

**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).

**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**

- 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

**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**

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,

**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**

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

**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**

- 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

**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**

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

**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**

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, Fil 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  
Certain 2017 Department of the Army (DA) Nationwide Permits (NWP)  
File No. WQC0901  
March 2, 2018**

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