

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE
_____ DISTRICT

Petitioner,

v.

OGC File No. 05-XXXX

JOHN DOE and AUTO SALVAGE YARD, INC.,

[For corporations, insert entire name as listed in corporate information records.

For joint owners of the property, include all owners. For businesses not listed in corporate information, contact OGC for advice on naming the proper parties.]

THIS EXAMPLE INCLUDES TWO PARTIES, IF THERE IS ONLY ONE MAKE SURE ALL REFERENCES TO "RESPONDENT" ARE SINGULAR.

Respondents.

_____ /

**NOTICE OF VIOLATION, ORDERS FOR CORRECTIVE ACTION,
AND ADMINISTRATIVE PENALTY ASSESSMENT**

Certified Receipt Return No.:
1234 5678 9012 3456

Certified Receipt Return No.:
1234 5678 9012 3457

To: Mr. John Doe
3131 Blue Lane
Orlando, Florida 32801

Auto Salvage Yard, Inc.
3131 Blue Lane
Orlando, Florida 32801

Pursuant to the authority of Section 403.121(2), Florida Statutes ("Fla. Stat."), the State of Florida Department of Environmental Protection ("Department") gives notice to Mr. John Doe and Auto Salvage Yard, Inc., ("collectively referred to as Respondents") of the following findings of fact and conclusions of law with respect to violations of

Chapters 376 and 403, Fla. Stat., and Chapter 62-710, Florida Administrative Code (“Fla. Admin. Code”).

FINDINGS OF FACT
PARAGRAPHS APPLICABLE TO ALL COUNTS

1. The Department is the administrative agency of the state of Florida having the power and duty to protect Florida’s air and water resources and to administer and enforce the provisions of Chapters 376 and 403, Fla. Stat., and the rules promulgated thereunder in Florida Administrative Code Title 62. To ensure consistency between the state and federal used oil programs, the text of relevant provisions of 40 Code of Federal Regulations (“C.F.R.”) Part 279, has been adopted by reference in Chapter 62-710, Fla. Admin. Code.

2. *[IN THE NEXT PARAGRAPHS DESCRIBE WHO THE RESPONDENTS ARE, WHAT THEY DO, AND WHERE THEY ARE LOCATED.]* Respondent Auto Salvage Yard, Inc., (“Auto Salvage”) is an active Florida for-profit business, organized under the laws of the state of Florida on or about August 10, 2000. Auto Salvage Yard, Inc., operates as an automobile salvage and maintenance shop [*describe the Facility’s operation: e.g., automobile dismantling and salvage yard, used oil transporter, used oil collection facility*] on a parcel of real property located at 3131 Blue Lane, Orlando, Orange County, Florida, 32801 (“Facility”).

3. Respondent John Doe (“Doe”) is a natural person who is the President and on-site manager of Auto Salvage Yard, Inc., and is responsible for managing the facility’s overall operations, including environmental compliance issues.

4. Respondent Doe holds the record title to the real property located at 3131 Blue Lane, Orlando, Orange County, Florida, 32801 and has owned the property since approximately January 1990.

5. *[DESCRIBE THE INSPECTION OF THE FACILITY OR PROPERTY THAT LED TO THE DISCOVERY OF THE USED OIL VIOLATIONS OR THE DEADLINES/REPORTING REQUIREMENTS THAT WERE NOT MET. ONLY INCLUDE THOSE EXHIBITS WHICH ARE NECESSARY FOR THE CAUSE OF ACTION. YOU MUST STATE ENOUGH SPECIFIC FACTS SO THAT IT IS CLEAR TO UNDERSTAND WHO, WHAT, HOW, WHEN, AND WHERE THE VIOLATIONS OCCURRED. THESE FACTS MUST BE MORE DETAILED THAN NEEDED FOR A CONSENT ORDER.]* FOR EXAMPLE: On May 18, 2002, the Department inspected the Facility in response to a complaint. The Department's inspection of the Facility revealed evidence of used oil discharged to the unpaved ground throughout the Facility. The Department observed used oil filters on the unpaved ground. A concrete pad used for vehicle disassembly operations, as well as the unpaved ground surrounding it were stained by releases of used oil. Additionally, there were several open and unlabeled 55-gallon drums containing used oil and oil filters. There were no disposal records available at the time of the inspection for used oil or used oil filters.

