



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CRYSTAL AQUATICS, INC.
FOR AN
UNPERMITTED DISCHARGE**

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 Crystal Aquatics, Inc., for the purpose of resolving certain disputed violations of the State Water Control Law and the applicable 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. "Crystal Aquatics" means Crystal Aquatics, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Crystal Aquatics is a "person" within the meaning of Va. Code § 62.1-44.3.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "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.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
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. "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... 9VAC 25-31-10.
12. "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.

13. "Pool" means the Kent Gardens Recreation Club pool located on 1906 Westmoreland Street, McLean, in Fairfax County, Virginia. The Pool is owned by the Kent Gardens Recreation Club and operated by Crystal Aquatics.
14. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "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.
17. "TRC" means Total Residual Chlorine.
18. "UT" means unnamed tributary.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Crystal Aquatics owns and operates a professional swimming pool management company located in Fairfax County, Virginia.
2. Pimmit Run flows to the Potomac River. The Potomac River is within the Potomac River Basin. Pimmit Run is listed in DEQ's 2010 305(b)/303(d) Integrated Report as a water impaired for recreation due to excursions from the maximum E. coli bacteria criterion and as impaired for fish consumption because of elevated Polychlorinated Biphenyls (PCBs), Chlordane, and Heptachlor epoxide in fish tissue. The sources of the impairments are reported as unknown.
3. During the three-day period of April 22-25, 2012, several pollution incidents were reported upstream and downstream of the Pool pump house discharge point located in an UT to Pimmit Run.
4. Crystal Aquatics asserts that a fish kill incident was reported upstream and is unrelated to the pool cleaning activities conducted by Crystal Aquatics at the Pool. Crystal Aquatics does not dispute that during the pool cleaning process, water was discharged from the pool pump house into an UT of Pimmit Run.

5. On April 25, 2012, DEQ received citizen phone calls regarding dead fish in Pimmit Run in McLean, located in Fairfax County, Virginia. On April 25 and 26, 2012, DEQ inspected the UT to Pimmit Run, Pimmit Run and the surrounding area starting just upstream of Westmoreland Street.
6. During the April 25, 2012, inspection of Pimmit Run and the surrounding area, DEQ observed evidence that a volume of water was discharged from the swimming pool pump house at Kent Gardens Recreation Club to an unnamed tributary (UT) of Pimmit Run during the pool cleaning. Crystal Aquatics advised DEQ that the pool cleaning was conducted by a sub-contractor of Crystal Aquatics, Jeff Allen Enterprises, Inc. (Jeff Allen).
7. During the inspection, DEQ took multiple water samples for TRC, pH and Dissolved Oxygen (DO) and found that water samples taken just downstream from the pump house discharge point resulted in TRC results of at least 4.4 mg/L. Upstream samples, in the UT, for TRC were 0.31 mg/L (50 ft upstream) and 0.19 mg/L (200 ft upstream).
8. DEQ observed dead fish on the bottom of the Pimmit Run stream on both sides of the foot bridge, approximately half a mile downstream from the discharge point. In addition, DEQ observed a noticeable smell of chlorine in the air. A strong chlorine smell was also observed by DEQ while inspecting the area around the Club pool.
9. 9 VAC 25-260-140.B states that the acute criteria standard for TRC is 0.019 mg/L. This standard is established to protect aquatic life in Virginia waters.
10. Crystal Aquatics asserts that the chlorine smell is attributed to a granular chlorine paste that was applied to the pool plaster after all water discharge was completed.
11. Crystal Aquatics asserts it did not have the opportunity to gather water samples or other evidence that may dispute DEQ's findings as it first heard of the fish kill via a third party on April 27, 2012. Upon receiving the information Casey Ford, Crystal Aquatics' President, immediately contacted DEQ.
12. On May 11, 2012, at the request of DEQ, Crystal Aquatics met with DEQ to discuss the work performed at the Kent Gardens Recreation Club.
13. DEQ issued a Notice of Violation, NOV No. W2012-05-N-101, to Crystal Aquatics on May 31, 2012, for the unauthorized discharge into a UT of Pimmit Run.
14. 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."
15. 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.

16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
17. The Department has issued no permits or certificates to Crystal Aquatics.
18. Pimmit Run and the UT to Pimmit Run are surface waters located wholly within the Commonwealth and are “state water[s]” under State Water Control Law.
19. On June 25, 2012, Crystal Aquatics met with DEQ to discuss the NOV. At the meeting, Crystal Aquatics submitted cleaning guidelines and a testing checklist for the company and sub-contractors to follow during future pool cleanings, which addresses releases of high levels of chlorine.
20. On June 27, 2012, Crystal Aquatics submitted to DEQ a revised sub-contractor form agreement for future pool cleaning and service.
21. On December 15, 2012, Crystal Aquatics submitted a copy of best management practices (BMPs) for spring pool cleaning. The copy of the BMPs was provided to supplement the sub-contractor guidelines and checklist provided to DEQ on June 27, 2012.
22. On January 15, 2013, Crystal Aquatics submitted a response letter to DEQ. The letter included an attached letter from Jeff Allen asserting that the pH and chlorine of the water was tested and it was neutral prior to discharge.
23. Based on the results of the inspection conducted on April 25 and 26, 2012, the Board concludes that Crystal Aquatics has violated Va. Code § 62.1-44.5 and 9 VAC 25-260-140.B, as described in paragraph C(6) and C(8), above.
24. Crystal Aquatics has fully cooperated with DEQ during this process and has submitted documentation that verifies that the type of violations as described in paragraph C(6) and C(8), above, will be prevented in the future.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Crystal Aquatics, and Crystal Aquatics agrees to pay a civil charge of \$5,000.00 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

Crystal Aquatics 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Crystal Aquatics for good cause shown by Crystal Aquatics, 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, Crystal Aquatics admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Crystal Aquatics consents to venue in the Circuit Court of the County of Fairfax for any civil action taken to enforce the terms of this Order.
5. Crystal Aquatics 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 Crystal Aquatics 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. Crystal Aquatics 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. Crystal Aquatics shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Crystal Aquatics 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 Crystal Aquatics. Nevertheless, Crystal Aquatics 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 Crystal Aquatics has completed all of the requirements of the Order;
 - b. Crystal Aquatics 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 Crystal Aquatics.

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

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

And it is so ORDERED this 20th day of June, 2014.



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

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Crystal Aquatics, Inc. voluntarily agrees to the issuance of this Order.

Date: 4/21/14 By: Casey Ford, President
(Person) (Title)
Crystal Aquatics, Inc.

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 21st day of
April, 2014, by Casey Ford who is
President of Crystal Aquatics, Inc., on behalf of the corporation.

[Signature]
Notary Public
7135610
Registration No.

My commission expires: 8/31/2015

Notary seal:

