



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

October 25, 2023 @ 11:31 am  
USEPA – Region II  
Regional Hearing Clerk

October 24, 2023

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
**VIA E-MAIL TO:** [returmer3@ulrichfab.com](mailto:returmer3@ulrichfab.com)

Richard E. Turner III, President  
Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and R.E. Turner, Inc.)  
2120 4th Street, PO Box 135  
Lakewood, New York 14750

Re: Notice of Proposed Assessment of a Civil Penalty  
In the Matter of: Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and  
R.E. Turner, Inc.)  
Docket No. CWA-02-2024-3302

Dear Mr. Turner:

Enclosed is an Administrative Complaint (“Complaint”) which the U.S. Environmental Protection Agency (“EPA”) is issuing to you as a result of our determination that Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and R.E. Turner, Inc.), located at 2120 4th Street, Lakewood, New York, has failed to comply with the General Pretreatment Regulations, in violation of Section 308 of the Clean Water Act (“Act”), 33 U.S.C. § 1318. This Complaint is filed pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g). The Complaint proposes that a penalty of \$10,000 be assessed against Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and R.E. Turner, Inc.) for this violation.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. Enclosed is a copy of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“CROP”), 40 C.F.R. Part 22, which the Agency follows in cases of this kind. Please note the requirements for an Answer at 40 C.F.R. § 22.15. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor (Room 1631)  
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, § 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be

assessed without further proceedings. Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty.

EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the Proposed CROP, including Subpart I thereof.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Brendan Killian, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway - 16th Floor  
New York, New York 10007-1866  
(212) 637-3380

#### Offer of Settlement

In an effort to promptly settle this matter, we are enclosing, for your consideration, a proposed Consent Agreement and Final Order (“CA/FO”). If, at the close of the public comment period on the Complaint, no adverse public comments are received and no information contrary to the information set forth in the Complaint comes to our attention in any other fashion, we would be prepared to enter into a CA/FO on the terms enclosed. Under the terms of the CA/FO you would be obligated to pay a penalty of \$2,000 in accordance with the terms of the CA/FO. **If you wish to resolve this matter without further proceedings, please sign the enclosed CA/FO and return it to EPA within twenty-five (25) calendar days of your receipt of this letter. Do not submit payment to EPA until after you receive an executed CA/FO.** If we do not receive the CA/FO, signed by you or your authorized representative, within this twenty-five (25) day period, our offer of settlement is withdrawn and we will thereafter seek the full amount of the penalty proposed in the Complaint.

If you have any questions on the enclosed Consent Agreement and Final Order, please contact Brendan Killian. We urge your prompt attention to this matter.

Sincerely,

**For** Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

In the Matter of: Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and R.E. Turner, Inc.)  
Docket No. CWA-02-2024-3302

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. Proposed Consent Agreement and Final Order

cc: Karen Maples, Regional Hearing Clerk  
Reid Van Every, Plant Manager, Ulrich Fabrication Inc, [rvanevery@ulrichfab.com](mailto:rvanevery@ulrichfab.com)  
Jaime Carlson, Director of Engineering, Ulrich Fabrication Inc, [jcarlson@ulrichfab.com](mailto:jcarlson@ulrichfab.com)  
Wayne Berg, Engineering Advisor, Blackstone Advanced Technologies,  
[wayneb@valuemw.com](mailto:wayneb@valuemw.com)  
George E. Gloss Jr., Supervising Chief Wastewater Treatment Plant Operator,  
South & Center Chautauqua Lake Sewer Districts, [glossg@co.chautauqua.ny.us](mailto:glossg@co.chautauqua.ny.us)  
Elizabeth Slagle, Lab Technician, South & Center Chautauqua Lake Sewer Districts,  
[SlagleE@chqgov.com](mailto:SlagleE@chqgov.com)  
Edward Hampston, Director, Bureau of Water Compliance Programs, NYSDEC,  
[edward.hampston@dec.ny.gov](mailto:edward.hampston@dec.ny.gov)  
Michelle L Schwank, NYSDEC, [michelle.schwank@dec.ny.gov](mailto:michelle.schwank@dec.ny.gov)

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, NY 10007-1866**

**IN THE MATTER OF:**

Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and R.E. Turner, Inc.)  
2120 4th Street, PO Box 135  
Lakewood, New York 14750

**Respondent**

Proceeding pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

**Administrative Complaint  
Findings of Violation, Notice of Proposed  
Assessment of a Civil Penalty, and Notice of  
Opportunity to Request a Hearing**

**Proceeding to Assess Class I  
Civil Penalty**

**Docket No. CWA-02-2024-3302**

**I. PRELIMINARY STATEMENT**

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Enforcement and Compliance Assurance Division (“ECAD”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (“CROP”), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and R.E. Turner, Inc.) (“Respondent”) for violations of federal pretreatment standards reporting requirements established pursuant to Section 308 of the Act, and enforceable pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d).

**II. APPLICABLE LEGAL REQUIREMENTS**

1. Sections 307(b), 402(a), and 402(b)(8) of the Clean Water Act, 33 U.S.C. §§ 1317(b), 1342(a), and 1342(b)(8), establish the National Pretreatment Program to regulate discharges from industries to Publicly Owned Treatment Works (“POTW”) as a component of the National Pollutant Discharge and Elimination System Permitting Program. The National Pretreatment Program requires non-domestic dischargers to treat or control pollutants in their wastewater before discharging it to a POTW.

2. Section 307(b) of the Act, 33 U.S.C. § 1317(b), requires the Administrator to propose, publish, and revise, when needed, regulations establishing Federal standards of performance (“Pretreatment Standards”). Pursuant to Section 307(b)(3) of the Act, 33 U.S.C. § 1317(b)(3), when proposing or promulgating any Pretreatment Standard, the Administrator must designate the category or categories of sources to which such standard shall apply; these are commonly referred to as “Categorical Pretreatment Standards.”
3. In accordance with Section 307(b)(1) of the Act, 33 U.S.C. § 1317(b)(1), all Pretreatment Standards shall specify a time for compliance not to exceed three (3) years from the date of promulgation.
4. Section 307(d) of the Act, 33 U.S.C. § 1317(d), makes it unlawful for the owner or operator of any facility which introduces pollutants into a treatment works to operate such a facility in violation of, inter alia, any applicable Pretreatment Standards, including Categorical Pretreatment Standards which are promulgated by the Administrator of EPA.
5. In 1981, EPA promulgated the General Pretreatment Regulations at 40 C.F.R. Part 403 (“Part 403” or the “General Pretreatment Regulations”), 46 Fed. Reg. 9404 (Jan. 28, 1981), and amended Part 403 in 1983 and 1995, 48 Fed. Reg. 2776 (Jan. 21, 1983) and 60 Fed. Reg. 33931 (Jun. 29, 1995), respectively. Part 403 implements Sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405 and 501(a) of the Act. *See* 40 C.F.R. § 403.1(a).
6. Pursuant to 40 C.F.R. § 403.1(b)(4), the General Pretreatment Regulations apply to, among other things, any New or Existing Source subject to Pretreatment Standards promulgated under Section 307 of the Act, 33 U.S.C. § 1317.
7. In accordance with Section 307(b) of the Act, 33 U.S.C. § 1317(b), the Administrator promulgated Pretreatment Standards for the Metal Finishing Point Source Category (“MF Pretreatment Standards”), set forth at 40 C.F.R. Part 433. This part applies to any metal finishing manufacturing facility that discharges pollutants to waters of the United States or that introduces pollutants to a publicly owned treatment works.
8. The MF Pretreatment Standards, at 40 C.F.R. § 433.17, which contain Pretreatment Standards for process wastewater discharged into POTWs for New Sources, became effective on August 31, 1982.
9. “Owner or operator,” as defined in Section 306(a)(4) of the Act, 33 U.S.C. § 1316(a)(4), means any person who owns, leases, operates, controls, or supervises a source.
10. “Person,” as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5), means, among other things, a corporation.
11. “Source,” as defined in Section 306(a)(3) of the Act, 33 U.S.C. § 1316(a)(3), and used in Section 307 of the Act, 33 U.S.C. § 1317, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

12. “New Source,” as defined in 40 C.F.R. § 403.3 (m)(1), means “any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section.” Additional criteria are set forth at 40 C.F.R. §§ 403.3 (m)(1) and (m)(2).
13. “Existing Source,” as defined in 40 C.F.R. §§ 403.3(m)(1)(ii) and (iii), means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which began before the “new source date.”
14. “Pollutant,” as defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6), 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.
15. “Control Authority,” as defined in 40 C.F.R. §§ 403.3(c) and (f), means either the EPA Regional Administrator, a State with a pretreatment program approved pursuant to 40 C.F.R. § 403.10, or a POTW with a pretreatment program approved pursuant to 40 C.F.R. § 403.9.
16. “Treatment works,” as defined in Section 212(2)(A) of the Act, 33 U.S.C. § 1292(2)(A), means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature....”
17. “POTW,” as defined in 40 C.F.R. § 403.3(q), means a treatment works that is owned by a State or municipality.
18. “Indirect Discharge,” or “Discharge,” as defined in 40 C.F.R. § 403.3(i), means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.
19. “Industrial User” (“IU”), or “User,” as defined in 40 C.F.R. § 403.3(j), means a source of an Indirect Discharge.
20. Pursuant to 40 C.F.R. § 403.6(b), within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.
21. Pursuant to Section 308 of the Act, 33 U.S.C. § 1318, the Administrator may require the owner or operator of an IU to install, use, and monitor equipment, maintain records, make reports, sample effluents, and provide other information as may reasonably be required to carry out, among other things, the objectives of the Act, including Sections 308 and 402 of the Act, 33 U.S.C. §§ 1318 and 1342.
22. Under the authority of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and in order to implement Section 307 of the Act, 33 U.S.C. § 1317, the Administrator of EPA promulgated 40 C.F.R. §§ 403.12(b), (d), and (e), which require an IU subject to a Categorical Pretreatment Standard to submit to the Control Authority a Baseline Monitoring Report (“BMR”) (40 C.F.R. § 403.12(b)),

a Report on Compliance with Categorical Pretreatment Standard Deadline (40 C.F.R. § 403.12(d)), and Periodic Reports on Continued Compliance (“Periodic Reports”) (40 C.F.R. § 403.12(e)).

23. 40 C.F.R. § 403.12(b) requires that the BMR submitted by an IU to the Control Authority shall include, among other information, flow measurement and measurement of pollutants sent to the POTW. Specifically, 40 C.F.R. § 403.12(b)(4) requires IUs to report both average daily and maximum daily flow, and 40 C.F.R. § 403.12(b)(5) requires IUs to report both daily maximum and average concentrations (or mass), of regulated pollutants in the discharge from each regulated process.
24. 40 C.F.R. § 403.12(e)(1) requires an any Industrial User subject to a categorical Pretreatment Standard (except a Non-Significant Categorical User as defined in § 403.3(v)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards.
25. 40 C.F.R. § 403.12(g)(2) requires that if sampling performed by an IU indicates a violation, the IU shall notify the Control Authority within twenty-four (24) hours of becoming aware of the violation. 40 C.F.R. § 403.12(g)(2) further requires that the IU repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within thirty (30) days after becoming aware of the violation.
26. Pursuant to Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), whenever, on the basis of any information available, the EPA Administrator finds that any person is in violation of, inter alia, Section 307 of the Act, the Administrator shall issue an order requiring such person to comply with such section.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW/FINDINGS OF VIOLATION**

1. Neither the State of New York nor the South & Center Chautauqua Lake Sewer Districts, New York, has an Approved Pretreatment Program. Therefore, pursuant to 40 C.F.R. §§ 403.3(c) and (f), the EPA Regional Administrator is the Control Authority.
2. Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and R.E. Turner, Inc.) (“Respondent”), is a corporation incorporated under the laws of the State of New York, and is, therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. Respondent owns and operates a facility located at 2120 4th Street, Lakewood, NY 14750 (“Facility”), where it performs, among other things, metal finishing operations.
4. The Facility generates process wastewater from its metal finishing operations. This process wastewater is a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6),

5. The Facility discharges process wastewater and is a source within the meaning of Section 306(a)(3) of the Act, 33 U.S.C. § 1316(a)(3), and use in Section 307 of the Act, 33 U.S.C. § 1317.
6. As a non-domestic source of pollution regulated under Section 307 of the Act, the Facility is required to comply with the requirements and standards promulgated by the EPA pursuant to Sections 307 and 308 of the Act, 33 U.S.C. §§ 1317 and 1318, including the General Pretreatment Regulations found at 40 C.F.R. Part 403.
7. The Facility introduces the process wastewater from its manufacturing processes into the South & Center Chautauqua Lake Sewer Districts Wastewater Treatment Plant.
8. The South & Center Chautauqua Lake Sewer Districts Wastewater Treatment Plant receiving this pollutant is publicly owned, and therefore qualifies as a POTW, under Section 212(2)(a) of the Act, 33 U.S.C. § 1292(2)(a) (hereinafter referred to as “the POTW”), and 40 C.F.R. § 403.3(q).
9. For the relevant time of this Order, the Facility has been subject to the MF Pretreatment Standards as a New or Existing Source.
10. The Facility is an "IU" within the meaning of 40 C.F.R. § 403.3(j). The Facility is subject to the General Pretreatment Regulations since it is a New or Existing Source regulated under Section 307(b) of the Act, 33 U.S.C. § 1317, which discharges into a POTW.
11. The Facility is subject to 40 C.F.R. § 403.12(e) and was required to submit Periodic Reports on Continued Compliance to EPA by June 30 and December 31 each year following submission of the BMR.
12. The Facility is subject to the MF Pretreatment Standards and the monitoring and reporting requirements set forth in 40 C.F.R. § 403.12.
13. On September 14, 2021, EPA sent Ulrich Planfiling Equipment Corporation, via email, a Request for Information pursuant to Section 308 of the Act, 33 U.S.C. § 1318 (“RFI”). The RFI sought, among other things, a description of the nature of operations carried out at the Facility, the Standard Industrial Classifications (commonly known as SIC codes) associated with each operation and copies of the results of any and all sampling and analysis of the quality of effluent discharged by the Facility to the South & Center Chautauqua Lake Sewer Districts Wastewater Treatment Plant since January 2016.
14. Unknown to EPA, on October 25, 2021, Ulrich Fabrication Inc purchased the Facility. By virtue of this sale Ulrich Fabrication Inc became an “owner or operator” of the Facility and consequently the Respondent in this matter.
15. On November 3, 2021, Ulrich Planfiling Equipment Corporation submitted its response to the RFI, which Ulrich Fabrication Inc was copied on. Both Ulrich Fabrication Inc and Ulrich Planfiling Equipment Corporation submitted additional information in subsequent emails in response to requests by EPA. The response revealed that the Facility began discharging process wastewater in 1994. The response included the lab results for a sample collected by the South & Center Chautauqua Lake



Sewer Districts on June 12, 2013, to analyze for phosphorus and iron. The lab report did not include analysis for any of the parameters regulated by 40 CFR Part 433.

16. On November 3, 2021, EPA asked if sampling and analysis of the metals, cyanide and total toxic organics (“TTO”) regulated by the MF Pretreatment Standards had been performed. The response was “that is the only lab result we have.” On November 4, 2021, EPA asked Respondent “so no analysis for metals and TTO, correct?” The reply was “Correct, no analysis for metals or TTO.”
17. The Facility commenced discharge in or about 1994 and is a “New Source”.
18. On February 25, 2022, Respondent was issued a signed and effective Administrative Order on Consent, Docket No. CWA-02-2022-3013 (“2022 AOC”) (see Attachment), for failure to submit to EPA 1) a BMR; 2) a 90-day Compliance Report; and 3) Periodic Reports on Continued Compliance. The 2022 AOC stated that “by April 15, 2022, Respondent shall submit a BMR, and by April 30, 2022, Respondent shall certify in writing to EPA that it has attained compliance with the applicable pretreatment standards and requirements. Also, Respondent shall submit Periodic Reports in accordance with 40 C.F.R. §403.12(e), due by June 30 and December 31 of each year, to EPA, the Control Authority.”
19. On February 22, 2022, Respondent signed an acknowledgment of receipt of the 2022 AOC.
20. On August 2, 2023, EPA sent an e-mail to Respondent inquiring as to the status of the periodic report on continued compliance that was due to EPA by June 30, 2023.
21. On August 3, 2023, the Respondent’s consultant, Mr. Wayne Berg off Blackstone Advanced Technologies, replied to EPA’s e-mail stating that “Samples for the June self-monitoring report were collected and submitted to the lab on April 28, 2023. The analysis report was received on May 11, 2023. Ulrich simply overlooked transfer of this data to our template and submission to you. We apologize that this was not completed on time. I have been asked to complete the report with certifications and submit to you as soon as possible. I anticipate I can have this ready for signatures early next week.”
22. On August 8, 2023, the Respondent submitted via e-mail the periodic report by cover letter dated August 7, 2023, transmitting the periodic report that was due to EPA by June 30, 2023, and stating that “Attached is the biannual self-monitoring report that was due on June 30, 2023. We apologize for the tardiness of this report. The data in the report was taken on time and the results overlooked when they arrived.”
23. Based upon the above paragraphs, EPA finds that Respondent violated Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulation set forth at 40 C.F.R. § 403.12(e), by failing to submit the June 2023 Periodic Report.
24. Based on the Finding of Violation set forth in paragraph 23 above, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$25,847 per violation, up to a maximum of \$64,618 per violation.

#### **IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of **\$10,000**. EPA determined the proposed penalty after taking into account the applicable factors identified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on the Findings set forth above, Respondent has been found to have violated the Act in one (1) instance. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION**

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

##### **A. Answering the Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within

thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway - 16th Floor (Room 1631)  
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

### **B. Opportunity to Request a Hearing**

If requested by Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of the CROP, at 40 C.F.R. §§ 22.21-22.26.

Should Respondent request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

### **C. Failure to Answer**

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

## **VI. INFORMAL SETTLEMENT CONFERENCE**

Regardless of whether Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment

on the charges made in this Complaint and Respondent may also provide whatever additional information it believes to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Brendan Killian, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone (212) 637-3380

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty, **\$10,000**, within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted in Section V above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, MO 63197-9000  
Docket No. CWA-02-2024-3302

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency".

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

## **VIII. FILING OF DOCUMENTS**

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

In the Matter of: Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and R.E. Turner, Inc.)  
Docket No. CWA-02-2024-3302

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway - 16th Floor (Room 1631)  
New York, New York 10007-1866

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Brendan Killian, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway - 16<sup>th</sup> Floor  
New York, New York 10007- 1866  
(212) 637-3380

**IX. GENERAL PROVISIONS**

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 24<sup>th</sup> DAY OF October, 2023.

*For* \_\_\_\_\_  
Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

To: Richard Turner III, President  
Ulrich Fabrication Inc (a/k/a Ulrich Planfiling Equipment Corporation and R.E. Turner, Inc.)  
2120 4th Street, PO Box 135  
Lakewood, New York 14750



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**February 25, 2022**

**VIA E-MAIL**

returner3@blackadvtech.com

Richard Turner, President  
Ulrich Fabrication Inc  
2120 4th Street, PO Box 135  
Lakewood, New York 14750

Re: Administrative Order on Consent, Docket No. CWA-02-2022-3013  
Ulrich Fabrication Inc, Lakewood, New York

Dear Mr. Turner:

Enclosed is the signed and effective Administrative Order on Consent (“AOC”).

Any questions regarding this AOC, please contact Mr. Larry Gaugler, P.E., Team Leader at (212) 637-3950 ([gaugler.larry@epa.gov](mailto:gaugler.larry@epa.gov)); or Alia Roufaeal, Environmental Engineer at (212) 637-3864 ([roufaeal.alia@epa.gov](mailto:roufaeal.alia@epa.gov)).

Sincerely,

**Anderson**  
**,Kate**

Digitally signed by  
Anderson, Kate  
Date: 2022.02.25  
12:19:56 -05'00'

**For** Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

Enclosure

cc: Danielle E Mettler-LaFeir, Esq., [dmettler@barclaydamon.com](mailto:dmettler@barclaydamon.com)  
Daniel Berry, [danberry@ulrichcorp.com](mailto:danberry@ulrichcorp.com)  
George E. Gloss Jr., Supervising Chief Wastewater Treatment Plant Operator,  
South & Center Chautauqua Lake Sewer Districts, [glossg@co.chautauqua.ny.us](mailto:glossg@co.chautauqua.ny.us)  
Elizabeth Slagle, Lab Technician, South & Center Chautauqua Lake Sewer Districts,  
[SlagleE@chqgov.com](mailto:SlagleE@chqgov.com)  
Edward Hampston, Director, Bureau of Water Compliance Programs, NYSDEC,  
[edward.hampston@dec.ny.gov](mailto:edward.hampston@dec.ny.gov)  
Michelle L Schwank, NYSDEC, [michelle.schwank@dec.ny.gov](mailto:michelle.schwank@dec.ny.gov)

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Ulrich Fabrication Inc  
2120 4th Street, PO Box 135  
Lakewood, New York 14750

Respondent

Proceeding pursuant to Section 309(a) of the  
Clean Water Act, 33 U.S.C. § 1319(a)

**ADMINISTRATIVE ORDER ON CONSENT**

**CWA-02-2022-3013**

**I. PRELIMINARY STATEMENT**

This Administrative Order on Consent (“AOC”) is entered into voluntarily by the United States Environmental Protection Agency, (“EPA”) Region 2, and Ulrich Fabrication Inc (current owner of the facility previously owned by Ulrich Planfiling Equipment Corporation) (“Respondent”) pursuant to Section 309(a) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(a). The authority has been delegated by the Administrator of the United States Environmental Protection Agency (“Administrator”) to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Enforcement and Compliance Assurance Division, EPA Region 2.

**II. STATUTORY AND REGULATORY AUTHORITY**

The South & Center Chautauqua Lake Sewer Districts, New York, does not have an “Approved Pretreatment Program” within the meaning of 40 Code of Federal Regulations (“C.F.R”) § 403.3(d). The State of New York is not approved to operate a pretreatment program in accordance with 40 C.F.R. § 403.10. Therefore, pursuant to 40 C.F.R. §§ 403.3(c) and (f), EPA is the “Control Authority.”

1. Section 402(b)(8) of the Act, 33 U.S.C. § 1342(b)(8), along with Section 307(b) of the Act, 33 U.S.C. § 1317(b), establish the National Pretreatment Program to regulate discharges from industries to Publicly Owned Treatment Works (“POTW”) as a component of the National Pollutant Discharge and Elimination System Permitting Program. The National Pretreatment Program requires non-domestic dischargers to treat or control pollutants in their wastewater before discharging to a POTW.
2. Section 307(b) of the Act, 33 U.S.C. § 1317(b), requires the Administrator to propose, publish, and revise, when needed, regulations establishing Federal standards of performance (“Pretreatment Standards”). When proposing or promulgating any Pretreatment Standard under Section 307 of the Act, the Administrator must designate the category or categories of sources to which such standard shall apply; these are commonly referred to as “Categorical Pretreatment Standards.”



3. In accordance with Section 307(b) of the Act, 33 U.S.C. § 1317(b), Categorical Pretreatment Standards shall specify a time for compliance not to exceed three (3) years from the date of promulgation.
4. Section 307(d) of the Act, 33 U.S.C. § 1317(d), makes it unlawful for the owner or operator of any facility which introduces pollutants into a treatment works to operate such a facility in violation of any applicable Pretreatment Standards, or Categorical Pretreatment Standards, which are promulgated by the Administrator of EPA.
5. “Owner or operator,” as defined in Section 306(a)(4) of the Act, 33 U.S.C. § 1316(a)(4), means any person who owns, leases, operates, controls, or supervises a source.
6. “Source,” as defined in Section 306(a)(3) of the Act, 33 U.S.C. § 1316, and used in Section 307 of the Act, 33 U.S.C. § 1317, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.
7. “New Source,” as defined by 40 C.F.R. § 403.3 (m)(1), means “any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section.” Additional criteria are set forth at 40 C.F.R. §§ 403.3 (m)(1) and (m)(2).
8. “Existing Source” means any building, structure, facility, or installation from which there is or may be a “discharge” of “pollutants,” the construction of which began before the “new source date.” See 40 C.F.R. §§ 403.3(m)(1)(ii) and (iii).
9. In accordance with Section 307(b) of the Act, 33 U.S.C. § 1317(b), the Administrator promulgated Categorical Pretreatment Standards for the Metal Finishing Point Source Category (“MF Pretreatment Standards”). The MF Pretreatment Standards are set forth at 40 C.F.R. Part 433.
10. The MF Pretreatment Standards were proposed on August 31, 1982, and promulgated on July 15, 1983.
11. The MF Pretreatment Standards at 40 C.F.R. §§ 433.15 and 433.17, contain pretreatment standards for the process wastewater discharged into POTWs for Existing and New Sources, respectively.
12. The effective date of the MF Pretreatment Standards for New Sources is August 31, 1982, which is the date EPA published the proposed MF Pretreatment Standards. 40 C.F.R. § 403.3(m)(1).
13. The effective date of the MF Pretreatment Standards for Existing Sources is August 29, 1983, which is after the date EPA promulgated the MF Pretreatment Standards. 33 U.S.C. § 307(b)(1).
14. The MF Pretreatment Standards at 40 C.F.R. § 433.15, provide compliance deadlines, with February 15, 1986, being the latest.

15. In 1981, EPA promulgated the General Pretreatment Regulations at 40 C.F.R. Part 403 (“Part 403” or the “General Pretreatment Regulations”), 46 Fed. Reg. 9404 (Jan. 28, 1981), and amended Part 403 in 1983 and 1995, 48 Fed. Reg. 2776 (Jan. 21, 1983) and 60 Fed. Reg. 33931 (Jun. 29, 1995), respectively. Part 403 implements Sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405 and 501(a) of the Act. 40 C.F.R. § 403.1(a).
16. Pursuant to 40 C.F.R. § 403.1(b)(4), the General Pretreatment Regulations apply to, among other things, any New or Existing Source subject to Pretreatment Standards promulgated under Section 307 of the Act, 33 U.S.C. § 1317.
17. “POTW,” as defined by 40 C.F.R. § 403.3(q) means a treatment works, as defined in Section 212 of the Act, 33 U.S.C. § 1292, which is owned by a State or municipality, and includes, among other things, any device and any system that, at a minimum, stores, treats, or disposes of municipal waste or industrial wastes, including waste in combined storm water and sanitary sewer systems.
18. “Indirect Discharge,” or “Discharge,” as defined in 40 C.F.R. § 403.3(i), means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.
19. “Industrial User” (“IU”), or “User,” as defined in 40 C.F.R. § 403.3(j), means a source of Indirect Discharge.
20. Pursuant to 40 C.F.R. § 403.6(b), within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.
21. Pursuant to Section 308 of the Act, 33 U.S.C. § 1318, the Administrator may require the owner or operator of an IU to install, use, and monitor equipment, maintain records, make reports, sample effluents, and provide other information as may reasonably be required to carry out, among other things, the objectives of the Act, including Sections 308 and 402 of the Act, 33 U.S.C. §§ 1318 and 1342.
22. Under the authority of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and in order to implement Section 307 of the Act, 33 U.S.C. § 1317, the Administrator of EPA promulgated 40 C.F.R. §§ 403.12(b), (d), and (e), which require an IU subject to a categorical pretreatment standard to submit to the Control Authority (defined at 40 C.F.R. §§ 403.3(c) and (f)): a Baseline Monitoring Report (“BMR”) (40 C.F.R. § 403.12(b)); a Report on Compliance with Categorical Pretreatment Standard Deadline (40 C.F.R. § 403.12(d)); and Periodic Reports on Continued Compliance (“Periodic Reports”) (40 C.F.R. § 403.12(e)).
23. 40 C.F.R. § 403.12(b) requires that a baseline report or BMR submitted by an IU to the Control Authority shall include, among other requirements, flow measurement and measurement of pollutants. Specifically, 40 C.F.R. § 403.12(b)(5) requires that, at a minimum, for the measurement of pollutants, the IU shall submit the results of sampling and analysis identifying the nature and concentration (or mass) of regulated pollutants in the discharge from each regulated process. IUs subject to 40 C.F.R. § 403.12(b) must submit both daily maximum and average concentration (or mass).

24. 40 C.F.R. § 403.12(b)(6) requires IUs that are subject to the reporting requirements under 40 C.F.R. § 403.12(b) to submit a statement, which has been reviewed by an authorized representative of the IU and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (“O and M”) and/or additional pretreatment is required for the IU to meet the Pretreatment Standards and Requirements.
25. 40 C.F.R. § 403.12(d) requires that within 90 days following the date for final compliance with the applicable Categorical Pretreatment Standards, any IU subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in 40 C.F.R. §§ 403.12(b)(4)-(6). For IUs subject to the equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in 40 C.F.R. § 403.6(c), this report shall contain a reasonable measure of the User’s long-term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the IU’s actual production during the appropriate sampling period.
26. 40 C.F.R. § 403.12(e) requires an IU subject to a Categorical Pretreatment Standard to submit to the Control Authority Periodic Reports during the months of June and December of each year. The Periodic Reports must, among other things, indicate the nature and concentration of those pollutants in the effluent that are subject to the applicable categorical Pretreatment Standards.
27. 40 C.F.R. § 403.12(g)(2) requires that if sampling performed by an IU indicates a violation, the IU shall notify the Control Authority within twenty-four (24) hours of becoming aware of the violation. 40 C.F.R. § 403.12(g)(2) further requires that the IU shall repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within thirty (30) days after becoming aware of the violation.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

28. EPA’s records show that for a period of time between 1994 and October 25, 2021 Ulrich Planfiling Equipment Corporation owned or operated a facility located at 2120 4th Street, Lakewood, NY 14750, where it performed, among other things, metal finishing operations (“Facility”). During that period of time Ulrich Planfiling Equipment Corporation was an “owner or operator” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
29. On September 14, 2021, EPA sent Ulrich Planfiling Equipment Corporation, via email, a Request for Information pursuant to Section 308 of the Act, 33 U.S.C. §1318 (“RFI”). The RFI sought, among other things, a description of the nature of operations carried out at the Facility, the Standard Industrial Classifications (commonly known as SIC codes) associated with each operation and copies of the results of any and all sampling and analysis of the quality of effluent discharged by the Facility to the South & Center Chautauqua Lake Sewer Districts Wastewater Treatment Plant since January 2016.
30. Unknown to EPA, on October 25, 2021 Ulrich Fabrication Inc purchased the Facility. By virtue of this sale Ulrich Fabrication Inc became an “owner or operator” of the Facility and consequently the Respondent in this matter.

31. On November 3, 2021, Ulrich Planfiling Equipment Corporation submitted its response to the RFI, which Respondent was copied on. The Respondent and Ulrich Planfiling Equipment Corporation submitted additional information in subsequent emails in response to requests by EPA. The response revealed that the Facility began discharging process wastewater in 1994. The response included the lab results for a sample collected by the South & Center Chautauqua Lake Sewer Districts on June 12, 2013 to analyze for phosphorus and iron. The lab report did not include analysis for any of the parameters regulated by 40 CFR Part 433.
32. On November 3, 2021, EPA asked if sampling and analysis of the metals, cyanide and total toxic organics (“TTO”) regulated by the MF Pretreatment Standards had been performed. The response was “that is the only lab result we have.” On November 4, 2021, EPA asked Respondent “so no analysis for metals and TTO, correct?” The reply was “Correct, no analysis for metals or TTO.”
33. The Facility commenced construction in or about 1994 and is a “New Source”.
34. The Facility introduces wastewater from its manufacturing processes (“process wastewater”) into the South & Center Chautauqua Lake Sewer Districts Wastewater Treatment Plant (“Wastewater Plant”), which comprises treatment works as defined in Section 212(2)(a) of the Act, 33 U.S.C. § 1292(2)(a). The Wastewater Plant is publicly owned, and therefore is a POTW as defined in 40 C.F.R. § 403.3(q).
35. The process wastewater is a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).
36. The Facility is an Industrial User within the meaning of 40 C.F.R. § 403.3(j) because it is a non-domestic source that introduces pollutants regulated under Section 307(b), (c) or (d) of the Act, 33 U.S.C. §§ 1317 (b), (c) or (d), into a POTW.
37. Based on EPA’s review of the Respondent’s and Ulrich Planfiling Equipment Corporation’s response to the RFI, EPA has determined that:
  - a) The Facility is a metal finishing operation plant;
  - b) The Facility is subject to the MF Pretreatment Standards as a New Source; and
  - c) Since at least 1994, the Facility has been discharging and continues to discharge non-domestic process-related wastewater into the South & Center Chautauqua Lake Sewer Districts Wastewater Treatment Plant, a POTW.
38. As a non-domestic source of pollution regulated under Section 307 of the Act, the Facility is subject to the requirements and standards promulgated by the EPA pursuant to Sections 307 and 308 of the CWA, 33 U.S.C. §§ 1317 and 1318, including the General Pretreatment Regulations found at 40 C.F.R. Part 403.
39. The Facility is subject to 40 C.F.R. §§ 403.12(b), (d), and (e), and therefore is required to submit to EPA a BMR at least ninety (90) days prior to the commencement of discharge; a Report on Compliance with Categorical Pretreatment Standard Deadline within ninety (90) days following commencement of the discharge to the POTW (“90-day Compliance Report”); and Periodic Reports on Continued Compliance by June 30 and December 31 of each year.

40. The Facility is subject to 40 C.F.R. § 403.12(g)(2) and therefore is required to inform EPA (the Control Authority) of any violation within twenty-four (24) hours of becoming aware that its sampling revealed a violation.
41. Since at least 1994, no BMR report for the Facility has been submitted to EPA.
42. Since at least 1994, Respondent no 90-day Compliance Report for the Facility has been submitted to EPA.
43. Since at least 1994, no Periodic Reports on Continued Compliance during June and December of each year as required under 40 C.F.R. § 403.12(e) for the Facility have been submitted to EPA.
44. Based upon Paragraphs above, Respondent has violated and continues to violate the federal pretreatment requirements set forth in the Act and its implementing regulations. Specifically, Respondent has failed to submit to the Control Authority: 1) a BMR; 2) a 90-day Compliance Report; and 3) Periodic Reports on Continued Compliance, as required by 40 C.F.R. §§ 403.12(b), (d) and (e), respectively. In addition, Respondent failed to analyze the process wastewater discharged for all the parameters regulated by 40 CFR Part 433. Therefore, based on the Findings of Fact and Conclusions of Law cited above, Respondent is in violation of Sections 307 and 308 of the Act, 33 U.S.C. §§ 1317 and 1318, and implementing regulation at 40 C.F.R. Part 403.

#### **IV. COMPLIANCE REQUIREMENTS**

In consideration of the above Findings of Fact and Conclusions of Law, and pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent agrees to comply with the following requirements:

1. **By no later than April 15, 2022**, Respondent shall submit a BMR in accordance with 40 C.F.R. § 403.12(b) to EPA, the Control Authority, with a copy to South & Center Chautauqua Lake Sewer Districts Wastewater Treatment Plant;
2. Respondent shall submit Periodic Reports in accordance with 40 C.F.R. § 403.12(e) by June 30 and December 31 of each year, to EPA, with a copy to the South & Center Chautauqua Lake Sewer Districts Wastewater Treatment Plant. Along with the Periodic Reports, Respondent shall provide a certification as required by 40 C.F.R. § 403.12(b)(6), (see paragraph V.2. below);
3. If sampling performed by Respondent reveals a violation, Respondent shall notify EPA within twenty-four (24) hours of becoming aware of the violation. Respondent shall also repeat the sampling and analysis and submit the results of the repeat analysis to EPA within thirty (30) days after becoming aware of the violation; and
4. Respondent shall ensure compliance with the reporting, recordkeeping, monitoring, and other requirements promulgated under Section 308 of the Act, 33 U.S.C. § 1318, and set forth in the MF Pretreatment Standards or the General Pretreatment Regulations.
5. **CERTIFICATION – By April 30, 2022**, Respondent shall certify in writing to EPA that it has achieved compliance with the applicable Pretreatment Standards and requirements.

## **V. SUBMISSIONS AND NOTIFICATIONS**

1. Unless otherwise noted, all submissions required by this AOC shall be signed by a duly authorized representative of Respondent.
2. All information required to be submitted pursuant to this AOC shall be sent by certified mail or its equivalent, or electronically to the following individuals. Electronic submissions are encouraged.

Doughlas McKenna, Chief  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
United States Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007-1866  
[mckenna.douglas@epa.gov](mailto:mckenna.douglas@epa.gov)

and

Edward Hampston, P.E.  
Professional Engineer 4 Environmental  
Division of Water  
Bureau of Water Compliance  
New York State Department of Environmental Conservation  
625 Broadway, Albany, NY 12233  
[edward.hampston@dec.ny.gov](mailto:edward.hampston@dec.ny.gov)

Please copy Alia Roufaeal at [roufaeal.alia@epa.gov](mailto:roufaeal.alia@epa.gov) and Michelle L Schwank at [michelle.schwank@dec.ny.gov](mailto:michelle.schwank@dec.ny.gov) on all electronic submittals. Pursuant to 40 C.F.R. § 122.22, all information or documents required to be submitted by Respondent shall be signed (including, as necessary, using a verifiable electronic signature) by an authorized representative of Respondent, and shall include 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 gathered and evaluated 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.”

## **VI. DELAY OF PERFORMANCE/FORCE MAJEURE**

1. “Force Majeure,” for purposes of this AOC, is any event arising from causes beyond the control of Respondent, or any entity controlled by Respondent, that delays or prevents performance of any obligation under this AOC, notwithstanding Respondent’s best efforts to avoid the delay. The best-efforts requirement includes using best efforts to anticipate any such event and to minimize the delay caused by any such event to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased

costs or expenses of any work to be performed under this AOC, Respondent's financial or business difficulties, and normal inclement weather.

2. Unless otherwise specified, if any event may occur or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure, Respondent shall notify, by telephone, the following EPA contact within two (2) business days of when Respondent knew or reasonably should have known that the event might cause a delay:

Doughlas McKenna, Chief  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
United States Environmental Protection Agency, Region 2  
(212) 637-4244

Within fifteen (15) business days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of force majeure.

3. If EPA agrees that an actual or anticipated delay is attributable to force majeure, the time for performance of the obligation shall be extended by written agreement of EPA and Respondent (the "Parties"). An extension of the time for performing an obligation directly affected by the force majeure event shall not, of itself, extend the time for performing a subsequent obligation.
4. Respondent shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.

## **VII. FAILURE TO COMPLY WITH THIS AOC**

1. EPA reserves all available legal and equitable remedies to enforce this AOC, and the right to seek recovery of any costs and attorney fees incurred by EPA in any actions against Respondent for non-compliance with this AOC.
2. EPA expressly reserves its right to seek civil, administrative, or criminal penalties for any violations of the CWA that occur or have occurred at Respondent's Facility.
3. Notice is hereby given that failure to comply with any of the Compliance Requirements in Section IV of this AOC may result in Respondent's liability for civil penalties for each violation of up to \$59,973 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if the Court determines that Respondent has failed to comply with any such requirements. The District Court has the authority to impose separate civil penalties for each violation of the CWA.

## **VIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

1. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this AOC, except to the extent that those allegations provide EPA with a jurisdictional basis to enforce this AOC.
2. In any enforcement action brought to enforce this AOC, the AOC shall be construed both as a contract and an enforceable order. Accordingly, the remedies available to the EPA in enforcing this AOC may include, but not be limited to, specific performance of the requirements set forth in this AOC, damages for failure to timely complete a milestone or milestones, measured by the financial savings to Respondent, injunctive and equitable remedies and statutory penalties.
3. Except as expressly stated herein, Respondent reserves all defenses and all rights and remedies, legal and equitable, available to it in any action brought by the United States or by Respondent under this AOC, the CWA, or any other federal or state statutes, regulations or rules. This AOC shall not be construed as a waiver of any defenses or remedies that Respondent may have to any future alleged violations of any User Agreements discharge limits, or of the federal and state laws and regulations governing said permits.
4. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the Compliance Provisions set forth in Section IV of this AOC is required to come into compliance with the law.

## **IX. SCOPE OF THIS AOC**

1. This AOC is not, and shall not be construed to be, a permit under the CWA, nor shall it in any way relieve or affect Respondent's obligations under the CWA, or any other applicable federal, state, or local laws, regulations, or permits. Compliance with this AOC shall be no defense to any actions commenced pursuant to any such laws, regulations, or permits.
2. Neither the issuance of this AOC, nor Respondent's compliance with it, shall in any way affect the rights of EPA or the United States against any person not a party hereto.
3. This AOC shall in no way affect EPA's authority to enter, inspect, sample, or monitor compliance under any law, regulation, permit, court order, or agreement.



**X. EFFECTIVE DATE**

This AOC shall become effective upon the date of execution by the Director, Enforcement and Compliance Assurance Division.

FOR: Ulrich Fabrication Inc

Dated: 02/22/22

Signed: Richard Turner AAA  
Richard Turner, President  
Ulrich Fabrication Inc

FOR: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Dated: 02/25/2022

Signed: Kate  
*For* Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

Digitally signed by  
Anderson, Kate  
Date: 2022.02.25  
12:20:21 -05'00'

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Ulrich Fabrication Inc  
2120 4th Street, PO Box 135  
Lakewood, New York 14750

Respondent

Proceeding pursuant to Section 309(a) of the  
Clean Water Act, 33 U.S.C. § 1319(a)

**ADMINISTRATIVE ORDER ON**  
**CONSENT**

**CWA-02-2022-3013**

**ACKNOWLEDGMENT OF RECEIPT OF  
ADMINISTRATIVE ORDER ON CONSENT**

I, Richard E. Turner III, an officer of Ulrich Fabrication Inc with the title of,  
President, do hereby acknowledge the receipt of a copy of the  
ADMINISTRATIVE ORDER ON CONSENT CWA-02-2022-3013.

DATE: 02/22/22

SIGNED: *Richard E Turner III*

NAME PRINTED: Richard E. Turner III