



Commonwealth of Virginia

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**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT**

ISSUED TO

**ENERGIX EPC US LLC, CADEN ENERGIX AXTON LLC, CADEN
ENERGIX PAMPLIN LLC, AND CADEN ENERGIX RIVES ROAD LLC**

FOR

**AXTON SOLAR PHASE II, PAMPLIN SOLAR, SOL LEATHERWOOD
SOLAR, WYTHEVILLE SOLAR, HOLLYFIELD II SOLAR, RIVES ROAD
SOLAR, BUCKINGHAM II SOLAR**

**Virginia Pollutant Discharge Elimination System Permit Nos. VAR10R609,
VAR10M363, VAR10M588, VAR10O685, VAR10K745, VAR10M345 and
VAR10K840**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the Virginia Department of Environmental Quality (DEQ) and Energix EPC US LLC (“Energix EPC”), on behalf of Caden Energix Axton LLC, Caden Energix Pamplin LLC, and Caden Energix Rives Road LLC (together with Energix EPC, collectively, “the Parties” or “Energix”), regarding Axton Solar Phase II, Pamplin Solar, Sol Leatherwood Solar, Wytheville Solar, Hollyfield II Solar, Rives Road Solar, and Buckingham II Solar (Sites), for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations. Because the Parties are under common management and control and Energix EPC has operational responsibility for the construction of the Sites for and on behalf of the Parties, this Order is being executed by Energix EPC. This Order supersedes and terminates the Consent Orders issued by the Department to Energix EPC on August 22, 2022 and August 25, 2022 for Buckingham II Solar and Wytheville Solar.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.*, § 62.1-44.15:24 *et seq.*, the Virginia Stormwater Management Program (VSMP) Regulation at 9 VAC 25-870-10., and the General VPDES Permit for Discharges of Stormwater from Construction Activities at 9 VAC 25-880-1.

SECTION C: Findings of Fact and Conclusions of Law

Site 1- Axton Solar Phase II

1. Caden Energix Axton LLC (Caden Energix Axton) is a business entity authorized to do business in Virginia and references to Caden Energix Axton LLC include its affiliates, partners, and subsidiaries. Caden Energix Axton LLC is a “person” within the meaning of Va. Code § 62.1-44.3.
2. Caden Energix Axton operates the Axton Solar Phase II site located at latitude 36.6268 and longitude -79.7035 near 374 Centerville Rd in Axton, Virginia located in Henry County (Site 1) from which stormwater associated with construction activity is discharged.
3. DEQ is the Virginia Stormwater Management Program (VSMP) authority for Site 1.
4. On September 27, 2022, DEQ granted coverage to Caden Energix Axton under the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law and VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024 (2019 Permit). Caden Energix Axton was assigned registration number VAR10R609.
5. The 2019 Permit allows Caden Energix Axton to discharge stormwater associated with construction activities from Site 1 to Cascade Creek, Fall Creek, and the Smith River (receiving waters) in strict compliance with the terms and conditions of the 2019 Permit.
6. The receiving waters are surface waters located wholly within the Commonwealth and are “state waters” under the State Water Control Law.
7. DEQ inspected Site 1 on October 26, 2022, and observed that a copy of the notice of coverage letter was not posted conspicuously near the main entrance of the construction activity. See 2019 Permit Part II.D.
8. During the inspection on October 26, 2022, DEQ staff observed that the SWPPP was not available for review, the location of the SWPPP was not posted near the site’s entrance and information for public access was not provided. See 2019 Permit Part II.E (1), (2) and (3) and 9VAC25-870-54(G).

9. The Department has not issued coverage under any permit or certificate to Caden Energix Axton other than under the 2019 Permit.
10. Based on the results of the October 26, 2022 inspection, the Department concludes that Caden Energix Axton violated 9VAC25-870-54(G) and the conditions of 2019 Permit Parts II.D, II.E(1), (2) and (3), as described in paragraphs C (7) and (8) of this Order.

Site 2- Pamplin Solar

11. Caden Energix Pamplin LLC (Caden Energix Pamplin) is a business entity authorized to do business in Virginia and references to Caden Energix Pamplin LLC include its affiliates, partners, and subsidiaries. Caden Energix Pamplin LLC is a “person” within the meaning of Va. Code § 62.1-44.3.
12. Caden Energix Pamplin operates the Pamplin Solar site located at latitude 37.3294 and longitude -78.7659 at Rt 460 in Appomattox, Virginia (Site 2) from which stormwater associated with construction activity is discharged.
13. DEQ is the VSMP authority for Site 2.
14. On September 5, 2019, DEQ granted coverage to Caden Energix Pamplin under the 2019 Permit. Caden Energix Pamplin was assigned registration number VAR10M363.
15. The 2019 Permit allows Caden Energix Pamplin to discharge stormwater associated with construction activities from Site 2 to Appomattox River - Wolf Creek and Suanee Creek (receiving waters) in strict compliance with the terms and conditions of the 2019 Permit.
16. The receiving waters are surface waters located wholly within the Commonwealth and are “state waters” under the State Water Control Law.
17. DEQ inspectors conducted inspections of Site 2 on October 28, 2020, November 23, 2020, February 10, 2021, May 3, 2021, June 11, 2021, September 28, 2021, December 6, 2021 and November 9, 2022.
18. During the inspections on October 28, 2020, November 23, 2020, and February 10, 2021, staff observed that many areas around the Site, particularly under the solar arrays, were denuded and stabilization had not been applied. DEQ staff also observed that denuded slopes throughout the site were exhibiting signs of erosion and that the gravel road was covered in sediment in most areas around the site. DEQ staff also observed that several ditches or stormwater conveyance channels around the site were not stabilized, were eroding or washed out, and had diminished capacity. During the inspections on October 28, 2020, several rip rap ditches leading into sediment traps and basin were not installed in accordance with approved plans. During the inspections on November 23, 2020 and February 10, 2021, several inches of sediment had been deposited in the wetland area between sediment basins 106 and 107. Approximately 0.05 acres of wetlands were

affected by the discharge. The Department received a 5-day letter on November 16, 2020, for the sediment release in accordance with Part III H of the 2019 Permit. See 9VAC25-840-60(A), 9VAC25-840-40(1), (3), (7), (11) and 9VAC25-870-54(B).

19. Following the DEQ inspections on October 28, 2020 and November 23, 2020, DEQ issued Warning Letters WL-20-11-BRRO-003 and WL WL-20-12-BRRO-001. Following the February 10, 2021 inspection, DEQ issued NOV-21-02-BRRO-002 on March 12, 2021.
20. DEQ received a Warning Letter response dated December 10, 2020, which stated wetland protection was addressed by installing silt fence and stabilizing the area upgradient of the wetland with straw. On March 24, 2021, Energix responded to the NOV and stated that Energix had been making an ongoing effort to stabilize the site including the channels.
21. DEQ re-inspected the site on May 3, 2021, June 11, 2021, September 28, 2021, and December 6, 2021 and observed site and channel stabilization issues had not been adequately addressed during the 2021 growing season. At the time of the December 6, 2021 inspection, multiple portions of the site remained denuded and did not have effective temporary or permanent stabilization. This included the laydown yard, the previous location of Sediment Trap 116, areas under the solar panels above Stormwater Basins 114 and 115, excavated material deposited on the western edge of the site, areas under the solar panels above Stormwater Basins 107, 108, 109, and 110, the area adjacent to Ditch 107, excavated material deposited next to Stormwater Basin 108, excavated material deposited above Stormwater Basin 102, areas surrounding Stormwater Basins 103 and 104, areas under the solar panels above Stormwater Basin 101, and excavated material deposited above Stormwater Basin 101. Many of the bottoms of the converted stormwater basins had not been stabilized since they were converted. There were also multiple areas with erosion throughout the site that require repair before the areas are stabilized. In addition, many ditches around the site were damaged and required repair or reinstallation. See 9VAC25-840-60(A), 9VAC25-840-40(1), (3), (7), (11) and 9VAC25-870-54(B).
22. DEQ re-inspected the site on November 9, 2022. During the inspection on November 9, 2022, DEQ staff observed that the stormwater management plan approved by DEQ indicates that the risers for the basins are constructed of reinforced concrete pipe (RCP). The material used for construction of the risers was observed to be corrugated metal pipe and not the RCP called for in the approved plan. This was indicated in previous DEQ inspections. A modified plan was submitted to DEQ's Office of Stormwater Management and received on February 5, 2021 and assigned plan number 2021-0147. DEQ does not have a record of the modified plan being approved. See 9VAC25-870-54(C).
23. During the inspection on November 9, 2022, DEQ staff observed that there were several areas within the limits of disturbance that were not stabilized. Areas within the solar array area and along the perimeter of the site between the array and the limits of disturbance did not have sufficient vegetative stabilization. Areas upslope of and contributing to

basins 114 and 115 did not have sufficient vegetative stabilization. Denuded areas were also observed upslope of and contributing to basins 104, 105 and 107. See 2019 Permit Part II.B.5.b.1, II.F.1, 9VAC25-840-60(A), and 9VAC25-840-40(1) and (3).

24. During the inspection on November 9, 2022, DEQ staff also observed operational stormwater conveyance channels that did not have adequate channel lining. In some cases, DEQ staff observed scouring (erosion) of the bed and banks of the channels had occurred as no filter fabric or similar channel lining appeared to have been installed under rip-rap placed in the channels. DEQ staff observed that rip-rap lining had become compromised. See 9VAC25-840-40(11) and 9VAC25-870-54(B).
25. The Department has not issued coverage under any permit or certificate to Caden Energix Pamplin other than under the 2019 Permit.
26. Based on the results of the October 28, 2020, November 23, 2020, February 10, 2021, May 3, 2021, June 11, 2021, September 28, 2021, December 6, 2021 and November 9, 2022 inspections, the Department concludes that Caden Energix Pamplin violated 9VAC25-840-60(A), 9VAC25-840-40(1), (3), (7), (11) and 9VAC25-870-54(B) and (C) and the conditions of 2019 Permit Parts II.B.5.b.1, II.F.1 as described in paragraphs C(18) and (21)-(24) of this Order.

Site 3- Sol Leatherwood Solar

27. Energix EPC US LLC (Energix EPC) is a business entity authorized to do business in Virginia and references to Energix EPC US LLC include its affiliates, partners, and subsidiaries. Energix EPC US LLC is a “person” within the meaning of Va. Code § 62.1-44.3.
28. Energix EPC operates the Sol Leatherwood Solar site located at latitude 36.6870 and longitude -79.7095 at Mountain Valley Road Rt. 647 and Dees Road Rt 615 in Henry County, Virginia (Site 3) from which stormwater associated with construction activity is discharged.
29. DEQ is the VSMP authority for Site 3.
30. On November 9, 2020, DEQ granted coverage to Energix EPC under the 2019 Permit. Energix EPC was assigned registration number VAR10M588.
31. The 2019 Permit allows Energix EPC to discharge stormwater associated with construction activities from Site 3 to an unnamed tributary of Leatherwood Creek and unnamed tributary to Sandy River (receiving waters) in strict compliance with the terms and conditions of the 2019 Permit.

32. The receiving waters are surface waters located wholly within the Commonwealth and are “state waters” under the State Water Control Law.
33. DEQ inspectors conducted inspections of Site 3 on December 16, 2021 and November 14, 2022.
34. During the inspections on December 16, 2021, and November 14, 2022, DEQ staff observed that the delegation of authority in the SWPPP did not include the language found at Part III.K of the 2019 Permit. See 2019 Permit Part II.B.9.
35. During the inspections on December 16, 2021, and November 14, 2022, DEQ staff did not observe a signed certification statement by the Operator in the SWPPP. See 2019 Permit Parts II.B.10.
36. During the inspection on November 14, 2022, DEQ staff documented that an exhibit has been prepared by Kimley-Horn to address stabilization and erosion issues, but the exhibit had not been incorporated into the SWPPP within seven days. See 2019 Permit Parts II.C.2, II.C.4, II.C.5, 9VAC25-870-54(G).
37. During the inspection on November 14, 2022, DEQ staff observed that inspection reports did not include the certification statement found at 2019 Permit Part III.K.4. See 2019 Permit Part II.G. 6.
38. During the inspection on November 14, 2022, DEQ staff observed conveyance channels that did not have established vegetative lining. Gullies had been created by shallow concentrated flow. See 2019 Permit Parts II.B.2.c and II.F(1-2), 9VAC25-840-40(11) and 9VAC25-870-54(B).
39. During the inspection on November 14, 2022, DEQ staff observed control measures that were not in effective operating conditions and required maintenance including silt fence, check dams, erosive areas and vegetative cover. See 2019 Permit Part II.F.1 and 9VAC25-840-60(A).
40. During the inspections, DEQ staff observed that the stormwater management plan approved by DEQ indicates that the risers for the basins are constructed of reinforced concrete pipe (RCP). The material used for construction of the risers was observed to be corrugated metal pipe and not the RCP called for in the approved plan. DEQ does not have a record of a modified plan being approved. See 9VAC25-870-54(C).
41. The Department has not issued coverage under any permit or certificate to Energix EPC other than under the 2019 Permit.
42. Based on the results of the December 16, 2021, and November 14, 2022 inspections, the Department concludes that Energix EPC violated 9VAC25-840-60(A), 9VAC25-840-40(11) and 9VAC25-870-54(B), (C) and (G) and the conditions of 2019 Permit Parts

II.B.2.c, II.B.9, II.B.10, II.C.2, II.C.4, II.C.5, II.F.(1-2), II.G.6 as described in paragraphs C(34) through (40) of this Order.

Site 4- Wytheville Solar

43. Energix EPC operates the Wytheville Solar site located at latitude 36.9637 and longitude -81.0489 in Wytheville, Virginia (Site 4) from which stormwater associated with construction activity is discharged.
44. DEQ is the VSMP authority for Site 4.
45. On October 8, 2021, DEQ granted coverage to Energix EPC under the 2019 Permit. Energix EPC was assigned registration number VAR10O685.
46. The 2019 Permit allows Energix EPC to discharge stormwater associated with construction activities from Site 4 to Reed Creek Muskrat Branch in strict compliance with the terms and conditions of the 2019 Permit.
47. The receiving water is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
48. DEQ and Energix EPC US LLC executed a consent order on August 25, 2022. Appendix A of the consent order required Energix to complete a list of corrective actions within fourteen days of the effective date of the order.
49. On November 2, 2022, DEQ staff conducted an inspection of Site 4 to evaluate compliance with the consent order and the Virginia Stormwater Act, regulations, and 2019 Permit.
50. During the inspection on November 2, 2022, DEQ staff observed that the contact information posted for reviewing the SWPPP was not accurate. Personnel identified on the SWPPP posting are no longer associated with the project. See Permit Part II.E (2) and (3) and 9VAC25-870-54(G).
51. During the inspection on November 2, 2022, DEQ staff observed that the SWPPP did not identify the contractor(s) that will implement and maintain each control measure. See Permit Part II.C.3 and 9VAC25-870-54(G).
52. During the inspection on November 2, 2022, DEQ staff observed that the SWPPP had not been updated when modifications to its implementation have occurred, including a record of dates when major grading activities occur, construction activities temporarily or permanently cease on a portion of the site or stabilization measures are initiated. The grading log in the SWPPP at the time of the November 2, 2022 inspection was last updated to indicate current contractors mobilized October 10, but activities since that date had not been recorded. See Permit Part II.C.4.a, 9VAC25-870-54(G), Item #1 of

Appendix A of the Consent Order Effective August 25, 2022 and Va. Code § 62.1-44.31.

53. During the inspection on November 2, 2022, DEQ staff observed that the SWPPP had not been updated to document areas that have reached final stabilization. Areas of the access roads as well as areas of permanent vegetation between the arrays of solar panels along the top of the hill between TSB 3-3 and TSB 5-1 had not been identified in the SWPPP. See Permit Part II.C.4.c and 9VAC25-870-54(G).
54. During the inspection on November 2, 2022, DEQ staff observed that corrective actions identified as a result of an inspection had not been addressed by the operator within the timeframe required by Permit Part II.H.1. See Permit Part II.H.1, Item #3 of Appendix A of the Consent Order Effective August 25, 2022 and Va. Code § 62.1-44.31.
55. During the inspection on November 2, 2022, DEQ staff observed evidence to suggest that areas of land disturbance have remained dormant for more than fourteen days without having stabilization measures applied. See Permit Part II.B.2.c.8, 9VAC25-840-40(1) and 9VAC25-870-54(B).
56. During the inspection on November 2, 2022, DEQ staff observed earthen structures that had not been stabilized immediately after installation. See 9VAC25-840-40(5), 9VAC25-870-54(B), Item #5 of Appendix A of the Consent Order Effective August 25, 2022 and Va. Code § 62.1-44.31.
57. During the inspection on November 2, 2022, DEQ staff observed sediment traps and basins were not installed in accordance with 9VAC25-840-40(6) and the approved plan. The basins had not yet been lined to ensure the appropriate wet and dry storage volumes are maintained as required by the regulation. See 9VAC25-840-40(6), 9VAC25-870-54(B), Item #4 of Appendix A of the Consent Order Effective August 25, 2022 and Va. Code § 62.1-44.31.
58. During the inspection on November 2, 2022, DEQ staff observed concentrated runoff discharging over cut and fill slopes that were not contained in an adequate temporary or permanent slope conveyance structure. See 9VAC25-840-40(8), 9VAC25-870-54(B), Item #6 of Appendix A of the Consent Order Effective August 25, 2022 and Va. Code § 62.1-44.31.
59. During the inspection on November 2, 2022, DEQ staff observed inlet protection had not been installed in accordance with the approved plan. See 9VAC25-840-40(10), 9VAC25-870-54(B). Item #7 of Appendix A of the Consent Order Effective August 25, 2022 and Va. Code § 62.1-44.31.
60. During the inspection on November 2, 2022, DEQ staff observed that outlet protection and channel linings had not been installed in accordance with the approved plan. See 9VAC25-840-40(11), 9VAC25-870-54(B), Item #8 of Appendix A of the Consent Order Effective August 25, 2022 and Va. Code § 62.1-44.31.

61. During the inspection on November 2, 2022, DEQ staff observed that sediment control measures were not being properly maintained in an effective operational condition. See Permit Part II.F.1, 9VAC25-840-60(A), Item #10 of Appendix A of the Consent Order Effective August 25, 2022 and Va. Code § 62.1-44.31.
62. The Department has not issued coverage under any permit or certificate to Energix EPC other than under the 2019 Permit.
63. Based on the results of the November 2, 2022 inspection, the Department concludes that Energix EPC violated Va. Code § 62.1-44.31, 9VAC25-840-60(A), 9VAC25-870-54(B) and (G), 9VAC25-840-40(1), 9VAC25-840-40(5), 9VAC25-840-40(6), 9VAC25-840-40(8), 9VAC25-840-40(10), 9VAC25-840-40(11), Items 1, 3, 4, 5, 6, 7, 8 and 10 of Appendix A of the Consent Order effective August 25, 2022, and the conditions of 2019 Permit Parts II.B.2.c.8, II.C.3, II.C.4.a, II.C.4.c, II.E(2) and (3), II.F.1, II.H.1 as described in paragraphs C(50) through (61) of this Order.

