



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Doug Domenech  
Secretary of Natural Resources

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Director

Maria R. Nold  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Carrollton Used Auto Parts, Inc.  
FOR  
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. "Carrollton" means Carrollton Used Auto Parts, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Carrollton is a "person" within the meaning of Va. Code § 62.1-44.3
3. "CSCE" means a comprehensive site compliance evaluation.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "DMR" means Discharge Monitoring Report.
7. "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.
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, 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. "305(b) report" means the report required by Section 305(b) of the Clean Water Act [33 United States Code § 1315(b)] and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
20. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
21. "2010 Order" means a Special Order by Consent between Carrollton and the State Water Control Board, effective December 10, 2010, which addressed Carrollton's failure to comply with the conditions of the Permit including: not performing benchmark monitoring of storm water discharges, quarterly visual examinations of storm water quality, quarterly Facility inspections, and an annual CSCE; not conducting employee training in storm water pollution prevention; and having an incomplete SWP3.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "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. Carrollton 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. This segment of Creer Creek is not listed as impaired in DEQ's 305(b) report.

3. Part I.A.1.a. of the Permit requires Carrollton to perform and document quarterly visual examinations of the quality of the storm water discharging from the storm water outfall identified in the Permit.
4. Part I.A.1.b and Part IV.C (for Sector M) of the Permit require Carrollton to conduct benchmark monitoring of storm water discharges from the Facility's permitted storm water outfall for the presence of four pollutants of concern (total suspended solids, aluminum, iron, and lead) once during each calendar year and record benchmark monitoring results on a DMR. The Permit requires that DMRs be submitted to DEQ by January 10 of the year following the annual benchmark monitoring period.
5. On February 22, 2011, DEQ issued Carrollton a Warning Letter for not submitting by January 10, 2011, a properly completed DMR recording benchmark monitoring results for the calendar year 2010 monitoring period.
6. The 2010 Order required Carrollton to perform additional "makeup" benchmark monitoring of storm water discharges during calendar year 2010 and during the period January 1 to June 30, 2011, and to submit the results thereof to DEQ on DMRs by January 10, 2011, and July 10, 2011, respectively.
7. During a DEQ Facility inspection on May 24, 2011, and a subsequent review of DEQ files, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the Permit and the 2010 Order:
  - a. The quarterly visual examinations of storm water quality required by Part I.A.1.a of the Permit had not been performed for the fourth Quarter of calendar year 2010 or the first Quarter of calendar year 2011.
  - b. The results of benchmark monitoring of storm water discharges for the calendar year 2010 monitoring period had not been properly recorded on a DMR and submitted to DEQ by January 10, 2011, as required by Part I.A.1.b and Part IV.C (for Sector M) of the Permit. The DMR was submitted on August 11, 2011, for a sampling event that had occurred on April 9, 2010.
  - c. Additional "makeup" benchmark monitoring of storm water discharges was not performed during calendar year 2010 as required by the 2010 Order.
  - d. The results of additional "makeup" benchmark monitoring of storm water discharges for the January 1 to June 30, 2011, monitoring period had not been properly recorded on a DMR and submitted to DEQ by July 10, 2011, as required by the 2010 Order. The DMR was submitted on August 11, 2011, for a sampling event that had occurred on March 31, 2011.
8. Carrollton violated the 2010 Order and 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(7) of this Order.

9. Carrollton 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.
10. Part III.B.6.b(1) of the Permit requires that the exposed areas of the Facility be maintained so as to minimize the potential of contributing pollutants to storm water discharges.
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.E of the Permit requires that a CSCE be conducted at least annually.
13. The 2010 Order required Carrollton to submit to DEQ by January 10, 2011, an updated Facility SWP3 and reports of all Facility inspections and visual examinations of storm water quality conducted between February 4, 2010, and December 31, 2010. It also required Carrollton to submit to DEQ by April 10, 2011, reports of all Facility inspections and visual examinations of storm water quality conducted between January 1 and March 31, 2011.
14. During the DEQ Facility inspection on May 24, 2011, and a subsequent review of DEQ files, DEQ staff documented compliance deficiencies with respect to the SWP3 requirements of the Permit and the 2010 Order, including the following:
  - a. The Facility had not been maintained so as to minimize the potential of contributing pollutants to storm water discharges as required by Part II.B.6.b(1) of the Order. Specifically, there were on the ground throughout the Facility stains of and areas saturated with apparent petroleum products.
  - b. The quarterly Facility inspections required by Part III.B.6.b(5) of the Permit had not been conducted.
  - c. The annual CSCE had not been performed in calendar year 2010 as required by Part III.E of the Permit.
  - d. Carrollton did not submit to DEQ by January 10, 2011, an updated Facility SWP3 and reports of all Facility inspections and visual examinations of storm water quality conducted between February 4, 2010, and December 31, 2010, as required by the Order.
  - e. Carrollton did not submit to DEQ by April 10, 2011, reports of all Facility inspections and visual examinations of storm water quality conducted between January 1 and March 31, 2011, as required by the Order.
15. Based on the results of the May 24, 2011, inspection, the Board concludes that Carrollton has violated the 2010 Order and conditions Part III.B.6.b(1), Part III.B.6.b(5), and Part III.E, of the Permit as noted in paragraph C(14) of this Order.

16. On August 1, 2011, DEQ issued NOV W2011-07-T-0001 to Carrollton. The NOV advised Carrollton of the violations of the 2010 Order and Permit conditions Part I.A.1.a, Part I.A.1.b, Part III.B.6.b(1), Part III.B.6.b(5), Part III.E, and Part IV.C (for Sector M) revealed during the inspection conducted by DEQ staff on May 24, 2011.
17. A representative of Carrollton responded to the report of the May 24, 2011, compliance inspection by undated letter received at DEQ on July 26, 2011, and to the NOV by electronic mail on August 11, 2011. Those responses stated that the housekeeping deficiencies had been corrected and the inventory of scrapped vehicles at the Facility reduced substantially. Photographs of the Facility improvements were included as were a copy of a CSCE performed on May 24, 2011, and a Facility inspection and a record of employee training in storm water pollution prevention both conducted on July 6, 2011. The Carrollton representative attributed the failures to timely submit DMRs for the April 9, 2010, and March 31, 2011, benchmark sampling events to administrative oversight.
18. In order for Carrollton to complete its return to compliance, DEQ staff and representatives of Carrollton 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 Carrollton, and Carrollton agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$6,000 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

Carrollton 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 Carrollton for good cause shown by Carrollton, 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, Carrollton admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Carrollton 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. Carrollton 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 Carrollton 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. Carrollton 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. Carrollton shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Carrollton 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 Carrollton 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 Carrollton. Nevertheless, Carrollton 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. The Director or his designee terminates the Order after Carrollton has completed all of the requirements of the Order;
  - b. Carrollton 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
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Carrollton.

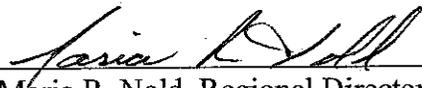
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Carrollton from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Carrollton 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 Carrollton 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 Carrollton to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Carrollton.

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. This Order hereby supersedes and cancels the 2010 Order referenced in paragraph B(21) above.
16. By its signature below, Carrollton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5 day of April, 2012

  
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Maria R. Nold, Regional Director  
Department of Environmental Quality

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

Date: 1-26-2012 By: [Signature], Pres  
(Person) (Title)  
Carrollton Used Auto Parts, Inc.

Commonwealth of Virginia  
City/County of 1st of Wight

The foregoing document was signed and acknowledged before me this 26<sup>th</sup> day of January, 2012, by Richard Holloway Jr. who is Owner/President of Carrollton Used Auto Parts, Inc., on behalf of the corporation.

[Signature]  
Notary Public

7500679  
Registration No.

My commission expires: 5/31/15

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

Carrollton shall:

1. By April 10, 2012, 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 April 10, 2012, submit to TRO the reports of all Facility inspections and visual examinations of storm water quality conducted between May 24, 2011, and March 31, 2012, to ensure compliance with the Facility SWP3 and the Permit.
3. By July 10, 2012, October 10, 2012, and January 10, 2013, submit to DEQ Tidewater Regional Office, reports of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of Carrollton 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 the permitted outfall twice during calendar year 2012, once during the period January through June 2012 and once during the period July through December 2012. The two sampling events will be at least 30 days apart and will be reported to DEQ on DMRs by July 10, 2012, and January 10, 2013, respectively.
5. Comply with all conditions of the Permit.
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