

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER by CONSENT**

ISSUED to

HCE Roark Mill Solar, LLC

FOR

HCE Roark Mill Solar

VPDES PERMIT No. VAR10

REGISTRATION No. VAR10N573

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 for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms used in this Consent Order have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.*, § 62.1-44.15:24 *et seq.*, 10.1-1182 *et seq.*, 9VAC25-870-10 *et seq.*, and 9VAC25-880-1 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

Responsible Party	HCE Roark Mill Solar, LLC		Permit Coverage Issuance Date	2/7/2022	
Site Address	Street Address/Coordinates	3144 Roark Mill Rd., Hurt			
	City/County	Pittsylvania County	VA	Zip Code	24536
Inspection Date(s)	3/9/23, 5/23/23, 6/22/23, 7/17/23, 1/8/24, 8/5/24		Receiving Water Information	Unnamed Tributary to Little Sycamore Creek and Little Sycamore Creek	
Warning Letter(s) and Notice(s) of Violation	WL# 23-04-BRRO-003 NOV# 24-01-BRRO-002				
<p>The General Virginia Pollutant Discharge Elimination System Permit for Discharges of Stormwater From Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, (Permit) was re-issued under the State Water Control Law and Regulations, 9 VAC 25-880-1, <i>et seq.</i>, on July 1, 2019 and expires June 30, 2024.</p>					
<p>The Responsible Party is a “person” within the meaning of Va. Code § 62.1-44.3.</p>					
<p>If the Responsible Party has obtained Permit coverage, it allows the Responsible Party to discharge stormwater associated with construction activities from the Site to the receiving water in strict compliance with the terms and conditions of the Permit.</p>					
<p>Va. Code § 62.1-44.5 states: Except in compliance with a certificate issued by the [Department], it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.</p>					
<p>The Regulation, at 9 VAC 25-870-310(A), also states that except in compliance with a state permit issued by the [Department] pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from...land-disturbing activities.</p>					
<p>Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.</p>					
<p>The receiving water is a surface water located wholly or partially within the Commonwealth and is a “state water” under State Water Control Law.</p>					

Violation	Observations and Legal Requirements	Civil Charge		Subtotal
	1. Land-disturbing activities greater than one acre or part of a common plan of development or sale that will disturb one or more acres have occurred at the Site in an area subject to stormwater runoff. Responsible Party (RP) has not obtained coverage under the Permit and no other permit was issued for the discharge of stormwater from construction activities at the Site. RP has not obtained VSMP authority approval to begin land disturbance. Va. Code §62.1-44.15:34; Va. Code §62.1-44.5(A)	\$0		\$ 0
		# of Occurrences		
	2. Unpermitted discharge to state waters or discharge to state waters not in compliance with a permit. Va. Code §62.1-44.5(A); 9 VAC 25-870-310(A)	\$0		\$ 0
		# of Occurrences		
	3. The Responsible Party failed to develop a Stormwater Pollution Prevention Plan (SWPPP). Permit Part II(A)	\$0		\$ 0
		# of Occurrences		
	4. The Responsible Party's SWPPP was incomplete. <input type="checkbox"/> No approved stormwater management plan 9 VAC 25-870-54(C); Permit Part II(B)(3) <input type="checkbox"/> No pollution prevention plan and/or plan not complete 9 VAC 25-870-54(D); 9 VAC 25-870-56; Permit Part II(B)(4) <input type="checkbox"/> Missing Component(s) required by Permit Part II(B) <ul style="list-style-type: none"> <input type="checkbox"/> No signed copy of the registration statement <input type="checkbox"/> No copy of the notice of coverage <input type="checkbox"/> No copy of the Permit <input type="checkbox"/> No complete site plan <input type="checkbox"/> No narrative description <input type="checkbox"/> No name, phone number and qualifications of the qualified personnel conducting inspections <input type="checkbox"/> No list of individuals or positions with delegated authority to sign inspection reports or modify the SWPPP and/or list not signed in accordance with Part III.K <input type="checkbox"/> SWPPP not signed in accordance with Part III.K <input type="checkbox"/> No identification of impaired waters, TMDLs, pollutants of concern, exceptional waters, and the additional measures applicable <input type="checkbox"/> Missing Component(s) required by Permit Part II(C) <ul style="list-style-type: none"> <input type="checkbox"/> SWPPP not amended when there was a change in design, construction, operation or maintenance <input type="checkbox"/> SWPPP not amended when inspection determined that existing control measures are ineffective <input type="checkbox"/> SWPPP did not identify the contractors that will maintain each control measure <input type="checkbox"/> SWPPP not updated following modifications/updates to its implementation <input type="checkbox"/> SWPPP amendments, modification and/or updates not signed in accordance with Part III.K 	\$0		\$ 0
		# of Occurrences		

Violation	Observations and Legal Requirements	Civil Charge		Subtotal
	<p>5. A SWPPP or SWPPP component was not available:</p> <p><input type="checkbox"/> On-site for use by those having responsibilities under the SWPPP. Permit Part II(E)(1)</p> <p><input type="checkbox"/> To the Department upon the request of DEQ staff and/or if an on-site location was unavailable to store the SWPPP when no personnel were present, notice of the SWPPP's location was not posted near the main entrance. Permit Part II(E) (2); 9 VAC 25-870-54(G)</p>	\$0		
		# of Occurrences		\$ 0
	<p>6. The Responsible Party does not have an approved an erosion and sediment control plan or agreement in lieu of a plan for the Site. Va. Code §62.1-44.15.55; 9 VAC 25-870-54(A); 9 VAC 25-870-54(B)</p>	\$0		
		# of Occurrences		\$ 0
	<p>7. Permanent control measures included in the SWPPP and/or stormwater management plan were not installed and/or functioning effectively. 9 VAC 25-870-54(C); 9 VAC 25-880-60</p>	\$0		
		# of Occurrences		\$ 0
	<p>8. The Responsible Party failed to comply with pollution prevention requirements in Permit Part II(B)(4)(e) to:</p> <p><input type="checkbox"/> Prevent or respond to spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities</p> <p><input type="checkbox"/> Prevent or respond to discharges of soaps, solvents, detergents, and wash water from construction materials</p> <p><input type="checkbox"/> Direct concrete wash water into a leak-proof container or basin.</p> <p><input type="checkbox"/> Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes</p> <p><input type="checkbox"/> Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, waste concrete, and sanitary wastes</p> <p><input type="checkbox"/> Minimize the exposure of waste materials to precipitation by closing or covering waste containers during precipitation events and at the end of the business day, or implement similar effective practices</p>	\$0		
		# of Occurrences		\$ 0

Violation	Observations and Legal Requirements	Civil Charge	Subtotal
✓	<p>9. Responsible Party failed to properly install and/or maintain control measures.</p> <p><input checked="" type="checkbox"/> Failure to design and implement an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations. 9 VAC 25-870-54(B); 9VAC25-840-30(A) 9VAC 25-840-40: <input type="checkbox"/> N/A <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input checked="" type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/></p> <p><input type="checkbox"/> Failure to maintain all control measures in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. Permit Part II(F)(1), 9 VAC 25-840-60.A</p>	<p>\$0</p> <p># of Occurrences</p> <p>11</p>	<p>\$ 0</p>
	<p>10. Inspections and/or inspection reports were not completed in accordance with Permit requirements.</p> <p><input type="checkbox"/> Inspections were not conducted by an individual identified as the qualified personnel by the operator in the SWPPP. Permit Part II(G)(1)</p> <p><input type="checkbox"/> Inspections required by the SWPPP were not conducted at the required frequency, including a modified frequency for impaired water(s), approved TMDL(s), and exceptional waters when applicable. Permit Part II(G)(2) and Part II(B)(5)(b)(3)</p> <p><input type="checkbox"/> Inspection reports were not completed and signed in accordance with the Permit. Permit Part II(G)(3-6)</p>	<p>\$0</p> <p># of Occurrences</p>	<p>\$ 0</p>
	<p>11. Responsible Party failed to comply with record and/or reporting requirements:</p> <p><input type="checkbox"/> Information for public access to the SWPPP was not posted conspicuously near the main entrance of the construction activity or, for linear projects, at a publicly accessible location near an active part of the project. Permit Part II(E)(3)</p> <p><input type="checkbox"/> A copy of the notice of coverage letter was not posted conspicuously near the main entrance of the construction activity or, for linear projects, at a publicly accessible location near an active part of the project. Permit Part II(D)</p>	<p>\$0</p> <p># of Occurrences</p>	<p>\$ 0</p>

