



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

SEP - 6 2012

Ref: 8ENF-W-NP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Curtis Vachal, President
Mon-Dak Water & Septic Service LLC
P.O. Box 56
9238 56th St. NW
Ross, ND 58776

Re: Administrative Order for Compliance under
Section 309(a) of the Clean Water Act
Docket No. **CWA-08-2012-0030**

Dear Mr. Vachal:

Enclosed is an Administrative Order for Compliance (Order) issued by the United States Environmental Protection Agency (EPA) pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). Based on its review of all available information, the EPA has determined that Mon-Dak Water & Septic Service LLC (Mon-Dak) is in violation of the Act. The Act prohibits, among other things, the disposal of sewage sludge except as in compliance with regulations promulgated pursuant to section 405 of the Act, 33 U.S.C. § 1345, and found at 40 C.F.R. part 503.

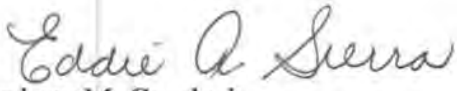
The Order specifies the nature of the violations of the Act and requires Mon-Dak to comply with the EPA's recordkeeping, pathogen and vector attraction reduction regulations pertaining to the land disposal of domestic septage.

The Act authorizes the EPA to take appropriate enforcement actions necessary to secure prompt compliance with the Act. Section 309 of the Act, 33 U.S.C. § 1319, authorizes the EPA to seek civil judicial penalties against persons violating an order issued under section 309(a) of the Act. The Act authorizes a variety of possible enforcement actions for violations of the Act, including civil or criminal actions, administrative penalty actions, and, in some cases following a criminal conviction, debarment from federal contracts and/or loans. Please be advised that issuance of the Order does not preclude any civil lawsuit, criminal prosecution, or administrative penalty assessment for the violations cited in the Order or for any other violations of the Act.

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 Act, the most knowledgeable people on my staff regarding these matters are Emilio Llamozas, Technical Enforcement, at (303) 312-6407, and Peggy Livingston, Enforcement Attorney, at (303) 312-6858.

Sincerely,

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

Enclosure

cc: Maggie Olson, Office of the Attorney General
Karl Rockeman, North Dakota Department of Health
Bryan Lee Van Grinsven, McGee, Hankla, Backes & Dobrovolny



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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 SEP -6 AM 8:09

FILED
EPA REGION VIII
HEATING OLEUM

IN THE MATTER OF:)

Mon-Dak Water & Septic Service LLC)
dba H & K Construction)
P.O. Box 56)
9238 56th St. NW)
Ross, ND 58776)

Respondent.)

Docket No. CWA-08-2012-0030

**ADMINISTRATIVE ORDER
FOR COMPLIANCE**

Proceeding Under Section 309(a) of the
Clean Water Act, 33 U.S.C. § 1319(a)

STATUTORY AUTHORITY

This Administrative Order for Compliance (Order) is issued pursuant to section 309(a) of the Clean Water Act (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, *inter alia*, section 405 of the Act, 33 U.S.C. § 1345. This authority has been properly delegated to the undersigned official.

FINDINGS OF FACT

1. Mon-Dak Water & Septic Service LLC (Respondent) is a North Dakota corporation that has done business under the name H & K Construction.
2. The Respondent is engaged in the domestic septage disposal business. This includes pumping sewage sludge (in the form of domestic septage) from oil well drilling sites, hydraulic fracturing sites, temporary crew housing, and other living quarters (both temporary and permanent) into vacuum tank trucks, and applying that sewage sludge from vacuum tank trucks to land in North Dakota and Montana.

3. The Respondent is a “person” for purposes of federal enforcement under sections 309 and 502(5) of the Act, 33 U.S.C. §§ 1319 and 1362(5), and 40 C.F.R. § 503.9(q).
4. On March 28, 2012, the North Dakota Department of Health (NDDH) issued a Notice of Violation (State NOV) to the Respondent. According to the State NOV, the Respondent repeatedly dumped septage at a site located in the SW quarter (1/4) of Section 28, Township 155N, Range 102W, in Williams County, North Dakota, in violation of Chapters 61-28 (Control, Prevention, and Abatement of Pollution of Surface Waters) and 23-19 (Regulation, Operation of Cleaning, Pumping and Servicing of Cesspools, Septic Tanks or Privies) of the North Dakota Century Code and the regulations promulgated thereunder.
5. According to the State NOV, the Respondent dumped 44 loads of septage at the site referenced in paragraph 4 above.
6. The EPA sent the Respondent a request for information pursuant to section 308 of the Act, 33 U.S.C. § 1318, on June 22, 2012, to determine compliance with section 405 of the Act, 33 U.S.C. § 1345, and its implementing regulations at 40 C.F.R. part 503.
7. After receiving the State NOV and the EPA’s information request, the Respondent dumped septage on John Vachal’s land located at Section 26, Township 155N, Range 93W, in Mountrail County.
8. The Respondent responded to the EPA’s information request on July 20 and 23, 2012.
9. In its response to the EPA’s information request, the Respondent indicated that it had land applied domestic septage at the following locations: Ellis Farm East, Ellis Farm West, Ellis 131st, Ellis Pasture, Ross Disposal, Vachal Farm, 74th/Wayzetta, City Road 1,

Geivings, Barstads, Biewer, Clear Lake Property/Gail, Junkyard/Mickelson, and Weinbar. The locations of these sites are described in the Respondent's submission.

STATUTORY AND REGULATORY BACKGROUND

10. Section 405(d)(1) of the Act directed the Administrator of the EPA to develop and publish "regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes." 33 U.S.C. § 1345(d)(1). The EPA has promulgated those regulations. They have been codified at 40 C.F.R. part 503, and, pursuant to 40 C.F.R. § 503.1(b), they apply to any person who prepares sewage sludge or applies sewage sludge to the land.
11. The states of Montana and North Dakota have not applied for or obtained primary authority to administer and enforce the sludge management program pursuant to 40 C.F.R. part 501. Consequently, the EPA directly implements the sludge management program in Montana and North Dakota.
12. According to 40 C.F.R. § 503.3(b), no person shall use or dispose of sewage sludge through any practice for which requirements are established in part 503 except in accordance with such requirements.
13. "Sewage sludge" is defined at 40 C.F.R. § 503.9(w) as "solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works [and] includes, but is not limited to, domestic septage. . . ."
14. "Domestic septage" is defined, in part, 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 [and] 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.”

15. “Agricultural land” is defined at 40 C.F.R. § 503.11(a) as “land on which a food crop, a feed crop, or a fiber crop is grown. . . includ[ing] range land and land used as pasture.”
16. “Land application” is defined at 40 C.F.R. § 503.11(h), in part, as “the spraying or spreading of sewage sludge onto the land surface . . . or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.”

Application Rate

17. According to 40 C.F.R. § 503.12(c), no person shall apply domestic septage to agricultural land during a 365-day period if the annual application rate in 40 C.F.R. § 503.13(c) has been reached during that period.
18. According to 40 C.F.R. § 503.13(c), the annual application rate for domestic septage applied to agricultural land shall not exceed the annual application rate calculated using the following equation.

$$AAR \text{ (gallons/ac/yr)} = \frac{N}{0.0026}$$

Annual application rates (AAR) = Annual application rate in gallons per acre per 365-day period

N = the amount of nitrogen in lbs/acre/365-day period required by the crop grown. Information on the amount of nitrogen required for the expected crop yield under local soil and climatic conditions can be obtained from sources such as Agricultural Extension Services. (58 Fed. Reg. 9248, 9335 (Feb. 19, 1993))

0.0026 is a conversion factor.

Pathogen Reduction

19. The term “pathogenic organisms” is defined in 40 C.F.R. § 503.31(f) as “disease-causing organisms . . . includ[ing], but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.”
20. According to 40 C.F.R. § 503.15(b), whenever domestic septage is applied to agricultural land, a forest, or a reclamation site, the requirements of either 40 C.F.R. § 503.32(c)(1) or 40 C.F.R. § 503.32(c)(2) must be met.
21. Under 40 C.F.R. § 503.32(c)(1), certain site restrictions set forth in 40 C.F.R. § 503.32(b)(5) apply. These include the following time limitations for harvesting crops, grazing animals, and allowing public access after sludge is applied:
 - (i) for 14 months after application, no harvesting food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface,
 - (ii) for 20 months after application, no harvesting food crops with harvested parts below the surface of the land, when the sewage sludge remains on the land surface for four months or longer prior to incorporation in the soil,
 - (iii) for 38 months after application, no harvesting food crops with harvested parts below the surface of the land, when the sewage sludge remains on the land surface for less than four months prior to incorporation in the soil,
 - (iv) for 30 days after application, no harvesting food crops, feed crops, or fiber crops,
 - (v) for 30 days after application, no grazing animals on the land,
 - (vi) for one year after application, no harvesting turf grown on the land, where the turf is placed on either land with a high potential for public exposure or a lawn,

- (vii) for one year after application, restrict public access to land with a high potential for public exposure, and
 - (viii) for 30 days after application, restrict public access to land with a low potential for public exposure.
22. Under 40 C.F.R. § 503.32(c)(2), the following pH and site limitations apply:
- (i) raising the pH of the domestic septage to 12 or higher by alkali addition,
 - (ii) without alkali addition, keeping the pH at 12 or higher for 30 minutes, and
 - (iii) meeting crop harvesting time limits in 40 C.F.R. § 503.32(b)(5)(i)-(iv).

Vector Attraction Reduction

23. “Vector attraction” is defined in 40 C.F.R. § 503.31(k) as “the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.”
24. According to 40 C.F.R. § 503.15(d), when domestic septage is applied to agricultural land, a forest, or a reclamation site, the requirements of 40 C.F.R. § 503.33(b)(9), (10) or (12) must be met. These requirements are as follows:
- (i) Under 40 C.F.R. § 503.33(b)(9),
 - domestic septage must be injected below the surface of the land,
 - no significant amount of the sewage sludge can be present on the land surface within one hour after the sewage sludge is injected, and
 - when the sewage sludge that is injected below the surface of the land meets Class A requirements (which are described in 40 C.F.R. § 503.32) with respect to pathogens, the sewage sludge must be injected below the

land surface within eight hours after being discharged from the pathogen treatment process.

- (ii) Under 40 C.F.R. § 503.33(b)(10), domestic septage applied to the land surface must be incorporated into the soil within six hours (or, if it meets Class A requirements, eight hours) after application to or placement on the land, unless otherwise specified by any permitting authority.
- (iii) Under 40 C.F.R. § 503.33(b)(12), the pH of domestic septage must be raised to 12 or higher by alkali addition and, without the addition of more alkali, must remain at 12 or higher for 30 minutes.

Recordkeeping

25. According to 40 C.F.R. § 503.17(b), when domestic septage is applied to agricultural land, the person who applies the domestic septage shall develop the following information for each site on which domestic septage is applied and shall retain this information for five years:

- (1) the location, by either street address or latitude and longitude;
- (2) the number of acres;
- (3) the application date;
- (4) the nitrogen requirement for the crop or vegetation grown during a 365-day period;
- (5) the application rate in gallons per acre per 365-day period;
- (6) the following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements [insert either § 503.32(c)(1) or

§ 503.32(c)(2)] and the vector attraction reduction requirement in [insert § 503.33(b)(9), 503.33(b)(10), or § 503.33(b)(12)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. 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 40 C.F.R. § 503.32(c)(1) or 40 C.F.R. § 503.32(c)(2) are being met; and
- (8) a description of how the vector attraction reduction requirements in 40 C.F.R. § 503.33(b)(9), 40 C.F.R. § 503.33(b)(10), or 40 C.F.R. § 503.33(b)(12) are being met.

FINDINGS OF VIOLATION

- 26. For each instance in which the Respondent land applied domestic septage as referenced in paragraphs 4, 5, 7, and 9, above, the Respondent failed to calculate an annual application rate in accordance with 40 C.F.R. § 503.13(c). Each such instance constitutes a separate violation of 40 C.F.R. § 503.13(c) and section 405 of the Act, 33 U.S.C. § 1345.
- 27. During each instance in which the Respondent land applied domestic septage as referenced in paragraphs 4, 5, 7, and 9, above, the Respondent failed to meet the pathogen reduction requirements of 40 C.F.R. § 503.15(b). Each such instance constitutes a separate violation of 40 C.F.R. § 503.15(b) and section 405 of the Act, 33 U.S.C. § 1345.
- 28. During each instance in which the Respondent land applied domestic septage as referenced in paragraphs 4, 5, 7, and 9, above, the Respondent failed to meet the vector attraction reduction requirements of 40 C.F.R. § 503.15(d). Each such instance

constitutes a separate violation of 40 C.F.R. § 503.15(d) and section 405 of the Act, 33 U.S.C. § 1345.

29. For each instance in which the Respondent land applied domestic septage as referenced in paragraphs 4, 5, 7, and 9, above, the Respondent failed to develop and retain for a period of five years all of the information required by 40 C.F.R. § 503.17(b). Each such instance constitutes a separate violation of 40 C.F.R. § 503.17(b) and section 405 of the Act, 33 U.S.C. § 1345.

ORDER

Based on the foregoing findings and pursuant to section 309 of the Act, 33 U.S.C.

§ 1319, it is hereby ORDERED that:

1. Within fifteen (15) days of receipt of this Order, the Respondent shall submit to the EPA written notice of the Respondent's intent to comply with the requirements of this Order, section 405 of the Act, and 40 C.F.R. part 503.
2. The Respondent shall cease all application of domestic septage to land unless such application complies fully with section 405 of the Act and 40 C.F.R. part 503. This shall include but not be limited to meeting the pathogen reduction requirements set forth in 40 C.F.R. § 503.32(c)(1) or (2), the vector attraction reduction requirements set forth in 40 C.F.R. § 503.33(b)(9), (10) or (12), the annual application rate limit set forth in 40 C.F.R. § 503.13(c), and the recordkeeping requirements of 40 C.F.R. § 503.17(b).
3. Within thirty (30) days of the effective date of this Order, the Respondent shall have a qualified contractor (certified professional soil scientist or equivalent) conduct soil

nitrogen sampling at the following land application sites: Ellis Farm East, Ellis Farm West, Ellis 131st, Ellis Pasture, Ross Disposal, and the Vachal Farm. The locations of these sites are described in the Respondent's submission. Within ninety (90) days of the effective date of this Order, the Respondent shall provide the results of the soil samples to the EPA at the address provided in paragraph 8, below.

4. For eight (8) consecutive calendar quarters following the issuance of this Order, the Respondent shall submit quarterly reports to the EPA that contain the information required to be developed and maintained pursuant to 40 C.F.R. § 503.17(b) for each load of domestic septage that the Respondent has land applied during that quarter. The first report is due December 15, 2012, and shall cover the time period from September 15, 2012, through November 30, 2012. Subsequent reports are due March 15, 2013 (covering December 1, 2012 through February 28, 2013), June 15, 2013 (covering March 1, 2013 through May 31, 2013), September 15, 2013 (covering June 1, 2013 through August 31, 2013), etc. For the purpose of quarterly reporting, the Respondent shall use the form attached as Exhibit 1 of this Order for each land application.
5. The Respondent's quarterly reports shall describe in detail how it has complied with the site restriction requirements for pathogen reduction (i.e., the requirements of 40 C.F.R. § 503.32(b)(5)(i)-(viii), which apply if the Respondent does not adjust pH in accordance with 40 C.F.R. § 503.32(c)(2), or, alternatively, the requirements of 40 C.F.R. § 503.32(b)(5)(i)-(iv), which apply if the Respondent adjusts pH in accordance with 40 C.F.R. § 503.32(c)(2)). This shall include a description of site access restrictions,

fencing, and signage, and a description of the nature and uses of the surrounding properties.

6. If the Respondent does not land apply domestic septage during a calendar quarter, the Respondent's report for that quarter shall state that the Respondent did not land apply domestic septage.
7. If the Respondent disposed of any domestic septage during a quarter by any means other than land application, the Respondent's report shall describe where, when, and how the Respondent disposed of that septage.
8. The Respondent shall send all written notices, correspondence, plans, schedules, and reports required by this Order to:

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

9. All reports and information required by this Order shall include the certification statement set forth in Exhibit 2 of this Order, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(1) of a responsible corporate officer.

GENERAL PROVISIONS

1. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject the Respondent to penalties as provided under section 309(d) of the Act, 33 U.S.C. § 1319(d).
2. This Order does not constitute a waiver or election by the EPA to forego any administrative, civil judicial, or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(g) of the Act, 33 U.S.C. § 1319(g),

as adjusted for inflation by 40 C.F.R. part 19, authorizes administrative penalties of up to \$16,000 per day for each day during which a violation continues. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes civil penalties of up to \$37,500 per day for each violation of the Act. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

3. Compliance with the terms and conditions of this Order shall not be construed to relieve the Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.
4. The Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.
5. This Order shall be effective upon receipt by the Respondent.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: 08/30/2012


for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached ADMINISTRATIVE ORDER FOR COMPLIANCE were 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:

Curtis Vachal, President
Mon-Dak Water & Septic Service LLC
P.O. Box 56
9238 56th St. NW
Ross, ND 58776
Certified Mail No. 7009-3410-0000-2594-9029

9/6/2012
DATE

Judith M. McTernan
SIGNATURE

Exhibit 1

1. Source of Septage: _____
2. Gallons of Septage: _____
3. Address or GPS coordinates of Septage Disposal: _____
4. Number of Acres Septage Applied to: _____

Nitrogen Requirements

5. Crop to be farmed and expected yield: _____
6. Soil Nitrogen test specific to this site (attach test results to this form): _____
7. Nitrogen requirements of crop per acre per year specific to this site: _____
Information on the amount of Nitrogen required for the expected crop yield under local soil and climatic conditions should be obtained from a qualified, knowledgeable person, such as your local agricultural extension agent.
8. Annual Application Rate (AAR) in gallons per acre per year: _____

$$AAR \text{ (gallons/ac/yr)} = \frac{N}{0.0026}$$

*Annual application rate (AAR) = Annual application rate in gallons per acre per 365 day period
N = the amount of nitrogen in lbs/acre/year required by the crop grown*

9. Treatment for Pathogens (Check one)
 - a. None (Must use either 10a or 10b below) [40 C.F.R. § 503.32(c)(1)]
Describe Site Access Restrictions: _____
 - b. pH 12 for 30 minutes [40 C.F.R. § 503.32(c)(2)]
10. 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)]
11. Monitoring 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.

12. Signed: _____
13. Date: _____

Exhibit 2

Statement of Certification
Mon-Dak Water & Septic Service LLC

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