



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO**

Dulles Town Center Mall, L.L.C.

FOR

Dulles Town Center

**VPDES General Permit for Noncontact Cooling Water Discharges of 50,000
GPD or Less (VAG25)**

Registration No. VAG250033

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 Dulles Town Center Mall, L.L.C., regarding the Dulles Town Center cooling tower, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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 the discharge of a pollutant.
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. "Dulles Town Center Mall, L.L.C." means Dulles Town Center Mall, L.L.C., a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Dulles Town Center Mall, L.L.C. is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" or "Site" means the Dulles Town Center facility, located at 21100 Dulles Town Circle, Dulles, Virginia 20166, from which discharges associated with noncontact cooling water occur.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
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. VAG25, which was issued under the State Water Control Law and the Regulation on March 2, 2018 and which expires on March 1, 2023. Dulles Town Center Mall, L.L.C. applied for coverage under the General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less and was reissued Registration No. VAG250033 on March 6, 2018.

15. "Registration statement" means a registration statement for coverage under the General VPDES Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less.
16. "Regulation" means the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less, 9 VAC 25-196, *et seq.*)
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "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.
19. "TRCu" means Total Recoverable Copper.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. Dulles Town Center Mall, L.L.C. owns and operates a cooling tower at the Dulles Town Center (Facility) located at 21100 Dulles Town Circle, Dulles, Virginia, from which discharges of noncontact cooling water occur.
2. The Permit allows Dulles Town Center Mall, L.L.C. to discharge noncontact cooling water from the Facility to an unnamed tributary of Broad Run, in strict compliance with the terms and conditions of the Permit.
3. Broad Run is located in the Potomac River River Basin. Broad Run is listed in DEQ's 305(b) report as impaired for aquatic life use (benthic macroinvertebrate bioassessment), recreational use (*E. coli*), and fish consumption use (PCBs and mercury in fish tissue). Fish consumption use has observed effects for arsenic and heptachlor epoxide.
4. Part I.A.1.a of the Permit requires Dulles Town Center Mall, L.L.C. to monitor discharges and comply with effluent limits for certain effluent parameters.

5. Part II.C of the Permit requires Dulles Town Center Mall, L.L.C. to submit the results of the monitoring on a DMR no later than the 10th day of the month after the monitoring takes place.
6. A DEQ file review of required DMR submissions from Dulles Town Center Mall, L.L.C. revealed the following compliance deficiencies:
 - a. Minimum pH was not reported on the 1st quarter 2018 DMR.
 - b. Total recoverable copper (TRCu) was reported to be 15 µg/L on the 2nd quarter 2018 DMR, which exceeds the 9 µg/L discharge limit for this parameter.
 - c. TRCu was reported to be 89.5 µg/L on the 3rd quarter 2018 DMR, which exceeds the 9 µg/L discharge limit for this parameter.
7. Based on the results of the file review the Board concludes that Dulles Town Center Mall, L.L.C. has violated condition Part I.A.1 and Part II.C of the Permit as noted in paragraph C.(6.a-d) of this Order.
8. NRO issued Notices of Violation for the violations noted above: NOV No. W2018-08-N-0006, issued August 15, 2018; and NOV No. W2018-11-N-0009, issued November 14, 2018.
9. Dulles Town Center Mall, L.L.C. responded to the Notice of Violation on November 9, 2018 by submitting a plan of corrective action to address the violations. Subsequent to this, officials from Loudoun Water verified the Facility's connection of the cooling water discharge to the sanitary sewer, thereby eliminating the point-source discharge and negating the need for the VPDES Permit. A Permit termination request was filed by Dulles Town Center Mall, L.L.C. on February 25, 2019.
10. 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
11. The Regulation, at 9 VAC 25-196-70 Part II.F, 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.
12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
13. The Department has issued coverage under no permits or certificates to Dulles Town Center Mall, L.L.C., other than under VPDES Permit No. VAG25, Registration No. VAG250033.
14. The unnamed tributary of Broad Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

15. Based on the results of the review of routinely submitted DMR documentation submitted from January through November of 2018, the Board concludes that Dulles Town Center Mall, L.L.C. has violated the Permit, as described in paragraphs C(1) – C(14), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Dulles Town Center Mall, L.L.C., and Dulles Town Center Mall, L.L.C. agrees to pay a civil charge of **\$2,415** 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

Dulles Town Center Mall, L.L.C. 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, Dulles Town Center Mall, L.L.C. 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 Dulles Town Center Mall, L.L.C. for good cause shown by Dulles Town Center Mall, L.L.C., 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, in NOV No. W2018-08-N-0006 dated August 15, 2018. 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, Dulles Town Center Mall, L.L.C. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Dulles Town Center Mall, L.L.C. 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. Dulles Town Center Mall, L.L.C. 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 Dulles Town Center Mall, L.L.C. 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. Dulles Town Center Mall, L.L.C. 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. Dulles Town Center Mall, L.L.C. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dulles Town Center Mall, L.L.C. 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 Dulles Town Center Mall, L.L.C. Nevertheless, Dulles Town Center Mall, L.L.C. 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 Dulles Town Center Mall, L.L.C. has completed all of the requirements of the Order;
 - b. Dulles Town Center Mall, L.L.C. 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 Dulles Town Center Mall, L.L.C..

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

And it is so ORDERED this 3rd day of June, 2019.



Thomas Fahs, Regional Director
Department of Environmental Quality

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Dulles Town Center Mall, L.L.C. voluntarily agrees to the issuance of this Order.
By: Lerner Corporation
Its Managing Agent

Date: 4/4/19 By: [Signature], Chief Operating Officer
Alan H. Gottlieb (Title)
Dulles Town Center Mall, L.L.C.

Commonwealth of ~~Virginia~~ Maryland
City/County of Prince George's

The foregoing document was signed and acknowledged before me this 4th day of April, 20 19, by Alan H. Gottlieb who is chief operating officer of Dulles Town Center Mall, L.L.C., on behalf of the company.

[Signature]
Notary Public

Registration # _____

My commission expires _____

Notary seal:



**LERNER
LEGAL DEPARTMENT
APPROVED** [Signature]