



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)
WATER QUALITY CERTIFICATION)
TO Bikini Island Club; ACOE Letter of)
Permission: DA File No. POH-2019-24)
WQC ORDER #2020-14
Bikini Island Club Temporary Hut,
Swing, and Table Project; ACOE
Letter of Permission: DA File No.
POH-2019-24

Effective Date: 12/31/2020
End Date: 12/31/2025

TO: Richard Jun Bae
Bikini Island Club
P.O. Box 6021
Merizo, Guam 96916

The Guam Environmental Protection Agency (Guam EPA) received a request for a Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) on September 20, 2019, in support of the Bikini Island Club Army Corps of Engineers (ACOE) Letter of Permission (LOP): Department of the Army (DA) File No. POH-2019-24, for the existing Temporary Hut, Swing, and Picnic Table Project (the Project) constructed in the Cocos Lagoon.

The procedures for application and issuance of §401 WQC include the Agency's review, preliminary determination, possible public noticing and public hearing, and a final decision. The Administrator provided public notice by letter to interested parties on November 20, 2020 and established a 30 day comment period from November 23 – December 26, 2020 pursuant to provisions of 22 Guam Administrative Rules and Regulations §5106(i). Any respective hand delivered, e-mailed, or post office delivered comments received by Guam EPA on or before **December 26, 2020** will be considered in finalizing the conditions of this WQC Order.

PROJECT DESCRIPTION

The applicant has built and assembled the following temporary structures at the Bikini Island sandbar located in the southernmost tip of Guam in the Cocos Lagoon, Merizo. (Latitude: N 13 44'43.91" N Longitude: W 144 39' 40.25" E.)

- 18' x 20' hut (4,500 lbs.)
- 8' x 10' swing (2,500 lbs.)
- 6' x 10' picnic table (1,000 lbs.)

The Project commenced October 15, 2018 and was completed October 21, 2018. The structures' assemblies were fabricated on land by the applicant, transported to the sandbar via boat and set in place, assembled in stages, and bolted together. No demolition, digging, or dredging was undertaken. The sandbar is approximately 9,571.71 square meters; and the structures in place occupy approximately 50 square meters. 4' x 60' rolls of Mexican palm leaves were secured to the hut structure and to the picnic table structure to serve as a thatched roofing.

DESCRIPTION OF RECEIVING WATER

Cocos Lagoon, located in the island's Southern-most village of Merizo, is Guam's only shallow water atoll-like lagoon which houses significant marine resources. Guam EPA includes Cocos Lagoon in its 2018 List of Impaired Waterbodies as follows:

WATERBODY NAME	Cocos Lagoon 1	Cocos Lagoon 2
ASSESSMENT ID	GUG-020A-1	GUG-020A-2
LOCATION	Geus Watershed	Geus Watershed
WATER CLASSIFICATION	M-1	M-2
WATERBODY SIZE	5.70 square miles	0.34 square miles
ASSESSED UNITS	5.70 sq. mi.	0.34 sq. mi
POLLUTANTS	PCBs in fish tissue	PCBs in fish tissue

Cocos Island, which sits on top of the lagoon, is an uninhabited barrier island that separates the lagoon from the open ocean. Part of Cocos Island houses a privately-owned resort while the other part is Government of Guam land which has been designated as a wildlife conservation area managed by various natural resource agencies. From 1944-1963, the United States Coast Guard (USCG) operated a Long-Range Navigation Station (LORAN) on the island. Ongoing studies are being undertaken on Cocos Island and in Cocos Lagoon regarding PCB concentrations in the sediment and fish of the area. A fish consumption advisory for Cocos Lagoon has been in effect since 2006.

Cocos Lagoon is an important recreational and subsistence fishing area and a popular area for numerous tourism operations. Cocos Lagoon also provides important habitats for a few Endangered Species Act (ESA)-listed species, is a NOAA Habitat Focus Area Site and Coral Reef Conservation Program Priority and is adjacent to one of Guam's five Marine Preserve Areas (MPA), the Achang Reef Flat Marine Preserve.

Beaches throughout Guam are listed as impaired for enterococcus. TMDLs for Guam's northern and southern beaches were adopted in December 2013 and February 2015, respectively, and include waste load allocations ("WLAs"). WLAs for Enterococcus are 35 CFU/100 mL (based upon the geometric mean of samples taken in any thirty day interval) and the Statistical Threshold Value (STV) of 130 CFU/100 (should not be exceeded more than 10 percent of the samples taken during the same thirty (30) day interval).

The Bikini Island Club temporary structures are in M-2, Cocos Lagoon 2 waters which 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. Other important and intended uses include mariculture activities, aesthetic enjoyment and related activities (GWQS 2017).

AUTHORITIES

The Guam EPA Administrator is the designated issuing authority for § 401 Water Quality Certifications. (22 GAR §5106).

Guam EPA has examined the Bikini Island Club 401 WQC application and ACOE LOP, DA File No. POH-2019-24 pursuant to applicable laws, statutes and regulations under 33 U.S.C. § 1341, 10 GCA §47109, 10 GCA §45106, 22 GAR §5106, and the following:

1. 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;
2. 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 under the ACOE LOP, DA File No. POH-2019-24 as conditioned, was conducted October 15-21, 2018 in a manner that did 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.

Nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of marine waters, fresh surface waters, ground waters, or sediments occurring as a result of related project activities.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean Bikini Island Club 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 identified with WQC Order #2020-14 and include the Applicant name, project name, and the project contact's name and phone number.

- A3. No discharges or (direct, indirect, permanent, or temporary) impacts to waters of the territory (including wetlands) are authorized by this Order except as specifically provided in the following documents:
- ACOE Letter of Permission, Department of the Army File No. POH-2019-24
 - Section 401 WQC Application dated September 20, 2019
- A4. The Administrator may, on the Administrator's own motion or the application of any person, modify, suspend, or revoke this §401 WQC if the Administrator determines that:
- There is a violation of any condition of the §401 WQC;
 - The §401 WQC was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
 - There is an unreasonable or significant change in the scope of the project and activity.
- A5. This Order shall be subject to amendment or modification if and to the extent that existing water quality standards are made more stringent, or new water quality standards are approved by USEPA and adopted by Guam EPA.
- A6. In accordance with 10 GCA Chapter 47 §47107, The Administrator or his duly authorized representative shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to pollution of any waters of the territory.
- A7. The Applicant shall provide to Guam EPA a signed statement (see Attachment A) 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 after receiving this order.

Antidegradation Review

- A8. The Project 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 water quality standards have not been met.

C. Project Conditions

General Conditions:

- C1. The applicant shall conduct weekly inspections of the temporary Hut, Swing, and Table and take immediate corrective actions or 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.

- C2. The ACOE regulates all structures or work in, over, or under navigable waters of the U.S. Therefore, the applicant shall not remove and/or reinstall any part of the temporary Hut, Swing or Table assemblies which are underwater, even if damaged by any natural disaster, without prior ACOE approval/permit, and GEPA CWA Section 401 WQC if required.
- C3. The Applicant shall implement Best Judgement and Best Management Practices to prevent or minimize water quality degradation.

In-Water Conditions:

- C4. No contamination (trash or debris disposal, janitorial or maintenance products, etc.) of adjacent marine/aquatic environments (reef flats, open ocean, channels, etc.) shall result from project-related activities.
- C5. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- C6. There shall be no discharge that causes a visible sheen in receiving water.

Emergency/Contingency Measures:

- C7. Any unpermitted discharge 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.

- C8. 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.
- C9. Submittal or reporting of any of this information does not provide relief from any subsequent enforcement actions for unpermitted discharges to waters of the United States.

D. Timing Requirements

- D1. This Order is valid for five (5) 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:
- Immediately upon discovery of noncompliance with the provisions of this Order.
- E2. Project maintenance repairs and preventive maintenance weekly log book records shall be provided to Guam EPA, upon request.
- 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. The use of temporary structures shall be suspended or halted until the applicant addresses water quality concerns to Guam EPA's satisfaction. Guam EPA may also levy penalties and fines (10 GCA §47111). Invalidity or enforceability of one or more provisions of this certification shall not affect any other provision of this certification.

APPLICANT 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

Statement of Understanding of Water Quality Certification Conditions

ACOE Letter of Permission, DA File No. POH-2019-24 Bikini Island Club Temporary Hut, Swing, and Table Project Water Quality Certification Order #2020-14

As the Applicant for the Bikini Island Club ACOE Letter of Permission, DA File No. POH-2019-24, I have read and understand the conditions of the Guam Environmental Protection Agency 401 WQC Order #2020-14 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

APPENDIX B

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. _____