

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Dennis O'Loughlin, Owner)
LA Recycling Services, LLC)
15980 Greeno Road)
Fairhope, Baldwin County, Alabama)

) Consent Order No. 19-XXX-CWP

General NPDES Permit No. ALG180853)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and LA Recycling Services, LLC (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 (herein after the "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. LA Recycling Services, LLC (hereinafter "the Permittee") is the owner/Permittee of a salvage and recycling facility (hereinafter "Facility") located at 15980 Greeno Road, Fairhope, Baldwin County, Alabama. The Permittee discharges pollutants from the Facility into an unnamed tributary to Waterhole Branch, a water of the State.

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 § 22-22A-4(n), Ala. Code (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. On December 7, 2015, the Department issued General National Pollutant Discharge Elimination System (hereinafter “NPDES”) Permit Number ALG180853 (hereinafter “the Permit”) to the Permittee with an effective date of January 1, 2016, and an expiration date of September 30, 2017. The Permit established limitations on the discharge of pollutants from point sources, designated therein as outfall numbers DSN001-1, DSN002-1, and DSN008-1 into an unnamed tributary to Waterhole Branch, a water of the State. The Permit required that the Permittee monitor its discharge and submit semiannual Discharge Monitoring Reports (hereinafter “DMRs”) to the Department describing the results of the monitoring. In addition, the Permit required that the Permittee properly operate and maintain all facilities and systems of treatment and control which were installed or used by the Permittee to achieve compliance with the conditions of the Permit. The Permittee was also required to maintain documentation and implementation of a Best Management Practices (hereinafter “BMP”) plan.

5. Ala. Code § 22-22-9(i)(3) states that “[e]very person, prior to discharging any new or increased pollution into any waters of this state, shall apply [...] for a permit and must obtain such permit before discharging such pollution.” Furthermore, ADEM Admin. Code r. 335-6-6-.03(2) states “[n]o person, required to apply for a storm water discharge permit by 40 CFR 122.26 (2016), 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 dischargers

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 (2016).” A facility involved in the salvage and recycling of materials, including salvage yards and automobile junkyards, is required to have a NPDES permit for its storm water discharge. The Permittee salvages automotive and scrap metal at the Facility and therefore is required to obtain a NPDES permit for storm water discharges.

6. Permit Condition II.F.1.a. required that the Permittee authorized to discharge under the General Permit, who wished to continue to discharge upon the expiration of the permit, submit a Renewal Notice of Intent (hereinafter “NOI”) to be covered by the reissued General Permit at least ninety days prior to the expiration date of the Permit. The expiration date of the Permit was September 30, 2017; therefore, the Permittee’s renewal NOI was due in the Department no later than July 2, 2017. The Permittee submitted an incomplete NOI on September 6, 2017, and did not include payment for the \$1,385 renewal application fee, in violation of Permit Condition II.F.1.a. The NOI further indicated that the Facility did not have a BMP Plan and that they did not comply with 40 CFR Part 112.

7. Permit Condition II.F.1.b. states that failure of the Permittee 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 Admin. Code r. 335-6-6-.06. Permit Condition II.F.1.b. further states that should the Permit not be reissued for any reason prior to its expiration date, Permittees who failed to meet the ninety-day submittal deadline will be illegally discharging without a permit after the expiration date of the permit. The

Permittee failed to submit a complete NOI with payment for reauthorization under the Permit within the time specified by the Permit, and therefore all discharges since expiration of the NPDES Permit on September 30, 2017, have been unpermitted, in violation of the AWPCA and ADEM Admin. Code r. 335-6-6-.03(2).

8. Permit Condition I.C.1.b. required the Permittee to submit semiannual DMRs for outfalls DSN001-1 and DSN002-1 on a semiannual basis. The semiannual DMRs are due to the Department by July 28th and January 28th and each submittal shall report results of all testing performed during the six month period preceding the reporting month. The Permittee failed to submit to the Department the DSN001-1 and DSN002-1 semiannual DMRs for the periods of July through December 2016, January through June 2017, and July through December 2017, in violation of Permit Condition I.C.1.b.

9. Permit Condition I.C.1.c. required the Permittee to enroll in the Departments Electronic Environmental DMR Reporting System Program (hereinafter "E2 Program") within 180 days of permit issuance. The Permittee failed to enroll in the E2 Program within the required timeframe. The completed form 511 and form 512, for enrollment in the E2 program, were not received by the Department until September 6, 2017, in violation of Permit Condition I.C.1.c.

10. Permit Condition I.A. DSN008 item 7 required that the Permittee submit an Annual Petroleum Certification form by January 28th certifying that all discharges during the preceding year were in accordance with the conditions of the permit. The 2016 Annual Petroleum Certification was not received by the Department until December 26, 2017, and the 2017 Annual Petroleum Certification has not yet been received by the Department, in violation of Permit Condition I.A.

11. On February 21, 2017, the Department conducted a Compliance Evaluation Inspection (hereinafter "CEI") at the Facility in response to National Response Center report # 1170724.

12. On May 23, 2017, the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee by certified mail that enclosed a copy of the February 21, 2017, CEI Report. The NOV required, inter alia, that the Permittee submit to the Department within thirty days from receipt of the NOV the Annual Petroleum Certification for 2016, the overdue 2016 DMRs, non-compliance forms, and a written report prepared by a registered engineer that describes the steps that have been or will be taken to correct the cited violations. A copy of the NOV was also emailed to the Permittee's consultant on August 25, 2017.

13. On September 6, 2017, the Department e-mailed the Permittee and the Permittee's consultant regarding their submittal of an incomplete NOI and notifying them that a complete response to the May 23, 2017, NOV was still required.

14. Ala. Code § 22-22-9(e) requires a person to respond within such time as is specified in a notice of violation issued by the Department. An adequate response to the May 23, 2017, NOV was not received by the Department within the specified timeframe, in violation of Ala. Code § 22-22-9(e).

15. On October 26, 2017, the Department conducted a CEI at the Facility in response to Complaint # 7E-008GH5G63. The Department observed that the Facility was continuing to operate despite the expiration of its Permit on September 30, 2017, in violation of ADEM Admin. Code r. 335-6-6-.03(2). The Department also observed uncovered and unlabeled fluid containers that were stored without adequate protection,

indicating that proper BMPs were not being implemented. In addition, it was noted that oil disposal records were not available.

16. On December 26, 2017, the Department received a written response from the Permittee which included the 2016 Annual Petroleum Certification, a copy of the BMP Plan, and an explanation of why the 2016 DMRs were not submitted. The response did not include non-compliance forms, the overdue DMRs, or a report prepared by an engineer as required by the May 23, 2017, NOV.

17. On January 9, 2019, the Permittee electronically submitted a complete NOI with the required \$1385.00 application fee. General NPDES Permit No. ALG180853 was reissued January 10, 2019, with an effective date of February 1, 2019.

18. The Permittee consents to abide by the terms of this Consent Order and pay the civil penalty assessed herein.

19. The Department has agreed to the terms of the 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 the 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 that 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'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 #1), 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 r. 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 discharge, the effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. THE STANDARD OF CARE: In considering this factor, the Department noted that the delayed failure to apply for a permit, respond to the NOV, and other reporting violations, are non-technical violations considered easily avoidable. The Permittee also failed to properly prepare and implement a BMP Plan. In consideration of the standard of care manifested by the Permittee, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee delayed or avoided certain costs associated with BMPs, sample collections and analysis, and the submittal of reports and permit renewals. The Department has determined that there has been an economic benefit associated with the Permittee's noncompliance and has enhanced the penalty.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION 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 issued NOVs to the Permittee on September 24, 2014, and June 11, 2015, for operating without an NPDES permit. The Department issued a Warning Letter to the Permittee on August 16, 2016, for failure to enroll in the E2 system, failure to submit DMRs, and failure to maintain a BMP Plan. In consideration of such history of previous violations, the Department has enhanced the penalty.

F. THE ABILITY TO PAY: The Permittee 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. OTHER FACTORS: 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 amicable, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment # 1.

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 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 Permittee (hereinafter “the 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 of fifteen thousand dollars (\$15,000.00), payable in twelve monthly installments in settlement of the violations alleged herein. The first payment of \$1250.00 shall be due on the first of the month following the effective date of the Order, with each subsequent payment due on the first of each month thereafter. The subsequent payments will be eleven equal monthly installments of \$1250.00. Failure to pay the civil penalty within 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 Permittee shall prepare and submit to the Department all overdue DMR data (or DMRs, indicating data not obtained with the proper code) electronically through the Department’s Electronic Environmental DMR Reporting System Program (hereinafter “E2 Program”) so that it is received by the Department no later than **thirty days** after issuance of this Order. The Permittee shall abide by all terms, conditions, and limitations of the E2 Program.

D. The Permittee shall prepare and submit the overdue 2017 Annual Petroleum Certification so that it is received by the Department no later than **thirty days** after issuance of this Order.

E. The Permittee shall submit an Engineering Report that addresses the need for changes in maintenance and operating procedures to achieve compliance with applicable rules, regulations, and permit conditions. The Report shall be prepared by a professional registered engineer licensed to practice in the State of Alabama and shall be submitted so that it is received by the Department no later than ninety days after issuance of this Order. The receiving water and the latitudinal/longitudinal coordinates of the facility's outfall(s) should be verified in the Report. A map showing the direction of the water flow shall also be included. The Permittee shall complete implementation of the recommendations provided in the Engineering Report no later than **120 days** after the date of issuance of this Order.

F. The Permittee shall comply with all terms, conditions, and limitations of the issued NPDES permit **immediately**.

G. 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 Order. The Permittee shall submit such certification so that it is received by the Department no later than **150 days** after the date of issuance of this Consent Order.

H. After issuance of this Consent Order, 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, 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:

<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, D, E, and G, the Department reserves the right to file a new action against Permittee.

I. Cumulative stipulated penalties described in paragraph E 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 specified in the accepted Engineering Report, then the Department reserves the right to issue an additional order 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.

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 milestone date and each and every month thereafter until the milestone is completed or until the final compliance date of this Consent Order. Notification to the Permittee 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 Permittee it 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, that 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. This information shall be submitted to 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.

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 the Facility 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 Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address 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 Permittee does hereby waive any hearing on the terms and conditions of same.

Q. This Consent Order shall not affect the Permittee'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 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 must 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 Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

LA Recycling Services LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By:  _____

By: _____

Its: R. Dennis O'Leary _____

Its: _____

Date: 3-10-19 _____

Date: _____

Attachment 1

**LA Recycling Services LLC
Fairhope, Baldwin County
ALG180853 / FID 52817**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Operating without a permit	1	\$ 5,000.00	\$ 2,500.00	\$ 2,500.00
Failure to adequately respond to NOV	1	\$ 2,000.00	\$ 1,000.00	
Failure to submit 2017 annual petroleum certification (APC) and late submittal of 2016 APC	2	\$ 1,000.00	\$ 1,000.00	
Failure to submit semiannual DMRs for DSN001-1 and DSN002-1	6	\$ 3,000.00	\$ 1,500.00	\$ 1,500.00
Failure to apply to E2 program in required timeframe	1	\$ 500.00	\$ 250.00	\$ 250.00

\$11,500.00	\$6,250.00	\$4,250.00
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 (-)	-\$6,600.00
Other Factors (+/-)	-\$5,400.00
Total Adjustments (+/-)	-\$12,000.00



Base Penalty Total	\$22,000.00
Mitigating Factors (-)	
Economic Benefit (+)	\$5,000.00
Ability to Pay (-)	
Other Factors (+/-)	
INITIAL PENALTY	\$27,000.00
Total Adjustments (+/-)	-\$12,000.00
FINAL PENALTY	\$15,000.00

Footnotes

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