Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SCOTT-II SOLAR LLC
FOR THE
SCOTT II SOLAR PROJECT
IN POWHATAN COUNTY
VPDES Permit No. VAR10
Registration No.VAR10I984

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 Scott-II Solar LLC, regarding the Scott II Solar Project, 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. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

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

4. "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.

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

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

7. "Discharge" means discharge of a pollutant.

8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:

    1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

    2. 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.

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

10. "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.

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

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

13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water… 9 VAC 25-31-10.

14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

16. "Registration statement" means a registration statement for coverage under the 2014 Permit.

17. "Runoff volume" means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.

18. "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 from which discharges of stormwater associated with construction activity occur.

19. "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.

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

21. "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.

22. "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.

23. "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.

24. "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.

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

26. "VAC" means the Virginia Administrative Code.

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

28. "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.

29. "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.

30. "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. Scott is the operator and permittee for construction activities related to the development of a solar energy generating facility on the Property in Powhatan County, Virginia.

2. The Department is the VSMP authority for the Site.

3. Scott applied for and, on April 11, 2017, the Department granted coverage under the 2014 Permit, VAR10 of the General Permit Regulation. The Department assigned Scott registration number VAR10I984.

4. The 2014 Permit allows Scott to discharge stormwater associated with construction activities from the Site to Fighting Creek and various unnamed tributaries, in strict compliance with the terms and conditions of the 2014 Permit.

5. Fighting Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

6. Fighting Creek and the various unnamed tributaries are located in the James River Basin. During the 2016 Water Quality Assessment 305(b)/303(d) Integrated Report, the receiving streams were not assessed for any designated uses; therefore, the streams are considered Category 3A.

7. On September 20, 2018, DEQ inspected the Site to determine compliance with the 2014 Permit. During the inspection DEQ staff observed the following:

    a. Scott did not implement sequencing of the project in accordance with the approved erosion and sediment control plan and stormwater management plans. Scott installed post construction BMPs (level spreaders) prior to site stabilization.
    b. Scott failed to stabilize all denuded areas requiring temporary or permanent stabilization.
    c. Scott had not adequately stabilized soil stockpiles with seeding or protected the stockpiles with sediment trapping measures.
    d. Scott had not established a permanent vegetative cover that is uniform and mature enough to survive and inhibit erosion.
    e. Scott had not immediately stabilized earthen structures including sediment traps and basins after installation.
    f. Scott did not construct cut and fill slopes in a manner that will minimize erosion. Slopes were eroding excessively.
    g. Scott had allowed concentrated runoff to flow down cut or fill slopes not contained in an adequate permanent or temporary structure. Specifically, Scott failed to secure a slope drain, which is not adequate, and not in accordance with the approved plans.
    h. Scott had not stabilized stormwater conveyance channels with channel lining and/or outlet protection.
    i. All control measures were not properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications.
    j. Permanent control measures included in the SWPPP were not in place.
    k. Scott did not take measures to prevent adverse impact(s) to receiving waters.

8. On December 13, 2018, the Department issued an NOV to Scott for the violations observed during the September 20, 2018 inspection. On December 14, 2018, Scott called in response to the NOV and the Department requested a written response to the NOV.

9. On January 18, 2019, the Department received the written NOV response from Scott. The response acknowledged the violations and provided a summary of implemented and ongoing preventive measures and on-site improvements. Scott Solar provided photographic documentation of site work progress in the response.

10. On March 27, 2019, DEQ inspected the Site to determine compliance with the 2014 Permit. During the inspection DEQ staff observed the following:
    a. Scott failed to stabilize all denuded areas requiring temporary or permanent stabilization.
    b. Scott had not established a permanent vegetative cover that is uniform and mature enough to survive and inhibit erosion.
    c. Scott had not adequately stabilized finished cut and fill slopes to prevent/correct excessive erosion.
    d. Scott had not adequately stabilized stormwater conveyance channels with channel lining and/or outlet protection.
    e. All control measures were not properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. Level spreaders were not operating properly and had channelized discharges.

11. 9VAC 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…"

12. 9VAC25-870-54(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…"

13. 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 . . . 5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.

14. 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."

15. 9VAC 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."

16. 2014 Permit Part II.A.2.c.8 states that 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 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.

17. 9VAC 25-840-40(2) states that during construction of the project, soil stock piles 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.

18. 9VAC 25-840-40(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.

19. 2014 Permit Part II.A.5.b.1 contains 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 provide clear direction that 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.

20. 9VAC 25-840-40(5) states stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.

21. 9VAC 25-840-40(7) states cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.

22. 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.

23. 9VAC25-840-40(18) states all temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the VESCP authority. Trapped

sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

24. 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.

25. 9VAC 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.

26. Part I.B.6 of the 2014 Permit states there shall be no discharge of floating solids or visible foam in other than trace amounts.

27. The Department has not issued coverage under any permit or certificate to Scott other than under the 2014 Permit.

28. Based on the Department inspections of the Property on September 20, 2018, and March 27, 2019, the Board concludes that Scott has violated 9VAC 25-870-54(B), 9VAC25-870-54(C), 9VAC 25-840-40(1), 9VAC 25-840-40(2), 9VAC 25-840-40(3), 9VAC 25-840-40(5), 9VAC 25-840-40(6), 9VAC 25-840-40(7), 9VAC 25-840-40(8), 9VAC25-840-40(18), 9VAC 25-840-40(11), and the conditions of 2014 Permit Parts I.B.6, II.A.2.c.8, II E.1, and II.A.5.b.1 as described above.

29. Department staff conducted an inspection on June 11, 2019, and verified that Scott corrected the violations described in Section C above.

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 $15,450 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 Stormwater Management Fund. 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 _____ day of _____, 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: 7/18/19 By: Amanda Tornabene, Vice President, Environmental Services
(Person) (Title)
Scott-II Solar LLC

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 18th day of

July, 2019, by Amanda Tornabene who is

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

ANGELA B. FITZGERALD
NOTARY PUBLIC
REG # 7022016
MY COMMISSION EXPIRES
3/31/2022
COMMONWEALTH OF VIRGINIA

Angela B. Fitzgerald
Notary Public

7022016
Registration No.

My commission expires: 3/31/2022

Notary seal: