



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Craig R. Nicol  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
ELLING ENTERPRISES, INC.  
FOR  
Baldwin Auto Disposal  
VPDES Permit No. VAR05  
Storm Water Registration No. VAR051676**

## **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 ELLING ENTERPRISES, INC. regarding the Baldwin Auto Disposal 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. "Baldwin" means ELLING ENTERPRISES, INC. dba Baldwin Auto Disposal, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Baldwin is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "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.

4. "CSCE" means comprehensive site compliance evaluation.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "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.
9. "DMR" means Discharge Monitoring Report.
10. "Facility" means the automobile salvage yard located at 404 Freeman Avenue in Chesapeake, Virginia, from which discharges of stormwater associated with industrial activity occur.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "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.
13. "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 expires on June 30, 2019. Baldwin applied for registration under the Permit and was issued Registration No. VAR051676 on July 1, 2014.
14. "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.

15. "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.
16. "Registration statement" means a registration statement for coverage under a storm water general permit.
17. "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.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "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.
20. "SWPPP" means Stormwater Pollution Prevention Plan.
21. "TRO" means DEQ's Tidewater Regional Office located in Virginia Beach, Virginia.
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.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Baldwin owns and operates the Facility located in Chesapeake, Virginia.
2. The Permit allows Baldwin to discharge stormwater associated with industrial activity from the Facility to the Southern Branch of the Elizabeth River, in strict compliance with the terms and conditions of the Permit.

3. The Southern Branch of the Elizabeth River is located in the Lower James River Basin and is listed in DEQ's 305(b) report as impaired for aquatic life use and fish consumption use.
4. Part I.A.2.c of the Permit requires that, for each monitoring event, along with the monitoring results, Baldwin identify the date and duration of the storm event sampled, rainfall total, and duration between storm events.
5. Part I.A.6 of the Permit requires that Baldwin review its SWPPP and modify as necessary if benchmark monitoring results exceed the benchmark concentration for that parameter.
6. During a DEQ Facility inspection on April 12, 2017, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the Permit:
  - a. The date and duration of the storm event sampled, rainfall total, and duration between storm events was not included on the quarterly visual examinations of storm water quality, as required by Part I.A.2.c of the Permit.
  - b. The benchmark monitoring records showed exceedances of benchmark levels for the semiannual sampling performed on June 23, 2016 and December 12, 2016, but the SWPPP had not been reviewed or modified to address deficiencies that may have causes the benchmark level exceedances, as required by Part I.A.6 of the Permit.
7. Baldwin violated conditions Part I.A.2.c and Part I.A.6 of the Permit, as noted in paragraph C(6) of this Order.
8. Baldwin is required to develop and implement a Facility SWPPP according to requirements outlined in Part III of the Permit.
9. Part III.B.4.b(1) of the Permit requires that Baldwin keep clean all exposed areas of the Facility that are potential sources of pollutants to stormwater discharges.
10. Part III.B.4.b(6) of the Permit requires that Baldwin implement a stormwater employee training program for the Facility, and include a schedule for training, document training sessions, and name employees who received training.
11. Part III.B.5 of the Permit requires that Baldwin inspect the Facility at a minimum quarterly unless more frequent intervals are specified, and at least once each calendar year while a discharge is occurring.

12. Part III.D.2.a of the Permit requires that the SWPPP include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges.
13. Part III.E.3 of the Permit requires that Baldwin write a CSCE report summarizing the scope of the evaluation, including the location of discharges and control measures that need to be maintained or repaired.
14. During the DEQ Facility inspection on April 12, 2017, DEQ staff documented the following compliance deficiencies with respect to the SWPPP requirements of the Permit:
  - a. The SWPPP had not been development and implemented for the current Permit term, as required by Part III of the Permit.
  - b. Exposed areas of the Facility that are potential sources of pollutants to storm water discharges had not been kept clean, as required by Part III.B.4.b(1) of the Permit. Petroleum staining was observed on the ground throughout the Facility. There was evidence of petroleum leaking from salvaged fuel tanks and heavy equipment. Several containers holding petroleum had holes, punctures, and missing plugs or lids.
  - c. Documentation of employee training in storm water pollution prevention was not available for review, as required by Part III.B.4.b(6) of the Permit.
  - d. The quarterly Facility inspections for 2016 had not been documented, as required by Part III.B.5 of the Permit.
  - e. The SWPPP did not document that all storm water outfalls associated with industrial activity had been evaluated annually for the presence of unauthorized discharges, as required by Part III.D.2.a of the Permit.
  - f. The annual CSCE report for 2016 was not available for review, as required by Part III.E.3 of the Permit.
15. Based on the results of the April 12, 2017 inspection, the Board concludes that Baldwin has violated conditions Part III.B.4.b(1), Part III.B.4.b(6), Part III.B.5, Part III.D.2.a, and Part III.E.3 of the Permit, as noted in paragraph C(14) of this Order.
16. On May 30, 2017, DEQ issued to Baldwin the inspection report citing the violations observed during the April inspection. In response to the May inspection report, Baldwin submitted documentation on June 19, 2017 maintaining that it had hired new staff to oversee housekeeping for gas and oil storage and to maintain records for daily inspections. Baldwin also maintained that it had rearranged the yard and implemented new stormwater controls.

