COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

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
Metro Used Auto Parts, Inc.
FOR
5209 Sondej Avenue Facility
Storm Water Registration No. VAR050149

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 Metro Used Auto Parts, Inc., 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 Metro Used Auto Parts automobile salvage yard located at 5209 Sondej Avenue, Chesapeake, Virginia, at which used motor vehicles are dismantled for the purpose of selling and recycling used automobile parts and/or scrap metal.

7. "Metro" means Metro Used Auto Parts, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Metro 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. "Registration statement" means a registration statement for storm water discharges under 9 VAC 25-151-60.

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

13. "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.

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

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

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

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

18. "VAC" means the Virginia Administrative Code.

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

20. "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. Metro owns and operates the Facility in Chesapeake, Virginia. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR050149. Storm water from the Facility discharges to the Dismal Swamp.

2. Dismal Swamp is located in the Chowan River and Dismal Swamp Basin. This segment of the Dismal Swamp is not listed as impaired in DEQ's 305(b) report.

3. Part I.A.1.a. of the Permit requires Metro 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 during a qualifying rain event [as defined by Part I.A.2.b of the Permit].

4. Part I.A.1.b, Part I.A.2.b and Part IV.C (for Sector M) of the Permit require Metro 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 during a qualifying rain event [as defined by Part I.A.2.b the Permit] and record benchmark monitoring results on a DMR. Before July 1, 2009, DMRs were to be retained at the Facility with the Facility SWP3; thereafter they are also to be submitted to DEQ.

5. Part I.A.1.b of the Permit also provides that exceedance of a benchmark concentration value included in the Permit does not constitute a violation of the Permit, but does trigger an obligation to take measures to control regulated pollutants that exceed benchmark values. Control measures may include, but are not limited to modifying the storm water controls outlined in the Facility SWP3.

6. DEQ staff had conducted a routine compliance inspection on November 5, 2003, and noted deficiencies in quarterly visual examinations of storm water quality and the failure to identify and monitor all points at which storm water discharges from the Facility, among other things. These deficiencies were noted in a Warning Letter dated November 19, 2003. DEQ staff had conducted another routine compliance inspection on July 2, 2008, and noted similar compliance deficiencies.

7. During a DEQ Facility inspection on December 15, 2009, 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 during the third quarter of calendar year 2008 or the third quarter of calendar year 2009.

    b. The DMRs recording the results of benchmark monitoring of storm water discharges were not maintained with the Facility SWP3 as required by Part I.A.2.b of the Permit. The DMRs were subsequently provided.

c. The quarterly visual examinations of storm water quality that were performed during the fourth quarter of calendar year 2008 and the benchmark monitoring of storm water discharges for the monitoring periods July 1, 2008, to June 30, 2009, and July 1, 2009, to December 31, 2009, were not performed during qualifying rain events as required by Part I.A.2.b of the Permit.

8. Metro violated conditions Part I.A.1.a and Part I.A.2.b of the Permit as noted in paragraph C(7) of this Order.

9. Metro 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.2.c(9) of the Permit requires that the SWP3 include a site map that identifies the locations of storm water outfalls and the drainage areas associated with those outfalls.

11. 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.

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

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

14. During the DEQ Facility inspection on December 15, 2009, DEQ staff reviewed the Facility SWP3 and documented compliance deficiencies with respect to the SWP3 requirements of the Permit, including the following:

    a. The SWP3 and associated site map did not identify the location of all storm water outfalls and the drainage areas associated with those outfalls as required by Part III.B.2.c(9) of the Permit.

    b. The Facility was not being maintained in such a manner as to minimize the potential of contributing pollutants to storm water discharges as required by Part III.B.6.b(1) of the Permit. Specifically, there were small patches of stained soil throughout the facility and batteries were stored in the open and exposed to the environment.

    c. The quarterly Facility inspections required by Part III.B.6.b(5) of the Permit had not been conducted during the last two quarters of calendar year 2008 or the first two quarters of calendar year 2009.

    d. An annual CSCE had not been performed during the 2009 calendar year as required by Part III.E of the Permit.

15. Based on the results of the December 15, 2009, inspection, the Board concludes that Metro has violated conditions Part III.B.2.c(9), 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 February 3, 2010, DEQ issued NOV W2010-02-T-0001 to Metro. The NOV advised Metro of the violations of Permit conditions Part I.A.1.a, Part I.A.2.b, Part III.B.2.c(9), Part III.B.6.b(1), Part III.B.6.b(5), and Part III.E, revealed during the inspection conducted by DEQ staff on December 15, 2009.

17. A consultant retained by Metro responded to the NOV by letter dated February 15, 2010, which included a revised SWP3 site map depicting an additional discharge point (Outfall 003) and its associated drainage area. The response stated that: Facility employees have been trained on how and when to conduct Facility inspections and quarterly visual examinations and on proper housekeeping procedures; batteries are being collected and stored in a single, covered storage area; Facility employees have been provided an instructional video on the proper collection of storm water samples; and a rain gauge will be installed at the Facility prior to the next storm water sampling event.

18. Metro has submitted documentation that verifies and DEQ staff inspected the Facility on March 1, 2010, and verified that the violations as described in paragraphs C(7)(b) and C(14)(a) and (b), above, have been corrected.

19. The report of the benchmark monitoring of Outfall 001 for the monitoring period from July 1, 2009, to December 31, 2009, reported a concentration of iron (2.38 mg/l) that exceeded the benchmark concentration established in the Permit of 1.0 mg/l and a concentration of aluminum (2200 ug/l) that exceeded the permit-established benchmark concentration of 750 ug/l.

20. In order for Metro to complete its return to compliance, DEQ staff and representatives of Metro 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 Metro, and Metro agrees to:

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

2. Pay a civil charge of $4,060 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

Metro shall include its Federal Employer Identification Number (FEIN) (54-1804966) 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 Metro for good cause shown by Metro, 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, Metro admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Metro 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. Metro 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 Metro 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. Metro 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. Metro shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Metro 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 Metro 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 Metro. Nevertheless, Metro 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. Metro 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 Metro.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Metro 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 Metro 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 Metro 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 Metro to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Metro.

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, Metro voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27th day of September, 2010.

Francis L. Daniel

Francis L. Daniel, Regional Director
Department of Environmental Quality

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

Date: 6-10-10 By: _____, President
(Person) (Title)
Metro Used Auto Parts, Inc.

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 10 day of June, 2010, by Stephen Silliphant who is the owner/ president of Metro Used Auto Parts, Inc., on behalf of the corporation.

_____
Notary Public

#247666
Registration No.

My commission expires: March 31, 2013

Notary seal: CHRISTIE L BLACK NOTARY PUBLIC REG # 247666 MY COMMISSION EXPIRES 03/31/2013 COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

Metro shall:

1. By October 10, 2010, 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 and includes the following:

   - The changes to best management practices and the revised Facility site map contained in the consultant's February 15, 2010, letter addressed in paragraph C(16) of this Order.

   - Benchmark monitoring of all three Facility outfalls by December 31, 2010.

   - Measures that have been taken since the December 15, 2009, compliance inspection to reduce the concentrations of aluminum and iron in storm water discharging from the Facility

2. By October 10, 2010, January 10, 2011, April 10, 2011, and July 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 Metro 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.

3. Comply with all conditions of the Permit.

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

   Mr. Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462