

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Coyote Septic Service, Inc.)
1315 Main Street)
Williston, ND 58801,)

Respondent.)

) Docket No. CWA-08-2014-0003

) **ADMINISTRATIVE ORDER**
) **FOR COMPLIANCE ON CONSENT**

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

INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Coyote Septic Service, Inc. (Respondent). The EPA has authority to issue this Consent Order pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), which authorizes the Administrator of the EPA to issue an order requiring compliance by a person found to be in violation of, *inter alia*, section 405 of the Act. This authority has been properly delegated to the undersigned EPA official.
2. The Findings of Fact and of Violation in paragraph numbers 19 through 28, below, are made solely by the EPA. In signing this Consent Order, the Respondent neither admits nor denies the Findings of Fact and of Violation. Without any admission of liability, the Respondent consents to issuance of this Consent Order and agrees to abide by all of its conditions. The Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The Respondent further agrees not to challenge the jurisdiction of the EPA or the Findings of Fact and of Violation in any proceeding to enforce this Consent Order or in any action under this Consent Order.

STATUTORY AND REGULATORY BACKGROUND

3. 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 Administrator 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 land.
4. The state of North Dakota has 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 North Dakota.
5. 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 40 C.F.R. part 503 except in accordance with such requirements.
6. “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. . . .”
7. “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.”

8. "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."
9. "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

10. 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.
11. 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

12. The term “pathogenic organisms” is defined in 40 C.F.R. § 503.31(f) as “disease-causing organisms, including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.”
13. 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 (c)(2) must be met.
14. 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.
15. 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

16. “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.”
17. 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), (b)(10), or (b)(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 the Class A requirements of 40 C.F.R. part 503 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

18. 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 (c)(2) are met; and
- (8) a description of how the vector attraction reduction requirements in 40 C.F.R. § 503.33(b)(9), (b)(10), or (b)(12) are met.

FINDINGS OF FACT AND OF VIOLATION

19. Coyote Septic Service, Inc. (Respondent) is a North Dakota corporation.
20. 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.
21. 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).
22. The EPA sent the Respondent a request for information pursuant to section 308 of the Act, 33 U.S.C. § 1318, on August 27, 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.
23. The Respondent responded to the EPA's information request on October 1, 2012.
24. In its response to the EPA's information request, the Respondent indicated that it had land applied domestic septage at the following locations near the City of Williston, North Dakota: (1) Mark Ellis Field #1 (Latitude 48.180853 °N, Longitude -103.574896 °W); (2) Mark Ellis Field #2 (Latitude 48.236222 °N, Longitude -103.514729 °W); and (3) Mark Ellis Field #3 (Latitude 48.1745 °N, Longitude -103.574381 °W).
25. For each instance in which the Respondent land applied domestic septage as referenced in paragraph 24, 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.
26. During each instance in which the Respondent land applied domestic septage as referenced in paragraph 24, 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.

27. During each instance in which the Respondent land applied domestic septage as referenced in paragraph 24, 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.
28. For each instance in which the Respondent land applied domestic septage as referenced in paragraph 24, 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

The EPA orders, and the Respondent agrees, as follows:

29. The Respondent shall cease all application of domestic septage to land unless such application complies fully with 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 (c)(2), the vector attraction reduction requirements set forth in 40 C.F.R. § 503.33(b)(9), (b)(10), or (b)(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).
30. For four (4) consecutive calendar quarters following its signature on this Consent 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 January 15, 2014, and shall cover the time period from October 1 through December 31, 2013. Subsequent reports

are due April 15, 2014 (covering January 1, 2014 – March 31, 2014), July 15, 2014 (covering April 1, 2014 - June 30, 2014), and October 15, 2014 (covering July 1, 2014 – October 1, 2014). For the purpose of quarterly reporting, the Respondent shall use the form attached as Exhibit 1 for each land application.

31. 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.
32. 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.
33. 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.
34. The Respondent shall send all written reports, information, and related correspondence required by this Consent Order to:

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

35. All reports and information required by this Consent Order shall include the certification statement set forth in Exhibit 2, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(1) of a responsible corporate officer.
36. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject the Respondent to penalties as provided under the section 309(d) of the Act, 33 U.S.C. § 1319(d).
37. This Consent Order does not constitute a waiver or election by the EPA to forego any civil 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 for 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.
38. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve the Respondent of its obligation to comply with any applicable federal, state, or local law, permit, or regulation.
39. The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent to the terms and conditions of this Consent Order.

40. This Consent Order shall be effective immediately upon execution by both parties.

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

Date: 10-29-2013
~~9-27-2013~~ (ama)

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

COYOTE SEPTIC SERVICE, INC.

Date: 9-26-2013

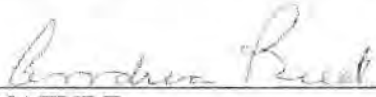
Mike Erickson
Mike Erickson
Vice President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the foregoing ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT 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:

Mike Erickson, Registered Agent
Coyote Septic Service, Inc.
1315 Main Street
Williston, North Dakota 58801-4236
Certified Mail No. 70013412 2009 2598 4537

5/27/13
DATE


SIGNATURE