



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE

Matthew J. Strickler
Secretary of Natural Resources

P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
Physical Address: 4411 Early Road, Harrisonburg, VA
www.deq.virginia.gov

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PILOT TRAVEL CENTERS, LLC FOR PILOT TRAVEL CENTER 4649 VPDES Permit No. VA0088277

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 the Pilot Travel Center 4649 for the purpose of resolving certain violations of the State Water Control Law, 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.

KS

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, including any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
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" means the Pilot Travel Center 4649 located at 713 Oakland Circle, in Raphine Virginia.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. See Va. Code §62.1-44.34:14.
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. VA0088277 which was issued under the State Water Control Law and the Regulation to Pilot on April 1, 2014 and which expired on March 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.

73

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.

SECTION C: Findings of Fact and Conclusions of Law

1. Pilot owns and operates a commercial fueling Facility. Pilot was subject to the Permit issued on April 1, 2014 and expired on March 31, 2019. Pilot is also registered with the Underground Storage Tank (UST) program, Registration No. 6023954. The Facility has a UST fuel storage capacity of 86,000 gallons: three gasoline USTs and three diesel USTs.

JS

2. Moores Creek is located in the James River Basin. Moores Creek is listed in DEQ's 305(b) report as impaired for due to violations of the General Standard for Benthics.
3. On May 1, 2018, DEQ received notification from Rockbridge County Fire and Rescue (RCFR) to report discharge of oil in the form of diesel fuel from the Facility. RCFR observed an oil sheen flowing throughout the length of Moores Creek between the Facility and Willow Lake located approximately 5,800 linear feet south of the Facility. RCFR was notified directly by a complainant. On May 2, 2018, DEQ received a citizen complaint reporting that an oil sheen was observed in Moores Creek.
4. On May 4, 2018, DEQ staff visited the Facility and observed an oil sheen on Moores Creek, for approximately one mile south, into Willow Lake, as well as oil stained vegetation along and in the creek. On May 9, 2018, DEQ received an additional citizen complaint of dead animals along Moores Creek, on the Orchard Creek Facility grounds. DEQ staff investigated the same day and observed an oil sheen on Moores Creek, iron bacteria in the uplands of Willow Lake, and also observed: one dead muskrat, one dead groundhog, one dead opossum, and one dead snake along the banks of Moores Creek. DEQ does not have record of notification or a 5-day letter from the Facility in accordance with the Permit.
5. On May 14, 2018, DEQ issued NOV No. W2018-05-V-0001 to Pilot for the unpermitted discharge of oil and wastewater from the Facility, and for failure to report the discharge to DEQ.
6. On May 16, 2018, DEQ staff met with Pilot representatives to discuss the NOV, the cause of the discharge, and the containment and clean-up efforts proposed by Pilot. Pilot stated that the discharge to the Oil Water Separator (OWS) and ultimately to Moores Creek, was as a result of a broken shear valve.
7. On May 29, 2018 and June 12, 2018, Pilot submitted documentation detailing the nature of location of the discharge, as well as the source. In the report, Pilot states the likely source of the diesel fuel in the OWS, in the adjoining stormwater pond, and in Moores Creek, was from maintenance activities associated with the replacement of the motors in the diesel tanks. A maintenance contractor removed approximately 2,400 gallons of water/algae/product [diesel] from the tanks and improperly disposed of it all into the OWS at the Facility. The OWS at the Facility has a total capacity of 2,000 gallons. The OWS then discharges to an on-site treatment unit, referred to as an Eco-Pod tank, and ultimately into a stormwater pond, which then discharges to Moores Creek.
8. On July 3, 2018, Pilot's consultant submitted the Site Characterization Report (SCR) to DEQ, which confirmed that diesel fuel had impacted surface waters. The SCR detailed Pilot's response to the spill including initial abatement measures such as diesel fuel recovery, deployment of absorbent booms, the installation of underflow dams, and surface water sampling. Pilot's consultant further detailed that 2,400 gallons of water, algae, diesel fuel mixture was removed, during the maintenance and replacement of submerged turbine pumps in two of the Facility's USTs, and placed by the maintenance

75

contractor into the Facility's OWS. Pilot's consultant estimated that 1,215 gallons of diesel fuel were recovered from, a combination, of the OWS and the Facility's stormwater pond. Additionally noted in the SCR was Pilot's removal of 11 tons of petroleum-contaminated soil from the Facility, and downstream to the confluence of Moores Creek.

