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MAY 25 2023

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IND/MUN BRANCH WATER DIVISION

IN THE MATTER OF:)
)
PK Business LLC)
25498 Highway 5)
Woodstock, AL 35188)
Bibb County, Alabama)
)
(Expired) GENERAL NPDES PERMIT NO. ALG180046)

Consent Order No. 23-XXX-CWP

PREAMBLE

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

STIPULATIONS

1. The Permittee operates a recycling/salvage yard, known as Woodstock Auto Salvage (“Facility”) located at 25498 Highway 5 in Woodstock, Bibb County, Alabama. The Permittee discharges pollutants from a point source into an Unnamed Tributary to Caffee Creek, 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), as amended, 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 transferred National Pollutant Discharge Elimination System (“NPDES”) Permit No. ALG180046 (“Permit”) to the Permittee on June 30, 2022, effective July 1, 2022, for discharges associated with the salvage and recycling industry to an unnamed tributary to Caffee Creek. The Permit expired on September 30, 2022. The Permit establishes limitations/conditions on the discharges of pollutants from Outfall No. DSN001-1 for the discharge of storm water from automotive recycling and salvage areas, and Outfall No. DSN008-1 for the discharge of uncontaminated storm water from fueling, petroleum storage and handling, equipment storage, and maintenance areas. The Permit requires that the Permittee monitor its discharges and submit semi-annual and annual Discharge Monitoring Reports (“DMRs”) to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of the Permit. The Permittee shall maintain documentation and implementation of a Best Management Practices (“BMP”) Plan.

5. 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 recycling of materials, including salvage yards and automobile junkyards, is required to have an NPDES permit for its storm water discharge. The Facility salvages automobiles parts onsite and therefore is required to obtain an NPDES permit for storm water discharges.

6. Ala. Code § 22-22-9(i)(3) provides that every person shall obtain a permit prior to discharging any new or increased pollution into waters of the state.

7. On April 19, 2022, the Department conducted a Compliance Evaluation Inspection (“CEI”) in response to a complaint. The NPDES Permit in effect at that time was issued to His Blessings LLC. According to on-site personnel, the Facility was currently owned

and operated by PK Business, LLC. Therefore, the Operator was operating without a valid permit during the April 19, 2022, inspection.

8. At the time of the April 19, 2022, inspection, good housekeeping measures and proper BMPs were not being implemented, and offsite sedimentation was observed downgradient of the Facility's discharge point. In addition, the secondary containment for the 300 gallon used oil tote had insufficient holding volume; there was staining observed in the entrance and outside of the building; used oil dry had not been cleaned/removed; contaminated soil had not been cleaned/removed; and plastic burn piles were exposed to stormwater.

9. On May 3, 2022, the Department issued a Notice of Violation ("NOV") to PK Business LLC in response to the violations observed during the inspection. The NOV required the Operator to submit to the Department within thirty days from receipt of the NOV a written report addressing the violations, a schedule for corrective action implementation and a permit transfer application to change the facility name and ownership.

10. An NPDES Permit Transfer Agreement was received with applicable fees by the Department on May 12, 2022, and the Permit was transferred to PK Business LLC on June 30, 2022, effective July 1, 2022.

11. On June 30, 2022, the Department received a written response to the May 3, 2022, NOV.

12. On August 4, 2022, the Department conducted a follow-up CEI inspection.

13. Permit Condition IV.A.1.a. requires the permittee to provide control sufficient to prevent or control pollution of storm water by particles to the degree required to maintain compliance with the permit and water quality standards. Erosion control should also be addressed. At the time of the August 4, 2022, inspection, the Department observed excessive accumulation of sediment inside the sediment trap and hay bales. Also, offsite sedimentation was observed immediately adjacent to the site and in a roadside ditch downgradient of the Facility. The Department noted that additional measures should be taken to address the continued sedimentation issues.

14. Permit Condition IV.A.1.b. requires the permittee to prevent the spillage or loss of fluids, oil, grease, gasoline, etc. and thereby preventing the contamination of storm water from these substances. At the time of the August 4, 2022, inspection, contaminated soil had been excavated but not removed or covered with plastic.

15. Permit Condition IV.A.4.c. states that the permittee shall provide training for any personnel required to implement the BMP and shall retain documentation of such training at the facility. This documentation shall also be available for inspection by representatives of the Department. At the time of the August 4, 2022, inspection, BMP training records were not available.

16. Permit Condition II.F.1.a. states the permittee authorized to discharge under this General Permit, who wishes to continue to discharge upon the expiration of this permit, shall submit a Notice of Intent ("NOI") to be covered by the reissued General Permit. Such Notice of Intent shall be submitted at least 90 days prior to the expiration date of this General Permit. The permittee shall electronically submit the Notice of Intent, unless the permittee submits in writing valid justification as to why the electronic submittal process cannot be utilized and the Department approves in writing utilization of hard copy submittals. The Facility's permit expired on September 30, 2022, and the Department received the NOI for reissuance late on August 29, 2022.

17. Permit Condition II.F.1.b. states failure 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 the permit. The Facility's permit expired on September 30, 2022. The Department received the NOI for reissuance on August 29, 2022. However, the Department was unable to issue coverage as additional information was necessary for the Duly Authorized Representative's (DAR's) delegation letter. The additional information needed to complete the

NOI was received on March 14, 2023.

18. On September 12, 2022, the Department sent a Follow-Up Inspection Letter to PK Business LLC that required the Operator submit to the Department within thirty days from receipt of the letter a written report prepared by an engineer registered and authorized to practice in Alabama which described the steps that have been taken and/or are being taken to correct the violations and a schedule for corrective action implementation. The Department acknowledged that the Operator implemented certain measures to address the sedimentation issues noted in the NOV. However, based on the August 4, 2022, inspection, additional measures needed to be taken to minimize sediment loss from the site.

19. On March 10, 2023, the Department conducted a follow-up CEI at the Facility.

20. At the time of the March 10, 2023 inspection, PK Business LLC was operating without a permit. At the time of inspection, the Facility was not discharging, but offsite sedimentation was observed downgradient of the site's outfall. The sediment trap had not been cleaned. The outlet from the sediment trap did not have rip-rap as recommended in the Alabama Handbook for Erosion Control. On the southeast side of the site, the drainage ditch was not stabilized. Near the northeast corner of the site, a drainage ditch drained to the site boundary with no BMPs implemented and was bypassing the sediment trap. Petroleum contaminated soil was covered by a tarp while waiting for disposal. However, the tarp had holes and there was no plastic under the pile of contaminated soil.

21. Permit Condition I.D.4.a. requires that any permittee shall furnish to the Director, within a reasonable time, any information which the Director or his designee may request to determine whether cause exists for suspending or revoking the permittee's authorization to discharge under the General Permit, in whole or in part, or to determine compliance with the permit or to determine if the permittee should be required to apply for an individual permit. Permit Condition I.D.4.b. requires that any or all permittees shall furnish to the Director, within a reasonable time, any information which the Director or his designee may request to determine whether cause exists for modifying or terminating this permit. The

Department's September 12, 2022, letter required an Engineering Report to be submitted to the Department within 30 days. The Report was not received until March 14, 2023.

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

23. 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 which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment 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 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 Permittee failed to manifest an appropriate standard of care by failing to obtain permits, respond to the Department within required timeframes, maintain training records, implement best management practices, and provide sufficient sediment control measures. 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 Department has considered that delayed compliance may have conferred an economic benefit upon the Permittee but is unable to estimate the economic benefit associated with the violations cited above, as the costs for compliance are not available at this time.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department acknowledges that the Permittee has taken certain actions to address violations cited within this Order; however, these actions have not resulted in compliance. The penalty has not been adjusted based upon this factor.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of any previous violations at this site by PK Business LLC.

