



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1 – 5 Post Office Square, Boston MA 02109
EXPEDITED SETTLEMENT AGREEMENT
Docket Number: CWA-01-2024-0039

FILED

4/9/24

9:54 AM

U.S. EPA REGION 1
HEARING CLERK

Dave's Automotive Enterprises, of Marlborough, NH ("Respondent") is a "person," within the meaning of Section 502(5) of the Clean Water Act ("Act"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an "Industrial Non-Filer Expedited Settlement Worksheet" ("Settlement Form"), which is incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent is responsible for unauthorized discharges of stormwater in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311, during the time frame described in the Settlement Form.

EPA finds, and Respondent admits, that Respondent is subject to Section 301 of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over any "person" who "discharges pollutants" from a "point source" to "waters of the United States." Respondent neither admits nor denies the specific alleged violations specified in the Settlement Form.

EPA is authorized to enter into this Expedited Settlement Agreement ("Agreement") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement to settle the civil violations alleged in this Agreement for a penalty of **\$10,000**. Respondent consents to the assessment of this penalty and waives the right to: (1) contest the findings specified in the Settlement Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the Respondent has addressed the alleged violations identified in the Settlement Form by submitting a Notice of Intent to be covered under the 2021 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Furthermore, Respondent agrees that 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.

Additionally, Respondent agrees that it shall submit payment of the penalty in the form of a bank, cashiers, or certified check in the amount of \$10,000, payable to the "Treasurer, United States of America" via certified mail to: U.S. EPA, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979078, St. Louis, MO 63197-9000 (and indicate: *In the Matter of: Dave's Automotive Enterprises* Docket No.: CWA-01-2024-0039, on the check) within 10 days after this Agreement becomes final. Respondent shall email a copy of the check to Cristeen Schena, EPA Region 1, at: schena.cristeen@epa.gov, and to the Regional Hearing Clerk, EPA Region 1 at: R1_Hearing_Clerk_Filings@epa.gov.

This Agreement settles EPA's civil penalty claims against Respondent for the alleged Clean Water Act violations specified in this Agreement. EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation. EPA does not waive its right to issue a compliance order for any uncorrected alleged violations described in the Settlement Form. EPA has determined this Agreement to be appropriate.

Respondent agrees to acceptance of the Complainant's: i. digital or an original signature on this Agreement; ii. service of the fully executed Agreement on the Respondent by mail or electronically by e-mail at the email address provided under Respondent's signature. Respondent understands that the mailing or e-mail address may be made public when the Agreement and Certificate of Service are filed and uploaded to a searchable database. Complainant agrees to acceptance of the Respondent's digital or an original signature on this Agreement.

Prior to requesting that an EPA Regional Judicial Officer issue the Final Order, the EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on it. The EPA will address any comments on this Agreement in accordance with section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

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NF ESA

This Agreement is binding on the parties signing below and becomes final 30 days from the date that a signed copy of the Final Order is transmitted from the Regional Judicial Officer to the Regional Hearing Clerk unless a petition to set aside this Agreement is filed by a commenter pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), following public noticing of this Agreement.

APPROVED BY EPA:

_____ Date: _____
Carol Tucker, Acting Director
Enforcement and Compliance Assurance Division

APPROVED BY RESPONDENT:

Name
(print): Kelly Knight

Title
(print): Operations Manager

Signature: Kelly Knight Date: 4/3/24

Provide Email address for service of fully executed Agreement on line below:

Kelly@davesautoent.com

More than 40 days have elapsed since the issuance of public notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and EPA has received no comments concerning this matter.

Having determined that this Agreement is authorized by law, IT IS SO ORDERED:

_____ Date: _____
LeAnn Jensen
Regional Judicial Officer

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**Industrial Non-Filer Expedited
Settlement Worksheet**



Name and Location of Facility:

Dave's Automotive Enterprises
42 Roxbury Road
Marlborough, NH, 03445

Docket #:

CWA-01-2024-0039

Case Developer:

Eleanor Horvath

Inspection Date:

11/6/2023

Factor 1 - Duration of Alleged Violation (D):

Rainfall events of 0.5" or greater
beginning:

6/1/2021

through:

3/5/2024

Years Operating w/o Permit
Coverage under CWA §301:

2.8

Duration Category: >2 Years

1

Factor 2 - Company Size/Sophistication (S):

Tier Level (1-3):

Tier 1

0.5

Factor 3 - Acreage of Industrial Activity Exposed (E):

Calculated from Aerial:

4

Exposure Category:

2-5 Acres

2

Factor 4 - Pollution Control (P):

Level of Pollution Control (P):

25-75%

1

Factor 5 - Notification (N):

Previous written notification?

No

1

Expedited Settlement Formula:

D x S x E x P x N x \$10,000

Total Expedited Settlement Amount:

\$10,000

Eligible for ESA Policy?

Yes