



west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

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ENVIRO

October 15, 2012

Joey Cupp
Pilot Travel Centers LLC
5508 Lonas Road
Knoxville, TN 37909

RE: Violation of Chapter 22, Article 11
of the WV State Code

Dear Mr. Cupp:

Enclosed is 2nd revised CONSENT ORDER NUMBER 7665 dated October 15, 2012. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Pilot Travel Centers, LLC violating Chapter 22, Article 11 of the WV State Code at its facility located in Nitro, Putnam County, West Virginia. This revision is based upon your recent meeting by telephone with David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto
Chief Inspector

Enclosure

- cc: Scott G. Mandirola, Director, DWWM (via e-mail)
- Yogesh Patel, Asst. Director, DWWM/Permits
- Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
- Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
- David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
- Laura McGee, Environmental Resources Specialist, EE (via e-mail)
- Cynthia Musser, Environmental Inspector Supervisor, EE/WW (via e-mail)
- Kevin Saunders, Environmental Inspector, EE/WW (via e-mail)
- Shyrel Moellendick, MSSS, EE (via e-mail)
- Kristin Seabrook, Pilot Travel Centers LLC (via-e-mail)

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OCT 31 2012



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Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Joey Cupp
Pilot Travel Centers LLC
5508 Lonas Road
Knoxville, TN 37909

DATE: October 15, 2012

ORDER NO.: 7665

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Pilot Travel Centers LLC (hereinafter "Pilot").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Pilot operates a travel center located in Putnam County, West Virginia.
2. On October 24, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel responded to an emergency fuel spill on site and determined that this facility was operating an oil/water separator without a WV/NPDES Permit, a violation of WV State Code 22-11-8.
3. WVDEP personnel observed discharge of diesel fuel and/or oil from this facility's parking lot on the following dates: October 24, October 25, October 26, October 27, October 28, and December 13, 2011. Because drop inlets were elevated, none of the spillage entered the oil/water separator, which only receives flow from the fueling bays. All other drop inlets are routed directly to a roadside ditch which flows to waters of the State. Diesel fuel and/or oil emanating from culverts draining the Pilot parking lot were observed in the receiving stream. Creating conditions not allowable in waters of the State is a violation of WV Legislative Rule 47CSR2 Section 3.2.a.

4. On December 13, 2011, WVDEP personnel met with Keith Carlton, Environmental Project Manager, on site. He provided a Spill Prevention Control and Countermeasure (SPCC) plan, which stated that spills would be contained by the oil/water separator. WVDEP personnel discussed with Pilot the need to apply for a WV/NPDES Permit.
5. On January 25, 2012, Pilot was issued WV/NPDES Water Pollution Control Permit No. WV0111457, General Permit Registration No. WVG611568.
6. On August 22, 2012, WVDEP personnel and representatives of Pilot met to discuss the terms and conditions of this Order.
7. On October 15, 2012, WVDEP personnel and representatives of Pilot met by telephone to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Pilot shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of Pilot's West Virginia Code and Legislative Rule violations, Pilot shall be assessed a civil administrative penalty of four thousand nine hundred ninety dollars (\$4,990) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Pilot hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Pilot agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Pilot does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Pilot other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as

well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.

3. If any event occurs which causes delay in the achievement of the requirements of this Order, Pilot shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Pilot becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Pilot intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Pilot (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Pilot of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Pilot to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Pilot, its successors and assigns.
7. This Order shall terminate upon Pilot's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Joey Cupp
Pilot Travel Centers LLC

10-25-12

Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date



Dam constructed downstream of diesel spill-note existing contamination below dam, 10-25-11



Condition of receiving stream prior to contamination from catastrophic spill, 10-25-11



Sheen on receiving stream, 10-27-11



Spillage on lot, 10-27-11



Foam flowing to receiving stream from facility, 10-28-11



Drop inlet leads directly to receiving stream without treatment, 12-13-11

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Pilot Travel Centers LLC

Receiving Stream:

Treatment System Design Maximum Flow: MGD

Treatment System Actual Average Flow: MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			2	3										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	0	1										
c)	Sensitivity of the Environment	0 to 3	0	1										
d)	Length of Time	1 to 3	2	3										
e)	Actual Exposure and Effects thereon	0 to 3	0	1										
Average Potential for Harm Factor			0.6	1.4	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	3										

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2	Minor	Major	\$1,800	1	\$1,800
3	Moderate	Major	\$4,400	1	\$4,400
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$6,200

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

- 6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase
- 6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum
- 6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)
- 6.2.b.7 - Public Interest (increase to be determined)
- 6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)
- 6.2.b.9 - Staff investigative costs (increase to be determined)
- 6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

- 6.2.b.2 - Good Faith - 10% decrease to 10% increase
- 6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease
- 6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -			\$0
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$620)
6.2.b.3 - Cooperation with the Secretary		10	(\$620)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$1,210)
Penalty =			\$4,990

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments:	

MEMORANDUM FOR THE RECORD

DATE: 10/10/50

TO: SAC, NEW YORK

FROM: SAC, NEW YORK

SUBJECT: [Illegible]

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