

June 18, 2018

**Response to Supplemental Comments
Issuance of National Pollutant Discharge Elimination System (NPDES) Permit
No. GUR040001 for Discharges from the Municipal Separate Storm Sewer System (MS4)
Operated by the Guam Department of Public Works (DPW)**

On June 27, 2017, Region 9 provided a tentative final MS4 permit to the Guam DPW for review, along with an updated fact sheet and responses to the comments received on the original draft MS4 permit public noticed in September 2016. In May 2018, the Guam DPW provided comments on the tentative final permit and Region 9's responses to Guam DPW's earlier comments on the previous draft permit. Region 9's responses to Guam DPW's new comments follow below:

1) Comment: The previous draft permit had limited the permit coverage for the Guam DPW to the southern half of the Island of Guam and certain drainage basins along the western coast of Guam, roughly paralleling the proposed geographic coverage of Region 9's proposed MS4 permit for military facilities on Guam. Guam DPW requested that its permit cover its facilities and operations on the entire Island of Guam (excluding areas under the jurisdiction of the military) to avoid two sets of requirements for the areas covered and not covered by the permit.

Response: The Guam DPW request expands the geographic area subject to the permit and will therefore increase the overall effectiveness of the permit in controlling pollutant discharges. Accordingly, Part 1.1 of the final permit was modified to cover DPW operations on the entire Island of Guam, except those areas under the jurisdiction of the military. Appendix E of the draft permit, showing the specific drainage basins covered by the draft permit, was removed in the final permit.

In commenting on the previous draft permit, DPW also suggested (see comment #6) that for clarity, another map be created showing the respective geographic areas of responsibility for the DPW and the military. Such a map would be useful given that the previous draft permit did not cover all of Guam, and the overlap with military areas was somewhat unclear. Since the final permit for DPW was revised to apply to all areas on Guam not covered by the military, a separate map is no longer necessary; Appendix C shows the military areas, and the DPW permit applies to all of Guam except the military areas. However, the separate map requested by DPW related to the previous draft permit was created, and is available on request.

2) Comment: In consideration of the substantial scope of the program and the limited resources of the permittee in implementing the new program, Guam DPW requested that various deadlines for program implementation in Parts 3.3, 3.4 and 3.5 of the tentative final permit be extended to more evenly distribute the initial workload. The permittee submitted alternate deadlines generally in the range of one to two years beyond the deadlines proposed in the

tentative final permit. The difficulties DPW would face in implementing the new program and in securing the necessary funding for the program were also described in DPW's comments on the previous draft permit of September 2016 and in conference calls with Region 9 in late summer 2017.

Response: Region 9 recognizes the resource limitations of the permittee and believes the revised deadlines are reasonable in light of these limitations. Parts 3.3, 3.4 and 3.5 of the final permit have been revised to incorporate the modified deadlines requested by the permittee.

3) Comment: In Part 3.6 of the permit (Pollution Prevention/Good Housekeeping for Municipal Facilities), the permittee requested that various deadlines in the tentative final permit be extended – for reasons similar to the request in comment #2 above. Some of the revised deadlines would extend beyond the five-year term of the permit. The permittee requested that a schedule of compliance (with interim steps and deadlines) be incorporated into the permit for implementation of such requirements. Deadlines extending beyond the term of this permit would most likely be implemented via the reissued permit, but also need to be incorporated into the current permit to ensure enforceability if the current permit is not reissued in a timely manner.

Response: Region 9 again recognizes the resources limitations of the permittee in implementing the new requirements of the permit. As such, Part 3.6 of the final permit incorporates the compliance schedule with the revised deadlines as requested by the permittee.

Region 9 has also determined that the compliance schedule complies with applicable regulations set forth at 40 CFR 122.47. Given the resource limitations of the permittee and the complexity of the program overall, Region 9 believes the amount of time requested is reasonable and will ensure implementation of the program as soon as possible, as required by the 40 CFR 122.47(a)(1). Further, for consistency with 40 CFR 122.47(a)(3) the compliance schedule includes interim dates and milestones with the time interval between milestones not exceeding one year. Finally, Part 5.4 of the permit includes an annual report requirement that will ensure that the permitting authority is kept apprised of progress in achieving compliance with the permit requirements.

4) Comment: The permittee requested that the word “municipal” be replaced in the permit by the term “DPW.” In its comments on the previous draft permit of September 2016, Guam DPW noted that its operations are similar to those of a state department of transportation and certain permit requirements on Guam are implemented by other entities such as the Guam Fire Department or the Department of Parks and Recreation. The requested modification would help to ensure that the permit only applied to DPW facilities and operations on Guam that are within DPW's legal authority and scope of operations.

Response: The final permit was revised as requested, given the existing responsibilities and legal authorities of the permittee. The tentative final permit had required an analysis of the legal authority of the permittee to implement all permit requirements and provided two options for addressing any shortfalls: 1) seek additional legal authority through legislation or other means, or 2) enter into a Memorandum of Understanding (MOU) with other entities on Guam that have or could obtain adequate legal authority to implement certain permit requirements.

For the final permit, the permittee suggested a permit reopener clause whereby the permit could be reopened and modified, as appropriate, to require implementation (via either or both options noted above) of any permit requirements identified through the legal analysis where Guam DPW's authority was found to be lacking; the suggested reopener clause has been included in the final permit (Part 2.3.1). In both the final and tentative final permits, the legal authority analysis is due within 18 months of the permit effective date.

When Region 9 designated the Guam DPW for MS4 permitting in 2011, Region 9 intended that pollutant controls would be implemented that would be comparable to those implemented by traditional MS4s (cities and counties) in other urbanized areas in the United States. By changing the word "municipality" to "DPW", the requirements of Part 3.6 of the permit (Pollution Prevention/Good Housekeeping) would be limited to facilities owned or operated by DPW. For the final permit, to ensure the implementation of controls in Guam comparable to MS4s elsewhere (despite the limited scope of DPW's legal authority), Region 9 expanded the scope of the legal authority analysis to investigate potential entities and mechanisms for implementation of the requirements of Part 3.6 of the permit for publicly-owned or operated facilities listed in Part 3.6.2.1 that are not owned or operated by the permittee.

The reopener clause could then be used to modify the permit, as necessary, to ensure the implementation of pollutant control measures to a broad range of publicly-owned or operated facilities that would be comparable to permits for MS4s in other urban areas of the United States.

5) Comment: The Guam DPW also requested two other changes to the tentative final permit stemming from the limitations in its existing legal authority; these changes would: 1) delete Part 3.5.4.2 of the permit that required that the permittee ensure long-term maintenance of structural control measures included in new developments to comply with the post-construction performance standards in Part 3.5.2 of the permit; and 2) revise Part 3.7 of the permit (Industrial/Commercial Sources) so that the requirements would only apply to facilities with newly-permitted connections to the DPW MS4.

Response: These changes were made in the final permit, given the existing legal authorities of the permittee. Again however, to ensure the implementation of controls in Guam comparable to MS4s elsewhere, Region 9 further expanded the scope of the legal authority analysis to investigate potential entities and mechanisms for implementation of the following: 1) implementation of a procedure for ensuring long-term maintenance of structural controls that are installed to comply with the post-construction standards of Part 3.5.2 of the permit; and 2) implementation of the requirements of Part 3.7 of the permit for all commercial and industrial sites listed in Part 3.7.2.2 of the permit.

The reopener clause could then be used to modify the permit (as noted previously) to ensure the implementation of pollutant control measures in Guam that would be comparable to those commonly implemented in other urban areas of the United States.

6) Comment: The Guam DPW requested a few editorial changes to the permit to better clarify the requirements of the permit.

Response: Region 9 has made most of the changes requested in the final permit. DPW requested that Part 3.4.1 of the permit (general requirements for construction activities) be revised to better match its operations and terminology. However, the word “maintenance” was not included in the list of categories of construction activities since maintenance is generally not considered a construction activity (see 40 CFR 122.26(b)(15)(i)), and including the word “maintenance” in the permit could be misleading.

In Part 3.5.5 of the permit, DPW suggested clarifying that the requirements for post-construction controls would only apply to projects with a connection to the DPW MS4. This change was made since the permittee is only responsible for controlling discharges into its MS4.

Finally, the summary of permit deadlines in Part 5.5 of the permit was revised to ensure that the deadlines in Table 5 matched revised deadlines in the final permit. Region 9 made one additional change to Table 5 to extend the deadline for compliance with the Trash Reduction Plan to 20 years following completion of the Trash Reduction Plan; this change was necessary to match the change made in Part 3.6.12.1.6 to extend the deadline for full implementation of the Trash Reduction Plan.