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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

\_\_\_\_\_) )  
In the Matter of: ) )  
 ) )  
Clark Hardsaw, ) )  
d/b/a Longbottom & Hardsaw, Inc. ) )  
7025 Central Drive SW ) )  
Central, Indiana 47110 ) )  
Respondent ) )  
\_\_\_\_\_) )  
Docket No. CWA-05-2013-0012

CONSENT AGREEMENT AND FINAL ORDER

1. Complainant, the Director of the Water Division, U.S. Environmental Protection Agency, Region 5 ("EPA"), and Respondent, Clark Hardsaw d/b/a Longbottom & Hardsaw, Inc., have agreed to the settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) of 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* found at 40 C.F.R. §§ 22.13(b) and 22.18(b).

2. EPA institutes this civil administrative proceeding for the assessment of a civil penalty pursuant to the authority granted in Section 309(g) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g).

3. Respondent consents to the entry of this Consent Agreement and Final Order ("CAFO"), all of the conditions of this CAFO, and the assessment of the civil penalty as outlined in this CAFO.

4. EPA and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.

#### **STATUTORY AND REGULATORY BACKGROUND**

5. 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, which have been codified at 40 C.F.R. Part 503, with amendments.

6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

7. 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.

8. 40 C.F.R. § 503.9(f) defines “domestic sewage” as waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

9. 40 C.F.R. § 503.9(f) defines “sewage sludge” as including, but not being limited to, domestic septage.

10. 40 C.F.R. § 503.2 provides that compliance with the standards in 40 C.F.R. Part 503 shall be achieved as expeditiously as practicable, but in no case later than February 19, 1994.

11. 40 C.F.R. § 503.3(b) provides that no person shall use or dispose of sewage sludge through any practice for which requirements are established in 40 C.F.R. Part 503 except in accordance with such requirements.

12. 40 C.F.R. § 503.10 provides that 40 C.F.R. Part 503, Subpart B, applies to any person who prepares sewage sludge that is applied to the land, to any person who applies sewage sludge to the land, to sewage sludge applied to the land, and to the land on which sewage sludge is applied.

13. 40 C.F.R. § 503.17(b) provides 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:

40 C.F.R. § 503.17(b)(2): The number of acres in each site on which domestic septage is applied.

40 C.F.R. § 503.17(b)(4): The nitrogen requirement for the crop or vegetation grown on each site during a 365 day period.

40 C.F.R. § 503.17(b)(6): The following certification statement:

“I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in either § 503.32(c)(1) or § 503.32(c)(2) and the vector attraction reduction requirements in either § 503.33(b)(9), § 503.33(b)(10), or § 503.33(b)(12) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

40 C.F.R. § 503.17(b)(7): A description of how the pathogen requirements in either 40 C.F.R. §§ 503.33(c)(1) or (c)(2) are met.

40 C.F.R. § 503.17(b)(8): 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.

14. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), provides 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 [Section 405(d) of the CWA, 33 U.S.C. § 1345(d)], except in accordance with such regulations.”

15. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), provides 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) of the CWA, 33 U.S.C. § 1319(g)].”

#### **GENERAL ALLEGATIONS**

16. Respondent is an individual.

17. Respondent is a “person,” as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

18. From on or about October 2007 through on or about August 23, 2011, Respondent collected liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only waste and wastewater from humans or household operations and applied that liquid or solid material to agricultural land in and around Harrison County, Indiana.

19. The materials collected by Respondent and applied to agricultural land, as identified in Paragraph 18, above, were “domestic septage” as defined at 40 C.F.R. § 503.9(f).

20. The materials collected by Respondent and applied to agricultural land, as identified in Paragraph 18, above, were “sewage sludge” as defined at 40 C.F.R. § 503.9(w).

## VIOLATIONS

### Count I

#### **Failure to Meet Record Keeping Requirements in 2007 and 2008 (40 C.F.R. § 503.17)**

21. Paragraphs 5-20 are hereby incorporated by reference.

22. For each instance on or about November 26, 2007, through on or about March 25, 2008, in which Respondent applied domestic septage to agricultural land, as alleged in Paragraphs 18-20, Respondent failed to develop and retain the number of acres in each site on which domestic septage was applied.

23. For each instance from on or about November 26, 2007, through on or about March 25, 2008, in which Respondent applied domestic septage to agricultural land, as alleged in Paragraphs 18-20, Respondent failed to develop and retain the nitrogen requirement for the crop or vegetation grown on each site during a 365 day period.

24. For each instance from on or about November 26, 2007, through on or about March 25, 2008, in which Respondent applied domestic septage to agricultural land, as alleged in Paragraphs 18-20, Respondent failed to develop and retain the certification statement required at 40 C.F.R. § 503.17(b)(6).

25. For each instance from on or about November 26, 2007, through on or about March 25, 2008, in which Respondent applied domestic septage to agricultural land, as alleged in Paragraphs 18-20, Respondent failed to develop and retain a description of how the pathogen requirements in either 40 C.F.R. §§ 503.33(c)(1) or (c)(2) were met.

26. For each instance from on or about November 26, 2007, through on or about March 25, 2008, in which Respondent applied domestic septage to agricultural land, as alleged in Paragraphs 18-20, Respondent failed to develop and retain a description of how the vector attraction reduction requirements in 40 C.F.R. §§ 503.33(b)(9), (b)(10), or (b)(12) were met.

27. Each of Respondent's failures to develop and retain information, as alleged in Paragraphs 22-26, constitutes a violation of 40 C.F.R. § 503.17(b), and, consequently, a violation of Section 405(e) of the CWA, 33 U.S.C. § 1345(e).

28. Each of Respondent's failures to develop and retain information, as alleged in Paragraphs 22-26, subjects Respondent to civil penalties under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

#### **TERMS OF SETTLEMENT**

29. Based upon the penalty factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA and Respondent agree to settle this matter for \$10,000.00.

30. For the purposes of this proceeding, and pursuant to 40 C.F.R. §§ 22.18(b) and (c), Respondent: (a) admits that EPA has jurisdiction over the subject matter set forth in this CAFO; and (b) neither admits nor denies the facts set forth in this CAFO.

31. For purposes only of the allegations and agreements made herein, upon execution of this CAFO, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, its right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to appellate review of the CAFO under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

32. Respondent must pay the \$10,000.00 civil penalty by mailing a certified or cashier's check made payable to "Treasurer, United States of America" within 60 days after Respondent and Complainant have executed this CAFO and it becomes effective.

33. Respondent must send the check to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

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

35. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

Regional Hearing Clerk  
Planning and Management Division (R-13J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Kris P. Vezner  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Mike Lukowich, P.E.  
Water Division (WC-15J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-35906

36. Respondent's failure to pay the assessed civil penalty in accordance with the provisions of this CAFO will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest on this penalty, Respondent shall also be required to pay attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty. This nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of each such quarter.

37. Notwithstanding any other provision of this CAFO, interest shall accrue on any amount overdue under the terms of this CAFO at an annual rate calculated in accordance with 40 C.F.R. § 13.11.

#### **OTHER MATTERS**

38. This CAFO settles EPA's claims for civil penalties for the violations alleged above.

39. Nothing in this CAFO relieves Respondent of the duty to comply with the CWA or other federal, state or local laws or statutes.

40. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent arising from the violations alleged in this CAFO. Notwithstanding any other provision of this CAFO, EPA expressly reserves any and all rights to bring an enforcement action pursuant to the Section 504 of the CWA, 33 U.S.C. § 1364, or other

statutory authority should EPA find that any of Respondent's disposal sites present an imminent and substantial endangerment to the health or welfare of persons. EPA also expressly reserves the right: (a) to take any action authorized under Section 309 of the CWA for any matters other than the violations alleged in this CAFO; and (b) to enforce compliance with this CAFO.

41. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of its disposal sites.

42. Each party agrees to bear its own costs accrued in the course of this action.

43. Pursuant to 40 C.F.R. § 22.38, the State was notified of this proceeding and the other terms of this settlement.

44. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her designated representative and subject to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

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

46. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*

Tinka G. Hyde

Tinka G. Hyde  
Director, Water Division  
U.S. Environmental Protection Agency  
Region 5

5/1/13  
Date

Clark Hardsaw  
Clark Hardsaw  
Longbottom & Hardsaw, Inc.

4-5-2013  
Date

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of: Clark Hardsaw**

**d/b/a Longbottom & Hardsaw, Inc.**

**Docket No. CWA-05-2013-0012**

**FINAL ORDER**

This CAFO is hereby approved. The Respondents are hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By: \_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

Dated: \_\_\_\_\_