



WATER QUALITY AND REMEDIATION PROGRAM

Environmental Programs Division

Southern Ute Indian Tribe

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Response to Comments – Southern Ute Indian Tribe Section 401 Certification Procedures and Fee Structure

Introduction:

On October 15, 2025, the Southern Ute Indian Tribe (the Tribe), through its Environmental Programs Department (Department), released for public comment five documents related to the Tribe's Clean Water Act (CWA) Section 401 water quality certification authority. These documents included:

- Instructions for Project Proponents Seeking a Section 401 Pre-Filing Meeting with the Tribe
- Instructions for Project Proponents Seeking a Section 401 Certification with the Tribe
- The Tribe's 401 Certification Procedures for Permitting Agencies
- The Tribe's 401 Certification Procedures for Project Proponents
- The Tribe's 401 Water Quality Certification Fee Guidelines

The purpose of the revisions was to update and clarify the Tribe's Section 401 procedures and fee structure, including alignment with EPA's 2023 revisions to the Section 401 regulations in 40

CFR Part 121, and to improve transparency, predictability, and administrative efficiency for permitting agencies, project proponents, and other stakeholders.

The Department accepted written comments from federal agencies, industry representatives, consultants, and internal Tribal entities and divisions. All comments were reviewed, categorized by topic, and substantively similar comments were consolidated where appropriate. Responses below reflect the Department’s consideration of the comments and any resulting revisions to the documents.

Topic Code	Topic Title
T-1	Applicability and Jurisdiction (Trust vs. Fee Lands)
T-2	Pre-Filing Meetings and Timing Requirements
T-3	Public Notice Period
T-4	Public Notice Methods
T-5	Fee Structure, Fee Tiers, and Transparency
T-6	Individual Permits
T-7	PCN Timing and Coordination with USACE
T-8	Additional Information and 40 CFR § 121.5(c)

Summary of Comments and Responses:

T1 Applicability and Jurisdiction (Trust vs. Fee Lands)

PP2 (Industry) and GF1 (Consultant)

Two commenters requested clarification regarding the scope of the Tribe’s Section 401 certification authority. Commenters suggested that the Procedures should clearly state that the Tribe’s authority applies where the point of discharge is located on Tribal trust lands, while EPA Region 8 retains authority for discharges occurring on fee lands within the Reservation.

Commenters also asked for confirmation that applicability is determined by the location of the point-source discharge rather than the overall project footprint.

Response

The Department has added a paragraph in the Certification Procedures for Project Proponents to confirm that the Tribe's Section 401 certification authority applies only to activities where the point of discharge is located on Tribal trust lands within the exterior boundaries of the Southern Ute Indian Reservation. For activities where the point of discharge is located on fee lands within the Reservation, EPA Region 8 retains Section 401 certification authority.

T2 Pre-Filing Meetings and Timing Requirements

PP3 (Industry)

It was commented that the Procedures may require pre-filing meetings for projects with greater potential water quality impacts, establish a minimum 30-day lead time prior to application submittal, and set a predictable response timeframe. GF3 (Consultant) recommended clarifying the relationship between the pre-filing process and the ultimate submittal, including reference to applicable federal timing requirements. GF4 (Consultant) provided additional suggestions regarding the pre-filing meeting process, recommending that pre-filing meetings be required for projects with greater potential water quality impacts, that a minimum 30-day lead time be established before application submittal, and that a predictable response timeframe be set. GF4 also requested clearer linkage between the pre-filing meeting and the subsequent certification request, including reference to applicable federal timing requirements, and suggested adding references or hyperlinks to the Instructions for Project Proponents to better guide applicants through the process.

Response

The Department has added clarifying content in the Certification Procedures for Project Proponents and Permitting Agencies establishing a minimum 30-day timeframe between the pre-filing meeting request and submittal of a certification request. The Department has also established a 30-day timeframe to respond to meeting requests. Cross references to the Instructions for Project Proponents have been added where appropriate. The Department has also established a 30-day timeframe to respond to meeting requests.

Cross-references to the Instructions for Project Proponents have been added where an appropriate timeframe between the pre-filing meeting request and submittal of a certification request is needed. EPD has also established a 30-day timeframe to respond to meeting requests. Cross-references in the Instructions for Project Proponents have been added where appropriate.

T3 Public Notice Period Public Notice Period

PP6 (Industry) and GF8 (Consultant)

Two commenters recommended establishing a clearly defined public notice period. Commenters suggested adopting a standard 30-day notice timeframe, consistent with common regulatory practice, or alternatively specifying minimum and maximum public notice durations to provide greater predictability and transparency.

Response:

While the Department recognizes that a 30-day public notice period is common in many regulatory contexts, setting up a fixed period is impractical for Tribal procedures. The potential for water quality impacts varies significantly from project to project, as does the time available within the established reasonable period of time. The Department will retain flexibility to tailor public notice periods to the specific circumstances of each project while ensuring meaningful engagement and timely decisions.

T4 Public Notice Methods

PP6(b) (Industry) and GF9 (Consultant)

Two commenters recommended clarifying the methods used to provide public notice and ensuring that notices are posted consistently. Commenters suggested identifying at least one reliable, regularly maintained method, preferably to the Division's website, to provide consistent and accessible public notice.

Response

The Department issues public notices pertaining to its Section 401 program on its webpage. Additional notice methods may be used depending on project type and affected audiences. Prescribing specific notice channels within the procedures could limit

flexibility and increase administrative complexity. For those reasons, the Department rejected these commenter requests.

T5 Fee Structure, Fee Tiers, and Transparency

PP4 and CPP5 (Industry) construction costs, GF7 (Consultant) fee structure, and DWR1 (Tribal Agency)

Several commenters requested greater clarity and transparency in the 401 certification fee structure. Suggestions included explaining how fees are calculated, defining evaluation factors, providing fee ranges, and clarifying whether post-construction costs are included. Additional recommendations included adopting a tiered flat-fee structure to improve predictability and providing either ballpark cost estimates or an hourly rate to help project proponents anticipate expenses.

Response

The Department has provided a separate Fee Tier Document specifying criteria used to determine fees, associated fee amounts, and which inspections, laboratory analyses, and long-term monitoring costs are included in the initial fee or billed separately. This document will be posted on the Department's webpage under the 401 water quality certification section. The proposed fee structure and rates are consistent with those of the Colorado Department of Public Health and Environment. In future updates, the Department may consider adding transparency measures, such as hourly rate estimates that are included in the initial fee or billed separately. Term monitoring costs are included in the initial fee or billed separately. This document will be updated as needed on our website.

T6 Inclusion of Individual Permits

EPA1 and EPA2 (Federal Agency) individual permits

A Federal agency commenter requested clarification regarding the use of the term "Permit" in the proposed Procedures for Federal Permitting Agencies. The commenter noted that the definition should expressly include EPA-issued individual permits and recommended adding references to individual permits within the relevant certification requirement sections.

Response

When a Federal agency requests a CWA Section 401 certification from the Tribe under an individual permit, the Federal agency is considered the project proponent and therefore this process would fall under the Procedures for Project Proponents. The Department has recognized, however, that under Procedures for Project Proponents Article 1. General Provisions, Section 1-104. Definitions item (8) was corrected to say “(8) “Permit” means an Army Corps-issued nationwide or regional general permit or an EPA-issued general or individual permit.”

Section 4-106 of the Procedures for Federal Agencies applies to certification of U.S. Army Corps of Engineers’ issuance or reissuance of nationwide or regional general permits, or EPA’s issuance or reissuance of general permits. Because EPA-issued individual permits fall under the Procedures for Project Proponents, and “individual permits” are already addressed within those provisions, the Department determined that no revision to Section 4-106 of the *Procedures for Federal Agencies* is necessary.

T7 PCN Timing and Coordination with USACE

PP10 (Industry) and GF14 (Consultant)

Two commenters suggested providing additional flexibility in the timing of pre-construction notification (PCN) submittals. Commenters recommended allowing PCNs to be submitted concurrently with, or shortly after, submission to the U.S. Army Corps of Engineers and expressed concern that existing timing requirements could delay USACE submittals.

Response

The Department has revised the Procedures for Project Proponents to allow concurrent or prompt subsequent submission of PCNs to the Division and USACE, while maintaining applicable pre-filing meeting requirements

T8 Additional Information and 40 CFR § 121.5(c)

GF5 (Consultant) GF15 (Consultant)

A commenter raised concerns about the scope of supplemental information that may be requested during the certification process. The commenter questioned whether the “but not limited to”

language used in reference to additional information requests is consistent with 40 CFR § 121.5(c) and recommended limiting any required supplemental materials to those directly related to water quality.

Response

The Department has added clarifying language to reflect that while the Division may request additional information after a certification request is submitted, it will not alter the required contents of a request after receipt. Clarifications have also been added to ensure that supplemental materials are requested only insofar as they relate to water quality.

If you have further questions or comments, please contact the Tribe's Environmental Programs Department.

Thank you,



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