

CHAPTER 3.

REQUIRED PERMITS AND APPROVALS

3.1 REQUIRED PERMITS AND APPROVALS

A list of federal and state permits that may be required for implementation of any of the alternatives is provided in Table 3.1-1. The Navy is working with Guam Environmental Protection Agency (GEPA) to develop an electronic permitting system that all contractors and the Navy will use to obtain local permits.

Table 3.1-1. Required Permits and Approvals

<i>Regulatory Requirement</i>	<i>Permitting Agency</i>	<i>Permit Specifications</i>	<i>Responsibility</i>	<i>Phase</i>
Local				
5 Guam Code Annotated (GCA) § 63302	Guam Department of Agriculture	License required for cutting, removal or mutilation of live trees on public lands. Not applicable on federal lands.	Contractor	Land construction
Right-of-Way Permit	Guam Department of Public Works	Permit for construction in public right-of-way.	Contractor	Land construction
10 GCA, § 74103	Guam Environmental Protection Agency (GEPA)	Storage of gasoline or kerosene in quantities exceeding 50 gallons (190 liters) but not exceeding 500 gallons (1,890 liters) must be in underground storage tanks. Not applicable on federal lands.	Contractor	Land construction and operation
10 GCA, §§ 76113(a) and (b)	GEPA	Permit required to own, install, or operate an underground storage tank (UST). On federal lands, federal UST regulations apply and GEPA is notified.	Navy	Land operation
10 GCA Chapter 53, Safe Drinking Water Act	GEPA	Protect public water supplies from contamination, and provide safe drinking water for public consumption. GEPA reviews plans for distribution systems.	Navy - Federal projects comply with Safe Drinking Water Act. Contractor must coordinate with GEPA for plan approval.	Land operation
22 Guam Administrative Rules (GAR) 10103, 10106, 10107	GEPA	Development or construction activities that involve clearing, grading, filling, excavating, and other earth-moving operations must follow an approved erosion control plan. As currently written, no permit is required on federal lands, but GEPA has issued draft regulations and a permit may be required.	Federal projects are governed by National Pollutant Discharge Elimination System (NPDES) regulations and permit requirements.	Land and coastal construction

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22 GAR 1127(e)	GEPA	Particulate matter emissions from fuel combustion must be controlled.	Navy	Land operation
22 GAR 1128 (a), (b) and (d)	GEPA	Fugitive dust emissions must be controlled.	Contractor	Land construction and operation
22 GAR 5104(h)	GEPA	Any petroleum storage facility containing petroleum products or hazardous substances not directly adjacent to navigable waters and below the Spill Prevention, Control and Countermeasure (SPCC) capacity requirements of 600 gallons (2,270 liters) must be provided with secondary containment to protect Guam's groundwater resources from potential threat from oil or hazardous substances discharges.	Navy - Federal projects comply with Clean Water Act, SPCC program	Operation
22 GAR 7105(a), 7106(a), (b) and (j), and 7124(c)	GEPA	Permit required to drill and operate water well. A Well Drilling Permit is required for exploratory and development work, and a Well Operating Permit is required for actual production and use of water resources. The Well Operating Permit is necessary to establish operating conditions such as allowable pumping rates, infrastructure requirements.	Navy	Land construction and operation
22 GAR 7127(b) through (d), and 7128(a), (b), and (i)	GEPA	Abandoned wells must meet destruction requirements. A well is considered abandoned if its use or maintenance is not in compliance with a valid operating permit or if it has not been used for a period of 12 consecutive months.	Navy and Contractor (Private Entity for Utilities)	Land construction

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22 GAR 9105(a), 9108(a) and (b), and 9113(a) and (b)	GEPA	Federal facilities must have a valid underground injection control permit to operate a Class V underground injection well. These regulations apply to Class V injection wells only, including nonhazardous liquid waste disposal wells, community septic system wells, sand backfill wells, recharge wells, drainage wells, cooling water return flow wells, air conditioning return flow wells, salt water barrier wells, and subsidence control wells (not associated with oil and gas production).	Permit to construct would be obtained by contractor. Permit to operate would be obtained by Navy.	Land construction and operation
10 GCA Chapter 51	GEPA	Obtain pertinent solid waste permits for collection, storage, transfer, and/or processing, including processing of construction and demolition debris/wastes onsite.	Navy and Contractor	Land construction
Commonwealth of the Northern Mariana Islands (CNMI) Earthmoving and Erosion Control Regulations	CNMI Department of Environmental Quality (DEQ)	Obtain Earthmoving and Erosion Control Permit for excavations of any kind for any reason (ponds, drainage ditches, infrastructure development, and building foundations).	Contractor	Land construction
Title 65: Division of Environmental Quality, Chapters 60-65 Pesticide Regulations	CNMI DEQ	Establishes system of control over the importation, distribution, sale, and use of pesticides.	Navy has reporting requirement under Federal Insecticide, Fungicide and Rodenticide Act.	Land operation
Federal				
Clean Air Act (CAA) Prevention of Significant Deterioration /New Source Review permit	GEPA/ USEPA	Required for new major Prevention of Significant Deterioration source and major existing source modification with respect to attainment pollutants.	Navy and Guam Power Authority (GPA)	Land operation

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CAA Nonattainment New Source Review permit	GEPA/ USEPA	Required for new major stationary source and major existing source modification with respect to nonattainment pollutants in a nonattainment area. The lowest-achievable emission rate technology and emission offsets would be required.	Navy and GPA	Design
CAA Title V permit	GEPA/ USEPA	Regulates air emissions from major stationary source and major source modification. Relevant emissions control technology would be required.	Navy and GPA	Design
Clean Water Act (CWA) NPDES Program – Construction Activities	USEPA	Seek coverage under USEPA Construction General Permit (CGP) for stormwater discharge from large and small construction activities. Requirements include filing a Notice of Intent, a Notice of Termination and a construction Stormwater Pollution Prevention Plan (SWPPP).	For Construction - Contractor and Navy	Land/coastal operation
Clean Water Act (CWA) NPDES Program – Industrial Activities	USEPA	Stormwater associated with industrial facilities must be covered under the NPDES General Industrial Permit	For new and/or modified industrial facilities, the SWPPP for the existing Navy Region Marianas Industrial Stormwater Permit would be updated.	Land/coastal operation
Rivers and Harbors Act § 10	U.S. Army Corps of Engineers (USACE)	Regulates the obstruction or alteration of navigable waters.	Navy	In-water construction
CWA § 404	USACE	Regulates discharge of dredged or fill material into waters and wetlands.	Navy	In-water/wetland construction
CWA § 401 Water Quality Certification	GEPA	401 water quality certification (WQC) issuance identifies construction or operation of a proposed project or facility would be conducted in a manner consistent with the Guam Water Quality Standards. All CWA Section 404 permits for work in marine waters, rivers, streams and wetlands require 401 WQC.	Navy	In-water construction

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Coastal Zone Management Act Federal Consistency Provisions and EO 78-37	Coastal Resource Management Program and Guam Bureau of Statistics and Plans	Determination of effects and consistency of federal actions with Guam Coastal Management Plan	Navy	NEPA EIS review
Federal Aviation Administration (FAA) Order 7400.2G FAA Order 1050.1E	FAA	Special Use Airspace (SUA) required for the Marine Corps and Army AMDTF actions on Guam: either designated SUA, Restricted Area airspace or Controlled Firing Area. Required to overlay 1) the Safety Danger Zones located at the proposed firing ranges on Guam and 2) weapons emplacement sites.	Navy and Army	Design
Marine Protection, Research and Sanctuaries Act § 103	USEPA in association with USACE	Regulates the transportation of dredged material for ocean disposal. Permit requires full suite of physical, chemical and biological testing of sediment to determine suitability for ocean disposal at designated sites.	Navy	In-water construction
Title 22, Division 4, Chapter 23, Solid Waste Disposal/ 40 CFR Part 258 Subtitle D	GEPA (Granted primacy by USEPA to administer requirements D)	Existing facilities require permit modifications for horizontal or vertical expansions.	Navy	Operation

3.1.1 Summary of Applicable Regulations to Protect Environmental Resources on Guam and Tinian

This section provides a summary of the regulations that apply to protection of environmental resources. DoD-proposed actions would be implemented in accordance with all the applicable regulatory mandates. While some regulations require permits, as summarized in the above table, many serve only as guidance.

Federal Regulations

Federal regulations applicable to the proposed action are described below. The timing of permits applied for in compliance with federal regulations can vary. For example, the U.S. Army Corps of Engineers (USACE) requires evidence from the lead action agency that formal consultations with the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service, and the State Historic Preservation Office/National Park Service have been satisfactorily completed in order to issue a Department of the

Army permit. USACE also requires a water quality certification (Section 401 of the DWA) and a determination of consistency (if applicable) in accordance with the Coastal Zone Management Act.

Clean Air Act (CAA)

The CAA defines the USEPA's responsibilities for protecting and improving the nation's air quality and the stratospheric ozone layer. Under the CAA, the USEPA sets limits on certain air pollutants, including setting limits on how much can be in the air anywhere in the United States. The CAA also gives USEPA the authority to limit emissions of air pollutants coming from sources like chemical plants, utilities, and steel mills.

Clean Water Act (CWA)

The purpose of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Under Section 404 of the CWA USACE authorizes discharges of dredged or fill material in waters of the U.S. through a permit program.

Coastal Zone Management Act

The Coastal Zone Management Act establishes a federal-state partnership to provide for the comprehensive management of coastal resources. Coastal states and territories develop management programs based on enforceable policies and mechanisms to balance resource protection and coastal development needs.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Under CERCLA, as amended by the Superfund Amendments and Reauthorization Act, a hazardous substance is defined as one that poses a potential hazard to human health or the environment by virtue of its quantity, concentration, or physical/chemical characteristics. CERCLA has established a national process to identify, characterize, and clean-up hazardous waste sites.

Department of Transportation Regulations

Department of Transportation Hazardous Materials Regulations (*49 Code of Federal Regulations [CFR] 171*) require the implementation of various protective and preventative measures designed to promote the safe transportation of hazardous materials in commerce.

Emergency Planning and Community Right-to-Know Act (EPCRA)

The EPCRA requires businesses and governments to report their use of hazardous and toxic chemicals. EPCRA also requires that workers be trained as to safe chemical handling protocols and specific chemical hazards and controls for substances used in the workplace. In addition, EPCRA requires that state and local communities be prepared to respond to potential chemical accidents through the development of emergency response plans and other measures.

Endangered Species Act 16 United States Code [USC] §1531 et seq.; 50 CFR Parts 17, Subpart I, and 50 CFR Part 402

The Endangered Species Act of 1973 and subsequent amendments provide for the conservation of threatened and endangered species of animals and plants, and the habitats in which they are found.

Federal Environmental Pesticide Control Act

The Federal Environmental Pesticide Control Act enacted as Public Law 92-516, amended the Federal Insecticide, Fungicide, and Rodenticide Act, and provides controls for the sale, use, distribution, and application of pesticides through an administrative registration process.

Federal Facilities Compliance Act

The Federal Facilities Compliance Act, enacted as Public Law 102-386 provides that all federal agencies are subject to all substantive and procedural requirements of federal, state, and local solid and hazardous waste laws in the same manner as any private party.

Federal Insecticide, Fungicide, and Rodenticide Act

The Federal Insecticide, Fungicide, and Rodenticide Act provides pesticide regulations designed to protect applicators, consumers, and the environment.

Fish and Wildlife Coordination Act (16 USC § 662)

The Fish and Wildlife Coordination Act requires consideration of the effects of a proposed action on wetlands and areas affecting streams (including floodplains), as well as other protected habitats.

Groundwater Rule (40 CFR Parts 9, 141 and 142)

The Groundwater Rule provides for increased protection against microbial contamination. This is a risk-based rule that requires groundwater used by public drinking water systems be disinfected if indicator bacteria are detected in it.

Marine Protection, Research, and Sanctuaries Act (MPRSA)

The MPRSA prevents, or restricts, dumping of materials that would degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Act provides for a permitting process to control the ocean dumping of dredged material. The Act also establishes the marine sanctuaries program, which designates certain areas of the ocean waters as sanctuaries in order to preserve or restore these areas for their conservation, recreational, ecological, or aesthetic values.

National Wildlife Refuge System Administration Act of 1966 (16 USC §§ 668dd-668ee)

This Act provides for the administration and management of the national wildlife refuge system, including wildlife refuges, areas for the protection and conservation of fish and wildlife threatened with extinction, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas.

Oil Pollution Act (OPA)

The OPA requires oil storage facilities and vessels to develop plans describing how spills or releases would be addressed. Specifically, OPA requires that facilities prepare and implement spill prevention, control, and countermeasures plans and facility response plans. These plans specify how these facilities would assess and respond to spills/releases.

Occupational Safety and Health Administration

The Occupational Safety and Health Administration requirements are designed to protect workers and prevent workplace accidents, injuries, or illnesses.

Pollution Prevention Act

The Pollution Prevention Act focuses on pollution source(s) reduction and promotes the implementation of new and innovative practices to conserve and protect natural resources.

Resource Conservation and Recovery Act (RCRA)

RCRA requires that all hazardous waste be systematically tracked from cradle-to-grave. Furthermore, the RCRA Corrective Action Program compels responsible parties of active facilities to investigate and clean up hazardous waste releases.

Military Munitions Rule under RCRA

The Military Munitions Rule identifies when conventional and chemical military munitions become RCRA hazardous waste.

Rivers and Harbors Act

Section 10 of the Rivers and Harbors Act requires approval from the USACE prior to obstructing or altering navigable waters.

Safe Drinking Water Act

The Safe Drinking Water Act regulates the nation's drinking water supplies by establishing standards for drinking water to protect against both naturally occurring and man-made contaminants. This act also seeks to prevent contamination of drinking water resources by establishing requirements under programs such as the underground injection control program.

Ship-Borne Hazardous Substances Regulations

The Ship-Borne Hazardous Substances Regulations are applicable to Navy activities "at sea", defined as beyond three nautical miles from shore, and govern the types of sewage, graywater, and oily waste discharge restrictions as a function of distance offshore or special area.

Statement of Procedures on Floodplain Management and Wetlands Protection; 40 CFR Part 6, Appendix A.

These procedures set forth USEPA policy and guidance for managing floodplains and protecting wetlands, as described in Executive Orders 11988 and 11990, respectively.

Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs)

This regulation (40 CFR Chapter 1, Part 280) protects groundwater by establishing regulations and procedures for USTs that contain regulated substances such as petroleum products.

Toxic Substance Control Act

The Toxic Substances Control Act addresses concerns regarding chemical substances and mixtures whose manufacturing and use may pose an unreasonable risk of injury, adverse health, or adverse environmental consequences.

Underground Storage Tanks (USTs)

The UST regulations set forth various requirements to prevent unintended releases with double-walled tanks and associated piping, leak detection methods, inventory control procedures, and various other administrative and engineering design controls.

Guam Regulations

Guam Coastal Nonpoint Pollution Control Program (CNPCP) (pending)

In 2009, the EPA and the National Oceanic and Atmospheric Administration will likely approve the Guam CNPCP which lays out management measures for the control of non-point sources from such areas as new urban development, stormwater, wetlands, roads, and bridges.

