

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
D&B CUSTOM POWDER COATINGS & ) CONSENT AGREEMENT AND  
HYDROGRAPHICS, INC. ) FINAL ORDER  
TRENTON, DADE COUNTY, GEORGIA )  
 )  
RESPONDENT. ) Docket No.: CWA-04-2016-4522(b)  
 )

HEARING CLERK

2016 NOV - 8 AM 8:32

USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL

**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999), codified at 40 Code of Federal Regulations ("C.F.R.") Part 22 ("Part 22").

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A) is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the NPDES Permitting and Enforcement Branch of EPA Region 4 ("Complainant").

**II. Allegations**

3. To accomplish the objective of the CWA, 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 discharge of pollutants by any person into waters of the United States except as in compliance with Section 307 of the CWA, 33 U.S.C. § 1317.

4. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), prohibits the discharge of pollutants into a publicly owned treatment works ("POTW") in violation of any effluent standard, prohibition, or pretreatment standard promulgated under Section 307 of the CWA, 33 U.S.C. § 1317.

5. Noncompliance with any pretreatment standard, prohibition or effluent standard is a violation of the Clean Water Act. 33 U.S.C. § 1317.

6. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, the EPA has established standards that govern discharges into POTWs that discharge to navigable waters. The General Pretreatment Regulations, found at 40 C.F.R. Part 403, are designed to ensure that each POTW can comply with its National Pollution Discharge Elimination System ("NPDES") permit.

7. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a state may establish its own pretreatment program by receiving approval of the program by the Administrator of the EPA.

8. The Georgia Environmental Protection Division ("GEPD") is the state agency with the authority to administer the Pretreatment Program in Georgia pursuant to 33 U.S.C. § 1342(b), implementing regulations, and a Memorandum of Agreement dated October 15, 2007. As such, GEPD is the Approval Authority as defined by 40 C.F.R. § 403.3(c).

9. Pursuant to 40 C.F.R. § 403.10(e), GEPD shares responsibility for implementing the Pretreatment Program in Georgia in addition to certain POTWs it approves to implement independent pretreatment programs. Because the local POTW in this matter does not have a GEPD-approved pretreatment program, GEPD is the Control Authority for purposes of this matter as defined by 40 C.F.R. § 403.3(f) and responsible for the requirements in 40 C.F.R. § 403.8(f).

10. In states authorized to implement their own pretreatment programs, the EPA retains authority concurrent with the authorized state pretreatment program to enforce state-issued permits, pursuant to 33 U.S.C. §§ 1319(a)(3) and 1342(i).

11. In addition, EPA has promulgated pretreatment standards for specified categories of industrial users pursuant to Section 307(b) of the CWA. These categories of industrial users, or "categorical" industrial users, are subject to specific pretreatment requirements set forth at 40 C.F.R. Parts 405-471; and Georgia Rule 391-3-6-.08(u)2.

12. Pursuant to 40 C.F.R. § 403.6, categorical standards are in addition to all other applicable pretreatment standards.

13. An "industrial user" is a nondomestic source that discharges pollutants to a POTW. 40 C.F.R. §§ 403.3(i), (j); and Georgia Rule 391-3-6-.08(2)(i). The metal finishing industry is one of the specified industries subject to categorical pretreatment standards. See 40 C.F.R. Part 433. These categorical pretreatment standards apply to facilities that perform coating as a metal finishing operation on any base material, including chromating, phosphating, and coloring.

14. At all times relevant to this action, D&B Custom Powder Coatings & Hydrographics, Inc. ("Respondent"), was and currently is an incorporated company, duly organized and existing under the laws of the State of Georgia and, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). At all times relevant to this action, Respondent owned and currently owns and operated and currently operates a powder coatings and hydrographics applications facility ("Facility") located at 457 N. Industrial Boulevard in Trenton, Dade County, Georgia, 30753.

15. The Facility is an industrial facility which prepares metal objects for powder coating by either sand-blasting or liquid acid etching. Once the metal is prepared it is then

sprayed with the coating product and then placed in a high-heat oven to cure the powder coating to the finished product and cooled.

16. On April 27, 2006, the Respondent began construction of the Facility. Operations started at the Facility approximately four months later, on August 1, 2006.

17. The Respondent discharges industrial wastewater from its Facility to the Dade County Water and Sewer Authority, Wastewater Treatment Plant ("WWTP" or "treatment plant") and its conveyances, which comprise a publicly owned "treatment works" ("POTW") and "municipality" within the meaning of Sections 212(2) and 502(4) of the CWA, 33 U.S.C. §§ 1292(2) and 1362(4). This POTW is managed by the Dade County Water and Sewer Authority ("DCWSA").

18. A "new source" includes any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the CWA. 40 C.F.R. § 403.3(m)(1).

19. The proposed pretreatment standards for the metal finishing industry under 40 C.F.R. Part 433 were published on August 31, 1982. 47 Fed. Reg. 38,462.

20. The Respondent is subject to the categorical standards of 40 C.F.R. Part 433 for the Metal Finishing Subcategory, and, particularly, to the Pretreatment Standards for New Sources ("PSNS") in 40 C.F.R. § 433.17, which specify effluent limitations for a number of pollutants.

21. Pursuant to 40 C.F.R. § 403.3(v)(1)(i), "significant industrial users" include all industrial users subject to categorical pretreatment standards. See also Georgia Rule 391-3-6-.08(2)(u).

22. Pursuant to 40 C.F.R. § 403.8(f)(1)(iii), a significant industrial user, under the meaning of 40 C.F.R. § 403.3(v), is required to have a valid permit for discharge of wastewater to a POTW. See also Georgia Rule 391-3-6-.08(3)(a).

23. Pursuant to 40 C.F.R. § 403.6(b), new sources, shall install and have in operating condition all pollution control equipment required to meet applicable Pretreatment Standards prior to beginning discharge to a POTW.

24. Pursuant to 40 C.F.R. § 403.12(b), new sources are required to submit a baseline monitoring report to the Control Authority at least 90 days prior to commencement of discharge.

25. Pursuant to 40 C.F.R. § 403.12(d), within 90 days following commencement of discharge of wastewater into the POTW, any industrial user subject to pretreatment standards shall submit to the Control Authority a report on its initial compliance with such standards.

26. Pursuant to 40 C.F.R. § 403.12(e), any new source or categorical industrial user shall submit to the Control Authority a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards each June and December.

27. The Respondent is a "significant industrial user," as defined in 40 C.F.R. § 403.3(v); and Georgia Rule 391-3-6-.08(2)(u).

28. On June 24, 2014, the EPA conducted a Pretreatment Reconnaissance Inspection of the Facility to evaluate the Respondent's compliance with the requirements of: Sections 301 and 307 of the CWA, 33 U.S.C. §§ 1311 and 1317; the regulations promulgated thereunder at 40 C.F.R. Parts 403 and 433; and the State of Georgia's pretreatment regulations at Georgia Rule 391-3-6-.08.

29. Based on the observations made during its inspection, the EPA determined that the Respondent discharged to the DCWSA POTW for a period of 9 years, from August 1, 2006, to November 10, 2015, without obtaining a permit from the State of Georgia, the pretreatment control authority.

30. The Respondent did not install the necessary pollution control equipment prior to beginning discharge to the POTW in 2006 through November 9, 2015 as required by 40 C.F.R. § 403.6(b). The Respondent thus discharged to the POTW without the necessary pollution control equipment, in violation of 40 C.F.R. § 403.6(b).

31. Ninety days after commencing discharge to the POTW in 2006, the Respondent did not submit a report to the State of Georgia of its initial compliance with the pretreatment standards in 40 C.F.R. § 433.17. The Respondent has also not maintained the required record demonstrating its initial compliance with pretreatment standards per 40 C.F.R. §§ 403.12(d), 403.12(g), 403.12(l) and 403.12(o).

32. From August 1, 2006, until January 14, 2016, the Respondent had not submitted to the State of Georgia or maintained its own records of self-monitoring reports of compliance with 40 C.F.R. § 433.17, pursuant to 40 C.F.R. §§ 403.12(e), 403.12(g), 403.12(l) and 403.12(o).

33. The Respondent has violated Sections 301 and 307 of the CWA, 33 U.S.C. §§ 1311 and 1317, by discharging process wastewater without proper authorization to the DCWSA POTW, and by failing to comply with applicable pretreatment standards in 40 C.F.R. Parts 403 and 433, and Georgia Rule 391-3-6-.08.

### **III. Stipulations and Findings**

34. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

35. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

36. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

37. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

38. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

39. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

#### **IV. Payment**

40. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that eight thousand twenty nine dollars and ninety nine cents, (\$8,029.99) is an appropriate civil penalty to settle this action. Respondent consents to the assessment of and agrees to pay the civil penalty and consents to the other conditions set forth in this CA/FO.

41. Respondent shall submit payment of the penalty specified in the preceding paragraph in accordance with the schedule described in Paragraph 43 below via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

42. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Protection Division  
NPDES Permitting and Enforcement Branch  
Municipal and Industrial Enforcement Section  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

43. Respondent shall pay a civil penalty, which includes interest, in the amount of \$8,029.99 as follows:

- a. Within thirty (30) days of the effective date of this CA/FO, Respondent shall pay \$2007.50;
- b. Within one hundred twenty (120) days of the effective date of this CA/FO, Respondent shall pay \$2007.50;
- c. Within two hundred ten (210) days of the effective date of this CA/FO, Respondent shall pay \$2007.50;
- d. Within three hundred (300) days of the effective date of this CA/FO, Respondent shall pay \$2007.49.

44. The penalty amount specified in the above paragraph shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

45. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

#### **V. General Provisions**

46. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

47. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

48. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

49. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

50. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

51. Any change in the legal status of Respondent including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

52. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

53. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Michele Wetherington  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9613

For Respondent:

Mr. and Mrs. Dewayne Gass  
Owners of: D&B Custom Powder Coatings & Hydrographics, Inc.  
457 N. Industrial Boulevard  
Trenton, Georgia 30753  
(706) 657-3410

54. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

55. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

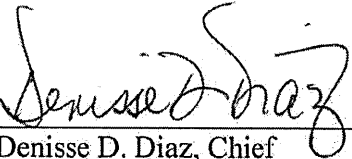
56. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment(s) required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

### VI. Effective Date

57. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.


#### AGREED AND CONSENTED TO:

For **COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:**

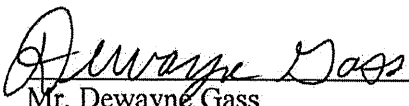
  
\_\_\_\_\_  
Denisse D. Diaz, Chief  
NPDES Permitting and Enforcement Branch  
Water Protection Division  
U.S. EPA, Region 4

Date: 11/1/2016

For **RESPONDENT, D&B CUSTOM POWDER COATINGS & HYDROGRAPHICS, INC.:**

  
\_\_\_\_\_  
Mrs. Brenda Gass  
Owner

Date: 8/29/16

  
\_\_\_\_\_  
Mr. Dewayne Gass  
Owner

Date: 8/29/16



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

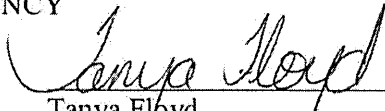
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HYDROGRAPHICS, INC. ) FINAL ORDER  
TRENTON, DADE COUNTY, GEORGIA )  
 )  
RESPONDENT. ) Docket No.: CWA-04-2016-4522(b)  
 )

**FINAL ORDER**

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: November 7, 2016

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

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **D&B CUSTOM POWDER COATINGS & HYDROGRAPHICS, INC.**, Docket No. CWA-04-2016-4522(b) (filed with the Regional Hearing Clerk on 11-8, 2016) was served on 11-8, 2016, in the manner specified to each of the persons listed below.

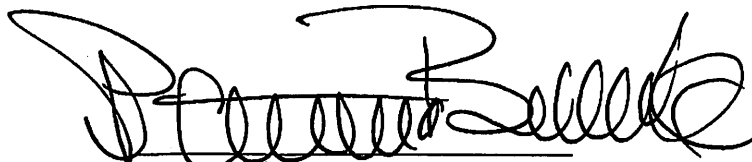
By hand-delivery:

Michele Wetherington  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9613

By certified mail,  
return receipt requested:

Mr. Dewayne Gass and Mrs. Brenda Gass  
Owners, D&B Custom Powder Coating & Hydrographics, Inc.  
457 N. Industrial Boulevard  
Trenton, Georgia 30753

Ms. Jill Causse  
Manager, Industrial Pretreatment Compliance Unit  
Georgia Environmental Protection Division  
2 Martin Luther King, Jr. Drive S.W., Suite 1152  
Atlanta, Georgia 30334



Ms. Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511