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DISTRICT COURT OF GUAM
TERRITORY OF GUAM

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

Civil Case No. 02-00022

ORDER RE: SPECIAL REPORT

This matter is before the court on the Receiver’s Special Report filed on February 3, 2011. *See* Docket No. 663. Therein, Gershman, Brickner & Bratton, Inc. (“Receiver”) informed the court that the Guam Environmental Protection Agency (“GEPA”) may be pursuing actions that could compromise the financing plan this court adopted to open the Layon Landfill and close the Ordot Dump. Apparently, after several collaborative meetings, GEPA has agreed to issue Guam Resource Recovery Partners (“GRRP”) a draft permit for a landfill at Guatali. However, the Receiver is concerned that GEPA may not be requiring GRRP to adhere to the same stringent permitting process required of GBB. For example, before the Receiver was issued a draft permit, it had to complete an extensive study and prepare a plan regarding the treatment of leachate coming from Layon. In addition, the Receiver was required to obtain Guam Waterworks Authority’s formal approval of the plan and any upgrades required at the Inarajan Waste Water Treatment Plant. At this time, the Receiver believes that
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1 no such study or plan has been required of GRRP.¹

2 The court is acutely aware of the financial constraints the Government of Guam is
3 struggling to address, and shares the Receiver's concern that a second landfill could jeopardize
4 the financing plan this court has approved. The opening of a second landfill may well violate
5 the General Bond Indenture pledges the Government of Guam has made, and place the Section
6 30 Revenue funds at risk. The loss of these Section 30 funds could severely hamper the
7 Government of Guam's ability to fund other much-needed projects.

8 In its Special Report, the Receiver made the following recommendations, which the
9 court adopts. Therefore, before GEPA issues a draft permit for the Guatali site:

- 10 1. The Office of the Attorney General is directed to review the process used to reach the
11 decision to issue a draft permit to GRRP. Such a review should determine if the
12 process was equivalent in its standards and requirements to those used for the process
13 used for the permit issued for the Layon Landfill. In the event that such a review
14 determines that the processes were not equivalent, the Attorney General shall advise the
15 court of the differences and any justification that may exist for the differences;
- 16 2. United States Environmental Protection Agency is ordered to review the process used to
17 reach the decision to issue a draft permit to GRRP and advise the court of any
18 discrepancies between that process and the process required of the Receiver to approve
19 the permit for the Layon Landfill.
- 20 3. The Office of the Attorney General and Bond Counsel for the Government of Guam are
21 ordered to advise the court if the issuance of a permit by GEPA for an additional
22 landfill violates Section 6.07 of the Bond Indenture or any other pledge the Government
23 made to secure the bonds needed for compliance with the Consent Decree;

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26 ¹ This is of particular concern to the court since it presides over civil case *United States*
27 *v. Guam Waterworks Authority and the Government of Guam*, Civil Case No. 02-00035, and is
28 fully aware of the challenges already facing Guam Waterworks Authority. It is quite troubling
that GEPA appears to be compromising its mission to protect human health and safeguard the
environment.

- 1 4. GEPA is ordered to explain to the court why it would permit a landfill on a site GEPA
2 itself has already determined does not meet the Resource Conservation and Recovery
3 Act (RCRA) Subtitle D requirement for landfill siting²; and
- 4 5. The Governor of Guam is ordered to provide the court with a revised Consent Decree
5 Financial Plan that will provide, in a manner acceptable to the court, additional
6 financial resources to the Solid Waste Management Division to compensate for the
7 financial losses that will occur should the Government allow an additional landfill to be
8 constructed.

9 All responsive pleadings shall be filed by March 3, 2011, at 12:00 noon. Any response
10 by the United States shall be filed by March 18, 2011, at 12 noon. These matters will then be
11 addressed at the Quarterly status hearing already scheduled for April 13, 2011, at 9:00 a.m. In
12 addition, the current GEPA administrator and the individual(s) knowledgeable about the
13 permitting process is ordered to attend the status hearing, prepared to answer the court's
14 questions.

15 **SO ORDERED.**



/s/ **Frances M. Tydingco-Gatewood**
Chief Judge
Dated: Feb 03, 2011

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26 ² The court understands that GEPA found Guatali to be an unsuitable site for a landfill.
27 In fact, the very permit GEPA issued to the Receiver for the Layon Landfill, specifically states
28 "Guatali and Malaa were eliminated from further consideration because it does not meet the
Resource Conservation and Recovery Act (RCRA) Subtitle D requirement for landfill siting."
See Docket No. 538, Exh. 3.