

**Department of Public Works
Solid Waste Management Division**

**Performance Audit
March 1, 2008 through September 30, 2009**

**OPA Report No. 10-04
June 2010**



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EXECUTIVE SUMMARY

Department of Public Works Solid Waste Management Division
Report No. 10-04, June 2010

We found that the government of Guam is unprepared to resume solid waste management and operations and that the legal and policy framework for management is outdated, obsolete, and in need of redevelopment.

The U.S. District Court's 2004 Consent Decree ordered the government of Guam to timely correct violations of the Clean Water Act or face penalties imposed by the U.S. Environmental Protection Agency (EPA). The Department of Public Works' (DPW) Solid Waste Management Division (SWMD) was tasked to comply with the Consent Decree by closing the Ordot Dump and opening a new landfill. However, in March 2008, when deadlines were not met, the U.S. District Court placed the SWMD under federal receivership. Solid waste management consultant Gershman, Brickner & Bratton (GBB) was appointed as Federal Receiver to manage the SWMD and ensure compliance with the Consent Decree. GBB's first task was to assess the condition and space left in the Ordot Dump. Based on GBB's assessment, the Ordot Dump's remaining life is expected to end on or about July 2011.

Legal and Policy Framework Needed for New Solid Waste Authority

The legal and policy framework for solid waste management is contained Title 10, Chapter 51 of the Guam Code Annotated and in the Guam 2006 Integrated Solid Waste Management Plan. This framework was rendered obsolete when the SWMD went into federal receivership. The District Court granted the Federal Receiver authority to supervise all government employees associated with Consent Decree projects, to perform and enter into contracts necessary, and to apply to the Consolidated Commission on Utilities (CCU) for rate increases for collection services and/or tipping fees. When the Federal Receiver's responsibilities are complete, the management of the SWMD will revert to the government of Guam.

Our interviews with the Federal Receiver and key government officials revealed that minimal efforts have been made by the government of Guam to update and clarify the legal and organizational framework for solid waste management, and that the present framework is no longer appropriate.

The Governor through Executive Order 2007-09 established the Solid Waste Law Review Commission (SWLRC) in July 2007, to propose new legislation that would address the legal and organizational framework for solid waste management. The Governor's Legal Counsel indicated that it is the Governor's intent to resolve the issue before the end of his term. In June 2010, the Chairman of the legislative Committee on Utilities, Transportation, Public Works & Veterans Affairs introduced Bill 426-30 establishing a Solid Waste Authority. With the introduction of this bill, we recommend that the SWLRC work with the Legislature to establish the new legal and organizational framework of the solid waste management.

Government of Guam's Involvement

As GBB attends to meeting the requirements of the Consent Decree, due to the nature of Federal Receivership, the government of Guam has had limited involvement in key solid waste management decisions made thus far. According to DPW's former Director, the department was not involved in decisions to institute new systems, such as the roll-out trash carts and the billing software, or in discussions regarding construction of the new landfill.

The government of Guam should be proactive in re-establishing its role by drawing upon the Federal Receiver's expertise in solid waste management. The appointment of a liaison to coordinate and collaborate with the Federal Receiver would enhance the government's ability to resume its proper role in managing solid waste operations.

The Cost and Funding of Modernizing Solid Waste Management

To fund construction of the new landfill and closure of the Ordot Dump, the government of Guam issued bonds totaling \$202 million (M), with an average annual debt service requirement of \$15M until FY 2035. Essentially, the \$202M will cost the government of Guam \$423M.

The overall cost for capital funding required for the Consent Decree projects is \$160M -- \$105.7M for the Layon landfill, \$39.4M for the Ordot Dump closure, \$14.9M for operations equipment and transfer stations.

The Federal Receiver's average monthly expenses approximate \$213,000. As of September 30, 2009, the Federal Receiver has been paid \$4.05M. We estimate an additional \$4.7M to be paid to the Receiver through July 2011, for a total of \$8.7M over 41 months. Until the government of Guam implements the legal framework and designates a management team to lead the new solid waste management organization, and all aspects of the Court's Consent Decree are addressed, including the closure of the Ordot Dump, the Federal Receiver's appointment will not end. How long after July 2011 the government of Guam will fund the Receiver's expenses is unknown.

U.S. Military as a Customer

The Federal Receiver's April 2010 quarterly report to the District Court contained a draft agreement for the military to become a customer of the new solid waste system, as ordered by the District Court. The government of Guam was not involved in developing the draft agreement.

The Federal Receiver provided an analysis of the impact military customers would have on tipping fees. With the military customers, tipping fees are estimated to rise from \$30 month in FY 2012 to \$36.50 in FY 2022. Without the military, fees would need to rise to \$52.81 by FY 2022. While the cost-savings for civilian customers would be significant, the potential impact in other areas, such as the volume and types of military waste -- whether both household and operational waste -- were not addressed. Military waste would considerably shorten the life span of the new landfill based on the volume of military waste, which according to estimates would amount to 38,000 tons, or 27% of Guam's annual waste.

The costs and benefits of having the military as customers should be thoroughly evaluated and elected leaders should set a clear policy direction. Unlike other utilities where the military was a customer, such as power, water, and telephone, the military has not been a customer of Guam solid waste management, hence the importance of having the study of the costs and benefits of adding the U.S. Military as a customer of the new landfill.

Conclusion and Recommendations

When the Federal Receiver completes the Consent Decree projects, Guam should have a new state-of-the-art municipal solid waste landfill, a modern solid waste management system, and the closure of Ordot Dump. These advances can be attributed to actions of the District Court and the court appointed Federal Receiver. If not for their intervention, the government of Guam would remain hard pressed to accomplish such goals. The consequence of the government of Guam's inaction has been that the modernization of solid waste comes at very high cost.

With the deadline to close the Ordot Dump by July 2011, the need to overhaul the legal and organizational framework of the Solid Waste Management Division is vital. The government of Guam should be proactive and attend to the organizational structure of the SWMD. It is also imperative that the government of Guam be allowed a more detailed role in the key decisions that affect the direction of the SWMD. To address these concerns, we recommend the Governor:

- With the introduction of Bill 426-30, work with the Legislature to establish the new legal and organizational framework of the solid waste management;
- Appoint a liaison to coordinate with the Federal Receiver on Consent Decree projects and act as the single point of contact for the government of Guam on solid waste management; and
- Commission a study to evaluate the costs and benefits of adding the U.S. Military as a customer of the new landfill.

Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

This report presents the results of our performance audit of the Department of Public Works' (DPW) Solid Waste Management Division (SWMD). The audit was conducted in cooperation with the Pacific Association of Supreme Audit Institutions (PASAI). Our audit objectives were to assess the effectiveness of solid waste management on Guam and to determine the government of Guam's preparedness to resume management.

The scope, methodology, and prior audit coverage are detailed in Appendices 1 and 2.

Background

In 1986, the U.S. Environmental Protection Agency (EPA) issued the first in a series of administrative orders citing the government of Guam for violating the Clean Water Act. The first order directed the government of Guam to cease the discharge of leachate from the Ordot Dump, Guam's only civilian waste disposal facility, predating World War II. Now covering approximately 47 acres, the dump remains in use. Twenty-four years after the first order, contaminants continue to leach into the Lonfit River and pose environmental and health hazards.



Image 1: The glow of an Ordot Dump fire in 2008.

Consent Decree

In February 2004, the government of Guam and EPA signed a Consent Decree to close the Ordot Dump, cease the discharge of leachates, open a new municipal landfill, and to develop and implement recycling and hazardous waste strategies to reduce the volume of disposed materials. The Consent Decree also outlined timelines for complying with the Clean Water Act.

A history of non-compliance with the Clean Water Act, the lack of cooperation between the executive and legislative branches, and the lack of financial commitment and tangible progress led the District Court to place solid waste management under federal receivership in March 2008. Solid waste management consultant Gershman, Brickner & Bratton (GBB) was appointed as Federal Receiver to bring the government into compliance.

Federal Receiver

The receivership order granted GBB full powers to enforce the terms of the Consent Decree and to assume all functions and responsibilities of DPW's SWMD and any other departments or divisions affecting compliance. The Federal Receiver's responsibilities include:

- ❖ Supervising all government employees associated with Consent Decree projects;
- ❖ Assuming control of existing contracts and awarding any future contracts;

- ❖ Hiring consultants, contractors, or counsel as necessary for administration, financial, legal, accounting, engineering, and construction or operational services;
- ❖ Facilitating financing and borrowing of funds necessary to carry out duties related to the Consent Decree;
- ❖ Applying to the Consolidated Commission on Utilities¹ (CCU) for rate increases for residential waste collection services and tipping fees;
- ❖ Consulting with EPA on the Consent Decree and securing technical advice or assistance as needed;
- ❖ Submitting quarterly progress reports to the District Court; and
- ❖ Having full access to the staff, documents, books, records, databases, and facilities of any government of Guam departments or divisions of the DPW. Access is granted also to any consultants GBB employs.

The Federal Receiver is working with the SWMD staff to develop solid waste services that are viable, sustainable over the long term, and beneficial for the citizens of Guam. The primary tasks are to close the Ordot Dump, construct a new landfill, and improve trash collection consistent with the best practices of the waste management industry.² Recycling also may be addressed, but not necessarily as a primary task. Unless otherwise directed by the District Court, the Federal Receiver will remain in place until compliance is achieved.

See Appendix 3 for a timeline of events.

¹ Although the Appointment of Receiver specifically states that applications for rate increases should be made to the CCU, utility rate adjustments remain the responsibility of the Public Utilities Commission (PUC).

² <http://www.guamsolidwastereceiver.org/>

Results of Audit

The government of Guam's existing legal and policy framework for solid waste management was rendered obsolete when the Federal Receiver assumed responsibility and control of DPW's SWMD. With the anticipated closure of the Ordot Dump on or about July 2011, the lack of an updated or entirely new framework leaves the government of Guam unprepared to resume solid waste operations or effectively manage the new landfill. The government of Guam has done little to involve itself with the new direction the Federal Receiver is taking with the management of solid waste.

Legal and Policy Framework Needed for New Solid Waste Management

In line with the stipulations of the Consent Decree, the Federal Receiver has taken steps to improve Guam's solid waste management. In the process, however, the government's legal framework for solid waste management and the policies attending to this function have been overturned and must be rewritten before the responsibility can be returned to government control. The lack of government participation and involvement in the modernization process and in key decision making may make the transition problematic.

Government of Guam's Involvement

Under receivership, the Federal Receiver has sole authority to make key decisions that have long term effects on solid waste operations. The government of Guam has had limited involvement in providing input as to the direction of the management of solid waste. As an example, DPW's former Director stated his department was not involved with the roll-out trash carts and the new billing system, or have they been involved in discussions regarding the construction of the new landfill. Whether and how the government can carry on these procedures should have been discussed and mutually agreed upon beforehand.

Cost and Funding of Modernizing Solid Waste System

As of September 30, 2009, the Federal Receiver's expenses for the 19 months were \$4.05 million (M). Assuming the receivership terminates in July 2011, we project the Federal Receiver's potential expenses for the remaining 22 months to amount to \$4.7M, totaling an estimated \$8.7M over the 41 months.

Until the government of Guam implements the legal framework and designates a management team to lead the new solid waste management organization, and all aspects of the Court's Consent Decree are addressed, including the closure of the Ordot Dump, the Federal Receiver's appointment will not end. How long after July 2011 the government of Guam will fund the Receiver's expenses is unknown. Thus, the government of Guam must attend to setting the legal authority and a new organizational framework for solid waste management, as well as enabling a management team to resume responsibility for solid waste operations.

To fund construction of the new landfill, the government of Guam issued bonds totaling \$202 million (M), with an annual debt service of \$15M until FY 2035.

Legal and Policy Framework Needed for New Solid Waste Authority

Title 10, Chapter 51 of Guam Code Annotated is the mandate for municipal solid waste management and the Guam Integrated Solid Waste Management Plan (ISWMP) contained the policies. This framework was rendered obsolete when solid waste management went into federal receivership. The Federal Receiver's court-granted authority to make any changes necessary to comply with the Consent Decree, in effect, invalidated the legal and policy framework. Although the ISWMP was outdated, several efforts were underway to update it prior to 2008.

Since assuming control of the SWMD, the Federal Receiver, who is not obligated to follow government procurement laws, has made policy decisions and implemented new procedures for solid waste collection, disposal, and billing. The Federal Receiver has essentially instituted a new framework without collaborating with the government of Guam, which will eventually resume responsibility for municipal solid waste management. The government of Guam should be proactive in re-establishing its role by drawing upon the Federal Receiver's expertise in solid waste management. The Federal Receiver will be legally in control of the SWMD until all aspects of the Consent Decree are addressed.

Our interviews with the Federal Receiver representative, the former DPW Director, the Governor's Chief of Staff and Legal Counsel, the Director of Bureau of Budget and Management Research (BBMR), an Assistant Attorney General, the Chair of the Legislature's Committee on Utilities, the Department of Administration's (DOA) Deputy Financial Manager, and the Guam Environmental Protection Agency (GEPA) Administrator revealed an absence of updated legislation or plans to address the organizational structure of the SWMD, or identify its new duties and responsibilities, once federal receivership ends.

The SWMD, as a division of DPW, is no longer appropriate. With a long-term debt of \$202M, SWMD may have difficulty generating the revenues necessary to make payments. An updated authority on solid waste should be established.



Image 2: Entrance to Ordot Dump in 2010.

Past Solid Waste Management Plans

The first ISWMP was developed and approved by the GEPA Board in 1999. The plan called for the creation of a Public Utility Solid Waste Authority, with CCU oversight, to collect tipping fees or other financing resources and to privatize operations as mandated by legislation. The Legislature adopted the plan with modifications in December 2000. The modifications called for major changes in solid waste management, the closure of Ordot Dump, and the creation of a new, legally-conforming landfill. The plans call for the creation of a Public Utility Solid Waste Authority was rejected.

In September 2006, GEPA updated the 2000 ISWMP. The plan's management objectives were revised and key elements of the integrated management system were identified. Projections of the new landfill's solid waste load were made to the year 2037 and efforts to reduce waste, and curtail illegal dumping included mandatory separation of curbside waste, allowable drop-off at regional transfer stations, recycling, composting, special waste disposal, and other waste reduction options. The updated plan was to be implemented between 2006 and 2010. The call for a Public Utility Solid Waste Authority was included again in the 2006 updated ISWMP.

In December 2005, GEPA issued DPW a permit to continue Ordot Dump operations until October 23, 2007, the date set by the Consent Decree for opening a new landfill. The permit expired with no new landfill, but the dump remains open and operates without a permit.

According to the GEPA Administrator, the 2006 updated ISWMP was not implemented because GEPA lacked the funding for enforcement, and the issue became irrelevant when the SWMD went into receivership in 2008. Thus, there has been no government of Guam oversight over solid waste operations, the collection, transport, and disposal of solid waste, recycling, waste reduction, or public education efforts.

Solid Waste Management Division as a Public Corporation

In August 2006, the PUC provided amendments to the proposed legislation to establish a Guam Solid Waste Management Authority. The amendments included regulations for residential and commercial tipping fees, such as periodic rate modifications, terms and conditions, rules for residential solid waste collection and disposal, and for the collection of fees for such services. The proposed realignment would more accurately determine the total costs to operate a solid waste system (i.e., collection and disposal of solid waste, closure of the dump, and development of a new sanitary landfill). See Appendix 4 for the proposed amendments to solid waste management statutes. In June 2010, the Chairman of the legislative Committee on Utilities, Transportation, Public Works & Veterans Affairs introduced Bill 426-30 establishing a Solid Waste Authority.

Solid Waste Review Commission

In July 2007, Executive Order 2007-09 established the Solid Waste Review Commission, which consisted of the Governor, the Speaker and Minority Leader of the Legislature, the Attorney General, the GEPA Administrator, the DPW Director, and the Chair of the PUC, or their designated representatives. The Commission was tasked to draft legislation that would:

- (1) Propose legislative policy for solid waste management;
- (2) Support the conversion of the SWMD from a line agency division into a stand-alone body that would more efficiently manage solid waste disposal; and
- (3) Review and propose revisions to the laws relating to solid waste management.

The Governor through Executive Order 2007-09 established the Solid Waste Law Review Commission (SWLRC) in July 2007, to propose new legislation that would address the legal and organizational framework for solid waste management. The Governor's Legal Counsel indicated that it is the Governor's intent to resolve the issue before the end of his term. We recommend the Governor work with the Legislature to establish the new legal and organizational framework of the SWMD in line with Bill 426-30;

Additionally, we recommend the Governor appoint a liaison to coordinate with the Federal Receiver on Consent Decree projects and act as the main point of contact for the government of Guam on solid waste management.

Government of Guam’s Involvement

DPW and other government of Guam representatives have not taken advantage of the Federal Receiver’s expertise in solid waste management. As an example, the Receiver’s residential roll-out trash cart project was implemented without DPW input or involvement. DPW has yet to seek instructions on how the transition process will take place or how to conduct the new collection method. Similarly, DOA, which is responsible for all government transactions and accounts, including the Solid Waste Management Fund, was not consulted in the Federal Receiver’s selection and implementation of the new trash collection billing system. The Receiver’s April 2010 quarterly report states that there are “serious problems for [the] implementation of the new customer service system, (i.e. billings).” Currently, tipping fees are paid to the Treasurer of Guam, where the reconciliation between the old and the new billing systems will have to take place.

Special Purpose Review

In June 2009, the Federal Receiver engaged a consultant to undertake a special purpose review to identify internal control weaknesses in the tipping fee system and in the government of Guam’s accounting system for SWMD operations. Eleven findings were identified, but no officials from DPW or DOA were given the opportunity to review or comment on the report.

The lack of the government of Guam involvement with the Consent Decree projects is likely to affect the eventual transfer of solid waste management from the Federal Receiver back to the government of Guam. No individual serves as liaison between the government and the Receiver so that the concerns that arise with regards to the construction of the new landfill, closing of the Ordot Dump, or the operation or management of solid waste are heard and addressed.



Image 3: Trash Roll-Out Cart.

Trash Roll-Out Cart Program

In September 2009, GBB initiated the first phase of its program to “introduce modern efficiencies into Guam’s solid waste system” by implementing rolling trash carts for residential customers. The project started with the delivery of standardized roll-out carts in four villages, then island-wide, enrolling customers for service and billing along the way. Residents were instructed to use only the receptacles provided. Prior to federal receivership, the SWMD limited customers to 30-gallon bins but allowed as many bins as their disposal needs required. Based on anecdotal evidence, customers seem satisfied with the roll-out cart program. The program also provides a more accurate database for trash service and billing. On its website, GBB advises that the new cart service “is only the beginning. Once the cart-based system is in place, the SWMD will add bulky waste collection, furniture and appliances, and free household hazardous waste collection sites where the public will be able to take batteries, anti-freeze, used motor oil and other household toxics that are hazardous.”

Weight Scale

Weighing waste measures what the community generates and provides a reasonably accurate way to determine the fees to charge. Weighing also provides information that can assist in forecasting solid waste operations, i.e., planning of a new landfill's capacity.

OPA's August 2007 audit of DPW's commercial tipping fees found that these were not properly applied, billed, and collected. We also found that DPW was not tracking the weight of commercial waste dumped at Ordot because DPW's weight scale was damaged during Typhoon Paka in December 1997 and had been inoperable since then. Billings to commercial haulers were just estimated. The amount of revenues lost while the scale was inoperable is unknown.



Image 4: Operable Weight Scale at Ordot Dump.

In May 2009, through the Federal Receiver's efforts in installing a new weight scale, weighing operations resumed. The SWMD is now able to accurately record the volume of waste entering the landfill. According to the Federal Receiver, as of March 2010, an average of 1,560 tons of waste enters the dump weekly. Between June 2009 and March 2010, 81,132 tons were dumped; 65% came from commercial haulers, 24% was residential waste, 6% came from transfer stations, 3% was government waste, and 2% came from the mayors.

Cost and Funding of Modernizing Solid Waste Management

Since the SWMD's existing legal and policy framework is obsolete, legislation and adequate funding are needed to organize a new SWMD and operate it in compliance with the Consent Decree and the Clean Water Act. The overall cost for capital funding required for the Consent Decree projects is \$160M, which \$105.7M for the Layon landfill, \$39.4M for the Ordot Dump closure, and the remaining \$14.9M for operations equipment and transfer stations.

2009 Series Bonds

Public Law 30-07, in April 2009, authorized the government of Guam to issue bonds to finance the construction of a new landfill in Layon. In June 2009, the government of Guam secured \$202M. Of this total, \$139.7M was reserved for construction, \$21M was used to prepay a prior Section 30³ loan, and the remainder was used to pay bond-related fees. The annual debt service for this bond averages \$15.6M until FY 2035. Essentially the \$202M secured bonds will cost

³ Section 30 of the Organic Act of Guam entitles the government of Guam to the federal revenues derived from: (i) customs duties and income taxes derived from Guam; (ii) all taxes collected under U.S. Internal Revenue laws on articles produced in Guam and transported to the U.S.; (iii) any other taxes that may be levied by Congress on the inhabitants, including members of the U.S. armed forces; (iv) all quarantine, passport, immigration, and naturalization fees collected on Guam; (v) such other taxes as may be collected pursuant to Section 30 (Title 48, Section 1421h of the U.S. Code); and (vi) all interest, profits or other income derived from the investment of amounts in any fund or account.

the government of Guam \$423M. See Table 1 for the breakdown of the bond proceeds and Appendix 5 for the Annual Limited Obligation Bond Debt Services Schedule.

Table 1: Breakdown of Series 2009A Bond Proceeds

Sources of Funds:	
Principal Amount of 2009A Bonds	\$202,425,000.00
Net Original Issue Discount	\$ (3,780,864.65)
	<u>\$198,644,135.35</u>
Uses of Funds:	
Deposit to Construction Account	\$139,742,206.00
Prepayment of 2009 Loan	\$ 20,826,285.25
Deposit to Capitalized Interest Account	\$ 18,793,561.77
Deposit to Bond Reserve Fund	\$ 15,673,287.50
Deposit to Costs of Issuance Account	\$ 3,608,794.83
Total Uses	<u>\$198,644,135.35</u>

USDA Loan and Grant

In a separate funding scheme to continue landfill projects, the government of Guam applied for an \$88M loan and a \$15M grant from the U.S. Department of Agriculture (USDA). In July 2009, the Governor received a letter from USDA outlining the requirements to secure the funding, which would free up \$103M of the \$202M bond proceeds.

The USDA’s letter stated that the conditions of the American Recovery and Reinvestment Act of 2009 (ARRA) would apply to the loan. This would include certifications, quarterly reporting requirements, and the “Buy American” policy and “Wage Rate Requirements” would have to be met. Among other stipulations, the government of Guam would be required to enter into a Third Party Management Agreement -- separate from the Federal Receiver -- to operate, maintain, and manage the solid waste facility and landfill operations. Upon approval of this loan, the Third Party Management stipulation would have to be included in the new legal and organizational framework of the SWMD.

USDA also has a stipulation with regards to the users of the new landfill. The letter of conditions states that the government of Guam would have to provide evidence or a certification that there will be at least 14,000 residential customers who will utilize the new landfill once construction has commenced. The new landfill must also provide service to large volume users, who are estimated to contribute 7,342 tons per month, in order to ensure repayment. Based on the April 2010 quarterly report of the Federal Receiver, there are 17,309 registered residential customers and commercial customers only average 4,036 tons a month. However, the Federal Receiver also reported that the 7,342 tonnage requirement for the USDA loan is problematic.

According to the Governor’s Legal Counsel, loan documents are being circulated amongst the Governor’s Office and the Guam Economic Development Authority for review. The loan agreement requires Legislative, PUC, and Court approval.

Receiver's Expenses

The Federal Receiver's average monthly expenses approximate \$213,000. As of September 30, 2009, the Federal Receiver's expenses reached \$4.05M. Based on the Order of Appointment, the District Court reviews the Federal Receiver's expenses. However, the cost is being borne by the government of Guam as an unbudgeted expenditure. If the Receiver's appointment terminates in July 2011, we project the Receiver's expenses for remaining 22 months to amount to \$4.7M, for an estimated \$8.7M over the 41 months. Since the Receiver's appointment is open-ended, it is unknown when it will terminate. How long after July 2011 the government of Guam will fund the Receiver's expenses is unknown. See Appendix 6 for the Federal Receiver's activity report on payment invoices.

The appointment order stipulates the setting aside of a 10% fee for the Federal Receiver to be paid "upon completion of the project," possibly an incentive to complete projects as soon as possible. Despite the payment-upon-completion provision, the District Court has been ordering the release of the fee after every quarter. Retention or retainage⁴ fees are commonly used to protect the buyer should the contractor not fully perform or expose the buyer to third party liability. The monthly retention amount generally equals 10% of the monthly bill. At any time the total amount of retention is equivalent to 10% of three months bill. Until the government of Guam steps forward with the legal organization framework and management team to lead the new solid waste organization, and all aspects of the Court's Consent Decree are addressed, including the closure of the Ordot Dump, the Federal Receiver's appointment will not end.

U.S. Military as a Customer

The Federal Receiver's April 2010 quarterly report to the District Court contained the draft agreement for the military to become a customer of the new solid waste system, as ordered by the Court. The government of Guam was not involved in developing the draft agreement. With the military as customers, according to the Federal Receiver, estimated monthly tipping fees would increase from \$30 in FY 2011 to \$36.50 in FY 2022. Without the military, fees are estimated to rise from \$30 in FY 2011 to \$52.81 by FY 2022. The savings for civilian customers would be significant and desirable.



Image 5: Construction at the new landfill in Layon, Inarajan.

However, the impact of military customers on other aspects of solid waste management were not addressed. According to the Receiver, the Layon Landfill is slated to have 13 cells, each with the life expectancy of 6-7 years or 45-50 years overall. Two cells are now under construction and are expected to last 12-14 years, but that is without military customers. Based on projections, the volume of military waste would constitute 38,000 tons, or 27% of Guam's estimated annual waste bringing the overall life expectancy down to 35-40 years.

⁴ Retainage: Provision in a contract that allows a customer to withhold a portion of the contract price until the determination that the project or goods meet the predetermined or standard specifications.

Although there are short term benefits to having the military as customers, such as lower tipping fees, there are also long term implications and costs, to include the cost of building additional cells as well as building a new landfill once Layon has been exhausted. In light of the impending military build-up, the full impact, as well as the costs and benefits, of military use of Guam's new landfill and solid waste management system should be carefully and thoroughly evaluated and elected leaders must set clear policy directions.

Unlike other utilities where the military was a customer, such as power, water, and telephone, the military has never been a customer of Guam solid waste management, hence the importance of having the study of the costs and benefits of adding the U.S. Military as a customer of the new landfill. Therefore, we recommend the Governor commission a study to evaluate the costs and benefits of adding the military as a customer of the new landfill.

Other Matters

During our audit, two matters came to our attention: the payment of the Federal Receiver's 10% retainage fee and the hiring of a former DPW SWMD employee.

Retainage Fee

The Receiver's appointment stipulates a 10% retainage fee be paid to the Receiver "upon completion of the project." The stipulation may be an incentive for timely completion of projects. However, the District Court has ordered the release of the retainage fee every quarter. In effect, the Federal Receiver receives 10% retainage every three months.

Former DPW SWMD Employee

In an attempt to increase the \$38,918 annual salary plus benefits of a DPW SWMD employee who the Federal Receiver considered to be a key employee, the Federal Receiver consulted with the OAG and DOA and was told that the issue was subject to the rules of the merit system. The Receiver attempted for several months, without success, to go through the merit system to accomplish an increase for this employee. The Receiver subsequently hired the employee as a consultant in June 2009, at a salary of \$93,000 per annum inclusive of benefits.

Conclusion and Recommendation

When the Federal Receiver completes the Consent Decree projects, Guam should have a new state-of-the-art municipal solid waste landfill, a modern solid waste management system, and the closure of Ordot Dump. These advances can be attributed to actions of the District Court and the court appointed Federal Receiver. If not for their intervention, the government of Guam would remain hard pressed to accomplish such goals. The consequence of the government of Guam's inaction has been that the modernization of solid waste comes at very high cost.

With the deadline to close the Ordot Dump by July 2011, the need to overhaul the legal and organizational framework of the Solid Waste Management Division is vital. The government of Guam should be proactive and attend to the organizational structure of the SWMD. It is also imperative that the government of Guam be allowed a more detailed role in the key decisions that affect the direction of the SWMD. To address these concerns, we recommend the Governor:

1. With the introduction of Bill 426-30, work with the Legislature to establish the new legal and organizational framework of the solid waste management;
2. Appoint a liaison to coordinate with the Federal Receiver on Consent Decree projects and act as the single point of contact for the government of Guam on solid waste management; and
3. Commission a study to evaluate the costs and benefits of adding the U.S. Military as a customer of the new landfill.

Management Response and OPA Reply

A preliminary draft report was transmitted to the Federal Receiver, DPW Director, Governor's Chief of Staff, Governor's Legal Counsel, Director of DOA, and the Director of BBMR on May 19, 2010. We met with the Governor's Legal Counsel and representatives from DOA on May 26, 2010 to discuss the preliminary draft report.

The Governor's Legal Counsel and Department of Administration generally concurred with the findings and recommendations of this report. See Appendix 7 for DOA's Management Response. There were some clarifications made regarding the funding for the closure of the Ordot Dump and draft legislation that was submitted to the Governor's office that were subsequently made to the final draft of this report. As of the date of issuance, no response was received from the Governor's office despite several follow-ups and inquiries.

The Federal Receiver provided a response to the preliminary draft report on June 1, 2010. The Receiver clarified several issues regarding the funding for the closure of the Ordot Dump, the costs and savings brought about as a result of their work, and the misunderstanding of the nature of Federal Receivership. Several points raised by the Federal Receiver were updated in the final report. The Federal Receiver also stated that significant savings were brought about through the work of the Federal Receiver. However, Guam OPA did not confirm these savings.

The Federal Receiver stated that they are committed to assisting the government of Guam in making needed policy and organizational decisions that will be necessary to resume the responsibilities of the solid waste system. See Appendix 8 for the Federal Receiver's Management Response.

The legislation creating the Office of Public Accountability requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of implementing the recommendations, and to endeavor to complete implementation of the recommendations no later than the beginning of the next fiscal year. We will be contacting the Office of the Governor to provide the target date and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation given to us by the staff and management of the Federal Receiver, Department of Public Works, Department of Administration, Office of the Governor, Office of the Attorney General, Guam Environmental Protection Agency, and the Guam Legislature.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:**Audit Objectives, Scope, and Methodology**

Our audit of the Department of Public Work's Solid Waste Management Division was conducted as part of the Pacific Association of Supreme Audit Institutions first cooperative audit on solid waste management. Our audit objectives were to assess the effectiveness of solid waste management legal and policy framework, and to determine the government of Guam's preparedness to resume solid waste management by examining:

- Existing legal and policy framework for solid waste management,
- The process by which the legal and policy framework is implemented, including whether risks to implementation have been considered, and;
- Compliance with the legal and policy framework, including monitoring arrangements.

The audit scope was from March 2008 through September 2009.

Our audit methodology included gaining an understanding of the policies, procedures, applicable laws, and regulations pertaining to solid waste management on Guam. We identified prior audits and OPA hotline tips relevant to this engagement, and included them in our assessments of the internal controls of the SWMD. We also conducted interviews with key officials involved with Consent Decree compliance. Interviews were conducted with a former DPW Director, the Federal Receiver representative, the Governor's Chief of Staff, the BBMR Director, the Governor's Legal Counsel, the DOA Director, the GEPA Administrative Director, and a senator in the 30th Guam Legislature.

We conducted this audit in accordance with the standards for performance audits contained in the *Government Auditing Standards*, issued by the Comptroller General of the United States of America. These standards require that we plan our audit objectives and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives.

PASAI is the official association of 25 supreme audit institutions (SAIs) (i.e., government Audit Offices and similar organizations known as SAIs) in the Pacific region. Member countries include Palau, Fiji, Federated States of Micronesia, and Guam. PASAI is one of the regional working groups belonging to the International Organization of Supreme Audit Institutions (INTOSAI). PASAI promotes transparent, accountable, effective, and efficient use of public sector resources in the Pacific. It contributes to that goal by helping its member SAIs improve the quality of public sector auditing in the Pacific to uniformly high standards. Guam became a PASAI member in 2007. Guam OPA elected to participate in this cooperative audit on solid waste management in order to ascertain how performance audits are conducted by PASAI members from Australia and New Zealand audit advisors.

Appendix 2: Prior Audit Coverage

Office of Public Accountability (OPA)

In September 2008, OPA issued Report No. 08-06, a performance audit of DPW's design contract for the New Municipal Solid Waste Landfill Facility. We found that DPW did not have controls to ensure that the landfill design contract was procured according to Guam procurement laws and regulations, or administered to comply with contract provisions and best practices.

In August 2007, OPA conducted an audit of DPW's Commercial Tipping Fees and found that commercial tipping fees were not properly applied, billed, and collected. The findings in OPA Report No. 07-08 involved the Solid Waste Operations Fund (SWOF), which derives its revenues from tipping fees. In a December 14, 2007 order, the U.S. District Court ordered the government of Guam [DPW] to respond to the report recommendations by February 14, 2008.

In June 2000, OPA issued Report No. 05-99, a management audit of DPW and found that the SWMD did not segregate the duties between financial and management operations and that the administrative official was the sole authority for overtime schedules and payments.

Single Audit Reports

In the single audit reports of the government of Guam from fiscal years 2004 through 2008, auditors found that revenues in the SWOF amounted to \$3.5M in FY 2004, \$5.9M in FY 2005, \$5.7M in FY 2006, \$6.2M in FY 2007, and \$5.3M in FY 2008. Questioned costs totaled \$13,000 for FY 2005 and \$336,553 for FY 2007. There were no questioned costs identified for the SWMD.

Georgetown Consulting Group (GCG) Focused Audit Report and Recommendations

In August 2006, GCG issued its report on the SWM function. The audit found that: (1) DPW's collection system is unable to handle current rate revenue levels, much less the increased burden necessary to support the revenue bonds; (2) Substantial remedial action must immediately occur to enable DPW to bill and collect the revenue necessary to fund revenue bond requirements; and (3) If remedial action does not occur, DPW will not be able to bill and collect the rate revenues necessary to fund revenue bond obligations and that this burden would fall, in part, on the General Fund. The Federal Receiver is now handling billing and collections with new software.

GCG December 2006 Updated Findings Report

In January 2007, GCG provided updated findings based on a November 2006 visit. The Solid Waste Operating Fund (SWOF) is not among the various special funds specifically exempted from the Governor's transfer authority. The SWOF was identified as one of the funding sources for the new landfill design contract. The Federal Receiver has addressed substantively all of the findings.

U.S. Department of the interior Office of Inspector General (DOI-OIG) Report

In March 1992, DOI-OIG issued an audit report that presented the results of their review of the government of Guam's Ordot Landfill and the Federal grant funds provided for the expansion

and development of the Landfill. The audit found that contrary to the provisions of Guam's solid waste management plan, the Ordot Landfill was not expanded or upgraded and continued to operate in violation of the Federal and local environmental laws, rules, and regulations. There were three recommendations made in the audit. The appointment of a Federal Receiver has addressed substantively all the recommendations.

Appendix 3: Timeline of Events

❖ **1950** – The Ordot Dump operates as a municipal solid waste disposal facility by the Department of Public Works.

❖ **1986** – EPA issues its first administrative order citing the government of Guam for violating the Clean Water Act and directing DPW to cease the discharge of leachate from the Ordot Dump.

❖ **July 24, 1990** – EPA issues another order to cease the discharges in accordance with a plan and schedule to be submitted to EPA for approval.

❖ **September 19, 1997** – EPA requests DPW to obtain and submit by specified deadlines certain data on the discharges from the Ordot Dump and the receiving water.

❖ **December 12, 2000** – The Guam Legislature adopts the first Integrated Solid Waste Management Plan, which calls for major changes in solid waste management and the creation of a new, legally conforming landfill and the closing of the Ordot Dump.

❖ **February 11, 2004** – The government of Guam enters into a Consent Decree with EPA to settle the lawsuit over failure to address the leachate issue after 18 years.

❖ **December 2005** – GEPA issues DPW a permit to continue Ordot Dump operations until the opening of a new municipal solid waste facility.

❖ **September 2006** – As required by Title 10 Guam Code Annotated Section 51103, the 2000 *Integrated Solid Waste Management Plan for the Island of Guam* is updated.

❖ **October 23, 2007** – The GEPA permit to operate Ordot Dump expires.

❖ **March 17, 2008** – District Court appoints a Federal Receiver to oversee solid waste management operations.

❖ **May 18, 2009** – The weight scale at Ordot Dump resumes operation, allowing for the collection of valuable information on the amount of disposed waste.

❖ **June 3, 2009** – A Deficit Financing Bond of \$202M is secured for the acquisition, construction, improvement, and equipment of a new municipal solid waste facility and closure of the Ordot Dump.

❖ **July 2009** – USDA issues a Letter of Conditions to the Governor outlining the requirements for an \$88M loan and \$15 M grant for the construction of the Layon Landfill.

❖ **September 28, 2009** – Trash Roll-Out Cart program commences.

❖ **November 23, 2009** – GEPA issues a permit for the new Layon Municipal Solid Waste Landfill.

❖ **July 2011** – The Ordot Dump is expected to close.

PUC Proposed Amendments to Solid Waste Statutes

The following is a list of legislation that will be required if the recommendations contained in GCG's August 18, 2006 Focused Audit Report are adopted:

- **Creation of an autonomous agency for solid waste management**

Proposal: remove the Solid Waste Management Division (SWM) from the auspices of the Department of Public Works ("DPW") and make SWM an autonomous agency under the auspices of the Consolidated Commission on Utilities ("CCU").

Rationale: remove numerous obstacles currently faced by SWM in obtaining bond financing. Also address the issues created by the Guam Supreme Court holdings in 2000 Guam 11 and 2004 Guam 16 that invalidated those provisions of Chapter 51-Title 10 of the Guam Code Annotated ("GCA") that were enacted by PL24-139 and PL24-272.

- **Privatization of all residential collections**

Proposal: increase the number of districts to be privatized from two to three. Legislation should clarify whether the PUC will regulate private hauler rates for residential customers.

Rationale: SWM has been unable to provide reliable service since interim rate increase approved on October 25, 2005.

- **Authorization to outsource SWM billings and collections**

Proposal: grant SWM the right to privatize its billing and collection services.

Purpose: SWM presently unable to produce reliable billings on a timely basis; collection rate remains below 40% of residential customers receiving service.

- **Clarification of commercial haulers' responsibility for collection of tipping fees**

Proposal: make commercial haulers customers of SWM instead of individual businesses.

Rationale: making commercial haulers primarily liable for payment of tipping fees and granting them the right to recoup tipping fees from their customers more efficient than having SWM separately bill businesses for tipping fees. SWM unable to determine if a business who failed to pay its tipping fee is still being serviced by a commercial hauler; charging commercial haulers directly provides incentive to immediately terminate service to any business customer that fails to pay any portion of the commercial hauler's bill.

- **Modification of lifeline eligibility standard**

Proposal: Change "GHURA low income eligibility criteria" to "appropriate income eligibility criteria as determined by the PUC."

Rationale: The GHURA low income eligibility criteria is the most liberal of its three eligibility standards. A family of four with household income of up to \$50,400 in 2005 would have qualified for the lifeline rate. Granting PUC the discretion to set eligibility requirements that would extend lifeline rates only to households who would not otherwise be able to afford services would prevent unnecessary erosion of SWM's rate base.

- **Clarification of enforcement powers**

Proposal: specify under what circumstances SWM may deny a commercial hauler access to the landfill. Legislation should also consider granting GEPA the right to summarily suspend a commercial hauler's license in the event the commercial hauler is denied entrance to the landfill for any reason (non-payment, non-conforming equipment, or failure to comply with landfill rules).

Rationale: will provide incentive for commercial haulers to pay bills timely, as delinquent haulers will be unable to collect solid waste until all arrears paid.

The following is a brief discussion of the considerations for legislation that will be required if the recommendations contained in GCG's Focused Audit Report are adopted:

- **Creation of an autonomous agency for solid waste management**

Removing the Solid Waste Management Division (SWM) from the auspices of the Department of Public Works ("DPW") and making SWM an autonomous agency under the auspices of the Consolidated Commission on Utilities ("CCU") will remove numerous obstacles currently faced by SWM in obtaining bond financing. The enabling legislation for the Guam Waterworks Authority is the closest model for this, as it resulted in the conversion of an entire line agency into an autonomous entity.

The legislation creating this new autonomous agency should also address the issues created by the Guam Supreme Court holdings in 2000 Guam 11 and 2004 Guam 16 that invalidated those provisions of Chapter 51-Title 10 of the Guam Code Annotated ("GCA") that were enacted by PL24-139 and PL24-272. If the recommendation to make SWM an autonomous agency under the CCU is not adopted, then separate legislation will be needed to deal with this issue.

- **Privatization of all residential collections**

This legislation can be accomplished by amending PL26-99:2 to increase the number of districts to be privatized from two to three. This proposed legislation should specify whether the PUC will regulate private hauler rates for residential customers.

Those haulers who are awarded contracts should be required to provide SWM with a list of initial customers and thereafter report on at least a monthly basis all new customers as well as all existing customer whose services have been terminated. This will enable SWM to determine which households are not receiving collection services and take appropriate action to ensure that these households are all using the transfer stations to dispose of their solid waste.

PL26-99:3 provides that "[n]othing herein shall be construed as authorizing the termination of any employee of the government of Guam." If this requirement is retained, then the feasibility of reassigning DPW employees and

packer fleet currently handling SWM residential collections to staffing the transfer stations and collecting solid waste from the various government of Guam agencies and public housing (as opposed to having these customers serviced by public haulers) needs to be explored. Having SWM service public housing units will greatly reduce the number of households that will need to be provided with a lifeline rate in order to afford residential collection services.

- **Authorization to outsource SWM billings and collections**

The proposed legislation should grant SWM the right to privatize its billing and collection services. If adopted, the cost of these services should be included in SWM's budget so that the same may be factored into the rates set by the PUC.

- **Clarification of commercial haulers' responsibility for collection of tipping fees**

The efficiency of SWM operations would be enhanced if the commercial haulers themselves were customers of SWM instead of individual businesses. The commercial haulers would be required to pay tipping fees on all solid waste brought to the landfill based on weight regardless of who generated the solid waste.

The legislation should specify the extent to which commercial haulers may pass this cost on to their customers. A possible model is the visible GRT law that permits businesses to segregate GRT from bills for services rendered and recoup the same from their customers.

Making commercial haulers primarily liable for payment of tipping fees and granting them the right to recoup tipping fees from their customers would be more efficient than having SWM separately bill businesses for tipping fees, as SWM would be unable to determine if a business who failed to pay its tipping fee is still being serviced by a commercial hauler. If the tipping fees were instead charged to commercial haulers coupled with a right to recoup the same from their business customers, then commercial haulers would have the incentive to immediately terminate service to any business customer that fails to pay any portion of the commercial hauler's bill.

The legislation should require a commercial hauler to notify SWM if service is terminated to any its business customers. SWM should then coordinate with the DPH&SS

Division of Public Health to determine if the sanitary permit for such business should be suspended until such time as alternative solid waste collection services are arranged.

- **Authorization for commercial haulers to collect tipping fees**

This is a less-preferable alternative to making the commercial haulers direct customers of SWM, as SWM will instead have to make the commercial haulers collection agents for SWM much the same way as a retailer is responsible for collection of sales tax and remitting the same over to the state. This would require comprehensive legislation imposing a myriad of duties on commercial haulers similar to those borne by retailers in states that have imposed a sales tax.

- **Authorization for SWM to audit commercial haulers**

This will be a necessary component of making the commercial haulers collection agents for SWM. The statute should be modeled after a state's power to conduct a sales tax audit. The power to audit commercial haulers' records is essential in order to ensure that a commercial hauler is not providing service to a business customer who has paid commercial hauler's fees but not the tipping fees. If this situation is discovered, then a commercial hauler should be subject to similar penalties to those imposed on a retailer who neglects to collect sales tax on a taxable transaction.

- **Clarification of enforcement powers**

As part of the legislation clarifying the responsibility for payment of business tipping fees, the legislation should specify under what circumstances SWM may deny a commercial hauler access to the landfill. The legislation may include a grace period and may also include a separate dollar limitations (for example, allowing a 30 day grace period for payment of delinquent accounts, which grace period is reduced to 15 days if the account is \$10,000 or more delinquent).

In addition, the legislation should consider granting GEPA the right to summarily suspend a commercial hauler's license in the event the commercial hauler is denied entrance to the landfill for any reason (non-payment, non-conforming equipment, or failure to comply with landfill rules).

- **Restrictions on back-billing**

Adoption of GCG's recommendations for improving billing and collection practices should largely eliminate the possibility of SWM failing to bill for services for over four (4) months. If these recommendations are not adopted, then the 4 month limitation on back billing imposed by PL26-17:4 may need to be re-examined.

Appendix 5:

Annual Limited Obligation Bond Debt Service Schedule

DEBT SERVICE SCHEDULE AND PROJECTED COVERAGE

Table 6 summarizes the annual debt service requirements for the 2009A Bonds and the 2001A Bonds:

TABLE 6
Government of Guam
Annual Limited Obligation (Section 30) Bond Debt Service Schedule

Fiscal Year Ending Sept. 30	Series 2009A				
	2001A Bonds Total	Principal	Interest	Total ⁽¹⁾	Total ⁽¹⁾
2010	\$ 9,822,288	--	\$ 10,668,687	\$ 10,668,687	\$ 20,490,975
2011	9,825,275	--	11,197,456	11,197,456	21,022,731
2012	9,825,631	--	11,197,456	11,197,456	21,023,087
2013		\$ 4,590,000	11,082,706	15,672,706	15,672,706
2014		4,825,000	10,847,331	15,672,331	15,672,331
2015		5,070,000	10,599,956	15,669,956	15,669,956
2016		5,330,000	10,339,956	15,669,956	15,669,956
2017		5,610,000	10,059,444	15,669,444	15,669,444
2018		5,915,000	9,759,913	15,671,913	15,671,913
2019		6,240,000	9,430,044	15,670,044	15,670,044
2020		6,595,000	9,077,081	15,672,081	15,672,081
2021		6,965,000	8,707,972	15,672,972	15,672,972
2022		7,350,000	8,322,100	15,672,100	15,672,100
2023		7,755,000	7,914,934	15,669,934	15,669,934
2024		8,185,000	7,485,266	15,670,266	15,670,266
2025		8,640,000	7,031,750	15,671,750	15,671,750
2026		9,130,000	6,542,081	15,672,081	15,672,081
2027		9,655,000	6,013,753	15,668,753	15,668,753
2028		10,215,000	5,454,909	15,669,909	15,669,909
2029		10,805,000	4,863,722	15,668,722	15,668,722
2030		11,435,000	4,238,222	15,673,222	15,673,222
2031		12,100,000	3,568,738	15,668,738	15,668,738
2032		12,820,000	2,852,288	15,672,288	15,672,288
2033		13,580,000	2,093,288	15,673,288	15,673,288
2034		14,380,000	1,289,438	15,669,438	15,669,438
2035		15,235,000	438,006	15,673,006	15,673,006
TOTAL⁽¹⁾	\$29,473,194	\$202,425,000	\$191,073,497	\$393,498,497	\$422,971,691

⁽¹⁾Totals may not add due to rounding.

Appendix 6: Payment of Receiver Invoices Activity Report

Payment of Receiver Invoices Activity Report Gershman Brickner & Bratton, Inc. - Receiver for the Government of Guam Solid Waste Management

	Month	Labor	*Expenses	Gross Receipt Tax	*Other	10% Retainage for fees held in trust	Total
FY 2008	March 2008	\$ 67,722.50	\$ 102.18			(\$6,772.25)	\$ 61,052.43
	April 2008	\$ 185,355.00	\$ 40,314.58			(\$18,535.50)	\$ 207,134.08
	May 2008	\$ 216,063.75	\$ 16,700.87	\$ 11,127.46		(\$21,606.38)	\$ 222,285.71
	June 2008	\$ 193,892.50	\$ 23,380.48		\$ 787.52	(\$19,389.25)	\$ 198,671.25
	July 2008	\$ 219,790.00	\$ 36,910.94	\$ 8,746.33	\$ 2,487.73	(\$21,979.00)	\$ 245,956.00
	August 2008	\$ 185,895.00	\$ 19,791.74		\$ 2,695.19	(\$18,589.50)	\$ 189,792.43
	September 2008	\$ 192,751.25	\$ 23,773.13	\$ 19,640.30	\$ 5,787.65	(\$19,275.13)	\$ 222,677.21

\$ 1,347,569.10

*Total Retainage paid as of 9/30/08 \$ 46,914.13

Total paid in FY 2008 \$ 1,394,483.23

	Month	Labor	*Expenses	Gross Receipt Tax	*Other	10% Retainage for fees held in trust	Total
FY 2009	October 2008	\$ 222,488.75	\$ 45,130.50		\$ 3,112.78	(\$22,248.88)	\$ 248,483.16
	November 2008	\$ 156,070.00	\$ 11,651.45	\$ 18,421.49	\$ 199.42	(\$15,607.00)	\$ 170,735.36
	December 2008	\$ 166,750.00	\$ 20,446.34	\$ 16,211.91	\$ 726.37	(\$16,675.00)	\$ 187,459.62
	January 2009	\$ 187,185.00	\$ 55,071.91		\$ 5,286.14	(\$18,718.50)	\$ 228,824.55
	February 2009	\$ 188,262.50	\$ 23,931.08	\$ 11,908.28	\$ 1,711.45	(\$18,826.25)	\$ 206,987.06
	March 2009	\$ 183,605.00	\$ 23,555.83	\$ 9,332.98	\$ 841.29	(\$18,360.50)	\$ 198,974.60
	April 2009	\$ 207,380.00	\$ 39,732.51		\$ 687.83	(\$20,738.00)	\$ 227,062.34
	May 2009	\$ 176,395.00	\$ 7,897.57	\$ 15,148.81	\$ 155.97	(\$17,639.50)	\$ 181,957.84
	June 2009	\$ 190,207.50	\$ 59,717.04		\$ 86.85	(\$19,020.75)	\$ 230,990.64
	July 2009	\$ 183,963.80	\$ 29,830.23	\$ 17,649.89	\$ 42.87	(\$18,396.38)	\$ 213,090.41
	August 2009	\$ 163,720.00	\$ 11,479.11		\$ 220.17	(\$16,372.00)	\$ 159,047.28
September 2009	\$ 161,331.25	\$ 25,643.45		\$ 139.48	(\$16,133.13)	\$ 170,981.06	

\$ 2,424,593.92

*Total Retainage paid as of 9/30/09 \$ 228,046.51

Total paid in FY 2009 \$ 2,652,640.43

Total Paid to Receiver \$ 4,047,123.66

Appendix 7: DOA's Management Response



Felix P. Camacho
Governor
Michael W. Cruz, M.D.
Lieutenant Governor

Department of Administration
(DIPATTAMENTON ATEMENSTRASION)
DIRECTOR'S OFFICE
(UFISINAN DIREKTOT)

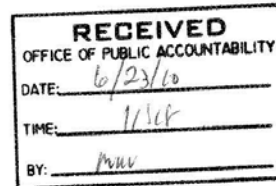
Post Office Box 884 Hagatña, Guåhan 96932
Tel: (671) 475-1101/1250 Fax: (671) 477-6788



Lourdes M. Perez
Director
Joseph C. Manibusan
Deputy Director

June 21, 2010

Mrs. Doris Flores Brooks
Public Auditor
Office of Public Accountability
238 Archbishop Flores Street
Suite 401 DNA Building
Hagatna, Guam 96910



Re: Draft Report, DPW-SWMD Performance Audit, May 2010

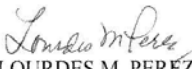
Dear Mrs. Brooks:

We received the draft copy of your Performance Audit – March 18, 2008 through September 30, 2009, Department of Public Works – Solid Waste Management Division, dated May 2010.

We generally agree with the report in its entirety however, we defer from providing any further comments as the report dwells mostly on the DPW-SWMD operation, but we specifically agree with the statements made on your report relative to our role and participation and generally concur with your recommendations as revised, see attachments.

Should you have any questions or need any clarification pertaining to our response, please give me a call at 475-1234.

Sincerely,


LOURDES M. PEREZ
Director of Administration

Attachments

**Appendix 8:
Federal Receiver's Management Response**



**SOLID WASTE
MANAGEMENT
CONSULTANTS
RECEIVER**

June 1, 2010

The Honorable Doris Flores Brooks, CPA, CGFM
Public Auditor
238 Archbishop Flores Street
Suite 401
Hagatna, Guam 96910

Dear Ms. Brooks:

Thank you for your letter of May 19, 2010 and the opportunity to comment on the Draft Audit Report. We are pleased to assist you in better understanding several issues presented in the Draft Report and to correct certain statements in the Draft Report that are factually incorrect.

First, there is a serious error in the Draft Report with respect to funding for the closure for the Ordot Dump. In several places your Draft Report states, incorrectly, that while the new landfill is funded, "nothing {is available} for closing the Ordot Dump". Beginning in our October 2008 Report to the Court, and numerous times since, we have provided detailed breakdowns of the funding required, including our cost estimates, for closure of the Ordot Dump. The following table appears on page 13 of our October 22, 2008 Report:

Table 9
Summary of Capital Funding Required
Consent Decree Projects

Project	Construction Cost	Equipment Cost	Total Capital Funding
Layon Landfill	\$ 78,099,500	\$ 6,380,000	\$ 84,479,500
WWTP Expansion & Leachate Sewer and Pre-Treatment	\$ 11,025,000	N/A	\$ 11,025,000
Leachate Sewer Line System - Layon	\$ 2,922,800	N/A	\$ 2,922,800
Transfer Station/HHWF	\$ 5,505,000	\$ 2,440,000	\$ 7,945,000
Construction Management - Layon	\$ 7,316,400	N/A	\$ 7,316,400
Ordot Closure	\$ 29,100,100	\$ 100,000	\$ 29,200,100
Leachate Sewer Line System - Ordot	\$ 640,200	N/A	\$ 640,200
Construction Management - Ordot	\$ 2,721,800	N/A	\$ 2,721,800
Redesign Cost for Ordot	\$ 1,000,000	N/A	\$ 1,000,000
Wetland Mitigation Cost Estimate	\$ 750,000	N/A	\$ 750,000
Operations Equipment	N/A	\$ 5,941,400	\$ 5,941,400
Remedial Investigation/Remedial Action - Ordot	\$ 5,800,000	N/A	\$ 5,800,000
Total Capital Funding	\$ 144,880,800	\$ 14,861,400	\$ 159,742,200

Government of Guam
Department of Public Works, Solid Waste Management Division
542 North Marine Corps Drive, Tamuning, Guam 96913
Phone: (671) 646-4379, Ext. 201 or 212
www.GuamSolidWasteReceiver.org
www.gbbinc.com

The Honorable Doris Flores Brooks, CPA, CGFM
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These amounts, including the estimates for the closure of the Ordot Dump, were fully funded by the Government of Guam's bond issue. This information has been widely reported, is included in numerous documents that have been available to your Office and is clearly stated in the Government of Guam Official Statement issued in connection with the bond issue when it states that the funds from the bond issue will be used for "paying costs associated with acquiring, constructing, improving and equipping a new municipal solid waste disposal facility in the Layon area near the Village of Inarajan (the "New Landfill") and with acquiring and constructing the closure of the Ordot Dump (emphasis added)". The Draft Report is in error on this important point and we urge you to correct it.

