



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MR. TIMOTHY D. OGBURN
FOR
DINWIDDIE CAR WASH
GENERAL VPDES Permit No. VAG75
Registration Number VAG750043**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Mr. Timothy D. Ogburn, regarding the Dinwiddie Car Wash, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

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

1. "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.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "DMR" means Discharge Monitoring Report.

5. "Facility" means the Dinwiddie Car Wash, a self-service facility, located at 13417 Boydton Plank Road in Dinwiddie, Virginia, which treats and discharges wastewater from the vehicle washing process.
6. "Mr. Ogburn" means Mr. Timothy D. Ogburn, owner and operator of the Dinwiddie Car Wash. Mr. Ogburn is a "person" within the meaning of Va. Code § 62.1-44.3.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "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.
9. "Permit" means the General VPDES Permit for Car Wash Facilities No. VAG75, which was issued under the State Water Control Law and the Regulation on October 16, 2007, and will expire on October 16, 2012. Coverage under the Permit for car wash wastewater discharges from the Facility is evidenced by Registration Number VAG750043.
10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
11. "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.
12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. "Regulation" means the General VPDES Permit Regulation for Car Wash Facilities, 9 VAC 25-194-10 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

15. "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.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "VPDES" means Virginia Pollutant Discharge Elimination System.
19. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Ogburn owns and operates the Facility in Dinwiddie, Virginia. The Permit governs the discharge of car wash wastewater from the Facility, to an unnamed tributary (UT) to Little Cattail Creek, in strict compliance with the terms and conditions of the Permit.
2. Little Cattail Creek is located in the Chowan River Basin. During the 2010 305(b)/303(d) Water Quality Assessment, the stream was assessed as a Category 4C water. The Aquatic Life Use is impaired due to naturally low dissolved oxygen caused by swampwater conditions in the watershed. The Recreation, Fish Consumption, and Wildlife Uses are fully supporting. The tributary is considered a Tier 1 water due to its intermittent nature and is not proposed for designation as a Tier 3 Exceptional Water.
3. Mr. Ogburn has failed to submit the annual DMRs as required by the Permit. Part I.A.I of the Permit, requires that Mr. Ogburn estimate the flow, and collect and test samples for pH, Total Suspended Solids (TSS) and Oil and Grease. The samples are to be collected by June 30 of each year and reported on the Facility's DMR by July 10 of each year. Part II.C.1 and 2 of the Permit requires that Mr. Ogburn submit to PRO, the results of the monitoring sample analysis on the Facility's DMR by July 10 of each year.
4. Mr. Ogburn was issued a WL and a NOV for non-receipt of the annual DMRs as follows: WL No. W2009-08-P-1007, issued August 7, 2009 for non-receipt of the DMR for the July 1, 2008 through June 30, 2009 monitoring period due by July 10, 2009; and NOV No. W2010-08-P-0001, issued August 19, 2010 for non-receipt of the DMRs for the July 1, 2007 through June 30, 2008 monitoring period, July 1, 2008 through June 30, 2009 monitoring period, and July 1, 2009 through June 30, 2010 monitoring period due by July 10 of each monitoring period.
5. Mr. Ogburn responded to the NOV by phone on September 2, 2010, to discuss the violations cited in the NOV.

6. Va. Code § 62.1-44.5 states that: "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
7. The Regulation, at 9 VAC 25-194-50, also states that except in compliance with the permit, or another permit issued by the Board, it is unlawful to discharge wastewater from car wash facilities to surface waters.
8. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
9. The Department has issued no permits or certificates to Mr. Ogburn other than coverage under General VPDES Permit No. VAG75.
10. Little Cattail Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
11. Based on DEQ file review, failure to submit the DMRs for the 2008, 2009 and 2010 monitoring periods, the Board concludes that Mr. Ogburn has violated the Permit and/or Va. Code §62.1-44.5 and 9 VAC 25-194-50, by discharging car wash wastewater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs **C(3)** above.
12. In order for Mr. Ogburn to return to compliance, DEQ staff and Mr. Ogburn have agreed to the Schedule of Compliance, which is incorporated in 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, the Board orders Mr. Ogburn, and Mr. Ogburn agrees to:

1. Perform the actions described in **Appendix A** of this Order; and
2. Pay a civil charge of **\$1,275** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
October 10, 2011	\$425 or balance
February 10, 2012	\$425 or balance
June 10, 2012	\$425 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Mr. Ogburn. Within 15 days of receipt of such letter, Mr. Ogburn shall pay the remaining

balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. All payments 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

5. Mr. Ogburn shall include his 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 Environmental Emergency Response Fund (VEERF)**.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mr. Ogburn for good cause shown by Mr. Ogburn, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Mr. Ogburn admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mr. Ogburn 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. Mr. Ogburn declares he has received fair and due process under the Administrative Process Act and the State Water Control Law and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Mr. Ogburn to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Ogburn 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 occurrence. Mr. Ogburn shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Ogburn 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 Mr. Ogburn intends 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.

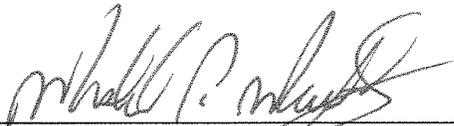
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Ogburn. Nevertheless, Mr. Ogburn agrees to be bound by any compliance date which 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 Mr. Ogburn has completed all of the requirements of the Order;

- b. Mr. Ogburn petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mr. Ogburn.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Ogburn from his 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 Mr. Ogburn 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. Any documents to be submitted pursuant to this Order shall be submitted by Mr. Ogburn or an authorized representative of Mr. Ogburn.
- 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 his signature below, Mr. Ogburn voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of SEPTEMBER, 2011.



Michael P. Murphy, Regional Director
Department of Environmental Quality

Mr. Timothy D. Ogburn voluntarily agrees to the issuance of this Order.

Date: 07-25-11 By: T D Ogburn
(Person)

Commonwealth of Virginia
City/County of Denver

The foregoing document was signed and acknowledged before me this 25th day of
July, 2011, by Timothy D. Ogburn.

Brenda H. Allen
Notary Public

737 2152
Registration No.

My commission expires: March 31, 2014

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Mr. Ogburn shall:

1. **By no later than July 10, 2012**, submit the Facility's annual DMR for the monitoring period of July 1, 2011 through June 30, 2012. The DMR shall reflect the estimated flow, and test results for the pH, TSS and Oil & Grease samples collected.
2. **Submit with the above described DMR**, a copy from the operational log showing the 3 preceding months activities regarding inspections of the Facility, and operation and maintenance of the wastewater treatment system.
3. Unless otherwise specified in this Order, submit all requirements of Appendix A of this Order to:

**Cynthia Akers
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060
Phone: (804) 527-5079
Fax: (804) 527-5106
e.cynthia.akers@deq.virginia.gov**