



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3801
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

~~Jeffery A. Street~~
Regional Director

July 18, 2007

WARNING LETTER

Kenneth Moreland, President
Mosby Woods Condominium Association
10173 Mosby Woods Drive
Fairfax, Virginia 22030

RE: WL No. W2007-07-N-101
Mosby Woods Pool
IR#2007-N-0923
Fairfax City

Dear Mr. Moreland:

The Department of Environmental Quality (DEQ), Northern Regional Office (NRO), has reason to believe that the Mosby Woods Condominium Association Pool is in violation of State Water Control Law § 62.1-44.

This letter addresses conditions at the facility 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. The Department requests that you respond **within 20 days of the date of this letter**.

OBSERVATIONS AND LEGAL REQUIREMENTS

On June 23, 2007, the Department of Environmental Quality (DEQ) received a complaint of a fish kill in Accotink Creek and an odor of chlorine around the creek area. On the same day, DEQ personnel visited the site and confirmed the presence of dead fish and dead crayfish in Accotink Creek. Also, a chlorine odor was detected by olfactory senses around the creek area. On June 25, 2007, DEQ personnel visited the Mosby Woods Condominium Association pool with Fairfax City Fire Department personnel. At that time, an outfall pipe into Accotink Creek was observed immediately behind the pool. The fire department also indicated the pool had been closed a few days prior due to an issue with the pools chlorination system. Based on this information, it appears a discharge of chlorine may have occurred from the Mosby Woods pool.

Title 9 of the Virginia Administrative Code (VAC), Section 25-31-50 and Section 62.1-44.5 of the State Water Control Law prohibit the discharge of pollutants (which include, but are not limited to *sewage, paint, antifreeze, floor soap, mulch leachate, etc*) into State waters without a state permit. Section 62.1-44.32 of the law provides for penalties and/or fines for violations of the law or regulation listed above. Please be aware that discharges adjacent to state waters, which include discharges to storm sewers,

must also be permitted.

The relevant citations for this complaint are summarized below.

§62.1-44.5 Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.

- A. *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;*
 2. *Excavate in a wetland;*
 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.*

ENFORCEMENT AUTHORITY

Va. Code § 62.1-44.23 of the State Water Control Law provides for 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, and to impose civil penalty of not more than \$10,000. Va. Code § 62.1-44.32 (b) and 62.1-44.32 (c) provide for other additional penalties.

The court has the inherent authority to enforce its injunction, and is authorized to award the Commonwealth its attorney's fees and costs.

FUTURE ACTIONS

After reviewing this letter, please respond in writing to DEQ **within 20 days of the date of this letter** detailing actions you have taken or will be taking to ensure compliance with state law and regulations. If corrective action will take longer than 90 days to complete, you may be asked to sign a Letter of Agreement or enter into a Consent Order with the Department to formalize the plan and schedule. *It is DEQ policy that appropriate, timely, corrective actions undertaken in response to a Warning Letter will avoid adversarial enforcement proceedings and the assessment of civil charges or penalties.*

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 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. If you complete the Process for Early Dispute Resolution and are not satisfied with

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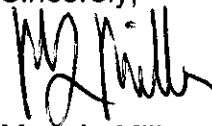
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the resolution, you may request in writing that DEQ take all necessary steps to issue a case decision where appropriate. For further information on the Process for Early Dispute Resolution, please visit the Department's website under "Laws & Regulations" and "DEQ Regulations" at http://www.deq.virginia.gov/regulations/pdf/Process_for_Early_Dispute_Resolution_8260532.pdf or ask the DEQ contact below.

Please direct written materials regarding this matter to Mark Miller. If you have questions or wish to arrange a meeting, please contact me at (703) 583-3864 or by e-mail at miller@deq.virginia.gov.

Sincerely,



Mark L. Miller

Pollution Response Coordinator

cc: Lt. Gary Lewis, Fairfax City Fire Department via e-mail
Adrian Fremont, Special Projects Engineer, Fairfax City via e-mail
Jeremy Fish, US Aquatics, 24307 Gum Spring Rd, Sterling, VA 20166