17. TRO issued NOV No. W2017-07-T-0003 for the above violations on July 11, 2017.
18. In response to the NOV, Baldwin submitted on July 28 2017 documentation of quarterly visual monitoring for 2016, the 2016 SWPPP and CSCE report, and records of employee training dated December 12, 2016 and July 24, 2017.
19. 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
20. 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.
21. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
22. The Department has issued coverage under no permits or certificates to Baldwin other than Registration No. VAR051676 under VPDES General Permit VAR05.
23. The unnamed tributary of the Southern Branch of the Elizabeth River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
24. Based on the results of the April 12, 2017 inspection and the documentation submitted on June 19, 2017 and July 28, 2017, the Board concludes that Baldwin has violated the Permit, as described in paragraphs C(6) and C(14), above.
25. In order for Baldwin to return to compliance, DEQ staff and Baldwin 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 Baldwin, and Baldwin agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,175.00 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

Baldwin shall include its Federal Employer Identification Number (FEIN) 54-1743848 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, Baldwin 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 Baldwin for good cause shown by Baldwin, 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 NOV No. W2017-07-T-0003 dated July 11, 2017. 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, Baldwin admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Baldwin 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. Baldwin 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 Baldwin 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. Baldwin 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. Baldwin shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Baldwin 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 Baldwin. Nevertheless, Baldwin 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 Baldwin has completed all of the requirements of the Order;
  - b. Baldwin 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 Baldwin.

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

And it is so ORDERED this 23 day of October, 2017.

  
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Craig R. Nicol, Regional Director  
Department of Environmental Quality

ELLING ENTERPRISES, INC. dba Baldwin Auto Disposal voluntarily agrees to the issuance of this Order.

Date: 8-22-17 By: , Pres.  
(Person) (Title)  
ELLING ENTERPRISES, INC. dba Baldwin Auto Disposal

Commonwealth of Virginia  
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 22<sup>nd</sup> day of August, 2017, by Henry A Elling who is President of ELLING ENTERPRISES, INC. dba Baldwin Auto Disposal, on behalf of the corporation.

  
\_\_\_\_\_  
Notary Public

7199701  
\_\_\_\_\_  
Registration No.

My commission expires: June 30, 2020

Notary seal:

MELNETTA EUVERN CARTER  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES JUNE 30, 2020  
COMMISSION # 7199701

## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Corrective Action Plan and Schedule**

- a. Within 30 days of the effective date of this Order, Baldwin shall submit for review and approval an updated SWPPP that reflects the language in the current Permit;
- b. Within 60 days of the effective date of this Order, Baldwin shall submit for review and approval a fluids management plan that includes measures and controls to minimize stormwater contamination at loading and unloading areas, and from equipment and containers, including:
  - i) A description of spill prevention and response measures to address areas that are potential sources of fluid leaks or spills;
  - ii) A procedure for immediate containment and cleanup of spills and leaks;
  - iii) An estimate of the amount of dry absorbent that needs to be kept onsite (based on the size and characteristics of the Facility, and activity performed at the Facility), and cleanup procedure for the use of dry absorbents;
  - iv) A procedure for the storage of drums containing liquids, especially oil and lubricants. Storage options include indoors, in a bermed area, in overpack containers or on spill pallets, or in similar containment devices;
  - v) Installation of overfill prevention devices on all fuel pumps or tanks;
  - vi) A procedure or practice for placing drip pans or equivalent measures under any leaking piece of stationary equipment until the leak is repaired;
  - vii) A schedule of regular inspections of equipment for leaks, spills, malfunctioning, worn or corroded parts or equipment;
  - viii) A preventive maintenance program for processing equipment; and
  - ix) Permanent or semipermanent covers in processing areas where there are residual fluids and grease;
- c. By April 10, 2018, Baldwin shall submit for review and approval a copy of the 2017 CSCE report, quarterly inspection reports for the second, third, and fourth quarter of 2017, and for the first quarter of 2018.

Consent Order  
Baldwin Auto Disposal;  
VPDES Registration No. VAR051676;  
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2. **DEQ Contact**

Unless otherwise specified in this Order, Baldwin shall submit all requirements of Appendix A of this Order to:

Regional Director  
VA DEQ – Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, Virginia 23462