



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

JUN 18 2009

Ref: 8ENF-L

VIA FEDERAL EXPRESS

Merl Reynolds
Cheerful Cesspool Service
18758 Surface Creek Road
Cedaredge, CO 81413

Re: Administrative Complaint and Notice of
Opportunity for Hearing
Docket No. **CWA-08-2009-0017**

Dear Mr. Reynolds:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing (complaint) that the U.S. Environmental Protection Agency, Region 8 (EPA) is issuing to Cheerful Cesspool Service (Cheerful) under the authority of § 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). In the Complaint, EPA alleges that Cheerful has violated § 308 of the Act, 33 U.S.C. § 1318 by failing to respond to a request for information issued by EPA pursuant to that section. The violation that EPA is alleging is specifically set out in the Complaint. The Complaint proposes that a penalty of \$6,200.00 be assessed against Cheerful for this violation.

By law, Cheerful has the right to request a hearing regarding the violation alleged in the Complaint and the appropriateness of the proposed administrative civil penalty. Please pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If Cheerful wishes to request a hearing, it must file within thirty (30) days of receipt of the enclosed Complaint, a written Answer with the EPA Regional Hearing Clerk at the address set forth in the Complaint. The written request must follow the requirements of the Consolidated Rules of Practice at 40 C.F.R. Part 22, a copy of which is enclosed. Note that should Cheerful fail to request a hearing within thirty (30) days of receipt of the Complaint, the right to such a hearing will be waived and the proposed civil penalty may be assessed against Cheerful without further proceedings.



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If Cheerful wishes to settle this matter without further legal action, it may waive the right to a hearing and, within thirty days of receipt of this letter, pay the proposed penalty to "Treasurer, United States of America," at the address set forth in the Complaint.

Enclosed is a copy of "U.S. EPA Small Business Resources," which can assist Cheerful with complying with federal environmental laws. Also enclosed is an SEC Disclosure Notice.

Whether or not Cheerful requests a hearing, it may confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement signed by Cheerful and the delegated official in EPA Region 8. The issuance of such a consent agreement shall constitute a waiver by Cheerful of its right to a hearing on, and to a judicial appeal of, the agreed upon civil penalty.

A request for an informal conference with EPA does not extend the thirty day period within which Cheerful must request or waive the right to a hearing, and the two procedures can be pursued simultaneously.

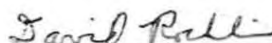
Cheerful has the right to be represented by an attorney at any stage in the proceedings, including any informal discussions with EPA, but it is not required. If Cheerful wishes to discuss settlement or technical questions, please contact Liz Fagen, Environmental Engineer, at (303) 312-6095. Legal questions, including any communications from an attorney, should be directed to Wendy Silver, Senior Attorney, at (303) 312-6637.

We urge your prompt attention to this matter.

Sincerely,



Darcy O'Connor, Unit Chief
NPDES Enforcement Unit
Office of Enforcement, Compliance, and
Environmental Justice



David Rochlin, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice

Enclosures:

1. Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Civil Practice (40 C.F.R. Part 22)
3. U.S. EPA Small Business Resources Information Sheet
4. SEC Disclosure Notice

cc: James Martin, Colorado Department of Public Health and Environment

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	ADMINISTRATIVE COMPLAINT
)	AND NOTICE OF OPPORTUNITY
Cheerful Cesspool Service)	FOR HEARING
18758 Surface Creek Road)	Proceeding to Assess Class I
Cedaredge, CO 81413)	Administrative Penalty Under
)	Clean Water Act, Section 309(g)
Respondent.)	
<hr/>)	Docket No. CWA-08-2009-0017

1. This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to § 309(g) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13. Section 309(g) of the Act authorizes the Administrator of the United States Environmental Protection Agency (EPA) to make findings and to assess civil penalties for violations of § 308 of the CWA, 33 U.S.C. § 1318 This proceeding is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, a copy of which accompanies this Complaint.
2. The undersigned EPA officials have been properly delegated the authority to issue this Complaint.

STATUTORY FRAMEWORK

3. Section 308(a)(2)(A) of the Act, 33 U.S.C. § 1318(a)(2)(A), authorizes the Administrator of the EPA to require the owner or operator of any point source to provide information as necessary to determine whether any person is in violation of any effluent limit or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance, or to carry out § 405 of the Act, 33 U.S.C. § 1345.

4. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the EPA to assess a Class I civil administrative penalty of up to \$11,000.00 per day for each day of violation of § 308 of the Act that occurred between March 16, 2004, and January 12, 2009, and \$16,000.00 for each day of violation thereafter. For violations between March 16, 2004, through January 12, 2009, the maximum amount of the penalty may not exceed \$32,500.00. For violations after January 12, 2009, the maximum amount of the penalty may not exceed \$37,500.00. These amounts have been adjusted for inflation by 40 C.F.R. Part 19.

GENERAL ALLEGATIONS

5. Respondent Cheerful Cesspool Service (Cheerful or Respondent) is and was at all relevant times a Colorado company doing business in the State of Colorado.

6. At all times relevant to this action, Respondent owned and operated a domestic septage pumping and disposal service at 18758 Surface Creek Road in Cedaredge, Delta County, Colorado.

7. At all times relevant to this action, Respondent pumped domestic septage, as defined in 40 C.F.R. § 503.9(f), into tanks attached to one or more trucks owned and/or operated by Respondent and disposed of the septage by land application.

8. On November 19, 2007, EPA sent to Respondent a request for information (request) pursuant to § 308 of the Act, 33 U.S.C. § 1318, to determine compliance with § 405 of the Act (Disposal or Use of Sewage Sludge), 33 U.S.C. § 1345, and regulations promulgated thereunder and found at 40 C.F.R. Part 503. Respondent's response to the request was due within 45 days of its receipt by Respondent.

9. The request was sent via certified mail, return receipt requested. The return receipt card was signed on behalf of Respondent on November 26, 2007.
10. To date, EPA has not received a response from Respondent to the request.
11. On March 14, 2008, EPA sent, by certified mail, a follow-up and opportunity to confer (opportunity to confer) regarding the request to Respondent, pursuant to § 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4). The opportunity to confer reiterated the request and offered Respondent an opportunity to confer with EPA via conference call regarding the request. Respondent's response to the opportunity to confer was due within fourteen (14) days of its receipt by Respondent.
12. Respondent did not accept service of the opportunity to confer, and it was returned to EPA by the U.S. Postal Service on April 12, 2008.
13. On July 3, 2008, EPA sent a Notice of Opportunity to Confer and Order for Compliance with Information Request (notice and order), Docket No. CWA-08-2008-0016, to Respondent via FedEx. Respondent's response to the order was due within 60 days of its receipt by Respondent, allowing Respondent 60 days in which to confer with EPA regarding the information requested.
14. Naomi Reynolds signed for the notice and order on behalf of Respondent on July 8, 2008. To date, Respondent has not responded to the notice and order.
15. On November 14 and 17, 2008, EPA attempted to contact Respondent by telephone to discuss the request and the notice and order. EPA dialed the telephone number listed for Respondent and, on each occasion, left a message requesting that Respondent call EPA.

16. To date, Respondent has not returned the November 14 and 17, 2008, calls from EPA.

17. On December 16, 2008, EPA sent a letter (December 2008 letter) to Respondent via FedEx indicating that it planned to pursue an action for administrative penalties against Respondent for its non-compliance with the request unless Respondent provided a complete response to the request prior to January 9, 2009. EPA enclosed a copy of the request with the December 2008 letter.

18. FedEx delivered the December 2008 letter to Respondent's place of business on December 17, 2008.

19. To date, Respondent has not responded to the December 2008 letter.

20. Respondent is, and was at all relevant times, a "person" within the meaning of the definition set forth in § 502(5) of the Act, 33 U.S.C. § 1362(5).

21. Domestic septage constitutes sewage sludge as defined in 40 C.F.R. § 503.9.

22. The truck(s) and other equipment used by Respondent to dispose of domestic septage each constitute a "point source" as defined by § 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

23. As the owner and/or operator of equipment used to dispose of domestic septage, Respondent is the "owner or operator" of a point source.

DESCRIPTION OF VIOLATION

23. Respondent is subject to the provisions of the Act, 33 U.S.C. § 1251 *et seq.*, including §§ 308 and 309(g) of the Act, 33 U.S.C. §§ 1318 and 1319(g).

24. Respondent's failure to respond to the request described in paragraphs 8, 9 and 10, above, constitutes a violation of § 308 of the Act, 33 U.S.C. §§ 1318.

25. Pursuant to § 309(g) of the Act, 33 U.S.C. §1319(g), EPA has consulted with James Martin, Executive Director, Colorado Department of Public Health and Environment, regarding assessment of this administrative penalty by furnishing a copy of this complaint and inviting him to comment on behalf of the State of Colorado.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

26. Based on the foregoing allegations and pursuant to the authority of § 309(g) of the Act, 33 U.S.C. §1319(g), EPA Region 8 hereby proposes that a penalty of \$6,200.00 be assessed against Respondent for the violation alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

Section 308 of the Act, 33 U.S.C. §1318, grants EPA the authority to require the owner or operator of any point source to provide information as necessary to determine, among other things, whether any person is in violation of any limitation, prohibition, or standard of performance, or to carry out § 405 of the Act, 33 U.S.C. § 1345. Respondent's refusal to comply with a request for information properly issued under § 308 of the Act completely undermines EPA's ability to fulfill its statutory mandate to ensure compliance with the Act.

The potential environmental impact of the possible improper application of septage by Respondent includes excessive amounts of nutrients reaching surface waters and ground water.

Prior Compliance History

On January 29, 2001, EPA sent a request for information (2001 request) to Respondent pursuant to § 308 of the Act, 33 U.S.C. §1318, to determine compliance with § 405 of the Act, 33 U.S.C. §1345, and regulations found at 40 C.F.R. Part 503. Respondent was granted a ten day extension on the response due date to April 25, 2001. To date, Respondent has not responded to

the 2001 request. On September 28, 2001, EPA issued an Order for Compliance with Information Request (2001 order) to Respondent. On April 15, 2002, EPA sent a letter to Respondent regarding its failure to respond to the 2001 request and the 2001 order, explaining EPA's authority and requesting a response to the 2001 order. EPA received a partial response from Respondent on August 15, 2002. On November 21, 2002, EPA sent a supplemental request for information. To date, EPA has not received a response from Respondent to the supplemental request. On January 17, 2003, EPA sent a notice of opportunity to confer to Respondent, which was not accepted and was returned to EPA on February 28, 2003.

Degree of Culpability

Respondent's complete failure to respond to EPA's request for information of November 19, 2007, despite written and telephonic reminders, corresponds to a high degree of culpability.

Economic Benefit

An analysis by EPA determined the economic benefit associated with the violation to be negligible.

Ability to Pay

The proposed penalty was not reduced based upon the statutory factor of an inability to pay. However, EPA will consider any new information that Respondent may present regarding Respondent's ability to pay the penalty proposed in this Complaint.

Other Matters That Justice May Require

At this time, EPA has not made any adjustment to the proposed penalty based on this statutory factor.

27. As required by § 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to assessing a civil penalty, EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

28. EPA may issue the Final Order Assessing Administrative Penalties thirty days after Respondent's receipt of this notice, unless Respondent, within that time, requests a hearing on this notice pursuant to the following section.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

29. As provided in § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing in this matter. If Respondent (1) contests any material fact upon which the Complaint is based, (2) contends that the amount of penalty proposed in the Complaint is inappropriate, or (3) contends that it is entitled to judgment as a matter of law, it must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty days after service of the Complaint.

30. Respondent's answer must (1) clearly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) state the circumstances or arguments which are alleged to constitute grounds of defense, (3) state the facts intended to be placed at issue, (4) state the basis for opposing any proposed relief, and (5) specifically request a hearing, if desired.

40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any factual allegation contained in the Complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(c).

31. Respondent's answer, an original and one copy, must be filed with:

Regional Hearing Clerk
U.S. EPA Region 8 (8RC)

1595 Wynkoop Street
Denver, Colorado 80202-1129

A copy of the answer and all other documents filed in this action must be served on:

Wendy Silver
Senior Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

32. Be aware that should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under § 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment.

IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.

33. Should Respondent not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional 30 days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

TERMS OF PAYMENT FOR QUICK RESOLUTION

34. If Respondent does not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within sixty (60) days of such receipt. Penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 9790777
St. Louis, MO 63197-9000

Copies of the check shall be sent to:

Elizabeth Fagen
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Wendy Silver
U.S. Environmental Protection Agency (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

35. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing in this matter.

36. Neither assessment nor payment of an administrative civil penalty pursuant to § 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act or any other federal, state, or local law or regulations and any separate Compliance Order issued under § 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

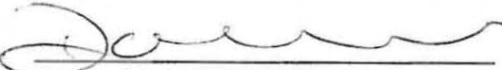
SETTLEMENT CONFERENCE

37. EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms will be expressed in a written consent agreement signed by the parties and incorporated into a final order by the Regional Judicial Officer. 40 C.F.R. § 22.18. To explore the possibility of settlement in this matter, contact Wendy Silver, Senior Attorney, at the address below. Ms. Silver can also be reached at (303) 312-6637.

United States Environmental Protection Agency, Region 8
Office of Enforcement, Compliance, and
Environmental Justice, Complainant.
1595 Wynkoop Street
Denver, CO 80202-1129

In the Matter of: Cheerful Cesspool Service

Date: 6/17/09

By: 
Darcy O'Connor, Unit Chief
NPDES Enforcement Unit

Date: 6/17/09

By: David Rochlin
David Rochlin, Supervisory Attorney
Legal Enforcement Program

Date: 6/18/09

By: Wendy I. Silver
Wendy I. Silver, Senior Attorney
Legal Enforcement Program

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Federal Express a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, to:

Merl Reynolds
Cheerful Cesspool Service
18758 Surface Creek Road
Cedaredge, CO 81413

FedEx tracking number 8667-8411-7290

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

James B. Martin
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Certified Return Receipt No. 7008-1830-0000-5157-1741

The original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 6/18/09

Judith M. McTernan