

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX A
([Proposed] Order re Stipulated Order Projects)

1 IGNACIA S. MORENO
Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice
3 ROBERT D. MULLANEY
Environmental Enforcement Section
4 Environment & Natural Resources Division
301 Howard Street, Suite 1050
5 San Francisco, CA 94105
Tel: (415) 744-6491
6 Fax: (415) 744-6476

7 MIKEL W. SCHWAB
Assistant U.S. Attorney
8 Suite 500, Sirena Plaza
9 108 Hernan Cortez
Hagatna, Guam 96910
10 Tel: (671) 472-7332
Fax: (671) 472-7215

11 Attorneys for the United States of America
12

13 UNITED STATES DISTRICT COURT
14 TERRITORY OF GUAM
15

| | | |
|--------------------------------|---|-------------------------|
| 16 UNITED STATES OF AMERICA, |) | Civil Case No. 02-00035 |
| |) | |
| 17 Plaintiff, |) | [PROPOSED] ORDER RE |
| |) | STIPULATED ORDER |
| 18 v. |) | PROJECTS |
| |) | |
| 19 GUAM WATERWORKS AUTHORITY |) | |
| 20 and the GOVERNMENT OF GUAM, |) | |
| |) | |
| 21 Defendants. |) | |
| <hr/> | | |

1 In an Order dated November 18, 2010 (Court Docket No. (“DN”) 136), this Court
2 directed plaintiff United States and defendants Guam Waterworks Authority (“GWA”) and the
3 Government of Guam to work together to draft a proposed plan to require GWA to complete the
4 projects outstanding from the Stipulated Order for Preliminary Relief (“Stipulated Order”), as
5 amended by stipulation and entered by the Court on October 25, 2006. DN 40; DN 41. The
6 parties were encouraged to work collaboratively to set workable time lines for projects. The
7 Court ordered the parties to file a proposed plan by December 15, 2010. If the parties were
8 unable to reach an agreement on a proposed plan, the parties were directed to file separate briefs
9 setting forth the projects, a scope of work for each project, and a schedule to complete each
10 project. DN 136.

11 Pursuant to the Court’s Order, the parties attempted to negotiate a proposed plan to
12 submit to the Court. After these attempts were unsuccessful, the United States and GWA
13 submitted separate briefs to the Court.

14 Therefore, having conducted quarterly status hearing in this case for almost one year;
15 having reviewed the status reports and briefs filed by the parties; in light of GWA’s lengthy
16 history of violations and ongoing violations of the Stipulated Order, the Clean Water Act,
17 33 U.S.C. §§ 1251-1387 (the “CWA”), and the Safe Drinking Water Act, 42 U.S.C. §§ 300f -
18 300j-26 (the “SDWA”); and to ensure that GWA completes the projects required by the
19 Stipulated Order on an expedited basis;

20 **IT IS HEREBY ORDERED** as follows:
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. DEFINITIONS 3

II. COMPLIANCE REQUIREMENTS 4

III. REPORTING REQUIREMENTS 23

IV. STIPULATED PENALTIES 27

V. FORCE MAJEURE 30

VI. DISPUTE RESOLUTION 31

VII. NOTICES 33

VIII. EFFECTIVE DATE 35

IX. RETENTION OF JURISDICTION 35

X. APPENDIX 35

1 I. DEFINITIONS

2 1. Terms used in this Order that are defined in the CWA, SDWA, or in regulations
3 promulgated pursuant to the CWA or SDWA, shall have the meanings assigned to them in those
4 statutes or regulations, unless otherwise provided in this Order. Whenever the terms set forth
5 below are used in this Order, the following definitions shall apply:

6 a. “Biosolids” shall mean non-hazardous sewage sludge, as defined in 40
7 C.F.R. § 503.9. Sewage sludge that is hazardous, as defined in 40 C.F.R. § 261.3, must be
8 disposed of in accordance with the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 -
9 6992k (also known as the Resource Conservation and Recovery Act or RCRA).

10 b. “Complaint” shall mean the Complaint filed by the United States in this
11 action;

12 c. “Day” shall mean a calendar day unless expressly stated to be a business
13 day. In computing any period of time under this Order, where the last day would fall on a
14 Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next
15 business day;

16 d. “Defendants” shall mean GWA and the Government of Guam;

17 e. “EPA” shall mean the United States Environmental Protection Agency
18 and any of its successor departments or agencies;

19 f. “Effective Date” shall have the definition provided in Section VIII.

20 g. “GWA” shall mean Guam Waterworks Authority.

21 h. “Independent Professional Engineer” shall mean a licensed professional
22 engineer who has not been employed by GWA in the past three years.

23 i. “Paragraph” shall mean a portion of this Order identified by an Arabic
24 numeral;

25 j. “Parties” shall mean the United States, GWA, and the Government of
26 Guam;
27

1 k. "Section" shall mean a portion of this Order identified by a Roman
2 numeral;

3 l. "SSO" or "Sanitary Sewer Overflow" shall mean an overflow, spill,
4 diversion, or release of wastewater from or caused by the GWA's Wastewater Collection
5 System, except that the term "SSO" does not include wastewater backups into buildings caused
6 solely by a blockage or other malfunction in a building lateral that is privately owned.

7 m. "Stipulated Order" shall mean the Stipulated Order for Preliminary Relief
8 entered by the Court on June 5, 2003, as amended by stipulation and approved and filed by the
9 Court on October 25, 2006.

10 n. "United States" shall mean the United States of America, acting on behalf
11 of EPA.

12 o. "Wastewater Collection System" shall mean all parts of the wastewater
13 collection system owned or operated by GWA that are intended to convey domestic, commercial
14 or industrial wastewater to GWA's wastewater treatment plants, including, without limitation,
15 sewers, pipes, pump stations, lift stations, manholes or maintenance holes, force mains, and
16 appurtenances associated with each of the above.

17 II. COMPLIANCE REQUIREMENTS

18 A. Wastewater Projects

19 2. Northern District WWTP Interim Primary Treatment Upgrades. By December
20 31, 2011, GWA shall complete construction of interim primary treatment improvements at the
21 Northern District WWTP and achieve consistent compliance with the interim effluent limits set
22 forth in subparagraph (1) of Paragraph 3.

23 3. Interim Effluent Limits for the Northern District WWTP.

24 (1) By no later than December 31, 2011, and until GWA completes the final compliance
25 milestone set pursuant to Paragraph 4, GWA shall comply with the following
26 requirements and interim effluent limits for flow rate, Biochemical Oxygen Demand (5
27
28

day) (“BOD5”), and Total Suspended Solids (“TSS”) for wastewater discharges from the Northern District WWTP.

| Northern District WWTP | | | | | |
|-----------------------------------|-----------------|---------------|---------|-------------------------|-------------|
| Interim Discharge Limitations | | | | Monitoring Requirements | |
| Parameter | Average Monthly | Maximum Daily | Units | Minimum Frequency | Sample Type |
| Flow | 6 | report | mgd | continuous | |
| Biochemical Oxygen Demand (5 day) | 85 | 170 | mg/L | daily | composite |
| | 4,256 | 8,512 | lbs/day | | |
| Total Suspended Solids | 50 | 100 | mg/L | daily | composite |
| | 2,504 | 5,008 | lbs/day | | |

a. After three months of continuous compliance with the average monthly limits in subparagraph (1), GWA may request from EPA the limits in the table below. GWA shall submit in its request to EPA, for review and approval in accordance with Paragraph 26 of this Order, (i) a report signed by an Independent Professional Engineer certifying that the Northern District WWTP has the capacity to treat an average monthly flow of 7.5 million gallons per day (“mgd”) in compliance with the following BOD5 and TSS limits, and (ii) documentation that shows at least three months of continuous compliance with the average monthly limits above in subparagraph (1).

| Northern District WWTP | | | | | |
|-------------------------------|-----------------|---------------|-------|-------------------------|-------------|
| Interim Discharge Limitations | | | | Monitoring Requirements | |
| Parameter | Average Monthly | Maximum Daily | Units | Minimum Frequency | Sample Type |
| Flow | 7.5 | report | mgd | continuous | |

| | | | | | |
|-----------------------------------|-------------|---------------|-----------------|-------|-----------|
| Biochemical Oxygen Demand (5 day) | 85 5,320 | 170 10,640 | mg/L lbs/day | daily | composite |
| Total Suspended Solids | 50 3,129 | 100 6,258 | mg/L lbs/day | daily | composite |

b. After three months of continuous compliance with the approved average monthly limits set forth in subparagraph (1)a. and with average monthly flows of at least 6.5 mgd, GWA may request from EPA the limits in the table below. GWA shall submit in its request to EPA, for review and approval in accordance with Paragraph 26 of this Order, (i) a report signed by an Independent Professional Engineer certifying that the Northern District WWTP has the capacity to treat an average monthly flow of 9 mgd in compliance with the following BOD5 and TSS limits, and (ii) documentation that shows at least three months of continuous compliance with the average monthly limits above in subparagraph (1)a.

| Northern District WWTP | | | | | |
|-----------------------------------|-----------------|---------------|-----------------|-------------------------|-------------|
| Interim Discharge Limitations | | | | Monitoring Requirements | |
| Parameter | Average Monthly | Maximum Daily | Units | Minimum Frequency | Sample Type |
| Flow | 9 | report | mgd | continuous | |
| Biochemical Oxygen Demand (5 day) | 85 6,834 | 170 12,768 | mg/L lbs/day | daily | composite |
| Total Suspended Solids | 50 3,755 | 100 7,510 | mg/L lbs/day | daily | composite |

(2) Until GWA completes the final compliance milestone set pursuant to Paragraph 4 for the Northern District WWTP, GWA shall comply with the requirements and interim effluent

limits for flow rate, TSS, and BOD5 set forth in subparagraph (1) for the Northern District WWTP, notwithstanding any final effluent limitations for flow rate, TSS and BOD5 set forth in GWA's applicable NPDES permit for the Northern District WWTP; provided, however, that this Order shall not affect the force or effect of any other effluent limitations, or monitoring and reporting requirements, or any other terms and conditions of its applicable NPDES permit.

(3) Once GWA completes the final compliance milestone set pursuant to Paragraph 4, GWA shall comply with the following requirements and interim effluent limits for flow rate, TSS, and BOD5 for wastewater discharges from the Northern District WWTP.

| Northern District WWTP | | | | | |
|-----------------------------------|-----------------|---------------|---------|-------------------------|-------------|
| Interim Discharge Limitations | | | | Monitoring Requirements | |
| Parameter | Average Monthly | Maximum Daily | Units | Minimum Frequency | Sample Type |
| Flow | 9 | report | MGD | continuous | |
| Biochemical Oxygen Demand (5 day) | 85 | 170 | mg/L | daily | composite |
| | 6,384 | 12,768 | lbs/day | | |
| Total Suspended Solids | 50 | 100 | mg/L | daily | composite |
| | 3,755 | 7,510 | lbs/day | | |

a. After three months of continuous compliance with the approved average monthly limits set forth in subparagraph (1)b. and with average monthly flows of at least 7.5 mgd, GWA may request from EPA the limits in the table below. GWA shall submit in its request to EPA, for review and approval in accordance with Paragraph 26 of this Order, (i) a report signed by an Independent Professional Engineer certifying that the Northern District WWTP has the capacity to treat an average monthly flow of 12 mgd in compliance with the following BOD5 and TSS limits, and (ii) documentation that shows at least three months of continuous compliance with

1 the average monthly limits above in subparagraph (1)b.

| Northern District WWTP | | | | | |
|-----------------------------------|-----------------|---------------|---------|-------------------------|-------------|
| Interim Discharge Limitations | | | | Monitoring Requirements | |
| Parameter | Average Monthly | Maximum Daily | Units | Minimum Frequency | Sample Type |
| Flow | 12 | report | mgd | continuous | |
| Biochemical Oxygen Demand (5 day) | 85 | 170 | mg/L | daily | composite |
| | 8,512 | 17,024 | lbs/day | | |
| Total Suspended Solids | 50 | 100 | mg/L | daily | composite |
| | 5,007 | 10,014 | lbs/day | | |

12 (4) After GWA completes the final compliance milestone set pursuant to Paragraph 4, GWA
13 shall comply with the requirements and interim effluent limits for flow rate, TSS, and
14 BOD5 set forth in subparagraph (3) for the Northern District WWTP, notwithstanding
15 any final effluent limitations for flow rate, TSS, and BOD5 set forth in GWA's
16 applicable NPDES permit for the Northern District WWTP; provided, however, that this
17 Order shall not affect the force or effect of any other effluent limitations, or monitoring
18 and reporting requirements, or any other terms and conditions of its applicable NPDES
19 permit.

20 (5) By 180 Days after the Effective Date, GWA shall commence effluent monitoring for
21 wastewater discharges from the Northern District WWTP. For one year, GWA shall
22 monitor the effluent each calendar-year quarter (four samples total) for the parameters
23 listed in Appendix A, including conventional and nonconventional compounds, metals,
24 cyanide, phenols, organic compounds, and whole effluent toxicity. GWA shall submit
25 the results to EPA in the Quarterly Report.

26 4. Northern District WWTP Primary Treatment Upgrades. By December 31, 2013,
27 GWA shall complete permanent primary treatment improvements at the Northern District
28

1 WWTP, achieve consistent compliance with the interim effluent limits set forth in subparagraph
2 (3) of Paragraph 3, and comply with sludge and biosolids requirements in 40 C.F.R. Part 503.

3 GWA shall meet the following interim compliance milestones:

- 4 (1) By June 30, 2011, GWA shall provide to EPA, for review and comment, a proposed
5 scope of work and schedule, describing permanent upgrades of treatment facilities and
6 solids handling to restore full primary treatment capacity of 12 mgd average monthly
7 flow at the Northern District WWTP.
- 8 (2) By September 30, 2011, GWA shall execute a design contract and issue a notice to
9 proceed for the design of all primary treatment and solids handling improvements
10 required to provide 12 mgd average monthly flow treatment capacity, comply with its
11 primary treatment requirements for wastewater discharges from the Northern District
12 WWTP, and comply with 40 C.F.R. Part 503.
- 13 (3) GWA shall provide to EPA, for review and comment, thirty (30) percent and ninety (90)
14 percent designs.
- 15 (4) By September 30, 2012, GWA shall execute a construction contract and issue a notice to
16 proceed with construction of the primary treatment and solids handling improvements
17 required to provide 12 mgd average monthly flow treatment capacity, comply with its
18 primary treatment requirements for wastewater discharges from the Northern District
19 WWTP, and comply with 40 C.F.R. Part 503.
- 20 (5) By September 30, 2013, GWA shall submit to EPA an operation and maintenance
21 (“O&M”) plan for primary treatment operations at the Northern District WWTP. The
22 plan shall include O&M procedures for all major systems of the WWTP from the
23 headworks to the outfall and sludge processing facilities.

24
25 5. Northern District WWTP Sludge and Biosolids Management.

- 26 (1) By June 30, 2011, GWA shall submit to EPA, for review and approval in accordance
27 with Paragraph 26 of this Order, a proposed Sludge Management Plan for solids
28

1 produced at the Northern District WWTP. The Plan shall include a schedule for full
2 implementation of the Plan no later than December 31, 2011, and shall include at a
3 minimum: (1) estimates of the average and maximum daily solids produced at the
4 WWTP under current conditions and conditions projected to exist when primary
5 treatment improvements are completed; (2) whether the solids produced will be stabilized
6 at the Northern District WWTP or transported off-site for stabilization; (3) the maximum
7 capacity that GWA has to transport solids for treatment off-site; (4) if solids will be
8 treated off-site, address the following issues: (i) how such solids will be stored prior to
9 transport; (ii) where treatment will be done; (iii) how much treatment capacity is
10 available; and (iv) how GWA will dispose of solids; and (5) if solids will be treated
11 on-site, address the following issues: (i) how much treatment capacity is available;
12 (ii) what new facilities or upgrades to existing facilities will be required; (iii) when and
13 how these new facilities or upgrades will be completed; and (iv) how GWA will dispose
14 of solids. GWA shall implement the Sludge Management Plan as approved.

15 (2) In each Quarterly Report submitted to EPA pursuant to Paragraph 32, GWA shall report
16 sludge management activities, including, but not limited to, the amount of solids
17 produced and/or applied to drying beds, solids transported off-site, and solids treated on-
18 site.

19 (3) By December 31, 2011, GWA shall repair or replace the solids handling facilities at the
20 Northern District WWTP, ensure that solids generated by the WWTP are fully stabilized
21 and dewatered at the Northern District WWTP, and comply with the sludge and biosolids
22 requirements in 40 C.F.R. Part 503.

23 6. Agana WWTP Primary Treatment Upgrades. By June 30, 2012, GWA shall
24 complete primary treatment improvements at the Agana WWTP, achieve consistent compliance
25 with the WWTP's NPDES permit, and comply with the sludge and biosolids requirements in 40
26 C.F.R. Part 503. GWA shall complete the following improvements and any additional WWTP
27
28

1 repairs, rehabilitation or improvements required to achieve consistent compliance.

2 (1) By March 30, 2011, GWA shall submit to EPA, for review and comment, a proposed
3 scope of work and schedule, describing all improvements required to achieve consistent
4 compliance. The scope of work and schedule shall include, but not be limited to,
5 improvements to septage handling, grit and FOG removal, and solids handling, as set
6 forth below.

7 (2) By June 30, 2012, GWA shall construct and have in service a septage handling facility
8 located at the Agana WWTP or another location to be determined by GWA. GWA shall
9 meet the following interim compliance milestones:

10 a. by June 30, 2011, GWA shall execute a design contract and issue a notice to
11 proceed with design; and

12 b. by December 31, 2011, GWA shall execute a construction contract and issue a
13 notice to proceed with construction.

14 (3) By June 30, 2012, GWA shall construct and have in service grit and FOG removal
15 systems at either the Agana WWTP or the Agana SPS. GWA shall meet the following
16 interim compliance milestones:

17 a. by June 30, 2011, GWA shall execute a design contract and issue a notice to
18 proceed with design; and

19 b. by December 31, 2011, GWA shall execute a construction contract and issue a
20 notice to proceed with construction.

21 (4) By June 30, 2012, GWA shall repair the solids handling facilities at the Agana WWTP,
22 ensure that solids generated by the WWTP are fully stabilized and dewatered at the
23 Agana WWTP, and comply with the sludge and biosolids requirements in 40 C.F.R. Part
24 503.

25 (5) By March 31, 2012, GWA shall submit to EPA an O&M plan for primary treatment
26 operations at the Agana WWTP. The plan shall include O&M procedures for all major
27
28

1 systems of the WWTP from the headworks to the outfall and sludge processing facilities.

2 (6) By 180 Days after the Effective Date, GWA shall commence effluent monitoring for
3 wastewater discharges from the Agana WWTP. For one year, GWA shall monitor the
4 effluent each calendar-year quarter (four samples total) for the parameters listed in
5 Appendix A, including conventional and nonconventional compounds, metals, cyanide,
6 phenols, organic compounds, and whole effluent toxicity. GWA shall submit the results
7 to EPA in the Quarterly Report.

8 7. Agana WWTP Effluent Backsurge. By June 30, 2012, GWA shall prevent the
9 backsurge of effluent flow from the Agana WWTP's outfall. By June 30, 2011, GWA shall
10 submit to EPA, for review and comment, a proposed plan and schedule to address the effluent
11 backsurge issues. Until the effluent backsurge is addressed, GWA shall continuously monitor
12 flows discharged through the old outfall, as required by the WWTP's NPDES permit.

13 8. Agat-Santa Rita WWTP Interim Measures. GWA shall complete the following
14 interim measures at the Agat-Santa Rita WWTP:

15 (1) By 180 Days after the Effective Date, GWA shall repair or replace the Agat-Santa Rita
16 WWTP's influent flow meter, calibrate the flow meter, report to EPA on the actions
17 taken to improve the flow meter, and ensure that the repaired or replaced flow meter
18 accurately measures flow as required by the NPDES permit for the Agat-Santa Rita
19 WWTP.

20 (2) By 180 Days after the Effective Date, GWA shall submit to EPA, for review and
21 approval in accordance with Paragraph 26 of this Order, a proposed Interim Disinfection
22 Plan for the Agat-Santa Rita WWTP to disinfect and dechlorinate wastewater flows prior
23 to discharge.

24 (3) Within 180 Days after EPA's approval of the Interim Disinfection Plan, GWA shall
25 implement the plan and comply with the bacteria and chlorine residual effluent
26 limitations of its NPDES permit.
27
28

1 (4) By one year after the Effective Date, GWA shall submit to EPA, for review and approval
2 in accordance with Paragraph 26 of this Order, a plan and schedule to repair or replace
3 the solids handling facilities at the Agat-Santa Rita WWTP, ensure that solids generated
4 by the WWTP are fully stabilized and dewatered at the Agat-Santa Rita WWTP, and
5 comply with the sludge and biosolids requirements in 40 C.F.R. Part 503. The plan shall
6 include, but not be limited to, anaerobic stabilization and dewatering by belt press, and
7 shall require that repair or replacement is completed no later than one year after EPA's
8 approval. Upon EPA's approval, GWA shall implement the plan in accordance with the
9 approved schedule.

10 (5) Within 60 Days after the Effective Date, GWA shall submit to EPA a list of each time
11 that GWA bypassed wastewater from the Agat-Santa Rita WWTP and discharged
12 without treatment in the last three calendar years (2008, 2009, 2010), including the date
13 and volume of wastewater bypassed. Within 180 Days after the Effective Date, GWA
14 shall implement measures to mitigate the impact of wastewater that is bypassed from the
15 WWTP and discharged without treatment. Within one year after the Effective Date,
16 GWA shall achieve and maintain a 75 percent reduction in the frequency and volume of
17 wastewater that is bypassed from the WWTP and discharged without treatment. GWA
18 shall measure the percent reduction by comparing the total number and volume of
19 wastewater bypass events in the prior year with the average number and volume of
20 wastewater bypass events in the last three calendar years (2008, 2009, 2010).

21
22 9. Agat-Santa Rita Wastewater Systems Evaluation. By December 31, 2012, GWA
23 shall complete an evaluation of the Agat-Santa Rita WWTP, collection system, and/or
24 conveyance system, submit a report to EPA documenting the findings of the evaluation, and
25 submit to EPA, for review and approval in accordance with Paragraph 26 of this Order, a plan
26 with a schedule to implement any proposed improvements to the Agat-Santa Rita WWTP,
27 collection system, and/or conveyance system. GWA shall evaluate upgrades to the Agat-Santa
28

1 Rita WWTP, collection system, and/or conveyance system that will achieve compliance with the
2 WWTP's NPDES permit and eliminate bypasses at the WWTP. The evaluation shall take into
3 account any relevant results from infiltration/inflow analyses and sanitary sewer evaluation
4 surveys, and the wastewater impacts, flow volumes, and pollutant loadings associated with the
5 anticipated population growth through year 2035. The evaluation shall examine options for
6 inflow and infiltration control, conveyance of peak flows, storage of peak flows, and treatment
7 plant capacity. The report shall describe the upgrades evaluated, methodology and criteria used,
8 and findings of the evaluation. GWA shall submit a plan that identifies improvements that GWA
9 will implement to achieve compliance with the WWTP's NPDES permit and eliminate bypasses
10 at the WWTP and a schedule for completing the improvements.

11 10. Agat-Santa Rita Wastewater Systems Upgrade. By December 31, 2015, GWA
12 shall complete the improvements identified in the approved plan required by Paragraph 9,
13 achieve consistent compliance with the Agat-Santa Rita WWTP's NPDES permit, and eliminate
14 bypasses at the WWTP. GWA shall also meet the following interim compliance milestones.

- 15 (1) By June 30, 2013, GWA shall execute a design contract and issue a notice to proceed
16 with the design.
17
18 (3) By June 30, 2014, GWA shall execute a construction contract and issue a notice to
19 proceed with construction.

20 11. Baza Gardens WWTP Interim Measures. GWA shall complete the following
21 interim measures at the Baza Gardens WWTP:

- 22 (1) By 180 Days after the Effective Date, GWA shall submit to EPA a report, prepared by a
23 qualified independent engineering consultant, assessing the structural integrity of the
24 Baza Gardens WWTP, and identifying critical repairs required to prevent the failure of
25 the treatment units or ancillary structures needed to allow operator access to the Baza
26 Gardens WWTP during the next ten years.
27 (2) By 540 Days after the Effective Date, GWA shall complete the repair of any structural
28

1 deficiencies that would prevent continued operation of the Baza Gardens WWTP for an
2 additional 10 years or until such time that the Baza Gardens WWTP has been
3 rehabilitated or replaced and placed in full operation.

