

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

) Docket No. CWA-07-2010-0068

)
) FRESH AND CLEAN RESTROOMS,
) PARK HILLS, MISSOURI)

) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE)

)
) Respondent,)

)
) Proceedings under Section 309(a)(3))
) Of the Clean Water Act,)
) 33 U.S.C. §1319(a))

I. Preliminary Statement

1. The following Findings of Violation and Order for Compliance ("Order") are issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3). This authority has been delegated to the Director of Region VII's Water, Wetlands, and Pesticides Division.

II. Statutory and Regulatory Framework

2. Pursuant to Section 405(d)(1) of the CWA, 33 U.S.C. 1345(d)(1), the EPA promulgated regulations codified at 40 C.F.R. Part 501 and Part 503 governing the standards for the use or disposal of domestic sewage sludge and septage (the "sludge management program").

3. The State of Missouri has not been authorized under Section 405(f) of the CWA and Section 40 C.F.R. Part 501 to administer the sewage sludge program in Missouri. The EPA remains responsible for enforcement of the requirements of 40 C.F.R. Part 503 until such time as the State of Missouri is authorized to administer the program.

4. 40 C.F.R. 503.9(f) defines domestic septage as either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage.

5. 40 C.F.R. 503.9(w) defines sewage sludge, and states in pertinent part: "*Sewage sludge* is solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage..."
6. 40 C.F.R. 503.7 places an affirmative obligation on "any person who prepares sewage sludge ...[to]... ensure that the applicable requirements are met when the sewage sludge is applied to the land..."
7. 40 C.F.R. 503.12 requires that no person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365 day period if the annual application rate in §503.13(c) has been reached during that period.
8. 40 C.F.R. 503.15 states, in pertinent part, that septage applied to agricultural land, forest, or a reclamation site shall meet the requirements for pathogen reduction set forth at 40 C.F.R. 503.32(c)(1) or (c)(2), and the requirements for vector attraction reduction set forth at 40 C.F.R. 503.33(b)(8), (b)(9), or (b)(12).
9. 40 C.F.R. 503.16(b) requires that if a person applying septage meets the pathogen requirements in § 503.32(c)(2) or the vector attraction reduction requirements in §503.33(b)(12) each container of domestic septage applied to the land shall be monitored for compliance with those requirements.
10. 40 C.F.R. § 503.17(b) requires that when domestic septage is land applied (agricultural land, forest, or reclamation site), the person who applies the domestic septage shall develop and retain the following specified information for five years:
 - a. The location, by either street address or latitude and longitude, of each site on which domestic septage is applied;
 - b. The number of acres in each site on which domestic septage is applied;
 - c. The date domestic septage is applied to each site;
 - d. The nitrogen requirement for the crop or vegetation grown on each site during a 365 day period;
 - e. The rate, in gallons per acre per 365 day period, at which domestic septage is applied to each site;
 - f. A certification statement that documents compliance with the application pathogen reduction and vector attraction reduction requirements of § 503.32 and 503.33;
 - g. A description of how the pathogen requirements in either 40 C.F.R. §§ 503.32(c)(1) or (c)(2) are met; and
 - h. A description of how the vector attraction reduction requirements in 40 C.F.R. §§ 503.33 (b)(9), (b)(10), or (b)(12) are met.

III. Findings of Fact

11. Fresh and Clean Restrooms, Park Hills, Missouri, (hereafter "Respondent" or "Fresh and Clean Restrooms") owns and operates a portable sanitation, septage and hauling company that prepares and applies domestic septage to non-public contact sites.

12. Fresh and Clean Restrooms is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Fresh and Clean Restrooms is a person that both prepares and applies sewage sludge (septage) to land.

13. On February 24, 2009, EPA issued Fresh and Clean Restrooms, a Request for Information under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), that required Fresh and Clean Restrooms to provide information regarding the company's preparation and land application of domestic septage onto the Big River Site in Desloge, Missouri.

14. By correspondence dated March 30, 2009, Respondent provided a response ("Response") to EPA's request.

15. On December 13, 2009, EPA inspected the Big River application site, where Respondent applies septage and found visible toilet paper, tampon applicators, plastic and other solid materials exposed on the surface areas where Respondent had applied septage.

IV. Findings of Violations

Respondent's preparation and application of sewage sludge (septage) at the Big River Site violated the following requirements of 40 C.F.R. 503's sludge management program:

16. Respondent failed to treat for pathogen reduction, in violation of 40 C.F.R. § 503.32;

17. Respondent failed to implement vector attraction reduction practices, in violation of 40 C.F.R. § 503.33; and

18. Respondent failed to maintain any of the records and documentation required for its land application of sewage sludge (septage), in violation of 40 C.F.R. § 503.17(b).

V. Order For Compliance

Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the actions described below:

19. Immediately upon receipt of this Order, Respondent shall take all actions necessary to ensure the sludge it prepares for application, and the sewage sludge (septage) that it land applies, is in compliance with the requirements of 40 C.F.R. 503, including but not limited to the following:

- a. 40 C.F.R. § 503.12 (general requirements);
- b. 40 C.F.R. § 503.13 (pollutant limits)
- c. 40 C.F.R. § 503.16 (frequency of monitoring);
- d. 40 C.F.R. § 503.17 (record keeping);
- e. 40 C.F.R. § 503.32 (pathogens); and
- f. 40 C.F.R. § 503.33 (vector reduction).

20. Immediately upon receipt of this Order, Respondent shall properly treat for pathogen reduction all septage that it land applies, as required by 40 C.F.R. §§ 503.32(c)(1) or (c)(2);

21. Immediately upon receipt of this Order, Respondent shall implement vector attraction reduction practices for all septage that it land applies, as required by 40 C.F.R. § 503.33.

22. Immediately upon receipt of this Order, Respondent shall prepare and maintain all documentation required for its preparation and/or application of septage, as required by 40 C.F.R. § 503.17(b).

23. No later than the 15th day of the first month of each calendar quarter (January 15th, April 15th, July 15th and October 15th) Respondent shall submit to EPA a Quarterly Sludge Report, with a copy to MDNR, that contains all documentation required by 503.17(b) for land application of septage that Respondent performed during the prior calendar quarter (January-March, April-June, July-September, October-December). Respondent shall continue submitting Quarterly Sludge Reports until Respondent receives written notification of termination from EPA of this requirement.

VI. Submissions

24. All documents required to be submitted to the EPA by this Order, shall be submitted may mail to:

Berla Johnson (WWPD/WENF)
Environmental Scientist
Water, Wetlands and Pesticides Division

EPA Region 7
901 North Fifth Street
Kansas City, Kansas 66101

25. A copy of documents to be submitted to the EPA by this Order, shall be submitted by the mail to:

Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Gary Gaines, Director
Southeast Regional Office
2155 N. Westwood Blvd.
Poplar Bluff, Missouri 63901

VII. General Provisions

Effect of Compliance with the terms of this Order for Compliance

26. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

27. This Order does not constitute a waiver of or a modification of any requirements of the Clean Water Act 33 U.S.C. § 1251, et seq., all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1318 and /or any other authority.

Access and Requests for Information

28. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and /or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, and/or any other authority.

Severability

29. If any provisions or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

30. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of an executed copy of the Order.

Termination

31. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 24th day of March, 2010.

for 
Howard Bunch, Esq.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency Region 7

for 
William A. Spratlin, Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency Region 7

CERTIFICATE OF SERVICE

I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Mr. Joshua Campbell
Fresh and Clean Restrooms
P.O. Box 553
Park Hills, Missouri 63601

I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following representative of the State of Missouri:

Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176

Gary Gaines, Director
Southeast Regional Office
2155 N. Westwood Blvd.
Poplar Bluff, Missouri 63901

Date

3/25/2010

Name

