



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
POLYCOR VIRGINIA INC.
FOR
POLYCOR VIRGINIA INC.
VPDES Permit Registration No. VAG840123**

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 Polycor Virginia Inc., regarding the Polycor Virginia Inc. facility for the purpose of resolving certain violations of the State Water Control Law and the applicable permit, and regulation.

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. "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.

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, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "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.
7. "DMR" means Discharge Monitoring Report.
8. "Facility" means the soapstone mining facility, Polycor Virginia Inc., located at 42 Alberene Loop in Schuyler, Virginia, which processes and discharges treated mining wastewater.
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" means General VPDES Permit for Nonmetallic Mineral Mining Facilities, Registration No. VAG840123 which was issued under the State Water Control Law and the Regulation to Virginia Soapstone Ventures, LLC dba Polycor Virginia Inc. on July 1, 2014 and which expired on June 30, 2019. DEQ reissued Permit coverage, with an effective date of July 1, 2019 and an expiration date of June 30, 2024.
12. "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.
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 (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.

14. "Polycor" means Polycor Virginia Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Polycor is a "person" within the meaning of Va. Code § 62.1-44.3.
15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "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.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Polycor owns and operates the soapstone mining Facility which processes and discharges treated mining wastewater to Ivy Creek.
2. Ivy Creek is located in the James River Basin.
3. On August 6, 2018, DEQ staff conducted a Pollution Response Investigation at the Facility after observing a white discoloration of Ivy Creek, downstream of the Facility. The substrate in Ivy Creek was stained white, upstream of the Facility's Outfall 003.
4. On August 20, 2018, DEQ issued NOV No. W2018-08-V-0004 to Polycor for the unpermitted discharge from the Facility.

5. On September 4, 2018, DEQ held a conference call with a Polycor representative to discuss the NOV. Polycor explained that the discharge was from the cutting operations of the soapstone at the Facility. Through the investigation, Polycor discovered that a pipe was broken in the process line, and the pump which pumps the process line to the treatment ponds, malfunctioned. Once Polycor was made aware of the broken infrastructure, they stopped the Facility operations with regards to cutting, and repaired the equipment.
6. On October 5, 2018, DEQ staff visited the Facility with Polycor representatives to confirm the repairs, and briefly review Facility conditions. One area of concern was noted in a building where soapstone was sculpted into statues, etc., due to the floor drains discharging towards Ivy Creek. Polycor conveyed that the potential for discharge would be eliminated.
7. On February 13, 2019, Polycor submitted DMRs to DEQ, which were due by January 10, 2019. The DMRs were not signed by an executive officer or duly authorized representative.
8. On February 21, 2019, DEQ issued NOV No. W2019-02-V-0002 to Polycor for the late and improperly signed DMRs.
9. On March 6, 2019, Polycor submitted documentation to DEQ, stating that the company hired a third party to sample, test, and submit documentation of the Permit's required DMRs. Additionally, a delegation of authority would be submitted once the third party was hired, to prevent future DMR delays.
10. Va. Code § 62.1-44.5 states that: "[E]xcept 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."
11. Part III.C.1 of the Permit states, "The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office."
12. Part III.K.2 of the Permit states, "All reports required by permits, and other information requested by the board, shall be signed by a person described in Part III.K.1 or by a duly authorized representative of that person."
13. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

15. The Department has issued no permits or certificates to Polycor other than VPDES Permit Registration No. VAG840123.
16. Ivy Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
17. Based on the results of the August 6, 2018 Facility visit, the October 5, 2018 Facility inspection, the September 4, 2018 meeting, and the documentation submitted on February 13, 2019, the Board concludes that Polycor has violated the Permit, Va. Code §62.1-44.5, and 9 VAC 25-31-50, by discharging mining wastewater while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3) through C(14) above.
18. Polycor submitted documentation on March 6, 2019 and DEQ staff inspected the Facility on October 5, 2018, which verified that the violations as described in paragraphs C(3)-C(8) above, have been corrected.

SECTION D: Agreement and Order

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

Pay a civil charge of \$9,875 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

Polycor 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, Polycor 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 Polycor for good cause shown by Polycor 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, in NOV No. W2018-08-V-0004 dated August 20, 2018 and NOV No. W2019-02-V-0002 dated February 21, 2019. 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, Polycor admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Polycor 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. Polycor 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 Polycor 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. Polycor 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. Polycor shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Polycor 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 Polycor. Nevertheless, Polycor 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 Polycor has completed all of the requirements of the Order;
- b. Polycor 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 Polycor.

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

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, Polycor voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12th day of December, 2019.



Amy T. Owens, Regional Director
Department of Environmental Quality

Plycor Virginia Inc. voluntarily agrees to the issuance of this Order.

Date: 10/01/19 By: [Signature], US QUARRIES MANAGER
(Person) (Title)
Plycor Virginia Inc.

State of Georgia
~~Commonwealth of Virginia~~
City/County of Pickens

The foregoing document was signed and acknowledged before me this 1st day of October, 2019, by Catherine Fortin who is U.S. Quarries Managers of Plycor Virginia, Inc., on behalf of the company.

Cindy M. Milner
Notary Public

Registration No. _____

My commission expires: 8-14-2020

Notary seal:

