



# COMMONWEALTH of VIRGINIA

Molly Joseph Ward  
Secretary of Natural Resources

## DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
SHEETZ, INC  
FOR  
SHEETZ TRAVEL CENTER #701  
VPDES Permit No. VA0090271**

### **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 Sheetz, Inc. regarding the Sheetz Travel Center #701 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. "eDMR" means electronic Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" means the Sheetz Travel Center #701 at 227 Conicville Rd., Mt. Jackson, that treats and discharges treated effluent from Sheetz's business operations.
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. VA0090271 which was issued under the State Water Control Law and the Regulation to Sheetz on October 1, 2014 and which expires on September 30, 2019.
14. "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.
15. "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.

16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "Sheetz" means Sheetz, Inc. a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Sheetz is a "person" within the meaning of Va. Code § 62.1-44.3.
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. Sheetz owns and operates the Facility. The Permit allows Sheetz to discharge treated industrial wastewater, as a result of retail operations and the sale of gasoline and diesel fuel, to an unnamed tributary to the North Fork Shenandoah River, in strict compliance with the terms and conditions of the Permit.
2. The unnamed tributary to North Fork Shenandoah River is located in the Potomac River Basin and is not listed in DEQ's 305(b) report as impaired.

3. In submitting its eDMRs, as required by the Permit, Sheetz has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for Ammonia-N (mg/L) Concentration Average, for the months of February 2015, June 2015, and August 2015, and for Ammonia-N (mg/L) Concentration Maximum, for the months of February 2015, March 2015, April 2015, June 2015, and August 2015. Sheetz indicated that it believed the exceedances were related to input into the Oil/Water Separator (OWS) from the high Urea content of Diesel Exhaust Fluid (DEF).
4. VRO issued Warning Letters and a Notice of Violation for the Ammonia-N (mg/L) Average Concentration and Maximum Concentration exceedances as follows: WL No. W2015-03-V-1002, issued March 6, 2015; WL No. W2015-03-V-1011, issued March 27, 2015; WL No. W2015-05-V-1013, issued May 11, 2015; WL No. W2015-06-V-1009, issued June 10, 2015; and NOV No. W2015-08-V-002, issued August 14, 2015.
5. Sheetz responded to the Warning Letters and Notice of Violation by hiring a consultant to investigate the source of the Ammonia-N, as well as initiating wastewater testing to include additional flow monitoring. Sheetz proposed a possible solution by isolating the water flowing to the Oil/Water Separator (OWS) and treating the water prior to discharge.
6. Sheetz's operating logs indicate that it discharged treated wastewater from the Facility from February 2015 to August 2015.
7. 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."
8. 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.
9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
10. The Department has issued no permits or certificates to discharge to Sheetz other than VPDES Permit No. VA0090271.
11. The unnamed tributary to North Fork Shenandoah River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
12. On September 21, 2015, Department staff met with representatives of Sheetz to discuss the violations, including Sheetz's written response.
13. Based on the results of submitted eDMRs, the September 21, 2015 meeting, and the documentation submitted in response to WLs and NOV, the Board concludes that Sheetz has violated the Permit, Va. Code 62.1-44.5, and 9 VAC 25-31-50 by discharging treated

industrial wastewater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3) above.

14. In order for Sheetz to return to compliance, DEQ staff and representatives of Sheetz 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 Sheetz, and Sheetz agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,500 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

Sheetz shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] 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, Sheetz 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 Sheetz for good cause shown by Sheetz, 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, WL No. W2015-03-V-1002 dated March 6, 2015; WL No. W2015-03-V-1011, dated March 27, 2015; WL No. W2015-05-V-1013, dated May 11, 2015; WL No. W2015-06-V-1009, dated June 10, 2015; and NOV No. W2015-08-V-002, dated August 14, 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, Sheetz admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Sheetz 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. Sheetz 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 Sheetz 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. Sheetz 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. Sheetz shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sheetz 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 Sheetz. Nevertheless, Sheetz 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 Sheetz has completed all of the requirements of the Order;
  - b. Sheetz 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 Sheetz.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Sheetz 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 Sheetz 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 Sheetz 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 Sheetz to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Sheetz.
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, Sheetz voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Amy T. Owens, Regional Director  
Department of Environmental Quality

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Sheetz, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/10/2016 By: [Signature], Env. Director  
(Person) (Title)  
Sheetz, Inc.

Commonwealth of ~~Virginia~~ Pennsylvania  
City/County of Blair

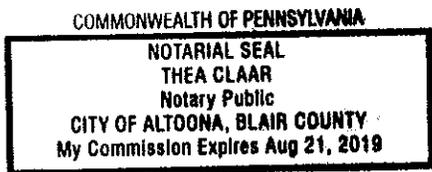
The foregoing document was signed and acknowledged before me this 10<sup>th</sup> day of March, 2016, by David S. Dodson who is Director of Env. Services of Sheetz, Inc. on behalf of the corporation.

[Signature]  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: 8/21/19

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

### 1. Plan and Schedule

- a. By March 30, 2016, Sheetz shall commence monthly water testing comparisons between the permitted outfall and OWS effluent prior to mixing with stormwater. Water quality parameters tested shall include Ammonia-N (mg/L) and also record flow (MGD).
- b. By June 30, 2016, Sheetz shall complete monthly water testing comparisons between the permitted outfall and OWS effluent prior to mixing with stormwater. Sheetz shall evaluate the results in order to determine the source of its Ammonia-N effluent violations.
- c. By July 30, 2016, Sheetz shall submit a final determination of the source of its Ammonia-N effluent violations to DEQ. By this date, Sheetz shall also submit a corrective action plan, including a schedule of events, to achieve and maintain compliance with its Permitted effluent limits.
- d. No later than 14 days following a date identified in the above schedule of compliance Sheetz shall submit to DEQ VRO, a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any actions taken to address the noncompliance, and the date compliance will be achieved.

### 2. DEQ Contact

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

Tiffany R. Severs  
Enforcement Specialist Senior  
VA DEQ –VRO Regional Office  
4411 Early Road, Mailing PO Box 3000  
Harrisonburg, VA 22980  
540-574-7859  
540-574-7878  
tiffany.severs@deq.virginia.gov