



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

Matthew J. Strickler
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Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RECYCLE MANAGEMENT OF WAYNESBORO, LLC
FOR
RECYCLE MANAGEMENT OF WAYNESBORO, LLC
General VPDES Permit Registration No. VAR052280**

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 Recycle Management of Waynesboro, LLC, regarding Recycle Management of Waynesboro, LLC, for the purpose of resolving certain violations of the State Water Control Law, the applicable Permit, and the 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. "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, as described in Va. Code § 10.1-1185.
5. "Discharge" means the discharge of a pollutant.
6. "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.
7. "DMR" means Discharge Monitoring Report.
8. "Facility" means the Recycle Management of Waynesboro, LLC scrap and waste site located at 715 North Bayard Avenue in Waynesboro, Virginia, from which discharges of stormwater associated with industrial activity occur.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "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.
11. "Permit" means General VPDES 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. Recycle Management applied for registration under the Permit and was issued coverage under Registration No. VAR052280 on June 8, 2015.
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. “Recycle Management” means Recycle Management of Waynesboro, LLC, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Recycle Management is a “person” within the meaning of Va. Code § 62.1-44.3.
14. “Registration statement” means a registration statement for coverage under a storm water general permit.
15. “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.* effective July 1, 2014.
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. “SWPPP” means Stormwater Pollution Prevention Plan.
19. “TMDL” means Total Maximum Daily Load, and is the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means the Virginia Administrative Code.
22. “VPDES” means Virginia Pollutant Discharge Elimination System.
23. “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. Recycle Management owns and operates a scrap and waste recycling facility (Facility) located in Waynesboro, Virginia. Recycle Management is subject to the General VPDES Permit for Discharges of Storm Water Associated with Industrial Activity (Permit) with Registration No. VAR052280 issued to Recycle Management on June 8, 2015 with an expiry date of June 30, 2019.

2. The Permit allows Recycle Management to discharge stormwater associated with Industrial Sector N - SIC Code 5093 activities from the Facility to the South River, in compliance with the terms and conditions of the Permit.
3. South River is located in the Potomac River Basin and is listed in DEQ's 305(b) report as impaired due to violations of the General Standard for Benthics. The source of pollutants is listed as Municipal – Urbanized High Density Area and this impairment is included in the EPA approved South River benthic TMDL (Federal TMDL ID# 38138 & 38139).
4. On September 7, 2016, DEQ staff conducted a compliance inspection of the Facility and recorded the following observations in a report dated November 16, 2016:

- a. A SWPPP was not available at the Facility during the inspection. DEQ requested this document and does not have record of submission.

Permit Part III.F.2 states that: "The permittee shall retain a copy of the current SWPPP required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request."

- b. Quarterly visual monitoring, routine facility inspections, annual evaluations for unauthorized discharges, and comprehensive site compliance evaluations were not available at the Facility during the inspection. DEQ requested these documents, and does not have record of submission.

Permit Part I.A.1.a states in part that: "The permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall...The visual examination reports shall be maintained on-site with the SWPPP."

Permit Part III.B.5 states in part that: "Facility personnel...shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater...The results of the inspections shall be documented in the SWPPP."

Permit Part III.D 2.a states that "The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges."

Permit Part III.E states that: "The permittee shall conduct comprehensive site compliance evaluations at least once each calendar year after coverage under the permits begins...A report shall be written summarizing the scope of the evaluation...and all observations relating to implementation of the SWPPP...and be maintained with the SWPPP."

- c. The Facility accepts salvage vehicles and is licensed by the Virginia Department of Motor Vehicles to operate an auto recycler (salvage dealer, demolisher). DEQ

does not have record of Permit coverage for stormwater discharges associated with this colocated industrial activity (SIC Code 5015).

9 VAC 25-151-50.C.1 states that “Facilities with colocated industrial activities on-site shall comply with all applicable effluent limitations, monitoring, and pollution prevention plan requirements of each section of 9 VAC 25-151-70 et seq. in which a colocated industry is described.”

- d. DEQ staff observed several areas within the Facility where oily residue, staining, and used oil and/or other automobile fluids were present on the ground surface with potential to reach stormwater outfalls, state waters, and exposed soils where the concrete pad has failed.

Virginia Code § 62.1-44.34:18.A. states that “The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.”

- e. DEQ does not have record of submission of semi-annual benchmark or semi-annual TMDL discharge monitoring reports (DMRs) for Outfalls 001, 002, and 003 for the monitoring periods July 1 – December 31, 2015, and January 1 – June 30, 2016.

Permit Part I.A.5.a requires that the permittee submit the results of semiannual monitoring via DMR by January 10 and by July 10, following the monitoring period.

5. DEQ issued the following Warning Letters to Recycle Management for lack of submission of semi-annual benchmark or semi-annual TMDL DMRs: WL2016-02-V-1205, issued February 12, 2016; W2016-08-V-1022, issued August 12, 2016; and W2016-10-V-1006, issued October 14, 2016. DEQ does not have any record of response to these Warning Letters from Recycle Management.
6. On December 14, 2016, DEQ conveyed the inspection report to Recycle Management and issued NOV No. W2016-12-V-0001 to Recycle Management for alleged violations of the State Water Control Law, Regulations, and applicable Permit conditions. Recycle Management failed to respond.
7. On October 25, 2017, DEQ sent a Decline to Negotiate letter to Recycle Management for non-response to the NOV. The letter noted that in addition to the observations listed in the NOV, DEQ did not have record of submission of semi-annual benchmark or semi-

annual TMDL DMRs for Outfalls 001, 002, and 003 for the monitoring period July 1 – December 31, 2016, and January 1 – June 30, 2017.

8. On November 8, 2017, DEQ staff met with representatives of Recycle Management to discuss the outstanding violations. DEQ advised Recycle Management of the sampling requirements associated with the Permit and offered short-term technical assistance for completion of the required DMRs.
9. On February 14, 2018, DEQ issued NOV No. W2018-02-V-0001 to Recycle Management that reiterated the outstanding violations listed in NOV No. W2016-12-V-0001 and added that DEQ did not have record of submission of semi-annual benchmark or semi-annual TMDL DMRs for Outfalls 001, 002, and 003 for the monitoring period July 1 – December 31, 2017.
10. 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
11. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with this permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
13. The Department has issued coverage under no permits or certificates to Recycle Management other than under General VPDES Permit No. VAR05.
14. South River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
15. Based on the results of the September 7, 2016 inspection and the November 8, 2017 meeting with Recycle Management, the Board concludes that Recycle Management has violated Permit Part I.A.1.a, Permit Part III.B.5, Permit Part III.D.2.a, Part Part III.F.2, 9 VAC 25-151-50.C.1, and Va. Code § 62.1-44.34:18.A as noted in paragraphs C(4) through C(9) described above.
16. In order for Recycle Management to return to compliance, DEQ staff and Recycle Management 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 Recycle Management, and Recycle Management agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$29,792.50 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

Recycle Management 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, Recycle Management 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 Recycle Management for good cause shown by Recycle Management, 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, Warning Letter W2016-02-V-1025, dated February 12, 2016, Warning Letter No. W2016-08-V-1022, dated August 12, 2016, Warning Letter No. W2016-10-V-1006, dated October 14, 2016, in NOV No. W2016-12-V-0001, dated December 14, 2016, and in NOV No. W2018-02-V-0001, dated February 14, 2018. 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, Recycle Management admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Recycle Management 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. Recycle Management 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 Recycle Management 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. Recycle Management 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. Recycle Management shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Recycle Management 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 Recycle Management. Nevertheless, Recycle Management 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 Recycle Management has completed all of the requirements of the Order;
- b. Recycle Management 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 Recycle Management.

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

And it is so ORDERED this 20th day of June, 2018.



Amy T. Owens, Regional Director
Department of Environmental Quality

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Recycle Management of Waynesboro, LLC voluntarily agrees to the issuance of this Order.

Date: 4/3/2018 By: [Signature], Sole Member
Jody Salyards Title
Recycle Management of Waynesboro, LLC

Commonwealth of Virginia
City/County of Harrisonburg

The foregoing document was signed and acknowledged before me this 3rd day of APRIL, 2018, by JODY SALYARDS who is SOLE MEMBER of Recycle Management of Waynesboro, LLC, on behalf of the corporation.

[Signature]
Notary Public
108395

Registration No.

My commission expires: 6-30-19

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Registration Statement

Within 30 days of the effective date of the Order, Recycle Management shall submit a revised Registration Statement to DEQ adding Permit coverage for stormwater discharges associated with the colocated Industrial Sector M - SIC Code 5015 (Auto Salvage Yards), and correctly identify outfall locations that include all inputs from each drainage area.

2. SWPPP

Within 60 days of the effective date of the Order, Recycle Management shall submit to DEQ for review and approval a SWPPP, including a detailed site map, in accordance with the requirements of Part III and Part IV of the Permit.

Recycle Management shall respond to any DEQ comments regarding its SWPPP within 30 days from the date of the DEQ comments.

3. Corrective Actions

Within 90 days of the effective date of this Order, Recycle Management shall:

- Submit documentation that the damaged concrete pad in the large item recycle yard (described in Item #4 of the November 16, 2016 inspection report) has been repaired;
- Submit documentation that the soil beneath the damaged pad has been properly characterized for contamination; and
- Submit documentation that the contaminated soil has been removed and disposed of properly.

4. Employee Training

Within 90 days of the effective date of this Order, Recycle Management shall provide documentation of implementation of stormwater employee training program for the Facility and a schedule for continued employee training in accordance with the requirements of Part III.B.4.b.(6) and Sector Specific Permit Requirements. The training schedule shall be stored in the SWPPP.

5. TMDL Wasteload Allocation

Within 12 months of the effective date of this Order, Recycle Management shall submit loading calculations based on the analysis of nutrient and sediment data captured from at least two sampling events from the Facility. The sampling events must be conducted in accordance with Part I.A.2 of the Permit and the analysis must be conducted in accordance with the Errata Sheet, which is incorporated as Appendix B of this order.

If the calculated loading values from the Facility exceed the loading values presented in Part I.B.7.b.(3)(a) of the Permit, Recycle Management must also submit within 12 months of the effective date of this Order a Chesapeake Bay TMDL Action Plan in accordance with Part I.B.7.b.(3)(c) of the Permit.

6. Reporting

For 12 months following the effective date of this Order, Recycle Management shall submit quarterly reports to DEQ that include documentation of all monitoring, evaluation, and recordkeeping requirements included in the Permit. The first report is due **July 10, 2018**, and subsequent reports will be due by **October 10, January 10, and April 10**. Reports must include:

- a. Copies of documentation demonstrating that salvage vehicles are inspected upon arrival at the Facility for leaks and that vehicles are properly drained of fluids prior to being dismantled or crushed;
- b. A copy of documentation of routine facility inspection for the quarter to include inspection of any equipment containing oily parts, hydraulic fluids, any other types of fluids, and mercury switches. The report shall show the location(s) of hazardous material storage and the location of fluid storage.
- c. Copies of visual monitoring reports for each outfall.

The final quarterly report shall also include, if not already provided in a previous quarterly report:

- d. A copy of the 2018 Annual Comprehensive Site Compliance Evaluation (Permit Part III.E) certified in accordance with Part II K signatory Requirements; and
- e. A copy of the 2018 Annual Evaluation for Unauthorized Discharges in accordance with the Permit Part IIID.

7. DEQ Contact

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

Tamara Ambler
Enforcement Specialist Senior
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
540-574-7878 (FAX)
tamara.ambler@deq.virginia.gov