

**WATER QUALITY CERTIFICATION AND  
WATER QUALITY REVIEW CODE OF THE  
BAD RIVER BAND OF THE LAKE SUPERIOR TRIBE  
OF CHIPPEWA INDIANS**

**CHAPTER 324**

**TABLE OF CONTENTS**

Section 324.1: Definitions .....	2
Section 324.2: Authority .....	4
Section 324.3: Purpose.....	4
Section 324.4: Delegation and Scope of Responsibility of the Bad River Water Resources Program .....	5
Section 324.5: Reservation of Rights .....	6
Section 324.6: Interpretation.....	6
Section 324.7: Procedures for the Evaluation of Tribal Water Quality Certification Requests .....	7
Section 324.8: Inspection of a Facility or Activity that Does Not Require an Operating License or Permit .....	11
Section 324.9: Review of a Facility or Activity that Requires a Separate Operating License or Permit .....	11
Section 324.10: Water Quality Review Procedures for Discharges that Originate Off-Reservation (Federal Permits/License). .....	12
Section 324.11: Water Quality Review Procedures for Discharges that Originate Off-Reservation (State Permits/License). .....	13
Section 324.12: Water Quality Review Procedures for General Permits.....	15

## **Section 324.1: Definitions**

Undefined terms that are defined in the Tribe's Water Quality Standards shall have the meaning assigned to them in that document.

- (a) **"Clean Water Act"** (CWA) means the Federal Clean Water Act, 33 U.S.C. § 1251 et seq. (1972), as amended.
- (b) **"Council"** or **"Tribal Council"** means the governing body of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.
- (c) **"Director"** means the Director of the Tribe's Natural Resources Department.
- (d) **"EPA"** means the U.S. Environmental Protection Agency.
- (e) **"General Permits"** means any and all Nationwide, Regional, General, and other permits written to cover multiple dischargers or activities that are similar in nature issued by the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the Wisconsin Department of Natural Resources.
- (f) **"General Permit Review"** means review of any and all general permits as defined above.
- (g) **"Groundwater"** means the supply of fresh water found beneath the Earth's surface, usually in aquifers.
- (h) **"Minimal Impacts to Water Quality"** means that the proposed activity is shown by clear and convincing information to not cause any substantial water quality impacts to Reservation Waters and to have a high likelihood of complying with the Tribe's Water Quality Standards.
- (i) **"Off-Reservation"** means all lands and waters outside of the exterior boundaries of the Tribe's Reservation.
- (j) **"Public Emergency"** means a serious or dangerous situation that requires expedited action to avoid endangerment to human health, public safety or the environment, or to reestablish needed public services, which includes but is not limited to, extreme flooding conditions, wildfires, and tornadoes.
- (k) **"Reservation"** means the Tribe's Reservation, described in the Treaty of 1854 as follows: *Beginning on the south shore of Lake Superior, a few miles west of Montreal River, at the mouth of a creek called by the Indians Ke-Che-se-be-we-she, running thence south to a line drawn east and west through the centre of township forty-seven north, thence west to the west line of said township, thence south to the southeast corner of the township forty-six north, range thirty-two west, thence west the width of two townships, thence north the width of two townships, thence west one mile, thence*

*north to the lake shore, and thence along the lake shore, crossing Shag-waw-me-quon Point, to the place of beginning. Also two hundred acres on the northern extremity of Madeline Island, for a fishing ground. Ke-Che-se-be-we-she is presently known as Graveyard Creek and Shag-waw-me-quon is now commonly spelled Chequamegon Point.*

- (l) **“Reservation Waters”** means any surface water or groundwater located within the exterior boundaries of the Reservation.
- (m) **“State”** refers to the State of Wisconsin and any other state that may issue proposed permits for activities that involve discharges that may affect Reservation waters.
- (n) **“Surface Water”** includes all water naturally open to the atmosphere above the surface of the ground including but not limited to rivers, lakes, reservoirs, ponds, streams (including intermittent streams), impoundments, and wetlands. Surface water does not include waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria for this definition).
- (o) **“Tribe”** and/or **“Tribal”** refers to the Bad River Band of the Lake Superior Tribe of Chippewa Indians.
- (p) **“Tribe’s Water Quality Standards”** means the water quality standards that apply to Reservation Waters that were adopted by Resolution No. 7-6-441 of the Tribe and which may be modified from time to time by the Tribe.
- (q) **“USACE”** means the United States Army Corps of Engineers.
- (r) **“Usufructuary Rights”** means the right for tribal members to use and enjoy the land and its resources.
- (s) **“Water Quality Certification”** means certification under CWA Section 401(a)(1) that a proposed project or activity for which a federal license or permit is required is not expected to cause a violation of relevant water quality standards.
- (t) **“Water Quality Review”** means a review of: (1) whether a discharge originating Off-Reservation may affect the quality of Reservation waters and potentially cause or contribute to non-compliance with the Water Quality Standards; or (2) whether a proposed General Permit adequately protects the quality of Reservation Waters.
- (u) **“Water Quality Standards”** are standards that consist of a designated use or uses for the waters, water quality criteria for such waters, an anti-degradation policy, and other policies or standards.
- (v) **“WDNR”** means the Wisconsin Department of Natural Resources.

- (w) **“WDNR/EPA Memorandum of Agreement”** means the Memorandum of Agreement between the State of Wisconsin Department of Natural Resources and United States Environmental Protection Agency, Region V,” approved February 4, 1974.
- (x) **“Wetlands”** means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, sloughs, and similar areas.
- (y) **“WRP”** means the Water Resources Program operating within the Tribe’s Natural Resources Department.
- (z) **“WQS”** means the Tribe’s Water Quality Standards.

**Section 324.2: Authority**

This Code is enacted pursuant to the Tribe’s inherent sovereign authority. The Tribe has a primary interest in the protection, control, conservation, and utilization of Reservation Waters, as exemplified in the Bad River Constitution and recognized by EPA when it granted the Tribe’s application for treatment-as-state authority to develop and implement the Tribe’s Water Quality Standards. The program authority granted by EPA is in addition to the Tribe’s historic hunting, fishing, gathering, and usufructuary rights and its treaty rights. This Code shall not be construed to annul those independent Tribal rights, including the right to sufficient quantities and quality of water to support the flora, fauna, and cultural traditions of the Tribe.

**Section 324.3: Purpose**

Protecting the Reservation Waters is a primary goal of the Tribe. Water pollution endangers the health and welfare of Tribal members and residents of the Reservation. This Code establishes procedures and standards for the review of applications for Tribal Water Quality Certifications under CWA Section 401(a)(1), Tribal Water Quality Reviews under CWA Section 401(a)(2), and Tribal Water Quality Reviews of proposed federal and state permits that may affect the waters of the Bad River Reservation. This Code also establishes procedures for the Tribe’s

review of federal and state general permits for their consistency with the Tribe's Water Quality Standards<sup>1</sup>.

**Section 324.4: Delegation and Scope of Responsibility of the Bad River Water Resources Program**

- (a) **Responsibility.** WRP shall have primary responsibility for the processing and initial review of applications for Tribal Water Quality Certifications as provided for under CWA Section 401(a)(1), Tribal Water Quality Reviews under CWA Section 401(a)(2), and Tribal Water Quality Reviews for proposed federal and state permits for Off-Reservation discharges that may affect Reservation Waters.

In performing their duties under this Code, the WRP and the Director may consult with other Tribal agencies, including the Tribal Historic Preservation Office, as appropriate.

- (b) **Discharges that Originate on the Reservation – Federal Permits.** The Tribal Council is authorized to issue Tribal Water Quality Certification(s) to any applicant for a federal permit or license for discharges that originate or will originate within the Reservation. This authority pertains to all activities within the external boundaries of the Bad River Reservation regardless of land ownership. Non-Tribal as well as Tribal members are required to obtain a Tribal Water Quality Certification for discharges within the exterior boundaries of the Bad River Reservation.
- (c) **Off-Reservation Discharges that may Affect Reservation Waters – Federal Permits.** The Director is authorized to communicate with the federal government regarding concerns with or objections to discharges that may affect Reservation Waters, to request a hearing with regard to such discharges, and to appear on behalf of the Tribe at such hearings.
- (d) **Off-Reservation Discharges that may Affect Reservation Waters – State Permits.** The Director is authorized to communicate with the State where a potential discharge may originate and with EPA regarding concerns with or objections to potential discharges that may affect Reservation Waters, to request hearings with regard to such discharges, and to appear on behalf of the Tribe at such hearings.

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<sup>1</sup> This Code does not address the review of proposed state licenses or permits for discharges on the Bad River Reservation because the state does not have the legal authority to issue licenses or permits on the Bad River Reservation.

- (e) **Permits and Licenses Reviewed.** The Tribe's Water Quality Certification reviews and Water Quality Reviews shall be conducted to assess potential impacts to Reservation Waters associated with activities under proposed federal or state permits or licenses including, but not limited to, the following:
- (1) "Dredge & Fill" Permits under CWA Section 404 including Nationwide Permits, General Permits, Letters of Permission, and Individual Permits;
  - (2) Discharge Permits under CWA Section 402 including all permits for discharges from point sources and permits for industrial and construction activities disturbing one (1) or more acres;
  - (3) Federal Energy Regulatory Commission hydropower licenses and related approvals;
  - (4) Rivers and Harbors Act § 9 and § 10 permits for activities that have a potential discharge into navigable waters;
  - (5) State Pollution Discharge Elimination System permits;
  - (6) State storm water permits;
  - (7) State permits regarding wetland impacts;
  - (8) State high-capacity well permits;
  - (9) State General Permits when adoption of such a permit may affect the quantity or quality of Reservation Waters.

### **Section 324.5: Reservation of Rights**

The Tribe reserves the right to amend or repeal all or any part of this Code at any time. There shall be no vested private right of any kind created by this Code. All the rights, privileges, or immunities conferred by this Code or by acts done pursuant thereto shall exist subject to the power and determinations of the Tribe. Nothing in this Code shall be construed to constitute a waiver of the sovereign immunity of the Tribe or consent to the jurisdiction of any government or forum not expressly authorized to exercise jurisdiction under this Code.

### **Section 324.6: Interpretation**

The provisions of this Code shall be interpreted in a manner that is consistent with the Tribe's Water Quality Standards, as now or hereafter amended, and with applicable provisions of the

CWA and its regulations. The provisions of this Code shall be interpreted in a manner consistent with the Tribe's conservation ethic, its history and culture of revering pure water as sacred, and its peoples' dependence on the health of the Reservation Waters including for securing food, medicine, and protecting the Tribe's political integrity, economic security, and health and welfare.

### **Section 324.7: Procedures for the Evaluation of Tribal Water Quality Certification Requests**

The Tribe shall evaluate requests for Tribal Water Quality Certification under CWA Section 401(a)(1) according to the following process:

- (a) **Applications**. Any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge that originates on the Reservation, shall obtain Water Quality Certification from the Tribe. The WRP shall advise the USACE, EPA, and other federal agencies with jurisdiction in any such permit or license to direct applicants to submit application materials to the WRP and to otherwise comply with the applicable terms of this Code.
- (b) **Certification Request**. Applicants shall request Water Quality Certification from the Tribe by sending a written application to the WRP at the following address:

Bad River Natural Resources Department  
Attn: Water Resources Specialist  
PO Box 39  
Odanah, WI 54861

wqs@badriver-nsn.gov

- (c) **Application Contents**. The application shall include the following:
  - (1) The name, address, telephone number, facsimile number, and email address of the applicant;
  - (2) A complete and accurate description of the applicant's proposed activity including any engineering or hand-drawn plans of the project site;
  - (3) A complete and accurate description of the potential discharge or discharges into or drawdown of groundwater or surface water that may result from the activity, including, but not limited to: potential discharges from the construction or operation of a facility; potential effects of pumping of groundwater or surface water; potential biological, chemical, thermal, physical (e.g., quantity), and other

characteristics and concentrations of the discharge; the location at which such discharge may enter groundwater or surface water;

- (4) A complete and accurate description of the function and operation of equipment or facilities to treat or reduce wastes or other effluents that may be discharged including specification of the degree of treatment expected to be attained and any other actions taken to reduce or mitigate the proposed activity's effect on groundwater or surface water quality or quantity;
  - (5) The dates when the activity is proposed to begin and end, as well as the dates when the proposed discharge or draw-down will take place;
  - (6) A complete and accurate description of the methods and means being used or proposed to monitor the quality and quantity of the discharges or drawdowns, the operation of equipment or facilities employed in the treatment or control of wastes or other effluents, and effects of the discharges on ground water or surface water quality and quantity;
  - (7) A complete and accurate description of the potential impact of the discharge on Reservation water;
  - (8) A complete copy of the application for a federal permit or license;
  - (9) Other information relevant or important to the Tribe's consideration of its request, including a proposed Reduced Timeline (defined below) if the applicant believes it meets the requirements as provided in Section 324.7.h;
  - (10) Confirmation that the applicant shall provide the WRP access, if requested, for an inspection and review of any lands, waters, or facilities under the applicant's control relevant to the Tribe's review of the application;
  - (11) Any additional information required for an antidegradation analysis under the Tribe's WQS; and
  - (12) Any other information requested by the WRP as reasonably needed for its review of the application.
- (d) Application Review. Upon receipt of the application the following reviews shall be conducted:
- (1) **Administrative Review:** The WRP shall review the application for completeness and accuracy. If the WRP determines that the application is incomplete or inaccurate, or that additional information is required to analyze whether the proposed activity will cause or contribute to a violation of the Tribe's WQS, the WRP shall request the relevant additional or corrected information from the applicant within forty-five (45) days of the receipt of the application. If the WRP



determines that the application is complete and accurate, it shall issue a Public Notice for the application for Water Quality Certification (the "Comment Period") in accordance with the Bad River Band of Lake Superior Chippewa's Administrative Procedure: Notice of Intent to Adopt a Code or Availability of Draft Environmental Review Statement. All comments received by the WRP will be reviewed by the WRP. Comments may be sent to the applicant for a satisfactory response using the contact information provided by the applicant. The applicant shall submit its responses to the comments to the WRP.

- (2) **Technical Review:** The WRP will conduct a technical review of the application materials and the applicant's responses to comments to evaluate whether the proposed activity will cause or contribute to a violation of the Tribe's Water Quality Standards (the "Technical Review"). If necessary or advisable, the WRP shall inspect lands, waters, or facilities relevant to its technical review of the application materials.
- (e) **Recommendation.** At the end of the Technical Review, the WRP will make a Recommendation to the Director regarding the application together with the basis of that recommendation (the "Recommendation"). The Recommendation will be either to: (1) grant the Tribal Water Quality Certification unconditionally; (2) grant the Water Quality Certification with such conditions necessary or advisable to ensure compliance with the Tribe's WQS; or (3) deny the Water Quality Certification. The Director will then issue one of the three recommendations to the Tribal Council (the "Director's Concurrence"). The Director's Concurrence shall include a statement of the basis for the recommendation. The WRP shall present a copy of the Director's Concurrence to the Tribal Council.
  - (f) **Decision.** Within thirty (30) days of the Director's Concurrence, the WRP shall present the Recommendation to Tribal Council during a public meeting. Unless the Council asks the WRP for additional information that would take additional time to compile, at this meeting the Council will issue one of three Decisions (the "Decision"): (1) grant the Water Quality Certification unconditionally; (2) grant the Water Quality Certification with such conditions necessary or advisable to ensure compliance with Tribe's Water Quality Standards; or (3) deny the Tribal Water Quality Certification. After the Decision is reached, the WRP shall deliver a copy of the Tribal Council's Decision to the EPA, the federal permitting or licensing agency, and the applicant.
  - (g) **Timeline.** It is anticipated that the comment period, technical review, recommendation, and decision outlined in this Section 324.7 shall be completed within six (6) months of the receipt of an application (the "Timeline"). However:
    - i. If the applicant needs time to respond to WRP requests for additional or corrected information, or if the applicant does not respond within thirty (30) days to public comments, the six (6) month timeframe shall be extended by an amount equal to the time taken by the applicant for these purposes;

- ii. If the Tribal Council asks the WRP for further information after the Recommendation has been presented, then the six (6) month timeframe shall be extended by an amount equal to the time needed to gather such information; or
  - iii. If the Tribe will not issue its decision within six (6) months, it shall so notify the EPA, the permitting or licensing agency, and the applicant. Such notification shall state that the Tribe is not waiving its right to make a decision regarding the request for Water Quality Certification and shall provide a revised timeframe for that decision.
- (h) **Reduced Timeline.** The WRP shall determine if, and the extent to which, an applicant qualifies for a Reduced Timeline (“Reduced Timeline”) within five (5) days of receipt of the applicant’s application if the applicant includes in its application a proposed reduced time period for the Timeline. The Reduced Timeline may include reducing the time period for the Comment Period as described in Administrative Procedure Section 118.3.a.iii. and for the Applicant Review, Recommendation, and Decision. To qualify for a Reduced Timeline, applicant must demonstrate (1) the applicant has not unduly delayed submitting its application causing a need for a Reduced Timeline, and (2) the need for a Reduced Timeline arises out of at least one of the two following situations:
- i. The proposed activity has been mandated by a Tribal or Federal order; or
  - ii. The proposed activity is in response to a Public Emergency and requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services.

For activities that qualify under Section 324.7.h.ii or Section 324.7.h.iii, the applicant may request that the Director, rather than the Tribal Council, make the Decision, and for there to be no Director’s Concurrence. In reviewing the proposal for a Reduced Timeline, the WRP or Director will decide to either: (1) adopt the proposed Reduced Timeline provided by the applicant; (2) set a different Reduced Timeline; or (3) not implement a Reduced Timeline.

- (i) **Reapplication Process.** If an applicant disagrees with the determination of the Tribal Council, the applicant may reapply for Tribal Water Quality Certification. The applicant may choose to significantly alter the proposed project to avoid, minimize, and/or mitigate for the impacts to water resources that facilitated the Tribal Council’s Decision. All reapplications shall follow the process set forth in this Section 324.7 for applications for Water Quality Certification.

### **Section 324.8: Inspection of a Facility or Activity that Does Not Require an Operating License or Permit**

- (a) **Inspection of a facility or activity that does not require an operating license or permit.** Where any facility or activity has received a Water Quality Certification pursuant to Section 324.7 in connection with the issuance of a license or permit for construction, and where such facility or activity is not required to obtain an operating license or permit, the WRP shall be afforded the opportunity to inspect such facility or activity prior to its initial operation for the purpose of determining if the manner in which such facility or activity will be operated or conducted will violate the WQS.
- (b) **Notification to licensing or permitting agency.** After an inspection pursuant to Section 324.8.a, the WRP shall make a recommendation to the Director regarding whether operation of the proposed facility or activity will violate the WQS. If the Director determines that operation of the proposed facility or activity will violate the WQS, he or she shall so notify the applicant and the licensing or permitting agency and shall include recommendations as to remedial measures necessary to bring the operation of the proposed facility or activity into compliance with such standards.
- (c) **Termination of suspension.** Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the Director's notice and recommendation pursuant to Section 324.8.b, the applicant may submit evidence to the Director showing the facility's or activity's operation or conduct thereof has been modified so as not to violate the WQS. If the Director determines that WQS will not be violated, he shall so notify the licensing or permitting agency.

### **Section 324.9: Review of a Facility or Activity that Requires a Separate Operating License or Permit**

- (a) **Review of a facility or activity that requires a separate operating license or permit.** If the WRP received notice of a federal license or permit—or renewal of a federal license or permit—required for the operation of a facility or activity that has received a Water Quality Certification with respect to the construction, the WRP shall review such notice and request any information needed to determine whether the operation of the facility or activity under the license or permit will comply with the WQS. Within the time allotted by the relevant federal regulation, and after reviewing relevant information, the WRP shall make a recommendation to the Director regarding whether or not there is reasonable assurance that there will be compliance with the WQS because of changes since the construction license or permit certification was issued regarding:
- (i) the construction or operation of the facility or activity;
  - (ii) the characteristics of the waters into which such discharge is made;
  - (iii) the water quality criteria applicable to such waters; or
  - (iv) applicable effluent limitations or other requirements.

Within the time allotted by the relevant federal regulation, the Director shall notify that agency if he or she determines that there is no longer reasonable assurance that there will be compliance with the WQS.

**Section 324.10: Water Quality Review Procedures for Discharges that Originate Off-Reservation (Federal Permits/Licenses)**

The Tribe shall evaluate requests for Tribal Water Quality Review under CWA Section 401(a)(2) regarding proposed federal licenses or permits pertaining to discharges originating Off-Reservation that may affect Reservation Waters pursuant to the following procedures:

- (a) **Notification.** The EPA, USACE, and other federal agencies shall notify the WRP if a permit or license is requested, including coverage under a General Permit, for a discharge that originates Off-Reservation and may affect the quality of Reservation Waters.
- (b) **Monitoring.** To the best of the WRP's ability given resource and time constraints, the WRP shall monitor proposed federal permits or licenses relating to discharges that originate Off-Reservation and may affect Reservation Waters. If the WRP learns of such proposed permits, licenses, or such discharges, the WRP shall contact the EPA and the permitting or licensing agency to indicate the potential effect on Reservation Waters and therefore that the requirements of this Code and CWA Section 401(a)(2) must be met.
- (c) **Completeness Determination.** Upon receipt of notification from a federal agency or otherwise becoming aware of a potential discharge that originates Off-Reservation that may affect Reservation Waters, the WRP shall evaluate the completeness and accuracy of the available information regarding the proposed discharge. If any information needed to evaluate the potential impact of the proposed discharge on Reservation Waters is not available to the WRP, it may request that information from EPA, the federal permitting or licensing agency, or the applicant.
- (d) **Water Quality Review, Recommendation, and Decision.** The WRP shall conduct a Water Quality Review to analyze whether the proposed Off-Reservation discharge will result in a violation or violations of the Tribe's WQS or may adversely affect the quality of Reservation Waters, and will provide a recommendation to the Director regarding how to respond to the application and the basis for that recommendation. The Director will then make one of two decisions:
  - i. To notify EPA and the permitting or licensing agency that the Tribe does not object to the issuance of the permit or license; or
  - ii. To notify EPA and the permitting or licensing agency of the Tribe's objection to the issuance of the permit or license for the Off-Reservation discharge and

the basis for such objection. The objection will be in writing and will include a request for a public hearing on the matter.

In accordance with CWA Section 401(a)(2), the Director's decision regarding whether a proposed Off-Reservation discharge will affect Reservation waters in a manner that will violate the Tribe's WQS shall be made and communicated to the EPA and the permitting or licensing agency within sixty (60) days of receipt of notification of the proposed Off-Reservation discharge.

- (e) **Communication Regarding Objection.** In the event that the Director communicates an objection to the EPA, the Director or the WRP shall appear at any public hearing held related to the objectionable permit or license and shall provide such written or verbal information as they determine necessary or advisable to protect Reservation Waters.

### **Section 324.11: Water Quality Review Procedures for Discharges that Originate Off-Reservation (State Permits/Licenses)**

The Tribe shall make determinations and provide notifications regarding proposed state licenses or permits pertaining to Off-Reservation discharges that may affect Reservation Waters, as provided under the 1974 WDNR/EPA Memorandum of Agreement, pursuant to the following process:

- (a) **State Provision of Information.** The WRP shall request that the State provide it with: (1) water-quality-based-effluent-level memoranda used to prepare the proposed permit decisions when those memoranda are prepared; and (2) copies of the proposed permit decisions at the same time they are provided to applicants. If possible, the Tribe shall enter into a Memorandum of Understanding or other agreement with the State for it to provide the above documentation to the Tribe on the above schedule.
- (b) **Applications.** The State shall provide the WRP copies of the proposed permit decisions, including decisions regarding coverage under a General Permit or issuance of an Individual Permit, no later than when proposed permit decisions have been publicly noticed.
- (c) **Review Requests.** The State shall provide notification of the proposed permits to be reviewed to the WRP at the following address:

Bad River Natural Resources Department  
Attn: Water Resources Specialist  
PO Box 39  
Odanah, WI 54861  
[wqs@badriver-nsn.gov](mailto:wqs@badriver-nsn.gov)

- (d) **Monitoring.** To the best of the WRP's ability given resource and time constraints, the WRP shall monitor proposed state permit processes relating to discharges that may affect Reservation waters. If the WRP learns of such proposed permits, the WRP shall contact the State and EPA to indicate the potential effect on Reservation waters and therefore that the requirements of this Code and the WDNR/EPA Memorandum of Agreement must be met.
- (e) **Completeness Determination.** Upon receipt of notification from the State or otherwise becoming aware of a proposed permit related to a discharge that may affect Reservation Waters, the WRP shall evaluate the completeness and accuracy of the available information regarding the proposed discharge. If any information needed to evaluate the potential impact of the proposed discharge on Reservation waters is not available to the WRP, it may request the needed information from the State or the applicant.
- (f) **Water Quality Review, Recommendation, and Decision.** The WRP shall conduct a Water Quality Review to analyze whether the proposed discharge originating Off-Reservation will result in a violation or violations of the Tribe's WQS or have other effects on Reservation Waters, and will provide a recommendation to the Director regarding how to respond to the State including the basis for that recommendation. The Director will then make one of three possible decisions:
- i. To direct the WRP to notify the State that it does not have concerns with the proposed permit;
  - ii. To direct the WRP notify the State and the EPA of the Tribe's concerns with the proposed permit based on impacts to the Reservation Waters, the basis for such concerns, and any recommendations to address the concerns. The WRP shall provide the concerns and recommendations to the State in writing and may include a request for a public hearing on the matter; or
  - iii. To direct the WRP to notify the State of recommendations regarding the proposed permit even if the discharge is not anticipated to result in a violation of the Tribe's WQS. The recommendations will be in writing and may include a request for a public hearing on the matter.
- (g) **Timeline.** All submittals shall be made to WDNR within thirty (30) days of the publication of public notice related to the proposed permit.
- (h) **State Response.** If the State does not accept, in whole or in part, any of the Tribe's recommendations regarding the proposed permit, the State shall immediately notify the Director in writing of the reasons for doing so. Upon receiving such notice, the Director shall meet with the WRP to determine whether discussions with the State or EPA are advisable to protect Reservation Waters. If the Director determines that additional discussions with the WDNR and/or EPA are advisable, the Director or the WRP shall contact the WDNR and/or EPA regarding the proposed permit and the changes needed to protect the Reservation Waters. The Director may request EPA's involvement as described in 40 CFR 131.7 to address issues that may arise because of differing WQS on common bodies of water.

## **Section 324.12: Water Quality Review Procedures for General Permits**

- (a) **General Permit Review.** When developing General Permits or modifications to General Permits that may apply to potential projects that could result in discharges affecting Reservation Waters, federal agencies, including but not limited to the USACE and EPA, and state agencies, including but not limited to WDNR, shall provide the proposed General Permit or the proposed modification to the General Permit to the WRP for Water Quality Review.
- (b) **General Permit Initial Contact.** Within 120 days of the passage of this Code, the WRP shall provide in writing a list of General Permits it will review to applicable federal and state agencies.
- (c) **General Permit Monitoring.** To the best of the WRP's ability given resource and time constraints, the WRP shall monitor proposed federal and state proposed General Permits and proposed modifications to General Permits that could apply to proposed activities potentially effecting Reservation Waters. If the WRP learns of such proposed General Permits or proposed modifications to General Permits, the WRP shall contact the relevant federal or state agency to indicate the potential effect on Reservation Waters, and therefore that the requirements of this Code must be met.
- (d) **General Permit Water Quality Review.** Upon receipt of the proposed General Permit or proposed General Permit modification, the WRP shall evaluate whether it provides for adequate protection of the Reservation Waters including protection against violations of the Tribe's WQS. If any information is needed to evaluate whether the proposed General Permit or proposed modification to General Permit adequately protects Reservation Waters, including protection against violations of the Tribe's WQS, the WRP may request that needed information from the relevant federal or state agency and may also request to meet and confer with the relevant agency.
- (e) **Water Quality Review, Recommendation, Decision, and Determination.** The WRP shall conduct a Water Quality Review to analyze whether the proposed General Permit or proposed modification to General Permit adequately protects Reservation Waters, including protection against violations of the Tribe's WQS, and will provide a recommendation to the Director regarding how to respond to the federal or state agency including the basis of that recommendation. The Director will then make one of two possible determinations:
  - i. To direct the WRP to notify the federal or state agency that it does not have concerns with the proposed General Permit or the proposed modification to the General Permit; or
  - ii. To direct the WRP to notify the relevant federal or state agency of the Tribe's concerns with the proposed General Permit or modification to the General Permit based on impacts to the Reservation Waters, the basis for such concerns, and any recommendations to address such concerns. The WRP shall provide the concerns and recommendations to the federal or state

**agency in writing and may request a meeting with the relevant federal or state agency regarding the matter to protect the Reservation Waters.**