

**FILED**  
DISTRICT COURT OF GUAM

FEB 04 2009

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Clerk of Court

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**IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM**

UNITED STATES OF AMERICA, )  
)  
)  
Plaintiff, )  
)  
vs. )  
)  
GOVERNMENT OF GUAM, )  
)  
Defendant. )

CIVIL CASE NO. 02-00022

**GOVERNMENT OF GUAM REPORT  
ON PERMITTING PROCESS  
FOR LAYON LANDFILL**

Office of the Speaker  
Judith T. Won Pat, Ec.

Date 02/05/09  
Time \_\_\_\_\_  
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In its January 14, 2009, Order, the Court ordered the Guam Environmental Protection Agency to file a joint report outlining the permitting process for the Solid Waste Management Facility at Layon. The Court also advised the parties to advise the Court if any assistance is required. In order to comply with the Court's order, the parties discussed language for the joint report. Although the parties agreed to most of the language for the language for a joint report, the parties could not come to an agreement on certain each party wanted in the report. The

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1 following shows: 1. The language the parties agreed upon; 2. The language the parties could  
2 not agree upon with comments by Guam Environmental Protection Agency.

3 **1. THE FOLLOWING LANGUAGE WAS AGREED UPON BY THE PARTIES:**

4 By Order dated January 14, 2009 (Docket No. 330), the Court directed the Guam  
5 Environmental Protection Agency (“Guam EPA”) and the United States Environmental  
6 Protection Agency (“EPA”) to provide a joint report by February 4, 2009, outlining the  
7 permitting process for the solid waste management facility at Layon to meet the permitting  
8 timetable established by the Court on October 22, 2008 (Docket No. 272). In response to the  
9 Court’s Order, the United States submits this joint report with the Government of Guam  
10 (“GovGuam”) on the permitting process, schedule, and necessary requirements for Guam EPA  
11 to meet the permitting deadline of August 27, 2009.

13 **I. BACKGROUND**

14 A. The Court’s October 2008 Order on Permitting Timetable

15 In an Order Re: Consent Decree Timetable, Financing Options, Guam Land Use  
16 Commission dated October 22, 2008 (Docket No. 272), the Court addressed the timetable for  
17 the Consent Decree projects proposed by the receiver. In the timetable, GBB proposed that  
18 Guam EPA issue the municipal solid waste permit for Layon by August 27, 2009, in order to  
19 ensure the timely initiation of construction of the new landfill. (Docket No. 269-5.) The Court  
20 specifically emphasized that the construction of the new landfill at Layon is the most important  
21 project because the Ordot Dump cannot be closed until the new landfill is opened. As the  
22 Court stated: “In light of the 22 years of noncompliance and delays by the Government of  
23 Guam, the court finds that further delays are unacceptable and will not be tolerated.” Docket  
24 No. 272 at 6. Therefore, the Court adopted GBB’s proposed timetable and ordered all branches  
25

1 of the Government of Guam to cooperate with GBB and assist the receiver in meeting the  
2 deadlines in the timetable. Id.

3 B. Guam EPA is the Permitting Authority for Solid Waste Facilities on Guam

4 The federal role in solid waste management is to establish the overall regulatory  
5 direction by providing minimum standards for protecting human health and the environment.  
6 For municipal solid waste landfills, EPA established these criteria at 40 C.F.R. Part 258.  
7 However, because planning and implementation of solid waste programs are primarily state  
8 and local functions, federal law allows States and Territories to devise programs, within the  
9 prescribed limits of 40 C.F.R. Part 258, that address specific conditions and needs. A State or  
10 Territory may seek to have EPA approve its permit program.  
11

12 On June 6, 2000, EPA approved Guam's municipal solid waste permit program.  
13 Pursuant to this approval, Guam EPA is the permitting authority for solid waste facilities on  
14 Guam. Therefore, it is Guam's approved solid waste permit program, not the federal criteria,  
15 that applies to solid waste facilities on Guam.

16 **II. GUAM EPA'S PERMITTING SCHEDULE**

17 The issuance of a solid waste permit to the Layon facility will require Guam EPA to  
18 conduct an extensive review of complex technical documents. Guam EPA has prepared the  
19 following schedule of activities that it will complete to meet the Court-approved deadline to  
20 issue a solid waste facility construction permit for the new landfill at Layon by August 27,  
21 2009:  
22

<b>GUAM EPA'S PERMITTING PROCESS ACTIVITIES</b>	<b>ACTION DATE</b>
<b>PERMITTING START DATE</b>	15-Jan-09

1	2006 Application Resubmittal - Books 1-3 Received	12-Dec-08
2	2006 Application Resubmittal - Books 4-5 Received	24-Dec-08
3		
4	2007 Application Resubmittal - Book 5 Resubmittal	15-Jan-09
5	<b>CONCLUDE COMPLETENESS REVIEW</b>	17-Feb-09
6	<b>CONCLUDE TECHNICAL REVIEW</b> [note - included within	17-Mar-09
7	Guam EPA's technical review are the following seven items:]	
8		
9	Review of USEPA/Guam EPA Response to 90% Pre-Final Design (June 2006)	
10	Hydrogeological Report - Compliance with Article 5 of SWDRR	
11	Review of updated Design	
12		
13	Review of Construction Quality Assurance and Management Plan	
14	Review of Operation Plan	
15		
16	Review of Closure Design and Closure Plan	
17		
18	<b>ISSUE LETTER OF TECHNICAL ADEQUACY</b>	31-Mar-09
19	<b>ISSUE DRAFT PERMIT</b>	29-Apr-09
20		
21	Publish Public Notice - Initiate Public Comment Period	29-Apr-09
22	Conduct Public Hearing	May or Jun-09
23		
24	Public Comment Period Concluded	15-Jun-09
25	<b>ISSUE NOTICE OF DECISION</b>	19-Aug-09

1 EPA and Guam EPA believe that Guam EPA can issue a solid waste permit for the  
2 Layon landfill by the deadline of August 27, 2009. Guam EPA has assigned a core Guam EPA  
3 Layon permit project team, consisting of a project manager, a permit writer, and an engineer as  
4 technical support, to the task -- as their highest work priority -- of developing and reviewing  
5 the permit for the new landfill at Layon pursuant to the Consent Decree. Other Guam EPA  
6 staff shall be available to provide support to the Guam EPA Layon permit project team as  
7 requested by the Guam EPA Administrator and shall also regard assistance on the Layon  
8 permit as their highest work priority. GovGuam's Office of the Attorney General has assigned  
9 a Assistant Attorney General to assist Guam EPA's Layon permit project team with legal  
10 counsel relating to the Layon permit process. To assist this permitting process, EPA will  
11 provide the Guam EPA Layon permit project team with technical review comments on the  
12 "Phase 2" design documents for the new landfill at Layon by March 17, 2009. (Phase 2 design  
13 documents are included in Books 1 through 4 submitted by GBB to Guam EPA for the Layon  
14 permit.) In addition, EPA and Guam EPA will hold bi-weekly conference calls to discuss  
15 issues related to the Layon permit.  
16

17 In order for Guam EPA to comply with the August 27, 2009 deadline, however, the  
18 following task must be undertaken in a timely manner:

19 By no later than February 10, 2009, Guam EPA shall obtain a commitment from CNMI's  
20 Division of Environmental Quality to provide assistance to the Guam EPA Layon permit  
21 project team on a routine basis until the permit is issued. As of February 4, 2009, Guam EPA  
22 believes that it has a tentative agreement in place with CNMI's Division of Environmental  
23 Quality to provide Guam EPA with technical assistance.  
24  
25

1 **B. THE FOLLOWING LANGUAGE COULD NOT BE AGREED UPON BY THE**  
2 **PARTIES:**

3 **A. The following language was proposed by Guam EPA as a back-fall in the event**  
4 **Guam EPA could not obtain the services of a consultant from the CNMI Department of**  
5 **Environmental Quality:**

6 If Guam EPA obtains assistance from the CNMI Department of Environmental Quality  
7 (DEQ), EPA agrees to pay the airfare and standard per diem to the CNMI DEQ consultant  
8 who is to provide the necessary assistance.<sup>1</sup> In the event Guam EPA is not able to obtain a  
9 consultant from the CNMI DEQ, by February 10, 2009, Guam EPA requests that EPA provide  
10 Guam EPA with the needed consultant.

