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AHENSIAN PRUTEKSION LINA'LA GUÁHAN

LOURDES A. LEON GUERRERO, GOVERNOR OF GUAM • JOSHUA F. TENORIO, LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO, ADMINISTRATOR

Mr. Yasuhiro Oikawa
Asanuma Corp. & Nippo USA, Inc.
P.O. Box 22108 GMF
Barrigada, GU 96921
Tel. No. 653-7077

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Subject: Notice of Violation and Compliance Order

The stated purpose of the Guam Soil Erosion and Sediment Control Regulations (GSESCR), 22 GAR Chapter 10, as implemented by Public Law 25-152, is "to control accelerated soil erosion, thereby preventing the pollution of Guam's waters from fertilizers, pesticides, sediments and other polluting substances carried by sediment, and to protect property and to promote the public health, safety and welfare by regulating grading, clearing, grubbing and stockpiling, and by setting minimum standards for erosion and sedimentation control for the island of Guam." As described herein, the Guam Environmental Protection Agency (GEPA) finds that Asanuma Corp. and Nippo USA, Inc. (together "Respondent") have violated the GSESCR and is ordered to undertake remedial action(s).

BACKGROUND

Respondent is constructing a 26 floor, 340 unit hotel identified in permit documentation as the "Tsubaki Hotel" in the village of Tumon at 345 Gun Beach Road. Construction of the hotel structure and civil works was authorized under Building Permit Number B15000970. On December 19, 2018, The Guam Environmental Protection Agency (GEPA) received an application for Building Permit Number B18001035 for the construction of additions to the hotel permitted under B15000970, consisting of (in general) a swimming pool, outdoor seating areas, and water features.

In conjunction with application number B18001035, GEPA conducted a site inspection at around 3:15 PM on the afternoon of January 28, 2019. GEPA staff conducting the inspection were Mr. Walter Leon Guerrero, Mr. Nic Lee, Mr. Johnny Abedania, and CDR Brian Bearden. The primary purpose of the inspection was to verify the installation of erosion and sediment control (E&SC) best management practices (BMPs), installation and proper protection of post-construction stormwater management BMPs, and to determine the appropriateness of the final stormwater BMPs associated with the proposed additions. The inspection team found that the only E&SC BMP installed was a single line of silt fence, located along the down-slope side of the property. The silt fence was not installed properly. Specifically, the bottom of the fabric was laid loosely on the ground surface instead of buried. The silt fence had also been removed entirely from one

section of the down-slope perimeter, leaving a gap of at least 20 feet. Sediment-laden runoff from the light rain at the time of inspection was observed discharging from the construction area toward this opening.

The inspection team also found that the only post-construction stormwater management BMP installed so far was an underground infiltration chamber, located at a low-point along the western construction access road. Adequate inlet protection measures had not been provided, and sediment-laden runoff was observed entering the BMP through inlets which were protected by only a loosely placed plywood sheet.

NOTICE OF VIOLATION

Based on the facts described above and the attached site inspection report, GEPA finds that Respondent violated the following provisions of the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152:

1. 22 GAR §10104(A)(1) Erosion and Sediment Control Plans: General Requirements. *All earth moving activities in the Territory shall be conducted in a manner that prevents accelerated land erosion and the resulting sedimentation. To accomplish this all persons engaged in earth-moving activities shall design, implement, and maintain erosion and sediment control measures which effectively prevent accelerated erosion and sedimentation. These erosion and sediment measures must be as set forth in Erosion and Sediment Control Plans submitted, reviewed and approved by GEPA.*

Respondent, in the process of conducting earth moving activities, failed to implement erosion and sediment control measures to effectively prevent accelerated erosion and sedimentation as set forth in the Erosion and Sediment Control Plans incorporated as part of Permit Number B15000970. Specifically, the silt fence was not installed in accordance with the plans, both in terms of burial of fabric and in terms of leaving a gap in coverage along the down-slope perimeter of the site.

2. 22 GAR §10104(C)(1) Erosion and Sediment Control Plans: Compliance. *All clearing, grading, embankment or filling, excavating and other earth moving operations, except those otherwise exempted from these regulations by the Administrator, must proceed in accordance with a duly approved Erosion and Sediment Control Plan.*

Respondent failed to conduct the earth moving activities undertaken as part of the work permitted under Permit Number B15000970 in accordance with the Erosion and Sediment Control Plans approved as part of that permit. Specifically, the silt fence was

not installed in accordance with the plans, both in terms of burial of fabric and in terms of leaving a gap in coverage along the down-slope perimeter of the site.

3. 22 GAR §10105(A)(1) Erosion and Sediment Control Plans and Measures: General policies for Erosion and Sediment Control. *All earth-moving operations on Guam shall be conducted in a manner that prevents accelerated land erosion, transportation of sediment to and along highways, or siltation of rivers, estuaries and marine waters.*

Respondent failed to conduct the earth moving activities undertaken as part of the work permitted under Permit Number B15000970, in a manner that prevents accelerated land erosion and siltation of marine waters. Specifically, the silt fence was not installed in accordance with the plans, both in terms of burial of fabric and in terms of leaving a gap in coverage along the down-slope perimeter of the site. In addition, the use of a single line of silt fence as the only BMP does not adequately prevent accelerated land erosion and siltation of marine waters, in accordance with E&SC BMP Guidance adopted through Executive Order 2012-02, which requires the use of the 2006 CNMI and Guam Stormwater Management Manual in the design and implementation of E&SC plans for a" non-transportation construction projects and construction projects on private property. Use of the 2006 Manual is also a requirement of the U.S. Environmental Protection Agency (USEPA) National Pollutant Discharge Elimination System (NPDES) Construction General Permit, which has been certified by GEPA and covers all work on site as evidenced by the Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) on file at AC's construction site office.

4. 22 GAR §10105(A)(8) Erosion and Sediment Control Plans and Measures: General policies for Erosion and Sediment Control. *The erosion and sediment control measures set forth in this Section are required, unless the Erosion and Sediment Control Plan shows that the alteration of these measures and facilities or inclusion of other measures and facilities will better prevent accelerated erosion and sedimentation.*

Respondent failed to provide required erosion and sediment control measures as specified by §10105, including but not limited to adequate measures to trap sediments (§10105(B)(5)(a)(iv)); failure to provide catchment facilities within the site for all site drainage (§10105(B)(5)(b)); and failure to install structural measures such as berms, dikes, traps, and basins prior to any other grading, clearing, or disturbance of the existing surface of the site (§10105(B)(5)(e)).

5. 22 GAR §10105(B)(5)(c) Erosion and Sediment Control Plans and Measures: Required contents of Erosion and sediment Control Plans: Storm water Drainage System and Control of Site Water Runoff. *During construction, all storm sewer inlets shall be protected with silt traps.*

Respondent failed to adequately protect the storm sewer inlets draining to the newly constructed infiltration BMP, resulting in discharge of sediment to the underground facility, which is likely to cause failure of the infiltration bed through clogging.

COMPLIANCE ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, Respondent is **HEREBY ORDERED** to undertake the following remedial actions:

1. **Within 2 working days of receiving this NOV:** (A) reinstall all silt fence in accordance with standard silt fence installation requirements, as detailed on the E&SC Plan approved with Permit Number B15000970 and as shown in your SWPPP; and (B) install inlet protection measures at ALL inlets serving the permanent infiltration basin located on the west side service road, and any other permanent stormwater control BMP already installed, in accordance with guidance provided in the 2006 CNMI and Guam Stormwater Management Manual. You must request inspection from the GEPA Water Pollution Control Program and receive GEPA approval of your silt fence reinstallation and inlet protection to demonstrate compliance with this item.
2. **Within 10 working days of receiving this NOV:** Pursuant to 22 GAR §10104(A)(3) and §10106(D), GEPA has determined that the previously approved E&SC plan does not provide adequate protection against erosion and sedimentation of nearby marine waters, and additional E&SC measures are required. You must submit to GEPA a revised E&SC plan meeting all requirements of the Guam Soil Erosion and Sediment Control Regulations, utilizing the guidance provided in the 2006 CNMI and Guam Stormwater Management Manual. The revised plan must include, but not be limited to the following BMPs: sediment traps or basins serving all areas of the project site, and diversion swales or berms to convey site runoff to the sediment traps or basins. The revised E&SC plan must be certified by a Guam-registered professional engineer, and is subject to review and approval by GEPA. The timeframe for compliance with this item includes any time required to correct the revised plan in accordance with review comments from GEPA.

