



REGION 8

DENVER, CO 80202

Ref: 8WD-CWW

SENT VIA EMAIL
DIGITAL DELIVERY RECEIPT REQUESTED

Geoff Hensgen, Water Quality Program Manager
Southern Ute Indian Tribe
ghensgen@southernute-nsn.gov

Re: 401 Certification Request for the Southern Ute Indian Tribe Ignacio Wastewater Treatment Plant, Permit No. CO-0022853

Dear Mr. Hensgen:

On September 27, 2024, the U.S. Environmental Protection Agency published a public notice of our intention to issue a National Pollutant Discharge Elimination System (NPDES) permit to the applicant listed below pursuant to Section 402 of the Clean Water Act (CWA).

Southern Ute Indian Tribe Utilities Division, Ignacio Wastewater Treatment Plant, Permit No. CO-0022853

The EPA is requesting the Southern Ute Indian Tribe's (SUIT) written certification of water quality under CWA Section 401 with respect to discharges that would be authorized by the above permit. Pursuant to 40 CFR § 121.4, the EPA and the SUIT held a 401 certification pre-filing meeting on May 7, 2024. At this time, we are requesting that the SUIT make a written determination regarding certification for this draft permit. The EPA may not issue a permit authorizing discharges into the waters of the Tribe until the SUIT has granted, granted with conditions, denied, or waived certification under CWA Section 401 (40 CFR § 121.7). Enclosed are copies of the permit application, public notice version of the draft permit, the supporting public notice version of the draft statement of basis, and water quality data used to develop permit conditions.

We would appreciate receiving your certification, certification with conditions, denial of certification, or express waiver of certification within a "reasonable period of time" from receipt of this letter. Consistent with 40 CFR § 121.6, the statutory "reasonable period of time" begins when a certifying authority (i.e., the SUIT) receives the request for certification, and its duration may be agreed upon by the certifying authority and the EPA. In the absence of a written agreement between the SUIT and the EPA about what constitutes a reasonable period of time, the EPA asks that you submit the SUIT's

certification as soon as conveniently possible but not more than six months after receiving this request, per 40 CFR § 121.6(c). To the extent possible, please account for the SUI's public notice procedures during this six-month period.

If a longer period of time is necessary to accommodate the SUI's public notice procedures or force majeure events, upon written notification to the EPA prior to the end of the reasonable period of time, the reasonable period of time shall be extended by the period of time necessitated by public notice procedures or the force majeure event. The EPA and the SUI may also agree in writing to extend the reasonable period of time for any reason, provided that the extension shall not cause it to exceed one year from the date that the request for certification is received. Failure to issue or deny certification within the reasonable period of time will be considered by the EPA to be a waiver of the certification requirement.

To provide more details about the SUI's options for certification, 40 CFR § 121.7(a) states that a certifying authority may act on a request for certification in one of four ways:

1. The certifying authority may grant certification. A grant of certification means that the certifying authority has determined that the permitted activity will comply with applicable water quality requirements. Granting certification means that the permit may be issued. See 33 U.S.C. 1341(a)(1).
2. The certifying authority may grant certification with conditions. A grant of certification with conditions means that the certifying authority has determined that the permitted activity will comply with applicable water quality requirements, but only if certain conditions are met. Pursuant to section CWA Section 401(d), if a grant of certification includes conditions, those conditions must be incorporated into the permit. 33 U.S.C. 1341(d).
3. The certifying authority may deny certification. A denial of certification means that the certifying authority is not able to certify that the permitted activity will comply with applicable water quality requirements. If a certifying authority denies certification, the permit cannot be issued. 33 U.S.C. 1341(a)(1).
4. The certifying authority may expressly waive certification. The CWA explicitly provides for a constructive waiver if the certifying authority fails or refuses to act on a request for certification within the reasonable period of time. An express waiver does not mean that the certifying authority has determined that the permitted activity will comply with applicable water quality requirements. Instead, an express waiver indicates only that the certifying authority has chosen not to act on a request for certification. Consistent with the CWA, an express waiver enables the permit to be issued without a certification. 33 U.S.C. 1341(a)(1).

If you have any questions with regard to the draft permit, the draft statement of basis or the request for 401 certification, please contact Erik Makus of my staff at (406) 457-5017 or makus.erik@epa.gov.

Sincerely,

Stephanie DeJong, Manager
Clean Water Branch

Enclosures

1. Permit Application
2. Draft Permit
3. Draft Statement of Basis
4. Water quality data

cc: Mark Hutson, Southern Ute Indian Tribe Environmental Program Director