

GUAM ENVIRONMENTAL PROTECTION AGENCY

AHENSIAN PRUTEKSION LINA'LA GUAHAN

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Mr. John McCarroll
Pacific Islands Office
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, California 94105

DEC 16 2008

Attn.: Michael Lee, Environmental Engineer, Pacific Islands Office (CED-6)

RE: Section 401 Water Quality Certification: NPDES General Vessels Permits

Dear Mr. McCarroll:

The Guam Environmental Protection Agency (Guam EPA) has reviewed the request for Water Quality Certification for the proposed NPDES General Permit for Discharges incidental to the Normal Operation of Commercial Vessels and Large Recreational Vessels (VGP) and the proposed NPDES General Permit for Discharges incidental to the Normal Operation of Recreational Vessels (RGP).

We note that on July 31, 2008, Public Law No: 110-299 was signed by President Bush. This law was introduced as a bill to clarify the circumstances during which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels, and to require the Administrator to conduct a study of discharges incidental to the normal operation of vessels.

The Vessel General Permit (VGP), as originally proposed, would authorize discharges incidental to the normal operation of all vessels except recreational vessels less than 79 feet long and vessels of the Armed Forces. As modified pursuant to P.L. 110-299, and P.L. 110-288, enacted subsequent to Guam EPA's receipt of these EPA NPDES applications, we note that:

- a) EPA will not be issuing the recreational general permit (RGP), and has withdrawn the 401 certification request for the RGP;
- b) EPA's certification request for the VGP is modified to exclude all discharges from large recreational vessels; and
- c) for discharges other than ballast water, EPA's certification request only includes discharges from commercial vessels of 79 feet or greater in length (but not including any commercial fishing vessels regardless of length). For ballast water discharges, EPA's certification request includes all commercial vessels including all commercial fishing vessels.

Under the new federal laws, incidental discharges from recreational vessels regardless of size are exempt from NPDES permit authorization. Additionally, NPDES permit authorization for incidental discharges from non-recreational vessels under 79 feet long and all fishing vessels will not be required for a two-year period. The VGP incorporates the Coast Guard's mandatory ballast water management and exchange standards and supplemental ballast water requirements for vessels that carry ballast water. Furthermore, for all covered vessels, this permit also would establish requirements for twenty-seven other discharge types including deck runoff, bilgewater discharge, and graywater discharge. In addition to these standard or common requirements, the permit outlines further requirements for eight specific classes of vessels, such as cruise ships, research vessels, and large ferries. The VGP also includes requirements for corrective actions, inspections, monitoring,

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recordkeeping and reporting. The VGP would require submission of a Notice of Intent (NOI) form to gain coverage under the general permit only for vessels greater or equal to 300 gross registered tons and/or having the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water. EPA estimates that 44,363 domestic and 7,834 foreign flagged ships and commercial vessels would need to submit NOIs. No fees are associated with this general permit. The proposed activities will affect waters, wetlands and aquatic resources. The VGP replaces existing federal regulations exempting these activities from NPDES permit requirements, codified as FR 32854, June 7 1979. Pursuant to a Federal District Court ruling, as recently upheld by the U.S. Court of Appeals for the Ninth Circuit, the exemption of discharges from permit requirements pursuant to FR 32854 will be vacated as of December 19, 2008.

We wish to register our concern over the provision that "vessels of the United States Armed Forces are not eligible for coverage under this permit" (Permit Fact Sheet Section 3.5.1, Eligibility). They are also excluded from the EPA study required under P.L. 110-299. Some of the most threatening potential sources of pollution discharges from vessels to Guam's pristine marine waters are from military ships, both from the U.S. Armed Forces and from visiting military vessels of other nations. Such excluded vessels could include aircraft carriers, tankers, ammunition ships, pre-positioning ships and others which enter Apra Harbor in Guam and pass through our Category M-1 of Excellent Marine Waters. If there is a need to issue these permits, we believe the exclusion of Armed Forces vessels would not be consistent with our protection of water quality under our Guam Water Quality Standards. However, we believe effluent limitations are not applicable in a practical manner to the permitted vessels, as is noted in the EPA Fact Sheet.

We note that discharges to coral spawning areas during coral mass spawning shall be avoided.

In regards to the Clean Water Act Section 401 Water Quality Certification (WQC) for this activity, we find these proposed NPDES permits tentatively to be acceptable, in accordance with the Guam Water Quality Standards, as amended in 2001. Based on the proposed numerical criteria, permit narrative, monitoring requirements and the current Guam Water Quality Standards, Guam Environmental Protection Agency believes that there is reasonable assurance that the NPDES permitted discharge activity will not violate applicable water quality standards. Therefore, we hereby issue Section 401 Water Quality Certification for the proposed NPDES for VGP.

Thank you for allowing us more time to act on your request. If there are questions on this WQC, please call our Chief Planner Mike Gawel at (671) 475-1646.

Sincerely,



LORILEE T. CRISOSTOMO
Administrator