



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

DEC 12 2011

Ref: 8ENF-W-NP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brad Manning
Brad Manning Excavation & Septic Service
P.O. Box 86
Miller, SD 57362

Re: Findings of Violation and Order for
Compliance under Section 309 of the Clean
Water Act
Docket No. **CWA-08-2012-0001**

Dear Mr. Manning:

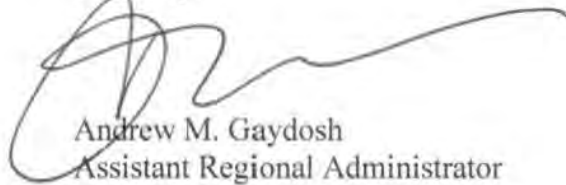
Enclosed is a Findings of Violation and Order for Compliance (Order) issued by the United States Environmental Protection Agency (EPA) pursuant to section 309(a) of the Clean Water Act, as amended (Act), 33 U.S.C. § 1319(a). Based on our review of all available information, the EPA has determined that Brad Manning Excavation & Septic Service is in violation of the Act. The Act prohibits, among other things, the disposal of sewage sludge except as in compliance with regulations promulgated pursuant to section 405 of the Act, 33 U.S.C. § 1345, and found at 40 C.F.R. Part 503.

The Order specifies the nature of the violations under the Act and describes the actions necessary for Brad Manning Excavation & Septic Service to achieve compliance. Specifically, the Order requires Brad Manning Excavation & Septic Service to comply with the recordkeeping and pathogen and vector attraction reduction regulations pertaining to the land disposal of domestic septage. The purpose of the Order is to increase your company's awareness and compliance with the domestic septage disposal regulations to ensure that Brad Manning Excavation & Septic Service's disposal methods are protective of the environment and public health.

Section 309(a) of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. § 1319(a)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the Act or with an order issued pursuant to the CWA (33 U.S.C. § 1368). Please be advised that issuance of this Order does not preclude civil or criminal U.S. District Court action or EPA administrative penalty proceedings for the violations cited in the Order. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to compliance with the Act, the most knowledgeable people on my staff regarding these matters are Emilio Llamozas, Technical Enforcement, at (303) 312-6407, and Amy Swanson, Enforcement Attorney, at (303) 312-6906.

Sincerely,



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

Enclosure

cc: Tina Artemis, Regional Hearing Clerk
Dennis Hartford, Crow Creek Environmental Director



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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 DEC 12 AM 11:55

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IN THE MATTER OF:)
)
Brad Manning Excavation & Septic Service)
P.O. Box 86)
Miller, SD 57362,)
Respondent.)
)

Docket No. CWA-08-2012-0001

**FINDINGS OF VIOLATION
AND ORDER FOR COMPLIANCE**

Proceeding Under Section 309(a) of the
Clean Water Act, 33 U.S.C. § 1319(a)

STATUTORY AUTHORITY

The following findings are made and order issued pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), which authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of, *inter alia*, §§ 301 or 405 of the Act, or in violation of any permit condition or limitation implementing such sections of the Act. This authority has been properly delegated to the undersigned Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS OF FACT

Respondent

1. Brad Manning Excavation & Septic Service owns and operates a domestic septage disposal business located in Miller, South Dakota.
2. The Respondent's business includes the pumping of sewage sludge (in the form of domestic septage) from residential septic tanks into a vacuum tank truck, and the land application of that sewage sludge from the vacuum tank truck.

3. The Respondent is a "person" for purposes of federal enforcement under sections 309 and 502(5) of the Act, 33 U.S.C. §§ 1319 and 1362(5), and 40 C.F.R. § 503.9(q).
4. EPA sent the Respondent a Request for Information pursuant to section 308 of the Act, 33 U.S.C. § 1318, on June 6, 2011, to determine compliance with section 405 of the Act, 33 U.S.C. § 1345, and the implementing regulations at 40 C.F.R. Part 503.
5. The Respondent submitted a response to the Information Request on July 25, 2011.
6. In the Respondent's Information Request Response, the Respondent stated that some, but not all, of the septage hauled by the Respondent was discharged to different wastewater treatment facilities.
7. In the Respondent's Information Request Response, the Respondent stated that he land applied domestic septage at several different locations.
8. In the Respondent's Information Request Response, the Respondent stated that on March 25, 2011, Respondent disposed of approximately 1,000 gallons of domestic septage on tribal lands rather than discharging into the designated City of Ft. Thompson manhole so that an object (a board) in the truck tank would not "plug (the) man hole sewer line."

General Prohibitions and Regulatory Authorization Regarding Sewage Sludge

9. Section 405(d)(1) of the Act directs the Administrator to develop and publish "regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes." 33 U.S.C. § 1345(d)(1). Those regulations are promulgated at 40 C.F.R. Part 503, and, pursuant to 40 C.F.R. § 503.1(b), apply to any person who prepares sewage sludge or applies sewage sludge to the land.

10. Subpart B of the Standards for the Use or Disposal of Sewage Sludge, 40 C.F.R. §§ 503.10, *et seq.*, sets forth the requirements for land applying sewage sludge.
11. 40 C.F.R. § 503.3(b) prohibits the use or disposal of sewage sludge through any practice for which requirements are established in Part 503 except in accordance with such requirements.

Definitions

12. “Sewage sludge” is defined at 40 C.F.R. § 503.9(w) as “solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage. . .”
13. “Domestic septage” is defined, in part, at 40 C.F.R. § 503.9(f) 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. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.
14. “Agricultural land” is defined at 40 C.F.R. § 503.11(a) as “land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.”
15. “Land application” is defined at 40 C.F.R. § 503.11(h), in part, as “the spraying or spreading of sewage sludge onto the land surface . . . or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.”

FINDINGS OF VIOLATION

Recordkeeping

16. 40 C.F.R. § 503.17(b) provides that when domestic septage is applied to agricultural land, the person who applies the domestic septage shall develop the following information and retain the information for five years on each site on which domestic septage is applied:

- (1) the location, by either street address or latitude and longitude;
- (2) the number of acres;
- (3) the application date;
- (4) the nitrogen requirement for the crop or vegetation grown during a 365 day period;
- (5) the application rate in gallons per acre per 365 day period;
- (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 (insert either § 503.32(c)(1) or § 503.32(c)(2)) and the vector attraction reduction requirement in [insert § 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.

- (7) a description of how the pathogen requirements in either
40 C.F.R. §§ 503.32(c)(1) or (c)(2) are met; and
 - (8) a description of how the vector attraction reduction requirements in
40 C.F.R. §§ 503.33(b)(9), (10), or (12) are met.
17. Respondent failed to develop and retain for a period of five (5) years all of the information required by 40 C.F.R. § 503.17(b)(2) and 40 C.F.R. § 503.17(b)(4) through

(8) for each land application of domestic septage on land referenced in Paragraphs 7 and 8 above.

18. Respondent's failure to develop and retain for five (5) years all the information specified in 40 C.F.R. § 503.17(b)(2) and 40 C.F.R. § 503.17(b)(4) through (8) for each land application of domestic septage constitutes a separate violation of section 405 of the Act, 33 U.S.C. § 1345, and 40 C.F.R. §§ 503.3(b) and 503.17(b).

Application Rate

19. 40 C.F.R. § 503.12(c) provides no person shall apply domestic septage to agricultural land during a 365 day period if the annual application rate in 40 C.F.R. § 503.13(c) has been reached during that period.
20. 40 C.F.R. § 503.13(c) provides that the annual application rate for domestic septage applied to agricultural land shall not exceed the annual application rate calculated using the following equation.

$$AAR \text{ (gallons/ac/yr)} = \frac{N}{0.0026}$$

Annual application rates (AAR) = Annual application rate in gallons per acre per 365 day period

*N = the amount of nitrogen in lbs/acre/year required by the crop grown
Information on the amount of Nitrogen required for the expected crop yield under local soil and climatic conditions should be obtained from a qualified, knowledgeable person, such as your local agricultural extension agent.*

0.0026 is a conversion factor.

21. Respondent's Information Request Response failed to contain soil nitrogen sample analyses from each land application site identified in Paragraphs 7 and 8.

22. Respondent's Information Request Response failed to contain a record of annual application rate in gallons per acre per 365 day period or a record of the nitrogen amount, in pounds, needed at each land application site by the particular crop(s) applied with septage.
23. Respondent's failure to determine the annual application rate on the site prior to land applying domestic septage on agricultural land constitutes a separate violation of section 405 of the Act, 33 U.S.C. § 1345, and 40 C.F.R. § 503.13(c).

Pathogen and Vector Attraction Reduction

24. 40 C.F.R. § 503.15 sets forth the operational standards for pathogen and vector attraction reduction when domestic septage is applied to agricultural land.
25. 40 C.F.R. § 503.31(f) defines "pathogenic organisms" as "disease-causing organisms, including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova."
26. 40 C.F.R. § 503.31(k) defines "vector attraction" as "the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents."
27. 40 C.F.R. § 503.15(b) states that the pathogen requirements in 40 C.F.R. §§ 503.32(c)(1) or (c)(2) shall be met when either:
 - (1) Domestic septage is applied to agricultural land and site restrictions set forth in 40 C.F.R. § 503.32(b)(5) are met, which states, in part, that public access to land with a high potential for public exposure shall be restricted for one year after application of domestic septage or public access to land with a low potential for public exposure shall be restricted for 30 days after application of domestic septage; and crop harvesting

restrictions set forth in 40 C.F.R. § 503.32(b)(5) are met, which states, in part, that food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of domestic septage when the domestic septage remains on the land surface for four months or longer prior to incorporation into the soil. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge; or

(2) Domestic septage is applied to agricultural land and pH adjustment set forth in 40 C.F.R. § 503.32(c)(2) are met, which provides that the pH of domestic septage applied to agricultural land be raised to 12 or higher by alkali addition and, without the addition of more alkali, that it shall remain at 12 or higher for 30 minutes; and crop harvesting restrictions set forth in 40 C.F.R. § 503.32(b)(5)(i) through (iv) are met.

28. 40 C.F.R. § 503.15(d) states that the vector attraction reduction requirements in 40 C.F.R. § 503.33(b)(9), (10) or (12) shall be met when domestic septage is applied to agricultural land and either:

(1) 40 C.F.R. § 503.33(b)(9) requires that domestic septage be injected below the surface of the land, that no significant amount of the sewage sludge be present on the land surface within one hour after the sewage sludge is injected, and that when the sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge must be injected below the land surface within eight hours after being discharged from the pathogen treatment process; or

- (2) 40 C.F.R. § 503.33(b)(10)(i) requires that domestic septage applied to the land surface be incorporated into the soil within six hours after application to or placement on the land, unless otherwise specified by the permitting authority; or
- (3) 40 C.F.R. § 503.33(b)(12) requires that the pH of domestic septage be raised to 12 or higher by alkali addition and, without the addition of more alkali, that it shall remain at 12 or higher for 30 minutes.
29. For at least the last five (5) years, at times the Respondent failed to either (1) inject the domestic septage below the surface of the land; (2) incorporate the domestic septage into the soil within six hours after application to or placement on the land; or (3) raise the pH of the domestic septage to 12 or higher by alkali addition and, without the addition of more alkali, maintain the pH at 12 or higher for 30 minutes when land applying domestic septage to the surface of agricultural land referenced in Paragraphs 7 and 8 above.
30. Each failure by Respondent to comply with the pathogen and vector attraction reduction requirements set forth in 40 C.F.R. §§ 503.32(c)(1) and (c)(2), and 503.33(b)(9), (10), (12), constitutes a separate violation of the requirements and section 405 of the Act, 33 U.S.C. § 1345, 40 C.F.R. §§ 503.3(b) and 503.15.

ORDER

Based on the foregoing findings and pursuant to section 309 of the Act, 33 U.S.C. § 1319, it is hereby ORDERED that:

31. Within fifteen (15) days of receipt of this Order, Respondent shall submit to EPA written notice of its intent to comply with the requirements of this Order, section 405 of the Act, and 40 C.F.R. Part 503.
32. Respondent shall cease all application of domestic septage to land unless such application complies with the pathogen and vector attraction reduction requirements set forth in 40 C.F.R. § 503.32(c)(1) or (2) and 40 C.F.R. § 503.33(b)(9), (10) or (12).
33. Respondent shall cease all application of domestic septage to land unless and until the information specified in 40 C.F.R. § 503.17(b)(1) through (8) is developed and retained.
34. Respondent shall cease all application of domestic septage to land unless and until such application complies with the application rate requirements set forth in 40 C.F.R. § 503.13(c) calculated using the equation provided (set forth in Paragraph 20 above), including accounting for the nitrogen present in the soil on any land application sites on which septage is applied.
35. For four (4) consecutive calendar quarters following receipt of this Order, Respondent shall submit quarterly reports that contain the information required to be developed and maintained pursuant to 40 C.F.R. § 503.17(b)(1) through (8) for each load of domestic septage that is land applied. These reports are due on the twenty-eighth (28th) day of the month following the end of each quarter. The first quarterly report shall be due on the twenty-eighth (28th) day of the month following the end of the first complete

calendar quarter. For the purpose of quarterly reporting, Respondent shall use the form attached as Exhibit 1 for each land application.

36. Respondent shall describe in detail in the first quarterly report, where he chooses not to use pH adjustment to meet pathogen reduction and vector attraction reduction requirements, any site access restrictions implemented at each of the sites where Respondent currently disposes of or land applies domestic septage or any other type of sewage. The site access description shall include, but not be limited to, whether the sites are partially or completely fenced; whether there are any signs at or near the site; and the nature and land uses of the surrounding property. If the location of Respondent's disposal site(s) changes or if the site access restrictions change on the land to which the domestic septage is applied, Respondent shall notify EPA in the subsequent quarterly report.
37. If Respondent does not land apply domestic septage during a calendar quarter, the Respondent shall state so in the quarterly report required by Paragraph 35.
38. All written notices, correspondence, plans, schedules, and reports required by this Order shall be sent to the following address:

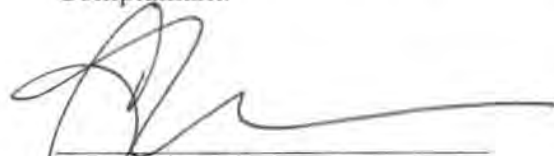
Emilio Llamozas (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129
39. All reports and information required by this Order shall include the certification statement set forth in Exhibit 2, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer or ranking elected official.

GENERAL PROVISIONS

40. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject Respondent to penalties as provided under the section 309 of the Act, 33 U.S.C. § 1319.
41. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the assessment of civil penalties of up to \$37,500 per day for each violation of the Act, while section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.
42. Compliance with the terms and conditions of this Order shall not be construed to relieve Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.
43. This Order shall be effective upon receipt by Respondent.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: December 12, 2011



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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached FINDINGS OF VIOLATION AND 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:

Brad Manning
Brad Manning Excavation & Septic Service
P.O. Box 86
Miller, SD 57362

June 14, 2011
DATE

Gene Howell
SIGNATURE OF SERVER

Exhibit 1

1. Source of Septage: _____
2. Gallons of Septage: _____
3. Address or GPS coordinates of Septage Disposal: _____
4. Number of Acres Septage Applied to: _____

Nitrogen Requirements

5. Crop to be farmed and expected yield: _____
6. Soil Nitrogen test specific to this site (attach test results to this form): _____
7. Nitrogen requirements of crop per acre per year specific to this site: _____
Information on the amount of Nitrogen required for the expected crop yield under local soil and climatic conditions should be obtained from a qualified, knowledgeable person, such as your local agricultural extension agent.
8. Annual Application Rate (AAR) in gallons per acre per year: _____

$$AAR \text{ (gallons/ac/yr)} = \frac{N}{0.0026}$$

*Annual application rate (AAR) = Annual application rate in gallons per acre per 365 day period
N = the amount of nitrogen in lbs/acre/year required by the crop grown*

9. Treatment for Pathogens (Check one)
 - a. None (Must use either 7a or 7b below) [40 C.F.R. § 503.32(c)(1)]
Describe Site Access Restrictions: _____
 - b. pH 12 for 30 minutes [40 C.F.R. § 503.32(c)(2)]
10. Treatment for Vector Attraction Reduction (Check One)
 - a. Injected below the surface [40 C.F.R. § 503.33(b)(9)]
 - b. Plowed into the soil within 6 hours [40 C.F.R. § 503.33(b)(10)]
 - c. pH 12 for 30 minutes [40 C.F.R. § 503.33(b)(12)]
11. Monitoring Requirements
pH of container before application _____

I certify, under penalty of law, that the pathogen requirements and the vector attraction reduction requirements described above have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

12. Signed: _____
13. Date: _____

Exhibit 2

**Statement of Certification
Brad Manning Excavation & Septic Service**

I certify under penalty of law that this document and all attachments 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, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. 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