



AHENSIAN PRUTEKSION LINA'LA GUĀHAN

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

Mr. Daijiro Meguro  
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MAY 07 2019

Subject: Proposed Penalty Order – February 26, 2019 Notice of Violation and Compliance Order

The Guam Environmental Protection Agency (GEPA) served Asanuma Corp. and Nippo USA, Inc. with a Notice of Violation and Compliance Order (NOV) on February 26, 2019, related to violations of the Guam Soil Erosion and Sediment Control Regulations (GSESCR), 22 GAR Chapter 10, as implemented by Public Law 25-152. GEPA subsequently amended the NOV to apply only to Nippo USA, Inc. (“Respondent”) on the basis of the Notice of Defense submitted by Asanuma Corp. on March 20, 2019.

Through previous letters, GEPA has determined that Respondent has met the requirements of Order Items 1 through 4. This letter addresses Order Item 5, which reads as follows:

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 (erosion and sediment control best management practices).

#### GEPA’s Responses to Respondent’s Defense

Respondent submitted a Notice of Defense on March 8, 2019. Briefly, Respondent’s assertions and GEPA’s responses (in italics) are as follows:

- a. Proper installation of silt fence could not be performed due to hard rock encountered on the site.

*GEPA response: Modified installation using sandbags could have been implemented, as demonstrated by Respondent's actions in response to the NOV as noted in Respondent's NOD.*

- b. Other parties had removed a portion of the silt fence to access the cliff line to create access for cleaning and maintenance.

*GEPA response: No cleaning or maintenance activities were underway at the time of inspection; reinstallation and maintenance of the silt fence is a clear responsibility under the permit and GSESCR.*

- c. The gap in the silt fence was corrected and the bottom of the silt fence was secured to the ground surface using sandbags within 3 days of GEPA's inspection.

*GEPA response: This does not address the violation; however it does factor into the penalty proposal below.*

- d. Materials required to adequately protect storm drain inlets were not available at the time of inspection, but this was corrected within 3 days of GEPA's inspection.

*GEPA response: Materials were available as demonstrated by Respondent's ability to install protective measures within 3 days of GEPA's inspection.*

In addition, on March 28, 2019, GEPA Administrator Walter Leon Guerrero and Chief Engineer Brian Bearden met with Respondent's Representatives Daijiro Meguro to discuss the NOD and potential fine amounts. During this meeting, additional considerations were presented by Respondent's representatives, as briefly summarized below:

- a. Respondent questioned whether Order Items 1 through 3 were duplicative.

*GEPA response: Each violation cites a separate and independent provision of the GSESCR.*

- b. Respondent questioned whether they should be held totally responsible: per contractual arrangements, Respondent was not solely responsible for all civil work, with some being performed by other contractors on-site, on the basis of an elevation cut-off.

*GEPA response: the violations relate strictly to the installation of E&SC measures required under the original permit, which was issued solely in the name of Respondent. Furthermore, Respondent confirmed that they were responsible under their contract for the installation and maintenance of E&SC measures. Therefore, GEPA does not believe it is appropriate to assign any of the responsibility for the violations to any other party.*

- c. Respondent requested that GEPA amend Order Item 5 to assess fines based on the "field citations" provisions under 22 GAR §10114(A)(a) in order to reduce the fines to a maximum of \$3,000.00 per violation, as opposed to \$10,000.00 per violation as cited under §10114(A)(b) for administrative penalties.

*GEPA response: the NOV was not issued as a field citation and was instead prepared as an administrative action pursuant to §10114(A)(b), in consideration of the potential severe impacts of the violation.*

## **Proposed Penalty Order**

*Total number of violations:*

No change from the original NOV. **Five (5) violations.**

*Time period of violation:*

From the time of the inspection which began at around 3:15 p.m. on January 28, to the completion of corrective actions as documented by the Respondent some time on January 31: approximately **3 days.**

*Penalty amount per violation:*

The \$10,000 per violation per day penalty suggested in Order Item 5 is the maximum amount allowable under §10114(A)(b). GEPA initially proposed the maximum penalty amount based on the potential severity of the consequences that could have resulted from the violations. GEPA has since determined that although Respondent acted knowingly and the Respondent's actions had the potential for significant impact, Respondent's actions resulted in no actual impact. Additionally, Respondent completed the corrective actions ordered by GEPA within three days of receiving the Compliance Order. Therefore, the revised penalty amount per violation is **\$5,000 per violation per day.**

*Proposed penalty order:*

**The total proposed penalty is seventy five thousand dollars (\$75,000.00), calculated as follows:**

$$5 \text{ violations} \times 3 \text{ days} \times \$5,000 \text{ per violation per day} = \$75,000.00$$

You may file within thirty days of the date of your receipt of this Proposed Penalty Order, 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 Proposed Penalty Order is hand delivered or mailed to Guam EPA within thirty days after the Proposed Penalty Order was personally served on

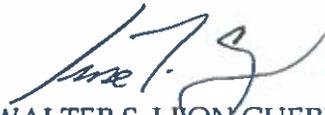
you or mailed to you, Guam EPA may proceed upon the Proposed Penalty Order without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:

Guam Environmental Protection Agency Board of Directors  
C/o Administrator Guam Environmental Protection Agency  
Building 17-3304 Mariner Avenue  
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 Proposed Penalty Order 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.

  
for WALTER S. LEON GUERRERO  
Administrator



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:

\_\_\_\_\_  
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\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**

**GUAM EPA CASE NO.:** \_\_\_\_\_

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