

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

_____)	UNILATERAL
In the Matter of:)	ADMINISTRATIVE
)	ORDER AND PERMIT SUSPENSION
Massachusetts Natural)	
Fertilizer Company, Inc. and)	Enforcement Document # 00013644
<u>Otter Farm Inc.</u>)	

I. THE PARTIES

1. The Massachusetts Department of Environmental Protection (“MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Central Regional Office at 8 New Bond Street, Worcester, Massachusetts 01606.
2. Massachusetts Natural Fertilizer Company, Inc. (“Mass Natural”) is a Massachusetts corporation with its principal office at 65 Bean Porridge Hill Road, Westminister, Massachusetts. For the purposes of this Order, Mass Natural’s mailing address is 65 Bean Porridge Hill Road, Westminister, MA 01473.
3. Otter Farm, Inc. (“Otter Farm”) is a Massachusetts corporation with its principal office at 35 Wilkins Road in Gardner, Massachusetts. Pursuant to a deed recorded in the Worcester North District Registry of Deeds in book 4146 at page 234, Otter Farm owns three contiguous parcels of land off Bean Porridge Hill Road in Westminister, Massachusetts identified by the Westminister Assessor’s Office as Parcel ID 44//18, Parcel ID 44//19, and Parcel ID 44//20. For purposes of this Order, Otter Farm’s mailing address is 35 Wilkins Road, Gardner, MA 01440.

II. STATEMENT OF FACTS AND LAW

4. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 111, § 150A and M.G.L. c. 111, § 150A1/2 and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00. MassDEP has authority under M.G.L. c. 111, § 2C to issue Orders to any person in violation of any law or regulation MassDEP is authorized to enforce. The Site Assignment Regulations at 310 CMR 16.01(6) provide that the owner and operator shall be jointly and severally liable such that MassDEP may take action for any violation against the owner, the operator, or both.
5. On October 6, 2020, MassDEP issued a “Final Approval Recycling, Composting or Conversion (RCC) Operation BWP SW46,” Authorization Number SW46B/47B-0000053 (the “RCC Permit”), to Mass Natural for its operations at 65 Bean Porridge Hill Road in

Westminster, Massachusetts (the "Site"). The RCC Permit became effective on October 27, 2020 and expires on October 27, 2025.

6. The RCC Permit authorizes Mass Natural to accept and utilize source-separated organics and other compostable materials to produce marketable compost materials at the Site.

7. Paragraph VI.B.4. of the RCC Permit requires Mass Natural to "ensure that the Operation, at all times, does not accumulate or store or handle materials of a nature or in quantities so as to cause or pose a threat to the public health, safety, welfare or the environment."

8. The private drinking water well at the Site and more than 100 private drinking water wells near the Site are contaminated with high levels of certain per- and poly-fluoroalkyl substances (collectively, "PFAS") regulated by MassDEP under M.G.L. c. 21E and 310 CMR 40.0000 (the "MCP"). PFAS levels in most of those private wells (83) exceed Imminent Hazard Levels as described in 310 CMR 40.0321(2)(a). MassDEP has identified Mass Natural and Otter Farm as Potentially Responsible Parties ("PRPs") for the private well contamination under the MCP. The PRPs are providing bottled water and/or water treatment systems to private well owners with contaminated wells and they continue to investigate the full extent of private well contamination from the Site as part of an Immediate Response Action Plan under 310 CMR 40.0414.

9. On May 17, 2022, MassDEP issued a Unilateral Administrative Order, Enforcement Document No. 00013278 (the "UAO"), directing Mass Natural to cease and desist from distributing any materials containing PFAS at levels that would exceed applicable standards for PFAS in groundwater that is or could be used as drinking water, including private wells. The UAO was based on information Mass Natural voluntarily submitted to MassDEP showing elevated levels of PFAS compounds in unspecified materials stored at the Site.

10. On June 30, 2022, Mass Natural voluntarily submitted 30 additional sampling results to MassDEP showing that most of the materials sampled on May 25 and June 2, 2022 at the Site contain one or more PFAS compounds at levels exceeding MCP standards. Specifically, the following materials all had exceedances of RCS-1 standards for at least one PFAS compound: landfill cover; golf course material; fiber biopellets; potting soil; compost; "turkey pad" materials; Greif paper; "windrow"; and Top Shelf (loam). The data were inconclusive for four other materials: Seaman paper, lettuce waste, tea leaves waste, and cannabis roots.

11. The UAO also required Mass Natural to submit a sampling plan for all the materials at the Site. MassDEP approved the sampling plan on June 30, 2022 and the approved sampling took place during a five-day period from July 7 to July 13, 2022. Using MassDEP-approved protocols, Mass Natural collected more than 150 samples for PFAS analysis.

12. Based on PFAS concentrations exceeding Imminent Hazard values in drinking water at the Site and in private wells off-site, and PFAS contamination in incoming, intermediate, and finished materials at the Site, MassDEP has determined that operation of the Site has caused or

poses a threat to public health and the environment, in violation of Paragraph VI.B.4. of the RCC Permit. Failure of any person to comply fully with an RCC permit is a violation of 310 CMR 16.01(8)(a)8, for which Mass Natural and Otter Farm are jointly and severally liable under 310 CMR 16.01(6).

13. M.G.L. c. 111, § 150A provides that MassDEP may rescind, suspend or modify a permit upon a determination that the operation or maintenance of the facility results in a threat to the public health and safety or to the environment. MassDEP has determined that operation or maintenance of the facility poses a threat to public health, safety, or the environment due to the presence of PFAS contamination in materials and groundwater on the Site and in over 100 private drinking water wells off-site.

14. The Site Assignment Regulations at 310 CMR 16.01(8)(b)2 provide that MassDEP may rescind, suspend, revoke, or modify an RCC permit whenever it has reason to believe that a violation of 310 CMR 16.00 has occurred.

15. The Site Assignment Regulations at 310 CMR 16.01(8)(b)1 provide that MassDEP may order the owner or operator to cease operations until the violation is corrected to the satisfaction of MassDEP, and/or to take appropriate remedial measures by a specified date to bring the Site into compliance or to protect public health, safety or the environment.

III. DISPOSITION AND ORDER

16. For the reasons stated above, and pursuant to the authority granted to MassDEP under the laws and regulations set forth above in Paragraph 4, MassDEP hereby **SUSPENDS** the RCC Permit, effective immediately.

17. For the reasons stated above, and pursuant to the authority granted to MassDEP under the laws and regulations set forth above in Paragraph 4, MassDEP hereby orders Mass Natural and Otter Farm to take the following actions:

- A. Effective immediately, cease composting operations at the Site; and
- B. Within 30 days of the date of this Order, submit to MassDEP for its review and approval a plan to take appropriate remedial measures to protect public health, safety, and the environment, including but not limited to removal of all materials listed in paragraph 10 above as exceeding PFAS standards from the Site.

18. Notwithstanding this Order, MassDEP reserves the right to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including but not limited to referral to the Attorney General's Office for criminal prosecution or civil action including court-imposed civil penalties, or administrative penalties assessed by MassDEP.

19. Mass Natural and Otter Farm are advised that M.G.L. c. 111, § 150A provides that “[a]ny person, including any political subdivision of the commonwealth who violates this section, or any order issued pursuant thereto, or any rule or regulation promulgated hereunder (1) shall be subject to a fine of not more than twenty-five thousand dollars, or by imprisonment for not more than two years in a house of correction, or both, for each such violation; or (2) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each such violation.”

20. Mass Natural and Otter Farm are further advised that M.G.L. c. 21A, § 16 provides for civil administrative penalties of up to twenty-five thousand dollars (\$25,000.00) for each day after the issuance of this Order during which each violation covered by this Order continues or is repeated.

IV. APPEAL RIGHTS

21. This Order is an action of MassDEP. If you are aggrieved by this action, you may request an adjudicatory hearing. A request for a hearing must be made in writing and must be received by MassDEP, as provided in 310 CMR 1.01, within twenty-one (21) days from the date of this Order.

22. Under 310 CMR 1.01(6)(b), the request must state clearly and concisely the facts that are the grounds for the request, and the relief sought. Additionally, the request must state why the Order is not consistent with applicable laws and regulations.

23. The original hearing request must be mailed to:

Case Administrator
Office of Appeals and Dispute Resolution
Massachusetts Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108

A valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100.00) for the filing fee must be mailed separately along with a completed Adjudicatory Hearing Fee Transmittal Form to:

Massachusetts Department of Environmental Protection
P.O. Box 4062
Boston, Massachusetts 02211

A copy of the transmittal form is attached for your convenience. A copy of the transmittal form and check should be sent to the Case Administrator at the address above.

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A copy of the hearing request should be sent to:

Douglas Fine, Deputy Regional Director
Bureau of Air & Waste
Massachusetts Department of Environmental Protection
8 New Bond Street
Worcester, Massachusetts 01606

Failure to pay the filing fee as required is grounds for dismissal of the request for hearing. Upon a showing of undue financial hardship, MassDEP may waive the adjudicatory hearing filing fee. A person who believes that payment of the \$100.00 filing fee would be an undue financial hardship must file, together with the request for adjudicatory hearing as provided above, an affidavit setting forth the facts the appellant believes constitute the undue financial hardship.

24. Mass Natural and Otter Farm may also be subject to administrative or civil penalties for the past violations described in this Order. Questions regarding the contents of this Order should be directed to Douglas Fine, Deputy Regional Director, MassDEP, 8 New Bond Street, Worcester, Massachusetts 01606, or douglas.fine@mass.gov.

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 
Mary Jude Pigsley, Regional Director
Central Regional Office
8 New Bond Street
Worcester, MA 01606

Date: 7/20/22