Mr. Jared Blumenfeld  
Regional Administrator, Region 9
U.S. Environmental Protection Agency  
75 Hawthorne Street
San Francisco, California  94105

Dear Mr. Blumenfeld:

Subject: Section 401 Water Quality Certification (WQC) for  
U.S. Environmental Protection Agency (EPA), Region 9
Proposed Small Vessel General Permit for Discharges Incidental to the  
Normal Operation of Vessels Less Than 79 Feet (sVGP) into  
Waters of the State of Hawaii  
File No. WQC0832/EPA 2013 sVGP

In accordance with the provisions of the Clean Water Act, as amended (33 U.S.C. §1251 et seq.; the "CWA"); Hawaii Revised Statutes (HRS), Chapters 91, 92 and 342D; Title 40, Code of Federal Regulations (CFR), Part 121; and Hawaii Administrative Rules (HAR), Chapter 11-54; the Department of Health (DOH) has reviewed your Section 401 WQC Application. The DOH bases its Section 401 WQC on the evaluation of the  
"Proposed Small Vessel General Permit (sVGP) Fact Sheet," "Proposed Small Vessel General Permit (sVGP)"and "Economic Analysis" in a CD transmitted with the December 8, 2011, request for a Section 401 WQC from Mr. David Smith, Manager of NPDES Permits Office, EPA, Region 9 and Federal Register (FR) "Notice of draft permit issuance and Notice of Public Hearing" (76 FR 76716 - 76725, dated December 8, 2011). This conditional Section 401 WQC is required for EPA, Region 9, to issue the final sVGP to "owner" or "operator" of any non-recreational, non-military vessel less than 79 feet in length that is operating in a capacity as a means of transportation, and is eligible for permit coverage under Part 1.1 of the proposed sVGP is authorized to discharge into waters of State of Hawaii subject to the proposed sVGP in accordance with the requirements set forth in the proposed sVGP to be authorized under the provisions of Section 402 of the CWA (33 U.S.C. 1342) and becomes effective on December 19, 2013.

The Director of Health (Director) attests that, when all terms, requirements, restrictions, and limitations contained in the proposed sVGP and this conditional Section 401 WQC are fully complied with, there is a reasonable assurance that the discharge activities will
be conducted in a manner which will not violate the Basic Water Quality Criteria applicable to all waters and the Specific Water Quality Criteria applicable to the class of State waters where the proposed discharges would take place.

1. Coverage of this Conditional WQC

a. In issuing this conditional Section 401 WQC, the DOH has relied on the information contained in the sVGP Fact Sheet and the proposed sVGP in a CD transmitted with the December 8, 2011, request for a Section 401 WQC for the subject proposed sVGP from Mr. David Smith, Manager of NPDES Permits Office, EPA, Region 9 and Federal Register (FR) "Notice of draft permit issuance and Notice of Public Hearing" (76 FR 76716 - 76725, dated December 8, 2011). Conditions, terms, requirements, restrictions, and limitations specified in the proposed sVGP constitute the minimal requirements acceptable to the DOH in issuing this conditional Section 401 WQC.

   This conditional Section 401 WQC may be modified, revoked, or revoked and reissued should any future modifications/changes to the proposed/final sVGP contain any requirement, condition, effluent limitation, or restriction that is less stringent than those specified in the proposed sVGP. EPA, Region 9, shall submit the modification(s)/change(s) to the DOH for review and concurrence. The Director will determine whether the modification(s)/change(s) to the condition(s) of this conditional Section 401 WQC is warranted.

b. Discharges incidental to the normal operation of a vessel are covered under this conditional Section 401 WQC unless they are listed in § 1.5 of the sVGP. Discharges incidental to the normal operation of a vessel, when operating as a means of transportation, include, but are not limited to:

   (1) Anti-foulant hull coating leachate.
   (2) Bilge water.
   (3) Deck runoff.
   (4) Fish hold effluent.
   (5) Gray water.
   (6) Non-contact engine cooling water.
   (7) Packing gland effluent.
   (8) Underwater hull husbandry.

