



COMMONWEALTH of VIRGINIA

Molly Joseph Ward
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
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David K. Paylor
Director

Robert J. Weld
Regional Director

October 4, 2017

Crop Production Services, Inc.
Attn: Mr. J. Billy Pirkle, Senior Director EHS
P.O. Box 22
3005 Rocky Mountain Ave.
Loveland, CO 80538

NOTICE OF VIOLATION

RE: NOV-17-10-BRRO-002
Crop Production Services, Inc. Unpermitted Discharge To State Waters on 07/28/17 in Botetourt County, Virginia; IR# 2018-W-0255

Dear Mr. Pirkle:

This letter notifies you of information upon which the Department of Environmental Quality (Department or DEQ) may rely in order to institute an administrative or judicial enforcement action. Based on this information, DEQ has reason to believe that you may be in violation of the State Water Control Law and Regulations.

This letter addresses conditions at the site named above, and also cites compliance requirements of the State Water Control Law and Regulations. Pursuant to Va. Code § 62.1-44.15(8a), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* (APA). DEQ requests that you respond **within 10 days of the date of this letter** to arrange a prompt meeting.

OBSERVATIONS AND LEGAL REQUIREMENTS

On July 29, 2017, DEQ staff responded to a fish kill in Tinker Creek in Botetourt and Roanoke Counties, Virginia. The resultant investigation report indicated that a release of surfactant material (believed to have occurred on July 28, 2017) near 218 Simmons Drive, Botetourt County, Virginia washed into Tinker Creek and caused large areas of foam on Tinker

Creek for a distance of more than 5 miles and resulted in a fish kill. The following describes the staff's factual observations and identifies applicable legal requirements:

1. *Observation:* On July 29, 2017, the Department began an investigation of a fish kill that was reported on Tinker Creek in the vicinity of 218 Simmons Drive, Botetourt County, Virginia. Visible foam and evidence of a fish kill were traced to Crop Production Services (CPS) in Botetourt County, Virginia by Botetourt County Fire & EMS personnel. Botetourt County Officials made entry to the site, where they identified a leaking 275-gallon container containing Termix 5301 product. The product container was being stored on a paved area on the south side of the warehouse, and was leaking through a hole in the side of the container (the hole was approximately 1.5" in size). The Virginia Department of Emergency Management (VDEM) estimated that the volume of product released was one hundred sixty-five (165) gallons. Further examination of the site showed that the released product had leaked onto a paved area, then flowed down a slope into a stormwater drainage ditch, which discharged into an on-site stormwater pond. The stormwater pond, in turn, discharged to a dry ditch and an unnamed tributary to Tinker Creek. Visible impacts from this discharge of material were observed for a distance of more than 5 miles downstream of the site.
2. *Observation:* Tinker Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
3. *Observation:* A review of Department files indicates that the Department has issued no permits or certificates to Crop Production Services, Inc. for discharges into state waters.

Legal Requirements:

Virginia Code § 62.1-44.5(A) 1 & 3 provides "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to:

1. **Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.**
3. **Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses."**

ENFORCEMENT AUTHORITY

Va. Code § 62.1-44.23 of the State Water Control Law provides for an injunction for any violation of the State Water Control Law, any State Water Control Board rule or regulation, an order, permit condition, standard, or any certificate requirement or provision. Va. Code §§ 62.1-44.15 and 62.1-44.32 provide for a civil penalty up to \$32,500 per day of each violation of the same. In addition, Va. Code § 62.1-44.15 authorizes the State Water Control Board to issue orders to any person to comply with the State Water Control Law and regulations, including the

imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the State Water Control Law and regulations. Va. Code §§ 62.1-44.32(b) and 62.1-44.32(c) provide for other additional penalties. Finally, Va. Code § 62.1-44.15(11) provides the State Water Control Board the authority to recover investigative and fish replacement costs in cases of fish kills caused by the discharge of sewage, industrial wastes or other wastes.

The Court has the inherent authority to enforce its injunction, and is authorized to award the Commonwealth its attorneys' fees and costs.

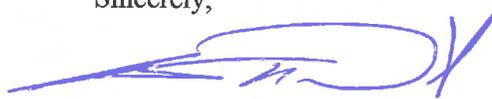
FUTURE ACTIONS

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed to ensure compliance with state law and regulations, any relevant or related measures you plan to take or have taken, and a schedule, as needed, for further activities. In addition, please advise us if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In order to avoid adversarial enforcement proceedings, you may be asked to enter into a Consent Order with the Department to formalize a plan and schedule of corrective action and to settle any outstanding issues regarding this matter, including the assessment of civil charges.

In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. Also, if informal discussions do not lead to a satisfactory conclusion, you may request in writing that DEQ take all necessary steps to issue a final decision or fact finding under the APA on whether or not a violation has occurred. For further information on the [Process for Early Dispute Resolution](#), please see Agency Policy Statement No. 8-2005 posted on the Department's website under "Programs," "Enforcement," and "Laws, Regulations, & Guidance" (<http://www.deq.virginia.gov/Programs/Enforcement/LawsRegulationsGuidance.aspx>) or ask the DEQ contact listed below.

Please contact Robert Steele at (540) 562-6777 or robert.steele@deq.virginia.gov within 10 days to discuss this matter and arrange a prompt meeting.

Sincerely,



R. Nelson Dail
Regional Enforcement Manager

cc: PReP CASE FILE IR# 2018-W-0255
Robert Steele, DEQ-BRRO (via email)
Steve Woodyard, DEQ- BRRO (via email)
Allen Linkenhoker, DEQ-BRRO (via email)
Beth Lohman, DEQ-BRRO (via email)