



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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### STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Ogburn & Ogburn Trucking, LLC FOR 9502 Zion Road, Ford, VA 23805

#### 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 Ogburn & Ogburn Trucking, LLC, regarding the property located at 9502 Zion Road, Ford, VA 23805, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

#### 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. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

5. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
6. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
7. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
8. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
9. "Ogburn & Ogburn Trucking, LLC" means, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Ogburn & Ogburn Trucking, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "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.
12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) 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; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "Property" means the tract of land located at 9502 Zion Road, Ford, VA 23805 owned by Ogburn & Ogburn Trucking, LLC.
16. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
19. "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 and 9 VAC 25-210-10.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "USACE" means the United States Army Corps of Engineers.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.
25. "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. Ogburn & Ogburn Trucking, LLC owns and operates a transporting business at the Property.
2. On August 29, 2017, DEQ staff inspected the Property as a result of a complaint from Dinwiddie County Environmental Department. DEQ staff made the following observations:
  - a. Approximately 1.5 acres of vegetation had been excavated resulting in the significant alteration and degradation of approximately 0.10 acres of wetlands;
  - b. Approximately 433 linear feet of a tributary to White Oak Creek had been filled;
  - c. No erosion and sediment control measures were installed; and
  - d. DEQ has not issued a Permit for these activities.
3. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 states that except in compliance with an individual or general Permit, it is unlawful to excavate in a wetland, significantly alter or degrade a wetland, discharge fill material into state waters, or otherwise alter the physical, chemical, and biological properties of state waters.
4. On September 26, 2017, DEQ issued a Notice of Violation (NOV No. 1709-000500) for the observations made during the August 29, 2017 inspection.
5. On October 3, 2017, B & B Consultants, on behalf of Ogburn & Ogburn Trucking, LLC, responded to the NOV and asked to schedule a site visit and discuss the returning to compliance.
6. On December 7, 2017, B & B Consultants, Inc. submitted a Corrective Action Plan, on behalf of Ogburn & Ogburn Trucking, LLC, for review and approval.
7. From December 7, 2017 through May 2018, DEQ worked with Ogburn & Ogburn Trucking, LLC on drafting a Corrective Action Plan. One May 15, 2018, DEQ approved the Corrective Action Plan.
8. Based on the results of August 29, 2017 inspection and the documentation submitted on December 7, 2017, the Board concludes that Ogburn & Ogburn Trucking, LLC has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 as described in paragraphs C(2) and C(3) above.
9. In order for Ogburn & Ogburn Trucking, LLC to return to compliance, DEQ staff and representatives of Ogburn & Ogburn Trucking, LLC 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, the Board orders Ogburn & Ogburn Trucking, LLC, and Ogburn & Ogburn Trucking, LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$10,000** 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

Ogburn & Ogburn Trucking, 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 Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Ogburn & Ogburn Trucking, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Ogburn & Ogburn Trucking, LLC for good cause shown by Ogburn & Ogburn Trucking, LLC, 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. 1709-000500 dated September 26, 2017. 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, Ogburn & Ogburn Trucking, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Ogburn & Ogburn Trucking, LLC 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. Ogburn & Ogburn Trucking, LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Ogburn & Ogburn Trucking, LLC 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. Ogburn & Ogburn Trucking, LLC 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. Ogburn & Ogburn Trucking, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ogburn & Ogburn Trucking, LLC 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 Ogburn & Ogburn Trucking, LLC. Nevertheless, Ogburn & Ogburn Trucking, LLC 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 Ogburn & Ogburn Trucking, LLC has completed all of the requirements of the Order;
- b. Ogburn & Ogburn Trucking, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Ogburn & Ogburn Trucking, LLC.

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

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, Ogburn & Ogburn Trucking, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27th day of July, 2018



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Austin L. Williams  
Interim Director, Division of Enforcement  
Department of Environmental Quality

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Ogburn & Ogburn Trucking, LLC voluntarily agrees to the issuance of this Order.

Date: 6 04 18 By: [Signature] OWNER  
(Person) (Title)  
Ogburn & Ogburn Trucking, LLC

Commonwealth of Virginia

City/County of Dinwiddie

The foregoing document was signed and acknowledged before me this 4th day of

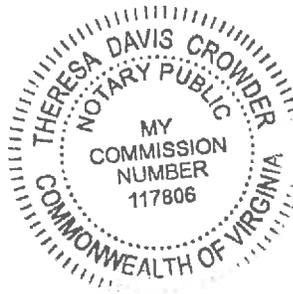
June, 2018, by Timothy D Ogburn who is  
Owner of Ogburn & Ogburn Trucking, LLC on behalf of the  
company.

[Signature]  
Notary Public

117806  
Registration No.

My commission expires: 2/28/21

Notary seal:



**APPENDIX A**  
**SCHEDULE OF COMPLIANCE**

Ogburn & Ogburn Trucking, LLC shall:

1. Immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit.
2. Begin implementation of the Corrective Action Plan (CAP) approved on May 15, 2018 in accordance with the schedule contained therein. Any changes to the approved CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Ogburn & Ogburn Trucking, LLC shall complete the CAP in accordance with its terms.
  - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then Ogburn & Ogburn Trucking, LLC shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Ogburn & Ogburn Trucking, LLC shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Ogburn & Ogburn Trucking, LLC in accordance with the schedule set forth in the alternative CAP.
  - b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Ogburn & Ogburn Trucking, LLC shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. Ogburn & Ogburn Trucking, LLC shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Ogburn & Ogburn Trucking, LLC shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

3. Unless otherwise specified in this Order, Ogburn & Ogburn Trucking, LLC shall submit all requirements of Appendix A of this Order to:

Cara Witte  
DEQ PRO  
4949 Cox Road  
Glen Allen, VA 23030  
804-527-5075

[PRO.VWPCCompliance@deq.virginia.gov](mailto:PRO.VWPCCompliance@deq.virginia.gov)