



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ALWAYS USED AUTO PARTS, INC.
FOR
ALWAYS USED AUTO PARTS
VPDES Permit No. VAR05
Storm Water Registration No. VAR051271**

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 Always Used Auto Parts, Inc., regarding the Always Used Auto Parts Facility, 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. "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.
2. "2014 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expired on June 30, 2019. Always Used Auto Parts, Inc. applied for registration under the Permit and was issued Registration No. VAR052147 on July 1, 2014.

3. "2019 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024. Always Used Auto Parts, Inc. applied for registration under the Permit and was issued Registration No. VAR052147 on July 1, 2019.
4. "AUAP" means Always Used Auto Parts, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Always Used Auto Parts, Inc., is a "person" within the meaning of Va. Code § 62.1-44.3.
5. "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.
6. "CSCE" means comprehensive site compliance evaluation.
7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
8. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
9. "Discharge" means the discharge of a pollutant.
10. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
11. "DMR" means Discharge Monitoring Report.
12. "Facility" means the Always Used Auto Parts automobile salvage yard located at 1604 Steel St. in Chesapeake, Virginia.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "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.
15. "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.

16. "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.
17. "Registration statement" means a registration statement for coverage under a storm water general permit.
18. "Regulation" means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "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.
21. "SWPPP" means Stormwater Pollution Prevention Plan.
22. "TMDL" means Total Maximum Daily Load.
23. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. AUAP owns and operates the automobile salvage yard located at 1604 Steel St. in Chesapeake, Virginia.
2. The Permit allows AUAP to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of the Southern Branch Elizabeth River, in strict compliance with the terms and conditions of the 2014 Permit and subsequently the 2019 Permit.
3. The unnamed tributary flows to the Southern Branch Elizabeth River, which flows to the Chesapeake Bay, Atlantic Ocean and small coastal basin. The Southern Branch Elizabeth River is listed in DEQ's 305(b) report as impaired for dioxin, dissolved oxygen, and PCBs in fish tissue. Among the sources of impairment are atmospheric deposition - nitrogen, industrial point source discharge, internal nutrient recycling, loss of riparian habitat, municipal point source discharges, and wet weather discharges from point sources, as well as stormwater, and separate sewer overflow.
4. On August 15, 2017, DEQ staff issued Warning Letter No. W2017-08-T-1010 ("2017 WL") for failure to perform benchmark and TMDL monitoring, and to submit a DMR for the January 1, to June 30, 2017, monitoring period. AUAP responded that staff was unable to sample during the monitoring period.
5. On April 19, 2018, DEQ staff conducted a compliance inspection of the Facility. During the inspection DEQ observed the following:
 - a. Records of quarterly visual examinations of stormwater discharges were requested but not provided for the 1st, 2nd, and 4th quarter of 2017;
 - b. Records of routine facility inspections were requested but not provided for the 4th quarter of 2017;
 - c. Documentation for the second annual employee training session for 2017, was requested but not provided (two times per year listed in the SWPPP);
 - d. Two DMRs were not received (January 1 – June 30, 2017; July 1 – December 31, 2017), and three DMRs (January 1 – June 30, 2016; January 1 – June 30, 2015; July 1 – December 31, 2014) were received but were late, as they were submitted more than ten days after the monitoring period ended;
 - e. Petroleum staining at the end of the crusher was exposed to stormwater, two uncovered roll off containers were not sealed and contained about two inches of oily water, petroleum staining underneath a motorcycle, petroleum sheen on ground leading to Outfall 001, exposed engine parts and petroleum staining on the

ground throughout the dismantling area, fluids in vehicles throughout the storage area, and an exposed battery.

6. Part I.A.1.a of the 2014 Permit requires that, “the permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall, except discharges exempted in Part I.A.3 or Part I.A.4...”
7. Part III.B.5 of the 2014 Permit requires that, “Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the Facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the Facility where industrial materials or activities are exposed to stormwater... the inspection frequency shall be... at a minimum quarterly.”
8. Part III.B.4.b(6) of the 2014 Permit requires that, “the permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training.”
9. Part I.A.1.b of the 2014 Permit requires that, “benchmark monitoring shall be performed for all benchmark parameters specified for the industrial sector or sectors applicable to a facility’s discharge. Monitoring shall be performed at least once during each of the first four, and potentially all, monitoring periods after coverage of the permit begins...”
10. Part II.C of the 2014 Permit requires that, “1) the permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place... 2) Monitoring reports shall be submitted to the department’s regional office.”
11. Part III of the 2014 Permit requires that, “a SWPPP shall be developed and implemented for the facility covered by this permit.”
12. Part III.B.4.b(1) of the 2014 Permit requires that, “the permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges.”
13. Part II.F of the 2014 Permit requires that, “except in compliance with this permit... it shall be unlawful for any person to: 1) discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2) otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”
14. On June 27, 2018, DEQ issued Notice of Violation No. W2018-06-T-0003 (“2018 NOV”), for the violations noted above.

15. On July 11, 2018, AUAP responded and provided an email and photographs showing what corrective actions the Facility had taken in response to the 2018 NOV. AUAP noted that it had implemented process changes to ensure the facility maintains compliance with the Permit. Additionally, AUAP noted that it had taken steps to remediate the petroleum staining at the Facility and other issues associated with observations in the NOV, and that once all the Facility changes were complete the SWPPP would be updated.
16. On April 15, 2019, having not received any of the documentation listed in the July 11, 2018 response, DEQ again requested documentation from AUAP demonstrating that the observations noted in the NOV had been addressed. AUAP failed to provide this documentation, however, the information requested would only show items that are required by the 2014 Permit, no additional non-2014 Permit related information was requested.
17. On July 11, 2019, DEQ observed that AUAP failed to submit a DMR for benchmark and TMDL monitoring for the January 1, to June 30, 2019, monitoring period.
18. Part I.A.1.b of the 2014 Permit requires that, “benchmark monitoring shall be performed for all benchmark parameters specified for the industrial sector or sectors applicable to a facility’s discharge. Monitoring shall be performed at least once during each of the first four, and potentially all, monitoring periods after coverage of the permit begins...”
19. Part II.C of the 2014 Permit requires that, “1) the permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place... 2) Monitoring reports shall be submitted to the department’s regional office.”
20. On August 27, 2019, DEQ staff issued NOV No. W2019-08-T-0002 (“2019 NOV”) for observations noted above.
21. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
22. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
23. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
24. The Department has issued coverage under no permits or certificates to AUAP other than under VPDES Permit No. VAR05 (Reg. No. VAR051271).

25. The unnamed tributary of the Southern Branch Elizabeth River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
26. Based on the failure to submit a DMRs for benchmark and TMDL monitoring resulting in the 2017 WL and 2019 NOV, and the April 19, 2018, inspection, the Board concludes that AUAP has violated Parts I.A.1.a, III.B.5, III.B.4.b.(6), I.A.1.b, II.C, III, III.B.4.b(1), and II.F of the 2014 Permit as noted in paragraphs C(4-5) and (17) of this Order.
27. AUAP was subject to coverage under VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014, and expired on June 30, 2019. AUAP became subject to coverage under the VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2019, and which expires on June 30, 2024.

SECTION D: Agreement and Order

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

Pay a civil charge of \$7,233 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 day of execution of Order	\$3,233 or balance
July 1, 2020	\$2,000 or balance
October 1, 2020	\$2,000 or balance

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

AUAP shall include its Federal Employer Identification Number (FEIN) _____ 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, AUAP shall be liable for attorneys’ fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of AUAP for good cause shown by AUAP, 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 and in the NOV Nos. W2018-06-T-0003, and W2019-08-T-0002, dated June 27, 2018, and August 27, 2019. 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, AUAP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. AUAP 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. AUAP 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 AUAP 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. AUAP 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. AUAP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AUAP 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 the parties intend 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.

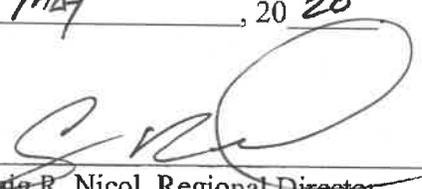
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and AUAP. Nevertheless, AUAP agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after AUAP has completed all of the requirements of the Order;
 - b. AUAP 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 AUAP.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve AUAP 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 AUAP 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 AUAP certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and

- legally bind AUAP to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of AUAP.
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, AUAP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1st day of May, 20 20



Craig R. Nicol, Regional Director
Department of Environmental Quality

Consent Order
Always Used Auto Parts, Inc.;
VPDES Permit No. VAR05, Registration Number VAR051271
Page 11 of 11

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

Date: 3/11/20 By: Robert Barone, V. President
(Person) (Title)
Always Used Auto Parts, Inc.

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 11 day of
March, 2020, by Robert Barone who is
V. President of Always Used Auto Parts, Inc., on behalf of the company.

Briana Riccio
Notary Public

7824915
Registration No.

My commission expires: May 31, 2023

Notary seal:

