

## **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.