



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC 21 2016

Mr. Michael Bolt  
Eastern Band of Cherokee Indians  
P.O. Box 492  
Cherokee, North Carolina 28719

Subject: Final Issuance of National Pollutant Discharge Elimination System Permit  
No.: NC0052469 Eastern Band of Cherokee Indians Wastewater Treatment Plant

Dear Mr. Bolt:

Enclosed is the National Pollutant Discharge Elimination System permit for the above referenced facility. This action constitutes the U.S. Environmental Protection Agency's final permit decision in accordance with Title 40, Code of Federal Regulations (CFR) § 124.15(a). The permit will become effective as specified, provided that a request for review of the permit decision is not received by the EPA's Environmental Appeal Board within 30 days according to 40 CFR § 124.19.

This permit requires electronic submittals of Discharge Monitoring Reports (DMRs) no later than January 1, 2017, using the EPA's netDMR tool and electronic submittal of Biosolids/Sewage Sludge Reports no later than February 19, 2017, using the EPA's NeT tool. Please refer to Part II.A of the permit for instructions on using these electronic tools.

Further information on procedures pertaining to the filing of a request for review of the permit decision or other legal matters relative to this permit issuance may be obtained by contacting Mr. Paul Schwartz, Assistant Regional Counsel, at (404) 562-9576. For information regarding technical aspects of the permit, please contact Ms. Molly Davis of my staff at (404) 562-9236.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary S. Walker".

Mary S. Walker  
Director  
Water Protection Division

Enclosures



**Permit No. NC0052469**  
**Major POTW**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq), the

**Eastern Band of Cherokee Indians**  
**Qualla Boundary**  
**Post Office Box 455**  
**Cherokee, North Carolina 28719**

is authorized to discharge from a facility located at

**Cherokee Wastewater Treatment Plant**  
**Old No. 4 Road**  
**Cherokee, Swain County, North Carolina**

to receiving waters named

**Oconaluftee River**

in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein. The permit consists of this cover sheet and Parts I through IV.

This permit shall become effective on January 1, 2017.

This permit and the authorization to discharge shall expire at midnight October 31, 2018.

**DEC 21 2016**

Date Issued



Mary S. Walker, Director  
Water Protection Division

**PART I**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. During the period beginning on the effective date and lasting through the expiration date of this permit, the permittee is authorized to discharge sanitary wastewater from outfall 002. Outfall 001 is functional but a non-operational outfall that can only be operational during the maintenance of outfall 002. The permittee should notify EPA NPDES program ahead of time when they intend to temporarily utilize outfall 001 and return to 002. The permit limits are applicable to both outfalls 001 and 002. Such discharges shall be limited and monitored by the permittee as specified below:

PARAMETERS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS		
	MONTHLY AVG	WEEKLY AVG	SAMPLING POINT(S)	MEASUREMENT FREQUENCY	SAMPLE TYPE
Flow rate, MGD	Report	Report	Effluent	Continuous	Recorder
Carbonaceous Biochemical Oxygen Demand 5-Day (CBOD <sub>5</sub> ), mg/l	18.0	27.0	Effluent	1 day/week	24-hour Composite
Total Suspended Solids (TSS), mg/l	Report 30.0	--- 45.0	Influent Effluent	1 day/week	24-hour Composite
Total Ammonia Nitrogen, (TAN), mg/l	7.0	10.5	Effluent	1 day/week	24-hour Composite
Dissolved Oxygen (DO), mg/l	DO shall not be less than 5.0		Effluent	1 day/week	Grab
pH, standard units (SU)	6.0 - 9.0		Effluent	1 day/week	Grab
Fecal Coliform Bacteria, #/100 ml	200	400	Effluent	1 day/week	Grab
Chronic Whole Effluent Toxicity	See item 6, page 2		Effluent	See Part III	
Total Phosphorus (as P), mg/l	Report	---	Effluent	Quarterly	24-hour Composite
Total Nitrogen (as N), mg/l	Report	---	Effluent	Quarterly	24-hour Composite

2. In addition to the specified limits, the monthly average effluent TSS concentrations shall not exceed 15 percent of their respective influent values (minimum of 85 percent removal). The percent removal shall also be reported on the Discharge Monitoring Report (DMR) Form (EPA No. 3320-1).
3. The geometric mean of the fecal coliform values collected during any monthly period shall not exceed 200 colonies per 100 ml of effluent sample and shall be reported as the monthly average value on the DMR Form. The weekly fecal coliform value (also computed as a geometric mean should any more than one sample be taken in a week) shall not exceed 400 colonies per 100 ml of effluent sample and shall be reported as the weekly average value on the DMR Form.
4. Samples taken in compliance with the monitoring requirements specified in this permit shall be taken at the nearest accessible point after final treatment but prior to the actual discharge or mixing with the receiving waters (unless otherwise specified).
5. Any bypass of the treatment facility, which is not included in the effluent monitored above, is to be monitored for flow and all other parameters, except chronic Whole Effluent Toxicity. For parameters other than flow, at least one grab sample per day shall be collected and analyzed. Daily flow shall be measured or estimated, as appropriate, to obtain reportable data. All monitoring results shall be reported on a DMR Form.
6. The effluent shall not be chronically toxic to, or produce adverse physiological or behavioral responses in, aquatic animals. An inhibition concentration (IC<sub>25</sub>) of less than or equal to 9.6 percent will constitute a violation. The testing for this requirement shall conform with Part III of this permit.
7. If the results for a given sample analysis are such that any parameter (other than fecal coliform) is not detected at or above the minimum level for the test method used, a value of zero will be used for that sample in calculating an arithmetic mean value for the parameter. If the resulting calculated arithmetic mean value for that reporting period is zero, the permittee shall report "NODI=B" on the DMR Form. For fecal coliform, a value of 1.0 shall be used in calculating the geometric mean. If the resulting fecal coliform mean value is 1.0, the permittee shall report "NODI=B" on the DMR Form. For each quantitative sample value that is not detectable, the test method used and the minimum level for that method for that parameter shall be attached to and submitted with the DMR Form. The permittee shall then be considered in compliance with the appropriate effluent limitation and/or reporting requirement.
8. There shall be no discharge of floating solids or visible foam in other than trace amounts.
9. The effluent shall not cause a visible sheen on the receiving water.
10. Overflow identification: The permittee shall identify all wastewater discharges at locations not authorized as permitted outfalls that occur prior to the head works of the wastewater treatment plant covered by this permit. The permittee shall submit, with the scheduled DMR Form, the following information for each discharge event at each source that occurs during the reporting period covered by the DMR Form:
  - a. the cause of the discharge;
  - b. duration and volume (estimate if unknown);
  - c. description of the source, e.g., manhole cover, pump station;
  - d. type of collection system that overflowed, i.e., combined or separate;

- e. location by street address, or any other appropriate method;
- f. date of event;
- g. the ultimate destination of the flow, e.g., surface water body, land use location, via municipal separate storm sewer system to a surface water body, (show location on a USGS map or copy thereof); and
- h. corrective actions or plans to eliminate future discharges.

The permittee shall refer to Part II of this permit which contains information about reporting unpermitted discharge events. Submittal or reporting of any of this information does not provide relief from any subsequent enforcement actions for unpermitted discharges to waters of the United States.

## **B. SLUDGE MANAGEMENT PRACTICES**

1. The permittee shall comply with all existing federal laws and regulations that apply to sewage sludge use and disposal practices including 40 CFR Part 503 and 40 CFR Part 258, which are hereby incorporated as part of the permit by reference, and the Clean Water Act (CWA) Section 405(d) technical standards.

If an applicable management or practice or numerical limitation for pollutants in sewage sludge more stringent than existing federal regulations is promulgated under Section 405(d) of the CWA, this permit may be modified or revoked and reissued to conform to the promulgated regulations.

2. The permittee is responsible for assuring that all biosolids produced at its facility are used or disposed of in accordance with these rules, whether the permittee uses or disposes of the biosolids itself or transfers them to another party for further treatment, use, or disposal. The permittee is responsible for informing subsequent preparers, appliers, and disposers of the requirements that they must meet under these rules.
3. Duty to mitigate: The permittee shall take all reasonable steps to minimize or prevent any discharge or biosolids use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
4. The permittee shall submit an annual sludge report containing the information required in 40 CFR Part 503 by February 19<sup>th</sup> of each calendar year. The report shall cover the previous calendar year. The report shall be submitted electronically to the EPA in accordance with the requirements in Part II.A of this permit.

## **C. SCHEDULE OF COMPLIANCE**

1. The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule:

Operational Level Attained on November 1, 2013.

2. No later than 14 calendar days following the date identified in the above schedule of compliance, the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

## PART II - Other Requirements

### A. Reporting of Monitoring Results

Monitoring results obtained for each month shall be summarized for that month and reported on a Discharge Monitoring Report Form (EPA No. 3320-1). Starting on December 21, 2016, the permittee must electronically report DMRs using EPA's NetDMR tool at [www.epa.gov/netdmr](http://www.epa.gov/netdmr). In addition, starting on December 21, 2016, the permittee must electronically report their Biosolids/Sewage Sludge Reports using EPA's NPDES Electronic Reporting Tool (NeT), which is accessed through the EPA's Central Data Exchange (CDE) network: <http://cdx.epa.gov>. Annual Biosolid/Sewage Sludge Reports are due February 19<sup>th</sup> of the following year. Starting on December 21, 2020, the permittee must electronically report the following compliance monitoring report using NeT:

Sewer Overflow/Bypass Event Reports

If no discharge occurs during the reporting period, sampling requirements of this permit do not apply. The statement "No Discharge" shall be written on the DMR Form. If, during the term of this permit, the facility ceases discharge to surface waters, the Permit Issuing Authority shall be notified immediately upon cessation of discharge. This notification shall be in writing.

The permittee may seek an electronic reporting waiver from EPA Region 4 based on one of the following conditions:

- If your headquarters is physically located in a geographic area (i.e., zip code or census tract) that is identified as under-served for broadband Internet access in the most recent report from the Federal Communications Commission; or
- If you have limitations regarding available computer access or computer capability.

If you wish to obtain a waiver from submitting DMRs electronically, you must submit a written request to EPA Regional 4 at the below address.

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

The electronic waiver request should include the following details:

- Facility name;
- NPDES permit number;
- Facility address;
- Name, address, and contact information for the owner, operator, or duly authorized facility representative; and
- Brief written statement regarding the basis for claiming such a temporary waiver.

EPA Region 4 will either approve or deny this electronic reporting waiver request within 120 days. The duration of a temporary waiver may not exceed five years, which is the normal period for an NPDES permit term. The permittee must re-apply for a new temporary waiver. Approved electronic reporting waivers are not transferrable. Only permittees with an approved reporting waiver request may submit monitoring data and reports on paper to EPA Region 4 for the period that the approved reporting waiver request is effective.

Permittees with an approved and effective electronic reporting waiver must submit monitoring data and reports to EPA Region 4 and Biosolids/Sewage Sludge Reports to EPA Region 7 at the following addresses. DMR submissions must use the forms provided by EPA Region 4 and must be postmarked no later than the 28<sup>th</sup> day of the month following the completed quarter. The Biosolids/Sewage Sludge Reports must be postmarked no later than the 19<sup>th</sup> day of February following the completed calendar year. The permittee must sign and certify all submissions in accordance with the requirements of Part IV.D.13 of this permit (“Signatory Requirements”). The permittee must submit the legible originals of these documents to the EPA regional offices at the addresses below:

**DMR and other reports:**

U.S. Environmental Protection Agency, Region 4  
Water Protection Division | NPDES Permitting and Enforcement Branch  
61 Forsyth Street SW | Atlanta GA 30303-8960  
[R4NPDESPermits@epa.gov](mailto:R4NPDESPermits@epa.gov)

**Biosolid/Sewage Sludge Reports (only):**

U.S. Environmental Protection Agency, Region 7  
Biosolids Center | Water Enforcement Branch  
11201 Renner Blvd | Lenexa, Kansas 66219

**B. Reopener Clause**

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation, or sludge disposal requirement issued or approved under Sections 301(b)(2)(C) & (D), 307(a)(2), and 405(d)(2)(D) of the Clean Water Act, as amended, if the effluent standard, limitation, or sludge disposal requirement so issued or approved:

- a. Contains different conditions or is otherwise more stringent than any condition in the permit; or
- b. Controls any pollutant or disposal method not addressed in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

**C. Special POTW Requirements**

a. Change in Discharge

In the case of a publicly owned treatment works (POTW) any anticipated changes in the facility discharge must be reported to the Permit Issuing Authority. Modifications to the permit may then be made to reflect any necessary effluent limitations for any pollutants not identified and limited herein. The permittee may be required to develop a local pretreatment program, if the industrial wastes are regulated by Federal Categorical Standards or cause interference at the POTW.

b. Control of User Discharges to the System

1. Under no circumstances shall the permittee allow introduction of the following pollutants into the waste treatment system:
  - a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to,



waste streams with a closed cup flashpoint of less than 60 °C (140 °F) using the test methods specified in 40 CFR § 261.21;

- b) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the treatment works is specifically designed to accommodate such discharges;
  - c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in sewers, or other interference with the operation of the POTW;
  - d) Any pollutant including oxygen demanding pollutants (BOD, etc.), released in a discharge of such volume or strength as to cause interference in the POTW;
  - e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the treatment works influent exceeds 40 °C (104 °F) unless the treatment works is designed to accommodate such heat;
  - f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
  - g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and/or
  - h) Any trucked or hauled pollutants except at discharge points designated by the POTW.
2. The permittee shall notify the Permit Issuing Authority of any of the following changes in user discharge to the system no later than 180 days prior to change in discharge:
- a) New introduction into such works of pollutants from any source which would be a new source as defined in Section 306 of the Act, if such source were discharging pollutants.
  - b) New introduction of pollutants into such works from a source which would be subject to Section 301 or Section 307 of the Act, if it were discharging such pollutants.

### PART III - Whole Effluent Toxicity Testing Program

As required by Part I of this permit, the permittee shall initiate the series of tests described below beginning in November 2008 to evaluate whole effluent toxicity of the discharge from outfall 002. All test species, procedures and quality assurance criteria used shall be in accordance with *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, EPA/821/R-02/013, or the most current edition. The dilution/control water used will be moderately hard water as described in EPA/821/R-02/013, Section 7 (or the most current edition). A chronic standard reference toxicant quality assurance test shall be conducted concurrently with each species used in the toxicity tests and the results submitted with the Discharge Monitoring Report (DMR) Form. Alternatively, if monthly QA/QC reference toxicant tests are conducted, these results must be submitted with the DMR Form.

1. a. The permittee shall conduct multi-concentration daphnid (*Ceriodaphnia dubia*) Survival and Reproduction and Fathead Minnow (*Pimephales promelas*) Larval Survival and Growth Tests. All tests shall be conducted on a control (0%) and the following dilution concentrations at a minimum: 100.0 %, 50.0 %, 9.6 %, 2.2 % and 1.1 %. Unacceptable chronic toxicity will be demonstrated if either test results in an inhibition concentration causing 25% reduction in survival, reproduction, and/or growth (IC<sub>25</sub>) of the test organisms (IC<sub>25</sub>) in less than or equal to 9.6 % effluent, which is the Receiving Water Concentration (RWC) of the effluent at critical conditions. The IC<sub>25</sub> shall be determined based on a 25% reduction as compared to the controls, and as derived from linear interpolation. The average reproduction and growth responses will be determined based on the number of *Ceriodaphnia dubia* and *Pimephales promelas* larvae, as appropriate, used to initiate the test.
- b. For each set of tests conducted, a minimum of three different 24-hour composite samples of final effluent shall be collected and used per the sampling schedule of Section 8.3.2, EPA/821/R-02/013 (or the most current edition). All test solutions shall be renewed daily. If test results do not meet the acceptability criteria of Section 13.11 or 11.11, respectively, EPA/821/R-02/013 (or the most current edition), that test shall be repeated. Additionally, all test results must be evaluated and reported for concentration-response relationship based on Method Guidance and Recommendations for Whole Effluent Toxicity (WET) Testing (40 CFR Part 136), EPA/821/B-00/004 (2000), or the most current edition. If the required concentration-response review fails to yield a valid relationship per EPA/821/B-00/004 (or the most current edition), that test shall be repeated. Any test initiated but terminated prior to completion must be reported with a complete explanation for the termination. A chronic test will be considered valid only if the acceptability criteria referenced above are met.
- c. If control mortality exceeds 20% for either species in any test, the test(s) for that species (including the control) shall be repeated. A test will be considered valid only if control mortality does not exceed 20% for either species. If, in any separate test, 100% mortality occurs prior to the end of the test, and control mortality is less than 20% at that time, that test (including the control) shall be terminated with the conclusion that the sample demonstrates unacceptable chronic toxicity.
- d. Results from all tests shall be reported according to EPA-821-R-02-013, Section 10, or the most current edition. All results shall be recorded and submitted on the DMR in the following manner: if the monthly average IC<sub>25</sub> of a test species is less than or equal to 9.6% effluent, 9.6% shall be entered on the DMR for that species. If the monthly average IC<sub>25</sub> of a test species is greater than 9.6% effluent, >9.6% shall be entered. All individual test results for a given month shall be submitted as an attachment to the DMR.

2. The toxicity tests specified above shall be conducted once a year for the duration of the permit, unless notified otherwise by the permit issuing authority. These tests are referred to as "routine" tests.
3. a. If unacceptable chronic toxicity (an  $IC_{25}$  less than or equal to 4.5 % in either test) is found in a routine test, the permittee shall conduct two additional toxicity tests on the specie(s) indicating unacceptable toxicity. For each additional test, the sample collection requirements and test acceptability criteria specified in Section 1(b) and 1(c) above must be met for the test to be considered valid. The first test shall begin within two weeks of the end of the routine test and the second test shall be conducted two weeks later. If either or both of these tests are invalid, additional test(s) are to be conducted every two weeks until two valid tests are completed (e.g., if the first test is valid and the second test is not, the permittee shall continue to conduct tests until one more test is valid). The additional tests will be used to determine if the toxicity found in the routine test is still present.

For routine tests with unacceptable chronic toxicity, additional daphnid (Ceriodaphnia dubia) Survival and Reproduction and/or fathead minnow (Pimephales promelas) Survival and Growth multi-concentration tests shall be conducted, as appropriate. All tests shall be conducted on a control (0 %) and the following dilution concentrations at a minimum: 100.0 %, 50.0 %, 4.5 %, 2.2 % and 1.1 %. The sample collection requirement specified in Section 1(b) above must be met.

- b. Results from additional tests, required due to unacceptable chronic toxicity in the routine test, must be reported on the DMR Form and submitted within 45 days of completion of the second additional, valid test.

## **PART IV - STANDARD CONDITIONS FOR NPDES PERMITS**

### **SECTION A - GENERAL CONDITIONS**

#### **1. Duty to Comply [40 CFR §§ 122.41(a) and 122.41(a)(1)]**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or Act) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

#### **2. Penalties for Violations of Permit Conditions [40 CFR § 122.41(a)(2) and 40 CFR § 122.41(a)(3)]**

(Note: Civil and administrative penalty amounts described in this subsection are based on adjustments to the original statutory amounts based on inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101- 410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321) and as set forth at 40 CFR § 19.4.)

The CWA provides that any person who violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under Section 402, or any requirement imposed in a pretreatment program approved under Sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$51,570 per day for each violation. The CWA provides that any person who negligently violates Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, or any requirement imposed in a pretreatment program approved under Section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than one year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than two years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than three years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than six years, or both. Any person who knowingly violates Section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

Any person may be assessed an administrative penalty by the Administrator for violating Section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$20,628 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$51,570. Penalties for Class II violations are not to exceed \$20,628 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$257,848.

The specific penalty amounts described above for violations reflect those in effect at the time of permit issuance and are subject to change.

### 3. Civil and Criminal Liability [40 CFR § 122.41(m) and (n)]

Except as provided in permit conditions on “Bypassing” Section B, Paragraph 3, and “Upset” Section B, Paragraph 4, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

### 4. Duty to Mitigate [40 CFR § 122.41(d)]

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### 5. Permit Actions [40 CFR § 122.41(f)]

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### 6. Toxic Pollutants [40 CFR § 122.44(b)(1)]

If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

### 7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA.

### 8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the CWA.

9. Effect of a Permit [40 CFR § 122.5(a)(1) and (2)]

Except for any toxic effluent standards and prohibitions imposed under Section 307 of the CWA and “standards for sewage sludge use or disposal” under Section 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 307, 318, 403, and 405 (a)-(b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in 40 CFR §§ 122.62 and 122.64.

Compliance with a permit condition which implements a particular “standard for sewage sludge use or disposal” shall be an affirmative defense in any enforcement action brought for a violation of that “standard for sewage sludge use or disposal” pursuant to Sections 405(e) and 309 of the CWA.

10. Property Rights [40 CFR § 122.5(b), 40 CFR § 122.41(g), and 40 CFR § 122.5(c)]

This permit does not convey any property rights of any sort, or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

11. Onshore or Offshore Construction

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any waters of the United States.

12. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

13. Duty to Provide Information [40 CFR § 122.41(h)]

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

## SECTION B - OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

### 1. Proper Operation and Maintenance [40 CFR § 122.41(e)]

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

### 2. Need to Halt or Reduce Activity Not a Defense [40 CFR § 122.41(c)]

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### 3. Bypass of Treatment Facilities [40 CFR § 122.41(m)(1)-(4)]

#### a. Definitions

- (1) **“Bypass”** means the intentional diversion of waste streams from any portion of a treatment facility.
- (2) **“Severe property damage”** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

#### b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs c. and d. of this subsection.

#### c. Notice

- (1) **Anticipated bypass.** If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- (2) **Unanticipated bypass.** The permittee shall submit notice of an unanticipated bypass as required in Section D, Subsection 8 (24-hour notice).

#### d. Prohibition of bypass

- (1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
  - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under Paragraph c. of this subsection.

(2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Paragraph d.(1) of this subsection.

#### 4. Upsets [40 CFR § 122.41(n)(1)-(4)]

##### a. Definition

“**Upset**” means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

##### b. Effect of an upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Paragraph c. of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

##### c. Conditions necessary for a demonstration of upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated;
- (3) The permittee submitted notice of the upset as required in Section D, Subsection 8 (24 hour notice); and
- (4) The permittee complied with any remedial measures required under Section A., Subsection 4.

##### d. Burden of proof

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.



5. Removed Substances

This permit does not authorize discharge of solids, sludge, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters of the United States unless specifically limited in Part I.

## SECTION C - MONITORING AND RECORDS

### 1. Representative Sampling [40 CFR § 122.41(j)(1)]

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Director.

### 2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of all measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than  $\pm 10\%$  from the true discharge rates throughout the range of expected discharge volumes. Guidance in selection, installation, calibration, and operation of acceptable flow measurement devices can be obtained from the following references. These references are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; phone number: (800) 553-6847 or (703) 487-4650.

“A Guide to Methods and Standards for the Measurement of Water Flow,” U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 100 pp. (Order by NTIS No. COM-7510683.)

“Water Measurement Manual,” U.S. Department of Interior, Bureau of Reclamation, Revised Edition, 1984, 343 pp. (Order by NTIS No. PB-85221109.)

“Flow Measurement in Open Channels and Closed Conduits,” U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Order by NTIS No. PB-273535.)

“NPDES Compliance Flow Measurement Manual,” U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, September 1981, 149 pp. (Order by NTIS No. PB-82131178.)

### 3. Monitoring Procedures [40 CFR § 122.41(j)(4)]

Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of Sewage sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the permit.

### 4. Penalties for Tampering [40 CFR § 122.41(j)(5)]

The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of

a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

5. Retention of Records [40 CFR § 122.41(j)(2)]

Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

6. Record Contents [40 CFR § 122.41(j)(3)(i)-(vi)]

Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

7. Inspection and Entry [40 CFR § 122.41(i)(1)-(4)]

The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

## SECTION D - REPORTING REQUIREMENTS

### 1. Change in Discharge [40 CFR § 122.41(l)(1)(i)-(iii)]

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b); or
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D, Subsection 11.
- c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

### 2. Anticipated Noncompliance [40 CFR § 122.41(l)(2)]

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Director.

### 3. Transfer of Ownership of Control [40 CFR § 122.41(l)(3), § 122.61, and § 122.61(b)]

- a. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA.
- b. In some cases, modification or revocation and reissuance is mandatory.
- c. Automatic transfers. As an alternative to transfers of permits by modification, any NPDES permit may be automatically transferred to a new permittee if:
  - (1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in Subparagraph b.(2) of this subsection;
  - (2) The notice includes a written agreement between the existing and new permittee(s) containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
  - (3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under 40 CFR § 122.63. If this notice is not received, the

transfer is effective on the date specified in the agreement mentioned in Subparagraph b.(2) of this subsection.

4. Monitoring Reports [40 CFR § 122.41(l)(4) and 40 CFR § 122.41(l)(4)(i)]

Monitoring results shall be reported at the intervals specified in Part I.A of the permit. Monitoring results must be reported on a Discharge Monitoring Report (DMR) and submitted electronically using EPA's NetDMR tool ([www.epa.gov/netdmr](http://www.epa.gov/netdmr)) unless a waiver from electronic reporting has been granted from EPA Region 4. Biosolids/Sewage Sludge Reports must be reported electronically using EPA's NeT tool (<http://cdx.epa.gov>) unless a waiver from electronic reporting has been granted from EPA Region 4. Electronic reporting requirements are described in Part II.A of this permit.

5. Additional Monitoring by the Permittee [40 CFR § 122.41(l)(4)(ii)]

If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sewage sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted using the DMR or sewage sludge electronic reporting tool specified by the Director.

6. Averaging of Measurements [40 CFR § 122.41(l)(4)(iii)]

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

7. Compliance Schedules [40 CFR § 122.41(l)(5)]

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

8. Twenty-Four Hour Reporting [40 CFR § 122.44(g), 40 CFR § 122.41(l)(6), and 40 CFR § 122.44(g)]

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5-calendar days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The following shall be included as information which must be reported within 24 hours under this paragraph. The Director may waive the written report on a case-by-case basis for reports under this subsection if the oral report has been received within 24 hours.

- a. Any unanticipated bypass which exceeds any effluent limitation in the permit.

- b. Any upset which exceeds any effluent limitation in the permit.
- c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours.

9. Other Noncompliance [40 CFR § 122.41(l)(7)]

The permittee shall report all instances of noncompliance not reported under Section D at the time monitoring reports are submitted. The reports shall contain the information listed in Section D, Subsection 8.

10. Other Information [40 CFR § 122.41(l)(8)]

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information to the Director.

11. Changes in Discharge of Toxic Substances [40 CFR § 122.42(a)(1)(i-iii) and 40 CFR § 122.42(a)(2)(i-iii)]

The following conditions apply to all NPDES permits within the categories specified below:

- a. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:
  - (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
    - (a) One hundred micrograms per liter (100 µg/l);
    - (b) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony; or
    - (c) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7).
  - (2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
    - (a) Five hundred micrograms per liter (500 µg/l);
    - (b) One milligram per liter (1 mg/l) for antimony; or
    - (c) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7).
- b. Publicly owned treatment works. All POTWs must provide adequate notice to the Director of the

following:

- (1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Section 301 or 306 of CWA if it were directly discharging those pollutants; and
- (2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
- (3) For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.  
[40 CFR § 122.42(b)]

12. Duty to Reapply [40 CFR § 122.41(b), § 122.21(d), § 122.6(a), and § 122.6(b)]

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

The application should be submitted at least 180 days before the expiration date of this permit. The Regional Administrator may grant permission to submit an application later than the 180 days in advance, but no later than the permit expiration date.

When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit if the permittee has submitted a timely application under this subsection which is a complete application for a new permit; and the Regional Administrator, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

Permits continued under this section remain fully effective and enforceable.

13. Signatory Requirements [40 CFR § 122.41(k)(1) and 40 CFR § 122.22]

All applications, reports, or information submitted to the Director shall be signed and certified.

a. Applications. All permit applications shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
  - (a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
  - (b) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements;

and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

NOTE: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in this subparagraph. The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under this subparagraph rather than to specific individuals.

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
  - (3) For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:
    - (a) the chief executive officer of the agency, or
    - (b) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).
- b. All reports required by permits, and other information requested by the Director shall be signed by a person described in Paragraph a. of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- (1) The authorization is made in writing by a person described in Paragraph a. of this section;
  - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company.
  - (3) The written authorization is submitted to the Director.
- c. Changes to authorization. If an authorization under Paragraph b. of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Paragraph b. of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- d. Certification. Any person signing a document under Paragraph a. or b. of this section shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”



14. Availability of Reports and the Administrative Record [40 CFR §§ 124.18 & 122]

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Permit Issuing Authority. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

15. Penalties for Falsification of Reports [40 CFR § 122.41(k)(2)]

The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six (6) months per violation, or by both.

## SECTION E - DEFINITIONS

### 1. Permit Issuing Authority [40 CFR § 122.2]

The Regional Administrator of EPA Region 4 or his/her designee is the **“Permit Issuing Authority,”** unless at some time in the future the State or Indian Tribe receives authority to administer the NPDES program and assumes jurisdiction over the permit at which time, the Director of the State program receiving the authorization becomes the issuing authority.

The use of the term **“Director”** in this permit shall apply to the EPA Regional Administrator, Region 4.

### 2. Act [40 CFR § 124.2]

**“Act”** means the CWA (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 U.S.C. 1251 et seq.

### 3. Discharge Monitoring Report (DMR) [40 CFR § 122.2]

**“Discharge Monitoring Report”** means the EPA national form (Form 3320-1) including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. EPA will prepare and mail “pre-printed” DMR forms to permittees for completion. These “pre-printed” DMR forms will indicate the appropriate reporting requirements and limitations as found in Part I of the permit.

### 4. Measurements [40 CFR § 122.2]

- a. The **“Daily discharge”** means the “discharge of a pollutant” measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling.
  - i) For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day.
  - ii) For pollutants with limitations expressed in other units of measurement (i.e., concentration), the “daily discharge” is calculated as the average measurement of the pollutant over the day.
- b. The **“average annual discharge limitation”** means the highest allowable average of “daily discharges” over a period of twelve consecutive calendar months, calculated as the “arithmetic mean” of the monthly averages for the current calendar month and the eleven prior calendar months. The annual average is calculated each month. This limitation is identified as “Annual Average” in Part I of the permit.
- c. The **“average monthly discharge limitation”** other than for bacterial indicators, means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily

discharges” measured during that month. For bacterial indicators, the “average monthly discharge limitation” is calculated using a “geometric mean.” This limitation is identified as “Monthly Average” or “Daily Average” in Part I of the permit.

- d. The “**average weekly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week. This limitation is identified as “Weekly Average” in Part I of the permit.
- e. The “**maximum daily discharge limitation**” means the highest allowable “daily discharge.” This limitation is identified as “Daily Maximum” in Part I of the permit.

#### 5. Types of Samples

- a. Composite Sample: A “composite sample” is a combination of not less than eight influent or effluent portions (aliquots), of at least 100 ml, collected over the full time period specified in Part I of the permit. The composite sample must be flow proportioned by either a time interval between each aliquot, or by volume as it relates to effluent flow at the time of sampling, or by total flow since collection of the previous aliquot. Aliquots may be collected manually or automatically.
- b. Grab Sample: A “**grab sample**” is a single influent or effluent portion which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

#### 6. Calculation of Means

- a. Arithmetic Mean: The “**arithmetic mean**” of any set of values is the sum of the individual values divided by the number of individual values.
- b. Geometric Mean: The “**geometric mean**” of any set of values is the  $N^{\text{th}}$  root of the product of the individual values where N is equal to the number of individual values. The geometric mean is equivalent to the antilog of the arithmetic mean of the logarithms of the individual values. For purposes of calculating the geometric mean, values of zero (0) shall be considered to be one (1).

#### 7. Hazardous Substance [40 CFR § 122.2]

A “**hazardous substance**” means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the CWA.

#### 8. Toxic Pollutants [40 CFR § 122.2]

A “**toxic pollutant**” is any pollutant listed as toxic under Section 307(a)(1) of the CWA or, in the case of “Sewage sludge use or disposal practices,” any pollutant identified in regulations implementing Section 405(d) of the CWA.



DATE: November 28, 2016

AMENDMENT TO THE FACT SHEET AT THE TIME OF ISSUANCE

APPLICATION NO: NC0052469

NAME OF APPLICANT: Cherokee Wastewater Treatment Plant

A. Changes from Draft Permit to Final Permit:

The following two amendments were made to the permit: 1) correct the penalty amounts for violating permit conditions; and 2) to update electronic reporting language for consistency with new regulations. The update to the penalty language is based on the most recent inflation adjustment table available under the Civil Monetary Penalty Inflation Adjustment Rules effective August 1, 2016. See link below:

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-01/pdf/2016-15411.pdf>

*On Page 10 of the permit, under item# 2, the penalty language was stated as "Any person may be assessed an administrative penalty by the Administrator for violating Section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$37,500. Penalties for Class II violations are not to exceed \$16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$177,500".*

*This penalty language is now amended to read " Any person may be assessed an administrative penalty by the Administrator for violating Section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$20,628 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$51,570. Penalties for Class II violations are not to exceed \$20,628 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$257,848".*

The electronic reporting language in the Final Permit was updated to include the requirement to submit biosolid reports electronically through the EPA's Central Data Exchange (CDE) network: <http://cdx.epa.gov> rather than paper copies. The exception would be if the permittee submits a

request for a waiver from e-reporting requirements and the EPA approve this request. The e-reporting requirements were consolidated into one section in the final permit whereas in the draft version the reporting requirements were in multiple sections. In the final permit, all reporting requirements are included in Part II.A, Reporting of Monitoring Results.

B. Public Comments:

The public notice announcing the proposed reissuance of EPA Region 4's Individual NPDES Permit for Cherokee Wastewater Treatment Plant, No. NC0052469, was published in a Cherokee local newspaper called Cherokee Feather. EPA Region 4 received no comments.

C. Changes to Fact Sheet:

The Fact Sheet was modified after the close of the public comment period to document consultation with the U.S. Fish and Wildlife Service (FWS) regarding any potential impacts to endangered species and/or critical habitat as a result of the increase in design flow. The FWS documented in a letter to the EPA dated November 28, 2016 that the probability for "take" of the Appalachian elktoe mussel (*Alasmidonta raveneliana*), a federally endangered species with designated critical habitat located 4.4 river miles downstream of the facility, is insignificant or discountable. Therefore, the FWS concurred with the EPA's determination that the project may affect, but is not likely to adversely affect this species.

## MUNICIPAL FACILITY FACT SHEET

### MODIFICATION FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT TO DISCHARGE TREATED WASTEWATER TO WATERS OF THE UNITED STATES

Permit No.: NC0052469      Modification Date: September 21, 2016

#### 1. Synopsis of Application

- A. Name and Address of Permittee:      Eastern Band of Cherokee Indians  
Qualla Boundary  
Post Office Box 455  
Cherokee, North Carolina 28719
- B. Facility Address:      Cherokee Wastewater Treatment Plant  
2000 Old No. 4 Road  
Cherokee, Swain County, North Carolina
- C. Type of Facility:      Municipal wastewater treatment plant  
Publicly-owned treatment works (POTW)  
Standard Industrial Classification Code: 4952
- D. Receiving Water:      Oconaluftee River
- Outfall Identification and Location:      Outfall Serial No. 002  
35° 28' 15" N, 83° 21' 15" W
- E. Purpose of Application:
- Permittee requests modification of existing permit to account for treatment plant expansion from 2.75 MGD to 6.0 MGD and process change from Schriber process to Modified Ludzack-Ettinger process.
- F. Wastewater Treatment Facility Description:
- Treatment consists of physical treatment with influent screening, followed by biological treatment with aeration and clarification. Sludge is to pass through an aerobic digester and a belt press before disposal. Before discharge, the effluent passes through an ultraviolet disinfection process and post-treatment aeration chamber. Population served is approximately 9,000.
- G. Description of Discharge:      Design Maximum Flow Rate: 6.0 MGD
- Effluent Characterization from DMR Reports (note that June 2015-present characterizes effluent quality from upgraded plant while November 2013-present characterizes overall effluent quality for current permit cycle):

DMR Date		11/13-present			6/15-present		
Flow Rate, MGD	Monthly Ave	Average	1.83		Average	1.81	
	Weekly Ave	Max	4.27		Max	4.27	
Total Ammonia Nitrogen, (TAN-N), mg/l	Monthly Ave	Average	6.06		Average	0.20	
	Weekly Ave	Max	18.70		Max	0.50	
Total Phosphorus, mg/l	Qrtly	Average	0.99		Average	0.72	
Carbonaceous Biochemical Oxygen Demand 5-Day (CBOD <sub>5</sub> ), mg/l	Monthly Ave	Average	7.76		Average	3.37	
	Weekly Ave	Max	42.80		Max	5.90	
Total Suspended Solids (TSS), mg/l	Monthly Ave	Average	14.29		Average	5.38	
	Weekly Ave	Max	97.00		Max	10.70	
Fecal Coliform Bacteria, #/100 ml	Mo Geomean	Average	4184		Average	16	
	Week Geomean	Max	353000		Max	2420	
Dissolved Oxygen (DO), mg/l	Daily Min	Average	6.3	Min 4.3	Average	7.0	Min 6.1
pH, standard units (SU)	Daily Min	Average	6.3	Min 4.4	Average	5.8	Min 4.4
	Daily Max	Average	6.9	Max 8.2	Average	6.8	Max 7.7
Total Nitrogen, mg/l	Qrtly	Average	10.05		Average	4.21	

## 2. Pre-Modification NPDES Permit Conditions

The NPDES permit (issued 10/30/13, effective 11/01/13, and expires 10/31/18) contained the following permit conditions:

<u>Parameters</u>	<u>Monthly Average</u>	<u>Weekly Average</u>
Flow Rate, MGD	Report	Report
Total Phosphorus, mg/l	Report	Report
Total Nitrogen, mg/l	Report	Report
CBOD <sub>5</sub> , mg/l	18.0	27.0
TSS, mg/l	30.0	45.0
Total Ammonia-N, mg/l	7.0	10.5
Fecal Coliform Bacteria, #/100 ml	200	400
DO, mg/l	DO shall not be less than 5.0 mg/l	
pH, standard units (SU)	6.0 - 9.0 at all times	
Chronic WET, IC <sub>25</sub>	IC <sub>25</sub> shall be greater than 4.5 %	



### 3. Final Modified Effluent Limitations and Monitoring Conditions

<u>Parameters</u>	<u>Monthly Average</u>	<u>Weekly Average</u>
Flow Rate, MGD	Report	Report
Total Phosphorus, mg/l	Report	Report
Total Nitrogen, mg/l	Report	Report
CBOD <sub>5</sub> , mg/l	18.0	27.0
TSS, mg/l	30.0	45.0
Total Ammonia-N, mg/l	7.0	10.5
Fecal Coliform Bacteria, #/100 ml	200	400
DO, mg/l	DO shall not be less than 5.0 mg/l	
pH, standard units (SU)	6.0 - 9.0 at all times	
Chronic WET, IC <sub>25</sub>	IC <sub>25</sub> shall be greater than 9.6 %	

### 4. Justification for the Final Modified Effluent Limits and Permit Conditions

The permit conditions and limitations are based on the modeling required to calculate effluent limits and the conditions of the permit were based on the Clean Water Act (CWA) § 405(d), CWA § 308(a), 40 Code of Federal Regulations (CFR) § 503, 40 CFR § 258, and 40 CFR § 133. Additionally, the permit conditions are consistent with the antibacksliding provisions of 40 CFR § 122.44(l). Except where otherwise stated, the monitoring requirements required in Part I of the permit were based on the Best Professional Judgment of the permit writer. The following table provides a detailed justification of the permit conditions and limitations.

Parameter	Condition	Justification
Flow, MGD	Monitor only	The requirement to monitor flow is consistent with the CWA § 308(a).
Total Phosphorous (as P), mg/L	Monitor only	The requirement to monitor flow is consistent with the CWA § 308(a).
Total Nitrogen (as N), mg/L	Monitor only	The requirement to monitor flow is consistent with the CWA § 308(a).
CBOD <sub>5</sub> , mg/l	18.0 monthly avg 27.0 weekly avg	The effluent limitations for CBOD <sub>5</sub> are based on modeling results calculating the maximum concentration allowable while protecting water quality. The existing effluent limits at the expanded design flow (6MGD) do not reduce background dissolved oxygen in downstream receiving waters as verified by a far-field steady-state water quality model set to simulate critical conditions for the impact of oxygen demanding substances (CBOD and ammonia) on ambient dissolved oxygen concentrations. Appendix 1.
TSS, mg/l	30.0 monthly avg 45.0 weekly avg	The effluent limitations for TSS were based on minimum level of effluent quality requirements of 40 CFR § 133.102 for discharges of wastewater from POTWs.
Total Ammonia - Nitrogen, mg/l	7.0 monthly avg 10.5 weekly avg	The effluent limitations for Ammonia are based on modeling results calculating the maximum concentration allowable while protecting water quality. The existing effluent limits at the expanded design flow ( 6MGD) do not reduce background dissolved oxygen in downstream receiving waters as verified by a far-field steady-state water quality model set to simulate critical conditions for the impact of oxygen demanding substances (CBOD and ammonia) on ambient dissolved oxygen concentrations. Appendix 1. In addition, the ammonia limits were tested against the EPA 1984 recommended ammonia criteria protective of toxicity to aquatic life. North Carolina has adopted this criteria to be met in the Oconaluftee River downstream of the State/Tribal boundary. Appendix 1 and 2.

Fecal Coliform Bacteria, #/100 ml	200 monthly avg 400 weekly avg (geometric mean)	The effluent limitations and monitoring requirements are consistent with the previous NPDES permit and the anti-backsliding provisions of 40 CFR § 122.44(l).
Dissolved Oxygen, mg/l	minimum of 5.0	The effluent limitation for dissolved oxygen is based on modeling results calculating the minimum level allowable while protecting water quality.
pH, SU	6.0 - 9.0	The effluent limitation range for pH was based on minimum level of effluent quality requirements of 40 CFR § 133.102 for discharges of wastewater from POTWs.
Chronic WET, IC <sub>25</sub>	IC <sub>25</sub> > 9.6 %	The CWA states in Section 101(a)(3) that it is the national policy that the discharge of toxic pollutant in toxic amounts be prohibited. The inhibition concentration causing 25% reduction in survival, reproduction, and/or growth (IC <sub>25</sub> ) of the test organisms was calculated using the receiving stream's estimated 10-year, 7-day low flow (7Q10) value. The in-stream waste concentration (IWC), which is equal to the lowest acceptable IC <sub>25</sub> , was determined by the following equation. $IWC = Q_w / (7Q10 + Q_w); \text{ where } Q_w = \text{waste flow rate.}$ Calculations are presented in Appendix 3.

**5. Requested Variances or Alternatives to Required Standards**

None

**6. Effective Date of Proposed Effluent Limits and Compliance Schedule**

The permittee shall achieve compliance with the effluent limitations immediately upon the permit effective date.

**7. State Certification Requirements**

State certification, including CWA § 401 certification, of the proposed permit was not required since the permitted activities are not in state waters. However, a CWA § 401 certification from the Eastern Band of Cherokee Indian (EBCI) Tribe is required and was waived by the EBCI.

**8. Endangered Species Act**

The EPA, in consultation with the U.S. Fish and Wildlife Service, has determined that the discharges authorized by this permit may affect, but is not likely to adversely affect the habitat of the Appalachian elktoe mussel (*Alasmidonta raveneliana*), which has designated critical habitat about 4.4 river miles downstream of the facility.

**9. The Administrative Record and EPA Contact**

The entire administrative record including application, draft permit, fact sheet, public notice, comments received, and supporting information is available by contacting the EPA using the below information. Copies will be provided at a minimal charge per page.

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

## APPENDIX 1: Far Field Steady State Water Quality Analysis

### Model Selection:

EPA's Advanced Eutro WASP Model (version 7.5) was parameterized to evaluate fate and transport of oxygen demanding substances from the discharger into down-stream receiving waters.

### Key Model Assumptions:

The one-dimensional longitudinally-segmented model was run in steady-state mode with the following assumptions:

- Primary drivers for dissolved oxygen concentration in receiving stream are reaeration, CBOD and NBOD demand, and boundary conditions.
- Receiving stream Oconaluftee River flow boundary at critical 7Q10 drought flow (87 cubic feet per second) as estimated from USGS Gage 03512000 (Oconaluftee River at Birdtown, NC) for the period of record 1947-present. Tuckasegee River flow boundary set to 145 cubic feet per second – estimated 7Q10 flow (133 cfs) at confluence using drainage basin weighting method and USGS gage 03510577 (Tuckasegee River).
- Simulated effluent at full design flow (6 MGD) and effluent monthly average limits for CBOD (58 mg/l assuming CBOD5/CBODu ratio of 0.31 and CBOD5 of 18 mg/l) and NH3 (10.5 mg/l -weekly average permit limit to compare against 96 hr chronic toxic exposure).
- Assumed Oconaluftee and Tuckasegee boundary for NH3 as 0.1 mg/l, boundary for CBOD as 2 mg/l.
- Assumed constant receiving stream background water temperature of 22.3 deg C and effluent water temperature of 26 deg C for fully mixed water temperature of 22.7 deg C. 22.3 deg background temperature based on USGS Gage at Birdtown highest 2015 4-day rolling average reported water temperature.
- Assumed receiving streams' upstream boundary conditions for DO at 7.88 mg/l (95% saturated at 25 deg C) and effluent DO concentration of 5 mg/l.
- BOD decay rate set to 0.075/day and corrected for temperature. Rate is consistent with typical secondary treated effluent.
- Nitrification rate set to 0.5/day and corrected for temperature. Rate is consistent with typical secondary treated effluent.
- Reaeration rate based on O'Connor-Dobbins equation for open channel streams.

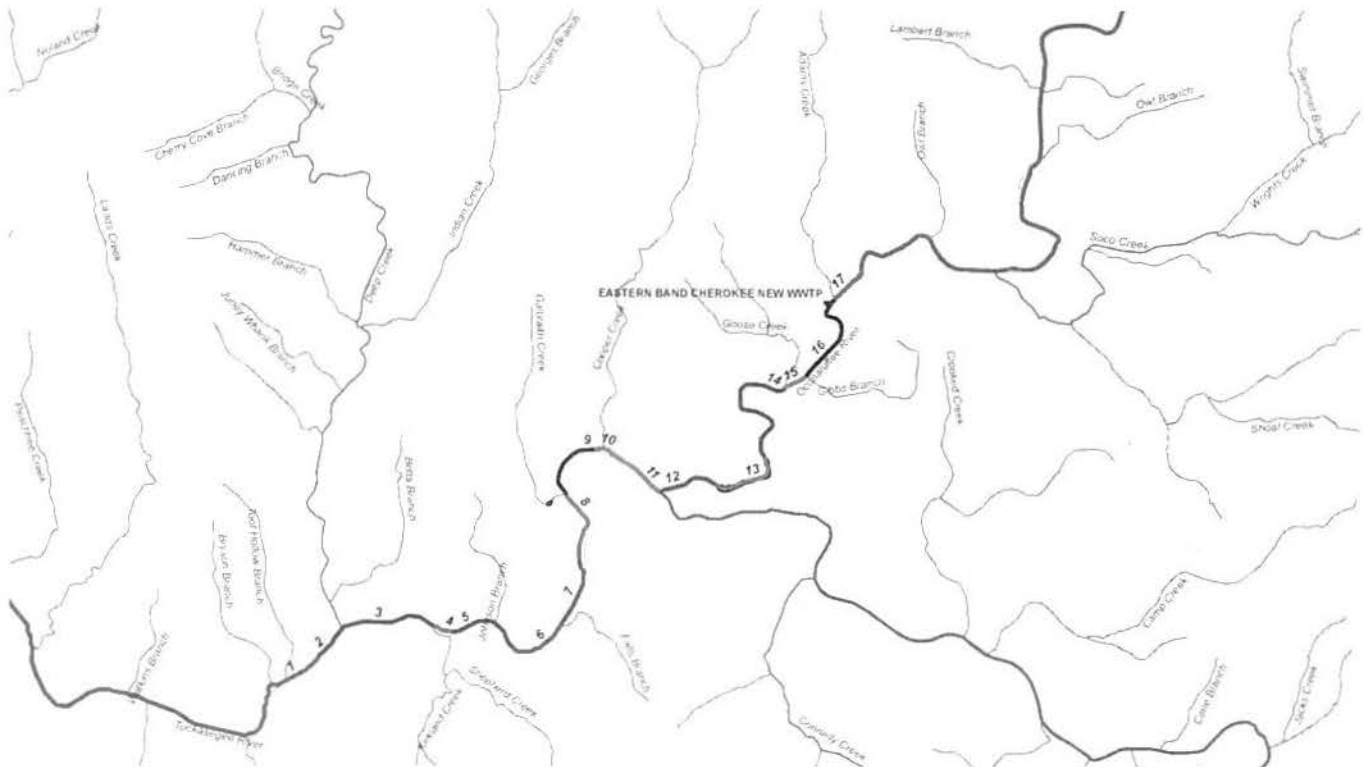
Model segmentation developed using USGS National Hydrography Dataset

Seqmer	Description	Volume	Velocity Multiplier	Velocity Exponent	Depth Multiplier	Depth Exponent	Seqment Type	Bottom Seqment	Length	Width	Minimum Depth	Slope	Bottom Roughness
1	Tuckasegee River	2.93014E+4	0.0000	0.0000	3.7800	0.0000	Surface	None	638.0000	24.3000	0.0010	0.0005	0.0500
2	Tuckasegee River	2.61459E+4	0.0000	0.0000	3.7800	0.0000	Surface	None	546.0000	25.3366	0.0010	0.0004	0.0500
3	Tuckasegee River	5.49494E+4	0.0000	0.0000	3.7000	0.0000	Surface	None	1428.0000	20.8000	0.0010	0.0013	0.0500
4	Tuckasegee River	1.32707E+4	0.0000	0.0000	3.6900	0.0000	Surface	None	296.0000	24.3000	0.0010	0.0007	0.0500
5	Tuckasegee River	5.04782E+4	0.0000	0.0000	3.6900	0.0000	Surface	None	1128.0000	24.2548	0.0010	0.0070	0.0500
6	Tuckasegee River	4.7332E+4	0.0000	0.0000	3.6900	0.0000	Surface	None	897.0000	28.6000	0.0010	0.0001	0.0500
7	Tuckasegee River	4.80423E+4	0.0000	0.0000	3.6900	0.0000	Surface	None	1076.0000	24.2000	0.0010	0.0001	0.0500
8	Tuckasegee River	3.27047E+4	0.0000	0.0000	3.6900	0.0000	Surface	None	1101.0000	16.1000	0.0010	0.0082	0.0500
9	Tuckasegee River	4.07652E+4	0.0000	0.0000	3.6800	0.0000	Surface	None	1055.0000	21.0000	0.0010	0.0011	0.0500
10	Tuckasegee River	1.33092E+4	0.0000	0.0000	3.6734	0.0000	Surface	None	287.0000	25.2481	0.0010	0.0004	0.0500
11	Tuckasegee River	3.99443E+4	0.0000	0.0000	3.6700	0.0000	Surface	None	907.0000	24.0000	0.0010	0.0554	0.0500
12	Oconaluftee River	1.09264E+4	0.0000	0.0000	2.6500	0.0000	Surface	None	927.0000	8.8958	0.0010	0.0124	0.0500
13	Oconaluftee River	1.30105E+4	0.0000	0.0000	2.6500	0.0000	Surface	None	1085.0000	9.0500	0.0010	0.0066	0.0500
14	Oconaluftee River	3.339E+4	0.0000	0.0000	2.6500	0.0000	Surface	None	2100.0000	12.0000	0.0010	0.0007	0.0500
15	Oconaluftee River	4.96822E+3	0.0000	0.0000	2.6400	0.0000	Surface	None	369.0000	10.2000	0.0010	0.0025	0.0500
16	Oconaluftee River	1.93344E+4	0.0000	0.0000	2.6300	0.0000	Surface	None	1508.0000	9.7500	0.0010	0.0034	0.0500
17	Oconaluftee River	7.38068E+3	0.0000	0.0000	2.6200	0.0000	Surface	None	598.0000	9.4216	0.0010	0.0042	0.0500

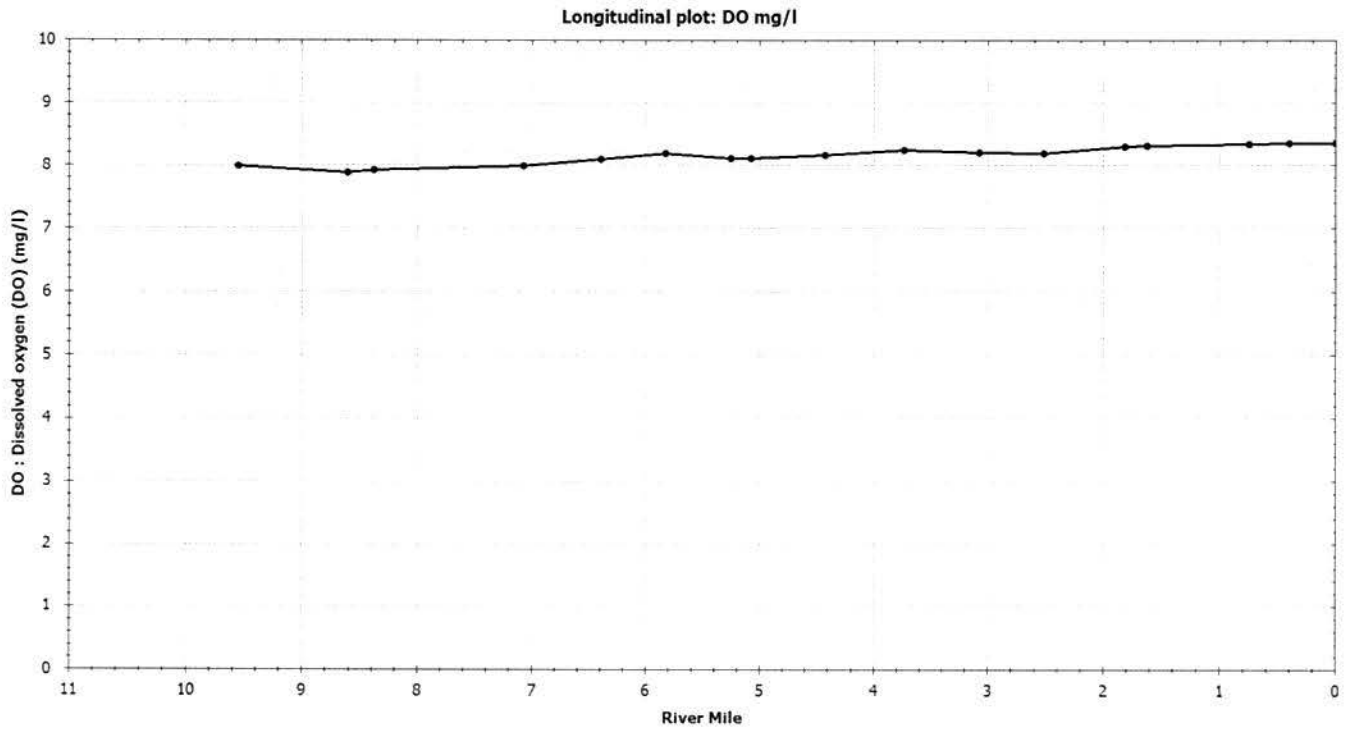
Key Model Boundary Locations:

- WASP Segment #17 represents upstream Oconaluftee River boundary.
- Cherokee POTW boundary enters WASP Segment #16.
- NCDEQ Water Quality Standards applicable Segment #14 to Segment #1.
- Oconaluftee River confluence with Tuckasegee River at WASP Segment #11 – Tuckasegee River boundary.
- WASP Segment #1 represents downstream boundary of simulation.

Model Segmentation Map:

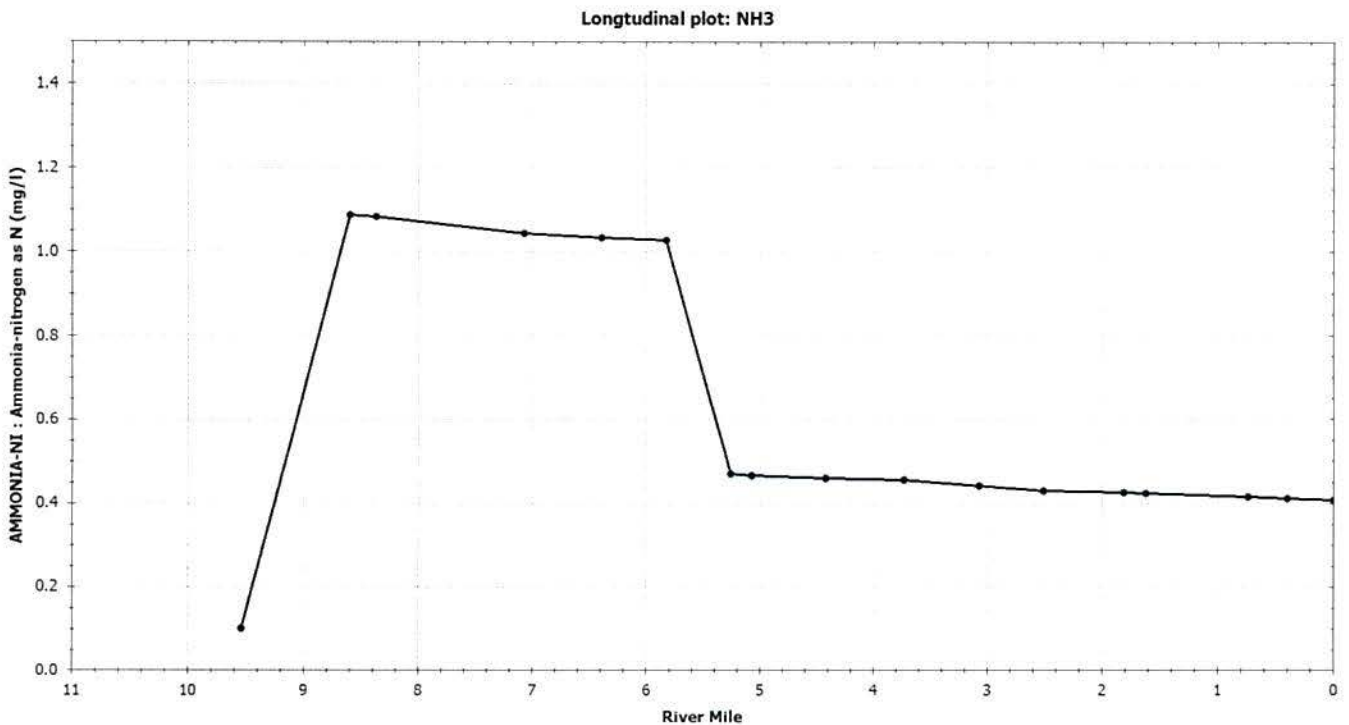


### Model Results for Dissolved Oxygen:



Model results from upstream Oconaluftee River boundary (RM 9.54) to Tuckasegee River just upstream Bryson City (RM 0.0). Oxygen demanding substances (CBOD and NH<sub>3</sub>) cause no appreciable deficit in dissolved oxygen when EBCI POTW discharges at full design flow (6 MGD) and maximum permissible monthly average concentrations (CBOD<sub>5</sub> = 18 mg/l and NH<sub>3</sub> = 7 mg/l).

### Ammonia also evaluated:



Critical conditions for NH<sub>3</sub> toxicity calculated to meet CCC at State/Tribal boundary (Segment 14 at RM 7.07). Background NH<sub>3</sub> assumed 0.1 mg/l. Background flow set to 7Q10 conditions as discussed in key model assumptions. NH<sub>3</sub> in EBCI POTW set to weekly average limit (10.5 mg/l) at design flow (6 MGD). Water temperature set as discussed in key model assumptions. pH for calculation of CCC target set at 7.46 standard units. Development of CCC discussed in appendix 2.

Modeling demonstrates that during critical conditions for ammonia toxicity the Oconaluftee River at the State/Tribal boundary meets the CCC as calculated using EPA 1984 Ammonia Criteria per NCDOW statute. NH<sub>3</sub> concentration at Segment 14 = 1.04 mg/l. CCC is 1.00 mg/l and is approximately equivalent to 1.04 mg/l.

## APPENDIX 2: Development of Ammonia CCC

EPA 1984 Guidance: 4-day Average Concentrations for chronic exposure to un-ionized ammonia where salmonids or other sensitive coldwater species are present:

$$FT = 10^{(0.03(20-TCAP))}; TCAP = 15 \text{ deg C}; TCAP \leq T \leq 30; T = 22.7 \text{ deg C}$$

$$FPH = (1 + 10^{(7.4 - pH)}) / 1.25; 6.5 \leq pH \leq 8; pH = 7.46$$

$$RATIO = 24 * ((10^{(7.7 - pH)}) / (1 + 10^{(7.4 - pH)})); pH = 7.46$$

$$CCC \text{ (mg/l un-ionized NH}_3 \text{ as NH}_3\text{)} = 0.80/FT/FPH/RATIO = 0.017 \text{ mg/l}$$

$$CCC \text{ (mg/l Total NH}_3 \text{ as NH}_3\text{)} = CCC \text{ un-ionized NH}_3 \text{ as NH}_3 / (\text{un-ionized NH}_3 / \text{Total NH}_3)$$

$$pK = 0.09018 + (2729.92 / (273.2 + T)); T = 22.7 \text{ deg C}$$

$$\text{un-ionized NH}_3 / \text{Total NH}_3 = 1 / (10^{(pK - pH)}); pH = 7.46$$

$$CCC \text{ (mg/l Total NH}_3 \text{ as N)} = CCC \text{ (mg/l Total NH}_3 \text{ as NH}_3) / 0.822 = \mathbf{1.00 \text{ mg/l}}$$





**ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**POLLUTION CONTROL AND IMPLEMENTATION BRANCH  
WATER PROTECTION DIVISION**

**EVIDENTIARY HEARING PROCEDURES**

The following is a list of acronyms/abbreviations used:

EPA	Environmental Protection Agency
NPDES	National Pollutant Discharge Elimination System
PSD	Prevention of Significant Deterioration
RCRA	Resource Conservation and Recovery Act
UIC	Underground Injection Control
U.S.C.	United States Code

The following regulation discusses the appeal procedures for NPDES permits and is cited from the regulations as found in Title 40, Code of Federal Regulations (40 CFR) Part 124--Procedures for Decisionmaking, Subpart A-General Program Requirements, Volume 21, pages 283-285, revised as of July 1, 2005.

**Section 124.19 Appeal of RCRA, UIC, NPDES, and PSD Permits.**

(a) Within 30 days after a RCRA, UIC, NPDES, or PSD final permit decision (or a decision under 270.29 of this chapter to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under Section 124.15 of this part, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Persons affected by an NPDES general permit may not file a petition under this section or otherwise challenge the conditions of the general permit in further Agency proceedings. They may, instead, either challenge the general permit in court, or apply for an individual NPDES permit under Section 122.21 as authorized in Section 122.28 and then petition the Board for review as provided by this section. As provided in Section 122.28(b)(3), any interested person may also petition the Director to require an individual NPDES permit for any discharger eligible for authorization to discharge under an NPDES general permit. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

- (1) A finding of fact or conclusion of law which is clearly erroneous, or
- (2) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(b) The Environmental Appeals Board may also decide on its own initiative to review any condition of any RCRA, UIC, NPDES, or PSD permit decision issued under this part for which review is available under paragraph (a) of this section. The Environmental Appeals Board must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.

(c) Within a reasonable time following the filing of the petition for review, the Environmental Appeals Board shall issue an order granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Environmental Appeals Board under paragraph (a) or (b) of this section shall be given as provided in Section 124.10. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the person(s) requesting review.

(d) The Regional Administrator, at any time prior to the rendering of a decision under paragraph (c) of this section to grant or deny review of a permit decision, may, upon notification to the Board and any interested parties, withdraw the permit and prepare a new draft permit under Section 124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part. Any portions of the permit which are not withdrawn and which are not stayed under Section 124.16(a) continue to apply.

(e) A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action.

(f) (1) For purposes of judicial review under the appropriate Act, final agency action occurs when a final RCRA, UIC, NPDES, or PSD permit decision is issued by EPA and agency review procedures under this section are exhausted. A final permit decision shall be issued by the Regional Administrator:

(i) When the Environmental Appeals Board issues notice to the parties that review has been denied;

(ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(2) Notice of any final agency action regarding a PSD permit shall promptly be published in the Federal Register.

(g) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to Section 124.2 and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

[48 FR 14264, April 1, 1983, as amended at 54 FR 9607, March 7, 1989; 57 FR 5335, February 13, 1992; 65 FR 30911, May 15, 2000]