   For the purposes of sVGP, not all vessel discharges are considered incidental to normal operation of a vessel (e.g., industrial discharges).
c. Vessel discharges not eligible for coverage under this conditional Section 401 WQC includes:

(1) Vessel discharges not Incidental to the normal operation of the vessel.
(2) Sewage.
(3) Used or Spent Oil.
(4) Garbage or Trash.
(5) Tetrachloroethylene (Perchloroethylene) Degreasers and other products.
(6) Discharges currently or previously covered by another NPDES permit.

d. Geographical Area Exclusions:

Discharges from a vessel eligible for coverage under the proposed sVGP may submit an individual Application to the Clean Water Branch (CWB), DOH for review, processing and consideration for an individual Section 401 WQC if the proposed discharges will enter the following waterbodies:

(1) (A) Natural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai‘i’s “no discharge” policy for these waters. Waste discharge into these waters is prohibited. (see HAR, paragraph 11-54-3 (b) (1)). [HAR, Paragraph 11-54-5.2]

(B) It is the objective of Inland Class 1 waters that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of these areas shall be protected. Waste discharge into these waters is prohibited. Any conduct which results in a demonstrable increase in levels of point or nonpoint source contamination in class 1 waters is prohibited. [HAR, Paragraph 11-54-3(b)(1)]

“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 the State. [HRS, §342D-1]

(2) Sewage, whether commingled with graywater or not, shall be disposed at pier side collection or treatment system or outside of estuaries or embayments. No new treated sewage discharges shall be permitted within estuaries. [HAR, Paragraph 11-54-3(b)(2)] No new sewage discharges will be permitted within embayments. [HAR, Paragraph 11-54-3(c)(2)]
(3) No new industrial discharges shall be permitted within estuaries. [HAR, Paragraph 11 54 3(b)(2)] No new industrial discharges shall be permitted within embayments. [HAR, Paragraph 11 54 3(c)(2)]

2. Terms of this conditional Section 401 WQC:

a. This conditional Section 401 WQC for discharges eligible for coverage under EPA proposed sVGP as listed Item No. 1.b, above, shall become effective on December 19, 2013.

b. This conditional Section 401 WQC shall expire at 11:59 p.m. December 18, 2017 or until such time as the proposed sVGP is modified, suspended, revoked or reissued or the applicable State Water Quality Standard(s) is revised or modified whichever is earliest. If the applicable State Water Quality Standard(s) is revised or modified and the discharge activities comply with the revisions or modifications, this conditional Section 401 WQC shall remain valid until 11:59 p.m. December 18, 2017.

c. This conditional Section 401 WQC may be modified, revoked, or revoked and reissued when the Director finds it is in the public interest in accordance with HRS, Chapters 91, 92, and 342D.

d. This conditional Section 401 WQC coverage for effluent discharges from each covered vessel may be revoked when:

(1) New State water quality standards (WQS) are subsequently established before this conditional Section 401 WQC expires and the vessel's effluent discharge activity is violating or the Director determines that the vessel's discharge activity is violating the new State WQS. The Director will notify the "owner" or "operator" of a vessel of the violation. The "owner" or "operator" of a vessel shall cease the violation within 180 calendar days of the date of the notice. If the "owner" or "operator" of a vessel fails within 180 calendar days of the date of the notice to cease the violation, the Director may revoke the vessel's Section 401 WQC coverage; or

(2) The Director determines that the vessel's effluent discharge(s) activity is violating the existing State WQS or any condition specified in this conditional Section 401 WQC. The Director will notify the "owner" or "operator" of a vessel of the violation. The "owner" or "operator" of a vessel shall cease the violation within seven (7) calendar days of the date of the notice. If the "owner" or "operator" of a vessel fails within seven (7) calendar days of the date of the notice to cease the violation, the Director may revoke the vessel's Section 401 WQC coverage.
These actions shall not preclude the DOH from taking appropriate enforcement action authorized by law.

Written notification by the Director under this section is complete upon mailing or sending a facsimile or an email transmission of the document or actual receipt of the document by the “owner” or “operator” of the vessel.

e. The “owner” or “operator” of a vessel shall comply with all conditions and requirements specified in the proposed sVGP. All terms, requirements, limitations, and restrictions specified in this conditional Section 401 WQC shall constitute as Part 5 of the proposed sVGP conditions and shall be primarily enforced by the EPA, Region 9, through the compliance of the proposed sVGP. DOH reserves the right to take appropriate enforcement action authorized by law.

3. Validation of this conditional Section 401 WQC coverage

Vessel “owner” or “operator” must complete the “Permit Authorization and Record of Inspection Form (PARI) available in Appendix A of the sVGP and retain it onboard their vessel. Completion of this form provides written certification that the vessel “owner” or “operator” has read and understood the terms of the sVGP, including the requirements contained in this conditional Section 401 WQC as specified in Part 5 of the sVGP. Part IV of the PARI Form also provides written certification that the vessel “owner” or “operator” has conducted the required quarterly visual inspections found in Part 3 of this permit.

All vessels eligible for coverage will receive coverage starting on December 19, 2013, provided vessel “owner” or “operator” has signed the sVGP PARI Form and maintain a copy onboard the vessel.

4. “Owner” or “operator” of the vessel eligible for coverage under sVGP shall conduct the required best management practices found in Part 2 of the sVGP and comply with the additional requirements as set forth in Parts 3 and 4 of the sVGP.

5. EPA Region 9 should inform the “owner” or “operator” of the vessels eligible for coverage under sVGP of this NPDES permitting requirements.

6. Pursuant to HAR, §11-54-4(a), all State waters shall be free of substances attributable to the discharge activities authorized under this conditional Section 401 WQC and the proposed sVGP, including:

   a. Materials that will settle to form objectionable sludge or bottom deposits.

   b. Floating debris, oil, grease, scum, or other floating materials.
c. Substances in amounts sufficient to produce taste in the water or detectable off flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters.

d. High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water.

e. Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life.

f. Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

An electronic copy of HAR, Chapter 11 54 is available at:  

7. Ballast water discharges from "Qualifying Vessels" shall also comply with the provisions of HAR, Chapter 13-76.

The term "Qualifying Vessels," as defined in HAR, Section 13-76-12, means all vessels, United States or foreign flagged, carrying ballast water into state marine waters after operating outside the EEZ.

The term "EEZ," as defined in HAR, Section 13-76-12, means the United States exclusive economic zone established by Presidential Proclamation No. 5030, dated March 10, 1983, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles, substantially as defined in federal law 33 CFR 151.2025, dated July 1, 2005.

8. Discharges from "Commercial Passenger Vessels" shall comply with requirements specified in HRS, Sections 342D 102, 342D 103, 342D 104, 342D 105 and 342 106 of PART VI of HRS, Chapter 342D titled "DISCHARGES FROM COMMERCIAL PASSENGER VESSELS."
"Commercial passenger vessel," as defined in HRS, Section 342D-101, means a vessel that carries passengers for hire. The term does not include a vessel:

1. Authorized to carry fewer than fifty passengers;

2. That does not provide overnight accommodations for at least fifty passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin; or

3. Operated by the United States or a foreign government.

9. There shall be no net increase in loadings of pollutant of concerns (POC) attributable to vessel's effluent discharges into water quality-limited segments as listed by the DOH under CWA, § 303(d). POC information for each water body is included in 2008/2010 State of Hawaii Water Quality Monitoring and Assessment Report which can be located at: http://hawaii.gov/health/environmental/water/cleanwater/integrated/index.html.

10. Pursuant to HRS, Section 342D-8, the DOH-CWB may conduct routine inspection of vessel covered under this conditional Section 401 WQC, taking color photographs, and to sample any effluent discharges.

11. The discharge incidental to normal operation of commercial vessels and commercial fishing vessels permitted under the authorization of proposed sVGP shall not interfere with or become injurious to any assigned uses made of (designated uses, as defined in HAR, Section 11-54-1, and specified in HAR, Section 11-54-3), or presently in (existing uses, as defined in HAR, Section 11-54-1, and specified in HAR, Subsection 11-54-1.1), those waters.

12. It shall constitute a violation under HRS, Chapter 342D; HAR, Chapter 11-54; and this WQC if any discharges resulting from the activities authorized under the EPA sVGP, resulting in any noncompliance to terms, requirements, restrictions, or limitations as specified in this WQC. The DOH reserves the right to take enforcement actions authorized by law.

The DOH has published a “Notice of Proposed Section 401 Water Quality Certification” in Honolulu Star-Advertiser, Maui News, Garden Island Newspaper, West Hawaii Today, and Hawaii Tribune Herald on September 14, 2012 (Doc. No. 12-CW-WQC-06).

After consideration of the expressed views of all interested persons and agencies and pertinent State statutes and rules, the DOH hereby issues this conditional Section 401 WQC to EPA, Region 9, for the proposed sVGP.
Mr. Jared Blumenfeld  
October 16, 2012  
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Should you have any questions, please contact Mr. Alec Wong, Branch Chief, or have your staff contact Mr. Edward Chen of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,

[Signature]

FOR
LORETTA J. PUDDY, A.C.S.W., M.P.H.
Director of Health

c: Pacific Islands Contact Office (PICO), U.S. EPA, Region 9  
U.S. Fish and Wildlife Service  
U.S. National Marine Fisheries Service  
CZM Program, Office of Planning, DBEDT  
Division of Aquatic Resources, DLNR  
Division of Boating and Ocean Recreation, DLNR  
Harbors Division, DOT  
DHO, Hawaii (Hilo)  
DHO, Hawaii (Kona)  
DHO, Maui  
DHO, Kauai  
EHS, Molokai/Lanai (Route file copy)  
Mr. David Smith, EPA, Region 9 [via e-mail only]  
Mr. Eugene Bromley, EPA, Region 9 [via e-mail only]  
Ms. Deborah Nagle, EPA, Head Quarter [via e-mail only]  
Ms. Wendy Wiltse, PICO, EPA, Region 9 [via e-mail only]  
Ms. Caitlyn Stewart, The American Waterways Operators