



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

REPLY TO THE ATTENTION OF:

WC-15J

SEP 21 2005

CERTIFIED MAIL 7001 0320 0006 1562 4942
RETURN RECEIPT REQUESTED

Mr. Leonard Sockness
Sockness Septic Service
N15048 Fernwall Ave.
Stanley, Wisconsin 54768

Subject: Notice of Proposed Assessment of a Class II
Administrative Penalty Pursuant to Section 309(g) of
the Clean Water Act
Docket No. ~~CWA-05-2005-0010~~ *10*

Dear Mr. Sockness:

Enclosed is a copy of an "Administrative Complaint", which I have filed against Sockness Septic Service, under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). In the Complaint, the U.S. Environmental Protection Agency (U.S. EPA) alleges that you and your company violated Section 405(e) of the Act. The Complaint describes the alleged violations.

You may request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. I invite you to pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If you fail to request a hearing within 30 days of receipt of the Complaint, you waive the right to a hearing and may become liable for the entire proposed civil penalty. If you request a hearing, you may seek the representation of an attorney, or represent yourself at any point in these proceedings.

The rules governing these proceedings are 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," 40 C.F.R. Part 22, 64 Fed. Reg. 40,138 (July 23, 1999). I have enclosed a copy for your reference.

Whether or not you or your company request a hearing, I invite you to confer informally with U.S. EPA concerning the alleged violations and the amount of the proposed penalty. Again, you may seek representation by an attorney at any conference, whether the meeting occurs in person or by telephone. U.S. EPA encourages all parties to pursue settlement during an informal conference. If the parties reach a satisfactory settlement, a mutually negotiated and executed Consent Agreement will resolve this matter. The issuance of such a Consent Agreement will constitute a waiver by Sockness Septic Service of its right to a hearing on, and judicial appeal of, the agreed civil penalty.

A request for an informal conference does not extend the 30 days during which Sockness Septic Service may request a hearing on the proposed penalty assessment. You may pursue the two procedures simultaneously. If Sockness Septic Service has any questions or wishes to discuss settlement of this matter, please contact Valdis Aistars, Water Division (WC-15J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Mr. Aistars at (312) 886-0264. For questions regarding legal issues, please contact Charles Mikalian, Assistant Regional Counsel at (312) 886-2242.

We urge your prompt attention to this matter.

Sincerely yours,



for Jo Lynn Traub
Director, Water Division

Enclosures

cc: Greg Kester, WDNR
Jeanne L. Calhoun, WDNR

U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION 5
PUBLIC NOTICE

Sockness Septic Service
N15048 Fernwall Ave.
Stanley, Wisconsin 54768
Docket No. ~~CWA-05-2005-0010~~ *JBW*

The U.S. Environmental Protection Agency (U. S. EPA), Region 5, is hereby giving notice of its proposal to assess a civil penalty of \$80,000.00 against Sockness Septic Service (Sockness) for violations of the Clean Water Act. U.S. EPA is seeking civil penalties for Sockness's failure to prepare and maintain records regarding land application of domestic septage.

Any person wishing to comment on the proposed penalty order must submit written comments to the Regional Hearing Clerk at the address listed below within 30 days of the date of this notice. These comments should identify the case name and docket number.

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Only Sockness may request a hearing on the proposed penalty order. If a hearing is held, those submitting written comments will be advised of the date and time of the hearing and may appear to present evidence on the appropriateness of the proposed penalty assessment. The U.S. EPA will give notice of the final order assessing a penalty to any person who submitted written comments.

A copy of the Administrative Complaint may be obtained from the Regional Hearing Clerk or by contacting Charles Mikalian at (312) 886-2242. All documents filed in this proceeding, including documents submitted by Sockness, are available at the U.S. EPA Regional Office at the address listed above. The case docket will be open for public inspection between 9 a.m. and 4 p.m. Monday through Friday.



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

SEP 21 2005

REPLY TO THE ATTENTION OF: WC-15J

CERTIFIED MAIL 7001 0320 0006 1562 4928
RETURN RECEIPT REQUESTED

Bruce Baker, Director
Bureau of Wastewater Management
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, WI 53707

Subject: Notice of Proposed Administrative Assessment of
Class II Civil Penalty: Sockness Septic Service
Docket No.

~~CWA 95-2005~~ - 0010
JBW

Dear Mr. Baker:

Enclosed is a copy of the administrative complaint which the U.S. Environmental Protection Agency (U.S. EPA) has issued to Sockness Septic Service for violations of Section 405(e) of the Clean Water Act (Act). Region 5 has issued the Complaint to assess administratively a Class II civil penalty against Sockness Septic Service for violations of Section 405 of the Clean Water Act. Because the violations have occurred in Wisconsin, U.S. EPA would like to offer you an opportunity to confer with us regarding the proposed assessment.

You may request a conference with U.S. EPA anytime within twenty (20) days of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed assessment. A copy of U.S. EPA's procedures governing the assessment of Class II administrative penalties under the Act is also enclosed.

If you wish to request a conference or if you have any comments or questions regarding this matter, please call Valdis Aistars at (312) 886-0264. For questions regarding legal issues, please contact Charles Mikalian at (312) 886-2242.

Sincerely yours,

for Jo Lynn Traub
Director, Water Division

Enclosure

cc: Regional Hearing Clerk

been established pursuant to subsection (d) of this section, except in accordance with such regulations.”

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. 40 C.F.R. § 503.2 provides that “[c]ompliance with the standards in this part shall be achieved as expeditiously as practicable, but in no case later than February 19, 1994.

7. 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 this part except in accordance with such requirements.”

8. Pursuant to 40 C.F.R. § 503.1(b), the provisions of 40 C.F.R. Part 503 apply, in pertinent part, to any person who applies sewage sludge to the land.

9. 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

10. Respondent is a “person”, a term defined at section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 501.2.

11. In the course of conducting its business, Respondent collected liquid and solid material from domestic septage tanks, cesspools, portable toilets or other waste collection devices.

12. The materials referred to in Paragraph 11 are "domestic septage" as that term is defined in 40 C.F.R. § 503.9(f).

13. The materials referred to in Paragraph 11 are "sewage sludge" as defined at 40 C.F.R. § 503.9(w).

14. The sources from which Respondent collected materials, identified in Paragraph 11, were "treatment works treating domestic sewage" within the meaning of Section 405(e) of the CWA, 33 U.S.C. § 1345(e).

ALLEGED VIOLATIONS

COUNT I

FAILURE TO MEET RECORDKEEPING REQUIREMENTS (40 C.F.R. § 503.17(b))

15. Paragraphs 1-15 are hereby incorporated by reference.

16. 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:

(1) The location, by either street address or latitude and longitude, or each site on which domestic septage is applied.

(2) The number of acres in each site on which domestic septage is applied.

(3) The date and time domestic septage is applied to each site.

(4) The nitrogen requirement for the crop or vegetation grown on each site during a 365 day period.

(5) The rate, in gallons per acre per 365 day period, at which domestic septage is applied to each site.

(6) The following certification statement:

“I certify, under penalty of law, that the pathogen requirements in [insert either § 503.32(c)(1) or § 503.32(c)(2)] and the vector attraction reduction requirements in [insert § 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.”

(7) A description of how the pathogen requirements in either § 503.33(c)(1) or (c)(2) are met.

(8) A description of how the vector attraction reduction requirements in § 503.33(b)(9), (b)(10), or (b) (12) are met.

17. During 2003, Respondent applied domestic septage referred to in Paragraph 11 to agricultural land on the following dates: June 26-27 and 30; July 8, 14 and 16; August 11-16, 18-23, 25-27 and 29; September 8-11, 15-20, 22-26, and 29-30; October 1-3, 6-10, 13-14, 16-17, 20-25, and 27-31; November 1, 4, 10-14, 19-21, 26, and 28; and December 1, 3-5, 6, 8, 11, 13-15, 17-19, 23-24, 26-27, and 29-31.

18. During 2004, Respondent applied domestic septage referred to in Paragraph 11 to agriculture land on the following dates: January 2, 5-9, 12-13, 15-17, 20-21, 23-24, and 26-30; April 9, 12, 15-16, 20, and 29-30; May 3-7; July 1; August 7; September 7-10; 13-14; 20, 22-24,

and 29-30; October 4, 6, 12-13, 15, 21-22 and 26; November 8-10, 15-18, 24 and 26; and December 15-17, 20-21, and 23.

19. With regard to each instance in which Respondent applied domestic septage to agricultural land, as identified in Paragraphs 17 and 18, Respondent failed to develop and maintain records identifying the information required by 40 C.F.R. § 503.17(b).

20. With regard to each instance in which Respondent applied domestic septage to agricultural land, as identified in Paragraphs 17 and 18, Respondent's failure to develop and maintain records required by 40 C.F.R. § 503.17(b) constitutes a separate violation of 40 C.F.R. § 503.17(b).

21. By violating 40 C.F.R. § 503.17(b), Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e), subjecting Respondent to civil penalties under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

COUNT II

FAILURE TO MEET VECTOR ATTRACTION REDUCTION REQUIREMENTS (40 C.F.R. § 503.15(d))

22. Paragraphs 1-21 are incorporated herein by reference.

23. 40 C.F.R. § 503.15(d) provides that the vector attraction reduction requirements of 40 C.F.R. § 503.33(b)(9), (b)(10), or (b)(12), shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

24. With regard to at least one instance in which Respondent applied domestic septage to agricultural land as identified in Paragraphs 17 and/or 18, Respondent failed to meet

the vector attraction reduction requirements of 40 C.F.R. § 503.33(b)(9), (b)(10) or (b)(12), as required by 40 C.F.R. § 503.15(d).

25. By failing to meet the vector attraction reduction requirements of 40 C.F.R. § 503.33(b)(9), (b)(10) or (b)(12), Respondent violated 40 C.F.R. § 503.15(d).

26. By violating 40 C.F.R. § 503.15(d), Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e), subjecting Respondent to civil penalties under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

PROPOSED CIVIL PENALTY

Pursuant to section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Administrator may assess a Class II civil penalty not to exceed \$10,000 per day for each day during which a violation continues, not to exceed \$125,000 for violations of section 405 of the CWA, 33 U.S.C. § 1345. In 1990, Congress enacted the Debt Collection Improvement Act of 1986, Pub. L. 101-410, 104 Stat. 890 (November 5, 1990), as amended, Pub. L. 104-134, Title III, § 31001(s)(1), 110 Stat. 1321-1373 (April 26, 1996), which authorizes federal agencies which collect penalties pursuant to statutory authority to adjust their statutory maximum penalties by rule, to account for inflation. Effective January 31, 1997, U.S. EPA modified the statutory maximum penalty under 309(g) of the CWA, 33 U.S.C. § 1319(g), increasing the maximum penalty per day of violation to \$11,000, and the maximum penalty per action to \$137,500. *See* 40 C.F.R. Part 19. For violations occurring after March 15, 2004, U.S. EPA increased the maximum penalty per action to \$157,500. *See* 40 C.F.R. Part 19.

In Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), Congress provides that, “[i]n determining the amount of any penalty assessed under this subsection, the Administrator . . . shall

take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.”

In determining the penalty amount proposed in this Administrative Complaint, the Administrator’s delegated complainant has analyzed the known evidence in this case, in consideration of the penalty criteria identified at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

In considering Respondent’s “ability to pay” a penalty, consistent with the Administrator’s Rules and Published Final Decisions, Complainant has presumed that Respondent does have an ability to pay the penalty amount proposed. However, should Respondent raise his “ability to pay” as an issue in any Answer that he files, and make available to the Administrator’s delegated complainant relevant and credible financial records which demonstrate that he does not have an ability to pay the amount of penalty proposed, Complainant will set aside the presumption and reduce the amount of penalty proposed, consistent with what is revealed in Respondent’s financial records. Likewise, should Respondent provide Complainant credible information relevant to any other issue regarding the appropriate amount of penalty, on review of that information Complainant will amend the amounts of penalty proposed if, and as, warranted.