3. **Within 15 working days of receiving this NOV:** Complete Installation of all BMPs called for in the revised E&SC plan, as approved by GEPA. You must request inspection from the GEPA Water Pollution Control Program and receive GEPA approval of your BMP installation to demonstrate compliance with this item.
4. **Within 20 working days of receiving this NOV:** Uncover and expose the existing, permanent infiltration basin located on the west side service road for GEPA inspection to determine if sedimentation from construction site activities has reduced the ability of the basin to function as designed. Depending on GEPA's inspection findings, Respondent may be further ordered to repair, rehabilitate, or replace the sedimentation basin to assure adequate function after construction is completed.
5. **Pay a penalty based on §10114(A)(b) Penalties, Liability, and Severability in the amount of ten thousand dollars (\$10,000) per violation per day for five (5) violations.** This amount was determined in accordance with §10114(A)(b)(2), taking into consideration: the large size and cost of the project; the gravity of the violations with respect to the site's proximity to the highly valuable ecological and economic resources of Tumon Bay; the high public visibility of the project and the potential discharge of construction site sediment associated with the violations; and the savings afforded Respondent by failing to install and maintain adequate E&SC BMPs.

You may file within thirty days of the date of your receipt of this Notice of Violation/Order of Compliance, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA's Board of Directors, setting forth in such Notice of Intent to Appeal/Notice of Defense, a verified petition outlining the legal and factual bases for such an appeal. A copy of the Notice of Intent to Appeal/Notice of Defense is attached for your convenience.

Unless a written request for a hearing signed by or on behalf of the person, agency or business entity named above in this Notice of Violation/Order of Compliance is hand delivered or mailed to Guam EPA within thirty days after the Notice of Violation/Order of Compliance was personally served on you or mailed to you, Guam EPA may proceed upon the Notice of Violation/Order of Compliance without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:

Guam Environmental Protection Agency Board of Directors
C/o Administrator Guam Environmental Protection Agency

Building 17-3304 Mariner Avenue
Tiyán Barrigada, Guam 96913

If you file a Notice of Intent to Appeal/Notice of Defense, the Guam EPA's Board of Directors shall hold a public hearing, at which time you may appear and present evidence in person or through counsel in support of this petition.

Failure to file a Notice of Intent to Appeal within the period specified above will constitute a waiver of your right to a hearing. If you waive your rights to a hearing the Notice of Violation and Order of Compliance will become final, and Guam EPA may proceed upon the Order without a hearing and without further notice to you.

Should you have questions or need additional information please contact Water Pollution Control Program or Water Division Chief Engineer, CDR Brian Bearden, P.E., BCEE at Tel# 3004779 and 3004786 respectively.

Dated this 20th day of February, 2019.



WALTER S. LEON GUERRERO
Administrator

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Guam Environmental Protection Agency
 P.O. Box 22439, GMF,
 Barrigada, Guam 96921



**NOTICE OF INTENT TO APPEAL
 (AKA NOTICE OF DEFENSE)**

I, _____, have received your Notice of Violation, Order of Compliance and/or Administrative Penalty Order dated _____, charging me for violations and/or imposing penalties and/or other orders, and I wish to:
 (Please check appropriate sections)

A. Request for a hearing and

- 1. Object to the accusation on the ground that it does not state acts or omissions upon which the Agency can proceed.
- 2. Object to the form of the accusation on the ground that it is so indefinite or ambiguous that I cannot identify the infraction or prepare my defense.
- 3. Wish to prepare new matter in my defense.
- 4. Admit to the accusation in part.

B. Admit to the accusation in whole.

C. Verified Petition: Under penalty of perjury I hereby declare that the following constitutes my legal and factual basis for this appeal:

[please continue on blank sheet of paper if more space is needed and attach to this paper]

My mailing address is:

SIGNATURE

DATE

GUAM EPA CASE NO.: 2Q12001

