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DATE: Jul 29, 2021 2:33pm

GUAM ENVIRONMENTAL PROTECTION AGENCY • AHENSIAN PRUTEKSIÓN LINA'LA' GUÁHAN  
LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM  
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

**JUL 29 2021**

Samsung E & C America, Inc.  
(Respondent)  
Mr. ByungHyup Kim, Project Manager  
Mangilao Solar Project  
P.O. Box 218008  
Barrigada, Guam 96921

**Subject: Notice of Violation / Compliance Order / 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.” Samsung E & C America, Inc. (“Respondent”) has violated the GSESCR and is ordered to undertake remedial action(s) and pay a penalty as stated herein.

### BACKGROUND

Respondent is actively engaged in earth moving operations as a part of the Mangilao Solar Project located at Lot 1 – R3 Tract 1541 in the Marbo area, Mangilao, Guam. The project was previously permitted through DPW under several different building permits, all of which were reviewed and approved by GEPA. Work on the project has been ongoing since at least July 20, 2020, according to GEPA staff observations and email correspondence from Respondent’s engineer. On the morning of July 23, 2021, GEPA received a forwarded complaint alleging discharges of runoff and sediment from Respondent’s site. The complaints included photos taken off-site showing accumulations of sediment and water on off-site properties, and one photo showing a large sediment plume in the ocean, alleged to have been caused by Respondent’s activities. In response, GEPA conducted a site inspection on July 23 between approximately 11:30 a.m. and 12:30 p.m. and observed evidence of significant off-site discharge and sedimentation from at least two locations along the site perimeter. GEPA staff further observed, and Respondent staff confirmed, that the approved erosion and sediment control (E&SC) measures had not been fully installed, and that other E&SC measures were still in the process of being installed, despite construction being at an advanced stage. In addition, GEPA staff observed that despite construction of the solar facility being nearly completed, active soil stabilization through re-vegetation had not yet begun, and evidence of mass soil erosion was observed throughout the entire site.

GEPA conducted follow-up inspections on July 28 to document evidence of discharge from the “Pond 5” location and Marbo Cave (located off-site), and observed evidence of significant

discharge of runoff and sediment from Respondent's project site into the cave, resulting in extensive erosion damage and sedimentation in the cave pools.

See attached reports for additional details and photographs.

### NOTICE OF VIOLATION

Based on the facts described above, 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(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 implement erosion and sediment control best management practices (BMPs) in accordance with the approved Erosion and Sediment Control Plan.

2. 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 at the site in a manner that prevents accelerated land erosion and siltation of marine waters. Specifically, the earth-moving activities were being conducted without the proper installation or use of erosion and sediment control best management practices (BMPs), and without implementing measures such as revegetation to stabilize previously disturbed areas, leaving the entire site vulnerable to erosion.

3. 22 GAR §10105(A)(5) Erosion and Sediment Control Plans: Compliance. *No person shall perform any earth-moving operation so as to cause falling rocks, soil or debris in any form to fall, slide or flow onto adjoining properties or waters of Guam.*

Respondent's earth-moving operations were conducted in such a way that allowed soil (sediment) to be carried in runoff which flowed onto adjoining properties, including Marbo Cave, and into waters of Guam.

4. 22 GAR §10105(B)(5)(e) Storm Water Drainage System and Control of Site Water Runoff. *Structural measures such as berms, dikes, traps, basins, shall be installed prior to any other grading, clearing, or disturbance of the existing surface of the site.*

Respondent failed to install structural erosion and sediment control measures in accordance with the approved Erosion and Sediment Control Plan, prior to all other grading, clearing, and construction activities which resulted in disturbance of the entire existing surface of the site.

