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STATE OF ILLINOIS  
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

February 11, 2009

PCB 09-60

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Crop Production Services***

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Jane E. McBride  
Sr. Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

JEM/pk  
Enclosures

CLERK'S OFFICE  
STATE OF ILLINOIS  
JAN 13 2009

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**PEOPLE OF THE STATE OF ILLINOIS,** )

**Complainant,** )

**vs.** )

**CROP PRODUCTION SERVICES,** )  
**a Delaware corporation,** )

**Respondent.** )

PCB No. *09-60*  
(Enforcement)

**NOTICE OF FILING**

To: Crop Production Services  
a Delaware corporation  
c/o CT Corporation Systems, R.A.  
208 South LaSalle Street, Ste. 814  
Chicago, IL 60604

**RECEIVED**  
**CLERK'S OFFICE**  
**FEB 17 2009**  
**STATE OF ILLINOIS**  
**Pollution Control Board**

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

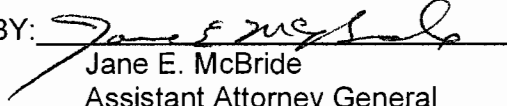
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2006), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
Jane E. McBride  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 11, 2009

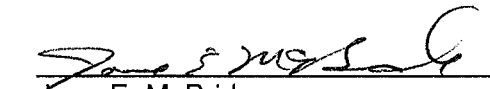
## CERTIFICATE OF SERVICE

I hereby certify that I did on February 11, 2009, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Crop Production Services  
a Delaware corporation  
c/o CT Corporation Systems, R.A.  
208 South LaSalle Street, Ste. 814  
Chicago, IL 60604

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

  
Jane E. McBride  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

FEB 17 2009

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
CROP PRODUCTION SERVICES, )  
a Delaware corporation, )  
)  
Respondent. )

PCB No. 09-60  
(Enforcement)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, Jane E. McBride, Sr. Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: Jane E. McBride  
Jane E. McBride  
Environmental Bureau  
Sr. Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 11, 2009

STATE OF ILLINOIS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 CROP PRODUCTION SERVICES, )  
 a Delaware corporation, )  
 Respondent. )

STATE OF ILLINOIS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PCB NO. 09-60  
 (Enforcement)  
**RECEIVED**  
 CLERK'S OFFICE  
 FEB 17 2009

COMPLAINT

STATE OF ILLINOIS  
Pollution Control Board

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent Crop Production Services, Inc., a Delaware corporation, as follows:

COUNT I

WATER POLLUTION VIOLATIONS – FERTILIZER SPILL – SINCLAIR

1. This Count is brought on behalf of the People of the State of Illinois, by LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), 42(e) (2006).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4, and which is charged, *inter alia*, with the duty of enforcing the Act.

3. This complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31, after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent, Crop Production Services, Inc. ("CPS"), a subsidiary of United Agri Products, Inc., is a foreign corporation in good standing in the State of Illinois. At all times relevant to this complaint, UAP Distribution, Inc. owned and operated the subject sites. Crop Production Services, Western Farm Service, Inc. and UAP Distribution, Inc., were affiliated

companies under the common ownership of United Agri Products, Inc. The three affiliated companies merged effective January 1, 2009. The surviving entity is UAP Distribution, Inc. In connection with the merger, UAP Distribution, Inc. changed its name to Crop Production Services, Inc. CPS' corporate headquarters is located at 7251 W 4th Street Greeley, CO 80634. CPS sells feed by retail and sells farm supplies by both retail and wholesale. CPS' registered agent is CT Corporation Systems, 208 South LaSalle Street, Suite 814, Chicago, IL 60604.

5. Respondent CPS owns and operates an agricultural chemical and fertilizer retail facility northeast of Jacksonville, Illinois in Morgan County. The facility is known as CPS Richter (Sinclair). The legal description of the site is SW 1/4, Section 28, T16N, R9W (Road District No. 1), Morgan County (the "site" or "facility"). The facility is located in the community of Sinclair, which consists of an unincorporated area including four residential structures and the CPS Richter facility. The facility is located in the watershed of Indian Creek. Indian Creek is tributary to the Illinois River.

6. At the Sinclair site, Respondent CPS handles dry fertilizer products, anhydrous ammonia, liquid fertilizer solutions and various pesticides. These products are delivered to the site by truck. Dry fertilizer products stored and handled at the site include potash and diammonium phosphate ("DAP"). Anhydrous ammonia is handled in bulk and stored in two, 12,000 gallon fixed storage tanks on-site. Approximately 40 ammonia nurse tanks are available at the site. Pesticides are handled in bulk, mini-bulks and packaged products. Liquid fertilizer (28% nitrogen) solution is also stored on-site. Two above-ground steel bulk tanks are available for storage of urea-ammonium nitrate (UAN 28% nitrogen solution). One of the tanks is an 18,000-gallon tank and was out of service at the time of the release. The other is a 30,000-gallon capacity, cone bottom tank that was involved in the July 21, 2005 release of 28%

nitrogen solution.

7. Section 12 (a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2006), provides in pertinent part, as follows:

No person shall:

a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

\* \* \*

d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;

8. Section 255.80 of the agrichemical containment regulations, 8 Ill. Admin. Code 255.80 provides, in pertinent part, as follows:

Section 255.80 Secondary Containment

- a) All agrichemical non-mobile storage containers for liquid pesticides and liquid fertilizer shall be located within a secondary containment structure.
- b) Secondary containment structures and systems shall provide the following capacity:
  - 1) When not protected from receiving precipitation, the containment shall have a minimum containment volume of a 6-inch rain storm (a 25 year, 24 hour rain), plus the capacity of the largest tank, and the volume displaced by the bases of the other tanks located within the secondary containment structure.
  - 2) When protected from receiving precipitation, the containment shall have a minimum containment volume of 100% of the capacity of the largest tank, plus the volume displaced by the bases of the other tanks located within the secondary containment structure.
- c) Structural materials and integrity shall provide secondary containment that meets or exceeds the requirement of this Section. Materials shall be compatible with the agrichemical to be contained.
  - 1) General requirements include:



- A) Clay, natural soil clay mixtures or clay/bentonite mixtures shall not be used to contain any bulk pesticide.
- B) Secondary containment for liquid agrichemicals storage at facility sites should provide for separation between bulk pesticides and bulk fertilizer to the extent that a common wall or curbing between the fertilizer area and the pesticide area shall provide for the interception and recovery including clean up of pesticide spills while the entire secondary containment area shall meet or exceed the total capacity requirement specified in this Section.
- C) The secondary containment structure shall be constructed to a water permeability rate of not greater than  $1 \times 10^{-6}$  centimeters per second and maintained so that liquid movement through the walls and base does not exceed a rate of  $1 \times 10^{-5}$  centimeters per second permeability rate. The secondary containment structure shall be designed and maintained to withstand a full hydrostatic head of any contained liquid. The containment area shall not be equipped with a permanent pump unless the pump has only a manual mode of operation.
- D) The secondary containment structure shall not have a discharge outlet or gravity drain through the wall or floor.
- E) Synthetic materials or liners may be used with secondary containment structures provided they are compatible with agrichemicals being contained and it is installed according to manufacturer's written direction and repaired and maintained according to manufacturer's recommendations. These directions and recommendations shall become records maintained at the facility site.

9. On July 21, 2005, a release at the site of approximately 11,000 gallons of urea-ammonium nitrate (UAN 28% nitrogen solution) 28% nitrogen fertilizer was discovered by Respondent's employees and reported.

10. The source of the release was a reducer fitting on the 30,000-gallon, cone shaped upright steel tank used for liquid fertilizer. The cause of failure was the corrosive nature of the 28% nitrogen solution acting on the cast iron fitting resulting in creation of an approximately 1 inch hole in the fitting. There was no shut off capability or valve ahead of the

failure. The tank was 12 to 13 years old, and the fitting had not been replaced.

11. The secondary concrete containment structure surrounding the 30,000 gallon tank also failed, and released the liquid fertilizer into the environment. Three of the walls of the secondary containment had been poured after the floor was installed. Liquid fertilizer leaked out of the wall/floor joint at all three of the walls that were poured on top of the concrete floor.

12. On July 21, 2005, the Illinois EPA conducted an inspection of the release site.

13. At the time of the July 21, 2005 inspection, Illinois EPA personnel observed and photographed fertilizer pooling and puddles, as well as stained ground, outside of the concrete containment. The surface liquid and staining indicated that the released material flowed east across the facility property and entered a dry creek bed, an unnamed tributary of Indian Creek, where it traveled north another 100 to 200 yards. The inspectors observed and photographed the surface drainage of fertilizer east across the facility property to the dry creek bed and observed small pools of fertilizer in the dry creek bed.

14. On November 21, 2005, an inspector from the Illinois EPA, Division of Water Pollution Control/Field Operations Section, Peoria Regional Office conducted a follow-up inspection of the site. Samples from three up gradient supply wells in the vicinity of the spill showed total Kjeldahl nitrogen levels of 30.9 mg/l at the on site well, 30.5 mg/l at well located at 1939 Sinclair Road well, and 31.8 mg/l at a well located at 1933 Sinclair Road well. The ammonia concentration of a water sample collected from a puddle in the dry bed of the unnamed tributary of Indian Creek, down gradient of the spill, was 56.4 mg/l. Two soil samples were collected from the dry creek bed. Analytical results from the sample collected in the drainage path of the spill at the property boundary were as follows: ammonia 1040 mg/l, nitrate/nitrite 138 mg/l, and Total Kjeldahl nitrogen 33,000 mg/l. Analytical results of the second sample off site were as follows: ammonia 740 mg/l, nitrate/nitrite 209 mg/l, and Total Kjeldahl

nitrogen 25,800 mg/l.

15. Respondent CPS has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the release of liquid fertilizer from its Sinclair facility to an unnamed tributary of Indian Creek, which flows into the Illinois River.

16. The Respondent CPS has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to an unnamed tributary of Indian Creek.

17. The discharge of contaminants from the Respondent's facility has caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

18. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a).

19. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

#### **PRAYER FOR RELIEF**

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board grant the following relief:

- A. Find that Respondent Crop Production Services, Inc. has violated Section 12 (a)

and (d) of the Act, 415 ILCS 5/12(a) and (d);

B. Order the Respondent from to cease and desist further violations of the Act and associated regulations pursuant to section 42(e) of the Act, 415 ILCS 5/42(e);

C. Assess against the Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

D. Grant such other and further relief as the Board deems appropriate.

## **COUNT II**

### **WATER POLLUTION VIOLATIONS – FERTILIZER SPILL – WHITE HALL**

1. This Count is brought on behalf of the People of the State of Illinois, by LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”) pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/42(d), 42(e) (2006) .

2-4. Complainant realleges and incorporates by reference herein paragraphs 2 through 4 of Count I as paragraphs 2 through 4 of this Count II.

5. Respondent CPS owns and operates an agricultural chemical and fertilizer retail facility in the southeast portion of White Hall in Greene County. The facility is known as CPS Richter (White Hall). The legal description of the site is NE 1/4, Section 2, T11N, R12W (White Hall Township), Greene County (the “site” or “facility”). The facility is located in White Hall, bordered on the west by an active railroad. The facility is bordered on the north by East Carlinville Street, on the south by Tunison Street and on the east by White Street. It is located in a residential area.

6. The majority of surface drainage from the White Hall facility flows to the south. A stormwater inlet structure is located at the south end of the facility in the north street ditch of

Tunison Street. Subsurface drainage from the stormwater inlet flows southeast to a 30-inch corrugated metal outlet pipe located on the east side of Fulton Street.

7. At the White Hall site, Respondent CPS handles dry fertilizer products, anhydrous ammonia, liquid fertilizer solutions and various pesticides. These products are delivered to the site by truck. Dry fertilizer products stored and handled at the site include potash and diammonium phosphate ("DAP"). Anhydrous ammonia is handled in bulk only and stored in a 30,000 gallon fixed storage tank on-site. Pesticides are handled in bulk, mini-bulks and packaged products. Liquid fertilizer (28% nitrogen) solutions are stored in various, above ground, metal bulk tanks on-site. The products include 28% and 32% nitrogen solution and 10-34-0. Urea-ammonium nitrate is brought to the site by truck. It is delivered as 32% nitrogen solution and is then cut to 28% while on-site.

8-9. Complainant realleges and incorporates by reference herein paragraphs 7 and 8 of Count I as paragraphs 8 and 9 of this Count II.

10. On February 18, 2005, a CPS employee observed a leak of 32% nitrogen fertilizer solution from a 500,000-gallon tank at CPS' facility in White Hall, Illinois. The release came from the bottom of the tank. The tank contained 32% nitrogen solution that was in the process of being cut to 28% solution. The tank failure was on the bottom, or base, of the tank. Due to the location of the failure, the release from the tank could not be stopped.

11. The subject 500,000-gallon tank was located inside a secondary containment structure.

12. The secondary containment structure failed to contain the leak. The material leaked from the secondary containment in two locations. The majority of the release occurred at the southeast corner of the secondary containment structure, from beneath the concrete floor of the secondary containment structure. Material also leaked from a joint between the concrete

sidewall and the concrete floor of the secondary containment structure at a location immediately east of the subject tank.

13. The release occurred through an approximately 1-inch hole in the floor of the 500,000 gallon tank. This hole was in proximity to a seam or joint in the concrete floor of the secondary containment structure. The steel tank sat directly on the surface of the concrete floor.

14. The secondary containment structure had been constructed in two phases. The west half was built in 1996 and the east half was poured in 1997. It was the seam or joint between the two phases of construction that was the source of the majority of material that was released from the structure.

15. In response to the release, Respondent CPS excavated soil impacted by the release. Respondent CPS installed four small, subsurface collection drains and sumps. The sumps consisted of limited drain lines positioned directly beneath the northeast corner of the subject secondary containment structure.

16. On October 6, 2005, the Illinois EPA conducted a follow-up compliance inspection. At the time of the inspection, the Illinois EPA collected samples from the collection sumps. Liquid sample collected from the small sump located on the north side of the subject secondary containment was clear with an ammonia odor. The analytical results for this sample were ammonia 6500 mg/l, nitrate/nitrite 1980 mg/l, Total Kjeldahl nitrogen 11,300 mg/l. Liquid sample collected from the small sump adjacent to the secondary containment structure on the east side of the structure, the northernmost sump on the east side, was brown in color and contained a strong ammonia odor. The analytical results for this sample were ammonia 4830 mg/l, nitrate/nitrite 1710 mg/l, Total Kjeldahl nitrogen 7540 mg/l. Liquid sample collected from the small sump adjacent to the secondary containment on the east side of the structure, was

clear with an ammonia odor. The analytical results for this sample were ammonia 1600 mg/l, nitrate/nitrite 694 mg/l, Total Kjeldahl nitrogen 2440 mg/l.

17. On May 12, 2006, the Illinois EPA conducted a compliance inspection at the site. Four groundwater monitoring well had been installed at the site.

18. At the time of the May 12, 2006 inspection, sample results were collected from the shallow sumps located adjacent to the bulk liquid fertilizer storage tank farm and the groundwater monitoring wells.

19. Analytical results of the samples taken from the shallow sumps indicated the following nitrate/nitrite levels for the wells S-2, S-3, S-4, located along the east side of the liquid fertilizer storage tank farm, north to south respectively: S-2, 21.6 mg/l; S-3, 31.8 mg/l; S-4, 154 mg/l.

20. Analytical results of samples taken from the groundwater monitoring wells indicated the following nitrate/nitrite levels: MW-1 located furthest southeast on the site, 101 mg/l; and MW-2 located just southeast of the tank farm, 246 mg/l.

21. Respondent CPS has caused, allowed or threatened the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards through the release of liquid fertilizer from its White Hall facility to surface and subsurface drainage at the site.

22. The Respondent CPS has caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to a surface and subsurface drainage at the site.

23. The discharge of contaminants from the Respondent's facility has caused, threatened or allowed water pollution in that such discharges have likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural,

recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

24. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois and/or in violation of the Board's regulations or standards, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a).

25. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

#### **PRAYER FOR RELIEF**

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this court grant the following relief:

A. Find that Respondent, Crop Production Services, Inc., has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d);

B. Order the Respondent to cease and desist from further violations of the Act and associated regulations pursuant to section 42(e) of the Act, 415 ILCS 5/42(e);

C. Assess against the Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and




D. Grant such other and further relief as the Board deems appropriate.

Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN,  
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
THOMAS DAVIS, Bureau Chief  
Assistant Attorney General  
Environmental Bureau

Of Counsel

JANE E. MCBRIDE

Assistant Attorney General

500 South Second Street

Springfield, Illinois 62706

217/782-9031

Dated: 2/09/09

