



Alabama Department of Environmental Management
adem.alabama.gov

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MAY 03 2016

**CERTIFIED MAIL # 91 7108 2133 3936 7190 8441
RETURN RECEIPT REQUESTED**

CHAD GIBSON
OWNER
CHAD'S SALVAGE YARD
593 BLALOCK ROAD
BLACK AL 36314

RE: Proposed Consent Order
Chad's Salvage Yard
General NPDES Permit No. ALG180753
593 Blalock Road, Black, AL 36314
Geneva County (061)

Dear Mr. Gibson:

As discussed during our March 25, 2016 conference, we have enclosed two copies of a proposed Consent Order containing terms and conditions acceptable to the Department as resolution of the cited violations. Please execute both copies of the document where indicated and return them to the Department in the enclosed envelope within 10 days of the date of receipt of this letter.

All proposed Orders assessing a civil penalty are subject to a 30-day public notice and comment period and may be the subject of a public hearing if significant comments are received. If changes are made to the proposed Consent Order in response to public comments, those changes will be sent to you for your further review and signature. Upon completion of the public notice process, the Department will enter the final order, assign the "effective date," and return a signed original to you. Payment of civil penalties is due within the schedule stipulated in the Order.

If you do not agree and reject the Consent Order, the Department will institute the previously drafted Unilateral Order which is a more formal administrative enforcement action seeking an enhanced civil penalty commensurate with the additional expenditure of agency resources or proceed with litigation in circuit court. Any administrative enforcement action would be subject to the same public notice and comment requirements as a Consent Order.

Should you have any questions concerning this matter, please contact Vernetta Holdren at vholdren@adem.state.al.us or (334) 394-4365

Sincerely,

A handwritten signature in black ink that reads "Glenda L. Dean".

Glenda L. Dean, Chief
Water Division

GLD/mfc

Enclosure: Two copies of Proposed Consent Order

cc: Tom Johnston/ADEM, Office of General Counsel
Carrie Blanton/ADEM, Office of General Counsel
Daphne Lutz/ADEM, Industrial/Municipal Branch
Lee Warren/ADEM, Industrial/Municipal Branch
Vernetta Holdren/ADEM, Industrial/Municipal Branch
Shelane Bergquist/ADEM, Montgomery Field Operations
Richard Hulcher/ ADEM, Montgomery Field Operations



**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Chad Gibson)
d/b/a Chad's Salvage Yard)
593 Blalock Road)
Black, Alabama, Geneva County)

GENERAL NPDES PERMIT ALG-180753)

Consent Order No. 16-XXX-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Chad Gibson (hereinafter "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Chad Gibson is the owner/operator of a salvage recycling facility (hereinafter "Facility") known as Chad's Salvage Yard, located at 593 Blalock Road, in Black, Geneva County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17 as amended.
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.
4. The Department reissued General National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number ALG180753 to the Permittee on January 24, 2014, effective February 1, 2014. A modification was issued July 28, 2014 with an effective date of August 1, 2014. The Permit establishes limitations on the discharge of pollutants from a point source,

designated therein as outfall number DSN001-1, to an unnamed tributary to John Branch, a water of the State. The Permit requires that the Permittee monitor its discharges and submit semiannual Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of the Permit.

5. Permit condition IV. A. 1. a. states the permittee shall prepare and implement a best management practices (hereinafter "BMP") plan which shall provide control sufficient to prevent or control pollution of the storm water by particles to the degree required to maintain compliance with this permit and water quality standards. Erosion control should also be addressed. Permit condition IV. A. 1. b. states the permittee shall prepare and implement a BMP plan which shall prevent the spillage or loss of fluids, oil, grease, gasoline, etc. thereby preventing the contamination of storm water from these substances. Permit condition II. F. 2. a. (3). requires the permittee to give notice to the Director at least 180 days in advance of any facility expansion, production increase, process change, or other action that could result in an additional discharge point.

6. On March 21, 2014, the Department conducted a Compliance Evaluation Inspection (hereinafter "CEI"). At the time of the inspection, the inspector observed an unpermitted discharge point and that the receiving stream listed on the Permit was incorrect in violation of Permit condition II. F. 2. a. (3). The inspector also observed oil/fuel and hydraulic fluid pooling in association with exposed car parts near the discharge point, garbage and debris scattered throughout the facility, and housekeeping throughout the facility appeared in need of maintenance in violation of Permit condition IV. A. 1. b.

7. The Department issued a Notice of Violation (hereinafter "NOV") to the Permittee on May 8, 2014. The NOV required the Permittee to submit a written report prepared by an engineer registered and authorized to practice in Alabama describing the steps that had been taken or would be taken (with compliance dates) to address the violations. The NOV also required the Permittee to submit a complete modification application to the Department to include the unpermitted discharge point at an additional outfall and to add the correct receiving stream to the permit and a modification application of fee of \$665.00.

8. On June 13, 2014, the Department received the engineering report, modification request, and modification application fee from the Permittee. The Department subsequently modified the Permit to include the correct receiving stream. The Permittee's engineer clarified that although two separate swales leave the product/inventory storage area, they connect before discharging from the property; therefore, an additional outfall did not need to be added to the Permit.

9. On February 3, 2015, the Department conducted a CEI at the Facility in response to a complaint received by the Department on January 29, 2015. At the time of the inspection, the inspector observed erosion at the outfall and noted that sediment appeared to be leaving the site and potentially entering an unnamed tributary to John Branch in violation of Permit condition IV. A. 1. a. In addition, the inspector observed staining throughout the Facility, an oil sheen on standing water near the outfall, various exposed car parts and rimless tires scattered throughout the Facility and near the outfall, and housekeeping that was in need of maintenance throughout the Facility in violation of Permit condition IV. A. 1. b.

10. The Permittee consents to abide by the terms of the following Consent Order and to pay any civil penalty assessed herein.

11. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of the State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that

the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment #A), the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY: Based on information available to the Department, violations of the Permit, ADEM Admin. Code chap. 335-6-6, and the AWPCA were noted. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, the condition of the receiving waters, the violations' effects, if any, on the receiving waters and any available evidence of irreparable harm to the environment or threat to the public.

B. THE STANDARD OF CARE: After the May 8, 2014 NOV, the Permittee modified its Permit to correct the receiving stream. However, the Permittee failed to adequately implement appropriate BMPs. The BMP implementation issues are considered to be easily available. In consideration of the standard of care manifested by the Permittee, the Department has enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has not been able to determine if there has been an economic benefit associated with the violations cited above.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has considered the history of violations and enhanced the penalty.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount \$1,500.00 in settlement of the violations alleged herein within forty-five days after issuance of this Consent Order. Failure to pay the civil penalty within forty-five days after issuance of this Consent Order may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee shall prepare and submit to the Department, not later than ninety days after the issuance date of this Consent Order, an Engineering Report that addresses the corrective actions taken or to be taken to ensure implementation of adequate BMPs. The Engineering Report shall include a Compliance Plan with a schedule for implementation of necessary corrective actions and cost of equipment and/or repairs needed to achieve compliance, if known. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient, then the Permittee shall modify the Engineering Report. The Department must receive modifications to the Engineering Report, if required, no later than thirty days after receipt of the Department's comments. The Permittee shall complete

implementation of the recommendations provided in the Engineering Report not later than 180 days after the date of the issuance of this Consent Order.

D. The Permittee shall comply with all other terms, conditions, and limitations of the Permit immediately upon the issuance date of this Consent Order.

E. The Permittee shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order. The Permittee shall submit such certification to the Department no later than 210 days after the date of issuance of this Consent Order.

F. After the issuance of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the written submittal milestone dates or requirement dates set forth in or established by paragraphs A, C, and E. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in paragraphs A, C, and E, the Department reserves the right to file a new action against the Permittee.

G. Cumulative stipulated penalties described in paragraph F. above shall under no circumstances exceed \$24,000.00. Once stipulated penalties of \$24,000.00 are due to the Department and violations continue to occur, or should violations continue to occur after the final compliance date, then the Department reserves the right to issue an additional orders or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

H. Payment of stipulated penalties due for violations of milestone dates under this Consent Order shall be due not later than the 28th day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

I. This Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the Party represented, and to legally bind such Party.

J. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

K. The Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

L. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten working days prior to the original anticipated completion date. If the Department,

after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

M. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning Chad's Salvage Yard which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

N. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

O. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

P. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

Q. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

R. Any modifications of this Consent Order shall be agreed to in writing signed by both Parties.

S. Except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law,

and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Chad Gibson
d/b/a Chad's Salvage Yard

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

By: _____	By: _____
Its: _____	Its: _____
Date: _____	Date: _____

Attachment A

**Chad's Salvage Yard
Black, Geneva County
General NPDES Permit ALG180753**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to implement adequate BMPs	1	\$ 2,000.00	\$ 1,000.00	\$ 750.00
				\$ -
				\$ -
				\$ -
				\$ -

\$2,000.00	\$1,000.00	\$750.00
Total (A)	Total (B)	Total (C)

Additional Adjustments due to negotiations, receipt of additional information, or public comment	
Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	-\$2,250.00
Total Adjustments (+/-)	-\$2,250.00

Base Penalty Total [Total (A) + Total (B) + Total (C)]	\$3,750.00
Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	
INITIAL PENALTY	\$3,750.00
Total Adjustments (+/-)	-\$2,250.00
FINAL PENALTY	\$1,500.00

Footnotes

*See the "Stipulations" and "Contentions" portions of the Order for a detailed description of each violation and the penalty factors