Clean Water Act §401 Certification

for the

Application for Certification
Pursuant to Section 401 of the
Federal Clean Water Act

CERTIFICATION

Submitted by:

UNITED STATE ENVIRONMENTAL PROTECTION AGENCY

NPDES PERMIT NO. OR0054917
("permit")

For the
United States Fish and Wildlife Service,
WARM SPRINGS NATIONAL FISH HATCHERY; 1 Fish Hatchery Road, Warm Springs, OR 97761
("Permittee")

Pursuant to Tribal Ordinances 45 and 80
& Tribal Code Chapters 433 and 479

Prepared by:
Tribal Environmental Office
Bureau of Natural Resources
Warm Springs, Oregon 97761

For:
THE WATER CONTROL BOARD
Confederated Tribes of Warm Springs Reservation of Oregon

DECEMBER 20th, 2018

Clean Water Act §401 Certification

This is the Certification to the Environmental Protection Agency
Regarding the NPDES PERMIT for
The Warm Springs National Fish Hatchery, on the Warm Springs River, Tributary to the Deschutes River, Oregon

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act", EPA is requesting a Certification for the Warm Springs National Fish Hatchery request to discharge from its fish ladder, offline settling basin, and during drawdown for fish release at the following locations:

Outfall	Receiving Water	Latitude	Longitude
001	Warm Springs River	44.51.662 North	121.14.716 West
002	Warm Springs River	44.51.38 North	121.14.76 West
003	Warm Springs River	44.51.662 North	121.14.716 West

in accordance with discharge points, effluence limitations, monitoring requirements and other conditions set forth in their Final NPDES Permit.

Based on the application and agency comments and other information submitted to the Confederated Tribes of the Warm Springs Reservation ("Tribe" or "CTSWS") Water Control Board ("WCB"), and pursuant to §401 of the Clean Water Act and Tribal Ordinances 45, 74, 80 and 81, the WCB is willing to conditionally approve the application for certification. The WCB is reasonable assured that compliance with the certification conditions contained herein will maintain the facility consistent with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, Tribal water quality standards, and other appropriate requirements of Tribal law related to water quality.

In accordance with Tribal Ordinance 81 and Warm Springs Tribal Code Chapter 433, the Permittee, if dissatisfied with the conditions of this certification, may request a hearing before the WCB or a hearings officer designated by the WCB. Such request for a hearing must be made in writing to the Chairman of the Water Control Board within 20 days of the date of mailing of this certification. Any hearing will be conducted pursuant to the rules of the Tribal Council.

This certification is valid for the Permittee only and is not transferable without prior approval of the Tribal Council or its designated representative, in accordance with Ordinance 81, 433.070(7).

Certification Conditions

The Tribal Water Code states *"Ownership of water carries the responsibility to maintain water quality so that after use it is essentially as good as before use. In addition the water resource must be preserved and quality maintained for future generations who live and make use of the reservation and its resources. The Primary objective in regards to water quality is to maintain excellent quality and purity of all waters that are on, cross the reservation, or are on reservation borders.*

These standards of purity will protect and conserve public health, recreational enjoyment of people, economic and industrial development of the reservation, protection of human life and property, and conservation of plant, aquatic, and animal life."

I. Limitations and Monitoring Requirements

Tribal Ordinance 80 established specific water quality standards for reservation waters.

Upon EPA's issuance of a new NPDES Permit for the Fish Hatchery, the Permittee shall comply with the following provisions related to water quality standards and other appropriate requirements of Tribal law:

A. Discharge Authorization

During the effective period of the permit, the Permittee is authorized to discharge pollutants from the outfalls specified herein to the Warm Springs River, within the limits and subject to the conditions set forth in the EPA issued NDPES Permit No. OR0054917. The permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams and operations that have been clearly identified in the permit application process.

B. Effluent Limitations and Monitoring

1. The Permittee must limit and monitor discharges from outfall 001 as specified in Table 1, from outfall 002 as specified in Table 2, and from outfall 003 as specified in Table 3. All figures represent maximum effluent limits unless otherwise indicated. The Permittee must comply with the effluent limits in the tables at all times unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of the permit.

Table 1

Effluent Limitations for Discharges from the Fish Ladder (Outfall 001)[1]

Pollutant	Average Monthly Limit	Maximum Daily Limit	Instantaneous Maximum
Net Total Suspended Solids[2]	5 mg/L	---	15 mg/L
Net Settleable Solids[2]	0.1 ml/L	---	---
Total Residual Chlorine[3] – into fresh water	9.0 µg/L	18.0 µg/L	---

[1] Excluding discharges from separate off-line settling basins (OLSBs) and from raceways or pond systems during drawdown; see Tables 2 and 3 for limits on those discharges.

[2] Net concentration = effluent concentration – influent concentration. Net TSS and settleable solids determinations will require influent analysis in addition to effluent analysis unless the permittee chooses to assume that the pollutant concentration in the influent is zero. Influent samples must be collected prior to collection of effluent samples; and net TSS and settleable solids will be determined by subtracting the influent concentrations from the effluent concentrations; see Appendix B. The EPA may require additional sampling to prove substantial similarity between influent and effluent solids, where indicated. All influent and effluent samples and flow measurements must be taken on the same day.

[3] Chlorine limits only apply when chlorine or Chloramine-T is being used. The Permittee will be in compliance with the effluent limits for total residual chlorine, provided the total residual chlorine residual levels are at or below the compliance evaluation level of 50 µg/L. Chlorine monitoring is not required if chlorine is allowed to dry at the location of use.

Table 2

Effluent Limits for Discharges from the Offline Settling Basin[1] (Outfall 002)

Pollutant	Maximum Daily Limit
Total Suspended Solids	100 mg/L
Settleable Solids	1.0 ml/L

[1] These limits apply to only those OLSB effluents that discharge directly to waters of the U.S.

Table 3

Effluent Limits for Discharges during Drawdown for Fish Release (Outfall 003)

Pollutant	Maximum Daily Limit
Total Suspended Solids	100 mg/L
Settleable Solids	1.0 ml/L

2. Copies of all reports and plans required by the EPA must also be submitted concurrently to the Tribal Environmental Office ("TEO").
3. The Permittee must report within 24 hours any violations of the maximum daily limits for total residual chlorine. Violations of other effluent limits are to be reported at the time that discharge monitoring reports are submitted (See III.B. and III.H.)
4. There shall be no discharge of floating, suspended, or submerged matter such that it causes a nuisance or objectionable condition or impair designated beneficial uses.
5. The Permittee must monitor discharges at each outfall. Monitoring must be performed before effluent is discharged to the receiving water. The monitoring requirements for the Rearing Ponds/Raceway (Table 4), Offline Settling Basin (Table 5), and the drawdown for fish release (Table 6) can be seen below.
6. Discharges from the Off-Line Settling Basin must be monitored 12 months out of the year if there is a discharge, regardless of pounds of fish at the facility.
7. Rearing vessel disinfection water that has been treated with chlorine must be tested before it is allowed to be discharged. Chlorine monitoring is not required if rearing vessels are allowed to dry completely and there is no discharge of chlorine.

Table 4

Effluent Monitoring Requirements from the Rearing Ponds/Raceways (Outfall 001)

Parameter	Units	Sample Type	Sample Frequency	Sample Location
Effluent Flow[1]	Gallons per day	Flow meter, calibrated weir, or other approved method	Monthly[2]	Effluent[3,4]
Net Total Suspended Solids[5]	mg/L	Composite[6]	Monthly[2]	Influent[3] & Effluent[3]
Net Settleable Solids[5]	ml/L	Grab	Monthly[2]	Influent[3] & Effluent[3]
Total Residual Chlorine (including when Chloramine-T is in use)[7]	µg/L	Grab	Monthly[2]	Effluent[3]

[1] All influent and effluent samples and flow measurements must be taken on the same day.

[2] Monthly monitoring must begin in the first full calendar month of permit coverage; quarterly monitoring must begin in the first full calendar quarter of permit coverage.

