



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SCOTT-II SOLAR LLC
FOR THE
SCOTT II SOLAR PROPERTY
POWHATAN COUNTY
PROPERTY ID #038-28**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Scott-II Solar LLC, regarding the Scott II Solar Property, for the purpose of resolving certain violations of 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. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "EPA" means the United States Environmental Protection Agency.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "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.
10. "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.
11. "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: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) 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; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. "Property or Site" means the tract of land in Powhatan County, Virginia with the property identification number of 038-28, owned by Scott Timberland and located at 4325 Old Buckingham Road in Powhatan County.
14. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

15. "Scott" means Scott-II Solar LLC, a limited liability company authorized to do business in Virginia. Scott is a "person" within the meaning of Va. Code § 10.1-1400.
16. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that either cause a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
18. "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 25-210-10.
19. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VWP" means Virginia Water Protection.
23. "VWP Permit" or "Virginia Water Protection Permit" means a 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.
24. "VWP Regulation" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
25. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Scott owns and is developing a solar energy generating facility on the Property in Powhatan County, Virginia.

2. The USACE issued a nationwide permit for a small road crossing associated with the project. DEQ has not issued a VWP Permit to Scott.
3. On June 22, 2017, DEQ was notified of a sediment discharge into jurisdictional state waters had occurred on June 21, 2017 at the Property as required by Va. Code §62.1-44.5(B).
4. On June 26, 2017, communication from Scott stated that sediment, a pollutant, overtopped the silt fence at the southwest corner of sediment basin #8 and entered the stream causing sediment impacts to adjacent wetlands.
5. On June 29, 2017, Department staff inspected the Property and observed sediment impacted palustrine forested wetlands and streambeds downstream of onsite sediment basins. Based on Department recommendations, the on-site contractor removed the sediment manually using buckets and shovels and placed the sediment back within the limits of disturbance. Scott completed the restoration and repaired the silt fence.
6. On July 21, 2017, DEQ received notification that several sediment discharges into jurisdictional state waters had occurred on July 20, 2017 at the Property.
7. On July 24, 2017, Department staff inspected the Property and observed failed erosion and sediment control measures. Impacts occurred to palustrine forested wetlands and streambeds in seven locations downstream of onsite sediment basins. The inspection results indicated that Scott did not construct several stormwater conveyance channels (ditches) across the site in accordance with the approved stormwater plan. Project personnel began clean-up activities to remove accumulated sediment from the wetland areas outside the limits of disturbance. Scott repaired all breached silt fences and mulch barriers.
8. On August 3, 2017, DEQ conducted a third site inspection after review of the unauthorized impact areas that DEQ mapped during the June 29, 2017 site inspection. During this inspection, DEQ mapped additional unauthorized discharges and discussed corrective actions with project personnel.
9. During the Department inspections conducted on June 29, July 24, and August 3, 2017, DEQ staff observed that Scott had not installed best management practices or had not installed/maintained sediment controls appropriately. This resulted in sediment erosion and deposition impacting 893 linear feet of stream channel and 0.71 acre of palustrine-forested wetland in an unnamed tributary of Fighting Creek and adjacent wetlands.
10. On September 18, 2017, the Department issued NOV No. 1707-00457 to Scott for the unauthorized impacts observed during the Department Site inspections.
11. On October 4, 2017, the Department met with Scott to discuss the NOV and the impacts on site. Restoration was complete at that time and DEQ informed Scott of the issuance of this Consent Order and the associated civil charge.

12. On March 22, 2019 DEQ received notification that erosion and sediment controls at several former sediment basin locations had been overwhelmed during a rain event resulting in sediment deposition to adjacent wetland areas. On March 27, 2019, the Department conducted a site visit and observed unpermitted impacts to an additional 0.09 acre of wetlands. Scott completed restoration of the impacted wetlands and installed additional erosion and sediment controls upstream.
13. Va. Code § 62.1-44.5(A) states, “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: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state 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; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.. .
..”
14. 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: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.
15. Based on the Department inspections of the Property, the Board concludes that Scott has violated Va. Code §§ 62.1-44.5(A) & 62.1-44.15:20, and VWP Regulation 9 VAC 25-210-50(A), as described above.
16. Scott has corrected the violations and submitted documentation that verifies permit compliance.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §62.1-44.15, the Board orders Scott and Scott agrees to pay a civil charge of \$37,070 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

Scott 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 Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Scott 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 Scott for good cause shown by Scott, 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. 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, Scott admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact, and conclusions of law in this Order.
4. Scott 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. Scott 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 Scott 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. Scott 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. Scott shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Scott 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 Scott. Nevertheless, Scott 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 Scott has completed all of the requirements of the Order;
 - b. Scott 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 Scott.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Scott 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 Scott 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 Scott certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Scott to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Scott
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, Scott voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 31st day of July, 2019.



Kyle Ivar Winter, P.E.
Department of Environmental Quality
Piedmont Deputy Regional Director

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Scott-II Solar LLC voluntarily agrees to the issuance of this Order.

Date: May 30, 2019 By: Amanda Tornabene, Vice President, Env. Services
(Person) (Title)
Scott-II Solar LLC

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 30th day of

June, 2019, by Amanda Tornabene who is

Vice President of Scott-II Solar LLC on behalf of the company.

Angela B. Fitzgerald
Notary Public

7022016

Registration No.

My commission expires: 3/31/2022

Notary seal:

