

CHAPTER 2401-1 EARTHMOVING REGULATIONS

GENERAL PROVISIONS	
2401-1-01	Authority
2401-1-02	Applicability
2401-1-03	Definitions
EROSION AND SEDIMENTATION CONTROL	
2401-1-04	General Requirements
2401-1-05	Erosion and Sedimentation Control Plan Preparation
2401-1-06	Erosion and Sedimentation Control Plan Requirements
2401-1-07	Additional Requirements for Marine-Related Earthmoving
2401-1-08	Control Measures and Facilities General Requirements
2401-1-09	Erosion and Sedimentation Control Measures
2401-1-10	Erosion and Sedimentation Control Facilities
2401-1-11	Restoration
DISCHARGE PROHIBITIONS	
2401-1-12	Proper Disposal
2401-1-13	Prohibited Discharges
PERMITS	
2401-1-14	Permit Required
2401-1-15	Application for Permit
2401-1-16	Modification, Change or Revocation of Permits
TRANSITION UNDER COMPACT OF FREE ASSOCIATION	
2401-1-17	Definitions
2401-1-18	Existing 404 Permits
2401-1-19	Compliance with 404 Permits Required
2401-1-20	Compliance with 401 Certification Required
2401-1-21	Earthmoving Application Required
2401-1-22	Continuation of Permitted Conduct
2401-1-23	Resolution of Inconsistencies
2401-1-24	Termination of 404 Authority; Continuation of 401 Authority
2401-1-25	Compliance with Law and Regulations Required
2401-1-26	(Reserved)
ENFORCEMENT	
2401-1-27	Enforcement
RESPONSIBILITIES OF GOVERNMENT, DEVELOPMENT, AND SUPPORT ENTITIES	
2401-1-28	Notice to EQPB Required
2401-1-29	Prohibition on Release of Support Without an Earthmoving Permit
MISCELLANEOUS PROVISIONS	
2401-1-30	Severability
2401-1-31	Repealer

GENERAL PROVISIONS

2401-1-01 Authority

These regulations are promulgated by the Republic of Palau Environmental Quality Protection Board pursuant to the authority granted it by Title 24 Palau National Code. These regulations shall have the force and effect of law.

(Effective May 26, 1996)

2401-1-02 Applicability

These regulations shall apply to all earthmoving activities as defined herein that begin on or after the

effective date of these regulations.

(Effective May 26, 1996)

2401-1-03 Definitions

As used herein, unless the context otherwise requires, the term:

(A) "Accelerated Erosion" means the removal of the surface of the land through the combined action of human activities and through the action of natural processes, at a rate greater than would result through the action of natural processes alone.

(B) "Accelerated Sedimentation" means the sedimentation resulting from the combined action of human activities and natural processes resulting from storms, heavy rains, and high winds at a rate greater than would result through the action of natural processes alone.

(C) "Board" or "EQPB" means the Republic of Palau Environmental Quality Protection Board or its authorized representative.

(D) "Chairman" means the Chairman of the Republic of Palau Environmental Quality Protection Board personally or his authorized representative.

(E) "Clearing" means the removal of vegetation, structures or other objects associated with a construction activity.

(F) "Conveyance Channel" means a channel other than an interceptor channel used for the conveyance of water through or around a project area.

(G) "Diversion Terrace" means a channel or dike constructed upslope of a project for the purpose of diverting storm water away from the unprotected slope.

(H) "Earthmoving" means any construction or other activity which disturbs or alters the surface of the land, a corai reef or bottom of a lagoon, including, but not limited to, excavations, dredging, embankments, land reclamation in a lagoon, land development, mineral extraction, ocean disposal, and the moving, depositing or storing of soil, rock, coral, or earth.

(I) "Embankment" means a deposit of soil, rock, gravel, sand or other materials, including dredged materials, deposited by man to hold back water or soil.

(J) "Erosion" means the natural process by

which the surface of the land is worn away by the action of water, wind or chemical action.

(K) "Excavation" means but is not limited to, a cavity formed by quarrying, dredging, uncovering, displacing, or relocating soil, coral, or rock.

(L) "Filling" or "Fills" means any rock, soil, sand, gravel or other material, including dredged materials, deposited by man.

