



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

WATER DIVISION

July 15, 2021

Reply to:
Attn: 19-C04

Mr. Todd Mitchell
Swinomish Indian Tribal Community
P.O. Box 817
La Connor, WA 98257
tmitchell@swinomish.nsn.us

Re: Request for Clean Water Act Section 401 Certification for the National Pollutant Discharge Elimination System (NPDES) Proposed 2022 Construction General Permit

Dear Mr. Mitchell:

The U. S. Environmental Protection Agency (EPA) is in the process of reissuing the National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) for stormwater discharges from construction activities. EPA may not issue an NPDES permit to conduct any activity that may result in any discharges into Swinomish waters until granted certification under Clean Water Act (CWA) section 401, or the Tribe has waived the right to certify. 33 U.S.C. 1341(a)(1); 40 C.F.R. 124.53(a). Your CWA section 401 certification must be based on the draft general permit published on May 12, 2021. 40 C.F.R. 124.53(c)(1). EPA requests that you review and take action on this CWA section 401 certification request within the applicable reasonable period of time.

The reasonable period of time for CWA certification of EPA-issued NPDES permits is normally 60 days, unless there is a determination that "unusual circumstances require a longer time." See 40 CFR 124.53(c)(3). EPA is setting the reasonable period of time for this certification request at 60 days, which will be September 13, 2021. Thus, the Swinomish Tribe will be deemed to have waived the right to certify unless that right is exercised by September 13, 2021. 40 C.F.R. 124.53(c)(3).

The draft permit, fact sheet, and all supporting documents are available on the public docket on regulations.gov (Docket ID# EPA-HQ-OW-2021-0169). Copies of the draft permit, fact sheet, and Federal Register notice are also available on EPA's NPDES construction stormwater website: <https://www.epa.gov/npdes/proposed-2022-construction-general-permit-cgp-and-related-documents>.

If the Swinomish Tribe choose to submit a certification, with or without conditions, that certification must be in writing and must include:

- 1) Any specific conditions necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of Swinomish law. 33 U.S.C. 1341(d); 40 C.F.R. 124.53(e)(1).
- 2) If you include one or more conditions more stringent than those contained in the draft permit as

necessary to meet the requirements of either the CWA or Swinomish Tribal law, you must cite the law reference upon which that condition is based. Failure to provide such a citation waives your right to certify with respect to that condition. 40 C.F.R. 124.53(e)(2).

- 3) A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of Swinomish Tribal law, including water quality standards. Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process. 40 C.F.R. 124.53(e)(3).

Please note that any comments that you may have submitted to EPA during the 60-day public comment period will not be considered part of the Swinomish 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 wish for any comments or permit limitations that you submitted during the 60-day public comment period to be included as part of your CWA section 401 certification, they must be submitted again as part of your CWA section 401 certification.

Please send your certification to Margaret McCauley at mccauley.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 2022 CGP. The final 2022 CGP will incorporate any appropriate conditions specified in your certification. 33 U.S.C. 1341(d). The permit, once final, will be available at: <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

If you have any questions, please contact Margaret McCauley of my staff at (206) 553-1772 or by email at mccauley.margaret@epa.gov. Thank you for your assistance and cooperation.

Sincerely,

Susan Poulson, Section Manager
NPDES Permitting Section