

REQUIREMENT

The State Department of Health (SDOH), Clean Water Branch (CWB) issued U.S. Army Garrison, Hawaii (USAG-HI) a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit effective April 7, 2014. This Enforcement Response Plan (ERP) is being prepared in compliance with Part D.1.d.(6) of the USAG-HI NPDES permit number HI S000090. It describes the USAG-HI program for construction site runoff control implementation and enforcement. Part D.1.d.(6) of the NPDES permit requires USAG-HI to perform the following:

“The Permittee shall establish policies for enforcement and penalties for those in non-compliance with Part D.1.d.(2) requiring the implementation of standards, and Develop and implement an Enforcement Response Plan to include written procedures for appropriate corrective and enforcement actions, and follow-up inspections when an inspected project is not in full compliance with its requirements, other permits, and any other applicable requirements under the NPDES permit program.”

The USAG-HI is required to develop and implement the ERP under Part D.1.d, Construction Site Runoff Control Program of the MS4 permit for all construction projects of 1 acre in efforts to reduce the discharge of pollutants to the Maximum Extent Practicable (MEP) from its MS4 to water of the State.

PURPOSE

The purpose of the ERP is to ensure that the design and construction agents (DCA) comply with the requirements of the USAG-HI NPDES permit and the State’s General Permit for construction activities disturbing larger than one acre. The intent of this plan is to enforce procedures that will improve water quality at all USAG-HI installations and ensure that construction storm water, sediment, erosion control measures and Best Management Practices (BMPs) are properly designed, installed, and maintained. The ERP provides structure for DPW-ENV to impose enforcement and penalties on construction projects if necessary.

ENFORCEMENT AUTHORITY

Construction projects of 1 acre or more must obtain NPDES General Permit Coverage (HAR 11-55, Appendix C) prior to construction, and must comply with NPDES General Permit conditions, including implementation, inspection, and maintenance of erosion and sediment controls. All construction projects regardless of size must install erosion and sediment control BMPs before earth moving operations begin to help prevent discharge of pollutants to the Maximum Extent Practicable (MEP). BMPs must be maintained throughout the project and until the site is stabilized. DPW-ENV conducts inspections to ensure the requirements are met. This section provides the legal framework to enforce the construction activities to correct any deficiencies identified during a DPW-ENV inspection.

The construction that occurs on USAG-HI consists primarily of 5 categories. They are Military Construction (MILCON) Army administered by the Army Corps of Engineers (COE), Residential

Communities Initiative currently awarded to ACTUS Lend Lease/Island Palm Communities LLC (IPC), DPW Job order Contract (JOC), DPW In-house projects and Miscellaneous projects. Occasionally miscellaneous projects occur with other organizations that include: Army Commands, Army Service Component Commands, Direct Reporting Units; Army Air Force Exchange Service (AAFES); Defense Commissary Agency (DECA); and non-appropriated activities, Army privatization initiatives programs; and all tenant activities. Each has specific contract language mechanisms, lease agreements or procedures that allow DPW to enforce violations identified during construction site inspections. The contracts hold the contractor liable for all environmental fines and clean up costs associated with violations of Federal, State, and local environmental protection laws and regulations. The government reserves the right to withhold payment in the amount of the fines, penalties and fees levied if not paid by the contractor.

Construction Projects and Enforcement Mechanisms

MILCON Projects-MILCON projects are executed by the USACE. Almost 100% of projects exceed one acre or more and require NPDES general permit coverage. Typical projects include Barracks, Motor Pools and Maintenance Facilities, Command and control Facilities, etc. Contract language provides the mechanisms to enforce construction site and runoff control policies and regulations.

USACE General Environmental Standards, Section 52.223.5000

Part 1.11 of Contract# W912CN-13-D-005, Section 01 57 20.00 10- Environmental Protection states, "The Contracting Officer will notify the contractor in writing of any observed non-compliance with Federal, State or local environmental laws or regulations, permits and other elements of the contractors Environmental Protection Plan. After receipt of the notice, the contractor will inform the Contracting Officer of the proposed corrective action and take such action when approved by the contracting Officer. The contracting officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions will be granted or equitable adjustments allowed for such suspensions. This is in addition to any other actions the contracting Officer may take under the contract, or in accordance with the Federal Acquisition Regulation or Federal law.