4 (3) By 180 Days after the Effective Date, GWA shall submit to EPA, for review and
5 approval in accordance with Paragraph 26 of this Order, a plan and schedule to repair or
6 replace the solids handling facilities at the Baza Gardens WWTP, ensure that solids
7 generated by the WWTP are fully stabilized and dewatered at the Baza Gardens WWTP,
8 and comply with the sludge and biosolids requirements in 40 C.F.R. Part 503. The plan
9 shall include, but not be limited to, anaerobic stabilization and dewatering by belt press,
10 and shall require that repair or replacement is completed no later than one year after
11 EPA's approval. Upon EPA's approval, GWA shall implement the plan in accordance
12 with the approved schedule.

13 12. Baza Gardens Wastewater Systems Evaluation. By December 31, 2013, GWA
14 shall complete an evaluation of the Baza Gardens WWTP, collection system, and/or conveyance
15 system, submit a report to EPA documenting the findings of the evaluation, and submit to EPA,
16 for review and approval in accordance with Paragraph 26 of this Order, a plan with a schedule to
17 implement any proposed improvements to the Baza Gardens WWTP, collection system, and/or
18 conveyance system. GWA shall evaluate upgrades to the Baza Gardens WWTP, collection
19 system, and/or conveyance system that will achieve compliance with the WWTP's NPDES
20 permit. The evaluation shall take into account any relevant results from infiltration/inflow
21 analyses and sanitary sewer evaluation surveys; the wastewater impacts, flow volumes, and
22 pollutant loadings associated with the anticipated population growth through year 2035; and the
23 effluent disposal options available to GWA. The report shall describe the upgrades evaluated,
24 methodology and criteria used, and findings of the evaluation. GWA shall submit a plan that
25 identifies improvements to achieve compliance with the WWTP's NPDES permit, including
26 inflow/infiltration control, conveyance of peak flows, storage of peak flows, and treatment plant
27
28

1 capacity.

2 13. Baza Gardens Wastewater Systems Upgrade. By December 31, 2016, GWA shall
3 complete the improvements identified in the approved plan required by Paragraph 12 and
4 achieve consistent compliance with the Baza Gardens WWTP's NPDES permit. GWA shall also
5 meet the following interim compliance milestones.

6 (1) By June 30, 2014, GWA shall execute a design contract and issue a notice to proceed
7 with the design.

8 (2) By June 30, 2015, GWA shall execute a construction contract and issue a notice to
9 proceed with construction.

10 14. Umatac-Merizo Wastewater Systems Evaluation. By December 31, 2013, GWA
11 shall complete an evaluation of the Umatac-Merizo WWTP, collection system, and/or
12 conveyance system, submit a report to EPA documenting the findings of the evaluation, and
13 submit to EPA, for review and approval in accordance with Paragraph 26 of this Order, a plan
14 with a schedule to implement any proposed improvements to the Umatac-Merizo WWTP,
15 collection system, and/or conveyance system. GWA shall evaluate upgrades to the Umatac-
16 Merizo WWTP, collection system, and/or conveyance system that will achieve compliance with
17 the WWTP's NPDES permit. The evaluation shall take into account any relevant results from
18 infiltration/inflow analyses and sanitary sewer evaluation surveys, and the wastewater impacts,
19 flow volumes, and pollutant loadings associated with the anticipated population growth through
20 year 2035; and the effluent disposal options available to GWA. The report shall describe the
21 upgrades evaluated, methodology and criteria used, and findings of the evaluation. GWA shall
22 submit a plan that identifies improvements to achieve compliance with the WWTP's NPDES
23 permit, including inflow/infiltration control, conveyance of peak flows, storage of peak flows,
24 and treatment plant capacity.

26 15. Umatac-Merizo Wastewater Systems Upgrade. By December 31, 2016, GWA
27 shall complete the improvements identified in the approved plan required by Paragraph 14 and
28

1 achieve consistent compliance with the Umatac-Merizo WWTP's NPDES permit. GWA shall
2 also meet the following interim compliance milestones.

3 (1) By June 30, 2014, GWA shall execute a design contract and issue a notice to proceed
4 with the design.

5 (2) By June 30, 2015, GWA shall execute a construction contract and issue a notice to
6 proceed with construction.

7 16. Sewer Hook-up Program. GWA shall maintain its sewer hook-up program and
8 initiate new efforts to connect residents to the GWA sewer system, including the following
9 measures:

- 10 (1) continue the existing sewer hook-up revolving fund program for residents currently
11 required to connect to the Wastewater Collection System;
12 (2) provide adequate funding to expand and ensure the viability of the existing program; and
13 (3) at EPA's request, provide a report describing the number of new connections and the
14 balance of the program's revolving fund.

15 B. Public Water System Planning and Improved O&M

16 17. Upgrade Groundwater Chlorination System Project. By 540 Days after
17 the Effective Date, GWA shall complete construction of the Upgrade of Groundwater
18 Chlorination System Project (U.S. EPA Grant XP-97931501-2).

19 18. Chlorine Residual Monitors and Alarms and/or Automatic Shutoff of Wells. By
20 180 Days after the Effective Date, GWA shall submit a proposed plan to EPA, for review and
21 approval in accordance with Paragraph 26 of this Order, detailing how GWA will design,
22 acquire, install, maintain, and operate at all wells both: (i) continuous chlorine residual monitors
23 and (ii) alarms and/or automatic shutoff systems when there is a loss of chlorine residual. The
24 chlorination dosage levels and the chlorine residual analyzers and monitoring shall meet, at a
25 minimum, all requirements under the new Groundwater Rule ("GWR"), 40 C.F.R. §§ 141.400 -
26 141.405, including the treatment technique requirements, 40 C.F.R. § 141.403, and, in addition
27
28

1 to the reporting requirements in 40 C.F.R. § 141.31, the reporting and recordkeeping
2 requirements in 40 C.F.R. § 141.405. Upon EPA's approval of the plan, GWA shall install
3 continuous chlorine residual monitors and alarms and/or automatic shutoff systems at all existing
4 wells in accordance with the following schedule:

- 5 (1) within 540 Days after the Effective Date at high risk wells located near sewage pumping
6 stations, ponding basins, injection wells, or other known possible sources of fecal
7 contamination, or with a history of regular fecal contamination, including at a minimum
8 the following wells: A-5, A-6, A-23, A-25, A-29, A30, A-31, A-32, Y-3, Y-9; Y-15,
9 F-13, D-7, D-19, and MJ-1;
- 10 (2) within two years after the Effective Date at moderate risk wells with any history of fecal
11 contamination, including at a minimum the following wells: D-4, D-27, F-11, A-2, A-3,
12 A-7, A-10, A-12, A-14, A-15, M-1, M-5, M-17A, EX-11, D-13, D-17, D-21, D-22, Y-2,
13 F-2, and F-10; and
- 14 (3) within three years after the Effective Date at all other wells with no history of fecal
15 contamination.

16 GWA shall operate the analyzers and report to EPA and Guam EPA as required under the GWR,
17 40 C.F.R. §§ 141.31, 141.405.

18
19 19. Water Meters. GWA shall ensure comprehensive water metering in the Public
20 Water Systems by implementing the following:

- 21 (1) By 180 Days after the Effective Date, GWA shall submit to EPA a detailed plan and
22 schedule to ensure that each known connection to its water supply system has an accurate
23 and accessible water meter. Information on each meter shall be entered into GWA's GIS
24 and into an asset inventory system. Pursuant to the plan, GWA shall ensure that all
25 known connections to the water system are metered by two years after the Effective Date.
- 26
27 (2) By 180 Days after the Effective Date, GWA shall submit to EPA a detailed plan and
28

1 schedule to develop and implement a water meter repair and maintenance program.

