

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:)
)
White Sanitation Service, Inc.)
Staunton, Illinois)
)
Respondent.)
_____)

Docket No. ⁰² CWA-05-2008-00006
Proceeding to Assess a Civil Penalty
Under Section 309(g) of the Clean Water
Act, 33 U.S.C. § 1319(g)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and Sections 22.1(a)(6), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Water Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is White Sanitation Service, Inc., a corporation doing business in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and the assessment of the specified civil

penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. For the purpose of this proceeding and according to 40 C.F.R. § 22.18(b), Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives all rights to contest the allegations in this CAFO and 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 its right to appeal this CAFO under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

Statutory and Regulatory Background

9. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), provides 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."

10. 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, which have been codified at 40 C.F.R. Part 503.

11. 40 C.F.R. § 503.2 provides that "[c]ompliance with the standards in this part shall be achieved as expeditiously as practicable, but in no case later than February 19, 1994."

12. 40 C.F.R. § 503.3(b) provides that “[n]o 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. § 503.7 requires any person who prepares sewage sludge to ensure that the applicable requirements in Part 503 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. § 503.14(d) provides that “[b]ulk sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk sewage sludge”

15. 40 C.F.R. § 503.15(b) provides that the pathogen requirements of 40 C.F.R. § 503.32(c)(1) or (c)(2) shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

16. 40 C.F.R. § 503.15(d) provides 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, a public site, or a reclamation site.

17. 40 C.F.R. § 503.17(b) provides that “[w]hen 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 to each site.

(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 attraction reduction requirements in § 503.33(b)(9), (b)(10), or (b)(12) are met.”

18. Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), states that “[w]henever 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)].”

Factual Allegations and Alleged Violations

19. Respondent operates a business located at 21529 Double Arch Road in Staunton, Illinois. Respondent’s business operations include the collection and disposal of domestic septage.

20. From at least the years of 2002 through 2007, Respondent applied domestic septage to the land.

21. As of December 31, 2007, Respondent has ceased land application of domestic septage.

22. On August 17, 2006, U.S. EPA issued an information request to Respondent pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, which required Respondent to submit information regarding Respondent's compliance with federal regulations governing the land application of domestic septage. On September 1, 2006, Respondent provided a response to U.S. EPA's information request.

23. On December 1, 2006, U.S. EPA issued a letter to Respondent stating that Respondent's September 1, 2006 response to U.S. EPA's information request was incomplete and requested Respondent to address the comments enclosed with the letter. On December 11, 2006, Respondent provided a response to U.S. EPA's comments.

24. On February 16, 2007, U.S. EPA issued a letter to Respondent stating that Respondent's December 11, 2006 response to U.S. EPA was incomplete and requested Respondent to address the comments enclosed with the letter. On March 2, 2007, Respondent provided a response to U.S. EPA's comments.

25. Based on information submitted by Respondent in response to U.S. EPA's requests for information, U.S. 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 at 40 C.F.R. Part 503.

26. On June 22, 2007, U.S. EPA issued a Notice of Intent to File a Civil Administrative Complaint (Notice of Intent) against Respondent for violations of the vector attraction reduction, pathogen reduction, agronomic application rate and recordkeeping requirements set forth at 40 C.F.R. Part 503. U.S. EPA offered Respondent an opportunity to present any information

Respondent believed should be considered before the filing of a complaint and proposed a penalty of \$137,500.

27. This CAFO settles the civil violations alleged in the June 22, 2007 Notice of Intent.

Civil Penalty

28. Based on an analysis of the factors specified in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the facts of this case and other relevant factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$35,000.00, and Respondent has agreed to pay a civil penalty in that amount.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$35,000.00 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America" to:

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

The check must note the case name, docket number of this CAFO and the billing document number.

30. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Valdis Aistars
Water Division (WC-15J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Christine Liszewski
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

32. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action. 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 proceedings and a quarterly nonpayment penalty. This nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of each such quarter.

33. 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.

General Provisions

34. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

35. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

36. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state, and local laws. Except as provided in paragraph 34, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

37. Respondent certifies that it has ceased applying domestic septage to the land and shall not resume applying domestic septage to the land without providing 90 days advance notice to U.S. EPA.

38. The terms of this CAFO bind Respondent, its successors, and assigns.

39. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

40. Each party agrees to bear its own costs and attorneys' fees in this action.

41. Pursuant to 40 C.F.R. § 22.38, on June 20, 2008, U.S. EPA notified the State of Illinois 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 with the Regional Hearing Clerk, and is subject to the public notice requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4).

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

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of White Sanitation Service, Inc.
Docket No. CWA-05-2008-0006

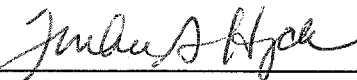
White Sanitation Service, Inc., Respondent

7-10-08
Date


Keith White, President
White Sanitation Service, Inc.

United States Environmental Protection Agency, Complainant

7-18-08
Date


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

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing 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.

Date

Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5