



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 8  
 1595 WYNKOOP STREET  
 DENVER, CO 80202-1129  
 Phone 800-227-8917  
<http://www.epa.gov/region08>

December 16, 2021

11:21 AM

Received by  
 EPA Region VIII  
 Hearing Clerk

DOCKET NO.: CWA-08-2022-0001

IN THE MATTER OF:	)	
	)	
CHARGING EAGLE ENTERPRISES, LLC	)	FINAL ORDER
	)	
	)	
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, which shall become final 30 days after issuance of this Final Order.

SO ORDERED THIS 16th DAY OF December, 2021.

KATHERIN HALL  
Digitally signed by KATHERIN HALL  
 Date: 2021.12.16 11:19:18 -07'00'

Katherin E. Hall  
 Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

11:21 AM

IN THE MATTER OF:	)
	)
Charging Eagle Enterprises, LLC	)
P.O. Box 1035	)
Killdeer, North Dakota 58640	)
	)
Respondent.	)

Received by  
EPA Region VIII  
Hearing Clerk

Docket No. CWA-08-2022-0001

CONSENT AGREEMENT

**I. INTRODUCTION**

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. EPA alleges Charging Eagle Enterprises, LLC (Respondent) operated the MHA Nation Tribal Administration Building construction site (Site) located in New Town, North Dakota, on the Fort Berthold Reservation (Reservation) at all relevant times.
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

**II. JURISDICTION**

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 309 of the Clean Water Act (Act), 33 U.S.C. § 1319. The undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

**III. GOVERNING LAW**

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of a pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
8. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program under which EPA may authorize discharges into navigable waters, subject to specific terms and conditions.

9. The term “discharge of a pollutant” means any addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12).
10. The term “pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. § 1362(6).
11. The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14).
12. The term “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. 33 U.S.C. § 1362(5).
13. The term “navigable waters” means the waters of the United States, including the territorial seas. 33 U.S.C. § 1362(7).
14. EPA is the permitting authority for NPDES permits in Indian country, including the Reservation. 40 C.F.R. § 123.1(h) (“ EPA will administer the program on Indian lands if a State (or Indian Tribe) does not seek or have authority to regulate activities on Indian lands.”).
15. Regulations implementing the NPDES program on the Reservation are contained in 40 C.F.R. part 122.
16. Permits are required for “a discharge associated with industrial activity[,]” including stormwater discharges. 40 C.F.R. § 122.26(a)(1)(ii).
17. “Construction activity including clearing, grading and excavation” at sites encompassing five or more acres constitutes industrial activity. 40 C.F.R. § 122.26(b)(14)(x).

#### IV. FACTS

18. Respondent is a limited liability company organized in North Dakota.
19. Respondent is a “person” as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2
20. The Site is located on the Reservation.
21. The United States holds the Site in trust for the beneficial interest of the MHA Nation.
22. The Site encompasses approximately 9.3 acres.

23. Respondent began clearing, grading, and/or excavating using construction equipment at the Site on November 5, 2018.
24. Respondent obtained NPDES permit coverage for the Site that began on September 4, 2019.
25. Respondent's activity described in paragraph 23 constitutes construction activity under 40 C.F.R. § 122.26(b)(14)(x) and industrial activity under 40 C.F.R. § 122.26(b)(14).
26. The Site and the construction equipment Respondent used on the Site for the activity described in paragraph 23 each constitute a "point source" within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
27. Stormwater is a "pollutant" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
28. Stormwater from the Site flows into Lake Sakakawea, a navigable-in-fact waterway.
29. Lake Sakakawea is a "navigable water" as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7).
30. The KEENE 3 S precipitation gauge is the National Oceanic and Atmospheric Administration precipitation gauge nearest to the Site.
31. Between November 5, 2018, and September 3, 2019, the KEENE 3 S gauge recorded 17 precipitation events of 0.25 inches or more.
32. A precipitation event of 0.25 inches or more at the Site causes stormwater to flow from the Site into Lake Sakakawea, either directly or through tributaries on the Site.
33. The addition of stormwater from the Site to Lake Sakakawea resulting from each of the 17 precipitation events over 0.25 inches constitutes a "discharge of a pollutant" within the meaning of section 502(12) of the Act, 33 U.S.C. § 1362(12).

**V. ALLEGED VIOLATIONS OF LAW**

34. Between November 5, 2018, and September 3, 2019, Respondent discharged pollutants from the Site without a permit at least 17 times, in violation of section 301 of the Act, 33 U.S.C. § 1311.

**VI. TERMS OF CONSENT AGREEMENT**

35. For the purpose of this proceeding, Respondent:
  - a. admits the jurisdictional allegations in section II of this Agreement;
  - b. neither admits nor denies the factual allegations stated in section IV of this Agreement and the alleged violations of law in section V of this Agreement;
  - c. consents to the assessment of a civil penalty as stated below;

- d. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - e. waives any right to contest any final order approving this Agreement; and
  - f. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
36. Section 309(g) of the Act authorizes EPA to assess a civil penalty in this matter. 33 U.S.C. § 1319(g).
37. In determining the amount of the penalty to be assessed, EPA considered the seriousness of the violations, the economic benefit resulting from the violations, the history of the violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, in accordance with section 309 of the Act, 33 U.S.C. § 1319(d).
38. Based on the Alleged Violations of Law, and after consideration of the statutory factors in paragraph 37 above, EPA has determined a civil penalty of **\$33,000** is appropriate to settle this matter.
39. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of **\$33,000** within 30 calendar days of the Effective Date of this Agreement;
  - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
  - c. identify each and every payment with the docket number that appears on the final order, and
  - d. within 24 hours of payment, email proof of payment to Emilio Llamozas and Matt Castelli at [Llamozas.emilio@epa.gov](mailto:Llamozas.emilio@epa.gov) and [castelli.matthew@epa.gov](mailto:castelli.matthew@epa.gov) ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
40. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;

- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
  - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
  - d. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
41. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
42. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Any change in ownership or control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
43. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
44. Except as qualified by paragraph 40, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

## **VII. EFFECT OF CONSENT AGREEMENT**

45. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
46. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.
47. EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
48. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
49. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

50. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

#### **VIII. PUBLIC NOTICE**

51. As required by section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, the EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate this Agreement is improper or inadequate.

#### **IX. EFFECTIVE DATE**

52. This Agreement shall become effective on the date established in a final order.

Consent Agreement In the Matter of Charging Eagle Enterprises, LLC

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY REGION 8,  
Complainant.**

Date: 10/22/2021

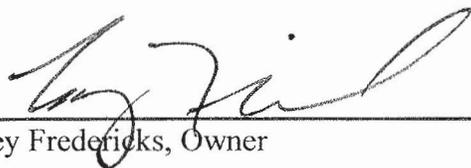
By: **MICHAEL  
BOEGLIN**  Digitally signed by MICHAEL  
BOEGLIN  
Date: 2021.10.22 12:51:38  
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Michael Boeglin, Chief  
NPDES and Wetlands Enforcement Section  
Enforcement and Compliance Assurance Division

**CHARGING EAGLE ENTERPRISES, LLC,  
Respondent.**

Date: 13 Oct 21

By:   
Casey Fredericks, Owner

## CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **CHARGING EAGLE ENTERPRISES, LLC; DOCKET NO.: CWA-08-2022-0001** was filed with the Regional Hearing Clerk on December 16, 2021.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Matt Castelli, Enforcement Attorney, and sent via certified receipt email on December 16, 2021, to:

Respondent

Casey Fredericks  
caseyfredericks@chargingeagle.com

Legal Counsel

Randall Sickler  
rsickler@ndlaw.com

EPA Financial Center

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
Chalifoux.Jessica@epa.gov

December 16, 2021

MELISSA  
HANIEWICZ

Digitally signed by  
MELISSA HANIEWICZ  
Date: 2021.12.16  
12:03:08 -07'00'

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Melissa Haniewicz  
Regional Hearing Clerk