



Commonwealth of the Northern Mariana Islands

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December 11, 2020

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**RE: CNMI Water Quality Certification for
Proposed 2020 Nationwide Permit Reissuance**

The Commonwealth of the Northern Mariana Islands (“CNMI”) Bureau of Environmental and Coastal Quality (“BECQ”) has reviewed the request for Clean Water Act (“CWA”) 401 Water Quality Certification (“WQC”) for the Proposal to Reissue the U.S. Army Corps of Engineers Nationwide Permits. For the reasons discussed below, BECQ has determined that it is the best interest of preserving the water quality in the CNMI to GRANT WITH CONDITIONS WQC for certain Nationwide Permits in the CNMI and to DENY WQC for certain other Nationwide Permits in the CNMI, as outlined below and summarized in Appendix 1 hereto.

I. Grant of WQC with Conditions

BECQ certifies that the discharges authorized by the following Nationwide Permits comply with the applicable provisions of the CWA, provided that the permittee complies with all general conditions of the Nationwide Permits, the Honolulu District’s final regional conditions, and the BECQ WQC conditions, which must be included as enforceable conditions of the Nationwide Permits to the extent they are applicable to the proposed activity:

- NWP 3 – Maintenance
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 14 – Linear Transportation Projects

- NWP 22 – Removal of Vessels
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP C – Electric Utility Line and Telecommunications Activities
- NWP D – Utility Line Activities for Water and Other Substances

BECQ's WQC conditions are stated in Appendix 2 hereto.

II. Denial of WQC for Revoked NWPs

BECQ denies CWA Section 401 WQC for all Nationwide Permits that are revoked pursuant to the Regional Conditions proposed by the Honolulu Regional Office:

- NWP 21 – Surface Coal Mining Activities
- NWP 24 – Indian Tribe or State Administered Section 404 Program
- NWP 30 – Moist Soil Management for Wildlife
- NWP 34 – Cranberry Production Activities
- NWP 44 – Mining Activities
- NWP 49 – Coal Remining Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects

See Regional Condition 1.

III. Denial of WQC for Unutilized NWPs

BECQ denies CWA Section 401 WQC for all NWPs that, based on BECQ's review of recent project files, have not been recently relied upon by applicants to authorize projects in the CNMI and do not authorize activities similar in nature or impact to other projects recently completed in the CNMI:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 13 – Bank Stabilization
- NWP 15 - U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 23 – Approved Categorical Exclusions
- NWP 25 – Structural Discharges
- NWP 26 – [Reserved]

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 47 – [Reserved]
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 A – Seaweed Mariculture Activities
NWP B – Finfish Mariculture Activities
NWP E – Water Reclamation and Reuse Facilities

BECQ acknowledges that for denial of WQC of a general license or permit such as a NWP, BECQ must identify:

- (i) The specific water quality requirements with which discharges that could be authorized by the general license or permit will not comply;
- (ii) A statement explaining why discharges that could be authorized by the general license or permit will not comply with the identified water quality requirements; and
- (iii) If the denial is due to insufficient information, the denial must describe the types of water quality data or information, if any, that would be needed to assure that the range of discharges from potential projects will comply with water quality requirements.

40 C.F.R. § 121.7(d)(2)(i)-(iii). BECQ has insufficient information to identify the specific water quality requirements with which discharges that could be authorized by the above-listed NWPs will not comply. In addition, BECQ has insufficient information to identify the types of water quality data or information that would be needed to assure that the range of discharges from potential projects will comply with water quality requirements. Because the above-listed activities have not been recently authorized by NWPs in the CNMI, the potential water quality impacts from these activities are unknown to BECQ.

BECQ can better assure that any water quality impacts from such activities are sufficiently protective of the CNMI's water quality by evaluating each activity on a project-by-project basis through the individual CWA Section 401 WQC process. By denying 401 WQC for the Nationwide Permits, BECQ is offered the opportunity to review each individual application and make a determination whether or not the project is "minor and non-controversial." BECQ regulations allow minor and non-controversial projects that fall under the scope of a Nationwide Permit to be issued a 401 WQC waiver.

For projects seeking authorization pursuant to the NWP's listed in this Section III, BECQ encourages the Corps to continue to follow its current practice of instructing applicants to obtain a 401 WQC or waiver from BECQ.

BECQ appreciates the assistance by your staff throughout the WQC process for the NWP's. Please do not hesitate to contact Larry Maurin at 670-664-8521 or larry.maurin@becq.gov.mp with any questions regarding BECQ's final CWA Section 401 WQCs.

Sincerely,



Eli D. Cabrera
BECQ Administrator

Appendix 1

CNMI Bureau of Environmental & Coastal Quality

Summary of Water Quality Certifications

for the

2020 U.S. Army Corps of Engineers Nationwide Permits

NWP 1 – Aids to Navigation:

Denied. An individual 401 Water Quality Certification (“WQC”) is required for all projects seeking authorization pursuant to this NWP.

NWP 2 – Structures in Artificial Canals:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 3 – Maintenance

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 5 – Scientific Measurement Devices

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 6 – Survey Activities

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 7 – Outfall Structures and Associated Intake Structures:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 8 – Oil and Gas Structures on the Outer Continental Shelf:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 9 – Structures and Fleeting and Anchorage Areas

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 10 – Mooring Buoys

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 11 – Temporary Recreational Structures:

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 12 – Oil or Natural Gas Pipeline Activities

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 13 – Bank Stabilization

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 14 – Linear Transportation Projects

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 15 – U.S. Coast Guard Approved Bridges:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 16 – Return Water From Upland Contained Disposal Areas:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 17 – Hydropower Projects:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 18 – Minor Discharges:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 19 – Minor Dredging:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 20 – Response Operations for Oil or Hazardous Substances:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 21 – Surface Coal Mining Activities:

Denied. This NWP is revoked pursuant to Regional Conditions proposed by the Honolulu Regional Office.

NWP 22 – Removal of Vessels

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 23 – Approved Categorical Exclusions:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 24 – Indian Tribe or State Administered Section 404 Program:

Denied. This NWP is revoked pursuant to Regional Conditions proposed by the Honolulu Regional Office.

NWP 25 – Structural Discharges:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 26 – [Reserved]

NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 28 – Modifications of Existing Marinas

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP 29 – Residential Developments:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 30 – Moist Soil Management for Wildlife:

Denied. This NWP is revoked pursuant to Regional Conditions proposed by the Honolulu Regional Office.

NWP 31 – Maintenance of Existing Flood Control Facilities:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 32 – Completed Enforcement Actions:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 33 – Temporary Construction, Access, and Dewatering:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 34 – Cranberry Production Activities:

Denied. This NWP is revoked pursuant to Regional Conditions proposed by the Honolulu Regional Office.

NWP 35 – Maintenance Dredging of Existing Basins:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 36 – Boat Ramps:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 37 – Emergency Watershed Protection and Rehabilitation:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 38 – Cleanup of Hazardous and Toxic Waste:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 39 – Commercial and Institutional Developments:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 40 – Agricultural Activities:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 41 – Reshaping Existing Drainage Ditches:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 42 – Recreational Facilities:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 43 – Stormwater Management Facilities:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 44 – Mining Activities:

Denied. This NWP is revoked pursuant to Regional Conditions proposed by the Honolulu Regional Office.

NWP 45 – Repair of Uplands Damaged by Discrete Events:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 46 – Discharges in Ditches:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 47 – [Reserved]

NWP 48 – Commercial Shellfish Mariculture Activities:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 49 – Coal Remining Activities:

Denied. This NWP is revoked pursuant to Regional Conditions proposed by the Honolulu Regional Office.

NWP 50 – Underground Coal Mining Activities:

Denied. This NWP is revoked pursuant to Regional Conditions proposed by the Honolulu Regional Office.

NWP 51 – Land-Based Renewable Energy Generation Facilities:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 52 – Water-Based Renewable Energy Generation Pilot Projects:

Denied. This NWP is revoked pursuant to Regional Conditions proposed by the Honolulu Regional Office.

NWP 53 – Removal of Low-Head Dams:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP 54 – Living Shorelines:

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP A – Seaweed Mariculture Activities

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP B – Finfish Mariculture Activities

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

NWP C – Electric Utility Line and Telecommunications Activities

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP D – Utility Line Activities for Water and Other Substances

Conditioned. All Nationwide Permit general conditions, Honolulu District final regional conditions, and BECQ WQC conditions apply.

NWP E – Water Reclamation and Reuse Facilities

Denied. An individual 401 WQC is required for all projects seeking authorization pursuant to this NWP.

Appendix 2

CNMI Bureau of Environmental & Coastal Quality's Water Quality Conditions for the 2020 U.S. Army Corps of Engineers Nationwide Permits

In addition to all the U.S. Army Corps of Engineers' National and Honolulu District's Regional permit conditions, the following BECQ Section 401 Water Quality Certification ("WQC") conditions apply to all certified Nationwide Permits to the extent they are applicable to the proposed activity. 40 CFR 121.7(d)(2) requires any certification conditions on issuance of a general license or permit to include both a statement explaining why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements and a citation to federal, state, or tribal law that authorizes the condition.

BECQ can better assure that any water quality impacts from dredge and fill activities are sufficiently protective of the CNMI's water quality by requiring that the following conditions are satisfied. Where a condition requires the use of best management practices or other control measures, the potential water quality impacts from these activities can be minimized. Where a condition requires notification to BECQ and/or individual certification, BECQ is offered the opportunity to review each individual application and make a determination whether or not the project is "minor and non-controversial" with respect to water quality impacts.

The CNMI's Water Quality Standards are codified at NMIAC Chapter 65-130. Key water quality criteria that may be impacted by dredge and fill activities include the criteria for total filterable suspended solids at NMIAC 65-130-420 and turbidity at NMIAC 65-130-435. Regulations relating to Water Quality Certification codified at NMIAC 65-130-600 state that the Administrator may specify conditions on a water quality certification deemed necessary with respect to a discharge or activity to prevent violation of CNMI Water Quality Standards.

1. Pre-Construction Notification (PCN):

For all activities authorized by NWP that require submission of a PCN to the Corps, all prospective permittees must submit a written PCN to the Corps that meets NWP General Condition #32. For all other activities authorized by NWP, all permittees (including all Federal and non-Federal permittees) must submit written notification to BECQ containing applicable information equivalent to the information required by the *Contents of Pre-Construction Notification* in NWP General Condition #32.

2. NWP Verification:

For all activities authorized by NWP that require submission of a PCN to the Corps, a written NWP verification must be obtained from the Corps and submitted to BECQ prior to conducting the activity.

3. Additional PCN Information

For non-Federal and Federal permittees, the submitted PCN must provide documentation of activities that would result in the permanent loss of wetlands, vegetated shallows including seagrass beds, coral reefs, and other special aquatic sites and other waters of the U.S., and each permittee must provide a written discussion of the on-site design configurations that were considered to demonstrate that avoidance and minimization of impacts were evaluated and that the proposed permanent loss is

unavoidable. Submission of a plan-view sketch depicting the footprint of on-site design configurations overlaying such waters within the project area will assist BECQ's review of the proposed activity.

4. Best Management Practices (BMPs):

The following standard BMPs must be implemented for all NWP's to avoid and/or minimize adverse impacts on environmental resources:

1. Pre-construction BMPs:

- a. Prior to commencement of the authorized work in wetlands, vegetated shallows including seagrass beds, coral reefs, other special aquatic sites and other waters of the U.S., each permittee must clearly identify (demarcate) in the field the geographic limits of such waters (i.e., High Tide Line, Mean High Water Mark, Ordinary High Water Mark, approved wetland boundary) affected by the authorized work and demarcated on project drawings. The delineation of these geographic bounds may be accomplished by staking, flagging, painting, silt fencing, signage, buoys, etc. and in all cases must be maintained and remain observable throughout the construction period. The permittee must also demarcate in the field the project limits to ensure that dredged or fill material is not discharged beyond the authorized limits. The permittee is prohibited from conducting any activity occurring in or affecting wetlands, vegetated shallows including seagrass beds, other special aquatic sites and other waters of the U.S. outside of the permitted limits of disturbance (as shown on the project drawings).

2. During Construction BMPs:

- a. Turbidity and the suspension or re-suspension of sediment from project-related work must be minimized and contained to the immediate vicinity of the authorized activity through the appropriate use of effective containment devices or measures and based on project-specific conditions. Silt fences, silt curtains, or other diversion or containment devices must be installed to contain sediment and turbidity at the work site (a) parallel to, and along the toe of any fill or exposed soil which may introduce sediment to an adjacent aquatic site; and (b) adjacent to any fill placed or soil exposed within an aquatic site. All silt fences, curtains, and other devices must be installed according to the manufacturer's guidelines and properly maintained throughout the construction period and until the impact area is stabilized and/or elevated turbidity levels have returned to ambient levels.
- b. All project-related materials (e.g., fill, rocks, landscaping, structures, etc.) and equipment (e.g., dredges, barges, backhoes, etc.) authorized to be used or placed in wetlands, vegetated shallows including seagrass beds, coral reefs, other special aquatic sites and other waters of the U.S., must be free of invasive plant and animal species.
- c. Any temporary tethering, anchoring, mooring or similar in-water structural components must be placed in a manner to avoid direct physical impact to coral and seagrass during installation and throughout the duration of its use.
- d. Any temporary in-water structures must be removed of, in their entirety, upon completion of the authorized work in or affecting wetlands, vegetated shallows including seagrass beds, coral reefs, other special aquatic sites and other waters of the U.S. The authorized work is not complete until these temporary structures are removed.
- e. Unless specifically authorized, stockpiling of project-related materials (e.g., fill, dredged material, revetment rock, pipe, etc.) or unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.) in or in close proximity to wetlands, vegetated shallows including seagrass beds, coral reefs, other special aquatic sites and other waters of the U.S. such that the stockpiled materials could be carried into such waters by wind, rain, or high surf is prohibited.
- f. Upland containment areas sited in uplands near wetlands, vegetated shallows including seagrass beds, coral reefs, other special aquatic sites and other waters of the U.S. for the purpose of stockpiling, dewatering, etc. must be bounded by impermeable material to prevent

return flows of dewatered effluent into such waters. The runoff or overflow from a contained disposal area into such waters requires separate authorization.

3. **Post-Construction BMPs:**
 - a. Non-invasive, preferably native plants appropriate for current site conditions must be used for re-vegetation for the purposes of restoring areas temporarily disturbed by the authorized work.
5. Notify BECQ of Substantial Change

The permittee shall notify BECQ of any substantial change to the project that may require reconsideration of this WQC.
6. Amendment or Modification for New or Amended Water Quality Standards

In accordance with NMIAC 65-130-625 of the CNMI Water Quality Standards, this WQC shall be subject to amendment or modification upon adoption or revision of water quality standards by BECQ.
7. Prevent Violation of Water Quality Standards

The permittee shall prevent violation of any Water Quality Standards to preclude degradation of the physical, chemical, biological, or radiological integrity of the surrounding waters by alteration or introduction of toxins, biological contaminants, litter, or other marine debris. BECQ may require a monitoring plan to ensure that violations of water quality standards are minimized.
8. Minimize Impacts to Benthic Communities

The permittee shall make every effort to minimize impacts to water quality and benthic communities during all project work, including but not limited to all excavating; drilling; transportation and installation of anchors, posts, instruments, and meters; and collection of sediment samples. No equipment or infrastructure may be dropped or dragged in the water.; instead, equipment or infrastructure must be gently lowered with appropriate methods. No cleaning of equipment may occur in the water; all cleaning activity must take place at least 150 feet from the mean high water mark, and any chemicals used for cleaning must be approved by BECQ prior to use.
9. Cease Activity During Coral Spawning Events

In accordance with NMIAC 65-130-530, for activities which have the potential to adversely affect coral reproduction, a stoppage period starting around the June or July full moon (to be determined by BECQ), is required. The stoppage period, if determined to be applicable, shall be no less than twenty-one calendar days. In determining whether an activity has the potential to affect coral spawning, BECQ shall consider all of the following:

 - (A) The magnitude of the sediment plume generated by the proposed activity;
 - (B) The most likely extent and directions of drift of the sediment plume;
 - (C) The type of sediment and its composition; and
 - (D) The proximity of broadcast spawning coral species to the proposed activity and expected sediment plume.
10. Limit Activity to Dry Low-Tide Conditions

All on-shore excavation and earthmoving activities shall be conducted during dry low-tide conditions in order to minimize sediment suspension and delivery to coastal waters from the project site.
11. Comply with all other Permit Conditions

This WQC does not relieve the permittee from obtaining other applicable local or federal permits. The permittee must obtain all required permits and comply with all of the terms and conditions of those permits, including but not limited to Area of Particular Concern or Major Siting permits issued by BECQ's Division of Coastal Resources Management; Earthmoving and Erosion Control permits issued by BECQ's Division of Environmental Quality and/or National Pollutant Discharge Elimination

System permits issued by the U.S. Environmental Protection Agency for discharges of wastewater or stormwater associated with construction and industrial activities and municipal sources, including the Stormwater Pollution Prevention Plans required under such permit(s); and all Erosion and Sediment Control Measures, Checklists of BMP Maintenance, Inspection, and Repair, Water Quality Monitoring Plans, and similar such plans establishing best management practices and/or water quality monitoring requirements prepared in support of any such permit(s).

12. Notify BECQ and Allow BECQ Access for Compliance Inspection

The permittee shall notify BECQ at least 48 hours prior to commencing dredge and/or fill activities for the project to allow BECQ time to inspect the project site (including all Best Management Practices) and shall allow prompt access to the BECQ Administrator or the Administrator's authorized representative for the purpose of inspecting the premises for compliance with the terms of the WQC. The inspection may be made with or without advance notice to the permittee, with good purpose, at the discretion of the Administrator, but shall be made at reasonable times unless an emergency dictates otherwise.

13. Share Data with BECQ

Any scientific data collected during or as a result of a permitted project, whether for compliance purposes or otherwise, shall be shared with BECQ.

14. Waters of Special Concern

Any activities in the following types of waters of the U.S. will require an individual 401 WQC: Wetlands, vegetated shallows including seagrass beds, coral reefs, and streams. Individual WQC is required for wetlands and streams due to the limited amount of freshwater resources in the CNMI, which are critical for public water supply and for support of aquatic life.

15. Erosion and Sediment Controls

A 401 WQC determination is based on the project or activity meeting established turbidity levels in the CNMI Water Quality Standards at NMAIC 65-130-435. Projects or activities that are expected to exceed these levels, except when due to natural conditions, will require individual 401 WQC, as determined by BECQ. BECQ may require a monitoring plan to ensure that violations of water quality standards are minimized.

16. Compliance with Stormwater Pollution Prevention and the National Pollutant Discharge Elimination System Permit Provisions

All projects that involve land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the U.S.

- a. For land disturbances during construction, the permittee must obtain and implement Construction Stormwater General Permit requirements where required.
- b. If required, the permittee must adopt and implement a Stormwater Pollution Prevention Plan.
- c. Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces must be provided.

BECQ encourages prevention of discharges by managing stormwater on site through implementation of Best Management Practices (BMPs), Low Impact Development principles, and other prevention techniques. BECQ will use the applicable provisions of the 2006 Guam and CNMI Stormwater Management Manual as guidance in meeting the applicable water quality standards.

17. Projects or Activities Discharging to Impaired Waters

An individual 401 WQC is required for projects or activities authorized under the Nationwide Permits (NWP) if the project will discharge to a waterbody on the list of impaired waterbodies (the 303(d) List) and the discharge may result in further exceedance of a specific parameter for which the waterbody is listed. BECQ will determine whether the discharge results in exceedance of a specific parameter. The current list of 303(d)-listed waterbodies is available on the Division of Environmental Quality's website or by contacting DEQ's Water Quality Surveillance/Nonpoint Source Branch.

18. Notification and 401 WQC Application

For projects requiring an individual 401 WQC, permittees must provide BECQ with the same documentation provided to the Corps (as described in the Corps' National General Condition #32, Pre-Construction Notification), including, when applicable:

- a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, any other U.S. Department of the Army permits used or intended to be used to authorize any part of the proposed project or any related activity.
- b. Delineation of special aquatic sites and other waters of the United States in accordance with methods and guidance from the Corps.
- c. If mitigation is required, a statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted.
- d. Other applicable requirements of Corps National General Condition #32, Corps Regional Conditions, or notification conditions of the applicable NWP.

A request and application for an individual 401 WQC is not complete until BECQ is provided the applicable documents noted above.

19. Designated Critical Resource Waters:

An individual 401 WQC is required for any proposed project or activity in waterbodies on the most current list of Designated Critical Resource Waters (including NOAA-managed marine sanctuaries and marine monuments and National Estuarine Research Reserves) per the Corps' National General Condition #22.

20. Anti-degradation Review:

An individual 401 WQC is required for any proposed project or activity in all waterbodies designated as Tier 3 under CNMI's Anti-degradation Policy under NMAIC 65-130-010. Tier 3 Waters are high quality waters which constitute an outstanding resource, such as waters of national parks, marine sanctuaries, wildlife refuges and waters of exceptional recreational or ecological significance shall be maintained and protected. Actions which would lower water quality in such waters are prohibited, with the exception of temporary degradation deemed necessary for the construction of important park infrastructure, pollution control devices, and best management practices designed to improve water quality. A list of Anti-degradation Tier designations may be found in the latest CNMI Water Quality Assessment Integrated Report, available on DEQ's website, or by contacting DEQ's Water Quality Surveillance/Nonpoint Source Branch.

21. Fills Within Special Flood Hazard Area:

An individual 401 WQC is required for any proposed project or activity that involves fill in waters of the U.S. and would increase permanent, above-grade fill within a Special Flood Hazard Area, as defined by the Federal Emergency Management Agency (FEMA).