2 C. Public Water System Capital Improvement Program Projects

3 20. Construction and Inspection of Ugum Water Treatment Plant. By 180 Days after
4 the Effective Date, GWA shall complete construction of the Ugum Water Treatment Plant,
5 including conversion of the plant to a membrane filtration system, replacement of the control
6 systems, and installation of a SCADA system, as well as other improvements to achieve
7 consistent compliance with SDWA requirements, performance standards, and the plant's NPDES
8 permit. By at least 60 Days before the scheduled completion of construction of the Ugum Water
9 Treatment Plant, GWA shall submit to EPA, for review and approval in accordance with
10 Paragraph 26 of this Order, the name and qualifications of an independent contractor with
11 experience in water treatment plant design, construction and operation who is qualified to inspect
12 all processes, equipment, and facilities at the plant, including raw water intake, pumping, all
13 treatment process including, but not limited to, chemical addition, membrane filtration,
14 disinfection, and all liquid and solid waste stream treatment, recycle and disposal processes,
15 equipment, and facilities. After completion of construction and prior to startup, GWA's
16 independent contractor shall perform an inspection of all components of the plant. The
17 contractor shall identify any deficiencies in the plant in a written report. Within 60 Days after
18 the inspection, GWA shall provide a copy of the written report to EPA and Guam EPA and shall
19 submit to EPA, for review and approval in accordance with Paragraph 26 of this Order, a plan
20 and schedule to correct the deficiencies identified in the report. The deficiencies shall be
21 corrected no later than 90 Days after EPA's approval of the plan and schedule. After GWA
22 corrects these deficiencies, the contractor shall certify the acceptability of the completed project.
23

24
25 21. Perform Operations Assessment and Provide Operator Training and Contractor
26 Assistance During Start-up. By at least 60 Days before the scheduled completion of the
27 construction of the Ugum Water Treatment Plant, GWA shall submit to EPA, for review and
28

1 approval in accordance with Paragraph 26 of this Order, a plan to perform an operations
2 assessment and provide operator training and start-up procedures for the plant. This plan shall
3 include the name and qualifications of an independent contractor, with experience in water
4 treatment plant design and operation, who is qualified to assess the operation of the plant and
5 assist GWA in start-up procedures. GWA may retain the same contractor used in the plant
6 inspection in Paragraph 20. The operations assessment and operator training program shall
7 commence prior to start-up and continue through the start-up period. GWA shall ensure that
8 contractor assistance is available throughout the start-up period and for a period of at least one
9 year following start-up or until plant operation can proceed without external assistance,
10 whichever is longer.

11 22. O&M Plan and Procedures for Ugum Water Treatment Plant. By at least 90 Days
12 before the scheduled start-up, GWA shall submit to EPA and Guam EPA, for review and
13 comment, a proposed O&M plan for the Ugum Water Treatment Plant. GWA may, where
14 appropriate, incorporate provisions from existing O&M manuals. This plan shall include, but
15 not be limited to, the following elements:

- 16 (1) O&M procedures for all major components and systems of the plant, from the intake to
17 the finished water storage, including all equipment such as pumps, valves, pipes, filters,
18 compressors, electrical controls, chemical addition equipment, process monitoring
19 equipment, all treatment processes and associated facilities and equipment, with a special
20 emphasis on newly installed membrane filters, waste stream treatment and disposal, and
21 other new treatment components. The O&M plan shall include procedures for all aspects
22 of operation and process control, including: chemical addition; monitoring of key
23 parameters; operation and maintenance of all associated equipment; use and handling of
24 all chemicals, including chemical storage, chemical addition, and associated equipment
25 and appurtenances; management and processing of all wastes, including wastewater,
26 waste sludge, and any other wastes; and the finished water storage facilities. The O&M
27 procedures shall be of sufficient detail such that the water treatment plant operators can
28

1 fully operate and maintain all components of the plant under all operating conditions.

2 The O&M plan also shall include development of monthly operating reports to
3 demonstrate regulatory compliance under federal and State regulations and requirements.

4 (2) Spare parts inventory procedures, including identification of parts to maintain on-site and
5 parts to maintain at off-site locations.

6 (3) Staffing levels and training plans to ensure that the plant is fully staffed with qualified
7 personnel, including the number of staff, position titles, required experience, water
8 treatment or other certification levels required for all operation and maintenance
9 personnel, and professional experience grades required for plant operating personnel.

10 23. Ugum Water Treatment Plant Operation and Maintenance. By one year after the
11 Effective Date, GWA shall achieve compliance at the Ugum Water Treatment Plant with the
12 SDWA, the Guam SDWA, regulations promulgated pursuant to those statutes, and the plant's
13 NPDES permit. GWA shall implement the O&M plan and procedures for the Ugum Water
14 Treatment Plant developed in accordance with Paragraph 22. GWA shall maintain spare parts as
15 required in the procedures and make timely repairs when needed. GWA shall modify the O&M
16 manuals as necessary to ensure consistent compliance. GWA shall ensure that the plant is
17 sufficiently staffed for all shifts with operators who have appropriate certifications, experience,
18 and training.

19
20 24. Sinajana Water Transmission Line. GWA shall construct the Sinajana Water
21 Transmission Line and ensure that it reliably disinfects and distributes water.

22 (1) By 180 Days after the Effective Date, GWA shall construct the Sinajana Water
23 Transmission Line that will receive water from several wells in the Northern Water
24 System and reliably deliver water to storage tanks for chlorination.

25 (2) By 180 Days after the Effective Date, GWA shall provide to EPA, for review and
26 comment, an engineering and hydraulic evaluation/assessment report detailing
27 improvements needed for any additional facilities (such as booster pumps, additional
28

1 water lines, chlorination facilities, and/or storage) to provide subsequent distribution of
2 water in a manner that ensures adequate disinfectant level, pressure, and flow are
3 maintained in the distribution system service area. The engineering and hydraulic
4 evaluation/assessment report shall include a plan and schedule to implement the
5 improvements identified in the report.

6 (3) By 540 Days after the Effective Date, GWA shall complete construction and start-up of
7 the Sinajana Water Transmission Line and other improvements identified by the
8 engineering and hydraulic evaluation/assessment to ensure that adequate disinfectant
9 level, pressure, and flow are maintained in the distribution system service area.

10 (4) At least 60 Days prior to the scheduled completion of construction, GWA shall provide to
11 EPA, for review and approval in accordance with Paragraph 26 of this Order, a plan
12 indicating how it will monitor flows, pressure, tank water levels, and chlorine throughout
13 the distribution system service area. Upon approval, for one year following completion
14 of construction and initial start-up, GWA shall monitor flows, pressure, tank water levels,
15 and chlorine throughout the service area in accordance with the approved plan.

16 (5) As part of its Quarterly and Annual Reports, GWA shall describe the status of the
17 engineering and hydraulic assessment/evaluation, implementation of the necessary
18 improvements, and monitoring of the distribution system service area.

19
20 25. Storage Tank/Reservoir Repair, Rehabilitation and Replacement Program. By 90
21 Days after the Effective Date, GWA shall provide to EPA, for review and approval in
22 accordance with Paragraph 26 of this Order, a plan to assess and repair, rehabilitate, replace,
23 and/or relocate all water storage tanks/reservoirs. The plan shall include: (1) a schedule to
24 assess the storage capacity, structure, and safety of each storage tank/reservoir; (2) a schedule to
25 repair, replace, and/or relocate each storage tank/reservoir and address inadequate storage and
26 pressure, structural deficiencies, and safety issues; and (3) procedures to operate and monitor
27 water transmission and distribution in order to minimize service disruptions while GWA assesses
28

1 and repairs, replaces, and/or relocates each tank. GWA shall ensure that:

- 2 (1) By 540 Days after the Effective Date, the Barrigada, Agana Heights, Chaot, and Piti
3 storage tanks/reservoirs are repaired, replaced, and/or relocated.
- 4 (2) By three years after the Effective Date, the Maloloj Elevated, Santa Rita, Santa
5 Rosa/Yigo, Yigo Elevated, and Yona Pulantat tanks/reservoirs are repaired, replace,
6 and/or relocated.
- 7 (3) By five years after the Effective Date, all other storage tanks/reservoirs are repaired,
8 replaced, and/or relocated.
- 9 (4) As part of its Quarterly and Annual Reports, GWA shall describe the status of the plan,
10 assessment findings of each water storage tank/reservoir, and status and description of
11 repairs, replacements, and/or relocations required for each tank/reservoir.

12 III. REPORTING REQUIREMENTS

13 26. Approval of Deliverables. After review of any plan, report, or other item that is
14 required to be submitted for EPA's review and approval pursuant to this Order, EPA shall in
15 writing: a) approve the submission; b) approve the submission upon specified conditions; c)
16 approve part of the submission and disapprove the remainder; or d) disapprove the submission.

17 27. If the submission is approved pursuant to Paragraph 26.a, Defendants shall take
18 all actions required by the plan, report, or other document, in accordance with the schedules and
19 requirements of the plan, report, or other document, as approved. If the submission is
20 conditionally approved or approved only in part, pursuant to Paragraph 26.b or c, Defendants
21 shall, upon written direction from EPA, take all actions required by the approved plan, report, or
22 other item that EPA determines are technically severable from any disapproved portions, subject
23 to Defendants' right to dispute only the specified conditions or the disapproved portions, under
24 Section VI (Dispute Resolution) of this Order.

25 28. If the submission is disapproved in whole or in part pursuant to Paragraph 26.c or
26 d, Defendants shall, within 45 Days or such other time as the Parties agree to in writing, correct
27
28

1 all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for
2 approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole
3 or in part, Defendants shall proceed in accordance with the preceding Paragraph.

4 29. Any stipulated penalties applicable to the original submission, as provided in
5 Section IV (Stipulated Penalties) of this Order, shall accrue during the 45-Day period or other
6 specified period, but shall not be payable unless the resubmission is untimely or is disapproved
7 in whole or in part; provided that, if the original submission was so deficient as to constitute a
8 material breach of Defendants' obligations under this Order, the stipulated penalties applicable
9 to the original submission shall be due and payable notwithstanding any subsequent
10 resubmission.

11 30. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in
12 whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance
13 with the preceding Paragraphs, or may itself correct any deficiencies, subject to Defendants'
14 right to invoke Dispute Resolution pursuant to Section VI of this Order and the right of EPA to
15 seek stipulated penalties as provided in the preceding Paragraphs.

16 31. Permits. Where any compliance obligation under this Section requires GWA to
17 obtain a federal, state, or local permit or approval, GWA shall submit timely and complete
18 applications and take all other actions necessary to obtain all such permits or approvals. GWA
19 may seek relief under the provisions of Section V (Force Majeure) of this Order for any delay in
20 the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining,
21 any permit or approval required to fulfill such obligation, if GWA has submitted timely and
22 complete applications and has taken all other actions necessary to obtain all such permits or
23 approvals.

24 32. GWA shall submit the following reports:

25 a. Quarterly Report. Within 30 Days after the end of each calendar-year
26 quarter (i.e., by January 30, April 30, July 30, and October 30) after the Effective Date of this
27

1 Order, until termination of this Order, GWA shall submit a Quarterly Report for the preceding
2 calendar-year quarter that shall include the status of any construction or compliance measures;
3 completion of milestones; problems encountered or anticipated, together with implemented or
4 proposed solutions; status of permit applications; effluent monitoring data required by Paragraph
5 3, subparagraph (5), and Paragraph 6, subparagraph (6); and the status of any programs for
6 which a quarterly report is due pursuant to this Order. The Quarterly Reports shall not be
7 subject to EPA's approval pursuant to Paragraph 26 of this Order.

8 b. Each Quarterly Report shall also include a description of any non-
9 compliance with the requirements of this Order and an explanation of the violation's likely cause
10 and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If GWA
11 violates, or has reason to believe that it may violate, any requirement of this Order, GWA shall
12 notify the United States of such violation and its likely duration, in writing, within 10 working
13 Days after the Day GWA first becomes aware of the violation, with an explanation of the
14 violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize
15 such violation. If the cause of a violation cannot be fully explained at the time the report is due,
16 GWA shall so state in the report. GWA shall investigate the cause of the violation and shall then
17 submit an amendment to the report, including a full explanation of the cause of the violation,
18 within 30 Days after the Day GWA becomes aware of the cause of the violation. Nothing in this
19 Paragraph or the following Paragraph relieves GWA of its obligation to provide the notice
20 required by Section V (Force Majeure) of this Order.

21 c. SSO Report. Within 30 Days after the end of each calendar-year quarter
22 (i.e., by January 30, April 30, July 30, and October 30) after the Effective Date of this Order,
23 until termination of this Order, GWA shall submit to EPA and Guam EPA a summary of all
24 SSOs that occurred during the previous quarter. The reports shall provide: (1) a map showing
25 the locations of all SSOs occurring in the previous quarter in relation to the locations of drinking
26 water wells and sewage pump stations; (2) the start and end date and time of each SSO; (3) the
27
28

1 location of each SSO including address, village, and manhole numbers; (4) the structure(s) from
2 which each SSO emerged (for example, maintenance hole, broken pipe, wet well, indoor
3 plumbing, lateral cleanout, etc.); (5) the pipe size, length, and material; (6) the estimated volume
4 of each SSO including gross volume, amount recovered, and amount not recovered; (7) the cause
5 of each SSO; (8) whether each SSO entered a particular water of the United States, and if so, the
6 name of the water body and whether it entered via storm drains or other man-made conveyances;
7 (9) the results and analysis of any post-SSO CCTV results; and (10) the actions GWA took to
8 control the SSO and prevent future SSOs at the same location.

9 d. Annual Report. After the Effective Date of this Order, GWA shall submit
10 an Annual Report to EPA regarding each project required by Paragraphs 2 through 25 of Section
11 II (Compliance Requirements) of this Order. The Annual Report shall be due on January 30
12 (covering the previous January 1 to December 31). Each Annual Report shall report the status of
13 each project required by Paragraphs 2 through 25. For projects that are completed, the Annual
14 Report shall state whether the project was completed by the applicable deadline. For projects
15 that have not been completed, the Annual Report shall briefly describe the status of the project,
16 including whether the project remains on schedule for completion by the applicable deadline. If
17 any projects identified in Paragraphs 2 through 25 are not completed by the applicable deadline,
18 subsequent Annual Reports shall continue to set forth the status of these uncompleted projects
19 until each project is completed. The Annual Reports shall not be subject to EPA's approval
20 pursuant to Paragraph 26 of this Order.

22 33. Whenever any violation of this Order or of any applicable NPDES permits or any
23 other event affecting GWA's performance under this Order, or the performance of its Facilities,
24 may pose an immediate threat to the public health or welfare or the environment, GWA shall
25 notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than
26 24 hours after GWA first knew of the violation or event. This procedure is in addition to the
27 requirements set forth in the preceding Paragraph.

1 34. All reports shall be submitted to the persons designated in Section VII (Notices)
2 of this Order.

3 35. Each report submitted by Defendants under this Section shall be signed by an
4 official of the submitting party and include the following certification:

5 I certify under penalty of law that this document and all
6 attachments were prepared under my direction or supervision in
7 accordance with a system designed to assure that qualified
8 personnel properly gather and evaluate the information submitted.
9 Based on my inquiry of the person or persons who manage the
10 system, or those persons directly responsible for gathering the
11 information, the information submitted is, to the best of my
12 knowledge and belief, true, accurate, and complete. I am aware
13 that there are significant penalties for submitting false information,
14 including the possibility of fine and imprisonment for knowing
15 violations.

16 This certification requirement does not apply to emergency or similar notifications where
17 compliance would be impractical.

18 36. The reporting requirements of this Order do not relieve Defendants of any
19 reporting obligations required by the CWA, SDWA, or implementing regulations, or by any
20 other federal, state, or local law, regulation, permit, or other requirement.

21 37. Any information provided pursuant to this Order may be used by the United
22 States in any proceeding to enforce the provisions of this Order and as otherwise permitted by
23 law.

24 IV. STIPULATED PENALTIES

25 38. Defendants shall be liable for stipulated penalties to the United States for
26 violations of this Order as specified below, unless excused under Section V (Force Majeure) of
27 this Order. A violation includes failing to perform any obligation required by the terms of this
28 Order, including any work plan or schedule approved under this Order, according to all
applicable requirements of this Order and within the specified time schedules established by or
approved under this Order.

39. Compliance Milestones

1 a. The following stipulated penalties shall accrue per violation per Day for
2 each violation of the Order's requirements identified below.

3 i. For failure to meet the deadlines specified in Paragraphs 6, 8, 9,
4 10, 11, 12, 13, 14, 15, and 16:

5 ● \$250 per day per violation for the first 30 days, \$500 per day per violation for the
6 following 30 days, and \$1,000 per day per violation for each day thereafter.

7 ii. For failure to meet the deadlines specified in Paragraphs 2, 3, 4, 5,
8 19, 24, and 25:

9 ● \$500 per day per violation for the first 30 days, \$1,000 per day per violation for the
10 following 30 days, and \$2,000 per day per violation for each day thereafter.

11 iii. For failure to meet the deadlines specified in Paragraphs 7, 17, 18,
12 20, 21, 22, and 23:

13 ● \$1,000 per day per violation for the first 30 days, \$2,000 per day per violation for the
14 following 30 days, and \$5,000 per day per violation for each day thereafter.

15 40. Reporting Requirements. Stipulated penalties shall accrue per violation per Day
16 for each violation of the reporting requirements of Section III of this Order:

17 ● \$250 per day per violation for the first 30 days, \$500 per day per violation for the
18 following 30 days, and \$1,000 per day per violation for each day thereafter.

19 41. Stipulated penalties under this Section shall begin to accrue on the Day after
20 performance is due or on the Day a violation occurs, whichever is applicable, and shall continue
21 to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated
22 penalties shall accrue simultaneously for separate violations of this Order.

23 42. Defendant shall pay any stipulated penalty within 30 Days after receiving the
24 United States' written demand.

25 43. The United States may, in the unreviewable exercise of its discretion, reduce or
26 waive stipulated penalties otherwise due it under this Order.
27
28

1 44. Stipulated penalties shall continue to accrue as provided in Paragraph 41 during
2 any Dispute Resolution, but need not be paid until the following:

3 a. If the dispute is resolved by agreement or by a decision of EPA that is not
4 appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together
5 with interest, to the United States within 30 Days after the effective date of the agreement or the
6 receipt of EPA's decision or order.

7 b. If the dispute is appealed to the Court and the United States prevails in
8 whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing,
9 together with interest, within 60 Days after receiving the Court's decision or order, except as
10 provided in subparagraph c., below.

11 c. If any Party appeals the District Court's decision, Defendants shall pay all
12 accrued penalties determined to be owing, together with interest, within 15 Days after receiving
13 the final appellate court decision.

14 d. Defendants shall pay stipulated penalties owing to the United States in the
15 manner set forth in this subparagraph. Defendants shall pay the penalty due by FedWire
16 Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written
17 instructions to be provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's
18 Office for the District of Guam, Suite 500, Sirena Plaza, 108 Hernan Cortez, Hagatna, Guam
19 96910; Tel: (671) 472-7332. At the time of payment, Defendants shall send a copy of the EFT
20 authorization form and the EFT transaction record, together with a transmittal letter, which shall
21 state that the payment is for the stipulated penalties owed pursuant to this Order in United States
22 v. Guam Waterworks Authority, et al., state for which violation(s) the penalties are being paid,
23 and reference the civil action number and DOJ case number 90-5-1-1-07942. Notice shall be
24 provided to the United States in accordance with Section VII (Notices) of this Order; by e-mail
25 to acctsreceivable.CINWD@epa.gov; and by mail to:

26 EPA Cincinnati Finance Office
27 26 Martin Luther King Drive
28

1 Cincinnati, Ohio 45268

2 45. If Defendant fails to pay stipulated penalties according to the terms of this Order,
3 Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961,
4 accruing as of the date payment became due. Nothing in this Paragraph shall be construed to
5 limit the United States from seeking any remedy otherwise provided by law for Defendant's
6 failure to pay any stipulated penalties.

7 46. The stipulated penalties provided for in this Order shall be in addition to any other
8 rights, remedies, or sanctions available to the United States for Defendants' violation of this
9 Order or applicable law. Where a violation of this Order is also a violation of the CWA or
10 SDWA, Defendants shall be allowed a credit, for any stipulated penalties paid, against any
11 statutory penalties imposed for such violation.

12 V. FORCE MAJEURE

13 47. "Force majeure," for purposes of this Order, is defined as any event arising from
14 causes beyond the control of GWA, of any entity controlled by GWA, or of GWA's contractors,
15 that delays or prevents the performance of any obligation under this Order despite GWA's best
16 efforts to fulfill the obligation. The requirement that GWA exercise "best efforts to fulfill the
17 obligation" includes using best efforts to anticipate any potential force majeure event and best
18 efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred
19 to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does
20 not include GWA's financial inability to perform any obligation under this Order.

21 48. If any event occurs or has occurred that may delay the performance of any
22 obligation under this Order, whether or not caused by a force majeure event, GWA shall provide
23 notice orally or by electronic or facsimile transmission to Fatima Ty, EPA Clean Water Program
24 Enforcement Section [e-mail: Ty.Fatima@epa.gov; fax: 415-947-3545], within 72 hours of
25 when GWA first knew that the event might cause a delay. Within seven Days thereafter,
26 Defendant shall provide in writing to EPA an explanation and description of the reasons for the
27
28

1 delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or
2 minimize the delay; a schedule for implementation of any measures to be taken to prevent or
3 mitigate the delay or the effect of the delay; GWA's rationale for attributing such delay to a
4 force majeure event if it intends to assert such a claim; and a statement as to whether, in the
5 opinion of GWA, such event may cause or contribute to an endangerment to public health,
6 welfare or the environment. GWA shall include with any notice all available documentation
7 supporting the claim that the delay was attributable to a force majeure. Failure to comply with
8 the above requirements shall preclude GWA from asserting any claim of force majeure for that
9 event for the period of time of such failure to comply, and for any additional delay caused by
10 such failure. GWA shall be deemed to know of any circumstance of which GWA, any entity
11 controlled by GWA, or GWA's contractors knew or should have known.

12 49. If EPA agrees that the delay or anticipated delay is attributable to a force majeure
13 event, the time for performance of the obligations under this Order that are affected by the force
14 majeure event will be extended by EPA for such time as is necessary to complete those
15 obligations. An extension of the time for performance of the obligations affected by the force
16 majeure event shall not, of itself, extend the time for performance of any other obligation. EPA
17 will notify GWA in writing of the length of the extension, if any, for performance of the
18 obligations affected by the force majeure event.

19 50. If EPA does not agree that the delay or anticipated delay has been or will be
20 caused by a force majeure event, EPA will notify GWA in writing of its decision.

21 51. If GWA elects to invoke the dispute resolution procedures set forth in Section VI
22 (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any
23 such proceeding, GWA shall have the burden of demonstrating by a preponderance of the
24 evidence that the delay or anticipated delay has been or will be caused by a force majeure event,
25 that the duration of the delay or the extension sought was or will be warranted under the
26 circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and
27
28

1 that GWA complied with the requirements of Paragraphs 47 and 48, above. If GWA carries this
2 burden, the delay at issue shall be deemed not to be a violation by GWA of the affected
3 obligation of this Order identified to EPA and the Court.

4 **VI. DISPUTE RESOLUTION**

5 52. Unless otherwise expressly provided for in this Order, the dispute resolution
6 procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or
7 with respect to this Order. GWA's failure to seek resolution of a dispute under this Section shall
8 preclude GWA from raising any such issue as a defense to an action by the United States to
9 enforce any obligation of GWA arising under this Order.

10 53. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under
11 this Order shall first be the subject of informal negotiations. The dispute shall be considered to
12 have arisen when GWA sends the United States a written Notice of Dispute. Such Notice of
13 Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not
14 exceed 20 Days from the date the dispute arises, unless that period is modified by written
15 agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position
16 advanced by the United States shall be considered binding unless, within 10 Days after the
17 conclusion of the informal negotiation period, GWA invokes formal dispute resolution
18 procedures as set forth below.

19 54. Formal Dispute Resolution. GWA shall invoke formal dispute resolution
20 procedures, within the time period provided in the preceding Paragraph, by serving on the United
21 States a written Statement of Position regarding the matter in dispute. The Statement of Position
22 shall include, but need not be limited to, any factual data, analysis, or opinion supporting GWA's
23 position and any supporting documentation relied upon by GWA.

24 55. The United States shall serve its Statement of Position within 45 Days after
25 receipt of GWA's Statement of Position. The United States' Statement of Position shall include,
26 but need not be limited to, any factual data, analysis, or opinion supporting that position and any
27
28

1 supporting documentation relied upon by the United States. The United States' Statement of
2 Position shall be binding on GWA, unless GWA files a motion for judicial review of the dispute
3 in accordance with the following Paragraph.

4 56. GWA may seek judicial review of the dispute by filing with the Court and serving
5 on the United States, in accordance with Section VII (Notices) of this Order, a motion requesting
6 judicial resolution of the dispute. The motion must be filed within 10 Days after receipt of the
7 United States' Statement of Position pursuant to the preceding Paragraph. The motion shall
8 contain a written statement of GWA's position on the matter in dispute, including any supporting
9 factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any
10 schedule within which the dispute must be resolved for orderly implementation of the Order.

11 57. The United States shall respond to GWA's motion within the time period allowed
12 by the Local Rules of this Court. GWA may file a reply memorandum, to the extent permitted
13 by the Local Rules.

14 58. Standard of Review

15 a. Disputes Concerning Matters Accorded Record Review. Except as
16 otherwise provided in this Order, in any dispute brought under Paragraph 54 pertaining to the
17 adequacy or appropriateness of plans, procedures to implement plans, schedules or any other
18 items requiring approval by EPA under this Order, the adequacy of the performance of work
19 undertaken pursuant to this Order, and all other disputes that are accorded review on the
20 administrative record under applicable principles of administrative law, GWA shall have the
21 burden of demonstrating, based on the administrative record, that the position of the United
22 States is arbitrary and capricious or otherwise not in accordance with law.

