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(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the state fails to take appropriate corrective action and file a certified statement thereof within the time prescribed by the Administrator, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meaning of 5 U.S. 704.

(d) Withdrawal of authorization under this section and the Act does not relieve any person from complying with the requirements of State law, nor does it affect the validity of actions taken by the State prior to withdrawal.

[53 FR 20776, June 1, 1988, as amended at 57 FR 5346, Feb. 13, 1992]

Subpart G—Eligible Indian Tribes

SOURCE: 58 FR 8183, Feb. 11, 1993, unless otherwise noted.

§ 233.60 Requirements for eligibility.

Section 518(e) of the CWA, 33 U.S.C. 1378(e), authorizes the Administrator to treat an Indian Tribe as eligible to apply for the 404 permit program under section 404(g)(1) if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(c) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for the Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction an alienation, or otherwise within the borders of the Indian reservation.

(d) The Indian Tribe is reasonably expected to be capable, in the Adminis-

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trator's judgment, of carrying out the functions to be exercised, in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective section 404 dredge and fill permit program.

[58 FR 8183, Feb. 11, 1993, as amended at 59 FR 64345, Dec. 14, 1994]

§ 233.61 Determination of Tribal eligibility.

An Indian Tribe may apply to the Regional Administrator for a determination that it meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State, for purposes of the section 404 program. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 233.60. The application should include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This Statement should:

(1) Describe the form of the Tribal government.

(2) Describe the types of governmental functions currently performed by the Tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(c)(1) A map or legal description of the area over which the Indian Tribe asserts regulatory authority pursuant to section 518(e)(2) of the CWA and § 233.60(c);

(2) A statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's assertion under section 518(e)(2) (including the nature or subject matter of the asserted regulatory authority)

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which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority;

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective 404 permit program. The Statement may include:

(1) A description of the Indian Tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self Determination & Education Act (25 U.S.C. 450 *et seq.*), The Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a).

(2) A list of existing environmental or public health programs administered by the Tribal governing body, and a copy of related Tribal laws, regulations, and policies;

(3) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.

(4) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and administering a section 404 dredge and fill permit program or plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(5) A description of the technical and administrative abilities of the staff to administer and manage an effective, environmentally sound 404 dredge and fill permit program.

(e) The Administrator may, at his discretion, request further documentation necessary to support a Tribal application.

(f) If the Administrator has previously determined that a Tribe has met the requirements for eligibility or for "treatment as a State" for programs authorized under the Safe Drinking Water Act or the Clean Water Act, then that Tribe need only provide additional information unique to the particular statute or program for

which the Tribe is seeking additional authorization.

(Approved by the Office of Management and Budget under control number 2040-0140)

[58 FR 8183, Feb. 11, 1993, as amended at 59 FR 64345, Dec. 14, 1994]

§ 233.62 Procedures for processing an Indian Tribe's application.

(a) The Regional Administrator shall process an application of an Indian Tribe submitted pursuant to § 233.61 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) The Regional Administrator shall follow the procedures described in § 233.15 in processing a Tribe's request to assume the 404 dredge and fill permit program.

[58 FR 8183, Feb. 11, 1993, as amended at 59 FR 64346, Dec. 14, 1994]

Subpart H—Approved State Programs

§ 233.70 Michigan.

The applicable regulatory program for discharges of dredged or fill material into waters of the United States in Michigan that are not presently used, or susceptible for use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including wetlands adjacent thereto, except those on Indian lands, is the program administered by the Michigan Department of Natural Resources, approved by EPA, pursuant to section 404 of the CWA. Notice of this approval was published in the FEDERAL REGISTER on October 2, 1984; the effective date of this program is October 16, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable 404 Program under the CWA for the State of Michigan. This incorporation by reference was approved by the Director of the Federal Register on October 16, 1984.