



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

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Rory Respicio, General Manager Port Authority of Guam) **WQC ORDER #2001-01**
) Hotel Wharf and Access Road
) Maintenance and Repair Project;
) Apra Harbor, Piti, Guam
)

TO: Rory Respicio, General Manager
Port Authority of Guam
1026 Cabras Highway, Suite 201
Piti, Guam 96915

On, June 4, 2018, Port Authority of Guam (PAG) submitted a Clean Water Act Section 401 Water Quality Certification (WQC) application for the Hotel Wharf and Access Road Maintenance and Repair project in accordance with 22 Guam Administrative Rules and Regulations (GAR) §5106 (2015). This WQC is in support of the Army Corps of Engineers Permit File No. POH-2017-253. A Guam EPA public notice was issued pursuant to the public process procedure at GAR §5106(i) on January 30-31st, 2020.

PROJECT DESCRIPTION

Hotel Wharf is located within Apra Harbor along the Glass Breakwater access road on Cabras Island. The property is owned and managed by the Port Authority of Guam and is approximately 1.3 miles west of Route 11. Coordinates for the wharf are 13°27'50.19"N and 144°39'6.05"E.

Approximately one mile of the roadway adjacent to the project area will be repaired to improve the access to Hotel Wharf as well as the other facilities on Cabras Island.

The proposed project includes wharf reconstruction, access road repair, stormwater outfall installation, underground utility placement/replacement, marine debris removal, placement of fill, and demolition. Wharf repair entails the construction of a new sheet pile bulkhead retaining wall that is offset from the current wall by 6.25-9.75 feet. This will expand Hotel Wharf's footprint by 4,577 sq. ft. Approximately one mile of the access road will receive minor adjustments in grade and alignment as well as improvements along the shoulder. There will be seven (7) new stormwater outfalls installed, i.e., five along the roadway and two along the Wharf, to discharge surface water runoff into Apra Harbor. The surface water along the road will first be filtered by a grass-lined bioswale prior to being discharged into the harbor. Hotel Wharf will receive two (2) oily water separators and a filtration system to treat its surface water runoff before discharge. Roadway utility placement and replacement will include water line replacement, stormwater piping, and empty data transmission conduit and sanitary sewer. Utilities installed within the wharf will include electrical for power and lighting, potable water with capped stubouts to support future construction, a fire main with supporting tank and manholes to support future construction, and an empty data communications conduit terminating in handholes to support future construction. Since the footprint of the wharf is expanding, the marine debris located on the seafloor surrounding the wharf will be cleared of any debris deemed unsuitable to remain in place or if it poses as an obstacle to the project. Clean fill material will be used to backfill the area between the existing and new bulkhead walls. Demolition of surface facilities, dilapidated structures, asphalt, and pavement will also take place along the wharf.

DESCRIPTION OF RECEIVING WATER

The primary receiving waters for this project are Apra Harbor and the Philippine Sea. The area of Apra Harbor in which Hotel Wharf is located, is classified as Category M-3 (“Fair”). M-3 classified waters are intended for general, commercial, and industrial use, while allowing for protection of aquatic wildlife, aesthetic enjoyment and compatible recreation with limited body contact. Specified intended uses include shipping, boating and berthing, industrial cooling water, and marinas (22 GAR Chapter 5).

The Philippine Sea is classified as Category M-2 (“Good”). M-2 classified waters must be of sufficient quality to allow for the propagation and survival of marine organisms, particularly shellfish and other similarly harvested aquatic organisms, corals and other reef-related resources, and whole body contact recreation (22 GAR Chapter 5). Other intended uses include mariculture activities, aesthetic enjoyment, and related activities. These classifications are from the Guam Water Quality Standards (WQS) within 22 GAR Chapter 5.

AUTHORITIES

Guam EPA has examined this application pursuant to its authority under 33 U.S.C. § 1341, 10 GCA §47109(a), 10 GCA §45106, and 22 GAR §5106, and the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306, and 307)
2. Conformance with the state water quality standards contained in 22 GAR Chapter 5 and authorized by 33 U.S.C. § 1313 and by 10 GCA §45106, 10 GCA §47108, and with other applicable federal or territorial laws
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of territorial waters as required by 22 GAR Chapter 10 and 10 GCA Chapter 47.

WATER QUALITY CERTIFICATION CONDITIONS

Through issuance of this Order, Guam EPA certifies it has reasonable assurance the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of territorial law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, 10 GCA Chapter 45, 10 GCA Chapter 47, and 22 GAR Chapter 5, water quality certification is granted to the Applicant, subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable territorial water quality standards as described in 22 GAR Chapter 5. Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean Port Authority of Guam, and its agents, assignees, and contractors.
- A2. All submittals required by this Order shall be sent to Guam Environmental Protection Agency's Main Office, Attn: 401 Federal Permit Manager, Non-Point Source Program, EMAS Division, 3304 Mariner Avenue, Bldg. 17-3304, Barrigada, Guam 96913, AND via email to taryn.mesa@epa.guam.gov and cc: jesse.cruz@epa.guam.gov. The submittals shall be identified with WQC Order #2001-01 and include the Applicant name, project name, and the project contact's name and phone number.

- A3. Work authorized by this Order is limited to the work described in the following documents:
- 401 Water Quality Certification Application: Hotel Wharf and Access Road Maintenance and Repair Project, received by Guam EPA on June 4, 2018.
 - Amendment of project description for Hotel Wharf and Access Road Maintenance and Repair Project, received by Guam EPA on January 7, 2019.
 - Additional Information submittal: Response to GEPA's request for additional Information, received by Guam EPA on February 27, 2019.
 - Draft Water Quality Monitoring Plan for the Hotel Wharf and Access Road Maintenance and Repair Project, received by Guam EPA on July 31, 2019.
 - Revised Compensatory Mitigation Plan, received by Guam EPA on December 31, 2019
 - Water Quality Monitoring Plan, received by Guam EPA December 31, 2019

The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in these documents is voided by subsequent changes to the project not authorized by this Order.

- A4. If an updated §401 Application or EIA/EIS short form is submitted after this Order, Guam EPA will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded after eighteen (18) months, if USEPA does not issue a National Pollutant Discharge Elimination System (NPDES) Permit, or the U.S. Army Corps of Engineers (Corps) does not issue a Section 404 and/or Section 10 permit, or if the Bureau of Statistics and Plans, Coastal Zone Management Program does not issue a Federal Consistency Determination.
- A6. The applicant shall provide to Guam EPA a copy of all final and local permits within two weeks of receipt, per condition A2 above.
- A7. Copies of this Order shall be kept on the job site and readily available for reference by Guam EPA personnel, the construction superintendent, construction managers and lead workers, and federal and local government inspectors.
- A8. The Applicant shall provide access to the project site and all mitigation sites upon request by Guam EPA personnel for site inspections, monitoring, necessary data collection, and/or to ensure conditions of this Order are being met.
- A9. Guam EPA retains authority to issue additional orders if Guam EPA determines further actions are necessary to implement the water quality laws of the territory. Further, Guam EPA retains continuing jurisdiction to make modifications hereto through supplemental order if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A10. The Applicant shall provide to Guam EPA a signed statement (see Attachment A for an example) that s/he has read and understands the conditions of this Order and any permits, plans, documents, and approvals referenced herein. The signed statement shall be submitted to Guam EPA per Condition A2 at least seven (7) days prior to start of in-water work.

- A11. The Applicant shall ensure all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.
- A12. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the territory (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.

Antidegradation Review

- A13. This proposal has been determined to be consistent with the anti-degradation policy as stated in 22GAR §5101(b).

B. Water Quality Conditions:

- B1. Mitigation and/or additional monitoring may be required if site inspections indicate the water quality standards have not been met.

C. Conditions for Construction Activities

General Conditions:

- C1. Any Clearing, grubbing, grading, embankment or filling, excavating, stockpiling or other earth-moving operations shall require a permit as provided for in 21 Guam Code Annotated, Chapter 66 (as amended).
- C2. The applicant shall conduct daily inspections of the project area and take immediate corrective actions or engineering measures to address non-compliance with water quality standards and/or environmental protection requirements and notify the Guam EPA within 24 hours from the time the applicant becomes aware of the non-compliance.
- C3. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of territorial water quality standards shall be in place before starting construction at the site.
- C4. Contractors or the applicant must submit to Guam EPA, and receive approval of, an Environmental Protection Plan (EPP) covering project activities. Placement of deep silt curtains around the work area with daily inspection and timely maintenance of the curtains shall be included in the required EPP.
- C5. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C6. All construction debris shall be properly disposed of at an approved Guam EPA site in a manner to prevent it from entering the waters of the territory.
- C7. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Guam EPA, in order to prevent contamination to any surface or marine water.
- C8. All project-related materials and equipment (dredges, barges, backhoes etc.) to be placed in the water shall be cleaned of pollutants prior to use.
- C9. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal.

In-Water Conditions:

- C10. Work in or near the water that may affect marine organisms' migration, spawning, or rearing shall cease immediately upon a determination by Guam EPA that marine resources may be adversely affected.
- C11. All manmade debris deposited below the Mean High Water Mark within the construction work area shall be removed and disposed of upland such that it does not enter waters of the territory. Concrete rubble, metal debris, and other debris in the construction work corridor that have washed onto shore or removed from the water shall be removed from the project area and properly disposed.
- C12. Project activities shall be conducted to minimize siltation of the beach area and reef flat.
- C13. Any areas of the site not already stabilized as part of project construction shall be restored to preconstruction conditions and elevations.
- C14. To the extent as practicable, anchors, chains, caissons, floating support structures, equipment and materials shall not be placed on live corals.
- C15. The applicant shall conduct a pre-construction site survey, to include photographs, of the site prior to disturbance to assist the applicant in restoring the site to its original state post construction.
- C16. The applicant shall adhere to and implement the approved Revised Compensatory Mitigation Plan and Water Quality Monitoring Plan submitted for this project.
- C17. Any discharges into Guam Waters shall be pretreated or meet Guam Water Quality Standards. Discharges within this zone may be required to have construction and/or discharge permits under Guam Sediment and Soil Erosion regulations. All point source/non-point discharges to Guam's waters will be controlled through the Federal National Pollutant Discharge Elimination System (NPDES), or through Guam EPA's local permit program, consistent with requirements of these programs.
- C18. Dewatering activities shall require a Dewatering Permit from the Agency prior to any dewatering activity. Dredging and other construction dewatering is not permitted under this certification.

Emergency/Contingency Measures:

- C19. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- C20. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the territory.
- C21. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into territorial waters.
- C22. Any work causing any discharge of oil, fuel, or chemicals into territorial waters or onto land with a potential for entry into territorial waters, is prohibited. If this occurs, the Applicant shall immediately take the following actions:
- Cease operations at the location of the violation or spill.
 - Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - Notify Guam EPA of the failure to comply. All petroleum spills shall be reported immediately to:

1. Guam's Emergency 911 system
 2. Guam EPA's 24-Hour Spill Response Team at (671) 888-6488 or during working hours (671) 300-4751
 3. US Coast Guard Sector Guam (671) 355-4824
 4. National Response Center 1-800-424-8802
- Submit a detailed written report to Guam EPA within five days of noncompliance that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
- C23. Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

D. Timing Requirements

- D1. The applicant shall be required to adhere to the current Guam Coral Spawning Moratorium dates for both hard and soft corals where in-water activities may impair water quality. These dates can be obtained from the Guam Department of Agriculture, Division of Aquatic and Wildlife Resources, or the NOAA NMFS Pacific Islands Regional Office Habitat Conservation Division.
- D2. This Order is valid for three (3) Years from Date of Certification, unless otherwise approved by the Guam EPA Administrator.