Guam Environmental Protection Act (GEPA)

Public Law 11-191 created the GEPA in 1973, with responsibilities for comprehensive protection of Guam's land, water, and air.

Guam Hazardous Waste Management Program (HWMP)

The Guam HWMP requires the permitting of hazardous waste collection, treatment, storage, and disposal facilities. The Guam HWMP also mandates inspection, compliance monitoring, enforcement, and corrective action of all hazardous waste-related activities in Guam.

Guam Primary Drinking Water Regulations

Guam Safe Drinking Water Act, Title 10 GCA, Chapter 53, Section 53104 authorizes the GEPA to prescribe rules and regulations as may be necessary to implement the Safe Drinking Water Act.

Guam Seashore Protection Act and Permit System

The Guam Seashore Protection Act (21 GCA, Chapter 63) establishes the Guam Seashore Reserve and the Guam Seashore Protection Commission, that must review and act on any applications for development, including any dredging, within the reserve. The reserve includes all subtidal areas down to ten fathoms (60 feet; 18 meters) and extends inland to within 100 (328 feet) meters (amended to 10 meters; 3 feet) of the mean high high water mark.

Guam Soil Erosion and Sedimentation Control Regulations/Permits

Erosion Control Permits are issued by GEPA while the Department of Public Works issues Clearing and Grading Permits. For most clearing and/or grading permits there must be an accompanying Erosion Control Plan to protect water quality of the affected water resources, fresh or marine.

Guam Water Quality Standards

The Guam Water Quality Standards aim to conserve, protect, maintain, and improve the quality of Guam's waters.

National Pollutant Discharge Elimination System (NPDES)

NPDES is a federal permit for all stormwater and other point source pollution discharges. GEPA assists in the administration of these permits and reviews and certifies (401 Water Quality Certification) the permit for compliance with all local regulations and policies and in accordance with the Guam Water Quality Standards.

Pollution Discharge and Operating Permit

For discharges similar to those covered by the NPDES permit, GEPA may require a Government of Guam Pollution Discharge Permit. This permit may be issued for any number of liquid, gaseous, solid, or thermal discharges to Territorial waters that fall below the minimum criteria defined in the federal CWA.

Test Boring and Dewatering Permit

Individuals conducting soil test boring and measurements activities may be required to obtain a GEPA Test Boring Permit. Test boring activities include drilling and excavations deeper than 6 feet (2 meters) deep for a number of soil and structural engineering analysis work. In addition, if the water table is encountered during excavation work for building foundations and similar construction activities, a Dewatering Permit may be required to control and treat water pumped from the excavation prior to final discharge. Dewatering permits may apply to dredging operations as well.

CWA Section 401 Water Quality Certification

CWA Section 401 Water Quality Certification issuance identifies that construction or operation of a proposed project or facility would be conducted in a manner consistent with Guam Water Quality Standards. As part of a WQC certification, an Environmental Protection Plan (EPP) is required. EPPs describe the methods, practices and equipment to be used on site; expected or anticipated environmental problems during and after construction; and the methods, practices and equipment that may be used to avoid, mitigate or control potential adverse effects on the environment. EPPs are specifically identified in 22 Guam Annotated Regulations, Division II, Chapter 10, Section 10103.C.5(d).

Commonwealth of the Northern Mariana Islands Regulations

Wastewater Treatment and Disposal Rules and Regulations

As groundwater aquifers on Tinian and Rota are vulnerable to contamination by substances introduced onto the soil surface, these regulations protect Class 1 Aquifer Recharge Areas.

Earthmoving and Erosion Control Regulations

These regulations establish a permit process for construction activities and identify investigations and studies that are required prior to construction and design, and standards for grading, filling, and clearing.

Water Quality Standards

The Commonwealth of the Northern Mariana Islands Department of Environmental Quality has established standards for water quality for all Commonwealth waters and groundwater in order to protect their use and value for commerce, propagation of fish and wildlife, recreational purposes, and public water supply use.