ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	Consent Order No. 16-XXX-CWP
R. D. Wright	)	
d/b/a Wrights Auto Parts Montgomery	)	
4956 Birmingham Highway	)	
Montgomery, Montgomery County, AL	)	
	)	
GENERAL NPDES PERMIT ALG-180262 (Expired)		

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and R. D. Wright (hereinafter "the Operator") 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. R. D. Wright is the owner and operator of a salvage recycling facility doing business as Wrights Auto Parts Montgomery (hereinafter "the Operator"), located at 4956 Birmingham Highway, Montgomery, Montgomery County, AL (hereinafter "the Facility").

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 issued General National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number ALG180262 (hereinafter "the Permit") to the Operator on August 25, 1993, with an effective date of October 1, 1993 establishing limitations on the discharge of pollutants from a point source, designated therein as outfall number DSN001-1, to West End Ditch,

a water of the state. The Department reissued the Permit on April 1, 1999 with an effective date of April 1, 1999, establishing limitations on the discharge of pollutants from the same point source, DSN001-1, to West End Ditch, a water of the state. The Permit requires that the Operator 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 Operator properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Operator to achieve compliance with the conditions of the Permit.

5. ADEM Administrative Code r. 335-6-6.03(2) states that [n]o person, required to apply for a storm water discharge permit by 40 CFR 122.26 (2000), shall discharge pollutants into waters of the state without first having applied for a valid NPDES permit, coverage under a valid General NPDES Permit, or coverage under a valid NPDES Registration. New discharges shall obtain a valid NPDES permit, coverage under a valid General Permit, or coverage under a valid NPDES Registration prior to conducting any activity for which application for a storm water discharge permit is required by 40 CFR 122.26(2000)." A facility involved in the recycling of materials, including salvage yards and automobile junkyards, is required to have a NPDES permit for its storm water discharge. The Operator salvages automobile parts at the Facility and therefore is required to obtain a NPDES permit for storm water discharge.

6. In addition, Permit condition II. F. 1. a. requires that the Operator authorized to discharge under the General Permit, who wishes to continue to discharge upon the expiration of this permit, shall submit a Renewal Notice of Intent (hereinafter "NOI") to be covered by the reissued General Permit. Such NOI shall be submitted at least ninety days prior to the expiration date of this Permit. Permit condition II. F. 1. b. states that failure of the Operator to submit a NOI for reauthorization under the Permit at least ninety days prior to the Permit's expiration will void automatic continuation of the authorization to discharge under the Permit as provided by ADEM Administative Code r. 335-6-6-.06. Permit condition II. F. 1. b. futher states that should the Permit not be reissued for any reason prior to its expiration date, operators who failed to meet the nintey-day submittal deadline will be illegally discharging without a permit after the expiration date to the Permit. The Operator did not submit a complete NOI for reauthorization under this Permit and therefore all discharges since expiration of the NPDES Permit, September 30, 2002, have been unpermitted.

7. On March 5, 2012, the Department conducted a Compliance Evaluation Inspection (hereinafter "CEI") at the Facility. During the inspection, the Department documented that the Facility was actively operating without a permit. The Department also observed leaking equipment and outdoor battery storage; fluid pooling near the vehicle crusher and the engine/transmission storage area; stained soil at various locations throughout the site and near the fuel storage tank; oil stained water on the southeast side of the Facility; and a leaking fuel tank stored near the vehicle crusher.

8. Ala. Code §22-22-9(e) requires a person to file a response to a Notice of Violation (hereinafter "NOV") with the Department within the time frame specified by the Department. The Department issued a NOV to the Operator on May 7, 2012. The NOV required the Operator to submit to the Department a complete permit renewal application with a renewal application fee of $770 such that it would be received by the Department within thirty days from receipt of the NOV. The NOV also required the Operator submit to the Department a written report prepared by an engineer registered and authorized to practice in Alabama describing the steps that had been taken to address the housekeeping issues noted during the inspection such that it would be received by the Department within thirty days from receipt of the NOV. The Department did not receive a response to the NOV.

9. On February 3, 2015, the Department conducted a CEI at the Facility. During the inspection, the Department documented that the Facility was actively operating without a permit. The Department also noted that a Best Management Practices (hereinafter "BMP") Plan was not being maintained or implemented onsite, conditions with which the Operator would have had to comply had it obtained a NPDES permit. In addition, the Department observed uncovered batteries and engines stored onsite; fluid pooling near the vehicle crushers and transmission storage areas; stained soil at various locations throughout the Facility; trash and debris in the stained water on the southeast side of the property near the discharge point; and onsite erosion and sediment accumulation on the northeastern most side of the Facility near the discharge point.

10. The Operator 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 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 have conferred 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 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: The Department considers the failure to reapply for permit coverage to be easily avoidable. In consideration of the standard of care manifested by the Operator, the Department has enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator delayed or avoided certain costs associated with the permit applications, implementation and maintenance of BMPs, sample collections and analysis, and the submittal of required reports. In consideration of these avoided costs, the Department has enhanced the penalty.

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

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator has a history of failing to adequately respond to the Department, failing to implement BMPs, and failing to obtain permit coverage. In consideration of the history of these previous violations, the Department has enhanced the penalty.

F. THE ABILITY TO PAY: The Operator has provided documentation which indicated a limited ability to pay the civil penalty. In consideration of the Permittee's ability to pay, the Department has decreased the 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.

H. The civil penalty is summarized in Attachment A.

ORDER

THEREFORE, the Operator, 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 six 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 Operator (hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Operator shall pay to the Department a civil penalty in the amount of five thousand dollars ($5,000.00) in settlement of the violations alleged herein by paying an initial installment payment of $600.00 and thereafter eleven equal monthly installment payments of $400.00. The first payment of $600.00 shall be due forty-five days from the date of issuance of this Consent Order. The remaining eleven installment payments of $400.00 each shall be due on the first day of each month thereafter. Failure to pay the civil penalty in accordance with the specified payment

schedule 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 Operator shall prepare and submit to the Department a complete General NPDES permit application and the applicable permit application fee of $1,385.00 so that it is received by the Department no later than thirty days after the issuance of this Consent Order.

D. If not already enrolled, the Operator shall prepare and submit to the Department a complete application for enrollment in the Department's Electronic DMR Reporting System Program (hereinafter "E2 Program.") The Operator shall submit said application so that it is received by the Department not later than thirty days after the issuance date of this Consent Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Operator to participate in the E2 Program, then the Operator shall modify the application so that it is sufficient. The Operator shall submit modifications to the application, if required, so that they are received by the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Operator shall begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Operator shall fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals. The Operator shall abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

E. The Operator shall prepare and submit to the Department, not later than ninety days after issuance of this Consent Order, an Engineering Report that addresses the corrective actions taken or to be taken to ensure the implementation and maintenance of BMPs. The Engineering Report shall include a schedule for implementation (i.e., a Compliance Plan) 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 Operator shall modify the Engineering Report. The Operator shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments. The Operator shall complete implementation of the recommendations provided in the Engineering Report not later than 365 days after the date of the issuance of this Consent Order.

F. The Operator shall comply with all other terms, conditions, and limitations of the Permit immediately upon the effective date of Permit coverage.

G. The Operator shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Operator is in compliance with all requirements of this Consent Order. The Operator shall submit such certification to the Department no later than 395 days after the date of issuance of this Consent Order.

H. After the issuance of this Consent Order, the Operator 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 C, D, E and G. 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:

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

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

I. Cumulative stipulated penalties described in paragraph H. 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 395 days from the issuance of this Consent Order, then the Department reserves the right to issue an additional order or file suit against the Operator in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

J. 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 Operator by the Department of the assessment of any stipulated penalty is not required.

K. 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.

L. 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.

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

N. 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 Operator 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 Operator, 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 Operator) 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 Operator 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 Operator, 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.

O. 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 Wrights Auto Parts Montgomery 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, and the Operator 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.

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

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

R. 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.

S. 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.

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

U. 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 Operator of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

R. D. Wright **d/b/a Wrights Auto Parts Montgomery**	**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT** EXECUTED AND ISSUED:
By: R D Wright	By: _____
Its: Owner	Its: _____
Date: 9-5-16	Date: _____

Attachment A

Wrights Auto Parts
Montgomery , Montgomery County
ALG180262

Violation*	Number of Violations*	(A) Seriousness of Violation*	(B) Standard of Care*	(C) History of Previous Violations*
Operating without a permit	1	$ 7,500.00	$ 5,000.00	$ 2,500.00
	1			
		$7,500.00 Total (A)	$5,000.00 Total (B)	$2,500.00 Total (C)

Base Penalty Total [Total (A) + Total (B) + Total (C)]	$15,000.00
Mitigating Factors (–)	
Economic Benefit (+)	$2,770.00
Ability to Pay (–)	
Other Factors (+/–)	
INITIAL PENALTY	$17,770.00
Total Adjustments (+/–)	-$12,770.00
FINAL PENALTY	$5,000.00

Additional Adjustments due to negotiations, receipt of additional information, or public comment

Mitigating Factors (–)	
Economic Benefit (+)	
Ability to Pay (–)	-$8,770.00
Other Factors (+/–)	-$4,000.00
Total Adjustments (+/–)	-$12,770.00

Footnotes

*See the "Findings" portion of the Order for a detailed description of each violation and the penalty factors