



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO River Pools & Spas Incorporated Registration Number 52484

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and 1316, between the State Air Pollution Control Board and River Pools & Spas Incorporated (RPS) for the purpose of resolving certain violations of the Virginia Air Pollution 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 Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
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. "Facility" means RPS's manufacturing facility located at 196 Selftown Road, Warsaw, Virginia 22572.

5. "FCE" means a Full Compliance Evaluation by DEQ staff.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a Consent Order or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a Partial Compliance Evaluation by DEQ staff.
9. "Permit" means a Minor New Source Review permit issued under the Virginia Air Pollution Control Law and the Regulations to RPS for the Facility, Registration Number 52484, on December 10, 2013.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "RPS" means River Pools & Spas Incorporated, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. RPS is a "person" within the meaning of Va. Code § 10.1-1300.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. RPS owns and operates the Facility in Warsaw, Virginia. The Facility is a pool and spa mold manufacturing plant.
2. The Facility is subject to a New Source Review Permit dated December 10, 2013. DEQ staff conducted an FCE of the Facility on January 17, 2019, and reported the following.
3. During the 12-month period ending in December 2018, the sum of resin in manufacturing process (R1) was 375,915 pounds. The resin throughput records range from 248,150 to 375,915 pounds for the term, calculated monthly as the sum of each consecutive 12-month period. The annual throughput of resin in R1 was 466,990 pounds for the 12-month period ending April 2019.

The sum of VOC emissions from the R1 process was 8.6 tons/yr for the period ending December 2018. The VOC emissions records range from 5.4 to 8.6 tons for the term, calculated monthly as the sum of each consecutive 12-month period. The sum of VOC emissions from the R1 process was 11.5 tons/yr for the 12-month period ending April 2019.

<u>Month / Year</u>	<u>Throughput in lbs.</u>	<u>VOC tpy (Resin)</u>
January 2018	248,150	5.4
February 2018	263,400	5.8
March 2018	253,130	5.6
April 2018	277,805	6.1
May 2018	292,340	6.3
June 2018	303,110	6.6
July 2018	322,635	7.0
August 2018	333,165	7.3
September 2018	341,040	7.5
October 2018	353,095	7.9
November 2018	373,715	8.4
December 2018	375,915	8.6
January 2019	376,655	8.8
February 2019	394,290	9.3
March 2019	439,125	10.5
April 2019	466,990	11.5

Condition 5 of the Permit states that, “The throughput of resin in the pool and spa manufacturing process (R1) shall not exceed 320,000 pounds per year, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months (9 VAC 5-80-1180).”

Condition 8 of the Permit also requires that emissions from R1 shall not exceed VOC 23.0 lbs/hr - 6.1 tons/yr. “These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Conditions 1, 2, and 5. (9 VAC5-80-1180 and 9 VAC 5-50-260).”

4. During the 12-month period ending in December 2018, the sum of gelcoat in the manufacturing process (GC1) was 56,970 pounds for the term. The gelcoat throughput records range from 34,105 to 56,970 pounds for the term, calculated monthly as the sum of each consecutive 12-month period. The annual throughput of gelcoat in GC1 was 64,965 pounds for the 12-month period ending April 2019.

The sum of VOC emissions from the GC1 process was 5.6 tons/yr ending December 2018. The VOC emissions records range from 3.3 to 5.6 tons for the term, calculated monthly as the sum of each consecutive 12-month period. The sum of VOC emissions from the GC1 process was 6.3 tons/yr for the 12-month period ending April 2019.

<u>Month / Year</u>	<u>Throughput in lbs.</u>	<u>VOC tpy (Gelcoat)</u>
January 2018	34,105	3.3
February 2018	35,875	3.5
March 2018	38,800	3.8
April 2018	42,410	4.1
May 2018	44,500	4.3
June 2018	46,255	4.5
July 2018	49,410	4.8
August 2018	50,665	4.9
September 2018	51,155	5.0
October 2018	53,880	5.3
November 2018	56,740	5.5
December 2018	56,970	5.6
January 2019	55,725	5.4
February 2019	58,225	5.7
March 2019	60,800	6.0
April 2019	64,965	6.3

Condition 6 of the Permit states that, "The throughput of gelcoat in the pool and spa manufacturing process (GC1) shall not exceed 36,000 pounds per year, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months (9 VAC 5-80-1180)."

Condition 9 of the Permit also requires that emissions from GC1 shall not exceed VOC 70.1 lbs/hr - 3.5 tons/yr. "These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Conditions 1, 3, and 6. (9 VAC 5-80-1180 and 9 VAC 5-50-260).

- Calculations for throughputs and emissions totals for both R1 and GC1 were incomplete, and did not include all data in 18 calculations from August, 2016 to September, 2018.

<u>Month /Year</u>	<u>Miscalculation</u>	<u>Month / Year</u>	<u>Miscalculation</u>
August 2016	GC1 e	February 2018	R1e GC1 e
September 2016	GC1 e	June 2018	R1e GC1 e
January 2017	GC1 e	July 2018	GC1 et
March 2017	R1e	August 2018	R1et GC1 e
August 2017	GC1 e	September 2018	GC1 e
September 2017	GC1 e		
January 2018	R1e GC1 e		

e = emissions miscalculation
t = throughput miscalculation

Condition 11 of the Permit requires RPS to maintain records . . . “of emission data and operating parameters, as necessary, to demonstrate compliance with this permit. These records shall include, but are not limited to: a) annual throughput of resin applied (R1) in the pool and spa manufacturing process . . . ; b) annual throughput of gelcoat applied (GC1) in the pool and spa manufacturing process . . . ; d) monthly and annual emissions of VOC from resin application (R1), gelcoat application [(GC1)], and the tooling process (T1) . . . These records shall be available for inspection by the DEQ and shall be current for the most recent five years. (9 VAC 5-50-50 and 9 VAC 5-80-1180).”

- Employee Training records were not available for review at the time of inspection.

Condition 16 of the Permit requires that RPS, “. . . d) Train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures, prior to their first operation of such equipment. The permittee shall maintain records of the training provided including the names of trainees, the date of training and the nature of the training. Records of maintenance and training shall be maintained on site for a period of five years and shall be made available to DEQ personnel upon request. (9 VAC 5-50-20(E) and 9 VAC 5-80-1180 (D)).”

- DEQ issued NOV No. APRO001111-001 on February 26, 2019 based on the violations observed during the FCE. Subsequent record inspections were conducted on August 27, 2019, October 22, 2019, and March 3, 2020 . In their 2019 Annual Update RPS reported a total throughput of 761,720 lbs of resin for R1, exceeding the permitted limit of 320,000 lbs for the 2019 calendar year. The Facility also reported a throughput of 122,900 lbs of gelcoat for GC1, exceeding the permitted limit of 36,000 lbs for the 2019 calendar year.
- DEQ staff corresponded and met with representatives from RPS on several occasions to discuss the NOV, permitting, requirements for throughput and emissions reporting, and employee training.
- Based on the information and results of the January 17, 2019 FCE and subsequent reporting, the Board concludes that RPS violated Permit conditions 5, 6, 8, 9, 11 and 16,

and 9 VAC5-50-20, 9 VAC5-50-50, 9 VAC 5-50-260 and 9 VAC5-80-1180, as described in Section C, above.”

10. By applying for a permit to increase its permitted emission limits, RPS has performed the corrective actions that demonstrate the violations described above have been addressed.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1309 and -1316, the Board orders RPS, and RPS agrees to:

1. Pay a civil charge of **\$69,028** 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", delivered to:

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

RPS 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 is required to refer collection of moneys due under this Order to the Department of Law, RPS 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 RPS, for good cause shown by RPS, 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, RPS admits the jurisdictional allegations, the findings of fact, and conclusions of law in this Order.

4. RPS 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. RPS declares it has received fair and due process under the Administrative Process Act and Virginia Air Pollution 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 RPS 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. RPS 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. RPS shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RPS 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.

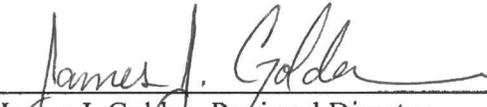
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement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

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

And it is so ORDERED this 8th day of July, 2020.



James J. Golden, Regional Director
Department of Environmental Quality

RPS Corporation, voluntarily agrees to the issuance of this Order.

Date: 6/22/20 By: Jason Hughes, PRESIDENT
(name) (Title)
River Pools & Spas Incorporated

Commonwealth of Virginia
City/County of WARSAW / RICHMOND CO.

The foregoing document was signed and acknowledged before me this 22ND day of
JUNE, 2020, by JASON HUGHES, who is
(name)
PRESIDENT of River Pools & Spas Incorporated on behalf of the company.

Catherine Gallagher
Notary Public
7594044
Registration No.

My commission expires: June 30, 2022

Notary seal:

