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GOVERNOR OF HAWAII

CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

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

In reply, please refer to:
EMD / CWB

WQC742.FNL.08

December 19, 2008

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

Dear Mr. Nastri:

Subject: Section 401 Water Quality Certification (WQC) for U.S. Environmental Protection Agency (EPA), Region 9 Proposed Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Commercial Vessels into Waters of the State of Hawaii File No. WQC 0000742

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 Fact Sheet and the proposed VGP transmitted in the June 27, 2008, request for a Section 401 WQC from Mr. Douglas E. Eberhardt, Chief, NPDES Permits Office, EPA, Region 9; Federal Register (FR) "Notice of proposed permit issuance and Notice of Public Hearing" (73 FR 34296-34304, dated June 17, 2008); and subsequent correspondence from the EPA, Region 9, dated September 12, 2008. This conditional Section 401 WQC is required for EPA, Region 9, to issue the final VGP to cover the 28 types of effluent discharges into waters of the State of Hawaii incidental to the normal operation of applicable commercial vessels (operated in a capacity as a means of transportation) and commercial fishing vessels that are eligible for permit coverage under Part 1.2 of the proposed VGP and to be authorized under the provisions of Section 402 of the CWA (33 U.S.C. 1342).

The Director of Health (Director) attests that, when all terms, requirements, restrictions, and limitations contained in the proposed VGP, EPA Region 9's letter of September 12, 2008, and this conditional Section 401 WQC are fully complied with, there is a reasonable assurance that

the 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 Fact Sheet and proposed VGP transmitted with EPA, Region 9's written request of June 27, 2008, and the additional conditions proposed in the letter of September 12, 2008. Conditions specified in the proposed VGP and in the letter of September 12, 2008, shall constitute the minimal requirements acceptable to the DOH with some exceptions as described within this conditional Section 401 WQC, below.

This conditional Section 401 WQC is subject to modification should any future modifications/changes to the proposed VGP contain any requirement, condition, effluent limitation, restriction that is less stringent than those specified in the proposed VGP. 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 conditions of this conditional Section 401 WQC is warranted.

b. This conditional Section 401 WQC covers effluent discharges into waters of the State of Hawaii incidental to the normal operation of applicable commercial vessels (operated in a capacity as a means of transportation) and commercial fishing vessels that are eligible for permit coverage under Part 1.2 of the proposed VGP and to be authorized under the provisions of Section 402 of the CWA (33 U.S.C. 1342).

c. Effluent discharges evaluated under this conditional Section 401 WQC are limited to the following that are currently excluded from obtaining the National Pollutant Discharge Elimination System (NPDES) permit under 40 CFR §122.3 requirements:

(1) Ballast water discharges incidental to normal operations of all commercial vessels including commercial fishing vessels; and

(2) Twenty-seven (27) types of effluent discharges incidental to commercial vessels 79-ft or longer, but not including commercial fishing vessels:

(A) Deck Runoff
(B) Bilgewater/Oily Water Separator Effluent

(C) Anti-fouling Leachate from Anti-Fouling Hull Coatings/Hull Coating Leachate
(D) Aqueous Film Forming Foam (AFFF)
(E) Boiler/Economizer Blowdown
(F) Cathodic Protection
(G) Chain Locker Effluent
(H) Controllable Pitch Propeller Hydraulic Fluid
(I) Distillation and Reverse Osmosis Brine
(J) Elevator Pit Effluent
(K) Firemain Systems
(L) Freshwater Layup
(M) Gas Turbine Wash Water
(N) Graywater Except that Graywater from commercial vessels operating in the Great Lakes within the meaning of CWA section 312 is excluded from the requirement to obtain an NPDES permit (see CWA Section 502(6)), and thus is not within the scope of this permit.
(O) Motor Gasoline and Compensating Discharge
(P) Non-Oily Machinery Wastewater
(Q) Refrigeration and Air Condensate Discharge
(R) Rudder Bearing Lubrication Discharge
(S) Seawater Cooling Overboard Discharge (Including Non-Contact Engine Cooling Water; Hydraulic System Cooling Water, Refrigeration Cooling Water)
(T) Seawater Piping Biofouling Prevention
(U) Small Boat Engine Wet Exhaust
(V) Sonar Dome Discharge
(W) Sterntube Oily Discharge
(X) Underwater Ship Husbandry
(Y) Welldeck Discharges
(Z) Graywater Mixed with Sewage from Vessels
(AA) Exhaust Gas Scrubber Washwater Discharge

d. Geographical Area Exclusions:

(1) There shall be no waste discharges into natural freshwater lakes, saline lakes and anchialine pools. 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.