(M) "Interceptor Channel" means a channel or dike constructed across a slope for the purpose of intercepting storm water, reducing the speed of water flow, or diverting it to outlets where it can be disposed.

(N) "Land Development" means the construction, installing, placing, planting, or building of surface structures, land reclamation, navigation channels, harbors, utility lines, piers, shopping centers, causeways, golf courses, apartment complexes, hotels, schools, roads, parking areas, or any other similar activity.

(O) "Person" means the Republic of Palau, a state, a political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the Republic or of any state or country, a lessee or other occupant or property, or an individual, singly or as a group.

(P) "Sediment" means soils or other surface materials transported by water as the result of land erosion, or earthmoving activity, on a reef or in a lagoon, or excavation, or fill.

(Q) "Sedimentation" means the process by which sediment is deposited on the bottom of a body of water, including, but not limited to, rivers, streams, ponds, lakes, the bottom of lagoons or the tops of reefs.

(R) "Stage Construction" means the staging of construction activity so as to limit the amount of exposed and unstabilized area.

(S) "Sand Mining" means the taking of any rock, sand, gravel, coral or other material from any site including beaches, lagoons and reefs.

(T) "Sedimentation Retention Boom" means a watertight membrane suspended from floats and weighted at the bottom in water bodies arranged in a manner that will confine sediments to a local area.

(U) "Stabilization" means the proper placing, grading and/or covering of soil, rock or earth, including the use of vegetation, to ensure their resistance to erosion, sliding, or other movement.

(V) "Subdivision" means the division or redivision of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other division of land including changes in existing lot lines for the purpose, whether immediate or in the future, of lease, transfer of ownership, building or lot

development.

(W) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include salt water marshes, salt water swamps, freshwater marshes, freshwater swamps, and cultivated wetlands.
(Effective May 26, 1996)

EROSION AND SEDIMENTATION CONTROL

2401-1-04 General Requirements

(A) All earthmoving activities within the Republic of Palau shall be conducted in accordance with these regulations and in such a way as to prevent accelerated erosion and accelerated sedimentation.

(B) To accomplish the requirements set forth in Division A of this Section, all persons engaging in earthmoving activities shall design, implement and maintain erosion control measures which effectively prevent accelerated erosion and accelerated sedimentation and polluting of off-site areas.

(C) These erosion and sedimentation control measures must be set forth in a plan, as described in Sections 2401-1-05 thru 2401-1-07, inclusive, of this chapter, and must be

(1) available at all times at the site of the project; and,

(2) filed with the ROI EOPB.

(D) The applicant shall, upon request from the Board, demonstrate financial capability to complete the proposed project.

(Effective May 26, 1996)

2401-1-05 Erosion and Sedimentation Control Plan Preparation

The erosion and sedimentation control plan shall be prepared by a person trained and experienced in erosion and sedimentation control methods and techniques.

(Effective May 26, 1996)

2401-1-06 Erosion and Sedimentation Control Plan Requirements

The erosion and sedimentation control plan shall be prepared to prevent acceleration of erosion and sedimentation and shall consider all factors which contribute to erosion and sedimentation. The plan shall include, but is not limited to, the following:

(A) A project description giving a detailed narrative description of the project's purpose, scale, location, pre- and post- construction activities and

other information as may be requested by the Board;

(B) A detailed site plan detailing all construction, landscaping, structures, and all project related activities. A plan shall be prepared for each stage of construction;

(C) A project construction schedule. Estimated dates for all stages of construction shall be included;

(D) The topographic and/or hydrographic features of the project area;

(E) The types, depth, slope, and area of the soils, coral and/or reef;

(F) The original state of the area as to plant and animal life;

(G) Whether any coral reef which may be affected by the earthmoving is alive or dead;

(H) The proposed alteration to the area;

(I) The amount of runoff from the project area;

(J) The staging of earthmoving activities;

(K) Temporary control measures and facilities for use during earthmoving activity;

(L) Permanent control measures and facilities for long term protection;

(M) Special provisions and control measures for periods of severe weather conditions; and,

(N) A maintenance program for the control facilities including disposal of materials removed from the control facilities or project area.

(Effective May 26, 1996)

2401-1-07 Additional Requirements for Marine-Related Earthmoving

If the project involves an earthmoving activity in a lagoon or a reef, or any body of water, the plan shall show existing marine life populations as well as minimum and maximum turbidities, and other water quality parameters which may be required by the Board. The baseline study shall be made by a person trained and experienced in aquatic biology and shall be completed prior to any earthmoving activity.

(Effective May 26, 1996)

2401-1-08 Control Measures and Facilities General Requirements

The erosion and sedimentation control measures and facilities set forth in these regulations shall be incorporated into all earthmoving activities unless the designer of the erosion and sedimentation control plan demonstrates to the Board and obtains the Board's written concurrence that alteration of these measures and/or facilities, or inclusion of other measures and/or facilities, will prevent accelerated erosion, accelerated sedimentation, other water quality degradation, or other environmental degradation.

(Effective May 26, 1996)

2401-1-09 Erosion and Sedimentation Control Measures

(A) Limiting Exposed Area. All earthmoving activities shall be planned and undertaken in such a manner so as to minimize the area of disturbed land, reef or lagoon.

(B) Containment of Underwater Sedimentation. All sedimentation resulting from underwater earthmoving activities shall be contained, confined and restricted by the best available means in such a manner that turbidities will be kept to a minimum.

(C) Velocity Control. All facilities for the conveyance of water around, through, or from the project site shall be designed to reduce the velocity of flow in the facilities to a speed that will not cause significant erosion. This velocity in no case shall exceed 1.5 ft/Sec.

(D) Stabilizing. Within a section or area of the project, all slopes, channels, ditches or any disturbed area shall be stabilized as soon as possible after the final grade or final earthmoving has been completed.

(E) Interim Stabilization. Where it is not possible to permanently stabilize a disturbed area immediately after the final earthmoving has been completed or where the activity stops for more than 14 days, interim stabilization measures shall be promptly implemented. No earthmoving activity shall be conducted during times of inclement weather unless directed by the Board to prevent further accelerated erosion or sedimentation.

(F) Containment of Fills and Reclaimed Land Within Bodies of Water or Tidal Zones. Before filling or land development within a body of water or tidal zone, adequate seawalls and/or breakwater facilities shall be constructed to safely contain the fill without failure and to prevent accelerated sedimentation.

(G) Collection of Runoff. All runoff from a project area shall be collected and diverted to facilities for removal of sediment.

(H) Solids Separation. Runoff from a project area shall not be discharged into the waters of the Republic of Palau without effective means to prevent sedimentation.

(Effective May 26, 1996)

2401-1-10 Erosion and Sedimentation Control Facilities

(A) Sediment Retention Booms. Sediment retention booms must be used to restrict accelerated sedimentation around earthmoving or earth disturbing activity on reefs or in lagoons in all cases, except when a finding has been made after actual demonstration that no facilities are needed to prevent accelerated sedimentation. Approval of use of

alternate facilities or a finding that no facilities are necessary shall be made in writing by the ROP EQPB.

(B) Diversion Terrace.

(1) Diversion Terraces shall be constructed upgrade of a project area to convey runoff around the project area.

(2) Diversion Terraces shall have sufficient capacity to convey such runoff without overflowing. For temporary diversion the channel associated with the terrace shall have, at a minimum, capacity to convey 4.0 cubic ft/sec per acre of land tributary to it.

(3) Diversion Terraces shall be grassed or lined with erosion resistant materials to prevent accelerated erosion of the terrace and within any associated channel.

(4) Outlet structures shall be designed to reduce the discharge velocity to that which will not cause accelerated erosion, and shall be stabilized before use. This velocity shall not exceed 3 ft/sec.

(C) Seawalls and Breakwater Facilities. Seawalls and/or breakwaters to contain fill or reclaimed land shall be:

(1) sufficiently watertight to prevent accelerated sedimentation;

(2) well constructed on a solid foundation;

(3) constructed to a level at least two feet above the highest tide or flood level of historical knowledge, and,

(4) planned, designed and constructed under the direction of a person trained and experienced in building seawalls and breakwater facilities.

(D) Interceptor Channels.

(1) Interceptor channels may be used within a project area to reduce the speed of flow of surface runoff and thus prevent accelerated erosion.

(2) Water collected by interceptor channels shall be conveyed to sedimentation basins or to streams or other bodies of water.

(3) Outlets to vegetated area shall be designed to reduce the discharge velocity to that which will not cause accelerated erosion.

(E) Channels of Conveyance. All channels of conveyance shall be designed and/or grassed or lined with erosion resistant materials so as to reduce the speed of flow of surface runoff so as not to cause accelerated erosion.

(F) Solids Separation Facilities.

(1) A basin for settling solids out of water shall be structurally sound and have sufficient capacity to hold the water that drains into the basin until the solids have settled out. A minimum capacity of 6000 cubic feet per acre of disturbed project area shall be the minimum capacity allowed.

(2) The basin shall be cleaned when the settling of solids has reduced the capacity of the basin by 25%.

(3) Outlet structures shall be designed to allow only adequately settled water to be discharged, and at a rate that will not cause accelerated erosion, or accelerated sedimentation.

(G) Hydraulic Dredged Fills. The discharge from pumps or hydraulic dredges used to construct fills shall be sufficiently treated and retained with dikes, levees, seawalls, or other structures for a sufficient period of time so that accelerated sedimentation will not take place in the waters which receive the effluent. Transmission pipelines transporting fill material shall be maintained in a watertight condition at all times of excavation and fill operation.

(H) Barges, Scows, or Vessels for Hauling Dredged Material. Barges, scows, and other vessels operating in waters of the Republic of Palau and used for hauling dredged material shall be sufficiently tight and secure that accelerated sedimentation will not occur by reason of leaking or premature dumping due to faulty mechanism.

(Effective May 26, 1996)

2401-1-11 Restoration

(A) Stabilization. Upon completion of the project, all areas which were disturbed by the project shall be stabilized so that accelerated erosion and/or accelerated sedimentation will be prevented.

(B) Interim Control Measures. Any erosion and sedimentation control facility required or necessary to protect areas from erosion during the stabilization period shall be maintained until stabilization is completed.

(C) Final Measures. Upon completion of stabilization, all unnecessary or unusable control facilities shall be removed, the areas shall be graded and the soils shall be stabilized.

(Effective May 26, 1996)

DISCHARGE PROHIBITIONS

2401-1-12 Proper Disposal

All removed material shall be disposed of in a manner as mandated herein and in related regulations of the Board and other applicable regulations of the Republic of Palau including, but not limited to Marine and Fresh Water Quality Regulations and the terms and conditions of any permit as approved by the Board.

(Effective May 26, 1996)

2401-1-13 Prohibited Discharges

Discharge of removed material, directly or indirectly, into wetlands, lagoons, reefs, streams,

ocean, or other person's property is prohibited unless otherwise permitted by the Board.

(Effective May 26, 1996)

PERMITS

2401-1-14 Permit Required

(A) Any person who engages in an earthmoving activity within the Republic of Palau shall first obtain a permit from the Board for the proposed activity.

(B) Notwithstanding the permitting requirement set forth in Division A of this Section, no permit is required:

(1) Where the earthmoving activity is for plowing or tilling for agricultural purposes; or,

(2) Where the earthmoving activity is for, and at the site of, the construction and operation of a solid waste landfill site which is permitted under Solid Waste Management Regulations promulgated by the Board.

(C) Those persons that qualify under Division B of this Section to engage in earthmoving activities without a permit must otherwise comply with all provisions of this chapter.

(Effective May 26, 1996)

2401-1-15 Application for Permit

(A) Application for permits shall be on forms provided by the Board and shall be submitted by the person undertaking the earthmoving activity. In the case of land development, the application shall be submitted by the land developer rather than the contractor or agent.

(B) Each application shall be accompanied by an erosion and sedimentation control plan and such other documents as the Board may require.

(C) Application shall be accompanied by a processing fee of \$100.00, for commercial projects and \$20 for private residences which is not refundable, except that no fee is required of the Government of the Republic of Palau.

(D) Applicants shall obtain all necessary clearances from the Historical Preservation Office, State Planning Commission and others as may be required by agencies of the Republic of Palau or any political sub-division thereof prior to approval of the application by the Board.

(E) The Board may, prior to the issuance of a permit or to the denial of a permit, hold a public hearing to determine the facts upon which to base its decision. The Board shall hold a public hearing prior to the issuance or denial of a permit if requested by the applicant or other interested person(s).

(Effective May 26, 1996)

2401-1-16 Modification, Change or Revocation of Permits

(A) The Palau Environmental Quality Protection Board may, after taking into account any significant detrimental environmental degradation resulting from this permitted earthmoving activity, change or modify the conditions of the permit to minimize such degradation or partially, or in whole, revoke the permit should the Board determine such action to be justified and appropriate for environmental protection.

(B) The EQPB may change or modify the conditions of, suspend, or partially or in whole revoke, the permit if, after issuance of the permit, the Board determines that the information provided by the applicant proves to be false, incomplete or inaccurate.

(Effective May 26, 1996)

TRANSITION UNDER COMPACT OF FREE ASSOCIATION

2401-1-17 Definitions

Unless specifically indicated otherwise, or unless the context clearly requires a different meaning, for the purposes of Sections 2401-1-17 through 2401-1-25, inclusive:

(A) "Environmental Quality Protection Act" means the Republic of Palau Environmental Quality Protection Act, Republic of Palau Public Law 1-58, 24 PNC Section 101, et seq.

(B) "Federal Water Pollution Control Act" means the United States of America Federal Water Pollution Control Act Amendments of 1972, 82 Stat. 886, 33 U.S.C. 1251, et seq., as amended by the Clean Water Act of 1977, 91 Stat. 1566, 33 U.S.C. 1251, et seq., and the Water Quality Act of 1987, 101 Stat. 7, 33 U.S.C. 1251, et seq.

(C) "Pollutant Discharge Permit" means any Republic of Palau Environmental Quality Protection Board Pollutant Discharge Permit issued pursuant to Sections 2401-11-21, 2401-11-22, or 2401-11-36 the Republic of Palau Environmental Quality Protection Board Marine and Fresh Water Quality Regulations.

(D) "Section 401 Water Quality Certification" means certification from the Environmental Quality Protection Board for purposes of Section 401 of the Federal Water Pollution Control Act, under Sections 2401-11-44 through 2401-11-54, inclusive, of the Palau Environmental Quality Protection Board Marine and Fresh Water Quality Regulations, that any discharge, as set forth in Section 401, will comply with sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act.

(E) "Section 404 Permit" means a permit issued by the United States Army Corps of Engineers, pursuant to Section 404 of the Federal Water Pollution Control Act.

(Effective May 26, 1996)

2401-1-18 Existing 404 Permits

All Section 404 Permits, and the terms and conditions thereof, in effect on September 29, 1994 for discharges within the territory of the Republic of Palau shall continue in effect after the implementation of the Compact of Free Association between the Republic of Palau and the United States of America and are hereby adopted as EQPB Permits as follows:

(A) Where a Palau EQPB Earthmoving Permit has already been issued by the Board with respect to a particular project, any and all Section 404 Permits and 401 Water Quality Certifications issued for the project continues in effect and is hereby adopted as part of each EQPB Earthmoving Permit issued for the project.

(B) Where no EQPB Earthmoving Permit has yet been issued by the Board with respect to a particular project, each and every Section 404 Permit and Section 401 Water Quality Certification shall continue as a Pollutant Discharge Permit.

(Effective May 26, 1996)

2401-1-19 Compliance with 404 Permits Required

All Persons to whom a Section 404 Permit has been issued shall continue to abide by the terms and conditions of each such Section 404 Permit until the permit is replaced by a Palau EQPB Earthmoving Permit issued subsequent to the implementation of the Compact of Free Association.

(Effective May 26, 1996)

2401-1-20 Compliance with 401 Certification Required

All Persons to whom a Section 401 Water Quality Certification has been issued shall continue to abide by the terms and conditions of each such Section 401 Water Quality Certification until the certification is replaced by a Palau EQPB Earthmoving Permit issued subsequent to the implementation of the Compact of Free Association.

(Effective May 26, 1996)

2401-1-21 Earthmoving Application Required

Within 90 days of the implementation of the Compact of Free Association, all persons shall apply to the EQPB for a new or revised Earthmoving Permit

to include the terms and conditions of any Section 404 Permits and Section 401 Water Quality Certifications where the person:

(A) Has been issued a Section 404 Permit or a Section 401 Water Quality Certification; and

(B) Has not yet received nor filed with the Palau EQPB a complete application for a Palau EQPB Earthmoving Permit,

(Effective May 26, 1996)

2401-1-22 Continuation of Permitted Conduct

During the time period when the permit application required by the Section 2401-1-21 is pending before the Board, an activity authorized or required by the Section 404 Permit and the Section 401 Water Quality Certification may continue, notwithstanding any expiration date on the permit, to the extent such conduct is not otherwise prohibited by the laws and regulations of the Republic of Palau, including the requirement that a valid earthmoving permit be applied for and received from the Palau EQPB prior to the initiation of any earthmoving as that term is defined in Section 2401-1-03(H).

(Effective May 26, 1996)

2401-1-23 Resolution of Inconsistencies

If there exists any irreconcilable inconsistency in the requirements of any Section 404 Permit or Section 401 Water Quality Certification and the terms and conditions of any EQPB Earthmoving Permit or other requirement under the Environmental Quality Protection Act, the requirement that is most protective of the environment and the health and safety of the public shall be controlling, subject to any specific authorization the Board issues as to the appropriate resolution of any such irreconcilable inconsistency.

(Effective May 26, 1996)

2401-1-24 Termination of 404 Authority; Continuation of 401 Authority

Once the EQPB issues, after the implementation of the Compact of Free Association, a new or revised Earthmoving Permit incorporating the requirements of any Section 404 Permit or Section 401 Water Quality Certification, all authorizations to discharge fill materials under the Section 404 Permit shall cease. Any conduct authorized by any Section 401 Water Quality Certification, however, shall continue in full force and effect.

(Effective May 26, 1996)

2401-1-25 Compliance with Law and Regulations Required

Nothing in these regulations shall be construed to

allow any person to avoid the requirements of the Environmental Quality Protection Act, and the Regulations promulgated thereunder, including but not limited to, the Earthmoving Regulation's prohibition on undertaking any activity that disturbs or alters the surface of the land, a coral reef, or lagoon floor and the Marine and Fresh Water Quality Regulations' Sections 2401-11-21, 2401-11-22, and 2401-11-36 requirement that prior written authorization be obtained from the Board prior to the initiation of any project that may represent a new or increased source of either point-source or non-point source pollution.

(Effective May 26, 1996)

2401-1-26 (Reserved)

ENFORCEMENT

2401-1-27 Enforcement

Implementation, enforcement and court action pertaining to regulations contained herein shall be conducted according to the rights and procedures established in 24 PNC Sections 121 through 171, inclusive.

(Effective May 26, 1996)

RESPONSIBILITIES OF GOVERNMENT, DEVELOPMENT, AND SUPPORT ENTITIES

2401-1-28 Notice to EQPB Required

Any person who provides financial assistance, equipment and/or materials, or permits to build shall notify the Board immediately upon receipt of an application for such assistance, equipment and/or

materials, or building permit or other activity involving an earthmoving activity, by forwarding to the Board a copy of the application.

(Effective May 26, 1996)

2401-1-29 Prohibition on Release of Support Without an Earthmoving Permit

No person shall release funds, equipment and/or materials, or building permits to those engaged in earthmoving activities requiring an EQPB permit until the EQPB has issued the permit pursuant to these Regulations or has determined that no permit is required.

(Effective May 26, 1996)

MISCELLANEOUS PROVISIONS

2401-1-30 Severability

If any provision of these regulations or the application of any provision of these regulations to any person or circumstance is held invalid, the application of such provision to other persons or circumstances and the remainder of these regulations shall not be affected thereby.

(Effective May 26, 1996)

2401-1-31 Repealer

The regulations contained herein shall replace the Republic of Palau Environmental Quality Protection Board Earthmoving Regulations in effect in the Republic of Palau on the effective date of these regulations.

(Effective May 26, 1996)