

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
MICHAEL POLING JR.,)
individually, and d/b/a)
POLING SEPTIC TANK SERVICE)
)
Respondent.)
_____)

Docket No. CWA-05-2013-0008

Proceeding to Assess a Class II Civil Penalty
under Section 309(g) of the Clean Water Act,
33 U.S.C. § 1319(g).

RECEIVED
MAR 12 2013

**REGIONAL HEARING CLERK
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CONSENT AGREEMENT AND FINAL ORDER

1. Complainant, the Director of the Water Division, U.S. Environmental Protection Agency, Region 5, and Respondent, Michael Poling Jr., individually, and doing business as Poling Septic Tank Service (Respondent), have agreed to the settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Sections 22.13(b) and 22.18(b) of 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* found at 40 C.F.R. §§ 22.13(b) and 22.18(b).
2. EPA institutes this civil administrative proceeding for the assessment of a civil penalty pursuant to the authority granted in Section 309(g) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA), 33 U.S.C. § 1319(g).
3. Respondent consents to the entry of this Consent Agreement and Final Order (CAFO), all of the conditions of this CAFO, and the assessment of the civil penalty as outlined in this CAFO.
4. EPA and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.

STATUTORY AND REGULATORY BACKGROUND

5. 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 [Section 405(d) of the CWA, 33 U.S.C. § 1345(d)], except in accordance with such regulations.”
6. 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 on February 19, 1994. 40 C.F.R. § 503.2(a).
7. 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.”
8. 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.”
9. 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, an individual.
10. 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.

11. 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.

12. 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.

13. 40 C.F.R. § 503.17(b) requires 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, of 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 domestic septage is applied.
- (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 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 § 503.32(c)(1) or (c)(2) are met.
- (8) A description of how the vector reduction requirements in § 503.33(b)(9), (b)(10), or (b)(12) are met.

14. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after

consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 405 of the CWA, 33 U.S.C. § 1345.

GENERAL ALLEGATIONS

15. Complainant alleges that Respondent is an individual doing business in the State of Ohio.
16. Complainant alleges that Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 503.9(q).
17. Complainant alleges that, at all times relevant to this CAFO, Respondent owned and operated a business located at 204 North Wayne Street, Picqua, Ohio.
18. Complainant alleges that, at all times relevant to this CAFO, Respondent was receiving and treating domestic septage from domestic septage tanks and disposing of these wastes by applying them to local land on which food, feed, and/or fiber crops are grown.

VIOLATIONS

19. Complainant incorporates paragraphs 1 through 18 of this CAFO as if set forth in this paragraph.
20. 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.
21. Respondent replied to EPA's information request with a letter dated August 9, 2011.
22. Based on information submitted in response to the Information Request, and follow-up communications with the Respondent, EPA determined that Respondent failed to develop and maintain records pertaining to the land application of domestic septage, as set forth at 40 C.F.R. Part 503.

23. On at least one hundred and forty (140) occasions between October 2006 and July 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(b).

24. On each of these occasions, Respondent failed to comply with the record keeping requirements of 40 C.F.R. § 503.17(b)(6) when it failed to develop and retain records that contain the required certification.

25. On 132 of these occasions, Respondent failed to comply with the record keeping requirements of 40 C.F.R. § 503.17(b)(7) when it failed to develop and retain records stating a description of how Respondent complied with the pathogen reduction requirements at 40 C.F.R. § 503.32(c)(2).

26. Prior to January 11, 2009, Respondent failed to develop any records as required by 40 C.F.R. 503.17(b).

27. 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) constitute violations of Section 405(e) of the CWA, 33 U.S.C. § 1345(e).

CIVIL PENALTY

28. On December 13, 2011, 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.

29. 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.

30. Based on analysis of the factors specified in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), and Respondent's inability to pay claim, Complainant has determined that an appropriate civil penalty to settle this action is \$0.

GENERAL PROVISIONS

33. This CAFO settles EPA's claims for civil penalties for the violations alleged above.

34. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

35. For purposes only of the allegations and agreements made herein, upon execution of this CAFO, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, 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 40 C.F.R. § 22.15(c), and its right to appellate review of the CAFO under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

36. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

37. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

38. Respondent certifies that it is complying fully with Section 405 of the CWA, 33 U.S.C. § 1345, and the regulations at 40 C.F.R. Part 503.

39. This CAFO constitutes a “history of recalcitrance” as that term is used in EPA’s Interim Clean Water Act Settlement Penalty Policy to determine Respondent’s “prior history of such violation” under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

40. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*

41. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of Poling Septic Tank Service.

42. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it.

43. Each party signing this CAFO agrees to bear its own costs and attorney’s fees in this action.

44. Pursuant to 40 C.F.R. § 22.38, the State was notified of this proceeding and the other terms of this settlement.

45. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or his designated representative and subjected to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

46. This CAFO constitutes the entire agreement between the parties.

47. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO in accordance with Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45(b).

CONSENT AGREEMENT AND FINAL ORDER

**In the Matter of: Michael Poling Jr. b/d/a Poling Septic Tank Service
Docket No.**

CWA-05-2013-0008

For Respondent:

Michael Poling Jr.
Michael Poling Jr.
Poling Septic Tank Service

2-16-13
Date

For Complainant:

Tinka G. Hyde
Tinka G. Hyde, Director
Water Division
U.S. Environmental Protection Agency
Region 5

3/5/13
Date

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FINAL ORDER

This CAFO is hereby approved. The Respondent is hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By: _____
Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

Dated: _____