



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 4**

**ATLANTA FEDERAL CENTER**

**61 FORSYTH STREET**

**ATLANTA, GEORGIA 30303-8960**

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

LKQ Corporation  
Mr. Brandon Walsh  
Environmental Compliance Manager  
2030 Lucas Lane  
Nashville, Tennessee 37207

Re: Notice of Violation and Opportunity to Show Cause Pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319 National Pollutant Discharge Elimination System Permit Nos.: ALG180791 (Trafford, AL Facility), ALG1808858 (Montgomery, AL Facility), GAIS03108 (Jenkinsburg, GA Facility), and TNR059253 (Chattanooga, TN Facility)

Dear Mr. Walsh:

In October 2020, the U.S. Environmental Protection Agency Region 4 conducted a Compliance Stormwater Evaluation Inspection (CSWEI) at the LKQ industrial site at 5112 Lower Wetumpka Rd, Montgomery, AL 36110 (Montgomery Facility). In November 2020, U.S. Environmental Protection Agency Region 4 conducted CSWEIs at the following industrial sites for which LKQ is the owner and/or operator: 24559 State Highway 79 North, Trafford, AL 35172 (Birmingham Facility) and 3055 Hillsboro Highway, Manchester, TN 37355 (Manchester Facility). On January 14, 2021, EPA issued a Section 308 Information Request to the LKQ industrial site at 400 Workman Road, Chattanooga, TN 37410 (Chattanooga Facility). In April 2021, the U.S. Environmental Protection Agency Region 4 conducted a CSWEI at the LKQ industrial site at 2401 Highway 42 North, Jenkinsburg, GA 30234 (Jenkinsburg Facility). The purpose of these CSWEIs and Information Request was to evaluate LKQ's compliance with the requirements of Sections 301 and 402(p) of the Clean Water Act (CWA), 33 U.S.C. §§ 1311 and 1342(p); the regulations promulgated thereunder at 40 C.F.R. § 122.26; and either the Alabama NPDES General Permit for Discharges Associated with the Salvage and Recycling Industry Consisting of Stormwater (AL Permit), the Alabama NPDES General Permit for Discharges from Construction Activities that Result in a Total Land Disturbance of One Acre or Greater (AL Construction Permit), the Tennessee Stormwater Multi-Sector General Permit for Industrial Activities, TNR050000 (TN Permit), or the Georgia NPDES General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GAR050000 (GA Permit), as applicable.

These CSWEIs and the responses to the Information Request have revealed that LKQ failed to comply with the requirements of Sections 301 and 402(p) of the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and/or the NPDES Permits listed above. Specifically, the EPA hereby notifies LKQ, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), of the following findings of violations at the following facilities:

## LKQ Montgomery

On October 21, 2020, the EPA issued a Section 308 Information Request to LKQ for the Montgomery Facility, for which LKQ provided its response to the EPA on November 4, 2020. The CSWEI conducted at the Montgomery Facility, for which the EPA transmitted the Report to LKQ on December 9, 2020, revealed that LKQ failed to comply with Section 301 of the CWA, 33 U.S.C. § 1311; its implementing regulations at 40 C.F.R. § 122.26; and the AL Permit. Specifically, the EPA hereby notifies LKQ, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), of the following alleged violations:

1. ***Part I(B)(2) of the AL Permit requires all test procedures for analysis of pollutants conform to 40 C.F.R. Part 136 and guidelines published pursuant to Section 304(h) of the FWPCA, 33 U.S.C. Section 1314(h). 40 C.F.R. Part 136 identifies Standard Method 4500-H+B-2011 as the appropriate test method for pH. According to Method 4500-H+B-2011, samples should be analyzed within 2 hours of collection.*** According to facility personnel and from review of the monitoring records, the pH benchmark monitoring analysis was only performed by the contract laboratory upon receipt of the samples. This does not comply with the 2-hour analysis time required by the method.
2. ***Part IV(A)(4)(b) of the AL Permit requires permittees to maintain a log of the inspections required by Part IV(A) of the permit. This log should contain records of all inspections performed and any corrective actions taken for the last three years.*** Records of inspections and corrective measures were requested during the EPA's recent inspection. In response to this request, the facility did not provide records of corrective measures in response to inspection findings.
3. ***Part IV(C)(1) of the AL Permit restricts permit coverage for facilities discharging to impaired waters unless consistent with an EPA-approved or EPA-established Total Maximum Daily Load (TMDL). For facilities covered under the AL Permit discharging to impaired waters are required to implement the additional measures outlined in Part IV(C) of the AL Permit.*** From a review of the facility's Best Management Practice (BMP) plan and aerial photography, it was determined that the inappropriate receiving waters were identified in the Notice of Intent (NOI). In the facility's NOI and BMP plan, it identifies Galbraith Mill Creek as the receiving water. The immediate receiving water for stormwater runoff from this site is Three Mile Branch, an impaired water for sediment. Due to the facility's incorrect identification of the receiving water (a stream that was not an impaired stream), it had not implemented the additional measures required for facilities discharging to impaired streams.
4. ***Part IV(A)(1) of the AL Permit requires the development of a Best Management Practice (BMP) plan with various requirements including, but not limited to, the identification of the receiving water and the description of the control measures utilized at the site.*** From the review of the BMP plan provided to the EPA, it was determined that the plan did not identify the appropriate receiving water or include all of the control measures implemented by LKQ at the facility.
5. ***Part II(B)(2)(c) of the AL Permit requires the permittee to prepare and implement a BMP plan according to Part IV of the permit. Part IV(A)(1)(a) of the AL Permit requires the BMP Plan include measures sufficient to prevent or control pollution of storm water by pollutants and the BMP Plan must also include erosion controls.*** The measures and erosion controls in the BMP Plan are insufficient to prevent or control pollution of stormwater by pollutants. During the

inspection, erosion features and breeches were observed in the berms throughout the site.

## **LKQ Birmingham**

On October 28, 2020, the EPA issued a Section 308 Information Request to LKQ for the Birmingham Facility, for which LKQ provided its response to the EPA on November 13, 2020. The CSWEI conducted at the Birmingham Facility, for which the EPA transmitted the Report to LKQ on December 16, 2020, revealed that LKQ failed to comply with Section 301 of the CWA, 33 U.S.C. § 1311; its implementing regulations at 40 C.F.R. § 122.26; and the AL Permits. Specifically, the EPA hereby notifies LKQ, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), of the following alleged violations:

1. ***Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p) and regulations promulgated thereunder at 40 C.F.R § 122.26 require individuals in Alabama to obtain permit coverage under the State of Alabama's Construction General Permit Number ALR100000 for construction activities resulting in land disturbances equal to or greater than one (1) acre.*** During the period of 2016 to 2018, the facility underwent a substantial expansion resulting in the facility expanding from approximately 35 acres to 130 acres. This expansion entailed the clearing and grading of land both west and south of the original facility footprint along the tributary to Dry Creek. According to facility personnel, the facility underwent this expansion and construction activity without obtaining coverage under the Alabama NPDES Construction Stormwater Permit. As such, discharges of stormwater during the expansion and construction activity were unpermitted and unauthorized.
2. ***Part III(A)(8) of the AL Construction Permit requires permittees to design, install, and maintain effective stormwater controls, erosion controls, and sediment controls including, but not limited to, a 25-foot natural riparian buffer around surface waters as discussed in detail in Part III(B). Part III(B) of the AL Construction Permit requires a 25-foot undisturbed natural riparian buffer zone to all waters of the State adjacent to or contained within the overall boundary of the construction site be maintained.*** During the EPA's inspection, the recently expanded areas of the facility were observed as having encroached on the required stream buffer for the tributary to Dry Creek along the west side of the site.
3. ***Part II(F)(2) of the AL Permit requires permittees to provide notice at least 180 days in advance of any facility expansion, production increase, process change, or other action that could result in the discharge of additional pollutants.*** In 2018, the facility completed its expansion from approximately 35 acres to 130 acres. The facility underwent this expansion without providing the necessary notice to the state until November 2020.
4. ***Part IV(A)(4)(d) of the AL Permit requires the BMP Plan be amended whenever there is a change in the facility or change in operation of the facility resulting in a discharge of significant amounts of pollutants.*** During the EPA's inspection, inconsistencies were observed between what was seen at the site and what was depicted in the BMP plan. Specifically, there was uncertainty with the facility pertaining to the locations of the outfalls, discharge points for specific areas of the facility, and additional drainage features not identified in the plan. Additionally, with the facility completing its major expansion in 2018, the BMP plan was not modified to reflect these changes until November 2020.

5. ***Part II(B)(2)(c) of the AL Permit requires the permittee to prepare and implement a BMP plan according to Part IV of the permit. Part IV(A)(1)(a) of the AL Permit requires the BMP Plan include measures sufficient to prevent or control pollution of storm water by particles and the BMP Plan must also include erosion controls.*** During the EPA's inspection, erosion features were observed forming in areas along the west side of the site leading to the adjacent tributary. The erosion control measures identified in the BMP Plan and implemented at the site failed to adequately prevent and/or control pollutants from entering into stormwater.

## **LKQ Jenkinsburg**

The CSWEI conducted at the Jenkinsburg Facility, for which the EPA transmitted the Report to LKQ on June 14, 2021, revealed that LKQ failed to comply with Section 301 of the CWA, 33 U.S.C. § 1311; its implementing regulations at 40 C.F.R. § 122.26; and the GA Permit. Specifically, the EPA hereby notifies LKQ, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), of the following alleged violations:

1. ***Part 1.3.5 of the GA Permit requires the permittee to submit an updated NOI with the "Change of Information" box marked within thirty (30) days of any information supplied in the NOI changing during the term of the permit.*** In 2019 the facility completed is facility expansion resulting in a significant modification of how stormwater at the site is discharged from the site. The facility failed to submit the necessary updated NOI for the changed information until April 27, 2021.
2. ***Part 5.1 of the GA Permit requires the permittee to develop a SWPPP containing, among other elements, the following: sampling data from the previous permit (Part 5.1.3.6); schedule for regular pick up and disposal of waste along with routine inspections for leaks and the condition of drums, tanks, and containers (Part 5.1.5.1(a)); and procedures for conducting the various types of analytical monitoring (Part 5.1.5.2).*** The SWPPP provided to the EPA during the inspection had an initial creation date of July 15, 2019. From the review of SWPPP, the following elements were missing: no sampling data was provided for the period prior to the current permit cycle (June 1, 2017), the section pertaining to good housekeeping measures did not include a definitive schedule, and no details were provided regarding the necessary procedures for pH analysis which is required to be completed within 2-hours of sample collection.
3. ***Part 5.4 of the GA Permit requires the permittee to maintain inspections, monitoring, and certification records. Part 4.1.1 of the GA Permit requires inspections during rain events to include inspections of control measures and outfalls. Part 4.1.2 of the GA Permit requires that the inspection records include, among other requirements, the time and date of the inspection.*** The quarterly inspection records provided during the EPA's inspection did not include the time of inspection or include observations of control measures and outfalls.
4. ***Part 4.2.1 of the GA Permit requires that at least once a quarter a stormwater sample be collected at each outfall, that the sample be collected within the first thirty (30) minutes discharge, that the samples be representative of the stormwater discharge from the site, and that a visual assessment of each sample be conducted.*** The records of quarterly visual assessments showed the permittee failing to consistently perform visual assessments during rain events, perform visual assessments at all outfalls (or rotate the observed representative outfall each quarter so that they are all assessed), and collect and analyze samples at each outfall that are

representative of the stormwater discharges from the Site.

5. ***Appendix B(14)(3) of the GA Permit requires all analytical methods, sampling containers, sample preservation techniques, and sample holding times be consistent with 40 C.F.R. Part 136. Part 136 identifies Standard Method 4500-H+B-2011 as the appropriate test method for pH. According to Method 4500-H+B-2021, samples should be analyzed within 2 hours of collection.*** According to facility personnel and from review of the monitoring records, the pH benchmark monitoring analysis was only performed by the contract laboratory upon receipt of the samples. This does not comply with the 2-hour analysis time required by the method.
6. ***Appendix A of the GA Permit defines an outfall as a location where stormwater in a discernible, confined, and discrete conveyance that either leaves the site or becomes a point source discharging to a receiving water.*** With the facility's expansion in 2019, LKQ added several sediment ponds which discharged to a preexisting pond that it identified as Pond 8. From the EPA's preliminary jurisdictional determination, it was determined that Pond 8 is a jurisdictional water in the headwaters of Yellow Water Creek that predates LKQ's operations at the site. Therefore, the smaller sediment ponds discharging to Pond 8 are discharging to jurisdictional waters and must be identified as individual outfalls. The facility has inappropriately been using Pond 8 as a control device and inappropriately been using the outfall from Pond 8 to the stream as a permitted outfall.

## **LKQ Chattanooga**

On January 14, 2021, the EPA issued a Section 308 Information Request to the Chattanooga Facility, for which LKQ submitted its response to the EPA on January 28, 2021. EPA reviewed LKQ's response which revealed that LKQ failed to comply with Section 301 of the CWA, 33 U.S.C. § 1311; its implementing regulations at 40 C.F.R. § 122.26; and the TN Permit. Specifically, the EPA hereby notifies LKQ, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), of the following alleged violations:

1. ***Part 4.6 of the TN Permit requires a facility discharging to waters with unavailable parameters or considered an Exceptional Tennessee Water to include additional requirements in their Storm Water Pollution Prevention Plan (SWPPP). Included in these requirements are the additional inspections, expedited responses to issues identified during inspections, and additional documentation and certifications.*** The measures and erosion controls identified in the BMP Plan are insufficient to adequately prevent or control pollutants from entering into stormwater.
2. ***Part 11, Sector N(Part 5.1) of the TN Permit requires Permittees to monitor stormwater discharges associated with industrial activities at least once per calendar year.*** A review of the benchmark monitoring records provided in response to the EPA's information request showed the facility failing to meet the annual monitoring requirement. Specifically, benchmark monitoring was not provided for years when visual observations of discharges were reported.

Until compliance with the CWA is achieved, LKQ is considered to be in violation of the CWA and may be subject to enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. This Section provides for the issuance of administrative penalty and/or compliance orders and the initiation of civil and/or criminal actions.

The EPA requests that representatives of LKQ contact the EPA within **seven (7) business days** of receipt of this letter to arrange a meeting in this office to show cause why the EPA should not take formal civil enforcement action against LKQ for these violations and any other potential violations, including the assessment of appropriate civil penalties. In lieu of appearing in person, a telephone conference may be scheduled. LKQ should be prepared to provide all relevant information with supporting documentation pertaining to the violations, including but not limited to any financial information which may reflect an inability to pay a penalty. LKQ has the right to be represented by legal counsel.

All information submitted during the show cause meeting must be accompanied by the following certification that is signed by a duly authorized official in accordance with 40 C.F.R. § 122.22:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

If LKQ believes that any of the requested information constitutes confidential business information, it may assert a confidentiality claim with respect to such information, except for effluent data. Further details, including how to make a business confidentiality claim, are found in Enclosure A.

Please be aware that the EPA may use information provided during the meeting or telephone conference in any enforcement proceeding related to this matter. Failure to schedule a show cause meeting may result in a unilateral enforcement action against LKQ. Notwithstanding the scheduling of a show cause meeting, the EPA retains the right to bring further enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited therein or for any other violation of the CWA.

In addition, the Securities and Exchange Commission (Commission) requires its registrants to periodically disclose environmental legal proceedings in statements filed with the Commission. To assist LKQ, the EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings* (Enclosure B).

Please contact Mr. Ahmad Dromgoole at [Dromgoole.Ahmad@epa.gov](mailto:Dromgoole.Ahmad@epa.gov) or at (404) 562-9212 to arrange a show cause meeting or if you have any questions or concerns. Legal inquiries should be directed to Mr. Tyler Sniff, Associate Regional Counsel, at [Sniff.Tyler@epa.gov](mailto:Sniff.Tyler@epa.gov) or at (404) 562-9499.

Sincerely,

KERIEMA  
NEWMAN

Digitally signed by KERIEMA  
NEWMAN  
Date: 2021.07.09 17:18:36 -04'00'

for

Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division

Enclosures

cc: Ms. Daphne Y. Lutz  
Alabama Department of Environmental Management

Ms. Veronica Craw  
Georgia Environmental Protection Division

Mr. DeWitt Logsdon  
TDEC, Columbia Environmental Field Office

Mr. Derek Green, Plant Manager  
LKQ Montgomery Facility

Mr. Dennis Antkowiak, Plant Manager  
LKQ Birmingham Facility

Ms. Kristine Jones, Plant Manager  
LKQ Jenkinsburg Facility

Mr. Danny Campbell  
LKQ Southeast, Inc.

## ENCLOSURE A

### RIGHT TO ASSERT BUSINESS CONFIDENTIALITY CLAIMS (40 C.F.R. Part 2)

Except for effluent data, you may, if you desire, assert a business confidentiality claim as to any or all of the information that the EPA is requesting from you. The EPA regulation relating to business confidentiality claims is found at 40 C.F.R. Part 2.

If you assert such a claim for the requested information, the EPA will only disclose the information to the extent and under the procedures set out in the cited regulations. If no business confidentiality claim accompanies the information, the EPA may make the information available to the public without any further notice to you.

40 C.F.R. § 2.203(b). Method and time of asserting business confidentiality claim. A business which is submitting information to the EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential.” Allegedly confidential portions of otherwise non confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by the EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.