COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO O'MALLEY'S UAP & UC, INC. FOR O'MALLEY'S USED AUTO PARTS VPDES REGISTRATION NO. VAR051273

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and O'Malley's UAP & UC, Inc., regarding O'Malley's Used Auto Parts, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions:

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

1. "Annual monitoring period" means the period from July 1 to June 30 of the following year.

2. "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.

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.

5. "Facility" means O'Malley's Used Auto Parts, an automobile salvage yard located at 1327 Portsmouth Boulevard, Suffolk, Virginia, at which used motor vehicles are dismantled for the purpose of selling and recycling used automobile parts and/or scrap metal.

6. "O'Malley's" means O'Malley's UAP & UC, Inc. a corporation registered and authorized to do business in Virginia, and its affiliates, partners, subsidiaries and parents.

7. "Order" means this document, also known as a "Special Order by Consent" or a "Consent Special Order."

8. "Permit" means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity, which was effective July 1, 2004, and expires June 30, 2009, and will be reissued July 1, 2009, and expire June 30, 2014.

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

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

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

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

13. "VAC" means the Virginia Administrative Code.

14. "VPDES" means the Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. O'Malley's owns and operates the Facility, an automobile salvage yard in Suffolk, Virginia. Storm water discharges from the Facility are subject to the Permit through Registration No. VAR051273. Storm water from the Facility discharges to an unnamed tributary to the Nansemond River.

2. The Nansemond River is located in the James River Basin and is listed in DEQ's 305(b) report as impaired for estuarine bioassessments, the source of which is contaminated sediments, and for the presence of fecal coliform, the source of which is unknown.

3. O'Malley's is required to develop and implement a Facility SWP3 according to requirements outlined in Part III and Part IV.B (for Sector M – Automobile Salvage Yards) ("Sector M") of the Permit.

4. Part I.A.1.a. of the Permit requires O'Malley's to perform and document quarterly visual examinations of the quality of the storm water discharging from the storm water outfall identified in the Permit.

5. Part I.A.1.b, Part I.A.2.b and Part IV.C (for Sector M) of the Permit require O'Malley's 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 annual monitoring period during a qualifying rain event [as defined by Part I.A.2.b of the Permit]; record benchmark monitoring results on a Discharge Monitoring Report ("DMR"); and maintain the DMR with the Facility SWP3.

6. DEQ staff had conducted a routine compliance inspection on August 5, 2003, and noted deficiencies in Facility inspections, employee training, quarterly visual monitoring of storm water discharges, Facility housekeeping, and the failure to develop a SWP3, among other things. These deficiencies were noted in a Warning Letter dated August 15, 2003. DEQ staff had conducted another routine compliance inspection on August 31, 2005, and noted similar compliance deficiencies in a Notice of Violation ("NOV") dated October 6, 2005.

O'Malley's subsequently submitted to DEQ the required documentation of Permit compliance, including a completed SWP3, and received additional compliance assistance from DEQ.

7. During a DEQ Facility inspection on November 24, 2008, DEQ staff documented the following Permit compliance deficiencies with respect to monitoring requirements:

   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 2006-2007 and 2007-2008 annual monitoring periods.

   b. 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 conducted for the 2006-2007 annual monitoring period.

   c. Benchmark monitoring of storm water discharges for the 2005-2006 and 2007-2008 annual monitoring periods were not conducted during a qualifying rain event as required by Part I.A.1.b(3) and Part I.A.2.b of the Permit.

8. O'Malley's violated Permit conditions Part I.A.1.a., Part I.A.1.b., Part I.A.1.b(3), Part I.A.2(b) and Part IV.C (for Sector M) as noted in paragraph C.7 of this Order.

9. Part III.B.2.c(7) of the Permit requires that the SWP3 include a site map that identifies the locations of storm water outfalls and an approximate outline of the area draining to each outfall. Part 3 and Attachment A of the SWP3 contain the Facility site map.

10. Part III.B.6.b of the Permit outlines those best management practices ("BMPs") that may be included in a SWP3 to control storm water at the Facility. Part III of the Permit provides that those BMPs that are included in the SWP3 are a condition of and enforceable under the Permit.

11. Part III.B.6.b(1)(a) of the Permit provides that a SWP3 may include good housekeeping practices so as to minimize the potential of contributing pollutants to storm water discharges. Parts 9 and 10 of the SWP3 detail the good housekeeping practices to be followed at the Facility.

12. Part III.B.6.b(1)(e) of the Permit provides that a SWP3 may include a schedule (at least quarterly) for conducting routine facility inspections. Part 12 of the SWP3 requires quarterly inspections of the Facility.

13. Part III.B.6.b(1)(f) of the Permit provides that a SWP3 may include a storm water employee training program and, if so, identify periodic dates for such training. Part 13 of the SWP3 requires that Facility employees be trained in storm water management.

14. Part III.D.1 of the Permit requires that the SWP3 include a certification that all discharges from the Facility have been tested or evaluated for non-storm water. Part 15 and Attachment G of the SWP3 discuss the requirement to provide the certification.

15. Part III.E of the Permit requires that a comprehensive site compliance evaluation ("CSCE") be conducted at least annually. Part 18 of the SWP3 requires that the CSCE be conducted annually.

16. Part III.F of the Permit requires that the SWP3 be signed and certified.

17. During the DEQ Facility inspection on November 24, 2008, DEQ staff reviewed the Facility SWP3 and documented Permit compliance deficiencies, with respect to SWP3 requirements, including the following:

    a. The SWP3 and the associated site map did not identify all storm water outfalls as required by Part III.B.2.c(7) of the Permit and Part 3 and Attachment A of the SWP3.

    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 and Part III.B.6.b(1)(a) of the Permit and Parts 9 and 10 of the SWP3. Specifically, equipment used for automobile dismantling was actively leaking fluids; stained soil was observed in several locations; and containers of apparent automotive fluids were not covered in such a way as to prevent spillage or overflows.

    c. Facility was not being inspected quarterly as required by Part III and Part III.B.6.b(1)(e) of the Permit and Part 12 of the SWP3.

    d. The SWP3 did not identify periodic dates for training Facility employees in storm water management as required by Part III and Part III.B.6.b(1)(f) of the Permit and Part 13 of the SWP3.

    e. Facility employees had not been trained in storm water management as required by Part III and Part III.B.6.b(1)(f) of the Permit and Part 13 of the SWP3.

    f. The SWP3 did not include a non-storm water certification as required by Part III.D.1 of the Permit and Part 15 and Attachment G of the SWP3.

    g. The annual comprehensive site compliance evaluation required by Part III.E of the Permit and the Part 18 of the SWP3 had not been performed for the 2006-2007 and 2007-2008 annual monitoring periods.

    h. The SWP3 was not signed and certified as required by Part III.F of the Permit.

18. O'Malley's violated Permit conditions Part III, Part III.B.2.c(7), Part III.B.6.b(1)(a), (e) and (f), Part III.D.1, Part III.E and Part III.F, and SWP3 conditions Parts 3, 9, 10, 12, 13, 15, and 18 and Attachments A and G as noted in paragraph C.17 of this Order.

19. On December 9, 2008 DEQ issued NOV W2008-12-T-0002 to O'Malley's. The NOV advised O'Malley's of the violations of Permit conditions Part I.A.1.a., Part I.A.1.b., Part I.A.1.b(3), Part I.A.2(b), Part III, Part III.B.2.c(7), Part III.B.6.b(1)(a), (e) and (f), Part III.D.1, Part III.E, Part III.F, and Part IV.C (for Sector M) and SWP3 conditions Parts 3, 9, 10, 12, 13, 15, and 18 and Attachments A and G revealed during the inspection conducted by DEQ staff on November 24, 2008.

20. O'Malley's responded to the NOV in writing on December 18, 2008, and stated that training in storm water management had been conducted on December 16, 2008; routine quarterly Facility inspections, CSCE's and quarterly visual examinations of storm water quality would now be conducted and properly documented; dismantling equipment was being repaired to eliminate fluid leaks; and fluid spills in the dismantling area were being cleaned up. The letter enclosed an updated SWP3 that included a non-storm water certification and a site map

identifying an additional storm water outfall; the updated SWP3 was signed and certified. The newly identified storm water outfall did not conform to the observations made by DEQ staff during the November 24, 2008, Facility inspection.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders O'Malley's, and O'Malley's agrees to:

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

2. Pay a civil charge of $12,000, within 30 days of the effective date of this Order, in settlement of the violations cited in this Order.

Payments 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

O'Malley's shall include its Federal Identification Number with each civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of O'Malley's, for good cause shown by O'Malley's, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specified 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

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

4. O'Malley'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. O'Malley's declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, 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 O'Malley'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. O'Malley'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 act of God, war, strike, or such other occurrence. O'Malley's shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. O'Malley's shall notify the DEQ Regional Director 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 of learning of any condition above, which O'Malley'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 O'Malley's. Nevertheless, O'Malley'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. O'Malley's petitions the Director or his designee to terminate the Order after it has completed all 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 O'Malley's.

   Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve O'Malley'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 O'Malley'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 O'Malley's certifies he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind O'Malley's to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of O'Malley's.

14. By its signature below, O'Malley's voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2009.

_____
Francis L. Daniel

O'Malley's UAP & UC, Inc., voluntarily agrees to the issuance of this Order.

By: Connie M. O'Malley

Date: May 1, 2009

Commonwealth of Virginia
City/~~County~~ of Norfolk

The foregoing document was signed and acknowledged before me this 1st day of May, 2009, by Connie O'Malley (name), who is President (title) of O'Malley's UAP & UC, Inc., on behalf of the Corporation.

Isabel D Bittenbender
Notary Public
Regis # 288880

My commission expires: 1/31/2012.

APPENDIX A

O'Malley's shall:

1. By October 1, 2009, submit to DEQ Tidewater Regional Office for review and approval an updated SWP3 that contains all elements required by Part III.B, Part III.D and Part IV.B (for Sector M – Automobile Salvage Yards) of the Permit, including the proper locations of all storm water outfalls at the Facility and a definitive schedule for training employees in storm water management.

2. By October 10, 2009, submit to DEQ Tidewater Regional Office, (a) the reports of all Facility inspections and quarterly visual examinations of storm water quality conducted since between November 24, 2008, and September 30, 2009, by or on behalf of O'Malley's to ensure compliance with the Facility SWP3 and the Permit and (b) a certification that all housekeeping deficiencies noted during the November 24, 2008, compliance inspection have been remedied.

3. By January 10, 2010, April 10, 2010, and July 10, 2010, submit to DEQ Tidewater Regional Office, reports of all Facility inspections and visual examinations of storm water quality conducted by or on behalf of O'Malley'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. By December 31, 2009, conduct the annual benchmark monitoring of storm water discharges from all permitted storm water outfalls required by Part I.A.1.b and Part IV.C (for Sector M) of the Permit; and, by January 10, 2010, submit to DEQ Tidewater Regional Office the Discharge Monitoring Reports ("DMRs") recording the results thereof. Should a DMR reflect that the monitoring cut-off concentration for any pollutant of concern prescribed in Part IV.C (for Sector M) of the Permit has been exceeded at any one of the permitted storm water outfalls, O'Malley's shall submit a corrective action plan ("plan") and schedule to reduce the concentration of that pollutant of concern in storm water discharges. That plan and schedule shall be submitted to DEQ with the April 10, 2010, submittal required by Item 3 above.

5. Comply with all conditions of the Permit.

6. 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