

**STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION**

In the matter of:

ACO-000216 2-5-14  
Date Entered:

Wayne Wolverton  
2295 Roseburgh Road  
Alger, Michigan 48610

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**ADMINISTRATIVE CONSENT ORDER**

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). Wayne Wolverton (Mr. Wolverton) owns and operates a business that he refers to as Wolverton Auto Salvage (facility) located at 2295 Roseburgh Road in Alger, Michigan. The DEQ alleges Mr. Wolverton is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.* Mr. Wolverton and the DEQ agree to resolve the violations set forth herein through entry of this Administrative Consent Order (Consent Order).

**I. STIPULATIONS**

Mr. Wolverton and the DEQ stipulate as follows:

- 1.1 The NREPA, MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Pollution Control, Part 31, Water Resources Protection, of the NREPA (Part 31), MCL 324.3101 *et seq.*, and the rules promulgated pursuant thereto, provides for the protection, conservation, and the control of pollution of the water resources of the state.
- 1.3 Section 3106 of Part 31, MCL 324.3106, states that, "(t)he department shall issue permits that will assure compliance with state standards to regulate municipal, industrial, and commercial discharges or storage of any substance that may affect the quality of the waters of the state."

- 1.4 Section 3112(1) of part 31, MCL 324.3112(1) states that "(a) person shall not discharge any waste or waste effluent into waters of this state unless the person is in possession of a valid permit from the department."
- 1.5 The DEQ is authorized by Section 3112(4) of Part 31 of the NREPA to enter orders requiring persons to abate pollution, and the director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.6 Mr. Wolverton consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of the DEQ and is enforceable as such under Section 3112(4) of Part 31. Mr. Wolverton agrees not to contest the issuance of this Consent Order, and that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the chief of the WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.7 Mr. Wolverton and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Mr. Wolverton that the law has been violated.
- 1.8 Mr. Wolverton shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.

## **II. FINDINGS**

- 2.1 The facility is an auto salvage yard that stores and sells auto parts containing vehicular fluids. As the owner of an auto salvage yard that has exposure of materials and/or processes to storm water and has a point source discharge of storm water from the facility to surface waters of the state, Mr. Wolverton is required to obtain industrial storm water permit coverage.

- 2.2 Mr. Wolverton failed to obtain permit coverage for the discharge of industrial storm water since the facility's last permit expired in 1999.
- 2.3 WRD staff conducted a compliance inspection of the facility on September 6, 2013, and observed exposure of industrial materials to storm water runoff with point source discharge of storm water to surface waters of the state. On September 19, 2013, WRD issued Violation Notice (VN), VN-005686, to Mr. Wolverton for failing to reapply for industrial storm water permit coverage which is a violation of Section 3112 of Part 31 and Rule 2161 of the Part 21 Rules, Wastewater Discharge Permits, promulgated pursuant to Part 31.

### **III. COMPLIANCE PROGRAM**

IT IS THEREFORE AGREED AND ORDERED THAT Mr. Wolverton shall take the following actions to prevent further violations of Part 31:

- 3.1 **Not later than 30 days** after the effective date of this Consent Order, Mr. Wolverton shall submit to the WRD the facility's Storm Water Pollution Prevention Plans (SWPPP) for review. The SWPPP shall meet the requirements of NPDES Permit No. MIS110000.
- 3.2 **Not later than 30 days** after receiving comments from the DEQ on the SWPPP referenced in paragraph 3.1, Mr. Wolverton shall incorporate the DEQ's comments into the proposed SWPPP and submit the revised SWPPP to the WRD Saginaw Bay District Supervisor for review.
- 3.3 Mr. Wolverton shall continue to employ a DEQ certified storm water operator who provides supervision over the facility's storm water treatment and control measures detailed in the SWPPP.
- 3.4 **Not later than 30 days** after the WRD Saginaw Bay District Supervisor granting final approval of Mr. Wolverton's SWPPP, Mr. Wolverton shall submit a Notice of Intent (NOI) for coverage under the NPDES Storm Water Permit No. MIS110000. The NOI shall be

submitted to the DEQ, WRD, Permits Section, P.O. Box 30458, Lansing, Michigan 48909-7958.

- 3.5 **Not later than 30 days** after receipt of the written notice from the DEQ, Mr. Wolverton shall cure all deficiencies identified in the NOI. If the DEQ requires additional information or action by Mr. Wolverton at any point during the permitting process to correct deficiencies in the NOI, the DEQ will notify Mr. Wolverton in writing of those deficiencies.
- 3.6 **Not later than 30 days** after receiving a permit fee invoice from the WRD, Mr. Wolverton shall pay the 2013 and 2014 annual discharge permit fee totaling \$520.00, made payable to the State of Michigan in accordance with Section 3118 of Part 31 of the NREPA, MCL 324.3118 and subsection 9.5 of this Consent Order.
- 3.7 Upon issuance of the Certificate of Coverage under NPDES General Permit No. MIS110000 by the DEQ, Mr. Wolverton shall pay the annual permit fee of \$260.00 associated with discharging storm water to the surface waters of the state for each billing period thereafter in accordance with Section 3118 of Part 31 of the NREPA. The invoice will be mailed to Mr. Wolverton each year.
- 3.8 Mr. Wolverton shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Saginaw Bay District Supervisor, WRD, DEQ, 401 Ketchum Street, Suite B, Bay City, Michigan 48708-5430, unless directed otherwise. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

#### **IV. DEQ APPROVAL OF SUBMITTALS**

- 4.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to the DEQ by Mr. Wolverton, the following process and terms of approval shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this Consent

Order shall include all of the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.

- 4.3 In the event the DEQ disapproves a work plan, proposal, or other document, it will notify Mr. Wolverton, in writing, specifying the reasons for such disapproval. Mr. Wolverton shall submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document which adequately addresses the reasons for the DEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify Mr. Wolverton of this disapproval.
- 4.4 In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify Mr. Wolverton, in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The DEQ may require Mr. Wolverton to submit, prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify Mr. Wolverton of this disapproval.
- 4.5 Upon DEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order.
- 4.6 Failure by Mr. Wolverton to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of this Consent Order and shall subject Mr. Wolverton to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 9.2.
- 4.7 Any delays caused by Mr. Wolverton's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter Mr. Wolverton's responsibility to comply with any other deadline(s) specified in this Consent Order.

- 4.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules or any other writing submitted by Mr. Wolverton will be construed as relieving Mr. Wolverton of its obligation to obtain written approval, if and when required by this Consent Order.

#### **V. EXTENSIONS**

- 5.1 Mr. Wolverton and the DEQ agree that the DEQ may grant Mr. Wolverton a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request in duplicate to the DEQ, WRD, Enforcement Unit Chief, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909-7773, and the Saginaw Bay District Supervisor at the address in paragraph 3.8, no later than ten business days prior to the pertinent deadline, and shall include:
- a. Identification of the specific deadline(s) of this Consent Order that will not be met.
  - b. A detailed description of the circumstances that will prevent Mr. Wolverton from meeting the deadline(s).
  - c. A description of the measures Mr. Wolverton has taken and/or intends to take to meet the required deadline.
  - d. The length of the extension requested and the specific date on which the obligation will be met.

The district supervisor, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests. No change or modification to this Consent Order shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

#### **VI. REPORTING**

- 6.1 Mr. Wolverton shall verbally report any violation(s) of the terms and conditions of this

Consent Order to the Saginaw Bay District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). Mr. Wolverton shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

#### **VII. RETENTION OF RECORDS**

- 7.1 Upon request by an authorized representative of the DEQ, Mr. Wolverton shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to Part 31 or its rules. All such documents shall be retained by Mr. Wolverton for at least a period of three years from the date of generation of the record unless a longer period of record retention is required by Part 31 or its rules.

#### **VIII. RIGHT OF ENTRY**

- 8.1 Mr. Wolverton shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

#### **IX. PENALTIES**

- 9.1 Mr. Wolverton agrees to pay a civil fine of **\$1125.00** for the violations specified in Section II of this Consent Order. Payment shall be made within 30 days of the effective date of this Consent Order in accordance with paragraph 9.5.

- 9.2 For each failure to comply with a provision of Section III or IV of this Consent Order, Mr. Wolverton shall pay stipulated penalties of **\$200.00** per violation per day for 1 to 7 days of violation, **\$300.00** per violation per day for 8 to 14 days of violation, and **\$500.00** per violation per day for each day of violation thereafter.
- 9.3 For each failure to comply with a provision of Section VI, VII, or VIII of this Consent Order, or any other requirement of this Consent Order, Mr. Wolverton shall pay stipulated penalties of **\$200.00** per violation per day for each day of violation.
- 9.4 To ensure timely payment of the above civil fine and stipulated penalties, Mr. Wolverton shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 9.5 Mr. Wolverton agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, MI 48909-8157; or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 W. Ottawa Street, Lansing, MI 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD60011**.
- 9.6 Mr. Wolverton agrees not to contest the legality of the civil fine pursuant to paragraph 9.1 above. Mr. Wolverton further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 9.2, 9.3, and 9.4, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

## X. FORCE MAJEURE

- 10.1 Mr. Wolverton shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of Mr. Wolverton's obligations under this Consent Order in accordance with this section.
- 10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of Mr. Wolverton, such as: an Act of God, untimely review of permit applications or submissions by the DEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by Mr. Wolverton's diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of Mr. Wolverton's actions or omissions.
- 10.3 Mr. Wolverton shall notify the DEQ, by telephone, within 48 hours of discovering any event that causes a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by Mr. Wolverton to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Mr. Wolverton shall adopt all reasonable measures to avoid or minimize any such delay.
- 10.4 Failure of Mr. Wolverton to comply with the notice requirements and time provisions under paragraph 10.3 shall render this Section X void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 10.3, above.
- 10.5 If the parties agree that the delay or anticipated delay was beyond the control of

Mr. Wolverton, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, the DEQ is the final decision-maker on whether or not the matter at issue constitutes a force majeure. The parties to this Consent Order understand and agree that the final decision by the DEQ regarding a force majeure claim is not subject to judicial review. The burden of proving that any delay was beyond the reasonable control of Mr. Wolverton, and that all the requirements of this Section X have been met by Mr. Wolverton, rests with Mr. Wolverton.

- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Mr. Wolverton qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

#### **XI. GENERAL PROVISIONS**

- 11.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of Mr. Wolverton to comply with the requirements of the NREPA and its rules.
- 11.2 The DEQ and Mr. Wolverton consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 *et seq.*; and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 *et seq.*
- 11.3 This Consent Order in no way affects Mr. Wolverton's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 The WRD reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and at its discretion, may also seek stipulated fines or statutory fines for any violation of this Consent Order. However, the

WRD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

- 11.5 Nothing in this Consent Order is or shall be considered to affect any liability Mr. Wolverton may have for natural resource damages caused by Mr. Wolverton's ownership and/or operation of the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 11.6 In the event Mr. Wolverton sells or transfers the facility, he shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, Mr. Wolverton shall also notify the WRD Saginaw Bay District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the WRD Saginaw Bay District Supervisor within 30 days of assuming the obligations of this Consent Order.
- 11.7 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 11.8 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

## **XII. TERMINATION**

- 12.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, Mr. Wolverton shall submit a request consisting of a written certification that

Mr. Wolverton has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. Specifically, this certification shall include:

- a. The date of compliance with each provision of the compliance program in Section III, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the district supervisor.
- c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

**Signatories**

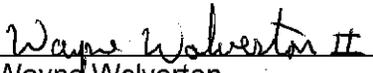
The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

  
\_\_\_\_\_  
William Creal, Chief  
Water Resources Division

2/5/2014  
Date

**WAYNE WOLVERTON**

  
\_\_\_\_\_  
Wayne Wolverton  
Owner, Wolverton Auto Salvage

1-24-14  
Date

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
By: Neil D. Gordon, Assistant Attorney General  
For: S. Peter Manning, Chief  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

1/30/14  
Date