



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
CONSTRUCTION STORMWATER ESA

IN THE MATTER OF:

EASTERN BAND CHEROKEE INDIANS
CHEROKEE BIG COVE GYMNASIUM

Respondent

DOCKET NO.: CWA-04-2023-0304(b)

Expedited Settlement Agreement and Final Order
Pursuant to Clean Water Act Section 309(g)(2)(A)

NPDES Permit No. NCR10I00A

The undersigned representatives of the United States Environmental Protection Agency (EPA) and the Eastern Band Cherokee Indians (EBCI), (Respondent) enter into this Expedited Settlement Agreement (ESA or Agreement) to resolve Respondent's civil penalty liability for alleged violations of the National Pollutant Discharge Elimination System storm water permit cited above (Permit). On 08/10/21, representatives of the EPA and EBCI inspected the Respondent's site at 8715 Big Cove Rd., Cherokee, NC 28719 (Site). Observations indicated operations at the Site were not in compliance with the requirements of the Permit.

Based on information obtained during the EPA inspection, the EPA finds that: (1) Respondent, who is the owner and operator of the Site, failed to comply with the Permit, and the Permit was issued pursuant to section 402 of the Clean Water Act (Act), 33 U.S.C. § 1342; (2) Respondent is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5); and (3) Respondent is responsible for the alleged violations specified in the attached "Inspection Findings, Alleged Violations, and Proposed Penalty Form" (Alleged Violations Form). The Alleged Violations Form is hereby incorporated into this Agreement by reference.

The EPA also finds, and Respondent admits, that the EPA has jurisdiction over this matter pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). Respondent neither admits nor denies the factual allegations alleged in the Alleged Violations Form.

The EPA is authorized to enter into this Agreement under the authority vested in the Administrator by Section 309(g) of the Act, 33 U.S.C. § 1319(g), and by §§ 40 C.F.R. § 22.13(b) and 22.18.

Respondent consents to the assessment of a civil penalty and agrees to pay \$15,400. Respondent waives the right to: (1) contest the allegations in the Alleged Violations Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); (3) appeal the Final Order; and (4) judicial review pursuant to CWA § 309 (g)(8), 33 U.S.C. § 1319(g)(8). The civil

penalty will be due within thirty (30) days of the Effective Date of this ESA and Final Order and shall be made in accordance with the attached Expedited Settlement Agreement Payment Instructions (Payment Instructions), incorporated herein by reference. Respondent agrees to bear its own costs and attorney's fees related to this ESA.

Failure by Respondent to pay the penalty assessed by this ESA and Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9)(B) of the Act, 33 U.S.C. § 1319(g)(9)(B). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

By signing this Agreement, Respondent certifies that: (1) the alleged violations listed in the Alleged Violations Form have been corrected, and Respondent has submitted true and accurate documentation to the EPA of such correction; and (2) consistent with Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

This Agreement, upon incorporation into the Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations of Section 301(a) of the Act alleged in the Alleged Violations Form. This Agreement does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law or to issue an administrative compliance order, e.g., for any uncorrected violations listed in the Alleged Violations Form. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

Pursuant to Section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45, the EPA will provide public notice of this Agreement and a reasonable opportunity for the public to

comment on the proposed issuance of this Agreement prior to issuance of the Final Order.

If Respondent does not sign and return this ESA as presented within 30 days of the date of its receipt, or within an extension timeframe approved by the EPA, this proposed ESA is withdrawn without prejudice to the EPA's ability to file any other enforcement action for the violations identified in the Alleged Violations Form.

The parties consent to service of this ESA and Final Order by e-mail to the e-mail addresses provided by the parties in the Certificate of Service.

This Agreement is binding on the parties signing below. Each person signing this Agreement certifies that he or she has the authority to sign for the party who he or she represents and to bind that party to its terms. The ESA and Final Order are effective on the date of filing with the Regional Hearing Clerk. Once the ESA is signed by the Regional Judicial Officer, the original ESA will be filed with the Regional Hearing Clerk. A copy of the filed ESA will be emailed to Respondent.

APPROVED BY THE EPA:

Mary Jo Bragan, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division

FINAL ORDER

Having determined that this Agreement is authorized by law, the foregoing Expedited Settlement Agreement is hereby incorporated into the Final Order.


IT IS SO ORDERED:

APPROVED BY RESPONDENT:

Name (print): Jeremy Hyatt

Title (print): Secretary of Operations

Tanya Floyd
Regional Judicial Officer

Signature:  _____ Date: 6.5.23

Attachments:

1. Alleged Violations Form
2. Payment Instructions
3. Certificate of Service

ENCLOSURE A
Construction Stormwater Inspection
Findings, Alleged Violations, and Proposed Penalty Form

1. To accomplish the objective of the Clean Water Act (CWA), as defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants into navigable waters except as in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the U.S. Environmental Protection Agency (EPA) or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions.
3. The land parcel where construction of a building located at 8715 Big Cove Rd., Cherokee, NC 28719 (Site) occurred is held in trust by the United States for the EBCI and is within the exterior boundaries of the Qualla Boundary of the EBCI. The Site is identified by Standard Industrial Classification (SIC) Codes 1542 & 1522.
4. The Site is located within Indian country, as that term is defined at 18 U.S.C. § 1151.
5. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), the EPA has the authority to implement the NPDES permit program in Indian country in the absence of an approved tribal program. The EBCI does not have an approved NPDES permit program. Therefore, the EPA implements the NPDES permit program within the exterior boundaries of the Qualla Boundary.
6. On August 10, 2021, representatives of the EPA, in conjunction with the EBCI's Natural Resources Division, performed a Compliance Stormwater Evaluation Inspection (CSWEI) at the Site to evaluate the Respondent's compliance with the requirements of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p); the regulations promulgated thereunder at 40 C.F.R. § 122.26; and the NPDES General Permit for Discharges from Construction Activities, Permit No. NCR10I00A (Permit).
7. On October 15, 2021, the EPA issued an Inspection Report to the Respondent. During the CSWEI, the EPA and EBCI inspectors observed the following:
 - A. Records (NOI, inspection reports, corrective actions, etc.) were not retained on site while the Permit was active;
 - B. Several bare soil areas were in need of stabilization (northeast corner of the building and along conveyance along the south side of the newly constructed building);
 - C. Several stormwater inlets were missing inlet protection (northeast corner of the building) and other inlets (northwest side of the building) were in need of maintenance; and

D. Final site stabilization was not achieved although outside construction activities had ceased.

8. Pursuant to the EPA's construction penalty policy, 0.25 inches of rain during a 24-hour period is used as the general benchmark for likely stormwater runoff. According to rain data available from Weatherunderground.com for this area, seventeen (17) months during the period from April 2020 to September 2021 has had one or more daily rain events greater than 0.25 inches. Due to the hydrology of the Site in which significant portions of the Site had not been stabilized and impervious surfaces and/or tightly packed material represented Site conditions, the EPA has determined that, between April 2020 and September 2021, stormwater associated with Respondent's construction activities discharged offsite into a stormwater drainage ditch. This ditch drains stormwater in a southwesterly direction to Raven Fork. Raven Fork flows to the Oconaluftee River which is located 8.35 miles from the Site.
9. The Oconaluftee River is a traditionally navigable water of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and its implementing regulation at 40 C.F.R. § 122.2.
10. Respondent has violated Sections 301 of the CWA, 33 U.S.C. § 1311, by discharging stormwater from the Site without proper authorization to waters navigable of the United States.
11. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.13(b), and in accordance with the EPA's February 5, 2008, Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Storm Water Requirements, the EPA is assessing a penalty of \$15,400 for the above-mentioned violations.

Enclosure B

Expedited Settlement Agreement and Final Order Payment Instructions

Payment shall be in a single payment, due no later than 30 calendar days from the effective date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall:

- designate the name and docket number of this case, and
- be payable to "Treasurer, United States of America."

The payment shall be remitted as follows:

If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

If remitted on-line with a debit card or credit card: No user name, password, or account number is necessary for this option. On-line payment can be accessed via www.pay.gov, entering 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent by mail and/or email to:

Regional Hearing Clerk
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

Lonnie Dorn
U.S. EPA Region 4
Water Enforcement Branch
Enforcement and Compliance Division
980 College Station Rd.
Athens, GA 30605
Dorn.lonnie@epa.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Expedited Settlement Agreement" and "Final Order," in the Matter of **Eastern Band Cherokee Indians Big Cove Gymnasium, Docket Number CWA-04-2023-0304(b)** were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Jeremy Hyatt, Secretary of Operations
Eastern Band Cherokee Indians
P.O. Box 455
Cherokee, NC 28719
jerehyat@ebci-nsn.com

To EPA: Lonnie Dorn, Water Enforcement Branch
U. S. EPA Region 4
980 College Station Rd., Athens, GA 30605
Dorn.Lonnie@epa.gov
706-355-8683

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