

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GOVERNMENT OF GUAM, :
 :
 Plaintiff and Counter-defendant, :
 : Case No. 1:17-cv-2487
 v. :
 : Hon. Jia M. Cobb
 UNITED STATES OF AMERICA :
 :
 Defendant and Counter-claimant. :

PARTIAL CONSENT DECREE

**CERCLA SECTION 107 PARTIAL CONSENT DECREE
FOR RECOVERY OF PAST RESPONSE COSTS INCURRED BY UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

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I. BACKGROUND

A. The Government of Guam (“Guam”) filed a Complaint and an Amended Complaint in this matter on March 2, 2017 and May 19, 2017 (Dkt Nos. 1 and 7), respectively, asserting claims against the United States of America, including, inter alia, the Departments of Interior, Defense, Army, Navy, and Air Force (“United States”) pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9607 and 9613, and 28 U.S.C. §§ 1331 and 2201, seeking recovery of past and future costs that Guam has incurred or will incur for response actions taken at or in connection with the Ordot Dump in Guam.

B. The United States responded to Guam’s Amended Complaint and counterclaimed against Guam on October 15, 2018 (Dkt No. 39), pursuant to CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, seeking an equitable allocation and recovery of past and future costs the United States has incurred or will incur for response actions taken at or in connection with the Ordot Dump in Guam. Guam responded to the United States’ counterclaim and asserted its own counterclaim on November 5, 2018 (Dkt No. 43), pursuant to CERCLA Section 113, 42 U.S.C. § 9613, seeking an equitable allocation of any costs recovered or recoverable pursuant to United States’ counterclaim. The United States responded to Guam’s counterclaim on November 28, 2018 (Dkt No. 46).

C. The United States and Guam (“the Parties”) do not admit any liability arising out of the transactions or occurrences alleged in this matter.

D. The EPA and Guam (“Settling Parties”) desire to enter into this Consent Decree to have a full and final resolution of any and all claims that were, could now be, or hereafter have been asserted between the Settling Parties in connection with Past EPA Response Costs, and to avoid the complication and expense of further litigation of such claims.

E. A separate Partial Consent Decree between Guam and the United States (“EDS Consent Decree”) was entered by the Court in this litigation on September 25, 2023. Pursuant to the EDS Consent Decree, the United States paid Guam \$48,900,000.00 (forty-eight million nine-hundred thousand dollars) to resolve Past Response Cost claims between Guam and the United States.

F. The Settling Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Settling Parties in good faith and at arm’s length, that settlement of Matters Addressed between the Settling Parties without further litigation and without the admission or adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the Settling Parties, and that this Consent Decree is fair, reasonable, in the public interest, and consistent with CERCLA.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal

jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying pleadings, the Settling Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Parties under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

“Affected Property” shall have the same meaning as “Ordot Dump,” as defined below.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this partial Consent Decree, and its Appendix A.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“EDS Payment Date” means the actual date of payment made by the United States to Guam to satisfy the United States' obligations pursuant to the EDS Consent Decree.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court's docket.

“EPA” shall mean the U.S. Environmental Protection Agency.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Guam” shall mean the Government of Guam and each department, agency, and instrumentality of the Government of Guam.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on

October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Municipal solid waste” or “MSW” shall mean waste material: (1) generated by a household (including a single or multifamily residence); or (2) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (i) is essentially the same as waste normally generated by a household; (ii) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (iii) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Ordot Dump” shall mean the Ordot Landfill Superfund Site, encompassing approximately 23 acres, located in the municipalities of Ordot Chalan-Pago, Yona, and Asan, Guam, on Lots 3390-R2 and 3434 Ordot Chalan-Pago & Yona; Lot 450-5 Asan; and Lots 37, 38, and 39, Tract 198, Asan; as generally shown on the map included in Appendix A, and any area where Hazardous Substances released from Ordot Dump prior to August 10, 2022 have come to be located.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” shall mean the United States and Guam.

“Past EPA Response Costs” shall mean all costs, including but not limited to direct and indirect costs, incurred by EPA or DOJ on behalf of EPA prior to August 10, 2022 that are related to the cleanup of, response to, or the corrective action or closure associated with a release or threatened release of hazardous substances at, from, or related to the Ordot Dump, including accrued Interest on all such costs prior to August 10, 2022.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, incurred by Guam or the United States (other than Past EPA Response Costs) prior to August 10, 2022 that are related to the cleanup of, response to, or the corrective action or closure associated with a release or threatened release of Hazardous Substances at, from, or related to the Ordot Dump, including accrued Interest on all such costs prior to August 10, 2022.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Site” shall have the same meaning as “Ordot Dump,” as defined above.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

4. **Payment by Guam for Past Response Costs.** Within five (5) days of the Effective Date, Guam shall pay to EPA \$3,900,000.00 (three million nine hundred thousand dollars), plus agreed upon Interest of \$17,745.53 (seventeen thousand seven hundred forty-five dollars and fifty three cents). In the event that Guam cannot make the payment due to an error in the payment information provided by the United States, any time limits for said payment shall be tolled until the correct account information is transmitted to Guam.

5. Guam shall make payment at <https://www.pay.gov> in accordance with instructions provided to Guam by the Financial Litigation Unit (FLU) of the U.S. Attorney’s Office for the District of Guam after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, Site/Spill ID Number 09A7, and DJ Number 90-5-1-1-06658/1, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Government of Guam
c/o William J. Jackson
Kelley Drye & Warren LLP
515 Post Oak Blvd., Suite 900
Houston, Texas 77027
bjackson@kelleydrye.com

on behalf of Guam. Guam may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIV (Notices and Submissions).

6. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 4 shall be deposited by EPA in the **Ordot Landfill** Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

7. **Notice of Payment.** At the time of payment, Guam shall send to EPA and DOJ, in accordance with Section XIV (Notices and Submissions), a notice of this payment including references to the CDCS Number, Site/Spill ID Number 09A7, and DJ Number 90-5-1-1-06658/1.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. **Interest on Late Payments.** If Guam fails to make any payment under Paragraph 4 (Payment by Guam for Past Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. If the United States brings an action to enforce this Consent Decree, Guam shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

10. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of Guam's failure to comply with the requirements of this Consent Decree.

VII. COVENANTS BY UNITED STATES

11. **Covenants for Guam by United States.** Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Guam pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past EPA Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Guam of its obligations under this Consent Decree. These covenants extend only to Guam and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

12. The United States reserves, and this Consent Decree is without prejudice to, all rights against Guam with respect to all matters not expressly included within Paragraph 11 (Covenants for Guam by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Guam with respect to:

- a. liability for failure of Guam to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past EPA Response Costs or resolved by the EDS Consent Decree;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANTS BY GUAM

13. **Covenants for the United States by Guam.** Guam covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to Past EPA Response Costs, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the response actions at the Site for which the EPA Past Response Costs were incurred, including any claim under the United States Constitution, the

Constitution of the territory of Guam, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or Guam law for Past EPA Response Costs.

14. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

15. **Waiver of Claims by Guam**

a. Guam agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

(1) **MSW Waiver.** For all matters relating to the Site against any person where the person's liability to Guam with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site; and

(2) ***De Minimis/Ability to Pay Waiver.*** For response costs relating to the Site against any person that has entered or in the future enters into a final CERCLA § 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site.

b. Exceptions to Waivers

(1) The waivers under this Paragraph 15 shall not apply with respect to any defense, claim, or cause of action that Guam may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against Guam.

(2) The waiver under Paragraph 15.a.(2) (MSW Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing MSW contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

16. Except as provided in Paragraph 15 (Waiver of Claims by Guam), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section IX (Covenants for United States by Guam), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

17. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Guam has, as of the Effective Date, resolved Guam's liability to the United States for Past EPA Response Costs within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past EPA Response Costs.

18. The Parties further agree, and by entering this Consent Decree this Court finds, that the counterclaims filed by the United States in this action are civil actions within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Guam has as of the Effective Date, resolved liability to the United States for Past EPA Response Costs within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

19. Guam shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Guam also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, Guam shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

20. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Guam shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the United States set forth in Sections VII.

XI. PROPERTY REQUIREMENTS

21. **Agreements Regarding Access and Non-Interference.** Guam shall with respect to the Affected Property:

a. Provide the United States and its representatives, contractors, and subcontractors with access at all reasonable times to the Affected Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) Verifying any data or information submitted to the United States;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, or monitoring response actions;
- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Guam or its agents, consistent with Section XII (Access to Information);
- (6) Assessing Owner Settling Defendant and any Performing Party's compliance with the Consent Decree;
- (7) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under the Consent Decree; and
- (8) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using the Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including the following restrictions:

- (1) Prohibiting activities that could interfere with response actions at the Site;
- (2) Prohibiting use of contaminated groundwater and/or surface water;
- (3) Prohibiting activities that could result in exposure to contaminants in subsurface soils, surface soils, surface water, and groundwater;
- (4) Ensuring that any new structures on the Affected Property will not be constructed in a manner that could interfere with response actions at the Site; and

(5) Ensuring that any new structures on the Affected Property will be constructed in a manner that will minimize potential exposure to contaminants, including but not limited to through inhalation, ingestion, and/or dermal pathways.

22. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Guam shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

23. Notice to Successors-in-Title

a. Guam shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site and (ii) that EPA and Guam performed a response action for the Site; and (3) identify the document requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter. Guam shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Guam shall, prior to entering into a contract to Transfer the Affected Property, or 60 days prior to Transferring the Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA and Guam performed a response action regarding the Site; and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

24. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, Guam shall continue to comply with its obligations under the Consent Decree.

25. Notwithstanding any provision of the Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

26. Guam shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to,

sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

27. Privileged and Protected Claims

a. Guam may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 27.b. and except as provided in Paragraph 27.c.

b. If Guam asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Guam shall provide the Record to the United States in redacted form to mask the privileged or protected information only. Guam shall retain all Records that it claims to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Guam's favor.

c. Guam may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Guam is required to create or generate pursuant to this Consent Decree.

28. Business Confidential Claims. Guam may assert that all or part of a Record submitted to United States under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Guam shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Guam asserts a business confidentiality claim. Records that Guam claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Guam that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Guam.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RETENTION OF RECORDS

30. Until 10 years after the Effective Date, Guam shall preserve and retain all non-identical copies of Records now in its possession or control or that come into its possession or

control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Guam, insofar as it is potentially liable as an owner or operator of the Site, must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate or governmental retention policy to the contrary.

31. At the conclusion of the record retention period, Guam shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, and except as provided in Paragraph 27 (Privileged and Protected Claims), Guam shall deliver any such Records to EPA.

32. Guam certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and Guam law.

XIV. NOTICES AND SUBMISSIONS

33. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescdcopy.enrd@usdoj.gov
Re: DJ# 90-5-1-1-06658/1

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-06658/1

As to EPA: Karen Ueno
EPA Region 9
Remedial Project Manager
Ueno.Karen@epa.gov

As to Guam: Government of Guam
c/o William J. Jackson
Kelley Drye & Warren LLP
515 Post Oak Blvd., Suite 900
Houston, Texas 77027
bjackson@kelleydrye.com

XV. RETENTION OF JURISDICTION

34. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDIX

35. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement of Past EPA Response Costs embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement of Past EPA Response Costs other than those expressly contained in this Consent Decree. Appendix A is attached to and incorporated into this Consent Decree. "Appendix A" is the map of the Site.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Guam consents to the entry of this Consent Decree without further notice.

37. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

38. Each undersigned representative of Guam and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

39. Guam agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Guam in writing that it no longer supports entry of the Consent Decree.

40. Guam shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Guam hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the

Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT AS TO PAST EPA RESPONSE COSTS

41. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment as to the United States and Guam, for Past EPA Response Costs. The Court finds that there is no just reason for delay and therefore enters this judgment as a partial final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ___ DAY OF _____, 2025.

Hon. Jia M. Cobb
United States District Judge

Signature Page for CERCLA Section 107 Partial Consent Decree For Recovery of Past Response
Costs Incurred by United States Environmental Protection Agency

FOR THE UNITED STATES OF AMERICA:

KATHERINE E. KONSCHNIK
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20530

1/17/2025
Dated

/s/ Peter Krzywicki
PETER KRZYWICKI
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
Denver, CO 80202

MATTHEW M. GRAVES, D.C. Bar # 481052
United States Attorney

BRIAN P. HUDAK
Chief, Civil Division

/s/ Christopher C. Hair
CHRISTOPHER C. HAIR
PA Bar # 306656
Assistant United States Attorney
601 D Street, N.W.
Washington, D.C. 20530
(202) 252 2543
christopher.hair@usdoj.gov

Attorneys for the United States of America

Signature Page for CERCLA Section 107 Partial Consent Decree For Recovery of Past Response
Costs Incurred by United States Environmental Protection Agency

**MICHAEL
MONTGOMERY**

Digitally signed by MICHAEL
MONTGOMERY
Date: 2024.07.17 18:31:26
-07'00'

Michael Montgomery
Division Director
Superfund Emergency Management Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

JON OWENS

Digitally signed by JON OWENS
Date: 2024.07.18 09:26:21 -07'00'

Jon Owens
Assistant Regional Counsel
Office of the Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street, ORC 3-1
San Francisco, CA 94105

Signature Page for CERCLA Section 107 Partial Consent Decree For Recovery of Past Response
Costs Incurred by United States Environmental Protection Agency

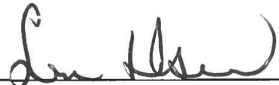
FOR GUAM:

Dated

DOUGLAS B. MOYLAN
ATTORNEY GENERAL OF GUAM

5/10/24

Dated




LOU LEON GUERRERO
GOVERNOR OF GUAM

Signature Page for CERCLA Section 107 Partial Consent Decree For Recovery of Past Response
Costs Incurred by United States Environmental Protection Agency

5/16/24
Dated

FOR GUAM:



DOUGLAS B. MOYLAN
ATTORNEY GENERAL OF GUAM

Dated

LOU LEON GUERRERO
GOVERNOR OF GUAM