

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

OHIO TRADING, INC.,
d/b/a BOSLEY DRAIN & SEPTIC
CLEANING

LOUISVILLE, OHIO,

RESPONDENT.



) Docket No. CWA-05-2013-0021

) Joint Civil Complaint and Consent

) Agreement and Final Order to

) Resolve a Proceeding to Assess

) A Civil Penalty Pursuant to

) Pursuant to section 309(g) of the

) Clean Water Act 33 U.S.C. § 309(g)

CONSENT AGREEMENT

1. This administrative action for the assessment of a civil penalty is being simultaneously commenced and concluded by the filing of this Consent Agreement and Final Order (CAFO) pursuant to section 309(g) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(g) (2012), and sections 22.13(b) and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. part 22.
2. Complainant is, by lawful delegation, the Director of the Water Division, Region 5, U. S. Environmental Protection Agency.
3. The Respondent is Ohio Trading, Inc., doing business as Bosley Drain and Septic Cleaning.
4. Respondent operates a business located at 8855 State Street, Louisville, Ohio 44641.

5. Respondent collects domestic septage, liquid, and solid waste material from domestic septage tanks, cesspools, portable toilets, and other domestic waste collection devices principally located within the vicinity of Louisville, Ohio.

6. On November 7, 2007, EPA issued an Information Request to Respondent in response to a complaint from the Stark County Health Department and the Ohio Environmental Protection Agency. EPA followed this initial request with letters dated February 1, 2008, and March 6, 2008, issued pursuant to section 308 of the CWA, 33 U.S.C. § 1318, that ordered Respondent to submit information regarding Respondent's compliance with federal regulations governing the land-application of domestic septage.

7. On August 31, 2011, EPA issued a subsequent Information Request to Respondent. EPA followed this request with a letter requesting additional information on February 15, 2012, pursuant to section 308 of the CWA that ordered Respondent to submit information regarding Respondent's compliance with federal regulations governing the land-application of domestic septage.

8. Respondent replied to EPA's information requests with letters received by EPA on December 31, 2007; February 1, 2008; February 19, 2008; May 8, 2008; February 15, 2012; and March 14, 2012.

9. Based on information submitted in response to the Information Requests and follow-up communications with the Respondent, EPA determined that Respondent had violated section 405(e) of the CWA, 33 U.S.C. § 1345(e), by failing to follow the Standards for the Use or Disposal of Sewage Sludge, set forth at 40 C.F.R. Part 503.

10. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), states 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)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B)].”

11. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), states that: “The determination of the manner of disposal or use of sludge is a local determination, except 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 subsection (d) of this section, except in accordance with such regulations.”

12. 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, codified at 40 C.F.R. part 503. By the terms of the regulation, the requirements of part 503 became effective one year from the date of promulgation.

13. 40 C.F.R. § 503.3(b) states 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.”

14. 40 C.F.R. § 503.7 states that: “Any person who prepares sewage sludge shall ensure that the applicable requirements in this part are met when the sewage sludge is applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.”

15. 40 C.F.R. § 503.12(c) states that: “No person shall apply domestic septage to agricultural land, forest, or reclamation site during a 365 day period if the annual application rate in § 503.13(c) has been reached during that period.”

16. 40 C.F.R. § 503.13(c) states that: “The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate”

which is calculated using the following equation: $AAR = N/0.0026$, where "AAR" represents the annual application rate in gallons per acre per 365-day period and "N" represents the amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

17. 40 C.F.R. § 503.15(d) states that: "The vector attraction reduction requirements in § 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."

18. 40 C.F.R. § 503.16(b) states that: "If either the pathogen requirements in § 503.32(c)(2) or the vector attraction reduction requirements in § 503.33(b)(12) are met when domestic septage is applied to agricultural land, forest, or a reclamation site, each container of domestic septage applied to the land shall be monitored for compliance with those requirements."

19. 40 C.F.R. § 503.17(b) states 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"

20. 40 C.F.R. § 503.17(b) requires a record of: "[t]he location, by either street address of latitude and longitude, of each site on which domestic septage is applied," as required by 40 C.F.R. § 503.17(b)(1); "[t]he number of acres at the site on which domestic septage was applied," as required by 40 C.F.R. § 503.17(b)(2); "[t]he date domestic septage is applied to each site," as required by 40 C.F.R. § 503.17(b)(3); "[t]he nitrogen requirement for the crop or vegetation grown on each site during a 365 day period," as required by 40 C.F.R. § 503.17(b)(4); "[t]he rate, in gallons per acre per 365 day period, at which domestic septage was applied to each site," as required by 40 C.F.R. § 503.17(b)(5); certification of compliance with both the pathogen and vector attraction reduction requirements, as required by 40 C.F.R. § 503.17(b)(6); "[a]

description of how the pathogen requirements in either § 503.32(c)(1) or (c)(2) are met,” as required by 40 C.F.R. § 503.17(b)(7); and “[a] description of how the vector attraction reduction requirements in § 503.33(b)(9), (b)(10), or (b)(12) are met,” as required by § 503.17(b)(8).

21. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 503.9(q) define the term “person” as including, among other things, a corporation.

22. 40 C.F.R. § 503.9(f) defines the term “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.”

23. 40 C.F.R. § 503.9(g) defines the term “domestic sewage” as “waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.”

