

NPDES: Inspector Credential Authority and Application: A Tribal Perspective

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Conference



Pueblo of Sandia Mission Statement

- The mission of the Pueblo of Sandia Environment Department is to protect and manage the reservation environment through the application of sound scientific methods and cultural needs and to involve the members of Sandia Pueblo in a community based approach which educates and encourages the participation of individuals in the protection and management of the environment.

Pueblo of Sandia Water Quality Program Objectives

- Implement and maintain a water quality monitoring program;
- Administer regulatory controls and activities that protect the surface water quality on the Pueblo;
- Write and implement water quality standards, codes and regulations;
- Create community awareness and involvement on water quality issues; and
- Develop a water quality environmental education program for the Pueblo community.

Inspector Credentials

- Guidance document for issuing federal credentials to tribal inspectors released by USEPA on September 30, 2004.
- Different federal statutes (Clean Water Act [CWA], Clean Air Act [CAA], Safe Drinking Water Act [SDWA], etc.) have different language in regard to USEPA delegating authority to a tribal inspector.

Statutory Language on Inspection Authority - CWA

- 33 U.S.C. § 1318(a) Whenever required to carry out the objective of this chapter, including but not limited to:...(4) carrying out sections 1315,1321, 1342, 1344 (relating to State permit programs), 1345, and 1364 of this title—
 - (B) – the administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator) upon presentation of his credentials.

The Benefits of Federal Credentials for Tribal Inspectors

- Allows tribal inspectors to perform inspections on USEPA's behalf
- Tribal inspectors may help support USEPA enforcement actions
- Tribal inspectors help USEPA provide coverage to remote areas and maintain an active presence amongst the regulated community
- Tribal inspectors are invaluable in helping USEPA follow up on enforcement actions

Tribal Inspectors with EPA Federal Credentials 2009

- Region 1: No tribes have applied or have shown interest
- Region 2: No tribes have applied or have shown interest
- Region 3: No tribes have applied or have shown interest

Tribal Inspectors with EPA Federal Credentials

- Region 4: One (1) RCRA (UST) Eastern Band of Cherokee Indians of North Carolina
- Region 5: Two (2) Fond du Lac Reservation, One (1) Keweenaw Bay Indian Community, Three Mille Lacs Band of Ojibwe
- Region 6: One (1) NPDES Pueblo of Sandia

Tribal Inspectors with EPA Federal Credentials

- Region 7: No tribes have applied or have shown interest
- Region 8: No tribes have applied or have shown interest
- Region 9: One (1) NPDES – Navajo; Two (2) FIFRA - Navajo and Salt River Pima Tribe
- Region 10: Two (2) FIFRA – Coeur d'Alene Tribe, Yakama Nation; Three (3) Clean Air Act - Coeur d'Alene, and Nez Perce; Two RCRA – Shoshone-Bannock Tribes and Yakama Nation

Steps to USEPA Issuing Credentials

- USEPA determines that issuing federal inspector credentials fills a USEPA need.
- Tribe submits to USEPA a request to issue federal inspector credentials to a designated tribal employee to assist USEPA with implementing federal environmental statutes.
- Credentials are specific to a tribal employee – not a program, so the tribe must designate an employee

Steps to USEPA Issuing Credentials, Continued

- USEPA and the tribe prepare and sign a written authorization agreement to ensure appropriate inspection oversight and reliability
- USEPA Region shall establish a tracking system for authorization agreements, credentials, inspection reports, and outcomes, and designate a contact to provide this information on request

Steps to USEPA Issuing Credentials, Continued

- USEPA Region shall insure the inspector has completed the appropriate training as identified and maintain all training documents.
- USEPA Region shall communicate the conditions and limitations of all credentials issued.

Conditions and Limitations

- Inspections by tribal inspectors on behalf of USEPA are generally authorized only within the borders of the tribe's land:
 - Exceptions can be made in specific instances.
 - An agreement must be in place between USEPA and the tribal authority.
- Inspections are conducted in accordance with an agreed upon inspection work plan:
 - A tribal Quality Assurance Project Plan (QAPP) should be in place.
 - If the tribe does not have a QAPP, one will need to be written.

Conditions and Limitations, Continued

- An inspection report must be submitted to USEPA if the tribal staff member conducts an inspection using USEPA credentials:
 - USEPA uses Inspection Form 3560-3 for NPDES inspections.
- USEPA will review all reports and take enforcement actions as appropriate.

Conditions and Limitations, Continued

- Inspectors act in the same capacity as a USEPA contractor.
- Funding (usually) not provided by USEPA
- An inspector should *never* allow her or his credentials to be copied.
- If a credential is lost or stolen, the USEPA Region office should be notified within 72 hours.

Minimum Training of Authorized Inspectors

- Basic Inspector Training.
- Health and Safety Training:
 - Specific topics must be covered; annual refresher training required.
- Program Specific Training for CWA –National Pollutant Discharge Elimination Systems (NPDES):
 - Includes reading, courses, on the job training, and refresher training.
 - Appendix 3 (5-G) of the guidance document specifies specific training requirements for CWA-NPDES.

The Actual Credential

- Expires in three years, but can be reissued.
- Requires photo and signature of the tribal inspector.
- USEPA Regional Administrator co-signs and laminated credential is issued.
- USEPA retains the right to revoke or suspend a tribal inspector's USEPA credential.
- A tribe may also revoke their employee's USEPA credential for their own reasons.

The Tribal Perspective

- Time:
 - Obtaining the credentials will take time.
 - Pueblo of Sandia initiated process with letter to EPA Region 6 on June 16, 2006.
 - Pueblo of Sandia received Federal Inspector Credentials for CWA on October 9, 2007.

The Tribal Perspective

- Legal:
 - Agreement between the state of New Mexico Environment Department (NMED) and the Pueblo of Sandia on jurisdiction issue.
 - United States EPA Region 6 Federal Inspector Credential Authorization Agreement.
 - Close working relationship between Pueblo of Sandia In-House Counsel, EPA Counsel (both regionally and nationally), and EPA enforcement and Surveillance Section.

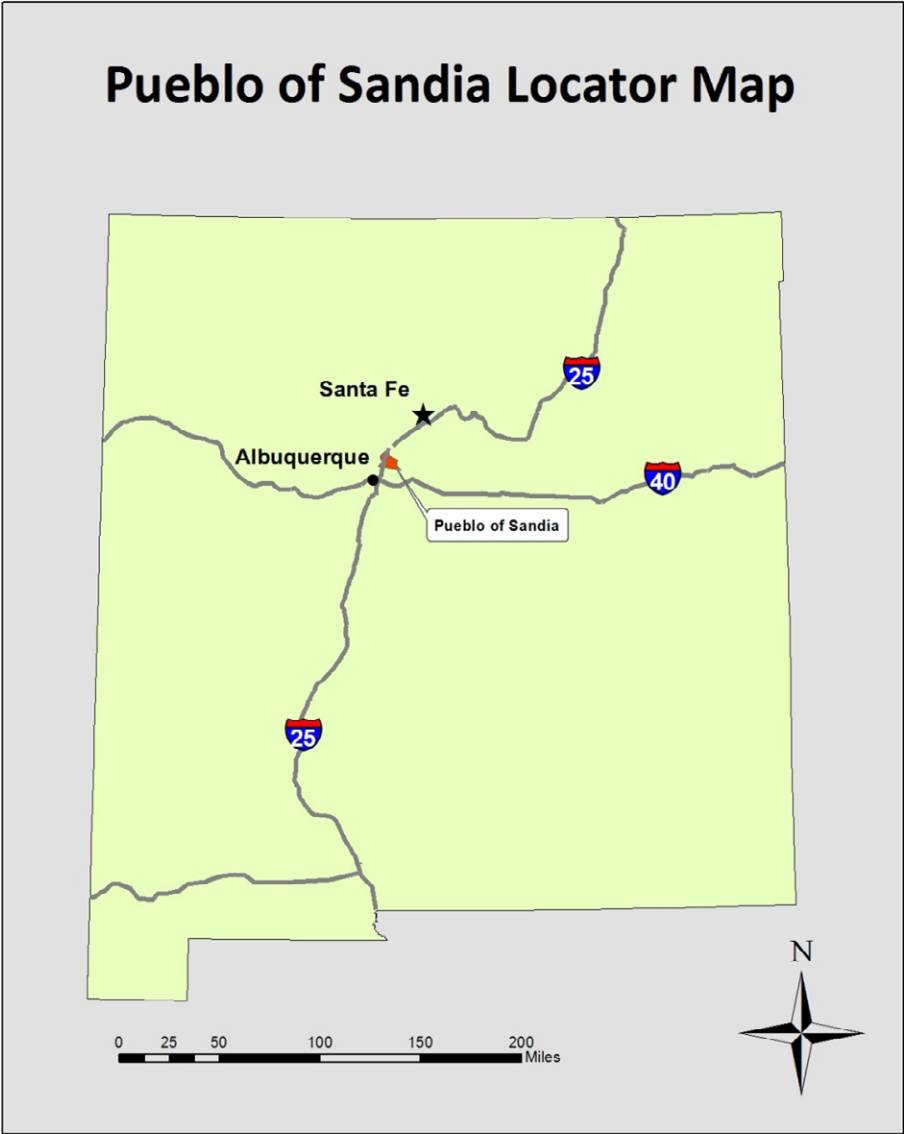
The Tribal Perspective

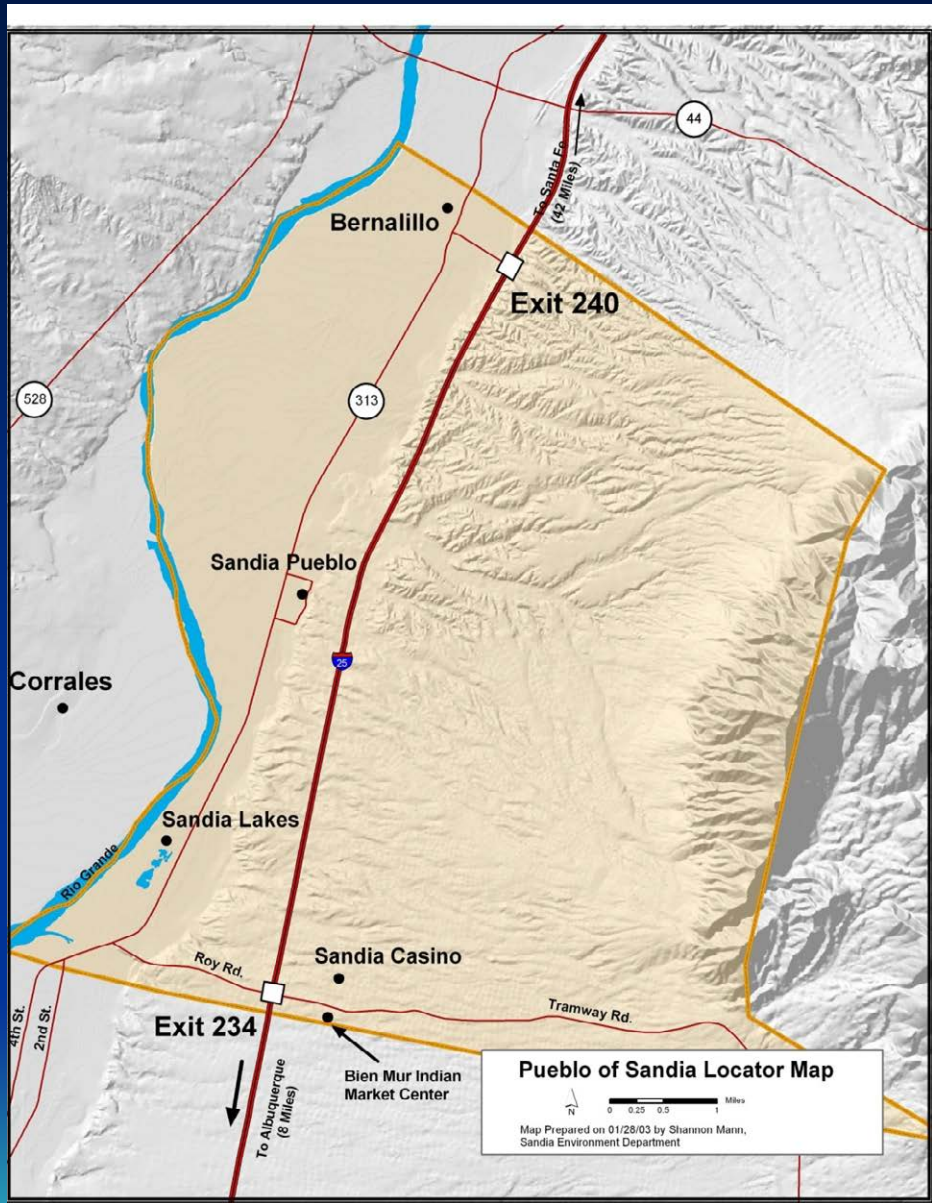
- QAPP:
 - QAPP already in existence? Revision or new QAPP.
 - QAPP revision will have to be worked on and approved.
- Training:
 - Will all or partial training be required?
 - Time frame for completion of training.
 - Scheduling of training classes.

The Tribal Perspective

- Funding:
 - From initial correspondence through authorization agreement to issuance of federal credentials funding will need to be addressed.
 - Will funding be tribal or grant.
 - Time period issues.

Pueblo of Sandia Locator Map





NPDES and the Pueblo of Sandia

- Under CWA Section 402 National Pollutant Discharge Elimination System (NPDES) each point source discharger is required to obtain a permit that limits the pollutant discharged.

NPDES and the Pueblo of Sandia

- Activities that require a NPDES permit are: major and minor municipal WWTPs, major and minor industrial facilities, mines, combined sewer overflows, sanitary sewer overflows, stormwater pollution, and concentrated animal feeding operations.

Rio Grande





Wastewater Treatment Plants

- Three (3) wastewater treatment plants (WWTPS) discharge into the Pueblo's stretch of the Rio Grande.
- They are: Town of Bernalillo, Rio Rancho WWTP#2, and Rio Rancho WWTP#3.

AMAFCA's North Diversion Channel

- The Albuquerque Metropolitan Arroyo Flood Control Authority's (AMAFCA's) North Diversion Channel diverts approximately 67% of Albuquerque's storm water into the Pueblo's waters of the Rio Grande.

Dredge or Fill Activities

- Under the Clean Water Act (CWA) - Section 404 whenever a project occurs that would affect waters of the United States a Dredge or Fill Permit is required and applied for through the Army Corps of Engineers.

Dredge or Fill Activities

- Through agreement with the Army Corps of Engineers, the Pueblo of Sandia is notified on all projects that may influence arroyos and water ways within and outside of the Pueblo.

Dredge and Fill Activities

- Under provisions of the CWA, tribes with WQS have the authority to protect their waters through a §401 Water Quality Certification.
- This §401 Water Quality Certification is required from the Pueblo of Sandia Environment Department on all projects that may influence arroyos and water ways that flow outside into and within the Pueblo.

Storm Water

- The 1987 Amendments to the CWA set the process of controlling storm water pollution into motion.
- In the early 1990's, "Phase I" required cities with populations over 100,000, industrial facilities, and construction sites five acres or larger to obtain a NPDES permit.
- In the late 1990's, "Phase II" required smaller MS4s in urbanized areas (combined populations 50,000+ and population density in core 1000/sq. mile), industrial facilities, and construction sites one acre or larger to obtain a NPDES permit.

Construction General Permit (CGP)

- Any construction activity that results in land disturbances of one (1) acre or more needs coverage under NPDES CGP.
 - “Large” construction activities (1990) –
40 CFR §122.26 (b) (14)
 - “Small” construction activities (2003) -
40 CFR §122.26 (b)(15) (ii)

Acknowledgements

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 - EPA Headquarters: Julie Tankersley, Inspector Team leader for National Compliance Monitoring Policy Branch

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