ACTUS/Lend Lease/IPC Projects- All family housing projects are executed by ACTUS. Almost 100% of projects exceed one acre or more and require NPDES general permit coverage. ACTUS has 3 agreements that govern accountability regarding environmental regulations and impacts: Ground Lease Agreement, Municipal Service Agreement and the Design Build Agreement. These documents guarantee that IPC will be responsible for and correct any violation of Federal, State, and local environmental protection laws, permits and regulations. Failure to comply with these documents can result in termination of lease.

JOC, O&E and Miscellaneous Projects- JOC and OE projects are executed by the DPW Engineering (ENG) project managers. About 50% of projects exceed one acre or more and require NPDES general permit coverage. Typical projects include road and parking area resurfacing, roofing, small linear utilities replacement, tank removal, AC and Boiler installation, etc. Contract language provides the mechanisms to enforce construction site and runoff control policies and regulations.

Environmental Protection, Section 01430

Part 1.2.2 of Contract# W912CN-10-D-005, Section 01430 Environmental Protection states, “The Contracting Officer will notify the contractor in writing of any observed non-compliance with Federal, State or local laws or regulations, permits and other elements of the contractors Environmental Protection Plan. The Contractor shall, after receipt of such notice, inform the Contracting Officer of the proposed corrective action and take such action when approved. If the contractor fails to comply within receipt of such notice, the contracting officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or costs or damages allowed to the contractor for any such suspension.

DPW-In House Projects- DPW-In House projects are executed by the shops in DPW Operations and Maintenance (O&M) personnel. These small projects never exceed one acre or more and do not require NPDES general permit coverage. Typical projects include side-walk repair, painting, carpentry, welding, plumbing, transformer replacement, etc. Environmental regulations on DPW O&M projects are enforced with this ERP. If a deficiency is noticed on one of these small projects by anyone on the installation, they can immediately stop work on site and the O&M section supervisor is notified verbally immediately. If the activity continues then the deficiency is reported to the O&M division Chief. If the division Chief deems it necessary then it can be elevated to the Director of DPW for disciplinary action.

Other Enforcement Policies

Construction BMP Field Manuals-Construction sites must the following City and County of Honolulu design documents serve as guidelines for design, construction and inspections of erosion and sediment control plans and specifications on the USAG-HI Installation. All contracts require the contractor to use:

“*Storm Water Best Management Practice Manual: Construction*”, prepared by the Department of Environmental Services City and County of Honolulu, November 2011.

“*Rules Relating to Erosion Control Standards and Guidelines*”, prepared by the Department of Planning and Permitting City and County of Honolulu, April 1999.

Military Law Enforcement

Military Law Enforcement has the ability to enforce Hawaii state laws through the Assimilative Crimes Act (ACA). The ACA is a Federal statute (18U.S.C.A. § 13) which provides adoption by Congress of state criminal laws for areas of exclusive or concurrent federal jurisdiction if the crime is not punishable under Federal law. In short, when a criminal offense has been committed on land or buildings that have been reserved or acquired by the federal government, and the offense is not a federal offense, state law will apply to the offense under the ACA. The military police can enforce Hawaii Revised Statute (HRS) Chapter 342D, Water Pollution.

Hawaii Department of Health

USAG-HI National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permits Number HI S000090, dated 07 April 2014.

Hawaii Administrative Rules (HAR), Title 11 Department of Health (DOH), Chapter 54-Water Quality Health (HAR 11-54) and Chapter 55-Water Pollution Control (HAR 11-55)

VIOLATIONS AND METHODS OF DISCOVERY

A certified EnviroCert International, Inc. inspector or other qualified DPW-ENV inspector(s) familiar with the project SWPPP shall conduct monthly inspections, and upon complaints from citizens or concerned groups, for all Military Construction-Army, Lend Lease/IPC, Job Order Contract (JOC), and In-House DPW construction activities disturbing one acre or more. For each inspection, a checklist will be completed and if necessary follow-up actions will be taken per standards identified in DPW-ENVs "*Construction Procedures for Construction Storm Water Inspections*" document (July 2014). Violations can occur when the Contractor is not in full compliance with the applicable State permits and regulations, the site specific SWPPP, fails to address non-compliances as directed by DPW ENV or when the Contractor discharges pollutants into the Army's MS4. Categories of non-compliances may include but not limited to, deficiencies in storm water and erosion control measures and failure to meet administrative requirements. Non-compliances may be identified through DPW ENV personnel conducting random wet weather construction inspections, NPDES covered projects that require scheduled routine inspections, Public complaints, Regulatory Agency inspections of audits (SDOH, EPA) and DPW-ENV unannounced construction storm water inspections.

ENFORCEMENT ACTIONS

USAG-HI DPW uses contract language and lease agreements as mechanisms to enforce violations identified during construction inspections. These documents provide the framework for DPW to initiate the following enforcement actions.

Verbal Notification

The construction site superintendant or representative will be notified of any inconsistencies between the approved SWPPP and the actual site conditions and any other finding or violation on the spot. The construction site superintendant or representative shall immediately correct the deficiency when possible or by end of working day in accordance with the "Reporting and corrective procedures for Stormwater Construction Inspections".

Electronic Notification

If the deficiency cannot be corrected immediately, DPW ENV will send the relevant project Contracting Officer, Project Manager and/or Division and Branch Chiefs notification of the deficiency via email within 48 hours which will include the "Construction Oversight Field Inspection Checklist" and photo documentation. An electronic response from the contractor documenting the corrective action taken to address the deficiencies is expected within 5 calendar days or before next forecasted precipitation from receiving the completed inspection form. The response should include what actions were taken to correct the deficiency, photo documentation and the date the actions were completed. Per the MS4 permit, the DPW Environmental qualified construction inspector(s) will conduct follow-up inspections as needed to ensure site deficiencies have been properly addressed and all storm water controls are in proper working order.

Written Notification

For all projects, if the corrective measures are not completed, then DPW ENV will notify the project Contracting Officer. The Contracting Officer will notify the contractor in writing of any violations of deficiencies. The contractor shall, after receipt of such notice, inform the Contracting Officer of the proposed corrective action and take such action when approved. If the contractor fails to comply within receipt of such notice, the contracting officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or costs or damages allowed to the contractor for any such suspension.

In the case of the COE, if a resolution is not provided, then the contracting officer will issue a cure notice in accordance with the Defense Federal Acquisition Regulations/Federal Acquisition Regulations. If the contractor has not remedied the situation, then the contracting officer has several options, which may include stopping work, termination for convenience or default.

Stop Work

If the contractor fails to comply within receipt of such notice, the contracting officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or costs or damages allowed to the contractor for any such suspension.

Withholding Payment

The government reserves the right to withhold payment in the amount of the fines, penalties and fees levied if not paid by the contractor per USACE contract language section 52.223.5000(3)(f). No time extensions shall be granted or costs or damages allowed to the contractor for any such suspension

Hawaii Department of Health Notification

In the event that the noncompliance has not been resolved, DPW has exhausted its use of sanctions and cannot bring a construction site or construction operator into compliance with its policies, standards, or the NPDES permit, or otherwise believes the site poses an immediate and significant threat to water quality, DPW-ENV shall, in accordance with MS4 permit Part D.1.d.(7):

- Provide an e-mail notification to SDOH CWB Enforcement Section within one week of determination.
- E-mail notifications will be followed by written notification and include supporting inspection documentation (checklists, notes) and correspondence within two weeks of determining a site noncompliant.
- In instances where an inspector identifies a site that has not applied for permit coverage under the NPDES program, DPW-ENV will provide written notification to SDOH CWB Enforcement Section within two weeks of the discovery.

Termination of Contract

In extreme cases the Army can terminate contracts for cause.

PENALTIES

For all projects, the contractor shall be solely responsible for remedying all Federal, State and local environmental and safety violations or non-compliance and any payment of fines, penalties and fees levied as a result of the violations or noncompliance. The government reserves the right to withhold payment in the amount of the fines, penalties and fees levied if not paid by the contractor. Violation of the Clean Water Act can result in fines of up to \$25,000 per violation per day and/or criminal enforcement actions including imprisonment.

RECORD KEEPING

Inspection reports shall be kept on file with the DPW, Environmental Division. Records shall be kept for three (3) years in accordance with the NPDES permit.

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