11 **Guam EPA comments.** Guam EPA has not yet received its Inter Agency Agreement  
12 federal grant funds for the fiscal year 2009 and does not anticipate receipt of these funds until  
13 April or May. Therefore, Guam EPA wants EPA to agree to make funds available for a  
14 substitute technical consultant, in the event the CNMI DEQ consultant is not available. Guam  
15 EPA receives \$100,000 in grant funds for travel for technical/support assistance for which EPA  
16 has draw-down authority. Guam EPA has proposed since early December 2008, that EPA  
17 authorize, \$50,000.00 of these funds, and \$40,000.00 of lapsed funds for technical laboratory  
18 support, for the permitting process if it becomes necessary. Guam EPA understands that if the  
19 CNMI DEQ, consultant does assist Guam EPA in the permitting process, the consultant's  
20 airfare and per diem will be paid from the above mentioned \$50,000.00. Previously, EPA  
21 indicated it would seek to provide other technical assistance to Guam EPA for the permitting,  
22 if the CNMI DEQ consultant is not available. The language proposed by Guam EPA was  
23 designed to insure there is financing to provide for such assistance. Without assurances for the

24 \_\_\_\_\_  
25 <sup>1</sup> Although EPA did not agree to the paragraph containing this language, it is Guam EPA's  
understanding that EPA has agreed to pay this airfare and per diem.

1 funding for this substitute assistance, Guam EPA is concerned that it will not have the  
2 technical assistance needed to meet the Court's timelines.

3 **B. The following language was proposed by EPA:**

4 In addition, EPA recommends that the Court require GovGuam to take the following  
5 steps:

- 6 1. If requested by the Guam EPA Administrator, GovGuam shall provide contract support  
7 to the Guam EPA Layon permit project team by no later than May 1, 2009, for:  
8 (i) preparing, organizing, and documenting a public hearing, including preparing any  
9 responsiveness summaries, associated with the Layon permit; and  
10 (ii) technical assistance associated with the permit's drafting and issuance.
- 11 2. GovGuam shall file monthly reports with the Court on the first working day of each  
12 month (from March 2, 2009 to August 3, 2009) to document Guam EPA's progress on  
13 the solid waste permitting for the new landfill at Layon. In each report, GovGuam shall  
14 advise the Court if any assistance from the Court or the receiver is required. See  
15 Docket No. 330 at 2.

16 **Guam EPA comments.** As to number 1 immediately above, Guam EPA considers a  
17 Court order unnecessary. In addition, as previously discussed, Guam EPA does not have funds  
18 to provide the contract support mentioned. Also, Guam EPA cannot obligate Government of  
19 Guam funds outside its agency budget for contractual services. This is why Guam EPA has  
20 proposed the language rejected by EPA.  
21

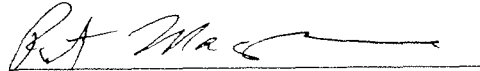
22 As to number 2 immediately above, Guam EPA currently has bi-weekly phone  
23 conferences with the Receiver and has meetings nearly every week with the Receiver's  
24 consultant TG Engineering. Given its limited resources and taking into consideration that  
25

1 Guam EPA has complied with all deadlines to date, Guam EPA believes there is no need for  
2 filing the reports suggested by EPA. Also, Guam EPA would prefer to expend its time and  
3 manpower on the permitting process, since the Court has not required these reports.

4 Respectfully submitted this 4<sup>th</sup> day of February 2009.

5  
6 OFFICE OF THE ATTORNEY GENERAL  
ALICIA G. LIMTIACO  
7 Attorney General of Guam

8  
9 By:



10 **J. PATRICK MASON**  
11 Deputy Attorney General  
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