23 b. Other Disputes. Except as otherwise provided in this Order, in any other
24 dispute brought under Paragraph 54, GWA shall bear the burden of demonstrating that its
25 position complies with this Order and better furthers the objectives of the Order.

26 59. The invocation of dispute resolution procedures under this Section shall not, by
27
28

1 itself, extend, postpone, or affect in any way any obligation of GWA under this Order, unless
2 and until final resolution of the dispute so provides. Stipulated penalties with respect to the
3 disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall
4 be stayed pending resolution of the dispute as provided in Paragraph 44. If GWA does not
5 prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in
6 Section IV (Stipulated Penalties).

7 **VII. NOTICES**

8 60. Unless otherwise specified herein, whenever notifications, submissions, or
9 communications are required by this Order, they shall be made in writing, shall be sent via
10 express mail or similar service with return receipt requested, or, in the alternative, by both fax
11 and e-mail, and addressed as follows:

12 To the United States:

13 Chief, Environmental Enforcement Section
14 (Attn: Robert Mullaney)
15 U.S. Department of Justice
16 301 Howard Street, Suite 1050
17 San Francisco, CA 94105
18 Re: DOJ No. 90-5-1-1-07942
19 Fax: (415) 744-6476
20 E-mail: robert.mullaney@usdoj.gov

21 and

22 Gary Hess, ORC-2
23 U.S. Environmental Protection Agency
24 75 Hawthorne Street
25 San Francisco, CA 94105
26 Fax: (415) 947-3571
27 E-mail: hess.gary@epa.gov

28 To EPA:

Fatima Ty, EPA Clean Water Program Enforcement Section
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
Fax: 415-947-3545
E-mail: Ty.Fatima@epa.gov

To GWA:

1 Samuel J. Taylor
2 Guam Waterworks Authority
3 578 North Marine Corps Drive
4 Tamuning, Guam 96913
5 Fax: (671) 646-2335
6 E-mail: staylor@guamwaterworks.net

7 John Benavente
8 GWA General Manager (interim)
9 Guam Waterworks Authority
10 578 North Marine Corps Drive
11 Tamuning, Guam 96913
12 Fax: (671) 646-2335
13 e-mail: gmcus@guamwaterworks.org

14 Paul Kemp
15 Compliance and Safety Officer
16 Guam Waterworks Authority
17 578 North Marine Corps Drive
18 Tamuning, Guam 96913
19 Fax: (671) 646-2335
20 e-mail: paulkemp@guamwaterworks.org

21 To Government of Guam:

22 Kathy A. Fokas
23 J. Patrick Mason
24 Office of the Attorney General
25 278 West O'Brien Drive
26 Hagatna, Guam 96910
27 Fax: (671) 472-2493
28 E-mail: kfokas@guamattorneygeneral.com
pmason@guamattorneygeneral.com

61. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

62. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Order or by mutual agreement of the Parties in writing.

VIII. EFFECTIVE DATE

63. The Effective Date of this Order shall be the date upon which this Order is entered by the Court as recorded on the Court's docket.

1 IX. RETENTION OF JURISDICTION

2 64. The Court shall retain jurisdiction over this case until termination of this Order,
3 for the purpose of resolving disputes arising under this Order pursuant to Section VI (Dispute
4 Resolution), or effectuating or enforcing compliance with the terms of this Order.

5 X. APPENDIX

6 65. The following appendix is attached to and part of this Order:
7 “Appendix A” is a list of effluent monitoring requirements for the Northern District WWTP and
8 the Agana WWTP pursuant to Paragraph 3, subparagraph (5), and Paragraph 6, subparagraph
9 (6).

10 **SO ORDERED.**

11
12 _____
13 FRANCES M. TYDINGCO-GATEWOOD
14 Chief Judge
15 United States District Court
16 District of Guam
17 Dated: _____
18
19
20
21
22
23
24
25
26
27
28

APPENDIX A

Effluent Monitoring Requirements for the Northern District WWTP and the Agana WWTP

Conventional and Nonconventional Compounds:

- Ammonia (As N)
- Chlorine (Total Residual, TRC)
- Dissolved Oxygen
- Total Kjeldahl
- Nitrogen (TKN)
- Nitrate plus Nitrite Nitrogen
- Oil and Grease
- Phosphorus (Total)
- Total Dissolved Solids (TDS) temperature
- Cyanide
- Total Phenolic Compounds
- Hardness (As CaCO₃)

Metals (Total Recoverable):

- Antimony
- Arsenic
- Beryllium
- Cadmium
- Chromium
- Copper
- Lead
- Mercury
- Nickel
- Selenium
- Silver
- Thallium
- Zinc

Volatile Organic Compounds:

- Acrolein
- Acrylonitrile
- Benzene
- Bromoform
- Carbon Tetrachloride
- Chlorobenzene
- Chlorodibromo-methane
- Chloroethane
- 2-chloro-ethylvinyl
- Ether
- Chloroform
- Dichlorobromo-methane
- 1,1-dichloroethane

- 1 1,2-dichloroethane
- 2 Trans-1,2-dichloro-ethylene
- 3 1,1-dichloroethylene
- 4 1,2-dichloropropane
- 5 1,3-dichloro-propylene
- 6 Ethylbenzene
- 7 Methyl Bromide
- 8 Methyl Chloride
- 9 Methylene Chloride
- 10 1,1,2,2-tetrachloro-ethane
- 11 Tetrachloro-ethylene
- 12 Toluene
- 13 1,1,1-trichloroethane
- 14 1,1,2-trichloroethane
- 15 Trichlorethylene
- 16 Vinyl Chloride
- 17 Acid-extractable Compounds:
- 18 P-chloro-m-cresol
- 19 2-chlorophenol
- 20 2,4-dichlorophenol
- 21 2,4-dimethylphenol
- 22 4,6-dinitro-o-cresol
- 23 2,4-dinitrophenol
- 24 2-nitrophenol
- 25 4-nitrophenol
- 26 Pentachlorophenol
- 27 Phenol
- 28 2,4,6-trichlorophenol
- 29 Base-neutral Compounds:
- 30 Acenaphthene
- 31 Acenaphthylene
- 32 Anthracene
- 33 Benzidine
- 34 Benzo(a)anthracene
- 35 Benzo(a)pyrene
- 36 3,4 Benzo-fluoranthene
- 37 Benzo(ghi)perylene
- 38 Benzo(k)fluoranthene
- 39 Bis (2-chloroethoxy)
- 40 Methane
- 41 Bis (2-chloroethyl)-ether
- 42 Bis (2-chloroiso-propyl)
- 43 Ether
- 44 Bis (2-ethylhexyl) Phthalate
- 45 4-bromophenyl Phenyl Ether
- 46 Butyl Benzyl Phthalate
- 47 2-chloronaphthalene
- 48 4-chlorphenyl Phenyl Ether

- 1 Chrysene
- Di-n-butyl Phthalate
- 2 Di-n-octyl Phthalate
- Dibenzo(a,h) Anthracene
- 3 1,2-dichlorobenzene
- 1,3-dichlorobenzene
- 4 1,4-dichlorobenzene
- 3,3-dichlorobenzidine
- 5 Diethyl Phthalate
- Dimethyl Phthalate
- 6 2,4-dinitrotoluene
- 2,6-dinitrotoluene
- 7 1,2-diphenylhydrazine
- 8 Fluoranthene
- Fluorene
- 9 Hexachlorobenzene
- Hexachlorobutadiene
- 10 Hexachlorocyclopentadiene
- Hexachloroethane
- 11 Indeno(1,2,3-cd)pyrene
- Isophorone
- 12 Naphthalene
- Nitrobenzene
- 13 N-nitrosodi-n-propylamine
- N-nitrosodi- Methylamine
- 14 N-nitrosodi-phenylamine
- Phenanthrene
- 15 Pyrene
- 1,2,4-trichlorobenzene
- 16

17 Whole Effluent Toxicity (Chronic):

18 Sperm Cell Toxicity Tests Using the Sea Urchin (*Arbacia punctulata*)
19 Sheepshead Minnow (*Cyprinodon variegatus*) Larval Survival and Growth Toxicity Tests

20

21

22

23

24

25

26

27

28