24. 40 C.F.R. § 503.9(w) defines the term “sewage sludge” as “solid, semi-solid or liquid residue generated during the treatment of domestic sewage in a treatment works.”

25. 40 C.F.R. § 503.9(aa) defines the term “treatment works” as “either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.”

26. 40 C.F.R. § 503.11(a) defines the term “agricultural land” 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.”

27. On at least nine hundred eighteen (918) occasions between August 2007 and June 2012, Respondent emptied liquid or solid material from a septic tank or cesspool and placed it onto open agricultural land but failed to generate and maintain certain records that contained all of the information required by 40 C.F.R. § 503.17(b), failed to demonstrate through adequate record keeping compliance with the vector attraction reduction requirements of 40 C.F.R. §§ 503.15(d)

and 503.16(b), and failed to demonstrate through adequate record keeping compliance with the agronomic application rate as required by 40 C.F.R. § 503.12(c).

28. On each of these occasions, Respondent failed to comply with the recordkeeping requirements of 40 C.F.R. § 503.17(b) when it failed to develop and retain records regarding: the number of acres in each site on which domestic septage was applied; the date domestic septage was applied to the site; the nitrogen requirement for the crop or vegetation grown on each site during a 365 day period; the rate, in gallons per acre per year, at which domestic septage was applied to each site; certification that it met pathogen reduction requirements and vector attraction requirements; a description of how the pathogen requirements in either 40 C.F.R. § 503.32(c)(1) or (c)(2) were met; and 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.

29. Respondent's applications of domestic septage to agricultural land without properly preparing and maintaining the records specified at 40 C.F.R. §§ 503.17(b), and section 405(e) of the CWA, 33 U.S.C. § 1415(e), constitute approximately nine hundred eighteen (918) days of violation of section 405(e) of the CWA, 33 U.S.C. § 1345(e).

30. On April 16, 2012, EPA issued a Notice of Intent to File a Civil Administrative Complaint against Respondent for violations of the standards set forth at 40 C.F.R. part 503. EPA offered Respondent an opportunity to advise EPA of any factors to be considered before the filing of a complaint and proposing a civil penalty of \$177,500.

31. Respondent subsequently claimed an inability to pay the proposed civil penalty and provided EPA with five (5) years of financial records (tax returns and financial statements) to support his claim.

in exchange for payment by Respondent of a civil penalty of \$30,000. Respondent agrees to pay this civil penalty to the United States as set forth below.

TERMS OF SETTLEMENT

33. For the purpose of this proceeding and according 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 consent agreement; (b) neither admits nor denies the facts stipulated in this consent agreement; and (c) consents to the terms of this CAFO.

34. This CAFO settles the civil violations alleged in paragraphs 1 through 29 of this CAFO.

35. Upon execution of the final order attached hereto, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this consent agreement, 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 attached final order found at section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

36. Respondent agrees to pay the \$30,000 civil penalty for the alleged violations in the complaint by mailing a certified or cashier's check made payable to "Treasurer, United States of America" to the following address:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

37. Payment of the civil penalty is due within thirty (30) calendar days from the effective date of this CAFO, which is the date that the CAFO is filed with the Regional Hearing Clerk. EPA reserves the right to require Respondent to provide a docket number on the check.

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

39. When Respondent pays the civil penalty in accordance with Paragraph 35 above, Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three parties at the address indicated:

Regional Hearing Clerk
Planning and Management Division (19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Steven P. Kaiser
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Noel Vargas
Water Division (WC-15J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

40. Respondent's failure to pay the assessed civil penalty in accordance with Paragraph 35, above, 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 Act, 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 of this penalty, Respondent shall also be required to pay attorney's fees and costs for collection.

41. 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.

42. Respondent agrees to comply with the requirements of 40 C.F.R. part 503 when land-applying domestic septage.

OTHER MATTERS

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

44. This Consent Agreement binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this consent agreement certifies that he or she has authority to enter into the terms of this consent agreement and bind that party to it.

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

46. Pursuant to 40 C.F.R. § 22.38, the State of Ohio was notified of this proceeding.

47. The effective date of this CAFO is the date that the Final Order signed by the Regional Administrator or his designated representative is filed in the office of the Regional Hearing Clerk, and is subject to the requirements of section 309(g)(4)(C) of the Act, 33 U.S.C. 1319(g)(4)(C).

In the Matter of Ohio Trading, Inc., d/b/a/ Bosley Drain and Septic Cleaning

Louisville, Ohio

Docket Number: CWA-05-2013-0021

For Respondent:

Ohio Trading, Inc., d/b/a Bosley Drain and Septic Cleaning

Andy - President

Date:

For Complainant:

United States Environmental Protection
Agency, Region 5

Tinka G. Hyde

Tinka G. Hyde
Director, Water Division
U.S. EPA, Region 5

Date:

9/17/13

In the Matter of Ohio Trading, Inc., d/b/a Bosley Drain and Septic Cleaning
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FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. This Final Order disposes of this proceeding in accordance with 40 C.F.R. § 22.31. Accordingly, this Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law other than those violations resolved by this Consent Agreement. Respondent is hereby ordered to comply with the terms of the above Consent Agreement effective immediately upon the filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.

Susan Hedman
Regional Administrator

Date