



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

www.deq.virginia.gov

L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO PALM POOLS SERVICE CORP.

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1455 between the Virginia Waste Management Board and Palm Pools Service Corp. for the purpose of resolving certain violations of the Waste Management Act.

SECTION B: Definitions

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Palm Pools" means Palm Pools Service Corp., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Palm Pools facility located in Woodbridge, Virginia.

8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Palm Pools owns and operates the Facility located at 5019 Davis Ford Road in Woodbridge, VA. On-site are various above ground storage tanks that hold chemicals that are used for the Palm Pools business purposes.
2. On February 26, 2008, DEQ-NRO staff received notification from the Prince William Fire Department that a discharge of hydrochloric acid had occurred at the Facility.
3. DEQ-NRO staff arrived at the Facility on February 26, 2008 and observed liquid seeping from a hillside, running across a bicycle path and entering a stormwater drainage swale and storm drain. Staff also observed dead vegetation, including trees and grass within the affected area, which may indicate repeated discharges from the facility. Initial litmus paper tests of the liquid substance seeping from the hillside performed by Prince William Hazardous Materials team indicated a pH of 1.
4. 40 CFR § 261.22(a)(1) (incorporated by 9 VAC 20-60-261) defines a solid waste that has a pH less than or equal to 2 as a characteristically corrosive hazardous waste.
5. DEQ-NRO staff returned to the site on February 27, 2008 and observed Palm Pools employees washing a liquid substance off of the bicycle path with water and allowing the liquid substance to enter the storm drain. Palm Pools has responded via letter dated April 14, 2008 that this action was taken under the direct supervision of Prince William Fire Department to minimize exposure to the users of the bicycle path.
6. DEQ-NRO staff conducted a follow up visit on February 29, 2008 and interviewed Palm Pools representatives. The representatives advised that the tank had not been used since June 2007 and it was holding approximately 300-400 gallons of hydrochloric acid. A follow-up letter dated April 14, 2008 from Palm Pools states that it cannot state with certainty what occurred to cause the release or if it was the result of single or multiple incidents.
7. On March 20, 2008, DEQ sent a Notice of Violation (NOV) to Palm Pools citing the following violations:

- a. Failure to determine if the hydrochloric acid met the definition of a hazardous waste prior to discharging it to the ground and stormdrain in compliance with 40 CFR § 262.11 (incorporated by 9 VAC 20-60-262).
 - b. Failure to maintain and operate the facility in a way that would minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in compliance with 40 CFR § 264.31 (incorporated by 9 VAC 20-60-265).
8. Under Va. Code § 10.1-1402, the Board has authority:
19. Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly managed...
21. Abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the Board.
9. Under Va. Code § 10.1-1450, the Board has promulgated regulations governing hazardous materials, including "corrosive materials." *See* 9 VAC 20-110. Hydrochloric acid is therefore a "substance within the jurisdiction of the Board."
10. DEQ staff met with Palm Pools representatives and their consultant Excalibur Group, LLC on March 28, 2008 to discuss the NOV and the actions that Palm Pools needs to implement. These items have been incorporated into the Appendix of the Order.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code § 10.1-1402 and 10.1-1455, the Board orders Palm Pools, and Palm Pools agrees, to perform the actions described in Appendix A of this Order.

In addition, the Board orders Palm Pools, and Palm Pools voluntarily agrees, to pay a civil charge of \$9,945.60 in settlement of the violations cited in this Order. Payment shall be made on the following dates:

1st Payment of \$3,315.20 will be paid on or before 60 days of the effective date of this Order.

2nd Payment of \$3,315.20 will be paid on or before 90 days of the effective date of this Order.

3rd Payment of \$3,315.20 will be paid on or before 120 days of the effective date of this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The payment shall include Palm Pools' Federal Tax ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Palm Pools, for good cause shown by Palm Pools, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities, whether or not arising out of the same or similar facts, for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Palm Pools admits the jurisdictional allegations, but neither admits nor denies the factual findings, and conclusions of law contained herein.
4. Palm Pools 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. Palm Pools declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act 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, or any subsequent

deliverables required to be submitted by Palm Pools and approved by the Department, without the consent of Palm Pools.

6. Failure by Palm Pools to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar 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.
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. Palm Pools 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 other such circumstance. Palm Pools must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Palm Pools shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this 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 Director of the Regional Office in writing within 24 hours of learning of any condition above, which Palm Pools intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

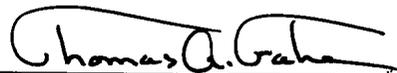
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. Any plans, reports, schedules or specifications attached hereto or submitted by Palm Pools and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

11. This Order shall become effective upon execution by both the Director or his designee and Palm Pools. Notwithstanding the foregoing, Palm Pools agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until:
 - a. Palm Pools 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
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Palm Pools.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Palm Pools from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, Palm Pools voluntarily agrees to the issuance of this Order.
14. The undersigned representative of Palm Pools 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 Palm Pools to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Palm Pools.

And it is so ORDERED this 20th day of March, 2009.


Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

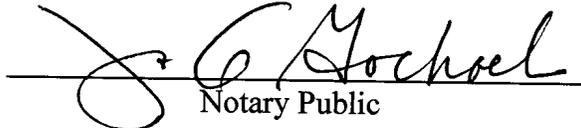
Palm Pools Service Corp. voluntarily agrees to the issuance of this Order.

By: 
Title: Pamela Merges
Date: 1/26/09

Commonwealth of Virginia
City/County of Prince William

The foregoing document was signed and acknowledged before me this 26th day of
January, 2009, by Gregory Gochoel, who is
(name)

Gen Mgr of Palm Pools Service Corp., on behalf of Palm Pools Service Corp.
(title)


Notary Public

My commission expires: Aug 31, 2012

Notary Registration Number: 296984

APPENDIX A

Palm Pools Service Corp. shall:

1. Complete and submit a RCRA Subtitle C Site Identification Form (EPA Form 8700-12) to DEQ-NRO within 15 days of the execution of this Order.
2. Operate the facility in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous materials to air, soil, or surface water which could threaten human health or the environment.
3. Submit a final report to DEQ-NRO summarizing the remediation efforts within 15 days of the execution of the Order.

All correspondence required by this Order, with the exception of the civil charge as listed in section D, shall be submitted to the NRO mailing address:

Department of Environmental Quality
Northern Regional Office
Attn: Enforcement Manager
13901 Crown Court
Woodbridge, VA 22193