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DISTRICT COURT OF GUAM

NOV 25 2009

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2009 NOV 27 PM 1:59 PM

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IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA)	CIVIL CASE NO. 02-00022
)	
Plaintiff,)	
)	
vs.)	GOVERNMENT OF GUAM'S SPECIAL
)	REPORT FOR NOVEMBER 25, 2009
GOVERNMENT OF GUAM,)	
)	
Defendant.)	
)	
)	

COPY

The Government of Guam submits this Special Report and the attachments hereto to inform and update the Court on the status of the municipal solid waste landfill permit for Layon ("MSWLF Permit"), which was issued Monday, November 23, 2009.

The Court's scheduling order set Friday, November 20, 2009 as the date for issuance of the final MSWLF Permit.

Office of the Prosecutor
District Court
Date: 11/25/09
Time: 4:15
Prosecutor: [Signature]
30-09-1389

1 TG-Engineers has been Project Manager and Engineer of Record for the Civil
2 Engineering work for the government's new landfill at Layon, Inarajan, Guam, since the project
3 commenced in 2005.

4 **EXHIBIT "A"** attached hereto, is a September 2, 2009 letter from the United States
5 Environmental Protection Agency ("US EPA") to the Guam Environmental Protection Agency
6 ("Guam EPA") concerning the review of August 2009 pond 2 slope stability analyses and
7 replacement information submitted by the Receiver on August 27, 2009. The last paragraph,
8 page 1, of US EPA's correspondence provides: "EPA recommends that these *appropriately*
9 *stamped documents be provided to GUAM EPA prior to issuance of the final permit*".
10 (Emphasis added)

11 Guam EPA on a regular basis reminded the contractor that the plans still needed to be
12 stamped and certified. Guam EPA in attempting to expedite work related to the Layon project
13 did not state early on that failure to complete stamping the documents was a condition precedent
14 to issuance of the MSWLF Permit.

15 On November 18, 2009, TG-Engineers submitted updated LF Leachate treatment
16 Feasibility Study dated November 9, 2009. Guam EPA immediately notified TG-Engineers to
17 provide both US EPA and Guam EPA with electronic copies of the report. On November 19,
18 2009 Guam EPA wrote TG-Engineers inquiring "By the way did Jeff Miller talked to you about
19 the stamping/signing the document? We really *need to have this done by tomorrow*". (Emphasis
20 added). Guam EPA's Crispin Bensen also spoke to Jeff Miller on November 19, 2009
21 concerning the need to sign and certify the submitted documents.

22 Tor Gudmundsen of TG-Engineers responded on November 20, 2009 stating: "The
23 problem we have with meeting the schedule for stamping everything by tomorrow is that I am
24 off-island and my stamp is locked in my office".

1 Guam EPA's staff was attempting to expedite issuance of the MSWLF Permit as
2 expeditiously as possible and, owing to the fact Mr. Gudmundsen was off-island, considered
3 listing the past due stamping and certification of documents as a condition. For this reason
4 Guam EPA didn't notify the Court Appointed Receiver and this court earlier that the MSWLF
5 Permit would not be issued on Friday, November 20, 2009.

6 On Friday, November 20, 2009, in the best interest of this project, Guam EPA's
7 Administrator determined that the MSWLF Permit could not be issued until such time as the
8 project documents were properly stamped and certified per local law.

9 Mr. Gudmundsen was able to certify and stamp the documents on Monday, November
10 23, 2009. The MSWLF Permit was issued that same day.

11 Respectfully submitted this 25th day of November, 2009.

12 OFFICE OF THE ATTORNEY GENERAL
13 **Alicia G. Lintiaco**, Attorney General

14 By:


15 **J. PATRICK MASON**
16 Deputy Attorney General

17 **VERIFICATION**

18 I, Lorilee T. Crisostomo, Administrator of the Guam Environmental Protection Agency,
19 state that I am an authorized representative for the Guam Environmental Protection Agency in
20 this matter, that I have reviewed the foregoing Special Report for November 25, 2009 and
21 declare upon penalty of perjury that the content thereof is true and correct to the best of my
22 personal knowledge, information and belief, this 25th day, of November, 2009.

23 
24 **LORILEE T. CRISOSTOMO**

EXHIBIT “A”



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

September 2, 2009

Conchita Taitano, Administrator
Air & Land Division
Guam Environmental Protection Agency
P.O. Box 22439
Barrigada, GU 96921

Via Electronic Copy—Hard Copy Not to Follow

RE: Review of August 2009 Pond 2 Slope Stability Analysis and Replacement Information
Submitted By GBB on August 27, 2009

Dear Conchita,

EPA has reviewed the recently performed critical slope analysis for the Pond 2 berm and associated replacement information transmitted on August 27, 2009 by Chris Lund to EPA and Guam EPA.

EPA appreciates that the critical slope stability analysis has now been performed, as the analysis confirmed that the 25' high section of the berm is indeed the most critical for purposes of analyzing pond slope stability (e.g., greatest potential for failure due to lowest design factor of safety). As you are aware, the pond in question is an integral component of the run-on/run-off control systems required by federal and Guam regulations. Moreover, the height and holding capacity of this pond nearly meet the federal definition of "dam," and any pond failure could adversely impact the directly adjacent landfill. Consequently the need to analyze the critical slope of the pond is understandably important.

While EPA appreciates the stability analysis performed by the applicant's contractor, we continue to be concerned that some of the information may be misconstrued by the public. In response, we have provided the attached clarification (Attachment 1) based on our understanding and review of supporting information. Please also note that the final Geotechnical Report and addenda contain engineering calculations and analyses, and thus should be stamped by the licensed professional engineer overseeing the work, in conformance with engineering licensing standards and typical state solid waste permitting requirements. EPA recommends that these appropriately stamped documents be provided to Guam EPA prior to issuance of the final permit.

EPA is mindful that the public comment period commenced on August 7, 2009, and requests that the following EPA documents concerning Pond 2 berm stability be added to Book 5 of the application presently in the repositories:

1. This letter and its attachments;
2. EPA's letter dated August 18, 2009 and its attachment (included as Attachment 3 to this letter, as a courtesy).

EPA also requests that Attachment 2 to this letter, which contains a clarification to the August 27, 2009 Addendum to the Geotechnical Report and a reference to Book 5, be added to Book 3B of the application in the repositories.

In an effort to ensure transparency during the public comment period, Guam EPA may also want to consider adding the following to Book 5 of the application:

1. Chris Lund's email dated August 14, 2009 concerning pond berm stability and attachment;
2. Chris Lund's email dated August 27, 2009 regarding "Issues concerning the stormwater retention pond" and attachments;
3. Chris Lund's email dated August 28, 2009 concerning keyway detail and material specification.

We understand Guam EPA is considering what impact, if any, the new analysis and replacement information may have on the public comment period. Public participation is a critical component of Guam's approved solid waste program, and EPA supports Guam EPA's efforts to ensure the integrity of the public participation process. As always, EPA continues to be committed to stay on the schedule provided to the Court, and will let appropriate parties know as soon as practicable if we anticipate any problems.

Please let us know if you and your staff would like to further discuss our review.

Sincerely,



Karen Ueno
EPA Ordof Team

Attachments (3)

Cc: Christopher Lichens, EPA