E. Reporting and Notification Requirement Conditions

- E1. Applicant shall provide notice to Guam EPA per Condition A2:
- At least three days prior to the start of construction.
 - Within 14 days after completion of construction at the project site.
 - Immediately upon discovery of noncompliance with the provisions of this Order.
- E2. If the project construction has not commenced within 12 months of issuance of this Order, the Applicant shall submit, per Condition A2, a written construction status report every 12 months until construction and mitigation plantings are completed.
- E3. A Notice of Violation/Work Stop Order will be issued if certification conditions are not adhered to or when significant or sustained water quality degradation occurs. Work or discharge shall be suspended or halted until the applicant addresses environmental problems/concerns to Guam EPA's satisfaction. Guam EPA may also levy penalties and fines (10 GCA §477111). Invalidity or enforceability of one or more provisions of this certification shall not affect any other provision of this certification.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Guam EPA Board of Directors, or request a hearing within 30 days of the date of receipt of this Order. Failure to appeal this Order constitutes a waiver of your right to a hearing. Any appeal will proceed pursuant to the provisions of 5 GCA Chapter 9, as provided by 22 GAR §5106(i)(7). Unless a written request for a hearing signed by or on behalf of the person named as Applicant in the accompanying order, is delivered or mailed to the agency within 30 days after this order is signed, Guam EPA may proceed upon the Notice of Intent to Appeal without a hearing. The request for hearing may be made by delivering or mailing the enclosed form entitled Notice of Intent to Appeal (Appendix B) as provided in §9205 to the address below.

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the Guam EPA Board of Directors (see address below). Filing means actual receipt by the Guam EPA Board of Directors during regular business hours.
- Serve a copy of your appeal and this Order to the Administrator in paper form - by mail or in person at the address below. Email or facsimile is not accepted.

ADDRESS INFORMATION:

Guam EPA Board of Directors
3304 Mariner Avenue, Bldg. 17-3304, Barrigada, Guam 96913

GUAM EPA CONTACT INFORMATION

Please direct all questions about this Order to:

Taryn N. Mesa
Biologist I, EMAS Division
(671) 300-4784

Taryn.mesa@epa.guam.gov

OR

Jesse T. Cruz
EMAS Division Administrator
(671) 300-4795

Jesse.cruz@epa.guam.gov

SIGNATURE

WALTER S. LEON GUERRERO

ADMINISTRATOR

DATE

APPENDIX A

DRAFT

Statement of Understanding of Water Quality Certification Conditions

Hotel Wharf and Access Road Maintenance and Repair Project
Port Authority of Guam
Water Quality Certification Order #2001-01

As the Applicant for the Hotel Wharf and Access Road Maintenance and Repair Project, I have read and understand the conditions of the Guam Environmental Protection Agency 401 WQC Order #2001-01, and any permits, plans, documents, and approvals referenced in the Order.

I have and will continue to ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.

Print Name

Signature

Date

Title

Phone Number

Company Name

APPENDIX B

DRAFT



GUAM ENVIRONMENTAL PROTECTION AGENCY • *AHENSIAŃ PRUTEKSIÓN LINA'LA' GUÁHAN*
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NOTICE OF INTENT TO APPEAL

I, _____, have received WQC Order # _____
dated _____, listing the Water Quality Certification Conditions for my proposed
project _____.

I request a hearing with the Guam EPA Board of Directors. The basis for this hearing and appeal
are the following:

[Additional Sheets maybe attached if more space is required.]

Mailing address:

Print Name

Signature

Date

Title

Phone Number

Company Name

GUAM EPA CASE NO.: _____