

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CHATTAHOOCHEE RIVERKEEPER,)
INC.,)

Plaintiff,)

v.)

A&R IRONWORKS, LLC and)
ARNWORKS PROPERTIES LLC,)

Defendants.)

Civil Action File
No. 1:19-CV-02949-AT

CONSENT DECREE

WHEREAS, Plaintiff Chattahoochee Riverkeeper, Inc. filed a Complaint against Defendants A&R Ironworks, LLC and Arnworks Properties LLC (“Defendants”) on June 27, 2019, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to the alleged unlawful discharge of pollutants into Burnt Fork Creek, Peachtree Creek, and the Chattahoochee River, and seeking declaratory judgment, injunctive relief, civil penalties, and attorneys’ fees and costs;

WHEREAS, Defendants deny Plaintiff’s claims and any liability for the alleged violations; and

WHEREAS, Defendants have undertaken, and are implementing, measures to ensure compliance with the Clean Water Act at the Site (as defined in paragraph 4 of this Consent Decree) and to address issues raised in the Complaint filed by Plaintiff; and

WHEREAS, Plaintiff and Defendants agree that settlement of these matters is in the best interest of the parties and the public, and that entry of this Consent Decree without additional litigation is the most appropriate means of resolving this action; and

WHEREAS, Plaintiff and Defendants, by their authorized counsel and without trial or final adjudication of the issues of fact or law, with respect to Plaintiff's claims or allegations, consent to the entry of this Consent Decree in order to avoid the risks of litigation and to resolve the controversy between them.

NOW THEREFORE, without trial of any issue of fact or law, and without admission by Defendants of the facts or violations alleged in the Complaint, and upon consent of the parties, and upon consideration of the mutual promises herein contained, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the parties and subject matter of this action;

2. The undersigned representative for each party certifies that he is fully authorized by the party he represents to enter into the terms and conditions of this Consent Decree and to legally bind the party and successors in interest to it.

3. This Consent Decree shall apply to, and be binding upon, the parties, their successors, assigns, agents, representatives, and designees.

4. This Consent Decree shall apply to all of Defendants' regulated industrial activities at 3350 Montreal Station, Tucker, Georgia 30084 (the "Site").

5. This Consent Decree constitutes a full and complete settlement and release of the claims alleged in the Complaint in this case and all other claims known and unknown related to Defendants or the Site existing as of the date of entry of this Consent Decree, including but not limited to those that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, arising from Defendants' ownership of and activities at the Site.

6. This Consent Decree shall not constitute evidence in any proceeding, an admission or adjudication with respect to any matter alleged in or arising out of the Complaint, or an admission or evidence of any wrongdoing or misconduct on the part of Defendants.

7. In full and complete satisfaction of the claims covered by the Complaint, and all other claims covered by this Consent Decree, as described in

paragraph 5, Defendants agrees to abide by and be subject to the following terms and conditions:

a. Defendants shall fully and finally resolve to the satisfaction of the Georgia Environmental Protection Division (“EPD”) any and all notice of violation letters sent to the Defendants and/or the Defendants’ tenants at the Site and obtain EPD’s approval of an application for No Exposure Exclusion (“NEE”) certification for the entire Site; if such application is not approved by EPD within forty (40) days of entry of this Consent Decree, then the Defendants shall file a Notice of Intent (“NOI”) for coverage under Georgia’s General NPDES Permit for Discharges of Storm Water from Industrial Activities GAR050000 (the “General Permit”) and fully and comply with all provisions of the General Permit including but not limited to preparation of a Storm Water Pollution Prevention Plan within thirty (30) days thereafter.

b. The Defendants shall (i) ensure that any and all dumpsters on the Site have adequate covers to prevent infiltration of storm water; (ii) ensure sufficient vegetation is present on all exposed soils on the Site to prevent erosion and sediment transport to Burnt Fork Creek; and (iii) ensure that no painting occurs outside and uncovered at the Site.

c. If the Defendants' NEE application is approved by EPD, then the Defendants shall provide CRK with the required quarterly inspection reports for the Site through the fourth quarter of year 2020;

d. Defendants shall grant CRK access to the Site for a site inspection at a mutually convenient time no later than six (6) months after the entry of this Consent Decree; and

e. Nothing contained herein shall prevent Defendants from enjoying the full use of the Site in compliance with all applicable environmental requirements.

8. Within three (3) business days of entry of this Consent Decree, the Defendants will make donations totaling sixty thousand dollars (\$60,000.00) to the qualified, water quality related programs described in Attachments A and B to this Consent Decree, as follows:

- (i) Payment of forty thousand dollars (\$40,000.00) to the South Fork Conservancy to support the Conservancy in its program to protect and increase access to the South Fork Peachtree Creek (into which Burnt Fork Creek flows), as further described in Attachment A. The payment shall be made payable to South Fork Conservancy, and

mailed to South Fork Conservancy, P.O. Box 5433, Atlanta, Georgia 31107;

- (ii) Payment of twenty thousand dollars (\$20,000.00) to DeKalb County, Georgia restricted for use by the County's Department of Recreation, Parks and Cultural Affairs to the Naturalist Programs and Trail Systems located at the County's Mason Mill Park, 1340 McConnell Drive, Decatur, GA 30033, and as further described in Attachment B. The payment shall be made payable to DeKalb County, and mailed to Chuck O. Ellis, Director of Parks & Recreation for DeKalb County, 1950 West Exchange Place, Suite 400, Tucker, GA 30084;

9. Within three (3) business days of the entry of this Consent Decree, Defendants shall pay Plaintiff's reasonable attorneys' fees and other litigation expenses in the amount of one hundred and eighteen thousand seven hundred and seventeen dollars and fifty cents (\$118,717.50) by check payable and mailed to Chattahoochee Riverkeeper, Inc., 3 Puritan Mill, 916 Joseph Lowery Boulevard, Atlanta, Georgia, 30318 in full and complete satisfaction of any claims Plaintiff may have, including but not limited to those under the Clean Water Act, for fees and costs. Plaintiff warrants that it will make no additional claim for expenses of litigation, including attorneys' fees, under the Clean Water Act or any other state

or federal law in relation to the claims alleged in the Complaint and all others covered by this Consent Decree, as described in paragraph 5 of this Consent Decree.

10. The parties recognize that no consent judgment can be entered in a Clean Water Act suit in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the Administrator of the U.S. EPA pursuant to 33 U.S.C. §§ 1365(c)(3). Therefore, upon the signing of this Consent Decree by the parties, Plaintiff shall serve copies of it upon the Administrator of the U.S. EPA and the Attorney General.

11. Within three (3) business days of receipt of the monies set forth in paragraphs 8 and 9 above, Plaintiff and Defendants shall file a Joint Stipulation of Dismissal with Prejudice.

12. The Court shall retain jurisdiction over this matter and allow this case to be reopened without filing fee for the purpose of enabling the parties to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree until termination of the Consent Decree per paragraph 13. In the event of a dispute regarding implementation of, or compliance with, this

Consent Decree, the parties shall first attempt to informally resolve the dispute through meetings between the parties by serving written notice of request for resolution to the parties and their counsel of record. If no resolution is reached within thirty (30) days from the date that the notice of dispute is served, the parties may resolve the dispute by filing motions with the Court.

13. This Consent Decree shall take effect on the date it is entered by the Court. This Consent Decree shall terminate sixty (60) days following completion of all obligations under it.

14. This Consent Decree may be modified only upon the written consent of the parties and the approval of the Court.

15. If for any reason the Court should decline to approve this Consent Decree in the form presented, this Consent Decree and the settlement embodied herein shall be voidable at the sole discretion of either party. The parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Consent Decree.

16. Notifications or copies required by this Consent Decree to be made to Plaintiff shall be mailed to Chattahoochee Riverkeeper, Inc., 3 Puritan Mill, 916 Joseph Lowery Boulevard, Atlanta, Georgia, 30318, and Andrew M. Thompson, Smith, Gambrell & Russell, LLP, Promenade, Suite 3100, 1230 Peachtree Street,

N.E., Atlanta, Georgia 30309. Notifications required by this Consent Decree to be made to Defendants shall be mailed to John Chesnutt, 3350 Montreal Station, Tucker, Georgia 30084, Elizabeth Davis, Burr & Forman, 171 17th Street, Suite 1100, Atlanta, Georgia 30363.

17. This Consent Decree constitutes the entire agreement between Plaintiff and Defendants in this case. All prior conversations, meetings, discussions, drafts and writings of any kind between Plaintiff and Defendants are specifically superseded by this Consent Decree.

18. Nothing in this Consent Decree shall be construed to make any other person or entity not executing this Consent Decree a third-party beneficiary to this Consent Decree.

SO ORDERED this ___ day of _____, 2020.

THE HONORABLE AMY TOTENBERG.
United States District Court for the Northern
District of Georgia

CONSENTED AND AGREED TO BY:

CHATTAHOOCHEE RIVERKEEPER,
INC.

A&R IRONWORKS, LLC

(signature)

(signature)

Title

Title

Date

Date

ARNWORKS PROPERTIES LLC

(signature)

Title

Date