



# ***COMMONWEALTH of VIRGINIA***

Matthew J. Strickler  
Secretary of Natural Resources

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **Blue Ridge Regional Office**

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## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO TWITTYS CREEK SOLAR, LLC FOR TWITTYS CREEK SOLAR PROJECT Registration No. VAR10J624**

### **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 Twittys Creek Solar, LLC, regarding the Twittys Creek Solar Project, 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. "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 CGP" 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 expired on June 30, 2019.

3. "2019 CGP" 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, 2019 and which expires on June 30, 2024.
4. "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.
5. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Salem, 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. "ESC Plan" means an erosion and sediment control plan.
12. "Facility" or "Site" means the Twittys Creek Solar Project, a small renewable energy project, located at 1975 VA Hwy 59, Charlotte County, Virginia, from which discharges of stormwater associated with construction activity occur.
13. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
14. "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.

15. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
16. "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.
17. "Registration Statement" means a registration statement for coverage under the 2014 CGP or the 2019 CGP.
18. "Runoff volume" means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
20. "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.
21. "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.
22. "SWM Plan" means a stormwater management plan, 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.
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. "Twittys" means Twittys Creek Solar, LLC, a company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Twittys is a "person" within the meaning of Va. Code § 62.1-44.3.
25. "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.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.

28. “VPDES” means Virginia Pollutant Discharge Elimination System.
29. “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.
30. “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.
31. “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. Twittys is the operator of the Site in Charlotte County, Virginia, from which stormwater associated with construction activity is discharged.
2. The Department is the VSMP authority for projects in Charlotte County, the location of the Site.
3. The Southside Soil and Water Conservation (“SS&WC”) District is designated under Charlotte County ordinance as being the ESC Plan approval authority for Charlotte County.
4. On or about March 14, 2017, Twittys submitted an ESC Plan for the Site to the SS&WC District (“2017 Site ESC Plan”). The SS&WC District approved the 2017 Site ESC Plan at its July 2017 meeting, which was confirmed by a SS&WC District letter to Twittys’ engineering consultant dated July 20, 2017 (“2017 Site ESC Plan Approval Letter”).
5. On or about April 24, 2017, Twittys submitted a 2014 CGP application package to the Department for review and confirmation of 2014 CGP coverage.

6. On or about October 12, 2017, Twittys submitted to DEQ for its approval a SWM Plan for the Site, which was amended by a revised plan sheet submitted to DEQ November 29, 2017.
7. On January 11, 2018, DEQ approved a SWM Plan for the Site.
8. Twittys asserts that it believed that 2014 CGP coverage had been established, based on DEQ's approval of the SWM Plan and other correspondence with DEQ,
9. On or about October 30, 2018, Twittys prepared amendments to 2017 Site ESC Plan to reflect anticipated changes to the original site design consistent with proposed amendments to the SWM Plan filed with DEQ, as described below. The amended Site ESC Plan was filed with DEQ on or about November 1, 2018.
10. On November 1, 2018, and December 18, 2018, proposed changes to the SWM Plan were submitted to the Department to reflect and account for anticipated changes to certain aspects of the original Site design, including reorientation of the photo-voltaic (PV) solar arrays, increase in construction period land disturbance from 88.89 acres to 89.45 acres, reduction of ultimate impervious area by about 25%, etc.
11. On or about December 17, 2018, land disturbance activities commenced at the Site for purposes of installation of Site erosion and sediment control measures.
12. On January 28, 2019, Department staff conducted an inspection of the Site and observed the following:
  - a. Land-disturbing activities estimated to be approximately 23 acres had occurred at the Site in an area subject to stormwater runoff.
  - b. The SWPPP included the 2017 Site ESC Plan Approval Letter;
  - c. A pollution prevention plan was not observed to have been incorporated as an element in the SWPPP; and
  - d. Based upon a related review of the Department's records, 2014 CGP coverage for the Site had not actually become effective due to an oversight regarding payment of the 2014 CGP registration fee, and no other certificate or permit had been issued at that time for the discharge of stormwater from construction activities at the Site.
13. Va. Code § 62.1-44.15:34 states: "A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance."

14. 9 VAC 25-870-54 (D) states: “A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.
15. Va. Code §§ 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” and describe regulated land-disturbing activities (including exemptions), respectively.
16. On or about January 31, 2019, Twittys submitted to DEQ payment of the 2014 CGP registration fee.
17. On February 5, 2019, the Department issued NOV No. 19-02-BRRO-002 to Twittys for the violations described in paragraph C(12) of this Order. Twittys responded to the NOV, as requested.
18. On March 21, 2019, Department staff inspected the Site and observed that land-disturbing activity was ongoing.
19. On March 22, 2019, Twittys received coverage under the 2014 CGP for the Site for land disturbance of up to a total of 88.89 acres. The 2014 CGP allowed Twittys to discharge stormwater associated with construction activities from the Site to Spencer Creek, in strict compliance with the terms and conditions of the 2014 Permit.
20. On April 22, 2019, Twittys submitted its registration statement package to DEQ for coverage under the 2019 CGP. 2019 CGP coverage took effect July 1, 2019.
21. Spencer Creek is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
22. Spencer Creek is located in the Staunton River (Roanoke River) Basin. Spencer Creek is listed in the Department’s 305(b)/303(d) Report as impaired for aquatic life due to sedimentation.
23. Based on the results of the January 28, 2019 and March 21, 2019 inspections, the Board concludes that Twittys violated Va. Code § 62.1-44.15:34 and 9 VAC 25-870-54 (D), as described in paragraph C(12) of this Order.
24. Twittys has submitted documentation that verifies that the violations as described in paragraph C(12), above, have been corrected.

#### **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 Twittys, and Twittys agrees to pay a civil charge

of \$9,555 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

Twittys 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, Twittys 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 Twittys for good cause shown by Twittys, 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, Twittys admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Twittys 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. Twittys 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 Twittys 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. Twittys 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. Twittys shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Twittys 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 Twittys. Nevertheless, Twittys 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 Twittys has completed all of the requirements of the Order;
  - b. Twittys 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 Twittys.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Twittys 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 Twittys 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 Twittys 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 Twittys to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Twittys.
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, Twittys voluntarily agrees to the issuance of this Order.

------(Signature Page Follows)-----

And it is so ORDERED this 21<sup>st</sup> day of April, 2020.

Robert J. Weld  
Robert J. Weld, Regional Director  
Department of Environmental Quality

Twittys Creek Solar, LLC voluntarily agrees to the issuance of this Order.

Date: 2/24/2020 By: Lacie Clark

Lacie Clark  
Executive Director  
Twittys Creek Solar, LLC

State of Missouri  
~~Commonwealth of Virginia~~

City/County of Greene

The foregoing document was signed and acknowledged before me this 24<sup>th</sup> day of February, 2020, by Lacie Clark, who is the Executive Director of Twittys Creek Solar, LLC, on behalf of the company.



Elizabeth Dugger  
Notary Public

14398753

Registration No.

My commission expires: 6/25/22

Notary seal: