

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 9
75 Hawthorne Street
San Francisco, CA 94105


GUAM WATERWORKS AUTHORITY'S
NORTHERN DISTRICT SEWAGE
TREATMENT PLANT APPLICATION
FOR A MODIFIED NPDES PERMIT
UNDER SECTION 301(h) OF THE
CLEAN WATER ACT

FINAL
DECISION OF THE
REGIONAL ADMINISTRATOR
PURSUANT TO 40 CFR PART 125,
SUBPART G

I have reviewed the attached evaluation analyzing the merits of the application of the Guam Waterworks Authority's request for the Northern District Sewage Treatment Plant (STP) and ocean outfall variance from secondary treatment requirements of the Clean Water Act (CWA) pursuant to section 301(h). It is my decision that the applicant be denied a variance in accordance with the terms, conditions and limitations of the attached evaluation, based on section 301(h) of the CWA.

This decision shall become effective on November 5, 2009, unless a request for review is filed. If a request for review is filed, this decision is stayed. Requests for review must be filed by November 5, 2009, and must meet the requirements of 40 CFR 124.19. All requests for review should be addressed to the Environmental Appeals Board. Those persons filing a request for review must have commented on the tentative decision, or participated in the public hearing. Requests for review from other persons must be limited to the changes made from the tentative decision to the final decision. EPA's calculation of the deadline for filing a request for review is explained in the Notice of Final Decision being sent to the applicant and to persons who submitted written comments or requested a notice of the final decision. The Notice of Final Decision will also be posted on the EPA Region 9 website.

Dated: 9/30/2009


for Laura Yoshii
Acting Regional Administrator

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Table of Contents

INTRODUCTION	1
DECISION CRITERIA	1
SUMMARY OF FINDINGS	4
CHANGES FROM THE TENTATIVE DECISION	6
CONCLUSION	7
BACKGROUND AND DESCRIPTION OF TREATMENT SYSTEM	7
A. BACKGROUND	7
B. TREATMENT SYSTEM	9
DESCRIPTION OF RECEIVING WATER	13
A. CURRENT DIRECTION AND SPEED	15
B. STRATIFICATION	15
C. CORAL REEFS	16
PHYSICAL CHARACTERISTICS OF THE DISCHARGE	16
A. INITIAL DILUTION	16
B. APPLICATION OF INITIAL DILUTION TO WATER QUALITY STANDARDS	19
C. ZONE OF INITIAL DILUTION	20
APPLICATION OF STATUTORY AND REGULATORY CRITERIA	20
A. ATTAINMENT OF PRIMARY OR EQUIVALENT TREATMENT REQUIREMENTS	20
B. ATTAINMENT OF WATER QUALITY STANDARDS RELATED TO BOD AND TSS	25
1. Dissolved Oxygen	25
a. Analysis of DO Based on Monitoring Data	25
b. Analysis of DO Based on Predictive Modeling	26
c. Conclusion on Attainment of Water Quality Standards for DO	35
2. Suspended Solids and Turbidity	36
a. Suspended Solids following Initial Dilution	36
b. Suspended Solids Deposition	37
c. Turbidity	38
d. Conclusion for Suspended Solids and Turbidity	39
C. ATTAINMENT OF OTHER WATER QUALITY STANDARDS AND IMPACT OF DISCHARGE ON PUBLIC WATER SUPPLIES; SHELLFISH, FISH AND WILDLIFE; AND RECREATION	39
1. Attainment of Other Water Quality Standards	40
a. Bacteria	40
b. Toxic Pollutants	41
c. pH ₄₃	44
d. Nutrients	44
e. Temperature	45
f. Salinity	45
g. Toxicity (Whole Effluent Toxicity)	46
2. Impact of Discharge on Public Water Supplies	47
3. Impact of Discharge on Shellfish, Fish and Wildlife	48
a. Review of Chemical-specific Data	49
b. Review of WET Data	49
c. Review of Biological Data	50
d. Conclusion on Impacts on Shellfish, Fish and Wildlife at and beyond the ZID	51
e. Conclusion on Impacts on Shellfish, Fish and Wildlife within the ZID	51

4. Impact of Discharge on Recreational Activities	52
a. Fish Consumption	52
b. Water Contact Recreation	53
c. Conclusion on Impact of Discharge on Recreational Activities	53
5. Additional Requirements for Applications based on Improved or Altered Discharges.....	54
D. ESTABLISHMENT OF A MONITORING PROGRAM	54
1. Biological Monitoring Program.....	55
2. Receiving Water Monitoring Program	56
3. Effluent Monitoring Program	58
4. Conclusion on the Establishment of a Monitoring Program.....	59
E. IMPACT OF MODIFIED DISCHARGE ON OTHER POINT AND NON-POINT SOURCES	59
F. TOXICS CONTROL PROGRAM	60
1. Chemical Analysis	60
2. Toxic Pollutant Source Identification	61
3. Industrial Pretreatment Requirements	61
4. Nonindustrial Source Control Program	62
G. URBAN AREA PRETREATMENT PROGRAM.....	63
H. INCREASE IN EFFLUENT VOLUME OR AMOUNT OF POLLUTANTS DISCHARGED.....	64
I. COMPLIANCE WITH OTHER APPLICABLE LAWS.....	64
1. Coastal Zone Management Act	65
2. Marine Protection, Research and Sanctuaries Act.....	65
3. Endangered Species Act.....	65
4. Magnuson-Stevens Fishery Conservation and Management Act	65
J. STATE DETERMINATION ON COMPLIANCE WITH WATER QUALITY STANDARDS.....	66
REFERENCES	67

INTRODUCTION

The Guam Waterworks Authority (GWA or applicant) has requested a renewal of its variance under section 301(h) of the Clean Water Act (CWA), 33 U.S.C. section 1311(h), from the secondary treatment requirements contained in section 301(b)(1)(B) of the CWA, 33 U.S.C. section 1311(b)(1)(B).

The variance is requested for the Northern District Sewage Treatment Plant (Northern District STP), a publicly owned treatment works (POTW). The applicant is seeking a section 301(h) variance¹ to discharge wastewater receiving less-than-secondary treatment to the Philippine Sea, Pacific Ocean. Secondary treatment is defined in regulations at 40 CFR Part 133 in terms of effluent quality for total suspended solids (TSS), biochemical oxygen demand (BOD) and pH. Pursuant to 40 CFR Part 133.102, secondary treatment requirements for TSS, BOD and pH are listed below:

TSS: (1) The 30-day average concentration shall not exceed 30 mg/l;
(2) The 7-day average concentration shall not exceed 45 mg/l; and
(3) The 30-day average percent removal shall not be less than 85%.

BOD: (1) The 30-day average concentration shall not exceed 30 mg/l;
(2) The 7-day average concentration shall not exceed 45 mg/l; and
(3) The 30-day average percent removal shall not be less than 85%.

pH: The pH of the effluent shall be maintained within the limits of 6.0 to 9.0 pH standard units.

This document presents the United States Environmental Protection Agency Region 9 (EPA) findings, and conclusions as to whether the applicant's proposed² discharge will comply with the criteria set forth in section 301(h) of the CWA, as implemented by regulations contained in 40 CFR Part 125, Subpart G.

DECISION CRITERIA

Under section 301(b)(1)(B) of the CWA, 33 U.S.C. section 1311(b)(1)(B), POTWs in existence on July 1, 1977, are required to meet effluent limitations based upon secondary treatment as defined by the Administrator of EPA (Administrator). As previously described, secondary treatment has

¹ A section 301(h) variance from secondary treatment is sometimes informally referred to as a "waiver."

² In its application for renewal of the 301(h) variance for the Northern District STP, GWA proposed to build a new outfall that would discharge farther from shore in deeper water. Thus, in this case, the proposed discharge which EPA evaluated is the discharge through the new outfall. EPA notes, however, that the outfall has been extended but the proposed diffuser has not been put in operation.

been defined by the Administrator in terms of three parameters: TSS, BOD, and pH. Uniform national effluent limitations for these pollutants were promulgated and included in National Pollutant Discharge Elimination System (NPDES) permits for POTWs issued under section 402 of the CWA. POTWs were required to comply with these limitations by July 1, 1977. Congress subsequently amended the CWA, adding section 301(h) which authorizes the Administrator, with State concurrence,³ to issue NPDES permits that modify the secondary treatment requirements of the CWA with respect to certain discharges. P.L. 95-217, 91 Stat. 1566, as amended by P.L. 97-117, 95 Stat. 1623; and section 303 of the Water Quality Act (WQA) of 1987. Section 301(h) provides that:

[T]he Administrator, with the concurrence of the State [or Territory], may issue a permit under section 402 [of the Act] which modifies the requirements of subsection (b)(1)(B) of this section [the secondary treatment requirements] with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that:

- (1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;
- (2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced indigenous population (BIP) of shellfish, fish and wildlife, and allows recreational activities, in and on the water;
- (3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of the monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;
- (4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;
- (5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;
- (6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger

³ Section 502(3) of the CWA defines "State" to include territories of the United States, specifically including Guam. 33 U.S.C. 1362(3).

- for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;
- (7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;
 - (8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit; and
 - (9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of the Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of subsection 301(h) the phrase the discharge of any pollutant into marine waters refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. For the purposes of paragraph (9), primary or equivalent treatment means treatment by screening, sedimentation and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into marine estuarine waters which at the time of application do not support a balanced, indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish and wildlife, or recreational

activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's previous or proposed discharge.

EPA regulations implementing section 301(h) provide that a section 301(h)-modified NPDES permit may not be issued in violation of 40 CFR 125.59(b), which requires among other things, compliance with all applicable requirements or provisions of state, local or other federal laws or Executive Orders, such as the Coastal Zone Management Act, as amended, 16 U.S.C. 1451 *et seq.*, the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, the Marine Protection Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*, and the Magnuson-Stevens Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.* Furthermore, in accordance with 40 CFR 125.59(i), the decision to grant or deny a section 301(h) variance shall be made by the Administrator and shall be based on the applicant's demonstration that it has met all the requirements of 40 CFR 125.59 through 125.68, as described in this Final Decision Document. EPA has reviewed all information submitted by the applicant in the context of applicable statutory and regulatory criteria and has presented its findings and conclusions in this Final Decision Document.

SUMMARY OF FINDINGS

Based upon review of information provided in the application and supporting documents, EPA Region 9 makes the following findings regarding the proposed discharge's compliance with the statutory and regulatory criteria:

- (1) The applicant's proposed discharge will not comply with primary treatment requirements. [section 301(h)(9) of the CWA; 40 CFR 125.60]
- (2) The applicant's proposed discharge is likely to comply with Guam water quality standards for dissolved oxygen and suspended solids (i.e., TSS). [section 301(h)(1) of the CWA; 40 CFR 125.61]
- (3) The applicant has not shown that it can consistently achieve Guam water quality standards beyond the zone of initial dilution. The specific water quality standard the applicant cannot consistently achieve is the standard for bacteria. In addition, the applicant has failed to submit the information required to assess whether or not the proposed discharge would achieve water quality standards for nutrients, whole effluent toxicity, toxic pollutants, and pesticides. [section 301(h)(9) of the CWA; 40 CFR 125.62(a)(1)(i) and 122.44(d)]
- (4) The applicant's proposed discharge, alone or in combination with pollutants from other sources, will not adversely impact public water supplies. However, the applicant's proposed discharge may interfere with the protection and propagation of a balanced

indigenous population of fish, shellfish, and wildlife, and may adversely affect recreational activities. [section 301(h)(2) of the CWA; 40 CFR 125.62(b), (c), and (d)]

- (5) While the applicant has demonstrated that it has the resources necessary to implement an adequate monitoring program upon issuance of a modified permit, the applicant has not continued the monitoring program specified in its current section 301(h)-modified permit and the current monitoring program is not adequate for purposes of section 301(h). [section 301(h)(3) of the CWA; 40 CFR 125.63]
- (6) The applicant's proposed discharge would not result in any additional treatment requirements on any other point or non-point source. [section 301(h)(4) of the CWA; 40 CFR 125.64]
- (7) The applicant has failed to develop and implement an Urban Area Pretreatment program in accordance with section 301(h)(6) of the CWA and 40 CFR 125.65. The applicant has failed to submit the necessary toxic pollutant analyses in accordance with 40 CFR 125.66(a). Consequently, the applicant has failed to identify and categorize known or suspected sources of toxic pollutants or pesticides (40 CFR 125.66(b)). The applicant also has failed to develop and implement a nonindustrial source control program that would have informed the public about nonpoint and wastewater issues and household toxic control measures [40 CFR 125.66(d)]. In addition, the applicant has not indicated that it plans to implement pretreatment. [section 301(h)(5), (6), and (7) of the CWA; 40 CFR 125.65 and 125.66]
- (8) The applicant has failed to demonstrate that there will be no new or substantially increased discharges from the point source of the pollutants to which the section 301(h) variance would apply above those specified in the current section 301(h)-modified permit. [section 301(h)(8) of the CWA; 40 CFR 125.67]
- (9) The applicant has not provided determinations or concurrences from the Guam Bureau of Planning, Guam Department of Agriculture, and Guam Environmental Protection Agency that the applicant's discharge is consistent with the Territory of Guam's Coastal Zone Management Program, nor has provided determinations from the National Oceanic and Atmospheric Administration (NOAA) that the applicant's discharge is in accordance with Title III of the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431 *et seq.* or from the U.S. Fish and Wildlife Service and the NOAA's National Marine Fisheries Service that the discharge is not likely to adversely affect listed threatened or endangered species or habitat. However, these determinations or concurrences are not necessary at this time because the final decision is that a section 301(h)-modified permit not be issued. [40 CFR 125.59(b)(3)]
- (10) While the Territory of Guam would have to concur with the issuance of a final section 301(h)-modified permit and make specific determinations regarding compliance with water

quality standards and whether the discharge would result in additional requirements on other sources, no Territory concurrence or determination is necessary at this time because the final decision is that a section 301(h)-modified permit not be issued. [40 CFR 125.61(b)(2), 125.54, and 125.53]

CHANGES FROM THE TENTATIVE DECISION

EPA has incorporated several changes to the Final Decision Document (“FDD”) based on additional data and information obtained since the tentative decision. These include:

- 1) GWA has constructed a new outfall, but has not yet installed the new diffuser as contemplated in the application. The new outfall extends the previous discharge location from shore by 328 feet and now discharges 190 feet deeper than the previous outfall. Although the new outfall is in operation without a diffuser, EPA has evaluated the application based on the planned diffuser in conjunction with the new outfall. Additional details on the outfall location are described below, in the “description of treatment” section.
- 2) Based on information received during the public comment period, EPA has concluded that GWA has demonstrated it has the resources to carry out its proposed monitoring program in accordance with 40 CFR 125.63(d). However, as described in the tentative decision, GWA has not consistently conducted effluent monitoring to provide the basis for demonstrating that the proposed discharge will meet all applicable water quality standards at and beyond the ZID (40 CFR 125.62(a)(1)). As a result, EPA concluded that the applicant has not demonstrated that it can consistently conduct effluent monitoring pursuant to 40 CFR 125.63(a) and (d), and collect the necessary information for determining compliance under 40 CFR Part 122. Therefore, EPA has concluded that the applicant has not established an effluent monitoring program for the proposed discharge that meets the requirements of 40 CFR 125.63(d).
- 3) EPA has considered additional receiving water characterization data obtained by GWA since the tentative decision. GWA reinstated the collection of quarterly water column physical-chemical data consistent with its receiving water monitoring permit requirements in September, 2008. This data was submitted to EPA in quarterly Discharge Monitoring Reports (DMRs) for the first, second and third quarters of 2009, and was considered by EPA. The data was consistent with the results of the previous analysis and further supported EPA’s tentative decision. EPA has therefore made no changes to its findings as a result of reviewing this data.
- 4) EPA has considered additional effluent monitoring data for BOD and TSS obtained by GWA since the tentative decision. Effluent monitoring data was submitted to EPA in GWA’s quarterly DMRs for the first, second and third quarters of 2009, and was considered by EPA. EPA has revised Tables 3 and 4 to account for this data. The data was consistent with the results of previous analysis and further supported EPA’s tentative decision. EPA has therefore made no changes to its findings as a result of reviewing this data.

CONCLUSION

EPA has concluded that the applicant's proposed discharge will not comply with the requirements of section 301(h) of the CWA and 40 CFR 125, Subpart G, and Guam water quality standards (GWQS), Public Law 26-113, Guam Administrative Rule, Guam Environmental Protection Agency (GEPA), Division II-Water Control, Chapter 5, Water Quality Standards, Section 5101 *et seq.* (GEPA 2002).

EPA is denying the applicant's request for a section 301(h) variance in accordance with the above findings pursuant to the applicable provisions of 40 CFR Parts 122 through 125. The basis for this conclusion is discussed in the following sections.

BACKGROUND AND DESCRIPTION OF TREATMENT SYSTEM

A. Background

The original section 301(h) decision for a variance from secondary treatment requirements for the Northern District STP was issued on November 14, 1983. It was issued to the Public Utility Authority of Guam, which later became GWA. Subsequently, EPA issued the Northern District STP's first section 301(h)-modified permit (NPDES Permit No. GU0020141) on June 30, 1986. The permit became effective on June 30, 1986, and expired on June 30, 1991. Pursuant to 40 CFR 122.6, the terms of the permit have been administratively extended.

The applicant submitted its first section 301(h) application for renewal of its variance on December 28, 1990. Between 1991 and 1997, EPA required GWA to submit additional information to supplement its renewal application. However, GWA failed to provide complete information during this period, and, as a result, EPA issued a tentative decision on April 4, 1997, that recommended that GWA be denied a variance from secondary treatment requirements specified in 40 CFR Part 133 (Marcus 1997). This letter also described GWA's failure to demonstrate both that the discharge would not adversely impact public health or coral reef communities and that the discharge would meet GWQS for fecal coliform and dissolved oxygen (DO). In the 1997 tentative decision, EPA recommended that GWA provide adequate maintenance of its diffuser and consider extending the outfall for the Northern District STP to improve the chances that the discharge would meet the 301(h) criteria. EPA indicated that GWA had 45 days to submit a letter of intent to revise its section 301(h) application for the Northern District STP. On May 6, 1997, EPA received GWA's letter of intent, which stated GWA's willingness to "make certain that the entire [section 301(h)] Applicant Questionnaire is filled with sufficient detail to adequately demonstrate compliance with all [section] 301(h) requirements."

On June 18, 1997, EPA confirmed its receipt of GWA's letter of intent to extend the ocean outfall for the Northern District STP and to submit a revised section 301(h) application for renewal of its variance (Strauss 1997). EPA provided suggestions on approaches for completing an acceptable revised permit application. EPA informed GWA that the revised application had to be submitted within one year of submittal of the May 6, 1997 letter of intent, and that it had to include a completed section 301(h) Applicant Questionnaire with sufficient detail to adequately demonstrate compliance with all section 301(h) requirements. In the June 18, 1997 letter, EPA also provided guidelines on collecting baseline data for the planned new outfall, such as effluent and receiving water monitoring data, including data on benthic fauna, sediment quality, toxic pollutants, chronic toxicity, and other necessary information to assess compliance with section 301(h) criteria. EPA recommended that GWA use the section 301(h) Applicant Questionnaire that is provided in EPA's Amended Section 301(h) Technical Support Document (ATSD; EPA 1994a) and other guidance documents to complete its revised application, and clarified that the Northern District STP would be considered a "large applicant" due to growth in the population it serves.

In response to the 1997 letters from EPA, GWA submitted a revised section 301(h) renewal application for the Northern District STP to EPA on March 27, 1998 (GWA 1998). In the revised renewal application, GWA provided architectural and engineering design and construction schedules for the Northern District STP's proposed outfall extension. In addition, GWA indicated that baseline surveys in the area of the new outfall had begun but had not been completed, and that funding was not secured for the outfall construction but efforts were underway to identify potential funding sources. On April 21, 1998, upon review of the revised renewal application, EPA indicated to GWA that its application was "significantly deficient in providing sufficient information" to support the proposed outfall extension and that it had not adequately demonstrated compliance with all section 301(h) requirements.

