

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Phillip Dickerson)
d/b/a Phillip's Auto Recycling)
(Phillip's Auto Recycling & Salvaging Inc.))
28 Harrell Lane)
Ozark, AL Dale County)

GENERAL NPDES PERMIT ALG180793)

Consent Order No. 19-XXX-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Phillip's Auto Recycling (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. Phillip Dickerson (hereinafter "Operator") is the owner and operator of Phillip's Auto Recycling & Salvaging, Inc., d/b/a Phillip's Auto Recycling (hereinafter "Facility"), a salvage and scrap metal recycling facility located at 28 Harrell Lane, in Ozark, Dale County, Alabama. The Facility discharges pollutants from point sources into an unnamed tributary to the Choctawhatchee River, 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 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. On June 4, 2013, pursuant to Ala. Code § 22-22-9(i)(3), Phillip Dickerson, as the

corporate officer responsible for Phillip's Auto Recycling, applied to the Department for a General National Pollution Elimination System (hereinafter "NPDES") Permit. The Department reissued General NPDES Permit Number ALG180793 (hereinafter "Permit") to the Operator on April 25, 2014, effective May 1, 2014. The Permit established limitations on the discharge of pollutants from point sources, designated therein as outfall numbers DSN001-1, DSN001-2, DSN001-3, DSN002-1, DSN002-2, DSN002-3, and DSN008-1 to an unnamed tributary to Choctawhatchee River, a water of the State. Outfall DSN001-3 was the representative outfall for outfalls DSN001-1, DSN001-2 and DSN001-3 and outfall DSN002-3 was the representative outfall for outfalls DSN002-1, DSN002-2 and DSN002-3. The Permit required that the Operator monitor its discharges and submit semiannual Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring and submit annual petroleum certification forms for outfall DSN008-1. In addition, the Permit required that the Operator 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. In addition, the Permit required that the Operator 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 the 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 that "[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 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 an NPDES permit for its storm water discharge. The Operator salvages automobiles parts onsite and therefore is required to obtain an NPDES permit for storm water discharges.

6. Permit Condition II. F. 1. b. of the Permit states "[f]ailure of the permittee to submit the

appropriate application material for reauthorization under this permit at least 90 days prior to the permit's expiration will void the automatic continuation of the authorization to discharge under this permit as provided by ADEM Administrative Code Rule 335-6-6-.06. Should the permit not be reissued for any reason prior to its expiration date, permittees who failed to meet the 90-day submittal deadline will be illegally discharging without a permit after the expiration date of this permit." The Permit expired on September 30, 2017. A complete renewal application and renewal application fee was due in the Department no later than July 2, 2017. According to the Department's electronic Notice of Intent (hereinafter "eNOI") system, a renewal application and current application fee of \$1,385.00 has been in "open" status on the eNOI system since September 14, 2017, but has not been submitted to the Department. The Operator has failed to submit a complete permit application including the application fee to the Department 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).

7. Permit Condition I. B. 4. b. states "[a]ll records required to be kept for a period of three years shall be kept at the permitted facility or an alternate location approved by the Department in writing and shall be available for inspection. A complete copy of the permit, the Best Management Practices (BMP) Plan, most recent BMP inspection records, and if applicable, a Spill Prevention, Control, and Countermeasures (SPCC) Plan shall be maintained at the facility." Permit Condition IV. A. 1. b. states the Permittee shall prepare and implement a BMP Plan which shall "[p]revent the spillage or loss of fluids, oil, grease, gasoline, etc. thereby preventing the contamination of storm water from these substances." Permit Condition IV. A. 4. c. states the Permittee shall provide BMP training "for any personnel required to implement the BMP and shall retain documentation of such training at the facility."

8. The Department conducted a compliance evaluation inspection (hereinafter "CEI") on August 8, 2018, to follow up on a complaint received by the Department alleging that there were several open drums of oil, cars flipped over and puddles of oil and other car fluids on the ground at the Facility. During the inspection, the Facility was actively operating. The Department noted staining and pooled liquid around the car crusher. The Department observed exposed car parts onsite. Facility personnel indicated that vehicles are washed inside occasionally. DMRs, laboratory records and BMP

training records were not available for review at the time of the inspection. The Operator is in violation of ADEM Admin. Code r. 335-6-6.03(2) by operating the Facility without a valid NPDES Permit. The Department's observations during the inspection further indicate that the Operator was not implementing proper best management practices to prevent stormwater contamination and was not complying with other conditions which would have been required under the terms of a valid NPDES permit. Permit condition I. C. 1. b. requires that annual, semiannual, and monthly DMRs be submitted as specified in the Permit. The January through December 2016 DMR for outfall DSN001-1 and the July through December 2016 DMRs for outfalls DSN002-1, DSN004-1, and DSN009-1 were due to the Department on January 28, 2017. The Department received the DMRs late on July 28, 2017 in violation of Permit Condition I. C. 1. b.

