



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY PIEDMONT REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MR. JOHN T. RUSSELL, JR. D/B/A RUSSELL'S AUTO TRUCK PARTS

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 Mr. John T. Russell, Jr., d/b/a Russell's Auto Truck Parts, for the purpose of resolving certain violations of 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. "BMP" means best management practice.
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 discharge of a pollutant. 9 VAC 25-31-10
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" or "Site" means the Russell's ATP salvage yard located at 24513 Russell Lane, Petersburg, Virginia, from which discharges of stormwater associated with industrial activity occur.
11. "Russell's ATP" means Mr. John T. Russell, Jr. d/b/a Russell's Auto Truck Parts and residing in Petersburg, Virginia. Russell's ATP is a "person" within the meaning of Va. Code § 62.1-44.3.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "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.
14. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2009, and which expired on June 30, 2014. Russell's ATP applied for registration under the stormwater general permit and was issued Stormwater Registration No. 1223 on October 9, 2009.
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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "Registration statement" means a registration statement for coverage under a storm water general permit.
19. "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.*
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "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.
22. "SWP3" means Stormwater Pollution Prevention Plan.
23. "TMDL" means total maximum daily load.
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. Russell's ATP owns and operates the Facility located at 24513 Russell Lane, Petersburg, Virginia, which discharges stormwater associated with industrial activity to an unnamed tributary of Arthur Swamp.
2. The unnamed tributary of Arthur Swamp is located in the Chowan and Dismal Swamp River Basin (Chowan). During the 2012 305(b)/303(d) Integrated Water Quality Assessment, Arthur Swamp was impaired of the Fish Consumption Use due to a Virginia

Department of Health advisory for mercury and impaired of the Aquatic Life Use due to low dissolved oxygen caused by natural swampwater conditions. The Recreation- and Wildlife Uses were fully supporting. A TMDL has not been developed for the watershed. The stream should be considered a Tier 2 water. The watershed is classified as a Class VII swampwater.

3. On December 20, 2013, the Department conducted an unannounced inspection of the Facility and observed the following:
 - Documentation of quarterly visual monitoring required by Part I A.1.a. of the Permit indicates the last monitoring was performed on 3/29/2010.
 - Documentation of benchmark monitoring required by Part I A.1.b. of the Permit indicates that benchmark monitoring was last performed on December 31, 2002.
 - Documentation of routine facility inspections required by Part III B.6.b(5) of the Permit was not available for review during the inspection.
 - Documentation of annual comprehensive site compliance evaluations required by Part III E. of the Permit was not available for review during the inspection.
 - Documentation of employee training sessions required by Part III B.6.b(6) of the Permit was not available for review during the inspection.
4. On January 30, 2014, PRO issued NOV No. W2014-01-P-0002 to Russell's ATP for the violations noted in paragraph C4.
5. On April 8, 2014, the Department met with Russell's ATP to discuss the NOV and the issuance of this Consent Order. Russell's ATP responded stated they were conducting routine inspections and training but not documenting them as required.
6. The Permit, and Mr. Russell's coverage under it expired on June 30, 2014.
7. Upon discovering that Permit coverage had expired, on December 8, 2016 the Department inspected the Facility.
8. The Department reviewed Russell's ATP's records and found that they were continuing to inspect and monitor Facility operations as outlined in the expired Permit.
9. On December 14, 2016, Mr. Russell submitted a registration statement for authorization to discharge under the industrial stormwater general permit.
10. Regarding the deadline for submitting registration statements for existing facilities, the Regulation, at 9 VAC 25-151-60(B)(1)(a), states that "Any owner that was authorized to discharge under the industrial stormwater general permit that became effective on July 1, 2009, and that intends to continue coverage under this general permit shall submit a complete registration statement to the board on or before May 2, 2014."
11. Based on the results of the December 8, 2016, inspection, the Board concludes that Russell's ATP has violated 9 VAC 25-151-60(B)(1)(a) of the Regulation, as described above.

12. In order for Russell's ATP to return to compliance, DEQ staff and Russell's ATP 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 Russell's ATP, and Russell's ATP agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$3,250 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
June 1, 2017	\$850 or balance
September 1, 2017	\$850 or balance
December 1, 2017	\$850 or balance
March 1, 2018	\$700

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Mr. John T. Russell, Jr. Within 15 days of receipt of such letter, Mr. John T. Russell, Jr. shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
4. All 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

5. Mr. John T. Russell, Jr. 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, Mr. John T. Russell, Jr. 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 Russell's ATP for good cause shown by Russell's ATP, 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, Russell's ATP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Russell's ATP 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. Russell's ATP 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 Russell's ATP 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. Russell's ATP 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. Russell's ATP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Russell's ATP 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 Russell's ATP. Nevertheless, Russell's ATP 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 Russell's ATP has completed all of the requirements of the Order;
 - b. Russell's ATP 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 Russell's ATP.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Russell's ATP from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

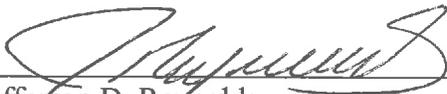
12. Any plans, reports, schedules or specifications attached hereto or submitted by Russell's ATP and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Russell's ATP 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 Russell's ATP to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Russell's ATP.

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, Russell's ATP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 6th day of July, 2017.



Jefferson D. Reynolds,
Department of Environmental Quality
Enforcement Division Director

Mr. John T. Russell, Jr. d/b/a Russell's Auto Truck Parts voluntarily agrees to the issuance of this Order.

Date: 5-1-17 By: John T. Russell, Jr.
Mr. John T. Russell, Jr.

Commonwealth of Virginia

City/County of Dominion

The foregoing document was signed and acknowledged before me this 5th day of

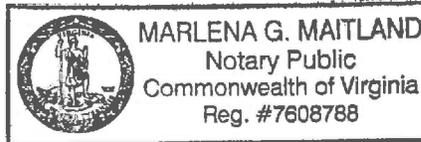
May, 2017, by John T. Russell, Jr..

Marlena G. Maitland
Notary Public

Registration No.

My commission expires: 6-30-18

Notary seal:



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APPENDIX A SCHEDULE OF COMPLIANCE

Mr. John T. Russell shall:

1. Respond to Department comments and adjustment requests regarding the SWP3 within 10 days of receiving written or electronic correspondence from the Department.
2. Within 30 days of Department approval of the SWP3, immediately begin training staff, conducting monitoring and inspections of the Facility, and recording and documenting the monitoring results, training, and inspection records as required by the Permit.
3. Within 30 days of Department approval of the SWP3, conduct a comprehensive site compliance evaluation in accordance with Part III E of the Permit and within 45 days of the issuance of Department approval of the SWP3, submit the evaluation to the Department and retain a copy of the evaluation in the SWP3. If after the evaluation it is determined by the Department that existing BMPs need to be modified or additional BMPs are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation.
4. Quarterly, for the period of one year, submit to the Department records of inspections, monitoring, and any permit required records generated during that quarter. Quarterly visual inspections and the comprehensive site compliance evaluation must be photographically recorded and the photographs submitted to the Department with the inspection reports. Reports will be due July 10, 2017, October 10, 2017, January 10, 2018, and April 10, 2018.

DEQ Contact

Unless otherwise specified in this Order, Russell's ATP shall submit all requirements of Appendix A of this Order to: Frank Lupini, VA DEQ –Enforcement Division, 629 East Main Street, Richmond, Virginia 23219 or by e-mail to Frank.Lupini@deq.virginia.gov