Violation	Observations and Legal Requirements	Civil Charge	Subtotal
	<p>12. Responsible Party failed to comply with SWPPP and/or plan requirements and/or other requirements.</p> <p><input type="checkbox"/> Corrective actions identified as a result of an inspection were not implemented as soon as practicable but no later than seven days after discovery or longer period as approved by the VSMP authority. Permit Part II(H)(1)</p> <p><input type="checkbox"/> Sequencing of the project was not implemented in accordance with the approved erosion and sediment control plan and/or stormwater management plan. 9 VAC 25-870-54(B), 9 VAC 25-870-54(C)</p>	<p>\$0</p> <p># of Occurrences</p>	\$ 0
	<p>13. The Responsible Party failed to report or timely report unpermitted discharge to state waters. Va. Code §62.1-44.5(A); 9 VAC 25-870-310(B)</p>	<p>\$0</p> <p># of Occurrences</p>	\$ 0
Violation Component Civil Charge Subtotal		\$ 0	

Aggravating Factors		
	Additional Civil Charge Assessment	Subtotal
Degree of Culpability	0.00	\$ 0.00
Consent Order in another media program within 36 months	0.00	\$ 0.00
Consent Order in the same media program within 36 months	0.00	\$ 0.00
Aggravating Factors Subtotal		\$ 0.00
Civil Charge Subtotal and Aggravating Factor Subtotal		\$ 0.00
Cooperativeness and Quick Settlement	-0.00	\$ 0.00
Economic Benefit of Noncompliance	Yes	\$ 17,887.00
In accordance with 62.1-44.15(8e), the Responsible Party's Ability to Pay was evaluated and it was determined that there is an ability to pay.	Yes	
Total Civil Charge		\$ 17,887.00
Based on the results of staff observations and discussions with the Responsible Party, the Department concludes that the Responsible Party has violated the Va. Code, Regulations and/or Permit as identified herein.		

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 the Responsible Party, and the Responsible Party agrees to:

Perform the actions described in Appendix A of this Order if this box is checked and

Pay the total civil charge of in settlement of the violations cited in this Order in accordance with the following:

Within 30 days of the effective date of the Order, or

In accordance with the following payment schedule:

Due Date	Amount

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, VA 23218

The Responsible Party shall include its Federal Employer Identification Number (FEIN), if applicable, 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 Stormwater Local Assistance Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Responsible Party 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 the Responsible Party for good cause shown by the Responsible Party, 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 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 Site; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Responsible Party admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. The Responsible Party 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. The Responsible Party 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 the Responsible Party 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. The Responsible Party 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. The Responsible Party shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Responsible Party 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 the Responsible Party. Nevertheless, the Responsible Party 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 the Responsible Party has completed all of the requirements of the Order;
 - b. The Responsible Party 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 Responsible Party.

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

And it is so ORDERED.

DEQ Signee Signature

Date

DEQ Signee Name

Title

I hereby certify that I am the Responsible Party or duly appointed representative/officer of the Responsible Party, and acknowledge that there are no material facts in dispute with respect to the violations as identified in this consent order.

Date:

By: Digitally signed by Rick Berube
Date: 2024.10.21 09:51:16 -04'00'

Name

Title

**APPENDIX A
SCHEDULE OF COMPLIANCE**

The Responsible Party shall take the following actions:

Corrective Actions to be Performed	Due Date

DEQ Contact

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

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