COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
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Molly Joseph Ward
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
PILOT TRAVEL CENTERS LLC
FOR
FLYING J #752
VPDES Permit No. VA0089214

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Pilot Travel Centers LLC, regarding Flying J #752, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:

   (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

   (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

7. "DMR" means Discharge Monitoring Report.

8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

9. "Facility" or "Plant" means the Flying J #752 wastewater treatment plant located at 1530 Rest Church Road in Clearbrook, Virginia, that treats and discharges treated effluent from Pilot Travel Centers LLC co-located business operations under VPDES Permit No. VA0089214.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

11. "O&M" means operations and maintenance.

12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

13. "Permit" means VPDES Permit No. VA0089214, which was issued under the State Water Control Law and the Regulation to Pilot on January 1, 2015 and which expires on December 31, 2019.

14. "Pilot" means Pilot Travel Centers LLC, a limited liability company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. Pilot is a "person" within the meaning of Va. Code § 62.1-44.3.

15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

20. "Va. Code" means the Code of Virginia (1950), as amended.

21. "VAC" means the Virginia Administrative Code.

22. "VPDES" means Virginia Pollutant Discharge Elimination System.

23. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Pilot Travel Centers LLC (Pilot) owns and operates the Plant. The Permit allows Pilot to discharge treated industrial wastes from the Plant to Duncan Run, in strict compliance with the terms and conditions of the Permit.

2. Duncan Run is located in the Potomac River Basin. Duncan Run is not listed in DEQ's 305(b) report as impaired.

3. In submitting its DMRs, as required by the Permit, Pilot has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for ammonia, as nitrogen, for the months of December 2013, February 2014, April 2014, July 2014, August 2014, October 2014, November 2014, December 2014, January 2015, February 2015 and March 2015. Discharge limitations for Xylenes were exceeded in December 2013, February 2014 and November 2014. Discharge limitations for total hydrocarbons were exceeded in July 2014 and August 2014. The DMR was submitted late in December 2013. Pilot indicated that it believed the ammonia exceedances were related to spills of diesel exhaust fluid (DEF). TPH and xylene exceedances were reported to originate from diesel spills at the fueling islands.

4. VRO issued Warning Letters and Notices of Violation for the exceedances as follows: WL No. W2014-02-V-1001, issued 2/19/2014, WL No. W2014-04-V-1008, issued 4/30/2014, WL No. W2014-06-V-1010, issued 6/11/2014, WL No. W2014-09-V-1001, issued 9/11/2014, WL No. W2014-10-V-1001, issued 10/14/2014, WL No. W2014-12-V-1006, issued 12/12/2014, NOV No. W2015-01-V-0002, issued 1/14/2015, NOV No. W2015-03-V-1001, issued 3/06/2015, and NOV No. W2015-05-V-0001, issued 5/08/2015.

5. Pilot responded to the Warning Letters and Notices of Violation by submitting a plan and schedule of corrective action to address the ammonia, xylene and TPH exceedances. The plan and schedule are incorporated in Appendix A of the Order.

6. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

7. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

8. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

9. In addition to VPDES Permit No. VA0089214, the Department has issued VPDES Permit No. VAG830377 to Pilot for discharges from an onsite oil water separator.

10. Duncan Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

11. On April 2, 2015, Department staff met with representatives of Pilot to discuss the violations, including Pilot's written response. Apex Companies LLC, employed by Pilot to perform studies to determine appropriate Plant upgrades, said they were drafting proposals for improving retention and mixing in the Plant's stormwater pond, which receives flow from the fueling stations where DEF and diesel fuel is dispensed. Proposed changes include the addition of baffles and installation of an ion exchange unit using

clinoptilolite.

12. Based on the results of the April 2, 2015 meeting and the Facility's DMRs, the Board concludes that Pilot has violated the Permit, the Regulation and Va. Code § 62.1-44.5, by discharging treated industrial wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3), above.

13. In order for Pilot to return to compliance, DEQ staff and representatives of Pilot have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Pilot, and Pilot agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of **$6,738** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Pilot shall include its Federal Employer Identification Number (FEIN), 34-1953155, with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Pilot shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Pilot for good cause shown by Pilot, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in WL No. W2014-02-V-1001, issued 2/19/2014, WL No. W2014-04-V-1008, issued 4/30/2014, WL No. W2014-06-V-1010, issued 6/11/2014, WL No. W2014-09-V-1001, issued 9/11/2014, WL No. W2014-10-V-1001, issued 10/14/2014, WL No. W2014-12-V-1006, issued 12/12/2014, NOV No. W2015-01-V-0002, issued

1/14/2015, NOV No. W2015-03-V-1001, issued 3/06/2015, NOV No. W2015-05-V-0001, issued 5/08/2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Pilot admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Pilot consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Pilot declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Pilot to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Pilot shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Pilot shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pilot shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Pilot. Nevertheless, Pilot agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Pilot has completed all of the requirements of the Order;

    b. Pilot petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Pilot.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Pilot from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Pilot and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Pilot certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Pilot to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Pilot.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Pilot voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of September, 2015.

Amy T. Owens, Regional Director
Department of Environmental Quality

Pilot Travel Centers LLC voluntarily agrees to the issuance of this Order.

Date: 7/14/15 By: Kristin Seabrook, VP, Chief Legal Counsel and Secretary
Title
Pilot Travel Centers LLC

State of Tennessee
City/County of Knox

The foregoing document was signed and acknowledged before me this 14 day of July, 2015, by Kristin Seabrook who is VP, Chief Legal Counsel & Secretary of Pilot Travel Centers LLC, on behalf of the company.

Notary Public

Registration No.

My commission expires: October 5, 2016

Notary seal:

AMY YARBROUGH
STATE OF TENNESSEE NOTARY PUBLIC
KNOX COUNTY

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Plan and Schedule of Upgrades and Corrective Action**

Pilot shall immediately implement the following plan and schedule of upgrades and corrective actions submitted to DEQ on May 5, 2015. Additional details can be found in the document titled Supplemental Response and Corrective Action Plan submitted by Dynamis, Inc. on behalf of Pilot, which is incorporated by reference.

a) Beginning with the effective date of this Order:

i) the Pilot Regional Maintenance Technician will immediately begin performing and documenting a monthly facility inspection, and perform maintenance (as needed) on the gasoline and diesel fueling islands, underground storage tank (UST) pumps and sumps, and the Oil/Water Separator.

ii) Pilot shall install signage at the DEF fueling areas at the diesel fueling islands stating, "Please Take Care Not To Overfill DEF Tank. Please Do Not Leave Nozzle Unattended." Said signage shall be completely installed no later than 30 days from the effective date of this Order date.

iii) Pilot shall create and implement a standard operating procedure that requires travel center maintenance personnel to look for and sweep up any DEF powder residue at the diesel fueling island lanes. Pilot shall provide and document employee training on this procedure no later than 30 days from the effective date of this Order and shall retain the document onsite for review by DEQ.

iv) Pilot shall immediately install Storm drain protection fabric inserts in the catch basins on the gasoline fueling islands. These drain protection inserts will be inspected and cleaned (or replaced if spent) on a calendar quarterly basis.

b) By December 30, 2015, Pilot shall:

i) construct a bioswale in the stormwater pond.

ii) install an ion exchange system between the two ponds, the lined Emergency Fuel Spill Holding Pond and the Stormwater Management Pond.

c) By January 30, 2016, Pilot shall submit to DEQ an updated O & M Manual that includes new procedures to ensure proper operation of the bioswale and ion exchange system and prevention of permit exceedances for ammonia, xylene and TPH.

d) Within 30 days of receiving comments from DEQ on the O&M Manual, Pilot shall submit a revised manual to DEQ, incorporating requested changes.

e) Within two weeks of the completion of each item above, Pilot shall submit to DEQ verification of completion.

f) Pilot shall submit a final report documenting completion of corrective action, in accordance with the Plan, within 30 days of completion of corrective action but no later than March 15, 2016.

2. Best Quality Effluent

The parties acknowledge that during the period of upgrades and corrective actions, Pilot may experience additional violations of the same permit limitations which necessitate the upgrades and corrective actions. Accordingly, pending completion of the upgrades and corrective actions, Pilot shall operate the Facility in a manner that produces the best quality effluent of which it is capable, in order to minimize such additional violations and minimize potential impacts to water quality.

DEQ Contact

Unless otherwise specified in this Order, Pilot shall submit all requirements of Appendix A of this Order to:

Karen Gail Hensley, P.E.
Enforcement Team Leader
VA DEQ –Valley Regional Office
4411 Early Road
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7821 - phone
(540) 574-7878 - fax
karen.hensley@deq.virginia.gov