



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ROGERS-CHENAULT, INC.
FOR
HUNTON STATION SUBDIVISION
Permit No. WP1-05-1311**

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 Rogers-Chenault, Inc., regarding the Hunton Station Subdivision, Henrico, Virginia, for the purpose of resolving certain violations of 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. "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. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "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.
11. "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.
12. "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.
13. "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.

14. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
15. "Property" or "Parcel" means the 8.5 acre tract of land off Mill Road and to the west of Old Washington Highway, Henrico County, Virginia, on which the residential Hunton Station Subdivision is located. The Property was owned and developed by Rogers-Chenault.
16. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "Rogers-Chenault" means Rogers-Chenault, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Rogers-Chenault is a "person" within the meaning of Va. Code § 62.1-44.3.
18. "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.
19. "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.
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 and 9 VAC 25-210-10.
21. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
22. "USACE" means the United States Army Corps of Engineers.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VWP" means Virginia Water Protection.
26. "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.

SECTION C: Findings of Fact and Conclusions of Law

1. On July 26, 2005, DEQ issued general permit WP1-05-1311, to Eagle Construction of Virginia, Inc. The Permit authorized impacts to 0.27 acres of palustrine forested wetland associated with the construction of the residential subdivision Hunton Station. On November 9, 2005, Rogers-Chenault bought the Property from Eagle Construction of Virginia, Inc. The Permit expired on July 25, 2008.
2. The Permit required the purchase of 0.54 acres of wetland mitigation bank credits through the Chickahominy Environmental Bank in Charles City County, Virginia. The Permit also required prior notification of construction and construction monitoring reports be submitted to DEQ in association with the permitted activities.
3. On September 1, 2011, DEQ staff observed through aerial photography that the authorized impacts at the Property had been completed. Upon a subsequent file review of the Permit, DEQ staff found no record of documentation that the 0.54 acres of wetland mitigation bank credits were purchased; no record of a prior notification of construction; and no record of construction monitoring reports submitted in association with the permitted activities.
4. Permit No. WP1-05-1311, Part III.A states that the permittee shall comply with all conditions of the VWP general permit.
5. Permit No. WP1-05-1311, Part II.A.4, states, “the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or the fund contribution has been submitted to and received by DEQ.”
6. Permit No. WP1-05-1311, Part II.C.2, states, “DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area.”
7. Permit No. WP1-05-1311, Part II.C.3, states, “[c]onstruction monitoring reports shall be submitted to DEQ not later than the 10th day of the month following the month in which the monitoring event specified in Part II. B takes place,” and describes the required contents of the reports.
8. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.A of the VWP Permit Regulations state that except in compliance with a permit no person shall dredge, fill or discharge any pollutant into or adjacent to surface waters, excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: filling or dumping.

9. On January 27, 2012, DEQ issued NOV No. 12-01-PRO-702 for the violation of Permit No. WP1-05-1311, Part II.A.4, Part II.C.2, Part II.C.3; Va. Code § 62.1-44.15:20; and 9 VAC 25-210-50.A.
10. On February 15, 2012, DEQ staff met with representatives of Rogers-Chenault to discuss the violations. Rogers-Chenault, Inc. submitted any construction monitoring records that could be located but they were incomplete.
11. On April 26, 2012, Rogers-Chenault provided documentation of the purchase of 0.54 acres of wetland credits from the Appomattox Mitigation Holdings LLC, and verified that the failure to compensate for impacts to wetlands has been addressed.
12. Based on the results of the aerial site review, review of the permit file, and the February 15, 2012, meeting, the Board concludes that Rogers-Chenault has violated Permit conditions Part II.A.4, Part II.C.2, Part II.C.3, Va. Code § 62.1-44.15:20; and 9 VAC 25-210-50.A; as described in paragraphs C(1) through C(8), above

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Rogers-Chenault and Rogers-Chenault agrees to:

1. Pay a civil charge of \$8,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
April 10, 2013	\$1,000 or balance
July 10, 2013	\$1,000 or balance
October 10, 2013	\$1,000 or balance
January 10, 2014	\$1,000 or balance
April 10, 2014	\$1,000 or balance
July 10, 2014	\$1,000 or balance
October 10, 2014	\$1,000 or balance
January 10, 2015	\$1,000

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

Rogers-Chenault 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Rogers-Chenault for good cause shown by Rogers-Chenault, 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, Rogers-Chenault admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Rogers-Chenault 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. Rogers-Chenault 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 Rogers-Chenault 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. Rogers-Chenault 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. Rogers-Chenault shall demonstrate that

such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rogers-Chenault 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.

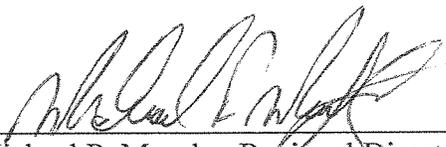
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 Rogers-Chenault. Nevertheless, Rogers-Chenault 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 Rogers-Chenault has completed all of the requirements of the Order;
 - b. Rogers-Chenault 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 Rogers-Chenault.

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

And it is so ORDERED this 19th day of MARCH, 2013.



Michael P. Murphy, Regional Director
Department of Environmental Quality

Rogers-Chenault, Inc. voluntarily agrees to the issuance of this Order.

Date: 10/28/12 By: *Todd D. Rogers* President
(Person) (Title)
Rogers-Chenault, Inc.

Commonwealth of Virginia

City/County of Hanover

The foregoing document was signed and acknowledged before me this 28th day of

October, 2012, by Todd D. Rogers who is

President of Rogers-Chenault, Inc., on behalf of the corporation.

Miriam M. Martell
Notary Public

349887
Registration No.

My commission expires: 7-31-2016

Notary seal:

