

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
EMD/CWB

WQC0901.FNL.18

March 2, 2018

Lieutenant Colonel James D. Hoyman
Commander and District Engineer
Department of the Army
U.S. Army Engineer District, Honolulu
Fort Shafter, Hawaii 96858-5440

Dear Lieutenant Colonel Hoyman:

**Subject: Section 401 Water Quality Certification (WQC) for
Certain 2017 Department of the Army (DA) Nationwide Permits (NWP)
File No. WQC0901**

This Section 401 WQC may be utilized by any owner of a discharge that is seeking work authorization verification under the DA NWP, promulgated in the January 6, 2017, Federal Register Notices-Final Rule, Volume 82, Number 4, and authorized under Section 404 of the Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act of 1899 (RHA). Pursuant to Hawaii Administrative Rules (HAR), §11-54-1, discharge means the discharge of a water pollutant as defined in Hawaii Revised Statutes (HRS), §342D-1. HRS, §342D-1, defines water pollutant to include dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.

The Department of Health (DOH), Clean Water Branch (CWB), based this Section 401 WQC on the evaluation of information contained in the January 6, 2017 Federal Register: Final Rules; the Final Regional Conditions announced on March 17, 2017 and became effective on March 19, 2017; and the additional information submitted to the DOH with a letter dated April 18, 2017 by the U.S. Army Corps of Engineers (USACE), Honolulu District of the Pacific Ocean Division (POH). The Director of Health (Director) attests that, when all requirements and conditions contained in this Section 401 WQC are fully complied with, there is a reasonable assurance that the activities will be conducted in a manner which will not violate the Basic Water Quality Criteria applicable to all waters and the Specific Water Quality Criteria applicable to the class of State waters where the proposed discharges will take place.

1. Terms of this Section 401 WQC
 - a. This Section 401 WQC becomes effective on **March 2, 2018**.
 - b. This Section 401 WQC expires at the earliest of the following:
 - (1) Midnight, **March 18, 2022**; or
 - (2) Until applicable State Water Quality Standards (WQS) are revised or modified. If applicable State WQS is revised or modified and the discharge activities comply with the revisions or modifications, this Section 401 WQC shall remain valid until midnight, **March 18, 2022**.

2. Coverage of this Section 401 WQC
 - a. The NWPs listed below are hereby granted coverage under this Section 401 WQC in the State of Hawaii if the owner of the activity/discharge complies with the General Conditions (Item No. 3); Applicable Monitoring and Assessment Plan (Item No. 4); and Compliance Reporting Requirements (Item No. 5). Any person, including any public body, conducting activities authorized by these NWPs that cannot or will not comply with requirements in Item Nos. 3 through 5 must apply for and obtain an individual Section 401 WQC from the DOH-CWB.

NWP 3 - Maintenance
NWP 5 – Scientific Measurement Devices
NWP 6 – Survey Activities
NWP 10 - Mooring Buoys
NWP 12 – Utility Line Activities
NWP 13 – Bank Stabilization
NWP 14 – Linear Transportation Projects
 - b. Automatic Coverage for Emergency Projects
 - (1) This Section 401 WQC shall automatically cover projects authorized by a NWP in Item 2.a above in response to a public emergency proclaimed by the President of the United States or State Governor if all of the following conditions are met:
 - (a) The project is in response to a public emergency (e.g. natural disaster, widespread disruption of essential public services);

- (b) The related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services; and
 - (c) Documentation to substantiate the issuance of the public emergency proclamation by the President of the United States or State Governor is emailed to the DOH-CWB (cleanwaterbranch@doh.hawaii.gov) on or before the date initiating the public emergency project.
- (2) This Section 401 WQC shall automatically cover projects authorized by a NWP in Item 2.a above in response to a public emergency as determined by the Director if all of the following conditions are met:
- (a) The project is in response to a public emergency (e.g. natural disaster, widespread disruption of essential public services);
 - (b) The related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services;
 - (c) The project in-water construction will commence no later than 30 calendar days from the date of the public emergency; and
 - (d) Documentation to substantiate the date of the public emergency and the commencement date of the project in-water construction are emailed to the DOH-CWB (cleanwaterbranch@doh.hawaii.gov) on or before the date initiating the public emergency project.

The notification requirements and the water quality monitoring requirements specified in Item No. 4, and the compliance reporting submittals in Item No. 5 do not apply to emergency projects with automatic coverage.

c. Limitations on Coverage

This Section 401 WQC does not apply to:

- (1) After-The-Fact applications, in whole or in part, submitted under DA 2017 – 2022 NWPs. Exception: The Director may, on a

case-by-case basis, grant coverage under this Section 401 WQC for improvements or modifications to DLNR/DOBOR permitted existing offshore moorings installed prior to October 4, 2017.

- (2) Discharge(s) regulated under Section 402 of the CWA.
- (3) Provisional verification issued by the POH under the authorization of any DA 2017 – 2022 NWP.
- (4) When the Director finds that it is more appropriate to evaluate the project impacts under an individual application for a Section 401 WQC such as project is not in the public interest or negatively impacting the live coral, or inappropriate or no mitigation measures proposed to compensate the adverse impacts, etc.
- (5) Any project that may result in downstream/down drift post construction impacts to the physical, chemical, and/or biological environment.
- (6) Projects/activities that involve:
 - (a) Dredging or filling in excess of 25 cubic yards;
 - (b) A maximum acreage loss of State waters exceeding 1/10-acre from any discharge of dredged or fill material in a special aquatic site, including wetlands or loss of State waters less than 1/10-acre without appropriate mitigation measures;
 - (c) Any discharge of dredged or fill material in any stream, including intermittent and ephemeral streams, exceeding 200 linear feet (LF). The 200-LF shall include total footage impacted and measured from both sides of the stream bank and the stream bed;
 - (d) Sidecasting of any material into State waters, including activity authorized under NWP #12;
 - (e) Vertical walls and/or non-permeable rigid structures such as pre-cast concrete, concrete rubble masonry, and cast-in-place structures that will be used for stream bank, stream bed or shoreline stabilization;
 - (f) Verification under the same NWP more than once;
 - (g) Verification under more than one (1) NWP; and

(h) New shoreline stabilization.

d. Water bodies and discharges below are excluded from coverage under this Section 401 WQC. Any person, including any public body, proposing discharges to these water bodies may submit an individual Section 401 WQC application to the DOH-CWB for consideration:

- (1) Waste Discharges to natural lakes and anchialine pools as specified in HAR, §11-54-5.2(a) or any State waters.

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substances, including radioactive substance, whether treated or not, which may pollute or tend to pollute the waters of the State. [HRS, §342D-1]

Note: Non-contaminated and suitable dredge and fill material authorized under a 2017 NWP is not considered waste.

- (2) New sewage discharges and new industrial discharges to estuaries as specified in HAR, §§11-54-3(b), and 11-54-5.2(d).

Note: New industrial discharges do not include the repair and/or replacement within the footprint of an existing structure.

- (3) New sewage and industrial discharges to Embayments: Class AA and Class A as identified in HAR, §§11-54-3(c), and 11-54-6(a).

Note: New industrial discharges do not include the repair and/or replacement within the footprint of an existing structure.

- (4) Inland Waters: Class 1 (including 1.a. and 1.b.) as identified in HAR, §§ 11-54-3(b)(1), 11-54-5.1 and listed in Appendix A, dated July 1, 2014, entitled "Class 1, Inland Waters".

- (5) Marine Waters: Class AA as identified in HAR, §§11-54-3(c), 11-54-6(b), 11-54-6(c), 11-54-6(d) and listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments," and in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", respectively.

- (6) Marine Bottoms: Class I as identified in HAR, §§ 11-54-3(d)(1), 11-54-7(a)(2)(A), 11-54-7(b)(2)(A), 11-54-7(c)(2)(A), and 11-54-7(e)(2)(A).

- e. This Section 401 WQC coverage for each individual work authorization verification issued by the POH under each applicable NWP:
- (1) Shall become valid only when the notification information required in Item No. 4 below has been submitted to the DOH-CWB; all concerns are properly addressed to the satisfaction of the DOH-CWB within 30 calendar days after informed by the DOH-CWB; and the DOH-CWB informs the POH via email of an individual project verification.
 - (2) Shall expire:
 - (a) When this Section 401 WQC for the applicable 2017 NWP expires as specified in Item No. 1.b above; or with respect to any 2017 NWP listed in item 2.a above is modified, revoked, or revoked and reissued or the applicable DA NWP verified project construction activity is completed; discharge ceased and disturbed site restored;
 - (b) May be administratively extended for no more than 12 months beyond midnight, March 18, 2022 only if:
 - i. The project is under construction or under contract to commence construction;
 - ii. The POH intends to extend the individual verification and;
 - iii. The owner of the activity/discharge notifies the DOH-CWB by February 18, 2022 through the e-Permitting CWB Compliance Submittal Form for Section-401 WQCs (Item No. 5 below) that an administrative extension is required to complete the project construction beyond March 18, 2022. The completed Transmittal Requirements and Certification Statement for e-Permitting CWB Compliance Submittal Form for Section 401 WQC. Submissions must be mailed/delivered to the DOH-CWB by February 18, 2022. If the DOH-CWB changes the e-Permitting status to "Accepted", this will indicate that the administrative extension has been granted.

No further correspondence will be provided by the DOH-CWB.

- (c) May be revoked when:

- i. The owner of the activity/discharge does not comply with the conditions and requirements of this Section 401 WQC.

Note: If the owner of the activity/discharge fails to submit the e-Permitting CWB Compliance Submittal Form by the deadlines specified in Item No. 5 below, the blanket Section 401 WQC coverage for that project may be revoked. The DOH-CWB will not make any exceptions and will not accept any excuses.

- ii. The owner of the activity/discharge fails to disclose all relevant facts and/or falsifies information by submitting to the DOH-CWB information that does not represent what is actually occurring at the project site.
- iii. State WQS are revised or modified before the activity is completed, and the DOH-CWB determines that the activity is violating the new State WQS.
- iv. New information arises and the Director has reason to believe that it is in the public interest.
- v. The DOH-CWB or the POH informs the owner of the activity/discharge via e-mail or letter of any non-compliance with any condition of this Section 401 WQC and/or State WQS and the owner of the activity/discharge fails to initiate corrective actions or stop the portion of the activity that is causing the non-compliance within one (1) business day.

These actions shall not preclude the DOH-CWB from taking other enforcement action authorized by law.

The DOH-CWB will provide written and/or email notification to the owner of the activity/discharge and POH when the Section 401 WQC coverage for an individual NWP work authorization verification is revoked.

3. General Conditions

The owner of the activity/discharge shall:

- a. Design, install, and maintain Best Management Practices (BMPs) to minimize the discharge of all potential water pollutants associated with the project construction and operation associated activities. For the purposes of this Section 401 WQC, "minimize" means to confine, isolate, reduce and/or eliminate to the extent achievable using treatment or control measures that are technologically available and economically practicable and achievable in light of best industry practices.

Develop a Site-Specific BMP Plan. The Site-Specific BMP Plan must include at a minimum the information below:

- (1) The project name, a project location description, the Tax Map Key, and the approximate centroid location coordinate of the in-water work activity (latitude/longitude coordinates in decimal degrees, in the WGS84 datum).
- (2) The name(s) of the State waters where the discharge will occur, the classification of the State waters, a determination if the State water(s) is on the CWA, §303(d) impaired water body list, the associated existing uses, temporary impacts to the associated existing uses, and information showing that the associated existing uses will be maintained and protected.
- (3) Identify all potential water pollutant discharge activities that may require the application of appropriate and effective BMPs measures.
- (4) Disclosure of each water pollutant of concern (POC) from the existing environment or from the potential discharge activity; and an estimate of the quality and quantity of the POC from the existing environment or from the potential discharge.
- (5) BMPs measures to be used for each potential water pollutant discharge/producing activity during the proposed project construction period; material specifications and installation and maintained details proposed to manage/isolate/reduce the POC from entering or affecting the adjacent State water outside the installed BMPs measures.
- (6) BMPs measures proposed to control the potential project operations related water pollutant discharges (i.e., stormwater).

- (7) BMP locations and design details, and construction drawings for activities/discharges covered under this Section 401 WQC.
- (8) The sequence of in-water construction activities, including a schedule of the estimated start dates and the duration of each activity. Note: If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of activities is not meant to "lock in" the owner of the activity/discharge to meeting these projections. When departures from initial projections are necessary, this should be documented in the Site-Specific BMP Plan.
- (9) A contingency plan details the alternative measures to be taken in case that unforeseen events do happen during the period of the proposed construction and discharge activity that renders the proposed BMPs measures ineffective/insufficient.
- (10) A restoration plan that will restore the temporarily disturbed site to its pre-construction conditions or better as determined by the monitoring results.

The owner of the activity/discharge is required to keep a current copy of the Site-Specific BMP Plan at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by the DOH-CWB, EPA, or USACE. If an onsite location is unavailable to keep the Site-Specific BMP Plan when no personnel are present, notice of the plan's location must be posted near the main entrance of the project site. The owner of the activity/discharge is required to provide the DOH-CWB, EPA, or USACE a copy of the Site-Specific BMP Plan within one (1) hour upon request.

The DOH-CWB may provide access to portions of the Site-Specific BMP Plan to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the public, but may not be withheld from DOH-CWB, EPA, or USACE.

- b. Utilize BMPs around the entire in-water work area where water pollution producing activities are occurring.
 - (1) In-water means in the State water.
 - (2) State water is defined in HAR, Chapter 11-54. A State water does not have to have flowing and/or standing water. It can be dry, such as a dry, natural gulch or intermittent stream.

- (3) In-water work area is out to a maximum of 10 feet from the toe of the activity authorized by the POH.
- c. Only utilize BMPs that are inert and not sources of pollution themselves. (Examples of inappropriate in-water BMPs include, but are not limited to: compost biosocks since they are a source of nutrients; and a soil berm since the soil particles will erode away.)
- d. Not utilize silt fence or other BMPs with porous material for the in-water work area.
- e. Limit the in-water construction to a maximum length of 200 feet at any given time. The 200 ft limits including both sides of the stream channel. Example: If the POH authorizes 400 feet, a separate Section 401 WQC application is required.
- f. Utilize BMPs for all upland project activity to minimize the discharge of water pollutants into State waters, including the designated in-water work area.
- g. Collect activity/discharge related water pollutants utilizing appropriate catchment/detention devices (e.g. construction debris; airborne particulates; dust; concrete slurry; concrete chips; concrete surface preparation washing effluent; excess water and overflow from boring related activity, horizontal directional drilling slurry; etc.) from localized work areas and minimize or prevent the release of these water pollutants into State waters, including the in-water work area.
- h. Ensure that all in-water and upland BMPs are:
 - (1) Deployed prior to the commencement of the associated work;
 - (2) Properly maintained throughout the entire period of the associated work; and
 - (3) Removed from the project site after the associated work is completed and properly stored or disposed of unless the BMP is intended to become a permanent BMP as specified in the notification.
- i. For a stream, ditch, or gulch: Allow unimpeded flow around the in-water work area to allow for aquatic animal migration and/or to prevent work site and downstream flooding situations. The unimpeded flow shall be equivalent to a two (2) year, 24-hour duration storm event and/or the

existing flow capacity of the stream, ditch, or gulch. Pumped diversions may be utilized if the stream, ditch, gulch is dry or there is only standing/ponded water without the existence of living aquatic animals.

- j. Comply and require all of their contractors and subcontractors to comply with all requirements of this Section 401 WQC.
- k. Ensure that all proposed construction/operation activities are conducted in a manner that will comply with "Basic Water Quality Criteria Applicable to All Waters" as specified in HAR, §11-54-4.
- l. Ensure that all material(s) placed or to be placed in State waters are free of waste material, heavy metals, organic materials, debris and any water pollutants at toxic or potentially hazardous concentrations to aquatic life as specified in HAR, §§11-54-4(a) and 11-54-4(b).
- m. Assess the existing physical, chemical, and biological environment and design the project to ensure there will be no downstream/down drift post construction impacts to the physical, chemical, and biological environment. Any activity that will result in post construction impacts are prohibited under this Section 401 WQC and by HAR, Chapter 11-54. The following are examples of prohibited activities:
 - (1) Concrete lining any section of natural streambed or bank. This type of activity is prohibited as it will result in adverse post construction impacts by eliminating ground water recharge, raising pH, and lowering dissolved oxygen or causing downstream bank erosion.
 - (2) Bank stabilization projects that cause post construction erosion to the adjacent sand beach, shoreline, stream bank, streambed, or other properties.
 - (3) Projects that will result in loss of aquatic environment or function lost without any compensation to the State.
 - (4) Projects involving the removal of dams, impoundments, structures, or sand bars that will result in the downstream/downdrift mobilization of material, sediment, and/or water pollutants.

- (5) Projects with potential impacts to living coral or coral reefs and aquatic ecosystems that have not been approved or deemed acceptable to the appropriate resource agencies (e.g. EPA, DLNR-DAR, NOAA, FWS, etc.). Note: The owner of the activity/discharge is solely responsible for coordinating and addressing concerns of the appropriate resource agencies. The DOH-CWB is not involved. If a resource agency does not have concerns and/or does not have jurisdiction, this requirement has been deemed met for that particular resource agency. In this situation, it is recommended that the owner of the activity/discharge keeps notes or correspondence with that resource agency.
- n. Immediately cease the portion of the construction work if water quality monitoring, daily inspection, or observations indicate that noncompliance with HAR, §11-54-4(a) or §11-54-4(c), will occur or is occurring. The construction activity shall not resume until adequate measures are implemented and appropriate corrective actions are taken to cease the non-compliance. Note: These actions shall not preclude the DOH-CWB from taking enforcement action authorized by law.
- o. Not hold the DOH responsible for any damages or costs incurred due to the temporary cessation of the construction operations.
- p. Ensure that:
 - (1) Erosion and Sediment Control Measures are in place and functional before earth moving operations begin;
 - (2) Temporary soil stabilization shall be applied on areas that will remain unfinished for more than 14 calendar days; and
 - (3) Permanent soil stabilization shall be applied as soon as practicable after final grading.
- q. Ensure that construction activities related discharges not authorized under the NWP's will also comply with the following State water pollution control permitting requirements under the National Pollutant Discharge Elimination System (NPDES) as established in HAR, Chapters 11-54 and 11-55:
 - (1) Obtain NPDES permit for storm water discharges associated with construction activities when the proposed construction activities will disturb one (1) or more acres of land area before initiating any construction activities;

- (2) Not discharge any effluent associated with the proposed construction activities or project operations, such as construction site dewatering effluent, hydrotesting effluent, rock and concrete truck washing effluent, cooling water, etc. without first obtaining the required NPDES permit from DOH-CWB; and
 - (3) Pesticides application in State waters shall comply with HAR, §§11-54-4(a), 11-54-4(b), 11-54-4(c), 11-54-4(f) and/or Chapter 11-55, Appendix M - NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides.
- r. Not allow any concrete truck wash water to be disposed by percolation into the ground.
- s. Ensure that all areas temporarily impacted, either directly or indirectly, by the project construction activities are fully restored to its pre-construction conditions. For example: Incidental construction debris is cleaned up prior to removal of BMPs; remove all scientific measurement devices and any other structures or fills associated with installation and use of these devices (e.g., foundations, anchors, buoys, lines, etc.) when no longer in use; etc.
- t. Discontinue work during storm events or during flood conditions. When storm events or flood conditions are expected or observed, stabilize the site to prevent polluted runoff and erosion and cease work until conditions are normal.
- u. Hold clearing and grubbing to a minimum.
- v. Modify environmental protection measures, including BMPs and monitoring requirements, when instructed by the DOH-CWB for corrective action/remedial actions.
- w. Allow the DOH-CWB to conduct routine inspections of the construction site in accordance with HRS, §342D-8.
- x. Not stockpile, store, or place construction material or construction activity-related materials in State waters or in ways that will disturb or adversely impact the aquatic environment.
- y. Not side cast excavated and/or dredged material in the aquatic environment.

- z. Dispose of construction debris, waste products, vegetation and/or dredged material removed from the construction site at upland State and County approved sites.

- aa. Complete and submit a Solid Waste Disclosure Form for Construction Sites to the DOH, Solid and Hazardous Waste Branch, Solid Waste Section. The form can be downloaded at:
<http://health.hawaii.gov/shwb/files/2013/06/swdiscformnov2008.pdf>.

- bb. When projects involve the dredging/excavation activities:
 - (1) Sediments to be dredged/excavated shall be tested to ensure they are not contaminated before initiating the proposed dredging/excavation activity;
 - (2) Avoid conducting maintenance activities that will lead to mid- and long-term destabilization and exposure of bare sediment/sand along stream banks, stream bed and beaches;
 - (3) Contain on land return flow or runoff from upland dredged spoils dewatering site(s)/disposal site(s), including the confined disposal facility (CDF), shall be contained on land and not allow it to discharge and/or re-enter any State waters without first obtaining the required discharge permit from POH or DOH-CWB;
 - (4) Place all dredged/excavated materials above the high tide line (in coastal areas) and above the ordinary high water mark at all State waters, or disposed of in an upland location. The owner of the activity/discharge shall demonstrate that there is no reasonable expectation that disposal locations adjacent to high tide lines on the ocean, or in floodplains adjacent to other rivers or streams, would result in the material being eroded into the nearby waterbody by high tides and/or flood events; and
 - (5) Warning signs shall be properly deployed and maintained until the portion of the in-water work is completed and the affected area water quality has returned to its preconstruction condition and turbidity control devices have been removed from the waterway.

- cc. Unless authorized by a DA or NPDES permit, do not allow any runoff, return flow, or airborne particulate pollutants from the excavated or dredged material dewatering or stockpiling site, including the confined disposal facility (CDF), to enter or re-enter State waters.

- dd. Ensure that the discharge activity shall not interfere with or become injurious to any designated uses (HAR, §11-54-1 and HAR, §11-54-3), or existing uses (HAR, §11-54-1 and HAR, §11-54-1.1). The owner of the activity/discharge shall maintain and protect all designated and existing uses.

- ee. Maintain and require all of their contractor(s) and the subcontractor(s), that are performing work covered under this Section 401 WQC, to maintain at the construction site or in the nearby field office a copy of this letter, all Notification and Compliance Reporting Requirements in Item Nos. 4 and 5 below, and all records demonstrating that every requirement of this Section 401 WQC has been complied with.

- ff. Report Immediately:
 - (1) In the event of a bypass, upset, or sewage spill resulting in or contributing to a discharge to State waters, the owner of the activity/discharge shall orally notify the DOH at the time the owner of the activity/discharge's authorized personnel become aware of the circumstances, but no later than 24 hours after the event.
 - (2) In the event of a bypass, upset, or sewage spill resulting in or contributing to a discharge of 1,000 gallons or more to State waters, the owner of the activity/discharge shall orally notify the DOH and the AP news wire services at the time the owner of the activity/discharge's authorized personnel become aware of the circumstances, but no later than 24 hours after the event.
 - (3) In the event of an exceedance of a daily maximum discharge limitation, if any exist, the owner of the activity/discharge shall orally notify the DOH within 24 hours of the time the owner of the activity/discharge's authorized personnel becomes aware of the circumstances.

- gg. Contact DOH for Oral Reports
 - (1) The owner of the activity/discharge shall make oral reports during regular office hours (7:45 a.m. to 4:30 p.m.) to the DOH, Clean Water Branch (CWB) at (808) 586-4309.
 - (2) The owner of the activity/discharge shall make oral reports outside of regular office hours to the State-On-Scene Coordinator (SOSC) from the Office of Hazard Evaluation and Emergency Response (HEER) at (808) 226-3799, or to the State Hospital Operator at (808) 247-2191.

4. Notification Requirements

- a. The form used to submit the notification requirements is the e-Permitting NWP Blanket WQC Notification Form. This form is available on the e-Permitting Portal located at: <https://eha-cloud.doh.hawaii.gov/epermit/> or alternate system provided by the Director.
 - (1) Enter the e-Permitting Portal website.
 - (2) Login to the e-Permitting Portal. A one-time registration is required to obtain a login and password.
 - (3) Press the Form Finder button.
 - (4) Type "NWP Blanket WQC Notification Form."
 - (5) Read the instructions.
 - (6) Press the submit Online Form button and complete the form.
- b. The owner of the activity/discharge seeking verification under the applicable NWP shall submit through the e-Permitting NWP Blanket WQC Notification Form:
 - (1) A copy of the PCN submitted to the USACE.
 - (2) A compliance certification indicating that they will comply with all conditions of this Section 401 WQC.
 - (3) The legal name(s), street address, contact person's name and position title, and telephone and email addresses of the Owner of the discharge, Owner Contact Person, Certifying Person, General Contractor, Emergency Contacts, Project Contact, and authorized representative (if applicable).
 - (4) The project name, a project location description, the Tax Map Key, and the approximate centroid location coordinate of the in-water work activity (latitude/longitude coordinates in decimal degrees).
 - (5) All associated applicable permits or licenses that will be required:
 - (a) The CWA, Section 402 NPDES Permit number and/or Notice of General Permit Coverage (NGPC) file number which is associated with this project activity, as applicable.

- (b) State Department of Land and Natural Resources (DLNR) permit number and status for:
 - (i) Stream Channel Alteration Permit (SCAP);
 - (ii) Conservation District Use Permit (CDUP);
 - (iii) Statewide programmatic general permit for the restoration, repair, maintenance, and operation of loko i'a, as applicable. Please provide a copy of "authorization to proceed" issued by DLNR, Office of Conservation and Coastal Land (OCCL).
- (c) RCRA Permit number for any hazardous wastes stored or used at the project, as applicable.
- (d) For SARA, indicate the chemicals and their quantities at the project site, as applicable.
- (e) Others (i.e., Underground Injection Control (UIC) file number, Special Management Area (SMA) permit, Shoreline Setback Variance (SSV), etc.), as applicable.
- (6) The name(s) of the State waters where the discharge will occur, the classification of the State waters, a determination if the State water(s) is on the CWA, §303(d) impaired water body list, the associated existing uses, temporary and potential long term adverse impacts to the associated existing uses, and a certification that the associated existing uses will be maintained and protected.
- (7) Disclosure of each water pollutant of concern (POC) from the Activity; certification that the BMPs will completely isolate and confine the entire volume of water within the in-water work area and prevent each water pollutant from leaving the in-water work area; the duration of the water pollutant discharge; and the quality and quantity of the POC discharge.
- (8) BMPs and construction drawings for activities/discharges covered under this Section 401 WQC.
- (9) Specification of the during construction monitoring frequency based on the duration of the in-water work and when BMPs will be changed/moved as the in-water work is performed. The minimum during construction monitoring frequency is as follows:

- (a) \leq two (2) months in-water work; monitoring and reporting frequency = daily.
 - (b) $>$ two (2) months and $<$ one (1) year in-water work; monitoring and reporting frequency = three (3) times per week.
 - (c) \geq one (1) year and $<$ two (2) years in-water work; monitoring and reporting frequency = two (2) times per month.
 - (d) \geq two (2) years and $<$ three (3) years in-water work; monitoring and reporting frequency = monthly.
 - (e) \geq three (3) years in-water work; monitoring and reporting frequency = quarterly.
- (10) The Applicable Monitoring and Assessment Plan (AMAP) that complies with AMAP Guidelines (August 14, 2015/Version 1); HAR, Chapter 11-54; CWA, §401(d); and HRS, §342D-55.

Water Chemistry Monitoring does not apply to activities/discharges that comply with the accepted/approved Standard Operational Procedures (SOP) by the DOH-CWB.

- (11) Certification that: the owner of the activity/discharge will stop all in-water work if a visible plume is observed emanating from the work area; the plume will be sampled in accordance with the AMAP; and work will not resume until the cause of the plume is determined and corrective action is performed as required.
- (12) Certification that: the owner of the /activitydischarge will stop all in-water work if during construction Impact Station water quality parameter levels are greater than the highest mean pre-construction Impact Station water quality parameter levels, and during construction Impact Station water quality parameter levels are greater than during construction upstream/up current control station water quality parameter levels. The owner of the activity/discharge must also certify that work will not resume until the cause of these exceedances are corrected as demonstrated by water quality sampling.
- (13) There is no filing fee for the e-Permitting NWP Blanket Notification Form.

- c. During the process of completing the e-Permitting NWP Blanket WQC Notification Form, the owner of the activity/discharge may be required to download the Transmittal Requirements and Certification Statement for e-Permitting NWP Blanket WQC Form Submissions. After submitting the NWP Blanket WQC Notification Form through the e-Permitting Portal, the owner of the activity/discharge shall mail/deliver to the DOH-CWB the completed Transmittal Requirements and Certification Statement for e-Permitting NWP Blanket WQC Notification Form Submissions with the following information:
- (1) The e-Permitting Submission #. A unique e-Permitting Submission # (e.g. 15H-ZGVV-421H) is assigned to each NWP Blanket WQC Notification Form submittal. It is located in the History Link of the e-Permitting Portal. If the owner of the activity/discharge submits a revised NWP Blanket WQC Form, the e-Permitting Submission # will contain the version (e.g. 15H-ZGVV-421H, v1).
 - (2) Indication if an initial NWP Blanket WQC Notification Form (new submittal) or a Revised NWP Blanket WQC Notification Form (revised submittal to address DOH-CWB comments) is being submitted.
 - (3) File number if revising the NWP Blanket WQC Notification Form to respond to DOH-CWB comments (e.g. WQC0962). The DOH-CWB comments will contain the file number. Initial NWP Blanket WQC Notification Form submittals will not have a file number.
 - (4) Printed First and Last Name of Certifying Person. For initial submittals, the Printed First and Last Name must be the Certifying Person identified in NWP Blanket WQC Notification Form. For revised submittals, the Printed First and Last Name may be either the Certifying Person identified in the NWP Blanket WQC Notification Form or the duly authorized representative identified in NWP Blanket WQC Notification Form.
 - (5) The certification statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the

best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

- d. Date of certification of the Transmittal Requirements and Certification Statement for e-Permitting NWP Blanket WQC Form Submissions.
- e. Original Certification signature. Someone else may sign “for” the individual listed in the Printed First and Last Name. Any signatures shall be provided as described in 40 CFR §122.22.
- f. A CD or DVD containing the downloaded e-Permitting submission in PDF or ZIP. To download the submission, click on the History Link in the e-Permitting Portal (after NWP Blanket WQC Notification Form is submitted). Locate the submission and press the view button under the Action column. Press the Download Submission button. A PDF file will be generated if you have no attachments. A ZIP file will be created if you have attachments. Save the PDF or ZIP file on the CD or DVD. Do not add additional files to the CD or DVD. Your CD or DVD shall match your e-Permitting submission #.
- g. The completed Transmittal Requirements and Certification Statement for e-Permitting NWP Blanket WQC Form Submissions and all attachments shall be mailed or delivered to the DOH-CWB, Hale Ola Room 225, 2827 Waimano Home Road, Pearl City, Hawaii 96782.
- h. Check the status of the NWP Blanket WQC Notification Form submittal using the History Link in the e-Permitting Portal. The statuses are as follows:
 - (1) Submitted – Owner of discharge has submitted the NWP Blanket WQC Notification Form through the e-Permitting Portal.
 - (2) Hard Copy Received – DOH-CWB has received the hard copy of the Transmittal Requirements and Certification Statement for e-Permitting NWP Blanket WQC Form Submissions.
 - (3) In Review – DOH-CWB is currently reviewing the NWP Blanket WQC Notification Form submittal. The DOH-CWB shall have 30 calendar days from the time DOH-CWB receives the hard copy of the Transmittal Requirements and Certification Statement for e-Permitting NWP Blanket WQC Form Submissions to review.

- (4) Applicant Action Required – DOH-CWB has comments on the NWP Blanket WQC Notification Form submittal. DOH-CWB will e-mail comments/concerns on the NWP Blanket WQC Notification Form submittal to the owner of the activity/discharge and cc copy USACE. The owner of the activity/discharge shall properly address DOH-CWB comments/concerns within 30 calendar days from the email. If the owner of the activity/discharge fails to properly address DOH-CWB comments/concerns by the 30 calendar day deadline, the DOH-CWB will consider the owner of the activity/discharge to no longer be interested in being covered under this Section 401 WQC. Therefore, the status of the NWP Blanket WQC Notification Form shall be changed to Rescinded and the processing will be terminated. The owner of the activity/discharge will then have to apply for and obtain coverage under an individual Section 401 WQC.
- (5) Accepted – The DOH-CWB concurs that the individual verification is covered under this Section 401 WQC. The DOH-CWB shall notify the USACE via e-mail (cepoh-ro@usace.army.mil) that the individual verification is covered under this Section 401 WQC. Copies of the email will be sent to the Certifying Person, Owner Contact, General Contractor (if applicable), Project Contact, Emergency Contacts, and Authorized Representative (if applicable).
- (6) Rescinded – The individual verification cannot be covered under this Section 401 WQC and must apply for and obtain coverage under an individual Section 401 WQC. The DOH-CWB shall notify the USACE via e-mail (cepoh-ro@usace.army.mil) that the individual verification has been denied coverage under this Section 401 WQC. Copies of the e-mail will be sent to the Certifying Person, Owner Contact, General Contractor (if applicable), Project Contact, Emergency Contacts, and Authorized Representative (if applicable).

5. Compliance Reporting Submittals

- a. The form used to submit reporting and compliance requirements is the e-Permitting CWB Compliance Submittal Form for Section 401 WQCs. This form is available on the e-Permitting Portal located at: <https://eha-cloud.doh.hawaii.gov/epermit/> or alternate system provided by Director.

- (1) Enter the e-Permitting Portal website.

- (2) Login to the e-Permitting Portal.
 - (3) Press the Form Finder button.
 - (4) Type "CWB Compliance Submittal Form for Section 401 WQCs" for the form to submit reporting and compliance requirements.
 - (5) Read the instructions.
 - (6) Press the submit Online Form button and complete the form.
- b. The owner of the activity/discharge shall submit through the e-Permitting Section CWB Compliance Submittal Form for Section 401 WQCs:
- (1) Notification of the commencement date within seven (7) calendar days before the start of any in-water construction activities.
 - (2) Notification of the completion date within 14 calendar days after the completion of the proposed construction activities (including the disturbed areas restoration activities and post construction monitoring requirements).
 - (3) Notification of all noncompliance with BMP and AMAP requirements, breaches of BMPs, and non-compliances requiring immediate reporting in Item No. 3.ff within five (5) working days from the date of the noncompliance. This noncompliance notification shall contain a description of the non-compliance and its cause; the period of non-compliance, including exact dates and times; if the non-compliance has not been corrected, the anticipated time it is expected to continue; public notice efforts, if any; clean-up efforts, if any; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the non-compliance.
 - (4) All field measurements results, color photographs, and assessments described in the AMAP to the DOH-CWB before the closing of the next business day the field samples and photographs were taken, via e mail in excel and pdf format to cleanwaterbranch@doh.hawaii.gov.
 - (5) If required by the appropriate resource agencies, a Compensatory Mitigation Plan that was approved/accepted if the activity may adversely affect the biological environment, including special aquatic sites specified in 40 CFR 230.40 to 230.45. If the discharge/activity will affect special aquatic sites, the Mitigation/Compensation Mitigation Plan must compensate for

the loss of area acreage, uses and function of the special aquatic site; be located on-site or be located in the same watershed as the affected special aquatic site; and be approved/accepted by the USACE in accordance with the "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule" published in Federal Register (FR) on April 10, 2008 and became effective on June 9, 2008.

- c. During the process of completing the e-Permitting Section 401 WQC Compliance Form, the owner of the activity/discharge may be required to download the Transmittal Requirements and Certification Statement for e-Permitting CWB Compliance Submittal Form for Section 401 WQCs Submissions. After submitting the CWB Compliance Submittal Form for Section 401 WQCs through the e-Permitting Portal, the owner of the activity/discharge shall mail/deliver to the DOH-CWB the completed Transmittal Requirements and Certification Statement for e-Permitting CWB Compliance Submittal Form for Section 401 WQCs Submissions with the following information:

- (1) The e-Permitting Submission #. A unique e-Permitting Submission # (e.g. 15H-ZGVV-421H) is assigned to each CWB Compliance Submittal Form for Section 401 WQCs submittal. It is located in the History Link of the e-Permitting Portal. If the owner of the activity/discharge submits a revised CWB Compliance Submittal Form for Section 401 WQCs, the e-Permitting Submission # will contain the version (e.g. 15H-ZGVV-421H, v1).
- (2) Indication if an initial CWB Compliance Submittal Form for Section 401 WQCs (new submittal) or a revised CWB Compliance Submittal Form for Section 401 WQCs (revised submittal to address DOH-CWB comments) is being submitted.
- (3) File number (e.g. WQC0962).
- (4) Printed First and Last Name of Certifying Person or Authorized Representative as identified in the NWP Blanket WQC Notification Form submitted for the verification.
- (5) The certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information

submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

- (6) Date of certification of the Transmittal Requirements and Certification Statement for e-Permitting CWB Compliance Submittal Form for Section 401 WQCs.
- (7) Original Certification signature. Someone else may sign “for” the individual listed in the Printed First and Last Name. Any signatures shall be provided as described in 40 CFR 122.22(a).
- (8) A CD or DVD containing the downloaded e-Permitting submission in PDF or ZIP. To download the submission, click on the History Link in the e-Permitting Portal (after the CWB Compliance Submittal Form for Section 401 WQCs is submitted). Locate the submission and press the view button under the Action column. Press the Download Submission button. A PDF file will be generated if you have no attachments. A ZIP file will be created if you have attachments. Save the PDF or ZIP file on the CD or DVD. Do not add additional files to the CD or DVD. Your CD or DVD shall match your e-Permitting submission #.

The completed Transmittal Requirements and Certification Statement for e-Permitting CWB Compliance Submittal Form for Section 401 WQCs Submissions and all attachments shall be mailed or delivered to the DOH-CWB, Hale Ola Room 225, 2827 Waimano Home Road, Pearl City, Hawaii 96782.

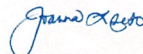
- d. Check the status of the CWB Compliance Submittal Form for Section 401 WQCs submittal using the History Link in the e-Permitting Portal. The statuses are as follows:
 - (1) Submitted – Owner of discharge or authorized representative has submitted the CWB Compliance Submittal Form for Section 401 WQCs through the e-Permitting Portal.
 - (2) Hard Copy Received – DOH-CWB has received the hard copy of the Transmittal Requirements and Certification Statement for e-Permitting CWB Compliance Submittal Form for Section 401 WQCs Submissions.

- (3) In Review – DOH-CWB is currently reviewing the CWB Compliance Submittal Form for Section 401 WQCs submittal.
 - (4) Applicant Action Required – DOH-CWB has comments on the CWB Compliance Submittal Form for Section 401 WQCs submittal. DOH-CWB will email comments/concerns to the owner of the activity/discharge and cc copy USACE. The owner of the activity/discharge shall properly address DOH-CWB comments/concerns or DOH-CWB will revoke individual verification coverage under this Section 401 WQC.
 - (5) Accepted – The DOH-CWB has no comments on the submittal at this time.
6. USACE shall email to the DOH-CWB (cleanwaterbranch@doh.hawaii.gov) a pdf copy of all issued final verifications.

If you agree with the terms and conditions of this Section 401 WQC, please sign and date below; make a copy for your file record; and submit this entire letter with your original signature to the DOH-CWB within 14 calendar days from your signature date.

If you have any questions, please contact Mr. Mathew Kurano of the Enforcement Section or Mr. Edward Chen of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,



for

VIRGINIA PRESSLER, M.D.
Director of Health

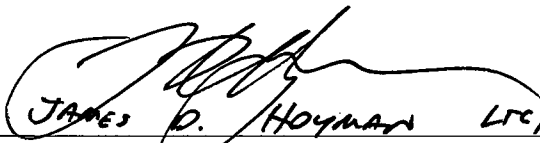
Enclosure: Response to Comments (No. WQC0901.FNL.18a)

- c: Regulatory Office, POH, COE [via e-mail cepoh-ro@usace.army.mil only]
Mr. John Nakagawa, CZM Program, Office of Planning, DBEDT
[via e-mail JNakagaw@dbedt.hawaii.gov only]
U.S. Fish and Wildlife Service
U.S. National Marine Fisheries Service [via e-mail pirohonolulu@noaa.gov only]
Division of Aquatic Resources, DLNR [via e-mail dlnr.aquatics@hawaii.gov only]
CWRM, DLNR [via e-mail dlnr.cwrn@hawaii.gov only]
OCCL, DLNR [via e-mail dlnr.occl@hawaii.gov only]
Mr. Cory K. Waki, CIV NAVFAC HI, EV1 [via e-mail cory.waki@navy.mil only]
DHO (Hawaii, Maui, Kauai) and EHS, Molokai/Lanai

Lieutenant Colonel James D. Hoyman
March 2, 2018
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WQC0901.FNL.18

I AGREE WITH THE TERMS AND CONDITIONS OF THIS LETTER:


JAMES D. HOYMAN LTC, EW 13 MAR 18
HONOLULU DISTRICT ENGINEER DATE
U.S. ARMY CORPS OF ENGINEERS

**Response to Comments and Final Determinations on Public Notice
Section 401 Water Quality Certification (WQC) for
Certain 2017 Department of the Army (DA) Nationwide Permits (NWP)
File No. WQC0901
March 2, 2018**

On October 4, 2017, the Department of Health (DOH) issued and published a "NOTICE OF PROPOSED SECTION 401 WATER QUALITY CERTIFICATION BY THE HAWAII STATE DEPARTMENT OF HEALTH, File No. WQC0901 "DOCKET NO. WQC0901" in the *"Honolulu Star-Advertiser, The Maui News, West Hawaii Today, Hawaii Tribune-Herald, and The Garden Island."* The public notice indicated that all written comments and requests received on time will be considered. The comment period ended on **November 2, 2017**.

Comments were received by the Clean Water Branch (CWB) on **November 3, 2017**, through an e-mail dated November 3, 2017, from the Naval Facilities (NAVFAC) Engineering Command, Hawaii. Although these comments were submitted after the 30-day comment period, the DOH-CWB has provided responses below for clarification.

1. General Comment

We appreciate that this blanket Water Quality Certification (WQC) will help to expedite the permitting process and allow the permittee more flexibility than the previous blanket WQC. In the future, it would be even more beneficial to have blanket WQCs that will be incorporated as Regional Conditions to the Nationwide Permits (similar to what was done in 2002) so that extra paperwork and burdensome and expensive Applicable Monitoring and Assessment Plans and monitoring are not required for very small projects which could implement standard types of best management practices for protection of water quality.

Response:

Thank you for your comments. The DOH-CWB has initiated and implemented many new processes to improve and expedite the review and processing of request for Section 401 WQCs. This blanket Section 401 WQC, File No. WQC0901.FNL.18, is one of the processes. Please see below for a summary.

- August 14, 2015, the DOH-CWB issued a blanket Section 401 WQC, File No. WQ0804, for seven (7) frequently authorized Department of the Army (DA) 2012 Nationwide Permits (NWPs). To assist and guide the owners of the activity/discharge wishing to be covered under this blanket Section 401 WQC, the DOH-CWB developed the Applicable Monitoring and Assessment Plan (AMAP) guidelines (August 14, 2015 Version 1) based on the Environmental Protection Agency (EPA) Data Quality Objective (DQO).

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- The DOH-CWB and the Regulatory Office of the Honolulu Engineering District, Pacific Ocean Division (POH) of the U.S. Army Corps of Engineers (USACE) held two (2) workshops. These workshops were sponsored by the State Department of Transportation (DOT), Highways Division (HWY) and the General Contractors Associations (GCA) and were held to inform government agencies, design and environmental consultants, construction contractors, and potential DA NWP permittees on how to properly utilize the blanket Section 401 WQC, File No. WQ0804, streamlined and expedited permitting process for their projects.
- In September 2015, the DOH-CWB and representatives from EPA Region 9; POH; DOT-HWY; DOT-Airports; Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR); City and County of Honolulu (CCH), Department of Design and Construction; CCH, Department of Facilities Maintenance; and one consulting firm participated in a 5-day Kaizen meeting. During the meeting, representatives evaluated the existing Section 401 WQC review and processing process; reviewed and analyzed two (2) years of the most current Section 401 WQC processing data; analyzed pros and cons of the current Section 401 WQC review and processing procedures with potential solutions/recommendations; identified unnecessary or burdensome steps; analyzed hurdles and problem areas that caused delays or prolonged the review and processing time; and brain stormed solutions to assist potential applicants to properly and accurately prepare their applications and to improve the WQC application review and processing procedures.
- The DOH-CWB took many of the recommendations from the Kaizen meeting and created a voluntary streamlining process where potential applicants could create Standard Operation Procedures (SOPs) for their discharge activities. The DOH-CWB provided written guidelines on elements/measures/criteria needed for design and developing the appropriate SOPs. The DOH-CWB encouraged WQC applicants, including government agencies, to develop their own SOPs for similar and routine discharge activities. Once the DOH-CWB accepts/approves the SOPs, they can be used for all Section 401 WQC applications that involve discharge activities covered by the SOPs, and that will eliminate the need for DOH-CWB to review the same information again since it was already approved. Also, once the DOH-CWB accepts/approves of a SOP, water chemistry monitoring is not required as the DOH-CWB will have a greater assurance that the proposed pollution control measures will be

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implemented. The SOPs are meant to be a living document and may be modified for improvement when deficiencies are observed or when new SOPs are developed for other types of discharge activities.

- The DOH-CWB is proposing to issue the blanket Section 401 WQC, File No. WQC0901.FNL.18 for seven (7) selected DA) 2017 NWPs. WQC0901.FNL.18 replaces File No. WQ0804 that expired in March 2017. The purpose of WQC0901.FNL.18 is to streamline the processing of request for Section 401 WQC coverage for projects/activities/discharges that can comply with all applicable conditions and requirements of WQC0901.FNL.18 to minimize adverse water quality impacts to State waters. There is a very short turnaround time [see Conditions Nos. 2.e(1), 4.h(3) and 4.h(4)] as compared to what is allowed Under Clean Water Act (CWA), Section 401. Condition No. 4.b(10) of this blanket Section 401 WQC (File No. WQC0901.FNL.18) requires the submittal of an AMAP that complies with AMAP Guidelines (August 14, 2015/Version 1); HAR, Chapter 11-54; CWA, §401(d); and HRS, §342D-55. However, the water chemistry monitoring requirement does not apply to activities/discharges with DOH-CWB accepted/approved SOPs. Any applicant wishing to eliminate the water chemistry monitoring requirements specified in the blanket Section 401 WQC (File No..WQC0901.FNL.18) may either (1) develop and properly implement SOPs, accepted/approved by the DOH-CWB, or (2) provide adequate justification in an individual Section 401 WQC application to justify why water chemistry monitoring is not necessary.

2. Page 9, Item No. 3.a, last paragraph

Security concerns for protecting critical infrastructure and information (not only Confidential Business Information) may also require information on WQC applications be kept from public viewing. It is requested that this also be included as a condition of the blanket WQC, but with the condition that information be shared only with permission from the permittee.

Response:

The DOH-CWB believes that it is more appropriate to handle this type of request administratively and on a case-by-case basis, instead of including it as a condition in the blanket Section 401 WQC, File No. WQC0901.FNL.18. Most activities requiring a Section 401 WQC are conducted in the open. Also, the information required in WQC0901.FNL.18, Condition No. 4 (Notification Requirements) are strictly water pollution control related and rarely will have anything to do with critical infrastructure or confidential information. In general,

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all information required in the Notification Requirements are considered public record. In the event an activity meets the terms and conditions of WQC0901.FNL.18, but there are security concerns for protecting critical infrastructure and information in the Notification Requirements, the DOH-CWB will handle this situation similar to the handling of confidential National Pollutant Discharge Elimination System (NPDES) application information in 40 CFR §122.7 and 40 CFR §123.25.

3. Page 14, Item No. 3.bb.(1)

There is a requirement under this proposed blanket WQC to test sediments to be dredged/excavated to ensure that they are not contaminated. Under most testing standard protocol, material is only tested if there is a history of land use, disposal, or spills that indicate that there is a source of suspected contamination. The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers require testing for suitability for ocean disposal, but since this proposed blanket WQC does not cover ocean disposal, the purpose for testing and criteria to be used are not clear. What criteria would be used to consider dredged material "contaminated" for suspension in water during excavation/dredging, and what parameters would the Clean Water Branch require that the material be tested for?

Recommend that testing only be required if there is a suspected source of contamination that could contaminate the water while sediment is being dredged/excavated (e.g., nearby contaminated site, oil or chemical spill, etc.), and sources like typical urban storm water runoff not be considered as source of contamination as the water discharges to the water body whenever it rains. Include criteria to be used to determine whether material is "contaminated" for purposes of the blanket WQC.

Response:

The blanket Section 401 WQC, File No. WQC0901.FNL.18 is designed for projects that:

- Have all available information demonstrating that the potential activity related water pollutant discharges will not cause adverse water quality impacts to State waters;
- Are designed and to be constructed in a manner to meet the WQC0901.FNL.18 conditions and requirements, including compliance with the Hawaii Administrative Rules, Chapter 11-54, Water Quality Standards, Basic Water Quality Criteria and Specific Water Quality Criteria; and

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- Are ready to initiate the proposed construction activity upon approval.

The blanket Section 401 WQC, File No. WQC0901.FNL.18 contains a requirement for testing the sediments to be dredged. The DOH-CWB uses the sediment testing results to determine if the activity should be covered under the blanket Section 401 WQC or an individual Section 401 WQC. Also, the DOH-CWB uses the sediment testing results to evaluate the appropriateness of the proposed Best Management Practices (BMPs) Plan and AMAP.

Parameters that need to be analyzed include those associated with known pollution sources, such as upland land use activities, spills, and illegal dumping activity. Storm water discharges associated with construction activity, storm water associated with industrial activity, and storm water from Municipal Separate Storm Sewer Systems (MS4s) are identified point source discharge under CWA, Subsection 402(p) and subject to regulations under the NPDES permitting program. Sediment contamination due to urban storm water discharges need to be properly handled, properly regulated, and cannot be overlooked.

The term "contamination" as it is used in File No. WQC0901.FNL.18 means containing pollutants that could be released into the water column. All dredging activities have the potential to resuspend solids and toxics into the water column. For dredging activities, resuspended solids and toxics are WQC0901.FNL.18 Notification Requirement water pollutants of concern that need to be disclosed in the required e-Permitting NWP Blanket WQC Notification Form. WQC0901.FNL.18 has a very short turnaround time for the DOH-CWB to render a decision as to whether a project is eligible for coverage, therefore, sediment testing needs to be performed prior to submitting the e-Permitting NWP Blanket WQC Notification Form.

If an owner of the activity/discharge believes that the sediment to be dredged/excavated is not contaminated and does not want to test the sediment, they can submit an individual Section 401 WQC application with appropriate evidence/justification, and request for an individual review and processing for a Section 401 WQC.

4. Page 15, Item No. 3.ff.(3)

Under this proposed blanket WQC, in the event of an exceedance of a daily maximum discharge limitation, if any exist, the Permittee is required to orally notify DOH within 24 hours of the time that authorized personnel become aware of the circumstances. Could this be further clarified? Would this be the same as

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the criteria stated in Item No. 4.b(12) or if a plume is observed in the case of visual monitoring, or is a reportable quantity under CERCLA?

Response:

A turbidity plume observed immediately outside of the installed BMPs is considered non-compliance with HAR, §11-54-4(a) requirements. The oral reporting of exceedances requirement on Page 15, Condition No. 3.ff.(3) applies to turbidity plumes observed immediately outside of the installed BMPs and to the criteria in WQC0901.FNL.18, Condition No. 4.b(12) (during construction Impact Station water quality parameter levels greater than the highest mean pre-construction Impact Station water quality parameter levels, and during construction Impact Station water quality parameter levels greater than during construction upstream/up current control station water quality parameter levels).

In addition to oral reporting, WQC0901.FNL.18 requires the owner of the activity/discharge to comply with Condition Nos.4.b.(11) and 4.b(12) immediately, which includes stopping work, sampling and analyzing the plume, and not resuming work until the cause of the plume is determined and corrective action is performed.

If a CERCLA reportable quantity is reached, it shall be reported to DOH's Hazard Evaluation and Emergency Response Office.

5. Page 18, Item No. 4.b.(10)

The AMAP Guidelines (August 10 2015/Version 1) is a difficult document to find. Recommend that it be posted to the Clean Water Branch's website or e-Permitting Portal as a stand-alone document.

Response:

There is a typo on the date of version 1 AMAP Guidelines. It should be August 14, 2015, instead of August 10, 2015. Corrected this error in condition No. 4.b(10) of the blanket Section 401 WQC, File No. WQC0901.FNL.18.

This document is located on the DOH-CWB's WPC Viewer located at:

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/WQC0804/20150814.AMAP%20Guidelines%20Version%201%20-%20WQC0804%20-%2008011CEC.15a.pdf>.

6. Page 18, Item No. 4.b.(10)

It is requested that DOH-CWB consider revising this section to include an abbreviated monitoring description to allow for only visual monitoring if the

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potential for pollutants in the water is low. The requirement for an AMAP and in-water quality monitoring is a burden on the permittee, especially for very small activities (e.g., single geotechnical boring, scientific measuring devices or mooring buoys that have almost no potential for discharge of a pollutant). It is also requested that DOH-CWB not require in-water testing for parameters listed and require only visual and photographic monitoring for projects that will last over one month but have very little potential for discharge, like those mentioned previously. The cost and time required for a consultant, boat, laboratory analysis, field instruments, calibration, and the time required is often not commensurate with the potential for discharge and potential for effect to water quality, with very little benefit to water quality and the taxpayer.

Response:

Please see the DOH-CWB response to Comment No. 1 .

7. Page 18, Item Nos. 4.b.(12)

Item No. 4.b.(12) requires a certification that the owner of the activity/discharge certify that work will not resume until the cause of exceedances are corrected as demonstrated by water quality sampling. Recommend that this section be clarified to specify that it only pertains to projects that require water quality sampling, and not if exceedances are for turbidity only.

Response:

Conducting receiving water monitoring in accordance with the accepted AMAP is a standard requirement of the blanket Section 401 WQC, File No WQC0901.FNL.18.

8. Item No. 4

It is often necessary to obtain permit coverage prior to contract award. It is requested that the NWP Blanket WQC Notification Form be modified to allow that the Contractor's point-of-contact information be provided 30 days prior to the start of work, similar to what is required for NPDES individual permit applications.

Response:

The owner of the activity/discharge can put themselves as the General Contractor in the e-Permitting NWP Blanket WQC Notification Form. After the activity is covered under the blanket Section 401 WQC, File No. WQC0901.FNL.18, the General Contractor information can be submitted via the e-Permitting CWB Compliance Submittal Form within seven (7) calendar

**Response to Comments and Final Determinations on Public Notice
Section 401 Water Quality Certification (WQC) for
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days before initiating any construction activity. No revision or modification is needed.

Other Changes to the public noticed draft conditional blanket Section 401 WQC, File No. WQC0901.FNL.18

1. The DOH-CWB has moved its office to a new location since the "NOTICE OF PROPOSED WATER QUALITY CERTIFICATION" published in five (5) newspapers Statewide on October 4, 2017. Therefore, DOH-CWB address contained in the issued conditional blanket Section 401 WQC (File No. WQC0901FNL.18) is revised to read as "Hale Ola, Room 225, 2827 Waimano Home Road, Pearl City, Hawaii, 96782," instead of "919 Ala Moana Boulevard, Room 301, Honolulu, Hawaii 96814."
2. To clarify the Director's intent of expediting the review and processing of applications submitted for conducting improvements/modifications to those DLNR-DOBOR permitted existing offshore moorings (in a list submitted to DOH-CWB through an email dated October 2, 2017), the Director may, on a case-by-case basis, grant coverage under this conditional blanket Section 401 WQC. Condition 2.c(1) is revised to read as: "(1) After-The-Fact applications, in whole or in part, submitted under DA 2017 – 2022 NWPs. Exception: The Director may, on a case-by-case basis, grant coverage under this Section 401 WQC for improvements or modifications to DLNR/DOBOR permitted existing offshore moorings installed prior to October 4, 2017."

WQC0901.FNL.18a