(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)]

e. Limitations on Coverage

This conditional Section 401 WQC does not apply to any of the following:

(1) The discharge(s) that is regulated under CWA, Section 404.

(2) Discharge activity(ies), to be authorized under the EPA proposed VGP, which is inconsistent with criteria established in HAR, Subsection 11-54-1.1.

(3) When the Director finds that it is more appropriate to evaluate the project impacts under an individual application for a Section 401 WQC.

2. Terms of this conditional Section 401 WQC

a. This conditional Section 401 WQC shall become effective on December 19, 2008.

b. This conditional Section 401 WQC shall be valid until such time as the VGP is modified, suspended, revoked or reissued or the applicable State Water Quality Standard(s) is revised or modified. 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.

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. All terms, requirements, limitations, and restrictions specified in this conditional Section 401 WQC shall constitute as Part 6 of EPA VGP conditions and shall be primarily enforced by the EPA, Region 9, through the compliance of the EPA VGP conditions.

e. EPA, Region 9, shall direct and ensure the VGP permittee will undertake immediate corrective measure(s) to mitigate the noncompliance or violations of any terms, requirements, limitations, or restrictions specified in this conditional Section 401 WQC. These actions shall not preclude the DOH from taking enforcement action authorized by law.

3. Notification Requirements

EPA, Region 9, shall submit a report to and notify the Clean Water Branch (CWB) in a timely manner when HRS, §342D-51 requirements are violated.

The DOH reserves the authority of taking appropriate enforcement action against a violator of the applicable requirements specified in HRS, Chapter 342D; and HAR, Chapter 11-54, and any condition of this conditional Section 401 WQC.

4. Discharge Limitations

a. All waters shall be free of substances attributable to the activities authorized under this conditional Section 401 WQC and EPA VGP, including:

(1) Materials that will settle to form objectionable sludge or bottom deposits.

(2) Floating debris, oil, grease, scum, or other floating materials.

(3) 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.

(4) 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.

(5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life.

(6) 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.

b. The following conditions as proposed in the letter of September 12, 2008, are hereby incorporated into this conditional Section 401 WQC and shall also be incorporated into Part 6 of the Final Region 9 VGP for discharges into Waters of the State of Hawaii "incidental to the normal operation of commercial vessels":

(1) Any discharge which would be unlawful under HRS, Section 342D-51 (or Section 301(a) of the Clean Water Act) must be reported to the Director, Water Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and to the Director of Health, Hawaii Department of Health, 919 Ala Moana Blvd., Rm. 301, Honolulu, Hawaii 96814-4920 within 24 hours of the discharge, unless a valid NPDES permit issued under HRS, Section 342D-6 (or Section 402 of the Clean Water Act) specifies another reporting period for the specific discharge.

(2) Enterococcus shall be added to the list of analytes for which samples shall be taken in accordance with Parts 5.1.2.2.1, 5.1.2.2.2, 5.2.2.2.1 and 5.2.2.2.2 of the VGP. Monitoring results shall be reported to the Director of Health, Hawaii Department of Health, 919 Ala Moana Blvd, Rm. 301, Honolulu, Hawaii 96814-4920 in addition to EPA's Washington DC office.

(3) Receiving waters of the State of Hawaii shall be free of substances attributable to the discharges including 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 humans, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water.

(4) Receiving waters of the State of Hawaii shall be free of substances attributable to the discharges including floating debris, oil, grease, scum, or other floating materials.

c. 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.

d. 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.

e. Concentration of Total Residual Chlorine (TRC) in effluent discharges shall not exceed an acute concentration of 13.0 ug/l in salt water or an acute concentration of 19.0 ug/l in fresh water

f. EPA shall be the Agency responsible to inform all commercial vessels (including the commercial fishing vessels) owners of which water bodies have or do not have an EPA approved Total Maximum Daily Load (TMDL) implementation plan prepared under CWA, Subsection 303(d).

g. State waters affected by the applicable discharge activities are subject to monitoring and to the standards for acute and chronic toxicity and the protection of human health as specified in HAR, Subsection 11-54-4(b).

h. The discharge incidental to normal operation of commercial vessels and commercial fishing vessels permitted under the authorization of EPA VGP 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.

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 VGP, 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 published a Notice of Proposed Section 401 WQC in ***The Garden Island, Honolulu Star Bulletin, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald*** on November 18, 2008, for the subject activity.

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 the EPA, Region 9, for the proposed VGP for listed discharges incidental to the normal operation of commercial vessels.

Should you have any questions, please contact Mr. Edward Chen of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,

FOR Chiyome Leinaala Fukino, M.D.
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 (Routed file copy)
Mr. Douglas Eberhardt, 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)