



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

SEP 22 2008

Ref: 8ENF-W-NP

CERTIFIED MAIL 7005-0390-0000-4845-6733
RETURN RECEIPT REQUESTED

Chuck Bishop
Eagle Plumbing and Septic, LLC
P.O. Box 3203
Montrose, CO 81402

Re: Findings of Violation and Order for
Compliance under sections 308 and
309 of the Clean Water Act
Docket No. CWA-08-2008-0027

Dear Mr. Bishop:

Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that Eagle Plumbing and Septic, LLC ("Eagle") is in violation of the Clean Water Act, as amended ("CWA"). The CWA prohibits, among other things, the disposal of sewage sludge except as in compliance with regulations promulgated pursuant to section 405 of the CWA, 33 U.S.C. § 1345, and found at 40 C.F.R. part 503.

Enclosed is an EPA Findings of Violation and Order for Compliance ("Order") issued to Eagle. The Order specifies the nature of the violations under the CWA and describes the actions necessary in order for Eagle to achieve compliance with the CWA. The authority for such action is provided to EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a). The Order is also issued pursuant to section 308(a) of the CWA, 33 U.S.C. § 1318(a), which authorizes the Administrator of EPA to require reports necessary to determine compliance.

The CWA requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any orders issued thereunder. Section 309(a) of the CWA 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 CWA or with an order issued pursuant to the CWA (33 U.S.C. § 1368).

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 CWA, the most knowledgeable people on my staff regarding these matters are Liz Fagen, Technical Enforcement, at (303) 312-6095, and Wendy Silver, Enforcement Attorney, at (303) 312-6637.

Sincerely,

Michael T. Reiner

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

Enclosures

cc: Tina Artemis, Regional Hearing Clerk
Kenan Diker, CDPHE



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 SEP 22 AM 10:47

EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)	FINDINGS OF VIOLATION
)	AND
)	ORDER FOR COMPLIANCE
Eagle Plumbing and Septic, LLC)	Proceeding Under Sections 308(a) and
P.O. Box 3203)	309(a) of the Clean Water Act,
Montrose, CO 81402)	33 U.S.C. §§ 1318(a) and 1319(a)
)	
)	
)	
Respondent.)	DOCKET NO. CWA-08-2008-0027
)	

STATUTORY AUTHORITY

The following Findings of Violation are made and Order for Compliance ("Order") issued pursuant to section 309(a) of the Clean Water Act (the "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 sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or in violation of any permit condition or limitation implementing such sections in a permit issued under section 402 or 404 of the Act. This Order is also issued pursuant to section 308(a) of the Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of EPA to require reports necessary to determine compliance. These authorities have been delegated to the Regional Administrator of EPA Region 8, and re-delegated to the undersigned official.

FINDINGS OF VIOLATION

1. Eagle Plumbing and Septic, LLC ("Respondent") owns and operates a domestic septage disposal service at 71120 Highway 50, Montrose, CO 81401.
2. Respondent is a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. As required by section 405 the Act, 33 U.S.C. § 1345, EPA promulgated the "Standards for the Use or Disposal of Sewage Sludge." 40 C.F.R. part 503. These regulations establish general requirements, pollutant limits, management practices, and operational standards for the final use or disposal of sewage sludge.
4. "Sewage sludge" is defined at 40 C.F.R. § 503.9(w) as a 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.
5. "Domestic septage" is defined 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.
6. Domestic septage haulers were required by 40 C.F.R. § 503.2(c) to begin keeping records and monitoring the land application of domestic septage on July 20, 1993.

7. Domestic septage haulers were required by 40 C.F.R. § 503.2(a) to be in full compliance with “Standards for the Use or Disposal of Sewage Sludge” no later than February 19, 1994.
8. Domestic septage haulers that apply domestic sewage to “non-public contact sites” which includes application of domestic sewage to “agricultural land” are also regulated by 40 C.F.R. part 503.
9. “Agricultural land” is defined in 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.” “Range land” is defined by 40 C.F.R. § 503.11(m) as “open land with indigenous vegetation.”
10. Respondent has applied domestic sewage to agricultural lands and is therefore subject to regulation pursuant to 40 C.F.R. part 503.
11. On November 19, 2007, EPA sent to Respondent a request for information (“November 19, 2007 Request”) pursuant to section 308 of the Act, 33 U.S.C. § 1318, to determine compliance with section 405 of the Act (Disposal or Use of Sewage Sludge), 33 U.S.C. § 1345, and the regulations promulgated thereunder and found at 40 C.F.R. part 503. The Respondent provided a response to the Request dated December 10, 2007 (“Response”).
12. Respondent's Response stated that domestic septage was disposed of at the Telluride Waste Water Treatment Plant (“TWWTP”) and at CB Industries (“CBI”), but included incomplete disposal records; for example, pickup records did not correspond to disposal records and billing statements, pickup records did not indicate disposal, and volumes disposed of at TWWTP and CBI, based on receipts and billing statements, did not match

the volumes on the Respondent's disposal records. Records for each disposal occurrence were to contain the following information:

- a. Name of Customer (Source of Septage)
- b. Customer Address (Source of Septage)
- c. Date Septage Picked-Up
- d. Type of Septage
- e. Volume of Septage
- f. Disposal Location

13. Respondent's Response stated that domestic septage was disposed of by land application on lands used for crop harvesting. Respondent was required to submit all records regarding septage pick up, however the records did not contain all of the following information:

- a. Name of Customer (Source of Septage)
- b. Customer Address (Source of Septage)
- c. Date Septage Picked-Up
- d. Type of Septage
- e. Volume of Septage

14. Respondent's Response stated that domestic septage was disposed of by land application on lands used for crop harvesting. Respondent was required to submit all land applications records as specified in 40 C.F.R. § 503.17(b). The records for each land application occurrence did not contain all of the following information per each septage application:

- a. Date [40 C.F.R. § 503.17(b)(3)];
- b. Disposal Location/Address [40 C.F.R. § 503.17(b)(1)];
- c. Number of Acres Applied [40 C.F.R. § 503.17(b)(2)];
- d. Nitrogen Requirement [40 C.F.R. § 503.17(b)(4)];
- e. Treatment Method for Pathogens [40 C.F.R. § 503.17(b)(7)];
- f. Treatment Method for Vector Attraction Reduction [40 C.F.R. § 503.17(b)(8)];
- g. Application Rate [40 C.F.R. § 503.17(b)(5)]; and

h. Certification Statement [40 C.F.R. § 503.17(b)(6)].

Failure to maintain this information is a violation of 40 C.F.R. § 503.17(b) and section 405 of the Act.

15. Respondent's Response did not provide adequate information to verify that the annual nitrogen application rate identified in 40 C.F.R. § 503.13(c) was not exceeded.

COMPLIANCE ORDER

Pursuant to the authority of sections 308 and 309 of the Act, 33 U.S.C. §§ 1318, 1319, it is hereby ORDERED:

1. Within fifteen (15) days after receipt of this Order, Respondent shall give written notice to this Agency of its intent to comply with the requirements of this Order to achieve and maintain compliance with section 405(e) of the Act, 33 U.S.C. § 1345(e).
2. Within thirty (30) days after receipt of this Order, Respondent shall conduct or have a qualified contractor conduct soil sampling at all land application sites prior to the application of additional septage. Following the Colorado General Permit for Sewage Sludge Disposal by Means of Land Application (Permit No. COG650000), a minimum of six representative samples over each application site shall be collected for each one foot interval to a depth of five feet. The representative samples shall be composited into one sample, resulting in five composite samples from the following depth intervals: 0-1 feet, 1-2 feet, 2-3 feet, 3-4 feet, and 4-5 feet at each application site. Each of the 0-1 feet samples shall be submitted to a soil analytical laboratory for analysis for: nutrients, including nitrogen and phosphorous; metals, including arsenic, cadmium, chromium,

copper, lead, mercury, molybdenum, nickel, selenium, and zinc; and pathogens. All of the remaining samples shall be submitted to a soil analytical laboratory for analysis for nitrogen only; the analytical results shall be reported as mg of nitrate-nitrogen/Kg of soil (dry weight basis). Prior to conducting any soil sampling, Respondent shall contact a soil analytical laboratory for guidance on appropriate sample collection, preservation and analysis.

3. Within ninety (90) days of receipt of this Order, Respondent shall provide soil sample results required under paragraph 2 of this Order to EPA at the address shown in paragraph 10, below.
4. Beginning in January, 2009, and continuing for four calendar quarters, Respondent shall submit quarterly reports to EPA that contain the following information for **each load of domestic septage disposed**:
 - a. Name of Customer (Source of Septage)
 - b. Customer Address (Source of Septage)
 - c. Date Septage Picked-Up
 - d. Type of Septage
 - e. Volume of Septage
 - f. Disposal Location

Respondent shall also submit disposal receipts for all disposal facilities utilized. These reports shall be due on the tenth (10th) day of the month following the end of the calendar quarter. The first quarterly report shall be due on January 10, 2009, for the fourth quarter of 2008. In addition, for each land application of domestic septage, the reported information shall be maintained for a minimum of five (5) years.

5. Respondent may elect to use the example in Exhibit 1 of this Order, to record the information required by paragraph 4 of this Order.
6. Respondent shall describe in detail in the first quarterly report required by paragraph 4, any site access restrictions implemented at each of the sites where Respondent has disposed of domestic septage for the past five (5) years or 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) change or if the site access restrictions change on the land to which the domestic septage is applied, Respondent shall notify EPA within 30 days of the change in conditions.
7. Beginning in January, 2009, and continuing for four calendar quarters, Respondent shall submit quarterly reports that contain the following information for **each load of domestic septage that is land applied**:
 - a. the location, by either street address or latitude and longitude, of each site on which domestic septage is applied [40 C.F.R. § 503.17 (b)(1)];
 - b. the number of acres in each site on which domestic septage is applied [40 C.F.R. § 503.17 (b)(2)];
 - c. the date and time domestic septage was applied to each site [40 C.F.R. § 503.17 (b)(3)];
 - d. the nitrogen requirement for the crop or vegetation grown on each site during a 365 day period [40 C.F.R. § 503.17 (b)(4)];
 - e. the rate, in gallons per acre per 365 day period, at which domestic septage is applied to each site [40 C.F.R. § 503.17 (b)(5)];
 - f. the following certification statement [40 C.F.R. § 503.17 (b)(6)]:

“I certify, under penalty of law, that the pathogen requirements in [Insert either 40 C.F.R. §§ 503.32(c)(1) or 503.32(c)(2)] and the vector attraction reduction requirements in [Insert 40 C.F.R. §§ 503.33(b)(9), 503.33(b)(10) or 503.33(b)(12)] 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.”

- g. a description of how the pathogen requirements in either 40 C.F.R. §§ 503.32(c)(1) or 503.32(c)(2) are met; and
- h. a description of how the vector attraction reduction requirements in 40 C.F.R. §§ 503.33(b)(9), 503.33(b)(10) or 503.33(b)(12) are met.

These reports are due on the tenth (10th) day of the month following the end of the quarter. The first quarterly report shall be due on January 10, 2009, for the fourth quarter of 2008. In addition, for each land application of domestic septage, the reported information shall be maintained for a minimum of five (5) years.

- 8. Respondent may elect to use the example in Exhibit 2 of this Order, to record the information required by paragraph 7 of this Order.
- 9. Respondent shall immediately take all actions necessary to achieve full compliance with 40 C.F.R. § 503.17(b) and section 405(e) of the Act, 33 U.S.C. § 1345(e).
- 10. All written notices and reports required by this Order shall be sent to the following address:

Elizabeth Fagen (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

11. All written notices, correspondence, plans, schedules, and reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent (as specified by 40 C.F.R. § 122.22(b)) and shall include the certification set forth in Exhibit 3 to this order.
12. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject Respondent to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.
13. Please be advised that section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500 per day for each violation of section 301 of the Act, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the Act, 33 U.S.C. § 1319(a), including this Order. Additionally, section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Further, section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this Order.
14. 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.

15. This Order shall be effective upon receipt by Respondent.

Dated: This 19th day of September, 2008.

for Michael T. Bizer
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

IN THE MATTER OF: Eagle Plumbing and Septic
DOCKET NO.:

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:

Chuck Bishop
Eagle Plumbing and Septic, LLC
P.O. Box 3203
Montrose, CO 81402

9/22/08
DATE

Judith M. McTernan
SIGNATURE OF SERVER

Exhibit 1 to Compliance Order

[illegible]

Exhibit 2 to Compliance Order

Eagle Plumbing and Septic

71150 Highway 50
Montrose, CO 81401

1. Source of Septage: _____
2. Gallons of Septage: _____
3. Location of Septage Disposal (Only One)
Land Applied at _____
4. Number of Acres Septage Applied _____

5. Nitrogen Requirement (Check One)

<u>Crop</u>	<u>lb N/acre/year</u>	<u>gals Septage/acre/year</u>
<input type="checkbox"/> Corn	100	38,500
<input type="checkbox"/> Oats	60	23,000
<input type="checkbox"/> Irrigated Hay/Grass	100	38,500
<input type="checkbox"/> Dryland Hay/Grass	30	11,500
<input type="checkbox"/> Irrigated Wheat	75	28,900
<input type="checkbox"/> Dryland Wheat	50	19,300
<input type="checkbox"/> Other _____	_____	_____

6. Treatment for Pathogens (Check one)

- ☐ a. None (Must use either 7a or 7b below) [40 C.F.R. § 503.32(c)(1)]
- ☐ b. pH 12 for 30 minutes [40 C.F.R. § 503.32(c)(2)]

7. 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)]

8. Monitoring Frequency 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.

9. Signed: _____

10. Date: _____

**Statement of Certification
Eagle Plumbing and Septic**

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