2015)



Figure 9 Western Channel Relocation area and perimeter roadway (June 2015)



**Western perimeter leachate collection system** – As with the east side, Phase I, the west side also has a perimeter leachate collection pipe and trench system that captures leachate from the waste pile at the toe of the slope. This work progressed with the installation of the cover system and shredded Guam tires were reused as aggregate in the collection trench. When complete, along with the cover system, this leachate collection system will be connected with the existing east side, now in operation, to collect leachate around the entire Ordot closure facility. This is anticipated to occur in the next reporting period. Figure 10 shows the installation of this perimeter leachate collection pipe along the west side.

Figure 10 West side leachate perimeter collection trench installation



**Gas Collection and Control System** – Hand-in-hand with the construction of the cover system is the gas collection system beneath it. Ongoing work on the installation of the gas extraction wells and horizontal collection piping continued and was nearly completed in the reporting period. As of the filing of this Report, the gas collection system is complete and the system is in operation collecting landfill gas over the entire Ordod Closure system. This gas is methane, one of the more potent greenhouse gases impacting global warming. Figure 11 shows some of this system and the gas flare installed for proper disposal of this gas.

Figure 11 Gas collection system components (Gas extraction wells and Gas Flare)



**Perimeter Security Fencing** – Initiated in this reporting period, ultimately surrounding the entire closure facility encompassing the closure cover system, stormwater ponding basins, gas collection system,

leachate collection system, and perimeter groundwater and gas monitoring wells— is an eight-foot high security fence system. It will be a continuous fence with vehicular and personnel gates at regular intervals to facilitate maintenance of the property, fencing, and the firebreak around the site. The fence foundation also has a continuous concrete foundation for the prevention of burrowing animals from the facility. The fence is approximately 7,120 feet in length.

**Figure 12 Perimeter Security Fence**



As stated in the prior report (March 2015), as of December 31, 2014, BCC was approximately 30 days behind schedule. Concerted efforts have been underway to accelerate many construction activities in the dry season, especially those of Phase II throughout the reporting period (January through June 2015). While these efforts have resulted in marked progress on certain work tasks, the multiple storm events this year have slowed some of that progress. For example, the damages from Typhoon Dolphin to the cover system resulted in over 50,000 square feet of material that could not be reused. New orders from the manufacturer were made; however, recent production stoppages in the mainland have delayed delivery of the material delaying placement to November. As of the date of this report we believe that the work will be substantially complete in mid to late December assuming no additional adverse weather events or other circumstances beyond the contractor's control.

**UXO Safety** – No additional unexploded ordinance (UXO) has been identified since August 19, 2014. The Receiver and all contractors continue to monitor for UXO whenever construction work is performed. When UXO is identified, it is properly removed and disposed through the military authorities on Guam. When construction is complete, the Receiver will compile a summary UXO report.

**Post Closure Care Plan and Operations** – Under Federal law and regulation, the Ordot Dump Facility must be managed and cared for in compliance with an approved Post Closure Care plan, for thirty years following the completion of closure construction. The Receiver has developed a post-closure plan in compliance with the Consent Decree and the Federal and Local regulatory requirements that is currently under review by the regulatory agencies. The Receiver continues to work closely with representatives from GEPA and USEPA to assist them in completing their review and final approval of the Post Closure



Care Plan. In this reporting period, the Receiver has used bi-weekly teleconferences and technical calls to facilitate this process. EPA provided ongoing comments to the Post Closure Care Plan dated February 19, 2015, and March 23, 2015, to which the Receiver provided a revised Post Closure Care Plan in May addressing comments and updating the Post Closure Care Cost estimate as needed. At this time, approval of the plan is still pending with the regulatory agencies.

Just as with the Layon Landfill, a qualified operator must be selected to manage the post-closure care of the Ordot Dump. One of the Receiver's current priorities is the issuance of a Request for Proposals (RFP) to select such an operator. A primary requirement of the procurement is to provide a Statement of Work for prospective operators to know what is expected for management and maintenance. The Post Closure Care Plan and associated gas collection system management and maintenance plans will be primary documents in the procurement package provided to prospective operators.

***Dero Road Renovation Design*** – In accordance with the Court's Order of May 1, 2015, regarding Financing the Dero Road Project, the Receiver has directed its contractors to redesign Dero Road to eliminate bicycle lanes and pedestrian ways with shoulder-to-shoulder repaving of Dero Road, including necessary stormwater mitigation, beginning just before the new pump station and terminating at the westernmost boundary of the Ordot Dump property. The Receiver expects to begin the procurement process to move this project to construction as soon as the redesign is complete.

## **2. Layon Landfill and Consent Decree Projects (January 2015 – June 2015)**

### **Access Road (Chalan Layon)**

During the construction of the Access Road for the new landfill, the remains of ancient Chamorro ancestors were discovered. In compliance with Guam law and with the guidance and approval of Guam's Historic Preservation Office (HPO), these remains were treated with respect and a fitting re-interment in a crypt designed and constructed for this purpose. It has been a slow and painstaking process. During May and June, the Receiver coordinated with HPO and had a tentative ceremony date scheduled for mid-June; however, circumstances related to weather and scheduling necessitated a rescheduling of the ceremony to mid-July. The crypt was completed at a location along the roadway in time for the reinterment ceremony that took place on July 17, 2015. The Receiver would like to point out the support of the village of Inarajan through the Mayor of Inarajan, Ms. Doris Lujan, in providing traffic control, a canopy, and chairs, as well as a podium and public announcement system to facilitate a solemn and moving tribute to the ancestral finds now reinterred at the crypt. The ceremony was well attended including Speaker Judith Won Pat of the Guam Legislature. The Village of Inarajan will be taking custodial care of the monument as a village responsibility to maintain the grounds around the crypt for all to experience.

Figure 13 Inarajan Crypt and Interment ceremony attendees



### **Construction Management**

During the reporting period, the construction management (CM) consultant, GHD, provided ongoing construction support in all areas of the Receiver's construction work. The CM activities consisted of the following:

- Support with the documentation and resolution of the construction claim and dispute with Maeda Pacific Corporation;
- Support for addressing improvements in operations of the Layon Landfill including planning to install surge tanks at two pump stations to assist GWA's management of large amounts leachate produced by significant rain events;
- Assistance to the Receiver in procurement activity as needed; and
- Design support services as described below.

### **Design Support Services**

***Upgrade of Residential Transfer Stations*** – As directed by the Court's Order dated April 20, 2015, the Receiver is developing a plan for the proper environmental closure of the Dededo Residential Transfer Station and to proceed with the work necessary to permit the transfer stations at Agat and Malojloj.

Since this Order, the Receiver has consulted with GEPA and USEPA to establish the parameters for the environmental closure of the Dededo Transfer Station and is currently developing the closure plan and a scope of work to be bid out for the work necessary to close this facility.

Guam's Agat and Malojloj residential transfer stations have never been permitted as required by Guam law. GEPA is requiring that these facilities be permitted as a condition of the Solid Waste Facility Permit for the Layon Landfill. Upgrades to these facilities are necessary to meet permitting standards.

At the present time, the 90 percent designs have been completed and the projects are ready to proceed with procurement for construction. Both sites will need environmental cleanup prior to the start of construction. The permitting process will be ongoing during the construction process.

### **Environmental Monitoring and Compliance**

Sound environmental practices and permit conditions require extensive and ongoing monitoring of the GSWA facilities, particularly the Layon Landfill. During the reporting period, the Receiver continued to advance environmental compliance coordination with U.S. EPA and GEPA by holding bi-weekly meetings and by regularly reporting data and the results of environmental testing and monitoring. In this section, we will discuss each area of monitoring and our plans to ensure compliance at the landfill as well as at the transfer stations.

***Layon Landfill Municipal Solid Waste Facility and Title V Air Permits*** – Since GEPA's issuance of both the Facility Operations permit and Title V Air permit on January 28, 2015, environmental reporting is in compliance with permit conditions. The emergency generator at the facility was included in the permit application for the Title V permit; however, GEPA chose to separate the emergency generator permit and issued it separately.

The Layon Landfill Solid Waste Operations Facility and Title V Air permits contain multiple reporting requirements. During operations, the landfill operator, under the oversight of the Receiver, provides permit reporting, supported with information from the third-party environmental compliance consultant, on stormwater, groundwater, gas, surface water and leachate characteristics. The Receiver and operator coordinate on the reporting and work diligently with GEPA and EPA to comply and remain up-to-date with all required permit conditions.

The Layon Landfill is approaching the time when installation of a landfill gas collection and control system must be evaluated. The applicable environmental regulations, however, allows site specific sampling (called Tier 2 sampling) of gas generating from the in-place waste to determine actual gas generation rates, and to use these as a determination of when the gas system should be installed. During May 2015, Tier 2 sampling was conducted at the Layon landfill and reported to both GEPA and USEPA. The sample results indicated that the facility has several more years than anticipated before it will be necessary to install a gas system. We will continue to monitor this carefully to ensure that the landfill remains in full compliance with its permit and applicable environmental regulation.

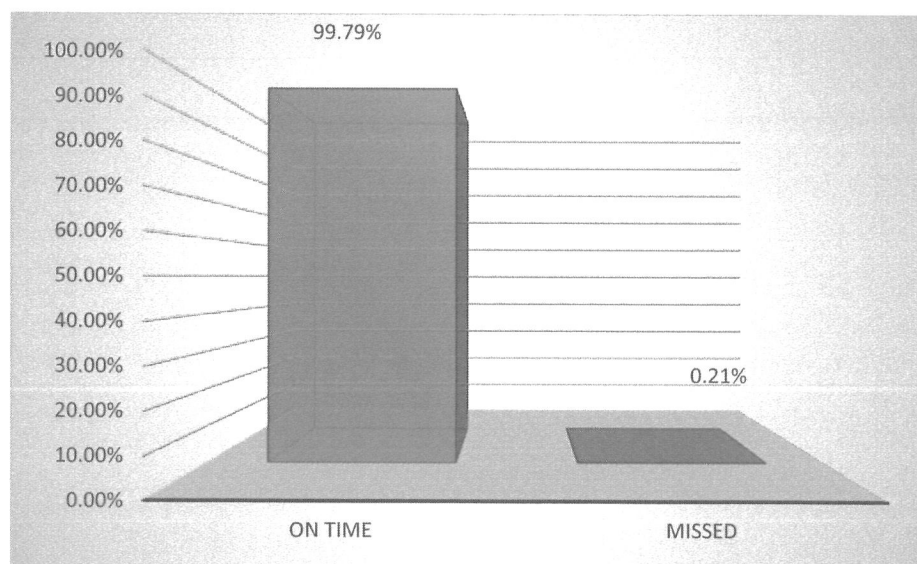
***Layon Groundwater and Site Monitoring*** – The second semi-annual monitoring event for Operations Year No. 4 (September 2014 to August 2015) was performed in mid-May 2015. The report was submitted in late August 2015 to GEPA and EPA. This is one of the many permit required reporting documents that are reviewed and discussed with the regulatory agencies

**Inarajan Wastewater Treatment Plant (WWTP)** – During the reporting period, leachate and marine water sampling continued in accordance with the monitoring work plan under the Layon permit. Leachate characteristics are monitored bi-monthly, and the performance of the Inarajan WWTP is evaluated based on GWA sampling of influent and effluent when available. Marine water monitoring at six sample locations is also being performed on a quarterly basis with priority pollutants performed once annually. There has been no recent GWA effluent sampling to understand the plants’ recent performance; however, marine water results do not differ significantly from the background locations, and leachate quality appears to be following trends consistent with landfill age and maturation. Sampling for leachate and marine water quality will continue in the future quarters at the current frequency and the Receiver will coordinate with GWA to confirm reported volumes treated by the WWTP. Reports are distributed to GEPA, GWA and EPA regularly.

### 3. Operations of the Guam Solid Waste Authority (January 2015 – June 2015)

At 2:45 a.m. Monday through Thursday, the collection crews gather for roll call. The supervisor assigns routes to drivers and loaders, reviews administrative information, and discusses collection points that are on a monitor list and need to be called in to dispatch when the crew is at that collection point. By 3:00 a.m. the crews are leaving the GSWA yard to collect their routes. They service more than 17,500 homes each week. At the end of June, GSWA’s residential customer base was 17,558, an increase of 464 customers (2.71 percent) from December 31, 2014. Over the current reporting period, GSWA crews performed 442,717 trash collections, of which 99.79 percent were on time. Figure 14 illustrates the on-time collections during the reporting period.

**Figure 14 On-Time Collections, January 1, 2015 – June 30, 2015**



GSWA crews collected 9,941.02 tons of trash from their residential customers over the six-month reporting period. Each GSWA customer households generated an average of 44.91 pounds of trash each week, or 6.41 pounds per household per day.

### Cart Repairs

During the reporting period, GSWA had seventy-four damaged or broken Toter carts. The carts were repaired and put back into service for GSWA customers. The carts are holding up well to the work demands and Guam weather.

### Bulky Item Collections

From the beginning of the bulky items program in 2011 through June 2015, customers have made 4,121 appointments to collect 11,327 bulky items such as sofas and mattresses and white goods such as washing machines and hot water heaters. These are mainly large and bulky items that customers have difficulty transporting to a disposal point. GSWA's curbside residential customers are allowed up to two free bulky item collections each calendar year. The fee for each subsequent collection during the same year is \$25. Residents who are not curbside residential customers of GSWA and are not a commercial entity may make appointments for bulky item collection for \$25 per collection. Metal objects are taken to a local scrap yard to be recycled, and non-metal items, such as mattresses and sofas, are disposed of at the Layon Landfill.

As shown in Figure 15 and Figure 16, from January 1, 2015, through June 30, 2015, GSWA collected 2,285 metallic and bulky items in 825 appointments made by GSWA customers. This represents a slight increase from the preceding six months (July 1, 2014, through December 31, 2014) in both the number of items collected (3.55 percent increase) and appointments made (2.14 percent increase).

**Figure 15 Number of Items Collected in Bulky Waste Program for January - June Each Operating Year**

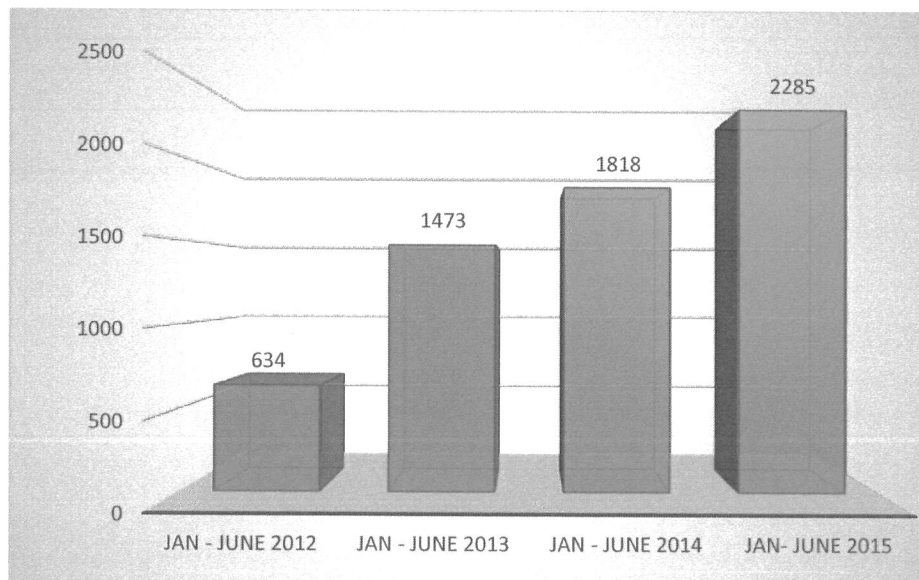
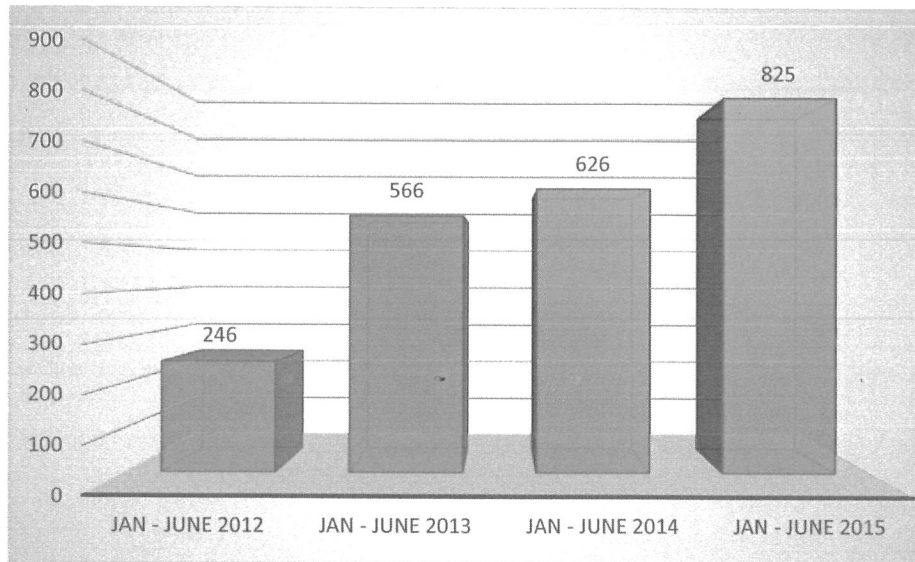


Figure 16 Bulky Item Collections Stops January – June 2012 Through 2015



Consistently over time, the average number of items set out per stop is approximately 3 (rounded from 2.71 for the period January – June 2015). Up to five items can be placed on the curb per customer, per set-out.

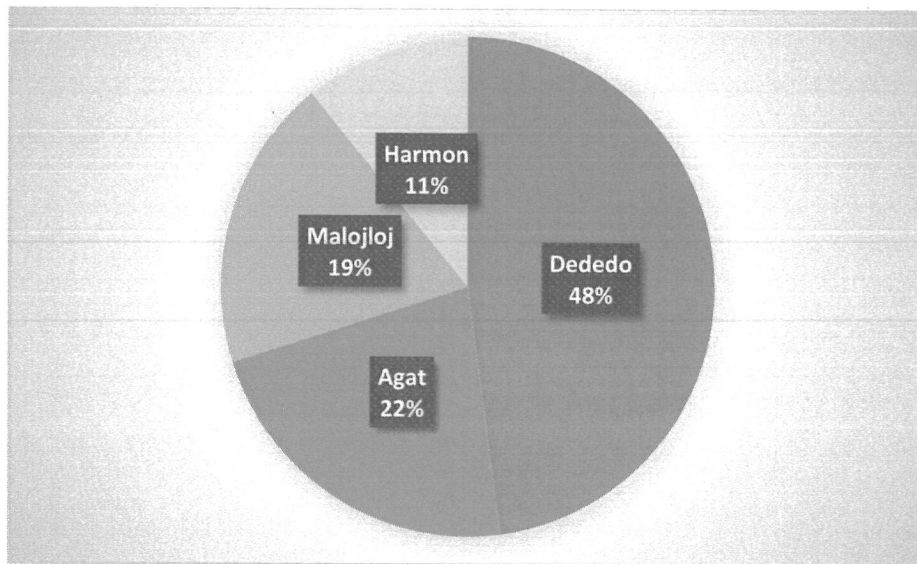
### **Residential Transfer Stations**

GSWA's four residential transfer stations are for disposal of residential trash and recycling; organizations and businesses are not allowed to take their trash to these facilities. Residents and some Mayors bring cardboard, glass bottles and jars, mixed paper and plastics # 1 (PET) and #2 (HDPE) for recycling, and trash for disposal. Glass bottles and jars are crushed and reused as alternative daily cover at the Layon Landfill.

In addition to trash during the reporting period, GSWA customers deposited 25.14 tons of glass bottles which GSWA uses as a substitute for coral on the active face of the Layon Landfill. A total of 54.32 tons of cardboard, metal cans, plastic 1 & 2 bottles, and mixed paper that were separated for recycling came from the transfer stations during this time period. (Cardboard = 50.69 tons; Metal cans = 0.4 tons; Mixed Paper = 0.18 tons; Plastics = 3.05 tons.)

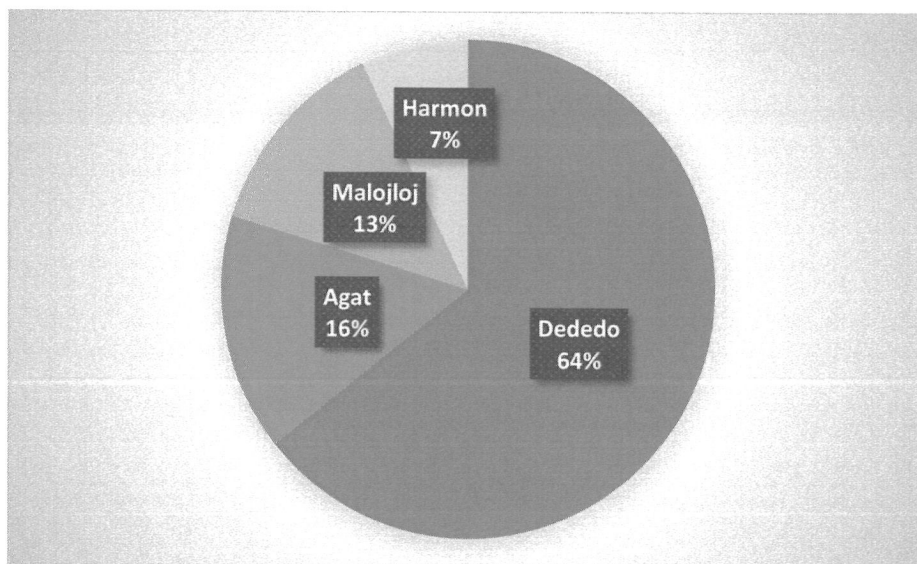
During the reporting period, GSWA opened its new Harmon Residential Transfer Station on January 23, 2015. At the end of this reporting period, GSWA closed the Dededo Transfer Station at the request of the Office of the Governor of Guam. The total number of customers using all four of the residential facilities during this period was 15,384, with 7,362 (or 48 percent) of these using the Dededo Residential Transfer Station as illustrated in Figure 17.

**Figure 17 Percentage of Customers by Residential Transfer Stations January – June 2015**



Over the six months of the reporting periods these 15,384 customers disposed of 2,532.69 tons of trash at these facilities. A total of 1,628.62 (or 64 percent) of these tons were deposited by customers at the Dededo Residential Transfer Station as illustrated in Figure 18. Agat and Malojloj facilities handled 390.38 and 334.72 tons, respectively, with the new facility, Harmon, accepting 178.97 tons during this reporting period.

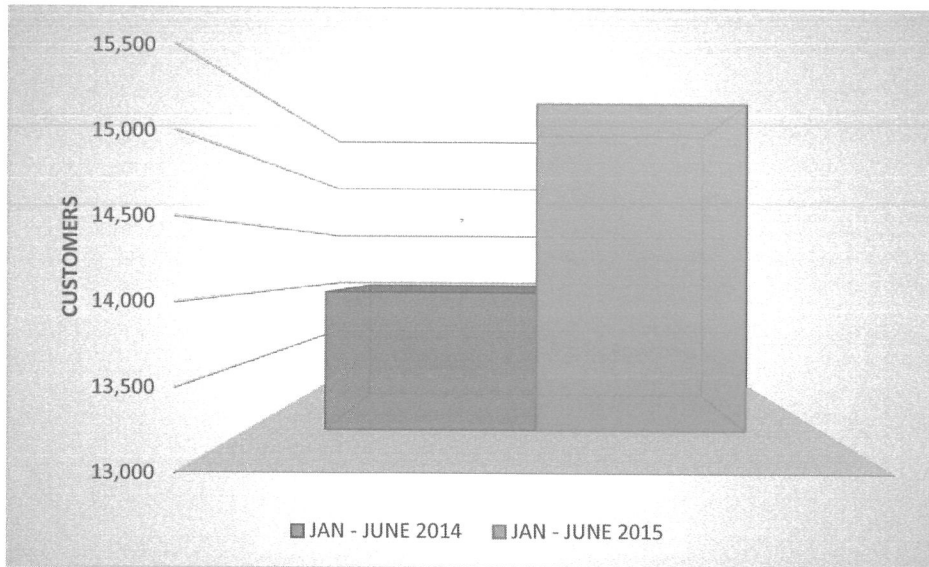
**Figure 18 Percentage of Trash Tonnage by Residential Transfer Station**



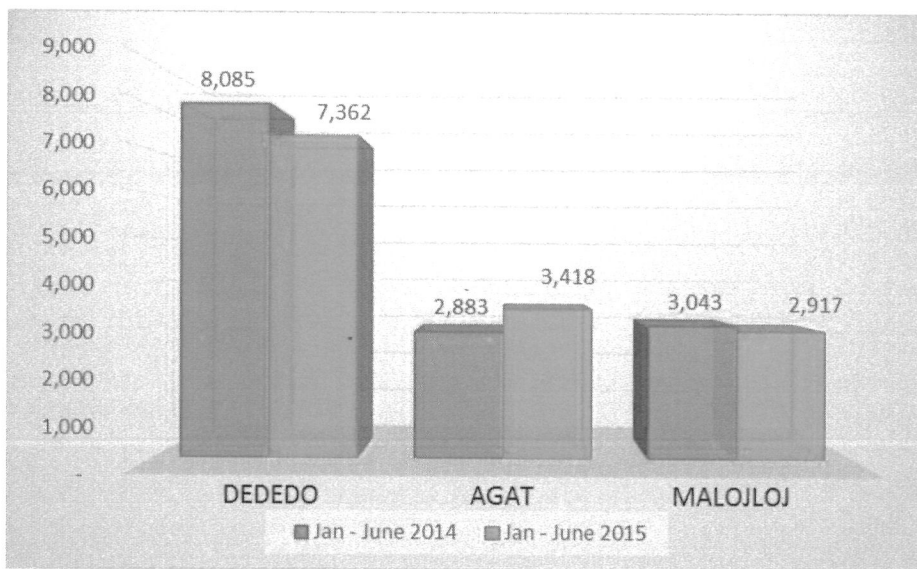
Use of the Residential Transfer Stations increased by 1,373 customer visits in this six-month reporting period from January through June of 2015 as compared to the same period in 2014, as shown in Figure 19. Comparing the number of visitors frequenting the Residential Transfer Stations between January and June in 2014 and in 2015, as shown in

Figure 20, reveals Agat had 535 more customer visits in 2015 than during the same months in 2014 and Malojloj had 126 fewer customer visits.

**Figure 19 Number of Customers Using Residential Transfer Stations: January – June 2014 and 2015**



**Figure 20 Number of Customer Visits Residential Transfer Station: January – June 2014 and 2015**



**Hauler-only Transfer Station**

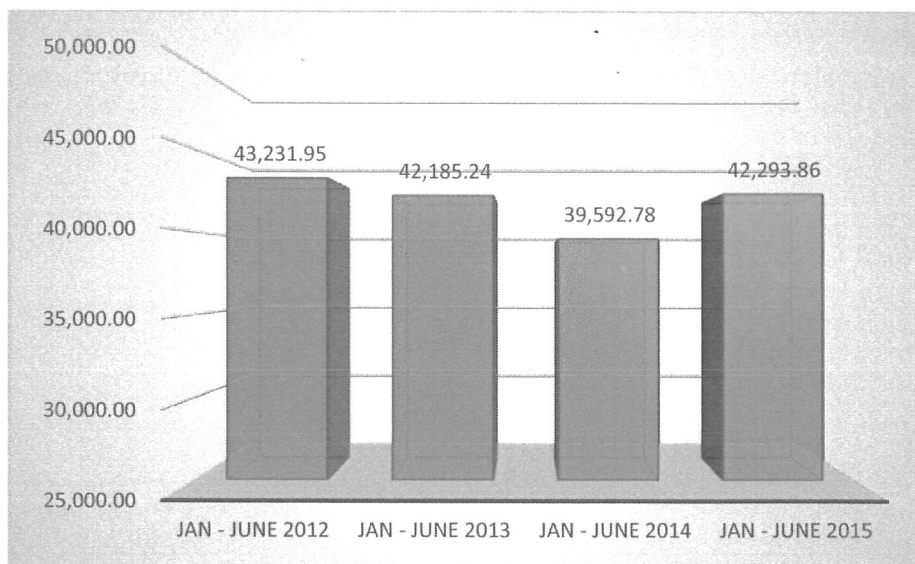
The Hauler-only Transfer Station is for commercial haulers and other large generators with a GSWA account. Most of the customers using this facility haul significant amounts of trash in large collection vehicles. GSWA personnel staff the scale house and handle the accounts while a private contractor, Guahan Waste Control, operates the tip floor (where the trash is dumped) and the transfer trailers that



transport the trash to the Layon Landfill. Once the material is dumped onto a tip floor, the operator of the facility screens it for excluded waste before loading it into a large transfer trailer for transport to the Layon Landfill. Consolidating the waste into large transfer trailers significantly reduces the amount of truck traffic to the Layon Landfill.

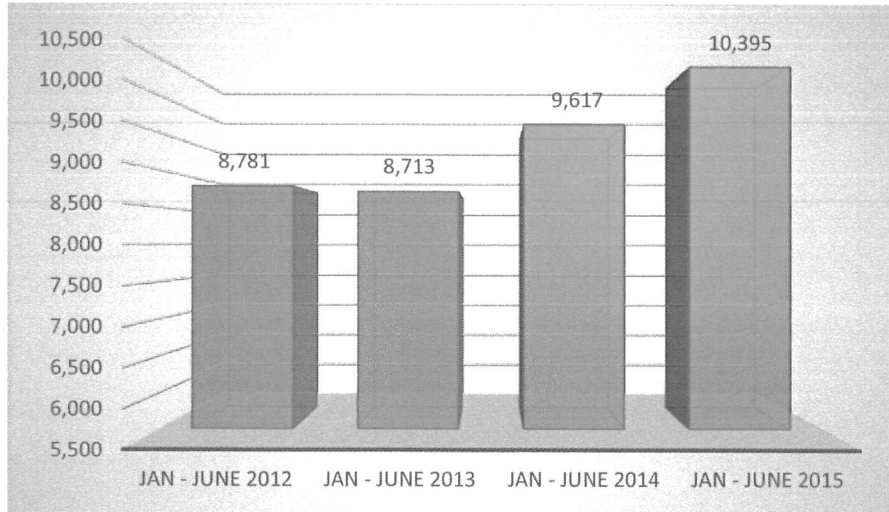
Comparing the first six months of each year the Hauler Only Transfer Station has been in operation, there is a slight decline in the tons of trash in 2013 from 2012 and again in 2014 from 2013. For the period of this report, tons have crept back up; however, it is still less than the amount received in 2012 (938.09 tons less) as illustrated in Figure 21 below.

**Figure 21 Hauler-only Transfer Station Tons Received January – June 2012 Through 2015**



Over 10,000 customers visited the Haulers' Only Transfer Station during this reporting period, as shown in Figure 22.

**Figure 22 Scale Crossings at Hauler-only Transfer Station, January – June 2012 Through 2015**

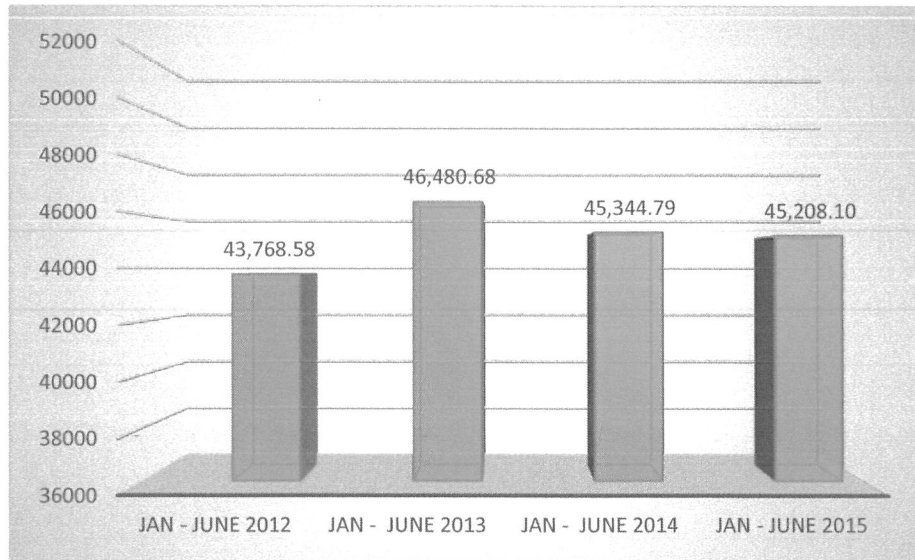


### **Layon Landfill**

The Layon Landfill opened on September 1, 2011. The day-to-day operations are contracted out to Green Group Holdings, LLC, (GGH) while GSWA staff operates the scale house and GSWA manages all accounts. The facility is open from Monday through Saturday every week but closes on Christmas and New Year's Day.

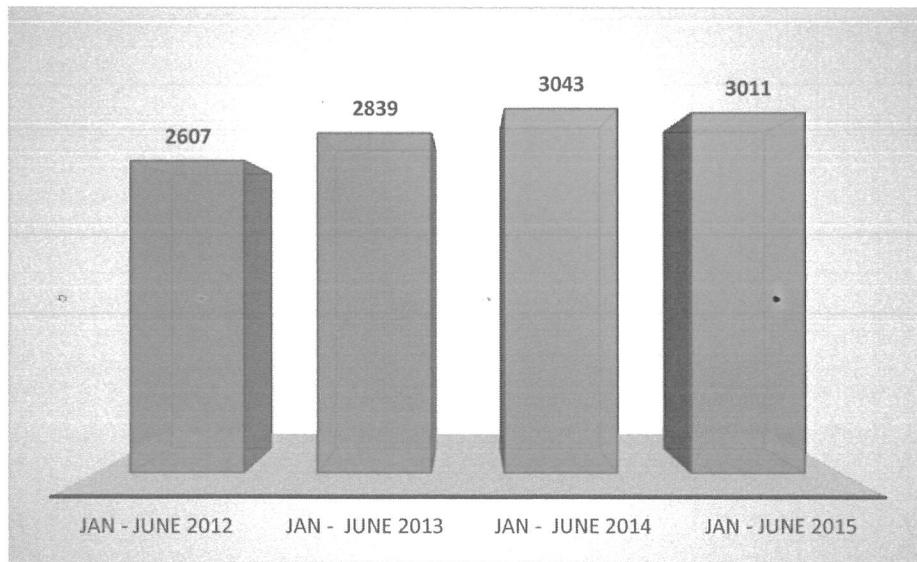
Nearly all of the trash that is delivered to the Haulers' Transfer Station is loaded into tractor trailers and transported down the Layon Landfill. The Layon Landfill accepts direct deliveries from nearby mayors, from other haulers that are collected in the vicinity of the landfill rather than to the Hauler-only Transfer Station. Materials not appropriate for the Hauler-only Transfer Station (i.e biosolids, bulky items, etc) are also delivered directly to the Layon Landfill. From January through June 2015, 45,208.10 tons of trash was delivered to the landfill. This is down slightly from the same period of time in 2014 and 2013 as shown in Figure 23.

Figure 23 Tonnage at Layon Landfill January – June 2012 Through 2015



The Court and the community have always been sensitive to concerns about the additional traffic the host community would incur as a result of the Layon Landfill. Figure 24 shows the truck traffic going to the landfill from January through June of each year the facility has been open. Truck traffic is about the same during the reporting period as it was for the same period last year, while there was a significant increase in the trucks going to the Hauler-only Transfer Station (see Figure 22). The number of vehicles crossing the scale at the Hauler-only Transfer Station for the current reporting period was 10,395 while vehicles crossing the scales at Layon Landfill were 3,011, clearly demonstrating value of Hauler-only Transfer Station for reducing truck traffic.

Figure 24 Number of Scale Crossings at Layon Landfill from January – June 2012 Through 2015.



The Receiver was recently made aware that the Department of Public Works has rescinded the weight waiver DPW provided to the contractor, Guahan Waste Control, who transports the trash from the Haulers Only Transfer Station to the Layon Landfill. The initial waiver was for a total weight of 98,000 pounds and the new weight limit is 86,500 pounds. This new weight limit is expected to go into effect in February 2016. This new weight restriction will impact road traffic on heavy trash days, generally Mondays. There will need to be more tractor-trailers travelling along Route 4 because of the new weight restriction. The Receiver expects there to be approximately four, but possibly more, additional tractor trailer trips on a typical Monday.

While there is no way to eliminate the smells associated with a landfill there are methods for mitigating them. This is particularly true when the landfill is the only location for the disposal of biosolids from wastewater treatment plants that do not employ the best available process to manage their biosolids prior to disposal. GWA is the source of a Guam's biosolids and their facilities do not currently employ the best available process to manage their biosolids before transporting them to the Layon Landfill for disposal. As a result, odors are a problem both in the transporting of biosolids and after they arrive at the landfill.

The Receiver, working through its contractor, GGH, employs several typical practices for mitigating these odors at the landfill, such as keeping the area where the trash is dumped as small as practical, burying the trash quickly, and covering the waste at the end of the work day. Some landfill managers even purchase odor control misters to be strategically placed so as to dissipate some or all of the odors before they leave the site. GGH has recently purchased such a machine for the Layon Landfill. Figure 25 and Figure 26 show the "New Deodorizer Mister at the Layon Landfill" actually working to mitigate odor.

Figure 25 New Deodorizer Mister at the Layon Landfill

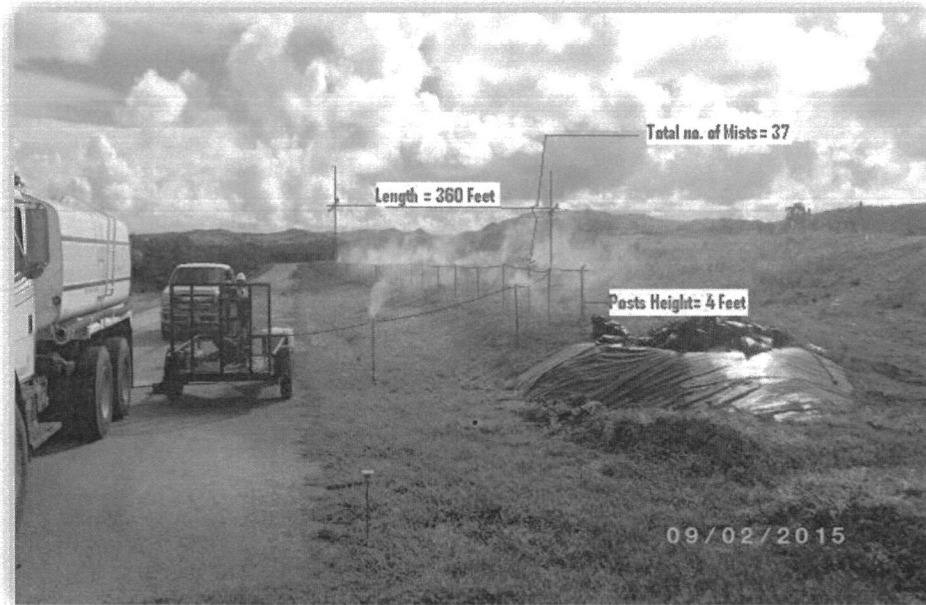


Figure 26 New Deodorizer Mister Nozzle



**Household Hazardous Waste**

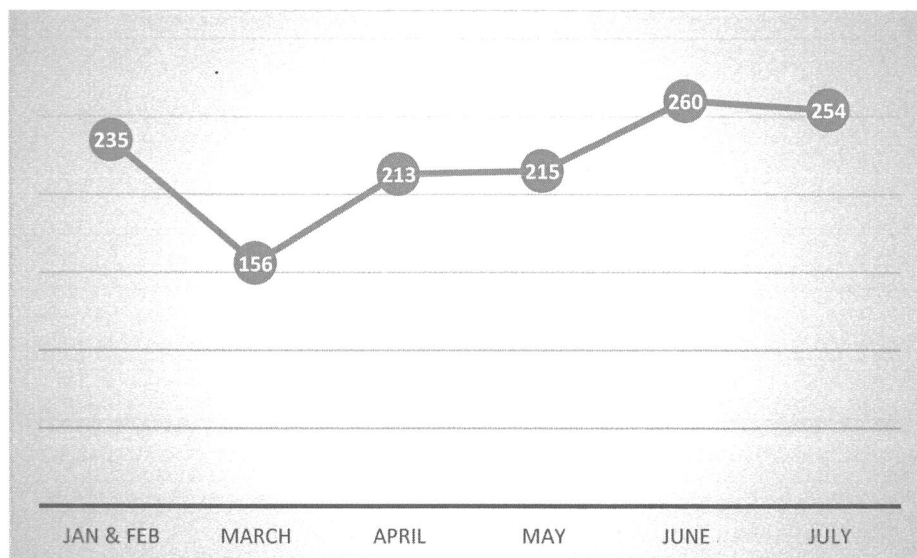
On January 23, 2015, the Court held a ceremonial hearing for the opening of the Harmon Street Residential Transfer Station Household Hazardous Waste Facility (HHWF). The HHWF was part of the 2004 Consent Decree agreed to by the Government of Guam and the United States Department of Justice and the United

States Environmental Protection Agency. This was a significant milestone in the implementation of the Consent Decree.

The HHWF is open five days a week (Thursday through Monday) from 9:00 a.m. to 5:00 p.m. It is free to residents. Businesses and institutions cannot use the HHWF because it is designed for household hazardous waste only and the cost of providing such a “free” service to businesses and other large organizations would be cost prohibitive. The HHWF is operated by the Unlimited Services Group whose representatives greet the customers, remove the acceptable material from the vehicle, separate it into its proper category, and bulk the material for disposal, reuse, or recycling.

From opening day on January 23, 2015 through the end of June, 2015 1,333 customers used the facility. Nearly 53,000 pounds of electronics were collected and recycled along with 15,000 pounds of used motor oil, 1,313 individual fluorescent tubes, and an additional 408 round fluorescent and incandescent bulbs. The contractor shipped 167 barrels of HHW to processing and disposal facilities in Utah and Arizona.

**Figure 27 Number of Monthly Customers at HHWF from January – June 2015**



### **Administration**

At the time the court appointed the Receiver, the customer service department had no accurate account of its customers, work orders, or its daily activities, and was in a separate building from all of the solid waste operations. The Receiver consolidated these activities into the main GSWA building, procured a work order and billing software, and truncated the department’s many phone numbers into one multi-line number. This has aided both GSWA customers and operations. A customer service representative (CSR) begins work at 5:00 a.m. to work with collection operations in accounting for such items as blocked roads on collection days, or contamination found in the cart. Drivers will notify the CSR, who will immediately place the information into the customer’s account as well as notify the other two CSRs (who arrive at work at 8:00 a.m.) of these types of situations found on the route. After 8:00 a.m., CSRs will attempt to call the customers that morning to let them know of these situations. CSRs also notify agencies

such as Guam Power Authority or any one of the telephone companies if drivers report downed electrical/telephone wires, or the appropriate Mayor's Office if there is a tree limb blocking a secondary road.

GSWA's CSRs assisted 3,928 walk-in customers from January through June 2015. The CSRs meet with walk-in customers to discuss their account histories, sign them up for collection service, map their service locations, and discuss which items can be recycled with GSWA. CSRs also provide information about where other items, such as electronics and scrap metal, can be recycled, and where additional material, such as green waste and construction and demolition debris, can be disposed.

During the reporting period, the CSRs sent 9,915 letters and made 9,367 calls to customers who were late paying their bills and in jeopardy of having their carts repossessed for lack of payment. During this reporting period, 31,659 calls were received by GSWA representatives. The vast majority of these were from current and prospective customers asking for information about GSWA services and about the customers' accounts.

When a customer becomes 60 days behind in payment, GSWA Customer Service staff contact the customer by mail and telephone to provide a reminder to the customer, encouraging them to make payment to ensure that their account is restored to good standing. If the customer fails to pay and becomes 90 days or more behind in payment, a work order is placed to repossess the cart and terminate service. GSWA operations staff collects these carts. Nine hundred and forty-four (944) carts were repossessed during this reporting period, and 384 of these carts (or 41 percent) were returned to customers after they had paid their balance due plus a \$50 reinstatement fee.

### **Personnel**

On June 30, 2015, GSWA had the equivalent of 58 full time equivalent positions. There were 28 FTE Government of Guam employees and 28 FTE workers employed by the Receiver through a contract with Pacific Human Resources, Inc. (PHRS). In addition, there were two employees under direct contract with the Receiver. When the Receiver was appointed by the Court in March 2008, the Division of Solid Waste had 99 employees.

### **GSWA Board of Directors**

During the reporting period, six official meetings of the GSWA Board of Directors were held.

The minutes and agenda for each meeting are posted on the GSWA website, and the audio of each meeting is also available online through the website of the Office of the Public Auditor. The Receiver provided staffing support for the board meetings and briefed the board on GSWA operational results at each meeting.

### **Island-wide Curbside Recycling Program**

As of June 30, 2014, GSWA had provided recycling carts to all customers serviced by the larger garbage trucks, approximately 90 percent of GSWA's curbside trash customers. Residential customers who live on roads where the large garbage trucks cannot travel because of road conditions, low hanging wires and branches or inability to turn the vehicle around, receive trash collection with what GSWA refers to as Baby

Packer trucks, which are pickups with small containers on their beds. The customers on the Baby Packer trash routes were not provided recycling carts because the Baby Packer trucks cannot efficiently serve these customers for recycling. However, GSWA had decided to purchase two 10-cubic-yard compactor trash trucks that were expected to replace the current Baby Packer trucks. GSWA released a bid for these trucks but before the bids were received a local vendor protested the bid. The Office of Public Accountability (OPA) ruled in favor of the vendor and GSWA has appealed the OPA's ruling to Superior Court where we await the ruling.

Figure 28 shows the recycling tonnage collected in the Island-wide Curbside Recycling Program thus far from January 2014 through June 2015, with a total of 3,041.73 tons of recyclable material collected at the curb. From January through June 2015, GSWA crews collected 1,178.20 tons at the curb which is an increase from the 881.07 tons (a 34 percent increase) collected during the same months in 2014. GSWA collection crews take the recyclable material to Guahan Waste Services, the contractor that processes and sells the material. Revenue for the recyclable material from January through June 2015 totaled \$4,920.71. Revenue for recyclable material has decreased as the international market for many recyclables has decreased. By way of comparison, GSWA received \$7,385.24 for the sale of recyclables from January through June 2014. The post-consumer recycling market has recently seen demand go down for the material in part because of the slowing Chinese economy and partly because of the drop in price of crude oil which makes post-consumer plastic more expensive in comparison.

**Figure 28 Recycling Tonnage January 2014 Through June 2015**

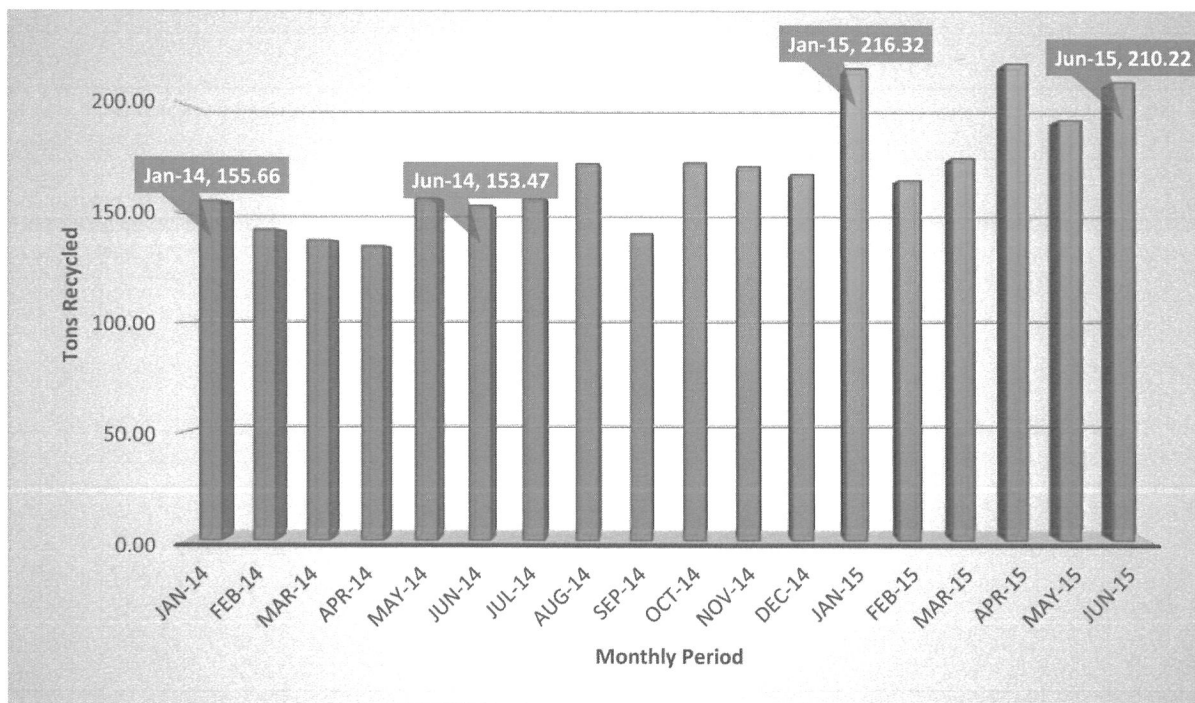
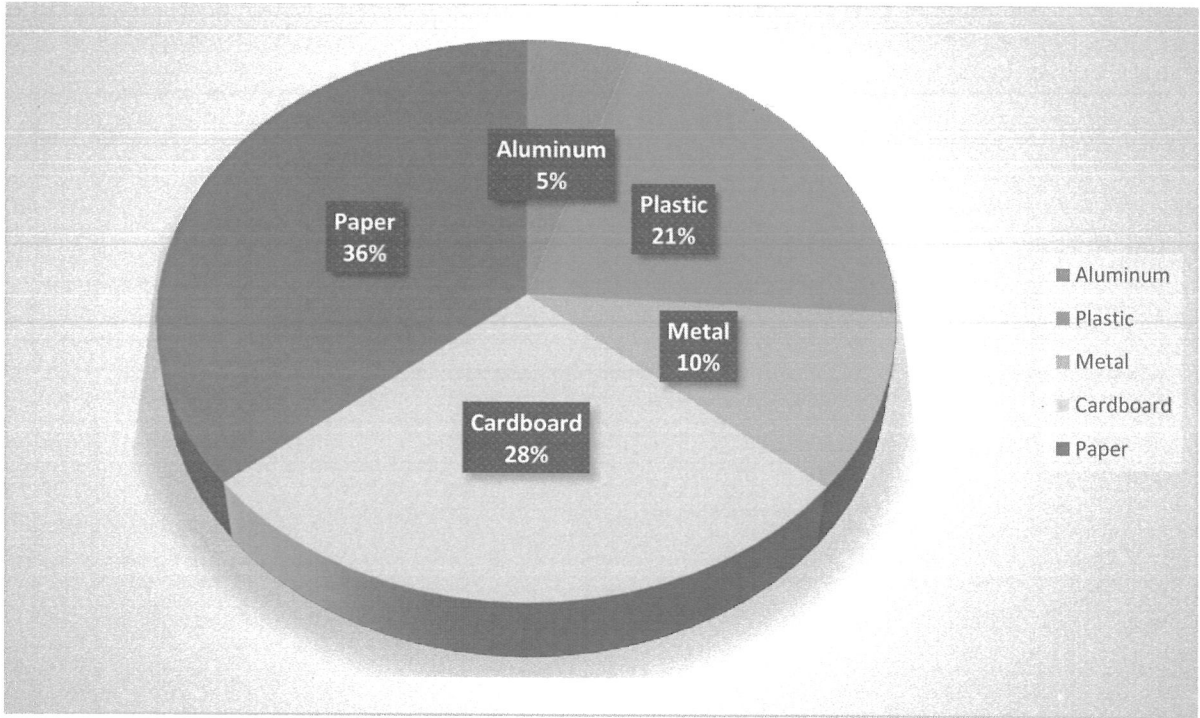


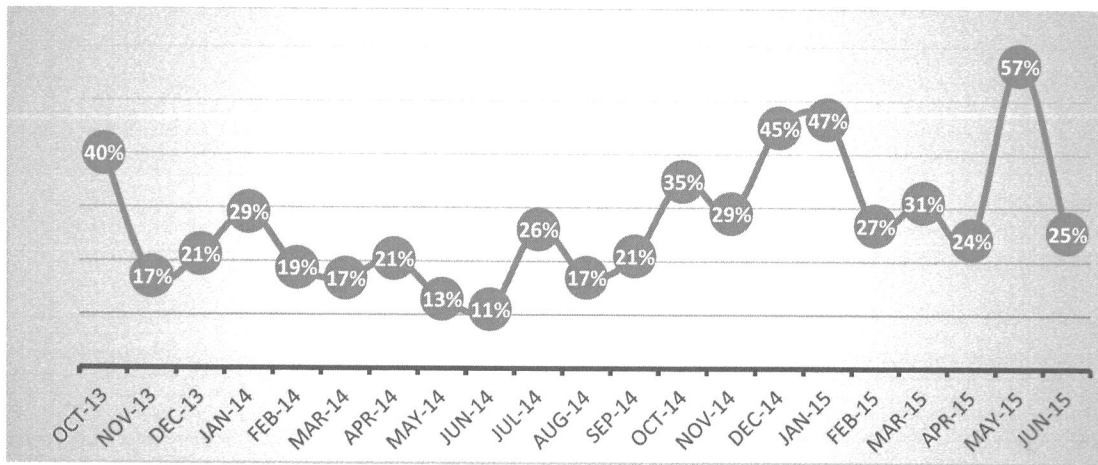


Figure 29 Percentage Breakdown of Recyclables Collected January Through June 2015



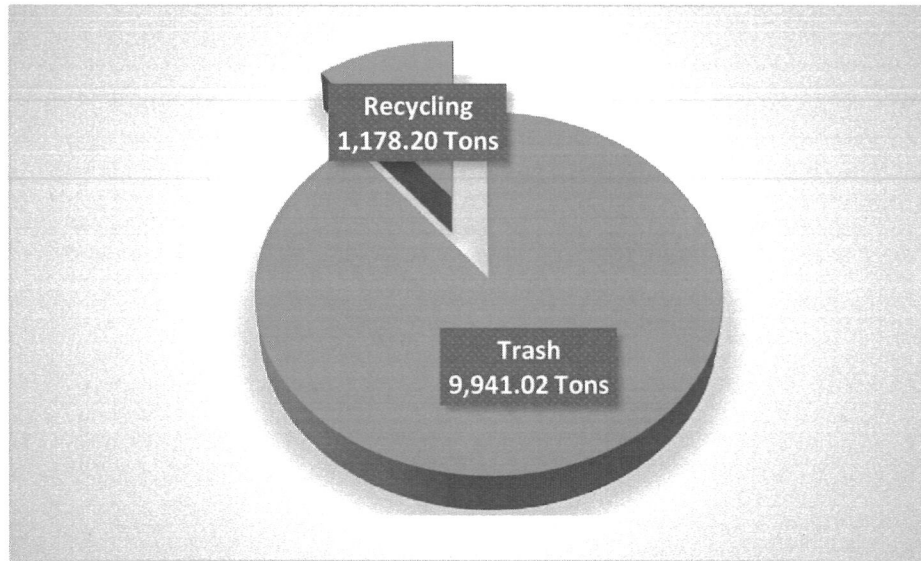
Ideally, contamination in the recycled material should be minimal. From October 2013 through December 2014, the average recycling rate for that time span was 24 percent. When the months from January through June 2015 are added, this average increases to 27 percent. During this reporting period from January through June 2015, GSWA crews have given 377 citations to customers for having a cart with too much contamination. If a customer receives three citations, their recycling cart is removed. Thus far we have removed only one recycling cart for contamination. Figure 30 illustrates the contamination rate from October 2013, when GSWA first began delivering recycling carts to GSWA customers, through June 2015.

Figure 30 Contamination Percentage



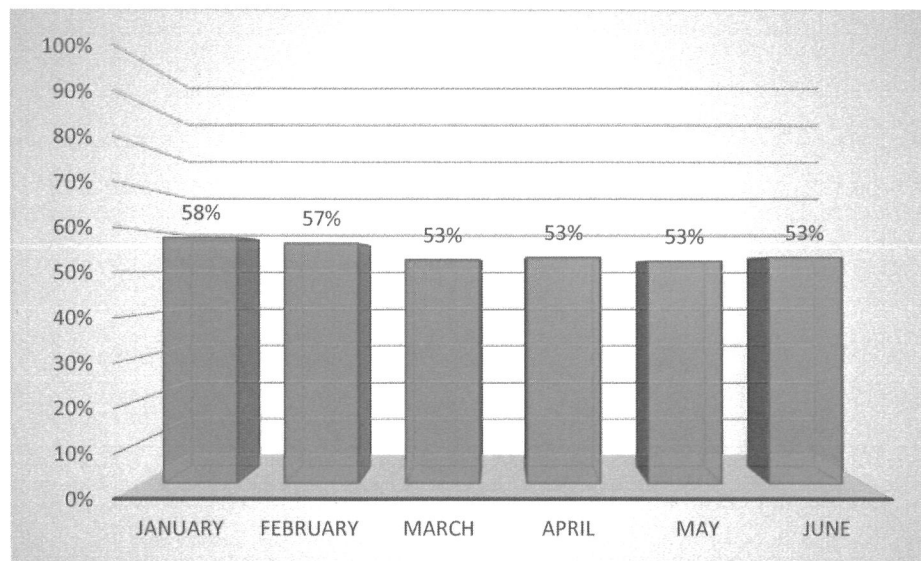
During the reporting period, residential trash customers who have both trash and recycling services disposed of 9,941.02 tons of trash and 1,178.20 tons of recycling, resulting in about 10.60 percent of residential trash diverted to recycling, as shown in Figure 31.

**Figure 31 Residential Curbside Recycling and Trash Tonnage, January Through June 2015**

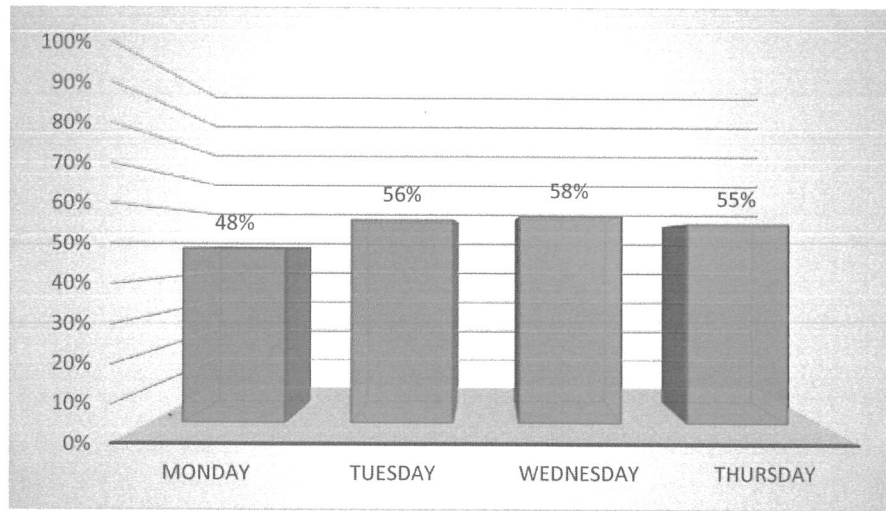


The recycling participation rate is defined as the proportion of households that set out a recycling cart for collection at each collection opportunity. For each month, as illustrated in Figure 32, during this reporting period the average set out percentage ranged from 58 percent to 53 percent. The overall set out average for the six months is a respectable 54 percent. Figure 33 illustrates the participation rates by day for the reporting period.

**Figure 32 Average Set Out Rates by Month**



**Figure 33 Average Recycling Participation Rates by Collection Day: January Through June 2015**



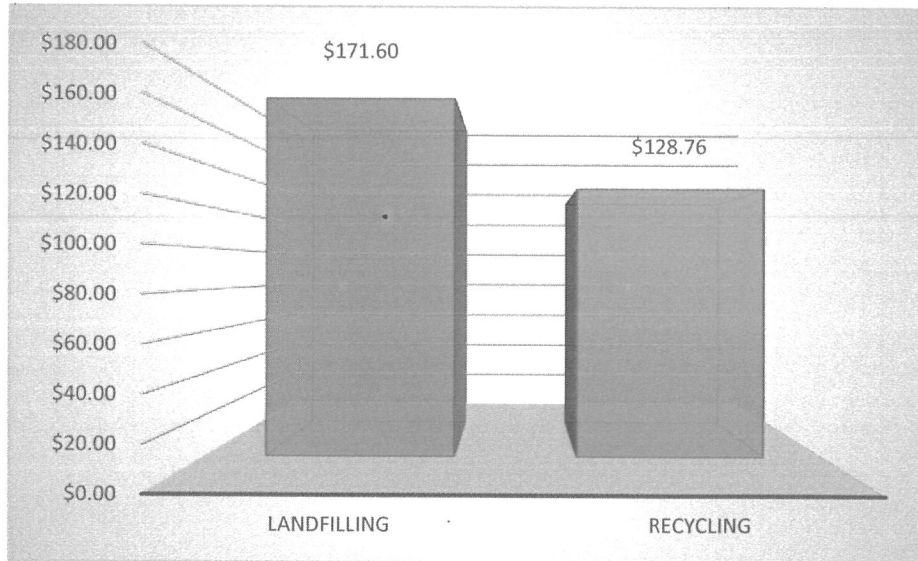
In the Special Report of the Receiver, "Island-wide Curbside Recycling," dated August 13, 2013, we recommended and the Court subsequently approved implementation of a curbside recycling program. The assumptions and calculations upon which the program is based are fully described in the above referenced Special Report. In the Special Report, we recommended using the current rate charged per ton (\$171.60) for waste disposal at the Layon Landfill as the benchmark cost against which the new program should be compared. Table 1 shows the estimated cost of the Island-wide Recycling Program from January through June 2014.

**Table 1 Recycling Costs January Through June 2015**

<b>COST FACTOR</b>	<b>JANUARY</b>	<b>FEBRUARY</b>	<b>MARCH</b>	<b>APRIL</b>	<b>MAY</b>	<b>JUNE</b>
<b>ANNUAL COST OF CARTS</b>	\$6,290.14	\$6,290.14	\$6,290.14	\$6,290.14	\$6,290.14	\$6,290.14
<b>OVERTIME FOR PERSONNEL</b>	\$4,388.00	\$4,189.32	\$4,665.78	\$6,826.52	\$2,375.37	\$4,897.40
<b>FUEL</b>	\$4,667.43	\$3,684.37	\$4,465.25	\$4,859.74	\$4,244.21	\$4,870.52
<b>MAINTENANCE/TIRES</b>	\$9,459.68	\$5,817.03	\$10,521.46	\$6,408.28	\$8,968.48	\$4,123.92
<b>EDUCATION</b>	\$98.27	\$98.27	\$98.27	\$98.27	\$98.27	\$98.27
<b>5% CONTINGENCY</b>	\$-	\$-	\$-	\$-	\$-	\$-
<b>LESS: LANDFILL FEES</b>						
	\$(4,971.03)	\$(3,794.23)	\$(3,343.82)	\$(4,076.19)	\$(4,108.13)	\$(4,090.44)
<b>LESS: TRANSFER STATION FEES</b>						
	\$(6,424.70)	\$(4,903.77)	\$(4,321.65)	\$(5,268.19)	\$(5,309.47)	\$(5,286.60)
<b>LESS: PILOT RECYCLING COSTS</b>						
	\$(6,500.00)	\$(6,500.00)	\$(6,500.00)	\$(6,500.00)	\$(6,500.00)	\$(6,500.00)
<b>TOTAL COST</b>	\$27,125.54	\$20,236.36	\$25,407.87	\$25,134.90	\$22,684.48	\$20,957.21
<b>REVENUE</b>	\$918.18	\$965.74	\$735.55	\$958.21	\$603.18	\$739.85
<b>NET EXPENSE</b>	\$26,207.36	\$19,270.62	\$24,672.32	\$24,176.69	\$22,081.30	\$20,217.36
<b>TONS</b>	216.32	165.11	145.51	177.38	178.77	178.00
<b>COST PER TON</b>	\$121.15	\$116.71	\$169.56	\$136.30	\$123.52	\$113.58

Taking all six months into consideration, the average cost to recycle a ton of material was \$128.76. Figure 34 compares the cost to landfill with the cost to recycle.

**Figure 34 Cost per Ton of Landfilling vs Recycling**



#### **4. Contract Management and Procurement (January 2015 – June 2015)**

Procurement activity during the quarter ending March 31, 2015, was primarily related to the protest on the Invitation for Bids (IFB) for replacement refuse collection vehicles. In the last report it was noted that the Office of Public Accountability (OPA) upheld the protest of Morrigo Equipment, LLC. We also indicated that we disagreed with OPA's decision but would revise and reissue the procurement to comply with the decision. However, upon further review of the decision and consultation with legal counsel, it was determined that it was in GSWA's best interests to appeal the OPA's decision. The appeal is presently pending in the Superior Court of Guam.

Another significant procurement related activity during this reporting period was addressing the issues associated with the liquidated damages assessed against Maeda Pacific Corporation (MPC). MPC has filed a claim with the Office of the Attorney General to essentially overturn the liquidated damages required under the contract. The Office of the Attorney General has delegated resolution of the matter to GSWA, based on GSWA's status as an autonomous agency. MPC has also filed a protest with the OPA contesting the validity of the liquidated damages provision of the contract. This matter was recently dismissed by OPA for lack of jurisdiction.

The procurement of an operator for the Ordot Dump during the post-closure period is also under development and will be issued in the near future.

The status of the Receiver's primary contracts, including the amounts spent during the reporting periods is summarized on Tab 3 and Tab 4. Individual payments occurring during the reporting periods for these contracts are included in Tab 5 and Tab 6. Information on direct employee contracts and payments,

contracts in connection with ongoing litigation, payments to the Government of Guam, and one-time expenditures are not included in the table, but updates on payments for these items are included elsewhere in this Report.

Tab 7 and Tab 8 provides the Court with a list of approved change orders for the open Consent Decree construction contracts listed in Tab 5 and Tab 6.

## **5. Financial Issues and Capital Funding (January 2015 – June 2015)**

### **Overview**

This section provides the Court with analysis of the operating finances of GSWA during the reporting periods. There are also reports on the status of capital funding for Consent Decree-related capital projects, and the status of GSWA funds transferred to the Reserve for Unfunded Expenses established pursuant to the Court's Order dated September 12, 2014.

Specifically, in this section, we provide the Court with updates on the following:

- GSWA operating results for the periods January 1, 2015 through March 31, 2015 and April 1, 2015 through June 30, 2015;
- Cash position of GSWA;
- Status of residential customers;
- Status of large commercial accounts;
- Status of GWA and Government accounts;
- Status of the Construction Subaccount;
- Host Community Premium Surcharge Fees;
- Capital funding;
- Compensation to Former Landowners of Ordot Property;
- Compensation to Former Landowners of Layon Property;
- Reserves of GSWA;
- Bridge and roadway repairs and replacements; and
- Waste disposed at the Layon Landfill.

In the next section we will address the additional projects and the funding for post-closure expenses of the Ordot Dump.

### **GSWA Operating Results for FY 2015 from January 1, 2015, to March 31, 2015**

GSWA's operating results during the reporting period continued to be positive, producing a small surplus of revenue over expenditures. Table 2 provides the Court with a summary of expenditures and revenue for the first six months of the FY 2015 fiscal year, compared with the approved budget. A detailed report of expenditures and revenue compared with the approved FY 2015 budget are provided in Tab 9 of this Report.

Table 2 GSWA Summary of Operating Budget FY 2015

<b>Guam Solid Waste Authority</b>				
<b>Summary of Operating Budget</b>				
<b>FY 2015</b>				
October 1, 2014 to March 31, 2015				
(Unaudited)				
Item	Total Annual Budget	Budget to Date	Actual Spending / Revenue to Date	% over (under) Budget
Personnel Expenses	\$3,000,000	\$1,500,000	\$1,279,590	-14.7%
Other Expenses / Reserves	\$15,365,597	\$7,682,799	\$7,734,921	0.7%
<b>Total Expenses / Reserves</b>	<b>\$18,365,597</b>	<b>\$9,182,799</b>	<b>\$9,014,510</b>	<b>-1.8%</b>
Total Revenue (All Sources)	\$17,845,681	\$8,922,841	\$9,283,418	4.0%
Budgeted From Fund Balance	\$519,916	\$259,958	\$0	-100.0%
<b>Total Funding Available</b>	<b>\$18,365,597</b>	<b>\$9,182,799</b>	<b>\$9,283,418</b>	<b>N/A</b>

During the first half of FY 2015, total expenses were almost 2 percent below the approved budget and revenue exceeded the budget estimate by 4 percent. The original budget projections anticipated spending about \$520,000 in fund balance reserves to balance the budget for the year; however, through March 31, 2015 GSWA actually added \$268,908 to the fund balance.

Cash collections of the amounts billed by GSWA remained strong for the period ending March 31, 2015. Table 3 compares the amounts collected during the period with the amount billed during the same period.

Table 3 GSWA Revenue Billed/Collected

<b>GSWA Revenue Billed / Collected</b>			
October 1, 2014 through March 31, 2015			
Customer Class	Billed	Collected	%
Commercial	\$ 4,950,593	\$ 5,477,153	110.6%
Residential	\$ 3,111,633	\$ 3,192,260	102.6%
Government	\$ 710,753	\$ 960,597	135.2%
Total	\$ 8,772,979	\$ 9,630,010	109.8%

Note: Amount collected is on a cash basis. Transfer Stations are included in the residential category. Interest income excluded.

Cash collections from commercial accounts during the reporting period exceeded billing for these accounts by more than 10 percent. This is primarily due to the military catching up on its payments. Seasonal fluctuations in amounts of waste disposed also contribute to changes in commercial collections.

Cash collections from residential customers exceeded billing by 2.6 percent. When payments from customers of the residential transfer stations, trash tag fees, collection service restoration fees and account reactivation charges are excluded, cash collections from residential customers were 102 percent of billed charges during the reporting period.

Cash collections from government accounts were 135.23 percent of billed charges for the period due to the timing of GWA payments. However, when GWA is excluded, the percentage of cash collected drops to about 42 percent. The unpaid balance in the Government accounts continues to grow. This issue is addressed when settling up GSWA accounts with the Government of Guam (GovGuam) general fund at the end of each fiscal year. In this way the Receiver is able to effectively address this problem and the Department of Administration is free to collect the sums directly from the GovGuam agencies, if it so chooses. Tabs 10 and 11 provide a listing of GovGuam agencies with their outstanding balances for both reporting periods.

**GSWA Operating Results for FY 2015 from April 1, 2015, to June 30, 2015**

During the reporting period ending June 30, 2015, GSWA continued to produce strong financial results. Table 4 provides the Court with a summary of expenditures and revenue compared with the approved budget for the period October 1, 2014 through June 30, 2015. Detailed reports of expenditures and revenue compared with the approved FY 2015 budget are provided in Tab 12 of this Report.

Expenses during the period were below budget; however the timing with which the Department of Administration (DOA) actually posts expenditures and adjusts for the accrual of FY2015 expenses has much to do with these numbers and we expect the final numbers for FY2015 will be close to the budgeted amounts.

**Table 4 GSWA Summary of Operating Budget for the Period Ending June 30, 2015**

<b>Guam Solid Waste Authority Summary of Operating Budget FY 2015 October 1, 2014 to June 30, 2015 (Unaudited)</b>				
Item	Total Annual Budget	Budget to Date	Actual Spending / Revenue to Date	% over (under) Budget
Personnel Expenses	\$3,000,000	\$2,250,000	\$2,045,337	-9.1%
Other Expenses / Reserves	\$15,365,597	\$11,524,198	\$11,206,845	-2.8%
<b>Total Expenses / Reserves</b>	<b>\$18,365,597</b>	<b>\$13,774,198</b>	<b>\$13,252,182</b>	<b>-3.8%</b>
Total Revenue (All Sources)	\$17,845,681	\$13,384,261	\$13,398,746	0.1%
Budgeted From Fund Balance	\$519,916	\$389,937	\$0	-100.0%
<b>Total Funding Available</b>	<b>\$18,365,597</b>	<b>\$13,774,198</b>	<b>\$13,398,746</b>	<b>N/A</b>

Cash collections of the amounts billed by GSWA during the reporting period remained strong. Table 5 compares the amounts collected during the period with the amount billed during the quarter ending June 30, 2015.

**Table 5 GSWA Revenue Billed/Collected**

<b>GSWA Revenue Billed / Collected</b>			
October 1, 2014 through June 30, 2015			
Customer Class	Billed	Collected	%
Commercial	\$ 7,434,989	\$ 7,860,664	105.7%
Residential	\$ 4,686,321	\$ 5,047,637	107.7%
Government	\$ 1,002,912	\$ 1,156,171	115.3%
<b>Total</b>	<b>\$ 13,124,221</b>	<b>\$ 14,064,472</b>	<b>107.2%</b>

Note: Amount collected is on a cash basis. Transfer Stations are included in the residential category. Interest income excluded.

Cash collections from all accounts for FY2015 exceeded billing for these accounts by 7.2 percent. When non-billed revenue (i.e. recycling, residential transfer stations, trash tags, and restoration and reactivation fees) is excluded, cash collections from all accounts YTD exceeded billing for these accounts by 5.2 percent.

Cash collections from most Government of Guam agencies other than GWA continue to lag behind billings with payments coming sporadically. This issue is addressed by including the amounts owed by these GovGuam agencies, as an amount due from the General Fund in the settlement that occurs at the end of each fiscal year.

Fund balance is the difference between the cumulative obligations of GSWA and its cumulative financial assets. While the actual fund balance is not known until the annual audit is completed, we can estimate the fund balance for the reporting periods.

Based on analysis for the period ended March 31, 2015, the Receiver estimates that GSWA's fund balance increased approximately \$268,908. Table 6 outlines the elements of the estimate.

**Table 6 GSWA Fund Balance**

<b>Guam Solid Waste Authority</b>	
<b>31-Mar-15</b>	
<b>(Unaudited)</b>	
<b>Elements of Fund Balance</b>	<b>Amount</b>
Actual Fund Balance @ 9/30/14	\$ 14,942,532
Revenue FY 2015	\$ 9,283,418
Expenses FY 2015	\$ 9,014,510
Excess (Deficit) FY 2015	\$ 268,908
Estimated Fund Balance @ 3/31/15	\$ 15,211,440

Note: Revenue is on accrual basis.

Using the same approach to estimating fund balance, Table 7 outlines the estimate of GSWA's fund balance for June 30, 2015.



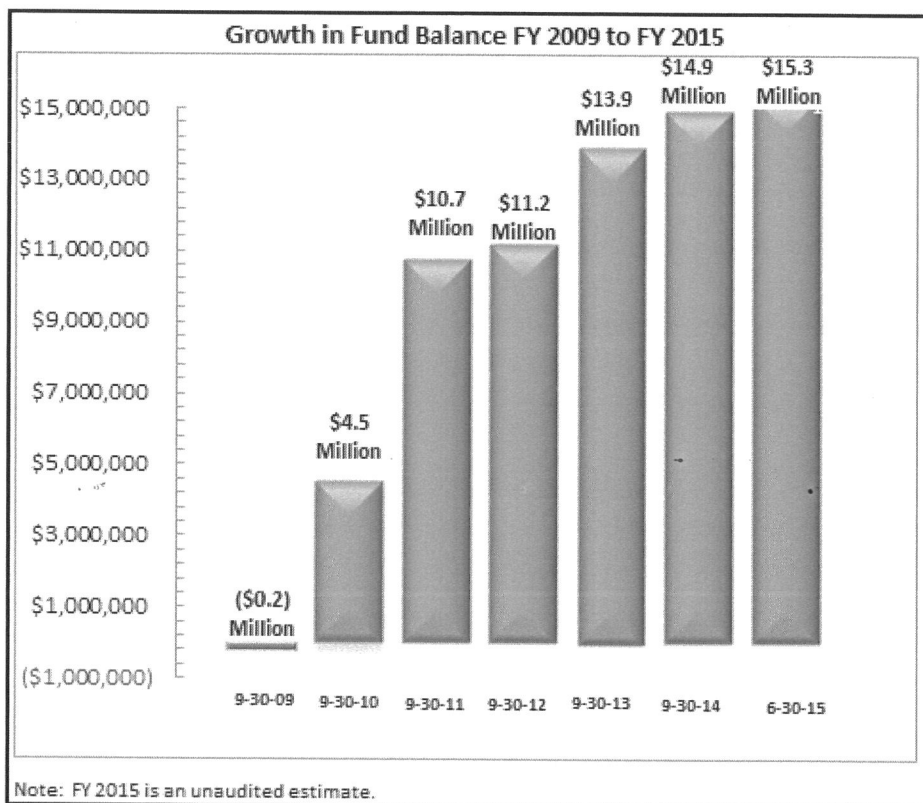
**Table 7 GSWA Fund Balance**

Guam Solid Waste Authority Fund Balance 30-Jun-15 (Unaudited)	
Elements of Fund Balance	Amount
Estimated Fund Balance @ 3/31/15	\$ 15,211,440
Revenue FY 2015	\$ 13,398,746
Expenses FY 2015	\$ 13,252,182
Excess (Deficit) FY 2015	\$ 146,564
Estimated Fund Balance @ 6/30/15	<u>\$ 15,358,004</u>

Note: Revenue is on accrual basis.

Figure 35 shows how the fund balance from operations has changed over the time GSWA has been in receivership.

**Figure 35 Growth in Fund Balance FY2009 to FY2015**



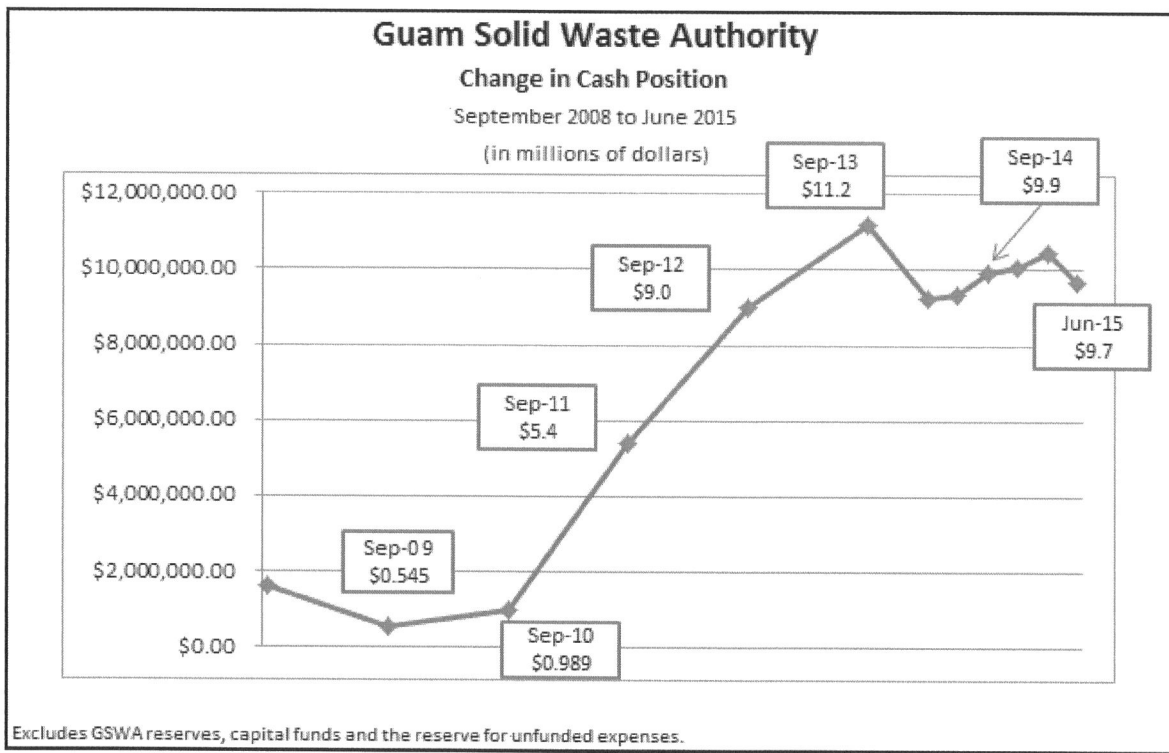
Payments for operating expenses of GSWA are made through the Department of Administration and through the Receiver's trust account known as the Primary Account. Payments made by the Receiver are

handled pursuant to the Disbursement Procedures approved by the Court. Tab 13 and Tab 15 provide a detailed list of the transactions affecting the Primary Account that occurred during the reporting periods.

**Cash Position of GSWA**

GSWA’s cash position has remained stable during FY 2015, reflecting the strong management by the Receiver of the billing process. Cash increased during the second quarter of FY 2015 but declined to its previous level at \$9.7 million at June 30, 2015. GSWA’s cash position does not include cash in GSWA’s reserves, including the new special reserve funded by cash previously used to reimburse the Government of Guam for debt service. Figure 36 outlines GSWA’s cash position at the end of each fiscal year since the Receivership began.

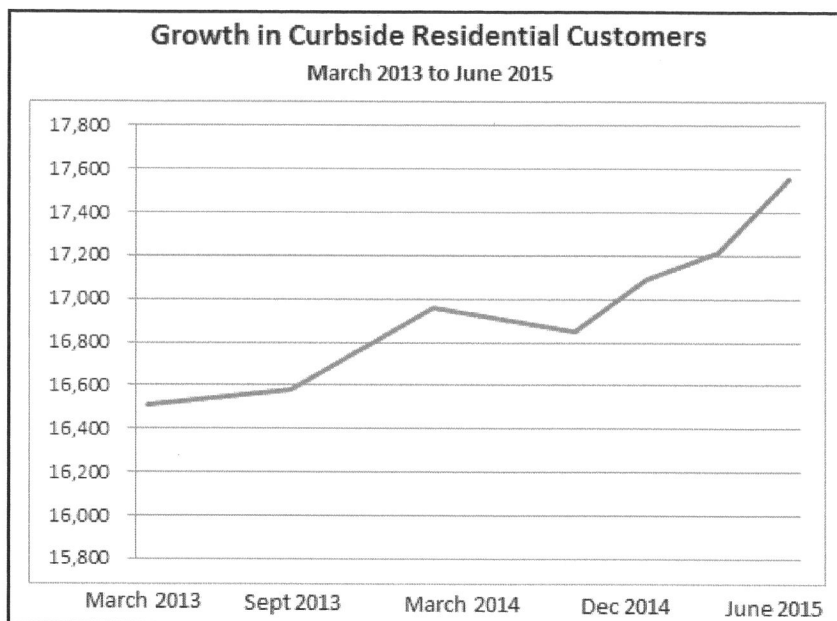
**Figure 36 Change in GSWA Cash Position (Million \$)**



**Status of Residential Customers**

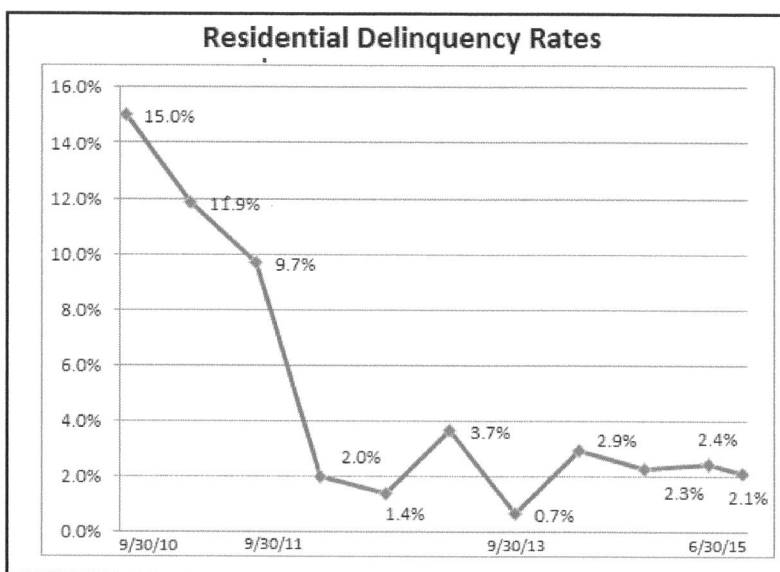
The number of curbside residential customers continued to increase during the reporting periods. On September 30, 2014, the number of residential customers was 16,849. On June 30, 2015, the number of residential customers was 17,558, an increase of 4.2 percent during the reporting period. Since March 2013, GSWA has added 1,047 curbside residential customers. Figure 37 illustrates the very stable base of GSWA residential customers with its recent growth trend over the previous four years.

**Figure 37 GSWA Residential Customers**



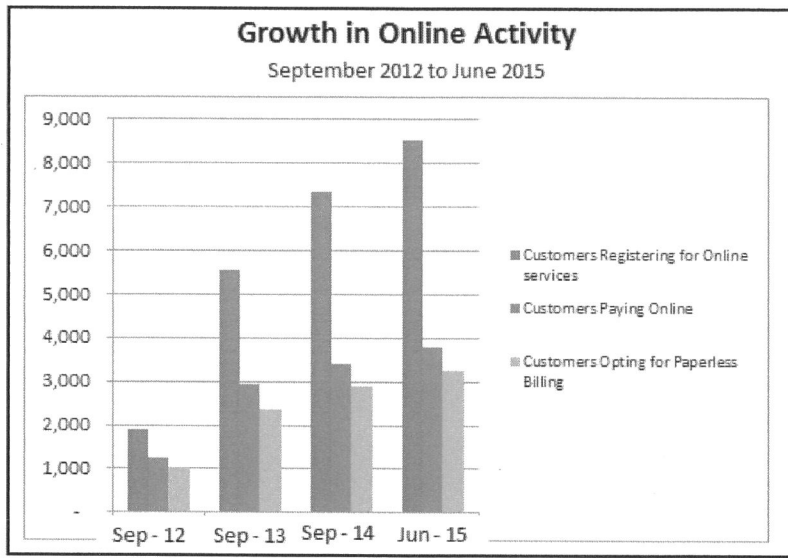
The residential delinquency rates remained low at the end of the reporting periods. Figure 38 shows the trend in residential delinquency rates from September 2010 to June 2015. These low delinquency rates clearly demonstrate that GSWA customers respond favorably to sound management and quality service. Before the Receivership, the quality of the service was extremely poor and more than 4,000 customers received services for many years without paying at all while others paid sporadically. GSWA’s customer service staff continues to do a great job in this vital area of its work. We will continue to monitor residential delinquency rates closely and keep the Court informed.

**Figure 38 Residential Delinquency Rates**



Online payments and account management by residential customers continued to grow during FY 2015. The number of customers registering for online services increased to 8,514, an increase of 15.7 percent during the reporting period. Customers paying their bills online grew to 3,787 by June 30, 2015, with 3,272 customers now enrolled for paperless billing. Figure 39 outlines the growth in online activity since GSWA initiated the current system in 2012.

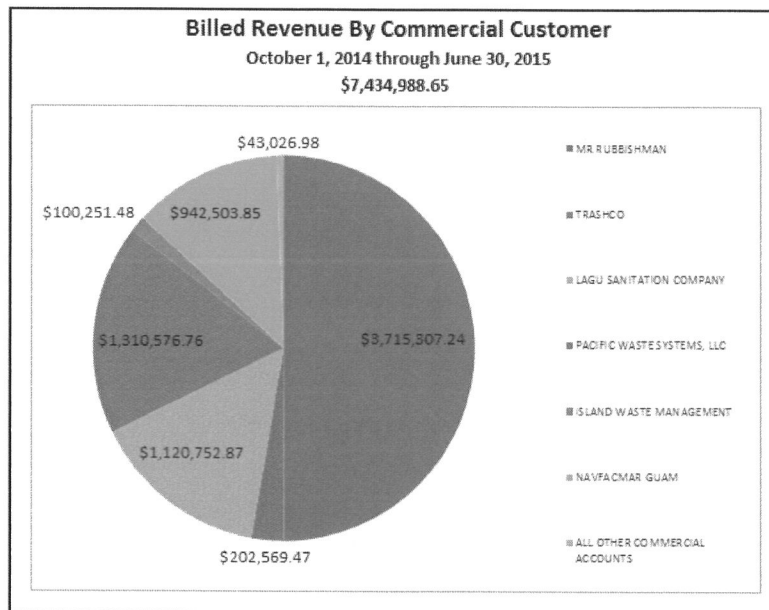
**Figure 39 Growth in Online Activity**



**Status of Large Commercial Accounts**

Large commercial haulers are the source of more than 60 percent of the system’s revenue. Figure 40 illustrates the amounts billed to each major commercial customer during FY 2015.

**Figure 40 Revenue Billed by Commercial Customer**



The Naval Facilities Engineering Command (NAVFAC) is included as a commercial customer because it is managed by a private company and is otherwise very similar to other GSWA commercial customers.

All of the major commercial accounts were in good standing during the reporting period with the exception of Lagu Sanitation. Lagu continues to pay off its debt to GSWA and will not be in compliance with GSWA policy until the debt is fully paid.

**Status of GWA and Government Accounts**

GWA remains in good standing, but most other direct government accounts are in arrears. With respect to the other Government of Guam accounts, we will continue to monitor carefully and support DOA when it needs our support, however, the balances owed from these GovGuam customers are addressed in the annual settlement process between the General Fund and GSWA as we described earlier in this Report.

**Status of the Construction Subaccount**

Payments from the Construction Subaccount were \$8,456,727.19 during the period January 1, 2015, through March 31, 2015. Interest earnings were added to the account in the amount of \$4,564.41. Tab 14 provides a detailed listing of all transactions affecting the account during the period January 1, 2015 through March 31, 2015.

Payments from the Construction Subaccount were \$6,543,472.83 during the period April 1, 2015 through June 30, 2015. Interest earnings were added to the account in the amount of \$3,857.23. In addition, funds were transferred into the account from the Government of Guam’s Construction account for the 2009 bonds in the amount of \$11,988,464.87. It should be noted that this transfer completes the transfer of all construction funds from the 2009 Section 30 Bonds to the Receiver for funding Consent Decree projects. Tab 16 provides a detailed listing of all transactions affecting the account during the period April 1, 2015 through June 30, 2015.

Table 8 provides the Court with an accounting of the retainage being held for contractors paid from the Construction Subaccount.

**Table 8 Retainage on Trustee Account Payments**

<b>Retainage on Trustee Account Payments</b>		
<i>As of 6/30/2015</i>		
<b>Company</b>	<b>Description</b>	<b>Amount</b>
<b>Brown and Caldwell</b>	Retainage	\$ 13,626.14
<b>Black Construction Corporation</b>	Retainage	\$ 2,043,000.67
<b>AECOM</b>	Retainage	\$ 9,798.50
<b>EA Science and Technology</b>	Retainage	\$ 11,346.61
<b>GHD (formerly Winzler &amp; Kelly)</b>	Retainage	\$ 122,371.88
<b>Total Retainage Held.....</b>		<b>\$ 2,200,143.80</b>

When the retainage obligations are considered, on June 30, 2015, the Construction Subaccount had a balance of \$14,084,051.59 available for future Consent Decree obligations.

### Host Community Premium Surcharge Fees

During the reporting period, January 1, 2015, through March 31, 2015, GSWA assessed Host Community Premium Surcharge (HCPS) fees totaling \$78,039.84, bringing the total assessed HCPS fees during FY2015 to \$162,860.84. Due to the lag time allowed by Guam Law between billing and payment, HCPS fees collected during the period were \$54,268.83. These funds were distributed in equal amounts to the Villages of Inarajan and Ordot-Chalan Pago. A copy of the report filed with the PUC for this period is attached as Tab 17.

During the quarter ended June 30, 2015, GSWA assessed Host Community Premium Surcharge (HCPS) fees totaling \$81,087.10. FY2015 HCPS fees collected during the period were \$63,385.65, bringing the total fees collect during FY2015 to \$243,947.94. As required, these funds were distributed in equal amounts to the Villages of Inarajan and Ordot-Chalan Pago. A copy of the report filed with the PUC for this period is attached as Tab 18.

### Capital Funding

Table 9 provides the Court with an update on the Receiver's use of the capital funds available to implement the requirements of the Consent Decree. This table reflects the use of capital funds as of June 30, 2015. This table is also provided as Tab 19 in a format with larger type.

**Table 9 Allocation of Capital Available to the Receiver**

Allocation of Capital Available to the Receiver					
Original Consent Decree Projects					
As of June 30, 2015					
Capital Budget Item	Original Estimate	Revised Estimate	Surplus / (Shortfall) Original vs Revised Estimate	Expenditures to Date	Balance Remaining (vs Revised Estimate)
Layon Landfill	\$ 57,040,900.00	\$ 42,000,000	\$ 15,040,900.00	\$ 41,750,442.74	\$ 249,557.26
Landfill Access Road and Sewer System	\$ 23,981,400.00	\$ 28,360,499	\$ (4,379,099.00)	\$ 28,444,613.60	\$ (84,114.60)
Construction Management - Layon and Associated Projects <sup>1</sup>	\$ 7,316,400.00	\$ 10,560,000	\$ (3,243,600.00)	\$ 9,611,633.72	\$ 948,366.28
Landfill Equipment <sup>2</sup>	\$ 6,380,000.00	\$ -	\$ 6,380,000.00	\$ -	\$ -
WWTP Expansion & Leachate Pre-Treatment - Layon	\$ 11,025,000.00	\$ 4,926,935	\$ 6,098,065.00	\$ -	\$ 4,926,935.00
Transfer Station/HHWF	\$ 5,505,000.00	\$ 2,410,000	\$ 3,095,000.00	\$ 2,015,900.75	\$ 394,099.25
Transfer Station Equipment <sup>2</sup>	\$ 2,440,000.00	\$ -	\$ 2,440,000.00	\$ -	\$ -
Operating Equipment	\$ 5,941,400.00	\$ 4,500,000	\$ 1,441,400.00	\$ 4,450,067.32	\$ 49,932.68
Environmental Investigation and Ordot Dump Closure Design	\$ 6,800,000.00	\$ 8,329,055	\$ (1,529,055.00)	\$ 8,091,136.05	\$ 237,918.95
Ordot Dump Closure	\$ 30,590,300.00	\$ 40,859,913	\$ (10,269,613.44)	\$ 32,625,576.86	\$ 8,234,336.58
Ordot Dump Closure - Land Acquisition	\$ -	\$ 1,700,000	\$ (1,700,000.00)	\$ 1,533,677.50	\$ 166,322.50
Construction Management - Ordot Dump and Subsequent Projects <sup>3</sup>	\$ 2,721,800.00	\$ 7,499,799	\$ (4,777,999.00)	\$ 8,227,136.42	\$ (727,337.42)
Ordot Contingency <sup>4</sup>	\$ -	\$ 6,487,987	\$ (6,487,986.56)	\$ -	\$ 6,487,986.56
Litigation Assistance	\$ -	\$ 249,525	\$ (249,524.94)	\$ 283,249.61	\$ (33,724.67)
Emergency Repairs of Residential Transfer Stations and GSWA Building	\$ -	\$ 295,569	\$ (295,569.13)	\$ 295,569.13	\$ -
USDA Expense	\$ -	\$ 186,311	\$ (186,311.07)	\$ 186,311.07	\$ -
Additional Projects (Dero Road improvements, Route 4 safety enhancements and residential transfer station upgrades and general contingency)	\$ -	\$ 552,070	\$ (552,069.60)	\$ 552,069.60	\$ -
<b>Total</b>	<b>\$ 159,742,200.00</b>	<b>\$ 158,917,663</b>	<b>\$ 824,537.26</b>	<b>\$ 137,515,314.77</b>	<b>\$ 20,850,278.37</b>

<sup>1</sup>Includes the access road and utilities, the new residential transfer station and the HHW facility, the emergency repairs at the residential transfer stations and the GSWA Building repairs and the design and environmental assessment of the residential transfer stations.

<sup>2</sup>Landfill equipment and equipment for the Hauler-only Transfer Station was provided under the respective contracts for the operation of these facilities and therefore no capital purchase was needed.

<sup>3</sup>Subsequent projects will require additional capital funding addressed elsewhere in this report.

<sup>4</sup>Ordot contingency is the difference between the total construction budget of \$49,052,804.40 [Special Report dated 9/20/2013] and the original contract for the closure of \$40,536,977. See Tab 20 for the allocation of the contingency as of 6/30/2015.

Other than the expenses already incurred for these projects, we have excluded the "additional projects" since they are addressed separately in this Report. It should also be noted that the cost of the closure of

the current cells at the Layon Landfill and the construction of the next cell, as stated in our last report, must also be considered as GSWA addresses its future needs. These costs will also be considered and addressed later in this Report even though these projects are likely to be constructed post-receivership.

#### **Compensation to Former Landowners of Ordot Property**

The property acquisitions are complete, however, with respect to Lot 3434 there remains a question of the size of the lot. To address this matter, the Receiver has commissioned a survey of the property which will be filed with the local court and the proper land officials on Guam. This information will hopefully allow for the resolution of the size of the lot and become the basis of final settlement negotiations with the former owners of the property.

With respect to Lot 450, on July 13, 2015, Vanessa Williams, in her capacity as a Special Assistant Attorney General and Counsel to GSWA filed the appropriate Complaint and accompanying documents to complete the condemnation of Lot 450. The appraised value of the property is \$308,000 and this amount was deposited with the Clerk of the Court who will hold the money in trust pending its disposition by the Court. The proper documents to reflect the transfer of ownership of the property to the Government of Guam are also being filed with the Department of Land Management and its former owners have been properly notified. We will keep the District Court informed as we work to complete these property acquisitions required for the Environmental Closure of the Ordot Dump.

#### **Compensation to Former Landowners of Layon Property**

The compensation paid to the former owners of the land upon which the Layon Landfill is located is important information to consider when evaluating the Government of Guam's compliance with the Consent Decree. The Government of Guam has chosen to compensate these former landowners through tax credits. In our report dated March 5, 2015, we provided the Court with the best information available to the Receiver on the compensation paid and the amounts still owed to the former landowners as of September 30, 2014. The Governor's Office continues to maintain that it cannot disclose information about specific compensation paid to each former landowner in the form of tax credits under Guam Law. We disagree with their position on disclosure of this information.

The Government of Guam has, however, provided the Receiver with information on total compensation provided to the former owners. From this information we can reasonably estimate the amounts paid to each former landowner. In our report dated March 5, 2015, we provided the Court with this information as of September 30, 2014. We have requested information to update this compensation provided and received a more limited amount of information than was initially provided, with assurances from the Legal Counsel to the Governor that more complete information will be provided when it becomes available.

The information provided by the Governor's Legal Counsel indicates that the total liability of the Government of Guam to the former landowners has increased by "about \$500,000" since September 30, 2014. We assume, based on representations made by the Governor's Office earlier this year that this is the result of interest that has continued to accrue on the balance owed until the former landowners actually used the tax credits available to them. We were also provided information indicating that the former owner of the largest share of the land had refused tax credits as a method of payment. However,

given the amount of tax credits claimed since September 30, 2014, it appears that this former owner is now accepting the tax credits. We do not have any information at this point on the specific dates these tax credits were actually claimed by the former landowners.

Using the information provided by the Governor’s Legal Counsel and assuming that the total liability has increased \$500,000 from the total liability of \$30,280,247 reported for September 30, 2014, Table 10 provides an update of the total amount of tax credits actually redeemed by the former owners as of August 20, 2015.

**Table 10 Tax Credits Paid**

As of August 20, 2015	
Original GovGuam Appraised Value	\$3,390,000
Additional Compensation per Judgment (CV0084-08)	\$21,705,683
6% Interest from 01/24/2008	\$9,074,564
<b>Total Liability</b>	<b>\$34,170,247</b>
Tax credits paid	\$ (24,447,867)
Cash paid from Federal Compact/Impact Funds	(\$3,401,877)
<b>Balance of Unpaid Judgment</b>	<b>\$6,320,503</b>
<small>Minor differences between this table and the table allocating payments to specific former owners is due to rounding.</small>	

Given the total value of additional tax credits that have been claimed as reported by the Governor’s Legal Counsel, it is apparent that the former owners of the largest share of the judgement are accepting tax credits as payment for the judgment. Table 11 provides the Court with an update of the range of likely payments to former landowners.



**Table 11 Range of Likely Payments to Former Landowners**

Compensation Paid to former Layon Landowners						
As of 8/20/2015						
Former Owner	Total Liability*	Allocation of Initial Payment	Range of Potential Distribution of Payments			
			Scenario A		Scenario B	
			Total Credits Redeemed	Estimated Compensation Paid to Date	Total Credits Redeemed	Estimated Compensation Paid to Date
Oxford Properties & Finance, Ltd.	\$ 17,182,984	\$ 1,700,938	\$ 10,707,103	\$ 12,408,041	\$ 13,477,004	\$ 15,177,942
Calvo's Insurance Underwriters, Inc.	\$ 8,440,197	\$ 850,469	\$ 7,589,728	\$ 8,440,197	\$ 4,917,063	\$ 5,767,532
Valencia Investments Corporation	\$ 2,749,277	\$ 272,150	\$ 2,477,127	\$ 2,749,277	\$ 2,438,077	\$ 2,710,228
Jones and Guerrero Company, Inc	\$ 2,749,277	\$ 272,150	\$ 2,477,127	\$ 2,749,277	\$ 2,438,077	\$ 2,710,228
Alfred and Diana Ysrael	\$ 1,715,266	\$ 170,094	\$ -	\$ 170,094	\$ -	\$ 170,094
Lee and Joan Holmes	\$ 499,326	\$ 51,028	\$ 448,298	\$ 499,326	\$ 440,976	\$ 492,004
Douglas F. Cushnie	\$ 413,171	\$ 42,285	\$ 370,885	\$ 413,171	\$ 364,935	\$ 407,220
Joaquin C. Arriola	\$ 276,702	\$ 28,321	\$ 248,381	\$ 276,702	\$ 244,415	\$ 272,736
Young Chull Kim	\$ 143,658	\$ 14,441	\$ 129,217	\$ 143,658	\$ 127,320	\$ 141,761
<b>Totals</b>	<b>\$ 34,169,858</b>	<b>\$ 3,401,877</b>	<b>\$ 24,447,867</b>	<b>\$ 27,849,744</b>	<b>\$ 24,447,867</b>	<b>\$ 27,849,744</b>

\*Initial Payment based on appraised value plus the judgement of the Superior Court of Guam plus interest @ 6%.

Scenario A in Table 11 assumes that all former landowners other than Oxford Properties & Finance LTD., and Alfred and Diana Ysrael were paid in full, with the balance of the \$13,477,003.63 in tax credits claimed since October 1, 2014, being claimed by Oxford Properties & Finance Ltd. Scenario B assumes that all of the tax credits claimed since September 30, 2014, were applied to Oxford Properties & Finance Ltd's unpaid balance and that none went to the other former landowners. In any event, most of the judgment appears to have been paid as of August 20, 2015. As more information becomes available, we will provide further updates to the Court.

**Reserves of the GSWA**

Table 12 outlines the status of the reserves of GSWA on June 30, 2015. These reserves are for the purpose of setting funds aside to pay for the future needs of the system.

**Table 12 Reserves of the Guam Solid Waste Authority**

Reserves of the Guam Solid Waste Authority	
As of 6/30/2015	
Reserves	Total
Equipment Replacement Reserve	\$ 2,391,161.73
New Cell Development Reserve	\$ 180,425.72
Cell Closure Reserve	\$ 180,407.23
Post-Closure Care Reserve Layon Landfill	\$ 360,851.16
Post-Closure Care Reserve Ordod Dump	\$ -
<b>Total Reserves.....</b>	<b>\$ 3,112,845.84</b>

The status of the special account established to address the cost of legal expenses, future capital requirements and the post-closure care of the Ordod Dump is addressed elsewhere in this report.

**FY2016 GSWA Operating Budget**

Tab 21 is the operating budget for FY2016 for the Court’s consideration. It is basically a status quo budget simply carrying forward the programs and anticipated costs of GSWA’s current program.

**GSWA’s Audit for FY2014**

The Receiver continued its support of GSWA during the audit process concluded for FY2014. The audit was conducted by Deloitte & Touche, LLC. The audit confirms the sound financial condition of GSWA and finds no misuse of GSWA funds. The only findings directed at the Receiver involve the use of the authority granted the Receiver by the District Court and simply demonstrate the unusual situation with which auditors must address when a governmental entity like GSWA is in receivership. There are several audit findings directed at DOA related to needed improvements in accounting procedures. The full audit report is submitted as Tab 22.

**Bridge and Roadway Repairs and Replacements**

Given the Court’s Order of June 29, 2015, the work of the Receiver monitoring bridge and roadway projects is at an end. Table 13 shows the current status of the projects the Receiver has been following, excluding the As-Alonso Repairs and the Route 4 Safety enhancement.

**Table 13 Status of Consent Decree Bridge and Roadway Projects**

<b>Status of Consent Decree Bridge and Roadway Projects</b>	
<b>Project</b>	<b>Current Status of Project</b>
Ylig Bridge Replacement	Project Complete*
Togcha Bridge Rehabilitation	Project Complete
Talofofa Bridge Rehabilitation	Project Complete
Route 4 Pago Bay to Route 17	Project Complete
Route 4 Togcha River to Ipan Beach	Project Complete
*The most recent reports from DPW indicate that they are still addressing certain issues on this project, however, for solid waste purposes the project is complete.	

Given the status of the projects shown in Table 13 and the Court’s recent Order with regard to Route 4, we will no longer include this information in future reports of the Receiver unless otherwise directed by the Court.

**Waste Disposed at the Layon Landfill**

The waste disposed at the Layon Landfill increased about 3.1 percent during the first nine months of FY2015. Table 14 shows total waste disposed by customer type during the period October 1, 2014, through June 30, 2015, compared to the same period one year earlier.

**Table 14 Total Waste (Tons) Disposed by GSWA**

<b>Change in Waste (Tons) Disposed by GSWA</b>			
<b>By Customer Group</b>			
Comparing October to June FY2014 with FY2015			
<b>Customer</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>% Change</b>
Residential	13,760	14,912	8.4%
Commercial	38,956	40,111	3.0%
Military	5,549	5,875	5.9%
Government	6,529	5,717	-12.4%
Mayors	1,064	1,307	22.8%
Transfer Stations	3,551	3,616	1.8%
Other	73	94	28.7%
<b>Total</b>	<b>69,482</b>	<b>71,631</b>	<b>3.1%</b>

Note: About 3 percent of the waste handled by GSWA is not landfilled due to removal of excluded waste and water loss.

There were wide variations in the growth by category. The only category declining was Government waste and this was attributable almost exclusively to GWA. For reasons that we understand are related to GWA internal operational issues, the amount of biosolids being disposed by GWA declined significantly from February through June. Since June, the levels of disposal have returned to the higher levels experienced before the slow-down.

## **6. Financial Plan for Additional Projects and Ordot Post-Closure Care**

In several orders issued relative to completing the work of the Receivership, the Court has directed the Receiver to submit a revised transition timeline that will allow the Receiver to complete the additional projects and provide a funding plan for post-closure care of the Ordot Dump.<sup>1</sup> Since the funds needed to complete the work of the Receivership must come from the operations of GSWA itself, the Court has recognized the need to extend the Receivership timeline for transition from the Receiver to the GSWA Board to assure successful completion of these projects and the long-term care of the Ordot Dump. Extending the Receivership also reduces GSWA operating cost<sup>2</sup> and makes more funds available.

Table 15 summarizes the remaining projects and the current estimate of the anticipated costs of completing this work. We should emphasize that this is an estimate, not a budget. We cannot know what the cost is until the bidding process is complete and a contract has been awarded. We will keep the Court informed as the bids are received and contracts are awarded.

<sup>1</sup> "Residential Transfer Stations," April 20, 2015; "Dero Road," May 1, 2015; "Post-closure Care of the Ordot Dump," May 27, 2015; and, "Rt. 4 Safety Enhancements," June 29, 2015.

<sup>2</sup> See "Quarterly Report of the Receiver," June 25, 2014, pages 40 – 43.

**Table 15 Additional Projects and Estimated Cost to Complete as of September 2015<sup>3</sup>**

<b>Additional Projects</b>	
Project	Estimated Cost
Dero Road Upgrades	\$ 2,300,000
Dero Road Redesign	\$ 100,000
Route 4 Safety Enhancements	\$ 10,000
Dededo Closure Plan Development	\$ 25,000
Dededo Environmental Closure	\$ 250,000
Cleanup of Agat & Malojloj	\$ 457,900
Residential Transfer Station Upgrades	\$ 4,300,000
Construction Management	\$ 1,000,000
General Contingency	\$ 1,000,000
<b>Total Projects</b>	<b>\$ 9,442,900</b>

In addition to the projects the Court also directed the Receiver to develop a plan for funding the post-closure cost of the Ordot Dump. Specifically, in its Order dated May 27, 2015, the Court directs the Receiver as follows:

*“The court has already approved the Receiver’s proposal to fund the post-closure care costs on an ongoing basis from the debt service reimbursements accumulating in the special account. However, if these funds are insufficient to meet the post-closure care funding obligations before the end of the Receivership, then the Receiver shall develop a financing plan that includes a dedicated funding mechanism to secure monies necessary to fully implement all post-closure care and monitoring actions.”*

While the Receiver awaits final approval from the U.S. Environmental Protection Agency (U.S. EPA) and Guam Environmental Protection Agency (GEPA) on the post-closure plan, we are confident the plan submitted complies with all of the Federal and local laws and rules. The estimated net present value (NPV) of the total 30-year cost is \$15,670,893.97<sup>4</sup>.

While the additional projects and Ordot Post-Closure Care are the primary focus of the project, the Receiver must consider the other capital needs of Guam Solid Waste Authority (GSWA). Equipment needs, including heavy equipment, trucks, bins, and more, should be adequately addressed through the Equipment Replacement Reserve, funded by the Receiver on a monthly basis since October 2011. Post-closure care for the Layon Landfill is also being funded through a similar reserve. Additional funds will be required to open a new cell(s) and properly close existing cells of the Layon Landfill. These projects may

<sup>3</sup> The Route 4 Safety enhancements are included only for the amount of expense that was incurred but not paid prior to the Court’s Order dated June 29, 2015. While there are issues with the work that must be resolved before any payment is made, the Receiver is seeking clarification of the Court’s intent concerning payment for work authorized and performed prior to the Order.

<sup>4</sup> This cost will need to increase to provide for the compensation of the trustee and the independent engineer.

occur after the Receivership ends, but they must be completed and they must be fully funded; therefore, a responsible financial plan must include funding them. Design of the next cell(s) should occur prior to immediate need, to ensure that the cells are ready when needed. Table 16 outlines the estimate of all of the capital costs that must be addressed to comply with the Consent Decree, the Orders of the District Court and GSWA's operating budget.

**Table 16 Future Capital and Ordot Post-Closure Funding Requirements**

Future Capital and Ordot Post Closure Funding Requirements	
Funding Required	Total
Additional Projects	\$ 9,442,900.00
Post-closure cost for Ordot Dump	\$ 15,670,893.97
Construction of new cell at Layon	\$ 10,590,642.09
Closure cost for cells 1 & 2	\$ 5,273,975.41
<b>Total</b>	<b>\$ 40,978,411.47</b>

**Table 17** Table 17 shows the Receiver's recommended plan for the use of the \$4.5 million in annual revenue that was previously used to reimburse the Government of Guam for debt service; to fund the upgrades to the residential transfer stations, the Dero Road upgrades, and the post-closure reserve for the Ordot Dump; and, to fund the other capital requirements of GSWA. Table 17 is also included as Table 23 in larger type for the convenience of the reader.

**Table 17 Future Capital and Ordot Post-Closure Funding Cash Flow**

Future Capital and Ordot Post-Closure Funding Cash Flow								
Year	Funding Requirement			Balance at Beginning of FY*	Funds Added During FY (Includes Actual and Estimated Interest Earnings)	Funds Available		
	Additional Projects	Allocation of Funds to Ordot Dump Post-Closure Reserve	Closure Cost of Cells 1 & 2 and New cell at Layon Landfill			Funds Used for Ordot Post-Closure Expense During FY	Funds Used for Capital and Legal Expense During FY	Funds Used for Legal Expense During FY
FY2014				\$ 2,437,501.89	\$ 1,873,790.40	\$ -		\$ 4,311,292.29
FY2015				\$ 4,311,292.29	\$ 4,501,596.96	\$ -	\$ 77,441.35	\$ 8,734,165.83
FY2016	\$ 4,721,450.00	\$ 2,000,000.00		\$ 8,734,165.83	\$ 4,501,596.96	\$ 6,721,450.00	\$ 100,000.00	\$ 6,414,312.79
FY2017	\$ 4,721,450.00	\$ 2,000,000.00		\$ 6,414,312.79	\$ 4,501,596.96	\$ 6,721,450.00	\$ 100,000.00	\$ 4,094,459.75
FY2018	\$ -	\$ 2,000,000.00		\$ 4,094,459.75	\$ 4,501,596.96	\$ 2,000,000.00	\$ 100,000.00	\$ 6,496,056.71
FY2019	\$ -	\$ 2,000,000.00		\$ 6,496,056.71	\$ 4,501,596.96	\$ 2,000,000.00	\$ 100,000.00	\$ 8,897,653.67
FY2020	\$ -	\$ 2,000,000.00	\$ 5,295,321.05	\$ 8,897,653.67	\$ 4,501,596.96	\$ 7,295,321.05	\$ 100,000.00	\$ 6,003,929.59
FY2021	\$ -	\$ 2,000,000.00	\$ 7,932,308.75	\$ 6,003,929.59	\$ 4,501,596.96	\$ 9,932,308.75	\$ 100,000.00	\$ 473,217.80
FY2022		\$ 2,000,000.00	\$ 2,636,987.71	\$ 473,217.80	\$ 4,501,596.96	\$ 4,636,987.71	\$ 100,000.00	\$ 237,827.05
FY2023		\$ 1,670,900.00		\$ 237,827.05	\$ 4,501,596.96	\$ 1,670,900.00	\$ 100,000.00	\$ 2,968,524.01
FY2024				\$ 2,968,524.01	\$ 4,501,596.96	\$ -	\$ 100,000.00	\$ 7,370,120.97
FY2025				\$ 7,370,120.97	\$ 4,501,596.96	\$ -	\$ 100,000.00	\$ 11,771,717.93

\*For FY14 the beginning balance is May 1, the first month these funds were set aside for this purpose.  
 Note: Shaded areas are estimates. Areas not shaded are actual expenditures and funds available.

The additional projects will be completed over calendar year 2016 and 2017. This timeframe provides the following benefits:

- Encompasses two dry seasons for the work;
- Fully funds the estimated cost of the projects;
- Sets aside \$4 million for the Ordot Dump Post-Closure Reserve during this time; and
- Continues setting aside funds for the Ordot Dump Post-Closure Reserve until it is fully funded.

The plan also provides sufficient funds for the new cell(s) and the proper closure of cells 1 and 2 at the Layon Landfill.

To assure that the needed funds are actually set aside and remain available to pay for the post-closure care of the Ordot Dump after the Receivership ends, the Receiver recommends that when the Receivership ends, the Court appoint a trustee to manage these funds and assure that the Ordot Dump Post-Closure Reserve is fully funded. The trustee, under the supervision of the District Court, should have the following duties:

1. Management and care of the funds in the Ordot Dump Post-Closure Reserve;
2. Assuring that a qualified operator is in place at all times to manage the Ordot Dump's post-closure care;
3. Paying for post-closure care from the Ordot Dump Post-Closure Reserve;
4. Receiving all payments owed to GSWA each month from the commercial haulers on Guam;
5. Adding funds from these payments to the Ordot Dump Post-Closure Reserve in compliance with the plan shown in Table 17 and passing on the remaining funds to GSWA for its use;
6. Periodically reassessing the financial requirements of the Ordot Dump Post-Closure Reserve and adjusting the amounts put into the reserve if needed;
7. Commissioning an independent engineer to inspect and certify that the Ordot Dump Post-Closure Operator is performing all of the work necessary for the proper care of the environmental closure of the Ordot Dump;<sup>5</sup> and
8. Such other duties as may be required by the trust instrument or the Court.

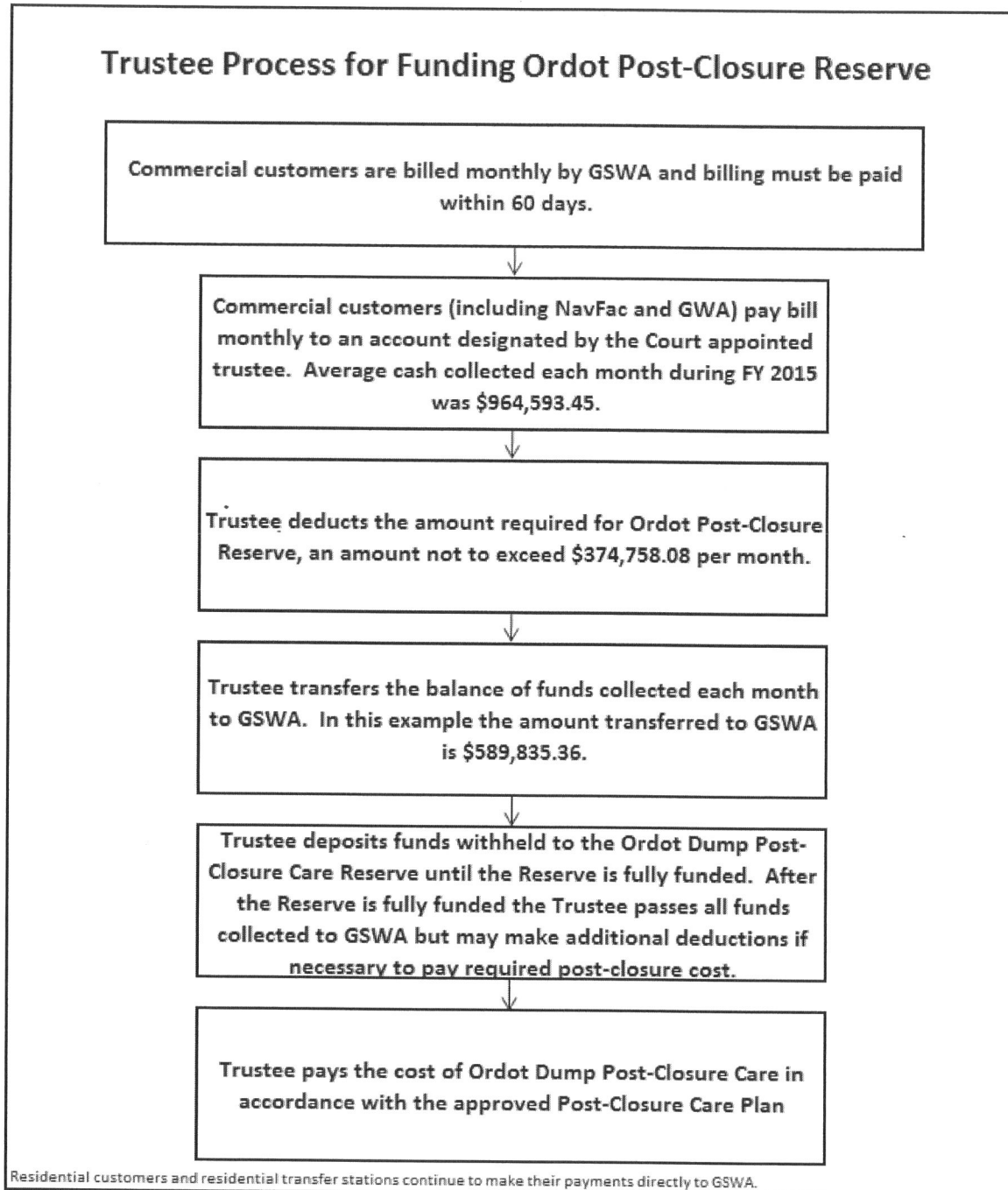
The Receiver can handle these duties during the remaining time that the Receivership is in place and assist the Court in its selection of a trustee developing the trust instruments. If all commercial haulers on Guam are required by Court Order to make their payments through the trustee, the dedicated funding source will have been achieved since the trustee will be the first to receive the funds. The trustee will deduct what is needed to fully fund the Ordot Dump Post-Closure reserve, and pass the balance through to GSWA for its operations. GSWA bills and collects more than \$10 million annually from commercial haulers ensuring that the trustee will have funds that are more than adequate to secure the Ordot Dump Post Closure Reserve requirements.

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<sup>5</sup> This would need to be completed quarterly during the first three years and once annually thereafter.

The flow of funds through the trustee to ensure that the Ordot Dump Post-closure Care Reserve is funded as illustrated in Figure 41. This recommended process only affects commercial payments to GSWA. Residential payments are not affected.

Figure 41 Trustee Process for Funding Ordot Post-Closure Reserve



## **100 percent of the cost of Guam's Solid Waste System is paid through user fees and federal funds.**

There have been complaints, primarily from elected officials, that the federal government is not doing enough to help Guam with its solid waste issues. Both the initial cost of the land for the Layon Landfill<sup>6</sup> and all of the debt service on the 2009 Bonds have been paid with federal funds<sup>7</sup>. The only local tax money that has been used to date since 2008 was in the form of tax credits awarded by the Government of Guam to the former landowners, based on the large increase in the cost of the land ordered by the Superior Court of Guam.

The Federal money used to pay the debt service could be used for other purposes if it were reimbursed to the Government of Guam by solid waste ratepayers, but there is no federal or market based requirement that this be done. It is a discretionary decision of Guam's policy makers similar to a decision to raise the rate of an existing tax or impose a new tax.

There has been much misleading or false information concerning the need for a rate increase. It is suggested that the current customer rates are not sufficient to pay for the solid waste system, with the clear implication that the system is operating at a deficit and creating a large debt that ratepayers will be called upon to pay after the Receivership. This is not correct. The current rates are sufficient to pay for the operation of the system; there is no debt for which solid waste customers are responsible; and, there are sufficient funds to pay for the additional projects, Post-Closure Care of the Ordot Dump, and future capital needs. As the Receiver has said previously on many occasions, there is no need for a rate increase for solid waste.

The Government of Guam has had the information needed to raise the rates since June 2012 but it has taken no action to actually raise the rates. The Receiver has provided information to the Government of Guam on numerous occasions since June 2012 that the Government could raise the rates if it wished to be reimbursed for the use of Section 30 revenue for debt service. The Government of Guam has taken no action to increase rates, insisting that only the Receiver could raise the rates, and arguing that the Receiver was not doing its job by not raising the rates. It has been and continues to be the position of the Receiver that a rate increase is not needed for solid waste; however, the Receiver acknowledges the prerogative of the Government of Guam to raise the rates in order to use the Section 30 Federal funds for other purposes. The Court formally ruled on May 27, 2015, at the request of the Government of Guam, that the Government of Guam has the ability to raise the rates, confirming what the Receiver has been telling the Government of Guam for more than three years. In the intervening months since that ruling, to the best of the Receiver's knowledge, there have been no steps taken by the Government of Guam to change the rates in any way.

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<sup>6</sup> The initial deposits into the local court system for the land were paid from Federal Compact-Impact funds.

<sup>7</sup> Debt service is paid with Federal Section 30 funds.



### **Revised Transition Timeline**

The Court has directed that the Receiver submit a revised transition timeline for the Court's consideration. The additional projects will require:

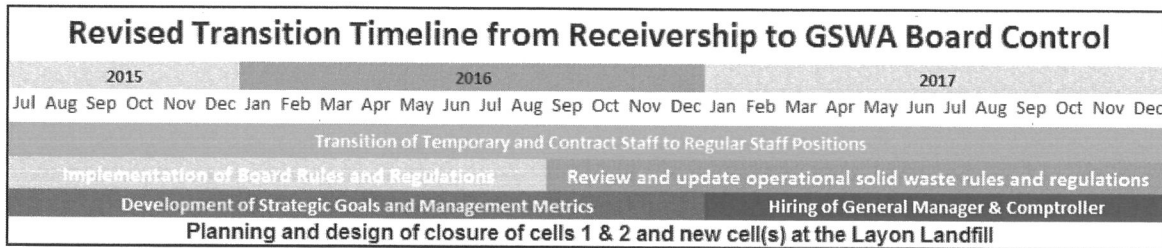
1. Planning – While much of the work for the Residential Transfer Stations has been done, the redesign of the Dero Road project and development of the plan for the environmental closure of the Dededo Residential Transfer Station remain to be completed.
2. Permitting – Construction permits must be acquired for all of the projects. In addition, Solid Waste Facility permits are required for the Residential Transfer Stations at Agat and Malojloj. These permits are both time-consuming and complex, and the Receiver notes that the requirement to permit the residential transfer stations was added by the Government of Guam as a condition for permitting the Layon Landfill and did not exist at the start of the Receivership.
3. Procurement – Bidding in order to select a contractor(s) for additional projects will have to be completed. The Receiver plans to bid both Residential Transfer Stations together to save time.
4. Environmental cleanup of the Residential Transfer Stations at Agat and Malojloj must be completed before construction can begin. The Agat cleanup is a significant undertaking since it is adjacent to the site of an illegal dump known as the Santa Anna Dumpsite, and waste on the Agat residential transfer station property is of significant size.
5. Construction – The time required for construction is dependent on several factors that are sometimes unpredictable. In the case of the Residential Transfer Stations, the environmental cleanup will need to be completed before construction can get underway. For this reason alone the work will likely require two dry seasons.
6. Close-out of the work and receipt of required documentation.

As is always the case, there are factors beyond the procedural and regulatory ones listed above that can affect the time required to complete the work. Chief amongst these is the weather on Guam. Given the nature of the work, storms and heavy rains will slow work. While the Receiver tries to allow for this in construction schedules, this is at best an imprecise effort with the weather often causing more delay in the work than the schedule provided. Weather which is better than expected may also speed up the construction calendar. Given all of these considerations, the Receiver believes it reasonable to anticipate that two dry seasons will be needed to complete all of the work.

Contractor performance is also a key factor. As the Court may recall, the Harmon facility took much longer than necessary due to poor planning and execution by the winning bidder. A well-executed work plan by the contractor can speed the work but a poor one will always slow it down.

These and other factors may slow or speed the work. Having considered these factors as best we can, our estimate of the time required to transition to GSWA Board control is two dry seasons given the work to be accomplished. Figure 42 illustrates a revised transition timeline and suggests areas of emphasis for the Guam Solid Waste Authority (GSWA) Board during this extended time-frame as it prepares for its new responsibilities.

Figure 42 Revised Transition Timeline for Receivership to GSWA Board Control



During the transition period, the conversion of temporary positions to permanent positions should be a major focus for the Board and the legal counsel hired to assist in the transition.<sup>8</sup> Since transitioning these positions to regular positions will cause a significant increase in GSWA’s cost, it should be carefully planned but not actually executed until near the end of the transition period. This is a critical step by the Board that is still pending.

Another area the Board should address is the solid waste rules and regulations. The Board has now adopted rules governing its own deliberations and actions. There are, however, operational rules and regulations that should be updated to reflect the way the system operates today as compared to its operation prior to the Receivership. These rules are entitled “Solid Waste Collection, Disposal, Processing and Recycling” and are found in Title 29 of the Guam Administrative Rules and Regulations under the Department of Public Works.

In addition, as the Board moves toward the time it will hire a General Manager and Comptroller, it should consider how it wants to manage the system and judge the performance of those who occupy these positions. Developing the strategic goals and the management metrics it wishes to use in this endeavor will be an important step in this process. The Receiver has produced reports for the District Court that includes many of the metrics the Board may wish to use, and recommends that these be continued after the Receivership. However, it should be a conscious decision of the Board to adopt these metrics in whole or in part and to add anything it wants further.

Finally, the Board should consider how it wants to proceed with the planning and construction of the next cells and the closure of cells one and two of the Layon Landfill. Will the new General Manager have this responsibility or will the Board hire a construction management firm to manage the projects? Will the current operator remain in place and handle these duties? Who will handle the permitting process on behalf of GSWA? These are vital tasks that must be accomplished during the first two or three years of

<sup>8</sup> It has been suggested by some members of the GSWA Board that the Board simply keep the employees employed under the same contract arrangement that the Receiver has utilized. In a letter dated May 28, 2009, Deputy Attorney General Pat Mason noted that such an arrangement by the Government of Guam would violate federal and local law which requires all such positions to come under the merit system. Mr. Mason recommended that the Receiver use the authority granted it by the Court to directly employ such workers and this was done. However, based on the Receiver’s understanding of the legal advice provided to it by the Office of the Guam Attorney General, the GSWA Board cannot legally continue the contract approach the Receiver has used.

the Board's management of the system. In order to avoid a disruption in service, this work must be completed on time and meet stringent environmental standards. Tab 24 provides the Court and the Board with the Receiver's estimates of the timeline for closure of cells one and two and the construction of the next cell(s).

## **7. Next Steps**

### **Ordot Dump Closure**

- Continue completion of Phase II work tasks and all remaining construction activities.
- Monitor and manage leachate collection and gas system operation until operator is on board.
- Continue project management of construction work to facilitate contractor's effort to make up time lost on the schedule.
- Continue coordination with GEPA and USEPA regarding Post Closure Care Plan review.
- Continue development of the Ordot Dump Post Closure Care procurement documents.
- Begin to develop construction certification documentation.

### **Design and Construction Management**

- Procure design services and redesign Dero Road plans for construction procurement.
- Advance the development of Dededo Residential Transfer Station Closure Plan.

### **Layon Operational Support**

- Procure installation of the surge tank improvements at the Pump Stations.

### **Environmental Compliance and Monitoring**

- Pursue final review of the Ordot Post Closure Care Plan with GEPA and EPA.
- Continue to conduct GEPA and EPA bi-weekly meetings to guide and manage environmental permitting and compliance.
- Continue Operation Year Number Four with annual reporting.
- Continue to report and manage environmental compliance monitoring of the Layon Landfill operations.
- Continue to manage, monitor, and report the results of the quarterly Inarajan WWTP monitoring program.
- Conduct procurement for environmental monitoring services beyond 2015.

### **Financial**

- Continue to work with contractors to complete the Consent Decree projects.
- Carefully manage the Trustee Accounts and other bank accounts of GSWA and keep all parties informed.
- Continuously monitor the system's cash flow to ensure that sufficient cash is on hand at all times.
- Continue to carefully monitor expenditures and revenue collections.

- Monitor the volume of waste and update rate information accordingly.
- Track the new HHW program by carefully monitoring its budget impact on the FY2015 budget.
- Continue to enforce the policies to ensure that delinquent residential and commercial accounts are paid in full or service is terminated.
- Monitor government accounts and continue to work with GovGuam to address deficiencies.
- Address the capital needs of GSWA in compliance with the Orders of the District Court.
- Assist the members of the GSWA board in preparing for their role after the Receivership ends.
- Work with legal counsel to complete land acquisition for closure of Ordot Dump.
- Continue to seek the needed information to determine the status of the Government of Guam's payments to the former Layon Landowners.



SOLID WASTE  
MANAGEMENT  
CONSULTANTS  
**R E C E I V E R**

September 4, 2015

Mr. Kevin J. Fowler  
Attorney at Law  
865 South Marine Corps Drive  
Suite 201  
Tamuning, Guam 96913

Dear Mr. Fowler:

This letter is in response to your protest letter dated September 1, 2015 on behalf of your client Morrico Equipment, LLC ("Morrico"). After considerations of the grounds for the protest set forth in your letter, GSWA hereby denies Morrico's protest. The reasons for the denial are set forth in the order submitted in Morrico's protest as follows:

1. IFB GSWA004-15 is Not Related to IFB GSWA001-15

GSWA has an independent need for the packer body solicited in IFB GSWA004-15, separate and apart from the needs solicited in IFB GSWA001-15. GSWA requires the packer body for trucks presently existing in GSWA's fleet. GSWA has every intention to resume IFB GSWA001-15 once a final determination is made in Superior Court of Guam Civil Case No. CV0185-15.

The subject matter of CV0185-15. began with your protest in October 2014. Since the time of that protest, GSWA closed, at the request of the Governor of Guam, the Dededo Residential Transfer Station as of the end of June 2015. Closing this facility has allowed GSWA to reexamine the allocation of GSWA's current roll off fleet of vehicles. GSWA has determined that at a minimum GSWA can convert one, possibly two, of these vehicles to a residential packer truck. Further, GSWA also has an additional three existing vehicles in its fleet that are experiencing problems with their packer units. These packers are of a sufficient age and use that they should be replaced rather than rebuilt. On August 20, 2015, GSWA's fleet maintenance contractor notified GSWA that one of these packer units had to either be rebuilt or replaced. Therefore, GSWA also determined it was necessary to replace these packer units through this current procurement.

2. Cubic Yard capacity of Packer Body

This issue is moot. IFB GSWA004-15 Addendum No. 3 provides that a hopper capacity of 3.5 cubic yards is acceptable.

3. Delivery Time

GSWA has determined that it is necessary for the delivery time to be within 90 days. The packer bodies are immediately needed to make use of existing refuse collection vehicles in GSWA's fleet. One of the existing vehicles is already inoperable and in need of new packer unit, and as stated above, replacement packer bodies are urgently needed. GSWA anticipates these to be inoperable soon, and the agency cannot afford to have half of its fleet inoperable for three additional months.

4. Tailgate Latches

This issue is moot. IFB GSWA004-15 Addendum No. 3 provides that tailgate latches that work independently of the tailgate cylinders are acceptable.

For the reasons set out above, GSWA rejects your protest. It is our hope that representatives of all of the manufacturers of these vehicles, including your client, will aggressively bid to provide these packer bodies to GSWA.

Thank you.

Sincerely,



David L. Manning  
Receiver Representative

c.c. Vanessa L. Williams, Esq.