The Draft Report emphasizes the cost of the Receiver but fails to acknowledge the significant savings brought about as a result of the Receiver's work. The Receiver's work has eliminated unconscionable waste in several areas that had been tolerated by the Government of Guam for years. The most egregious of these was in the area of equipment maintenance and rental. When the Receiver assumed control of the Solid Waste Management Division, spending was out of control, with the Government spending about \$11,000 per day to rent equipment and operators while equipment owned by the Government of Guam and personnel paid to operate that equipment sat idle. Employees worked three shifts to collect Guam's trash. Customer dissatisfaction was rampant, bills were not paid and the working conditions of the employees of the Solid Waste Management Division were horrendous.

In addition, the scale system at the Ordot Dump had been allowed to remain inoperable for years prior to the Receivership. A few months before the Receivership began, in an attempt to begin addressing this problem, the Government of Guam contracted with Duenas, Camacho and Associates (DCA) for a temporary, leased scale that was improperly installed and never provided accurate information. The SWMD was billed for more than \$103,000 for that effort with nothing to show for it. The Receiver purchased and installed a new scale system that has been accurately weighing waste for the past year for \$113,415.16.

Under the Receivership the cost of rental equipment has been reduced to an average of under \$500 per day; all trash collections are made in one shift and in a predictable and efficient manner; government owned equipment has been repaired and properly maintained; staffing has been reduced nearly 40 percent; and working conditions have dramatically improved and complaints have declined dramatically. The monthly savings from reductions in equipment rental and the reduced payroll exceed the monthly cost of the Receivership. How can such information not be relevant to a performance audit?

The Draft Report also seems to suggest that there is something wrong with the Court's periodic release of retainage to the Receiver. First, I should note that there is no requirement that the Court impose a retainage provision of any kind on the Receiver. The Court chose to do this to ensure that the work is pursued in a timely and professional manner. The Court's decisions to release retainage reflect its satisfaction with the work performed by the Receiver. You seem to suggest that this lessens the Receiver's incentive for timely completion of the projects, yet you have acknowledged in our conversations, what is obvious to all knowledgeable observers of this process, that the Receiver is moving much

Government of Guam
Department of Public Works, Solid Waste Management Division
542 North Marine Corps Drive, Tamuning, Guam 96913
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www.GuamSolidWasteReceiver.org
www.gbbinc.com

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more quickly than is the norm for these kinds of projects in Guam and has remained focused and on schedule to achieve results in a time-frame severely compressed, due to the failure of the Government to act timely in this matter over a number of years. I would also note that the Government of Guam releases retainage for its consultants, in some cases, on a more frequent schedule than that which is practiced by the Court.

The Draft Report also materially misstates the situation it describes under the heading "Former DPW SWMD Employee." I have discussed this matter with you personally and also provided you with the basis for our decision in this matter (see Attachment I). You, in fact, suggested that we base the adjustment on comparable positions in Guam's other utilities. We accepted your recommendation and made the adjustment based on a comparable position of the Guam Water Authority. In addition, to say that the annual salary of this individual went from \$38,918 to \$93,000 is wrong. The correct comparison is that the annual salary increased from \$38,918 to \$73,000. The balance of the cost of the position is for benefits that are not as generous or costly as those provided by the Government of Guam to its employees. The Draft Report also fails to note that the Receiver attempted for months, without success, to go through the merit system to accomplish a reasonable adjustment for this key member of the Solid Waste Management Division.

The Draft Report evidences a misunderstanding of the nature of the Federal Receivership. It expresses concern that Government of Guam officials have not been "allowed a more detailed and proactive role in making decisions affecting the SWMD." The precise reason that the SWMD was placed into Receivership by the Court is a long-standing failure by the Government of Guam to make and implement the decisions necessary to properly address the issues of the Consent Decree, placing the Government in violation of federal law and putting the health and welfare of its citizens at significant risk.

The Order of the Court appointing GBB as Receiver requires that GBB take the necessary steps "to achieve expeditious compliance with the Consent Decree." It is illogical to then assert that this should be done by giving the same officials who failed to make and implement the necessary decisions to keep Guam out of Receivership, a "detailed and proactive role in making decisions." Such would be an invitation to further failures and an environmental disaster.

The Draft Report further states that "DPW's former Director stated that his management team has been left out of decisions affecting future operations of the SWMD." The former Director never approached the Receiver with any input or suggestions. To the contrary, he consistently indicated a desire to move the SWMD out of Public Works.

The Draft Report also seems to be confused about when the Receivership ends. The Draft Report states "The Federal Receiver contends that until all aspects of the Consent Decree are addressed, which would include closure of the Ordot Dump, GBB will be legally in control of SWMD." This is not a contention, it is a fact. The plain language of the District Court's Order appointing GBB as Receiver clearly states that "This appointment shall be for the period necessary to achieve compliance with the Consent Decree." The opening of the

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Layon Landfill is an essential step to allow for the closure of the Ordot Dump, which is the primary objective of the Consent Decree. There is no doubt that the Receivership will continue until the Ordot Dump is properly closed, and compliance is achieved with all other requirements of the Consent Decree.

The concern expressed in the Draft Report that government officials have no input into our Quarterly Reports to the District Court and that the Special Purpose Report should have circulated for comment, also evidences a misunderstanding of the Receivership. The Receiver is required to provide its Reports to the District Court. We cannot allow other parties to review them prior to submitting them to the Court. The Court has, however, made all of our Reports available to the public in a timely manner, so all parties then have an opportunity to review and comment on them.

We also noted several errors in Appendix 7. Attachment II provides you with the corrected numbers for your use.

As to the Draft Report's concern that the Government of Guam will not be prepared to reassume its responsibilities when the Receivership is concluded, we have been focused from the first day of our work on training the staff of the Solid Waste Management Division and providing them with the tools they need to be successful. The staff has, for the first time, been provided needed safety equipment. We have reduced the number of Limited Term Appointment employees by working through the merit system to get several of them placed in permanent positions. The engineer responsible for the Ordot Dump has completed training in landfill operations provided by the Solid Waste Association of North America. We have established the position of Solid Waste Administrator and are training an individual with extensive experience in the Government of Guam to perform the day to day management responsibilities of the SWMD. Customer Service has been significantly upgraded with management responsibility vested in a long-term GovGuam employee who is receiving the needed training to further develop his skills. Key staff has also been recruited and is being trained in management of the new billing system and human resource management. No such training occurred prior to the Receivership. When Receivership ends, the Government of Guam will have a modern, effective, efficient and sustainable solid waste system and a staff trained to manage the system.

We are also committed to assisting the Government of Guam in any way we can as it makes the needed policy and organizational decisions that will be necessary for the Government to reassume its responsibilities for the solid waste system. We recognize, however, that the responsibility for taking the necessary legal and policy steps to assume its responsibilities when the Receivership ends rests with the Governor and Legislature of Guam. When the Government is ready to consider these decisions about how it wants to proceed, it will find both the Court and the Receiver willing to work cooperatively with them to accomplish this objective.

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We appreciate the opportunity to review and comment on the Draft Report and we are available to discuss this Report further with you and your staff.

Sincerely,



David L. Manning
GBB's Receiver Representative

Attachments



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Solid Waste Management Division
Report No. 10-04, June 2010

ACKNOWLEDGEMENTS

Key contributions to this report were made by:
Vincent Duenas, Auditor-in-Charge
Jerrick Hernandez, Audit Staff
Doris Flores Brooks, CPA, CGFM, Public Auditor

MISSION STATEMENT

**To improve the public trust,
we audit, assess, analyze, and make recommendations
for accountability, transparency,
effectiveness, efficiency, and economy of the government of Guam
independently, impartially, and with integrity.**

VISION

Guam is the model for good governance in the Pacific.

CORE VALUES

Integrity	Independence	Impartiality
Accountability	Transparency	

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All information will be held in strict confidence.