



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

SEP 10 2010

Ref: 8ENF-W

CERTIFIED MAIL #7008 3230 0003 0730 4314

RETURN RECEIPT REQUESTED

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

CERTIFIED MAIL #7009 3410 0000 2593 8726

RETURN RECEIPT REQUESTED

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

Re: Findings of Violation and  
Administrative Order for Compliance  
Docket No. **CWA-08-2010-0029**

Dear Ms. Polidori:

Based on our review of all available information, the United States Environmental Protection Agency (EPA) has determined that Polidori Corporation, Inc., and Poli-Gold, L.L.C., are in violation of the Clean Water Act, as amended (CWA or the Act). The CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers prior to the discharge of pollutants (i.e., dredged or fill material) into waters of the United States. See 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 33 C.F.R. § 328.3.

Specifically, Polidori Corporation, Inc., and Poli-Gold, L.L.C., or persons acting on their behalf, have discharged dredged and fill material into waters of the United States without authorization under the Act. These discharges of pollutants occurred within, and adjacent to a portion of the southern shoreline of, Panguitch Lake, in the south half of section 4, Township 36 South, Range 7 West in Garfield County, Utah. The discharges of dredged and fill material were made in conjunction with construction of a marina and a recreational vehicle park.



Printed on Recycled Paper

2. Respondent Poli-Gold, L.L.C. (Poli-Gold) is a limited liability company 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.
3. Respondents PCI and Poli-Gold (respondents) are engaged in construction and real estate development in Arizona and Utah.
4. 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).
5. The United States Army Corps of Engineers (Corps) has determined that Panguitch Lake is a traditional navigable water.
6. In or about July 2007, respondents, or persons acting on their behalf, began construction activities, without a permit, 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 Panguitch Lake, dredging and filling a significant portion of an existing marina, and placement of riprap 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 riprap along a portion of the southern shore of Panguitch Lake.

application, approximately 50,600 cubic yards of fill were discharged at the site at and below an elevation of 8,218 feet.

11. In response to respondents' requests, the Corps conducted a field visit to the site on December 10, 2008. Based upon site observations and data collected during that field visit and a prior field visit conducted September 26, 2008, the Corps concluded that the area at and below an elevation of 8,217 feet would meet the criteria for wetlands under the 1987 Corps of Engineers Wetland Delineation Manual and the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region.
12. On March 17, 2009, the Corps issued a letter to PCI summarizing its findings from the field visits conducted September 26, 2008, and December 10, 2008. The Corps also recommended removal of all fill material at and below an elevation of 8,217 feet and restoration of the site to pre-disturbance conditions.
13. On July 20, 2009, the Corps referred this case to 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.
14. On July 7, 2010, the Corps issued a letter in response to a June 2, 2010, letter from PCI that raised several concerns regarding the Corps' investigation of the alleged violations at the site. Among other issues, the Corps addressed its jurisdiction under § 404 of the CWA and explained that, to determine the ordinary high water mark (OHWM) of a water body, regulations and national guidance direct the Corps to first examine physical

evidence of an OHWM. In the case of Panguitch Lake, the Corps found there is a clear water stain across the lake's dam that demonstrates regular inundation to that level.

Based on the water stain, the Corps determined that the OHWM is ten inches below the top of the dam.

15. On June 30, 2010, a professional land survey was conducted on behalf of EPA because of uncertainty regarding the elevation of the top of the dam on Panguitch Lake. The survey established that the elevation of the top of the dam is 8,220.46 feet above mean sea level. Therefore, the OHWM of Panguitch Lake is 8,219.62 feet above mean sea level.
16. The construction activities described in paragraph 6 of section II of this order resulted in discharges of dredged and fill material to Panguitch Lake and its adjacent wetlands. Panguitch Lake and its adjacent wetlands provide numerous functions and values including aquatic and wildlife habitat, flood attenuation, groundwater recharge, recreation, and aesthetics.
17. The discharges described in paragraph 6 of section II of this order were performed using common earthmoving vehicles and equipment, which were operated by respondents or persons acting on their behalf.
18. Respondents are each a "person" within the meaning of § 502(5) of the CWA, 33 U.S.C. § 1362(5).
19. The discharged dredged and fill material referenced in paragraphs 6, 7, 9, 10, 12, and 16 of section II of this order is and was at all relevant times "dredged material" and "fill material" within the meaning of 33 C.F.R. § 323.2(c) and (e), respectively, and "pollutants" within the meaning of § 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The vehicles and equipment described in paragraph 17 of section II of this order are and were at all relevant times each a “point source” within the meaning of § 502(14) of the CWA, 33 U.S.C. § 1362(14).
21. Panguitch Lake and its adjacent wetlands referenced in paragraphs 6, 11, and 16 of section II of this order are and were at all relevant times “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore “navigable waters” within the meaning of § 502(7) of the CWA, 33 U.S.C. § 1362(7).
22. The placement of dredged and fill material into Panguitch Lake and its adjacent wetlands constitutes the “discharge of pollutants” within the meaning of § 502(12) of the CWA, 33 U.S.C. § 1362(12).
23. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with § 404 of the CWA, 33 U.S.C. § 1344.
24. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.
25. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.

26. Respondents are not and never have been authorized by a permit issued pursuant to § 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 6 of section II of this order.
27. The activities conducted by respondents and their agents as described in paragraph 6 of section II of this order violate § 301 of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by respondents into waters of the United States without the required permit issued pursuant to § 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of § 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permit constitutes an additional day of violation of § 301(a) of the CWA, 33 U.S.C. § 1311(a).
28. The removal of dredged and fill material illegally discharged into waters of the United States at the site and restoration and mitigation for the adverse impacts to, and the loss of the functions and values of, those waters can be achieved as a practical matter through commonly used methods of construction, digging, revegetation, and best management practices.
29. Activities to be carried out under this order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in § 101(a) of the CWA, 33 U.S.C. § 1251(a). Restoration and mitigation are appropriate to address the actual and potential harm to water quality, aquatic habitat, and wildlife habitat, as well as other functions and values, caused by respondents' unpermitted activities.

30. This order was issued after consultation and coordination with the Corps' Sacramento District.

### **III. ORDER**

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to §§ 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Respondents shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to § 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in the discharge of dredged or fill material into waters of the United States.
2. Within 14 calendar days of receipt of this order, respondents shall inform EPA in writing of their intent to fully comply with the order.
3. Upon EPA approval of the restoration and mitigation plan (plan) required by paragraph 5 of section III of this order, respondents shall conduct restoration and/or mitigation activities, as more fully described below, for impacts to Panguitch Lake and its adjacent wetlands resulting from the unauthorized discharges of dredged and fill material used to construct the new marina at the site. Respondents also shall remove all dredged and fill material not associated with construction of the marina that was discharged as a result of

the additional violations identified in this order and restore those impacted areas of Panguitch Lake and its adjacent wetlands to their pre-impact condition and grade.

4. All dredged and fill material removal, as well as all restoration and mitigation activities, shall be conducted in accordance with an EPA-approved plan prepared by a consultant experienced in shoreline and wetland restoration and mitigation. The consultant also shall directly supervise all work performed pursuant to the plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within 21 calendar days of receipt of this order.
5. Within 60 calendar days of receipt of this order, respondents shall submit to EPA for review and comment a plan, prepared by the consultant referenced in paragraph 4 of section III of this order, for restoration and/or mitigation of the impacts to Panguitch Lake below its OHWM of 8,219.62 feet above mean sea level and to its adjacent wetlands resulting from the unauthorized discharges of dredged and fill material used to construct the new marina at the site. For any areas at the marina that are not restored, no less than three acres of mitigation shall be realized for each acre of impact (a 3:1 ratio). The plan also shall provide for the removal of all dredged and fill material not associated with the construction of the new marina that was discharged to Panguitch Lake below 8,219.62 feet above mean sea level and to its adjacent wetlands as a result of the additional violations identified in this order and restoration of those impacted areas to their pre-impact condition and grade.



6. The plan shall be prepared in accordance with “U.S. Environmental Protection Agency, Region 8 Clean Water Act § 404 Enforcement: Removal/Restoration Plans and Habitat Mitigation/Monitoring Proposals,” attached hereto as Exhibit A. The plan shall include:
- a. A complete assessment of the impacts to Panguitch Lake below 8,219.62 feet above mean sea level, the wetlands adjacent to Panguitch Lake, and any other impacted areas due to respondents’ unauthorized discharges of dredged and fill material at the site;
  - b. Locations of the existing natural features and man-made improvements, including all surface disturbance, fills, channel excavations, road crossings, culverts, structures, and any other work, including a corresponding map of these locations;
  - c. A detailed work plan and schedule for all of the work and activities to be accomplished, as specified in the plan, including the application for any required permits, providing for completion of all aspects of the work no later than 90 days after EPA approves the plan;
  - d. Grading, planting, and monitoring plans, measurable criteria for success of restoration and mitigation, and provisions for proper disposal of any excess soils or other material generated during removal, restoration, and mitigation;
  - e. Detailed professional drawings of the restoration and mitigation site(s), including plan and profile drawings with control elevations for current conditions and proposed conditions; and

- f. A description of all costs to complete the restoration and mitigation work, including the costs of all consultations, permits, construction, monitoring, land acquisition, etc.
7. EPA will review the plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the plan, respondents shall, within 30 calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.
8. Upon receiving EPA's written approval of the plan, respondents shall obtain all necessary permits to implement the plan and then commence all restoration and mitigation activities in accordance with the approved plan, including the time frames specified therein, and all granted permits. Respondents shall demonstrate that all necessary permits have been granted by providing copies of all such permits, and any amendments thereto, to EPA within seven calendar days of issuance of each permit.
9. All restoration and mitigation activities conducted pursuant to this order and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in shoreline and wetland restoration and mitigation. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to EPA within 21 calendar days of receiving EPA's written approval of the plan and prior to commencement of restoration and mitigation activities.
10. This order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondents shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this

order requires a permit from the Corps under § 404 of the CWA, 33 U.S.C. § 1344. If required, respondents shall obtain such permit(s) and provide a copy to EPA pursuant to paragraph 8 of section III of this order prior to initiating any work that is to be performed pursuant to this order.

U.S. Army Corps of Engineers  
St. George Regulatory Office  
321 North Mall Drive, Suite L-101  
St. George, UT 84790  
Telephone: 435-986-3979  
Facsimile: 435-986-3981

11. Respondents shall submit two copies of the plan, all notifications, and related correspondence to:

Monica Heimdal, 8ENF-W  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129  
Telephone: 303-312-6359  
Facsimile: 303-312-6953

A copy of the plan, all notifications, and related correspondence also shall be provided to:

Wendy I. Silver, 8ENF-L  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129  
Telephone: 303-312-6637  
Facsimile: 303-312-6953

A copy of the plan also shall be provided to the Corps at the address noted in paragraph 10 of section III of this order.

12. In addition to the notification requirements set forth in paragraph 11 of section III of this order, after issuance of any Corps authorization for restoration and mitigation work,

respondents shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.

13. Any deliverables, plans, reports, specifications, schedules, and attachments required by this order are, upon approval by EPA, incorporated into this order. Any noncompliance with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this order and subject to EPA enforcement.
14. A lease, sublease, or transfer of the site shall not relieve respondents of any responsibility in the order unless EPA, respondents, and the lessee, sublessee, or transferee agree in writing to allow the lessee, sublessee, or transferee to assume such responsibility. Additionally, at least 30 calendar days prior to such lease, sublease, or transfer, respondents shall notify EPA regarding the details of the lease, sublease, or transfer at the address specified in paragraph 11 of section III of this order.
15. Respondents shall allow, or use their best efforts to allow, access by any authorized representative of EPA or its contractors, the Corps, UDEQ, the Natural Resources Conservation Service, and the U.S. Fish and Wildlife Service, upon proper presentation of credentials, to sites and records relevant to this order for any of the following purposes:
  - a. To inspect and monitor progress of the activities required by this order,
  - b. To inspect and monitor compliance with this order, and
  - c. To verify and evaluate data and other information submitted to EPA.

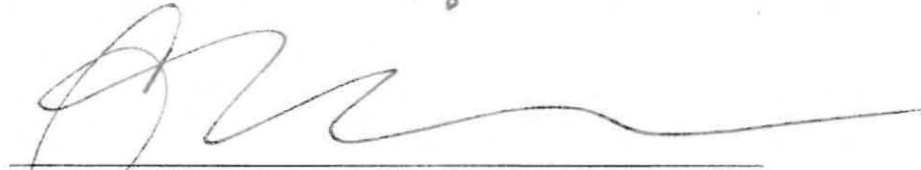
This order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the site, conduct inspections, have access to

records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

16. This order shall be effective upon receipt by both respondents.
17. Please be advised that § 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500 per day for each violation that occurred after March 15, 2004, through January 12, 2009, and \$37,500 per day for each violation thereafter of § 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under § 309(a) of the CWA, 33 U.S.C. § 1319(a). Additionally, § 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, § 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA.
18. Issuance of this order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the order.
19. Compliance with the terms and conditions of the order shall not be construed to relieve respondents of their obligation to comply with any applicable Federal, state, or local law or regulation. Failure by respondents to complete the tasks described herein in the manner and time frame specified pursuant to this order may subject respondents to a civil action under § 309 of the CWA, 33 U.S.C. § 1319, for violation of this order.

**IN THE MATTER OF: Polidori Corporation, Inc., and Poli-Gold, L.L.C.**

DATED this 10<sup>th</sup> day of September, 2010.



---

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

## **Exhibit A**

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8**

**CLEAN WATER ACT § 404 ENFORCEMENT:  
REMOVAL/RESTORATION PLANS  
AND HABITAT MITIGATION/MONITORING PROPOSALS**

**INTRODUCTION**

These guidelines are designed to assist respondents in the preparation of (1) removal and restoration plans and (2) habitat mitigation and monitoring plans associated with projects required under EPA administrative orders. They have been developed from the experiences of many cases and are intended to be merely guidelines. In the event of a conflict between an administrative order and these guidelines, the administrative order controls.

For answers to questions regarding the interpretation of these guidelines or of acceptable restoration and mitigation for a specific project, please contact the person at EPA Region 8 in the Technical Enforcement Program who is handling the case.





Office of Enforcement and Compliance Assurance  
**INFORMATION SHEET**

## U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

### Compliance Assistance Centers

([www.assistancecenters.net](http://www.assistancecenters.net))

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

#### Agriculture

([www.epa.gov/agriculture](http://www.epa.gov/agriculture) or 1-888-663-2155)

#### Automotive Recycling Industry

([www.ecarcenter.org](http://www.ecarcenter.org))

#### Automotive Service and Repair

([www.ccar-greenlink.org](http://www.ccar-greenlink.org) or 1-888-GRN-LINK)

#### Chemical Industry

([www.chemalliance.org](http://www.chemalliance.org))

#### Construction Industry

([www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911)

#### Education

([www.campuserc.org](http://www.campuserc.org))

#### Healthcare Industry

([www.hercenter.org](http://www.hercenter.org) or 1-734-995-4911)

#### Metal Finishing

([www.nmfrc.org](http://www.nmfrc.org) or 1-734-995-4911)

#### Paints and Coatings

([www.paintcenter.org](http://www.paintcenter.org) or 1-734-995-4911)

#### Printed Wiring Board Manufacturing

([www.pwbrc.org](http://www.pwbrc.org) or 1-734-995-4911)

#### Printing

([www.pneac.org](http://www.pneac.org) or 1-888-USPNEAC)

#### Transportation Industry

([www.transource.org](http://www.transource.org))

#### Tribal Governments and Indian Country

([www.epa.gov/tribal/compliance](http://www.epa.gov/tribal/compliance) or 202-564-2516)

#### US Border Environmental Issues

([www.bordercenter.org](http://www.bordercenter.org) or 1-734-995-4911)

The Centers also provide State Resource Locators ([www.envcap.org/statetools/index.cfm](http://www.envcap.org/statetools/index.cfm)) for a wide range of topics to help you find important environmental compliance information specific to your state.

### EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

#### EPA's Home Page

[www.epa.gov](http://www.epa.gov)

#### Small Business Gateway

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)

#### Compliance Assistance Home Page

[www.epa.gov/compliance/assistance](http://www.epa.gov/compliance/assistance)

#### Office of Enforcement and Compliance Assurance

[www.epa.gov/compliance](http://www.epa.gov/compliance)

#### Voluntary Partnership Programs

[www.epa.gov/partners](http://www.epa.gov/partners)

