

**COMMONWEALTH OF THE NORTHERN MARINA ISLANDS COASTAL
NONPOINT PROGRAM NOAA/EPA DECISIONS ON CONDITIONS OF APPROVAL**

FOREWORD

This document contains the basis for NOAA and EPA's decision to fully approve the Commonwealth of the Northern Marina Islands' Coastal Nonpoint Pollution Control Program (coastal nonpoint program). It discusses how the Commonwealth has met each of the conditions of approval placed on the coastal nonpoint program submitted by the Commonwealth of the Northern Marina Islands pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

The Findings for the Commonwealth of the Northern Marina Islands' coastal nonpoint program were issued on October 3, 1997. Since that time, the Commonwealth of the Northern Marina Islands has undertaken a number of actions to address conditions of approval on its coastal nonpoint program. Based on those actions and on materials the State has provided to document how the conditions have been met, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) find that the Commonwealth of the Northern Marina Islands has satisfied all conditions of approval.

This document is organized in the same fashion as the Findings for the Commonwealth of the Northern Marina Islands' coastal nonpoint program. Where the Findings included a condition, this document quotes the condition, and discusses how the condition has been satisfied. For further understanding of terms in this document and the basis for these decisions, the reader is referred to the following: *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* (EPA, January 1993); *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (NOAA and EPA, January 1993); *Flexibility for State Coastal Nonpoint Programs* (NOAA and EPA, March 1995); and *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance for Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)* (NOAA and EPA, October, 1998)

FINAL APPROVAL DECISION

NOAA and EPA find that the Commonwealth of the Northern Mariana Islands has satisfied all conditions placed on approval of the Commonwealth of the Northern Marina Islands coastal nonpoint program submitted to NOAA and EPA pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990. Therefore, the Commonwealth of the Northern Marina Islands' coastal nonpoint program meets all program requirements and is hereby fully approved, constituting a final approval decision for the program.

Please note that the approval decision made for the Commonwealth of the Northern Marina Islands coastal nonpoint program does not relieve the Commonwealth of any requirements under the Endangered Species Act.

AGRICULTURE

CONDITION: Within two years, the CNMI will include in its program management measures in conformity with the 6217(g) guidance for confined animal facilities (large and small) and for nutrient management as it applies to animal waste, and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.

DECISION: The CNMI has met these conditions.

RATIONALE: The CNMI program has addressed these management measures by amending its Individual Wastewater Disposal Systems (IWDS) regulations (Commonwealth Register, Vol.24, No. 08), issuing a Policy Memo (No. 2003-01), and continuing to implement several voluntary outreach and technical assistance programs. The CNMI has also demonstrated its commitment to implementing these management measures by having the governor sign an Executive Directive (No. 220).

The IWDS were amended on August 21, 2002 and officially adopted on November 27, 2002 to “establish minimum standards for the treatment of animal wastes” (Section 2.4). The amendments require that CAFOs must construct and operate wastewater treatment systems to treat all animal wastes (Section 20.1) that are “designed to prevent direct and indirect discharge of untreated animal waste to Waters of the Commonwealth and groundwater” (Section 20.2). The IWDS minimum animal unit standards are stricter than those set in the (g) guidance for small CAFOs. While the amended IWDS regulations do not specifically require nutrient management plans, an Internal Policy Memorandum (Policy Memo No. 2003-01) requires that all permit applicants must obtain and submit Nutrient Management Plans through the Natural Resource Conservation Service (NRCS). As the policy memo states, the plan should include the proper use of appropriate BMPs as described in the seven core components of the (g) guidance for nutrient management before the permit is issued. The primary direct incentive provided to farmers for developing Nutrient Management Plans is access to funding made available through the NRCS Environmental Quality Incentives Program (EQIP). The wastewater branch staff will be responsible for inspections and enforcement on a general level and specific violations that fall within the jurisdiction of other DEQ branches shall be reported to the appropriate branch manager for enforcement action.

