



*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

NORTHERN REGIONAL OFFICE  
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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Bristow Shopping Center Limited Partnership LLP  
FOR  
Heritage Mall Citgo  
VPDES Permit No. VAG830536**

**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 Bristow Shopping Center Limited Partnership LLP, regarding the Heritage Mall Citgo facility, 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. "BSC LLP" means Bristow Shopping Center Limited Partnership LLP, a partnership authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Bristow

Shopping Center Limited Partnership LLP is a “person” within the meaning of Va. Code § 62.1-44.3.

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. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
7. “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.
8. “DMR” means Discharge Monitoring Report.
9. “Facility” means the Heritage Mall Citgo facility and its associated groundwater petroleum treatment works located at 7824 Rectory Lane, Annandale, Virginia 22003, which discharges water that has been treated for gasoline and other petroleum contamination, for the remediation of petroleum product releases from underground storage tanks owned by BSC LLP.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. “O&M” means operations and maintenance.
13. “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.
14. “Permit” means VPDES General Permit No. VAG83, which was issued under the State Water Control Law and the Regulation to BSC LLP on February 26, 2018, and which expires on February 25, 2023. BSC LLP applied for coverage under this permit, and was reissued Permit Registration Number VAG83056 on July 23, 2018.
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 General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Test," 9 VAC 25-120-80, *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. "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. BSC LLP owns and operates the Facility. The Permit allows BSC LLP to discharge treated groundwater from the Facility, to an unnamed tributary of Accotink Creek, in strict compliance with the terms and conditions of the Permit.

2. Accotink Creek is located in the Potomac River Basin. Accotink Creek is listed in DEQ's 305(b) report as impaired for recreational use due to bacteria, wildlife use due to chloride, and aquatic life use due to chloride and benthic macroinvertebrate bioassessment.
3. In submitting its DMRs and revisions to DMRs, as required by the Permit, BSC LLP has indicated that it exceeded discharge limitations contained in Parts I.A.3, I.A.4, and I.A.5 of the Permit, for the following parameters and months. BSC LLP indicated that it believed the reported exceedances were related to malfunctioning of the Facility's carbon vessel and other treatment system elements that required cleaning, and that parameters reported to be  $< X$   $\mu\text{g/L}$  were due to laboratory errors.
  - a. June 2019 DMR Outfall 001:
    - i. Naphthalene (reported 52.6  $\mu\text{g/L}$ , limit of 8.9  $\mu\text{g/L}$ )
    - ii. Ethylbenzene (reported  $<5.0$   $\mu\text{g/L}$ , limit 4.3  $\mu\text{g/L}$ )
    - iii. 1,2-Dichloroethane (reported  $<5.0$   $\mu\text{g/L}$ , limit 3.8  $\mu\text{g/L}$ )
    - iv. Ethylene Dibromide (reported  $<5.0$   $\mu\text{g/L}$ , limit 1.9  $\mu\text{g/L}$ )
  - b. June 2019 DMR Outfall 101:
    - i. Vinyl Chloride (reported  $<5.0$   $\mu\text{g/L}$ , limit 2.0  $\mu\text{g/L}$ )
    - ii. Carbon Tetrachloride (reported  $<5.0$   $\mu\text{g/L}$ , limit 2.3  $\mu\text{g/L}$ )
    - iii. 1,2-Dichloroethane (reported  $<5.0$   $\mu\text{g/L}$ , limit 3.8  $\mu\text{g/L}$ )
    - iv. Total Chlorobenzene (reported  $<5.0$   $\mu\text{g/L}$ , limit 3.4  $\mu\text{g/L}$ )
    - v. Chloroethane (reported  $<5.0$   $\mu\text{g/L}$ , limit 3.6  $\mu\text{g/L}$ )
    - vi. 1,1-Dichloroethane (reported  $<5.0$   $\mu\text{g/L}$ , limit 2.4  $\mu\text{g/L}$ )
  - c. July 2019 DMR Outfall 001:
    - i. Naphthalene (reported 65.9  $\mu\text{g/L}$ , limit 8.9  $\mu\text{g/L}$ )
  - d. August 2019 DMR Outfall 001:
    - i. Benzene (reported 46.3  $\mu\text{g/L}$ , limit 12.0  $\mu\text{g/L}$ )
    - ii. Naphthalene (reported 18  $\mu\text{g/L}$ , limit 8.9  $\mu\text{g/L}$ )
    - iii. Toluene (reported 49.1  $\mu\text{g/L}$ , limit 43.0  $\mu\text{g/L}$ )
    - iv. Total Xylenes (reported 94.9  $\mu\text{g/L}$ , limit 33.0  $\mu\text{g/L}$ )
4. NRO issued a Warning Letter and a Notice of Violation for the exceedances as follows: WL No. W2019-09-N-1007, issued September 20, 2019; and NOV No. W2019-10-N-0003, issued October 30, 2019.
5. BSC LLP responded on October 4, 2019, to the Warning Letters and Notice of Violation by submitting a report of corrective actions, including system cleaning and repairs. BSC LLP's statements and submissions indicate that it ceased discharges from the Facility from September 2019 through October 17, 2019. Submitted DMRs for September through December 2019, and January 2020, do not include any parameter exceedances. BSC LLP met with NRO staff on November 18, 2019, to discuss the violations and corrective actions.

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 25-120-80, 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. The Department has issued no current permits or certificates for BSC LLP other than VPDES Permit No. VAG830536.
10. Accotink Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
11. Based on the results of the documentation submitted by BSC LLP, the Board concludes that BSC LLP has violated the Permit and 9 VAC 25-120-80, by discharging treated groundwater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(1) – C(10), above.
12. BSC LLP has submitted documentation that verifies that the violations as described in paragraph C(3), above, have been corrected.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders BSC LLP, and BSC LLP agrees to pay a civil charge of **\$5,250** 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

BSC LLP shall include its Federal Employer Identification Number (FEIN) 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, BSC LLP 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 BSC LLP for good cause shown by BSC LLP, 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, BSC LLP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. BSC LLP 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. BSC LLP 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 BSC LLP 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. BSC LLP 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. BSC LLP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BSC LLP 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 BSC LLP. Nevertheless, BSC LLP 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 BSC LLP has completed all of the requirements of the Order;
  - b. BSC LLP 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 BSC LLP.

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

And it is so ORDERED this 11<sup>th</sup> day of June, 2020.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Bristow Shopping Center Limited Partnership LLP voluntarily agrees to the issuance of this Order.

Date: 4/2/20 By: Jonathan Farnelo, Partner  
(Person)  
Bristow Shopping Center Limited Partnership LLP

Commonwealth of Virginia  
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 2<sup>nd</sup> day of April, 2020, by Jonathan Farnelo, Partner, on behalf of Bristow Shopping Center Limited Partnership LLP, a partnership.

[Signature]  
\_\_\_\_\_  
Notary Public

7522172  
\_\_\_\_\_  
Registration No.

My commission expires: April 30, 2020

  
**Therese D. Fontes**  
**Notary Public 7522172**  
**Commonwealth of Virginia**  
**My Commission Expires April 30, 2020**

Notary seal: