

STATEMENT OF BASIS

NPDES #: NC0054992

PERMITTEE: C.R. Brown Enterprises, Inc.
235 Milton Mashburn Drive
Andrews NC 28901

FACILITY: Cherokee Trout Farm
10285 Big Cove Road
Cherokee NC 28719
Eastern Band of Cherokee Indian Tribal Land

FACILITY TYPE: Concentrated Aquatic Animal Production (SIC code 0273)

OUTFALL(S): 001 (Latitude 35 34' 32" North; Longitude 83 15' 30" East)

RECEIVING WATER: Raven Fork River

1. Facility Description

Cherokee Trout Farm is an existing source concentrated aquatic animal production (CAAP) “flow-through” facility that grows Rainbow Trout (*Oncorhynchus Mykiss*).¹ The operation includes twenty-seven (27) raceways and six (6) settling ponds that are in-series. The maximum daily discharge flow rate through the one permitted outfall is 9 million gallons. The maximum production of Rainbow Trout from this farm is approximately 725,000 pounds annually. The maximum amount of feed is 114,000 pounds per month. The intake water source for the facility is the Raven Fork River. The facility is located within the Eastern Band of Cherokee Indian (EBCI) Tribal boundary.

2. Receiving Water Body Description

The effluent discharges to the Raven Fork River thence approximately 7.5 miles to the Oconaluftee River. According to the EBCI Water Quality Code for Surface Waters (Chapter 113E), the Raven Fork River has a designated use of primary contact recreation, ceremonial and religious use, and cold water aquatic habitat (trout waters).

3. Rationale for the Permit Conditions and Requirements

The current NPDES permit authorizing the facility to discharge pollutants into the Raven Fork River was effective on December 1, 2009 and administratively continued on September 4, 2014. The permit conditions are consistent with the Clean Water Act (CWA) § 308, § 312, § 402, and § 403, and 40 Code of Federal Regulations (CFR) § 125. The permit conditions are based on the CAAP regulations (40 CFR § 122.24 and 40 CFR Part 451). The limits and conditions are further clarified in the CAAP effluent limit develop document² and the CAAP Compliance Guide.³ The rationale for each part of the permit is summarized below:

¹ A new source is defined as a facility from which there is a discharge of pollutants for which the construction commenced after the promulgation of standards of performance under CWA Section 306 (in accordance with 40 CFR § 122.2 and 40 CFR § 122.29). The facility originally obtained a NPDES permit from the EPA in 1987. The effluent limitations guidelines for the CAAP industry became effective on September 22, 2004. Therefore, the facility is considered an existing source.

² U.S. Environmental Protection Agency. 2002. Development Document for Proposed Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production Industry Point Source Category. EPA-821-R-02-016. U.S. Environmental Protection Agency, Office of Water, Washington, DC. <<http://water.epa.gov/scitech/wastetech/guide/aquaculture/tdd.cfm>>.

³ U.S. Environmental Protection Agency. 2006. Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category. EPA-821-B-05-001. U.S. Environmental Protection Agency, Office of Water, Washington, DC. <http://water.epa.gov/scitech/wastetech/guide/aquaculture/upload/2006_05_03_guide_aquaculture_guidance_full-final.pdf>.

Part I – Effluent Limitations and Monitoring Requirements

The monitoring conditions and/or effluent limitations are based upon the previous NPDES permit, the North Carolina Aquaculture General Permit (NCG530000), and the Best Professional Judgment (BPJ) of the permit writer to protect the EBCI Water Quality Code for Surface Waters and protect the North Carolina waters downstream from the facility's discharge. The monitoring requirements are consistent with the CWA § 308(a).

Part II – Aquaculture Specific Requirements

This permit section outlines the specific reporting requirements for aquaculture facilities as mandated by the effluent guidelines for the CAAP Point Source Category (40 CFR Part 451).

Part III – Reporting, Monitoring, and Record Requirements

This permit section provides the electronic reporting requirements and general monitoring provisions in accordance with the CWA and its implementing regulations.

Part IV – Best Management Practices (BMP) Plan

The permit requires the implementation of a BMP plan to minimize the effects of the facility's discharges on the water quality of the receiving water body. The BMP plan is required in accordance with the effluent limitation guideline for the CAAP point source category and 40 CFR § 122.44(k).

Part V – Quality Assurance Plan (QAP)

This permit requires the implementation of a QAP to ensure that the water quality data collected by the permittee is reliable. The permittee is required to submit and follow the QAP which prescribes the procedures for the collection and analysis of all effluent and in-stream sampling. The QAP requirement is based upon the BPJ of the permit writer.

Part VI – Standard Conditions

This section contains the general conditions and definitions applicable to NPDES permits issued by the EPA.

4. Effective Date of Effluent Limits, Permit Conditions, and Compliance Schedule

The permittee shall achieve compliance with all effluent limitations, monitoring conditions, and permit requirements immediately upon the effective date of the permit. A compliance schedule is not included in this permit.

5. CWA § 401 Certification Requirements

A CWA § 401 certification is not required from the North Carolina Department of Environmental Quality because the permitted activity is not in State waters; however, a CWA § 401 certification from the EBCI is required because the permitted activity discharges to EBCI waters. The EBCI waived its right to provide a CWA § 401 certification for this facility on March 20, 2017.

6. Endangered Species Act (ESA) Compliance

In accordance with 40 CFR § 122.49(c) the EPA is required to ensure, in consultation with the U.S. Fish and Wildlife Service, that "any action authorized EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat." The EPA, in consultation with the U.S. Fish and Wildlife

Service, has determined that the discharges authorized by this permit are not likely to have an effect on any federally listed species, proposed species, or critical habitat. See the 2017 Biological Evaluation for more information.

7. National Environmental Policy Act (NEPA) Compliance

Under NEPA, an analysis is required when an action is deemed a major federal action significantly affecting the quality of the human environment. CWA § 511(c) lists the only actions of the Administrator under the CWA that require any NEPA analysis. Section 511(c)(1) of the CWA states: “Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by Section 1281 of this title, and the issuance of a permit under Section 402 of this title for the discharge on any pollutant by a new source identified in Section 1316 of this title, no action of the Administrator taken pursuant to this chapter [the CWA] shall be deemed a major federal action significantly affecting the quality of the human environment within the meaning of NEPA.” This same limiting language is reflected in 40 CFR § 6.101(a).

Because the CWA and implementing regulations are specifically inclusive as to what actions require NEPA and is limited to those two annotated situations, existing sources are exempt from NEPA since they are not “deemed a major federal action significantly affecting the quality of the human environment within the meaning of NEPA.” The discharges associated with this CAAP facility are considered an existing source.¹ Therefore, a NEPA analysis is not required because the EPA is required to comply with the requirements of the NEPA for EPA-issued NPDES permits only for new sources.

8. The Administrative Record and EPA Contact

The entire administrative record including application, draft permit, statement of basis, public notice, comments received, and supporting information is available by contacting the EPA using the below information.

NPDES Permitting and Enforcement Branch Chief
U.S. Environmental Protection Agency, Region 4
Water Protection Division | NPDES Permitting and Enforcement Branch
61 Forsyth Street SW | Atlanta GA 30303-8960
404.562.9610 | R4NPDESPermits@epa.gov