

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

KELLY'S SEPTIC SERVICE, LLC.

BELLEFONTAINE, OHIO,

RESPONDENT.

)
) Docket No. CWA-05-2013-0007
)
) **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)**
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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), 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, United States Environmental Protection Agency (EPA or the Agency)

3. The Respondent is Kelly's Septic Service, LLC.

4. Respondent operates a business located at 4340 County Road 55, Bellefontaine, Ohio 43311.

5. Respondent collects, treats and disposes of domestic septage.

6. On June 8, 2011, EPA issued an Information Request to Respondent pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, ordering Respondent to submit information regarding Respondent's compliance with federal regulations governing the land-application of domestic septage.

7. Respondent replied to EPA's information request with letters dated June 24, 2011, September 14, 2011, October 26, 2011, and February 14, 2012.

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

9. 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)]."

10. 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."

11. 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.

12. 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.”

13. 40 C.F.R. § 403.7 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.”

14. 40 C.F.R. § 503.15(d) states that: “The vector attraction reduction requirements in 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, a public site, or a reclamation site.”

15. 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... .”

16. 40 C.F.R. § 503.17(b) requires, among other things, that the location, by either street address or latitude and longitude, of each site on which domestic sewage is applied be developed and maintained for a period of at least 5 years.

17. 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.

18. 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.

19. 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.

20. 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.

21. 40 C.F.R. § 503.9(a) 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.

22. 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 a pasture).

23. On at least 157 (one hundred fifty-seven) occasions between September 21, 2010 and April 14, 2011, 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 required by 40 C.F.R. § 503.17.

24. On each of these occasions, Respondent failed to comply with the record keeping requirements of 40 C.F.R. § 503.17 when it failed: to develop and retain records stating the number of acres in each site on which domestic septage is applied; to provide the nitrogen requirement for the crop or vegetation grown on the site during each year; the rate, in gallons per acre per year, at which domestic septage is applied to each site; to provide the required certification statements; and to provide a description of how Respondent complied with the pathogen reduction requirements at 40 C.F.R. § 503.32(c)(2), or the vector attraction reduction requirements at 40 C.F.R. §§ 503.33(b)(9), (b)(10), or (b)(12).

25. 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)(2), (b)(4), (b)(5), 7(b)(6), (b)(7) and (8), and Section 405(e) of the CWA, 33 U.S.C. § 1415(e), constitute three hundred and twenty-seven (327) days of violation of Section 405(e) of the CWA, 33 U.S.C. § 1345(e).

26. On May 27, 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 U.S. EPA of any factors to be considered before the filing of a complaint and proposing a civil penalty of \$ 177,500.

27. Respondent subsequently claimed an inability to pay the proposed civil penalty and provided EPA with three (3) years of financial records (tax returns and financial statements) and additional information pertaining to his household finances to support his claim.

28. Based on Complainant's financial analysis of Respondent's financial records, EPA and Respondent agreed to settle this matter for a civil penalty of \$500. Respondent agrees to pay this civil penalty to the United States as set forth below.

TERMS OF SETTLEMENT

29. 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.

30. This CAFO settles the civil violations alleged in the May 27, 2009, Notice of Intent letter.

31. 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).

32. Respondent agrees to pay the \$500 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

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.

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

34. When Respondent pays the civil penalty in accordance with Paragraph 33 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

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

and

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

35. Respondent's failure to pay the assessed civil penalty in accordance with Paragraph 33, 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.

36. 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.

37. Respondent agrees to comply with the requirements of 40 C.F.R. Part 503 when land applying domestic septage.

OTHER MATTERS

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

39. 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.

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

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

42. 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).

CWA-05-2013-0007

Kelly's Septic Service, LLC
Bellefontaine, Ohio
Docket Number:

For Respondent:

Kelly's Septic Service, LLC

Joseph W. Spiers III

Joseph W. Spiers III

Date: 1/24/13

For Complainant:

United States Environmental Protection
Agency, Region 5

Tinka G. Hyde

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

Date: 3/5/13

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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.

Date

Susan Hedman
Regional Administrator