

PUBLIC NOTICE

The U.S. Environmental Protection Agency has issued the 2012 National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity (CGP).

In accordance with Section 401 of the Clean Water Act (CWA), the Bad River Band of Lake Superior Tribe of Chippewa Indians has examined the application of the 2012 NPDES CGP and determined that there is reasonable assurance—with conditions attached—that the activities associated with this General Permit will be consistent with relevant water quality considerations. Additional information is provided in the attached document (Exhibit A).

The Tribe seeks comments on its proposed CWA Section 401 Certification associated with the 2012 NPDES CGP. Written comments can be sent via email or post office to:

Naomi Tillison
Bad River Tribe's Natural Resources Department
P.O. Box 39
Odanah, WI 54861
wqs@badriver-nsn.gov

Comment deadline is March 29, 2012.

Exhibit A: Proposed Conditional Certification

Clean Water Act 401 Certification for the 2012 National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity

In compliance with the provisions of the Clean Water Act (CWA), as amended (33 U.S.C. 1251 *et seq.*), the U.S. Environmental Protection Agency (EPA) has issued the 2012 National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity (CGP).

The Federal Register Notice proposing for public comment the 2012 NPDES CGP was published by the EPA on April 25, 2011. For additional information on the CGP or to view the complete text of the *Federal Register* notice, please visit: <http://www.epa.gov/npdes/stormwater/cgp>.

In accordance with Section 401 of the Clean Water Act, the Bad River Band of Lake Superior Tribe of Chippewa Indians (hereafter, the Tribe) has examined the application of the 2012 NPDES CGP and determined that there is reasonable assurance—with the conditions listed below—that the activities associated with this General Permit will be consistent with relevant water quality considerations.

The Tribe has determined, however, that certain conditions are necessary to protect (a) the public health and welfare of the Tribe, its members, and others living on its Reservation, and (b) the present and future use of Reservation waters for cultural purposes, propagation of fish and aquatic life and wildlife, and other legitimate uses. Accordingly, the Tribe will grant CWA 401 certification for the 2012 NPDES CGP with the following conditions to apply to discharges made under this General Permit into Waters of the Bad River Reservation:

- 1) Only those activities specifically authorized by the CGP are authorized by this Certification. This Certification does not authorize impacts to cultural properties, or historical sites, or properties that may be eligible for listing as such.^{a,b}
- 2) Operators are not eligible to obtain authorization under the CGP for all new discharges to an Outstanding Tribal Resource Water (or Tier 3 water).^c Outstanding Tribal Resource Waters, or Tier 3 waters, include the following: Kakagon Slough and the lower wetland reaches of its tributaries that support wild rice, Kakagon River, Bad River Slough, Honest John Lake, Bog Lake, a portion of Bad River, from where it enters the Reservation through the confluence with the White River, and Potato River.^d
- 3) Projects utilizing cationic treatment chemicals^e within the Bad River Reservation boundaries are not eligible for coverage under the CGP.^f
- 4) All projects which are eligible for coverage under the CGP and are located within the exterior boundaries of the Bad River Reservation shall be implemented in such a manner that is consistent with the Tribe's Water Quality Standards (WQS).^a

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- 5) An operator proposing to discharge to an Outstanding Resource Water (or Tier 2.5 water) under the CGP must comply with the antidegradation provisions of the Tribe's WQS. Outstanding Resource Waters, or Tier 2.5 waters, include the following: a portion of Bad River, from downstream the confluence with the White River to Lake Superior, White River, Marengo River, Graveyard Creek, Bear Trap Creek, Wood Creek, Brunswailer River, Tyler Forks, Bell Creek, and Vaughn Creek.^g The antidegradation demonstration materials described in provision E.4.iii. must be submitted to the following address:
 - Bad River Tribe's Natural Resources Department
 - Attn: Water Resources Specialist
 - P.O. Box 39
 - Odanah, WI 54861

- 6) An operator proposing to discharge to an Exceptional Resource Water (or Tier 2 water) under the CGP must comply with the antidegradation provisions of the Tribe's WQS. Exceptional Resource Waters, or Tier 2 waters, include the following: any surface water within the exterior boundaries of the Reservation that is not specifically classified as an Outstanding Resource Water (Tier 2.5 water) or an Outstanding Tribal Resource Water (Tier 3 water).^h The antidegradation demonstration materials described in provision E.4.ii. must be submitted to the following address:
 - Bad River Tribe's Natural Resources Department
 - Attn: Water Resources Specialist
 - P.O. Box 39
 - Odanah, WI 54861

- 7) A discharge to a surface water within the Bad River Reservation boundaries shall not cause or contribute to an exceedance of the turbidity criterion included in the Tribe's WQS, which states: Turbidity shall not exceed 5 NTU over natural background turbidity when the background turbidity is 50 NTU or less, or turbidity shall not increase more than 10% when the background turbidity is more than 50 NTU.ⁱ

- 8) All projects which are eligible for coverage under the CGP within the exterior boundaries of the Bad River Reservation must comply with the Bad River Reservation Wetland and Watercourse Protection Ordinance, or Chapter 323 of the Bad River Tribal Ordinances, including the erosion and sedimentation control, natural buffer, and stabilization requirements. Questions regarding Chapter 323 and requests for permit applications can be directed to the Wetlands Specialist in the Tribe's Natural Resources Department at (715) 682-7123 or wetlands@badriver-nsn.gov.

- 9) An operator of a project, which is eligible for coverage under the CGP, that would result in an allowable discharge under the CGP occurring within the exterior boundaries of the Bad River Reservation must notify the Tribe prior to the commencing earth-disturbing activities.^{a,b} The operator must submit a copy of the Notice of Intent (NOI) to the following addresses at the same time it is submitted to the U.S. EPA:

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Bad River Tribe's Natural Resources Department
Attn: Water Resources Specialist
P.O. Box 39
Odanah, WI 54861

Bad River Tribe's Natural Resources Department
Attn: Tribal Historic Preservation Officer (THPO)
P.O. Box 39
Odanah, WI 54861

The operator must also submit a copy of the Notice of Termination (NOT) to the above addresses at the same time it is submitted to the U.S. EPA.

- 10) The THPO must be provided 30 days to comment on the project.^j
- 11) The operator must obtain THPO concurrence in writing. This written concurrence will outline measures to be taken to prevent or mitigate effects to historic properties. For more information regarding the specifics of the cultural resources process, see 36 CFR Part 800. A best practice for an operator is to consult with the THPO during the planning stages of an undertaking.^k
- 12) An operator of a project, which is eligible for coverage under the CGP, that would result in an allowable discharge under the CGP occurring within the exterior boundaries of the Bad River Reservation must submit a copy of the Stormwater Pollution Prevention Plan (SWPPP) to the following address at the same time as submitting the NOI:^a

Bad River Tribe's Natural Resources Department
Attn: Water Resources Specialist
P.O. Box 39
Odanah, WI 54861
- 13) Any corrective action reports that are required under the CGP must be submitted to the following address within one (1) working day of the report completion:^a

Bad River Tribe's Natural Resources Department
P.O. Box 39
Odanah, WI 54861
- 14) An operator shall be responsible for meeting any additional permit requirements imposed by the U.S. EPA necessary to comply with the Tribe's antidegradation policies if the discharge point is located upstream of waters designated by the Tribe.^a

Each condition of the CGP and this Certification cannot be made less stringent without violating the requirements of tribal law.

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Citation and Other Relevant Footnotes:

^a Bad River Band of Lake Superior Tribe of Chippewa Indians Water Quality Standards adopted by Resolution No. 7-6-11-441 (hereafter, Tribe's WQS).

^b 36 C.F.R. § 800.16(l)(2).

^c Tribe's WQS: See provisions E.3.ii. and E.4.iv.

^d Tribe's WQS: See provision E.2.iii.

^e See definition of cationic treatment chemicals in Appendix A of the CGP.

^f Tribe's WQS: See provisions E.6.ii.a. and E.6.ii.c.

^g Tribe's WQS: See provision E.2.ii.

^h Tribe's WQS: See provision E.2.i.

ⁱ Tribe's WQS: See provision E.7.iii.

^j 36 C.F.R. § 800.3(c)(4).

^k 36 C.F.R. § 800.3(b).