The Administrator's delegated complainant proposes that the Administrator assess the following civil penalties against Respondent for the violations alleged in this complaint:

Count 1	(40 CFR 503.17(c))	\$ 50,000
Count 2	(40 CFR 503.15(b))	\$ 30,000
Total Penalty:		\$ 80,000

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check, payable to "Treasurer, the United States of America," delivered to:

U.S. EPA, Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send a copy of the check and transmittal letter to:

Valdis Aistars
Water Enforcement and Compliance Assurance Branch (WC-15J)
Water Division
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Congress has provided that, before issuing an order assessing a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1219(g)(2)(B), except as otherwise provided in Section 309(g) of the CWA, 33 U.S.C. § 1219(g), a Class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of Title 5.

Consequently, you have the right to request a hearing to challenge the facts alleged in the Administrative Complaint and the amount of civil penalty it is proposed the Administrator assess. Any hearing and pre-hearing matter will be governed in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22 (July 1, 2000) ("the Administrator's Rules"). A copy of the Administrator's Rules accompanies this Complaint.

If you wish to avoid being found in default, you must file a written answer to the Complaint with the Regional Hearing Clerk (R-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) days of your receipt service of this Complaint. 40 C.F.R. § 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. 40 C.F.R. § 22.7(a).

By rule, the Administrator provides that your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Administrative Complaint with respect to which you have any knowledge, or, where you have no knowledge of a particular factual allegation, so state. 40 C.F.R. § 22.15(b). The Administrator further provides that your Answer must also state:

1. The circumstances or arguments that you allege constitute the grounds of defense;
2. The facts that you dispute;

3. The basis on which you dispute the proposed relief, that being the amount of penalty proposed; and
4. Whether you request a hearing.

40 C.F.R. § 22.15(b). Your failure to admit, deny or explain any material factual allegation in the Compliant will constitute an admission of the allegation. 40 C.F.R. § 22.15(d).

You should further note that the Administrator's Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer." 40 C.F.R. § 22.15(c). Consequently, your failure to raise an issue in your answer may preclude you from addressing the issue at any hearing which may be held.

A copy of the Answer, and any subsequent documents filed by you in this action, should be sent to Charles V. Mikalian, Associate Regional Counsel, Office of Regional Counsel (C-29A), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Mr. Mikalian's telephone number is (312) 886-2242.

Notwithstanding any request you may make for a hearing, if you fail to file an answer within thirty (30) days of your receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. 40 C.F.R. §22.15(a); 40 C.F.R. § 22.17. Issuance of this Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to a hearing on those factual allegations. Any civil penalty determined appropriate in the Default Order shall then become due and payable, without further proceedings, on becoming a final order under 40 C.F.R. § 22.27(c). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default

penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. U.S. EPA will impose a late payment handling charge of \$15.00 after thirty (30) days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

SETTLEMENT CONFERENCE:

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent should contact: Mr. Valdis Aistars; Water Division (WC-15J); U.S. Environmental Protection Agency Region 5; 77 West Jackson Boulevard; Chicago, Illinois 60604-3590. You may also telephone Mr. Aistars at (312) 886-0264.

Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

CONTINUING OBLIGATION TO COMPLY

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable Federal, state, or local law.

By: Sally Swann
for Jo Lynn Traub
Director, Water Division

Dated: 9-20-05

~~CWA-05~~ 2005-0010
JLW

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of this Administrative Complaint were filed with the Regional Hearing Clerk on 9-21-05, and that a true and correct copy was mailed along with a copy of the Consolidated Rules of Practice to the addressees as follows:

CERTIFIED MAIL 7001 0320 0006 1562 4942
RETURN RECEIPT REQUESTED

Mr. Leonard Sockness
Sockness Septic Service
N15048 Fernwall Ave.
Stanley, Wisconsin 54768

Date: 9-21-05

CERTIFIED MAIL 7001 0320 0006 1562 4928
RETURN RECEIPT REQUESTED

Mr. Bruce Baker, Director
Bureau of Wastewater Management
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, WI 53707

Date: 9-21-05

Ronise Mone

U.S. Environmental Protection Agency
Region 5
77 West Jackson, WC-15J
Chicago, Illinois 60604

~~CWA-05~~ 2005 - 00 10
BBW

US ENVIRONMENTAL
PROTECTION AGENCY
REGION V

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RECEIVED
REGION V