Commonwealth of Virginia

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VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ENERGIX EPC US LLC FOR CADEN ENERGIX WYTHEVILLE T-647 Virginia Pollutant Discharge Elimination System Permit or Registration No. VAR10O685

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 Virginia Department of Environmental Quality and Energix EPC US LLC, regarding the Caden Energix Wytheville T-647 project, lying within both Wytheville and Wythe County, Virginia, located at approximate 36.9637° N, 81.0489° W, 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. "2019 Permit" or "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, 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. "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 the discharge of a pollutant.

8. "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.

9. "Energix" means Energix EPC US LLC, a company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Energix is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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. "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 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.

15. "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.

16. "Registration Statement" means a registration statement for coverage under the 2019 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. "Site" means the Caden Energix Wytheville T-647 project, located at approximate 36.9637° N, 81.0489° W, in Wytheville, Wythe County, Virginia, from which discharges of stormwater associated with construction activity occur.

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. "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.

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. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

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. "VESCP authority" means an authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. 9 VAC 25-870-10.

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.

SECTION C: Findings of Fact and Conclusions of Law

1. Energix is the operator of the Site, located at approximate 36.9637° N, 81.0489° W, in Wytheville, Wythe County, Virginia, from which stormwater associated with construction activity is discharged.

2. DEQ is the VSMP authority for the Site.

3. Energix applied for and, on October 8, 2021, was granted coverage under the 2019 Permit. Energix was assigned registration number VAR10O685 for the Site.

4. The Permit allows Energix to discharge stormwater associated with construction activities from the Site to an unnamed tributary to Reed Creek, in strict compliance with the terms and conditions of the Permit.

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

6. Reed Creek is located in the New River Basin, Section 2, Class IV, Special Standards: v. Reed Creek is listed in DEQ's 305(b)/303(d) Integrated Report as impaired for *E.coli* and PCBs in fish tissue. The *Bacteria Total Maximum Daily Load Development for Mill Creek, Cove Creek, Miller Creek, Stony Fork, Tate Run, South Fork Reed Creek and Reed Creek in Wythe County, Virginia* was approved by the EPA on October 1, 2012 and by the SWCB on March 25, 2013. The *PCB Total Maximum Daily Load Development for Reed Creek, the Upper New River, Peak Creek, Walker Creek, Stony Creek, and the Lower New River* was approved by the SWCB on December 13, 2018 and by the EPA on March 12, 2019.

7. During an inspection of the Site on November 10, 2021, DEQ staff observed that land-disturbing activities greater than one acre had occurred at the Site in an area subject to stormwater runoff. Per the inspection report, dated November 18, 2021, the total estimated disturbed area at time of inspection was approximately 130 acres.

8. During the inspection on November 10, 2021, DEQ staff observed that a copy of the notice of coverage letter from DEQ was not posted conspicuously near the main entrance of the construction Site. A copy of the plan approval letter was posted on a sign board at the construction trailer; however, the sign board was not located near public access. The sign board was located at the laydown yard and office. This area was accessed by the construction entrance off Pepsi Way, which traveled through mature corn on each side and was not visible from a public area.

   The Permit, at Part II, Section D, states: "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. For linear projects, the operator shall post the notice of coverage letter at a publicly accessible location near an active part of the construction project (e.g., where a pipeline crosses a public road). The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F."

9. During the inspection on November 10, 2021, DEQ staff observed no posting notice near the Site's entrance identifying the location of the SWPPP and/or information for public access to the SWPPP.

   The Permit, at Part II, Section E(2), states: "The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department, the VSMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location shall be posted near the main entrance of the construction site.

   The Permit, at Part II, Section E(3), states: "The operator shall make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP shall be posted and maintained in accordance with Part II D. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released."

   Regulation 9 VAC 25-870-54(G) states: "The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. 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."

10. During the inspection on November 10, 2021, DEQ staff observed that a signed copy of the registration statement was not contained in the SWPPP.

    The Permit, at Part II, Section B(1), states, in part: "The SWPPP shall include the following items: ...a. A signed copy of the registration statement, if required, for coverage under the general VPDES permit for discharges of stormwater from construction activities..."

