



Saint Regis Mohawk Tribe

Environment Division

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By B. Brown USACE at 2:29 pm, Dec 28, 2020

Anthony David,
Director

Tsiothóhrha/December 23, 2020

Stephan A. Ryba, Chief
Regulatory Branch
New York District, U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278-0090

Diane Kozlowski, Chief
Regulatory Branch
Buffalo District, U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207-3199

Re: Request for Clean Water Act Section 401 Water Quality Certification of the proposed 2020 U.S. Army Corps of Engineers Nationwide Permits as they apply to Indian Nation Lands in New York

Dear Mr. Ryba and Ms. Kozlowski:

This letter is in response to your Kentenhkó:wa/November 9, 2020, request for Clean Water Act Section 401 water quality certification of the United States Army Corps of Engineers (Corps) proposed reissuance of the Nationwide Permits (NWP) for projects that may be authorized on Indian Nation lands in the State of New York. The Saint Regis Mohawk Tribe (SRMT) has completed its review of the Federal Register Notice dated Seskehkó:wa/September 15, 2020, to reissue the 57 existing NWPs, general conditions and definitions with some modifications, and to issue five new NWPS (NWPs A, B, C, D, E). The Final Notice of Reissuance has not been published in the Federal Register at the time this letter is issued.

Section 401(a)(1) of the Clean Water Act (CWA) requires applicants for Federal permits that may result in discharges into waters of the U.S. to obtain certification that the discharge will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Whereas the Saint Regis Mohawk Tribe is the sole jurisdictional authority to allow for such certification, through treatment in a similar manner as a state [CWA §518(e)] authority. SRMT is required to certify federal actions resulting in discharges to Tribal Waters, will not contravene its Water Quality Standards nor impair Tribal Designated Uses. Therefore, under SRMT's delegated authority by USEPA, the Environment Division and Water Resources Program (WRP) is providing the certification decision for discharges that may result from the proposed NWPs.

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aioianeréhake ne enióhrhen'ne

Based on materials provided by the Corps, and the close upstream proximity to three USEPA Superfund Hazardous Waste Sites, including in National Priority List Site, which have undergone various stages of remedial activities throughout the past including those currently ongoing, SRMT Environment Division has determined as to whether or not the discharges from the proposed NWP's will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the CWA.

Essentially, as to all numerical categories of NWP's as to which the ACOE has requested the Tribe's agreement to also process applications in accordance with NWP criteria, the Tribe declines. The SRMT elects to demand individual applications for all projects within Akwesasne so that they may be subject to individual scrutiny such that an informed decision can be made by the Tribe as to whether to approve, approve with conditions or deny a permit application.

The interests of the SRMT is best served by denial of a water quality certificate ensure adequate protection of water quality and help ensure that the NWP program minimizes adverse impacts on the aquatic environment on sovereign Indian Nation lands, both individually and cumulatively, as required by CWA Section 404(e). Where certification is denied for an applicable NWP, the applicant may request an individual certification from SRMT Environment Division. An individual certification request must follow the requirements outlined in §121.5 of EPA's CWA § 401 Certification Rule, effective Seskehkó:wa/September 11, 2020.

Thank you for your assistance in this matter, and we look forward to working together on implementing future environmental protection and sustainability projects.

Sincerely,



Tiernan W. Smith
Water Resources Program Manager

Sincerely,



Mr. Anthony David
Environment Division Director