

June 8, 2017

Response to Public 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

Public notice of EPA's tentative decision to issue the draft NPDES permit was published in the *Pacific Daily News* on September 28, 2016. The following parties submitted written comments on the draft permit within the public comment period that closed on November 28, 2016:

Guam Department of Public Works (DPW)
Guam Environmental Protection Agency (GEPA)
National Marine Fisheries Service (NMFS)

The written comments that were submitted were reviewed by EPA and considered in the formulation of the final determinations regarding the draft permit. Our responses to the comments follow below.

I. Responses to Guam DPW Comments

The comments from the Guam DPW were broken into two categories – general comments and specific comments. Comments 1 through 5 address general issues, while comments 6 through 37 focus on specific issues and permit conditions.

1. **Comment:** The permittee expressed concern that the draft permit included numerous requirements for the permittee to require controls for pollutants in runoff from private lands and certain facilities operated by other Government of Guam entities that the permittee has no authority to regulate. The permittee noted that it did have control over certain lands and operations such as public streets and bus operations; however, the permittee requested that the permit be revised to exclude requirements that are beyond the authority of the permittee to implement. The permittee also suggested that Region 9 consider adding other Government of Guam entities to the permit as co-permittees.

The permittee raised the same issue in comments #8 and #9 below in which the permittee noted that it did not currently have adequate legal authority to fully implement the permit requirements. In comment #8, the permittee suggested certain other approaches in which a memorandum of understanding (MOU) would be pursued with the appropriate Government of Guam entities that have adequate authority to adopt additional regulatory mechanisms (where necessary), or that the permittee initiate legislative action to acquire the necessary legal authority itself. The permittee suggested that the permit provide four years to initiate an MOU with the appropriate Government of Guam entities, or for the permittee to initiate legislative action to

acquire the needed additional legal authority for itself.

Response: Region 9 recognizes that some permittees may have limited legal authority under State, Tribal or local law to establish and enforce an ordinance, or other regulatory mechanism. In such a case, the permittee is encouraged to obtain the necessary authority, if possible. Alternatively, EPA regulations at 40 CFR 122.35 allow permittees to partner with a third party for implementation of permit requirements. This may be a viable option for Guam DPW for its MS4 permit. EPA regulations make clear that the permittee remains responsible for compliance with all permit obligations if it cannot obtain necessary local authorities or if the third party fails to implement the control measure (or component thereof) and thus the permittee is encouraged to enter into a legally binding agreement in order to minimize any uncertainty about compliance with the permit.

As noted below in the response to comment #8, the final permit (like the draft permit) requires that the permittee review the adequacy of its legal authority within 18 months of the permit effective date. To address gaps in legal authority that are identified in the legal authority review, the final permit requires that the permittee must do one or more of the following: (1) request legislation or other mechanisms that would provide Guam DPW with additional legal authority to fully implement all permit requirements, or (2) enter into a Memorandum of Understanding (MOU) with another entity that would provide that the other entity would implement certain permit requirements on behalf of Guam DPW. If the other entity already has adequate legal authority, the MOU would provide that the other entity would begin implementation upon initiation of the MOU. If necessary, the MOU could also provide that the other entity would seek additional legal authority and then implement a permit requirement on behalf of Guam DPW.

Given the uncertainties in the amount of time that may be necessary for the permittee to address the legal authority issue, the final permit only requires that it be addressed as soon as practicable, using the options described above. However, consistent with other MS4 permits, the requirement to implement the permit's provisions is not contingent on establishment of additional legal authorities.

Region 9 also considered the permittee's suggestion that additional Government of Guam entities be named as co-permittees. The Guam DPW indicated that it has an excellent working relationship with other Government of Guam entities such as Guam EPA, Guam Fire Department, the Department of Parks and Recreation and the Department of Land Management. As such, Region 9 is optimistic that the permittee would be able to expeditiously enter into suitable agreements with other appropriate entities to ensure full implementation of permit requirements and therefore has chosen not to name any additional entities as co-permittees. Further, naming additional entities as co-permittees would trigger a lengthy administrative process, including submittal of permit applications from the other entities, and redrafting and renoticing the permit, all of which would delay implementation of the permit's required pollutant control measures and the accompanying reductions in pollutant discharges to Guam's receiving waters.

2. **Comment:** The permittee contended that the scope of the requirements of the draft

permit was too extensive for a first-round permit for a small MS4 and more time should be provided for development and implementation of many of the permit requirements.

Response: As discussed below in the responses to specific comments, many of the deadlines in the final permit have been extended, or other revisions have been made in response to timing concerns raised by the permittee. Region 9 believes that these revisions are sufficient to address the concerns of the permittee.

3. **Comment:** The permittee repeated that it did not currently have adequate legal authority to implement many of the permit requirements, such as controls for runoff from commercial businesses. Legislative action would be necessary to acquire the necessary authority, which could take considerable time. The permittee recommended that the full term of the first permit be provided for the acquisition of such authority.

Response: As discussed in the responses to comments #1 and #8, Region 9 has revised the final permit to provide additional time for either the acquisition of additional legal authority by the permittee or for partnerships to be established with other entities that could implement certain permit requirements on behalf of Guam DPW.

4. **Comment:** The permittee noted that implementation of certain permit requirements (such as outfall prioritization) could depend on completion of other permit requirements such as an updated and complete MS4 map. The permittee recommended that the deadlines for the various permit requirements be set to allow for logical sequencing of the various tasks. The permittee also requested that the permit include language recognizing that compliance with permit deadlines could be impacted by other Federal or local regulations addressing endangered species, or historic or cultural preservation.

Response: As discussed below in the responses to specific comments (e.g., #16 and #29), Region 9 has clarified that some permit requirements (such as outfall prioritization and the catch basin cleaning schedule) should be implemented based on the best information available to the permittee at the time implementation begins, and that program implementation should be refined as new information becomes available. As such, full sequencing of permit tasks would not be necessary to the degree envisioned by the permittee. However, the final permit does extend certain deadlines as discussed below (e.g., response to comment #37) to ensure appropriate sequencing in the implementation of some permit requirements, among other reasons for the changes.

Region 9 did not make changes to the permit to reflect the permittee's concern that Federal or local regulations may impact timing, as the deadlines in the final permit already provide adequate time to accommodate such requirements.

5. **Comment:** Part 2.5 of the draft permit required that the permittee secure the necessary resources (e.g., financial and personnel resources) to meet the permit requirements. The permittee pointed out that it operates on an October 1 through September 30 fiscal year and that budget planning must begin in approximately December of the preceding year in order to request the appropriate level of funding for the budget year. The permittee requested that the permit

effective date be set on October 1, 2017 to match the start of the permittee's fiscal year. Further, given the considerable time necessary to secure the additional resources needed for permit compliance, the permittee requested a six-month extension of the deliverables that are currently due within 18 months in the draft permit.

Response: The permit effective date has been set for October 1, 2017 to match the start of the permittee's budget period, in accordance with the permittee's request. As noted below in the responses to specific comments, many of the due dates have also been extended in recognition of the permittee's budget cycle.

6. **Comment:** The permittee noted that the map in Appendix C had described the permit coverage as the entire Island of Guam (except military areas), while the map in Appendix E showed the coverage to be restricted to the roughly the southern half of the Island; this inconsistency needed to be addressed. For added clarity, the permittee also suggested that the areas of responsibility for both the Guam DPW and the military be shown on one map.

Response: Appendix C has been revised to indicate that Guam DPW's areas of responsibility are shown in Appendix E, except the areas under the jurisdiction of the military within the area shown in Appendix E. An additional map (Appendix F) was also generated that shows on one map the areas of responsibility for both the Guam DPW and the military.

7. **Comment:** Part 1.2 of the draft permit would regulate discharges from all outfalls of the permittee's MS4. The permittee indicated that outfalls located outside the permit area should not be subject to the permit.

Response: To the extent that outfalls (if any) that are located outside the permit area discharge pollutants in stormwater or non-stormwater discharges that originate from within the permit area, those pollutants must be controlled in accordance with the terms and conditions of the permit.

8. **Comment:** Part 2.3.1 of the draft permit required that Guam DPW review its legal authority to implement the permit requirements and where necessary adopt additional ordinances or other regulatory mechanisms to ensure adequate authority. In its comment, Guam DPW indicated that it currently lacks adequate legal authority to implement many of the draft permit requirements, and that legislative action would be needed to establish the necessary legal authority. The permittee suggested that an MOU could be pursued with appropriate Government of Guam entities that have adequate authority to adopt appropriate ordinances or other regulatory mechanisms, or that the permittee initiate legislative action to acquire the necessary legal authority itself. The permittee suggested that such actions be required within four years of the permit effective date.

Response: Region 9 recognizes that considerable time may be necessary to establish the legal authority necessary to fully implement the permit requirements. The final permit requires that the permittee review the adequacy of its existing legal authority within 18 months of the permit effective date (same as the draft permit); the permittee must address any gaps in legal authority as described above in the response to comment #1,

9. **Comment:** Parts 2.3.2.1 through 2.3.2.11 of the draft permit described the functions and capabilities that adequate legal authority would need to include. The permittee noted that it currently did not have full legal authority as described in the draft permit, but did have authority to implement some requirements such as those applicable to road and bus operations.

Response: See responses to comments #1 and #8.

10. **Comment:** Part 2.4 of the draft permit required that the permittee develop and implement an enforcement response plan and described various components of the plan. The permittee indicated that it did not currently have adequate legal authority to fully implement such a plan.

Response: The final permit requires that the permittee implement those aspects of the permit for which it currently has adequate legal authority and to seek additional legal authority, or partnerships with other entities, as described above in the responses to comments #1 and #8.

11. **Comment:** Part 3.1.2 of the draft permit required the permittee to distribute educational materials to a minimum of 20% of the target audience each year. The permittee noted that it would not be possible to comply with this requirement at the start of the permit term as the permit allows 18 months for the development of a public education program.

Response: The final permit was modified to require the permittee to begin distribution of the educational materials not later than two years after the permit effective date.

12. **Comment:** Part 3.3.1 of the draft permit required that the permittee implement a program to address illicit discharges and illegal dumping into the MS4. The permittee indicated that it did not currently have adequate legal authority to fully implement such a program, consistent with the permit requirements. The permittee suggested that the permit require commencement of a program, consistent with existing legal authorities, at the start of the third year of the permit term. The permittee would also seek additional legal authority, or pursue an MOU with another Government of Guam entity where necessary to fully comply with the permit, as described above.

Response: The requirements of the final permit are generally consistent with the permittee's suggestion. The final permit requires that the permittee develop and then implement those aspects of the program for which it already has adequate legal authority and to seek additional legal authority (or partner with other entities) where necessary, as described above in the responses to comments #1 and #8. Implementation of the initial program (based on the permittee's existing authorities) would begin at the start of the third year of the permit term, which is the same as the draft permit had required, and consistent with the permittee's suggestion.

13. **Comment:** Part 3.1.4 of the draft permit required that the permittee assess the effectiveness of the stormwater outreach program beginning in the second year of the permit term and adjust the program based on the assessment. The permittee noted that the first

assessment would be based on only six months of actual program implementation, as 18 months are provided for program development. The permittee suggested that the first assessment not be required until the first full year of program implementation.

Response: As noted above in the response to comment #11, the final permit provides two years for program development. Consistent with the permittee's recommendation, the final permit also provides that the first assessment would not be required until the end of the third year of the permit term, which allows for review of a full year of program implementation.

14. **Comment:** Part 3.2.1 of the draft permit required that the permittee make the stormwater management program (SWMP) available for public review and comment on the Guam Transportation Program (GTP) website. The permittee indicated that the website may not provide a means for the public to submit comments; the permittee suggested that another publicly accessible website be allowed, but did not provide any specific suggestions.

Response: The permittee's draft SWMP had noted that the GTP website does provide the public an opportunity to comment on matters involving roadways and transportation issues. Region 9 believes that it should be straightforward for the website to be modified, if necessary, to accept comments on the draft SWMP. As such, for this permit condition, the requirements of draft permit were retained in the final permit.

15. **Comment:** Part 3.3.2 of the draft permit required that the permittee generate a complete and up-to-date map of the storm sewer system. The permittee indicated that as-built plans are lacking for projects constructed prior to 2009. The permittee suggested that the mapping requirement be restricted to surface features and documented subsurface features. Such an updated map would continue to be due within two years of the permit effective date, as required in the draft permit.

Response: Borrowing from the permittee's suggestion, the final permit was modified to require an up-to-date map of the surface features and documented subsurface features within two years of the effective date of the permit, but also a plan to map remaining undocumented features as accurately as practicable. The plan must further include an implementation schedule leading to a complete map by the time of the permit reapplication (180 days before permit expiration).

16. **Comment:** Part 3.3.3 of the draft permit required that the permittee identify priority outfalls as part of the program for controlling illicit discharges and illegal dumping. The permittee pointed out that an updated map (with a complete list of outfalls) as required by Part 3.3.2 would be necessary before the priority outfalls could be selected. The permittee suggested four years following the permit effective date as the deadline for outfall prioritization.

Response: The final permit was modified slightly to provide that an initial selection of priority outfalls would be required based on the best information currently available to the permittee when the initial program is developed. As noted in comment #12, the permittee had proposed that an initial program for addressing illicit discharges/illegal dumping could begin at the start of year three of the permit term; the final permit (like the draft permit) also requires the program to begin at the start of year three. This program would focus on priority outfalls

selected on the basis of the best available information at that time. We would also note that Part 3.3.3.9 of the permit requires that the list of priority outfalls be updated annually based on any new information that may become available.

17. **Comment:** Part 3.3.3.9 of the draft permit required that the permittee document in the SWMP the basis for the selection of priority outfalls. The permittee again pointed out that an accurate map would be necessary before this could be accomplished.

Response: As noted above in the response to comment #16, the final permit provides two years for development and to begin implementation of the program for illicit discharges and illegal dumping. The final permit provides that the initial selection of priority outfalls would only need to be based on the best information available to the permittee at the time of selection. Region 9 believes this clarification will address the permittee's concern.

18. **Comment:** Part 3.3.4.2 of the draft permit required that the permittee begin implementation of the field screening program at the beginning of year three of the term of the permit. The permittee again noted that the selection of priority outfalls would need to be completed before this program could begin.

Response: As stated above in the response to comment #17, the final permit provides that an initial selection of priority outfalls could be based on the based information available to the permittee at the time the initial selections are made. With this clarification, compliance with the permit should be straightforward.

19. **Comment:** Part 3.3.4.2.1 of the draft permit seemed to require that the permittee screen all non-priority outfalls once during the permit term. Since the screening program would not begin at the start of the permit term, it would not be possible to screen all outfalls at the suggested rate of 20% per year.

Response: The intent of the draft permit was to require screening of non-priority outfalls at a minimum rate of 20% of the universe of such outfalls following the start of program. Since the program would be not implemented during the full five years of the permit, the full inventory of non-priority outfalls would not be screened, nor was this the intent of the draft permit. The final permit was revised to clarify that point.

20. **Comment:** Part 3.3.6.1 of the draft permit provided that if 911 were selected for emergency reporting by the public of non-stormwater discharges and spills, the permittee must also create a non-emergency phone number with voicemail that is checked daily. The permittee requested a clarification that the required checking be restricted to regular business hours.

Response: The final permit was modified to restrict the checking to regular business hours, as requested by the permittee. The draft permit language was derived from EPA's 2010 MS4 Permit Improvement Guide, which was itself derived from the 2009 Regional MS4 Permit issued by the San Francisco Bay Water Board.

21. **Comment:** Part 3.4.1 of the draft permit required the permittee to ensure that

construction site operators comply with the Guam Soil Erosion and Sediment Control Regulations (Title 22 of Guam Annotated Rules and Regulations (GAR): GEPA, Chapter 10) dated October 2000, and other requirements of the permit found in Parts 3.4.1 through 3.4.6. The permittee indicated that it did not currently have the legal authority to ensure compliance with the Guam Soil Erosion and Sediment Control Regulations or the other requirements of the permit in Parts 3.4.1 through 3.4.6 for projects other those directly controlled by the permittee, such as road construction projects.

Response: As noted in the fact sheet for the draft permit, the Phase II stormwater regulations (40 CFR 122.35) provide that a permittee may rely on a third party for implementation of certain minimum control measures. The fact sheet also points out that the Erosion Control Plan approved by the Guam EPA requires compliance with the Guam Soil Erosion and Sediment Control Regulations.

The final permit requires that the permittee ensure compliance with the Guam Soil Erosion and Sediment Control Regulations (beginning on the effective date of the permit) for projects that it controls such a road construction projects. For other projects, the permit requires that the permittee either seek additional legal authority for itself or partner with a third party (such as Guam EPA or another appropriate entity) to ensure compliance with the permit requirements. See responses to comments #1 and #8 for additional information related to the issue of legal authority.

22. **Comment:** Part 3.4.1 of the draft permit required certain additional best management practices (BMPs) and measurable goals to supplement those already found in the Guam Soil Erosion and Sediment Control Regulations. The new BMPs and measurable goals are found in Parts 3.4.1 through 3.4.6 of the draft permit and would be due within 18 months of the permit effective date. The permittee requested that implementation of this requirement be delayed until the beginning of the fourth year of the permit term, given the heavy workload during the earlier years.

Response: The deadline for commencement of implementation of the additional BMPs and measurable goals in the final permit is the beginning of the third year of the permit term for projects under the direct control of the permittee such as road projects. This deadline was extended by six months from the deadline in the draft permit for reasons discussed in the response to comment #5. Region 9 believes this is an appropriate amount of time, considering the relatively well-developed erosion control program on Guam, and the importance of erosion control in protecting coastal resources such as coral. For projects not under the direct control of the permittee (at least at this time), the permit requires that the permittee either seek additional legal authority or partner with an appropriate third party to ensure compliance with the permit requirements. See responses to comments #1 and #8 for additional information related to the issue of legal authority.

23. **Comment:** Part 3.4.2 of the draft permit required the permittee to develop and maintain an inventory of construction projects that result in a land disturbance of one or more acres. This would be due within 18 months of the permit effective date; the permittee requested that it be due within four years of the permit effective date.

Response: For reasons discussed above in the response to comment #22, the inventory would be required at the beginning of year three of the permit term for projects under the control of the permittee. For projects not under the direct control of the permittee, the permit requires that the permittee either seek additional legal authority or partner with an appropriate third party to ensure compliance with the permit requirements. See responses to comments #1 and #8 for additional information related to this issue.

24. **Comment:** The permittee indicated that it did not currently have adequate legal authority to fully ensure compliance with the post-construction stormwater management requirements of Part 3.5.2 of the draft permit. However, the permittee did indicate that it could ensure compliance for projects under the direct control of the permittee such as road construction projects.

Response: The permittee's concern here is similar to that expressed in several others described above related to legal authority, and the final permit provides a similar response. For projects under the direct control of the permittee at this time, the final permit requires that the permittee ensure compliance with the post-construction stormwater management requirements of Part 3.5.2 on the permit effective date. For other projects, the permittee must either seek additional legal authority for itself or partner with an appropriate third party to ensure compliance with the post-construction standards. See responses to comments #1 and #8 for additional information related to this issue.

25. **Comment:** Part 3.5.4 of the draft permit required the permittee to ensure the maintenance in perpetuity for control measures that are included in new developments and redevelopments for compliance with the post-construction stormwater management requirements of Part 3.5.2. The permittee indicated that such a requirement should only apply to new developments/redevelopments that tie into the permittee's MS4.

Response: Region 9 agrees with the permittee on this matter. The draft permit had intended that this requirement would only apply to projects that discharge stormwater into the MS4 operated by the permittee. This is also consistent with the description of the post-construction minimum control measure in the Phase II stormwater regulations at 40 CFR 122.34(b)(5). With this clarification, Region 9 presumes the issue has been adequately addressed.

26. **Comment:** Part 3.5.4 of the draft permit required the permittee to ensure the maintenance in perpetuity for control measures that are included in new developments and redevelopments for compliance with the post-construction stormwater management requirements of Part 3.5.2. The permittee indicated that it did not currently have adequate legal authority to implement this requirement.

Response: This comment is similar to several others described above related to the adequacy of the permittee's legal authority. The final permit requires that the permittee either seek additional legal authority for itself or partner with an appropriate third party to ensure compliance with the post-construction standards. See responses to comments #1 and #8 for

additional information related to this issue.

27. **Comment:** Part 3.5.7 of the draft permit required development and implementation, within three years of the permit effective date, of a plan for retrofitting the MS4 with additional controls, focusing on green infrastructure, for discharges that are currently impacting water quality. The permittee requested that the plan be submitted with the permit reapplication to provide more time for development of the plan, and in consideration of the substantial resources necessary for implementation of other permit requirements.

Response: After considering the rationale for the permittee's request, the final permit has been revised in accordance with the request. The retrofit plan must be included with the permit reapplication and would be considered in the formulation of the requirements of the subsequent MS4 permit.

28. **Comment:** Part 3.6 of the draft permit required that the permittee develop and maintain a list of municipally-owned or operated facilities and stormwater controls and provided a specific minimum list of types of facilities to be included. The permittee expressed concern that it does not have legal authority to implement the permit requirements for some of these facilities, since another entity may have jurisdiction. The permittee requested that the permit be modified to indicate that Guam DPW would only be responsible for those facilities for which it is the owner or operator.

Response: The comment is similar to several others discussed above in which the permittee expressed concern regarding the adequacy of its legal authority. The final permit was modified to require implementation of the permit requirements for permittee-owned or operated facilities in accordance with the schedule set forth in the permit.

For the types of "municipally-owned or operated" facilities listed in the permit that are not currently under the jurisdiction of the permittee, the final permit requires that the permittee seek additional legal authority or partner with the appropriate entity that does have jurisdiction. See responses to comments #1 and #8 for additional information related to this issue.

29. **Comment:** Part 3.6.5.1.1 of the draft permit required prioritization of catch basins for cleaning based on volume of accumulated trash/debris. The permittee indicated that such prioritization would need to be preceded by updated MS4 mapping also required by the permit (Part 3.3.2), and would require multiple inspections/cleanings to generate an adequate database. Given the time necessary for accumulation of the needed data, the permittee recommended that the requirement be included with the permit reapplication due 180 days prior to permit expiration (or with the fourth-year annual report), and serve as the basis for requirements for the subsequent MS4 permit.

Response: First, for reasons discussed in the response to comment #5, Part 3.6.1 of the final permit was modified from the draft permit to provide two years (rather than 18 months) for development of the overall program addressing pollution prevention/good housekeeping for municipal facilities. Further, in response to the permittee's concerns, Part 3.6.5.1.1 of the final permit provides that an initial prioritization of catch basins would be based on the best

information available to the permittee at the time it is due (i.e., within two years of the permit effective date). The prioritization would be refined over time as the permittee accumulates more data.

30. **Comment:** Part 3.6.5.1.2.1 of the draft permit required that catch basins be cleaned in accordance with specific frequencies based on the prioritization determined by Part 3.6.5.1.1 of the permit. The cleaning would begin within 18 months of the permit effective date. As noted in comment #29 above, the permittee indicated that more time would be needed to gather the necessary data for the prioritization.

Response: This comment is a follow-up to comment #29. Along with the lines of the response to comment #29, the final permit provides that the initial cleaning schedule would be based on the best information available to the permittee at the time the program implementation begins, and would be refined over time as more information becomes available.

31. **Comment:** Part 3.6.5.1.2.2 of the draft permit required that catch basins found to be one third to one half full of trash/debris be cleaned within 7 days of discovery. The permittee contended that the requirement for cleaning within 7 days would create logistics problems. The permittee suggested the cleaning deadline be modified to within 30 days of discovery for catch basins found to be at least one third full at the time of inspection.

Response: Region 9 has revised the final permit to require cleaning (within 30 days) of catch basins that are found to be at least one third full at the time of inspection. The upper limit in the draft permit (one half full) was deleted since there is no apparent reason to include such a limit.

32. **Comment:** Part 3.6.6.1 of the draft permit required that the permittee evaluate the rate of pollutant load generation of the various municipally-owned streets and parking lots within its jurisdiction. The streets and parking lots would be rated as high, medium or low priority based on the rate of pollutant generation. Certain land uses such as high traffic areas and shopping malls would be required to be rated as high priority. The permittee indicated that it did not have the legal authority to sweep or require sweeping of certain facilities such as shopping malls. The permittee suggested the requirement be limited to permittee-owned or operated streets and parking lots.

Response: This comment is similar to several others discussed above in which the permittee expressed concern regarding the adequacy of its legal authority. The final permit was modified to require implementation of the permit requirements for permittee-owned or operated facilities in accordance with the schedule set forth in the permit.

For the types of facilities listed in the permit that are not currently under the jurisdiction of the permittee, the final permit requires that the permittee seek additional legal authority for itself or enter into an agreement with the appropriate entity that does have jurisdiction. See responses to comments #1 and #8 for additional information related to this issue.

33. **Comment:** Part 3.6.6.6 of the draft permit required that the permittee develop a

procedure to dewater and dispose of street sweeper waste material without that material reentering the MS4. The permittee noted that it does not currently have a decant station for dewatering and disposing of sweeping waste. The permittee also indicated that siting, design and construction of such a facility could take up to five years. The permittee suggested that the permit require that a procedure be developed within three years for dewatering and disposal of sweeping waste and that it be functional by the end of the permit term.

Response: Part 3.6 of the draft permit had required that the permittee develop and implement a program (within 18 months of the permit effective date) to minimize pollutant discharges from municipal facilities and operations. The implementation deadline would apply to all the various components of the program, including Part 3.6.6.6. For reasons explained in the response to comment #5, several requirements that were due within 18 months in the draft permit were extended to two years in the final permit. However, given the implementation requirements noted by the permittee in complying with Part 3.6.6.6, the deadlines and pathway to achieving compliance for this particular requirement in the final permit were revised to match the permittee's recommendation.

34. **Comment:** Part 3.6.12.1.6 of the draft permit required that the permittee develop and implement a trash reduction plan for controlling and monitoring trash discharges from the MS4. The plan would be due within two years of the permit effective date and would require a gradual reduction to zero trash discharges not later than 15 years following development of the plan. The plan due in two years would also include a baseline estimate of existing loading rates. The permittee indicated that based on the experiences of other MS4s, more time would be necessary to prepare the plan and gather adequate data on loading rates; the permittee suggested that the plan be due prior to the expiration of the permit.

Response: Region 9 understands that trash management is challenging and this permit is the first MS4 permit issued to Guam DPW. Therefore, the final permit includes a deadline for the trash reduction plan which is comparable to Guam DPW's recommendation; the plan is due with the permit reapplication which is due not later than 180 days prior to permit expiration.

35. **Comment:** Part 3.6.12.1 of the draft permit required that the permittee develop and implement a trash reduction plan for controlling and monitoring trash discharges from the MS4. As a follow-up to comment #34, the permittee indicated that it could not commit to a 15-year compliance schedule to achieve zero trash discharges, given the uncertainties in what might be required.

Response: Region 9 has modified the final permit for the Guam DPW was revised to require a trash reduction plan that would achieve compliance with zero trash as soon as practicable, but not later than 20 years after the permit effective date for several reasons. First, the permit would be Guam DPW's first MS4 permit, and Guam DPW would need to gather additional basic information such as a more complete map of the MS4, and an inventory of important sources discharging into the MS4. Further, as noted in comments 1 and 8 above (and the responses to those comments), additional time is needed to address the issue of adequate legal authority in Guam. On the other hand, Region 9 point outs that Guam DPW could learn from and benefit from the experiences of other MS4s, and this could facilitate the development

and implementation of Guam DPW's trash management plan.

Weighing all the above factors, Region 9 believes the final compliance deadline to be appropriate. Nevertheless, when subsequent MS4 permits are issued for the permittee, Region 9 would be willing to consider revisions in the permit requirements as may be warranted based on the early experiences of the permittee in implementing the permit requirements or other new information that may become available.

36. **Comment:** Part 3.7 of the draft permit required that the permittee develop and implement a program to control pollutants in runoff from industrial/commercial facilities. The permittee indicated that it does not currently have the legal authority to implement the permit requirements. The permittee suggested that an MOU could be pursued with the appropriate Government of Guam entities that have adequate authority to adopt appropriate regulatory mechanisms, or that the permittee initiate legislative action to acquire the necessary legal authority itself. The permittee suggested that such actions be required within four years of the permit effective date.

Response: This comment is similar to several others discussed above in which the permittee expressed concern regarding the adequacy of its legal authority, and final permit provides a similar response. The final permit requires that the permittee implement those aspects of the permit for which it currently has adequate legal authority and to seek additional legal authority, or partner with other appropriate entities for implementation of certain permit requirements, as described above in the responses to comments #1 and #8.

37. **Comment:** Parts 4.1.1 and 4.1.2 of the draft permit required that the permittee either comply with applicable TMDL wasteload allocations within 18 months of the permit effective date, or submit a plan within 12 months of the permit effective date, including an implementation schedule, for attaining compliance. The permittee indicated that more time would be needed for development of the plan, given the limited information currently available to the permittee, and the time necessary to gather the information. The permittee recommended that four years be provided for the development of the plan.

Response: For reasons discussed below, Region 9 has extended the deadline for submittal of the implementation plan to four years following the permit effective date, consistent with the permittee's recommendation. As noted above in several earlier comments and responses, there are limits currently on the legal authority of the permittee to implement some permit requirements and considerable time may be necessary for the permittee to either acquire the necessary legal authority itself, or enter into partnership agreements with other entities that could implement certain permit requirements on behalf of Guam DPW. The permittee also pointed out the need for updating the MS4 map and that accurate mapping and source information would be necessary to develop an effective TMDL implementation plan. Finally, considering the fact that this is a first-round MS4 permit and that time is necessary to gain general experience with stormwater quality management, Region 9 extended the compliance deadline as suggested.

II. Responses to Guam EPA Comments

The comments from Guam EPA were divided into two categories, referred to as 401 WQC (or water quality certification) comments and general comments. As noted in the fact sheet for the draft permit, and as provided in section 401 of the CWA and 40 CFR 122.53, Region 9 may not issue the permit until Guam EPA certifies (or waives its right to certify) that the permit is consistent with applicable provisions of sections 208(e), 301, 302, 303, 306, and 307 of the CWA and applicable requirements of territorial law. Comments #1 through #6 below address issues and permit revisions/additions necessary for the water quality certification, while comments #7 through #29 address other issues.

Part 4.5 of the draft permit had been reserved for any additional requirements that would need to be added to the permit based on the CWA 401 certification from Guam EPA. As discussed below in the responses to comments #1 through #6, Part 4.5 of the final permit includes additional requirements that are necessary for the CWA 401 certification based on Guam EPA's comments.

1. Comment: Guam EPA noted that it currently plays a role in the implementation of the local program for sediment and erosion control, in that it approves an Erosion Control Plan and an Environmental Protection Plan for new construction projects prior to Guam DPW issuing its Clearing and Grading Permit. Guam EPA appeared to be recommending that an MOU be developed between the two agencies clarifying the existing roles and responsibilities.

Response: The fact sheet for the draft permit had also recommended that an MOU be developed that would clarify existing roles and responsibilities. Part 4.5 of the final permit includes a requirement that the Guam DPW pursue an appropriate MOU with Guam EPA that we believe is consistent with the intent of the comment.

2. Comment: Guam EPA indicated that the monitoring plan that would be developed pursuant to Part 5.2 of the draft permit would need to be submitted to Guam EPA for review and approval.

Response: Part 4.5 of the final permit includes a requirement that the Guam DPW submit the monitoring plan to Guam EPA for review and approval, consistent with the comment.

3. Comment: Guam EPA noted that the permittee would be required to monitor for various constituents in dry weather discharges including ammonia, conductivity, surfactants, pH, and enterococcus as indicators of potential illicit discharges. Guam EPA indicated that the permittee must protect water quality by ensuring that no discharges cause or contribute to an exceedance of Guam's water quality standards.

Response: A narrative requirement, consistent with the above comment, has been included in Part 4.5 of the final permit.

4. Comment: Guam EPA noted that all dewatering activities will require the submission of a dewatering plan for review and approval to Guam EPA.

Response: The above requirement was added to Part 4.5 of the final permit.

5. **Comment:** Guam EPA indicated that hard copies of operating reports such as annual reports and discharge monitoring reports would need to be submitted to Guam EPA prior to electronic submittal using NeT.

Response: Part 4.5 of the final permit requires that hard copies of such reports be submitted to Guam EPA, prior to electronic submittal using NeT, as requested by Guam EPA.

6. **Comment:** Guam EPA requested that it be involved in the evaluation of outfalls and the identification of priority outfalls that may be discharging significant quantities of pollutants.

Response: Part 4.5 of the final permit requires that the Guam DPW consult with Guam EPA in evaluating outfalls for discharges of significant quantities of pollutants, and in selecting priority outfalls in the implementation of the requirements of Part 3.3.3 of the permit.

7. **Comment:** Part 1.3.2 of the draft permit provided a list of non-stormwater discharges that would not need to be prohibited from being discharged into the MS4 unless the permittee identified them as significant sources of pollutants, in which case they would be addressed as illicit discharges in accordance with Part 3.3 of the draft permit. Guam EPA recommended that three of the non-stormwater discharges on the list (air conditioning condensate, dechlorinated swimming pool water and flows from emergency firefighting activities) be addressed as illicit discharges as specified in Part 3.3 of the permit.

Response: The draft permit had required that non-stormwater discharges listed in Part 1.3.2 either be allowed or essentially prohibited as illicit discharges in accordance with Part 3.3. The final permit was revised to provide another option (as suggested in Part 1.3.3 of the draft permit) in which the three discharges listed by Guam EPA (and potentially other discharges as well) could be conditionally allowed into the MS4, provided certain BMPs are implemented to adequately control pollutant discharges.

With regards to firefighting runoff, Region 9 does not believe it would be practicable to prohibit this discharge entirely since the location of future fires (and any accompanying firefighting runoff) cannot be known in advance. Nevertheless, some municipalities have developed BMPs designed to minimize the potential impacts of firefighting runoff. One example in Region 9 would be Riverside County, CA in which BMPs for firefighting activities have been developed; see Appendix L of the 2015 Stormwater Management Plan for the Whitewater River Region, available at:

http://rcflood.org/downloads/NPDES/Documents/WW_SWMP_WQMP/Jan2015_App_L_FireAgencyBMPs.pdf. The final permit for the Guam DPW requires that DPW develop and then implement appropriate BMPs for firefighting runoff; the Riverside County BMPs could serve as a model for Guam DPW in developing its own BMPs.

With regards to dechlorinated swimming pool water and air conditioning condensate, the final permit takes a similar approach to the one described above for firefighting runoff, in which

the Guam DPW would develop and implement additional BMPs or policies to address these discharges. For dechlorinated swimming pool water, the 2012 MS4 permit issued by the Los Angeles Regional Water Board (NPDES permit No. CAS004001) provides example BMPs that the Guam DPW could consider for its own use. The Los Angeles County MS4 permit can be found at:

http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/index.shtml.

For air conditioning condensate, the 2015 Municipal Regional Permit for the San Francisco Bay area provides some example requirements for this discharge that Guam DPW could consider. The Municipal Regional Permit can be found at:

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/R2-2015-0049.pdf

The additional BMPs for the three non-stormwater discharges discussed above are required within two years of the permit effective date; otherwise these discharges would need to be addressed as illicit discharges in accordance with Part 3.3 of the permit.

8. **Comment:** Guam EPA recommended that in Part 3.6.5.2.1.3 of the draft permit that Region 9 consider a requirement for the use of more environmentally-friendly firefighting foam. Part 3.6.5.2.1.3 of the draft permit already included a general requirement to maximize the use of environmentally-benign materials in municipal operations and maintenance activities.

Response: Region 9 agrees with the commenter on this matter. The final permit was modified to specifically include firefighting foam as a type of material for which the permittee must seek to use the most environmentally-friendly materials.

9. **Comment:** In Part 3.6.5.2.1.3 of the draft permit, Guam EPA recommended that operation and maintenance activities be conducted in a manner to minimize exposure or mobilization of pollutants (such as mulch or grass clippings) to prevent them from being discharged into the MS4.

Response: Part 3.6.5.2.1.3 of the draft permit already required that operations be conducted in a manner that would minimize exposure. The final permit was modified to require both operations and maintenance to be conducted in such a manner.

10. **Comment:** Guam EPA recommended that Part 3.6.12 of the permit (Trash Reduction Plan) address the beach cleaning activities conducted in Tumon Bay and East Hagatna.

Response: The draft permit had only required that a trash reduction plan be developed and implemented that would achieve the trash reduction goals of the permit in accordance with the implementation deadlines of the permit. To the extent that some trash reduction activities are already underway, such efforts can be incorporated into the overall plan required by the permit. As such, no changes were made in the final permit in response to this comment.

11. **Comment:** Guam EPA recommended that Guam DPW develop a permitting program for charity car washes to better control the potential water quality impacts from such events.

Response: The final permit was modified to include a requirement for the development of a program by the Guam DPW for charity car washes to minimize the potential water quality impacts of such events. Programs of this nature that could serve as models for Guam DPW (and address Guam EPA's concern) have already been developed in other jurisdictions such as Alameda County, CA or Sacramento, CA; additional information is available at:

<http://www.cleanwaterprogram.org/uploads/IDC%20Car%20Wash%20Flyer.pdf>

<http://riverfriendlycarwash.org/index.html>

Region 9 recommends that Guam DPW consider such programs in the development of its own program.

12. **Comment:** Guam EPA asked whether the permittee would be responsible for discharges from facilities within the area of permit coverage that discharge directly to a water of the U.S. rather than into the MS4.

Response: The MS4 permit only regulates discharges from the MS4 owned or operated by the permittee. To comply with the permit, the permittee must only control pollutants from facilities that discharge into the MS4, and not those discharging directly to a U.S.

13. **Comment:** Guam EPA requested additional clarification of Part 2.3.2.10 of the draft permit concerning interagency agreements and what an acceptable contribution of pollutants from one entity into a shared MS4 would be.

Response: Part 2.3.2.10 of the final permit requires Guam DPW to have adequate legal authority to "control the contribution of pollutants from one MS4 to another MS4 through interagency agreements or other similar agreements with other owners of the MS4, such as the Department of the Navy." In promulgating the Phase II stormwater regulations, EPA recognized that some MS4s would be physically interconnected and that "a local government should not have to shoulder total responsibility for a stormwater program when stormwater discharges from another MS4 are also contributing pollutants or adversely affecting water quality." 64 FR 68722, 68745. This permit condition requires Guam DPW to have the legal authority to enter into an interagency agreement to provide a mechanism to address issues if they arise. The agreement could include a provision defining "an acceptable contribution of pollutants," however, EPA notes that responsibility to control the discharge of pollutants from Guam DPW's MS4 lies with Guam DPW. EPA also plans to issue a permit to the Department of the Navy to ensure that the discharge of pollutants from the Navy MS4 is also controlled. See 55 FR 47990, 47999 (where pollutants are added by one person to a conveyance owned/operated by another person, and that conveyance discharges those pollutants through a point source, EPA may permit either person or both to ensure the discharge is properly controlled.) EPA has made minor edits to Part 2.3.2.10 to clarify the language.

14. **Comment:** Guam EPA noted that it and the permittee would need to identify their respective roles and responsibilities in the implementation of the stormwater program on Guam.

Response: Region 9 agrees. The final permit requires that the Guam DPW review its

existing legal authority and where necessary either seek additional legal authority for itself, or enter into MOUs with other entities (such as Guam EPA) to ensure full implementation of permit requirements. The fact sheet for the draft permit had noted that implementation of the construction program would be one example of a program where a partnership between Guam DPW and Guam EPA would seem appropriate.

15. Comment: Appendix A (Definitions and Acronyms), section 9 refers to municipal “streams” in the definition of the term “MS4.” Guam EPA asked whether this should have been municipal “streets” instead.

Response: The commenter is correct. To match the definition of municipal separate storm sewer at 40 CFR 122.26(b)(8), the word “streets” should have been used. The final permit has been corrected accordingly.

16. Comment: Appendix A (Definitions and Acronyms), section 10 includes the definition of the term “outfall” as found at 40 CFR 122.26(b)(9). Guam EPA requested additional explanation of this term.

Response: The preamble to EPA’s 1990 Phase I stormwater regulations (55 FR 47997) provides additional discussion of the term “outfall” and Region 9 would refer to commenter to that discussion.

17. Comment: Guam EPA asked whether sheet flow from roads would be considered to be a discharge from an outfall, and how such outfalls could be identified.

Response: Region 9 would again refer to the commenter to the preamble for EPA’s 1990 Phase I stormwater regulations (55 FR 47995). Region 9 recommends the commenter review the discussion in the preamble concerning the term “point source” and its applicability to stormwater discharges.

Region 9 also suggests that the commenter review EPA’s Industrial Stormwater Sampling Guide (EPA 832-B-09-003) for insights into solutions to common logistical problems associated with stormwater sampling of sheet flow.

18. Comment: In Table 1 in Part 3.3.4.2.2.2 of the draft permit, Guam EPA noted that the pH benchmarks should be 6.5 - 8.5 for marine waters and 6.5 - 9.0 for surface waters, per the Guam water quality standards for pH.

Response: Region 9 agrees with the commenter and the final permit was revised to incorporate the changes for the pH benchmarks as recommended by the commenter.

19. Comment: In Part 3.4.1 of the draft permit, Guam EPA indicated that the requirements for construction projects in the 2006 Guam/CNMI Stormwater Manual need to be included as well as the Guam Soil Erosion and Sediment Control Regulations.

Response: Region 9 agrees that all the local requirements should be reflected in the

permit and the final permit was modified in accordance with the commenter's recommendation.

20. Comment: Part 3.4.4.4.1 of the draft permit required that when inspecting construction sites for compliance with local sediment and erosion control requirements, the permittee must also check for permit coverage under EPA's stormwater construction general permit. Guam EPA noted that Guam Soil Erosion and Sediment Control Regulations include a similar requirement and the permit could tend to duplicate the local requirement.

Response: The final permit retains this requirement since it will further ensure that construction site operators that need permit coverage under the EPA construction general permit do in fact secure the necessary permit coverage.

21. Comment: With regards to Part 3.6.9 of the draft permit (Pesticide, Herbicide and Fertilizer Application and Management), Guam EPA recommended that Guam DPW work closely with the Guam EPA pesticide programs and consider the requirements of the EPA "MSGP Pesticide." Given the subject matter of the comment, however, Region 9 presumes the commenter was referring to EPA's pesticides general permit, issued in October 2016, for point source discharges of pesticides to waters of the U.S., rather than the multi-sector general permit (MSGP) issued in 2015 for industrial stormwater discharges.

Response: Region 9 agrees that coordination with the other pesticides programs as recommended by the commenter would be beneficial. The final permit was modified to require such coordination.

22. Comment: Guam EPA recommended that in Part 3.7.2.2.1 of the permit, Region 9 should add construction site staging areas, laundry facilities and medical facilities.

Response: Part 3.7.2.2.1 of the draft permit included a list of the minimum types of commercial businesses that the permittee would need to include on a list of sources for which additional pollutant controls would be required for stormwater discharges into the MS4. Region 9 agrees that the commenter's suggested additional categories could be significant sources of pollutants and they were added to the list in Part 3.7.2.2.1 of the final permit. It should also be noted that construction site staging areas (where construction equipment and other construction related materials are kept) at construction sites are already covered by EPA's construction general permit. However, offsite staging areas such as construction equipment maintenance and storage yards are not covered, but would receive additional attention in the final MS4 permit for the Guam DPW per the commenter's recommendation.

23. Comment: In Table 1 in Part 3.3.4.2.2.2 of the draft permit, Guam EPA asked about the type of ammonia listed in the Table and the origin of the benchmark concentrations in the Table.

Response: As noted in the fact sheet, the numeric values for the benchmark concentrations in Table 1 (except for enterococcus) were obtained from the 2004 manual entitled "Illicit Discharge Detection and Elimination, A Guidance Manual for Program Development and Technical Assessments", published by the Center for Watershed Protection. The benchmark for enterococcus was obtained from Guam water quality standards; the type of ammonia is total

ammonia. The 2004 manual did not clarify whether the benchmark was intended to be expressed in another way such as “as N.” The final permit uses the more conservative way of expressing the benchmark as total ammonia.

24. Comment: Part 3.3 of the draft permit requires that the permittee develop and implement a program to control illicit discharges and illegal dumping into the MS4. Guam EPA recommended that an analysis strategy be developed whereby illicit dry weather discharges could be identified by type. The commenter noted a reference document entitled “Source Verification of Inappropriate Discharges to Storm Drainage Systems” that has a process for the analysis and identification of such discharges.

Response: Region 9 presumes the commenter is referring to a 2004 document with the above title prepared by Robert Pitt, Soumya Chaturvedula, Verra Karri and Yukio Nara of the University of Alabama. The draft permit already required that the permittee investigate the source of illicit discharges that are discovered, and suggested a 2004 guidance manual published by the Center for Watershed Protection in conducting such investigations. The final permit was modified to include the additional guidance manual noted by the commenter as well.

25. Comment: Guam EPA recommended that Part 5.2.2.2 of the draft permit be modified to require wet weather discharge sampling in both the dry and wet seasons for the first two years of the term of the permit.

Response: The draft permit required only once/year sampling for most parameters. However, Region 9 agrees that sampling in both the wet and dry seasons could be useful, at least for the first two years. The final permit was modified to include the commenter’s recommendation.

26. Comment: Guam EPA noted that when its Stormwater BMP RFP is completed, this should contribute to more successful implementation of the requirements of Part 3.1.1 and 3.6.7 of the draft permit.

Response: Comment noted. Parts 3.1.1 and 3.6.7 of the draft permit include requirements related to the development and implementation of a program for public education/outreach and the maintenance of structural controls. The commenter did not provide any details concerning its Stormwater BMP RFP, but we presume the final product will provide useful information for the permittee in the implementation of Parts 3.1.1 and 3.6.7 of the permit and possibly other requirements of the permit as well.

27. Comment: Guam EPA asked whether the permittee would need additional legal authority to implement the requirements of Part 3.5.7 of the draft permit (Retrofit Plan) for the hotels and other businesses in the Tumon Bay area.

Response: As noted in section I above of this response to comments, the permittee had indicated in its comments on the draft permit that it did not currently have adequate legal authority to implement many of the requirements of the draft permit. Although the permittee did not specifically mention Part 3.5.7 of the draft permit, the permittee did indicate that it did not currently have adequate authority to implement many of the requirements of Part 3.7 of the draft

permit, applicable to commercial businesses such as hotels. Based on the comments from the permittee, it would seem likely that enforcing the requirements of a retrofit program for commercial businesses such as hotels would require legal authorities beyond those the permittee currently has.

28. **Comment:** Guam EPA indicated that Guam's water quality standards were currently being updated for enterococcus, and that Part 4.1 of the draft permit (TMDL requirements) should be revised to reflect that.

Response: At the time a permit is issued, the permit must be based on requirements that are currently in effect. If the water quality standards are modified for enterococcus in the future (and the TMDL is modified to reflect those changes), the permit could be modified to incorporate the changes, but only after the changes are approved by EPA.

29. **Comment:** Guam EPA recommended that Part 3.6 of the draft permit (Pollution Prevention/Good Housekeeping for Municipal Operations) be modified to include requirements addressing leakage of garbage truck wastewater on the roads.

Response: Part 3.6.4.2.3 of the draft permit required standard operated procedures to reduce spills and other releases from municipal vehicles at vehicle maintenance facilities. This requirement, retained in the final permit, will ensure that appropriate vehicle maintenance is performed on garbage trucks so that leaks of garbage truck wastewater (and other releases) are minimized at the maintenance facility and also on the road.

III. Responses to NMFS Comments

NMFS reviewed the draft MS4 permit pursuant to the Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and the NMFS comments focus on potential impacts to EFH.

1. **Comment:** NMFS indicated that stormwater discharges on Guam have had significant adverse effects on Guam's marine EFH resources such as coral reefs over the years due to pollutants such as sediment and nutrients. However, NMFS agreed with Region 9's conclusion that the issuance of the draft permit should have a beneficial effect on EFH, due to the additional controls on pollutant discharges. Moreover, the proposed BMPs in the draft permit for construction and stormwater projects were consistent with NMFS conservation recommendations for such projects.

Response: Comment noted.

2. **Comment:** NMFS disagreed with Region 9's decision to exclude northern Guam from permit coverage, given that studies have shown that surface stormwater discharges on Guam may quickly reach coastal waters via groundwater transport through Guam's porous soils. NMFS recommended that Region 9 support additional study of this matter and consider wider MS4 permit coverage in the future, if warranted by such studies.

Response: As noted in the fact sheet for the draft permit, Region 9 and Guam EPA do intend to continue to investigate the potential for surface water quality impacts from stormwater percolating into the porous soils of northern Guam. Region 9 would also consider revising the scope of MS4 permit coverage on Guam if new information indicates that would be warranted.