11. During the inspection on November 10, 2021, DEQ staff observed that a copy of the notice of coverage letter and 2019 Permit were not contained in the SWPPP.

    The Permit, at Part II, Section B(1), states, in part: "The SWPPP shall include 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 (i.e., notice of

coverage letter); c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities…"

12. During the inspection on November 10, 2021, DEQ staff observed that the SWPPP did not contain a legible site plan identifying the following: locations of support activities, when applicable and when required by the VSMP authority, including but not limited to (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage.

    The Permit, at Part II, Section B(1), states, in part: "The SWPPP shall include the following items: …e. A legible site plan identifying: (1) Directions of stormwater flow and approximate slopes anticipated after major grading activities; (2) Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed; (3) Locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment, that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration; (4) Locations of surface waters; (5) Locations where concentrated stormwater is discharged; (6) Locations of any support activities, including (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage; and (7) When applicable, the location of the on-site rain gauge or the methodology established in consultation with the VSMP authority used to identify measurable storm events for inspection as allowed by Part II G 2 a (1) (ii) or 2 b (2)."

13. During the inspection on November 10, 2021, DEQ staff observed that the name, phone number and qualifications of "Qualified Personnel" conducting inspections were not included in the SWPPP.

    The Permit, at Part II, Section B(8), states: "The SWPPP shall include the following items: …8. Identification of qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit."

14. During the inspection on November 10, 2021, DEQ staff observed that a Delegation of Authority, signed in accordance with Part III, Section K of the Permit, was not included in the SWPPP.

    The Permit, at Part II, Section B(9), states: "The SWPPP shall include the following items: …9. Delegation of authority. The individuals or positions with delegated

authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP."

15. During the inspection on November 10, 2021, DEQ staff observed that the SWPPP was not signed and dated in accordance with Part III, Section K of the Permit.

    The Permit, at Part II, Section B(10), states: "The SWPPP shall include the following items: ...10. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K."

    The Permit, at Part III, Section K, states: "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; b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this chapter, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency. 2. Reports and other information. 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 shall be provided to the department and VSMP authority, if requested. 3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the VSMP authority as the administering entity for the board prior to or together with any reports or information to be signed by an authorized representative. 4.

Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification: "I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.""

16. During the inspection on November 10, 2021, DEQ staff observed the SWPPP did not identify the contractor(s) that will implement and maintain each control measure.

    The Permit, at Part II, Section C(3), states: "The SWPPP shall clearly identify the contractors 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."

17. During the inspection on November 10, 2021, DEQ staff observed the SWPPP had not been updated when modifications to its implementation had occurred, including a record of dates when major grading activities occur, construction activities temporarily or permanently cease on a portion of the Site, or stabilization measures are initiated.

    The Permit, at Part II, Section C(4), states, in part: "The operator shall update the SWPPP as soon as possible but 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..."

    Regulation 9 VAC 25-870-54(G) states: "The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. 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."

18. During the inspection on November 10, 2021, DEQ staff observed the operator's self-inspection reports did not comply with the inspection requirements, as required by Part II, Section G(3) and (4) of the Permit. The inspection reports did not contain signatures consistent with the requirements of the Permit. In addition, the operator's self-inspection reports did not accurately reflect field conditions observed during the November 10 inspection conducted by DEQ.

    The Permit, at Part II, Section G(3)(a), states, in part: "As part of the inspection, the qualified personnel shall: ...(3) Record any land-disturbing activities that have occurred outside of the approved erosion and sediment control plan; (4) Inspect the following for

installation in accordance with the approved erosion and sediment control plan, identification of any maintenance needs, and evaluation of effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used: (a) All perimeter erosion and sediment controls, such as silt fence; (b) Soil stockpiles, when applicable, and borrow areas for stabilization or sediment trapping measures; ...(e) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from stormwater; ...(6) Inspect for evidence that the approved erosion and sediment control plan... has not been properly implemented. This includes: ...(e) Required stabilization has not been initiated or completed or is not effective on portions of the site; (f) Sediment basins without adequate wet or dry storage volume or sediment basins that allow discharge of stormwater from below the surface of the wet storage portion of the basin; ...(h) Land disturbance or sediment deposition outside of the approved area to be disturbed..."