Site 5- Hollyfield II Solar

64. Energix EPC operates the Hollyfield II Solar site located at 289 Hollyfield Ln in Manquin (King William County), Virginia (Site 5) from which stormwater associated with construction activity is discharged.
65. DEQ is the VSMP authority for Site 5.
66. On June 17, 2021, DEQ granted coverage to Energix EPC under the 2019 Permit. Energix EPC was assigned registration number VAR10K745.
67. The 2019 Permit allows Energix EPC to discharge stormwater associated with construction activities from Site 5 to Deep Creek in strict compliance with the terms and conditions of the 2019 Permit.
68. The receiving water is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
69. On October 31, 2022, DEQ staff conducted an inspection of Site 5.
70. During the inspection on October 31, 2022, DEQ staff observed that the SWPPP did not contain an approved ESC plan in the form of a stamped set or a plan approval letter from King William County. See Permit Part II.B.2 and 9VAC25-870-54(B).
71. During the inspection on October 31, 2022, DEQ staff observed that the SWPPP did not contain an approved stormwater management plan in the form of a stamped set or a plan

approval letter from DEQ. See Permit Part II.B.3 and 9VAC25-870-54(C).

72. During the inspection on October 31, 2022, DEQ staff observed a conveyance channel installed in zone 2 that is not indicated in the approved plans or in the SWPPP. See Permit Part II.C.1 and 9VAC25-870-54(B).
73. During the inspection on October 31, 2022, DEQ staff observed a conveyance channel in zone 2 that was eroding and not adequately lined. See Permit Part II.F(1), 9VAC25-840-40(11) and 9VAC25-870-54(B).
74. During the inspection on October 31, 2022, DEQ staff observed that construction trash on site was not in an adequate container. See Permit Part II.B.4.e(6) and 9VAC25-870-56.
75. The Department has not issued coverage under any permit or certificate to Energix EPC other than under the 2019 Permit.
76. Based on the results of the October 31, 2022 inspections, the Department concludes that Energix EPC violated 9VAC25-870-54(B) and (C), 9VAC25-840-40(11), 9VAC25-870-56, and the conditions of 2019 Permit Parts II.B.2, II.B.3, II.B.4.e(6), II.C.1, II.F(1) as described in paragraphs C (70) through (74) of this Order.

Site 6- Rives Road Solar

77. Caden Energix Rives Road LLC (Caden Energix Rives) is a business entity authorized to do business in Virginia and references to Caden Energix Rives Road LLC include its affiliates, partners, and subsidiaries. Caden Energix Rives Road LLC is a “person” within the meaning of Va. Code § 62.1-44.3.
78. Caden Energix Rives operates the Rives Road Solar site located at 3513 Rives Rd and 3701 Rives Rd in Prince George, Virginia (Site 6) from which stormwater associated with construction activity is discharged.
79. DEQ is the VSMP authority for Site 6.
80. On June 17, 2021, DEQ granted coverage to Caden Energix Rives under the 2019 Permit. Caden Energix Pamplin was assigned registration number VAR10M345.
81. The 2019 Permit allows Caden Energix Rives to discharge stormwater associated with construction activities from Site 6 to Second Swamp and an unnamed tributary to Blackwater Swamp (receiving waters) in strict compliance with the terms and conditions of the 2019 Permit.
82. The receiving waters are surface waters located wholly within the Commonwealth and are “state waters” under the State Water Control Law.

83. DEQ conducted inspections of Site 6 on August 30, 2022 and October 17, 2022.
84. During the inspection on August 30, 2022, DEQ staff observed areas of erosion and lack of stabilization under panel arrays in Sections 1 and 4, and basins 103, 200, 206, 403, 404 and 405. DEQ staff also observed that access roads needed stabilization throughout the site. During the inspection on October 17, 2022, DEQ staff observed areas of erosion and lack of stabilization under panel arrays in Section 1, and basins 102, 103, 104, and 404. The access road from the entrance to Section 1 to the northeast corner was eroding and lacking stabilization. See Permit Part II.B.2.c.8, II.B.5.b.1, II.F(1-2) and 9VAC25-840-40(1), and 9VAC25-870-54(B).
85. During the inspection on August 30, 2022, DEQ staff observed that plan sheet C5.14 indicates that all level spreaders are Henrico level spreaders but none of the level spreaders were built to specifications. During the inspection on August 30, 2022, DEQ staff also observed that basin slopes were 2:1 and used corrugated metal structures, while the approved plans indicate 3:1 slopes and concrete for structures. Most basins had not been converted to final configuration and as a result basins 202, 206 and 301 were holding water. DEQ staff observed stormwater basins 103, 200, 206, 403, 404, and 405 had eroding slopes. During the inspection on October 17, 2022, DEQ staff observed that basin slopes were 2:1 and used corrugated metal structures, while the approved plans indicate 3:1 slopes and concrete for the structures. The sides of basin 404 were very shallow on the south and north side of the east end of the basin. The emergency spillways for basins 203 and 306 did not have riprap and were not wide enough per the approved plans. Half of the basins were not converted to final configuration and ponding was observed at basins 101, 206, 301, 306, 403 and 405. Erosion was observed on the slopes of basins 102, 103 and 404. DEQ staff did not observe inlet protection as required by the approved plan at the culvert being worked on at the access road for Section 4. See Permit Part II.B.2.c, II.F(1-2) and 9VAC25-840-40(6), 9VAC25-840-40(7), 9VAC25-840-40(8), and 9VAC25-870-54(B).
86. During the inspection on August 30, 2022, DEQ staff observed that the ground had eroded under the outfall of Basin 301. Plan sheet C5.13 shows the outfall flush to the ground. DEQ staff also observed eroded stormwater conveyance channels next to access roads leading to Basin 206 and Basin 401. During the inspection on October 17, 2022, DEQ staff observed that the ground had eroded under the outfall of Basin 301. Plan sheet C5.13 shows the outfall flush to the ground. DEQ staff also observed eroded stormwater conveyance channels next to access roads leading to Basin 206 and the channel to basin 103 was eroding. DEQ staff also observed no outlet protection at the culvert being worked on at the access road for Section 4. See 9VAC25-840-40(11), 9VAC25-850-54(B), Permit Part II.B.2.c and Permit Part II.F(1-2).
87. During the inspection on August 30, 2022, DEQ staff observed that the sediment basins need all woody vegetation removed. All level spreaders needed vegetation removed. Level spreader 402 was ponding. During the inspection on October 17, 2022, DEQ staff

observed that basin 105's trash rack was covered in vegetation and required maintenance. Basin 202 required removal of woody vegetation. In addition, level spreader 107 was in the process of being converted to a Henrico level spreader but none of the other level spreaders had been converted to the specifications on plan sheet C5.14. DEQ staff observed ponding at level spreader 402. See Permit Part II.F.1 and 9VAC25-840-60.A.

88. The Department has not issued coverage under any permit or certificate to Caden Energix Rives other than under the 2019 Permit.
89. Based on the results of the August 30, 2022 and October 17, 2022 inspections, the Department concludes that Caden Energix Rives violated 9VAC25-840-60(A), 9VAC25-840-40(1), 9VAC25-840-40(6), 9VAC25-840-40(7), 9VAC25-840-40(8), 9VAC25-840-40(11) and 9VAC25-870-54(B) and the conditions of 2019 Permit Parts II.B.2.c, II.B.2.c.8, II.B.5.b.1, II.F(1-2) as described in paragraphs C(84) and (87) of this Order.

Site 7- Buckingham II Solar

90. Energix EPC operates the Buckingham II Solar site located at 23 Highrock Road in Buckingham, Virginia (Site 7) from which stormwater associated with construction activity is discharged.
91. DEQ is the VSMP authority for Site 7.
92. On August 28, 2020, DEQ granted coverage to Energix EPC under the 2019 Permit. Energix EPC was assigned registration number VAR10K840.
93. The 2019 Permit allows Energix EPC to discharge stormwater associated with construction activities from Site 7 to Buffalo Creek and an unnamed tributary to Payne Creek in strict compliance with the terms and conditions of the 2019 Permit.
94. The receiving waters are surface waters located wholly within the Commonwealth and are "state waters" under the State Water Control Law.
95. DEQ and Energix EPC US LLC executed a consent order on August 22, 2022. Appendix A of the consent order required Energix to complete a list of corrective actions within the timeframe designated in the order.
96. On July 15, 2022, August 31, 2022, and October 25, 2022, DEQ staff conducted inspections of Site 7 to evaluate compliance with the consent order and the Virginia Stormwater Act, regulations, and 2019 Permit.
97. During the inspection on July 15, 2022, DEQ staff observed that the SWPPP did not contain the qualifications for the O&M personnel conducting the inspections and there was no delegation of authority in the SWPPP for the person signing inspections. See

Permit Parts II.B.8 and II.B.9.

98. During the inspection on July 15, 2022, DEQ staff observed a small discharge of sediment north of basin 5 that was not documented in the SWPPP. See Permit Part II.C.4(e-f) and 9VAC25-870-54(G).
99. During the inspection on July 15, 2022, DEQ staff observed that inspections required by the SWPPP were not conducted at the required frequency. The last inspection was dated June 29, 2022. See Permit Parts II.G.2 and II.B.5.b.3, Appendix A of the Consent Order Effective August 22, 2022 and Va. Code § 62.1-44.31.
100. During the inspection on July 15, 2022, DEQ staff observed denuded areas on the site including the slopes of basins 21, 27, 28, 30 and 31. During the inspection on August 31, 2022, DEQ staff observed denuded areas on site including the slopes of basins 10, 13, 18, 21, 27 and 30 as well as areas between arrays. During the inspection on October 25, 2022, DEQ staff observed several denuded areas on site including between arrays along the road east of the High Rock Road entrance. DEQ also observed that erosion was occurring between arrays above basin 13, above basin 20, the channels to basins 3 and 8, the slopes of basin 4, 5, 6, 10, 13, 14, 15, 19, 25, 30 and 32. Approximately 25 acres of the site was observed to still be denuded. DEQ observed sediment covering an onsite road. See Permit Parts II.B5.b.1, II.B.2.c.8, II.F(1-2), 9VAC25-840-40(1), 9VAC25-870-54(B), Appendix A of the Consent Order Effective August 22, 2022 and Va. Code § 62.1-44.31.
101. During the inspection on July 15, 2022, DEQ staff observed the slopes of basins 21, 27, 28, 30 and 31 were not stabilized. During the inspection on October 25, 2022, DEQ staff observed that the slopes of basin 4, 5, 6, 10, 13, 14, 15, 19, 25, 30 and 32 were denuded. See Permit Part, II.B.2.c, II.F (1-2), 9VAC25-840-40(5), 9VAC25-870-54(B), Appendix A of the Consent Order Effective August 22, 2022 and Va. Code § 62.1-44.31.
102. During the inspection on July 15, 2022, DEQ staff observed erosion on the slopes of basins 3, 4, 5, 8, 9, 10, 24, 25, 27, 28 and 30 as well as the inlet of basin 25 and northwest of basin 8. During the inspection on August 31, 2022, DEQ staff observed erosion on the slopes of basins 3, 4, 5, 8, 9, 10, 18, 24, 25, 27 and 30 as well as west of basin 31, the inlet of basin 25, and northeast of basin 28. Rip rap on the slope of basin 5 did not have fabric in accordance with the approved plan and DEQ staff observed that it was experiencing undercutting. During the inspection on October 25, 2022, DEQ staff observed erosion on the slopes of basins 10, 13, 14, 15, 19, 20, 21, 24, 25, 30 and 32. See Permit Part II.B.2.c, II.F(1-2), 9VAC25-840-40(7), 9VAC25-870-54(B), Appendix A of the Consent Order Effective August 22, 2022 and Va. Code § 62.1-44.31.
103. During the inspection on July 15, 2022, DEQ staff observed the culvert east of basin 6 did not have adequate inlet protection. During the inspection on August 31, 2022, DEQ staff observed that the culvert southeast of basin 6 was not adequately protected. Sediment was observed on the outlet protection and in the receiving channel. See Permit

Part II.B.2.c, II.F(1-2), 9VAC25-840-40(10) and 9VAC25-870-54(B).

104. During the inspection on July 15, 2022, DEQ staff observed the channel northeast of basin 25 was eroding and not adequately lined. During the inspection on August 31, 2022, DEQ staff observed that the culvert of basin 6 outlet protection had approximately 2 inches of sediment and needed maintenance. Sediment was filling in the conveyance channel to basin 6. DEQ staff also observed that the channels at basins 10, 25 and 30 were not adequately lined. During the inspection on October 25, 2022, DEQ staff observed erosion occurring along the channel to basin 6, the channel south of basin 10, and the channel to basin 8. See Permit Part II.B.2.c, II.F(1-2), 9VAC25-840-40(11), 9VAC25-870-54(B), Appendix A of the Consent Order Effective August 22, 2022 and Va. Code § 62.1-44.31.
105. During the inspection on July 15, 2022, DEQ staff observed the culvert east of the basin 6 outlet protection had large amounts of sediment and needed maintenance. The inlet on the northeast side of basin 25 needed maintenance. During the inspection on August 31, 2022, DEQ staff observed that the inlet protection, outlet protection, and basins 8, 9, and 10 needed maintenance. During the inspection on October 25, 2022, DEQ staff observed that approximately 50 feet of silt fence required maintenance at basin 14, a tree had fallen in the inlet of basin 24, and a groundhog burrow was observed in the dam of basin 10. Basins 8, 9 and 10 had large deposits of sediment and required maintenance. See Permit Part II.F, 9VAC25-840-60(A), Appendix A of the Consent Order Effective August 22, 2022 and Va. Code § 62.1-44.31.
106. During the inspection on August 31, 2022, DEQ staff observed that corrective actions from the December 16, 2021 and July 15, 2022 inspections had not been corrected. See Permit Part II.H(1-2).
107. During the inspection on October 25, 2022, DEQ staff observed that several rip rap and grass lined channels had been installed to correct excessive erosion and the SWPPP had not been amended to document the channels. See Permit Part II.C.1 and 9VAC25-870-54(G).
108. The Department has not issued coverage under any permit or certificate to Energix EPC other than under the 2019 Permit.
109. Based on the results of the July 15, 2022, August 31, 2022, and October 25, 2022 inspections, the Department concludes that Energix EPC violated Va. Code § 62.1-44.31, 9VAC25-840-60(A), 9VAC25-870-54(B) and (G), 9VAC25-840-40(1), 9VAC25-840-40(5), 9VAC25-840-40(7), 9VAC25-840-40(10), 9VAC25-840-40(11), Appendix A of the Consent Order effective August 22, 2022, and the conditions of 2019 Permit Parts II.B.2.c, II.B.2.c.8, II.B.5.b.1, II.B.5.b.3, II.B.8, II.B.9, II.C.1, II.C.4(e-f), II.F, II.F(1-2), II.G.2, and II.H(1-2) as described in paragraphs C(97) through (107) of this Order.

All Sites

110. On January 3, 2023 DEQ issued a Notice of Violation No. 2023-SWRO-0001 for the violations noted above.
111. On January 4, 2023, Energix confirmed that it received the NOV. On January 13, 2023, DEQ and Energix held a conference call to discuss the NOV, actions Energix had taken to date and next steps. On January 19, 2023, Energix submitted follow-up documentation with the status of corrective actions, photo documentation, and estimated completion dates for items not yet corrected. Additional links to the photos were submitted on January 23, 2023.
112. The Parties have submitted documentation that verifies that the violations as described in paragraphs C (7-8) for Site 1 Axton Solar, (34-37) for Site 3 Sol Leatherwood, (50-53) for Site 4 Wytheville, (70-71 and 74) for Site 5 Hollyfield, (97-98) for Site 6 Rives Road, and 107 for Site 7 Buckingham, above, have been corrected.
113. In order for the Parties to return to compliance at the Sites, DEQ staff and the Parties have agreed to Schedules of Compliance, which are incorporated as Appendices A-F of this Order.

Legal Requirements

114. Va. Code § 62.1-44.31 states: “It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter, or to fail to comply with a pretreatment condition incorporated into the permit issued to it by the owner of a publicly owned treatment works or to fail to comply with any pretreatment standard or pretreatment requirement, or to discharge sewage, industrial waste or other waste in violation of any condition contained in a certificate issued by the Board or in excess of the waste covered by such certificate, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Board under this chapter.”
115. 2019 Permit Part II.B.2 states in part: “The SWPPP shall include the following items: 2. Erosion and sediment control plan. An erosion and sediment control plan designed and approved in accordance with the Virginia Erosion and Sediment Control Regulations...”
116. 2019 Permit Part II.B.2.c.8 states in part: “An approved erosion and sediment control plan, implemented to: (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period

exceeding 14 days...”

117. 2019 Permit Part II.B.3. states in part: “The SWPPP shall include the following items: 3. Stormwater management plan. a. Except for those projects identified in Part II B 3 b, a stormwater management plan approved by the VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation...”
118. 2019 Permit Part II.B.4.e(6) states: “(6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials.”
119. 2019 Permit Part II.B.5 states: “SWPPP requirements for discharges to nutrient and sediment impaired waters. For discharges to surface waters (i) identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for sediment for a sediment-related parameter (i.e., total suspended solids or turbidity) or nutrients (i.e., nitrogen or phosphorus), the operator shall: a. Identify the impaired water(s)...b. Provide clear direction that (1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site; (2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and (3) A modified inspection schedule shall be implemented in accordance with Part II G 2 a.”
120. 2019 Permit Part II.B.8 states: “Identification of qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit.”
121. 2019 Permit Part II.B.9 states: “Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP.”
122. 2019 Permit Part II.B.10 states: “SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K.”
123. 2019 Permit Part II.C.1 states: “The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.”

124. 2019 Permit Part II.C.2 states: “The SWPPP shall be amended if, during inspections or investigations by the operator’s qualified personnel, or by local, state or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures shall be accomplished as described in Part II H.”
125. 2019 Permit Part II.C.3 states: “The SWPPP shall clearly identify the contractors that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure.”
126. 2019 Permit Part II.C.4 states in part: “The operator shall update the SWPPP as soon as possible but no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: a. A record of dates when: (1) Major grading activities occur; (2) Construction activities temporarily or permanently cease on a portion of the site; and (3) Stabilization measures are initiated; b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and were modified; c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply; ...e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release; f. Measures taken to prevent the reoccurrence of any prohibited discharge; ...”
127. 2019 Permit Part II.C.5 states: “Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K.”
128. 2019 Permit Part II(D) states in part: “Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity...The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F.”
129. 2019 Permit Part II(E) states: “1. Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site. 2. The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department . . . If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP’s location must be posted near the main entrance of the construction site. 3. The operator shall make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP shall be posted and

maintained in accordance with Part II D. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released.”

130. 2019 Permit Part II.F.1 states: “All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”
131. 2019 Permit Part II.F.2 states: “If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.”
132. 2019 Permit Part II.G.1 states: “Inspections required by this general permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for insuring that the qualified personnel conduct the inspection.”
133. 2019 Permit Part II.G. 2 states in part: “2. Inspection schedule. a. For construction activities that discharge to a surface water identified in Part II B 5 and B 6 as impaired or having an approved TMDL or Part II B 7 as exceptional, the following inspection schedule requirements apply: (1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day; and (2) Representative inspections as authorized in Part II G 2 d shall not be allowed. b. Except as specified in Part II G 2 a, inspections shall be conducted at a frequency of: (1) At least once every five business days; or (2) At least once every 10 business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day.”
134. 2019 Permit Part II.G.6 states: “The inspection report and any actions taken in accordance with Part II shall be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated. The inspection report shall identify any incidents of noncompliance. Where an inspection

report does not identify any incidents of noncompliance, the report shall contain a certification that the construction activity is in compliance with the SWPPP and this general permit. The report shall be signed in accordance with Part III K of this general permit.”

135. 2019 Permit Part II.H states: “1. The operator shall implement the corrective actions identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained. 2. The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by this general permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the VSMP authority and the department as well as obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.”
136. 2019 Permit Part III. K states: “Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification: ‘I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.’”
137. 9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”
138. 9 VAC 25-850-40(3) states: “A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.”
139. 9 VAC 25-840-40(5) states: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”
140. 9 VAC 25-840-40(6) states: “Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin. a.

The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres. b. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.”

141. 9VAC25-840-40(8) states: “Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.”
142. 9 VAC 25-840-40(10) states: “All storm sewer inlets that are made operational during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.”
143. 9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”
144. 9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”
145. 9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”
146. 9 VAC 25-870-54(C) states in part: “A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities.”
147. 9 VAC 25-870-54(G) states in part: “The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP’s location must be posted near the main entrance at the construction site.”
148. 9 VAC 25-870-56 states in part: “A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary...At a minimum, such measures must be designed, installed, implemented, and maintained to: 2. Minimize the exposure of building materials, building products, construction wastes, trash...and other materials present on the site to precipitation and to stormwater.”

149. Appendix A of the Consent Order effective August 25, 2022 between DEQ and Energix EPC US LLC states in part “Within 14 days of the effective date of this Order, Energix EPC US LLC shall: 1. Update the SWPPP to accurately document when modifications to the SWPPP implementation occur, to include a record of dates when major grading activities occur, construction activities temporarily or permanently cease on a portion of the Site, or stabilization measures are initiated. 3. Address corrective actions identified as a result of inspections within the timeframe specified by Part II, Section H (1) of the Permit. 4. Provide adequate and fully functional sediment trapping controls down gradient of all areas of land disturbance, in accordance with the approved erosion and sediment control plan. 5. Provide stabilization measures for all earthen structures, such as dams, dikes and diversions, immediately after construction/installation. 6. Ensure all concentrated discharges of runoff over cut and fill slopes are contained within adequate temporary or permanent slope conveyance structures. 7. Install adequate inlet protection for all operable storm drain inlets. 8. Install outlet protection and channel linings in accordance with the approved erosion and sediment control plan. 10. Ensure that all erosion and sediment control measures are properly maintained in an effective operating condition.”

150. Appendix A.1.a of the Consent Order effective August 22, 2022 between DEQ and Energix EPC US LLC states: “Within 7 days of the effective date of this Consent Order, Energix shall address the maintenance of erosion and sediment controls and the stabilization of denuded and eroded areas as detailed in the December 16, 2021 Site Inspection Report – Request for Corrective Action.”

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, and upon consideration of Va. Code § 10.1-1186.2, the Department orders the Parties, and the Parties agree:

1. To perform the actions described in Appendices A-F of this Order; and
2. Pay a civil charge of \$97,651 within 30 days of the effective date of this 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

The Parties shall include their 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 Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, the Parties shall be liable for attorneys' fees of 30% of the amount outstanding.

Both the Department and the Parties understand and agree that this Order supersedes and terminates the Consent Orders issued by the Department to Energix EPC US LLC on August 22, 2022, and August 25, 2022, for Buckingham II Solar and Wytheville Solar.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of the Parties for good cause shown by the Parties, 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. 2023-SWRO-0001 dated January 3, 2023, NOV No. NOV-21-02-BRRO-002 dated March 12, 2021, and Warning Letters No. WL-20-11-BRRO-003 and WL-20-12-BRRO-001. This Order shall not preclude the Department 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, the Parties admit to the jurisdictional allegations and agree not to contest, but neither admit nor deny, the findings of fact and conclusions of law contained in this Order.
4. The Parties 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. The Parties declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and they waive 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 Department to modify, rewrite, amend, or enforce this Order.
6. Failure by the Parties to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department 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. The Parties 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 their part. The Parties shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The Parties shall notify the DEQ Enforcement 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 Enforcement 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 the Parties. Nevertheless, the Parties 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 the Parties have completed all of the requirements of the Order;
 - b. The Parties petition 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 Department terminates the Order in his or its sole discretion upon 30 days' written notice to the Parties.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Parties from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

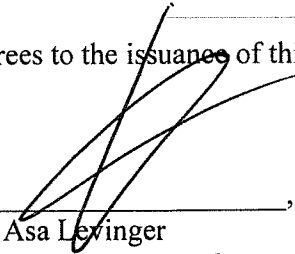
- 12. Any plans, reports, schedules or specifications attached hereto or submitted by the Parties and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of the Parties certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind the Parties to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Parties.
- 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, the Parties voluntarily agree to the issuance of this Order.

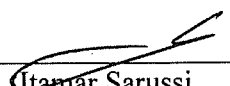
And it is so ORDERED this _____ day of _____, 2023.

Lee M. Crowell, Director of Enforcement
Department of Environmental Quality

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Energix EPC US LLC voluntarily agrees to the issuance of this Order.

Date: 3/6/23 By:  _____, Authorized Representative
Asa Levinger
Energix EPC US LLC

Date: 3/6/23 By:  _____, Authorized Representative
Utamar Sarussi
Energix EPC US LLC

**APPENDIX A
PAMPLIN SOLAR- SITE 2
SCHEDULE OF COMPLIANCE**

1. Within seven (7) days of the effective date of this Order, Energix shall:
 - a. Submit revisions to the stormwater management plan modification submitted to DEQ on February 5, 2021 to address the use of corrugated metal risers for the basins and barrels. The calculations packet shall use the correct coefficient for corrugated metal outfall pipes and the plan and calculations shall reflect the appropriate coefficient in accordance with the Virginia Stormwater Management Handbook and National Engineering Handbook. Provide a signed, sealed copy of the approved plans with the re-submission.
 - b. Apply stabilization to denuded areas, including but not limited to, areas within the solar array area and along the perimeter of the site between the array and the limits of disturbance, areas upslope of and contributing to basins 114 and 115, and areas upslope of and contributing to basins 104, 105 and 107, in accordance with Permit Part II.B.5.b.1, II.F.1, 9VAC25-840-60(A), and the minimum standards in 9VAC25-840-40.
 - c. Ensure operational stormwater conveyance channels have adequate channel lining in accordance with 9VAC25-840-40(11) and 9VAC25-870-54(B) and that filter fabric is installed under rip-rap placed in channels where required by the approved plans.
2. By May 31, 2023, Energix shall repair areas of erosion throughout the site and erosion of the bed and banks of channels.

DEQ Contact

Unless otherwise specified in this Order, the Parties shall submit all requirements of Appendices A-F of this Order to:

**Kristen Sadtler
Water Enforcement Coordinator
VA DEQ – Central Office
1111 East Main Street
Richmond, VA 23219
804-664-3864
Kristen.Sadtler@deq.virginia.gov**

APPENDIX B
SOL LEATHERWOOD SOLAR- SITE 3
SCHEDULE OF COMPLIANCE

1. Within 7 days of the effective date of this Order, Energix shall:
 - a. Submit a stormwater management plan modification for the change to corrugated metal risers and barrels for the basins that addresses changes to calculations, materials, construction sequences and post-construction maintenance requirements as well as any potential change to surface water hydrology to DEQ for review and approval. The plan and calculations shall reflect the appropriate coefficient in accordance with the Virginia Stormwater Management Handbook and National Engineering Handbook. Provide a signed, sealed copy of the approved plans with the re-submission.
 - b. Ensure that conveyance channels have lining installed and repair any gullies that have been created by shallow concentrated flow in accordance with Permit Parts II.B.2.c and II.F(1-2), 9VAC25-840-40(11) and 9VAC25-870-54(B).
 - c. Ensure that control measures are in effective operating condition and perform any required maintenance in accordance with Permit Part II.F.1 and 9VAC25-840-60(A).

**APPENDIX C
WYTHEVILLE SOLAR- SITE 4
SCHEDULE OF COMPLIANCE**

1. Within 7 days of the effective date of this Order, Energix shall:
 - a. Ensure that corrective actions identified as a result of an inspection have been addressed by the operator within the timeframe required by Permit Part II.H.1.
 - b. Ensure that areas of land disturbance that have remained dormant for more than fourteen days have stabilization measures applied in accordance with Permit Part II.B.2.c.8, 9VAC25-840-40(1).
 - c. Stabilize earthen structures that have not been stabilized and stabilize new earthen structures immediately after installation in accordance with 9VAC25-840-40(5).
 - d. Ensure that sediment control measures are properly maintained in an effective operational condition in accordance with Permit Part II.F.1 and 9VAC25-840-60(A).
2. By June 30, 2023, Energix shall:
 - a. Contain concentrated runoff discharging over cut and fill slopes in an adequate temporary or permanent slope conveyance structure in accordance with 9VAC25-840-40(8).
 - b. Install inlet protection in accordance with the approved plan and 9VAC25-840-40(10).
 - c. Ensure that outlet protections and channel linings are installed in accordance with the approved plan. See 9VAC25-840-40(11).
3. By August 30, 2023, Energix shall ensure basins are installed in accordance with 9VAC25-840-40(6) and the approved plan. Line the basins to ensure the appropriate wet and dry storage volumes are maintained as required by the regulation.

APPENDIX D
HOLLYFIELD SOLAR- SITE 5
SCHEDULE OF COMPLIANCE

1. By June 30, 2023, Energix shall:
 - a. Either remove the conveyance channel that is installed in zone 2 that is not indicated in the approved plans or submit a modification to the approved plan to DEQ to add the conveyance channel.
 - b. Ensure the conveyance channels, including the conveyance channels in zone 2, are adequately lined and repair any areas of erosion in accordance with Permit Part II.F(1), 9VAC25-840-40(11) and 9VAC25-870-54(B).

APPENDIX E
RIVES ROAD SOLAR- SITE 6
SCHEDULE OF COMPLIANCE

1. Within 7 days of the effective date of this Order, Energix shall:
 - a. Submit a stormwater management plan modification for the change to corrugated metal structures for basins and barrels that addresses changes to calculations, materials, construction sequences and post-construction maintenance requirements as well as any potential change to surface water hydrology to DEQ for review and approval. The plan and calculations shall reflect the appropriate coefficient in accordance with the Virginia Stormwater Management Handbook and National Engineering Handbook.
 - b. Apply stabilization to denuded areas throughout the site, including access roads, basins, and under panel arrays, in accordance with Permit Parts II.F(1) and the minimum standards in 9VAC25-840-40.
 - c. Ensure that basin slopes are constructed per the approved erosion and sediment control and stormwater management plans. Energix shall repair the sides of basin 404 that were very shallow on the south and north side of the east end of the basin. Energix shall install riprap and ensure the emergency spillways for basins 203 and 306 are per the approved plans.
 - d. Install inlet protection as required by the approved plan at the culvert at the access road for Section 4.
 - e. Ensure the outfall of Basin 301 is installed per plan sheet C5.13 and fix areas of erosion under the outfall.
 - f. Repair areas of erosion in stormwater conveyance channels and that conveyance channels are properly stabilized in accordance with 9VAC25-840-40(11) and the approved plans.
 - g. Ensure outlet protection is installed throughout the site in accordance with the approved plans and 9VAC25-840-40(11), including at the culvert at the access road for Section 4.
 - h. Ensure the erosion and sediment controls are properly maintained and functional in accordance with Permit Part II.F.1 and 9VAC25-840-60(A). This includes, but is not limited to, the removal of woody vegetation from sediment basins and level spreaders, maintenance of level spreaders and basins that are ponding, and ensuring basin trash racks are not covered in vegetation.
2. By June 30, 2023, Energix shall repair areas of erosion throughout the site and apply stabilization to the repaired areas, in accordance with Permit Parts II.F(1) and the minimum standards in 9VAC25-840-40.

APPENDIX F
BUCKINGHAM SOLAR II- SITE 7
SCHEDULE OF COMPLIANCE

1. Within 7 days of the effective date of this Order, Energix shall:
 - a. Ensure the erosion and sediment controls are properly maintained and functional in accordance with Permit Part II.F.1 and 9VAC25-840-60(A). This includes maintenance of inlet protect, outlet protection, basins, silt fence, vegetation, sediment removal, and groundhog burrows.
 - b. Ensure that the culvert east of basin 6 has adequate inlet protection in accordance with the approved plans and 9VAC25-840-40(10).
 - c. Ensure that the culvert southeast of basin 6 is adequately protected in accordance with 9VAC25-840-40(11) and the approved plans.
 - d. Ensure that inspections are conducted at the required frequency in accordance with Permit Parts II.G.2 and II.B.5.b.3.
 - e. Apply stabilization to denuded areas throughout the site, including access roads, basins, and under panel arrays, in accordance with Permit Parts II.F(1) and the minimum standards in 9VAC25-840-40.

2. By May 30, 2023, Energix shall:
 - a. Repair areas of erosion and apply stabilization to the repaired areas, in accordance with Permit Parts II.F(1-2) and the minimum standards in 9VAC25-840-40.
 - b. Ensure that rip rap on the slope of basin 5 has fabric in accordance with the approved plans and that basins are installed in accordance with the approved plans.
 - c. Repair areas of erosion in stormwater conveyance channels and that conveyance channels are properly stabilized in accordance with 9VAC25-840-40(11) and the approved plans.