



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

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Director

James J. Golden  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Comcast Cable Communications Management, LLC  
TriWire Engineering Solutions, Inc.**

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Comcast Business Communications of Virginia, LLC and Tri Wire Engineering Solutions, Inc. (sometimes referred to herein as “the Parties”) for the purposes of resolving certain violations of the State Water Control Law and applicable regulations.

### SECTION B: Definitions

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

1. “Aboveground storage tank” or “AST” means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Comcast Cable Communications Management, LLC” or “Comcast” is a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Comcast is a “person” within the meaning of Va. Code § 62.1-44.3.

4. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
8. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred; 2937 Galena Avenue, Chesterfield VA 23237.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
11. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
14. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil.
16. "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.
17. "TriWire Engineering Solutions, Inc.," or "TriWire" is a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. TriWire is a contract service to Comcast. TriWire is a "person" within the meaning of Va. Code § 62.1-44.3.

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

19. "VAC" means the Virginia Administrative Code.

**SECTION C: Findings of Fact and Conclusions of Law**

1. On August 14, 2018, DEQ staff received notification of a discharge of oil from a home heating oil AST at 2937 Galena Avenue, N. Chesterfield, VA 23237. The property owner for the AST informed DEQ that on approximately August 2, 2018, a worker employed by TriWire and contracted by Comcast was connecting communications cable to the home. In the process of running cable to the roof, the worker stepped on the AST to elevate and anchor himself. The AST buckled beneath the weight of the worker, resulting in approximately 100 gallons of oil spilling from the AST onto the ground. The oil impacted surface and sub-surface soil, and traveled several feet across the rear of the property to a neighboring property.
2. On August 16, 2018, DEQ staff visited the site to evaluate the cleanup and observe any further impacts to the property. DEQ staff observed oil staining on the ground near the AST, damage to a valve on the tank, and a large area of distressed grass near the tank and the nearby neighbor's yard. Comcast and TriWire failed to report the incident to DEQ and did not take corrective action to contain and cleanup the oil spill.
3. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems.
4. Va. Code § 62.1-44.34:19 requires reporting discharges of oil into or upon state waters, lands, or storm drain systems immediately upon learning of the discharge to the Board, the Director or coordinator of emergency services for the political subdivision in which the discharge occurs, and any other political subdivision reasonably expected to be affected by the discharge.
5. On August 23, 2018, the Department issued Notice of Violation No. 18/8/PRO-501 to Comcast for a discharge of oil to land and failure to report the discharge.
6. On September 5, 2018, Department staff discussed the violations with representatives of Comcast, including the accident, discharge, response, containment and clean-up, and future actions. Department staff learned about the involvement of TriWire in the spill event and contractual relationship between Comcast and TriWire subsequent to issuance of the NOV. Notwithstanding potential TriWire liability, Comcast fully cooperated in spill clean-up and resolution of DEQ's enforcement action.
7. A state-lead remediation contract was initiated with the cooperation of Comcast. On September 20, 2018, Apex Companies, LLC ("Apex") excavated soil impacted by the release. The limits of the excavation measured approximately 15 feet wide by 18 feet long to an approximate depth of one foot below ground surface. A total of 9.79 tons of

impacted soil was excavated and transported offsite for disposal. *See Apex, Initial Abatement Measures Report*, State Lead Contract No. 15-01-CP-01 (November 7, 2018). DEQ staff reviewed the Apex report and determined no further action was required on November 14, 2018.

8. Based on the information provided above, the State Water Control Board concludes that Comcast and TriWire violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders the Parties and the Parties agree to:

1. Pay a civil charge of **\$4,454.00** in settlement of the violations cited in this Order.
2. Pay costs in the amount of **\$6,656.09** in settlement of all costs associated with remediation activities conducted by Apex Companies, LLC (Invoice dated November 15, 2018).

Total payment in the amount of **\$11,110.09** shall be made within 30 days of the effective date of the Order 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 party making payment shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department is required 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.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the Parties for good cause shown by 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 the Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking

any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, the Parties admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Parties consent 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 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 Board 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 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 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 its 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 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 Parties. Nevertheless, the Parties agree 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 Board terminates the Order in his or its sole discretion upon 30 days' written notice.

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 representatives certify that they are responsible officials authorized to enter into the terms and conditions of this Order and to execute and legally bind their respective organizations to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of each 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, Comcast and TriWire voluntarily agree to the issuance of this Order.

Comcast voluntarily agrees to the issuance of this Order.

Date: 2/18/19 By: [Signature], Assistant General Counsel  
Comcast Cable Communications (Title)  
Management, LLC

Commonwealth of Pennsylvania  
City/County of Philadelphia

The foregoing document was signed and acknowledged before me this 18<sup>th</sup> day of  
February, 2019, by Rachel Krantz who is  
\_\_\_\_\_ of Comcast Cable Communications  
Management, LLC on behalf of the company.

[Signature]  
Notary Public

1066465  
Registration No.

Commission  
My commission expires: 12/18/21

Notary seal:



TriWire voluntarily agrees to the issuance of this Order.

Date: Feb 5, 2019 By: Sharon Marie Cassidy RISK Manager  
TriWire Solutions, Inc. (Title)

Commonwealth of Massachusetts  
City/County of Middlesex

The foregoing document was signed and acknowledged before me this 5 day of  
Feb, 2019, by Sharon Marie Cassidy who is  
\_\_\_\_\_ of TriWire Solutions, Inc. on behalf of the company.

Nancy A. Dancoe  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: \_\_\_\_\_



Notary seal:

And it is so ORDERED this 25th day of April, 2019.



(FOR)

James J. Golden  
Department of Environmental Quality

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