[3] Effluent samples must be collected from the effluent stream after the last unit prior to discharge into the receiving waters or to subsequent mixing with other water flows. If off-line settling basin effluent combines with raceway flows, at least one quarter of the grab samples that go into a composite sample must be collected when the OLSB is discharging.

[4] If the facility is operating in a steady state (no drawdown nor filling up), the flow may be monitored at the influent or the effluent.

[5] Net concentration = effluent concentration – influent concentration. Net TSS and settleable solids determinations will require influent analysis in addition to effluent analysis unless the permittee chooses to assume that the pollutant concentration in the influent is zero. Influent samples must be collected prior to collection of effluent samples; and net TSS and settleable solids will be determined by subtracting the influent concentrations from the effluent concentrations: see Appendix B of the Permit. The EPA may require additional sampling to prove substantial similarity between influent and effluent solids, where indicated.

[6] Composite samples must consist of four or more discrete samples taken at one-half hour intervals or greater over a 24-hour period; if the Hatchery cleans raceways periodically, at least one fourth of the samples must be taken during quiescent zone or raceway cleaning.

[7] Total residual chlorine must be monitored only when being used, giving consideration to retention times in the facility. Monitoring must be conducted during each calendar quarter if the chemical used at any time during the quarter, but sampling does not need to occur more than once a quarter.

Table 5

Off-Line Settling Basin

Effluent Monitoring Requirements (Outfall 002)[1]

Parameter	Units	Sample Type	Sample Frequency	Sample Location
Effluent Flow[2]	Gallons per day	Flow meter, calibrated weir, or other approved method	Monthly[3]	Effluent[4]
Total Suspended Solids	mg/L	Grab	Monthly[3]	Effluent[4]
Settleable Solids	ml/L	Grab	Monthly[3]	Effluent[4]
Ammonia	mg/L	Grab	Quarterly[3]	Effluent[4]
Temperature[5]	° C	Meter	Weekly when OLSB is discharging	Effluent[4]
pH[6]	Standard Units	Meter	Quarterly[3]	Effluent[4]

[1] Only direct discharges the Warm Springs River need to be monitored; if the discharge combines with other process wastewaters, these additional OLSB monitoring requirements do not apply.

[2] All effluent samples and flow measurements must be taken on the same day.

[3] Monthly monitoring must begin in the first full calendar month of permit coverage; quarterly monitoring must begin in the first full calendar quarter of permit coverage.

[4] Effluent samples must be collected from the effluent stream after the last unit prior to discharge into the Warm Springs River or to subsequent mixing with other water flows.

[5] Temperature monitoring must be taken concurrently with each grab sample for the composite ammonia sample and the results averaged and reported on the discharge monitoring report (DMR).

[6] pH monitoring must be taken concurrently with each grab sample for the composite ammonia sample and the range of results reported on the discharge monitoring report (DMR).

Table 6

Monitoring Requirements for Discharges from

Rearing Pond or Raceway Drawdowns for Fish Release (Outfall 003)

Parameter	Sample Point	Sampling Frequency	Type of Sample
Settleable Solids (mL/L)	Effluent	1/Drawdown[1]	Grab
Total Suspended Solids (mg/L)	Effluent	1/Drawdown[1]	Grab

[1] Drawdown samples must be collected during the last quarter of each drawdown event. If the drawdown is a continuous event that involves more than one rearing pond or raceway discharging directly to the Warm Springs River, the Permittee may composite grab samples from each rearing pond or raceway proportionally to their respective flows, each taken in the last quarter of its drawdown; the combined sample may be analyzed instead of separately analyzing grab samples from each of the rearing ponds or raceways. If the discharge is to a settling pond, the facility must estimate when the final ¼ of the discharge is being released to the settling pond, delay the monitoring by the residence time calculated for the pond, and then monitor as the effluent discharges from the pond to the receiving water. If multiple drawdown events are sequential or on different days, a separate grab sample must be analyzed for each event.

C. Surface Water Monitoring

1. The Permittee must conduct surface water monitoring quarterly for ammonia, pH, and temperature immediately upstream, outside the influence of discharge.
2. All surface water samples must be grab samples and must be collected at approximately the same time as the effluent samples
3. All samples must be analyzed for the parameters listed above to achieve minimum levels (MLs) that are equivalent to or less than those listed in Table 7. The Permittee may request different MLs if its results have consistently been above the required MLs. Such a request must be in writing and must be approved by the WCB before the Permittee may use the revised MLs.
4. All surface water monitoring must be submitted to the EPA and to the TEO immediately following the month when the monitoring is conducted. The report must include all information required below, and a summary and evaluation of the analytical results.

D. Minimum Levels (MLs)

1. For all effluent monitoring, the Permittee must use methods that can achieve a minimum level (ML) less than the effluent limitation. If the effluent limit is less than the minimum level, of the most sensitive EPA-approved analytical method, the Permittee must use the most sensitive EPA-approved analytical method.
2. For purposes of reporting on the Discharge Monitoring Report (DMR) for a single sample, if a value is less than the Method Detection Limit (MDL), the Permittee must report "less than {numeric value of MDL}' and if value if less than the ML, the Permittee must report "less than {numeric value of ML}."
3. For purposes of calculating monthly and weekly averages, zero may be assigned for values less than the MDL, and the {numeric value of the MDL} may be assigned for values between the MDL and the ML. If the average value is less than the MDL, the Permittee must report "less than {numeric value of the MDL}" and if the average value is less than the ML, the Permittee must report "less than {numeric value of the ML}." If a value is equal to or greater than the ML, the Permittee must report and use the actual value. The resulting average value must be compared to the compliance level, the ML, in assessing compliance. Table 7 outlines the applicable MLs.

Table 7 Minimum Levels	
Parameter	**Minimum Level (ML)**
Total Suspended Solids	5 mg/L
Ammonia Nitrogen as N	50 µg/L
pH	NA
Temperature	0.2° C
Total Residual Chlorine	50 µg/L

II. Special Conditions

A. Quality Assurance (QA) Plan

1. Within 90 days of the effective date of NPDES Permit No. OR0054917, the Permittee must submit written notice to the EPA and the Confederated Tribes of Warm Springs TEO that the QA Plan has been developed and implemented. The Permittee may submit written notification as an electronic attachment to the DMR. Any existing QA Plans may be modified to meet this requirement.
2. At a minimum, the QA Plan must include the following:
   a. Details on the number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantification limits for each parameter, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, and sample shipping methods.
   b. Description of flow measuring devises used to measure influent and/or effluent flow at each point, calibration procedures, and calculations used to convert to flow units. A description of the method used to composite samples from all influence or effluent points proportionally to their respective flows is also required.
   c. Maps indicating the location of each sampling point.
   d. Qualification and training of personnel.
   e. Name, address, and telephone number of the laboratory used by or proposed to be used by the Permittee.
3. The Permittee must amend the QA plan whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QA plan and must update it whenever there is a change in ownership or operator.
4. Copies of the QA plan must be kept on site and made available to the EPA and/or the WCB upon request.

B. Best Management Practices Plan

1. Through implementation of the best management practices (BMP) plan, the Permittee must prevent or minimize the generation and discharge of wastes and pollutants from the facility to waters of the United States to meet water quality standards and permit requirements; the Permittee must also ensure that disposal or land application of wastes is carried out in such a way as to minimize negative environmental impact and, if applicable, to comply with the Tribes' solid waste disposal regulations.
2. The Permittee must develop and implement a BMP Plan that meets the specific requirements listed below. An existing BMP Plan may be modified for use under this certificate. The Permittee must implement the provisions of the BMP Plan as conditions of this certificate within 90 days of receiving authorization to discharge under the permit.
3. The Permittee must certify that a BMP Plan has been developed and is being implemented by submitting the information contained in Appendix C of the permit to the WCB within 90 days of the effective date of the permit. Any existing BMP plans may be modified for compliance with this section. The plan must be retained on site and made available to the WCB upon request.
4. The Permittee must review the BMP Plan annually. A certified statement that the annual review has been completed and that the BMP Plan fulfills the requirements set forth in the permit must be submitted to the WCB in the Annual Report of Operations.
5. The BMP Plan must include, at a minimum, the following BMPs. Where a practice is infeasible, the Permittee will substitute another practice to achieve the same end.
   a. Materials Storage
      i. Ensure proper storage of drugs and other chemicals to prevent spills that may result in the discharge to waters of the United States or the Confederated Tribes or Warm Springs.
      ii. Implement procedures for properly containing, cleaning, and disposing of any spilled materials.
   b. Structural Maintenance
      i. Routinely inspect rearing and holding units and waste collection and containment systems to identify and promptly repair damage.
      ii. Regularly conduct maintenance of rearing and holding units and waste collection and containment systems to ensure their proper function.
   c. Record Keeping
      i. Document feed amounts and numbers and weights of aquatic animals to calculate feed conversion ratios.
      ii. Document the frequency of cleanings, inspections, maintenance, and repairs.
      iii. Maintain records of all medicinal and therapeutic chemical usage for each treatment at the facility.

iv. A copy of the label (with treatment application requirements) and the Material Safety Data Sheet (MSDS) must be maintained in the facility's records for each drug or chemical used at the facility.

v. In order to show how the maximum concentrations of chlorine and/or Chloramine-T were derived, facilities must maintain records by chemical and by outfall of the approach/analyses used to determine the elapsed time from its application to its maximum (peak) effluent concentration, giving consideration to retention times within the facility.

vi. Permittees must keep the records necessary to provide the water-borne treatment/calculations information required in the Annual Report.

d. Training Requirements

i. Train all relevant personnel in spill prevention and how to respond in the event of a spill to ensure proper clean-up and disposal of spilled materials.

ii. Train personnel on proper structural inspection and maintenance of rearing and holding units and waste collection and containment systems.

e. Operational Requirements

i. Raceways and ponds must be cleaned at such a frequency and in such a manner that minimizes accumulated solids discharged to the Warm Springs River. If solids are removed from the OLSB, they must be disposed of at an upland disposal site.

ii. Fish feeding must be conducted in such a manner as to minimize the discharge of unconsumed food.

iii. Fish grading, harvesting, egg taking, and other activities within ponds or raceways must be conducted in such a way as to minimize the discharge of accumulated solids and blood wastes.

iv. Animal mortalities must be removed and disposed of on a regular basis to the greatest extent feasible.

v. Water used in the rearing and holding units or hauling trucks that is disinfected with chlorine or other chemicals must be treated before it is discharged to waters of the U.S.

vi. Treatment equipment used to control the discharge of floating, suspended or submerged matter must be cleaned and maintained at a frequency sufficient to minimize overflow or bypass of the treatment unit by floating, suspended, or submerged matter; turbulent flow must be minimized to avoid entrainment of solids.

vii. Procedures must be implemented to prevent fish from entering quiescent zones, full-flow, and off-line settling basins. Fish that have entered quiescent zones or basins must be removed as soon as practicable.

viii. Procedures must be implemented to minimize the release of diseased fish from the facility.

ix. All drugs and pesticides must be used in accordance with applicable label directions (FIFRA or FDA), except under the following conditions:
(i) Participation in Investigational New Animal Drug (INAD) studies, using established protocols; or
(ii) Extralabel drug use, as prescribed by a veterinarian.

x. Procedures must be identified and implemented to collect, store, and dispose of wastes, such as biological wastes. Such wastes include fish mortalities and other processing solid wastes from aquaculture operations.

xi. Facilities must dispose of excess/unused disinfectants in a way that does not allow them to enter waters of the U.S or the Confederates Tribes of Warm Springs.

xii. Facilities must implement procedures to eliminate the release of Polychlorinated Biphenyls (PCBs) from any known sources in the facility- including paint, caulk, or feed. Any future application of paint or caulk must be below the allowable TSCA level of 50 ppm. Facilities must implement purchasing procedures that give preference for fish food that contains the lowest amount of PCBs that is economically and practically feasible.

6. The Permittee must maintain a copy of the BMP Plan at the facility and make it available to the EPA, the WCB, or an authorized representative upon request.
7. The Permittee must amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to surface waters. With any change in operator, the BMP Plan must be reviewed and modified, if necessary.

C. Aquaculture Specific Reporting Requirements

1. The following requirements apply to disease control chemicals that are used in such a way that they will be or may be discharged to waters of the United States or the Confederated Tribes of Warm Springs.
   a. Only disease control chemicals and drugs approved for aquaculture use by the U.S. Food and Drug Administration (FDA) or by the EPA may be used.
   b. The following drugs may also be used:
      i. Investigational New Animal Drugs (INADs) for which the FDA has authorized use on a case-by-case basis.
      ii. Extralabel drug use of approved animal and human drugs by, or on the order of, a licensed veterinarian.
      iii. Low Regulatory Priority (LRP) compounds in accordance with conditions included on the list in the FDA policy 1240.4200: *Enforcement Priorities for Drug Use in Aquaculture* (08/09/2002; 4/26/07 minor revisions)3 p.13--15.
      iv. Potassium permanganate, a deferred regulatory priority drug.

c. All drugs, pesticides and other chemicals must be applied in accordance with label directions (with the exception of INAD, extralabel drug use, LRP compounds, or potassium permanganate, as described above).
d. Records of all applications of drugs, pesticides, and other chemicals must be maintained and must, at a minimum, include the information specified in a Chemical Log sheet. This information must also be summarized in the Annual Report.

2. The following written and oral reports must be provided to the EPA when an INAD or extralabel drug is used for the first time at the acility and when an INAD or extralabel drug is used at a higher dosage than previously approved by the FDA for this or a different animal species or disease. The Permittee must include descriptions of all disease control chemicals used during the past year on the Annual Report.
   a. A Permittee must provide a written report to CWB within seven days of agreeing or signing up to participate in an INAD drug study or receiving a prescription for extralabel drug use if the drug is being used at a higher dosage than previously approved by the FDA for this or a different species or disease.
   b. For INADs and extralabel drug uses, the Permittee must provide to CWB a written report within 30 days after initiating use of the drug. This information must also be included in the Annual Report.
   c. For first use of an LRP drug or potassium permanganate, the Permittee must provide to WCB a written report within 30 days after initiating use of the drug. This information must also be included in the Annual Report.

D. Structural Failure of Damage to the Facility

1. Structural failure or damage to the facility must be reported to the EPA and WCB orally within 24 hours and in writing within five days when there is a resulting discharge of pollutants to waters of the Confederated Tribes of Warm Springs. Reports must include the identity and quantity of pollutants released.

E. Spills of Drugs, Pesticides, or Other Chemicals

1. The Permittee must monitor and report to the EPA and to the WCB any spills of drugs, pesticides, or other chemicals that result in a discharge to waters of the Confederated Tribes of Warm Springs; these must be reported orally within 24 hours and in writing within five days. Reports must include the identity and quantity of pollutants released.
2. The hatchery must report immediately any spills of drugs, pesticides, oil, or hazardous materials to the Tribes' Natural Resources Department at 541-553-1161.

F. Records of Fish Mortalities

1. Records of routine and mass mortalities must be maintained on site for at least three years.
2. Summaries of mortality data must be included in annual reports.

G. Annual Report of Operations

1. During the term of EPA Permit No. OR0054917, the Permittee must prepare and submit an annual report of operations by January 20th of each year. The report may be mailed to the Tribe WCB or submitted electronically with the DMR. A copy of the annual report and the data used to compile it must be available to the WCB upon request and during inspections.

III. Monitoring, Recording, and Reporting Requirements

A. Representative Sampling (Routine and Non-Routine Discharges)

Samples and measurements must be representative of the volume and nature of the monitored discharge.

In order to ensure that the effluent limits set forth in the permit are not violated at times other than when routine samples are taken, the Permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The Permittee must analyze the additional samples for those parameters limited in Part I.B. of the permit that are likely to be affected by the discharge.

The Permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with paragraph IILC ("Monitoring Procedures"). The Permittee must report all additional monitoring in accordance with paragraph III.D ("Additional Monitoring by Permittee").

B. Reporting of Monitoring Results

1. The Permittee must submit monitoring data and other reports to the WCB and TEO.
2. Permittee must submit copies of the DMR and other reports to the Confederated Tribes of Oregon WCB and TEO no later than the 20th of the month following the completed reporting period at the following addresses.

The Confederated Tribes of Warm Springs Reservation of Oregon
Water Control Board
PO Box C
Warm Springs, Oregon, 97761

The Confederated Tribes of Warm Springs Reservation of Oregon
Tribal Environmental Office
PO Box C
Warm Springs, Oregon 97761

3. The Permittee must sign and certify all DMRs, and other reports. .

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless another method is required under 40 CFR subchapters N or O, or other test procedures have been specified in the permit or approved by EPA as an alternate test procedure under 40 CFR 136.5.

D. Additional Monitoring by Permittee

If the Permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the Permittee must include the results of this monitoring in the calculation and reporting of the data submitted in the DMR.

Upon request by the WCB, the Permittee must submit results of any other sampling, regardless of the test method used.

E. Records Contents

Records of monitoring information must include:

1. the date, exact place, and time of sampling or measurements;
2. the name(s) of individual(s) who performed the sampling or measurements;
3. the date(s) analyses were performed;
4. the names of the individual(s) who performed the analyses;
5. the analytical techniques of methods used; and
6. the results of such analyses.

F. Retention of Records

The Permittee must retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the permit, and records of all data used to complete the application for the permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by request of the EPA or the WCB at any time.

G. Twenty-four Hour Notice of Noncompliance Reporting

1. The Permittee must report the following occurrences of noncompliance by telephone within 24 hours from the time the Permittee becomes aware of the circumstances:

a. Any noncompliance that may endanger health or the environment;
b. Any unanticipated bypass that exceeds any effluent limitation in the permit.
c. Any upset that exceeds any effluent limitation in the permit.
d. Any violation of a maximum daily discharge limitation for applicable pollutants identified by Table 1 and Table 2 of this certification.

2. The Permittee must also provide a written submission within five days of the time that the Permittee becomes aware of any event required to be reported under subpart 1 above. The written submission must contain.
   a. A description of the noncompliance and its cause:
   b. The period of noncompliance, including exact dates and times;
   c. The estimated time noncompliance is expected to continue if it has not been corrected; and
   d. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
3. The Director of the Office of Compliance and Enforcement may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.
4. Reports must be submitted to the addresses in Part III.B. ("Reporting of Monitoring Results").

H. Other Noncompliance Reporting

The Permittee must report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part III.B ("Reporting of Monitoring Results") are submitted. The reports must contain the information listed in Part III.G.2 of the permit ("Twenty-four Hour Notice of Noncompliance Reporting").

I. Changes in Discharge of Toxic Pollutants

The Permittee must notify the Director of the Office of Water and Watersheds and the Confederated Tribes of the Warm Springs Reservation as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a **routine or frequent** basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonable be expected to exceed the highest of the following "notification levels":
   a. One hundred micrograms per liter (100 µg/l);
   b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1mg/l) for antimony;
   c. Five (5) times the maximum concentration value reported for that pollutant in the permit in accordance with 40 CFR 122.21(g)(7); or

d. The level established by EPA in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur that would result in any discharge, on a **non-routine or infrequent** basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonable be expected to exceed the highest of the following "notification levels":
   a. Five hundred micrograms per liter (500 µg/l);
   b. One milligram per liter (1mg/l) for antimony;
   c. Ten (10) times the maximum concentration value reported for that pollutant in the permit in accordance with 40 CFR 122.21(g)(7); or
   d. The level established by EPA in accordance with 40 CFR 122.44(f).
3. The Permittee must submit the notification to the Office of Water and Watersheds and the Tribal Environmental Office at the following addresses:

US EPA Region 10
Attn: NPDES Permits Unit Manager
1200 Sixth Avenue
Suite 155 OWW-191
Seattle, Washington 98101-3140

The Confederated Tribes of Warm Springs Reservation of Oregon
Tribal Environmental Office
PO Box C
Warm Springs, Oregon 97761

J. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this certificate must be submitted no later than 14 days following each schedule date.

Permittee

IV. General Provisions

A. Duty to Provide Information

The Permittee must furnish to the Tribe WCB or TEO, within the time specified in the request, any information that the Tribe WCB or TEO may request to to determine compliance with this certificate. The Permittee must also furnish to the Tribe, upon request, copies of records required to be kept by this certificate.

B. Inspection and Entry

The Permittee must allow the authorized representatives of the WCB and TEO (including an authorized contractor acting as a representative) , upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the certificate;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the certificate;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the certificate; and
4. Sample or monitor at reasonable times, for the purpose of assuring certificate compliance or as otherwise authorized by the Act, any substances or parameters at any location.

C. Property Rights

The issuance of the certificate does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of federal, tribal, state or local laws or regulations.

D. Tribal Laws

Nothing in the permit or certificate shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable Tribal law or regulation under authority preserved by Section 510 of the Act.

The Tribal Council of the Confederated Tribes of Warm Springs has delegated the responsibility and accountability to implement the Policy Statements listed in Tribal Ordinance 80 and 8l to the Water Control Board. Therefore the WCB will be responsible for all decisions requiring the exercise of delegated authority from the Federal Environmental Protection Agency under the Federal Clean Water Act and for implementing Tribal Ordinances 45, 80 and 81.

V. Antidegradation Policy

With the implementation of the mitigation measures listed above, the WCB

believes that overall water quality in and below the Project will be protected. Accordingly, the WCB believes that there is a reasonable assurance that plant operations, coupled with the mitigation measures listed above, will comply with the Tribal antidegradation policies. The WCB will require implementation of all monitoring and reporting to ensure compliance with the antidegradation policy.

VI. §401 Certification Modification

Subject to the provisions of Ordinance 80 and 81, the WCB may reconsider and add or alter conditions to the Certification as necessary to address changes in conditions or knowledge or to address any failure of conditions herein to protect water quality and beneficial uses. In accordance with the Clean Water Act Section 401, any added or altered condition shall, so long as it is in effect, become a condition of any federal license or permit that is thereafter issued for the Project. Ordinance 81 provides a mechanism for appropriate changes to the conditions established in this Certificate. With respect to an existing federal license or permit for the Project, the WCB may petition the federal agency to incorporate the added or altered condition in the federal license or permit.

VII. Project Changes, Repairs and Maintenance

A. The Permittee must obtain the WCB review and approval before undertaking any change to the facility that might significantly affect water quality, including changes to operations and effluent flows.

B. The Permittee must obtain the WCB review and approval before undertaking repair or maintenance activities that might significantly affect water quality. The WCB may, at the Permittee's request, provide prior approval of such repair and maintenance activities on a periodic or ongoing basis.

C. The Permittee will notify the TCB and TEO of all future changes in the facility or operation of the project

The Permittee has provided reasonable assurance that the plant will be managed and operated in a manner that will not violate applicable tribal water quality standards. The Water Control Board as the delegated authority of Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon is reasonably assured that compliance with the certification conditions contained herein will maintain the Project consistent with applicable provisions of Sections 301,302,303, 306, and 307 of the Federal Clean Water Act, Tribal water quality standards, and other appropriate requirements of Tribal law related to water quality.

Based on the application, public and agency comments, the Evaluation Report and Findings, and other information submitted to the WCB, and pursuant to Section 401 of the federal Clean Water Act and Tribal Ordinances 45, 74,80 and 81, the WCB hereby conditionally approves the application for certification.

CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON WATER CONTROL BOARD

ROY SPINO, Chairman — Date: 12/20/18

CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON TRIBAL ENVIRONMENTAL OFFICE

RYAN SMITH SR., Director (Acting) — Date: 12/20/18