



REGION 8

DENVER, CO 80202

Ref: 8WD-CWW

Mark Hutson, Environmental Director
Southern Ute Indian Tribe
mhutson@southernute-nsn.gov

Re: 401 Certification Request for the National Pollutant Discharge Elimination System Pesticide General Permit

Dear Mark Hutson:

The U. S. Environmental Protection Agency (EPA) is in the process of reissuing the National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for point source discharges from the application of pesticides (2026 PGP). EPA may not issue an NPDES permit to conduct any activity which may result in any discharges into the waters of the Southern Ute Reservation until the Southern Ute Indian Tribe has granted certification under Clean Water Act (CWA) section 401 or has waived its right to certify. 33 U.S.C. 1341(a)(1); 40 C.F.R. 124.53(a). This letter represents EPA's request for certification on the 2026 PGP pursuant to CWA section 401(a)(1).

A certifying authority must act on a request for section 401 certification within a set "reasonable period of time." EPA is setting the reasonable period of time for this certification request at 60 days, which will end on January 16, 2024 (60 days after this request was sent), unless EPA finds that "unusual circumstances require a longer time." See 40 CFR 124.53(c)(3). Thus, the Southern Ute Indian Tribe will be deemed to have waived its right to certify unless it acts on this request by January 16, 2024 (60 days after this request was sent).

EPA's PGP regulates point source discharges of biological pesticides and chemical pesticides that leave a residue in waters of the United States. The PGP covers pesticide discharge from the following pesticide use patterns: (1) mosquito and other flying insect pest control, (2) weed and algae pest control, (3) animal pest control, and (4) forest canopy pest control. EPA renews the PGP every five years, and the current PGP is scheduled to expire on October 31, 2026. Pursuant to a settlement agreement, EPA has agreed to issue the next iteration of the PGP on or prior to December 17, 2024. While the 2026 PGP will be reissued prior to the expiration of the 2021 PGP, the 2026 PGP will not go into effect until the current permit (2021 PGP) expires.

Attached is a copy of the draft permit and fact sheet. See 40 C.F.R. 124.53(c)(1). The draft permit, fact sheet, and all supporting documents will also be available on the public docket on regulations.gov (ID# EPA-HQ-OW-2023-0268). Copies of the draft permit and fact sheet are also available on EPA's NPDES pesticide permitting website: <https://www.epa.gov/npdes/pesticide-permitting-proposed-2026-pgp>. EPA estimates that 14,300 Operators are covered by the PGP on an annual basis, although this number varies from year to year. If you need assistance in determining the scope of coverage in your jurisdiction, please notify the contact listed below. Also attached is documentation that EPA sent a pre-filing meeting request to you at least 30 days prior to submitting this certification request.

It is important to note that EPA recently promulgated revised regulations governing section 401 certification that are scheduled to go into effect on November 27, 2023. 88 FR 66558 (revising 40 CFR part 121). Because this request for certification, including EPA's setting of the reasonable period of time, is being sent prior to the revisions taking effect, it is subject to the pre-existing regulatory requirements (not by the revised regulations). Once the new regulations take effect, all certification actions will be based on the revised regulations. For example, current regulations require you to cite, for each certification condition, the CWA or Southern Ute Indian Tribal law upon which the condition is based. 40 C.F.R. 124.53(e)(2). The revised regulations while requiring that the certifying authority must state why the conditions are necessary to assure that the activity will comply with water quality requirements, do not include this citation requirement. See 40 CFR 121.7 and 124.53 as revised by EPA's recent rulemaking. If you have any questions regarding the revised regulations governing section 401 certification, please notify CWA401@epa.gov, or the contact listed below. Also, see 88 FR 66655, *Implementation Considerations* for more information regarding the applicability of the revised regulations to ongoing certification actions.

Please note that any comments you may submit to EPA during the upcoming 45-day public comment period for this permit will not be considered part of the Southern Ute Indian Tribe CWA section 401 certification. Any such comments will be evaluated, along with other public comments, as part of the overall public comment review and finalization of the draft permit. If you anticipate submitting any comments during the 45-day public comment period that you wish to be included as part of your CWA section 401 certification, they must be explicitly included as part of your CWA section 401 certification.

Please send your certification to:

Margaret Kennedy
kennedy.margaret@epa.gov

Following review of the public comments received during the public comment period and receipt of your certification or waiver thereof, EPA will issue the final PGP. The final 2026 PGP will incorporate any conditions specified in the Southern Ute Indian Tribe certification. 33 U.S.C. 1341(d).

If you have any questions, please contact Margaret Kennedy of my staff at 303-312-6644, or by email at kennedy.margaret@epa.gov. Thank you for your cooperation.

Sincerely,

Stephanie DeJong, Manager
Clean Water Branch

Enclosures

1. Draft 2026 Permit
2. Draft 2026 Fact Sheet
3. Documentation that EPA has submitted a pre-filing meeting request

cc: Mandy Eskelson, Water Quality Coordinator