F. THE ABILITY TO PAY: The Permittee has provided information indicating 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 amicably, 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 (collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of **eight thousand dollars (\$8,000.00)** in settlement of the violations alleged herein according to the payment schedule as set forth in this paragraph. The Permittee shall pay to the Department a civil penalty in the amount of one thousand three hundred and thirty three dollars (\$1,333.00) payable in five equal monthly installments and a final monthly payment of one thousand three hundred and thirty five dollars (\$1335.00) in settlement of the violations alleged herein. The first payment of \$1,333.00 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 entire remaining 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. If requested by the Department, the Operator shall make any necessary corrections and submit revised applications and/or information through the Alabama

Environmental Permitting and Compliance System (AEPACS) to obtain NPDES Permit coverage. Any requested information shall be submitted such that it is received by the Department no later than thirty days after the request or an alternate timeframe as identified by the Department.

D. The Operator shall prepare and submit to the Department, not later than **30 days** after the issuance of this Order, an updated Engineering Report that addresses the corrective actions taken or to be taken to ensure the implementation and maintenance of proper BMPs. The Engineering Report shall include a schedule for implementation of necessary corrective actions with dates (i.e., a Compliance Plan) and the cost of equipment and/or repairs needed to achieve compliance, if known. The report should specifically include, but not be limited to, the corrective actions taken or to be taken to address the on-going sedimentation loss from the site including dates of completion and/or a schedule of compliance. The Engineering report shall be prepared by an engineer registered and authorized 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 the receipt of the Department's comments. The Operator shall complete implementation of the recommendations provided in the Engineering Report no later than **90 days** after the date of the issuance of this Order.

E. The Operator shall comply with all terms, conditions, and limitations of its expired permit immediately and upon the effective date of any subsequent issued permits.

F. 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 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 Order.

G. After issuance of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the written submittal milestone dates or requirement dates set forth in or established by paragraphs A., D. and F. 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., D. and F., the Department reserves the right to file a new action against Permittee.

H. Cumulative stipulated penalties described in paragraph I. above shall under no circumstances exceed \$15,000.00. Once stipulated penalties of \$15,000.00 are due to the Department and violations continue to occur, or should violations continue to occur after **270 days** from the issuance of this Consent Order, 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.

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

J. 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.

K. 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.

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

M. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of **ten working days** prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may

extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

N. 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. The Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

O. 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.

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

Q. 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.

R. 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.

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


T. 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.

Anwar Vasaya
PK Business LLC
(Woodstock Auto Salvage)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
EXECUTED AND ISSUED:

By:  By: _____
Its: OWNER Its: _____
Date: 05/23/2023 Date: _____

Attachment 1

**PK Business LLC
Woodstock, Bibb County
Expired ALG180046**

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	
Failure to provide sufficient sediment control measures	2	\$ 10,000.00	\$ 5,000.00	
Failure to implement adequate BMPs	1	\$ 10,000.00	\$ 5,000.00	
Failure to provide engineering report within required timeframe	1	\$ 2,000.00	\$ 1,000.00	
Failure to maintain BMP Training Records	1	\$ 500.00	\$ 250.00	

\$27,500.00	\$13,750.00	\$0.00
Total (A)	Total (B)	Total (C)
Base Penalty Total [Total (A) + Total (B) + Total (C)]		\$41,250.00
Mitigating Factors (-)		
Economic Benefit (+)		
Ability to Pay (-)		
Other Factors (+/-)		
INITIAL PENALTY		\$41,250.00
Total Adjustments (+/-)		-\$33,250.00
FINAL PENALTY		\$8,000.00

Additional Adjustments due to negotiations, receipt of additional information, or public comment	
Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	-\$25,000.00
Other Factors (+/-)	-\$8,250.00
Total Adjustments (+/-)	-\$33,250.00



Footnotes

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