

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4 (MODEL)**

**IN THE MATTER OF:**

Re-Tek, Inc.

Respondent

**DOCKET NO.:** CWA-04-2020-0401(b)

Industrial Stormwater Expedited Settlement Agreement  
Pursuant to Clean Water Act Section 309(g)(2)(A)

Permit No.: "Non-Filer"

Re-Tek, Inc. ("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.

On or about July 22, 2019, at 3320 Cleaton Road, Central City, Kentucky, the Respondent had unauthorized discharge(s) of stormwater in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311, as described on the attached "Industrial Stormwater Non-Filer Inspection Findings, Alleged Violations, and Proposed Penalty Form" ("Violations Form"), Enclosure A, which is incorporated herein by reference. By its signature, Complainant ("EPA") finds that Respondent is responsible for the alleged violations specified in the Violations Form.

The EPA finds, and Respondent admits, that Respondent is subject to Section 301 of the Act, 33 U.S.C. § 1311, and that the 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 Violations Form.

The EPA is authorized to enter into this Expedited Settlement Agreement and Final Order ("ESA") under the authority vested in the Administrator of the 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 \$20,000. Respondent consents to the assessment of this penalty and waives the right to: (1) contest the findings specified in the Violations Form; (2) appeal the Final Order; (3) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (4) 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 taken corrective actions that will prevent future unauthorized discharges and has addressed the alleged violations identified in the Violations Form by either a) developing and implementing a Stormwater Pollution Prevention Plan and submitting to the permit authority a Notice of Intent to be covered by the applicable industrial stormwater permit; or b) acting to meet eligibility requirements for a waiver from industrial stormwater permit requirements as allowed by the permit authority and submitting the relevant forms (such as the Non-Exposure Certification form) to the permit authority.

Respondent agrees to pay the penalty assessed within thirty (30) calendar days of the effective date of this Agreement. Instructions for making the penalty payment are enclosed with this Agreement as Enclosure B, which is incorporated herein by reference. Failure by Respondent to pay the penalty assessed by this ESA in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest, attorney's fees, and costs, pursuant to Clean Water Act § 309(g)(9), 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any payment made pursuant to this ESA is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore, Respondent shall not claim it as a tax-deductible expenditure for purposes of federal, state, or local law.

This ESA settles the EPA's civil penalty claims against Respondent for the alleged Clean Water Act violations specified in this Agreement. The 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. The EPA does not waive its right to issue a compliance order for any uncorrected alleged violation(s) described in the Violations Form. The EPA has determined this ESA to be appropriate.

This ESA is binding on the parties signing below. Each person signing this ESA 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 is effective upon filing with the Regional Hearing Clerk. If Respondent does not sign and return this ESA within thirty (30) calendar days of the date of its receipt, the proposed ESA will be withdrawn without prejudice to the EPA's ability to file another enforcement action for the noncompliance identified in the Violations Form, unless an extension has been granted by the EPA.

APPROVED BY RESPONDENT:

Name (print): JOHN N. BOHRMAN II

Title (print): COMMGR/V.P.

Signature: [Handwritten Signature] Date: 7/6/20

APPROVED BY EPA:

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

FINAL ORDER

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

Date: \_\_\_\_\_  
Tanya Floyd  
Regional Judicial Officer

## ENCLOSURE A

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

1. Re-Tek, Inc. (Respondent) owns and operates a waste rubber recycling facility located at 3320 Cleaton Road, Central City, Kentucky (Facility). The Facility is identified by Standard Industrial Classification (SIC) Code 5093.
2. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), a National Pollution Discharge Elimination System (NPDES) permit is required for “a [stormwater] discharge associated with industrial activity.”
3. Pursuant to 40 C.F.R § 122.26(b)(14)(vi), “[f]acilities involved with the recycling of materials, ... including but limited to those classified as Standard Industrial Classification 5015 and 5093” are considered to be engaging in “industrial activity” for purposes of 40 C.F.R. 122.26(b)(14).
4. On July 22, 2019, representatives of the EPA, in conjunction with the Kentucky Department of Environmental Protection (KDEP), performed a Compliance Stormwater Evaluation Inspection (CSWEI) at Re-Tek’s Facility to evaluate the Respondent’s compliance with the requirements of Sections 301 of the CWA, 33 U.S.C. § 1311; and the regulations promulgated thereunder at 40 C.F.R. § 122.26.
5. On September 12, 2019, the EPA issued an Inspection Report to the Respondent. During the CSWEI, the EPA inspectors observed the following:
  - A. The facility had outdoor industrial processes, including but not limited to, loading and unloading operations, material storage, product storage, and equipment fueling and maintenance activities with potential exposure and contribution to stormwater contamination.
  - B. The facility had a process water outfall, from the shredder building, discharging to the ground outside of the building where it commingles with stormwater runoff and discharges to waters of the United States.
  - C. The Facility is a waste rubber recycling operation (SIC Code 5093) but has not submitted an NOI for coverage under the existing Permit.
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), as referenced above, require that an industrial facility discharging stormwater into a surface water 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 the rain data available for this area, every month during the period of May 2015 to April 2020 has 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 May 2015 to April 2020 stormwater associated with Re-Tek's industrial activities were directed to either one of the water conveyances along the northeast or southwest sides of the facility. These conveyances direct runoff to the two unnamed tributaries along the north and south sides of the property. These unnamed tributaries connect into another unnamed tributary roughly half a mile east of the facility which flows south for roughly 2.5 miles where it connects with Pond Creek. Both the unnamed tributaries and Pond Creek downstream of the facility are impaired for a number of pollutants including, but not limited to, sediment, metals, and salts.

7. Pond Creek 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 its implementing regulation 40 C.F.R. § 122.2.
8. Respondent has violated Sections 301 of the CWA, 33 U.S.C. § 1311, by discharging stormwater from the Facility without proper authorization to waters of the United States.
9. 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 \$20,000 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 to:

Patricia Bullock, Regional Hearing Clerk  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960  
(404) 562-9511

and

Ahmad Dromgoole  
U.S. EPA Region 4  
Water Enforcement Branch  
Enforcement and Compliance Division  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Expedited Settlement Agreement" and "Final Order," in the Matter of **Re-Tek, Inc., Docket No. CWA-04-2020-0401(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:** John N. Boarman II, General Manager  
Re-Tek, Inc.  
3320 Cleaton Road, Central City, KY - 42337  
j.boarman.retek@hotmail.com

**To EPA:** Mr. Ahmad Dromgoole, Water Enforcement Branch  
United States Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960  
(404) 562-9212  
Dromgoole.Ahmad@epa.gov

AND

Bianca N. Jaikaran, Associate Regional Counsel  
United States Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960  
(404) 562-9680  
Jaikaran.Bianca@epa.gov

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Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960