



PUBLIC NOTICE

US Army Corps of Engineers, Honolulu District

Regulatory Office (CEPOH-RO)
Building 230
Fort Shafter, Hawaii 96858-5440

Public Notice Date: October 2, 2015

FEDERAL PUBLIC NOTICE

PURPOSE: Interested parties are hereby notified that the Honolulu District, U.S. Army Corps of Engineers (Corps) has received, from the State of Hawaii, a conditional Water Quality Certification for seven of the most commonly used nationwide permits (NWP) in Hawaii: NWP 3 – Maintenance; NWP 5 – Scientific Measurement Devices; NWP 6 – Survey Activities; NWP 12 – Utility Line Activities; NWP 13 – Bank Stabilization; NWP 14 – Linear Transportation Projects; and NWP 33 - Temporary Construction, Access, and Dewatering. This notice also provides guidance to Prospective Permittees concerning the process for verification of these nationwide permits as affected by this Water Quality Certification.

AUTHORITY: 33 CFR Part 330

LOCATION: Waters of the U.S. within the State of Hawaii

BACKGROUND: The Corps requested Water Quality Certification for the 2012 nationwide permits on February 25, 2011. The State of Hawaii, Department of Health (State), denied Section 401 Water Quality Certification (WQC) for the 2012 nationwide permits on April 8, 2011. The nationwide permits were noticed in the Federal Register on February 21, 2012 (77 FR 34:10184-10290). The Honolulu District public noticed its regional conditions on March 19, 2012, and the 2012 nationwide permits went into effect. The Corps requested reconsideration of the State's decision on February 24, 2015.

GUIDANCE: The following procedures are provided to Prospective Permittees to clarify the steps as specified in the August 30, 2015 Water Quality Certification where they relate to the Corps verification process.

1. Pre-Notification Coordination. Although not required, the Prospective Permittee is strongly encouraged to coordinate with the State Department of Health, Clean Water Branch (State) and the Corps, prior to submittal of their notification.
2. Prospective Permittee submits notification to both the Corps and State. Notification to the Corps shall be in the form of a Pre- Construction Notice (PCN) as specified in nationwide permit general condition 31 and regional condition 2. Notification to the State shall be as specified in the August 30, 2015 Water Quality Certification which includes

two submissions: (a) Follow procedures for submission of “e-Permitting NWP Blanket WQC Notification Form” and additional required information required by WQC items 5a and 5b; and (b) Mail the signed “Transmittal Requirements and Certification Statement for e-Permitting NWP Blanket WQC Form Submissions” to the State (WQC item 5c).

3. State Notification Received Date. The Corps will consider the notification to the State to be received when the Prospective Permittee provides documentation that the State’s e-Permitting Portal status read’s “Hard Copy Received.” The Prospective Permittee may provide to the Corps an electronic image (e.g., screen capture) of the status as documentation.

4. State Determination. As specified in the August 30, 2015 Water Quality Certification. The State will review the submission and, within 30 days of the State Notification Received Date and inform the Corps and the Responsible Party of its determination: (a) Applicant Action Required – The State has determined that the notification is incomplete; (b) Accepted – The State has determined that this proposed action qualifies under the August 30, 2015 Water Quality Certification; or (c) Rescinded – The State has determined that the proposed action does not qualify under the August 30, 2015 Water Quality Certification or has exercised its discretionary authority to review the proposed action as an individual water quality certification.

5. Presumed to Qualify under the WQC. If, after 30 days from the State Notification Received Date, the Corps has not receive a response from the State then it will presume that the proposed action qualifies under the August 30, 2015 Water Quality Certification.

6. Applicant Action Required. If the Corps receives notification from the State, within 30 days of the State Notification Received Date, with a status of “Applicant Action Required” then the Project Manager will record that notification in the Administrative Record and communicate to the Prospective Permittee that (a) the Corps cannot verify without the State’s Water Quality Certification or a waiver of the WQC, (b) the proposed action is not permitted without the State’s WQC or a waiver of the WQC and (c) the Prospective Permittee has 30 days from the date the Corps received the notification from the State with a status of “Applicant Action Required” to rectify the issue with the State. If, after 30 days from the date that the Corps was informed that “Applicant Action Required,” the Corps has not received notification from the State with a status of “Accepted” or “Rescinded” the Corps will inform the Prospective Permittee in writing if the proposed activity complies with the terms and conditions for the nationwide permit, including activity-specific conditions, and that the State must make a WQC determination. The Prospective Permittee must furnish a completed WQC to the Corps before the activity is authorized and work in regulated waters is initiated. If WQC is subsequently issued or waived, the Corps will send a nationwide permit verification letter to the Prospective Permittee.

7. Accepted. If the Corps receives notification from the State, within 30 days from State Notification Received Date, with a status of "Accepted" then the Corps will complete its review of the proposed action.
8. Rescinded. If the Corps receives notification from the State, within 30 days from the State Notification Received Date, with a status of "Rescinded" then the Corps will (a) inform the Prospective Permittee that we cannot verify without the State's Water Quality Certification or a waiver of the WQC, (b) inform the Prospective Permittee that the proposed action is not permitted without the State's WQC or a waiver of the WQC and (c) complete the verification review in the same manner as any other general permit for which the State has not issued a blanket Water Quality Certification and an Individual WQC is required.
9. When applicable, conditions of the August 30, 2015 Water Quality Certification become conditions of the federal permit as per 33 USC 1342(d). The Corps verification letters will include these conditions by reference.
10. When applicable, compliance with the August 30, 2015 Water Quality Certification fulfills the requirement of Regional Condition 2.8 (published on March 19, 2012).
11. To clarify, the Corps Regional Condition 2.7 does not require a separate plan addressing Best Management Practices. Incorporation of items listed in Regional Condition 2.7.a through 2.7.m into a Best Management Practices plan required by the State fulfills this requirement.

If you have any questions about this public notice, please contact this office via telephone at (808) 835-4303 or via email at CEPOH-RO@usace.army.mil.

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