



COMMONWEALTH of VIRGINIA

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RHETSON COMPANIES, INC.
FOR
5 CONSTRUCTION SITES
Virginia Pollutant Discharge Elimination System Permit VAR10**

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 Rhetson Companies, Inc. regarding five construction sites for the purpose of resolving certain violations of the State Water Control Law and the applicable permits and regulations.

SECTION B: Definitions

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

1. "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.
2. "2019 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, which is effective July 1, 2019 and which expires on June 30, 2024.

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. "CO" means the Central Office of DEQ, located in Richmond, Virginia.
6. "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.
7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
8. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
9. "Discharge" means the discharge of a pollutant.
10. "Discharge of a pollutant" means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any 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.
11. "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.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "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.
14. "Registration Statement" means a registration statement for coverage under the State Permit.

15. "Rhetson" means Rhetson Companies, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Rhetson is a "person" within the meaning of Va. Code § 62.1-44.3.
16. "Site 1" means the construction activity located at latitude 37.1904 and longitude - 78.8116 on Red House Road in Charlotte County, Virginia, from which discharges of stormwater associated with construction activity occur. Rhetson received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10K561.
17. "Site 2" means the construction activity located at 7080 Bethel Road in Scottsburg, Virginia, from which discharges of stormwater associated with construction activity occur. Rhetson received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10K464.
18. "Site 3" means the construction activity located at 6088 Kentuck Rd in Pittsylvania, Virginia, from which discharges of stormwater associated with construction activity occur. Rhetson received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10K545.
19. "Site 4" means the construction activity located at latitude 36.9352 and longitude - 79.0134 on Cody Rd in Halifax, Virginia, from which discharges of stormwater associated with construction activity occur. Rhetson received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10K550.
20. "Site 5" means the construction activity located at latitude 36.6570 and longitude - 79.3003 on Highwayview Rd in Motley, Virginia, from which discharges of stormwater associated with construction activity occur. Rhetson received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10K658.
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
22. "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.
23. "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.

24. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
25. "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 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.
26. "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.
27. "Va. Code" means the Code of Virginia (1950), as amended.
28. "VAC" means the Virginia Administrative Code.
29. "VPDES" means Virginia Pollutant Discharge Elimination System.
30. "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 this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
31. "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.
32. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
33. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

Site 1

1. Rhetson is the permitted operator for Site 1, located in Charlotte County, which discharges stormwater associated with construction activity.
2. DEQ is the VSMP authority for Charlotte County.
3. Rhetson applied for and, on March 15, 2018, was granted coverage under the 2014 Permit. The site was assigned registration number VAR10K561. Rhetson's coverage under the 2014 Permit was administratively continued until permit coverage was granted under the 2019 Permit on October 7, 2019.
4. The 2014 Permit allowed and the 2019 Permit allows Rhetson to discharge stormwater associated with construction activities from Site 1 to Little Falling River in strict compliance with the terms and conditions of the 2014 and 2019 Permits.
5. Little Falling River is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
6. During an inspection on June 27, 2018, DEQ staff documented that a copy of the notice of coverage letter was not posted conspicuously near the main entrance of the construction activity.

Permit Part II(C) 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."

7. During an inspection on June 27, 2018, DEQ staff documented that the SWPPP did not include a narrative description of the nature of the construction activity, a complete site plan, an approved stormwater management plan and a complete copy of the approved erosion and sediment control plan.

Permit Part II.A.1 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 1. General information. d. A narrative description of the nature of the construction activity...; e. A legible site plan..."

Permit Part II.A.2 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 2. Erosion and sediment control plan. a. An erosion and sediment control plan approved by the VESCP authority..."

Permit Part II.A.3 states in part: “Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 2. Stormwater management plan. a. A stormwater management plan approved by the VSMP authority...”

8. During inspections on June 27, 2018 and September 4, 2018, DEQ staff documented that the SWPPP did not contain an adequate pollution prevention plan. There was a pollution prevention plan template in the SWPPP but it had not been filled out. During the June 27, 2018 inspection, vehicle fueling was being conducted by the use of a mobile fuel tank in the back of a pick-up truck. No spill clean-up kit was observed at the site. In addition, a dumpster was observed at the site but package materials were deposited on the ground.

Permit Part II.A.4 states in part: “Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall: e. Describe the pollution prevention practices and procedures that will be implemented to: 2. Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities...6. Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes...”

9. During inspections on June 27, 2018 and September 4, 2018, DEQ staff documented that the SWPPP did not contain the name, phone number, and qualifications of the qualified personnel conducting inspections required by the 2014 permit.

Permit Part II.A.6 states in part: “Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 6. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit.”

10. During inspections on June 27, 2018 and September 4, 2018, DEQ staff documented that the SWPPP was not signed and dated in accordance with Part III K of the 2014 Permit.

Permit Part II.A.8 states in part: “Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 8. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K.”

11. During the September 4, 2018 inspection, DEQ staff documented that the SWPPP did not contain a delegation of authority that was signed in accordance with Part III K of the 2014 Permit. The document authorizing a representative to act on behalf of Rhetson was signed by a representative of Par 3.

Permit Part II.A.7 states in part: “Stormwater pollution prevention plan contents. 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.”

Permit Part III K states in part: “K. Signatory requirements. 1. Registration statement. All registration statements shall be signed as follows: a. For a corporation: by a responsible corporate officer. For the purpose of this chapter, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; 2. Reports, etc. All reports required by this general permit, including SWPPPs, and other information requested by the board or the department shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if: a. The authorization is made in writing by a person described in Part III K 1; b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and c. The signed and dated written authorization is included in the SWPPP. A copy must be provided to the department and VSMP authority, if requested.”

12. During inspections on June 27, 2018 and September 4, 2018, DEQ staff documented that the SWPPP did not identify the contractors that will implement and maintain each control measure and the SWPPP did not contain grading or stabilization records.

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.”

Permit Part II.B.4 states in part: “The operator shall update the SWPPP 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.”

13. During inspections on June 27, 2018 and September 4, 2018, DEQ staff documented that the SWPPP inspections were not performed at the required frequency, the inspection reports were not completed and signed in accordance with the 2014 Permit and corrective actions were not taken in response to the inspection reports.

Permit Part II.F.2 states: "Inspection schedule. 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 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."

Permit Part II.F.4 states in part: "Inspection report. Each inspection report shall include the following items: j. The date and signature of the qualified personnel and the operator or its duly authorized representative."

Permit Part II.G states in part: "Corrective actions. The operator shall implement the corrective action(s) 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."

14. During a DEQ inspection on June 27, 2018 DEQ staff documented the following erosion and sediment control observations:

- a. Denuded areas that had been dormant for more than 14 days were not stabilized.

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."

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."

Permit Part II(A)(2)(c)(8) states: "A properly implemented erosion and sediment control plan... ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have been 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..."

- b. The banks of the sediment trap were not immediately stabilized.

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

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."

- c. The sediment trap was not installed in accordance with the approved erosion and sediment control plan.

9 VAC 25-840-40(6) states in part: "Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin."

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."

- d. The side slopes on the conveyance channels had not been stabilized.

9 VAC 25-840-40(7) states in part: "Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion."

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."

- e. Stormwater conveyance channels were not adequately stabilized and outlet protection had not been installed at the discharge point of the culvert at the southern edge of the sediment trap.

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."

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."

- f. Silt fence had collapsed on the northern perimeter of the site.

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

9 VAC 25-840-60(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..."

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 implanted during construction activities."

15. Va. Code § 62.1-44.5 states in part, "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities."
16. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities."
17. Based on the results of the June 27, 2018 and September 4, 2018 inspections, the Board concludes that Rhetson violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-840-40(1), 9 VAC 25-840-40(5), 9 VAC 25-840-40(6), 9 VAC 25-840-40(7), 9 VAC 25-840-40(11), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B) and the conditions of Sections II.A.1, II.A.2, II.A.2.c.8., II.A.3, II.A.4, II.A.6, II.A.7, II.A.8, II.B.3, II.B.4, IIC, II.E.1, II.F.2, II.F.4, II.G., IIIK, of the 2014 Permit, by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C(6)-(16) of this Order.
18. On July 20, 2018, BRRO issued Warning Letter No. WL-18-07-BRRO-002 to Rhetson for the violations observed during the June 27, 2018 inspection.
19. DEQ staff have verified that the violations as described in paragraphs (C)(6) through (14) above, have been corrected.

20. Rhetson is the permitted operator for Site 2, located in Halifax County, which discharges stormwater associated with construction activity.
21. DEQ is the VSMP authority for Halifax County.
22. Rhetson applied for and, on November 13, 2017, was granted coverage under the 2014 Permit. The site was assigned registration number VAR10K464. Rhetson's coverage under the 2014 Permit was administratively continued until permit coverage was granted under the 2019 Permit on September 4, 2019. Coverage under the 2019 Permit was terminated on November 25, 2019.
23. The 2014 Permit and 2019 Permit allowed Rhetson to discharge stormwater associated with construction activities from Site 2 to Gibson Creek and an unnamed tributary (UT) to the Bannister River in strict compliance with the terms and conditions of the 2014 and 2019 Permits.
24. Gibson Creek and the UT to Bannister River are surface waters located wholly within the Commonwealth and are "state waters" under the State Water Control Law.
25. During inspections on March 28, 2018, July 17, 2018, and September 4, 2018, DEQ staff documented that a copy of the notice of coverage letter was not posted conspicuously near the main entrance of the construction activity.

Permit Part II(C) 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."

26. During inspections, DEQ documented the following observations regarding the SWPPP:
 - a. During the inspections on March 28, July 17, and September 4, 2018, the SWPPP did not contain complete information for the qualified personnel.

Permit Part II.A.6 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 6. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit."

- b. During the inspections on July 17, 2018 and September 4, 2018, the general VPDES permit for discharges of stormwater from construction activities was the 2009 Permit not the 2014 Permit.

Permit Part II.A.1 states: "The SWPPP shall contain the following items: c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities."

- c. During the inspections on July 17, 2018 and September 4, 2018, the SWPPP did not include a legible site plan identifying all appropriate measures required by the 2014 Permit.

Permit Part II.A.1.e lists the items that are required to be included in the site plan.

- d. During the inspections on July 17, 2018 and September 4, 2018, the SWPPP did not contain an adequate pollution prevention plan or a delegation of authority for the qualified personnel. In addition, the SWPPP and SWPP amendments were not signed and dated in accordance with Part III K.

Permit Part II.A.4 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity."

Permit Part II.A.8 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 8. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K."

Permit Part II.B.5 states: "Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K."

Permit Part III K states in part: "K. Signatory requirements. 1. Registration statement. All registration statements shall be signed as follows: a. For a corporation: by a responsible corporate officer... 2. Reports, etc. All reports required by this general permit, including SWPPPs, and other information requested by the board or the department shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person..."

- e. During the inspections on July 17, 2018 and September 4, 2018, DEQ staff observed that the contractors that will implement and maintain each control measure were not identified in the SWPPP.

Permit Part II.B.3 states in part: "The SWPPP must clearly identify the contractor(s) that will implement and maintain each control measure identified in the SWPPP."

- f. During the inspection on July 17, 2018, DEQ staff observed that the list of updates to the SWPPP when any modifications to its implementation have occurred was incomplete.

Permit Part II.B.4 states in part: "The operator shall update the SWPPP 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."

- g. During the inspection on July 17, 2018, DEQ staff observed that the SWPPP was not updated to indicate areas that had reached final stabilization.

Permit Part II.B.4 states in part: "The operator shall update the SWPPP 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: c. Areas that have reached final stabilization..."

- 27. During the inspection on July 17, 2018, DEQ staff documented that inspections were not performed at the required frequency and inspection reports were not signed in accordance with the 2014 Permit.

Permit Part II.F.2 states: "Inspection schedule. 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 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."

Permit Part II.F.4 states in part: "Inspection report. Each inspection report shall include the following items: j. The date and signature of the qualified personnel and the operator or its duly authorized representative."

- 28. During the inspections, DEQ staff documented the following erosion and sediment control observations:

- a. During the inspection on March 28, 2018, DEQ staff observed sediment that was tracked from Site 2 onto an adjacent public road. No control measures were observed to minimize the transport of sediment from Site 2 onto the public road.

9 VAC 25-840-40(17) states: "Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities."

- b. During the inspections on March 28, July 17, and September 4, 2018, DEQ staff documented that stormwater conveyance channels to the sediment basin were not stabilized.

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."

- c. During the inspections on July 17 and September 4, 2018, DEQ staff observed that the sequencing of the project was not implemented in accordance with the approved erosion and sediment control and stormwater management plans.

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."

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."

- d. During the inspections on July 17 and September 4, 2018, DEQ staff documented that denuded areas had not been adequately stabilized.

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."

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."

9 VAC 25-840-40(16) states in part: "Underground utility lines shall be installed with the following standards in addition to the other applicable criteria: e. Restabilization shall be accomplished in accordance with this chapter."

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.”

Permit Part II(A)(2)(c)(8) states: “A properly implemented erosion and sediment control plan... ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have been 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...”

- e. During inspections on July 17 and September 4, 2018, DEQ staff documented that cut and fill slopes were not adequately stabilized and erosion was occurring.

9 VAC 25-840-40(7) states in part: “Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion.”

- f. During inspections on July 17 and September 4, 2018, DEQ staff documented control measures, including silt fence, that were not properly maintained in effective operating condition.

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

- 29. Va. Code § 62.1-44.5 states in part, “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.”

- 30. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”

- 31. Based on the results of the March 28, 2018, July 17, 2018, and September 4, 2018 inspections, the Board concludes that Rhetson violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-840-40(1), 9 VAC 25-840-40(3), 9 VAC 25-840-40(7), 9 VAC 25-840-40(11), 9 VAC 25-840-40(16), 9 VAC 25-840-40(17), 9 VAC 25-870-54(B), 9 VAC 25-870-54(C) and the conditions of Sections II.A.1, II.A.2.c.8., II.A.4, II.A.6, II.A.8, II.B.3, II.B.4, II.B.5, IIC, II.E.1, II.F.2, II.F.4, IIIK, of the 2014 Permit, by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C(25)-(30) of this Order.

32. DEQ staff have verified that the violations as described in paragraph (C)(25) through (28) above, have been corrected.

Site 3

33. Rhetson is the permitted operator for Site 3, located in Pittsylvania County, which discharges stormwater associated with construction activity.
34. DEQ is the VSMP authority for Pittsylvania County.
35. Rhetson applied for and, on April 26, 2018, was granted coverage under the 2014 Permit. The site was assigned registration number VAR10K545. Rhetson's coverage under the 2014 Permit was administratively continued until permit coverage was granted under the 2019 Permit on September 4, 2019. Coverage under the 2019 Permit was terminated on January 3, 2020.
36. The 2014 Permit and 2019 Permit allowed Rhetson to discharge stormwater associated with construction activities from Site 3 to Cane Creek in strict compliance with the terms and conditions of the 2014 and 2019 Permits.
37. Cane Creek is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
38. During inspections on July 19, 2018, August 27, 2018, and February 4, 2019, DEQ staff made the following observations regarding the SWPPP:

- a. On July 19 and August 27, 2018, the SWPPP did not contain the name, phone number, and qualifications of the qualified personnel conducting inspections required by the 2014 permit.

Permit Part II.A.6 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 6. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit."

- b. On July 19 and August 27, 2018, the SWPPP did not contain an adequate pollution prevention plan. There was a generic pollution prevention plan template in the SWPPP but it had not been filled out with specifics for the site.

Permit Part II.A.4 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall:..."

- c. On July 19, 2018, the SWPPP did not identify the contractors that will implement each control measure.

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."

- d. On July 19 and August 27, 2018, the SWPPP did not include a legible site plan that incorporated all the required elements.

Permit Part II.A.1 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 1. General information. d. A narrative description of the nature of the construction activity...; e. A legible site plan..."

- e. On July 19 and August 27, 2018, the SWPPP did not include updates when any modifications to its implementation had occurred.

Permit Part II.B.4 states in part: "The operator shall update the SWPPP 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."

- f. On July 19 and August 27, 2018, the SWPPP did not contain a delegation of authority that was completed in accordance with the requirements of the 2014 Permit.

Permit Part II.A.7 states in part: "Stormwater pollution prevention plan contents. 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."

- g. On August 27, 2018, the SWPPP did not identify impaired waters and include additional control measures as required by the 2014 Permit.

Permit Part II.A.5 states: "SWPPP requirements for discharges to impaired waters, surface waters with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit, and exceptional waters. The SWPPP shall: a. Identify the impaired water(s)...B. Provide clear direction that..."

- h. On February 4, 2019, the SWPPP did not contain a copy of the approved erosion and sediment control plan or a copy of the approved stormwater management plan.

Permit Part II. A.2 states: "The SWPPP shall contain the following items: An erosion and sediment control plan approved by the VESCP authority..."

Permit Part II.A.3 states: "The SWPPP shall contain the following items: A stormwater management plan approved by the VSMP authority..."

- 39. During the inspection on August 27, 2018, DEQ staff documented that SWPPP inspections were not being conducted at the required frequency and the inspection reports were not completed and signed in accordance with the 2014 Permit. During the inspection on February 4, 2019, SWPPP inspections were not being conducted at the required frequency.

Permit Part II.F.2 states: "Inspection schedule. 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 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."

Permit Part II.F.4 states in part: "Inspection report. Each inspection report shall include the following items: j. The date and signature of the qualified personnel and the operator or its duly authorized representative."

- 40. During inspections on July 19, 2018, August 27, 2018, and February 4, 2019, DEQ staff made the following observations regarding the erosion and sediment controls:

- a. On July 19, 2018, sediment was observed tracked onto the paved surface of Kentuck Road.

9 VAC 25-840-40(17) states: "Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface."

- b. On July 19 and August 27, 2018, the embankment of the sediment trap was not stabilized. On February 4, 2019, the embankment of the stormwater pond was not stabilized.

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

- c. On July 19 and August 27, 2018, the Class A1 rip-rap at the inflow point of Swale 1 and Swale 2 had not been installed as required by the approved erosion and sediment control plan.

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."

- d. On July 19 and August 27, 2018, the sediment trap was not installed and maintained in effective operating condition. On February 4, 2019, the silt fence was removed from the perimeter adjacent to the stormwater pond embankment. The stormwater pond embankment was not stabilized.

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

9 VAC 25-840-60(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..."

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."

- e. On August 27, 2018 and February 4, 2019, stormwater channels around the perimeter of the site were not stabilized with erosion and sediment control blankets as required by the approved erosion and sediment control plan.

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."

41. During the February 4, 2019 inspection, permanent control measures were not installed in accordance with the approved stormwater management plan. The outlet pipe from the control structure did not extend to the length indicated on the approved plan and the invert of the dewatering orifice and the invert of the outlet pipe were not the same height as indicated on the approved plan.

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."

42. During the February 4, 2019 inspection, a copy of the notice of coverage letter was not posted conspicuously near the main entrance of the site activity.

Permit Part II(C) 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."

43. Va. Code § 62.1-44.5 states in part, "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities."
44. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities."
45. Based on the results of the July 19, 2018, August 27, 2018, and February 4, 2019 inspections, the Board concludes that Rhetson violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-840-40(5), 9 VAC 25-840-40(11), 9 VAC 25-840-40(17), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), 9 VAC 25-870-54(C), and the conditions of Sections II.A.1, II.A.2, II.A.3, II.A.4, II.A.5, II.A.6, II.A.7, II.B.3, II.B.4, II.C., II.E.1, II.F.2, II.F.4, of the 2014 Permit, by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C(38)-(44) of this Order.
46. DEQ staff have verified that the violations as described in paragraph (C)(38) through (42) above, have been corrected.

Site 4

47. Rhetson is the permitted operator for Site 4, located in Halifax County, which discharges stormwater associated with construction activity.
48. DEQ is the VSMP authority for Halifax County.
49. Rhetson applied for and, on February 28, 2018, was granted coverage under the 2014 Permit. The site was assigned registration number VAR10K550. Rhetson's coverage under the 2014 Permit was administratively continued until permit coverage was granted under the 2019 Permit on September 4, 2019. Coverage under the 2019 Permit was terminated on December 4, 2019.

