SMITHBRIDGE Guam Inc.
(Respondent)
P.O. BOX# 11700
Yigo, Guam 96929
Contact # 888-2191/653-5036

Attn: Mr. Russ Prokos
(Operational Manager)

Subject: Notice of Violation / Compliance Order / Proposed Penalty 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 SMITHBRIDGE Guam Inc. ("Respondent") has violated the GSESCR and is ordered undertake remedial action(s) as described herein.

BACKGROUND

On April 2, 2019, GEPA Water Pollution Control staff conducted an inspection of massive grading occurring along Route 15 in Yigo near the Guam Raceway Park. GEPA staff ascertained from an equipment operator at the site that the grading was being performed at the direction of Smithbridge Guam Inc. ("Smithbridge") and confirmed this information with Russ Prokos, Operational Manager of Smithbridge. Mr. Prokos represented that Smithbridge was performing the work in accordance with a permit received in 2017. GEPA staff determined that the permit referred to had expired on January 10, 2018. Smithbridge has not obtained a current permit as it was required to do before continuing work at the site. A permit application was submitted to GEPA by Smithbridge on April 10, 2019.

(Pls. see site attached inspection report)
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 §10103(A) Permit Issuance and Denials: Permits Required. (1) Unless exempted, no person shall commence or perform any grading, clearing, grubbing, embankment, filling, excavation or other earth-moving activity without a grading permit; (2) Unless exempted, no person shall commence or perform any stockpiling without a stockpiling permit.

Respondent performed grading, clearing, grubbing, embankment, filling, excavation and other earth-moving activities across an area just over 29 acres, without a grading permit, starting January 20, 2018.

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. Immediately upon receipt of this order: Cease all earth moving and construction work pursuant to 22 GAR §10110(C) ("Stop Work Order") and do not resume until a valid after-the-fact permit has been obtained.

2. Within fifteen (15) days of receipt of this order: Apply for an after-the-fact permit pursuant to 22 GAR §10110(C) ("Stop Work Order") and pay the required permit fees, which pursuant to §10108(F) ("Work occurring without a permit") and §10109(C) ("Permit expiration"), amount to two times the normal fees specified under §10110.

3. Within fifteen (15) days of receipt of this order: Pursuant to 22 GAR §10113(A) "Corrective Measures", install temporary erosion and sediment control best management practices (BMP's) consisting of, at a minimum, silt fence along the down-gradient boundaries of all cleared areas. Silt fence installation must be in accordance with the specifications provided for in Appendix A7 (2010 updated version) of the 2006 CNMI and Guam Stormwater Management Manual, implemented through Executive Order 2012-02. If the slope and length of flow contributing runoff to the silt fence exceeds the requirements prescribed in Appendix A7, the installation of temporary sediment traps as detailed in Appendix A6 must be installed. The manual and updated Appendix A7 can be found on Guam EPA’s website at epa.guam.gov.

This order does not prevent GEPA from taking additional actions including the issuance of penalties under 22 GAR §10114(A)(a) or (b). Please also note that if you fail to take the remedial
actions listed above within the required timeframe(s), additional violations, remedial actions, and penalties may be assessed by Guam EPA.

**PROPOSED PENALTY ORDER:**

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, GEPA hereby notifies Respondent of the Administrator's proposal to issue a penalty order pursuant to 22 GAR §10114(b), which authorizes a civil penalty no more than Ten Thousand Dollars ($10,000) per day per violation, up to a maximum civil penalty of One Hundred Twenty-five Thousand Dollars ($125,000).

GEPA is proposing a total civil penalty amount of Two Thousand Dollars ($2,000) per violation, per day on the basis of there being no actual impact, although GEPA finds that Respondent knowingly operating without a permit. Additionally, GEPA recognizes that Respondent applied for a new permit within a relatively short time frame after being notified of the violation.

The proposed $2,000 penalty is being assessed for the entire period from the date the permit expired on January 10, 2018, until the new permit application was received by GEPA on April 10, 2019, for a total of Four Hundred Fifty-five (455) days. This amounts to a total of $910,000. The total proposed penalty amount is therefore One Hundred Twenty-five Thousand Dollars ($125,000), which is the maximum civil penalty authorized under 22 GAR §10114(b).

You may file within thirty days of the date of your receipt of this Notice of Violation/Order of Compliance/Proposed Penalty Order, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA’s Board of Directors. 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/Proposed Penalty Order is hand delivered or mailed to GEPA within thirty days after the Notice of Violation/Order of Compliance/Proposed Penalty Order was personally served on you or mailed to you, GEPA may proceed upon the Notice of Violation/Order of Compliance/Proposed Penalty Order 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  
Tiyan Barrigada, Guam 96913
If you file a Notice of Intent to Appeal/Notice of Defense, the GEPA’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/Order of Compliance/Proposed Penalty Order will become final, and GEPA 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 7th day of May, 2019.

[Signature]

WALTER S. LEON GUERRERO
Administrator
AHENSIAN PROTEKSHON LINALA GUåIAN
LOURDES A. LEON GUERRERO, GOVERNOR OF GUAM • JOSHUA F. TENORIO, LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO, ADMINISTRATOR

SITE INSPECTION REPORT

Subject: On-going Massive Clearing, Grading & Stockpiling Activities with possible NO or EXPIRED Grading permit from Guam EPA.

Location: Near Guam Raceway, Along Rt. 15, Yigo (Pls. attached site location plan)

Date/Time:
1st inspection: March 29, 2019 @ 2:00PM by Johnny
2nd inspection: April 2, 2019 @ 9:30 AM by Johnny, Ron and Helen

Alleged Violator: SMITHBRIDGE Guam Inc.
P.O. BOX# 11700
Yigo, Guam 96929
Contact # 888-2191/653-5036
Contact Person: Mr. Russ Prokos (Operational Manager)

INITIAL FINDINGS:
On March 29, 2019 @ 2:00 PM staff of Water Pollution Control (WPC) program staff Mr. Johnny Abedania did an initial inspection for the on-going massive grading activities located along Rt. 15, near Guam Raceway, Yigo, Guam (Pls. attached site location plan). Mr. Abedania was not able to go inside the property because the gate is closed/padlock and a sign of NO TRESSPASSING can be seen at the entrance gate, (Pls. see photo No. 1) but looking outside the entrance gate, on-going massive grading activities is visible. (Pls. see photo Nos. 1 and 2).

On April 2, 2019 @ 9:30 AM, Mr. Johnny Abedania, Mr. Ron Charfarous and Mrs. Helen Guamatatao, Guam EPA, WPC Program staff did a follow-up inspection on the said facility. The Entrance gate still closed/lock but Guam EPA staff was able to pass thru underneath the entrance gate and leaving Guam EPA SERVICE vehicle outside the gate. With our complete PPE’s and proper identification ID that we show, Guam EPA staff where able to talk to one of the operator and confirm that SMITHBRIDGE Guam Inc. is doing the grading activities. (Pls. see attached pictures for the extent of the on-going grading activities). Based on our observation, coral materials/boulders are excavated at site then haul at SMITHBRIDGE Guam Inc. quarry for processing also based on our observation, NO BMP’s are installed/constructed at the site.

At around 10:30 AM same day, Guam EPA Staff proceed to SMITHBRIDGE Guam Inc. main office located at Rt. 15, Yigo for more confirmation that SMITHBRIDGE Guam Inc. is doing the grading activities at the subject lot. Guam EPA Staff where able to talk to Mr. Russ Prokos, Operational Manager of SMITHBRIDGE Guam Inc. and Mr. Prokos confirm that SMITHBRIDGE Guam Inc. is the contractor doing the grading activities. Guam EPA staff ask Mr. Prokos if they have a copy of their latest grading permit from Guam EPA and Dept. of Public Work and according to Mr. Prokos they have a FY 2017 permit from Guam EPA but need to look in there
file. Guam EPA staff inform Mr. Prokos that if Guam EPA issued a permit on FY 2017 then based on the permit condition it EXPIRES on FY 2018 since Guam EPA clearance permit is only good for 1 year upon issuance of permit to the contractor. Mr. Prokos confirm this. Since Mr. Prokos cannot provide us a copy of their latest Clearing and grading permit at that time, Guam EPA staff inform Mr. Prokos to renew/apply new Clearing, grading and stockpiling permit ASAP but NO LATER THAN next week with the following attachment:

1. a copy of the expired clearing and grading clearance permit from Guam EPA.
2. latest grading plan showing existing site condition grade elevation and proposed finished grade complete with profile and section plan.

At 11:30 Am Guam EPA staff left SMITHBRIDGE Guam Inc. main office.

FINAL FINDINGS:
Based on the site ocular inspection report, SMITHBRIDGE Guam Inc. violates the following:

1. Guam Soil Erosion and Sediment Control Regulation (GSESCR) §10103(A)(1), as stated: Permit Issuance and Denials states that "Unless exempted, no person shall commence or perform any grading, clearing, grubbing, embankment, filling, excavation or other earth moving activity without a grading permit."

2. FY2006 CNMI and Guam Stormwater Management Manual Guam (as implemented under Executive Order No 2012-02) were observed to have been violated:
   
   **E&SC Standard 3** Erosion and sediment control practices shall be aggressively maintained throughout all phases of construction. All erosion and sediment control plans shall have an enforceable operation and maintenance agreement to ensure that practices are maintained during the construction process.

   **E&SC Standard 7** Perimeter sediment controls shall be applied to retain or filter concentrated runoff from disturbed areas to trap or retain sediment before it leaves a construction site. Upland runoff should be diverted around excavations where possible.

   **E&SC Standard 8** Sediment trapping and settling devices shall be employed to trap and/or retain suspended sediments and allow time for them to settle out in cases where perimeter sediment controls (e.g., silt fence) are deemed to be ineffective in trapping suspended sediments on-site.
Guam Environmental Protection Agency
P.O. Box 22439, GMF,
Barrigada, Guam 96921

NOTICE OF INTENT TO APPEAL
(aka NOTICE of DEFENSE)

I, Russell Prokos, have received your Notice of Violation, Order of Compliance and/or Administrative Penalty Order dated May 7, 2019, 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: PO Box 11700
Yigo, GU 96929

SIGNATURE

May 20, 2019
DATE

GUAM EPA CASE NO.: ____________