

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

NORTH STAR PAVING &
CONSTRUCTION, INC.
Soldotna, Alaska

Respondent.

DOCKET NO. SDWA-10-2021-0002

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(c).

1.2. In accordance with Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22 (“Part 22 Rules”), EPA issues, and North Star Paving & Construction, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

1.3. Congress authorized EPA to administer the Underground Injection Control (“UIC”) program within any state that does not have an approved UIC program. SDWA § 1422(c), 42 U.S.C. § 300h-1(c).

1.4. The State of Alaska does not have an approved UIC program for Class V injection wells. Therefore, EPA Region 10 directly implements the Class V UIC program in the State of Alaska. 40 C.F.R. § 147.101.

1.5. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), grants EPA enforcement authority whenever the Administrator finds that any person subject to any requirement of any applicable UIC program is violating that requirement. EPA's enforcement authority includes commencing a civil action under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), or issuing an administrative order to require compliance with UIC regulations, to assess penalties, or both under Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c).

1.6. Section 1445 of the SDWA, 42 U.S.C. § 300j-4, authorizes EPA to conduct inspections and to request information to determine whether the owner or operator of an injection well has acted or is acting in compliance with the UIC program.

1.7. Section 1445 of the SDWA, 42 U.S.C. § 300j-4, authorizes EPA to require an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations.

II. PRELIMINARY STATEMENT

2.1. Issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective. 40 C.F.R. §§ 22.13(b), 22.18.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant") has been delegated the authority, pursuant to Section 1423(c) of the

SDWA, 42 U.S.C. § 300h-2(c), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the SDWA is proposed to be assessed.

2.3. Respondent admits the jurisdictional allegations of this Consent Agreement.

2.4. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

2.5. Respondent is voluntarily entering into the terms of this Consent Agreement, and as a result, Respondent agrees not to request a hearing on this Consent Agreement at any time and Respondent also agrees to not request a hearing on the Final Order after it becomes effective in accordance with Paragraph 2.1. SDWA § 1423(c)(3)(A), 42 U.S.C. § 300h-2(c)(3)(A).

2.6. Respondent agrees not to contest EPA's jurisdiction or authority to enter into or enforce this Consent Agreement. Respondent agrees not to contest the validity of any terms and conditions of this Consent Agreement in any action to enforce, or any action arising from, this Consent Agreement.

2.7. This Consent Agreement and Final Order shall bind Respondent and its agents, employees, attorneys, successors, and assigns, and all persons, contractors, and consultants acting in concert with Respondent.

2.8. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the SDWA together with the specific provisions of the SDWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1. Underground injection is prohibited, except as authorized by rule or permit under the UIC program. 40 C.F.R. § 144.11.

3.2. Class V injection wells are authorized by rule under 40 C.F.R. § 144.24(a). Injection into those Class V injections wells is prohibited under 40 C.F.R. § 144.24(c)(3) upon a failure to submit inventory information in a timely manner pursuant to 40 C.F.R. § 144.26.

3.3. Injection activity that allows the movement of fluids containing any contaminant into an Underground Source of Drinking Water endangers drinking water sources and is prohibited if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons. SDWA § 1421(b)(1), (d)(2), 42 U.S.C. § 300h(b)(1), (d)(2); 40 C.F.R. §§ 144.12(a), 144.82(a)(1).

3.4. A “contaminant” is any physical, chemical, biological, or radiological substance or matter in water. SDWA § 1401(6), 42 U.S.C. § 300f(6); 40 C.F.R. § 144.3.

3.5. A “motor vehicle waste disposal well” (“MVWDW”) is a Class V well that receives or has received fluids from facilities at which vehicular repair or maintenance occurs. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (“MCLs”) established by federally mandated primary drinking water regulations. These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health. 40 C.F.R. § 144.81(16); 64 Fed. Reg. 68546.

3.6. The UIC regulations prohibit the construction of any MVWDW on or after April 5, 2000, and require that all MVWDWs in Alaska that were operational or under

construction on April 5, 2000, be closed by January 1, 2005. 40 C.F.R. §§ 144.87(b)(1)(i), 144.88(b)(1)(v), (2).

General Allegations

3.7. Respondent is a company and is therefore a “person” within the meaning of the SDWA. SDWA § 1401(12), 42 U.S.C. §§ 300f(12); 40 C.F.R. § 144.3.

3.8. Respondent is the “owner” and/or “operator” of the property located at 44251 Frontier Avenue in Soldotna, Alaska (“the Site”). 40 C.F.R. § 144.3.

3.9. The Site includes a vehicle maintenance shop, in which Respondent performs maintenance and repairs on motor vehicles.

3.10. At times relevant to this Consent Agreement, Respondent operated an internal, open floor drain system that drained and placed various fluids from the Site, including motor vehicle waste from an unmaintained oil/water separator, at least directly below the land surface (“Injection Well”).

3.11. The Site includes a building utilizing an Injection Well which receives fluids from open drains located on the shop floor which drains directly to ground.

3.12. The Injection Well exists for the purpose of underground injection of fluids and is therefore a Class V injection well. 40 C.F.R. §§ 144.3, 144.6, 144.81, and 146.5.

3.13. As the “owner” and/or “operator” of Class V injection well, Respondent is subject to regulation under the UIC program. 40 C.F.R. § 144.3.

3.14. The Injection Well receives fluids from vehicular body repair or maintenance activities and, therefore, is a MVWDW. 40 C.F.R. § 144.81(16); 64 Fed. Reg. 68546.

3.15. The Injection Well at the Site overlays the regional aquifer system and is not within the area of an exempted aquifer. 40 C.F.R. § 146.4.

3.16. The aquifer system underneath the Site is an Underground Source of Drinking Water (“USDW”). 40 C.F.R. § 144.3.

Violations

Count 1: Endangerment of an Underground Source of Drinking Water

3.17. The statements in Paragraphs 1.1 – 3.16 are hereby incorporated by reference as if set forth in full.

3.18. Fuels and other motor vehicle fluids may contain contaminants, such as benzene, toluene, ethylbenzene, xylenes, cadmium, chromium, and lead, in concentrations which exceed Maximum Contaminant Levels (“MCLs”), as established in the primary drinking water regulations under 40 C.F.R. Part 141.

3.19. Fuels, other motor vehicle fluids, and/or other contaminants may cause a violation of primary drinking water regulations or may otherwise adversely affect the health of persons if allowed to move into a USDW.

3.20. Respondent constructed, operated, maintained, converted, plugged, abandoned, or conducted other injection activity in a manner that allowed the movement of fluid containing any contaminant into a USDW, such that the presence of that contaminant may cause a violation of a primary drinking water regulation or may otherwise adversely affect the health of persons, in violation of 40 C.F.R. §§ 144.12(a) and 144.82(a)(1).

3.21. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent is liable for administrative civil penalties up to \$23,331 per violation per day during which the violation continued (81 Fed. Reg. 43095) as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act

of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

Count 2: Failure to close a MVWDW by January 1, 2005

3.22. The statements in Paragraphs 1.1 – 3.16 are hereby incorporated by reference as if set forth in full.

3.23. Respondent failed to close or receive a permit for the Injection Well, which is a MVWDW, by January 1, 2005, in violation of 40 C.F.R. §§ 144.87(b)(1)(i) and 144.88(b)(1)(i).

3.24. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent is liable for administrative civil penalties up to \$23,331 per violation per day during which the violation continued (81 Fed. Reg. 43095) as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

Count 3: Failure to Submit Inventory Information Prior to Commencing Injection

3.25. The statements in Paragraphs 1.1 – 3.16 are hereby incorporated by reference as if set forth in full.

3.26. Respondent failed to submit inventory information prior to injecting into a Class V well authorized by rule in violation of 40 C.F.R. § 144.24(c)(3).

3.27. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, Respondent is liable for administrative civil penalties up to \$23,331 per violation per day during which the violation continued (81 Fed. Reg. 43095) as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act

of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

IV. TERMS OF SETTLEMENT

4.1. Based upon the FINDINGS AND CONCLUSIONS in Part III of this Consent Agreement, and pursuant to Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), Respondent is ORDERED and AGREES to the following:

Compliance Order

4.2. **Prohibition of Injection:** Respondent shall not inject any fluid into the Injection Well.

4.3. **Implementation of Well Closure Requirements:** Respondent shall implement the Well Closure requirements described in Paragraph 4.11.

4.4. **Notifications:**

a. Respondent shall provide EPA's Project Coordinator, identified in Paragraph 4.8, notification by email no less than five (5) days prior to commencement of any activity under this Consent Agreement.

b. Respondent shall provide a copy of this Consent Agreement to any contractor and/or consultant retained to perform any work described in this Consent Agreement at least 48 hours prior to the initiation of such work. Respondent shall simultaneously provide EPA's Project Coordinator, identified in Paragraph 4.8, written notice that the notice required in this subparagraph was given. No contract between Respondent and a contractor and/or a consultant shall affect Respondent's obligation to comply fully with this Consent Agreement.

c. Respondent shall provide a copy of this Consent Agreement to any successor in ownership, control, operation, or any other interest in all or part of the Injection Well, at least

thirty (30) days prior to the transfer. Respondent shall simultaneously provide EPA's Project Coordinator, identified in Paragraph 4.8, written notice that the notice required in this subparagraph was given. A transfer of property rights at the Site will not affect Respondent's obligation to comply fully with this Consent Agreement.

4.5. **Site Access:** This Consent Agreement does not affect EPA's authority to enter, inspect, sample, or monitor compliance under any law, permit, court order, or agreement. Respondent shall provide EPA or its authorized representatives access to the Site upon reasonable notice. EPA or its authorized representatives shall be permitted to move freely at the Site and appropriate off-site areas to determine compliance with this Consent Agreement and to conduct actions in accordance with this Consent Agreement.

4.6. **Site Data:** Upon EPA's request, Respondent shall provide the requestor access to all records and documentation related to the conditions at the Site and to results or data pertaining to the restoration and mitigation activities conducted under this Consent Agreement.

4.7. **Record Preservation:** Respondent shall preserve and retain, and shall instruct any consultant and other persons acting on their behalf, to preserve and retain all records and documents relating in any manner to the requirements of Paragraph 4.11 for three years after EPA has issued a written approval of Respondent's final report. At the end of that three-year period, EPA may request Respondent to provide EPA with copies of any records and documents related to this Consent Agreement or implementation of the requirements of Paragraph 4.11. If EPA requests records and documents, Respondent shall, at no cost to EPA, but subject to a claim of privilege, provide EPA the original or copies of the records and documents within thirty (30) days of EPA's request. If EPA makes no request at the end of the three-year period, Respondent may dispose of the records and documents.

4.8. **Project Coordinator:**

a. Donna Ortiz is the EPA Project Coordinator who shall oversee implementation of this Consent Agreement. The Project Coordinator shall receive communications, which include, but are not limited to, all documents, reports, comments, approvals, and other correspondence submitted or exchanged under this Consent Agreement. All submissions required by this Consent Agreement shall be sent to:

Donna Ortiz
U.S. Environmental Protection Agency
Field, Data, & Drinking Water Enforcement Section
1200 Sixth Avenue, ECAD-20-CO4
Seattle, Washington 98101
Phone: (206) 553-2429
Email: Ortiz.donna@epa.gov

b. Within ten (10) days of the effective date of this Consent Agreement and Final Order in accordance with Paragraph 2.1, Respondent shall identify a project coordinator for purpose of receipt of all communication and implementation of this Consent Agreement. The contact information for this project coordinator shall be sent to the EPA Project Coordinator.

4.9. **Failure to comply:** Failure to timely and appropriately implement to EPA's satisfaction any element of the requirements of Paragraph 4.11 shall be deemed a violation of this Consent Agreement and the SDWA.

4.10. **Scope of Consent Agreement Compliance Order Section:**

a. This Consent Agreement is not and shall not be construed to be a permit under the SDWA, nor shall it relieve or affect Respondent's obligation under the SDWA, or any other applicable federal or state laws, regulations or permits. Compliance with this Consent Agreement shall be no defense to any actions commenced pursuant to applicable laws, regulations, or permits.

b. This Consent Agreement shall not be construed to preempt or preclude in any way any future administrative order issued by EPA or judicial action brought by the United States. This Consent Agreement shall not be construed to resolve any claims for administrative or civil penalties that are not set out in this Consent Agreement and that may be assessed or sought by EPA or the United States.

c. This Consent Agreement shall in no way affect the rights of EPA or the United States against any person not a party to this Consent Agreement.

d. Nothing in this Consent Agreement shall be deemed to constitute a precedent by any party for any future administrative order, consent agreement, consent decree or civil action relating to the Site and/or any restoration work undertaken at the Site.

4.11. **Well Closure Requirements:** To successfully implement the well closure requirements, Respondents shall comply with the following standards and requirements:

a. **Well Closure:**

1. Closure Plan: On July 9, 2020, Respondent submitted a Draft Closure Plan to EPA. EPA approved the Draft Closure Plan on August 27, 2020.

2. Closure: Respondent shall close the Injection Well at the Site no later than November 30, 2020, following the approved Closure Plan. Closure shall be in accordance with 40 C.F.R. §§ 144.82, 144.89, and 146.10(c), including removal of all contaminated liquids, sludge, and soil from in and around the Injection Well. Well closure activities include permanent disconnection from the floor drain to the leachfield. All potential piping must be disconnected.

Additionally, the facility must include a plan for the proper disposal of the floor drain wastewater including potential installation of a holding tank, evaporation

pond, etc. Any installation of a holding tank or evaporation pond would require Alaska Department of Environmental Conservation (“ADEC”) approval. No discharge of floor drain effluent is allowed to access leachfield soils or groundwater.

3. Final Well Closure Report: Respondent shall submit to EPA a Final Well Closure Report for the Injection Well no later than December 15, 2020, with documentation of all closure activities for the Injection Well, including a narrative statement describing the closure procedures, photographic documentation of all closure activities, and confirmatory sample results and any waste manifests from the closure of the Injection Well, in accordance with the EPA Region 10 *Guidance for Underground Injection Control (UIC) Class V Well Closures* and Paragraph 4.11.

i. EPA will review and approve or disapprove the Final Well Closure Report. After reviewing this document, EPA may require edits and/or additional information to the Final Well Closure Report before approving. All revisions to the Final Well Closure Report shall be completed within fourteen (14) calendar days of notice that the Final Well Closure Report has been disapproved.

b. *Performance Standards for Well Closure*: Closure of the Class V Injection Well shall be conducted in a manner that protects Underground Sources of Drinking Water and complies with all applicable laws and regulations related to removal of materials from the well and adjacent to the well: 40 C.F.R. §§ 144.12(a), 144.82, 144.89, and 146.10(c).

c. Summary of Deliverables: The schedule of activities under the requirements of Paragraph 4.11 may be summarized as follows:

Deliverables / Actions	Due Date
Well Closure Complete	November 30, 2020
Final Well Closure Report Submitted	December 15, 2020

4.12. Force Majeure:

a. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines set forth in this Consent Agreement, Respondent or its attorney shall, within forty-eight (48) hours of the delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay, whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) 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. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

b. If EPA agrees in writing that the delay or anticipated delay in compliance with this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance may be extended for the period of the delay resulting

from the circumstances causing the delay. In such event, EPA will grant, in writing, an extension of time. An extension of the time for performing an obligation granted by EPA pursuant to this paragraph shall not, of itself, extend the time for performing a subsequent obligation.

4.13. **Termination and Satisfaction:** In accordance with Paragraph 4.11, Respondent shall submit to EPA a Final Well Closure Report documenting the completion of all requirements described in Paragraph 4.11. Upon receipt of a Final Well Closure Report, EPA may schedule an inspection of the Injection Well with Respondents and other interested state and/or federal agencies. After completion of the inspection, EPA will notify Respondent in writing whether the compliance with this Order is fully completed. EPA's Project Coordinator will provide this notification by telephone as promptly as possible. With the exception of Paragraphs 4.2 and 4.5 through 4.7, this Consent Agreement shall terminate after EPA issues a written approval of Respondent's Final Well Closure Report and it is verified by EPA that Paragraphs 4.15 – 4.20 are satisfied.

4.14. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Paragraphs 4.2 – 4.13, is restitution or required to come into compliance with law.

Administrative Penalty

4.15. Pursuant to Section 1423(c)(1) of the SWDA, 42 U.S.C. § 300h-2(c)(1), and in consideration of the statutory penalty factors identified in Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), EPA determined and Respondent agrees that an appropriate penalty to settle this action is \$130,000 (the "Assessed Penalty").

4.16. Respondent agrees to pay the Assessed Penalty within thirty (30) days of the effective date of the Final Order in accordance with Paragraph 2.1, and to undertake the actions specified in this Consent Agreement

4.17. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check shall be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent shall note on the check the title and docket number of this action.

4.18. Concurrently with payment, Respondent shall serve photocopies of the check, or proof of other payment method described in Paragraph 4.17, on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S ORC-11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Young.teresa@epa.gov

Donna Ortiz
U.S. Environmental Protection Agency
Region 10, M/S ECAD-20-CO4
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Ortiz.donna@epa.gov

4.19. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with costs, attorney's fees, and interest, as set

forth below. In any collection action, the validity, amount, and appropriateness of the penalty will not be subject to review. SDWA § 1423(c)(7), 42 U.S.C. § 300h-2(c)(7).

4.20. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.20.1. *Interest.* Any unpaid portion of the Assessed Penalty will bear interest, at the rate established by the Secretary of the United States Treasury, from the effective date of the Final Order contained herein, provided, however, that no interest will be payable on any portion of the Assessed Penalty that is paid within thirty (30) days of the effective date of the Final Order contained herein. SDWA § 1423(c)(7), 42 U.S.C. § 300h-2(c)(7); 31 U.S.C. § 3717(a)(1).

4.20.2. *Nonpayment Penalty.* Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than ninety (90) days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.20.3. *Attorneys' Fees and Costs.* Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), should Respondent fail to pay the Assessed Penalty on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings.

4.21. **Federal Tax.** The Assessed Penalty, including any additional costs incurred under Paragraphs 4.20.1 and 4.20.2, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C § 162(f).

General Provisions

4.22. The undersigned representative of Respondent certifies that they are fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.23. Except as described in Paragraph 4.20 of this Consent Agreement, each party shall bear its own costs in bringing or defending this action.

4.24. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.25. The provisions of this Consent Agreement and the Final Order shall bind Respondent and their agents, servants, employees, successors, and assigns.

4.26. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.27. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR NORTH STAR PAVING & CONSTRUCTION, INC:

CAREY FOSTER
President
North Star Paving & Construction, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10