



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ADVANCED FLOORING TECHNOLOGIES OF VIRGINIA, INC.
FOR
IR 2012-P-0244**

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 Advanced Flooring Technologies of Virginia, Inc., for the purpose of resolving certain violations of the State Water Control Law.

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. "Advanced Flooring" means Advanced Flooring Technologies of Virginia, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Advanced Flooring is a "person" within the meaning of Va. Code § 62.1-44.3.
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. "Company" means Advanced Flooring, a company located at 2561 Turkey Creek Road in Oilville, Virginia, which installs and maintains a variety of carpet and floor covering products.
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 discharge of a pollutant. 9 VAC 25-31-10
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program 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. "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. "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.
12. "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.

13. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. Advanced Flooring owns and operates the Company located in Oilville, Virginia. The Company installs a variety of flooring products and provides cleaning services for commercial and noncommercial carpeting.
2. On June 28, 2011, DEQ received a report from the Richmond Department of Public Utilities (DPU) of an unpermitted discharge of commercial carpet cleaning wastewater from an Advanced Flooring truck into state waters. The truck discharged the wastewater into a carwash drop-inlet located at the Forest Ridge Apartments, in Richmond, Virginia. The wastewater flowed from the carwash drop-inlet into a UT to Powhite Creek.
3. The UT to Powhite Creek is located in the James River Basin. During the 2010 305(b)/303(d) Water Quality Assessment, the stream was not assessed. It is currently listed as a Category 3A water, which means that there is no data available for the current assessment to determine if any designated use is attained and the water was not previously listed as impaired. The tributary is considered a Tier 1 water and is currently not proposed for designation as a Tier 3 Exceptional Water.
4. The Richmond DPU investigated the report on June 28, 2011, took photos of the area of discharge and collected water samples from the UT to Powhite Creek. Richmond DPU also requested that Advanced Flooring provide the material safety data sheets (MSDS) on products used by Advanced Flooring in their commercial carpet cleaning service. Richmond DPU provided DEQ with their investigation report, test results of the stream samples collected, photos and the MSDS.
5. On August 15, 2011, DEQ issued a Notice of Violation to Advanced Flooring for the unpermitted discharge of carpet cleaning wastewater to an unnamed tributary to Powhite Creek.

6. Advanced Flooring responded to the NOV on August 17, 2011, to schedule a meeting. DEQ met with Advanced Flooring on August 25, 2011, to discuss the violations cited in the NOV. Advanced Flooring stated that employees are allowed to discharge the carpet cleaning wastewater through a filter bag and into the City of Richmond's wastewater collection system at carwash facilities drop inlets that discharge into a wastewater collection system. On June 28, 2011, an employee discharged the wastewater into a posted carwash drop inlet that discharged into state waters, and not into a sewage collection system.
7. 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."
8. The Department has issued no permits or certificates to Advanced Flooring.
9. The UT of Powhite Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
10. Based on the information provided by Richmond DPU and DEQ's meeting with Advanced Flooring on August 25, 2011, the Board concludes that Advanced Flooring has violated the Va. Code §62.1-44.5, by discharging carpet cleaning wastewater from an Advanced Flooring truck, without authorization of a permit or certificate issued by the Board, into state waters as described in paragraphs C(2) through C(4) above.
11. Based on discussions with Advanced Flooring, Advanced Flooring has assured DEQ that the Company has taken steps to educate company employees to discharge the carpet cleaning wastewater in a manner that is in compliance with the Code of Virginia. Corrective actions taken by Advanced Flooring demonstrates that the violations described in paragraphs C(2) through C(4) above, have been addressed, and the corrective actions have been completed.

SECTION D: Agreement and Order

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

1. Pay a civil charge of **\$6,500** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

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

Advanced Flooring 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 Advanced Flooring for good cause shown by Advanced Flooring, 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, Advanced Flooring admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Advanced Flooring 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. Advanced Flooring 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 Advanced Flooring 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. Advanced Flooring 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. Advanced Flooring shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Advanced Flooring 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 Advanced Flooring 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.

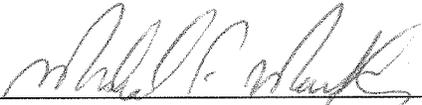
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Advanced Flooring. Nevertheless, Advanced Flooring agrees to be bound by any compliance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

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Advanced Flooring 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 Advanced Flooring 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 Advanced Flooring or an authorized representative of Advanced Flooring.
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, Advanced Flooring voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of APRIL, 2012.



Michael P. Murphy, Regional Director
Department of Environmental Quality

Advanced Flooring Technologies of Virginia, Inc. voluntarily agrees to the issuance of this Order.

Date: 11/29/11 By: [Signature] owner
(Person) (Title)

Commonwealth of Virginia
City/County of Goochland

The foregoing document was signed and acknowledged before me this 29th day of November 2011, by Robert E. Draper who is owner of Advanced Flooring Technologies of Virginia, Inc., on behalf of the corporation.

[Signature]
Notary Public

7205078
Registration No.

My commission expires: 11-30-2012

Notary seal:

