COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
PILOT TRAVEL CENTERS, LLC
FOR
Facility ID Nos. 2-011254 and 2-011241

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 for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

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

1. "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.

2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

3. "Containment and Cleanup" means abatement, containment, removal and disposal of a regulated substance and to the extent possible, the restoration of the environment to its existing state prior to the release of the regulated substance.

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

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

6. "Botetourt Facility" means the Pilot Travel Center store #258, located at 2966 Lee Highway South in Botetourt County Virginia; Facility ID # 2-011254.

7. "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

8. "Roanoke Facility" means the Pilot Travel Center store #108, located in located at 3001 Franklin Road in Roanoke County Virginia; Facility ID # 2-011241.

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

10. "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

11. "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.

12. "Owner" means (1) in the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and (2) in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use as defined in 9 VAC 25-581-10.

13. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

14. "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

15. "PTC" means Pilot Travel Centers LLC, a Delaware limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents.

16. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

17. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

18. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.

19. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

20. "UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

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

22. "VAC" means the Virginia Administrative Code.

23. "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. PTC is a person who at all times relevant to the violations addressed in this Order, owned and operated the UST systems at the Botetourt Facility and Roanoke Facility.

2. The UST systems at the Botetourt Facility and Roanoke Facility contain regulated substances in the form of motor fuel.

Botetourt Facility

3. The UST system at the Botetourt Facility contains seven UST's; three 10,000 gallon tanks used to store gasoline, three 10,000 gallon tanks used to store diesel, and one 4,000 gallon tank used to store bio-diesel.

4. On February 21, 1995 the DEQ received notification that a release of approximately one thousand gallons of regulated substance occurred at the Botetourt Facility. *See*, PC# 1995-1072.

5. On November 13, 1996 DEQ received notification that a release of approximately several thousand gallons of regulated substance occurred at the Botetourt Facility. *See*, PC# 1997-1047.

6. On May 12, 1998, a Corrective Action Plan (CAP) was approved in order to address any contaminated soils and ground water. DEQ requested a revised CAP on January 13, 2003 and again on September 8, 2005. DEQ approved the revised CAP and bids

for equipment purchases to upgrade the system; however, Pilot did not implement the Corrective Action Plan according to the Board's standards.

7. On February 2, 2002 a Release of an unknown quantity of a regulated substance occurred at the Botetourt Facility. *See,* PC #2002-2123. The DEQ was not notified of the Release. DEQ discovered the Release had occurred while reviewing documents related to another release at the Botetourt Facility.

8. 9 VAC 25-580-240 requires owners and operators within 24 hours upon confirmation of a release in accordance with 9 VAC 25-580-210 or after a release from the UST system is identified in any other manner, to report the release to the Board.

9. 9 VAC 25-580-250 (B) requires owners and operators within 20 days after a release of a regulated substance is confirmed, to submit a report to the Board summarizing the initial abatement steps taken under any resulting information or data.

10. On July 2, 2002 the DEQ issued a Notice of Violation (NOV #02-WCRO-001) for failure to report a known release of a regulated substance.

11. On May 11, 2006 the DEQ approved a CAP for the Botetourt Facility.

12. On August 30, 2006 the DEQ received notification that a release of regulated substance occurred at the Botetourt Facility. *See,* PC # 2007-2020.

13. On September 5, 2006 the DEQ received notification that a release of regulated substance occurred at the Botetourt Facility. *See,* PC # 2007-2020.

14. On January 9, 2008 the DEQ received notification that a release of regulated substances occurred at the Botetourt Facility. *See,* PC # 2008-2049.

15. On June 5, 2008, a vehicle collided with a satellite dispenser causing a release of a regulated substance. *See,* PC #2008-2080. The release continued until the pump was manually turned off, about 45 minutes after the incident. The regulated substance entered an unknown tributary of Buffalo Creek and then downstream into Buffalo Creek, each of which are state waters. The Virginia Department of Emergency Management and DEQ were immediately notified of the release.

16. On June 18, 2008 the DEQ staff performed a UST compliance inspection of the Botetourt Facility and made the following observations:

    a. A test of the cathodic protection system performed on March 24, 2007 indicated that the cathodic protection system had been "out of service" due to a malfunctioning cathodic protection rectifier. The cathodic protection test did not adequately cover the satellite piping or address potential continuity issues with the piping sections. The steel piping was in contact with the ground and that cathodic

protection had not been properly maintained.

b. Documentation was not provided (1) to show that the impressed current cathodic protection system had been inspected every 60 days, (2) to show that a proper integrity assessment was performed on the tanks prior to installation of the cathodic protection system, and (3) that the UST system was monitored at least every 30 days for releases.

c. The vent tubes to the vented line leak detectors (diesel product piping) were missing or unattached in conflict with required manufacturer's specifications.

17. 9 VAC 25-580-90(1) requires all corrosion protection systems to be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

18. 9 VAC 25-580-120 (2) and (3) requires owners and operators to maintain documentation of operation of corrosion protection equipment and recent compliance with release detection requirements and keep the records at the UST site and immediately available for inspection or at a readily available alternative site and be provided for inspection upon request.

19. 9 VAC 25-580-130(A)(2) requires owners and operators of new and existing UST systems to provide a method, or combination of methods, of release detection that is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

20. On June 26, 2008, the DEQ issued a Notice of Violation (NOV 08-06-WCRO-005) regarding the observations referenced in section C (16) above.

21. On August 5, 2008 the DEQ received the Initial Abatement Measures Report concluding an undetermined amount of a regulated substance, in the form of diesel fuel, had migrated along subsurface conduits and entered Buffalo Creek.

22. Based on the information set forth in paragraphs C (3) through C (21) above, the Board concludes that PTC has violated 9 VAC 25-580-240, 9 VAC 25-580-250 (B), 9 VAC 25-580-90(1), 9 VAC 25-580-120 (2) and (3), and 9 VAC 25-580-130(A)(2) at the Botetourt Facility.

Roanoke Facility

23. The UST system at the Roanoke Facility contains six UST's; four 6,000 gallon tanks used to store diesel, kerosene, and gasoline (two tanks), and two 10,000 gallon tanks used to store gasoline.

24. On May 28, 2005 the DEQ received notification that a suspected release of an

unknown quantity of a regulated substance may have occurred at the Roanoke Facility. *See*, PC# 2005-2105.

25. On May 31, 2005 the DEQ Staff conducted a visit to the Roanoke Facility and detected gasoline vapors at several access points within the sewer on adjacent property and observed that the spill catchment basin contained gasoline and water. DEQ Staff sent PTC a letter confirming the release of a regulated substance and requested a Site Characterization Report. At PTC's request, DEQ granted several extensions for submittal of the Site Characterization Report and addendums. The reports and addendums submitted by PTC were substantially incomplete.

26. 9 VAC 25-580-260 owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures.

27. On April 6, 2007 the DEQ issued a Warning Letter because PTC failed to submit the Site Characterization Report that would define the extent of contamination and potential risk to the environment in addition to developing a complete remediation assessment for formal corrective action.

28. On June 1, 2007 the DEQ requested a CAP to be submitted by August 10, 2007. PTC requested numerous extensions but the CAP was not submitted.

29. 9 VAC 25-580-280 requires owners and operators to submit additional information or to develop and submit a Corrective Action Plan for responding to contaminated soils and ground water. Upon approval of the Corrective Action Plan, owners and operators must implement the plan, including modifications to the plan made by the board. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the board.

30. January 4, 2008 the DEQ issued a Warning Letter because PTC failed to submit a CAP to address the release of a regulated substance and motor fuel vapors at adjacent businesses.

31. On April 15, 2008 the DEQ received a CAP for the Roanoke Facility but the CAP was substantially incomplete. On May 1, 2008 the DEQ requested that PTC revise the CAP.

32. On June 24, 2008 the DEQ issued a Notice of Violation (NOV 08-06-WCRO-004) for failing to submit a revised CAP detailing how PTC would respond to the release of regulated substances that occurred on May 28, 2005. *See,* PC # 2005-2015.

33. On October 28, 2008 PTC submitted the Corrective Action Plan for the release of regulated substances that occurred on May 28, 2005.

34. On November 18, 2008 DEQ reviewed and approved the CAP and issued a CAP

Permit. Since that time, all reports and activities have been completed by the required quarterly reporting due dates.

35. Based on the information set forth in paragraphs C (23) through C (32) above, the Board concludes that PTC has violated 9 VAC 25-580-260 and 9 VAC 25-580-280 at the Roanoke Facility.

SECTION D: Agreement and Order

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

1. Pay a civil charge of $48,370.00 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

PTC 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 Petroleum Storage Tank Fund (VPSTF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the written consent of PTC for good cause shown by PTC, 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. 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, PTC admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. PTC 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. PTC 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 PTC to comply with any of the terms of this Order shall constitute a violation of this Order. 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. PTC 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 occurrence. PTC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. PTC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three (3) 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 (3) business days, of learning of any condition above, which PTC intends 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, their 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 PTC. Nevertheless, PTC 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. PTC 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to PTC.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve PTC 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 PTC 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 PTC 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 PTC 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, PTC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2011.

_____

Melanie D. Davenport, Director
Division of Enforcement
Department of Environmental Quality

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

Date: 1-3-11 By: _____, Sr VP + CFO
(Person) (Title)
Mitchell D. Steenrod Pilot Travel Centers, LLC

State of Tennessee
~~Commonwealth of Virginia~~
City/County of Knox

REVIEWED BY PTC LAW DEPARTMENT

The foregoing document was signed and acknowledged before me this 3 day of January, 2011, by Mitchell D. Steenrod. who is Sr VP + CFO of Pilot Travel Center LLC, on behalf of the company.

Charmaine Kostreba
Notary Public

_____
Registration No.

My commission expires: 10.4.2014

Notary seal:

CHARMAINE KOSTREBA
STATE OF TENNESSEE NOTARY PUBLIC
KNOX COUNTY