5. 22 GAR §10105(B)(10)(a) & (e) Stabilization of Affected Areas. *(a) Stabilization of slopes, channels, ditches, berms, diversions, silt dams, or any disturbed areas shall begin as soon as possible and no later than thirty (30) calendar days after the final grade or final earth-moving activities has been completed; & (e) Any disturbed area not paved, sodded or built shall be seeded and mulched with vegetative cover appropriate to the soil type, as recommended by an engineer, or the condition of the area based on soil test analysis done by a laboratory. This condition does not prohibit the use of matting, gabion, armor coating on erodible surfaces or other type of vegetative cover that will minimize erosion.*

Respondent failed to stabilize disturbed areas with appropriate vegetative cover within 30 days after final grade had been achieved throughout a majority of the site area.

#### 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 (all compliance dates shall be computed using calendar days):

1. **Within seven (7) days of receipt of this order:** Complete installation of interim measures intended to partially capture runoff and sediment prior to off-site discharge from the location of: (a) Pond 4 and (b) Pond 5. Coordinate approval of the scope and nature of such interim measures with GEPA and then contact GEPA for site inspection upon completion.
2. **Within fourteen (14) days of receipt of this order:**
  - a. Submit to GEPA a revised design which includes an armored overflow weir from Pond 1, similar to that provided for Pond 3, to prevent the failure of the pond embankment in the event of an overtopping storm event.
  - b. Complete the installation of the overflow weir at Pond 3, in accordance with the approved E&SC plan.
  - c. Complete active soil stabilization/revegetation measures as called for in the approved E&SC plans.
3. **Within thirty (30) days of receipt of this order:**
  - a. Complete installation of Ponds 2, 4, and 5 in accordance with the approved E&SC plan.
  - b. Complete the installation of the armored overflow weir for Pond 1.

**Stand by to receive and implement additional order items** directed toward the clean-up and restoration of off-site properties and resources damaged by discharges of runoff and sediment from the project site. Such order items will be provided to Respondent in writing and may include requirements to coordinate and conduct work in cooperation with relevant Government of Guam agencies and private landowners.



### 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 decision to issue a penalty order pursuant to 22 GAR §10114(b), which authorizes a civil penalty of 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 Ten Thousand dollars (\$10,000) per violation, per day. In accordance with 22 GAR §10114(b)(2), this penalty is proposed based on the extent and gravity of the violation, and the following factors considered by GEPA: 1) the violation resulted in a significant, direct impact to neighboring properties, resources of cultural and recreational significance, and waters of Guam; 2) Respondent is a large and experienced company and yet knowingly deviated from the approved E&SC plans, permit conditions, and regulations of Guam; and 3) Respondent realized an economic benefit by using the space allotted for E&SC measures for office, staging, and stockpiling areas.

The time period over which GEPA is assessing the proposed \$10,000 penalty is for a period of three hundred sixty eight (368) days, from July 20, 2020, to July 23, 2021. For five (5) total violations over a period of three hundred sixty five (368) days, this amounts to a total of Eighteen Million, Four Hundred Thousand dollars (\$18,400,000). However, the total penalty that may be assessed by GEPA is limited by 22 GAR §10114(b) to \$125,000. **Therefore the total penalty amount is One Hundred Twenty-five Thousand Dollars (\$125,000).**

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.

### RIGHT TO APPEAL:

You may file within thirty days of the date of your receipt of this Notice of Violation/Compliance Order/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/Compliance Order/Penalty Order is hand delivered or mailed to GEPA within thirty days after the Notice of Violation/Compliance Order/Penalty Order was personally served on you or mailed to you, GEPA may proceed upon the Notice of Violation/Compliance Order/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/Compliance Order/Penalty Order will become final, and GEPA may proceed upon the Order without a hearing and without further notice to you.

Should you have any questions or need additional information, please do not hesitate to contact me and my staff at Water Pollution Control Program or Water Division Chief Engineer, CAPT Brian Bearden, P.E., BCEE at 300-4786 and 300-4779, respectively.

*Dangkolu na si Yu'us ma'åse'.*

*Senseramente,*



WALTER S. LEON GUERRERO  
Administrator

Attachments: Notice of Defense Form  
Chief Eng. Inspection Report dated July 23 & 28, 2021  
EMAS Inspection Report dated July 28, 2021

cc: GEPA Legal Counsel