6. *[IF YOU ARE INCREASING THE PENALTY FOR A HISTORY OF NON-COMPLIANCE, YOU MUST INCLUDE THE INFORMATION IN SECTION 403.121(7). ONLY CONSENT ORDERS, FINAL ORDERS, OR JUDGMENTS THAT HAVE AN EFFECTIVE DATE AFTER JUNE 15, 2001, CAN BE USED HERE.]* FOR EXAMPLE: On

September 3, 2002, the Department executed Consent Order OGC Case No. 02-1234 with Respondents John Doe and Auto Salvage Yard, Inc., which contained a finding of violation and a civil penalty of more than \$2,000.00.

EACH COUNT SHOULD CONTAIN A SEPARATE VIOLATION. THE FOLLOWING ARE SAMPLES OF USED OIL COUNTS. INCLUDE ALL COUNTS SUPPORTED BY THE EVIDENCE IN THE CASE. SINCE THE COUNTS ARE A PART OF THE FINDINGS OF FACT, ALL RELEVANT FACTS NECESSARY TO DESCRIBE THE VIOLATION MUST BE INCLUDED. THEREFORE, A COUNT MAY INCLUDE MULTIPLE PARAGRAPHS, WHICH EXPLAIN THE VIOLATION. IF YOU ARE ASSESSING MULTI-DAY PENALTIES, YOU MUST SPECIFICALLY RECITE THE NUMBER OF DAYS OF VIOLATION. IF YOU ARE INCLUDING ECONOMIC BENEFIT, YOU MUST INCLUDE IT IN THE SPECIFIC COUNT THAT APPLIES.

COUNT I

7. On May 18, 2002, the Department observed oil-contaminated soil/gravel was observed surrounding the concrete pad of the vehicle disassembly area in the southwest portion of the Facility yard. Evidence of discharges of used oil to unpaved ground was also observed among the vehicle storage area in the Facility yard. Respondents had not addressed or cleaned up the spills.

COUNT II

8. On May 18, 2002, the Department observed several 55-gallon containers of used oil not marked or labeled clearly with the words "Used Oil."

COUNT III

9. On May 18, 2002, the Department reviewed the Respondents' operating records and files. Respondents failed to maintain documents and receipts for the management and disposal of used oil and used oil filters.

COUNT IV

10. On May 18, 2002, the Department observed used oil filters at Respondents' Facility on the unpaved ground, in open containers, and in unmarked drums.

COUNT V

11. [ALWAYS INCLUDE THIS COUNT] The Department has incurred expenses to date while investigating this matter in the amount of not less than \$_____.

CONCLUSIONS OF LAW

IN THIS SECTION OF THE NOV, SPECIFIC CONCLUSIONS OF LAW MUST BE MADE TO AFFIRM EACH VIOLATION. EACH CONCLUSION OF LAW MUST BE SUPPORTED BY A SUFFICIENT FINDING OF FACT IN THE PREVIOUS SECTION.

The Department has evaluated the Findings of Fact with regard to the requirements of Chapters 376 and 403, Fla. Stat., and Fla. Admin. Code Title 62. Based on the foregoing facts the Department has made the following conclusions of law:

12. Respondents are each a "person" as defined in Sections 376.301(28), 403.031(5), and 403.75(3), Fla. Stat.

13. The Auto Salvage Yard, Inc., facility includes the handling, management and disposal of solid wastes, including used oil and used oil filters. Furthermore, used oil and used oil filters are considered "pollutants" within the meaning of Section 376.301(36), Fla. Stat.

14. Respondents are “generators” of used oil within the meaning of Fla. Admin. Code Rule 62-710.210(2) (adopting 40 C.F.R. Part 279.1). [MAKE SURE TO INCLUDE ALL DEFINITIONS APPROPRIATE TO RESPONDENTS: GENERATOR, TRANSPORTER, TRANSFER FACILITY, BURNER, ETC.]

15. The Department is imposing an administrative penalty of less than or equal to \$10,000.00 in this Notice of Violation as calculated in accordance with Section 403.121, Fla. Stat.

IN THE FOLLOWING PARAGRAPHS YOU MUST RECITE THE RULES AND STATUTES THAT RELATE TO THE SPECIFIC COUNTS AND ASSOCIATED VIOLATIONS. THE PENALTY ASSESSMENT FOR EACH COUNT SHOULD BE IN A SEPARATE PARAGRAPH. EACH COUNT MUST HAVE AT LEAST ONE CORRESPONDING CONCLUSION OF LAW. EACH CONCLUSION OF LAW MUST BE SUPPORTED BY A SUFFICIENT FINDINGS OF FACT.

16. The facts in Count I constitute a violation of Fla. Admin. Code Rule 62-710.210(2) (adopting 40 C.F.R. Part 279.22(d)) and Fla. Admin. Code Rule 62-710.401(2) [INCLUDE ALL SECTIONS THAT APPLY TO RESPONDENTS: 40 C.F.R. Parts 279.43(c); 279.45(h); 279.52; or 279.64(g)] which prohibit the discharge of used oil into soils and require a generator to stop, contain, and immediately clean up releases of used oil. [INCLUDE THE FOLLOWING SENTENCE AT THE END OF ALL COUNTS.] The facts also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

17. The violation in Count I requires the assessment of administrative penalties under Section 403.121(3)(e), Fla. Stat., of \$2,000.00 for failure to properly dispose or store solid waste.

18. The facts in Count II constitute a violation of Fla. Admin. Code Rule 62-710.210(2) (adopting 40 C.F.R. Part 279.22(c)) and Fla. Admin. Code Rule 62-710.401(6) [*INCLUDE ALL SECTIONS THAT APPLY TO RESPONDENTS: 40 C.F.R. Parts 279.45(g); 279.54(f); or 279.64(f)*] which require a generator to store used oil in containers that are clearly and visibly marked or labeled with the words “Used Oil” and are in good condition with no visible leakage. The facts also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

19. The violation in Count II requires the assessment of an administrative penalty under Section 403.121(5) of \$500.00 for failure to comply with departmental regulatory statute or rule requirement.

20. The facts in Count III constitute a violation of Fla. Admin. Code Rule 62-710.210(2) (adopting 40 C.F.R. Part 279.24) and Fla. Admin. Code Rule 62-710.300(1)(a) [*INCLUDE ALL SECTIONS THAT APPLY TO RESPONDENTS: Fla. Admin. Code Rule 62-710.850(4)(a), 40 C.F.R. Parts 279.46; 279.56; 279.65; or 279.74*] which require a used oil generator to ensure that their used oil is managed by a handler registered with the Department. The facts also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

21. The violation in Count III requires the assessment of an administrative penalty under Section 403.121(4)(f), Fla. Stat., of \$500.00 for failure to prepare, submit, maintain, or use required reports or other required documentation.

22. The facts in Count IV constitute a violation of Fla. Admin. Code Rule 62-710.850(5)(a), which requires that all persons storing used oil filters store them in above ground containers which are clearly labeled "Used Oil Filters," and which are in good condition and sealed or otherwise protected from weather. The facts also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

23. The violation in Count IV requires the assessment of an administrative penalty under Section 403.121(5) of \$500.00 for failure to comply with departmental regulatory statute or rule requirement.

24. The administrative penalties assessed for Counts I - IV total \$3,500.00. *[IF USING A HISTORY OF NONCOMPLIANCE MULTIPLIER, THEN ADD:]* The Consent Order OGC Case No. 02-1234 constitutes a history of noncompliance pursuant to Section 403.121(7), Fla. Stat. Therefore the penalty is increased by 25% or \$875.00, making the total administrative penalty \$4,375.00.

25. *[FOR ECONOMIC BENEFIT ADD:]* The facts related in Count ____ establish Respondents gained a direct economic benefit of \$_____ by failing to *[describe the benefit (e.g., obtain the required permit)]*. Therefore, the administrative penalty is increased by an additional \$_____ pursuant to Section 403.121(8), Fla. Stat., making the total administrative penalty \$_____.

26. The costs and expenses related in Count V are reasonable costs and expenses incurred by the Department while investigating this matter, which are recoverable pursuant to Section 403.141(1) Fla. Stat.

ORDERS FOR CORRECTIVE ACTION

The Department has alleged that the activities related in the Findings of Fact constitute violations of Florida law. The Orders for Corrective Action state what you, Respondents, must do in order to correct and redress the violations alleged in this Notice.

The Department will adopt the Orders for Corrective Action as part of its Final Order in this case unless Respondents either file a timely request for a formal hearing or informal proceeding, pursuant to Section 403.121(2)(c), Fla. Stat., or file written notice with the Department opting out of this administrative process, pursuant to 403.121(2)(c), Fla. Stat. (See *Notice of Rights*) If Respondents fail to comply with the corrective actions ordered by the Final Order, the Department is authorized to file suit seeking judicial enforcement of the Department's Order pursuant to Sections 120.69, 403.121, and 403.131, Fla. Stat.

Pursuant to the authority of Sections 403.061(8) and 403.121, Fla. Stat., the Department proposes to adopt in its Final Order in this case the following specific corrective actions that will redress the alleged violations:

27. Respondents shall forthwith comply with all Department rules regarding solid waste and used oil management. Respondents shall correct and redress all violations in the time periods required below and shall comply with all applicable rules in Fla. Admin. Code Rule 62-710.210(2) (adopting 40 C.F.R. Part 279) and Fla. Admin. Code Chapters 62-710. [INCLUDE ALL APPROPRIATE RULES.]

IN THE FOLLOWING PARAGRAPHS YOU MUST INCLUDE SPECIFIC CORRECTIVE ACTIONS, WHICH RELATE TO EACH OF THE COUNTS. BE SURE TO SPECIFICALLY STATE ALL CORRECTIVE ACTIONS NEEDED TO CORRECT EACH VIOLATION. ANY CORRECTIVE ACTIONS NOT STATED (INCLUDING THOSE FROM A DIFFERENT PROGRAM AREA) MAY BE WAIVED.

28. **Commencing immediately and henceforth**, Respondents shall cease discharging used oil to ground surfaces. Furthermore, Respondents shall take all required and appropriate steps required to stop, contain, abate, and immediately clean up all releases at the Facility, including but not limited to releases of used oil.

29. **Commencing immediately and henceforth**, Respondents shall label all containers/tanks used for storing used oil with the words "Used Oil."

30. **Commencing immediately and henceforth**, Respondents shall store all used oil filters in closed containers labeled with the words "Used Oil Filters" and with no visible leakage.

31. **Commencing immediately and henceforth**, Respondents shall acquire and retain on site all documentation and receipts for the disposal of solid waste, including used oil, needed to demonstrate that used oil is managed by a handler registered with the Department.

32. **Commencing immediately and henceforth**, Respondents shall maintain records documenting disposal of used oil filters. Records shall be maintained on site and available for inspection for a minimum of three years. Within 30 days of the effective date of this Order, Respondents shall present to the Department copies of the required disposal. If documents are unavailable, Respondents must provide a written

affidavit stating where and how these wastes were disposed of during the time frame in question.

33. *[IF A PCAP IS NECESSARY TO DETERMINE THE NEED FOR A CAP/RAP, INSERT THIS PARAGRAPH.]* Respondents shall implement the Preliminary Contamination Assessment Actions, attached and incorporated herein as Exhibit I, within the timeframes set forth therein. In the event the Preliminary Contamination Assessment Actions described in Exhibit I reveals the presence of contamination in the soil, sediment, surface, and/or ground water in violation of the Department's water quality standards or minimum criteria, or reveals the presence of contaminants which may reasonably be expected to cause pollution of the surface and/or ground water of the state in excess of such standards or criteria, Respondents shall implement the corrective actions in the manner and within the time frames set forth in the document entitled "Corrective Actions for Contamination Site Cases," attached and incorporated herein as Exhibit II. Such time frames shall begin upon notification by the Department that the presence of contaminants has been confirmed and that such corrective actions are necessary.

34. *[IF GROUND WATER CONTAMINATION WILL BE ADDRESSED BY CAP/RAP WITHOUT THE NEED FOR A PCAP, INSERT THIS PARAGRAPH.]* To address the soil and ground water contamination at the Facility, Respondents shall implement the corrective actions as set forth in the document entitled "Corrective Actions for Contamination Site Cases," attached and incorporated herein as Exhibit II in the manner and within the time frames specified therein.

35. **Within 10 days of the effective date of this Order**, Respondents shall pay \$4,375.00 to the Department for the administrative penalties imposed above. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. 05-XXXX" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, _____ District, *[insert address]*.

36. In addition to the administrative penalties, **within 10 days of the effective date of this Order**, Respondents shall pay \$500.00 to the Department for costs and expenses. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. 05-XXXX" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, _____ District, *[insert address]*.

NOTICE OF RIGHTS

Respondents' rights to negotiate, litigate or transfer this action are set forth below.

Right to Negotiate

37. This matter may be resolved if the Department and Respondents enter into a Consent Order, in accordance with Section 120.57(4), Fla. Stat., upon such terms and conditions as may be mutually agreeable.

Right to Request a Hearing

38. Respondents have the right to a formal administrative hearing pursuant to Sections 120.569, 120.57(1), and 403.121(2), Fla. Stat., if Respondents dispute issues of material fact raised by this Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment (“Notice”). At a formal hearing, Respondents will have the opportunity to be represented by counsel or other qualified representative, to present evidence and argument on all issues involved, and to conduct cross-examination and submit rebuttal evidence.

39. Respondents have the right to an informal administrative proceeding pursuant to Sections 120.569 and 120.57(2), Fla. Stat., if Respondents do not dispute issues of material fact raised by this Notice. If an informal proceeding is held, Respondents will have the opportunity to be represented by counsel or other qualified representative, to present to the agency written or oral evidence in opposition to the Department’s proposed action, or to present a written statement challenging the grounds upon which the Department is justifying its proposed action.

40. If Respondents desire a formal hearing or an informal proceeding, Respondents must file a written responsive pleading entitled “Request for Administrative Proceeding” within 20 days of receipt of this Notice. The request must be in the form required by Fla. Admin. Code Rule 28-106.2015 and include the following:

- (a) The Department’s Notice identification number and the county in which the subject matter or activity is located;

- (b) The name, address, and telephone number, and facsimile number (if any) of each respondent;
- (c) The name, address, telephone number, and facsimile number of the attorney or qualified representative of respondent, if any, upon whom service of pleadings and other papers shall be made;
- (d) A statement of when respondent received the Notice; and
- (e) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the request for hearing must so indicate.

A request for hearing is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida, 32399-3000.

Right to Mediation

41. If Respondents timely file a request for hearing challenging the Notice, the Respondents have the right to mediate the issues raised in the Notice. If requested, a mediator will be appointed to assist the Department and Respondents reach a resolution of some or all of the issues. The mediator is chosen from a list of mediators provided by the FCRC Consensus Center ("FCRC"). The FCRC will provide up to eight hours of free mediation services to the Respondents. A mediator cannot require the parties to settle the case. If mediation is unsuccessful, both parties retain their full rights to litigate the issues before an administrative law judge. The Respondents must select the mediator and notify the FCRC within 15 days of receipt of the list of mediators. The mediation process does not interrupt the time frames of the

administrative proceedings and the mediation must be completed at least 15 days before the date of the final hearing.

42. The written request to appoint a mediator must be made within 10 days after receipt of the Initial Order from the administrative law judge appointed to hear the case. The request must be received by the FCRC Consensus Center, Attn. Chris Pedersen, 2035 East Paul Dirac Drive, Room 236, Tallahassee, Florida, 32310, (850) 644-6320, cpedersen@fsu.edu. Once the request is timely received, the FCRC will provide the parties with a list of mediators and the necessary information.

Right to Opt Out of the Administrative Proceeding

43. If Respondents do not wish to contest the issues before an administrative law judge, Respondents may file a notice with the Department opting out of the administrative process. Respondents must file its written opt out notice within 20 days after service of the Notice. The written notice to opt out is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000.

44. Once the Respondents opt out of the administrative process, the Department may sue the Respondents for injunctive relief, damages, costs and expenses, and civil penalties. If the Respondents opt out of the administrative process, the Department may ask the judge to assess civil penalties in excess of the amounts in this Notice up to \$10,000.00 per day per violation. The election to opt out of the administrative process is permanent and once the election is made the administrative process cannot be restarted.

Waivers

45. Respondents will waive the right to a formal hearing or an informal proceeding if either:
- a. a request for a formal hearing or informal proceeding is not filed with the Department within 20 days of receipt of this Notice, or
 - b. a notice opting out of the administrative proceeding is not filed with the Department within 20 days of receipt of this Notice.

These time limits may be varied only by written consent of the Department.

General Provisions

46. The Findings of Fact and Conclusions of Law of this Notice together with the Orders for Corrective Action will be adopted by the Department in a Final Order if Respondents fail to timely file a request for a formal hearing or informal proceeding, pursuant to Section 403.121, Fla. Stat. A Final Order will constitute a full and final adjudication of the matters alleged in this Notice.

47. If Respondents fail to comply with the Final Order, the Department is authorized to file suit in circuit court seeking a mandatory injunction to compel compliance with the Order, pursuant to Sections 120.69, 376.303, 403.121 and 403.131, Fla. Stat. The Department may also seek to recover damages, all costs of litigation including reasonable attorney's fees and expert witness fees, and civil penalties of not more than \$10,000 per day for each day that Respondents have failed to comply with the Final Order.

48. Copies of Department rules referenced in this Notice may be examined at any Department Office or may be obtained by written request to the District Office.

DATED this _____ day of _____, 20__.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

District Director

District

Copies furnished to:
Jack Chisolm, OGC Enforcement Section
Mail Station 35