COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HENRY COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
FOR
PATRIOT CENTRE AT BEAVER CREEK INDUSTRIAL PARK
Virginia Pollutant Discharge Elimination System Permit
Registration No. VAR10D694

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 State Water Control Board and the Henry County Industrial Development Authority, regarding the Patriot Centre at Beaver Creek Industrial Park for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2009 Permit" means the General Permit for Discharges of Stormwater from Construction Activities, No. VAR10, which was promulgated at 4 VAC 50-60-1170 and subsequently transferred to 9 VAC 25-880-70, issued under the Stormwater Management Act, the VSMP Regulations, and the General Permit Regulation on July 1, 2009 and which expired on June 30, 2014.

2. "2014 Permit" means 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, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

4. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

5. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.

6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

8. "Discharge" means the discharge of a VWP or Stormwater Pollutant.

9. "Discharge of a pollutant" means:

    a. Any addition of any VWP or Stormwater Pollutant or combination of pollutants to surface waters from any point source; or

    b. Any addition of any VWP or Stormwater Pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

10. "Fill Material" means any VWP pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.

11. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.

12. "IDA" means the Henry County Industrial Development Authority, a political subdivision of the Commonwealth created by Henry County through Henry County Code § 2-300 pursuant to Va. Code § 15.2-4903. The IDA is a "person" within the meaning of Va. Code § 62.1-44.3.

13. "Impacts" means results caused by human-induced activities conducted in surface waters, as specified in Va. Code § 62.1-44.15:20(A) of the Code of Virginia.

14. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or

excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.

15. "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

16. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

17. "Pollution" means "such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are 'pollution.'" Va. Code § 62.1-44.3.

18. "Site" means the Patriot Centre at Beaver Creek Industrial Park, located at Beaver Creek Drive in Martinsville, Virginia, from which discharges of stormwater associated with construction activity occur.

19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.

20. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-870-10.

21. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.

22. "Stormwater Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.

23. "Stream restoration" means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

24. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of Stormwater Pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.

25. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.

26. "Va. Code" means the Code of Virginia (1950), as amended.

27. "VAC" means the Virginia Administrative Code.

28. "VPDES" means Virginia Pollutant Discharge Elimination System.

29. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Virginia Stormwater Management Act, and evaluation consistent with the requirements of the Virginia Stormwater Management Act and associated regulations. Va. Code § 62.1-44.15:24.

30. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.

31. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

32. "VWP Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344).

33. "VWP Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. The IDA is the operator of the Site, from which stormwater associated with construction activity is discharged.

2. DEQ is the VSMP authority for Henry County, Virginia and the City of Martinsville, Virginia.

3. On May 19, 2014, DEQ granted coverage to the IDA under the 2009 Permit. DEQ reissued coverage to the IDA under the 2014 Permit on August 22, 2014. DEQ assigned the IDA registration number VAR10D694.

4. The 2014 Permit allows the IDA to discharge stormwater associated with construction activities from the Site to surface waters within the Commonwealth, in strict compliance with the terms and conditions of the 2014 Permit.

5. Stormwater from construction activities at the Site is discharged to Little Beaver Creek and three of its unnamed tributaries, which are surface waters located wholly within the Commonwealth and are State Waters under the State Water Control Law.

6. On July 8, 2015 and July 9, 2015, the IDA provided verbal and written notification, respectively, of sediment deposition in receiving streams resulting from a breach in perimeter controls during storm events producing a total of 2.59 inches of rain from July 3 to 5, 2015

7. During a DEQ Site inspection on July 16, 2015, DEQ staff documented that a copy of the 2014 Permit coverage letter was not posted near the entrance to the Site.

   2014 Permit Part II(C) states, "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."

8. During DEQ Site inspections on July 16, 2015 and February 4, 2016, DEQ staff observed that the SWPPP for the Site did not address stockpile areas and all land disturbance activities on Lot 14 and did not include them in the limits of land disturbance

   2014 Permit Part I(A)(2)(e) states, "This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that: . . . Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas . . . ."

2014 Permit Part II(A)(1)(e)(2) states, "The SWPPP shall also include the following items: . . . A legible site plan identifying: . . . Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed."

9. During a DEQ Site inspection on July 16, 2015, DEQ staff documented that the SWPPP did not include water quality calculations in the stormwater management plan.

   9 VAC 25-870-55(B)(7) of the VSMP Regulations states, "A complete stormwater management plan shall include the following elements: . . . Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations . . . ."

   2014 Permit Part II(A)(3)(b) states, "Any operator that was authorized to discharge under the general permit issued in 2009, and that intends to continue coverage under this general permit, shall ensure compliance with the requirements of 9VAC25-870-93 through 9VAC25-870-99 of the VSMP Regulation, including but not limited to the water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed."

10. During a DEQ Site inspection on July 16, 2015, DEQ staff documented that the SWPPP did not include a pollution prevention plan.

    9 VAC 25-870-54(A) of the VSMP Regulations states, "A stormwater pollution prevention plan shall include . . . a pollution prevention plan for regulated land-disturbing activities . . . ." *See also* 9 VAC 25-870-54(D), 9VAC 25-870-56, and 2014 Permit Part II(A)(4) (describing the required contents of a pollution prevention plan).

11. During a DEQ Site inspection on July 16, 2015, DEQ staff documented that the SWPPP did not include a delegation of authority or a dated signature.

    2014 Permit Part II(A) states, "The SWPPP shall include the following items: . . .
    7. Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP.
    8. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K."

12. During DEQ Site inspections on July 16, 2015 and February 4, 2016, DEQ staff documented that the SWPPP did not identify current contractors that will implement and maintain control measures identified in the SWPPP. During the July 16, 2015 Site inspection, DEQ staff also documented that check dams installed at the Site were not identified in the SWPPP.

Permit Part II(B)(3) states, "The SWPPP must clearly identify the contractor(s) 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."

2014 Permit Part II(B)(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."

13. During a DEQ Site inspection on July 16, 2015, DEQ staff documented that the SWPPP did not include SWPPP inspection reports for the period between September 22, 2014 and June 6, 2015. Available SWPPP inspection reports lacked signatures, documentation of stabilization deficiencies, and documentation of corrective actions.

    2014 Permit Part II(F)(2)(a) states, "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 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted no later than the next business day."

    2014 Permit Part II(F)(2)(b) states, "Where areas have been temporarily stabilized or land-disturbing activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency."

    2014 Permit Part II(F)(4) requires that "The inspection report . . . must 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."

    2014 Permit Part II(F)(4) also states, "Each inspection report shall include the following items: a. The date and time of the inspection and when applicable, the date and rainfall amount of the last measurable storm event; b. Summarized findings of the inspection; c. The location(s) of prohibited discharges; d. The location(s) of control measures that require maintenance; e. The location(s) of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location; f. The location(s) where any evidence identified under Part II F 3 a (7) exists; g. The location(s) where any additional control measure is needed that did not exist at the time of inspection; h. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance; i. Documentation of any corrective actions required from a previous inspection that have not been implemented; and j. The date and signature of the qualified personnel and the operator or its duly authorized representative."

14. During DEQ Site inspections on July 16, 2015 and February 4, 2016, DEQ staff observed that erosion and sediment controls were not installed or maintained in accordance with the specifications in the Erosion and Sediment Control ("ESC") Plan in the Site's SWPPP as follows:

    a. On July 16, 2015, nine sediment traps had outlets with elevations higher than the adjacent embankment, and embankments of twelve sediment traps were not stabilized, contrary to the specifications in the ESC Plan. On February 4, 2016, seven sediment traps had outlets with the same elevation as the adjacent embankment, and embankments of nine sediment traps were not stabilized, contrary to the specifications in the ESC Plan. Also on February 4, 2016, DEQ staff documented that the drainage to ST3 and ST4A was inconsistent with the ESC Plan. In some areas, water in the drainage area for ST3 on the ESC Plan bypassed the trap, and other areas not accounted for in the ESC Plan drained to ST3. Water shown in the drainage area for ST4A on the ESC Plan was bypassing ST4A.

    b. On July 16, 2015 and February 4, 2016, temporary right of way diversions and other diversions throughout the Site were not stabilized or constructed in accordance with the Virginia Erosion and Sediment Control Handbook ("VESCH"), as required by the ESC Plan

    c. On July 16, 2015 and February 4, 2016, check dams were full of sediment and no longer functioning to trap sediment and had not been installed and maintained in accordance with VESCH, as required by the ESC Plan.

    d. On July 16, 2016, the secondary construction entrance was not installed with the aggregate size specified in the VESCH, as required by the ESC Plan. The primary construction entrance shown on the ESC Plan had not been maintained and was so full of sediment that it was unrecognizable as a construction entrance.

    e. On February 4, 2016, silt fence surrounding a soil stockpile at the Site was sagging and had not been maintained, and there was a gap in the silt fence below ST6A, contrary to the ESC Plan.

    f. On February 4, 2016, temporary slope drain TSD1 lacked inlet protection in accordance with the VESCH, as required by the ESC Plan. TSD3 discharged down a steep slope and lacked effective outlet protection, contrary to the specifications in the VESCH required by the ESC Plan.

9 VAC 25-870-54(B) of the VSMP Regulations states, "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."

2014 Permit Part II(E)(1) states, "All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications."

9 VAC 25-840-40(5) of the Erosion and Sediment Control Regulations states, "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation."

9 VAC 25-840-40(8) of the Erosion and Sediment Control Regulations 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."

15. During DEQ Site inspections on July 16, 23, and 31, 2015, DEQ staff documented that breaches of perimeter ESC controls at the Site resulted in the discharge of fill material, in the form of sediment (a VWP Pollutant), in streams and wetlands. Measurable accumulation of sediment was observed in approximately 0.22 acres of forested wetlands and 4,078 linear feet of streams. During a DEQ Site inspection on February 4, 2016, additional measurable accumulation of sediment and gravel (VWP Pollutants), attributed to ESC failures, impacted at least 143 linear feet of stream (of which 112 linear feet overlapped with previous impacts, and 31 linear feet were not previously impacted). DEQ has not issued a VWP Permit for such impacts.

    Va. Code § 62.1-44.15:20(A) states: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: . . . On or after October 1, 2001, conduct the following in a wetland: . . . Filling . . . or New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 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."

    Va. Code § 62.1-44.5 also prohibits any person, except in compliance with a permit issued by the Board or authorized entity, from altering the physical, chemical or biological properties of state waters and making them detrimental to animal or aquatic life, or for other uses; or from filling a wetland or conducting new activities causing significant alteration or degradation of existing wetland acreage or functions.

    9 VAC 25-210-50(A) states: "Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall . . . fill or discharge any pollutant into, or adjacent to surface waters, . . . 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 . . ."

16. Based on the results of the inspections on July 16, 23, and 31, 2015 and February 4, 2016, the Board concludes that the IDA violated Va. Code §§ 62.1-44.5, 62.1-44.15:20; 9 VAC

25-210-50; 9 VAC 25-840-40; 9 VAC 25-870-54; 9 VAC 25-870-55; and the conditions of 2014 Permit Parts I(A) and II(A), (B), (C), (E), and (F), as described in paragraphs C(7)-(15) of this Order.

17. On September 22, 2015, DEQ issued Notice of Violation (NOV) No. 15-09-BRRO-002 for the violations described above that were documented during the DEQ Site inspections on July 16, 23, and 31, 2015.

18. On October 22, 2015, DEQ staff met with IDA representatives to discuss the violations.

19. On December 11, 2015, the IDA provided a stream assessment, which proposed corrective action measures in three stream segments with significant sediment accumulations. On March 22, 2016, DEQ staff approved a Sediment Removal Plan Map submitted by the IDA indicating the areas where the IDA will remove accumulated sediment from state waters.

