



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

JUN 30 2008

Ref: 8ENF-I.

**VIA FEDERAL EXPRESS**

Merl Reynolds  
Cheerful Cesspool Service  
18758 Surface Creek Road  
Cedaredge, CO 81413

Re: Opportunity to Confer and Order for  
Compliance with Information Request.  
Docket No. **CWA-08-2008-0016**

Dear Mr. Reynolds:

Enclosed is a U.S. Environmental Protection Agency (EPA) Notice of Opportunity to Confer and Order for Compliance with Information Request (Notice and Order) issued under the authority vested in the Administrator of EPA by sections 308 and 309(a)(3) of the Clean Water Act (the Act), 33 U.S.C. §§ 1318 and 1319(a)(3). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8. The Notice and Order provides Cheerful an opportunity to confer with EPA regarding information requested by EPA and further requires Cheerful Cesspool Service to submit requested information to EPA within the time frame set forth in the Notice and Order. That time frame provides ample opportunity for Cheerful to confer with EPA prior to having to submit the requested information to EPA.

On November 16, 2007, EPA sent a Request for Information (Request) regarding the method(s) of septage disposal employed by Cheerful. Section 308 of the Clean Water Act, 33 U.S.C. § 1318, gives EPA the authority to request information of this nature. Cheerful received the Request on November 26, 2007, and the response was due on or before January 10, 2008. To date, EPA has not received a response to the Request from Cheerful, in violation of section 308 of the Act.

Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), authorizes the Administrator of EPA to issue an order requiring compliance with a section 308 request for information. However, under section 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4), such an order may not take effect until the person to whom the order has been issued has had an opportunity to confer with EPA regarding the alleged violation of section 308. Following Cheerful's failure to respond to



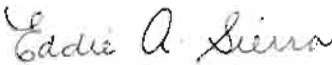
the Request, on March 14, 2008. EPA sent Cheerful a Follow-up and Opportunity to Confer (Opportunity to Confer), as required by section 309(a)(4) of the Act. Cheerful refused to accept service by first class mail of the Opportunity to Confer.

The enclosed Notice and Order again provides notice of an opportunity for you to confer with EPA via conference call concerning Cheerful's alleged violation of section 308 of the Act. If you wish to take advantage of this opportunity, you are encouraged to contact Elizabeth Fagen at 303-312-6095. The Compliance Order portion of the Notice and Order will not become effective until thirty days following Cheerful's receipt of the Notice and Order, providing you with sufficient time to confer with EPA before the information required by the Compliance Order is due.

The Act requires the Administrator of EPA to take all appropriate enforcement action to secure prompt compliance with the Act and any order issued thereunder. Section 309 of the Act authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or disbarment from federal contracts and/or loans for any non-compliance with the Act or an order issued pursuant to the Act.

Please review the Notice and Order carefully. If you have any questions, the most knowledgeable people on my staff are Elizabeth Fagen, Environmental Engineer, at 303-312-6095, and Wendy Silver, Senior Attorney, at 303-312-6637.

Sincerely,

  
for Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosures

cc: Tina Artemis, EPA, Regional Hearing Clerk

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2008 JUN 30 AM 9:30

IN THE MATTER OF: )  
 )  
Cheerful Cesspool Service ) NOTICE OF OPPORTUNITY  
18758 Surface Creek Rd. ) TO CONFER AND  
Cedaredge, CO 81413 ) ORDER FOR COMPLIANCE  
 ) WITH INFORMATION REQUEST  
Respondent. )  
 )  
 ) DOCKET NO. CWA-08-2008-0016

INTRODUCTION

This notice of opportunity to confer and administrative order for compliance ("Notice and Order") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by sections 308 and 309(a)(3) of the Federal Water Pollution Control Act (also referred to as the Clean Water Act) (the "Act"), 33 U.S.C. §§ 1318 and 1319(a)(3). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. This Notice and Order is based on the findings of violation of section 308 of the Act, 33 U.S.C. § 1318, resulting from Cheerful Cesspool Service's failure to respond to a request for information made by EPA on or about November 19, 2007, pursuant to section 308 of the Act, 33 U.S.C. § 1318.

FINDINGS OF VIOLATION

1. Cheerful Cesspool Service ("Respondent") owns and operates a domestic septage disposal service at 18758 Surface Creek Rd. in Cedaredge, Colorado.
2. At all relevant times, Respondent engaged in the disposal of domestic septage.

3. On November 19, 2007, EPA sent to Respondent a request for information (“November 19, 2007 Request”) pursuant to section 308 of the Act, 33 U.S.C. § 1318, to determine compliance with section 405 of the Act (Disposal or Use of Sewage Sludge), 33 U.S.C. § 1345, and regulations promulgated thereunder and found at 40 C.F.R. Part 503. Respondent’s response to the November 19, 2007 Request was due within 45 days of its receipt by Respondent. The November 19, 2007 Request was sent via certified mail (article number 7005-1160-0005-3397-2296), return receipt requested. The return receipt card was signed by Merl Reynolds on behalf of Respondent on November 26, 2007.
4. To date, EPA has not received a response from Respondent to the November 19, 2007 Request.
5. On March 14, 2008, EPA sent a follow-up and opportunity to confer (“Opportunity to Confer”) regarding the November 19, 2007 Request to Respondent, pursuant to section 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4). The Opportunity to Confer reiterated the November 19, 2007 Request and offered Respondent an opportunity to confer with EPA via conference call regarding the November 19, 2007 Request. Respondent’s response to the Opportunity to Confer was due within fourteen days of its receipt by Respondent. The Opportunity to Confer was sent to Respondent via certified mail (article number 7005-0390-0000-4846-9689) on March 14, 2008.
6. Respondent did not accept service of the Opportunity to Confer, and it was returned to EPA by the U.S. Postal Service on April 12, 2008.
7. Respondent is a “person” within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).

8. Equipment used by Respondent to dispose of domestic septage constitutes a "point source" within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
9. As the owner or operator of equipment used to dispose of domestic septage, Respondent is the "owner or operator" of a point source.
10. Section 308(a)(2)(A) of the Act, 33 U.S.C. § 1318(a)(2)(A), authorizes the Administrator of the EPA to require the owner or operator of any point source to provide information as necessary to determine whether any person is in violation of any effluent limit or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance, or to carry out section 405 of the Act, 33 U.S.C. § 1345.
11. Respondent's failure to respond to the November 18, 2007 Request and to the Opportunity to Confer constitute violations of section 308 of the Act, 33 U.S.C. § 1318.

#### COMPLIANCE ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, it is hereby ORDERED:

1. Within 30 calendar days of the effective date of this Notice and Order, Respondent shall submit to EPA the following information:
  - a. Describe the business operations of Cheerful Cesspool Service, including all types of wastes accepted, and the percentage of total waste accepted that qualifies as septage defined at 40 C.F.R. § 503.9(f).
  - b. Provide a list of all septage received by Cheerful Cesspool Service from November 1, 2005 to present. Include the name, address of the source, date of receipt of septage, and type of septage.

- c. Describe each and every method of septage disposal employed by Cheerful Cesspool Service (i.e., land application, surface spreading, trenching, disposal into a wastewater treatment facility, incineration) from November 1, 2005 to present.
- d. If land application of septage is or has been employed, describe how Cheerful Cesspool Service is achieving compliance with the record keeping requirements found in 40 C.F.R. § 503.17. Please refer to the enclosed publication entitled *Domestic Septage Regulatory Guidance* and 40 C.F.R. Part 503 for specific record-keeping requirements (Attachment A). Please provide all land application records from November 1, 2005 to present.
- e. If land application of septage is employed, describe how Cheerful Cesspool Service is achieving compliance with the pathogen and vector attraction reduction requirements of 40 C.F.R. § 503.15(b).
- f. If land application of septage is employed, describe how Cheerful Cesspool Service is achieving compliance with the monitoring requirements found in 40 C.F.R. § 503.16. Provide all monitoring documentation from November 1, 2005 to present.
- g. If land application of septage is employed, list all locations utilized by Cheerful Cesspool Service. Include size of each site, property owner's name and address, type of crop or vegetation growing at each site, maps, and locations of nearby drainage ditches, ponds, streams, rivers, or other bodies of water.
- h. If land application of septage is employed, list the source of the septage, date, time, location, application rate, and application method of each load Cheerful Cesspool Service has applied from November 1, 2005 to present.
- i. Provide all sample analysis for all of Cheerful Cesspool Service's septage that was land applied from November 1, 2005 to present.
- j. If Cheerful Cesspool Service is disposing of septage into a publicly owned treatment works (POTW), describe the location and method of disposal. Please provide all records of disposal into a POTW from November 1, 2005 to present.
- k. If Cheerful Cesspool Service disposes of septage employing surface disposal, provide the name and address of all surface disposal sites and records of disposal from November 1, 2005 to present.
- l. If Cheerful Cesspool disposes of septage employing surface disposal, list sources of each load of septage, the date, and the amount disposed of at each surface disposal site.

- m. If Cheerful Cesspool Service disposes of septage employing surface disposal, describe how compliance with the pathogen and vector attraction reduction requirements of 40 C.F.R. § 503.25(c) is achieved. Provide documentation from November 1, 2005 to present.
- n. If Cheerful Cesspool Service disposes of septage employing surface disposal, explain how the record keeping requirements of 40 C.F.R. § 503.27(b) are being achieved.
- o. If Cheerful Cesspool Service disposes of septage employing surface disposal, provide all sample analysis from November 1, 2005 to present.
- p. For the period November 1, 2005 to present, provide the following costs incurred by Cheerful Cesspool Service along with all written and/or electronic documentation for the treatment and disposal of septage as follows:
  - 1. Cost of sampling & analysis
  - 1. Cost of equipment used for land application
  - 2. Cost of operation and maintenance of application equipment
  - 3. Cost of disposal at a POTW or other site
  - 4. Cost of pathogen and vector reduction

2. Respondent's responses to the questions set forth in paragraph 1 of this section must be accompanied by a certificate that is signed and dated by a person authorized to represent Respondent. The certification must state that the response is complete and contains all information and documentation available to Respondent that is responsive to the questions listed above. A sample Statement of Certification can be found in Attachment B.

3. Please be advised that under section 309 of the Act, 33 U.S.C. § 1319, violation of this Notice and Order or failure to submit the required information, or making a false statement under section 308 of the Act, may be punishable by a fine of not more than \$32,500 per day of violation, or by imprisonment for not more than one year, or by both


4. Copies of the information required by this Notice and Order shall be sent to EPA at the following address:

Liz Fagen (8ENF-W-NP)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

NOTICE OF OPPORTUNITY TO CONFER

1. As required by section 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4), the Compliance Order portion of this Notice and Order shall not take effect until Respondent has the opportunity to confer with EPA on the alleged violations. The effective date of the Compliance Order portion of this Notice and Order is therefore delayed until 30 calendar days after Respondent's receipt of this Notice and Order. If you wish to confer with EPA via conference call concerning any information EPA has requested from you, we encourage you to contact Elizabeth Fagen, at 303-312-6095, to schedule the call before the answers to the request are due.

Issued this 23<sup>rd</sup> day of June, 2008.

  
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice



IN THE MATTER OF: Cheerful Cesspool Service  
DOCKET NO.: CWA-08-2008-0016

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the attached ORDER FOR COMPLIANCE was hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop St., Denver, Colorado, and that a true copy of the same was sent via certified mail to the following:

Cheerful Cesspool Service  
18758 Surface Creek Rd.  
Cedaredge, CO 81413

6/30/08  
DATE

Judith M. McTernan  
SIGNATURE OF SERVER

United States  
Environmental Protection  
Agency

Office of Water  
(4204)

EPA 832-B-92-005  
September 1993

*1st Page only*



# Domestic Septage Regulatory Guidance

## A Guide to The EPA 503 Rule



**Statement of Certification  
Cheerful Cesspool Service**

I certify under penalty of law that the foregoing responses and attachments to EPA's Request for Information Pursuant to the Clean Water Act ("Request") were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. The response and attachments contain all documents and information responsive to the Request that are known to me following a complete and thorough review of all information and sources available to me. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Official Title