



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

REPLY TO THE ATTENTION OF
(C-14J)

February 11, 2010

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Re: Barton Septic Tank Service, St. Clairsville, Ohio.
Docket No. CWA-05-2009-0009.

Dear Judge Gunning:

Enclosed, please find **COMPLAINANT MOTION TO POSTPONE HEARING** for this civil administrative action which I filed today with the Regional Hearing Clerk.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Trevino".

Jeffery M. Trevino
Associate Regional Counsel

Enclosure

cc: **LaDawn Whitehead**
Regional Hearing Clerk
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (E-19J)
Chicago, IL 60604-3590

Christopher Congeni, Esq.
Brennan, Manna, and Diamond, LLC
75 East Market Street
Akron, OH 44308

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

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U.S. EPA REGION 5
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In the Matter of)
)
Barton Septic Tank Service,) **Docket No. CWA-05-2009-0009**
)
Respondent.)

COMPLAINANT MOTION TO POSTPONE HEARING

Pursuant to 40 C.F.R. § 22.16 Complainant hereby files this Motion to Postpone the Hearing for this civil administrative action due to the following facts.

1. On December 30, 2009, the Court ordered the hearing for this action to begin on March 2, 2010, in Akron, Ohio.
2. On or about February 5, 2010, Richard Antolak, President, Barton Septic Tank Service, Respondent, signed and dated the Consent Agreement and Final Order (CAFO) to resolve this action without resort to hearing. (Attached).
3. The parties will complete the signing and dating of the CAFO, and file it with the Regional Hearing Clerk, by Thursday, March 4, 2010.
4. Respondent does not object to this Motion.

WHEREFORE, Complainant requests the Court postpone the hearing for this action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Trevino', written over the typed name below.

Jeffery M. Trevino
Associate Regional Counsel
Office of Regional Counsel
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590
Tel. No. (312) 886-6729
Fac. No. (312) 692-2987

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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Barton Septic Tank Service,) **Docket No. CWA-05-2009-0009**
)
Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that today I filed with LaDawn Whitehead, Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois, 60604-3590, the original document entitled **COMPLAINANT MOTION TO POSTPONE HEARING** for this civil administrative action and I issued to the Court and Respondent by first class mail a copy of the original document:

Judge Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

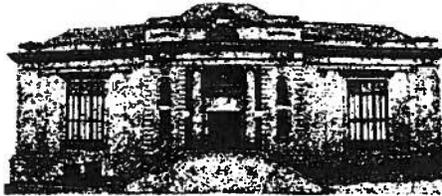
Christopher B. Congeni, Esq.
Brennan, Manna, and Diamond, LLC
75 East Market Street
Akron, OH 44308



Jeffery M. Trevino
Associate Regional Counsel



Dated



BRENNAN, MANNA & DIAMOND, LLC

ATTORNEYS & COUNSELORS AT LAW
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Christopher B. Congeni
Direct Dial: (330) 253-2038
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E-Mail: cbcongeni@bmdllc.com

FAX COVER SHEET

Date: February 11, 2010

To: Jeffrey Trevino

Fax No.: (312) 692-2987

No. of pages, including cover page: 7

Comments:

Please notify Sharon Tawney at 330.253.5060 ext. 164 if not received properly.
Our 24-hour automatic fax number is 330.253.1977.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Barton Septic Tank Service,)	Docket No. CWA-05-2009-0009
)	Consent Agreement and Final Order.
Respondent.)	

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

Preliminary Statement

1. On July 30, 2009, the Director, Water Division, Region 5, United States Environmental Protection Agency (EPA or Complainant) filed the Complaint for this civil administrative action against Barton Septic Tank Service, 70170 Provident Fairpoint Road, St. Clairsville, Ohio, 43950, (Respondent), pursuant to Section 309(g) of the Clean Water Act, (CWA), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the Consolidated Rules), codified at 40 C.F.R. Part 22.

2. The Complaint alleged that on 131 occasions from July 1, 2004, to August 2, 2005, Respondent applied domestic septage to agricultural land, but failed to generate and maintain the records required by 40 C.F.R. § 503.17(b), in violation of Section 405(e) of the CWA, 33 U.S.C. § 1415(e).

3. On or about August 29, 2009, Respondent filed its Answer to the Complaint and requested a hearing pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B).

4. The parties agree it is in their interest and in the public interest to resolve this action

without the adjudication of any issue of fact or law.

Stipulations

5. Respondent admits the jurisdictional allegations of the Complaint pursuant to 40 C.F.R. § 22.18(b)(2).
6. Respondent neither admits nor denies the specific allegations contained in the Complaint pursuant to 40 C.F.R. § 22.18(b)(2).
7. Respondent consents to the assessment of the stated civil penalty below pursuant to 40 C.F.R. § 22.18(b)(2).
8. Respondent waives any right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying this Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2).
9. Respondent consents to the terms and conditions of this Consent Agreement.

Civil Penalty

10. Complainant determined the appropriate civil penalty to resolve this action without resort to hearing to be **\$12,500.00** pursuant to Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, history of violations, degree of culpability, economic benefit resulting from the violations and any other factors justice may require. Complainant particularly considered financial information submitted by Respondent which demonstrated its inability to pay the proposed civil penalty to resolve this action.

11. Respondent agrees to pay the civil penalty of \$12,500.00 within thirty (30) days after the effective date of this CAFO. Respondent agrees to pay the \$12,500.00 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, MO 63197-9000

The check must state the docket number of this CAFO, and any assigned billing document number, discussed below.

12. Respondent agrees to include with its check a transmittal letter stating Respondent's name, complete address, the case docket number and any assigned billing document (BD) number. Respondent agrees to write the case docket number and the BD number on the face of the check. The BD number may be found on the cover letter transmitting this CAFO.

Respondent must send copies of the check and transmittal letter to:

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

Valdis Aistars (WC-15J)
Section 1
Water Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Jeffery M. Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

13. Respondent agrees it will take all future collected domestic septage to a publicly-owned treatment works (POTW) as defined at 40 C.F.R. § 403.3. If Respondent fails to take any of its future collected domestic septage to a POTW, it shall pay immediately a civil penalty of \$1,000.00 for each failure, in the manner prescribed in paragraphs 11 and 12 above, and subject

to the late fees of paragraphs 15 and 16 below.

14. The civil penalty and any stipulated penalties are not deductible for federal tax purposes.

15. If Respondent does not pay the civil penalty or any stipulated penalties timely, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(4). The validity, amount and appropriateness of the civil penalty or any stipulated penalties are not reviewable in a collection action.

16. Respondent must pay the following on any civil penalty or stipulated penalties overdue under this CAFO. 31 C.F.R. § 901.9. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15.00 handling charge each month that any portion of the penalty is more than thirty (30) days past due. In addition, Respondent must pay a six percent (6%) per year penalty on any principal amount ninety (90) days past due.

General Provisions

17. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

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

19. This CAFO does not affect Respondent's responsibility to comply with the Clean Water Act, the pretreatment standards promulgated thereunder, or any other applicable federal, state, and local laws.

20. Respondent certifies that it is complying with the Clean Water Act and the

pretreatment standards promulgated thereunder.

21. The terms of this CAFO bind Respondent, its successors and assigns.
22. 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.
23. Each party agrees to bear its own costs and attorney's fees in this action.
24. This CAFO constitutes the entire agreement between the parties.
25. According to Section 309(g)(5) of the CWA, 33 U.S.C. ' 1319(g)(5), this Consent Agreement and Final Order will become effective the date it is filed with the Regional Hearing Clerk. No person responded to the public notice of the commencement of this action pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. ' 1319(g)(4)(A). Therefore, it is not necessary to notify any interested persons of the issuance of the Final Order in this matter pursuant to Section 309(g)(9)(C) of the CWA, 33 U.S.C. ' 1319(g)(9)(C).
26. The Final Order, once effective, is a final order for the purposes of future enforcement.

Barton Septic Tank Service, Respondent

2-5-2010
Date

Richard Antolak
Richard Antolak
President

United States Environmental Protection Agency, Complainant

Date

Tinka G. Hyde, Director
Water Division, Region 5

**In the Matter of: Barton Septic Tank Services.
St. Clairsville, Ohio.
Docket No. CWA-05-2009-0009**

FINAL ORDER

I approve the preceding Consent Agreement and incorporate it by reference into this Final Order. I order Barton Septic Tank Service, St. Clairsville, Ohio, to comply with the terms of the preceding Consent Agreement, effective the date it is filed with the Regional Hearing Clerk.

Date

Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5