

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

In reply, please refer to:
File:

WQC1092.FNL.22

April 28, 2022

David S. Hobbie
Regional Regulatory Chief
Honolulu District
Department of the Army
U.S. Army Engineer District, Honolulu
Fort Shafter, Hawaii 96858-5440

Dear Mr. Hobbie:

**Subject: Blanket Section 401 Water Quality Certification (WQC) for
Certain 2021 Department of the Army (DA)
Nationwide Permits (NWP) and Activities
File No. WQC1092**

Purpose. This letter is a blanket Section 401 WQC (Blanket Certification) and sets forth applicable qualifications and activity-specific conditions to certain NWPs and activities, as described below. This Blanket Certification may be utilized by any applicant that is seeking authorization and/or verification from the U.S. Army Corps of Engineers (USACE), Honolulu District of the Pacific Ocean Division (POH) for work in Waters of the United States.

This Blanket Certification supersedes and replaces previous WQC0901.FNL.20 issued in May and November of 2020 (WQC0901). The following shall apply:

1. Requirements and conditions set forth in WQC0901 which are not set forth in this Blanket Certification shall no longer be applicable;
2. Activities covered under WQC0901 shall be subject to this Blanket Certification, including requirements and conditions different from or in addition to WQC0901;
3. Pending applications, including those currently under review by USACE or the Department of Health (DOH), shall be subject to this Blanket Certification.

Note: A previous version of this Blanket Certification was public noticed on September 23 and 24, 2020, for the proposed 2020 NWPs. Since the aforementioned public notices, the NWPs were reissued and modified in 2021, the federal Section 401 WQC regulations were revised, and the State Section 401 WQC rules were revised. This Blanket Certification incorporates these revisions.

Overview. The DA has published a list of NWP's and applicable general conditions that attach to those NWP's.¹ Certain NWP's may require a Section 401 WQC from the State of Hawaii. The DOH has the authority to issue a Blanket Certification and may qualify or condition the Blanket Certification. The conditions in this Blanket Certification become additional conditions to the NWP's. The qualifications would set forth the applicability of the Blanket Certification to a NWP or other described activity.

The DOH reviewed the NWP and General Conditions published in the Federal Register: Final Rules and the additional comments submitted by USACE POH. DOH believes that when all requirements and conditions contained in this Blanket Certification are fully complied with, there is a reasonable assurance that the activities will be conducted in a manner which will not violate the applicable State water quality standards and will comply with the applicable provisions of the CWA, Sections 301, 302, 303, 306, and 307.

The NWP's and activities in Item 2.a below do not require a Section 401 WQC. The NWP's and activities in Item 2.b below are covered under this Blanket Certification. The DOH has determined that projects authorized by the USACE POH for the NWP's and activities in Item 2.b below, subject to the requirements of the General Conditions in Item 3 below, will not cause adverse environmental impacts or effects; are in the public interest; and represent the optimum balance between economic development and environmental quality.

1. Term of this Blanket Certification

- a. This Blanket Certification becomes effective with respect to a specific project on **April 28, 2022**.
- b. This Blanket Certification will expire at midnight, **March 14, 2026**.
- c. This Blanket Certification's coverage is administratively extended to a certain project beyond midnight, March 14, 2026, when the USACE POH extends the project authorization/verification.

2. Coverage of this Blanket Certification

- a. The NWP's and activities listed below do not require a Section 401 WQC.
 - NWP 1 – Aids to Navigation
 - NWP 8 – Oil and Gas Structures on the Outer Continental Shelf

¹ The DA NWP authorizes activities under 1) Section 404 of the Clean Water Act (CWA), 2) Section 10 of the Rivers and Harbors Act of 1899 (RHA), and/or 3) a Letter of Permission. The NWP's were published on September 15, 2020, in the Federal Register, Volume 85, Number 179 and December 27, 2021, Volume 86, Number 245 (Federal Register).

- Projects in response to a public emergency proclaimed by the President of the United States or Governor of Hawaii where HRS Chapter 342D has been suspended
 - Any emergency project as determined by the Director of Health
 - Projects granted an exemption under Act 048 of 2017 (temporary exemption of certain bridge rehabilitation projects)
 - Activities exempt under CWA, Section 404(f)(1)
 - Directional drilling under a waterbody where entry and exit pits are located on land and all slurry/spoils/runoff is contained on land
 - Structures over a waterbody where debris and other pollutants associated with the installation, construction, and operation do not enter the waterbody
 - Installation of temporary Best Management Practices (BMPs) with inert material in State waters, excluding material used to divert or dam stream flow
 - Comprehensive Environmental Response, Compensation, and Liability Act actions with oversight from DOH Hazard Evaluation and Emergency Response (HEER) Office and/or EPA
 - DOH HEER response actions
 - Bridge inspections
 - Improvements or modifications to Department of Land and Natural Resources, Division of Boating and Ocean Recreation permitted existing offshore moorings installed prior to October 4, 2017
 - Coral transplant with National Oceanic and Atmospheric Administration oversight
 - Fireworks where visible debris is collected after event
 - Lanterns and rubber duckies collected after event
 - Ashes from funeral ceremonies 3 miles away from shore
 - After-The-Fact applications for USACE POH enforcement actions²
- b. The NWP's and activities listed below are hereby granted coverage under this Blanket Certification in the State of Hawaii if the applicant of the activity/discharge complies with the General Conditions (Item No. 3) and USACE POH provides notification (Item No. 4). Any person, including any public body, conducting activities authorized by these NWP's and activities that cannot or will not comply with this Blanket Certification must apply for and obtain an individual Section 401 WQC from DOH Clean Water Branch (CWB).
- NWP 2 – Structures in Artificial Canals
 - NWP 3 – Maintenance

² DOH has decided not to process After-The-Fact applications so the USACE POH can proceed with their enforcement action.

- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water from Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharge
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 29 – Residential Developments
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access and Dewatering
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 45 – Repair of Uplands Damaged By Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines

- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities to Water and Other Substances
- NWP 59 – Water Reclamation and Reuse Facilities
- Letters of Permission – Section 10 only activities with no discharge of fill material
- Any activity conducted in compliance with DOH pre-approved Standard Operating Procedures

c. Limitations on Coverage

This Blanket Certification shall not cover:

- (1) Discharge(s) regulated under CWA, Section 402.
- (2) Any project that may result in downstream/downdrift post construction impacts to the physical, chemical, and/or biological environment.
- (3) Concrete lining any section of natural streambed or bank.³
- (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) Waste Discharges to natural lakes and anchialine pools as specified in HAR 11-54 or any State waters.
“Waste” means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the waters of this State. Hawaii Revised Statutes (HRS) §342D-1.
Non-contaminated and suitable dredge and fill material authorized under a 2021 NWP is not considered waste.
- (6) New sewage discharges and new industrial discharges to estuaries as specified in HAR 11-54. New industrial discharges do not include the repair and/or replacement within the footprint of an existing structure.
- (7) New sewage and industrial discharges to Embayments: Class AA and Class A as identified in HAR 11-54. New industrial discharges do not include the repair and/or replacement within the footprint of an existing structure.

³ 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.

3. General Conditions

The applicant of the activity/discharge shall:

- a. Report any non-compliance with the conditions of this Blanket Certification to the USACE POH. Do not report or submit compliance related information to DOH. This Blanket Certification is a condition of the USACE POH permit.⁴
- b. Maintain records at the project site or in the nearby field office demonstrating that all Blanket Certification requirements have been fully complied with.
- c. Ensure that all activities are conducted in a manner that will comply with the "Basic Water Quality Criteria Applicable to All Waters" as specified in HAR 11-54.
- d. Ensure that all material(s) placed or to be placed in State waters are free of waste metal products, organic materials, debris, and any pollutants at toxic or potentially hazardous concentrations to aquatic life as specified in HAR 11-54.
- e. Ensure that the activities will not permanently interfere with or become injurious to any designated uses and/or existing uses of the receiving State water. Any permanent adverse impacts to the designated uses and/or existing uses of the receiving State water is a violation of HAR Chapter 11-54.
- f. Ensure that pollution control measures and BMPs are utilized that prevent water pollutants from leaving the in-water work area authorized by the USACE POH permit.⁵ Any visual plume emanating from the authorized in-water work area is a violation of HAR Chapter 11-54.
- g. Ensure that all construction debris from any portion of the activities (including but not limited to debris caused by hydraulic saws, water jets, or drilling equipment) are contained and prevented from entering or re-entering State waters. All construction debris and sidecast material shall be properly removed from the aquatic environment and disposed of at an upland State and county approved site. Before the start of the activities, a Solid Waste Disclosure Form for Construction Sites shall be completed and returned to the DOH's Solid and Hazardous Waste Branch,

⁴ With respect to USACE projects granted coverage under Item 2.c above, non-compliance reports from USACE POH should be submitted to DOH CWB.

⁵ With respect to USACE projects granted coverage under Item 2.c above, the relevant in-water work area is identified in the USACE project.

Office of Solid Waste Management. No construction material or construction related materials shall be stockpiled in the aquatic environment or stored or placed in ways that will disturb the aquatic environment. The Solid Waste Disclosure Form for Construction Sites is available online at:

<https://health.hawaii.gov/shwb/files/2018/04/swdiscformapr2018.pdf>.

- h. Utilize only BMPs that are inert and not sources of pollution themselves. Examples of inappropriate in-water porous material 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.
- i. 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.
- j. Utilize BMPs for all upland project activity to minimize the discharge of water pollutants into State waters, including the designated in-water work area.
- k. 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 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, or gulch is dry or there is only standing/ponded water without the existence of living aquatic animals.
- l. Not discharge any type of wash water and/or effluent into State waters without first obtaining from DOH a National Pollutant Discharge Elimination System (NPDES) permit authorizing such type of water pollutant discharge to State waters.
- m. Not allow any concrete truck wash water to be disposed by percolation into the ground.
- n. 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.

- o. When projects involve dredging/excavation activities:
- (1) Be required to check the DOH, HEER Office Sites, Incidents and Records through the “Viewer” in iHEER at:
<https://eha-cloud.doh.hawaii.gov/iheer>.⁶
 - (2) Be required to contact the HEER Office at (808) 586-4249 and through e-permitting Form “Notification of Construction Activities” at Form Finder <https://eha-cloud.doh.hawaii.gov/epermit/finder> if contaminated soil, sediment, vapor, or groundwater is known to be present at your project site. The applicant shall notify the HEER Office at least 90 days prior to surface and subsurface disturbing activities that may disturb the ground surface at HEER sites. If the 90-days prior notification is missed, the applicant shall notify the HEER Office as soon as possible to avoid any potential delays regarding the covered project.
 - (3) Contain return flow or runoff from upland dredged spoils dewatering site(s)/disposal site(s), including the confined disposal facility (CDF), which shall be contained on land and not allowed to discharge and/or re-enter any State waters without first obtaining the required discharge permit from USACE POH or CWB. Unless authorized by a USACE POH or NPDES permit, the applicant shall not allow any runoff, return flow, or airborne particulate pollutants from the excavated or dredged material dewatering or stockpiling site, including the CDF, to enter or re-enter State waters.
 - (4) Properly deploy warning signs, which shall be 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.
- p. When projects involve moorings:
- (1) Avoid locating moorings (including anchors and floats) in sensitive aquatic habitats such as coral reefs, fish spawning areas, and submerged aquatic vegetation (unless location is acceptable to the Department of Land and Natural Resources, Division of Aquatic Resources or the National Oceanic Atmospheric Administration);
 - (2) Ensure moorings (including anchors and floats) are made of clean, inert material. Treated lumber shall not be used as it may contain

⁶ The HEER Office is currently updating site information for sites. Most, but not all, sites may be displayed on the viewer map. Site Document data upload is ongoing and not all documents may be currently available via this website. To get the complete record for the site, a record request form can be filled and submitted to the HEER Office. Users will then be notified when they are able to download all information via the iHEER system website.

- compounds that can be released into the water and become toxic to the aquatic environment;
- (3) Pre-cast and cure concrete anchors, if required, away from State waters prior to use to prevent seepage of potentially toxic substances into the waterbody;
 - (4) Locate moorings in depths that allow structures and vessels to remain afloat at the lowest possible water levels and that prevent propellers from disturbing bottom sediments;
 - (5) Select mooring anchors of an adequate size to secure vessels or structures and prevent the anchor from shifting or dragging along the bottom of the State water;
 - (6) Size the length of mooring lines, chains, or cables to avoid excess line, chain, or cable accumulation on the bed of the State water;
 - (7) Ensure native beach material such as logs, sand, gravel, and boulders that are important components of fish habitat are not used as mooring structures and are left in place on the foreshore;
 - (8) Properly dispose of derelict or unused floats, lines, chains, or cables in accordance with appropriate laws and rules; and
 - (9) Ensure moorings are kept in good repair by regularly inspecting and maintaining the structure. Mooring maintenance must be performed into perpetuity (or until it is properly disposed of) or it will itself become a pollution source.
4. USACE POH shall e-mail to CWB (cleanwaterbranch@doh.hawaii.gov and darryl.lum@doh.hawaii.gov) a pdf copy of all issued final verifications. This Blanket Certification coverage shall become valid with respect to an activity only when USACE POH notifies CWB via email of a project authorization/verification and conditions of this Blanket Certification have been incorporated as part of the USCE POH final verification; provided, that this email notification requirement shall not apply to activities that do not require a pre-construction notification, and this Blanket Certification shall automatically become valid with respect to such activities.


Mr. David S. Hobbie
April 28, 2022
Page 10

WQC1092.FNL.22

If you agree with the terms and conditions of this Blanket Certification, please sign and date below; make a copy for your administrative record; and submit this entire letter with your original signature to CWB within 14 calendar days from your signature date.

If you have any questions, please contact Mr. Darryl Lum of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,


for
ELIZABETH A. CHAR, M.D.
Director of Health

- c: Regulatory Office, POH, COE [via e-mails linda.speerstra@usace.army.mil only]
- Ms. Debra Mendes, CZM Program, Office of Planning, DBEDT
[via e-mail debra.l.mendes@hawaii.gov only]
- U.S. Fish and Wildlife Service [via e-mail pifwo_admin@fws.gov only]
- 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]
- DHO (Hawaii, Maui, Kauai) and EHS, Molokai/Lanai [via e-mail only]

I AGREE WITH THE TERMS AND CONDITIONS OF THIS LETTER:



David S. Hobbie
Regional Regulatory Chief
Honolulu District

DATE