50. The 2014 and 2019 Permits allow Rhetson to discharge stormwater associated with construction activities from Site 4 to Childrey Creek UT and Bannister River UT in strict compliance with the terms and conditions of the 2014 and 2019 Permits.
51. Childrey Creek UT and Bannister River UT are surface waters located wholly within the Commonwealth and are "state waters" under the State Water Control Law.
52. During inspections on February 20, May 15, and August 20, 2018, DEQ staff documented that a copy of the notice of coverage letter was not posted conspicuously near the main entrance of the construction activity and during the August 20, 2018 inspection, the SWPPP was not on-site or made available.

Permit Part II(C) 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."

Permit Part II(D)(1) and (2) state:

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.

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."

53. During inspections on February 20, May 15, and August 20, 2018, DEQ staff documented that the SWPPP did not contain a copy of the notice of coverage letter.

Permit Part II.A.1 states: "The SWPPP shall contain the following items: b. Upon receipt, a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities."

54. During an inspection on February 20, 2018, the SWPPP did not contain information for the qualified personnel.

Permit Part II.A.6 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 6. Qualified personnel. The name, phone

number, and qualifications of the qualified personnel conducting inspections required by this general permit.”

55. During the August 20, 2018 inspection, there were no records of SWPPP inspections available for review.

Permit Part II(F)(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.”

Permit Part II(F)(3) states in part: “As part of the inspection, the qualified personnel shall: (1) Record the date and time of the inspection....”

Permit Part II(F)(4) states in part: “The inspection report and any actions taken in accordance with Part II must be retained by the operator as part of the SWPPP for at least three years...”

56. During the inspections DEQ staff documented the following observations regarding erosion and sediment controls:

- a. During the May 15 and August 20, 2018 inspections, denuded areas requiring stabilization had not been stabilized.

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.”

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.”

- b. During the May 15 inspection, culvert inlet protection was not installed in accordance with the approved erosion and sediment control plan.

9 VAC 25-840-40(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.”

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.”

- c. During the May 15 inspection, a soil stockpile was not adequately stabilized or protected with sediment trapping measures.

9 VAC 25-840-40(2) states in part: “During construction of the project, soil stockpiles and borrow areas shall be stabilized or protected with sediment trapping measures.”

- d. During the May 15 and August 20 inspections, the earthen embankment of the detention basin had not been stabilized.

9 VAC 25-840-40(5) states: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”

- e. During the May 15 and August 20 inspections, cut and fill slopes were not adequately stabilized to prevent erosion.

9 VAC 25-840-40(7) states in part: “Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion.”

- f. During the August 20 inspection, concentrated runoff down cut or fill slopes was not contained in an adequate permanent or temporary structure.

9VAC 25-840-40(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.”

- g. During the August 20 inspection, stormwater management grass conveyance channels were not adequately stabilized with channel lining.

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 the receiving channel.”

- h. During the May 15 and August 20 inspections, DEQ staff documented control measures that were not installed in accordance with the approved erosion and sediment control plan and controls that were not properly maintained.

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

9 VAC 25-840-60(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...”

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.”

57. Va. Code § 62.1-44.5 states in part, “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.”

58. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”

59. Based on the results of the February 20, 2018, May 15, 2018, and August 20, 2018 inspections, the Board concludes that Rhetson violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-840-40(1), 9 VAC 25-840-40(2), 9 VAC 25-840-40(3), 9 VAC 25-840-40(5), 9 VAC 25-840-40(7), 9 VAC 25-840-40(8), 9 VAC 25-840-40(10), 9 VAC 25-840-40(11), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), 9 VAC 25-870-54(G), and the conditions of Sections II.A.1, II.C, II.D.1, II.D.2, II.E., and II.F, of the 2014 Permit, by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C(52)-(58) of this Order.

60. DEQ staff have verified that the violations as described in paragraph (C)(52) through (56) above, have been corrected.

Site 5

61. Rhetson is the permitted operator for Site 5, located in Pittsylvania County, which discharges stormwater associated with construction activity.

62. DEQ is the VSMP authority for Pittsylvania County.

63. Rhetson applied for and, on May 25, 2018, was granted coverage under the 2014 Permit. The site was assigned registration number VAR10K658. Rhetson’s coverage under the 2014 Permit was administratively continued until permit coverage was granted under the 2019 Permit on September 4, 2019.

64. The 2014 Permit allowed and the 2019 Permit allows Rhetson to discharge stormwater associated with construction activities from Site 5 to Sycamore Creek in strict compliance with the terms and conditions of the 2014 and 2019 Permits.
65. Sycamore Creek is a surface waters located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
66. During inspections on August 27 and October 23, 2018, DEQ staff documented that a copy of the notice of coverage letter was not posted conspicuously near the main entrance of the construction activity.

Permit Part II(C) 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."

67. During the inspection on August 27 the SWPPP was not available for review and no contact information was posted to obtain a copy of the SWPPP. During the October 23, 2018 inspection, DEQ staff made the following SWPPP observations:

- a. The SWPPP did not contain an adequate pollution prevention plan.

Permit Part II.A.4 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity."

- b. The SWPPP did not contain information for the qualified personnel conducting inspections.

Permit Part II.A.6 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 6. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit."

- c. The SWPPP did not contain a delegation of authority that was completed and signed in accordance with the 2014 Permit.

Permit Part II.A.7 states in part: "Stormwater pollution prevention plan contents. 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."

- d. The SWPPP did not contain updates when any modifications to its implementation occurred.

Permit Part II.B.4 states in part: "The operator shall update the SWPPP 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."

68. During the August 27 and October 23 inspections, DEQ staff observed that the sequencing of the project was not implemented in accordance with the approved erosion and sediment control plan. Sediment trapping measures were not constructed as the first step in land disturbing activities.

9 VAC 25-840-40(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."

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."

69. Va. Code § 62.1-44.5 states in part, "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities."

70. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities."

71. Based on the results of the August 27, 2018 and October 23, 2018 inspections, the Board concludes that Rhetson violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-840-40(4), 9 VAC 25-870-54(B), 9 VAC 25-870-54(C), and the conditions of Sections II.A.4, II.A.6, II.A.7, II.B.4, II.C of the 2014 Permit, by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C(66)-(70) of this Order.

72. DEQ staff have verified that the violations as described in paragraphs C(66) through(68) above, have been corrected.

All Sites

73. On September 6, 2018 Department staff met with representatives of Rhetson to discuss the company's compliance with the 2014 Permit and steps Rhetson could take to achieve compliance.
74. On November 27-28, 2018, staff from Rhetson participated in a DEQ erosion and sediment control inspector class.
75. On December 18, 2018, DEQ issued Rhetson NOV No. 2018-CO-0002 for the violations listed above.
76. On January 8, 2019, Rhetson staff met with DEQ to discuss the NOV and necessary corrective actions

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 Rhetson and Rhetson agrees to pay a civil charge of \$29,487.50 within 30 days of the effective date of the 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

Rhetson 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 Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Rhetson 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 Rhetson for good cause shown by Rhetson, 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 Warning Letter No. WL-18-07-BRRO-002 dated July 20, 2018. 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 Rhetson admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
 4. Rhetson 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. Rhetson 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 Rhetson 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. Rhetson 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. Rhetson shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rhetson 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 Rhetson. Nevertheless, Rhetson 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 Rhetson has completed all of the requirements of the Order;
 - b. Rhetson 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 Rhetson.
- Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rhetson 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 Rhetson 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 of Rhetson certify that he is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Rhetson to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Rhetson.
 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, Rhetson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of May, 2020.

Tiffany R. Severs 
~~Jeffery A. Steers~~, Enforcement Director
Department of Environmental Quality

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Rhetson Companies, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/24/20 By: [Signature], President/CEO
(Person) (Title)
Rhetson Companies, Inc.

State of North Carolina
~~Commonwealth of Virginia~~
City/County of Moore

The foregoing document was signed and acknowledged before me this 24th day of
February, 2020, by Brian Godfeller who is
President/CEO of Rhetson Companies, Inc. on behalf of the corporation.



[Signature]
Notary Public

201420400033
Registration No.

My commission expires: 7-22-2024

Notary seal:

