



ENVIRONMENTAL PROGRAMS DEPARTMENT

SOUTHERN UTE INDIAN TRIBE
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November 12, 2024

Sent via email

Stephanie DeJong, Manager
Clean Water Branch
U.S. Environmental Protection Agency – Region 8
dejong.stephanie@epa.gov
303.312.6362

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

Dear Ms. DeJong:

The Southern Ute Indian Tribe’s (“Tribe”) Environmental Programs Department (“Department”) received a Clean Water Act (“CWA”) Section 401 certification request on October 2, 2024 for the Environmental Protection Agency’s (“EPA”) issuance of the National Pollutant Discharge Elimination System (“NPDES”) permit No. CO-0022853, on behalf of the Tribe’s Ignacio Wastewater Treatment Plant. EPA requested a pre-filing meeting with the Department on April 24, 2024 and held a pre-filing meeting on May 7, 2024 to discuss information relevant to the permit. In addition, The Department met with EPA on September 3, 2024, to supply preliminary recommendations for EPA’s consideration for the draft NPDES permit. Note, on behalf of the Tribe, the Department retains the authority to adjust these recommendations during the 401 certification analysis for this permit.

The Ignacio Wastewater Treatment Plant is located on tribal trust lands within the exterior boundaries of the Southern Ute Indian Reservation; therefore, the Department is the certifying authority. The Department has completed its certification analysis and has elected to grant a certification.

Facility Description

The Ignacio Wastewater Treatment Plant is a Tribally owned and operated wastewater treatment plant (“WWTP”). The facility services both the Tribe and the Town of Ignacio and facility NPDES permitting dates to 1992. Permit number CO-0022853 became effective November 1, 2017 and expired September 30, 2022. Renewal Paperwork was submitted to EPA March 15, 2022. The permit authorizes the WWTP to discharge into Rock Creek, which empties into the Pine River within the boundaries of the Reservation. The Ignacio WWTP is a publicly owned treatment works located at 16364 US Highway 172 at the southern end of Ignacio, in La Plata

County, Colorado within the external boundaries of the Southern Ute Indian Reservation. Outfall 002 is located at approximately latitude 37.1043° N, longitude 107.6300° W. The WWTP produces dried, composted sludge (biosolids) on-site, and applies them on Tribal agricultural lands.

Procedures and Decision Making

As the Tribal entity with the authority to make 401 water quality certification decisions, the Department expects any issued or reissued NPDES permits will abide by the conditions outlined in the Tribe's 401 certification procedures for non-404 permits and consider the Tribe's approved water quality standards when developing effluent limits.

The Department evaluates requests pursuant to the "[Southern Ute Indian Tribe's Clean Water Act Section 401 Certification Procedures for Non-Section 404 Permits](#)." Consistent with 40 Code of Federal Regulations §121.6, the Department is issuing its certification decision to EPA within the statutory "reasonable period of time," which begins when a certifying authority 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 Tribe and the EPA regarding what constitutes a reasonable period of time, the EPA requested the Department's decision as soon as conveniently possible, but not more than six months after receiving the certification request.

During the September 3, 2024 meeting with EPA, the Department conveyed the following recommendations for water quality monitoring by the facility and effluent pollutant limits associated with discharge points (outfalls):

- Temperature: Reducing the frequency of temperature monitoring to only six months annually, during May through October each year.
- Nutrients: Monthly monitoring for six sequential months each year (May through October) for a total of six samples annually. This recommendation is based off nitrogen and phosphorus results observed at the Tribe's Pine River and Rock Creek monitoring sites from 2017-2021.
- Ammonia: Removing the ammonia limit from the permit but monthly ammonia monitoring should be performed for six sequential months each year (May through October).

The Department reviewed EPA's certification request, including the permit application form, draft permit, statement of basis, and EPA's compilation of relevant water quality data and Direct Monitoring Report data, and then compared this information to the Tribe's water quality monitoring data spanning the past 5 years. The permit requirements are consistent with the Department's recommendations regarding monitoring and removal of effluent limits for ammonia and it is the opinion of the Department that facility discharges under the permit will comply with the Tribe's water quality standards. The Department's assessment of relevant water quality monitoring data from Rock Creek and Pine River did not indicate that facility discharges were causing non-attainment of Tribal water quality standards for these water bodies.

Public Notice Process

Upon completion of internal Tribal reviews, the Department complied with the public notice procedures set forth in Section 4-102 of the Tribe's 401 Certification Procedures. The public comment period was posted (**TO BE UPDATED**). The Department received (**TO BE UPDATED**) comments.

General Information

This 401 certification decision letter must be retained in the permit applicant's files with the applicable EPA permit. This certification is specifically associated with the EPA NPDES permit (**CO-0022853**) and expires concurrently with the permit expiration date.

Within 30 days of the Department's 401 certification decision, any person aggrieved by the decision may seek judicial review in the Southern Ute Indian Tribal Court. The review shall be on the record without taking additional evidence. If the court finds that the Department exceeded its authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse or modify the Department's decision or action. Otherwise, the decision of the Department shall be affirmed. Upon request by the court, the Department shall provide the court with a certified copy of all documents, records, transcripts, or other information which formed the basis for any decision or action for which an aggrieved party seeks judicial review.

If you have questions about the Tribe's certification decision, please contact Geoffrey Hensgen, Water Quality Program Manager (ghensgen@southernute-nsn.gov, 970-563-2805).

Sincerely,

Mark Hutson, Director
Environmental Programs Department
mhutson@southernute-nsn.gov

Enclosure: Southern Ute Indian Tribe's 401 Water Quality Certification Requirements

cc: Erik Makus, U.S. EPA Region 8, makus.erik@epa.gov
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Southern Ute Indian Tribe (SUIT) 401 Water Quality Certification Requirements

Southern Ute Indian Tribe's Clean Water Act Section 401 Certification Procedures for Non-Section 404 Permits

Article 4-106. Certification Requirements

(1) The following requirements shall apply to all certifications unless specifically authorized by the 401 certification issued by the Division:

(a) A water quality certification shall require the project owner and operator to notify the Division Head* of all changes in the project subsequent to certification.

(b) A water quality certification shall not be transferable without the written approval of the Division Head.

(c) Authorized representatives from the Division shall be permitted to enter upon the site where the construction activity or operation of the project is taking place for purposes of inspection of compliance with BMPs and certification conditions.

(d) In the event of any changes in control or ownership of facilities where the construction activity or operation of the project is taking place, the successor shall be notified in writing by his predecessor of the existence of the BMPs and certification conditions. The permittee shall provide a copy of such notification to the Division.

(e) If the permittee discovers that certification conditions are not being implemented as designed, or are not operating or functioning as designed, or if there is an exceedance of water quality standards despite compliance with the certification conditions by the permittee, the permittee shall verbally notify the Division of such failure or exceedance within two working days of becoming aware of the same. Within ten working days of such notification, the permittee shall provide to the Division, in writing, the following:

i. In the case of the failure to comply with the certification conditions, a description of (i) the nature of such failure, (ii) any reasons for such failure, (iii) the period of non-compliance, and (iv) the measures to be taken to correct such failure to comply; and

ii. In the case of the exceedance of water quality criteria, (i) an explanation, to the extent known after reasonable investigation, of the relationship between the project and the exceedance, (ii) the identity of any other known contributions to the exceedance, and (iii) a proposal to modify the certification conditions so as to remedy the contribution of the project to the exceedance.

(f) Any anticipated change in discharge location, quantities, or composition associated with the project must be reported to the Division by submission of a written notice by the permittee no less than ten days before the change. If the change is determined to be significant, the permittee

will be notified within ten days, and the change will be acknowledged and approved or disapproved.

(g) Any diversion from or bypass of facilities necessary to maintain compliance with the terms and conditions herein is prohibited, except (i) where unavoidable to prevent loss of life or severe property damage, or (ii) where excessive storm drainage or runoff would damage any facilities necessary for compliance with limitations and prohibitions herein. The Division shall be notified immediately in writing of each such diversion or bypass.

(h) At least 5 days before commencement of a project in a watercourse, which the Division has certified, or conditionally certified, the permittee shall notify the Division.

(i) Immediately upon discovery of any spill or other discharge to waters of the United States not authorized by the applicable license or permit, the permittee shall notify the Division.

(j) Construction operations within watercourses and water bodies shall be restricted to only those project areas specified in the federal license or permit.

(k) No construction equipment shall be operated below the existing water surface.

(l) Work should be carried out diligently and completed as soon as practicable. To the maximum extent practicable, discharges of dredged or fill material shall be restricted to those periods when impacts to designated uses are minimal.

(m) The project shall incorporate provisions for operation, maintenance, and replacement of BMPs to assure compliance with the conditions identified in this section, and any other conditions placed in the permit or certification.

All such provisions shall be identified and complied with in an operation and maintenance plan which will be retained by the project owner and available for inspection within a reasonable timeframe upon request by any authorized representative of the Division.

(n) The use of chemicals during construction and operation shall be in accordance with the manufacturers' specifications. There shall be no excess application and introduction of chemicals into waters of the United States.

(o) All solids, sludges, dredged or stockpiled materials and all fuels, lubricants, or other toxic materials shall be controlled in a manner so as to prevent such materials from entering waters of the United States.

(p) All seed, mulching material and straw used in the project shall be certified weed-free.

(q) Discharges of dredged or fill material in excess of that necessary to complete the project are not permitted.

(r) Discharges to waters of the United States not identified in the license or permit and not certified in accordance therewith are not allowed.

(s) No discharge shall be allowed which causes non-attainment of federal or tribal narrative water quality or biological criteria.

(t) Before any equipment touches the water, the project proponent must provide to the Division:

(i) a certification that (a) the equipment has not been used in waters with the possibility of aquatic nuisance species infestation and (b) the equipment has been thoroughly decontaminated using water that is heated to a temperature necessary to kill aquatic nuisance species,

(ii) evidence that the equipment has passed a Colorado Parks and Wildlife invasive species inspection, or

(iii) a certification in a form that is acceptable to the Division, signed by a third-party consultant, certifying that the equipment has undergone a waters of the United States-specific preventative decontamination using water that is heated to a temperature necessary to kill aquatic nuisance species.

(2) Best Management Practices.

(a) BMPs are required for all projects for which Division certification is issued except for section 402 permits. Project proponents must select and propose BMPs to the Division to be employed in their project.

(b) All certification requests for certifications which require BMPs shall include a map of project location, a site plan, and a listing of the selected BMPs chosen for the project. At a minimum, each project must provide for the following:

i. Permanent erosion and sediment control measures that shall be installed at the earliest practicable time consistent with good construction practices and that shall be maintained and replaced as necessary throughout the life of the project.

ii. Temporary erosion and sediment control measures that shall be coordinated with permanent measures to assure economical, effective, and continuous control throughout the construction phase and during the operation of the project.

* Division Head refers to the Department's Water Quality & Remediation Division Head. Please direct any and all correspondence pertaining to the above Certification Requirements to the Division Head's correspondence liaison: The Department's Water Quality Program Manager per the contact information supplied on Page 3 of this letter.