ORIGINAL

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FILED  
 DISTRICT COURT OF GUAM  
 FEB 11 2004  
 MARY L. M. MOBAN  
 CLERK OF COURT  
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11  
12 Attorneys for the United States of America

13  
14 UNITED STATES DISTRICT COURT  
15 TERRITORY OF GUAM

16  
17  
18 UNITED STATES OF AMERICA, ) CIVIL CASE NO. 02-00022  
 Plaintiff, )  
 19 v. )  
 20 GOVERNMENT OF GUAM, ) CONSENT DECREE  
 Defendant. )  
 21 )  
 22 )

23  
24  
25  
26  
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1 WHEREAS, Plaintiff United States of America, on behalf of the United States  
2 Environmental Protection Agency ("U.S. EPA"), filed a civil lawsuit against the Government of  
3 Guam;

4 WHEREAS, the Government of Guam owns and operates a solid waste disposal  
5 facility in the Village of Ordot, hereinafter referred to as the "Ordot Dump;"

6 WHEREAS, the operation of the Ordot Dump is subject to, among other things,  
7 the provisions of the Clean Water Act, 33 U.S.C. §§ 1251-1387;

8 WHEREAS, 33 U.S.C. § 1311(a) makes it unlawful to discharge pollutants from  
9 a point source to waters of the United States, except as authorized by a permit issued pursuant to  
10 33 U.S.C. § 1342;

11 WHEREAS, in the Complaint, the United States alleges that discharges from the  
12 Ordot Dump into the Lonfit River constitute discharges of pollutants into a water of the United  
13 States and that such discharges are not authorized by a permit issued pursuant to 33 U.S.C.  
14 § 1342;

15 WHEREAS, pursuant to the authority in 33 U.S.C. § 1319, on July 24, 1990,  
16 U.S. EPA issued an administrative order to the Government of Guam Department of Public  
17 Works ("DPW") requiring the cessation of discharges in accordance with a plan and schedule to  
18 be submitted to and approved by U.S. EPA;

19 WHEREAS, pursuant to the authority in 33 U.S.C. § 1318(a), on September 19,  
20 1997, U.S. EPA requested DPW to obtain and submit to U.S. EPA certain data and information  
21 on the discharges from the Ordot Dump and the receiving water in accordance with specified  
22 deadlines;

23 WHEREAS, in the Complaint, the United States alleges that the Government of  
24 Guam did not comply with the terms and conditions of the administrative order and the request  
25 for information;

26 WHEREAS, Guam law, at 10 G.C.A. § 51118, provides for a financing source  
27  
28



1 from tipping and user fees for the Government of Guam costs and expenses directly related to the  
2 closure of Ordot Dump and the development, design, construction, and operation of a new  
3 sanitary landfill;

4 WHEREAS, the parties agree that settlement of the civil judicial claims as  
5 alleged in the Complaint is in the public interest and that entry of this Consent Decree without  
6 further litigation is the most appropriate way to resolve this action and avoid protracted litigation;

7 THEREFORE, based on the pleadings, before taking testimony or adjudicating  
8 any issue of fact or law, and without any finding or admission of liability against or by the  
9 Government of Guam;

10 IT IS ORDERED, ADJUDGED, AND DECREED as follows:

11 I. JURISDICTION

12 1. This Court has jurisdiction over the subject matter of this action and over the  
13 parties pursuant to 33 U.S.C. § 1319(b) and (d) and 28 U.S.C. §§ 1331, 1345, and 1355. Venue  
14 is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) and 33 U.S.C. § 1319(b).

15 II. PARTIES BOUND

16 2. This Consent Decree shall apply and be binding upon the Government of Guam  
17 and its boards, directors, agencies, authorities, departments (including and not limited to DPW  
18 and the Guam Environmental Protection Agency ("GEPA")), and their successors and assigns,  
19 and on the United States on behalf of U.S. EPA.

20 3. The Government of Guam shall give written notice of this Consent Decree to any  
21 successor in interest prior to the transfer of any ownership interest or right to operate the Ordot  
22 Dump. The Government of Guam shall send a copy of such notification to U.S. EPA prior to  
23 such sale or transfer. Upon sale or transfer of the Ordot Dump, the Government of Guam shall  
24 attach a copy of this Consent Decree to the agreement which effects the sale or transfer and shall  
25 make performance of the obligations of the Government of Guam under this Consent Decree an  
26 obligation of the purchaser or transferee. Transfer of ownership of the Ordot Dump will not  
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1 relieve the Government of Guam from the obligations of this Consent Decree.

2 4. Within TEN (10) days from the entry of this Consent Decree and as appropriate  
3 thereafter, the Government of Guam shall provide copies of this Consent Decree, accompanied  
4 by a summary explanation of its terms, to all persons who are bound by this Consent Decree as  
5 specified in Paragraph 2 or who are in a position to ensure or affect compliance with this Consent  
6 Decree, including notice to any successors in interest to property governed by this Consent  
7 Decree prior to the transfer of said property. The Government of Guam shall provide a copy of  
8 this Consent Decree to any contractor or consultant retained to perform any activity required by  
9 this Consent Decree. No later than TEN (10) days after any such notice, the Government of  
10 Guam shall provide U.S. EPA with a copy of its summary explanation and a list of the names,  
11 titles, and addresses of all recipients.

### 12 III. CIVIL PENALTY

13 5. The Government of Guam shall pay a civil penalty of \$200,000 to the United  
14 States in accordance with Paragraph 6 below.

15 6. Payments shall be made by wire transfers payable to the United States Department  
16 of Justice in accordance with the FEDWIRE Electronic Funds Transfer instructions (forms  
17 attached as Appendix A) at the following times:

- 18 a. Thirty days after the effective date in the amount of \$25,000;
- 19 b. One (1) year after the effective date in the amount of \$50,000;
- 20 c. Two (2) years after the effective date in the amount of \$50,000; and
- 21 d. Three (3) years after the effective date in the amount of \$75,000.

### 22 IV. COMPLIANCE

23 7. The Government of Guam shall correct all compliance problems that form the  
24 basis for the Complaint filed in this action by undertaking the actions identified below within the  
25 specified times. Unless otherwise specified, the times given in days refer to calendar days from  
26 the date of entry of this Consent Decree. U.S. EPA may, at its discretion, review documents  
27

1 submitted by the Government of Guam concerning operation and closure of Ordot Dump and the  
2 construction or operation of the new Municipal Solid Waste Landfill ("MSWLF"). In the event  
3 that U.S. EPA provides written comments, the Government of Guam must respond in writing  
4 within 30 days and incorporate such comments into the document. Representatives of the Parties  
5 shall make themselves readily available during and after the comment period to informally  
6 discuss questions and comments on any documents.

7 a. For purposes of this Consent Decree, (i) "Ordot Dump" shall refer to Ordot Dump  
8 in its current configuration and current boundaries as depicted in Appendix B; and (ii) the new  
9 Municipal Solid Waste Landfill or "MSWLF" shall include the option of constructing and  
10 operating new cells at a location adjacent to the Ordot Dump location.

11 8. Closure of Ordot Dump and Cessation of Discharge of Pollutants from Ordot  
12 Dump into Waters of the United States.

13 a. Within 300 days (approximately 10 months), DPW shall:

14 i. Submit a Draft Closure Plan to U.S. EPA that shall include, but not be  
15 limited to:

- 16 - Site investigation, survey & mapping.
- 17 - Environmental baseline survey.
- 18 - 40% (conceptual) design of the dump cover system including methods and  
19 procedures to be used to install the cover system and operational plans to  
20 implement measures to cease discharge of pollutants into waters of the  
21 United States.
- 22 - 40% (conceptual) design of perimeter surface water diversion system.
- 23 - Other measures necessary to comply with Government of Guam  
24 regulations regarding closure of municipal solid waste landfills (22  
25 G.A.R. § 23601).

26 ii. Submit a permit application to GEPA pursuant to Government of Guam  
27

1 regulations (22 G.A.R. § 23104) for the disposal of municipal solid waste at Ordot  
2 Dump until such time as the facility is closed and no longer accepts municipal  
3 solid waste for disposal. DPW shall provide a copy of this permit application to  
4 U.S. EPA at the time of submission.

5 b. Within 450 days (approximately 15 months), DPW shall:

6 i. Submit to U.S. EPA a 90% Draft Final Closure Plan that shall include, but  
7 not be limited to:

8 - 100% design of the dump cover system including methods and procedures  
9 to be used to install the cover system and operational plans to implement  
10 measures to cease discharge of pollutants into water of the United States.

11 - 100% design of the perimeter surface water diversion system.

12 - 100% post-closure care and monitoring plan.

13 - 40% Draft Specifications (including a Construction Management Plan)  
14 that describes the quality assurance measures necessary to ensure that the  
15 final dump closure system meets the design specifications.

16 - Other measures necessary to comply with Government of Guam  
17 regulations regarding closure of municipal solid waste landfills (22 G.A.R.  
18 § 23601).

19 ii. Submit to U.S. EPA and GEPA a draft final plan and a schedule to  
20 implement post-closure requirements.

21 iii. Submit to U.S. EPA a supplement to its original permit application to  
22 GEPA that includes complete information about closure plans, in compliance with  
23 Government of Guam Regulations (22 G.A.R. § 23104).

24 c. Within 570 days (approximately 19 months), DPW shall:

25 i. Submit to U.S. EPA a Final Closure Plan that shall include, but not be  
26 limited to:

- 1 - 100% design of the dump cover system including methods and procedures  
2 to be used to install the cover system and operational plans to implement  
3 measures to cease discharge of pollutants into waters of the United States.
- 4 - 100% design of the perimeter surface water diversion system.
- 5 - Final Specifications (including a Construction Management Plan) that  
6 describes the quality assurance measures necessary to ensure that the final  
7 dump closure system meets the design specifications.
- 8 - Other measures necessary to comply with Government of Guam  
9 regulations regarding closure of municipal solid waste landfills (22 G.A.R.  
10 § 23601).
- 11 ii. Submit to GEPA a final plan and schedule to implement post-closure  
12 requirements, in accordance with Government of Guam requirements. A copy  
13 shall be provided to U.S. EPA at the same time.
- 14 iii. Submit to GEPA, U.S. EPA, and U.S. Army Corps of Engineers a 90%  
15 Draft Wetland Mitigation Plan for closure of Ordot Dump. An approved Wetland  
16 Mitigation Plan, including a viable financial plan, shall be required before the  
17 issuance of any closure construction permits.
- 18 d. Within 570 days (approximately 19 months), GEPA shall notify DPW and U.S.  
19 EPA of the adequacy of the solid waste permit application filed pursuant to Paragraph  
20 8(a)(ii) and 8(b)(iii) above in accordance with Government of Guam regulations (22  
21 G.A.R. § 23104(c)(2)).
- 22 e. Within 660 days (approximately 22 months), GEPA shall issue or deny a solid  
23 waste permit for the continued operation of Ordot Dump for a period not to extend  
24 beyond 1,350 days (approximately 45 months) after the entry of this Consent Decree and  
25 for the closure of Ordot Dump and provide a copy of the permit, including any  
26 conditions, or the denial to U.S. EPA.

1 f. Within 700 days (approximately 23 months), DPW shall advertise for bids to  
2 construct Ordot closure plans and specifications.

3 g. Within 800 days (approximately 27 months), DPW shall award a construction  
4 contract for Ordot Dump closure and provide a notice to proceed to the selected  
5 contractor and submit evidence of such award and notice to U.S. EPA.

6 h. Within 1,350 days (approximately 45 months), DPW shall complete closure of  
7 Ordot Dump, begin implementation of the post-closure plan in accordance with  
8 Government of Guam requirements, and submit a certification to U.S. EPA that  
9 the Ordot Dump no longer receives municipal solid waste for disposal.

10 i. Within 1,350 days (approximately 45 months), DPW shall cease all discharges to  
11 waters of the United States and submit a certification to U.S. EPA that discharges  
12 to waters of the United States from the Ordot Dump have ceased.

13 9. Construction and Operation of New Municipal Solid Waste Landfill ("MSWLF").

14 a. Within 30 days, DPW shall submit a list of at least three potential landfill sites to  
15 U.S. EPA and GEPA. Within 300 days (approximately 10 months), DPW shall complete  
16 an Environmental Impact Statement ("EIS") that includes a detailed analysis and  
17 comparison of at least three potential landfill sites for the MSWLF and identifies DPW's  
18 preferred alternative for the MSWLF. DPW shall provide U.S. EPA and GEPA with a  
19 copy of the draft and final EIS within 10 days after completion of the draft and final EIS.

20 b. If U.S. EPA does not agree with DPW's preferred alternative, the parties shall use  
21 their best efforts to come to an agreement regarding the location of the new MSWLF  
22 within 90 days after completion of the final EIS. If the parties are unable to agree on a  
23 location, the Government of Guam shall file a motion within 110 days after completion of  
24 the final EIS, submitting the disputed matter to the Court for resolution. The Government  
25 of Guam's motion shall request oral argument and shall be set for hearing not less than 45  
26 after service of the moving papers. The United States shall have 30 days to respond to  
27

1 the Government of Guam's motion. The Court shall render a decision on the location of  
2 the new MSWLF based on the written materials on file and any oral argument.

3 c. Within 540 days (approximately 18 months), DPW shall submit a Draft Plan for  
4 the design, construction, and operation for the new MSWLF to U.S. EPA. The Draft  
5 Plan shall include but not be limited to:

- 6 - Site investigation, survey, and mapping.
- 7 - Hydrogeologic/subsurface investigation.
- 8 - 40% design and specifications for construction and operation of the new  
9 MSWLF system.
- 10 - Other measures necessary to comply with Government of Guam  
11 regulations regarding siting, design, and operational criteria for Municipal  
12 Solid Waste Landfills (22 G.A.R. § 23601).

13 d. Within 725 days (approximately 24 months), DPW shall:

- 14 i. Submit a 90% Draft Final Plan for the design, construction, and operation  
15 for the new MSWLF to U.S. EPA. The Draft Final Plan shall include but  
16 not be limited to:
  - 17 - 100% design for construction and operation of the new MSWLF system.
  - 18 - Draft Specifications (including a Construction Management Plan) that  
19 describes the quality assurance measures necessary to ensure that the final  
20 new municipal solid waste landfill system meets the design specifications.
  - 21 - Other measures necessary to comply with Government of Guam  
22 regulations regarding siting, design, financial and operational criteria for  
23 Municipal Solid Waste Landfills (22 G.A.R. § 23401).
- 24 ii. Submit a permit application to GEPA in accordance with Government of  
25 Guam Regulations (22 G.A.R. § 23104) to site, construct, and operate a  
26 new municipal solid waste disposal landfill in accordance with applicable  
27

1 Guam and Federal regulations. A copy of the application shall also be  
2 submitted to U.S. EPA at the same time.

3 iii. Submit to GEPA, U.S. EPA, and U.S. Army Corps of Engineers a 90%  
4 Draft Wetland Mitigation Plan and submit a Wetland Development Permit  
5 application to the Guam Land Use Commission. Approval of the 100%  
6 Final Wetland Mitigation Plan, including a viable financial plan, and a  
7 Wetland Development Permit shall be required before the issuance of any  
8 landfill construction permits.

9 e. Within 845 days (approximately 28 months, which is 120 days after DPW's  
10 application is submitted), GEPA shall notify DPW and U.S. EPA of the adequacy of the  
11 permit application filed pursuant to Paragraph 9(d)(ii) above in accordance with  
12 Government of Guam Regulations (22 G.A.R. § 23104(c)(2)).

13 f. Within 845 days (approximately 28 months), DPW shall:

14 i. Submit 100% Final Plan for the design, construction, and operation for the  
15 new MSWLF to U.S. EPA. The Final Plan shall include but not be limited  
16 to:

- 17 - 100% design for construction and operation of the new MSWLF system.
- 18 - Other measures necessary to comply with Government of Guam regulations  
19 regarding the design criteria for Municipal Solid Waste Landfill (22 G.A.R.  
20 § 23401).
- 21 - Final Specifications (including a Construction Management Plan) that  
22 describes the quality assurance measures necessary to ensure that the final  
23 new municipal solid waste landfill system meets the design specifications.

24 ii. Advertise for bids to construct the new MSWLF.

25 g. Within 935 days (approximately 31 months), GEPA shall issue or deny a permit  
26 for the new MSWLF and provide a copy of the permit, including any conditions, or the  
27



1 denial to U.S. EPA.

2 h. Within 975 days (approximately 32 months), DPW shall award a construction  
3 contract for the new MSWLF in accordance with applicable procurement rules and  
4 policies of the Government of Guam and provide a notice to proceed to the selected  
5 contractor and submit evidence of such award and notice to U.S. EPA.

6 i. Within 1,320 days (approximately 44 months), DPW shall begin operations of the  
7 new MSWLF and so certify to U.S. EPA within 7 days of commencement of operation.

8 10. Financing Closure of Ordot Dump and Construction and Operation of New  
9 Municipal Solid Waste Landfill.

10 a. Within 120 days, the Government of Guam shall submit to U.S. EPA a financial  
11 plan for funding those actions identified in Paragraphs 8 and 9, over time, including the  
12 funding source or sources and a schedule to secure funds for the capital and operating  
13 costs necessary to fully implement those actions identified in Paragraphs 8 and 9 above.  
14 The parties acknowledge and agree that the total amount of funding needed to complete  
15 the projects required under this Consent Decree is not currently available. The parties  
16 agree that the projects shall be funded by the Solid Waste Operations Fund, established by  
17 10 G.C.A. § 51118, including the costs and expenses directly related to the closure of the  
18 Ordot Dump and the development, design, construction, and operation of a new sanitary  
19 landfill. The parties also agree that the Solid Waste Operations Fund shall not be regarded  
20 as the exclusive source of funding for the projects, and that the Government of Guam may  
21 obtain funding from other sources. The Government of Guam shall use its best efforts to  
22 obtain sufficient funding to fully implement the projects required by this Consent Decree.  
23 If funding from the Solid Waste Operations Fund is not sufficient to fully implement the  
24 projects, the Government of Guam shall seek funding through legislative appropriation,  
25 loans, grants, and rates charged for consumer services such as tipping or user fees.

26 b. Notwithstanding any of the time frames set forth in Paragraph 8 or 9 above, upon  
27

1 the opening of a properly licensed and permitted municipal solid waste landfill prior to the  
2 times set forth in Paragraphs 8 and 9 above, no further dumping of any kind will be  
3 permitted at the Ordot Dump.

#### 4 V. REPORTING REQUIREMENTS

5 11. Beginning with the first quarter following the quarter in which this Consent Decree  
6 is entered and continuing until termination of this Consent Decree, the Government of Guam shall  
7 submit to U.S. EPA written quarterly reports of its progress in implementing the provisions of this  
8 Consent Decree. Quarterly reports shall be submitted within twenty-one (21) days after the last  
9 day of each quarter. At a minimum, these Progress Reports shall include:

- 10 a. All tasks required under the Consent Decree and performed during the reporting  
11 period;
- 12 b. All deadlines in this Consent Decree that the Government of Guam was required to  
13 meet during the reporting period;
- 14 c. A report whether the Government of Guam met these deadlines;
- 15 d. The reasons for any failure to meet these deadlines and all steps taken to remedy  
16 such failure; and
- 17 e. A projection of the tasks to be performed pursuant to this Consent Decree during  
18 the next reporting period.

#### 19 VI. STIPULATED PENALTIES

##### 20 12. Stipulated Penalties.

- 21 a. The Government of Guam shall pay stipulated penalties for failure to meet  
22 deadlines specified in Section IV (Compliance) as follows:
- 23 i. For failure to meet any of the deadlines specified in Paragraphs 8(a) - 8(f)  
24 and 9(a) - 9(g):
- 25 - \$250 per day per violation for the first 30 days, \$500 per day per violation  
26 for the following 30 days, and \$1,000 per day per violation for each day  
27

1 thereafter.

2 ii. For failure to meet any of the deadlines specified in Paragraphs 8(g), 9(h),  
3 and 10:

4 - \$500 per day per violation for the first 30 days, \$1,000 per day per violation  
5 for the following 30 days, and \$2,000 per day per violation for each day  
6 thereafter.

7 iii. For failure to meet any of the deadlines specified in Paragraphs 8(h), 8(i),  
8 and 9(i):

9 - \$1,000 per day per violation for the first 30 days, \$2,000 per day per  
10 violation for the following 30 days, and \$5,000 per day per violation for  
11 each day thereafter.

12 b. The Government of Guam shall pay stipulated penalties in the amount of \$500 per  
13 day for failure to timely pay the civil penalty required by Section III.

14 c. The Government of Guam shall pay stipulated penalties for failure to meet any  
15 other requirements of this Consent Decree (with the exception of the failure to complete  
16 the Supplemental Environmental Project as set forth in Appendix C that is subject to  
17 penalties pursuant to Paragraph 18) as follows:

18 - \$250 per day per violation for the first 30 days, \$500 per day per violation  
19 for the following 30 days, and \$1,000 per day per violation for each day  
20 thereafter.

21 13. Stipulated penalties shall begin to accrue on the day after performance is due and  
22 shall continue to accrue through the final date of completion even if no notice of the violation is  
23 sent to the Government of Guam. Nothing herein shall prevent the simultaneous accrual of  
24 separate penalties for separate violations of the Consent Decree.

25 14. Any stipulated penalty accruing pursuant to this Consent Decree shall be payable  
26 upon demand and due not later than THIRTY (30) days after the Government of Guam's receipt  
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1 of U.S. EPA's written demand. Stipulated penalties shall be paid by certified or cashier's check  
2 in the amount due, shall be made payable to the "U.S. Department of Justice," referencing DOJ  
3 #90-5-1-1-06658 and USAO File Number 1998V00094, and shall be delivered by certified mail  
4 with return receipt requested to:

5 United States Attorney, District of Guam  
6 Attention: Financial Litigation Unit  
7 Suite 500, Sirena Plaza  
8 108 Hernan Cortez  
9 Hagatna, Guam 96910

8 Concurrently with making the payment, Defendant shall send notice of payment to U.S. EPA and  
9 DOJ, directed to the addresses provided in Section XI (Notification). The notice of payment shall  
10 also identify: (i) the specific provision of this Section VI (Stipulated Penalties) related to such  
11 payment, and (ii) a description of the violation(s) of this Consent Decree for which the stipulated  
12 penalties or interest are being tendered.

13 15. If the Government of Guam fails to pay stipulated penalties owed pursuant to this  
14 Consent Decree within THIRTY (30) days of receipt of U.S. EPA's written demand, the  
15 Government of Guam shall pay interest on the late payment for each day after the initial thirty day  
16 due date. The rate of interest shall be the most recent interest rate determined pursuant to 28  
17 U.S.C. § 1961.

18 16. Stipulated penalties are not the Plaintiff's exclusive remedy for violations of this  
19 Consent Decree. The United States expressly reserves the right to seek any other relief it deems  
20 appropriate, including, but not limited to, action for statutory penalties, contempt, or injunctive  
21 relief against the defendant.

## 22 VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

23 17. In partial satisfaction of Plaintiff's claims, the Government of Guam shall perform  
24 and complete the Supplemental Environmental Project ("SEP") set forth in Appendix C, which  
25 has the objective of securing significant environmental or public health protection and  
26 improvements. The Government of Guam shall complete the SEP in accordance with the  
27

1 schedule and requirements set forth in Appendix C. The SEP shall be completed by March 2007.  
2 The SEP shall develop and implement a comprehensive waste diversion strategy for household  
3 hazardous waste on Guam.

4 18. The total expenditure for the SEP shall be not less than the present value of  
5 \$1,000,000. The Government of Guam shall include documentation of the expenditures made in  
6 connection with the SEP as part of the SEP Completion Report described in Paragraph 21 below.  
7 In the event that the Government of Guam fails to perform and complete the SEP as set forth in  
8 Appendix C, it shall, in the same manner as set forth in Paragraph 14, pay a civil penalty to the  
9 United States equal to the difference between the sum of \$1,000,000 and the total SEP costs that  
10 the Government of Guam has incurred and itemized according to the requirements set forth in  
11 Paragraph 21.

12 19. The Government of Guam is responsible for the satisfactory completion of the SEP  
13 in accordance with the requirements of this Decree. The Government of Guam may use  
14 contractors and/or consultants in planning and implementing the SEP.

15 20. The Government of Guam hereby certifies that, as of the date of this Consent  
16 Decree, it is not required by any federal, state or local law or regulation to perform or develop the  
17 SEP; nor is the Government of Guam required by agreement, grant or as injunctive relief in this or  
18 any other case to perform or develop the SEP. The Government of Guam further certifies that it  
19 has not received, and is not presently negotiating to receive, credit in any other enforcement action  
20 for the SEP; nor will the Government of Guam realize any profit attributable to or associated with  
21 the SEP, or receive any reimbursement for any portion of the SEP from any other person.

22 21. SEP Completion Report. The Government of Guam shall complete the SEP by  
23 March 2007. The Government of Guam shall submit a SEP Completion Report to the United  
24 States within thirty (30) days after completion of the SEP. The SEP Completion Report shall  
25 contain the following information:

26 a. A detailed description of the SEP as implemented;

- b. A description of any implementation problems and the solutions thereto;
- c. An itemization of all SEP costs and acceptable evidence of such costs;
- d. Certification that the SEP has been completed pursuant to the provisions of this Consent Decree, including Appendix C;
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reduction to the extent feasible); and
- f. Copies of any training materials, brochures, databases, or software relating to the SEP.

22. Periodic Reports. While the SEP is being planned and implemented, the Government of Guam shall submit quarterly reports to U.S. EPA describing the progress of the SEP within twenty-one (21) days after the end of each Calendar Quarter.

23. Following receipt of the SEP Completion Report described in Paragraph 21 above, U.S. EPA will do one of the following in writing:

- a. Accept the SEP Completion Report; or
- b. Reject the SEP Completion Report, notifying Government of Guam in writing of deficiencies in the SEP Completion Report. If U.S. EPA rejects SEP Completion Report, the Government of Guam shall have thirty (30) days from the date of receipt of U.S. EPA's notice in which to correct any deficiencies and submit a revised SEP Completion Report. If U.S. EPA rejects a revised SEP Completion Report, it shall notify the Government of Guam about the rejection. The Government of Guam shall be subject to stipulated penalties in accordance with Paragraph 12(c) herein for each day after receipt of U.S. EPA's notice of rejection of the revised SEP Completion Report until an acceptable SEP Completion Report is submitted to U.S. EPA.

24. If U.S. EPA rejects the SEP Completion Report pursuant to Paragraph 23(b), U.S. EPA shall permit the Government of Guam the opportunity to object in writing to the notification

1 of deficiency within ten (10) days of receipt of such notification. U.S. EPA and the Government  
2 of Guam shall have an additional thirty (30) days from the receipt by U.S. EPA of the notification  
3 of objection to reach agreement relating to U.S. EPA's notice of deficiency. If agreement cannot  
4 be reached on any issue in the notice of deficiency within this thirty (30) day period, U.S. EPA  
5 shall thereafter provide a written statement of its decision to the Government of Guam, which  
6 decision shall be final and binding. Any such decision shall not be subject to Dispute Resolution.  
7 The Government of Guam agrees to comply with any SEP-related requirements imposed by U.S.  
8 EPA's written decision.

9 25. If upon receipt of the SEP Completion Report, U.S. EPA determines in its sole  
10 discretion that part or all of the SEP has not been implemented in accordance with this Consent  
11 Decree, including Appendix C, and any statements of work, U.S. EPA may require the  
12 Government of Guam: (1) to repeat any deficient tasks; or (2) if specific tasks set forth in  
13 Appendix C were not performed at all, to perform such tasks. U.S. EPA shall provide any such  
14 requirement to the Government of Guam in writing.

15 26. The Government of Guam bears the burden of segregating eligible SEP costs from  
16 costs not eligible for SEP credit. Any non-segregable cost evidence (i.e., containing both eligible  
17 SEP costs and costs not eligible for SEP credit) shall be disallowed in its entirety. "Acceptable  
18 evidence" includes invoices, purchase orders, or other documentation that specifically identifies  
19 and itemizes the individual costs of the goods or services for which payment is made. Cancelled  
20 drafts are not acceptable evidence unless such drafts specifically identify and itemize the  
21 individual costs of the goods or services for which payment is made. Each submission required  
22 under this Section shall be signed by an official with knowledge of the SEP and shall bear the  
23 certification language set forth in Paragraph 42 below.

24 27. The Government of Guam hereby agrees that if, in estimating the cost of the SEP,  
25 it did not subtract the estimated savings achieved from deducting the cost of each SEP in  
26 calculating state and federal taxes, any funds expended by the Government of Guam in the  
27

1 performance of each SEP shall not be deductible for purposes of such taxes. The Government of  
2 Guam, at the time of completion of the SEP, shall submit to the United States written certification  
3 than any funds expended in the performance of each SEP have not been and will not be deducted  
4 for purposes of such taxes.

5 28. In the event the Government of Guam does not spend the present value attributed  
6 to a SEP pursuant to Paragraph 18 above, the Government of Guam shall perform additional work  
7 on the SEP, as set forth in Appendix C, such that the total expenditures on the SEP equals or  
8 exceeds the required present value of the SEP. If the Government of Guam performs the  
9 additional work as required by this Paragraph, it shall not be subject to the civil penalty set out in  
10 Paragraph 18.

11 29. Any public statement, oral or written, in print, film, or other media made by the  
12 Government of Guam making reference to the SEP shall include the following language, "This  
13 project was undertaken in connection with the settlement of a civil enforcement action taken by  
14 the United States for violations of the Clean Water Act."

#### 15 VIII. RIGHT OF ENTRY

16 30. U.S. EPA and its contractors and consultants shall have the authority to enter Ordot  
17 Dump and any facility related to the SEP at all reasonable times, upon proper presentation of  
18 credentials. This provision in no way limits or otherwise affects any right of entry held by U.S.  
19 EPA pursuant to applicable federal or territorial laws, regulations, or permits.

#### 20 IX. FORCE MAJEURE

21 31. The Government of Guam shall perform all requirements of this Consent Decree in  
22 accordance with the time schedules set forth except to the extent, and for the period of time, that  
23 such performance is prevented or delayed by events which constitute a force majeure. The  
24 schedule set forth in Paragraph 9 above for the construction of a new municipal solid waste  
25 landfill is not based on, or dependent upon, the existence of any contractual arrangements the  
26 Government of Guam may or may not have, now or in the future, for the construction and  
27



1 operation of a new landfill or incinerator.

2 32. For the purposes of this Consent Decree, a force majeure is defined as any event  
3 arising from causes beyond the control of the Government of Guam and that cannot be overcome  
4 by diligent and timely efforts of the Government of Guam, including its contractors. Economic  
5 hardship, normal inclement weather, and increased costs of performance shall not be considered  
6 events beyond the reasonable control of the Government of Guam for purposes of determining  
7 whether an event is force majeure. The requirement that the Government of Guam exercise  
8 diligent and timely efforts to fulfill its obligations includes using best efforts to anticipate any  
9 force majeure event and best efforts to address the effects of any potential force majeure event  
10 (1) as it is occurring and (2) following the potential force majeure events, such that delay is  
11 minimized to the greatest extent possible.

12 33. In the event of a force majeure, the time of performance of the activity delayed by  
13 the force majeure shall be extended by U.S. EPA for the time period of the delay attributable to  
14 the force majeure. An extension of one compliance date based on a particular incident does not  
15 necessarily result in an extension of a subsequent compliance date or dates. The Government of  
16 Guam must make an individual showing of proof regarding each delayed incremental step or other  
17 requirement for which an extension is sought. The Government of Guam shall adopt all  
18 reasonable measures to avoid or minimize any delay caused by a force majeure.

19 34. When an event occurs or has occurred that may delay or prevent the performance  
20 of any obligation under this Consent Decree, the Government of Guam shall notify by telephone  
21 the Manager, Pacific Islands Office, Region 9, (415) 972-3774, or the Guam Program Manager,  
22 Pacific Islands Office, Region 9, (415) 972-3770, within 72 hours of Government of Guam's  
23 knowledge of such event. Telephone notification shall be followed by written notification made  
24 within SEVEN (7) days of Government of Guam's knowledge of the event. The written  
25 notification shall fully describe: the event that may delay or prevent performance; reasons for the  
26 delay; the reason the delay is beyond the reasonable control of the Government of Guam if Guam

1 believes the event constitutes a force majeure; the anticipated duration of the delay; actions taken  
2 or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to  
3 be taken to mitigate the effect of the delay; and the time needed to implement any dependent  
4 activities. For purposes of this Section, the Government of Guam shall be deemed to have  
5 knowledge of anything it or its contractors knew or should have known.

6 35. Failure of the Government of Guam to comply with the force majeure notice  
7 requirements provided in Paragraph 34 for any delay in performance will be deemed an automatic  
8 forfeiture of its right to assert that the delay was caused by a force majeure.

9 36. After receiving written notification from the Government of Guam of a force  
10 majeure, U.S. EPA shall determine whether the Government of Guam's request for delay is  
11 justified and U.S. EPA shall notify the Government of Guam of its determination in writing. U.S.  
12 EPA's failure to respond within THIRTY (30) days to a request for delay by the Government of  
13 Guam shall be deemed a denial of that request. If the Government of Guam disagrees with U.S.  
14 EPA's determination, the Government of Guam may initiate dispute resolution procedures  
15 pursuant to Section X (Dispute Resolution).

16 37. The Government of Guam shall bear the burden of proving that any delay or  
17 violation of any requirement of this Consent Decree was caused by circumstances beyond its  
18 control, or any entity under its control, including consultants and contractors, and that the  
19 Government of Guam could not have reasonably foreseen and prevented such violation. The  
20 Government of Guam shall also bear the burden of proving the duration and extent of any delay or  
21 violation attributable to such circumstances.

#### 22 X. DISPUTE RESOLUTION

23 38. The Dispute Resolution procedures of this Section shall be the exclusive  
24 mechanism to resolve disputes arising under or with respect to the Consent Decree. However, the  
25 procedures set forth in this Section shall not apply to actions by the United States to enforce  
26 obligations by the Government of Guam under this Consent Decree that have not been disputed in  
27

1 accordance with this Section.

2 39. If the Government of Guam disputes any determination made by U.S. EPA under  
3 this Consent Decree, the Government of Guam shall send a written notice to U.S. EPA and DOJ  
4 outlining the nature of the dispute, submitting all supporting information and document relating to  
5 the dispute, describing its proposed resolution, and requesting informal negotiations to resolve the  
6 dispute. Such period of informal negotiations shall not extend beyond FIFTEEN (15) days from  
7 the date when notice was received by U.S. EPA and DOJ unless the parties agree otherwise in  
8 writing.

9 40. If the informal negotiations are unsuccessful, the disputed determination by U.S.  
10 EPA shall control, unless the Government of Guam files a motion with this Court for dispute  
11 resolution. Any such motion must be filed within TWENTY (20) days after termination of  
12 informal negotiations and must be concurrently sent to U.S. EPA and DOJ. The United States  
13 shall then have THIRTY (30) days to respond to the Government of Guam's motion. In any such  
14 dispute resolution proceeding, the Government of Guam bears the burden of proving that U.S.  
15 EPA was arbitrary and capricious.

#### 16 XI. NOTIFICATION

17 41. Except as otherwise specifically stated, all notices and submissions from the  
18 Government of Guam to U.S. EPA required by this Consent Decree shall be sent via express mail  
19 or similar service with a return receipt requested, or, in the alternative, by both fax and e-mail, and  
20 addressed to:

21 Manager, Pacific Islands Office (CMD-6)  
22 U.S. Environmental Protection Agency, Region 9  
23 75 Hawthorne Street  
24 San Francisco, CA 94105  
25 Fax: (415) 947-3560  
26 e-mail: machol.ben@epa.gov

27 42. All notices and submissions to U.S. EPA shall be signed and affirmed by a  
28 responsible official of the Government of Guam using the following certification

1 statement:

2 I certify under penalty of law that I have examined and am familiar with the information  
3 submitted in this document and all attachments and that this document and its attachments  
4 were prepared either by me personally or under my direction or supervision in a manner  
5 designed to ensure that qualified and knowledgeable personnel properly gathered and  
6 presented the information contained therein. I further certify, based on my personal  
7 knowledge or on my inquiry of those individuals immediately responsible for obtaining the  
8 information, that the information is true, accurate, and complete. I am aware that there are  
9 significant penalties for submitting false information, including the possibility of fines and  
10 imprisonment for knowing and willful submission of a materially false statement.

11 43. All notices and submissions to the Government of Guam required by this Consent  
12 Decree shall be sent to:

13 Attorney General of Guam  
14 Guam Judicial Center, Suite 2-200E  
15 120 West O'Brien Drive  
16 Hagatna, Guam 96910  
17 Fax: (671) 472-2493  
18 e-mail: law@mail.justice.gov.gu

19 Director, Department of Public Works  
20 542 North Marine Drive  
21 Tamuning, Guam 96911  
22 Fax: (671) 649-6178  
23 e-mail: dpwdir@mail.gov.gu

24 Administrator, Guam Environmental Protection Agency  
25 15-6101 Mariner Avenue  
26 Tiyan, Guam 96913  
27 Fax: (671) 477-9402  
28 e-mail: fcastro@guamepa.gov.guam.net

44. All notices and submissions to DOJ required by this Consent Decree shall be sent  
to:

1 United States Attorney  
2 District of Guam  
3 Sirena Plaza  
4 108 Hernan Cortez Ave., Suite 500  
5 Hagatna, Guam 96910  
6 Fax: (671) 472-7215  
7 e-mail: mikel.schwab@usdoj.gov

8 Section Chief, Environmental Enforcement Section  
9 D.J. Ref 90-5-1-1-06658 (Mullaney)  
10 U.S. Department of Justice  
11 301 Howard Street, Suite 1050  
12 San Francisco, CA 94105  
13 Fax: (415) 744-6476  
14 e-mail: robert.mullaney@usdoj.gov

## 15 XII. MISCELLANEOUS

16 45. Entry of this Consent Decree and compliance with the requirements herein shall be  
17 in full settlement and satisfaction of the civil judicial claims of the United States against the  
18 Government of Guam as alleged in the Complaint filed in this action through the date of the  
19 lodging of this Consent Decree. This Consent Decree in no way relieves the Government of  
20 Guam of any criminal liability.

21 46. Nothing in this Consent Decree shall limit the ability of the United States to  
22 enforce any and all provisions of applicable federal laws and regulations for any violations  
23 unrelated to the claims in the Complaint or for any future events that occur after the date of  
24 lodging of this Consent Decree.

25 47. The United States does not guarantee that implementing the relief described in this  
26 Consent Decree will ensure compliance with the Clean Water Act. This Consent Decree in no  
27 way affects the Government of Guam's responsibilities to comply with all applicable federal and  
28 territorial laws and regulations.

48. Except as specifically provided herein, the United States does not waive any rights  
or remedies available to it for any violation by the Government of Guam of federal and territorial  
laws and regulations.

49. Except as provided herein, each party shall bear its own costs and attorney's fees in

1 this action. Should the Government of Guam subsequently be determined to have violated the  
2 terms and conditions of this Consent Decree, then the Government of Guam shall be liable to the  
3 United States for any costs and attorney's fees incurred by the United States in any actions against  
4 it for noncompliance with this Consent Decree.

5 50. This Consent Decree contains the entire agreement between the parties and no  
6 statement, promise, or inducement made by any of the parties or agent of the parties that is not  
7 contained in this written Consent Decree shall be valid or binding, and this Consent Decree may  
8 not be enlarged, modified, or altered except by using procedures described in this Consent Decree.

9 51. The Attorney General of the Government of Guam and the Assistant Attorney  
10 General for Environmental and Natural Resources Division of the Department of Justice each  
11 certify that he is fully authorized to enter into the terms and conditions of this Consent Decree, to  
12 execute the document, and to legally bind the party he represents to this document.

13 52. The Government of Guam shall identify, on the attached signature page, the name,  
14 address and telephone number of an agent who is authorized to accept service of process by mail  
15 on behalf of that party with respect to all matters arising under or relating to this Consent Decree.  
16 The Government of Guam hereby agrees to accept service in that manner and to waive the formal  
17 service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any  
18 applicable local rules of this Court, including, but not limited to, service of summons.

### 19 XIII. RECORD RETENTION

20 53. In addition to any state or federal requirements relating to record retention, the  
21 Government of Guam shall retain at least one legible copy of all records, documents, reports or  
22 plans required by its permit or which relate to its performance under any provision of this Consent  
23 Decree and any documentation which the Government of Guam relied on in preparing such  
24 records, documents, reports or plans, for a period of five (5) years from the date of such record,  
25 document, report, or plan, or underlying documentation, or until two (2) years after termination of  
26 this Consent Decree, whichever is later.

1 54. Not less than sixty (60) days prior to destruction of any reports or documents  
2 created pursuant to the requirements of this Consent Decree and any documents used to create  
3 such submittals, the Government of Guam shall notify the U.S. EPA and DOJ in writing, as  
4 provided in Section XI, that destruction of documents is planned and make such records available  
5 to the United States for inspection, copying or retention. This notification will identify the nature  
6 of the documents and their storage location or locations. The Government of Guam shall not  
7 claim that any such reports or documents are confidential or privileged.

8 55. Within fifteen (15) days of a written request from the United States, the  
9 Government of Guam shall provide the United States with copies of the documentation  
10 underlying any document, report or plan submitted pursuant to this Consent Decree, or any  
11 documents, reports or plans retained pursuant to Paragraph 53.

#### 12 XIV. TERMINATION

13 56. This Consent Decree shall remain in effect until the later of: (1) one year after the  
14 Government of Guam completes all activities contained in Sections III, IV, and VII; or (2) the  
15 resolution of any matters pending in this Court regarding this Consent Decree.

16 57. If the Government of Guam believes that the requirements of Paragraph 56 have  
17 been met, the Government of Guam may request that the United States make a determination that  
18 this Consent Decree may be terminated. Any such request shall be in writing and include a  
19 certification that the applicable requirements have been met.

20 58. If the United States agrees that the requirements of Paragraph 56 have been met,  
21 the United States will notify the Government of Guam and the Court that the Consent Decree has  
22 terminated.

23 59. Until termination of this Consent Decree, the Court shall retain jurisdiction to  
24 handle any disputes that arise under this Consent Decree.

25 60. The parties agree to the foregoing Consent Decree and agree that the Consent  
26 Decree may be entered upon compliance with the public notice procedures set forth at 28 C.F.R.

1 § 50.7, which states that the public shall have THIRTY (30) days to comment on this Consent  
2 Decree, and upon notice to this Court from DOJ requesting entry of this Consent Decree. The  
3 United States reserves its right to withdraw consent to this Consent Decree based upon comments  
4 received during the public notice period. The Government of Guam consents to entry of this  
5 Consent Decree without further notice to the Court.

6 **XV. MODIFICATION**

7 61. There shall be no material modifications of this Consent Decree without the  
8 written approval of the parties to this Consent Decree and the approval of the Court. All non-  
9 material modifications, which may include extensions of the time frames and schedules for  
10 performance of the terms and conditions of this Consent Decree and certain modifications to the  
11 attachments, may be made by agreement of the parties and shall be effective upon filing by the  
12 United States of such modifications with the Court.

13 **XVI. FINAL JUDGMENT**

14 62. Upon approval and entry of this Consent Decree by the Court, the Consent Decree  
15 shall constitute a final judgment pursuant to Federal Rules of Civil Procedure 54 and 58.


17 **ORDER**

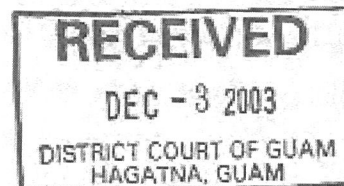
18 IT IS SO ORDERED this 11<sup>th</sup> day of February, 2003.

19   
20 \_\_\_\_\_  
21 United States District Judge

22  
23  
24 Notice is hereby given that this document was  
25 entered on the docket on 02/12/04.  
26 No separate notice of entry on the docket will  
27 be issued by this Court.

28 By: Mary L. M. Morn  
Deputy Clerk, District Court of Guam

By:  02/12/04  
Deputy Clerk Date





1 For the United States of America, Plaintiff:

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Dated: 11/7/03

*Kelly A. Johnson*  
~~THOMAS L. SANSONETTI~~  
Acting Assistant Attorney General  
Environment & Natural Resources Division  
ROBERT D. MULLANEY  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice

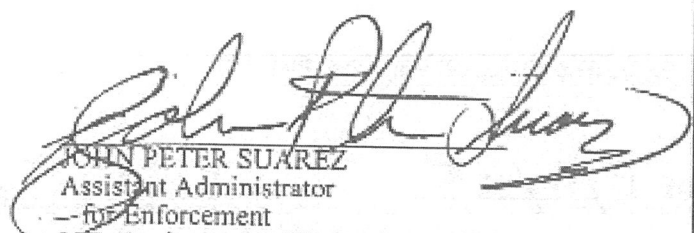
LEONARDO M. RAPADAS  
United States Attorney  
Districts of Guam and NMI  
(671) 472-7832

Dated: 11/26/03

*Mikel W. Schwab*  
MIKEL W. SCHWAB  
Assistant U.S. Attorney

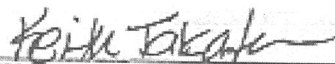
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Dated: 11/20/03

  
JOHN PETER SUAREZ  
Assistant Administrator  
for Enforcement  
U.S. Environmental Protection Agency

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Dated: 11/05/03

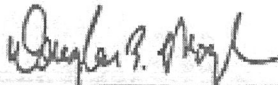
  
\_\_\_\_\_  
WAYNE NASTRI  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 9

OF COUNSEL:

JULIA JACKSON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

1 For the Government of Guam, Defendant:

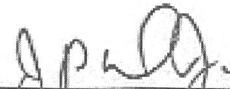
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3 Dated: 10/20/03

  
DOUGLAS B. MOYLAN  
Attorney General of Guam  
Guam Judicial Center, Suite 2-200E  
120 West O'Brien Drive  
Hagatna, Guam 96910  
(671) 475-3324

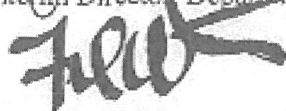
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FELIX P. CAMACHO  
Governor of Guam

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11 Dated: 10/20/03

  
JOSE MORCILLA, JR.  
Interim Director, Department of Public Works

12  
13  
14 Dated: 10/20/03

  
FRED CASTRO  
Administrator  
Guam Environmental Protection Agency

15  
16  
17 Agent for service of process:  
18 Douglas B. Moylan  
19 Attorney General of Guam  
20 Guam Judicial Center, Suite 2-200E  
21 120 West O'Brien Drive  
22 Hagatna, Guam 96910  
23 (671) 475-3324  
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