



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

REPLY TO THE ATTENTION OF:

WC-15J

NOV 08 2011

CERTIFIED MAIL 7001 0320 0006 1562 5321
RETURN RECEIPT REQUESTED

Jeff Misch, President
 Misch Excavating
 d/b/a Rooterman
 P.O. Box 181
 Downs, IL 61736-0181

Re: Docket No: CWA-05-2010-0003
 BD # 2751263W002

Dear Mr. Misch:

I have enclosed one copy of the fully executed Consent Agreement and Final Order (CAFO) in the resolution of the above case. It was filed **NOV 08 2011**, with the Regional Hearing Clerk.

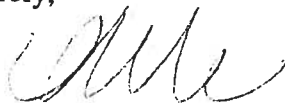
The penalty amount agreed upon is \$20,000 plus \$177.65 interest, which is due in installments as indicated in the chart below:

Date	Payment	Principal	Interest	Balance
1/15/2012	2,522.21	2,522.21	0	17,477.79
4/15/2012	2,522.21	2,478.03	44.18	14,999.76
7/15/2012	2,522.21	2,484.29	37.92	12,515.47
10/15/2012	2,522.21	2,490.23	31.98	10,025.24
1/15/2013	2,522.21	2,496.59	25.62	7,528.65
4/15/2013	2,522.21	2,503.39	18.82	5,025.26
7/15/2013	2,522.21	2,509.51	12.7	2,515.75
10/15/2013	2,522.18	2,515.75	6.43	0
TOTALS	20,177.65	20,000.00	177.65	

Maria Gonzalez (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson Blvd
Chicago, IL 60604

If you have any questions, please contact Mr. Valdis Aistars at (312) 886-0254.

Sincerely,

A handwritten signature in black ink, appearing to read 'DM', is written over the word 'Sincerely,'.

Dean Maraldo, Chief
Water Enforcement and Compliance Assurance Branch

Enclosures

cc: Michael Garretson, IEPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. EPA REGION 5
2011 NOV -8 PM 4:04

IN THE MATTER OF:

MISCH EXCAVATING, LLC
d/b/a ROOTERMAN
DOWNS, ILLINOIS 61736

RESPONDENT.

)
) Docket No. CWA-05-2011-0003
)
) Proceeding to Assess a
) Class II Civil Penalty
) Pursuant to Section
) 309(g) of the Clean
) Water Act, 33 U.S.C.
) § 1319(g)
)

Consent Agreement and Final Order

Preliminary Statement

1. Complainant, the Director of the Water Division, United States Environmental Protection Agency (EPA), Region 5, brought this administrative action seeking a civil penalty under Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).
2. After receiving information from the local county health department indicating that Respondent had disposed of septage sludge on land without complying with the applicable requirements of 40 C.F.R. Part 503, Complainant issued an Order to Respondent on November 7, 2008, that, among other things, requested information and documents from Respondent pursuant to Section 308(a) of the CWA, relating to Respondent's compliance, or non-compliance, with 40 C.F.R. Part 503.
3. On January 7, 2011, EPA filed the Complaint in this action against Respondent Misch Excavating, LLC. The Complaint alleges that Respondent failed to comply with requests for information and documents issued under Section 308(a) of the Clean Water Act in violation of Section 308(a) of the CWA, 33 U.S.C. § 1318(a); and that information available to U.S. EPA indicates that Respondent has disposed of sludge from treatment works treating domestic sewage

within the meaning of Section 405(e) of the CWA, 33 U.S.C. § 1345(e), without complying with the applicable requirements of 40 C.F.R. Part 503. The Complaint proposed that the Administrator assess a civil penalty against Respondent of \$157,500.

4. Respondent filed an Answer on February 11, 2011, requesting a hearing.

Stipulations

5. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.

6. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

7. Respondent certifies that it is in compliance with the Administrator's Standards for the Use or Disposal of Sewage Sludge at 40 C.F.R. Part 503.

8. Respondent agrees to cease any further land application of septage or of hydroexcavation return waters.

9. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

10. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalties

11. In consideration of Respondent's willingness to expeditiously resolve this matter without the further expenditure of agency resources, and considering the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, history of violations, culpability, economic benefit or saving resulting from the violations, and other matters as justice may require, EPA has determined that an appropriate civil penalty to settle this

action is \$20,000, to be paid in 8 installments with one percent interest as set forth in the following schedule of payment:

Date	Payment	Principal	Interest	Balance
1/15/2012	2,522.21	2,522.21	0	17,477.79
4/15/2012	2,522.21	2,478.03	44.18	14,999.76
7/15/2012	2,522.21	2,484.29	37.92	12,515.47
10/15/2012	2,522.21	2,490.23	31.98	10,025.24
1/15/2013	2,522.21	2,496.59	25.62	7,528.65
4/15/2013	2,522.21	2,503.39	18.82	5,025.26
7/15/2013	2,522.21	2,509.51	12.7	2,515.75
10/15/2013	2,522.18	2,515.75	6.43	0
TOTALS	20,177.65	20,000.00	177.65	

12. Respondent must pay the civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
 Fines and Penalties
 Cincinnati Finance Center
 P.O. Box 979077
 St. Louis, Missouri 63197-9000

The check must note *In the Matter of Misch Excavating LLC*, the case docket number, and the billing document number. (The billing document number will be provided to Respondent with a copy of the fully executed CAFO.)

13. A transmittal letter, stating Respondent's name, complete address, *In the Matter of Misch Excavating LLC*, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
 U.S. EPA, Region 5
 77 West Jackson Boulevard
 Chicago, Illinois 60604

Attn: Valdis Aistars (WC-15J)
 Water Enforcement and Compliance Assurance Branch

Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Joseph Williams (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

Maria Gonzalez (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

14. This civil penalty is not deductible for federal tax purposes.

15. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

16. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due. If Respondent fails to comply with any provision of this CAFO, the full amount of civil penalty assessed in the CAFO, that being \$20,000, shall immediately become due and owing, to be paid by Respondent as provided in paragraphs 11-13, minus any penalty amounts on the principal earlier paid by Respondent. See 31 C.F.R. § 901.8.

General Provisions

17. This CAFO resolves the liability of Respondent, and its officers and employees, only for federal civil penalties for the violations alleged in the Complaint.

18. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

19. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws.

20. The terms of this CAFO bind Respondent, its successors, and assigns.

21. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

22. Each party agrees to bear its own costs and attorney's fees in this action.

23. This CAFO constitutes the entire agreement between the parties.

10-20-11
Date

Jeff Misch
Jeff Misch
President
Misch Excavating LLC

United States Environmental Protection Agency, Complainant

11-1-11
Date

Tinka G. Hyde
Tinka G. Hyde, Director
Water Division


In the Matter of:
Misch Excavating, LLC
Docket No. CWA-05-2011-0003

REGIONAL HEARING CLERK
U.S. EPA REGION 5
2011 NOV -8 PM 4:04

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11-2-11
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5