COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VIRTEXCO CORPORATION
FOR
SMALL ARMS RANGES AT NAVAL WEAPONS STATION YORKTOWN
Virginia Pollutant Discharge Elimination System Permit No. VAR10H597

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 Virtexco Corporation, regarding the Small Arms Ranges at Naval Weapons Station Yorktown, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

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

1. "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. "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. "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.

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

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

6. "Virtexco" means Virtexco Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Virtexco is a "person" within the meaning of Va. Code § 62.1-44.3.

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

8. "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.

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

10. "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.

11. "Site" means the Small Arms Ranges at the Naval Weapons Station Yorktown, located in Yorktown, Virginia, from which discharges of stormwater associated with construction activity occur.

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

13. "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.

14. "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.

15. "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.

16. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

17. "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.

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

19. "VAC" means the Virginia Administrative Code.

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

21. "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.

22. "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.

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

SECTION C: Findings of Fact and Conclusions of Law

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

2. DEQ is the VSMP authority for the Site because it is a federal facility.

3. On January 29, 2016, DEQ granted coverage to Virtexco under the 2014 Permit. DEQ assigned Virtexco registration number VAR10H597.

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

5. Stormwater from construction activities at the Site is discharged to King Creek, which is a surface water located wholly within the Commonwealth and is a state water under the State Water Control Law.

6. King Creek is located in the York River Basin, which is subject to a TMDL for sediment and nutrients.

7. During DEQ Site inspections on June 20, 2016, August 26, 2016, and October 6, 2016, DEQ staff observed that erosion and sediment controls were not installed or maintained in accordance with the specifications in the Erosion and Sediment Control Plan, Erosion and Sediment Control regulations, VSMP regulations, and 2014 Permit as follows:

   a. On June 20, 2016, August 26, 2016, and October 6, 2016, the majority of the Site was disturbed without temporary or permanent stabilization. Denuded areas dormant for greater than 14 days or at final grade were not temporarily or permanently stabilized.

   b. On June 20, 2016 and August 26, 2016, cut and fill slopes along the Burma Road and KD Range area of the Site were not stabilized and were showing rill and gully erosion. On October 6, 2016, cut and fill slopes located at KD Range were not stabilized and showed signs of rill and gully erosion.

   c. On October 6, 2016, erosion and sediment control blankets included in the Erosion and Sediment Control Plan had not been installed on slopes at the northeast and southeast of KD Range.

   d. On June 20, 2016, August 26, 2016, and October 6, 2016, diversion dikes located at the KD Range area of the Site were not stabilized.

   e. On June 20, 2016, none of the four sediment traps at KD Range included in the Erosion and Sediment Control Plan had been installed, and upslope land disturbance had occurred. On August 26, 2016, sediment traps #1 and #4 had been installed but neither was stabilized. Sediment traps #2 and #3 had not been installed on August 26, 2016, and upslope land disturbance had occurred. On October 6, 2016, sediment traps #1, #2, and #4 had been installed but had not been stabilized. Sediment trap #3 had not been installed, and upslope land disturbance had occurred.

   f. On June 20, 2016 and August 26, 2016, silt fence along the west side of Burma Road and along the north and south sides of KD Range had not been maintained. On August 26, 2016, a row of silt fence had been stacked on top of another row of

silt fence in lieu of cleaning out the sediment accumulated against the first row of silt fence. On October 6, 2016, silt fence was not maintained along KD Range.

g. On June 20, 2016, stockpiles on the KD Range of the Site were not stabilized or protected with sediment trapping measures. On August 26, 2016, a stockpile at Burma Road was not stabilized and did not have sediment trapping measures. On October 6, 2016, stockpiles located at pistol range and KD Range were not stabilized and did not have sediment trapping measures.

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 25-840-40(1) of the Erosion and Sediment Control Regulations 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."

2014 Permit Part II(A)(2)(c)(8) states: "Erosion and sediment control plan: (8) Ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days…"

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 25-840-60(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…"

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

9 VAC 25-840-40(2) states: "During construction of the project, soil stockpiles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site."

8. Based on the results of the June 20, 2016, August 26, 2016, and October 6, 2016 inspections, the Board concludes that Virtexco violated 9 VAC 25-840-40(1), 9 VAC 25-840-40(2), 9 VAC 25-840-40(5), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), and the

conditions of 2014 Permit Parts II(A)(2)(c)(8) and II(E)(1) as described in paragraphs C(7)(a)-(g) of this Order.

9. On November 18, 2016, DEQ issued NOV No. TRO-17-002 for the violations described above that were documented during DEQ Site inspections on July 20, 2016, August 26, 2016, and October 6, 2016.

10. On January 5, 2017, Department staff met with representatives of Virtexco to discuss the violations.

11. Virtexco has submitted documentation that verifies that the violation described in paragraph C(7)(f) above, has been corrected.

12. On April 18, 2017, DEQ visited the Site and verified that the violations described in paragraph C(7)(a), (c), and (d) above, have been corrected.

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

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Virtexco, and Virtexco agrees to:

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

2. Pay a civil charge of $19,500 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

Virtexco 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, Virtexco 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 Virtexco for good cause shown by Virtexco, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No.TRO-17-002 dated November 18, 2016. 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, Virtexco admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Virtexco 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. Virtexco 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 Virtexco 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. Virtexco 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. Virtexco shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virtexco 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 Virtexco. Nevertheless, Virtexco 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 Virtexco has completed all of the requirements of the Order;

    b. Virtexco 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 Virtexco.

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

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, Virtexco voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14 day of July, 2017.

Jefferson D. Reynolds, ~~Enforcement~~ Director
Department of Environmental Quality

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Virtexco Corporation voluntarily agrees to the issuance of this Order.

Date: 5/11/2017 By: James D. Vachon, Senior Project Manager
(Person) (Title)
Virtexco Corporation

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 11 day of May, 2017, by Jim Vachon who is Sr. Project Manager of Virtexco Corporation, on behalf of the corporation.

Andrea B. Corbett
Notary Public

7343746
Registration No.

My commission expires: 7/31/2018

Notary seal:

ANDREA B. CORBETT
NOTARY PUBLIC
REG # 7343746
MY COMMISSION EXPIRES 7/31/2018
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Erosion and Sediment Controls**

   a. Within fourteen days of the effective date of this Order Virtexco shall complete the following work on ESC controls at the Site in accordance with the specifications in the Erosion and Sediment Control Plan and 9 VAC 25-840-40:

      i) Repair areas of rill and gully erosion and stabilize cut and fill slopes at RCP3, RCP5, RCP2, and the south toe of the 500 yard line. Repair areas of rill and gully erosion located at the first culvert on Burma Road.

      ii) Install sediment traps in accordance with the erosion and sediment control plan or submit an amended plan to DEQ for approval and stabilize sediment traps.

      iii) Stabilize stockpiles or protect stockpiles with sediment trapping measures.

2. **DEQ Contact**

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

   Kristen Sadtler
   Stormwater Enforcement Manager
   VA DEQ - Central office
   629 East Main Street
   Richmond, VA 23219
   804-698-4149
   Kristen.Sadtler@deq.virginia.gov