



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
INDUSTRIAL STORMWATER ESA

IN THE MATTER OF:

NORTH FULTON METALS, LLC

Respondent

DOCKET NO.: CWA-04-2022-0304(b)

Expedited Settlement Agreement and Final Order
Pursuant to Clean Water Act Section 309(g)(2)(A)

NPDES Permit No.: Unpermitted

The undersigned representative of the United States Environmental Protection Agency (EPA) and North Fulton Metals, LLC, a corporation, (Respondent) enter into this Expedited Settlement Agreement (ESA or Agreement) to resolve Respondent's civil penalty liability for allegedly discharging industrial stormwater without a permit at the Site. On 12/9/2021, representatives of the EPA inspected the Respondent's facility at 11460 North Fulton Industrial Blvd, Alpharetta, GA 30009 (Site). Observations indicated operations at the facility were responsible for allegedly discharging industrial stormwater without a permit at the Site.

Based on information obtained during the EPA inspection, the EPA finds that: (1) Respondent, who is the co-owner and operator of the Site, discharged industrial stormwater from the Site without authorization by any permit issued pursuant to the Clean Water Act (Act) in violation of Section 301 of the Act, 33 U.S.C. § 1311]; (2) Respondent is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5); and (3) Respondent is responsible for the alleged violations specified in the attached "Industrial Stormwater Non-Filer Inspection Findings, Alleged Violations, and Proposed Penalty Form" (Alleged Violations Form). The Alleged Violations Form is hereby incorporated into this Agreement by reference.

The EPA also finds, and Respondent admits, that the EPA has jurisdiction over this matter pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). Respondent neither admits nor denies the factual allegations alleged in the Alleged Violations Form.

The EPA is authorized to enter into this Agreement under the authority vested in the Administrator by Section 309(g) of the Act, 33 U.S.C. § 1319(g), and by 40 C.F.R. §§ 22.13(b) and 22.18.

Respondent consents to the assessment of a civil penalty and agrees to pay \$7,500. Respondent waives the right to: (1) contest the allegations in the Alleged Violations Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); (3) appeal the Final Order; and (4) judicial review pursuant to CWA § 309(g)(8), 33 U.S.C. § 1319(g)(8). The civil penalty will

be due within thirty (30) days of the Effective Date of this ESA and Final Order and shall be made in accordance with the attached Expedited Settlement Agreement Payment Instructions (Payment Instructions), incorporated herein by reference. Respondent agrees to bear its own costs and attorney's fees related to this ESA.

Failure by Respondent to pay the penalty assessed by this ESA and Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9)(B) of the Act, 33 U.S.C. § 1319(g)(9)(B). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the State of Georgia was provided a prior opportunity to consult with the EPA regarding this matter.

By signing this Agreement, Respondent certifies that: (1) the alleged violations listed in the Alleged Violations Form have been corrected, and Respondent has submitted true and accurate documentation to the EPA of such correction; and (2) 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.

This Agreement, upon incorporation into the Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations of Section 301(a) of the Act alleged in the Alleged Violations Form. This Agreement does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law or to issue an administrative compliance order, e.g., for any uncorrected violations listed in the Alleged Violations Form. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

Pursuant to Section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45, the EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on the proposed issuance of this Agreement prior to issuance of the Final Order.

Respondent does not sign and return this ESA as presented within 30 days of the date of its receipt, or within an extension timeframe approved by the EPA, this proposed ESA is withdrawn without prejudice to the EPA's ability to file any other enforcement action for the violations identified in the Alleged Violations Form.

The parties consent to service of this ESA and Final Order by e-mail to the e-mail addresses provided by the parties in the Certificate of Service.

This Agreement is binding on the parties signing below. Each person signing this Agreement certifies that he or she has the authority to sign for the party who he or she represents and to bind that party to its terms. The ESA and Final Order are effective the date of filing with the Regional Hearing Clerk. Once the ESA is signed by the Regional Judicial Officer, the original ESA will be filed with the Regional Hearing Clerk. A copy of the filed ESA will be emailed to Respondent.

Attachments:

1. Alleged Violations Form
2. Payment Instructions
3. Certificate of Service

APPROVED BY RESPONDENT:

Name (print): DARIUS ZOSTALITAS

Title (print): MANAGER

Signature:  Date: 7/5/22

APPROVED BY THE EPA:

\_\_\_\_\_  
Mary Jo Bragan, Chief,  
Water Enforcement Branch  
Enforcement and Compliance Assurance Division

FINAL ORDER

Having determined that this Agreement is authorized by law, the foregoing Expedited Settlement Agreement is hereby incorporated into the Final Order.

IT IS SO ORDERED:

\_\_\_\_\_  
Tanya Floyd  
Regional Judicial Officer

**ENCLOSURE A**  
**Industrial Stormwater Non-Filer Inspection**  
**Findings, Alleged Violations, and Proposed Penalty Form**

1. To accomplish the objective of the Clean Water Act (CWA), as defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants into navigable waters except as in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the U.S. Environmental Protection Agency or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. The EPA has granted the state of Georgia through the Georgia Environmental Protection Division (EPD) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.
3. North Fulton Metals, LLC (Respondent), owns and operates a metal fabrication facility located at 11460 North Fulton Industrial Blvd, Alpharetta, GA 30009 (Facility). The Facility is identified by Standard Industrial Classification (SIC) Code 5093.
4. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), an NPDES permit is required for "a [stormwater] discharge associated with industrial activity."
5. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), "[f]acilities classified within Standard Industrial Classification... 34..." which would include SIC Code 5093 are considered to be engaging in "industrial activity" for purposes of 40 C.F.R. 122.26(b)(14).
6. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), and its implementing regulations at 40 C.F.R. §122.26(b)(14)(vi), require that an industrial facility discharging stormwater into navigable waters of the United States must obtain an NPDES permit.
7. On December 9, 2021, representatives of the EPA, in conjunction with EPD, performed a Compliance Stormwater Evaluation Inspection (CSWEI) at the Facility to evaluate Respondent's compliance with the requirements of Section 301 of the CWA, 33 U.S.C. § 1311; and the regulations promulgated thereunder at 40 C.F.R. § 122.26.
8. On January 10, 2022, the EPA issued an Inspection Report to Respondent. During the CSWEI, the EPA inspectors observed the following:
  - A. The Facility had outdoor industrial loading and unloading operations, material storage, and waste material storage activities with potential exposure and contribution to stormwater contamination.
  - B. The Facility had stormwater runoff which discharges offsite into a ditch that leads to Foe Killer Creek. Foe Killer Creek drains into the Chattahoochee River which is a navigable water of the United States.

- C. Respondent's industrial activity at the Facility, which included metal fabrication, is classified under SIC Code 5093. Facilities operating under SIC Code 5093, industrial Sector N, are required to obtain a general NPDES permit coverage for their stormwater discharges.
  - D. Respondent did not have an NPDES permit at the time of the CSWEI and did not submit a Notice of Intent for permit coverage until after the violations alleged in this action.
9. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), and its implementing regulations at 40 C.F.R. §122.26(b)(14)(vi), as referenced above, require that an industrial facility discharging stormwater into navigable waters of the United States must obtain an NPDES permit. The EPA's industrial stormwater guidance anticipates potential discharges from an industrial site to occur with rain events greater than 0.1 inch. In the EPA's industrial penalty policy, 0.5 inches during a 24-hour period is used as the general benchmark for likely stormwater runoff. According to rain data available from Weatherunderground.com for this area, 59 months during the period of December 2016 to December 2021 had one or more daily rain events greater than 0.5 inches. Due to the hydrology of the Facility in which significant portions of the site are covered in impervious surfaces and/or tightly packed material, the EPA has determined that from December 2016 to December 2021 stormwater associated with Respondent's industrial activities discharged offsite into a stormwater drainage ditch. This ditch drains stormwater in a northern direction to Foe Killer Creek. Foe Killer Creek drains to the northwest where it joins Big Creek and then the Chattahoochee River. The Chattahoochee River is situated approximately 3.6 miles from the Facility.
  10. The Chattahoochee River is a traditionally navigable water of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2(q)(1988).
  11. Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging stormwater from the Facility without proper authorization to navigable waters of the United States.
  12. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.13(b), and in accordance with the EPA's September 8, 2016, Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements, the EPA is assessing a penalty of \$7,500 for the above-mentioned violations.

## Enclosure B

### Expedited Settlement Agreement and Final Order Payment Instructions

Payment shall be in a single payment, due no later than 30 calendar days from the effective date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall:

- designate the name and docket number of this case, and
- be payable to "Treasurer, United States of America."

The payment shall be remitted as follows:

#### **If remitted by regular U.S. mail:**

U.S. Environmental Protection Agency / Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197

#### **If remitted by any overnight commercial carrier:**

U.S. Bank  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

**If remitted by wire transfer:** Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**If remitted through the Automated Clearing House (ACH) for receiving US currency:**

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737

**If remitted on-line with a debit card or credit card:** No user name, password, or account number is necessary for this option. On-line payment can be accessed via [www.pay.gov](http://www.pay.gov), entering 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent by mail and/or email to:

Regional Hearing Clerk  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960  
[R4\\_Regional\\_Hearing\\_Clerk@epa.gov](mailto:R4_Regional_Hearing_Clerk@epa.gov)

and

Lonnie Dorn  
U.S. EPA Region 4  
Water Enforcement Branch  
Enforcement and Compliance Division  
980 College Station Rd.  
Athens, GA 30605  
[Dorn.lonnie@epa.gov](mailto:Dorn.lonnie@epa.gov)

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Expedited Settlement Agreement" and "Final Order," in the Matter of **North Fulton Metals, LLC, Docket Number CWA-04-2022-0304(b)** were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties at the following email addresses:**

**To Respondent:** Darius Zostautas, Co-owner  
North Fulton Metals, LLC  
11460 North Fulton Industrial Blvd, Alpharetta, GA 30009  
dariusz@fultonmetalsrecycling.com

**To EPA:** Lonnie Dorn, Water Enforcement Branch  
U.S. EPA Region 4  
980 College Station Rd.  
Athens, GA 30605  
Dorn.Lonnie@epa.gov  
706-355-8683

Stephen P. Smith  
Associate Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
Smith.Stephen@epa.gov  
(404) 562-9554

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Shannon Richardson  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
[R4\\_Regional\\_Hearing\\_Clerk@epa.gov](mailto:R4_Regional_Hearing_Clerk@epa.gov)