

Special Report of the Receiver

Pending Draft Permit for Guam Resource Recovery Partners

Civil Case No. 02-00022

United States of America v. Government of Guam
Guam Solid Waste Management Division

Prepared for:



U.S. District Court of Guam

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We have been informed by the representative of the Guam Environmental Protection Agency (GEPA) assigned to us for the Consent Decree Projects, that GEPA intends to issue a Draft Permit in the near future to Guam Resource Recovery Partners (GRRP) to construct a landfill at Guatali. We also received a copy of the attached correspondence documenting an agreement between GEPA and GRRP to issue the draft permit. This correspondence was provided to us through the media. Since the correspondence indicates that it was shared with the United States Environmental Protection Agency (USEPA), as well as several other local agencies, we made an inquiry to USEPA to determine if they had actually been provided with a copy. USEPA responded that it never received a copy of the correspondence.

While the Receiver has been aware that GEPA was evaluating the GRRP Permit Application, we have not previously engaged on these issues for two reasons. First and foremost, our primary responsibility is the construction of the Layon Landfill, and all of our time and effort has been properly focused on getting the Landfill required by the Consent Decree, completed and open in order to close the Ordot Dump as required by the Consent Decree. Second, we have been aware of the fact that the Guatali site was found to be an unacceptable site by GEPA. GEPA actually memorialized this in granting the permit to the Receiver for the Layon Landfill when describing the process through which the Layon site was selected; it said "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." Yet despite this finding by GEPA that the Guatali site is not an acceptable landfill site, it now appears that GEPA intends to issue a permit that would allow a landfill on this site.

We were also informed that GRRP has not been required to go through the stringent review process that was required for the Layon Landfill. In response to a direct question from the Receiver asking GEPA if the proposed GRRP Draft Permit was required to meet the same standards and stringent review that was required of the Receiver for GEPA to issue the permit for the Layon Landfill, the answer was "no, there are a lot of holes in it that will need to be filled in later."

The process for permitting the Layon Landfill, which took the Receiver about 18 months to complete, required extensive hydrogeologic study for the Layon site and more than 3,000 pages of design and other technical information which was extensively reviewed by GEPA, USEPA and independent experts retained by USEPA. All of this was done before a draft permit was issued. An extensive study of the treatment of leachate coming from the Layon Landfill was required and completed and the Guam Waterworks Authority formally approved the plan and the upgrades that are required at the Inarajan Waste Water Treatment Plant. Based on the attached documentation, it appears that there is no definitive plan for the treatment of

leachate from the proposed Guatali Landfill. Given the challenges facing Guam in its efforts to achieve compliance with applicable standards in the treatment of waste water, this would be a striking omission.

All of this information seems to evidence that a different standard is being applied by GEPA in its review of the GRRP permit application that appears to be detrimental to the environmental standards GEPA is required to uphold. In addition to the potential environmental damage such a course of action could cause, it will likely result in a reduction in cost for any landfill that is actually constructed with less stringent environmental protections and thus create a competitive disadvantage for the Layon Landfill which was held to a higher and more costly standard.

An essential part of the Consent Decree is the financial plan required by Paragraph 10. This financing plan is required to “secure funds for the capital and operating costs necessary to fully implement those actions identified in Paragraphs 8 and 9” of the Consent Decree.

Funds were secured for the capital costs of the Consent Decree projects through a difficult process that required several Orders from the Court and that finally resulted in the issuance of Series 2009 (A) Limited Obligation Section 30 Bonds by the Government of Guam. It is contemplated by the bond indenture that the funding to repay the bonds will be provided to the Government of Guam from the fees of the Solid Waste Management Division (SWMD). It is further contemplated by the bond indenture that operating funds and the necessary funds to pay for the long-term maintenance of the Layon Landfill and its equipment will be paid from the operating revenues of the SWMD. It should be noted that sufficient operating revenue and revenue to fund the long-term maintenance of the Landfill, as well as maintenance for 30 years of post closure care are not only required by sound management principles, they are requirements of both Guam and federal law. If Guam allows the construction of an additional landfill, particularly a sub-standard landfill, it will likely result in a short-term, lower cost per ton and the diversion of some portion of the waste to such a facility. The diversion of just 20 percent of the waste to such a facility would deprive the SWMD of \$3.2 to \$3.9 million in estimated annual revenue. Such a revenue loss could not be addressed by increasing rates since increased rates would lead to more waste diversion and even greater losses of revenue.

Section 6.07 of the General Bond Indenture, issued by the Government of Guam in connection with the 2009 (A) Limited Obligation Section 30 Bonds, pledges that the Government of Guam will not “at any time voluntarily do, suffer or permit any act or thing the effect of which would be to hinder, delay or imperil either the payment of the indebtedness evidenced by any of the Bonds or the observance of any of the covenants herein contained.” This is a promise made by the Government of Guam to its bond holders. It appears to us that the permit for GRRP currently being contemplated by GEPA, would violate this bond covenant.

Should the Government of Guam take an action that undermines the ability to repay the bonds from the revenues of the SWMD, it would suffer a loss of Section 30 Revenue sufficient to pay the bond holders, seriously exacerbating the very serious financial conditions the Government

is already struggling to address. In other words, the bondholders would be paid at the direct expense of the Government of Guam with no SWMD revenue to offset the loss of Section 30 Revenue. In addition, the SWMD's ability to set aside operating revenue to pay for the long-term maintenance of the equipment and maintenance of the Layon Landfill itself, as required by Guam and Federal Law, would be impaired. The ability of the SWMD and the Government of Guam to pay for the post-closure care of the Ordot Dump would also be impaired. Given the Government of Guam's long-standing financial problems, it hardly seems credible that the Government has any other means of repairing the damage such an action would cause the financing plan required by the Consent Decree.

Accordingly, we would ask that the Court require the following steps be taken by the Government of Guam prior to the issuance of the draft permit for the Guatali site:

1. The Office of the Attorney General should be directed to review the process used to reach the decision to issue a draft permit to GRRP. Such a review should determine if the process was equivalent in its standards and requirements to those used in the process for the permit issued for the Layon Landfill. In the event that such a review determines that the processes were not equivalent, the Attorney General should advise the Court of the differences and any justification that may exist for the differences.
2. USEPA should also be directed to review the process used to reach the decision to issue a draft permit to GRRP and advise the Court of any discrepancies between that process and the process required of the Receiver to approve the permit for the Layon Landfill.
3. The Office of the Attorney General and Bond Counsel for the Government of Guam should be directed to advise the Court if the issuance of a permit by GEPA for an additional landfill violates Section 6.07 of the Bond Indenture or any other pledge the Government made to secure the bonds needed for compliance with the Consent Decree.
4. GEPA should be directed to explain to the Court why it would permit a landfill on a site GEPA itself has determined not to meet the Resource Conservation and Recovery Act (RCRA) Subtitle D requirement for landfill siting.
5. The Governor of Guam should be directed to provide the Court with a revised Consent Decree Financial Plan that will provide, in a manner acceptable to the Court, additional financial resources to the SWMD to compensate for the financial losses that will occur should the Government allow an additional landfill to be constructed.

We thank the Court for its consideration of our recommendations in this matter.