Since 1998, GWA has submitted additional information to supplement its application for renewal of its section 301(h) variance. In 2001, GWA submitted a section 301(h) Applicant Questionnaire and a Basis of Design report for the Northern District STP that detailed plans and configurations of a new outfall that would discharge farther offshore in deeper water (GMP Associates, Inc. 2001; GWA 2001).⁴ For the purpose of the section 301(h) evaluation, all information submitted by the applicant in the 1998 revised renewal application and in the 2001 supplemental documents is considered, in whole, GWA's application for renewal of its section 301(h) variance.

On January 5, 2009, EPA issued a Tentative Decision Document that the application for a renewed variance be denied. Subsequently, EPA held a public hearing on the tentative decision on June 3, 2009 and accepted public comments on the tentative decision through June 30, 2009. EPA has carefully considered all the public comments and has prepared written responses to comments received. Throughout this document, any

⁴ GWA completed construction of the extended outfall in January 2009 but GWA has yet to install the diffuser.

reference to “public comments” includes the comments submitted by the applicant.

B. Treatment System

The Northern District STP is located on the northwestern coast of the island of Guam (see Figure 1). The facility resides within the town of Dededo and collects and treats wastewater from the regions of Dededo, Latte Heights, Perez Acres, Ypaopao, and Marianas Terrace, the Yigo Collector System, and other unincorporated subdivisions throughout Yigo and Dededo municipalities. The service area also includes U.S. military facilities (Air Force and Navy) within the areas of Dedeo and Harmon Annex, and Anderson Air Force Base. The Northern District STP currently provides primary treatment for a population of approximately 76,000 people. The facility is located on a plateau that is 91 m (300 ft) above the Philippine Sea. In addition, the Department of Defense (DoD) is planning an expansion of military operations in Guam with the construction of a new Marine base that will neighbor the Northern District STP facility. Based on information from DoD, EPA understands that DoD is considering the installation of a new sewage connection system from the new base to the Northern District STP.⁵ At this time, EPA is not aware of a schedule for completion of the new base or if DoD has made a final decision on wastewater management for the military expansion activities. Therefore, for the purpose of this section 301(h) evaluation, EPA has reviewed GWA’s application for renewal of its section 301(h) variance without consideration of DoD’s proposed military expansion.

Based on information provided by the applicant, the average daily and peak hourly design flow capacities of the facility are estimated at 12.0 and 28.6 MGD, respectively. From 2007 DMR data, EPA determined that the monthly average and daily maximum effluent discharge harmonic means are 9.9 MGD and 10.6 MGD, respectively. In 2001, GWA provided additional flow information that stated that the daily maximum flow of the current discharge is between 6 and 7 MGD, and that a flow of 12 MGD is estimated for the proposed discharge at the end of the next permit cycle. The design treatment removal is estimated to be between 50 and 75% for TSS and between 40 and 60% removal for BOD. No updated information was provided by the applicant regarding categorical industrial discharges into the treatment system.

Design treatment at the Northern District STP includes screening of raw sewage, pre-aeration for odor control, grit removal, comminution of solids, primary sedimentation, and chlorination. Figure 2 provides a schematic of the Northern District STP treatment works system. According to GWA’s Final Water Resources Master Plan, the Northern District STP’s inflow meter, comminutor, pre-aeration, aerated grit removal, one primary clarifier, influent flow meter, chlorination system, digesters, centrifuges, and effluent flow meter were declared out-of-service or off-line (GWA 2006).

⁵For more information on the military expansion in Guam, visit the DoD Joint Guam Program Office’s website at <http://www.guambuildupeis.us>

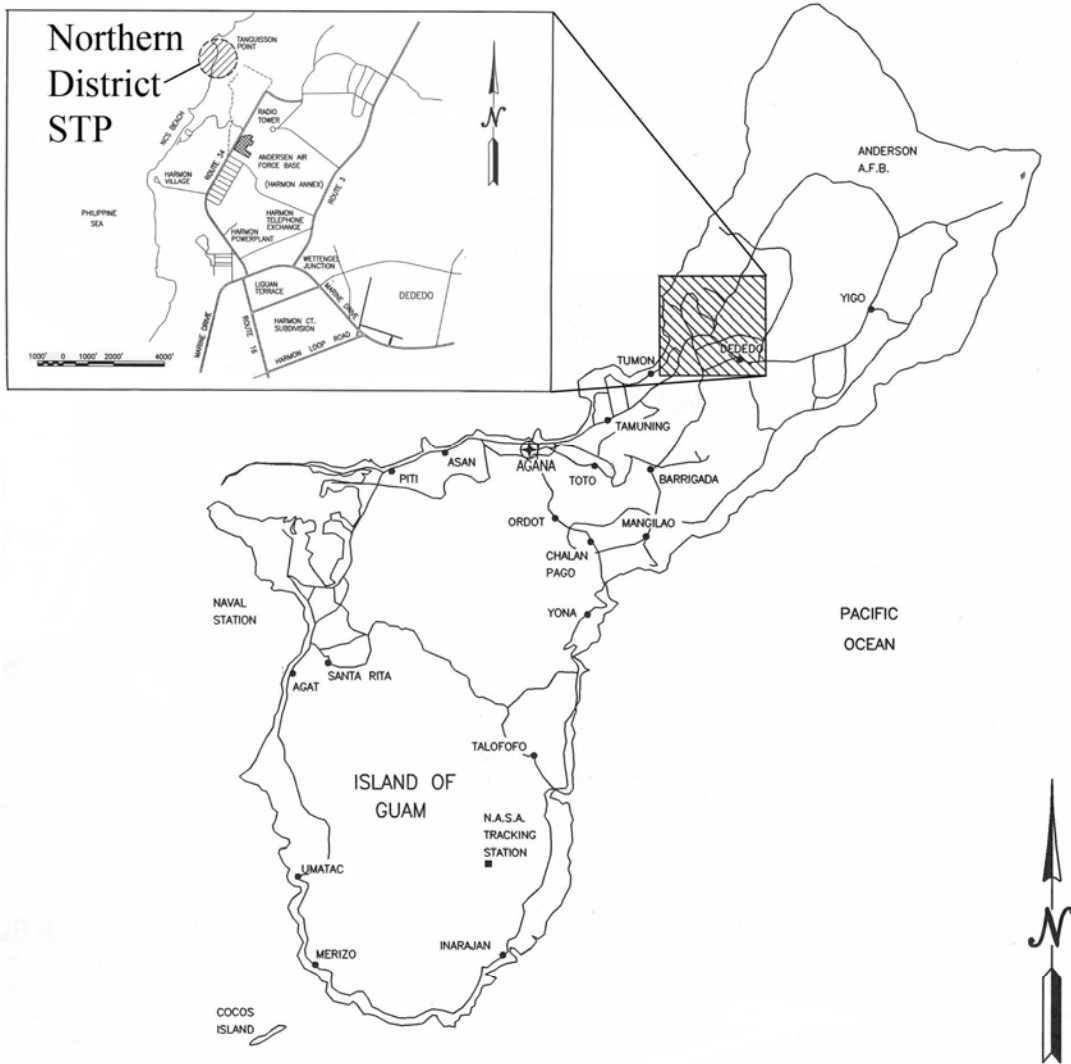


Figure 1. Location of Northern District STP on the island of Guam. Reprinted from GWA's Construction Plans for Tumon Infrastructure and Beautification for Northern District STP Outfall Extension (GMP Associates, Inc. 2005).

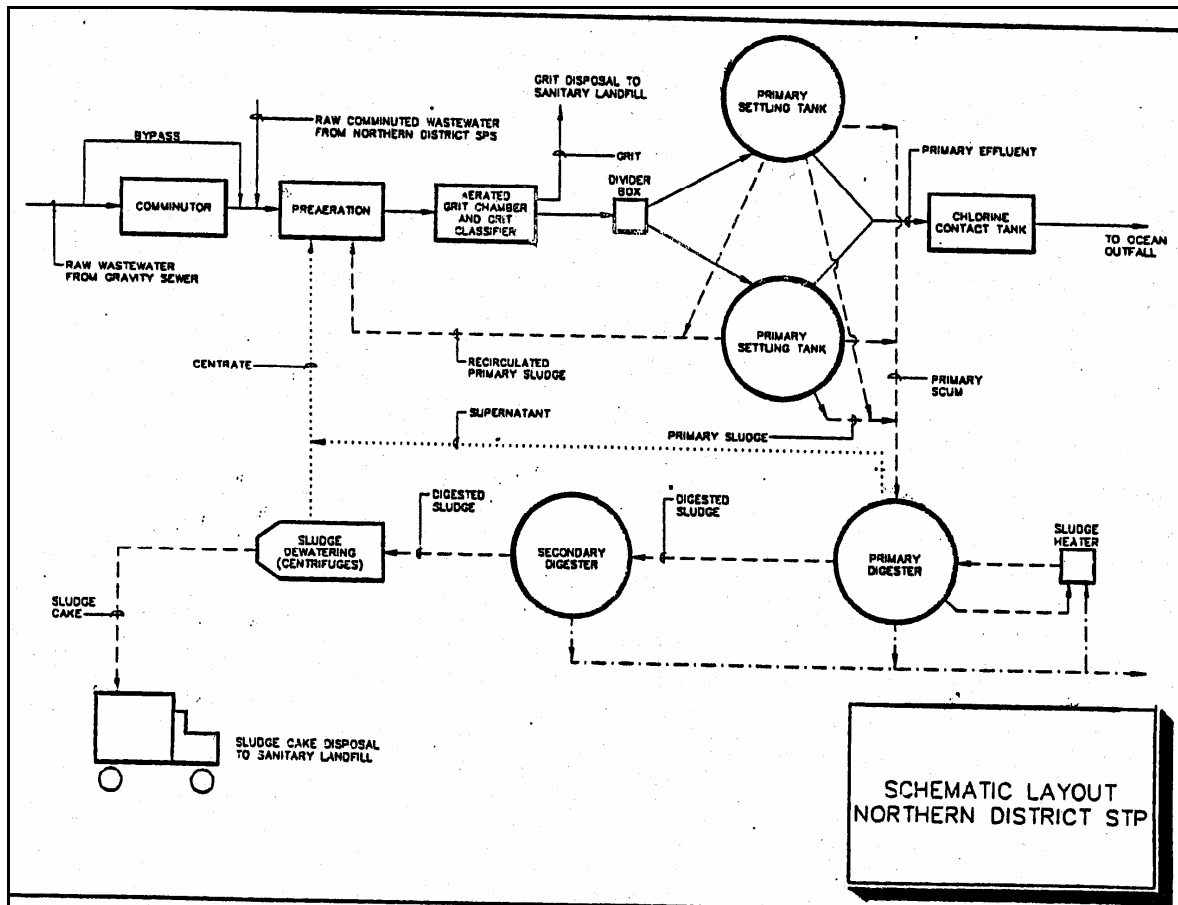


Figure 2. Process diagram of Northern District STP. Reprinted from GWA’s section 301(h)-modified NPDES permit renewal application (GWA 1998).

Table 1 below provides a comparison of characteristics for the previous and new outfalls. The previous outfall discharged effluent directly into the Philippine Sea at 655 m (2,160 ft) from the shoreline and at a depth of 18.2 m (60 ft). The previous outfall was located at 166 m (545 ft) beyond the reef line at latitude of 13°33’7.36” N and longitude of 144°48’24.03” E. The total length of the previous outfall was approximately 2,216 m (7,272 ft), including a diffuser that was 129 m (422 ft) long and was located at the terminal end of the outfall. The previous outfall consisted of a 1,676 m (5,500 ft), 76.2 cm (30 in) diameter pipe made of mainly Techite piping and encased in concrete. The previous diffuser was constructed from flexible joint ductile iron pipe in five segments of decreasing diameters: 76.2 cm (30 in), 60.9 cm (24 in), 50.8 cm (20 in), 40.6 cm (16 in), and 30.5 cm (12 in). According to GWA’s Basis of Design report, the previous diffuser consisted of 22 port risers capped with 4-inch 90 degree elbows and installed on the five pipe segments at a spacing of approximately 18 feet on centers, which sums to a total length of 129 m (422 ft; GMP Associates, Inc. 2001). The previous diffuser was oriented north to south

and located parallel to the shoreline. In November 1998, GWA conducted an underwater inspection and found that the first three risers on the 76.2 cm (30 in) diameter segment were blind flanged, two risers were missing elbows, four risers were blocked in the header, and most of the risers discharged towards offshore.

Table 1. Characteristics of Previous and New Outfall for the Northern District STP.

Parameter	Previous Outfall	New Outfall
Total outfall + diffuser length, m (ft)	2,216 (7,272)	2,430 (7,972)
Decreasing outfall diameters, cm (in)	1.219 to 0.762 (48 to 30)	1.219 to 0.762 (48 to 30)
Outfall depth, m (ft)	18.3 (60)	42.6 (140)
Diffuser length, m (ft)	129 (422)	121 (400)
Diffuser diameters, cm (in)	76.2 (40), 60.9 (24), 50.8 (20), 40.6 (16), 30.5 (12)	86.4 (34), 71.1 (28), 55.9 (22), 50.8 (20)
Diffuser configuration	Linear	Linear
Port number	22	40
Port spacing, m (ft)	5.5 (18)	3.0 (10)
Port diameter, cm (in)	10.2 (4)	15.24 (6)
Angle of port orientation from horizontal, degrees	90	90
Port depth below the surface, m (ft)	17.5 to 18.3 (58 to 60)	42.1 (138)
Number of ports per segment	5 at 12", 4 at 16", 4 at 20", 5 at 24", 4 at 30"	10 at 20", 10 at 22", 10 at 28", 10 at 34"

The new outfall was completed and went into operation in January, 2009, although GWA has not yet installed the new diffuser to the outfall. The new outfall currently discharges 580 m (1,900 ft) from shoreline, which is approximately 152 m (500 ft) further offshore, and at a depth of 42.6 m (140 ft). According to GWA's Basis of Design report, a new 121 m (400 ft) multiport diffuser with 40 ports was to be added to the end of the outfall so that the total length of the outfall system (from the Northern District treatment works to the diffuser terminus) would be 2,430 m (7,972 ft; GMP Associates, Inc. 2001). No diffuser has yet been added to the new outfall, but as the proposed discharge is based on the new outfall with a new diffuser, EPA has evaluated the application assuming that the diffuser will be added. Since the proposed discharge will discharge farther away from the shoreline and at a greater depth, and incorporates additional diffuser ports, it is predicted to have higher dilution.

C. Improved Discharge

Under 40 CFR 125.58(i), an improved discharge is defined as the volume, composition, or location of the discharge following: (1) construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or (2) construction of planned treatment system improvements to treatment levels or discharge characteristics; or (3) implementation of a planned program to improve operation and maintenance of an existing treatment system or to eliminate or control the introduction of pollutants into the applicant's treatment works. The applicant has requested a modification of secondary treatment requirements for the Northern District STP based on an improved discharge to the Territorial waters of Guam due to an extension of the outfall and construction of a new diffuser.

The applicant is seeking a variance from the secondary treatment requirements for BOD and TSS only. GWA proposed an outfall extension and new diffuser system, and requested an increase in the permitted wastewater flow to the facility during the next permit cycle. The applicant has not requested a change in concentration-based effluent limits for BOD and TSS that are established in the current permit, nor a change in mass-based effluent limitations to reflect the increase in the facility's average monthly design flow of 12 MGD. EPA has calculated anticipated mass-based concentrations of BOD and TSS based on GWA's requested average monthly permitted flow of 12 MGD. Table 2 provides a comparison of these and the applicant's current effluent limits for BOD and TSS. In addition, Table 2 includes facility performance data from August 2005 through June 2009.

The applicant is not seeking a variance for pH. As specified in 40 CFR 133.102(c), the secondary treatment requirement for pH is that effluent values shall be maintained within limits of 6.0 to 9.0 pH standard units. Based on review of Discharge Monitoring Report (DMR) data (August 2005 through June 2009), EPA determined that effluent values of pH ranged between 6.75 and 8.42 standard units. Therefore, pH values in the effluent met current permit limits and secondary treatment requirements. In the application, GWA has anticipated that the minimum pH value to be 7.0 and the maximum pH value to be 9.0 during the term of the new permit. These values are consistent with secondary treatment requirements for pH.

DESCRIPTION OF RECEIVING WATER

The Northern District STP discharges into coastal waters that are located south of Tanguisson Point on the northern shoreline of Guam. There are no embayments in this area, but long, shallow indentations that exist to the north and south of Tanguisson Point. As specified in section 5102 of GWQS, the coastal waters off Tanguisson Point are considered "Category M-2 Good" marine waters. The beneficial uses for this category of waters are the propagation and survival of marine organisms, particularly shellfish and coral reefs. Other important and intended uses include mariculture activities, aesthetic enjoyment, and compatible recreation inclusive of whole body contact and related activities.

Table 2. Summary of current and proposed effluent limitations and monitoring data for BOD and TSS for the Northern District STP. Monitoring data based on Discharge Monitoring Reports (DMRs) from August 2005 to June 2009.

Pollutant	Current Effluent Limits ¹				Proposed Effluent Limits ²				Maximum Effluent Concentrations Based on DMR Data			
	Mass-based Limits (kg/day)		Concentration-based Limits (mg/l)		Mass-based Limits (kg/day)		Concentration-based Limits (mg/l)		Mass-based Limits (kg/day)		Concentration-based Limits (mg/l)	
	30-day Average	Daily Max	30-day Average	Daily Max	30-day Average	Daily Max	30-day Average	Daily Max	30-day Average	Daily Max	30-day Average	Daily Max
BOD	1,930	3,860	85	170	3,861	7,721	85	170	10,473	13,914	184	249
TSS	1,136	2,272	50	100	2,271	4,542	50	100	14,280	31,705	259	576

¹ Based on the permitted daily maximum flow of 6 MGD.

² Based on the applicant's requested daily maximum flow of 12 MGD.

A. Current Direction and Speed

The circulation pattern of currents in Guam is a function of the westward flowing North Equatorial Current. Currents are driven by prevalent northeast trade winds, tidal phases, local eddies/winds, and seafloor bathymetry. Current studies suggest that the flow pattern in Guam is predominantly in the westerly direction, particularly in the winter. During the summer, the tides and trade winds abate somewhat and the current patterns can vary. Western prevailing currents will still dominate, but with less persistence and strength. Tidal activity in Guam is characterized as semidiurnal, bearing considerable diurnal inequality, with a mean range of 0.51 m (1.7 ft) and a diurnal range of 0.72 m (2.4 ft) (Huddell et al. 1974). Huddell et al. (1974) reported that winds in Guam have an overwhelming influence against other current causing forces such as tidal activity, density patterns, wave activity, and ocean topography.

Measurements at Tanguisson Point show both a predominant northeasterly current and southwesterly current during the summer, and a predominant northeasterly current during the winter. Based on information provided by the applicant, plume behavior is generally expected to travel up and down the coast along the island and travel away from the shoreline. In the application, GWA provided mean frequency diagrams for current direction utilizing drift cross cast data that suggest that ocean current may not influence the plume to travel towards shore. The applicant reported that the predominant current velocities during all four seasons in the receiving water ranged from 0.05 knots to 0.4 knots. As part of the application renewal, the applicant submitted a 1998 current study for the new outfall site. The study found that during the six days of current monitoring, the current sensor moved northeasterly-south at a mean velocity of 0.18 knots (0.3 ft/s) and ranging from no current movement to a current speed of 0.65 knots (1.1 ft/s).

B. Stratification

In the application, GWA stated that there are no discernable periods of significant (maximum) stratification in the vicinity of the previous or new outfalls. According to the applicant, there is very little seasonal temperature variation (less than 1°C) between the surface and the 50 m (165 ft) depth that would cause stratification in areas of the previous or new outfall. The previous outfall discharged at a depth of 18.3 m (60 ft) and the new outfall discharges at a depth of about 42.7 m (140 ft).

In the application, GWA provided a summary of 17 salinity-temperature-depth (STD) profiles from receiving waters near the new outfall that were collected between November 6 and November 14, 1998. STD data were collected and used to calculate density profiles. Based on density profiles, the applicant concluded that little stratification exists in the area surrounding the new outfall based on uniform density values from the surface to a 70 m (231 ft) depth. Based on review of density profile data, EPA has concurred with GWA's finding that there likely is little variation in density across the water column in the area of the new outfall.

C. Coral Reefs

Tanguisson Point is bordered by fringing reef flat platforms which range in width from 15.24 m (50 ft) to 304.8 m (1,000 ft). The platform to the north of Tanguisson Point is the widest and much of the reef flat is exposed at low tide. The low tide inner reef flat moat is discontinuous and shallow. In the application, GWA indicated that the distance from the previous outfall to the edge of the coral reef flat was approximately 179 m (590 ft). Based on GWA's Basis of Design report, with installation of a new diffuser, the distance from the new outfall to the edge of the coral reef flat will be between 391 m (1,290 ft) and 406 m (1,340 ft; GMP Associates, Inc. 2001).

PHYSICAL CHARACTERISTICS OF THE DISCHARGE

A. Initial Dilution

40 CFR 125.62(a) requires that the new outfall and diffuser be located and designed to provide adequate initial dilution, dispersion, and transport of wastewater to meet all applicable water quality standards and all applicable EPA water quality criteria at and beyond the boundary of the zone of initial dilution (ZID). EPA's ATSD provides the following description of initial dilution and dispersion:

As the plume rises and entrains ambient saline water, its density increases and its momentum and buoyancy decreases accordingly. If a sufficient ambient vertical density gradient or zone of stratification (like a pycnocline or a thermocline) is present, the plume will spread horizontally at the level of neutral buoyancy (i.e., where the plume density equals ambient water density). If a sufficient density gradient is not present, the diluted effluent will reach the water surface and flow horizontally. The vertical distance from the discharge points to the centerline of the plume when it reaches the level of neutral buoyancy or the water surface is called the "height-of-rise" (sometimes referred to as the height to "trapping" or "equilibrium" level). The dilution achieved at the completion of this process is called the "initial dilution." Dilution is the ratio of the total volume of a sample (ambient water plus effluent) to the volume of effluent in the sample. A dilution of 100 is a mixture composed of 99 parts of ambient water and 1 part of effluent.

Figure 3 below provides a description of initial dilution. Initial dilution is an important parameter for determining compliance with territory and federal water quality standards and criteria. Initial dilution varies with oceanographic (e.g., temperature and salinity) and effluent (e.g., flow rate) conditions. Pursuant to EPA's ATSD, the critical (i.e., lowest) initial dilution must be computed for each of the critical environmental periods and is based on the predicted peak two to three- hour effluent flow for the new permit term. Critical environmental periods are

defined as a “worst-case density profile (i.e. the profile producing the lowest initial dilution)” or ambient parameters causing the most significant stratification along the water column in respect to the diffuser. In addition, current speed and direction are important in assessing initial dilution and pollutant transport at critical conditions.

In the application, GWA presented average initial dilutions based on dilution modeling and applying various outfall design parameters and a critical flow of 28.6 MGD (GMP Associates, Inc. 2001). GWA estimated dilution values between 213:1 and 254:1 for discharge depths ranging from 135 to 150 ft. However, for the design of the new outfall, GWA selected an outfall depth of 140 ft and an initial dilution of 200:1, which it determined necessary for compliance with water quality criteria for toxic pollutants. According to GWA’s Basis of Design report, additional dilution would be necessary for the discharge through the new outfall to comply with GWQS for bacteria at the ZID. For example, GWA determined that a dilution of up to 8,000:1 would be required to meet and attain GWQS for enterococci based on enterococci concentrations typically observed in primary treated wastewater (GMP Associates, Inc. 2001). The new outfall is now in operation, but the diffuser described in the Basis of Design report has not been installed. EPA has evaluated the proposed discharge using the outfall and diffuser as proposed in the application.

In accordance with EPA’s ATSD, EPA re-calculated initial dilution for the new outfall location using the EPA-approved UM3 model to better understand initial dilution (EPA 1994b). EPA utilized the applicant’s new outfall design parameters such as the depth of 140 ft, critical hourly peak flow of 28.6 MGD, two ambient density profiles provided by the applicant (Nos. 001 and 002), and a current direction perpendicular to the diffuser. EPA determined that density profiles Nos. 001 and 002 from a November 1998 receiving water monitoring survey were the most critical profiles, although other density profiles provided by the November 1998 survey demonstrated strong similarities with little to no stratification. In addition, EPA selected a current direction that is perpendicular to the diffuser since the applicant has indicated that currents in the vicinity of the new outfall are estimated to be parallel to the shoreline. Table 3 provides a summary of EPA-predicted initial dilutions at the ZID with trapping depth based on the proposed diffuser. As shown in Figure 3, the trapping depth is the vertical distance from the point where the discharged effluent is no longer rising in the water column to the surface. Results of the UM3 model show initial dilutions that ranged between 260:1 and 275:1. In addition, EPA predicted that the new outfall will rise to between 9.9 and 5.8 ft below the surface.

Figure 3. Description of initial dilution in the receiving water. Reprinted from EPA's ATSD (EPA 1994a).

Table 3. Summary of EPA-predicted initial dilutions and trapping depths based on new outfall depth.

Outfall Depth (ft)	Predicted Initial Dilution at ZID	Trapping Depth (ft)
140	260	9.9
140	275	5.8

In the application, GWA proposed an initial dilution of 200:1 for the new outfall. Although EPA predicted higher initial dilutions, EPA has concluded that using the applicant’s proposed initial dilution of 200:1 is a conservative estimate of critical dilution and, therefore, is adequate for the purpose of the section 301(h) evaluation for the new outfall.

B. Application of Initial Dilution to Water Quality Standards

40 CFR 125.62(a) requires that at the time a section 301(h) modification becomes effective, the applicant’s outfall and diffuser must be located and designed to provide adequate initial dilution, dispersion, and transport of wastewater such that the discharge does not exceed at and beyond the ZID all applicable water quality standards. In accordance with 40 CFR 125, and as allowed by section 5103 of GWQS, EPA has analyzed all applicable water quality standards to determine compliance with section 301(h) regulations. Because the applicant submitted a revised application for an improved discharge that consists of construction of an extended outfall, EPA assessed compliance with section 301(h) requirements for the proposed discharge using information on the previous outfall, where appropriate and necessary. Since GWA has not proposed a change in the level of treatment at the Northern District STP and the proposed discharge would be to the same receiving water, the review of receiving water monitoring data for the previous outfall can provide useful information when predicting whether the proposed discharge will meet water quality standards. Baseline data collected from the location of the new outfall prior to its construction are not helpful in this regard, because those data do not reflect impacts of the discharge. Also, GWA has not submitted sufficient information on the discharge through the new outfall, which only began in December 2008, to evaluate attainment of water quality standards. Moreover, the proposed diffuser has not been installed. Thus, where attainment of water quality standards is based on receiving water monitoring, EPA has used data from the previous outfall to evaluate the impact of the proposed discharge on water quality. By contrast, where attainment of water quality standards is based on predictive modeling or the analysis of effluent data, EPA has applied a critical initial dilution of 200:1 for the new outfall to assess attainment of water quality criteria (i.e., for DO, suspended solids, whole effluent toxicity, and toxic pollutants) at the ZID.

Section 5104 of GWQS allows the use of dilution of effluent to attain and maintain water quality standards so long as “the best pollutant removal or control consistent with technological feasibility, economic reasonableness and sound engineering judgment” are implemented. In section 5104(c) of GWQS, narrative criteria for general mixing zones are described as well as mixing zone criteria for specific types of discharges. The narrative criteria found in section 5104(d)(2) of GWQS apply to the applicant’s discharge and describe: (a) mixing zone size limit; (b) compliance with section 403(c) of the CWA; and (c) when practical, desirable location of discharge and its mixing zone. GWQS also provide a requirement for using a minimum or average dilution to assess outfall performance.

Although a mixing zone for discharge through the new outfall has not been approved by Guam, GWQS provide for the use of mixing zones. Therefore, for the purpose of the section 301(h) evaluation, EPA has considered all applicable water quality standards at the boundary of the ZID and has applied a critical initial dilution of 200:1, where appropriate and necessary, to determine compliance with section 301(h) regulations.

C. Zone of Initial Dilution

As defined in 40 CFR 125.58(dd), the ZID is a region of mixing surrounding, or adjacent to, the end of the outfall or diffuser, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards. EPA's ATSD limits the ZID to the depth of the outfall, i.e., subtending the depth of the outfall on each side of the diffuser and above it. In the application, GWA described the ZID for the previous outfall as having a horizontal width of 35.6 m (120 ft) and length of 129 m (423 ft). Based on the procedures described in EPA’s ATSD, EPA re-calculated the ZID dimensions for the previous outfall and determined that it had a horizontal width of 35.6 m (120 ft) and length of 165 m (543 ft). For the proposed discharge, the applicant has calculated the ZID as having a horizontal distance of 280 ft and a length of 680 ft. EPA believes that the applicant has correctly calculated the size of the ZID for the proposed discharge in accordance with EPA’s ATSD.

APPLICATION OF STATUTORY AND REGULATORY CRITERIA

A. Attainment of Primary or Equivalent Treatment Requirements

Section 301(h)(9) of the CWA was amended by section 303(d)(1) and (2) of the WQA. Under section 303(d)(1), the applicant’s wastewater effluent must be receiving at least primary treatment at the time its section 301(h)-modified permit becomes effective. Section 303(d)(2) states that “primary or equivalent treatment means treatment by screening, sedimentation, and skimming adequate to remove at least 30% of the biological oxygen demanding material and of the suspended solids in the treatment work’s influent, and disinfection, where appropriate.” 40 CFR 125.60 requires the applicant to perform influent and effluent monitoring to ensure, based

on the monthly average results of monitoring, that the effluent it discharges has received primary or equivalent treatment.

In the application, GWA provided influent and effluent monitoring data for BOD and TSS from January 1997 to December 1997, and from October 1999 to September 2000. EPA reviewed these and other monitoring data from DMR reports from August 2005 through June 2009 to evaluate compliance with the primary treatment requirements. Table 4 below provides a summary of monthly average TSS and BOD influent and effluent concentrations and average percent removals. Of the 70 months that were assessed for BOD removal, the applicant achieved the 30% removal requirement 61% of the time. Removal efficiency rates for monthly averaged percent removal of BOD ranged between -20.83 to 81.17%. Of the 70 months that were assessed for TSS removal, the applicant met the percent removal requirement for TSS 50% of the time. Removal efficiency rates for monthly averaged TSS data ranged from -284 to 79.2%. GWA did not specify a possible reason for negative or low percent removal values for BOD and TSS. However, based on information provided by GWA, EPA believes that there are several possible reasons for the poor removal rates for BOD and TSS such as: weak influent from infiltration/inflow (I/I) and/or supernatant disposal at headworks; inadequate sedimentation in clarifier such as decreased retention time and/or insufficient surface overflow rates (especially during wet weather seasons); irregular plant performance malfunction such as backflow; resuspension of particulate and bacterial growth from the sludge zone of the primary clarifier; algae growth; and general facility under-performance.

Although GWA did not request using a longer averaging period for meeting the percent removal requirements for BOD and TSS, EPA also assessed whether the 30% removal requirement would have been achieved based on the annual average of removal rates if GWA had been a longer averaging period pursuant to 40 CFR 125.60(c)(1). As shown in Table 5 below, the applicant would not be able to consistently meet the minimum 30% removal requirement for BOD and TSS based on a longer averaging period.

Therefore, based on review of the facility's performance data, EPA has concluded that the applicant has not demonstrated that the Northern District STP is consistently able to meet the primary treatment requirements as specified in section 301(h)(9) of the CWA and 40 CFR 125.60 for the proposed discharge.

Table 4. Monthly Removal Efficiencies for BOD and TSS. Shaded cell indicates percent removal that is below the 30% removal rate requirement for primary treatment.

Date	BOD			TSS		
	Influent (mg/l)	Effluent (mg/l)	Percent Removal	Influent (mg/l)	Effluent (mg/l)	Percent Removal
January 1997	285.5	141.5	50.44	192.4	192	0.2
February 1997	187	103	44.92	221	168	24.0
March 1997	140	61	56.43	230	202	12.2
April 1997	195	98	49.74	178	70	60.7
May 1997	297	120	59.60	206	174	15.5
June 1997	180	109	39.44	150	576	-284.0
July 1997	280	122	56.43	482	292	39.4
August 1997	177	105	40.68	316	324	-2.5
September 1997	165	91	44.85	189	140	25.9
October 1997	154	115	25.32	155	174	-12.3
November 1997	478	90	81.17	157	114	27.4
October 1999	203	152	25.12	181	92	49.2
November 1999	164	108	34.15	208	130	37.5
December 1999	175	142	18.86	309	118	61.8
January 2000	221	249	-12.67	271	336	-24.0
February 2000	144	174	-20.83	161	190	-18.0
March 2000	144	154	-6.94	128	160	-25.0
April 2000	187	137	26.74	204	100	51.0
May 2000	241	166	31.12	288	104	63.9
June 2000	208	140	32.69	160	132	17.5
July 2000	141	84	40.43	154	32	79.2
August 2000	202	169	16.34	228	142	37.7
September 2000	184	158	14.13	170	126	25.9
August 2005	158	104	34.18	250	188	24.8
September 2005	131	43	67.18	90	84	6.7
October 2005	24	8	66.67	103	97	5.8
November 2005	44	12	72.73	117	87	25.6
December 2005	58	19	67.24	141	92	34.8
January 2006	68	26	61.76	112	71	36.6
February 2006	174	53	69.54	75	65	13.3
March 2006	38	10	73.68	64	72	-12.5
April 2006	48	12	75.00	261	80	69.3
May 2006	54	21	61.11	134	55	59.0
June 2006	28	15	46.43	109	118	-8.3
July 2006	18	7	61.11	88	92	-4.5
August 2006	103	58	43.69	80	100	-25.0
September 2006	143	79	44.76	47	62	-31.9
October 2006	94	83	11.70	73	56	23.3
November 2006	106	85	19.81	98	78	20.4
December 2006	135	94	30.37	86	84	2.3
January 2007	139	83	40.29	97	85	12.4
February 2007	129	88	31.78	89	56	37.1
March 2007	195	82	57.95	428	276	35.5
April 2007	89	83	6.74	125	33	73.6
May 2007	111	56	49.55	100	62	38.0
June 2007	65	46	29.23	66	51	22.7
July 2007	76	59	22.37	77	54	29.9
August 2007	71	65	8.45	95	59	37.9
September 2007	85	59	30.59	62	46	25.8
October 2007	90	52	42.22	90	51	43.3
November 2007	100	60	40.00	100	70	30.0
December 2007	97	61	37.11	97	56	42.3

January 2008	106	92	13.21	106	56	47.2
February 2008	101	77	23.76	149	65	56.4
March 2008	100	70	30.00	100	49	51.0
April 2008	135	80	40.7	113	68	39.8
May 2008	88	66	25.0	74	59	20.3
June 2008	95	67	29.5	98	80	18.4
July 2008	92	67	27.2	96	71	26.0
August 2008	113	77	31.9	171	67	60.8
September 2008	94	73	22.3	130	76	41.5
October 2008	111	80	27.9	138	73	47.1
November 2008	103	72	30.1	138	70	49.3
December 2008	113	75	33.6	195	77	60.5
January 2009	90	71	21.1	152	87	42.8
February 2009	126	78	38.1	174	77	55.7
March 2009	119	86	27.7	144	81	43.8
April 2009	114	92	19.3	101	90	10.9
May 2009	132	97	26.5	184	69	62.5
June 2009	134	96	28.4	156	80	48.7

Table 5. Summary of BOD and TSS percent removal rates based on a rolling one year averaging period. Shaded cell indicates percent removal that is below the 30% removal rate requirement for primary treatment.

One Year Period	BOD Percent Removal	TSS Percent Removal
August 2005 – July 2006	63.05	20.89
September 2005 – August 2006	63.85	16.74
October 2005 – September 2006	61.98	13.52
November 2005 – October 2006	57.40	14.98
December 2005 – November 2006	52.99	14.54
January 2006 – December 2006	49.91	11.84
February 2006 – January 2007	48.12	9.82
March 2006 – February 2007	44.98	11.80
April 2006 – March 2007	43.67	15.80
May 2006 – April 2007	37.98	16.15
June 2006 – May 2007	37.01	14.41
July 2006 – June 2007	35.58	16.99
August 2006 – July 2007	32.35	19.86
September 2006 – August 2007	29.42	25.10
October 2006 – September 2007	28.24	29.91
November 2006 – October 2007	30.78	31.58
December 2006 – November 2007	32.46	32.38
January 2007 – December 2007	33.02	35.71
February 2007 – January 2008	30.77	38.61
March 2007 – February 2008	30.10	40.21
April 2007 – March 2008	27.77	41.50
May 2007 – April 2008	30.60	42.35
June 2007 – May 2008	28.56	40.87
July 2007 – June 2008	28.58	40.51
August 2007 – July 2008	28.98	40.19
September 2007 – August 2008	30.93	42.10
October 2007 – September 2008	30.24	43.41
November 2007 – October 2008	29.05	42.51
December 2007 – November 2008	28.22	42.20
January 2008 – December 2008	27.93	43.19
February 2008 – January 2009	28.59	42.82
March 2008 – February 2009	29.79	42.77
April 2008 – March 2009	29.60	42.17
May 2008 – April 2009	27.81	39.76
June 2008 – May 2009	27.94	43.28
July 2008 – June 2009	27.84	45.80

B. Attainment of Water Quality Standards related to BOD and TSS

In accordance with section 301(h)(1) of the CWA, EPA may not issue a section 301(h)-modified permit unless the applicant demonstrates that it meets the applicable water quality standard specific to the pollutant for which the modification is requested. GWA has requested a variance from federal secondary treatment requirements for BOD and TSS. Water quality standards applicable for the Northern District STP are those for Category M-2 marine waters in section 5103 of GWQS. Although GWQS contain specific water quality criteria for total suspended solids, GWQS do not contain specific water quality criteria for BOD; however, criteria are established for DO, which can be affected by BOD (section 5103(C) of GWQS). In addition to the criteria for total suspended solids, GWQS also contain criteria for turbidity, which can be affected by suspended solids. Under 40 CFR 125.61(a)(1) and (2), and (b)(1), which implement section 301(h)(1) of the CWA, the applicant must demonstrate that the modified discharge will comply with water quality criteria for BOD or DO, and for suspended solids (i.e., TSS) and turbidity.

1. Dissolved Oxygen

The effect of the effluent discharge on DO can occur in the nearfield and farfield as the effluent mixes with the receiving water and the oxygen demand of the effluent BOD load is exerted. Pursuant to 40 CFR 125.61(b)(1), the applicant must demonstrate that the modified discharge will comply with water quality criteria for DO and that the outfall and diffuser are located and designed to provide adequate initial dilution, dispersion, and transport of wastewater such that the discharge does not exceed criteria at and beyond the ZID (40 CFR 125.62(a)(1)). Section 5103(C)(4) of GWQS provides that the DO concentration in Category M-2 marine waters “shall not decrease to less than 75% of saturation at any time as influenced by salinity or naturally occurring temperature variations.”

Generally, EPA assesses attainment of water quality standards for DO using both receiving water data and modeling. In this case, EPA assessed receiving water data collected at the previous outfall in the TDD, because the new outfall was not yet in operation. EPA also assessed attainment of the DO standard in the TDD using modeling based on the design of the new outfall (e.g., an initial dilution of 200:1). The following sections describe the analysis conducted for the TDD. The new outfall is now in operation, but given that little data has been collected related to DO in the receiving waters since the new outfall went into operation, that GWA has not yet installed the new diffuser as proposed, and that EPA’s conclusion that the proposed discharge would meet water quality standards for DO, it is not necessary for EPA to review the new data in depth or rerun the modeling calculations.

a. Analysis of DO Based on Monitoring Data

To determine whether the proposed discharge would attain the water quality criterion for DO, EPA reviewed monitoring data to assess levels of DO in the receiving water. EPA compared concentrations of DO at receiving water monitoring stations for the previous outfall to the DO criterion, which is expressed as 75% of the saturation concentration. The saturation

concentration of DO is dependent on temperature and salinity of the water matrix. Because the water quality criterion is related to the saturation concentration, which varies with temperature and salinity, the criterion can change throughout the water column. For instance, warmer water has less capacity for oxygen than colder water and more saline water has less DO capacity than less saline water. Therefore, the DO concentration based on a 75% saturation criterion may be lower in warmer, more saline water than it would be in colder, less saline water. To determine the appropriate DO concentration based on the DO criterion, EPA calculated 75% DO saturation values for each sample at each station based on temperature and salinity data provided by GWA for the previous outfall. Based on a comparison of these values and actual measurements of DO in the water column at the previous outfall, EPA determined whether the new outfall will provide for the attainment of the DO criterion in the receiving water.

In the application, GWA provided receiving water concentrations of DO from June 1989 to July 1997 taken from stations within and beyond the ZID for the previous outfall. In GWA's quarterly Wastewater Operations and Maintenance Progress Reports for the Northern District STP, GWA consistently indicated that the absence of water monitoring data was due to the lack of personnel. Since receiving water monitoring at the ZID has not been conducted, EPA could not determine directly if the water quality criterion for DO was attained at the ZID boundary in accordance with 40 CFR 125.62. As a result, EPA evaluated receiving water monitoring data from stations within the ZID (station C) and in the farfield (station D) to infer whether the criterion would be met at the boundary of the ZID for the previous outfall and potentially for the proposed discharge. More recent data from April 2008 to June 2009 is now available, but as EPA's conclusion is that the proposed discharge would meet the criterion for DO, additional analysis using more recent data is not necessary.

Based on review of receiving water monitoring data, EPA determined that between 33% and 53% of the DO concentrations taken within and beyond the ZID of the previous outfall did not meet the 75% saturation criterion for DO. Since the observed DO concentrations frequently did not meet the water quality criterion, it is likely that the DO criterion was also not met at the boundary of the ZID for the previous outfall. However, because the proposed discharge is predicted to achieve greater dilution through a new outfall that will be located farther offshore and in deeper water and, because the applicant has not proposed an increase in the concentration of BOD for the proposed discharge, which can affect DO concentrations in the receiving water, it is likely that the criterion for DO will be met at the boundary of the ZID for the proposed discharge. Furthermore, by using the method of prediction for DO in the receiving water following initial dilution, attainment of the DO criteria can be evaluated based on parameters specific to the proposed discharge. As a result, EPA used predictive modeling to further assess the impact of the proposed discharge on DO concentrations in the receiving water.

b. Analysis of DO Based on Predictive Modeling

In addition to reviewing receiving water quality data, using predictive modeling can help assess whether a discharge will meet water quality criteria for DO. Since the proposed discharge is based on a new outfall, the modeling of potential impacts to water quality is especially important because the impact of the proposed discharge could not be directly analyzed using monitoring

data provided in the application. In the application, GWA did not provide such an analysis. Using predictive modeling procedures pursuant to EPA's ATSD, EPA analyzed the following four scenarios to assess whether the proposed discharge would meet the water quality criteria for DO:

- in the wastewater plume at the boundary of the ZID;
- in the wastewater plume in the farfield (beyond the ZID);
- near the bottom due to steady-state sediment oxygen demand; and
- near the bottom due to abrupt sediment resuspension.

For all four scenarios, EPA calculated resultant DO values for the proposed discharge.

DO depression upon initial dilution. When wastewater is discharged through a diffuser, the effluent forms a buoyant plume that entrains ambient water as it rises. The affected ambient DO concentration can change substantially as a function of depth, depending on environmental characteristics and seasonal influences. As the discharge plume rises during initial dilution, water from deeper parts of the water column is entrained into the plume and advected to the plume trapping level, which can result in an oxygen depression caused by entrainment if the DO level is lower at the bottom of the water column than at the trapping level or surface. To assess whether the proposed discharge would meet the DO criterion at completion of critical initial dilution, EPA calculated final DO concentrations based on the procedures described in EPA's ATSD. In its application, GWA did not provide an assessment of DO depression upon initial dilution for the proposed discharge.

The DO concentration upon critical initial dilution, at the boundary of the ZID, can be estimated using Equation B-5 of EPA's ATSD:

$$DO_f = DO_a + \frac{DO_e - IDOD - DO_a}{S_a}$$

where:

DO_f = final DO concentration of the receiving water at the plume trapping depth in mg/l;

DO_a = ambient DO concentration immediately up-current of the diffuser, averaged from the diffuser port depth to the plume trapping depth in mg/l;

DO_e = DO concentration of the effluent in mg/l;

IDOD = immediate DO demand in mg/l; and

S_a = critical initial dilution.

Table 6 below provides the values for each parameter that EPA used to calculate final DO concentrations and the predicted net change in ambient DO concentrations for the proposed discharge. As specified in EPA's ATSD, DO_a values should represent critical conditions and be calculated based on data that are immediately upcurrent of the diffuser averaged over the tidal period (12 hours) and from the diffuser port depth to the trapping level (18.3 m; see section on Initial Dilution). Based on baseline monitoring data for the new outfall, EPA determined that the critical (lowest) DO value was observed at the surface and was reported as a DO concentration of 5.18 mg/l (GMP Associates, Inc. 2001). EPA averaged DO concentrations from the diffuser depth to the trapping level and determined a DO_a of 5.75 mg/l.

In accordance with EPA's ATSD, EPA applied a DO_e of zero for the proposed discharge. For IDOD, EPA estimated an IDOD of 3 mg/l using Table B-3 of EPA's ATSD based on the maximum monthly average BOD concentration of 92 mg/l (January 2008) and a travel time from the treatment plant to the point of discharge of less than one hour. For S_a , EPA applied a critical initial dilution of 200:1. Using Equation B-5 and the values presented in Table 6, EPA calculated DO_f for the proposed discharge.

Table 6. Values used by EPA to estimate final DO concentrations (DO_f) and predicted DO_f upon critical initial dilution.

Parameter	Proposed Discharge
S_a	200:1
IDOD, mg/l	3
DO_e , mg/l	0
DO_a , mg/l	5.75
DO_f , mg/l	5.71
Average ambient salinity, ppt	32
Average ambient temperature, °C	29.9
DO_{sat} , mg/l	6.8
DO_{target} , mg/l	5.1

To assess whether predicted final concentrations of DO in the receiving water will meet the DO criterion, EPA compared DO_f to DO_{target} for the proposed discharge. DO_{target} is 75 percent of DO_{sat} and represents the value for assessing compliance with the water quality criterion, as specified in section 5103 of GWQS. First, EPA calculated DO_{sat} , based on the average salinity and temperature values listed in Table 6. Based on DO_{sat} concentrations of 6.8 mg/l for the proposed discharge, EPA calculated a DO_{target} concentration of 5.1 mg/l for the proposed discharge. Using Equation B-5, EPA calculated a DO_f of 5.71 mg/l. Because DO_f is estimated to be above the DO_{target} concentration, the proposed discharge is predicted to meet the water quality criteria for DO at the ZID upon critical initial dilution.

DO depression due to BOD exertion in the farfield. Pursuant to EPA's ATSD, EPA also evaluated potential DO depression in the farfield. Subsequent to initial dilution, DO in the water column is consumed by BOD in the wastefield. As the discharge plume travels through the water column, the combined oxidation of organic material in the diluted effluent and receiving water can result in oxygen depression beyond the ZID in the farfield. BOD consists of a carbonaceous component (CBOD) and a nitrogenous component (NBOD), both of which can contribute to oxygen depressions in the farfield. As described in EPA's ASTD, NBOD may not always contribute to oxygen depletion if the discharge is to open coastal waters where there are no other major discharges in the vicinity and the background population of nitrifying bacteria is negligible. To assess DO concentrations after initial dilution, the applicant evaluated receiving water monitoring data for the previous outfall, and modeled the exertion of BOD on DO concentrations in the farfield under critical conditions for the proposed discharge.

Before conducting an analysis to determine whether the farfield BOD exertion causes a violation of the DO criterion, EPA first determined whether the following inequality is true:

$$DO_f - 1.46 \times \frac{BOD_e + (BOD_e - BOD_a)}{S_a} \geq DO_{target}$$

where,

DO_f = DO concentration at the completion of initial dilution, in mg/l;

BOD_a = affected ambient BOD concentration immediately updrift of the diffuser, from the diffuser port depth to the trapping depth, in mg/l;

BOD_e = effluent BOD concentration, in mg/l;

S_a = critical initial dilution; and

DO_{target} = DO concentration at 75% saturation, in mg/l.

Table 7. Values used by EPA in determining whether the predicted DO concentration in the farfield will attain the water quality criterion for DO as a result of the proposed discharge.

Parameter	Proposed Discharge
DO _f , mg/l	5.71
BOD _a , mg/l	0
BOD _e , mg/l	92
S _a	200:1
DO _{sat} , mg/l	6.8

According to EPA's ATSD, if the inequality is true, then the proposed discharge alone is not likely to exceed the DO criterion due to BOD exertion and no further analysis of farfield BOD is required. Table 7 provides the values EPA used in determining whether the predicted DO concentration in the farfield will attain the water quality criterion for DO as a result of the proposed discharge. The values for DO_f, S_a, and DO_{sat} are the same as those provided in Table 6. BOD_a was estimated to be zero as a conservative assumption. As a conservative approach for BOD_e, EPA's ATSD recommends utilizing the maximum monthly average effluent BOD concentration from the previous 12 months of data. As a result, based on BOD data, EPA determined the maximum monthly average effluent BOD was 92 mg/l (January 2008). For the proposed discharge, EPA determined that the result of the calculation was not greater than the DO_{target}, and therefore, further analysis is required to determine if the proposed discharge will attain the water quality criterion for DO in the farfield.

In accordance with EPA's ATSD, EPA estimated DO depression in the farfield due to the consumption of BOD in the receiving water using a simplified farfield depletion model for open coastal waters. In this case, the closest major discharger is the Tanguisson Power Plant, which is 1.35 km (0.85 mi) south of the Northern District STP's outfall. EPA has assumed that oxygen depletion in the vicinity of the proposed discharge occurs in the first phase of the BOD reaction due to CBOD and that the effect of NBOD on farfield DO is negligible. Therefore, the terms related to NBOD in Equation B-16 of EPA's ATSD are not included in determining final DO concentrations:

$$DO(t) = DO_a + \frac{DO_f - DO_a}{D_s} - \frac{L_{fc}}{D_s} [1 - \exp(-k_c t)]$$

where,

DO(t) = DO concentration in submerged wastefield as a function of travel time, t, in mg/l;

DO_a = affected ambient DO concentration immediately up current of the diffuser, in mg/l;

- DO_f = DO concentration at the completion of initial dilution, in mg/l;
- k_c = carbonaceous BOD (CBOD) decay rate coefficient, in day^{-1} ;
- L_{fc} = ultimate CBOD concentration above ambient at completion of initial dilution, in mg/l; and
- D_s = dilution attained subsequent to initial dilution as a function of travel time.

Table 8. Values for the parameters that EPA used to predict DO concentrations, $DO(t)$, in the farfield as a function of time.

Parameter	Proposed Discharge
DO_a , mg/l	5.75
DO_f , mg/l	5.71
k_c , day^{-1}	0.362
L_{fc} , mg/l	0.67
D_s	See Table 9

Table 8 provides the values used by EPA to predict $DO(t)$ concentrations in the receiving water immediately following critical initial dilution as a function of time. For DO_a and DO_f , EPA used the values calculated previously when estimating DO depression upon initial dilution (using ATSD Equation B-5; see section “*DO depression upon initial dilution*”). EPA calculated k_c according to Equation B-13 in EPA’s ATSD:

$$k_c = 0.23 \times 1.047^{(T-20^{\circ}C)}$$

where:

- k_c = CBOD decay rate coefficient, in day^{-1} ; and
- T = ambient receiving water temperature, in $^{\circ}C$.

Using a temperature of $29.9^{\circ}C$ for the proposed discharge, EPA calculated a k_c of 0.362 day^{-1} . For ultimate CBOD concentration, L_{fc} , EPA estimated the final BOD concentration using Equation B-10 from EPA's ATSD:

$$L_{fc} = 1.46 \times \frac{BOD_a + (BOD_e - BOD_a)}{S_a}$$

where,

L_{fc} = ultimate CBOD concentration above ambient at completion of initial dilution, in mg/l;

BOD_a = affected ambient BOD concentration immediately updrift of the diffuser, averaged from the differ port depth to the trapping depth, in mg/l;

BOD_e = effluent BOD_5 concentration, in mg/l; and

S_a = critical initial dilution.

Using the values for BOD_a , BOD_e , and S_a listed in Table 8, EPA calculated a L_{fc} value of 0.67 mg/l for the proposed discharge.

Since the proposed discharge is to open coastal waters, EPA calculated D_s as a function of time using the following equation in accordance with EPA's ATSD:

$$D_s = \frac{1}{\left[\operatorname{erf} \left(\frac{1.5}{\left[1 + \frac{12\varepsilon_o t}{b^2} \right]^2} - 1 \right) \right]^{1/2}}$$

where:

D_s = dilution attained subsequent to initial dilution as a function of travel time;

b = initial width of the sewage wastefield, in ft;

ε_o = diffusion coefficient when the width of the sewage wastefield at any distance from the ZID is equal to the initial width of the wastefield, in ft²/sec;

t = travel time, in seconds; and

erf = the error function.

As specified in EPA's ATSD, EPA applied a value for b based on the longest dimension of the ZID. For the proposed discharge, b is 680 ft. For the diffusion coefficient (ε_o), EPA estimated a value of 5.98 ft²/sec for the proposed discharge.

Using these values, EPA calculated D_s at intervals up to 96 hours immediately following critical initial dilution as shown in Table 9. EPA applied the values listed in Tables 8 and 9 to Equation B-16 of EPA's ATSD and calculated a minimum farfield DO concentration of 5.74 mg/l for the proposed discharge. Because the minimum farfield DO concentration of 5.74 mg/l is greater

than the DO_{target} of 5.1 mg/l, the proposed discharge is predicted to meet the water quality criterion for DO beyond the ZID.

Table 9. Predicted farfield dilution, D_s , for the proposed discharge as a function of travel time.

Time, hrs	Farfield Dilution, D_s
0	1.02
1	1.27
2	1.66
4	2.49
8	4.21
12	5.92
16	7.64
24	11.07
32	14.51
48	21.38
60	26.53
72	31.69
84	36.84
96	41.99

DO depression due to sediment oxygen demand. In addition to causing DO depression in the water column, the deposition of suspended particles from the wastewater discharge can also impact ambient concentrations of DO near the seafloor. In the application, GWA did not provide an analysis of the impact of the proposed discharge on DO concentrations in the receiving water due to sediment oxygen demand. Therefore, in accordance with EPA's ATSD, EPA used Equation B-24 from EPA's ATSD to calculate oxygen depletion due to sediment oxygen demand:

$$\Delta DO = \frac{\bar{a}\bar{S}k_aX_m}{UHD}$$

where:

ΔDO = oxygen depletion, in mg/l;

a = oxygen stoichiometric ratio, 1.07 mg O_2 /mg sediment;

\bar{S} = average concentration of deposited organic sediments over the deposition area, in g/m^2 ;

k_a = sediment decay rate, 0.01/day;

X_m = length of deposition area in longshore direction, in m;

H = average depth of water column influenced by sediment oxygen demand, measured above bottom, in m;

U = minimum sustained current over deposition area, in m/sec; and

D = dilution caused by horizontal entrainment of ambient water as it passes over the deposition area (always ≥ 1).

To calculate ΔDO , EPA used values for average deposited organic sediments, \bar{S} , and the length of the deposition area, X_m , determined from the analysis done for suspended solids deposition in the next section of the document. \bar{S} is estimated by averaging the maximum (closest to the ZID) and minimum (farthest from the ZID) steady-state sediment accumulation values. For the proposed discharge, EPA calculated a \bar{S} averaged steady-state sediment accumulation value of 4.55 g/m^2 . The X_m value for the deposition zones for the proposed discharge is 427 km. Using the procedures in the EPA's ATSD, H is dependent on the X_m value and was calculated as 3.0 km for the proposed discharge. U describes the minimal natural current velocity over the deposition area. The applicant applied EPA's ATSD prescribed default velocities for on-/off-shore (3 cm/s) and up-/down-coast (5 cm/s) vectors. Since the proposed discharge is in open coastal waters that are off-shore, EPA selected 3 cm/s as its minimum velocity. In addition, given the initial field width and plume travel time, D is estimated as 1.0 for the proposed discharge.

In accordance with EPA's ATSD, EPA calculated a ΔDO of 0.004 mg/l for the proposed discharge. For the proposed discharge, EPA subtracted the steady sediment oxygen demand from the outfall's projected DO_f concentration of 5.71 mg/l and determined a DO concentration of 5.66 mg/l, which is above the DO_{target} of 5.1 mg/l.

DO depression due to sediment resuspension. As suspended solids from the discharge are initially deposited on the seafloor, sediments can be resuspended due to disturbances in the water column or on the seafloor that can cause additional DO depression in the receiving water. Given the complexity of accurately predicting oxygen demand due to resuspension, EPA applied a worst-case situation to simplify the analysis. Equation B-29 in EPA's ATSD specifies the following:

$$\Delta DO = \frac{\bar{S}_r}{DH} \left[1 - \exp\left(\frac{-krt}{24}\right) \right]$$

where:

ΔDO = oxygen depletion, in mg/l;

—

- S_r = average concentration of resuspended organic sediment (based on 90-day accumulation), in g/m^2 ;
- D = dilution caused by horizontal entrainment of ambient water as it passes over the deposition area (as previously defined), set to equal 1;
- H = depth of water column containing resuspended materials, in m;
- k_r = decay rate of suspended solids, 0.1/day; and
- t = elapsed time following resuspension, in hrs.

For the purpose of the section 301(h) evaluation, EPA has applied a conservative assessment for determining DO depression due to sediment resuspension that is outside the ZID and assumes continued resuspension beyond the ZID. EPA derived \bar{S}_r for the proposed discharge by averaging the respective maximum and minimum 90-day organic accumulations. A description of the methods and values used for accumulation is found in the following section discussing sediment deposition. Since depth of the water column containing resuspended sediment is a function of time, values were determined at intervals ranging from 3 to 24 hours to determine maximum depletion as described in EPA's ATSD. As a result, EPA calculated a ΔDO of 0.03 mg/l for the proposed discharge based on oxygen depletion due to abrupt resuspension of suspended solids. EPA then calculated the DO concentration that would result from depletion due to the wastefield combined with abrupt sediment resuspension. For the proposed discharge through the new outfall, subtracting DO depression due to abrupt resuspension of bottom sediments from projected DO_f concentration of 5.71 mg/l results in a DO concentration of 5.68 mg/l, which is above the DO_{target} concentration of 5.1 mg/l.

c. Conclusion on Attainment of Water Quality Standards for DO

In accordance with 40 CFR 125.61 and 125.62, the applicant must demonstrate that the proposed discharge will comply with water quality criteria for DO, and that the outfall and diffuser are located and designed to provide adequate dilution such that the discharge does not exceed these criteria at and beyond the ZID. Based on review of available information, EPA has determined the proposed discharge is likely to meet the DO criteria based on the following: the proposed discharge involves a new outfall and diffuser that are predicted to achieve greater dilution; GWA has not proposed an increase in the effluent concentration of BOD or a change in the level of treatment that would increase the discharge of oxygen-demand substances; and predictive modeling has demonstrated that the DO criteria would be met during critical conditions. Therefore, EPA has concluded that the proposed discharge will likely attain the applicable water quality criteria for DO at and beyond the ZID, assuming that a new diffuser is installed on the new outfall as proposed.

2. Suspended Solids and Turbidity

EPA used effluent data from March 2007 to March 2008 in the analysis of suspended solids and turbidity, as this was the most recent data available when the analysis was done for the TDD. More recent data is now available, but as EPA's conclusion is that the proposed discharge would meet the criterion for suspended solids and turbidity, additional analysis using more recent data is not necessary.

a. Suspended Solids following Initial Dilution

Section 5103(C)(6) of GWQS has established water quality criteria for total suspended solids (TSS) for Category M-2 marine waters that provide that concentrations of suspended solids at any point shall not be increased more than 10% from ambient conditions at any time, and the total concentration should not exceed 20 mg/l, except when due to natural conditions. Since there are no receiving water monitoring data for TSS, EPA is unable to determine ambient conditions of suspended solids and, therefore, directly assess the impact of the proposed discharge on concentrations of suspended solids at the ZID. However, because GWA has not proposed a change in the level of treatment for suspended solids for the proposed discharge, EPA is able to use suspended solids concentrations in the effluent based on DMR data for TSS to predict concentrations of suspended solids upon initial dilution for the proposed discharge. Although there are no ambient data available to assess compliance with the water quality criterion for a maximum 10% increase above ambient levels of suspended solids, EPA has assessed whether the concentration of TSS predicted at the ZID would exceed the water quality criterion of 20 mg/l for suspended solids.

The maximum change in suspended solids concentration, ΔS , at the boundary of the ZID, can be calculated using the following Equation B-32 from EPA's ATSD:

$$\Delta S = \frac{SS_e}{S_a};$$

where:

SS_e = TSS concentration in the effluent, in mg/l; and

S_a = critical initial dilution.

As discussed in EPA's ATSD, suspended solids concentrations in the effluent are generally much greater than solids concentrations in the receiving water. Since there are no receiving water monitoring data for suspended solids and the discharge is to open coastal waters, suspended solids are considered to be negligible. Based on DMR data from 2005 to June 2009, EPA determined the minimum and maximum effluent flow rates and their corresponding TSS values for the Northern District STP. DMR data from this period were selected for having the lowest suspended solids concentrations in terms of both critical flow rates and critical water quality loading. EPA determined TSS concentrations of 49 and 188 mg/l based on the minimum and maximum flow rates of 5.43 and 10.54 MGD, respectively. In addition, EPA also

determined the minimum and maximum TSS concentrations of 33 and 276 mg/l, respectively, which are independent of flow. The critical initial dilution (S_a) of 200:1 for the proposed discharge was used to determine the potential solids contribution to the receiving water.

Table 10. Predicted increase in suspended solids concentrations in the receiving water based on TSS concentrations in the effluent.

Description	SS _e , mg/l	ΔS, mg/l
TSS at Max Flow	188	0.94
TSS at Min Flow	49	0.25
Max TSS	276	1.38
Min TSS	33	0.17

Table 10 provides a summary of changes in suspended solids concentrations in the receiving water after initial dilution. Based on effluent concentrations of TSS, EPA calculated increases of suspended solids concentrations at the ZID that ranged between 0.17 and 1.38 mg/l, with the maximum predicted increase based on the maximum effluent concentration of TSS (276 mg/l). Because ambient concentrations of suspended solids are considered to be low, the predicted increases are not likely to result in total concentrations of suspended solids in the receiving water that would exceed the water quality criterion of 20 mg/l for TSS. In addition, because the proposed discharge is predicted to achieve greater dilution and because GWA has not proposed an increase in the discharge of TSS concentrations for the proposed discharge, it is likely that the criteria for suspended solids will be met at the boundary of the ZID for the proposed discharge.

b. Suspended Solids Deposition

Many of the potential impacts of wastewater discharges are associated with the discharge of suspended solids. Suspended solids in the effluent can result in a significant loading of solids to the water column that subsequently deposit onto the seafloor. Suspended solids vary in size and other factors which cause them to settle at different rates. Some solids settle so slowly that they may stay suspended in the water column for long periods of time. According to EPA's ATSD, EPA assumes that 50 percent of suspended solids in wastewater discharges settle quickly enough to potentially accumulate in the vicinity of the outfall. The accumulation of suspended solids from wastewater discharges can lower DO concentrations in near-bottom waters which can adversely impact benthic communities. Section 5103(A)(1)(b) of GWQS provides that "all waters shall ... be free from substances, conditions, or combinations thereof attributable to domestic, commercial, and industrial discharges or agricultural, construction, and land use practices or other human activities ... that produce visible turbidity, settle to form deposits, or otherwise adversely affect aquatic life."

As specified in EPA's ATSD, the applicant is required to predict the sedimentation of suspended solids that results from the discharge of suspended solids into the receiving water. In the application, GWA provided information regarding suspended solids deposition for the previous outfall and did not provide information on the sedimentation of suspended solids for the

proposed discharge through the new outfall. Discharge through the new outfall only began in 2009 and there has been insufficient time for any sediment accumulation at the new outfall to become evident. However, because the application is based on a proposed discharge through a new outfall, GWA is required to assess the sedimentation of suspended solids for the proposed discharge. EPA's ATSD provides procedures for predicting whether substantial sedimentation of suspended solids will occur as a result of a discharge. Using these procedures, EPA assessed the accumulation of suspended solids in the vicinity of the proposed discharge based on predictive modeling to determine whether the proposed discharge would attain the water quality standard for suspended solids deposition.

The accumulation of suspended solids in the vicinity of a discharge is influenced by the amount of solids discharged (i.e., mass emission rate), the settling velocity distribution of the particles in the discharge, the plume height-of-rise, and current velocities. In accordance with EPA's ATSD, EPA calculated a mass emission rate of 2,584 kg/d on an annual basis. This estimate is based on an average suspended solids concentration from April 2007 through March 2008 of 56.9 mg/l and the applicant's requested permitted flow of 12 MGD. For settling velocity distribution, EPA applied settling velocities based on particle sizes typically observed in primary treated effluent (EPA 1994a). For the plume height-of-rise, EPA applied the plume height-of-rise of 42.7 m (140 ft) based on the initial dilution modeling previously described. For current velocities, EPA used the default values of 5 cm/s for up and down coast velocities and 3 cm/s for on and off shore velocities as recommended by EPA's ATSD. Settleable solids contain both inert and organic components. The reactive components, which EPA estimates are 80% of total settleable solids for wastewater receiving primary treatment, have the potential to affect biota.

Based on this information, EPA calculated the accumulation of solids for the critical 90-day period when seabed deposition is likely to be highest and for steady-state conditions where average annual values are used. In accordance with EPA's ATSD, EPA determined an annual total organic deposition rate of 40.04 g/m²/yr. Using this deposition rate, EPA calculated a critical 90-day organic accumulation value of 6.51 g/m² and a steady-state organic accumulation value of 10.97 g/m².

According to EPA's ATSD, biological effects are likely to be minimal when steady-state accumulation is estimated to be below 50 g/m². Furthermore, EPA believes that organic deposition rates estimated between 36.5 and 365 g/m²/yr are likely to result in enriched conditions and concentrations greater than 548 g/m²/yr may result in degraded conditions (Maughan and Oviatt 1993). Accordingly, EPA has predicted the accumulation of suspended solids to be below 50 g/m² and organic loading less than 548 g/m²/yr. Therefore the proposed discharge is not likely to cause significant sedimentation of suspended solids in the vicinity of the new outfall.

c. Turbidity

Pursuant to 40 CFR 125.62(a), the applicants must demonstrate that the proposed discharge will comply with water quality standards for suspended solids, including turbidity. Applicants must demonstrate that the outfall and diffuser are located and designed to provide adequate initial

dilution, dispersion, and transport of wastewater such that discharge does not exceed, at and beyond the ZID, these water quality standards. Section 5103 of GWQS provides that turbidity values at any time, as measured by nephelometric turbidity units (NTU), shall not exceed 1.0 NTU over ambient conditions except when due to natural conditions. GWQS for turbidity also provide that when debris, rapidly settling particles and true color give low readings when using nephelometric methods in making turbidity determination, Secchi disc determinations shall be used and be based on the standard that Secchi disc visibility shall not decrease by more than five meters from ambient conditions except when due to natural conditions.

In the application, GWA provided water quality data for turbidity based on receiving water monitoring for the previous outfall and did not provide information for the proposed discharge through the new outfall. Further, GWA did not provide water quality data based on Secchi disc depth. Because the application is for a proposed discharge that will consist of a new outfall that was only recently constructed and to which the planned new diffuser has not yet been attached, EPA evaluated attainment of the turbidity criterion based on receiving water monitoring data collected between December 1989 and July 1997 for the previous outfall to infer whether the turbidity criterion would be met at the ZID for the proposed discharge. Based on review of available data, EPA determined that all monitoring data met the turbidity criterion of 1 NTU for within-ZID station C, farfield station D, and reference station E for the previous outfall. Since the turbidity criterion was met within and beyond the ZID, it is likely that the turbidity criterion was met at the boundary of the ZID for the previous outfall. Because the proposed discharge is predicted to achieve higher dilution and GWA has not proposed an increase in the discharge of TSS concentrations, it is likely that the criterion for turbidity will also be met at the boundary of the ZID for the new outfall.

d. Conclusion for Suspended Solids and Turbidity

In accordance with 40 CFR 125.61 and 125.62, the applicant must demonstrate that the proposed discharge will comply with water quality criteria for suspended solids and turbidity, and that the outfall and diffuser are located and designed to provide adequate dilution such that the discharge does not exceed these criteria at and beyond the ZID. Based on the available information, EPA has determined that the proposed discharge through the new outfall is likely to meet the suspended solids and turbidity criterion based on the following: the total concentration of TSS in the receiving water would be below the 20 mg/l criterion for suspended solids; sediment is predicted to not significantly accumulate in the vicinity of the proposed discharge and would not result in adverse impacts to the biological community; and the turbidity criterion is predicted to be met at the ZID based on receiving water monitoring data. Therefore, EPA has concluded that the proposed discharge through the new outfall and diffuser likely will attain the applicable water quality standards related to suspended solids and turbidity at and beyond the ZID.

C. Attainment of Other Water Quality Standards and Impact of Discharge on Public Water Supplies; Shellfish, Fish and Wildlife; and Recreation

Section 301(h)(2) of the CWA contemplates that to qualify for a variance, a discharge must protect human health and the environment. Specifically, section 301(h)(2) requires that the

applicant's discharge must not interfere with the attainment and maintenance of water quality which assures protection of public water supplies; assures protection and propagation of a balanced, indigenous population (BIP) of shellfish, fish and wildlife; and allows recreational activities. In addition, section 301(h)(9) requires that the applicant must be discharging effluent which meets the criteria established under section 304(a)(1) of the CWA after initial dilution. This portion of the Final Decision Document addresses these requirements as specified in relevant EPA regulations at 40 CFR 125.62.

1. Attainment of Other Water Quality Standards

Pursuant to 40 CFR 125.62(a), the applicant's outfall and diffuser must be located and designed to provide adequate initial dilution, dispersion, and transport of wastewater such that the discharge does not exceed, at and beyond the ZID, all applicable water quality standards, nor exceed CWA section 304(a) criteria for toxic pollutants for which there are no applicable EPA-approved standards. In addition, 40 CFR 125.59(b)(1) prohibits issuance of a modified permit that would not assure compliance with all applicable NPDES requirements of 40 CFR Part 122; under these requirements a permit must ensure compliance with all water quality standards. 40 CFR 122.4(d) and 122.44(d). Attainment of water quality criteria for DO, total (unfilterable) suspended solids, and turbidity was previously discussed. However, in accordance with 40 CFR 125.62(a), the applicant must also demonstrate that the proposed discharge will attain other water quality standards, including those for bacteria, toxic pollutants, pH, nutrients, temperature, salinity, and toxicity. GWQS also have water quality criteria for ammonia. However, EPA was unable to assess attainment of these criteria because ammonia data were unavailable for review since the applicant was not required to collect such data pursuant to permit requirements.

GWA's application is based on an improved discharge involving a new outfall discharging farther offshore and in deeper water. The new outfall went into operation only in January 2009 so no data regarding the discharge through the new outfall was available at the time EPA did its analysis as described in the TDD (only baseline monitoring data were available at that time) and little data is available at this time. Moreover, GWA has not installed a new diffuser on the new outfall as planned. Therefore, EPA has assessed compliance with section 301(h) requirements for the proposed discharge using information on the discharge through the previous outfall, where appropriate and necessary. Specifically, where attainment of water quality standards is based on receiving water monitoring (i.e., nutrients, temperature, salinity, and pH), EPA has used receiving water monitoring data from the previous discharge to evaluate the impact of the proposed discharge on water quality. By contrast, where attainment of water quality standards is based on the analysis of effluent data, EPA has applied a critical initial dilution of 200:1 for the proposed discharge through the new outfall (assuming that the planned diffuser would be installed) to assess attainment of these water quality criteria (i.e., bacteria, toxic pollutants, and whole effluent toxicity) at the ZID.

a. Bacteria

In general, undisinfected wastewater from sewage treatment plants contains high levels of pathogenic organisms that can adversely affect water quality and the uses it supports.

Enterococcus concentrations are important bacterial indicators in assessing the impact of pathogens on recreational uses. Section 5102(B)(2) of GWQS establishes water quality criteria for enterococcus to protect whole body contact recreation for Category M-2 marine waters. Section 5103(C)(1) of GWQS provides that the number of enterococcus bacteria shall not exceed 35 enterococci per 100 ml based on a geometric mean of five (5) sequential samples over a period of thirty (30) days nor have an single sample exceeding 104 enterococci per 100 ml.

In the application, GWA did not provide information on concentrations of enterococci in the effluent or receiving water. As a result, EPA cannot determine directly whether attainment of the enterococcus criteria is met at and beyond the ZID in accordance with 40 CFR 125.62(a). However, in GWA's Basis of Design report, GWA indicated that a dilution of up to 8,000:1 would be necessary to meet water quality criteria for enterococcus at the boundary of the ZID for the proposed discharge (GMP Associates, Inc. 2001). However, because the applicant has designed the new outfall for the Northern District STP to attain an initial dilution of 200:1, it is unlikely that the proposed discharge through the new outfall would meet GWQS for enterococcus. GWA's Basis of Design report estimates that effluent from the Northern District STP would contain approximately 830,000 enterococci per 100 ml after primary treatment, which is consistent with reports of levels of enterococci from other wastewater treatments. For instance, Miescier and Cabelli (1982) found that primary treatment decreased enterococci densities only by about 25%, and therefore, primary treatment alone does not reduce bacteria levels to the extent that would be required to meet GWQS for enterococci. As previously mentioned, GWA does not disinfect effluent from the Northern District STP, nor has it proposed to disinfect the effluent as part of its section 301(h) application; thus, concentrations of enterococcus concentrations in the effluent are expected to be high.

Due to the lack of effluent or receiving water data to evaluate the attainment of the water quality criteria for enterococcus, EPA cannot be reasonably assured that the proposed discharge would meet the water quality criteria for bacteria in the receiving water. Therefore, EPA has concluded that the applicant has not demonstrated that the proposed discharge through the new outfall would meet water quality criteria for enterococcus at and beyond the ZID.

b. Toxic Pollutants

Pursuant to 40 CFR 125.62(a), the applicant must demonstrate that, at and beyond the ZID, the discharge does not exceed applicable water quality standards or CWA section 304(a) water quality criteria for toxic pollutants for which there are no EPA-approved water quality standards. In addition, in accordance with 40 CFR 125.66, which implements section 301(h)(7) of the CWA, the applicant is required to conduct a chemical analysis of its effluent under both wet and dry weather conditions for toxic pollutants defined in 40 CFR 125.58(p) and (aa) (i.e., toxic pollutant analysis). Section 5103(C)(11)(B) of GWQS provides numeric criteria for toxic pollutants for Category M-2 marine waters based on the saltwater criterion maximum concentration (CMC), saltwater criterion continual concentration (CCC), and human health criterion for consumption of organisms only.

In the application, GWA provided results of a March 1998 toxic pollutant analysis of effluent from the Northern District STP but did not specify if the analysis was based on a wet or dry weather sample. No toxic pollutant data dated after March 1998 were made available to EPA for review, even though EPA instructed GWA to conduct annual toxic pollutant analyses to support its section 301(h) application to better understand potential toxic pollutants in the discharge (Strauss 1997). Based on review of data from the March 1998 toxic pollutant analysis, EPA determined that five toxic pollutants were detected in the effluent: copper, lead, zinc, toluene, and p-dichlorobenzene (1,4-DCB). Table 11 below provides a comparison of the water quality criterion, effluent concentration, and predicted concentrations of the toxic pollutant at the edge of the ZID based on critical initial dilution. Except for lead, concentrations of all four of the detected toxic pollutants were estimated to be below water quality criteria at the ZID with consideration of critical initial dilution. Based on a lead concentration of 2,900 µg/l detected in the effluent, receiving water concentrations of lead were predicted to exceed the saltwater CCC criteria of 8.1 µg/l at the ZID. In the application, the applicant indicated that the March 1998 toxic pollutant analysis was a misrepresentation of its effluent quality and it presented a survey of lead concentrations in other wastewater treatment plants. However, GWA did not provide information to EPA that would indicate that the results of the March 1998 toxic pollutant analysis were not valid nor did it submit to EPA any additional toxic pollutant analyses that it determined would be more representative of effluent quality of the Northern District STP.

While GWA conducted a single toxic pollutant analysis, EPA required GWA, as a large applicant, to submit annual toxic pollutant analyses to better understand toxic pollutant concentrations in the effluent and to identify potential sources, if applicable. Because GWA has not provided additional toxic pollutant analyses, as specified by EPA, EPA cannot be reasonably assured that the proposed discharge will attain water quality criteria for toxic pollutants at and beyond the ZID for the proposed discharge. Based on the results of the single toxic pollutant analysis, EPA has predicted that the proposed discharge will exceed the applicable water quality criterion for lead. Therefore, EPA has concluded that the applicant has failed to demonstrate that the proposed discharge through the new outfall would comply with water quality standards for toxic pollutants at and beyond the ZID.

Table 11. Comparison of water quality criteria, effluent concentrations of detected toxic pollutants, and the predicted concentrations of toxic pollutants at the ZID for the proposed discharge. Shaded cell indicates exceedance of the water quality criterion.

Toxic Pollutant	Water Quality Criterion			Effluent Conc. (µg/l)	Predicted Conc. at ZID (µg/l)
	CMC (µg/l)	CCC (µg/l)	Human Health Criterion For Consumption of Organism Only (µg/l)		
Copper, Total	4.8	3.1	-	0.053	0.0003
Lead, Total	210	8.1	-	2,900	14.50
Zinc, Total	95	86	69,000	0.21	0.0002
Toluene	-	-	200,000	1.9	0.0095
p-Dichlorobenzene (1,4-DCB)	-	-	2,600	1.1	0.0055

c. pH

Pursuant to 40 CFR 125.62(a), the applicant must demonstrate that the proposed discharge, at and beyond the ZID, will comply with water quality criteria for pH. Section 5103 of GWQS provides water quality criteria for pH for Category M-2 marine waters which state that the pH shall remain within the range of 6.5 and 8.5 standard units and, for open ocean waters where the depth is substantially greater than the euphotic zone, the pH should not be changed more than 0.2 units from the naturally occurring variation, or in any case outside the range of 6.5 to 8.5. GWA has not requested a variance for pH. Because the proposed discharge will discharge at a depth of less than 200 m, which lies within the euphotic zone, EPA has evaluated the attainment of the water quality criterion for pH based on the pH range of 6.5 and 8.5.

In the application, GWA submitted receiving water monitoring data for pH from March 1989 to July 1997. Additional receiving water monitoring data for pH was provided in quarterly DMRs for the first, second and third quarters of 2009. Based on review of monitoring data, EPA observed pH levels above the maximum pH criterion of 8.5 standard units at monitoring stations within and beyond the ZID. Exceedances of the pH criterion were observed at within-ZID station C in May and August 1991, August 1992, January 1993, September 1993, October 1993, and June 1994. Exceedances were also observed at the farfield station D in April 1991, May 1991, August 1991, August 1992, January 1993, September 1993, October 1993, and June 1994. Reference station E did not meet the pH criterion in May 1991, August 1991, August 1992, January 1993, September 1993, and October 1993. EPA notes that the majority of exceedances of pH criterion observed were at station D, which is the monitoring station closest to the edge of the ZID and in the previous outfall's wastefield.

In addition to review of receiving water monitoring data for pH, EPA also reviewed DMR data to determine whether the proposed discharge would attain the water quality criterion for pH since GWA has not proposed a change in treatment level that would affect effluent pH levels. Review of DMR data from August 2005 to June 2009 show that levels of pH in the effluent were within

the pH range of 6.5 and 8.5. The minimum pH value reported was 6.75 and the maximum pH value was 8.42. Therefore, despite observed current outfall pH exceedances, EPA predicts that the proposed outfall will achieve greater dilution through the new outfall and will likely attain the water quality criterion for pH at and beyond the ZID. In addition, because effluent concentrations of pH meet the water quality criterion for pH, EPA has concluded that the proposed discharge would likely attain the pH criteria at and beyond the ZID.

d. Nutrients

Nutrients such as phosphorus and nitrogen play a critical role in the health and productivity of the marine environment. However, domestic wastewater can contain high levels of phosphorus and nitrogen, and significant loadings of these nutrients into the environment can result in excessive algal growth and eutrophication that can adversely impact marine biota and habitats. To protect the beneficial uses of Category M-2 marine waters, section 5103(C)(3) of GWQS provides numeric criteria for nutrients which state that concentrations of nitrate-nitrogen ($\text{NO}_3\text{-N}$) and orthophosphate ($\text{PO}_4\text{-P}$) shall not exceed 0.20 mg/l and 0.05 mg/l, respectively.

In the application, GWA provided receiving water monitoring data from March 1989 to December 1989 for “ NO_x ” and FRP (free-reactive phosphate). No data dating after December 1989 were made available to EPA for review. GWA did not specify the value of ‘x’ in “ NO_x ,” which identifies the form of nitrogen analyzed. Therefore, EPA assumed that ‘ NO_x ’ represents concentrations of nitrate, or NO_3 , for its initial evaluation under section 301(h). Since GWQS are in the nitrogen form of $\text{NO}_3\text{-N}$, EPA converted assumed NO_3 concentrations to $\text{NO}_3\text{-N}$ to assess attainment of the water quality criteria for $\text{NO}_3\text{-N}$. As a result, EPA calculated maximum concentrations of $\text{NO}_3\text{-N}$ of 0.01 mg/l, 0.02 mg/l, and 0.008 mg/l for within-ZID station C, farfield station D, and reference station E, respectively. To assess attainment of the water quality criterion for $\text{PO}_4\text{-P}$, EPA converted FRP concentrations to $\text{PO}_4\text{-P}$ that resulted in the maximum $\text{PO}_4\text{-P}$ concentrations of 0.88 mg/l, 0.003 mg/l, and 0.003 mg/l for within-ZID station C, farfield station D, and reference station E, respectively. Based on available data, the maximum calculated receiving water concentrations of $\text{NO}_3\text{-N}$ and $\text{PO}_4\text{-P}$ were below the applicable water quality criteria at stations C ($\text{NO}_3\text{-N}$ only), D and E. At within-ZID station C, two (June and September 1989) of twelve samples showed an exceedance of the water quality criterion of 0.05 mg/l for $\text{PO}_4\text{-P}$. These samples were collected at bottom depths and the results were 0.52 mg/l and 0.88 mg/l $\text{PO}_4\text{-P}$.

Although GWA has provided some receiving water monitoring data for nutrients, EPA is unable to adequately evaluate whether the proposed discharge will attain water quality criteria for nutrients at and beyond the ZID. Generally, the review of receiving water monitoring data for the previous outfall could be useful in predicting the potential receiving water impacts for the proposed discharge; however, the available receiving water data provided by the applicant were limited and do not provide for a direct comparison with the attainment of applicable water quality criteria as required by 40 CFR 125.62(a)(1). Furthermore, since 1997, EPA has expressed to GWA on several occasions that it should collect and provide EPA with more recent monitoring information, such as water quality data for nutrients, for evaluation of compliance with section 301(h) requirements. However, GWA has consistently failed to provide this

information, which is necessary for adequately assessing whether the proposed discharge will meet water quality criteria for nutrients. Therefore, EPA has concluded that the applicant has failed to demonstrate that the proposed discharge would attain water quality criteria for nutrients at and beyond the ZID.

e. Temperature

Section 5103(C)(9) of GWQS provides that the receiving water temperature shall not be changed more than 1.0 °C (1.8 °F) from ambient conditions. Because the temperature criterion is expressed as a difference from ambient conditions, and since the proposed discharge is for a new outfall that has not yet been completed, EPA predicted the attainment of the water quality criterion for temperature for the proposed discharge based on a comparison of receiving water monitoring from the reference station of the previous outfall to the stations in the vicinity of the proposed discharge.

In the application, GWA provided receiving water monitoring data for temperature from March 1989 to July 1997. Temperature data were collected at within-ZID station C, farfield station D, and reference station E. Additional receiving water monitoring data for temperature was provided in quarterly DMRs for the first, second and third quarters of 2009 which further supported EPA's tentative conclusions based on earlier data. EPA compared receiving water monitoring data for the previous outfall from reference station E with data from within-ZID station C and farfield station D for each monitoring event and sampling depth. For example, temperature data for October 1993 showed that the temperature at the middle depth for reference station E was 28°C, whereas the temperatures for within-ZID station C and farfield station D were 27.5°C and 28.2°C, respectively. Based on review of available temperature data, EPA determined that temperature differences between ZID station C and reference station E did not exceed 1°C. However, temperature differences between farfield station D and reference station E showed an exceedance of 1°C. These were observed on December 1989 at the surface (-1.3°C) and on May 1997 at surface, middle, and bottom depths (-2°C). Because there are no receiving water monitoring data directly from the boundary of the ZID, and the temperature criteria was met at within-ZID station C but not at farfield station D, it is unclear whether the criteria for temperature would be met at the ZID for the previous outfall.

However, because the proposed discharge is predicted to achieve greater dilution through a new outfall, and because the receiving water monitoring data show a low frequency of exceedances and that the temperature criterion is met at within-ZID station C, EPA has concluded that the proposed discharge through the new outfall will likely attain the criterion for temperature at and beyond the ZID.

f. Salinity

Section 5103(5) of GWQS provides that "no alterations of marine environments shall occur that would alter the salinity of marine and estuarine waters and wetlands of Guam more than an increase of 10% of the ambient conditions, except when due to natural conditions." This standard is applicable to all marine water categories. Because the salinity criterion is expressed

as a change in ambient conditions, and since the proposed discharge is for a new outfall that has not yet been completed, EPA predicted the attainment of the water quality criterion for salinity for the proposed discharge based on a comparison of receiving water monitoring from the reference station of the previous outfall to the stations in the vicinity of the proposed discharge.

In the application, GWA provided receiving water monitoring data for salinity from March 1989 to July 1997. Salinity data were collected at within-ZID station C, farfield station D, and reference station E. Additional receiving water monitoring data for salinity was provided in quarterly DMRs for the first, second and third quarters of 2009 which further supported EPA's tentative conclusions based on earlier data.

EPA compared receiving water monitoring data from reference station E data from data collected at within-ZID station C and farfield station D for the same monitoring event and depth. For example, salinity data for October 1993 showed that the salinity at the middle depth for reference station E was 29.1 parts per thousands (ppt), whereas the salinity values for within-ZID station C and farfield station D at middle depth were 29.1 and 29 ppt, respectively. Of the 55 calculated salinity differences between reference station E and at within-ZID station C, EPA determined that only two differences exceeded the salinity criterion of 10%. These occurred at middle and bottom depths on August 1991 and were calculated as a salinity difference of 11.4%. Of the 57 calculated salinity differences between reference station E and farfield station D, there were three instances where exceedances of the 10% criterion were observed. On July 1990 the difference at middle and bottom depths was 11.4% and on January 1997 the difference at shallow depth was 17.9%. Due to salinity differences that were greater than 10% at reference station E and both within-ZID station C and farfield station D, it is possible that salinity at the boundary of the ZID also did not meet the 10% criterion.

Based on review of the receiving water monitoring data for salinity for the previous outfall, changes in salinity have been observed within and beyond the ZID for the previous outfall. Since these changes did not meet the salinity criterion within and beyond the ZID, it is possible that the salinity criterion was also not met at the boundary of the ZID of the previous outfall. However, because the proposed discharge is predicted to achieve greater dilution through a new outfall, and because the proposed discharge, which is primarily freshwater, will have low salinity, EPA has concluded that the proposed discharge through the new outfall will likely attain the water quality criterion for salinity at and beyond the ZID.

g. Toxicity (Whole Effluent Toxicity)

In 1989, EPA defined whole effluent toxicity (WET) as "the aggregate toxic effect of an effluent measured directly by a toxicity test" (54 FR 23868, June 2, 1989). Aquatic toxicity tests are laboratory tests that measure the biological effect (e.g., an acute effect such as mortality and chronic effects such as impairment of growth and reproduction) of effluents or receiving waters on aquatic organisms. In aquatic toxicity tests, organisms of a particular species are held in test chambers and exposed to different concentrations of an aqueous sample (e.g., effluent, dilution

water containing different concentrations of effluent or a particular pollutant, or receiving water). Observations are then made and recorded at predetermined exposure periods and at the end of the test. The measured responses of the test organisms are used to evaluate the effects of the aqueous test sample.

In the NPDES program, WET test results are used to evaluate both the toxicity of wastewater discharges and compliance with water quality standards that prohibit the discharge of toxic pollutants in toxic amounts, or otherwise provide for the maintenance and propagation of a balanced population of aquatic life. NPDES regulations at 40 CFR 122.44(d)(1) have established procedures for determining when water quality-based effluent limits for WET are required in permits and specify that the level of water quality achieved by such limits must be derived from and comply with water quality standards. Section 5103(C)(11)(A) of GWQS provides narrative water quality criteria for toxicity that all waters shall be maintained free of toxic substances in concentrations that produce detrimental responses in human, plant, animal, aquatic life, or consumable harvestable aquatic life. This is often referred to as “no toxics in toxic amounts” (Denton et al. 2007). GWQS do not provide a numeric standard for toxicity.

In the application, GWA did not provide any WET results to assess effluent toxicity. In 1997, EPA instructed GWA to conduct annual WET tests using a marine indicator species and specified that these results be submitted as part of its section 301(h) application for renewal of its variance (Strauss 1997). EPA also recommended that GWA refer to the EPA WET guidance document, *Short-Term Method for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms*, EPA/600/R-95/136 or its most recent edition, for information on conducting these tests. Between 1997 and 2007, however, GWA did not provide EPA with any WET data to assess whether the proposed discharge would attain water quality standards for toxicity. In response to EPA’s expressed concern for the lack of WET data, GWA finally submitted results of a single WET test from October 2007 to EPA in July 2008. The test was conducted using *Ceriodaphnia dubia*, a freshwater indicator organism. Results of the test showed no observable toxic effects at 100% effluent. But because the Northern District STP discharges into a marine environment and EPA previously provided guidance to GWA on the appropriate WET test methods it should be using, GWA should conduct WET testing on a marine organism since marine test organisms would be more representative of the type of species found in the vicinity of the proposed discharge.

Because GWA has submitted data for only one WET test, which is based on a freshwater organism, EPA cannot be reasonably assured that toxic impact will not occur as a result of the proposed discharge and issuance of a modified permit. EPA has repeatedly requested additional WET testing to assess the proposed discharge, but due to the lack of sufficient data EPA is unable to adequately assess whether the proposed modified discharge will meet the water quality standards for toxicity. Consequently, EPA has concluded that the applicant has not demonstrated that the proposed discharge would attain water quality standards for toxicity at and beyond the ZID.

2. Impact of Discharge on Public Water Supplies

Pursuant to 40 CFR 125.62(b), which implements section 301(h)(2) of the CWA, the applicant's proposed discharge must allow for the attainment or maintenance of water quality that assures the protection of public water supplies. The applicant's proposed discharge must also not interfere with the use of planned or existing public water supplies. Ocean waters within the vicinity of the proposed discharge are not considered as a source of public water supply at the present time. According to section 5102(B)(1) of GWQS, drinking water (human consumption) has not been established as a designated use for Category M-2 marine waters of Guam. Currently, drinking water supplies are derived from surface and groundwater sources. Therefore, EPA has concluded that the proposed discharge would not affect public water supplies.

3. Impact of Discharge on Shellfish, Fish and Wildlife

Pursuant to 40 CFR 125.62(c), the applicant's proposed discharge must allow for the attainment or maintenance of water quality which assures protection and propagation of a balanced indigenous population (BIP) of shellfish, fish, and wildlife. A BIP must exist immediately beyond the ZID of the applicant's discharge and in all other areas beyond the ZID where marine life is actually or potentially affected by the applicant's proposed discharge.⁶ In addition, conditions within the ZID must not contribute to extreme adverse biological impacts, including but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenters, or the stimulation of phytoplankton blooms which have adverse effects beyond the ZID. 40 CFR 126.62(c)(3).

Discharges from wastewater treatment plants can contain a variety of pollutants that can cause adverse impacts to the marine environment. In Part C.1 of this section, EPA evaluated individual pollutants and assessed whether the proposed discharge would affect the attainment of water quality standards for those pollutants. In this part, to assess the impact of the proposed discharge on shellfish, fish, and wildlife, EPA has used a weight-of-evidence approach based on evaluation of chemical-specific data, WET data, and biological data. This is consistent with the approach described in EPA's Technical Support Document for Water Quality-based Toxics Control (EPA 1994c):

It is EPA's position that the concept of "independent application" be applied to water quality-based situations. Since each method (chemical specific, whole effluent, and bioassessment) has unique as well as overlapping attributes, sensitivities, and program applications, no single approach for detecting impact should be considered uniformly superior to any other approach. For example, the inability to detect receiving water impacts using a biosurvey alone is insufficient evidence to waive or relax a permit limit established using either of the other methods.

EPA has assessed the available information to determine whether a BIP would exist in the vicinity of the proposed discharge. GWA's application is based on an improved discharge

⁶ As defined in 40 CFR 125.58(f), a balanced indigenous population is an ecological community which "exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions, or may reasonably be expected to become re-established in the polluted water body segment from adjacent waters if sources of pollution were removed."

involving a new outfall discharging farther offshore and in deeper water. As described in EPA's ATSD, applicants for improved discharges are required to predict the physical, chemical, and biological conditions that would occur in the receiving water following implementation of the proposed improvements or alterations. However, in this case, the new outfall went into operation only in January 2009, so no data on the discharge through the new outfall were available at the time EPA did its analysis as described in the TDD (only baseline monitoring data were available at that time) and little data is available at this time. Moreover, GWA has not attached a diffuser to the new outfall as proposed. As described below, GWA has not complied with the requirement to predict the physical, chemical, and biological conditions in the receiving water of the new location. Therefore, EPA has assessed compliance with 40 CFR 125.62(c) for the proposed discharge using information on discharge through the previous outfall, where appropriate and necessary.

a. Review of Chemical-specific Data

Domestic wastewater discharges can contain significant amounts of organic material and other pollutants that can cause potential adverse biological impacts in the receiving water. Monitoring of water quality can provide valuable information when assessing the impact of discharges on marine life. As previously discussed, EPA has concluded that the proposed discharge will comply with water quality criteria for DO, suspended solids, and turbidity. However, EPA has concluded that the applicant has failed to provide adequate water quality monitoring data to determine whether toxic pollutants, and other chemical-specific pollutants, such as orthophosphate and nitrate-nitrogen, can consistently comply with GWQS. Therefore, because sufficient water quality data do not exist to evaluate potential biological impacts, even though EPA has repeatedly requested such information from GWA for the section 301(h) evaluation, EPA cannot be reasonably be assured that the proposed discharge will not cause adverse biological impacts due to the discharge of chemical-specific pollutants into the marine environment.

b. Review of WET Data

Section 101(a)(3) of the CWA states that it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited. 33 U.S.C. section 1251(a)(3). To evaluate toxicity, EPA established WET as a pollutant parameter defined as "the aggregate toxic effect of an effluent measured directly by a toxicity test" (54 FR 23895, June 2, 1989). The primary advantage to using WET over individual, chemical-specific measurements is that WET integrates the effects of all chemical(s) in an aqueous sample (EPA 2007). Generally, WET tests are designed to detect toxicity in whole effluents as well as predict receiving water impacts. The objective of a toxicity test is to estimate the highest "safe" or "no-effect concentration" (NOEC) of wastewaters (Denton et al. 2007). Although relating effluent toxicity to receiving water impacts can be difficult, there is evidence that suggests a strong correlation between the discharge of toxic effluents and adverse impacts to receiving waters (Grothe et al. 1996; Denton et al. 2007).

As previously discussed, EPA has concluded that the applicant has failed to demonstrate that the proposed discharge would comply with water quality standards for toxicity due to the lack of representative WET data. As a result, EPA is unable to determine if the proposed discharge would not likely interfere with the attainment or maintenance of water quality to protect aquatic life. Based on the March 1998 toxic pollutant analysis, toxic pollutants such as copper, zinc, lead, p-dichlorobenzene, and toluene have been detected in the effluent. While these pollutants, except for lead, were predicted to be below water quality criteria at the ZID, there is a potential for these pollutants, alone or in combination, to adversely impact marine life once in the environment. As explained above, the December 2007 WET test was based on a fresh-water species. Therefore, because GWA has not demonstrated that the proposed discharge will meet water quality standards for toxicity in the receiving water, there is potential that the discharge may contain pollutants that, alone or in combination, may impact marine life.

c. Review of Biological Data

Wastewater discharges can affect biological communities in many ways such as modifying the structure of benthic communities caused by accumulation of discharged solids on the seafloor, increasing algae growth due to nutrient inputs, reducing DO concentrations due to phytoplankton blooms and thus causing die-offs that result in mass mortalities of fish or invertebrates, and causing bioaccumulation of toxic substances in marine organisms. According to EPA's ATSD, the assessment of adverse biological effects in section 301(h) analyses involves the assessment of whether a BIP exists in the vicinity of the discharge and in other areas potentially affected by the discharge. Biological impact assessments that examine species composition, abundance, and diversity, for example, are necessary components of a BIP demonstration. Under 40 CFR 125.59(c), all applications for section 301(h)-modified permits shall contain a complete section 301(h) Applicant Questionnaire, which requires demonstration of a BIP. For a BIP demonstration, EPA's ATSD requires large applicants, such as GWA, to perform biological impact assessments that involve comparisons of biological conditions and habitat characteristics among different stations at the ZID boundary, nearfield, farfield, and reference areas.

In this case, demonstration of a BIP cannot be directly determined, because the proposed discharge is through a new outfall that was not put into operation until January 2009. Data on biological conditions near the new outfall collected since January 2009 are not available, and even if some data were available, it is unlikely that any adverse effects associated with discharge through the new outfall would be apparent so quickly. Moreover, GWA has not installed a diffuser on the new outfall as proposed in the application. However, as specified in EPA's ATSD, comparisons of the attributes of the proposed discharge (e.g., volume and composition) and receiving water with conditions near other outfalls that discharge effluent of similar volume and composition and in similar receiving water (e.g., the discharge through the previous outfall) can be used to predict whether a BIP would exist as a result of the proposed discharge. In addition, 40 CFR 125.63 requires that biological monitoring also be conducted at the proposed discharge site to provide the basis for demonstrating a BIP in compliance with the requirements of 40 CFR 125.62(c).

In the application, GWA provided results of several reef surveys that were conducted in the vicinity of the previous discharge. Surveys were conducted once in 1973 and quarterly from August 1989 to September 1994 (Boyd 1998). In addition, GWA provided baseline benthic community monitoring surveys conducted for the proposed discharge. These studies were conducted in August 2005, March 2006, and January 2007 (Bailey-Brock and Krause 2007). Even though both discharges were expected to be similar in composition and flow into the same receiving water, GWA did not predict whether unacceptable biological conditions would occur as a result of the proposed discharge based on a comparison of biological monitoring data at each site and the attributes of the proposed discharge. According to EPA's ATSD, biological impact assessments for improved discharges involve not only describing the current biological communities but also determining whether a BIP will exist beyond the ZID after improvements to the discharge, which requires predictive demonstrations of future biological conditions near the new outfall and elsewhere in the receiving water. In the application, GWA has not provided the necessary biological information to adequately assess whether biological impacts would occur as a result of the proposed discharge through the new outfall.

Since GWA did not provide the necessary biological data for review, EPA cannot assess the extent to which the proposed discharge may impact the structure of the biological community in the vicinity of the new outfall. Consequently, EPA cannot be assured that there are acceptable biological conditions that would occur or that a BIP would exist in the vicinity of the proposed discharge and in other areas potentially affected by the discharge.

d. Conclusion on Impacts on Shellfish, Fish and Wildlife at and beyond the ZID

Pursuant to 40 CFR 125.62(c)(2), the applicant's discharge must allow for a BIP of shellfish, fish, and wildlife at and immediately beyond the ZID of the proposed discharge and in all other areas at and immediately beyond the ZID where marine life is actually or potentially affected by the proposed discharge. Based on review of available data, EPA has determined the applicant has not provided the necessary information for evaluating whether a BIP would exist as a result of the proposed discharge. Therefore, EPA has concluded that the applicant has failed to demonstrate that the proposed discharge would not interfere with the attainment or maintenance of water quality which assures protection of a BIP of shellfish, fish, and wildlife.

e. Conclusion on Impacts on Shellfish, Fish and Wildlife within the ZID

Pursuant to 40 CFR 125.62(c)(3), conditions within the ZID must not contribute to extreme adverse biological impacts, including but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenters, or the stimulation of phytoplankton blooms which have severe adverse effects beyond the ZID.

Although EPA has concluded that the applicant has not demonstrated that the proposed discharge would provide for the attainment of water quality criteria for toxic pollutants, nutrients, and WET, EPA has no information that exceedances of these would be so severe that they would result in extreme events such as major fish kills. EPA does not anticipate any adverse impacts to rise to the level of being extremely adverse as a result of the proposed discharge based on the

applicant's requested daily average flow of 12 MGD, the predicted critical initial dilution of the proposed discharge, and that the discharge is to open coastal waters. Therefore, EPA has concluded that the proposed discharge would not cause conditions within the ZID that would contribute to extreme adverse biological impacts.

4. Impact of Discharge on Recreational Activities

Pursuant to 40 CFR 125.62(d), the applicant's discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the ZID, including, without limitation, swimming, diving, boating, fishing, and picnicking, and sports activities along shorelines and beaches. In addition, there must be no federal, territory, or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. It is also necessary that the proposed discharge meet water quality standards relevant to recreational activities beyond the ZID, and not cause legal restrictions on activities that would be lifted or modified if the applicant's Northern District STP were upgraded to secondary treatment (EPA 1994a). Section 5101(b) of GWQS provides protected uses for Category M-2 marine waters that include, but are not limited to, recreational activities such as mariculture and whole body contact recreation.

In the application, GWA identified recreational activities such as fishing, swimming, snorkeling, and diving that occur within an 8 km (5 mile) radius of the previous outfall. GWA did not indicate whether these recreational activities are anticipated in the vicinity of the proposed discharge. However, since the proposed discharge is near the previous outfall, i.e., 500 ft farther from the shoreline, in the same receiving water, EPA believes that these activities are likely to occur in the vicinity of the proposed discharge during the next permit period. For the purpose of the section 301(h) evaluation, EPA assessed the available information to determine the impact of the proposed discharge on fish consumption and water contact recreation.

a. Fish Consumption

Assessment of impact on fisheries is important because of their economic significance, their recreational potential, and the potential for human consumption of contaminated organisms. Guam's coral reefs and offshore waters provide habitat for a variety of fish, invertebrates and shellfish that are often harvested by local people. The discharge of effluent containing toxic pollutants such as heavy metals and some pesticides could result in bioaccumulation of these pollutants in aquatic organisms consumed by humans. EPA's ATSD provides procedures for adequately evaluating whether adverse impacts will occur as a result of a discharge.

In the application, GWA provided results of the March 1998 toxic pollutant analysis of the Northern District STP effluent. However, GWA did not provide an analysis of toxic pollutants in fish tissue or sediments nor has evaluated whether fishing resources will be impacted as a result of the proposed discharge as described in EPA's ATSD. In a 1997 letter, EPA instructed GWA to conduct annual toxic pollutant analyses in the effluent and sediments to support the section 301(h) application and provide the groundwork for the NPDES monitoring program for the proposed discharge (Strauss 1997). However, since the March 1998 toxics pollutant analysis,

GWA has not conducted any analyses of toxic pollutants in the effluent or sediments. Based on the results of March 1998 toxic pollutant analysis, toxic pollutants were detected in the effluent. As a result, and because GWA has not assessed the potential for the bioaccumulation of toxic pollutants, EPA has determined that GWA has not provided the necessary information to adequately assess the impact of the proposed discharge on fish consumption.

Therefore, EPA has concluded that the applicant has not demonstrated that the proposed discharge will allow for the attainment or maintenance of water quality which allows for fishing and other mariculture activities.

b. Water Contact Recreation

Because of the potential for pathogenic microorganisms to be transmitted by contaminated water, monitoring of indicator bacteria such as enterococci can be used to identify the presence of sewage and fecal contamination and ensure the protection of the beneficial uses of the waterbody, such as water contact recreation. To protect the beneficial uses of Category M-2 marine waters for water contact recreation, section 5103(C) of GWQS provides that concentrations of enterococci shall not exceed 104 enterococci per 100 ml for a single sample and 35 enterococci per 100 ml based on a geometric mean of five sequential samples.

In the application, GWA did not provide effluent or receiving water monitoring data for bacteria to assess whether the discharge of bacteria from the proposed discharge would allow for the attainment of water contact recreation at and beyond the ZID. Based on beach monitoring data collected in Tanguisson Bay, beach closures and advisories due to bacterial contamination have been frequently reported (NRDC 2004 and 2005). While it is possible that there may be other sources of bacteria, EPA notes that under 40 CFR 125.62(f), an applicant must demonstrate compliance with 40 CFR 125.62(d) not only on the basis of the applicant's own proposed discharge, but also taking into account the applicant's discharge in combination with pollutants from other sources. Since effluent from the Northern District STP is currently not disinfected, effluent discharged from the facility is a source of bacterial contamination in the receiving water.

Undisinfected primary treated effluent is known to contain high levels of bacteria and the applicant has not proposed disinfection as a treatment for bacteria in the Northern District STP effluent. As a result, EPA has determined that the proposed discharge would not attain GWQS for enterococci beyond the ZID. Therefore, EPA has concluded that the proposed discharge may adversely affect water contact recreation.

c. Conclusion on Impact of Discharge on Recreational Activities

In accordance with 40 CFR 125.62(d), the applicant's discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the ZID. Based on available information, EPA has determined that GWA has not provided the necessary information on toxic pollutants in effluent, fish tissue, or sediments, nor information on bacteria to adequately evaluate the impact of the proposed discharge on recreational activities such as mariculture activities and water contact recreation. Therefore, EPA has concluded that the

applicant has not demonstrated that the discharge of pollutants will not interfere, alone or in combination with other sources, with the attainment and maintenance of water quality which allows for recreational activities beyond the ZID, as required by 40 CFR 125.62(d).

5. Additional Requirements for Applications based on Improved or Altered Discharges

Pursuant to 40 CFR 125.62(e), where the proposed discharge is based on an improved discharge, the applicant must demonstrate that the proposed improvements or alterations to the previous outfall have been thoroughly planned and studied, and that the improved discharge will comply with the requirements of 40 CFR 125.62(a) through (d). As previously described, GWA has requested a modification of secondary treatment requirements for TSS and BOD for the Northern District STP based on an improved discharge to the territorial waters of Guam due to the construction of an extended outfall and a new diffuser. GWA has not proposed additional treatment to the previous outfall. GWA has requested an increase in maximum daily flow from 6.0 to 12.0 MGD during the next permit period but has not requested a change in concentration limitations for BOD or TSS. In the application, GWA indicated that the improved discharge has been thoroughly planned and studied, as required by 40 CFR 125.62(e)(1), but did not provide the detailed analyses required by 40 CFR 125.62(e)(4). The new outfall went into operation in January 2009.

Based on available information, EPA has concluded that the proposed discharge would not ensure compliance with the requirements of 40 CFR 125.62(a) through (d). EPA has determined that the proposed discharge would not comply with water quality standards; would not provide for the attainment or maintenance of water quality which assures the protection and propagation of a BIP of shellfish, fish, and wildlife; and would not allow for recreational activities. Based on the March 1998 toxic pollutant analysis, concentrations of lead have been predicted to exceed water quality criteria at the ZID for the proposed discharge. Further, since the Northern District STP does not provide for disinfection of its effluent, and none is proposed, EPA has determined that the proposed discharge would not meet water quality criteria for bacteria at the ZID; thus, the proposed discharge would not provide for the attainment of recreational activities.

While it is possible that there may be other sources of pollutants discharging to Tanguisson Bay, EPA notes that under 40 CFR 125.62(f), an applicant must demonstrate compliance with water quality standards not only on the basis of the applicant's own discharge, but also taking into account the applicant's discharge in combination with pollutants from other sources. Although EPA recognizes that GWA has constructed an extended outfall with a planned multiport diffuser to achieve higher dilution to assist in meeting water quality standards, EPA believes that the initial dilution for the proposed discharge based on the new outfall is not sufficient to attain water quality criteria for bacteria and may not be for lead. This is based in part on GWA's statement that a dilution of 8,000 to 1 would be required to meet the criteria for bacteria and that the dilution at the new outfall is 200 to 1. Therefore, EPA has concluded that the applicant has not demonstrated that the proposed discharge would meet the requirements of 40 CFR 125.62(e).

D. Establishment of a Monitoring Program

Under 40 CFR 125.63, which implements section 301(h)(3) of the CWA, the applicant must have a monitoring program designed to evaluate the impact of the proposed discharge on the marine biota, demonstrate compliance with applicable water quality standards and measure toxic substances in the discharge. In addition, the applicant must also demonstrate that it has the resources necessary to implement the monitoring program upon issuance of a section 301(h)-modified NPDES permit and to carry it out for the life of the permit (40 CFR 125.63(a)(1)(iii)). The frequency and extent of the program are to be determined by taking into consideration the applicant's rate of discharge, quantities of toxic pollutants discharged, and the potential for significant impacts in the receiving water (40 CFR 125.63(a)(1)(iv)).

The current permit requires GWA to conduct biological, receiving water, and effluent monitoring. However, as previously discussed, since approval of the previous section 301(h) variance and subsequent issuance of the current permit, GWA's application status has changed and GWA is now considered a large applicant for the purpose of the section 301(h) evaluation. As a result, as specified in 40 CFR 125.63(b), GWA is required to have a monitoring program that includes additional biological requirements. EPA has reviewed GWA's monitoring program for the proposed discharge to assess compliance with the requirements of 40 CFR 125.63(a) through (d).

1. Biological Monitoring Program

Pursuant to 40 CFR 125.63(b), the applicant must have a biological monitoring program that provides adequate data to evaluate the impact of the discharge on the marine biota. In addition, in accordance with 40 CFR 125.63(b)(3)(iii), because the application is based on an improved in discharge involving outfall relocation, the applicant must have a biological program that includes the previous outfall site until such discharge ceases. The applicant must also provide baseline data at the relocation site to demonstrate impact of the discharge and demonstrate that the requirements of 40 CFR 125.62(c) will be met. Under 40 CFR 125.63(b)(1), the applicant's biological monitoring program must include periodic surveys of control sites and biological communities most likely to be affected by the discharge; periodic bioaccumulation studies and examination of possible adverse effects of effluent-related toxic substances; periodic sampling of sediments for toxic pollutants and pesticides; and periodic assessment of fisheries.

In the application, GWA described a biological monitoring program for the previous discharge and a baseline biological monitoring program for the proposed discharge that consists of quarterly surveys of benthic and fish community structure, coral reef assemblages, and sediment. However, GWA did not include bioaccumulation studies or the monitoring of toxic pollutants in sediments for the previous outfall, or a biological monitoring program for the proposed discharge that would be implemented upon completion of the new outfall as required by 40 CFR 125.63(b)(1)(i) through (iv). In 1997, EPA instructed GWA to conduct baseline biological monitoring at the new outfall location starting in 1997 to support its section 301(h) application, and to continue the monitoring until the outfall was completed (Strauss 1997). EPA also indicated that such monitoring should include annual surveys of sediment characterization, toxic pollutants, and infauna and that collecting such information would set the foundation for GWA's NPDES monitoring program for the proposed discharge. However, in the application, GWA did

not include these surveys in a proposed biological monitoring program for the proposed discharge.

Although GWA has described a biological monitoring program for the proposed discharge, EPA has determined that the proposed program is not consistent with the requirements of 40 CFR 125.63(b)(1)(i) through (iv) and is not sufficient to provide data to evaluate the impact of the proposed discharge on the marine biota. Furthermore, while GWA conducted baseline benthic monitoring surveys for the proposed discharge, GWA has not conducted the remainder of baseline monitoring required pursuant to EPA's 1997 letter and 40 CFR 125.63(b)(3)(iii) to provide the basis for demonstrating that the proposed discharge will result in for the attainment or maintenance of water quality that assures protection and propagation of a BIP of shellfish, fish, and wildlife (40 CFR 125.62(c)).

Because the applicant has proposed a biological monitoring program that does not meet the requirements of 40 CFR 125.63(b)(1)(i) through (iv), EPA has concluded that the applicant has failed to establish an adequate biological monitoring program to evaluate the impact of the proposed discharge and to demonstrate compliance with section 301(h) biological monitoring requirements. Additionally, the biological assessment program conducted for the previous discharge was incomplete and inadequate for EPA to assess conclusions for the proposed discharge. In this Final Decision Document, however, EPA is not recommending specific changes to the biological monitoring program; rather, EPA intends to work with GWA to develop appropriate monitoring requirements during development of a secondary treatment permit.

2. Receiving Water Monitoring Program

Pursuant to 40 CFR 125.63(c), the applicant must have a receiving water monitoring program that provides adequate data for evaluating compliance with water quality standards or criteria, and measures the presence of toxic pollutants which have been identified or are expected to be in the effluent discharged to the receiving water.

In accordance with its NPDES permit, GWA was required to conduct receiving water monitoring the vicinity of the previous outfall. Table 12 provides a summary of the receiving water monitoring requirements for the previous discharge. In the application, GWA proposed a baseline receiving water monitoring program for the proposed discharge but did not clearly indicate whether this would be the receiving water monitoring program upon completion of the new outfall, as required by 40 CFR 125.63(c). GWA proposed a baseline receiving water monitoring program that includes parameters for the previous outfall as well as additional ones: bacteria, pH, orthophosphate, nitrate-nitrogen, DO, salinity, total filterable suspended solids, turbidity, temperature, and oil and grease. The parameters proposed are consistent with those specified by EPA in 1997 for a baseline receiving water monitoring program for the proposed discharge. GWA did not indicate that any toxic pollutants or pesticides have been measured or are expected to be present in the effluent.

In 1997, EPA also indicated that GWA should monitor the parameters listed in Table 12 on a quarterly basis at the new outfall's discharge site starting in 1997 and continuing until the outfall was completed in order to support its section 301(h) application. EPA also stated that collecting such baseline information would set the foundation for GWA's NPDES monitoring program for the proposed discharge (Strauss 1997). At the time of EPA's tentative decision, GWA had conducted only one baseline receiving water monitoring survey (September 2000) since 1997. In the application, GWA submitted receiving water monitoring data from March 1989 to July 1997

Table 12. Summary of receiving water monitoring parameters and requirements pursuant to the current section 301(h)-modified permit for the Northern District STP.

Parameter	Stations	Sample Frequency	Sample Type
Floating Materials, Odor and Color	C, D, E	Quarterly	Visual
Total Coliform	C, D, E	Quarterly	Discrete
Temperature	C, D, E	Quarterly	Discrete
Salinity	C, D, E	Quarterly	Discrete
pH	C, D, E	Quarterly	Discrete
Dissolved Oxygen	C, D, E	Quarterly	Discrete
Turbidity	C, D, E	Quarterly	Secchi disc/discrete

for the previous discharge pursuant to the current permit but no other data since July 1997 has been submitted to EPA for review. In GWA's quarterly Wastewater Operations and Maintenance Progress Reports for the Northern District STP, GWA has consistently indicated that the absence of water monitoring data has been due to the lack of personnel.

As of September 2008, GWA reinstated the collection of quarterly water column physical-chemical data consistent with the receiving water monitoring permit requirements. GWA collected samples at three monitoring locations (near-field, far-field, and control) and at three depths (surface, middle, and bottom). Parameters include: floating materials, odor and color (visual observation), fecal coliform (surface only), temperature, dissolved oxygen, pH, salinity, and turbidity, although no receiving water monitoring for toxic pollutants was conducted. This data was submitted to EPA in GWA's quarterly DMRs for the first, second and third quarters of 2009. EPA evaluated this additional data and concluded that the new data does not change EPA's assessment of water quality impacts. As discussed above, EPA had already concluded in the Tentative Decision Document that the criteria will likely be met at the ZID for the parameters analyzed in the receiving water (DO, salinity, temperature, pH, and turbidity). Therefore the new data do not change this assessment.

Although GWA has proposed a baseline receiving water monitoring program for the proposed discharge, EPA has determined that it is not adequate to meet the requirements of 40 CFR 125.63(c). Based on review of the receiving water monitoring program for the previous outfall, EPA has concluded that GWA has not consistently conducted receiving water monitoring to

demonstrated that the proposed discharge will meet all applicable water quality standards at and beyond the ZID (40 CFR 125.62(a)(1)). Specifically, EPA has concluded the GWA has failed to demonstrate that the discharge will meet WQS at the ZID for bacteria, toxic pollutants, nutrients, and toxicity.

As a result, EPA has determined that the applicant has not demonstrated that it can consistently conduct receiving water monitoring pursuant to 40 CFR 125.63(a) and (c), and collect the necessary information for determining compliance under 40 CFR 122. Because the applicant has consistently failed to conduct the required receiving water monitoring under its current permit, and specified in EPA's 1997 letter, EPA cannot be reasonably assured that the applicant will adequately implement a receiving water monitoring program for the proposed discharge upon issuance of a new permit and to carry it out for the life of the new permit. Therefore, EPA has concluded that the applicant has not established a receiving water monitoring program for the proposed discharge that meets the requirements of 40 CFR 125.63(c).

3. Effluent Monitoring Program

Pursuant to 40 CFR 125.63(d), the applicant must have an effluent monitoring program that provides quantitative and qualitative data on toxic substances and pesticides in the effluent, and data for evaluating compliance with the percent removal efficiency requirements under 40 CFR 125.60. As described in EPA's ATSD, the major objectives of effluent monitoring are to provide data for determining compliance with permit effluent limitations and CWA section 304(a) water quality criteria, measure the effectiveness of the toxic substances control programs, and relate effluent characteristics to the receiving water biological and water quality conditions. In addition, influent and effluent monitoring provides data for assessment of treatment plant performance with primary treatment requirements for BOD and TSS.

In the application, GWA proposed an effluent monitoring program for the proposed discharge that includes monitoring of effluent parameters included in the current permit, and any required for the new permit, in addition to monitoring of toxic substances and pesticides as required by 40 CFR 125.63(d). GWA did not propose WET testing. Table 13 provides a summary of effluent monitoring parameters and requirements in the current permit. The current permit does not require effluent monitoring for toxic pollutants or WET testing. However, in a 1997 letter, EPA instructed GWA to conduct annual toxic pollutant analyses and WET testing to better understand potential sources of toxic pollutants in the Northern District STP effluent (Strauss 1997). Although GWA has provided EPA with some effluent monitoring data (e.g., the March 1998 toxic pollutant analysis and October 2007 WET test), GWA has failed to conduct annual toxic pollutant analyses and WET testing as required by EPA.

Based on information received during the public comment period, including DMR data from 2009 documenting that GWA has reinstated its receiving water monitoring program, EPA has concluded that GWA has demonstrated it has the resources to carry out the proposed monitoring programs.

Although GWA has proposed an effluent monitoring program for the proposed discharge in accordance with 40 CFR 125.63(d), GWA did not consistently conduct effluent monitoring of

the previous discharge. As a result, EPA has determined that the applicant has not demonstrated that it can consistently conduct effluent monitoring pursuant to 40 CFR 125.63(a) and (d), and collect the necessary information for determining compliance under 40 CFR Part 122. Therefore, EPA has concluded that the applicant has not established an effluent monitoring program for the proposed discharge that meets the requirements of 40 CFR 125.63(d).

Table 13. Summary of effluent monitoring parameters and requirements in the current section 301(h)-modified permit for the Northern District STP.

Parameter	Sample Frequency	Sample Type
Flow	Continuous	-
BOD	1/week	Composite
Suspended Solids	1/week	Composite
Settleable Solids	1/week	Discrete
Oil and Grease	1/month	Discrete
pH	1/week	Discrete

4. Conclusion on the Establishment of a Monitoring Program

Under 40 CFR 125.63, the applicant must have a monitoring program designed to evaluate the impact of the proposed discharge on the marine biota, demonstrate compliance with applicable water quality standards and measure toxic substances in the discharge. In addition, the applicant must also demonstrate that it has the resources necessary to implement the monitoring program upon issuance of a section 301(h)-modified NPDES permit and to carry it out for the life of the permit (40 CFR 125.63(a)(1)(iii)).

EPA has concluded GWA has demonstrated it has the resources necessary to implement the monitoring program. However, EPA has concluded that GWA has failed to meet section 301(h)(3) and 40 CFR 125.63 because of GWA's failure to submit the monitoring data required in the existing permit and the additional monitoring data required as part of its 301(h) applications. Therefore, EPA has concluded that the applicant has not met the requirements of 40 CFR 125.63.

E. Impact of Modified Discharge on Other Point and Non-point Sources

In accordance with section 301(h)(4) of the CWA, EPA may not issue a section 301(h)-modified permit unless the applicant demonstrates that such modified requirements will not result in any additional requirements on any other point or non-point source. Under 40 CFR 125.64, which

implements section 301(h)(4) of the CWA, the applicant's proposed modified discharge may not result in any additional pollution control requirements on any other point or non-point source.

In the application, GWA indicated that there are no other pollution discharges within the area of the proposed discharge. Based on review of other point source dischargers in Tanguisson Bay, EPA determined that the nearest point source is Pruvient Energy Guam Inc.'s Tanguisson Power Plant (NPDES Permit No. GU0020087), which discharges through an outfall located approximately one mile south of the proposed discharge. As the NPDES permitting authority in Guam, EPA has not imposed any additional requirements on this discharge (or any other discharge) based on its proximity to the previous outfall, nor would EPA expect to impose additional requirements on the power plant's discharge now that the new outfall for the Northern District STP is completed. Furthermore, EPA is not aware of any additional requirements that have been imposed on non-point sources as a result of the applicant's previous outfall. Non-point source discharges are known to occur in Tanguisson Bay; however, EPA has no information that the proposed discharge through the new outfall would result in additional pollution control requirements on these sources. In addition, based on information provided by GWA, the proposed discharge will travel away from the shoreline and away from potential interactions with other sources. Since EPA is not aware of any additional requirements that would be imposed on point and non-point sources as a result of the proposed discharge, and since the proposed discharge will be located farther offshore and have additional dilution, EPA has concluded that the applicant's proposed discharge would not result in any additional pollution control requirements on any other point or non-point source.

F. Toxics Control Program

In accordance with section 301(h)(7) of the CWA, EPA may not issue a section 301(h)-modified permit unless the applicant demonstrates, to the extent practicable, that it has established a schedule of activities designed to eliminate the entrance of toxic pollutants from industrial and nonindustrial sources into such treatment works. Under 40 CFR 125.66, which implements section 301(h)(7), the applicant must design a toxics control program to identify and ensure control of toxic pollutants and pesticides discharged in the effluent. In addition, for industrial sources of toxic pollutants, the applicant must also comply with the urban area pretreatment program requirements under 40 CFR 125.65, which are discussed in the next section.

1. Chemical Analysis

Under 40 CFR 125.66(a), the applicant must submit a chemical analysis of its discharge for all toxic pollutants and pesticides defined in 40 CFR 125.58(p) and (aa). As specified in EPA's ATSD, the applicant must submit results of wet and dry weather analyses of the effluent if known or suspected industrial sources of toxic pollutants or pesticides exist. The analysis shall be performed on a minimum of two 24-hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute chemical analyses if the composition of the supplemental or substitute samples typifies that which occurs during wet and dry weather conditions.

In the application, GWA provided results of a March 9, 1998 toxic pollutant analysis. The applicant did not specify if the analysis was based on effluent sampled during wet or dry weather conditions or if the sample was a supplement or substitute for wet or dry weather conditions. Based on the toxic pollutant analysis, the applicant reported detectable concentrations of copper, lead, zinc, toluene, and *p*-dichlorobenzene.

Since the applicant did not provide toxic pollutant analyses based on wet and dry weather conditions, nor specified whether the sample was a supplement or substitute, EPA has concluded that the applicant has not met the requirements of 40 CFR 125.66(a).

2. Toxic Pollutant Source Identification

Under 40 CFR 125.66(b), the applicant must submit an analysis of the known or suspected sources of toxic pollutants or pesticides identified in response to 40 CFR 125.66(a). As described in 40 CFR 403.8(f)(2), applicants must conduct an industrial waste survey as the basis for determining whether there are any known or suspected industrial sources of toxic pollutants. To the extent practicable, the applicant is required to categorize the sources according to industrial and nonindustrial types.

In 2001, as part of its application, GWA provided results of an April 1999 survey conducted via mail and telephone of all GWA commercial wastewater customers. GWA indicated that, of the 1,500 surveys, a total of 366 responses were received by GWA. GWA reported that the results of the survey showed that 346 of the 366 responses reported no discharge of any non-domestic wastewater into the collection system. The remaining 20 responses reported the discharge of non-domestic wastewater into the collection system. Respondents reported indirect non-domestic dischargers such as a hotel, water park, hemodialysis center, laundromat, beverage and ice manufacturer, dental clinic, seafood retailer, restaurant/food court, daycare center, newspaper publisher, commercial building, diagnostic laboratory, optical laboratory, medical clinic, and pharmacy. In the application, GWA did not include Anderson Air Force Base as a source of non-domestic wastewater to the Northern District STP.

Although GWA has conducted a survey of potential sources of pollutants pursuant to 40 CFR 403.8(f)(2), based on review of available information, EPA has determined that the applicant has failed to identify the sources of the detected toxic pollutants identified in the March 9, 1998 toxic pollutant analysis and categorize them according to industrial and non-industrial origins. Identifying and categorizing the sources of toxic pollutants is important in developing and implementing toxics monitoring and source control programs. Because GWA has not provided the necessary information to assess potential sources of toxic pollutants to Northern District STP's wastewater collection system, EPA cannot be reasonably assured that GWA has properly identified and categorized potential industrial and nonindustrial sources of toxic pollutants. Therefore, EPA has concluded that the applicant has not met the requirements of 40 CFR 125.66(b) for toxic pollutant source identification.

3. Industrial Pretreatment Requirements

Under 40 CFR 125.66(c)(1), an applicant for a section 301(h) variance that has known or suspected industrial sources of toxic pollutants must have an approved pretreatment program as described in 40 CFR 403. The applicant does not need to have an approved pretreatment program if it provides a certification at the time of application that there are no known or suspected sources of toxic pollutants, and the certification is supported by an industrial user survey, as described in 40 CFR 125.66(c)(2).

Currently, GWA does not have an EPA-approved industrial pretreatment program. In the application, GWA indicated that the Territory of Guam has very little or no heavy industry and that there were no suspected industrial sources of toxic pollutants. However, GWA did not provide a certification that there were no sources of pollutants as specified in 40 CFR 125.66(c)(2). Based on the March 9, 1998 toxic pollutant analysis, toxic pollutants have been detected in the Northern District STP effluent. In addition, in the application, GWA provided results of an October 15, 1999 survey that indicated potential industrial sources but GWA did not indicate whether it identified any known or suspected industrial source as a result of the March 9, 1998 toxic pollutant analysis. Given that GWA does not have an EPA-approved pretreatment program and has failed to provide a certification that there are no known or suspected sources of toxic pollutants, EPA has concluded that the applicant has not met the requirements of 40 CFR 125.66(c)(1) and (2).

4. Nonindustrial Source Control Program

Pursuant to 40 CFR 125.66(d)(1), all applicants must submit a proposed public education program designed to minimize the entrance of nonindustrial toxic pollutants into the wastewater treatment system, which shall be implemented no later than 18 months after issuance of a section 301(h)-modified permit. According to the applicant's current permit, the public education program's implementation date was November 30, 1987. However, in the application, GWA indicated that it had not yet implemented a formal program. Instead, GWA provided a schedule for implementing a public education program. GWA specified a completion date of September 1998 for the collection of industrial user surveys and the investigation and identification of significant toxic pollutant contributors. However, the implementation of a public education program with the issuance of industrial user surveys did not occur until April 1999. In the application, GWA proposed the use of posters, newspaper articles, and radio/TV announcements as parts of its public education program to educate the public on proper disposal of waste. However, GWA has not provided information to EPA on the progress towards meeting the requirements of 40 CFR 125.66(d)(1). Therefore, EPA has concluded that the applicant has not meet the requirements of 40 CFR 125.66(d)(1).

Under 40 CFR 125.66(d)(2) and (3), the applicant also must develop and implement a nonindustrial source control program, including a schedule of activities for identifying nonindustrial sources of toxics and pesticides and a schedule for developing and implementing control programs. Upon issuance of the current permit, the applicant was exempt from these requirements since it applies to large applicants only and GWA was a small applicant at the time. However, as previously discussed, GWA's applicant status changed in 1997 when EPA determined that GWA was a large applicant based on the Northern District STP serving a

population greater than 50,000. Therefore, for the purposes of this section 301(h) evaluation, GWA was required to complete all sections of the section 301(h) questionnaire that pertained to large applicants. In the application, GWA did not provide information on the development and implementation of a nonindustrial source control program as required by 40 CFR 125.66(d)(2) and (3). Therefore, EPA has concluded that the applicant has not demonstrated that it has met the requirements of 40 CFR 125.66(d)(2) and (3).

G. Urban Area Pretreatment Program

In accordance with section 301(h)(5) and (6) of the CWA, EPA may not issue a section 301(h)-modified NPDES permit unless the applicant demonstrates that all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced. Under 40 CFR 125.65, POTWs that service a population of 50,000 or greater or that receive one or more toxic pollutants from an industrial source are required to comply with the urban area pretreatment requirements. On June 18, 1997, EPA notified GWA that it is considered a large applicant and requested that it respond to the “Urban Area Pretreatment Requirements” questionnaire and that it should submit the questionnaire as part of its section 301(h) application (Strauss 1997).

Because urban area pretreatment requirements apply to the applicant’s proposed discharge, 40 CFR 125.65(b)(1) requires that the applicant establish control of toxic pollutants that may be introduced by an industrial discharger by demonstrating that it either has in effect an applicable pretreatment requirement in accordance with 40 CFR 125.65(c) or has in effect a program that achieves secondary removal equivalency in accordance with 40 CFR 125.65(d). However, GWA did not provide any information in the application that it has adopted, or intends to adopt, any numerical local limits to control toxics from any potential industrial sources that may be introduced into its treatment works.

Since GWA provided an incomplete industrial sources survey with its application, and it did not provide any additional information, neither EPA nor GWA can determine categorical standards to use for a potential urban area pretreatment program.

Consequently, EPA has concluded that the applicant has failed to meet the requirements of 40 CFR 125.65(c) by not identifying appropriate categorical pretreatment standards for toxic pollutant control that would have been used towards setting appropriate local limits to satisfy the requirements of 40 CFR 403. In addition, the applicant has failed to determine whether or not local limits are necessary for toxic pollutant control in accordance with 40 CFR 125.65(c)(1)(iii), largely because the applicant has failed to submit annual toxic pollutant analyses as requested in EPA’s 1997 letter (Strauss 1997). This would have provided necessary monitoring information in support of meeting the requirements of the Urban Area Pretreatment program.

Furthermore, GWA has not demonstrated the secondary removal equivalency as required in 40 CFR 125.65(d). In the application, GWA did not indicate that it has demonstrated or plans on demonstrating that it can achieve secondary removal equivalency through the use of a secondary treatment pilot at the applicant’s facility that would provide an empirical determination of the

amount of toxic pollutants removed by the application of secondary treatment to the applicant's influent where the applicant's influent has not been pretreated.

Because GWA has not provided the necessary information regarding toxic pollutants introduced into the wastewater treatment system, nor has demonstrated the secondary removal equivalency, EPA has concluded that the applicant has not demonstrated that it meets all the Urban Area Pretreatment Program requirements specified in 40 CFR 125.65(b) through (d).

H. Increase in Effluent Volume or Amount of Pollutants Discharged

In accordance with section 301(h)(8) of the CWA and 40 CFR 125.67, EPA may not issue a section 301(h)-modified NPDES permit unless the applicant demonstrates there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above the volume of discharge specified in the permit. Pursuant to 40 CFR 125.67(b), where pollutant discharges are attributable to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged. 40 CFR 125.67(b) pertains to applicants for facilities that have combined sewer systems. The Northern District STP is not a combined sewer system; therefore, the applicant is exempt from this requirement.

In addition, pursuant to 40 CFR 125.67(c), the applicant must provide projections of annual average effluent volume in m³/sec and mass loadings in metric tons/year for any pollutants to which the modification applies in five-year increments for the design life of its facility. The applicant has requested a variance from federal secondary treatment requirements for BOD and TSS, and has requested an increase in flow rate from 6 MGD to 12 MGD for the new permit period. However, in the application, GWA did not provide five-year incremental projections of effluent volume and mass loadings for BOD and TSS as required by 40 CFR 125.67(c). Therefore, the applicant did not project or describe whether pollutant discharge loadings will be affected by the increased discharge or if modified permit limits will be met. Furthermore, EPA understands that there are plans for a military expansion in Guam. EPA also understands DoD is considering sending wastewater from the expanded base to the Northern District STP. Because the applicant has not provided relevant information that would enable EPA to assess whether the proposed discharge may result in any new or substantially increased discharges of BOD, TSS, or toxic pollutants, EPA has concluded that the applicant has not met the requirements of 40 CFR 125.67(c).

I. Compliance with Other Applicable Laws

40 CFR 125.59(b)(3) provides that no section 301(h)-modified permit shall be issued where such issuance would conflict with applicable provisions of state, local, or other federal laws or Executive Orders. This includes compliance with the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*; Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*; the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and the Magnuson-Stevens Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

1. Coastal Zone Management Act

Under 40 CFR 125.59(b)(3), a section 301(h)-modified permit must comply with the Coastal Zone Management Act (CZMA) of 1972, as amended, 16 U.S.C. 1451 *et seq.* In accordance with 16 U.S.C. 1456(c)(3)(A), and its implementing regulations, a section 301(h)-modified NPDES permit may not be issued unless the proposed discharge is certified by the Territory of Guam to be consistent with the Territory's Coastal Zone Management Program. On March 6, 1998, GWA requested a consistency certification for the proposed discharge from the Territory of Guam's Bureau of Planning. In the application, GWA indicated that a response letter from the Bureau of Planning is pending. However, because EPA is denying the application for a section 301(h) variance, no CZMA certification is necessary at this time.

2. Marine Protection, Research and Sanctuaries Act

Under 40 CFR 125.59(b)(3), a section 301(h)-modified permit must comply with Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.* In accordance with 40 CFR 125.59(b)(3), 16 U.S.C. 1434(d), and MPRSA regulations, a section 301(h)-modified permit may not be issued for a discharge into a marine sanctuary designated pursuant to Title III if the regulations applicable to the sanctuary prohibit such a discharge, unless the National Ocean and Atmospheric Administration does not object to the permit. In the application, GWA did not indicate whether the proposed discharge is located in a marine sanctuary designated under Title III of the MPRSA. If EPA's tentative decision were to approve a section 301(h) variance, a demonstration of compliance with the MPRSA would be necessary prior to issuance of a section 301(h)-modified NPDES permit. However, because EPA's decision is that a modified permit is not be appropriate and, therefore, no modified permit has been prepared, no demonstration of compliance with the MPRSA and/or National Marine Fisheries Service concurrence is necessary at this time.

3. Endangered Species Act

Under 40 CFR 125.59(b)(3), a section 301(h)-modified permit must comply with the Endangered Species Act (ESA) of 1973, as amended, 16 U.S.C. 1531 *et seq.* In accordance with 16 U.S.C. 1536(a)(2), a section 301(h)-modified permit may not be issued if the proposed discharge will adversely impact threatened or endangered species or critical habitat listed pursuant to the ESA. In the application, GWA did not indicate whether there are threatened or endangered species or federally designated critical habitat located near the discharge that may be affected by the proposed discharge. If EPA's tentative decision were to approve a section 301(h) variance, a demonstration of compliance with the ESA would be necessary prior to issuance of a section 301(h)-modified NPDES permit. However, because EPA's decision is that a modified permit is not be appropriate and, therefore, no modified permit has been prepared, no demonstration of compliance with the ESA and/or National Marine Fisheries Service or U.S. Fish and Wildlife Service concurrence or determination is necessary at this time.

4. Magnuson-Stevens Fishery Conservation and Management Act

Under 40 CFR 125.59(b)(3), a section 301(h)-modified permit must comply with applicable provisions of federal laws including the Magnuson-Stevens Fishery Conservation and Management Act (MSA) of 1976, 16 U.S.C. 1801 *et seq.*, which protects against adverse impacts to essential fish habitat (EFH). In the application, GWA did not provide any information on whether the proposed discharge will adversely impact EFH, or on compliance with the requirements of the MSA. GWA also did not provide information on consultation with the National Marine Fisheries Service and regional fishery management councils. To comply with 40 CFR 125.59(b)(3), the applicant would need to demonstrate either that the MSA does not apply, or that the discharge would comply with it. However, since EPA's decision is that a modified permit is not appropriate, and, therefore, no modified permit has been prepared, no demonstration of compliance with the MSA is necessary at this time.

J. State Determination on Compliance with Water Quality Standards

Under 40 CFR 125.61(b)(2) the applicant must provide a determination signed by the State, Territory, or interstate agency authorized to provide certification under 40 CFR 124.53 and 124.54 that the proposed modified discharge will comply with applicable provisions of State or Territory law including water quality standards. This determination shall include a discussion of the basis for the conclusion reached. In the application, GWA indicated that it submitted a request to GEPA for a determination. On March 28, 2008, EPA sent a letter to GEPA requesting a decision on certification of GWA's section 301(h) application. At this time, EPA has not received a certification. However, since EPA's decision is to deny the applicant's request for a waiver from secondary treatment requirements, a water quality certification determination from the Territory of Guam is unnecessary.

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