9. Permit Condition I. C. 1. b. requires that semiannual DMRs be submitted as specified in the Permit. The January through June 2017 DMRs for outfalls DSN001-3 and DSN002-3 were due to the Department on July 28, 2017, respectively. The Department has not received the DMRs in violation of Permit Condition I. C. 1. b. In addition, since expiration of the NPDES Permit the Operator has not submitted additional DMRs.

10. The Operator consents to abide by the terms of this Consent Order and to pay the 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 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 #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 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 Operator could have easily avoided the violations cited herein by reapplying for permit coverage and submitting the required monitoring reports. 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 and/or avoided certain costs associated with violations cited herein. The Department has determined that non-compliance has conferred an economic benefit upon the Operator and 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 previous violations such as failure to submit required reports, failure to maintain required documentation, failure to monitor as required, and failure to implement and maintain a BMP Plan. In consideration of the history of 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 Operator'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 amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment 1.

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 "the 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) payable in ten equal monthly installments of \$500.00 in settlement of the violations alleged herein. The first payment of \$500.00 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. 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 Operator shall submit a complete renewal General NPDES Notice of Intent ("hereinafter" NOI) through the Department's eNOI system, no later than **thirty days** after issuance

of this Order. If vehicle wash water is discharged to a water of the state then the eNOI shall also include vehicle washing operations on the application forms. In addition, the renewal application shall include the full legal entity name of the facility.

D. The Operator shall prepare and submit to the Department a complete application for enrollment in the Department's Electronic Environmental DMR Reporting System Program (hereinafter "E2 Program") for all facilities under his operation. The Operator shall submit the application(s) so that it is received by the Department not later than **thirty days** after the issuance of this 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, the Operator must 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, upon acceptance into the E2 Program, unless an extension is granted in writing by the Department. 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 **sixty days** after the issuance date of this Order, an Engineering Report that identifies the potential causes of noncompliance. The Engineering Report shall include a Compliance Plan with a schedule for implementation of the changes necessary to achieve compliance. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. The Engineering Report shall include plans for the remediation of spill areas so as to minimize stormwater contamination, development of an updated BMP plan, conducting BMP plan training including inspection frequencies, and the implementation of the BMP Plan. The Report shall verify whether vehicle wash water is discharged and, if so, confirm that an NPDES application has been submitted. 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 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 **180 days** after the date of issuance of this Order.

F. The Operator shall comply with all terms, conditions, and limitations of any issued NPDES permit immediately upon the effective date of the permit.

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 so that it is received by the Department no later than **210 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:

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

I. Cumulative stipulated penalties described in paragraph H. above all 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 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 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 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 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 Operator 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 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 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.

Phillip Dickerson
d/b/a Phillip's Auto Recycling
(Phillip's Auto Recycling & Salvaging Inc.)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

By: Phillip Dickerson By: _____
Its: Phillip's Auto Recycling Its: _____
Date: 4-4-19 Date: _____

Attachment 1

**Phillip's Auto Recycling
Ozark, Dale County
Expired ALG180793**

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 submit DMRs - DSN001-3 and DSN002-3 due 7/2017	2	\$ 2,500.00	\$ 1,250.00	\$ 1,250.00

\$7,500.00	\$3,750.00	\$3,750.00
Total (A)	Total (B)	Total (C)
Base Penalty Total		\$15,000.00
Mitigating Factors (-)		
Economic Benefit (+)		\$9,000.00
Ability to Pay (-)		
Other Factors (+/-)		
INITIAL PENALTY		\$24,000.00

Additional Adjustments due to negotiations, receipt of additional information, or public comment	
Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	-\$15,200.00
Other Factors (+/-)	-\$3,800.00
Total Adjustments (+/-)	-\$19,000.00



Total Adjustments (+/-)	-\$19,000.00
FINAL PENALTY	\$5,000.00

Footnotes

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