To support the large and small CAFO management measures, the CNMI Coastal Nonpoint Team has also created and distributed a brochure illustrating the management measures and best management practices that can be implemented to prevent nutrient and pathogen contamination from large and small CAFOs. Topics addressed in the brochure include: diverting runoff around CAFOs; establishing vegetated buffers below the farm; collecting liquid waste and runoff from the animal yard in storage ponds or tanks; and composting solid waste.

In addition, several CWA Section 319 grant demonstration projects have also been implemented to control runoff from concentrated animal facilities. For example, the Interagency Watershed Working Group is developing watershed approaches to handle nonpoint source pollution from farmland in high priority watersheds. Through these projects, they reach out to local animal producers to demonstrate how they can protect ground and surface water by properly composting wastes and using chipped wood to absorb animal wastes.

To address the nutrient management measure, all farmers who wish to receive USDA's EQIP funds must have nutrient management plans in place. Since there are very few farmers and ranchers in the CNMI, and little farmland left, this provides an incentive to increase the profitability of their operation. The NRCS develops nutrient management plans free of charge to interested parties, based on the NRCS Pacific Basin Area Conservation Practice Standard for Nutrient Management (Code 590), which is consistent with the (g) measures.

The Northern Marianas College—Cooperative Research Extension and Education Services (NMC-CREES) augments the NRCS program by educating farmers about nutrient management BMPs and offering technical assistance to ensure proper implementation of their nutrient management plans. The NMC-CREES also assists, trains, and performs demonstrations to local farmers on the latest and best management practices that have been proven to control nonpoint source pollution in regards to animal waste, nutrient management, and pesticide management.

Finally, if necessary, CNMI can use its Water Quality Standards (Commonwealth Register Vol. 19 No. 1) to ensure compliance with the 6217 agriculture measures. Also, to add additional support for these measures, the governor signed an Executive Directive on September 20, 2002, stating that the Department of Environmental Quality (DEQ) shall include in its program, enforceable policies and mechanisms to implement all the conditionally approved management measures, including agriculture with regard to animal waste control and nutrient management.

URBAN

CONDITIONS

WATERSHED PROTECTION AND EXISTING DEVELOPMENT: Within three years, the CNMI will include in its program management measures in conformity with the 6217(g) guidance for watershed protection and existing development.

DECISION: The CNMI has met this condition.

RATIONALE: The CNMI has developed several on-going programs and projects to meet the requirements of the watershed protection and existing development management measures, including the Interagency Watershed Working Group, the Unified Watershed Assessment (UWA) Program, the Watershed Restoration Action Strategies (WRAS), and many other smaller watershed initiatives, such as the Saipan Lagoon Use Management Plan (SLUMP). In addition, the CNMI included language consistent with watershed protection and existing development requirements in its revised CRMO Rules and Regulations (Vol. 25, No. 03, March 31, 2003). The governor of the CNMI also signed an Executive Directive requiring the DEQ include enforceable policies and mechanisms to implement the watershed protection and existing development measures required by the (g) guidance.

The Interagency Watershed Working Group was formed in 1995 to provide technical assistance to government agencies on watershed management issues, to participate in watershed decision-making processes (e.g. UWA and WRAS programs), and to make regulatory changes on a

watershed basis. The Working Group is comprised of representatives from the Commonwealth's agencies dealing with watershed issues, local Soil and Water Conservation Districts, Northern Marianas College, private environmental consulting firms, and two federal agencies. The group meets the second Wednesday of each month.

The DEQ, with support from NRCS and significant input from the Interagency Watershed Working Group, began the UWA program in 1998 to prioritize the Commonwealth's watersheds for further restoration actions. The UWA identified specific sources of degradation for the CNMI's watersheds using many existing sources of data including DEQ's 303(d) and 305(d) lists, water quality and coral reef health databases, and existing watershed management plans. Using this information, each watershed was then placed into one of four categories based on their need for restoration.

The Watershed Restoration Actions Strategies, developed by the DEQ, builds upon the UWA findings to establish a plan to restore aquatic system health on a watershed basis. The *Northern Mariana Islands Watershed Restoration Action Strategies* was finalized April 2003 and lay out a detailed plan for restoring CNMI's watershed over the next ten years, including addressing sources of nonpoint source pollution. The plan will focus first on priority watersheds identified by the UWA. Because CNMI has an integrated Nonpoint Source Pollution Prevention and Control Program, incorporating both the 6217 Coastal Nonpoint and the 319 Clean Water Action Nonpoint Programs, the Strategies specifically address the 6217 management measures as appropriate in its restoration plan. The Strategies establish timeframes for achieving each goal. CNMI plans on using 6217, 319, Conservation Reserve Enhancement Program (CREP) and other funding to implement its watershed restoration action strategies.

The CNMI's 5 and 15 year plans also contain schedules for implementing many additional watershed projects to carry out the watershed and existing development management measures. Several of these projects have already been completed successfully. Examples of watershed-related projects contained in the 5 and 15 year plan include: creating a watershed atlas for Saipan, Tinian, and Rota; mapping areas that should be preserved, and working with elected officials to set aside these lands; creating a beach road area management plan to develop a comprehensive solution to nonpoint source pollution problems occurring in the Beach Road area of Saipan; closing the Puerto Rice Dump, one of the primary sources of pollution to the Saipan Lagoon, a priority watershed; creating a constructed wetland storm water control project to address runoff problems in the Garapan area.

To further ensure the implementation of these management measures, the CNMI included language in its amended Office of Coastal Resource Management (OCRM) Rules and Regulations so that any "proposed projects that modify areas that are particularly susceptible to erosion and sediment loss; areas that provide important water quality benefits and/or are necessary to maintain riparian and aquatic biota and/or necessary to maintain the natural integrity of waterbodies and natural drainage systems" must meet permitting requirements to protect coastal waters from nonpoint source pollution (Sect. 11 (A)(xi)). This amendment directly addresses the three requirements of the watershed protection measure and the third requirement of the existing development measure. The amended Rules also stipulate that every CRM permit must contain provisions that "where appropriate, projects shall preserve, enhance or establish buffers along surface waterbodies and their tributaries" thus satisfying the fourth

requirement for existing development (Sect. 12 (D)). The CRM has the authority to issue notice of violations, assess fines and penalties, and take criminal actions against anyone not complying with the standards and policies contained within the OCRM Rules and Regulations (Sect. 15).

CONSTRUCTION SITE CHEMICAL CONTROL: Within two years, the CNMI will expand the applicability of its construction site chemical control management measures to include currently excluded sites, and will include in its program a measure that provides for proper application and management of toxic substances and nutrients.

DECISION: The CNMI has met these conditions.

RATIONALE: In their December 2002 Policy Memo, NOAA and EPA agreed to defer to EPA's National Pollution Discharge Elimination System (NPDES) Phase I & II Storm Water Regulations for the construction site chemical control management measures. According to Section 6217 program guidance, once a source is covered by a NPDES permit, it is exempt from 6217 requirements. Therefore, by implementing the Phase I & II program, the CNMI has met all conditions for construction site chemical control, including proper management of toxic substances and nutrients.

NEW AND OPERATING ONSITE DISPOSAL SYSTEMS (OSDS): Within three years, the CNMI will amend its program to include enforceable policies and mechanisms to ensure inspection of operating OSDS at a frequency to ascertain whether OSDS are failing.

DECISION: The CNMI has met this condition.

RATIONALE: In August, 2002, the Governor of the Commonwealth of the Northern Mariana Islands signed an Executive Directive stating that:

[T]he DEQ and the Bureau of Environmental Health . . . shall execute a Memorandum of Understanding to implement the On-site Disposal System Compliance Inspection Program of July 2002 and to formulate a septic system tracking system that will insure all OSDS in the Commonwealth are permitted, are operating properly, and are properly maintained in order to reduce the threat of contamination of the ground water, surface waters, streams, or coastal waters.

The goal of the Inspection Program, which began in October 2002, is to inspect all OSDS in the CNMI once every 15 years. Based on the 2000 Census, there are 7,340 septic systems in the Commonwealth. Approximately 200-300 new permits are expected annually in the future. Thus, after 15 years, an estimated 11,090 septic tanks will populate the CNMI. In order to inspect every system within 15 years, the DEQ has calculated that 739 systems will have to be inspected

every year at a rate of 16 systems per week. The Inspection Program contains a detailed timetable of how many inspections will occur in each watershed a year to accomplish this goal.

The CNMI has secured 319 funds to support a staff position to conduct the inspections for the next two years. Long-term support for the OSDS inspector position will come from fines, fees, and state funds. The DEQ has the authority to levee fines and penalties against failing systems through its Individual Wastewater Disposal System Rules and Regulations (Commonwealth Register, Volume 24, Number 08, Section 23). DEQ and the Bureau of Environmental Health are also working to form partnerships with other agencies such as Coastal Resource Management, and Commonwealth Utilities to assist with the inspection program. In addition, the Inspection Program calls for developing public-private partnerships between inspectors from septic system management companies and DEQ to lend additional support for the inspection program.

Inspectors, which will focus on priority watersheds first, will be trained to look for rich grass growth over the septic tank site, sewage backup into homes, depressions in soil from collapsed leach fields, and breakouts, all which would indicate system malfunction. The inspectors will also use GPS to track the location of every OSDS. The GPS data will be converted into GIS coverages to aid tracking and monitoring of the inspection program.

Another component of the Inspection Program involves educating homeowners how to properly construct and maintain their OSDS. Education programs will teach them how to properly conduct their own inspections, and what to do if their system is malfunctioning.

Progress will be assessed through annual status reports. Preliminary feedback available as of the date of these findings indicates that CNMI is on schedule to implement the OSDS inspection program as described above. The status report will include metrics such as the number of systems inspected, the number of failing systems found, a map of all systems inspected, and a decrease in nutrients and other pollutants in groundwater or surface water samples.

ROADS, HIGHWAYS, AND BRIDGES: Within three years, CNMI will include in its program management measures in conformity with the 6217(g) guidance for operation and maintenance and runoff systems and expand the applicability of its construction site chemical control management measure to include currently excluded sites in conformity with the 6217(g) guidance. In addition, within three years, the CNMI will include in its program a measure that provides for proper management of toxic substances and nutrients in conformity with the 6217(g) guidance.

DECISION: The CNMI has met these conditions.

RATIONALE: In its original submission for the Coastal Nonpoint Pollution Control Program, the Commonwealth failed to describe how they implement the operation and maintenance management measure for roads, bridges and highways. More recent submissions have clarified that the CNMI does have management measures and a plan in place for carrying out the operation and maintenance measure for roads, bridges and highways. According to the amended Coastal Resource Management Rules and Regulations (Vol. 25, No. 03, March 31, 2003), to receive a CRM permit, the application must include a description and design of the proposed management measures that will be used to avoid, or minimize, the nonpoint source pollution contributed by the proposed project (Sect. 9 (B) (x)). CRM officials must then consider “the extent of the impact of the project, including construction, operation maintenance, and

intermittent activities, on its watershed and receiving waters. . .” (Sect. 9 (B)(iv)).

Street sweeping by the Department of Public Works, MVA, and Mayor’s office and volunteer clean-up campaigns by the public occur regularly - about once a month. The CRM and DEQ offices routinely send their enforcement staff out to ensure that general maintenance is performed on urban runoff systems, including roads and highways. CRM enforcement staff are also in the field every day ensuring that permits are not being violated and that no one is without a permit. DEQ staff inspect new projects and investigate complaints as necessary. The newly developed *Construction Site Chemical and Material Control Handbook of August 2002* contains BMPs that will aid in addressing operation and maintenance concerns for road and highway construction activities. The CNMI has also developed a detailed 5 and 15 year strategy which includes actions it will take to ensure that the operation and maintenance measure is implemented, including holding annual workshops on storm water control, operation, and maintenance.

To develop and implement a runoff management system for existing roads, bridges and highways, the CNMI have developed several complementary strategies. The new CRM Rules and Regulations require permit applicants to submit preliminary storm water management plans (Sect. 8, A(viii)(h)(4)). The CRM has the authority to issue Notice of Violations, assess fines and penalties, and take criminal actions against anyone not adhering to the CRM Rules and Regulations (Sect. 15).

Capital Improvement Project (CIP) Funds, which are used almost exclusively for road projects, also require projects to address the nonpoint source pollution management measures and assess possible project retrofits in order to receive funding. In addition, local permitting requirements under DEQ’s Earthmoving and Erosion Control Regulations (Commonwealth Register, Volume 15, No. 10, October 15, 1993) require all projects, including those excluded from the CIP process, to incorporate runoff measures into their permit applications. The CNMI’s 5 and 15 year strategy outlines a schedule for improving existing urban runoff control structures, including roads and highways. Several retrofit projects are already being carried out for identified roadways. For example, the CNMI are using 319 funds to conduct an assessment of the Beach Road in Saipan to identify areas most affected by runoff. BMPs will be installed to correct identified impairments.

In their December 2002 Policy Memo, NOAA and EPA agreed to defer to EPA’s National Pollution Discharge Elimination System (NPDES) Phase I & II Storm Water Regulations for the construction site chemical control management measures. According to Section 6217 program guidance, once a source is covered by a NPDES permit, it is exempt from 6217 requirements. Therefore, by implementing the Phase I & II program, the CNMI has met all conditions for construction site chemical control, including proper management of toxic substances and nutrients.

MARINAS AND RECREATIONAL BOATING

CONDITIONS

MARINA SITING AND DESIGN: Within two years, the CNMI will include in its program management measures for storm water runoff, shoreline stabilization, fueling station design, and sewage facility design in conformity with the 6217(g) guidance.

DECISION: The CNMI has met all of these conditions.

RATIONALE: Although the CNMI does not anticipate any new marinas will be built, the Commonwealth has amended the Office of Coastal Resource Management (CRMO) Rules and Regulations to incorporate the management measures for marina siting and design for storm water runoff, shoreline stabilization, fueling station design, and sewage facility design consistent with the (g) guidance. The new rules apply at all new and expanding marinas. All major CRM permit applications, including those for marina facilities, must be reviewed for consistency with the CRMO and unanimously approved by the CRM Board which consists of Directors and Administrators of Coastal Resource Management Agencies including the Division of Fish and Wildlife, CRM, DEQ, DPW, Commonwealth Utilities Corporation, Historical Preservation Office, and Department of Commerce.

In addition, on September 20, 2002, the governor of the CNMI signed an Executive Directive stating that the DEQ shall include enforceable policies and mechanisms to implement the Marina Siting and Design management measure consistent with the (g) guidance.

OPERATION AND MAINTENANCE: Within two years, the CNMI will include in its program management measures for fish waste, liquid material, petroleum control, boat cleaning, public education, maintenance of sewage facilities, and boat operation in conformity with the 6217(g) guidance and will include enforceable policies and mechanisms to ensure implementation.

DECISION: The CNMI has met all of these conditions.

RATIONALE: The newly amended Office of Coastal Resource Management (CRMO) Rules and Regulations address the marina operation and maintenance management measures for fish waste, liquid material, petroleum control, boat cleaning, public education, and maintenance of sewage facilities in conformity with the (g) guidance (Sect. 9 (C)(v)(6)). The CRM has the authority to issue notices of violation, assess fines and penalties, and take criminal actions against anyone who violates the standards and policies contained within the CRMO Rules and Regulations (Sect. 15). In addition, CNMI can use their Water Quality Standards (Commonwealth Register Vol. 10, No. 1) as back-up authority to ensure implementation of these measures at existing marinas when necessary.

As additional support, on September 20, 2002, the governor of the CNMI signed an Executive Directive stating that the DEQ shall include enforceable policies and mechanisms to implement the Marina Operation and Maintenance management measure consistent with the (g) guidance.

The CNMI addresses the boat operation management measure through its Boating Safety Regulations within the Department of Public Safety pursuant to 3 CMC 5459 and 5460. Under

the Boating Safety Regulations, all owners and operators, and employees of boat liveries and boat tours must attend and successfully complete a Boating Safety and Education Program, which provides education consistent with the operation and maintenance management measure. The Boating Safety Regulations also excludes jet skis from specific inshore areas, thus restricting boating activity where necessary to decrease turbidity and physical destruction of shallow water habitats.

The CNMI has also secured FY02 grant funding from NOAA to further its efforts to implement the marina operation and maintenance measures. The CNMI are using the funds to develop a Clean Marina Guidebook, install a ponding basin demonstration project, erect a sewage pumpout with cost-share support from the Division of Fish and Wildlife, and create and distribute promotional items to enhance the Clean Marina Campaign.

CRITICAL COASTAL AREAS and ADDITIONAL MANAGEMENT MEASURES

CONDITION: Within two years, the CNMI will develop a process for the identification of critical coastal areas and a process for developing and revising management measures to be applied in critical coastal areas and in areas where it is necessary to attain and maintain water quality standards.

DECISION: The CNMI has met this condition.

RATIONALE: The Nonpoint Source Executive Directive signed by the Governor of the Commonwealth of the Northern Mariana Islands on September 20, 2002, calls for the DEQ and the CRM to create an interagency committee to formulate and identify Critical Coastal Areas (CCAs) in the CNMI that need additional management measures to protect them from current and anticipated nonpoint source pollution. The Executive Directive also charges the CCA Committee with identifying the process to identify, implement, evaluate and revise, as necessary, additional management measures in CCAs. The Executive Directive named Saipan Lagoon as the first CCA.

The Commonwealth is already working to develop the CCA committee. Members of the Committee will include members of the CNMI Interagency Watershed Working Group representing the Commonwealth's environmental resource agencies and the public. An MOU between DEQ and CRM is pending to appoint this new group as the Committee. Although not officially designated at the CCA Committee, the Interagency Watershed Working Group has already been identifying, evaluating, and revising additional management measures that may be needed. For example, the Working Group has identified the need to address golf courses as an additional management area. As a result, golf course staff and hotel/resort staff of Saipan, Tinian, and Rota were trained and completed a certification course on how to mix and properly apply pesticides at rates necessary to maintain vegetation without causing significant runoff to surface waters. The Pest Management Branch at the Northern Marianas Community College—CREES extension taught the course. The CNMI has also established several other areas (i.e. highly erodible soils, wildland fire areas, and the Puerto Rico Dump) that may need additional management measures under the CCA Program.

MONITORING

CONDITION: Within one year, the CNMI will develop a plan that enables the Commonwealth to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

DECISION: The CNMI has met this condition.

RATIONALE: The CNMI has outlined its monitoring approaches in the *Commonwealth of the Northern Mariana Islands Nonpoint Source Pollution Monitoring Strategy* (September 2002) developed jointly by the DEQ and the CRM. The Commonwealth plans to assess the extent and efficacy of management measure implementation in the field using three primary approaches: (1) assessment of baseline water quality data; (2) analysis of water quality trends; and (3) evaluation of BMP implementation compliance.

The CNMI have several ongoing routine water quality monitoring programs such as its Beach Monitoring program, Saipan Lagoon Water Quality Sampling Program, Nearshore Coral Reef Water Quality Sampling Program, and Groundwater Monitoring Program. These programs regularly measure chemical and bacteriological parameters. The CNMI has also implemented an intermittent and perennial stream sampling program to assess streams that are present only during and soon after storm events. This sampling program will focus first on priority watersheds. To better record and track monitoring data, the CNMI is developing a GIS database of all monitoring sites.

The Commonwealth also has developed a long-term biological Marine Monitoring Plan which is currently under revision. The Marine Monitoring Team (MMT) created by DEQ in 1997, oversees this biological monitoring program. In addition to the general Marine Monitoring Program, the Plan also includes specific studies such as the Saipan Lagoon Habitat Assessment Program, and the Reef Flat Monitoring Program. The goal of the Long-Term Marina Monitoring Program is to collect data on benthic cover, coral communities, and fish and invertebrate abundance and diversity to determine the impact of water quality disturbances such as runoff, sewage outfalls, and urban development.

The CNMI's 5 and 15 year strategy demonstrates how the Commonwealth will implement its monitoring program over the next 15 years. Not only does the 5 and 15 year strategy contain a separate "monitoring" section, but each management measure is also linked to monitoring or tracking components to assess the implementation of the individual measures.