20. On November 18, 2015 and January 8, 2016, the IDA sent DEQ revised versions of the SWPPP for the Site, and on March 18, 2016 the IDA sent DEQ an approved ESC Plan for lot 14. Based on these documents, DEQ staff have verified that the violations described in paragraphs C(9), (10), and (11) have been corrected.

21. During the DEQ Site inspection on February 4, 2016, DEQ staff verified that the violation described in paragraph C(7) has been corrected.

22. Based on photographs and other documentation submitted by the IDA on April 13, 2016, August 22, 2016, and September 20, 2016, and October 27, 2016, DEQ staff verified that the violations described in paragraphs C(8), C(12), C(14)(a), C(14)(d), C(14)(e), and C(15) have been corrected. Additionally, DEQ staff verified removal of sediment accumulation in check dams described in paragraph C(14)(c) and installation of inlet protection for TSD1 described in paragraph C(14)(f).

23. In order for the IDA to complete its return to compliance, DEQ staff and the IDA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

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, the Board orders the IDA, and the IDA agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a total civil charge of $39,490 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The total civil charge is comprised of the following components:

a. Construction Stormwater Civil Charge: $16,523
b. Virginia Water Protection Program Civil Charge: $22,967

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 IDA shall include its Federal Employer Identification Number (FEIN) (52-1305420), with the civil charge payment. The IDA shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund for the Construction Stormwater Civil Charge set forth in Section (D)(2)(a) above and for deposit into the Virginia Environmental Emergency Response Fund (VEERF) for the Virginia Water Protection Program Civil Charge set forth in Section (D)(2)(b) above. If the Department has to refer collection of moneys due under this Order to the Department of Law, the IDA shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the IDA for good cause shown by the IDA, 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. 15-09-BRRO-002 dated September 22, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Site; 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 IDA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The IDA 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 IDA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by the IDA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. The IDA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The IDA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The IDA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and the IDA. Nevertheless, the IDA 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 IDA has completed all of the requirements of the Order;

b. The IDA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the IDA.

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

12. Any plans, reports, schedules or specifications attached hereto or submitted by the IDA 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 IDA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the IDA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the IDA.

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 IDA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of February, ~~2016~~ 2017

Jefferson D. Reynolds, Enforcement Director
Department of Environmental Quality

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The Henry County Industrial Development Authority voluntarily agrees to the issuance of this Order.

Date: 12-19-2016 By: Len Dillon, Chairman
(Person) (Title)
Henry County Industrial Development Authority

Commonwealth of Virginia
City/County of Henry

The foregoing document was signed and acknowledged before me this 19th day of December, 2016, by Len Dillon who is Chairman of the Henry County Industrial Development Authority on behalf of the Authority.

Jennifer N. Gregory
Notary Public

241558
Registration No.

My commission expires: 12-31-2020

Notary seal:

JENNIFER N. GREGORY
Notary Public
Commonwealth of Virginia
Reg. #241558
My Commission Exps. 12-31-2020

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **ESC Controls**

   a. Prior to engaging in any new grading or other land-disturbing activities at the Site, the IDA shall complete the following work on ESC controls at the Site:

      i) Install temporary right of way diversions and reshape and achieve stabilization of other diversions throughout the Site to meet the specifications of the VESCH, as required by the ESC Plan.

      ii) Reshape check dams that are both included in the ESC Plan and located in active diversions to meet the specifications in the VESCH, as required by the ESC Plan.

      iii) Repair TSD3 in accordance with the specifications in the VESCH, as required by the ESC Plan, so that it does not discharge down a steep slope. Install outlet protection for TSD3 in accordance with the specifications in the VESCH, as required by the ESC Plan.

   b. The IDA shall notify DEQ within 7 days of the completion of the work required by paragraph 1(a). Such notification shall be made prior to any new grading or other land-disturbing activities at the Site.

2. **DEQ Contact**

   Unless otherwise specified in this Order, the IDA shall submit all requirements of Appendix A of this Order to:

   Carla Pool
   Enforcement Adjudication Manager
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   629 East Main Street
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