



Commonwealth of Virginia

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October 18, 2023

Mr. Franz Szymanski
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NOTICE OF VIOLATION

RE: NOV No. 2023-SWRO-0002

Axton Solar Phase 1, Permit Number VAR10P781 (Site 1)
Axton Solar Phase 2, Permit Number VAR10R609 (Site 2)
Axton Solar Phase 3, Permit Number VAR10S146 (Site 3)
Waverly Solar Phase 2, Permit Number VAR10R839, VWP GP WP2-22-1720 (Site 4)
Caden Energix Wytheville T-647, Permit Number VAR10O685 (Site 5)
Buckingham II Solar, Permit Number VAR10K840 (Site 6)

Dear Mr. Szymanski and Mr. Goldberg:

This letter notifies you of information upon which the Department of Environmental Quality (Department or DEQ) may rely in order to institute an administrative or judicial enforcement action. Based on this information, DEQ has reason to believe that Caden Energix Axton LLC (Caden Energix) may be in violation of the Virginia Stormwater Management Act, State Water Control Law, Regulations, VWP General Permit WP2-22-1720 and the General

VPDES Permit for Discharges of Stormwater from Construction Activities¹ at the Axton Solar Phase 1 (Site 1), Axton Solar Phase 2 (Site 2), Axton Solar Phase 3 (Site 3), Waverly Solar Phase 2 (Site 4), Caden Energix Wytheville T-647 (Site 5) and Buckingham II Solar (Site 6).

This letter addresses conditions at the Site and also describes compliance requirements of the Virginia Stormwater Management Act, § 62.1-44.15:24 *et seq.*, Regulations and the Permit. Pursuant to Va. Code § 62.1-44.15(8a), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* (APA). DEQ requests that you respond **within 10 days of the date of this letter** to arrange a prompt meeting with DEQ staff.

OBSERVATIONS

Axton Solar Phase 1, Permit Number VAR10P781 (Site 1)

On October 28, 2022, DEQ granted coverage to Caden Energix under the Permit for discharges of stormwater associated with construction activities at Site 1, assigning it registration number VAR10P781. Site 1 is located at 374 Centerville Road, Axton, Henry County, Virginia. DEQ staff conducted an inspection of Site 1 on March 8, 2023, June 21, 2023, July 19, 2023, and August 22, 2023. The following describes staff observations:

1. During the inspections of Site 1 on March 8, 2023, it was observed that the banks of the stream crossing between Zones B & C were not stabilized immediately in accordance with Minimum Standard 15. See 9VAC25-870-54(B) and 9VAC25-840-40(15).
2. During the inspection of Site 1 on July 19, 2023, the contractor stated that grading plan was revised to flatten out steep grades, eliminating the need for one or more stormwater conveyance channels (SCC). During the inspection of Site 1 on August 22, 2023, the Operator stated that a plan modification was being prepared but was unaware of the scope of the changes to be included in the modified stormwater management plan. The approved erosion and sediment control and stormwater plans have not been adjusted to document the change in grading, elimination of SCCs, or re-analyze the effect of these changes on stormwater runoff. See 9VAC25-870-54(A)-(C) and Permit Part II.C(1)-(2)
3. During the March 8, 2023, June 21, 2023, July 19, 2023, and August 22, 2023, inspection of Site 1 it was observed that sediment trapping measures had not been made functional in accordance with the approved erosion and sediment control plan prior to the occurrence of upslope land disturbing activities. During the March 8, 2023 inspection, the dewatering structure was not installed properly on SBA1 and SBA 3 resulting in no wet storage volume for the basins. During the June 21, 2023 inspection, SBA1, SBA3, SBA4, SBA5, SBA6, SBA7, SBA10 and SBA11 did not have dewatering structures in accordance with the approved plan and lacked the design wet storage component. Sediment basin riser structures were installed with the permanent riser trash rack instead of the temporary riser, which includes an anti-vortex plate. During the inspection of Site 1 on June 21, 2023, the sediment

¹ Permit terms and conditions are found at 9 Virginia Administrative Code (VAC) 25-880-70.

traps were not properly constructed. STA2, STA8, and STA9 did not include smaller stone on the inside face of the outlet weir. During the June 21, 2023 inspection, silt fence had been installed along the limits of disturbance prior to the completion of sediment traps and basins. The discharge from the installed traps and basins went to the perimeter fence in several locations causing the silt fence to fail. In addition, several conveyance channels (SCCA8, SCCA9) did not have check dams that were on the approved ESC plan. Stormwater conveyance channel SCCA6 was not constructed, which allowed concentrated flow to bypass sediment basin SBA5.

During the July 19, 2023, inspection, the contractor had attempted to create a watertight seal between dewatering HDPE pipes and concrete riser pipes with tape that is supposed to stick to HDPE and concrete. It was observed that the tape had not provided a watertight seal on basins SBA1, SBA3, SBA4, SBA5, SBA6, SBA10, and SBA11 and dewatering structures were not installed in accordance with the approved erosion and sediment control (ESC) plans. The dewatering structure of SBA7 had not been modified and was still installed incorrectly. During the August 22, 2023, inspection, it was observed that sealant had been applied between the HDPE plate and the concrete riser to improve the watertightness of the dewatering structures of sediment basins SBA1, SBA3, SBA4, SBA5, SBA6, and SBA10. Sediment basin SBA7 was holding a permanent pool, but others were not. The principal spillway of SBA5 is also set higher or at the same elevation as the emergency spillway of SBA5; the plan indicates the emergency spillway should be set 1.0 feet higher than the top of the riser pipe. Upslope land disturbance was occurring prior to the complete installation of sediment basins in accordance with the approved plans. See 9VAC25-840-40(4), 9VAC25-870-54(B), and Permit Part II.B.2.c(9).

4. During the inspections of Site 1 on June 21, 2023, it was observed that operational stormwater conveyance channels (SCC) SCCA9 and SCCA14 had not been lined with erosion control blanket matting or a vegetative lining as indicated in the approved ESC and stormwater management plan. During the July 19, 2023 inspection and August 22, 2023 inspection, the “engineered stormwater ditch”, Detail 8 on Sheet C2-203 were not installed per Note 5 on the Site Grading and Drainage Plan Sheets. During the inspection on August 22, 2023, it was observed that the SWPPP now contains the approval by the VESCP authority for the use of proprietary fiber stabilization in lieu of the “EC-2” type erosion and sediment control blanket matting. SCCs directing flow to SBA10 and SBA11 are constructed on the Site but are not included in the approved plans, so it is unknown what type of channel lining is required in these channels. During the inspection on August 22, 2023, it was observed that the upper end of SCCA14, the channel entering sediment basin SBA10, had been recently regraded in preparation for re-seeding and additional check dams installed, but the lower section of SCCA14 is eroding. It was explained by the Operator that a flexible concrete lining product is being considered for trial application in the lower section of this conveyance. See 9VAC25-870-54(B) and 9VAC25-840-40(11).
5. During the inspection of Site 1 on June 21, 2022, July 19, 2023, and August 22, 2023, it was observed that the earthen embankments of sediment traps and sediment basins had not been immediately stabilized on installation. On August 22, 2023, the embankment of STA2 had

been recently disturbed by security fence installation and the embankment of SBA5 had been recently disturbed by repair and re-orientation of the riprap outlet protection stone. The cut slope of SBA7 had been regraded and stabilized with EC-2 fabric. On August 22, 2023, it was observed that rill erosion is occurring on the cut slope of SBA10 where it had been observed stabilized on July 19, 2023. See 9VAC25-870-54(B) and 9VAC25-840-40(5).

6. During the inspection of Site 1 on June 21, 2023, and July 19, 2023, it was observed that culvert inlet protection had not been installed on SCCA14. During the inspection on August 22, 2023, it was observed that culvert discharging into SCCA14 had been cleaned out, the channel recently re-graded, and check dams installed. Culvert inlet protection had not been installed. See 9VAC25-870-54(B) and 9VAC25-840-40(10).
7. During the inspections on June 21, 2023, July 19, 2023, and August 22, 2023, it was observed that there were large portions of the Site in a denuded and not stabilized condition. See 9VAC25-870-54(B), 9VAC25-840-40(1) and Permit Part II.B.2.c(8).
8. During the inspections of Site 1 on June 21, 2023 and July 19, 2023, discharges from installed traps and basins were to the perimeter silt fence, which caused the silt fence to fail. Since June 21, 2023, an attempt was made to separate the discharge from the completed basins but concentrated runoff still flowed to the perimeter silt fence during the July 19, 2023 inspection. The silt fence installed to separate the flow paths was incorrectly installed- not entrenched and not spliced with a watertight connection. During the July 19, 2023 and August 22, 2023 inspections, it was observed that sections of silt fence that had been repaired were not made with watertight splices. See 9VAC25-840-60(A) and 9VAC25-870-54(B).
9. During the inspections of Site 1 on July 19, 2023, and August 22, 2023, it was observed that there were temporary slope drains (TSD) installed in SBA4 and SBA10. The TSD in SBA10 did not extend to the toe of the basin slope. The listed TSD practices are not identified on the approved ESC plan. In addition, concentrated runoff is flowing down basin slopes creating erosion in SBA3, SBA4, SBA5, SBA6, SBA7, STA9, SBA10, and SBA11. Concentrated discharges of stormwater into basins should be analyzed by the engineer of record and appropriate SCCs designed and installed on cut and fill slopes as directed by the engineer. See 9VAC25-840-40(7), 9VAC25-840-60, 9VAC25-870-54(B) and Permit Part II.C(1)-(2).

Axton Solar Phase 2, Permit Number VAR10R609 (Site 2)

On August 4, 2022, DEQ granted coverage to Caden Energix under the permit for discharge of stormwater associated with construction activities at Site 2. Site 2 is located at 374 Centerville Road, Axton, Henry County, Virginia. On June 22, 2023, and July 18, 2023, DEQ staff conducted inspections of Site 2. The following describes staff observations:

1. During the inspection of Site 2 on May 12, 2023, June 22, 2023, and July 18, 2023, it was observed that sediment traps and basins had not been made functional in accordance with the approved erosion and sediment control plan prior to the occurrence of upslope land

disturbing activities. Sediment laden stormwater runoff was being drawn down from a dewatering orifice located at the base of the control riser structure. Upslope land disturbance was occurring prior to the complete installation of sediment basins consistent with the approved plans. On June 22, 2022, it was observed that construction of SBC12, SBC7, SBC 8 was not completed. On July 18, 2022, it was observed that construction of SBC11 was halted due to the presence of bedrock. Construction of SBE1, SBE2, and SBE4 was not complete. SBD3 and SBD6 were not constructed. Clearing, grubbing, and de-stumping had occurred upslope of the locations where the basins were to be installed. See 9VAC25-840-40(4), 9VAC25-870-54(B), Permit Part II.B.2.c(9)

2. During the inspection of Site 2 on June 22, 2023, and July 18, 2023, it was observed that a temporary vehicular stream crossing and dirt access road had been constructed across Cascade Creek outside the approved limits of disturbance within the existing overhead electrical transmission utility right of way. The temporary vehicular stream crossing was not indicated on the approved erosion & sediment control plan nor the approved stormwater management plan and has not been approved by the VESCP or VSMP authorities. See 9VAC25-870-54(A)-(C) and Permit Part II.C(1)-(2).
3. During the inspection of Site 2 on June 22, 2023, and July 18, 2023, it was observed that operational stormwater conveyance channels had not been lined with erosion control blanket matting or a vegetative lining as indicated on the approved plan. On July 18, 2023, it was observed that the channel lining indicated on the approved plan for SCCE1 had not been installed, nor had it been directed to flow into sediment basin SBE1 as indicated on the approved ESC and stormwater management plans. As installed, the terminal end of SCCE1 discharges directly into a stream channel, there is no outlet protection at the terminal end of SCCE1, and the silt fence at the end of SCCE1 has failed and is not being maintained. There is evidence in the inspection report that SCCE1 is discharging sediment directly to a stream without adequate perimeter controls in place. See 9VAC25-840-40(11), 9VAC25-870-54(A)-(C) and Permit Part II.C(1)-(2)
4. During the inspection of Site 2 on June 22, 2023, it was observed that rip-rap outlet protection installed at the ends of the discharge barrels of sediment basins was observed not have been installed in accordance with the approved ESC plans. See 9VAC25-840-40(11) and 9VAC25-870-54(B).
5. During the inspection of Site 2 on June 22, 2023, it was observed that the earthen embankments of sediment traps and sediment basins had not been immediately stabilized on installation, including SBC 12, SBC 7, and SBC 8. During the inspection of Site 2 on July 18, 2023, it was observed that the earthen embankments of sediment traps and sediment basins had not been immediately stabilized on installation, including SBE1, SBE2, and SBE4. Temporary earthen “water bars” installed in the drainageways to the locations designated for SBD3 and SBD 6 were not immediately stabilized upon installation. See 9VAC25-840-40(5) and 9VAC25-870-54(B).

6. During the inspections of Site 2 on June 22, 2023, evidence of concentrated stormwater flows being discharged down the face of the denuded faces of cut and fill slopes resulting in the presence of erosive rills and gullies was observed. During inspection of Site 2 on July 18, 2023, it was observed that the cut side slopes of several sediment basins were not stabilized with permanent, or temporary stabilization. See 9VAC25-840-40(7), 9VAC25-840-40(8), and 9VAC25-870-54(B).
7. During the inspections of Site 2 on June 22, 2023, and July 18, 2023, it was observed that there were large portions of the Site in a denuded, unstabilized condition. Portions of Site 2 had been disturbed and land disturbance ceased for a period of 14 days or more but had not been stabilized. See 9VAC25-840-40(1), 9VAC25-870-54(B), and Permit Part II.B.2.c(8).
8. During the inspection of Site 2 on June 22, 2023, sediment accumulations were observed in several sediment basins as a result of upslope erosion. Sediment accumulations on the upstream side of check dams required removal to ensure the check dams functioned correctly. On July 18, 2023, it was observed that there were several locations where silt fence required maintenance. See 9VAC25-870-54(B) and 9VAC25-840-60(A).
9. During the inspections of Site 2 on June 22, 2023, and July 18, 2023, it was observed that number and spacing of check dams were not installed in stormwater conveyance channels (SCCs) as indicated in the approved ESC plan. See 9VAC25-870-54(B).
10. During the inspection of Site 2 on July 18, 2023, it was observed that soil stockpiles were not provided with sediment trapping measures. See 9VAC25-840-40(2) and 9VAC 25-870-54(B).
11. During the inspection of Site 2 on July 18, 2023, it was observed sediment deposits in the natural channel at the northeast side of the permanent stream crossing, which was receiving stormwater runoff being contributed by SCCE1 instead of the stormwater being directed into the northern portion of SBE1. A method of intercepting sediment laden runoff from the southern dirt approach road at the unpermitted temporary vehicular stream crossing between areas D and F was not observed to prevent sediment from entering the surface waters of the stream. See 9VAC28-870-54(B) and 9VAC840-40(12).

Axton Solar Phase 3, Permit Number VAR10S146 (Site 3)

On February 16, 2023, DEQ granted coverage to Caden Energix under the permit for discharge of stormwater associated with construction activities at Site 3. Site 3 is located at 374 Centerville Road, Axton, Henry County, Virginia. On July 18, 2023, DEQ staff conducted an of Site 3. The following describes staff observations:

1. During the inspection of Site 3 on July 18, 2023, it was observed that there were portions of the Site in a denuded and unstabilized condition, including lack of soil stabilization at stream crossings 1 and 2. See 9VAC25-840-40(1), 9VAC25-840-40(15) and Permit Part II.B.2.c(8).
2. During the inspection of Site 3 on July 18, 2023, it was observed that there was a soil stockpile that was not provided with sediment trapping measures or stabilized upgradient of stream crossing 2. See 9VAC25-840-40(2) and 9VAC 25-870-54(B).
3. During the inspection of Site 3 on July 18, 2023, it was observed that there was a ruptured filter sock located near stream crossing 2 that required repair or replacement. See 9VAC25-870-54(B) and 9VAC25-840-60(A).

Waverly Solar Phase 2, Permit Number VAR10R839 (Site 4)

On March 29, 2023, DEQ granted coverage to Energix EPC US LLC under the permit for discharge of stormwater associated with construction activities at Site 4. Site 4 is located at Beef Steak Road (37.0351, -77.148605) in Sussex County, Virginia. On July 17, 2023, DEQ staff conducted an inspection of Site 4. The following describes staff observations:

1. Zone D had all clearing done within the limits of disturbance of the section inspected and perimeter controls were partially installed with no sediment basins or traps nor a construction entrance installed. Zone B had all clearing done, but did not have perimeter controls, a construction entrance, and installation of basins was still in progress. Zone A was in the process of being cleared and did not have a construction entrance or basins. The construction activity was not consistent with the sequence from the erosion and sediment control phase 1 construction sequence seen in the approved plan page C.7.03. See 9VAC25-870-54(B)-(C) and 9VAC25-840-40(4).
2. Operational stormwater conveyance channels and sediment basin slopes in Zone B lacked stabilization. See 9VAC25-870-54(B), 9VAC25-840-40(5) and 9VAC25-840-40(11).
3. The silt fence joints in Zone B and D were improperly joined together. See 9VAC25-870-54(B), 9VAC25-840-60(A) and Permit Part II.F(1).
4. On July 31, 2023, DEQ Virginia Water Protection (VWP) staff conducted a site inspection. DEQ staff observed approximately 0.19 acre of Palustrine Forested (PFO) Wetland impacted by the accumulation of 1-8" of sediment deposition in surface waters near Stormwater Basins 11, 20, 21, 22, and 24. This impact was not authorized by the VWP permit. See Va. Code §62.1-44.15:20(A), 9VAC25-210-50(A), and VWP General Permit WP2-22-1720 Part I.B.5.

Wytheville Solar, Permit Number VAR10O685 (Site 5)

On October 8, 2021, DEQ granted coverage to Energix EPC US LLC under the Permit for discharges of stormwater associated with construction activities at Site 5 assigning it registration

number VAR100865. Site 5 is located at latitude 36.9367 and longitude -81.0489 in Wytheville, Virginia. DEQ staff conducted an inspection of Site 5 on May 16, 2023, July 25, 2023 and September 11, 2023. The following describes staff observations:

1. During DEQ inspections on May 16, 2023, July 25, 2023, and September 11, 2023, DEQ staff observed that sequencing of the project had not been implemented in accordance with the approved erosion and sediment control and stormwater management plans. 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-C), and Item #3 of Appendix C of the Consent Order Effective May 1, 2023 and Va. Code § 62.1-44.31.
2. During DEQ inspections on May 16, 2023, July 25, 2023, and September 11, 2023, 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) and Permit Part II.B.2.c.
3. During DEQ inspections on May 16, 2023, July 25, 2023, and September 11, 2023, DEQ staff observed that sediment control measures were not being properly maintained in an effective operating condition. See 9VAC25-870-54(B), 9VAC25-840-60(A), and Permit Part II.F.1.

Buckingham II Solar LLC, Permit Number VAR10K840 (Site 6)

On August 28, 2020, DEQ granted coverage to Energix EPC US LLC under the Permit for discharges of stormwater associated with construction activities at Site 7, assigning it registration number VAR10K840. Site 7 is located 23 Highrock Rd in Buckingham County, Virginia. DEQ staff conducted an inspection of Site 7 on May 30 and July 31, 2023. The following describes staff observations:

1. Basin 28 was ponding and stabilization was lacking at the bottom of the basin. See 9VAC25-870-54(B), 9VAC25-840-40(1), 9VAC25-840-60(A), Item #1.a, 1.e, and 2.b of Appendix F of the Consent Order between DEQ and Energix effective May 1, 2023.

LEGAL REQUIREMENTS

9VAC 25-210-50 (A) states that “Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for

domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”

9VAC25-840-40(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.”

9VAC25-840-40 (2) states: “During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.”

9VAC25-840-40(4) states: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.”

9VAC25-840-40(5) states: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”

9VAC25-840-40 (7) states: “7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.”

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.”

9VAC25-840-40 (10) states: “All storm sewer inlets that are made operable 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.”

9VAC25-840-40(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.”

9VAC25-840-40(12) states: “When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodable cover materials.”

9VAC25-840-40(15) states: “The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.”

9VAC25-840-60. Maintenance and inspections, states, “A. All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

9VAC25-870-54, Stormwater pollution prevention plan requirements, states, “A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.

B. 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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.

C. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.

G. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. 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.”

VWP General Permit WP2-22-1720 Part I.B.5 of Special Conditions states, “Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.”

Permit Part II B.2. c (8) states: “An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, 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”.

Permit Part II B.2.c (9) states: “The SWPPP shall include the following items: An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps.”

Permit Part II C states: “C. SWPPP amendments, modification, and updates. 1. 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. 2. 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.”

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: 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.”

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.”

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.”

Va. Code §62.1-44.15:20(A) states “A. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1.

Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or function; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”

Appendix A, Item #1.b, of the Consent Order between DEQ and Energix effective May 1, 2023 states: “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.”

Appendix C, Item #4, of the Consent Order between DEQ and Energix effective May 1, 2023 states: “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 by the regulation.”

ENFORCEMENT AUTHORITY

Va. Code § §62.1-44.15:42 and 62.1-44.23 of the State Water Control Law provide for an injunction for any violation of the Stormwater Management Act, State Water Control Law, or any rule, regulation, approved standard and specification, order, permit condition, standard, or any certificate requirement or provision issued by the State Water Control Board, DEQ, or authorized VSMP authority. Va. Code §§ 62.1-44.15:48, 62.1-44.15 and 62.1-44.32 provide for a civil penalty up to \$32,500 per day of each specified violation. In addition, Va. Code § 62.1-44.15:25 authorizes the Department to issue special orders to any person subject to state or VSMP authority permit requirements to comply with the Stormwater Management Act and regulations. Va. Code § 62.1-44.15 authorizes the Department to issue orders to any person to comply with the State Water Control Law and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Va. Code § 62.1-44.15:37 authorizes issuance of a notice to comply with permit conditions and further authorizes a stop work order, permit revocation, or enforcement action for failure to comply with such a notice within the specified time period. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the State Water Control Law and regulations. Va. Code §§ 62.1-44.32(b), 62.1-44.32(c), 62.1-44.15:48(B), and 62.1-44.15:48(C) provide for other additional penalties.

FUTURE ACTIONS

A list of recommended corrective actions necessary to achieve compliance and remediate the alleged violation is contained in DEQ’s inspection reports dated March 8, 2023, June 21,

2023, July 19, 2023, and August 22, 2023 (Axton Solar Phase 1), June 22, 2023, and July 18, 2023 (Axton Solar Phase 2), July 18, 2023 (Axton Solar Phase 3), July 17, 2023 (Waverly Solar Phase 2), May 16, 2023, July 25, 2023 and September 11, 2023 (Wytheville Solar), and May 30 and July 31, 2023 (Buckingham II Solar LLC) which are included with this Notice of Violation.

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed to ensure compliance with state law and regulations, any relevant facts or related measures you plan to take or have taken which demonstrate a good faith effort to achieve compliance, and a schedule, as needed, for further activities. In addition, please advise us if you dispute any of the observations recited herein or if there is other information or relevant facts of which DEQ should be aware. Full compliance with State Water Control Law (§ 62.1-44.2 *et. seq.*) and regulations and remediation of the alleged violation(s) within the next 30 days may result in the administrative closure of this matter through return to compliance.

If compliance and remediation is not achieved within 30 days, the Department may proceed with a formal enforcement action including assessment of civil charges under its enforcement authority described in the section above.

If discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. To request the Process for Early Dispute Resolution please send a letter detailing any facts or observations listed in this notice of violation that you dispute, a reasoned analysis of why this notice of violation is inappropriate, and any documentation you would like DEQ to consider when reviewing your request to **Matthew Stafford by email** matthew.stafford@deq.virginia.gov within 30 days of the date of this letter. Additional information regarding the Process for Early Dispute Resolution may be found on DEQ's website: DEQ.Virginia.GOV/PEDR. If informal discussions do not lead to a satisfactory conclusion, you may request in writing that DEQ take all necessary steps to conduct an informal fact-finding proceeding and issue a case decision under the APA on whether or not a violation has occurred.

Please contact Kristen Sadtler at 804-664-3864 or Kristen.sadtler@deq.virginia.gov within 10 days of the date of this letter to discuss this matter and arrange a conference.

Sincerely,



Matthew Stafford
Manager, Office of Water
Compliance

cc: CASE FILE
Kristen Sadtler, DEQ
John McCutcheon, DEQ