

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 DEC 14 AM 10:12

IN THE MATTER OF:

Polidori Corporation, Inc.
5890 Highway 95, Suite A
Fort Mohave, AZ 86426

Poli-Gold, L.L.C.
1341 Powell Drive
Lake Havasu City, AZ 86406

Veronica Polidori
1889 Fairway
Lake Havasu City, AZ,

Respondents.

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Docket No. **CWA-08-2012-0003**

FILED
EPA REGION VIII
HEARINGS RM BRK

Complainant, the United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Respondents, Polidori Corporation, Inc. (PCI), Poli-Gold, L.L.C. (Poli-Gold), and Veronica Polidori (collectively, Respondents), by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

2. The EPA has jurisdiction over this matter pursuant to section 309(g)(1)(A) and (2)(B) of the Clean Water Act (Act or CWA), 33 U.S.C. § 1319(g)(1)(A) and (2)(B).

3. For the purposes of this settlement only, Respondents admit the jurisdictional allegations contained herein and neither admit nor deny the specific factual allegations.

4. Respondents retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Agreement and the Administrative Order on Consent, Docket No. CWA-08-2012-0002, the validity of any issue of law or fact set forth in this Consent Agreement. In any proceeding to enforce this Consent Agreement, Respondents waive their right to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement. Respondents further waive their right to appeal the Final Order in this matter.

5. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondents agree that entry of this Consent Agreement and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.

6. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondents, and Respondents' heirs, officers, directors, agents, successors and assigns. Any change in ownership of the Panguitch Lake Resort or corporate organization structure or status of either Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter any Respondents' responsibilities under this Consent Agreement unless the EPA, Respondents and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, thirty (30) days prior to such transfer, Respondents shall notify the EPA at the address specified in paragraph 30.d of this Consent Agreement of the pending transfer.

7. This Consent Agreement contains all civil penalty settlement terms agreed to by the parties.

II. GENERAL ALLEGATIONS

8. Respondent PCI is a corporation incorporated under the laws of the State of Arizona. The address of the registered office for PCI is 5890 Highway 95, Suite A, Fort Mohave, AZ 86426.

9. Respondent Poli-Gold is a limited liability corporation organized under the laws of the State of Arizona. The address of the registered office for Poli-Gold is 1341 Powell Drive, Lake Havasu City, AZ 86406.
10. Respondent Veronica Polidori is an individual residing at 1889 Fairway, Lake Havasu City, Arizona.
11. Respondents are engaged in construction and real estate development in Arizona and Utah.
12. At all relevant times, Respondents owned, managed, operated on and/or otherwise controlled property adjacent to a portion of the southern shoreline of Panguitch Lake, located in the south half of section 4, Township 36 South, Range 7 West, in Garfield County, Utah (the Site).
13. The United States Army Corps of Engineers (Corps) has determined that Panguitch Lake is a traditional navigable water.
14. In or about July 2007, Respondents, or persons acting on their behalf, began construction activities that resulted in the discharge of dredged and fill material to Panguitch Lake and its adjacent wetlands. The work involved:
 - a. Construction of a 150-slip marina within and along the shore of Panguitch Lake. The unauthorized work included construction of a coffer dam within the lake, dredging and filling a significant portion of an existing marina, and placement of rip-rap along the perimeter of the newly constructed marina, and
 - b. Construction of a recreational vehicle park consisting of lots intended to be sold to individual owners. The unauthorized work included the construction of a rock wall, discharge of fill, and placement of rip-rap along a portion of the southern shore of Panguitch Lake.

15. On May 1, 2008, the Corps was notified by the Utah Department of Environmental Quality (UDEQ) of a possible CWA violation on Panguitch Lake related to the discharge of a large amount of fill adjacent to the lake.
16. Following a May 12, 2008, field visit, the Corps issued a cease and desist order on May 20, 2008, notifying PCI that the work performed in Panguitch Lake was a violation of the CWA and requiring PCI to cease all work on the project until the violation is resolved.
17. On July 20, 2009, the Corps referred this case to the EPA for enforcement in accordance with the "Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act," dated January 19, 1989.
18. On September 10, 2010, the EPA issued a Findings of Violation and Administrative Order for Compliance, Docket No. CWA-08-2010-0029, to Respondents, requiring Respondents to take certain actions to achieve compliance with the CWA.
19. The construction activities described in paragraph 14, above, resulted in discharges of dredged and fill material to Panguitch Lake and its adjacent wetlands. Respondents had neither applied for nor received a permit to discharge into the lake and its adjacent wetlands and have not been authorized by any permit issued under CWA section 404, 33 U.S.C. § 1344, to allow the unauthorized discharges to remain.
20. On November 17, 2010, Poli-Gold filed a Chapter 11 bankruptcy case in the District Court of Arizona - Yuma, case number 0:10-bk-37018-RJH.
21. Each Respondent is a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).

22. The discharges described in paragraph 14, above, were from a “point source” within the meaning of CWA section 502(14), 33 U.S.C. § 1362(14).

23. The dredged and fill material referenced in paragraph 14, above, constitutes “pollutants” within the meaning of CWA section 502(6), 33 U.S.C. § 1362(6).

24. The Respondents’ activities as described in paragraph 14, above, constitute the “discharge of pollutants” within the meaning of the definition set forth in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

25. Panguitch Lake and its adjacent wetlands are “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of CWA section 502(7), 33 U.S.C. § 1362(7).

III. DESCRIPTION OF VIOLATION

26. Respondents did not apply for or receive a CWA section 404 permit from the Corps authorizing the discharges of dredged or fill materials described in paragraph 15, above, prior to their discharge, as required under sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

27. The discharges of pollutants from a point source by Respondents into waters of the United States described in paragraph 14, above, were carried out without the required permit issued by the Corps pursuant to section 404 of the Act, 33 U.S.C. § 1344, and, therefore, constitute violations of section 301 of the Act, 33 U.S.C. § 1311.

IV. CIVIL PENALTY

28. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and based in part on the nature of the violations, the Respondents’ ability to pay, and other relevant factors, the EPA has determined that an appropriate civil penalty to settle this action is the amount of \$30,000.00, to be paid

within thirty (30) days of receipt of the Consent Agreement and signed Final Order issued by the Regional Judicial Officer.

29. The Respondents consent and agree to the assessment and payment of the civil penalty cited in the foregoing paragraph.

30. The Respondents shall pay the agreed upon civil penalty by one of the following methods:

a. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

b. **Wire Transfer:**

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

c. **On Line Payment:**

This option is available through the Department of Treasury.

www.pay.gov

Enter sfo 1.1 in the search field.

Open form and complete the required fields.

d. Copies of the check or record of payment shall be sent to:

Monica Heimdal

U.S. Environmental Protection Agency (8ENF-W)

1595 Wynkoop Street

Denver, CO 80202-1129

and

Tina Artemis

Regional Hearing Clerk

U.S. Environmental Protection Agency (8RC)

1595 Wynkoop Street

Denver, CO 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

31. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued). In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

32. The penalty specified in paragraphs 28 and 29, above, represents civil penalties assessed by the EPA and Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or credit.

V. OTHER TERMS AND CONDITIONS

33. Failure by Respondents to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

34. Nothing in this Consent Agreement shall be construed as a waiver by the Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this Consent Agreement.

35. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

36. This Consent Agreement shall be subject to a public comment period of not less than forty (40) days, pursuant to section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45. The EPA may modify or withdraw its consent to this Consent Agreement if comments received disclose facts or considerations which indicate that the Consent Agreement is inappropriate, improper, or inadequate.

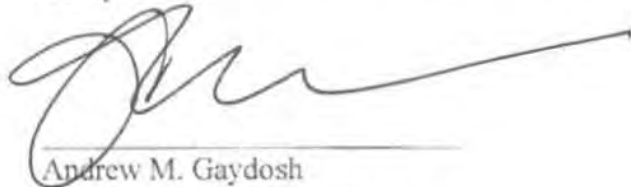
37. If comments received during the public comment period do not require modification or withdrawal by the EPA from this Consent Agreement, the parties agree to submit this Consent Agreement to the Regional Judicial Officer following closure of the public comment period specified in 40 C.F.R. § 22.45 and the period for state consultation specified in 40 C.F.R. § 22.38(b), with a request that it be incorporated into a Final Order.

38. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Consent Agreement. This Consent Agreement resolves Respondents' liability for federal civil penalties under section 309(d) and (g) of the Act, 33 U.S.C. § 1319(d) and (g), for the alleged violations and facts contained in this Consent Agreement. This Consent Agreement shall not in any case affect the EPA's right to pursue criminal sanctions for any violations of law whether or not alleged in this Consent Agreement.

39. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Date: 12/8/11



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

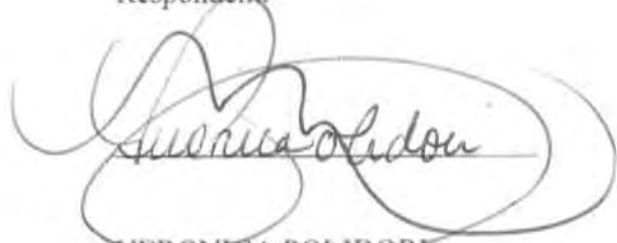
POLIDORI CORPORATION, INC.
Respondent

Date: 11/21/2011



POLI-GOLD, L.L.C.
Respondent.

Date: 11/21/2011

A handwritten signature in black ink, appearing to read "Veronica Polidori", written over a horizontal line. The signature is highly stylized and cursive.

VERONICA POLIDORI
Respondent.

Date: 11/21/2011

A handwritten signature in black ink, appearing to read "Veronica Polidori", written over a horizontal line. The signature is highly stylized and cursive.

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing COMBINED COMPLAINT AND CONSENT AGREEMENT to:

Polidori Corporation, Inc.
5890 Highway 95, Suite A
Fort Mohave, AZ 86426

Poli-Gold, L.L.C.
1341 Powell Drive
Lake Havasu City, AZ 86406

Veronica Polidori
1889 Fairway
Lake Havasu City, AZ 86406

The original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. EPA Region 8 (RC
1595 Wynkoop Street
Denver, CO 80202-1129

12 | 14 | 11
Date _____

Judith M. McTernan
