COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Carrollton Used Auto Parts, Inc. t/a Joe's Auto Parts
Storm Water Registration No. VAR050280

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Carrollton Used Auto Parts, Inc., regarding Joe's Auto Parts for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

2. "CSCE" means a comprehensive site compliance evaluation.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "DMR" means Discharge Monitoring Report.

6. "Facility" means the Joe's Auto Parts automobile salvage yard located at 22251 Brewers Neck Road, Carrollton, Isle of Wight County, Virginia, at which used motor vehicles are dismantled for the purpose of selling and recycling used automobile parts and/or scrap metal.

7. "Joe's" means Carrollton Used Auto Parts, Inc., trading as Joe's Auto Parts, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Joe's is a "person" within the meaning of Va. Code § 62.1-44.3.

8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

10. "Permit" means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity, which was effective July 1, 2004, and expired June 30, 2009, and which was renewed effective July 1, 2009, and expires June 30, 2014.

11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 9 VAC 25-31-10.

12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

13. "Registration statement" means a registration statement for storm water discharges under 9 VAC 25-151-60.

14. "Regulation" means the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity, 9 VAC 25-151-10 *et seq.*

15. "Sector M" means Industry Sector M defined by the Regulation as that sector of industry engaged, in part, in dismantling or wrecking used motor vehicles for parts recycling/resale and for scrap.

16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

18. "SWP3" means a storm water pollution prevention plan.

19. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

20. "Va. Code" means the Code of Virginia (1950), as amended.

21. "VAC" means the Virginia Administrative Code.

22. "VPDES" means Virginia Pollutant Discharge Elimination System.

23. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Joe's owns and operates the Facility in Isle of Wight County, Virginia. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR050280. Storm water from the Facility discharges to Creer Creek.

2. Creer Creek is located in the James River Basin and is listed as impaired in DEQ's 305(b) report due to excess levels of fecal coliform, polychlorinated biphenyl ("PCB") in fish tissue, and low dissolved oxygen ("DO"). The sources of the DO impairment include industrial point sources. The sources of the PCB and fecal coliform impairments are unknown.

3. Part I.A.1.a. of the Permit requires Joe's to perform and document quarterly visual examinations of the quality of the storm water discharging from the two storm water outfalls (Outfalls 001 and 002) identified in the Permit.

4. Part I.A.1.b and Part IV.C (for Sector M) of the Permit require Joe's to conduct benchmark monitoring of storm water discharges from the Facility's permitted storm water outfalls for the presence of four pollutants of concern (total suspended solids, aluminum, iron, and lead) once during each benchmark monitoring period and record benchmark monitoring results on a DMR. Before July 1, 2009, the Permit required that DMRs be retained at the Facility with the Facility SWP3. The renewed Permit, effective July 1, 2009, now requires that DMRs also be submitted to DEQ.

5. DEQ staff had conducted a routine compliance inspection on October 9, 2009, and noted failures to develop a Facility SWP3 and to perform quarterly visual examinations of storm water quality, benchmark monitoring of storm water discharges, Facility inspections, CSCEs, and the training of Facility employees in storm water pollution prevention, among other things. These deficiencies were noted in a Warning Letter dated November 16, 2009.

6. During a DEQ Facility inspection on February 4, 2010, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the Permit:

   a. The quarterly visual examinations of storm water quality required by Part I.A.1.a of the Permit had not been performed.

   b. The benchmark monitoring of storm water discharges required by Part I.A.1.b and Part IV.C (for Sector M) of the Permit had not been performed.

7. Joe's violated conditions Part I.A.1.a, Part I.A.1.b and Part IV.C (for Sector M) of the Permit as noted in paragraph C(6) of this Order.

8. Joe's is required to develop and implement a Facility SWP3 according to requirements outlined in Part III and Part IV.B (for Sector M) of the Permit.

9. Part III.B.2.c(3) of the Permit requires that the Facility SWP3 include a site map that identifies, among other things, locations of all storm water conveyances.

10. Part III.B.3 of the Permit requires that the Facility SWP3 contain a summary of potential pollutant sources.

11. Part III.B.6.b(5) of the Permit requires that the Facility be inspected at least quarterly for compliance with the Facility SWP3.

12. Part III.B.6.b(6) of the Permit requires that Facility employees be trained in storm water pollution prevention.

13. Part III.E of the Permit requires that a CSCE be conducted at least annually.

14. Part III.F.1 of the Permit requires that the Facility SWP3 be signed.

15. During the DEQ Facility inspection on February 4, 2010, DEQ staff noted that a Facility SWP3 had been developed since the October 9, 2009, Facility inspection and documented compliance deficiencies with respect to the SWP3 requirements of the Permit, including the following:

    a. The Facility site map contained in the Facility SWP3 that had been developed subsequent to the October 9, 2009, Facility inspection did not properly identify all

storm water conveyances from the Facility as required by Part III.B.2.c(3) of the Permit.

b. The Facility SWP3 that had been developed subsequent to the October 9, 2009, Facility inspection did not contain an accurate summary of potential pollutant sources as required by Part III.B.3 of the Permit; specifically, the Facility SWP3 identified a vehicle crusher that was not present at the Facility.

c. The quarterly Facility inspections required by Part III.B.6.b(5) of the Permit had not been conducted.

d. The training of Facility employees in storm water pollution prevention required by Part III.B.6.b(6) of the Permit had not been conducted

e. Annual CSCE's had not been performed as required by Part III.E of the Permit.

f. The Facility SWP3 that had been developed subsequent to the October 9, 2009, Facility inspection had not been signed as required by Part III.F.1 of the Permit.

16. Based on the results of the February 4, 2010, inspection, the Board concludes that Joe's has violated conditions Part III.B.2.c(3), Part III.B.3, Part III.B.6.b(5), Part III.B.6.b(6), Part III.E, and Part III.F.1 of the Permit as noted in paragraph C(15) of this Order.

17. On April 5, 2010, DEQ issued NOV W2010-02-T-1092 to Joe's. The NOV advised Joe's of the violations of Permit conditions Part I.A.1.a, Part I.A.1.b, Part III.B.2.c(3), Part III.B.3, Part III.B.6.b(5), Part III.B.6.b(6), Part III.E, Part III.F.1, and Part IV.C (for Sector M) revealed during the inspection conducted by DEQ staff on February 4, 2010.

18. A representative of Joe's responded to the report of the February 4, 2010, compliance inspection by electronic mail on April 5, 2010, to the effect that the Facility SWP3 had been revised, signed, and implemented; a Facility inspection and a visual examination of storm water quality had been performed on March 15, 2010; and employee training in storm water pollution prevention had been conducted.

19. In order for Joe's to complete its return to compliance, DEQ staff and representatives of Joe's have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Joe's, and Joe's agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $4,660 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Joe's shall include its Federal Employer Identification Number (FEIN) (75-2974973) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Joe's for good cause shown by Joe's, or on its own motion pursuant to the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Joe's admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Joe's consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Joe's declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Joe's to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or

the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Joe's shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Joe's shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Joe's shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Joe's intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Joe's. Nevertheless, Joe's agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. Joe's petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Joe's.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Joe's from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Joe's and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Joe's certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Joe's to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Joe's.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Joe's voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of December, 2010.

Francis L. Daniel

Francis L. Daniel, Regional Director
Department of Environmental Quality

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Carrollton Used Auto Parts, Inc. voluntarily agrees to the issuance of this Order.

Date: 9-10-10 By: [signature] Pres
(Person) (Title)
Carrollton Used Auto Parts, Inc.

Commonwealth of Virginia
City/County of Isle of Wight

The foregoing document was signed and acknowledged before me this 10th day of September, 2010, by Richard A. Holloway, Jr. who is owner of Carrollton Used Auto Parts, Inc., on behalf of the corporation.

Christawnda L Clarke
Notary Public

3647736
Registration No.

My commission expires: 12/31/13

Notary seal:

CHRISTAWNDA L. CLARKE
COMMONWEALTH OF VIRGINIA
NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

Joe's shall:

1. By January 10, 2011, submit to DEQ Tidewater Regional Office for review and approval an updated Facility SWP3 that contains all elements required by Part III and Part IV.B (for Sector M) of the Permit.

2. By January 10, 2011, submit to TRO the reports of all Facility inspections and visual examinations of storm water quality conducted between February 4, 2010, and December 31, 2010, to ensure compliance with the Facility SWP3 and the Permit, and of all training of Facility employees in storm water pollution prevention conducted during calendar year 2010.

3. By April 10, 2011, July 10, 2011, and October 10, 2011, submit to DEQ Tidewater Regional Office, reports of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of Joe's to ensure compliance with the Facility SWP3 and the Permit during the preceding three-month period. Reports shall include any corrective action taken in response to deficiencies noted during any inspection or examination.

4. Notwithstanding Part I.A.1.b of the Permit, perform additional "makeup" benchmark monitoring of Outfalls 001 and 002 by December 31, 2010, and submit the results thereof to DEQ on DMRs by January 10, 2011. In addition, Joe's will perform benchmark monitoring of both outfalls twice during calendar year 2011, once during the period January through June 2011 and once during the period July through December 2011. The two sampling events will be at least 30 days apart and will be reported to DEQ on DMRs by July 10, 2011, and January 10, 2012, respectively.

5. Comply with all conditions of the Permit, except as noted in Item 4 above.

6. Mail all submittals and reports required by this Appendix A to:

   Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462