The Permit, at Part II, Section G(4), states: "Inspection report. Each inspection report shall include the following items: a. The date and time of the inspection and, when applicable, the date and rainfall amount of the last measurable storm event; b. Summarized findings of the inspection; c. The locations of prohibited discharges; d. The locations of control measures that require maintenance; e. The locations of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location; f. The locations where any evidence identified under Part II G 3 a (6) exists; g. The locations where any additional control measure is needed; h. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance; i. Documentation of any corrective actions required from a previous inspection that have not been implemented; and j. The date and signature of the qualified personnel and the operator or its duly authorized representative."

19. During the inspection on November 10, 2021, DEQ staff observed that corrective actions identified as a result of an inspection had not been addressed by the operator within the timeframe required by Part II, Section H(1) of the Permit. The October 20, 2021 inspection conducted by Wythe County (transmitted by email October 26) indicated that stockpiles onsite had not been stabilized with seeding and were not otherwise adequately protected. Corrective actions had not been taken, as this was consistent with observations made by DEQ staff during the November 10 inspection.

    The Permit, at Part II, Section H(1), states: "The operator shall implement the corrective actions 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. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained."

20. During the inspection on November 10, 2021, DEQ staff observed that sequencing of the project had not been implemented in accordance with the approved erosion and sediment control and stormwater management plans. The approved plan calls for a total of ten

temporary sediment basins. At the time of the inspection, the inspector, after seeing that several basins had not been installed, asked to see any basins that were in place. Temporary sediment basins 3-3 and 3-2 were put forth as meeting the description. Neither Basin 3-3 nor Basin 3-2 were equipped with the appropriate dewatering device to ensure water is withdrawn slowly and to ensure both the required wet and dry storage volumes are attained. Because the dewatering devices had not been installed per the plan and the required volumes had not been achieved, at the time of this inspection, none of the ten temporary sediment basins included in the approved plan were fully operational, as required by the approved plan, prior to commencement of upslope land disturbance.

Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

Regulation 9 VAC 25-870-54(C) states: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority."

21. During the inspection on November 10, 2021, DEQ staff observed that areas of land disturbance had remained dormant for more than 14 days without having stabilization measures applied.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

    Regulation 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."

    The Permit, at Part II, Section B(2)(c), states, in part: "An approved erosion and sediment control plan... implemented to: ...(8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas 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..."

Regulation 9 VAC 25-880-1 states, in part: "..."Initiation of stabilization activities" means: 1. Prepping the soil for vegetative or nonvegetative stabilization; 2. Applying mulch or other nonvegetative product to the exposed area; 3. Seeding or planting the exposed area; 4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area; or, 5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization. This list in not exhaustive."

22. During the inspection on November 10, 2021, DEQ staff observed the soil stockpile east of proposed temporary sediment basin 7-5 was not adequately stabilized with seeding and/or protected with sediment trapping measures. This stockpile was not shown on the approved plan on Sheet C6.12.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

    Regulation 9 VAC 25-840-40(2) states: "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."

    The Permit, at Part II, Section B(2)(c), states, in part: "An approved erosion and sediment control plan... implemented to: ...(8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas 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..."

    Regulation 9 VAC 25-880-1 states, in part: "..."Initiation of stabilization activities" means: 1. Prepping the soil for vegetative or nonvegetative stabilization; 2. Applying mulch or other nonvegetative product to the exposed area; 3. Seeding or planting the exposed area; 4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area; or, 5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization. This list in not exhaustive."

23. During the inspection on November 10, 2021, DEQ staff observed several areas of land disturbance which had no functional sediment trapping controls in place down gradient.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to

land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

Regulation 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."

The Permit, at Part II, Section B(2)(c), states: "An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: (1) Control the volume and velocity of stormwater runoff within the site to minimize soil erosion; (2) Control stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion; (3) Minimize the amount of soil exposed during the construction activity; (4) Minimize the disturbance of steep slopes; (5) Minimize sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site; (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible; (7) Minimize soil compaction and, unless infeasible, preserve topsoil; (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas 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; and (9) Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps."

24. During the inspection on November 10, 2021, DEQ staff observed that temporary sediment basins had not been installed in accordance with 9 VAC 25-840-40(6) and the approved ESC plan.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

    Regulation 9 VAC 25-840-40(6) states: "Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin. a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres. b. Surface runoff from disturbed areas that is comprised of flow from drainage areas

greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized."

The Permit, at Part II, Section B(2)(c), states: "An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: (1) Control the volume and velocity of stormwater runoff within the site to minimize soil erosion; (2) Control stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion; (3) Minimize the amount of soil exposed during the construction activity; (4) Minimize the disturbance of steep slopes; (5) Minimize sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site; (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible; (7) Minimize soil compaction and, unless infeasible, preserve topsoil; (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas 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; and (9) Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps."

25. During the inspection on November 10, 2021, DEQ staff observed that temporary stream crossings were not installed using non-erodible material. Evidence of equipment crossing a stream was observed in an area not identified as a stream crossing on the plan. As a result of tracked equipment crossing the stream, the flow path of the channel had been impacted due to depressions by the tracks impeding flows. Immediate stabilization of the area was not applied following work in this area. The access road through the Site would have allowed equipment to reach the other side of the stream to perform the work, while doing so in the dry.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

Regulation 9 VAC 25-840-40(13) states: "When a live watercourse must be crossed by construction vehicles more than twice in any six month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided."

The Permit, at Part II, Section B(2)(c), states: "An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: (1) Control the volume and velocity of stormwater runoff within the site to minimize soil erosion; (2) Control stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion; (3) Minimize the amount of soil exposed during the construction activity; (4) Minimize the disturbance of steep slopes; (5) Minimize sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site; (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible; (7) Minimize soil compaction and, unless infeasible, preserve topsoil; (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas 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; and (9) Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps."

Regulation 9 VAC 25-880-1 states, in part: "..."Initiation of stabilization activities" means: 1. Prepping the soil for vegetative or nonvegetative stabilization; 2. Applying mulch or other nonvegetative product to the exposed area; 3. Seeding or planting the exposed area; 4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area; or, 5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization. This list in not exhaustive."

26. During the inspection on November 10, 2021, DEQ staff observed that the Site had been cleared and areas of the Site rolled for compaction. The approved ESC and SWM plans did not indicate that these areas were to be compacted. Compaction of these areas had altered the watershed characteristics from those analyzed on the approved ESC and SWM plans. In addition, the Site had been cleared prior to installation of all control measures required by the approved plan to ensure stormwater discharges from the Site discharged to adequate receiving conveyances.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the

department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

Regulation 9 VAC 25-840-40(19) states, in part: "Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. ...a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system...e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project."

The Permit, at Part II, Section B(2)(c), states: "An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: (1) Control the volume and velocity of stormwater runoff within the site to minimize soil erosion; (2) Control stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion; (3) Minimize the amount of soil exposed during the construction activity; (4) Minimize the disturbance of steep slopes; (5) Minimize sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site; (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible; (7) Minimize soil compaction and, unless infeasible, preserve topsoil; (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas 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; and (9) Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps."

27. During the inspection on November 10, 2021, DEQ staff observed that sediment control measures were not being properly maintained in an effective operational condition.

    Regulation 9 VAC 25-840-60(A) states: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan."

    The Permit, at Part II, Section F(1), states: "All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective

actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures."

28. On November 15, 2021, Wythe County, the VESCP authority for that portion of the Site lying within Wythe County, issued a stop work order notice to Energix. The notice stated that Energix had conducted land disturbing activities that were not in accordance with the approved plans, and that grading operations had commenced prior to installation/ construction of the required erosion and sediment controls. The notice ordered Energix to take immediate action to bring the Site into compliance with the approved plan and applicable laws, regulations, and ordinances.

29. On November 16, 2021, the Town of Wytheville, the VESCP authority for that portion of the Site lying within the Town of Wytheville, issued a letter to Energix ordering that all work be halted, with exception of any work pertaining to the installation of erosion and sediment control measures. The letter stated that a November 15, 2021 inspection had determined that several of the first step erosion and sediment control measures had not been installed prior to commencement of Site grading activities, and that the project was not in compliance with the approved plan. The letter ordered Energix to immediately begin corrective actions and stated that all first step measures needed to be completely installed prior to any land disturbing activities.

30. On December 2, 2021, SWRO issued Notice of Violation No. NOV-001-1221-SC to Energix, citing the violations noted in paragraphs C(8) through C(27), above.

31. On December 13, 2021, Energix submitted a written response to the December 2, 2021 NOV. The response addressed the individual violations cited in the NOV and detailed corrective actions taken to date. Per the response, all violations cited in the NOV had been corrected as of the date of the response letter.

32. On January 11, 2022, DEQ performed a follow up inspection of the Site.

33. During the inspection on January 11, 2022, DEQ staff observed that the SWPPP was not signed and dated in accordance with Part III, Section K of the Permit. This is consistent with observations made by DEQ staff during the November 10, 2021 inspection, as described in paragraph C(15), above.

34. During the inspection on January 11, 2022, DEQ staff observed the SWPPP had not been updated when modifications to its implementation had occurred, including a record of dates when major grading activities occur, construction activities temporarily or permanently cease on a portion of the Site, or stabilization measures are initiated. This is consistent with observations made by DEQ staff during the November 10, 2021 inspection, as described in paragraph C(17), above.

35. During the inspection on January 11, 2022, DEQ staff observed the operator's self-inspection reports did not comply with the inspection requirements, as required by Part II, Section G(3) and (4) of the Permit. The inspection reports did not contain signatures

consistent with the requirements of the Permit. In addition, the operator's self-inspection reports did not accurately reflect field conditions observed during the January 11 inspection conducted by DEQ. This is consistent with observations made by DEQ staff during the November 10, 2021 inspection, as described in paragraph C(18), above.

36. During the inspection on January 11, 2022, DEQ staff observed that corrective actions identified as a result of an inspection had not been addressed by the operator within the timeframe required by Part II, Section H(1) of the Permit. This is consistent with observations made by DEQ staff during the November 10, 2021 inspection, as described in paragraph C(19), above.

37. During the inspection on January 11, 2022, DEQ staff observed that sequencing of the project had not been implemented in accordance with the approved erosion and sediment control and stormwater management plans. The approved plan calls for a total of ten temporary sediment basins. At the time of the January 11 inspection, temporary sediment basins 5-2, 7-2, and 7-3 were still not operational in accordance with the approved plan. Seven of the ten required temporary sediment basins had been made functional since the November 10, 2021 inspection. Otherwise, this observation is consistent with observations made by DEQ staff during the November 10, 2021 inspection, as described in paragraph C(20), above.

38. During the inspection on January 11, 2022, DEQ staff observed the soil stockpile east of proposed temporary sediment basin 7-5 was not adequately stabilized with seeding and/or protected with sediment trapping measures. This stockpile was not shown on the approved plan on Sheet C6.12. This is consistent with observations made by DEQ staff during the November 10, 2021 inspection, as described in paragraph C(22), above.

39. During the inspection on January 11, 2022, DEQ staff observed several areas of land disturbance which had no functional sediment trapping controls in place down gradient. This is consistent with observations made by DEQ staff during the November 10, 2021 inspection, as described in paragraph C(23), above.

40. During the inspection on January 11, 2022, DEQ staff observed earthen structures that had not been stabilized immediately after installation.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

    Regulation 9 VAC 25-840-40(5) states: "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation." The Permit, at Part II, Section B(2)(c), states, in part: "An approved erosion and sediment control plan... implemented to: ...(8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas 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..."

41. During the inspection on January 11, 2022, DEQ staff observed concentrated runoff discharges over cut and fill slopes that were not contained in adequate temporary or permanent slope conveyance structures.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

    Regulation 9 VAC 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."

    The Permit, at Part II, Section B(2)(c), states, in part: "An approved erosion and sediment control plan... implemented to: ...(4) Minimize the disturbance of steep slopes..."

42. During the inspection on January 11, 2022, DEQ staff observed that inlet protection had not been installed for all operable storm drain inlets.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

    Regulation 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."

    The Permit, at Part II, Section B(2)(c), states, in part: "An approved erosion and sediment control plan... implemented to: ...(5) Minimize sediment discharges from the site..."

43. During the inspection on January 11, 2022, DEQ staff observed that outlet protection and channel linings had not been installed in accordance with the approved plan.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to

land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

Regulation 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."

The Permit, at Part II, Section B(2)(c), states, in part: "An approved erosion and sediment control plan... implemented to: ...(5) Minimize sediment discharges from the site..."

44. During the inspection on January 11, 2022, DEQ staff observed that the Site had been cleared prior to installation of all control measures required by the approved plan to ensure stormwater discharges from the Site discharged to adequate receiving conveyances. This is consistent with observations made by DEQ staff during the November 10, 2021 inspection, as described in paragraph C(26), above.

    Regulation 9 VAC 25-870-54(B) states: "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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

    Regulation 9 VAC 25-840-40(19) states, in part: "Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. ...a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system..."

    The Permit, at Part II, Section B(2)(c), states: "An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: (1) Control the volume and velocity of stormwater runoff within the site to minimize soil erosion; (2) Control stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion; (3) Minimize the amount of soil exposed during the construction activity; (4) Minimize the disturbance of steep slopes; (5) Minimize sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site; (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration,

unless infeasible; (7) Minimize soil compaction and, unless infeasible, preserve topsoil; (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas 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; and (9) Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps."

45. During the inspection on January 11, 2022, DEQ staff observed that sediment control measures were not being properly maintained in an effective operational condition. This is consistent with observations made by DEQ staff during the November 10, 2021 inspection, as described in paragraph C(27), above.

46. During the inspection on January 11, 2022, DEQ staff observed areas where discharges from spilled and/or leaked fuels and chemicals from vehicle fueling and maintenance operations had occurred.

    Regulation 9 VAC 25-870-56 states, in part: "A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to: ...3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures. B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e): ...3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance..."

    The Permit, at Part II, Section B(4), states, in part: "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 (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available)..."

47. During the inspection on January 11, 2022, DEQ staff observed that practices were not in place to minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes.

    Regulation 9 VAC 25-870-56 states, in part: "A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation,

implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to: ...2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures...B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e): ...2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials; 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and 4. Soaps or solvents used in vehicle and equipment washing."

The Permit, at Part II, Section B(4), states, in part: "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: ...(6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials..."

48. During the inspection on January 11, 2022, DEQ staff observed that practices were not in place to prevent the discharge of fuels, oils and other petroleum products, hazardous or toxic wastes, and sanitary wastes.

    Regulation 9 VAC 25-870-56 states, in part: "A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to: ...2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures...B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e): ...2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials; 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and 4. Soaps or solvents used in vehicle and equipment washing."

The Permit, at Part II, Section B(4), states, in part: "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: ... (7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, waste concrete, and sanitary wastes..."

49. While not cited in a Warning Letter or NOV, the violations described in paragraphs C(33) through C(48), above, are covered by this Order.

50. The Department has not issued coverage to Energix for discharges of stormwater from construction activities at the Site under any permit or certificate other than under the 2019 Permit.

51. Based on the results of the November 10, 2021 DEQ inspection, the November 15, 2021 correspondence from Wythe County to Energix, the November 16, 2021 correspondence from the Town of Wytheville to Energix, the December 13, 2021 correspondence submitted to DEQ by Energix, and the January 11, 2022 DEQ inspection, the Department concludes that Energix violated 9 VAC 25-840-40(1), 9 VAC 25-840-40(2), 9 VAC 25-840-40(4), 9 VAC 25-840-40(5), 9 VAC 25-840-40(6), 9 VAC 25-840-40(8), 9 VAC 25-840-40(10), 9 VAC 25-840-40(11), 9 VAC 25-840-40(13), 9 VAC 25-840-40(19)(a) & (e), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), 9 VAC 25-870-54(C), 9 VAC 25-870-54(G), 9 VAC 25-870-56, and the conditions of 2019 Permit Parts II(B)(1), II(B)(2)(c), II(B)(4)(e), II(B)(8), II(B)(9), II(B)(10), II(C)(3), II(C)(4), II(D), II(E)(2), II(E)(3), II(F)(1), II(G)(3)(a), II(G)(4), II(H)(1), and III(K), as described in paragraphs C(8) through C(50) of this Order.

52. In order for Energix to return to compliance, DEQ staff and Energix 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 Department orders Energix EPC US LLC, and Energix EPC US LLC agrees to:

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

2. Pay a civil charge of $68,250.00 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

Energix EPC US LLC 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, Energix EPC US LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Energix for good cause shown by Energix, 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. NOV-001-1221-SC, dated November 10, 2021. This Order shall not preclude the Department 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, Energix admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Energix 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. Energix 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 Department to modify, rewrite, amend, or enforce this Order.

6. Failure by Energix to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department 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. Energix 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. Energix shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Energix 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 Energix. Nevertheless, Energix 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 Energix has completed all of the requirements of the Order;

    b. Energix 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 Department terminates the Order in his or its sole discretion upon 30 days' written notice to Energix.

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

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, Energix voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25 th day of August, 2022.

Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Energix EPC US LLC voluntarily agrees to the issuance of this Order.

Date: 6/8/22 By: _____, _____
(Person) (Title)
Energix EPC US LLC

Commonwealth of Virginia

City/County of Arlington

The foregoing document was signed and acknowledged before me this 8th day of June, 2022, by Asa Levinger & Itamar Sarussi who is Authorized Signatories of Energix EPC US LLC, on behalf of the company.

_____
Notary Public

_____
Registration No.

Daniela Schneider
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 7887152
Com. Exp. Oct. 31, 2024

My commission expires: _____

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

Within 14 days of the effective date of this Order, Energix EPC US LLC shall:

1. Update the SWPPP to accurately document when modifications to the SWPPP implementation occur, to include a record of dates when major grading activities occur, construction activities temporarily or permanently cease on a portion of the Site, or stabilization measures are initiated.

2. Ensure that self-inspection reports comply with the inspection requirements set forth by Part II, Sections G(3) and (4) of the Permit. Inspection reports must be signed in accordance with the requirements of the Permit and must accurately reflect field conditions at the time of inspection.

3. Address corrective actions identified as a result of inspections within the timeframe specified by Part II, Section H(1) of the Permit.

4. Provide adequate and fully functional sediment trapping controls down gradient of all areas of land disturbance, in accordance with the approved erosion and sediment control plan.

5. Provide stabilization measures for all earthen structures, such as dams, dikes and diversions, immediately after construction/installation.

6. Ensure all concentrated discharges of runoff over cut and fill slopes are contained within adequate temporary or permanent slope conveyance structures.

7. Install adequate inlet protection for all operable storm drain inlets.

8. Install outlet protection and channel linings in accordance with the approved erosion and sediment control plan.

9. Construct/install all control measures required by the approved erosion and sediment control plan to ensure stormwater discharges from the Site discharge to adequate receiving conveyances.

10. Ensure that all erosion and sediment control measures are properly maintained in an effective operating condition.

11. Implement proper practices to minimize or prevent the discharge of fuels, oils and other petroleum products, hazardous or toxic wastes, and sanitary wastes.

12. Upon completion of corrective actions, provide written notification to DEQ that all violations have been corrected and submit photographic documentation.

Unless otherwise specified in this Order, Energix EPC US LLC shall submit all requirements of Appendix A of this Order to:

Jonathan M. Chapman
Enforcement Specialist
Virginia DEQ
Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
Phone: (276) 525-2557
jonathan.chapman@deq.virginia.gov