



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUL 30 2009

REPLY TO THE ATTENTION OF: WC-15J

**CERTIFIED MAIL 7001 0320 0005 8922 6814**  
**RETURN RECEIPT REQUESTED**

Mark Mann, Supervisor  
Div. of Surface Water – Enforcement Unit  
Ohio Environmental Protection Agency  
Post Office Box 1049  
Columbus, Ohio 43216-1049

Subject: Notice of Proposed Administrative Assessment of Class II Civil Penalty:  
Barton Septic Tank Service - Docket No. **CWA-05-2009-0009**


Dear Mr. Mann:

Enclosed is a copy of the administrative complaint which the U.S. Environmental Protection Agency has issued to Barton Septic Tank Service (Barton), for violations of Section 405(e) of the Clean Water Act (Act). Region 5 has issued the Complaint to assess administratively a Class II civil penalty against Barton for violations of Section 405 of the Act. Because the violations have occurred in Ohio, EPA would like to offer you an opportunity to confer with us regarding the proposed assessment.

You may request a conference with EPA anytime within twenty (20) days of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed assessment. A copy of EPA's procedures governing the assessment of Class II administrative penalties under the Act is also enclosed.

If you wish to request a conference or if you have any comments or questions regarding this matter, please call Valdis Aistars at (312) 886-0264. For questions regarding legal issues, please contact Jeffery M. Trevino at (312) 886-6729.

Sincerely,

  
Tinka G. Hyde  
Director, Water Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 30 2009

REPLY TO THE ATTENTION OF: WC-15J

**CERTIFIED MAIL** 7001 0320 0006 1457 7829  
**RETURN RECEIPT REQUESTED**

Mr. Richard Antolak  
Barton Septic Tank Service  
70170 Provident Fairpoint Road  
St. Clairsville, Ohio 43950

Subject: Notice of Proposed Assessment of a Class II Administrative Penalty  
Pursuant to Section 309(g) of the Clean Water Act  
Docket No. **CWA-05-2009-0009**

Dear Mr. Antolak:

Enclosed is an "Administrative Complaint" which I have issued against you and Barton Septic Tank Service under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). In the Complaint, the U.S. Environmental Protection Agency alleges that you and your company violated Section 405(e) of the Act. The Complaint describes the alleged violations and proposes an administrative civil penalty.

You may request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. I invite you to pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If you fail to request a hearing within 30 days of receipt of the Complaint, you waive the right to a hearing and may become liable for the entire proposed civil penalty. If you request a hearing, you may be represented by an attorney, or represent yourself at any point in these proceedings.

The rules governing these proceedings are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22. I have enclosed a copy for your reference.

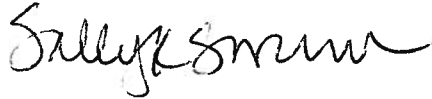
Whether or not you or your company requests a hearing, I invite you to confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. Again, you may be represented by an attorney at any conference, whether the meeting occurs in person or by telephone. EPA encourages all parties to pursue settlement during an informal conference. If the parties reach a satisfactory settlement, a mutually negotiated and executed Consent Agreement

and Final Order will resolve this matter. The issuance of such a Consent Agreement and Final Order will constitute a waiver by both you and your company of its right to a hearing on, and judicial appeal of, the agreed civil penalty.

A request for an informal conference does not extend the 30 days during which you may request a hearing on the proposed penalty assessment. You may pursue the two procedures simultaneously. If you wish to discuss settlement of this matter, please contact Valdis Aistars, Water Division (WC-15J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Mr. Aistars at (312) 886-0264. For questions regarding legal issues, please contact Jeffery M. Trevino, Associate Regional Counsel at (312) 886-6729.

We urge your prompt attention to this matter.

Sincerely,



*per* Tinka G. Hyde  
Director, Water Division

Enclosures

cc: Mark Mann, Ohio Environmental Protection Agency  
James D. King, Belmont County Health Department  
Scott Golden, Ohio Department of Public Health  
Christopher B. Congeni, Attorney at Law

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

\_\_\_\_\_  
IN THE MATTER OF: )

BARTON SEPTIC TANK SERVICE )  
ST. CLAIRSVILLE, OHIO, )

RESPONDENT. )  
\_\_\_\_\_ )

Docket No. CWA-05-2009-0009

Proceeding to Assess a  
Class II Civil Penalty  
Pursuant to Section 309(g)  
of the Clean Water Act,  
33 U.S.C. § 1319(g)

RECEIVED  
JUL 30 2009

COMPLAINT

JURISDICTIONAL ALLEGATIONS

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

1. This is an administrative Complaint issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA") pursuant to section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits." The Administrator has delegated this authority to the Regional Administrator of U.S. EPA Region 5, who has re-delegated the authority to the Director of the Water Division, U.S. EPA Region 5.
2. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), states that: "Whenever, on the basis of any information available the Administrator finds that any person has violated [section 405 of the CWA, 33 U.S.C. § 1345], ... the Administrator ... may, after consultation with the State in which the violation occurs, assess a ... class II civil penalty under [section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B)]."

3. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), states that: “The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.”

4. Pursuant to section 405(d) of the CWA, 33 U.S.C. § 1345(d), the Administrator published the “Standards for the Use or Disposal of Sewage Sludge” on February 19, 1993, codified at 40 C.F.R. part 503. By the terms of the regulation, the requirements of part 503 became effective one year from the date of promulgation.

5. Federal regulations, at 40 C.F.R. § 503.3(b), state that: “No person shall use or dispose of sewage sludge through any practice for which requirements are established in this part except in accordance with such requirements.”

6. Federal regulations, at 40 C.F.R. § 403.7, state that: “Any person who prepares sewage sludge shall ensure that the applicable requirements in this part are met when the sewage sludge is applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.”

7. Federal regulations, at 40 C.F.R. § 503.9(w), define “sewage sludge” to include “domestic septage.”

8. Federal regulations, at 40 C.F.R. § 503.9(f), define “domestic septage” to include “... liquid or solid material removed from a septic tank ... .”

9. Federal regulations, at 40 C.F.R. § 503.17(b), state that: “When domestic septage is applied to agricultural land, forest, or a reclamation site, the person who applies the domestic septage shall develop the following information and shall retain the information for five years: . . .” This regulation then specifies 8 specific items of information which must be generated and/or recorded and maintained for a period of at least 5 years.

### **GENERAL ALLEGATIONS**

10. Respondent is Barton Septic Tank Service, 70170 Provident Fairpoint Road, St. Clairsville, Ohio, an association residing in Belmont County, Ohio. Respondent is a “person” as that term is defined at section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 501.2.

11. Respondent owns and operates a business, which among other things, receives and treats domestic septage from domestic septic tanks and disposes of these wastes by applying them to local land on which food, feed and/or fibre crops are grown.

### **ALLEGATIONS OF LIABILITY**

#### **FAILURE TO CREATE AND MAINTAIN ADEQUATE RECORDS 40 C.F.R. § 503.17**

12. On 131 occasions from July 1, 2004, to August 2, 2005, Respondent applied domestic septage to agricultural land.

13. During the period of July 1, 2004, to August 2, 2005, Respondent failed to keep adequate records indicating, at a minimum: the nitrogen requirement of the crop grown on the site appropriate for conditions in Belmont County, Ohio, as required by 40 C.F.R. § 503.17(b)(4); the execution of the certification provided at 40 C.F.R. § 503.17(b)(6); an adequate description of how the pathogen requirements of 40 C.F.R. § 503.33(c)(1) or (c)(2)

were met; or an adequate description of how the vector attraction requirements in 40 C.F.R. § 503.33(b)(9), (b)(10), or (b)(12) were met.

14. Respondent's 131 applications of domestic septage to agricultural land from July 1, 2004, to August 2, 2005, without generating and maintaining records as required by 40 C.F.R. § 503.17(b), constitute violations of section 405(e) of the CWA, 33 U.S.C. § 1415(e).

15. According to 309(g) of the CWA, 33 U.S.C. § 1319(g), as modified pursuant to the Debt Collection Improvement Act of 1986, Respondent's violations of section 405(e) of the CWA, 33 U.S.C. § 1345(e), render him subject to civil penalties not to exceed \$11,000 per day of violation.

**NOTICE OF PROPOSED ASSESSMENT OF A CIVIL PENALTY**

16. Pursuant to section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), the Administrator may assess a Class II civil penalty not to exceed \$10,000 per day for each day during which the violation continues, not to exceed \$125,000 for violations of section 405 of the CWA, 33 U.S.C. § 1345. Subsequently, Congress enacted the Debt Collection Improvement Act of 1986, Pub. L. 101-410, 104 Stat. 890 (November 5, 1990), as amended, Pub. L. 104-134, Title III, 31001(s)(1), 110 Stat. 1321-1373 (April 26, 1996), which authorizes federal agencies collecting penalties pursuant to statutory authority to adjust statutory maximum penalties by rule to account for inflation. Effective January 31, 1997, U.S. EPA modified the statutory maximum recoverable per day of violation pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g), to \$11,000 and the maximum recoverable in an action pursuant to section 309(g) to \$137,500. *See* 40 C.F.R. Part 19.

17. Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, prior history and such other matters as justice may require, U.S. EPA proposes to issue a Final Order to Respondent assessing a penalty in the amount of \$55,000.00.

18. The proposed penalty may be adjusted if Respondent establishes a bona fide issue of his ability to pay or other affirmative defense relevant to the determination of any final penalty. The proposed civil penalty has been determined in accordance with the statute based on the circumstances, extent and gravity of the alleged violations. With respect to Respondent, other factors, such as ability to pay, may mitigate calculation of a final penalty.

19. Respondent shall pay this penalty by certified or cashier's check payable to "Treasurer, United States of America," and shall send it, with a transmittal letter identifying the Complaint, to:

U.S. Environmental Protection Agency  
P.O. Box 70753  
Chicago, Illinois 60673

Copies of the transmittal letter and check shall be sent to:

U.S. Environmental Protection Agency  
Water Enforcement and Compliance Assurance Branch (WC-15J)  
Water Division  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
ATTN: Valdis Aistars

and



Jeffery M. Trevino  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (C-14J)  
Chicago, Illinois 60604-3590

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

20. As provided in section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15, Respondent has the right to request a hearing to contest any material fact alleged in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. To request a hearing, Respondent must make such request in the Answer, which is discussed below.

21. Any hearing Respondent requests regarding this Complaint will be held and conducted in accordance with the “The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits,” 40 C.F.R. Part 22, a copy of which accompanies this Complaint.

**ANSWER**

22. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (E-13J)  
Chicago, Illinois 60604-3590

You must serve copies of the written answer on all other parties.

23. If Respondent chooses to file a written answer to the Complaint, you must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

24. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint, or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

25. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

26. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 20 above.

27. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under section 22.27(c) of the Consolidated Rules.

28. If Respondent requests a hearing on the Complaint, members of the public who have exercised their right to comment will have a right under section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), to present evidence on the appropriateness of the penalty assessment. If a hearing is not held, U.S. EPA may issue a Final Order assessing penalties, and only members of the public who commented on the proposed penalty assessment during the 30 day period following issuance of the public notice will have an additional 30 days to petition U.S. EPA to set aside the Final Order assessing penalties and to hold a hearing thereon. U.S. EPA will grant the petition and hold the hearing only if the petitioner's evidence is material and was not considered by U.S. EPA in the issuance of the Final Order assessing penalties.

#### **SETTLEMENT CONFERENCE**

29. Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please write to Mr. Valdis Aistars, Water Division (WC-15J), U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may also telephone Mr. Aistars at (312) 886-0624.

30. Respondent's request for an informal settlement conference will not extend the 30 day period during which Respondent must submit a written Answer and Request for Hearing. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure. U.S. EPA encourages all parties against whom a penalty is proposed to pursue settlement through an informal conference. U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference will be embodied in a Consent Agreement and Final Order. Respondent's signature upon a Consent Agreement and Consent Order constitutes a waiver of the right to request a hearing on any matter stipulated to therein.

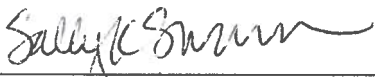
**NOTICE TO THE PUBLIC AND TO THE STATE OF OHIO**

31. U.S. EPA has consulted with the State of Ohio regarding this action by mailing a copy of this Complaint to the Division of Surface Water, Ohio Environmental Protection Agency, and by offering the State an opportunity to comment on the proposed penalty assessment. U.S. EPA, contemporaneously with the issuance of this Complaint, has also caused a public notice to be published in a newspaper local to Akron, Ohio, regarding this action.

**CONTINUING OBLIGATION TO COMPLY**

32. Neither assessment nor payment of a penalty pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g), affects Respondent's continuing obligation to comply with the CWA, with any other Federal, state or local law or regulation or with any Compliance Order issued under section 309(a) of the CWA, 33 U.S.C. § 1319(a).

Date: July 29, 2009

  
for Tinka Hyde, Director  
Water Division  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois

**RECEIVED**  
JUL 30 2009

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of this Administrative Complaint were filed with the Regional Hearing Clerk on 7-30-09, and that a true and correct copy was mailed along with a copy of the Consolidated Rules of Practice to the addressees as follows:

**CERTIFIED MAIL** 7001 0320 0006 1457 7829  
**RETURN RECEIPT REQUESTED**

Mr. Richard Antolak  
Barton Septic Tank Service  
70170 Provident Fairpoint Road  
St. Clairsville, Ohio 43950

Date: JUL 30 2009

**CERTIFIED MAIL** 7001 0320 0005 8922 6814  
**RETURN RECEIPT REQUESTED**

Mark Mann, Supervisor  
Div. of Surface Water – Enforcement Unit  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Post Office Box 1049  
Columbus, Ohio 43216-1049

Date: JUL 30 2009

*Denise Moore*  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson, WC-15J  
Chicago, Illinois 60604

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REGIONAL HEARING CLERK  
USEPA  
REGION 5