9. From July 2018 to September 2018, Pilot's consultant monitored the stream, replacing booms and pads as needed, cleaned the Facility's OWS and wastewater treatment system, and proactively installed a forebay immediately down gradient of the stormwater management pond as an added line of defense to prevent future contamination from reaching Moores Creek.
10. Pilot exceeded the effluent limits contained in Part I.A.1 of its VPDES Permit, as indicated on the Discharge Monitoring Reports (DMRs) submitted to DEQ, for the following months:

Month	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement*
May 2018	002	Petroleum Hydrocarbons, Total Recoverable	Concentration Maximum	120	15 mg/L
June 2018	002	Petroleum Hydrocarbons, Total Recoverable	Concentration Maximum	15.5	15 mg/L
December 2018	002	Petroleum Hydrocarbons, Total Recoverable	Concentration Maximum	61.9	15 mg/L
December 2018	002	Naphthalene	Concentration Maximum	32.5	8.9 mg/L
January 2019	002	Petroleum Hydrocarbons, Total Recoverable	Concentration Maximum	16.3	15 mg/L

11. On December 5, 2018, DEQ closed the pollution complaint case since Pilot completed the Facility and stream clean up. Also, DEQ did not observe ongoing impacts to Moores Creek, and based on documentation submitted throughout the containment and clean-up process, there were no remaining risks to sensitive receptors, human health, or the environment as a result of the oil discharge.
12. On February 8, 2019, Pilot notified DEQ that it intended to allow its Permit to expire, and planned to eliminate the discharge and discharge pipe from the Facility.
13. On April 2, 2019, Pilot submitted documentation with accompanying photographs to DEQ, confirming that the discharge pipe was capped on March 26, 2019. Pilot informed DEQ that the OWS will be monitored weekly, and will be pumped and hauled on an as needed basis. On April 4, 2019, DEQ staff visited the Facility and confirmed elimination of the discharge and capping of the discharge pipe.

14. Va. Code § 62.1-44.31:18 states that: “The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited.”
15. Va. Code § 62.1-44.31:18 states that: “Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the discharge, notify the Board, the director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs and any other political subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of such discharge.”
16. 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.
17. Permit Part I.A.1 prohibits discharges that exceed discharge limitations.
18. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
19. The Department has issued no permits or certificates to Pilot other than VPDES Permit No. VA0088277.
20. Moores Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
21. Based on the results of May 4, 2018 site visit, the May 16, 2018 meeting, and the documentation submitted on May 29, 2018, June 12, 2018, and July 3, 2018, the Board concludes that Pilot has violated the Permit, Va. Code 62.1-44.31:18, Va. Code 62.1-44.34:19, and 9 VAC 25-31-50 by discharging oil into state waters as described in paragraph C(3)-C(10) above.
22. Pilot has submitted documentation that verifies that the violations as described in this Order, have been corrected. DEQ staff inspected the Facility on April 4, 2019 and verified that the discharge from the OWS was eliminated.

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:

KS

1. Pay a civil charges totaling \$103,837.65 within 30 days of the effective date of the Order in settlement of the violations cited in this Order, payable in two separate payments as follows:
 - a. Pilot shall indicate that a payment of \$98,062.65 is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).
 - b. Pilot shall indicate that a payment of \$5,775.00 is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

Payments 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) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order. 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 NOV No. W2018-05-V-0001 dated May 14, 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, 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.

KS

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.

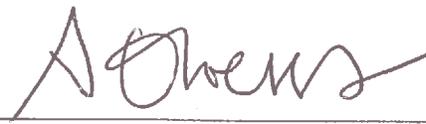
75

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 9th day of September, 2019.



Amy T. Owens, Regional Director
Department of Environmental Quality

JS

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

Date: 6-6-19 By: [Signature], Chief Legal Counsel
(Person) (Title)
Pilot Travel Centers LLC

Commonwealth of Virginia
City/County of Knox

The foregoing document was signed and acknowledged before me this 6 day of
June, 2019, by Kristin Seabrook who is
VP & General Counsel of Pilot Travel Centers LLC on behalf of the company.

[Signature]
Notary Public

Registration No.

My commission expires: August 29, 2020

Notary seal:

