



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 04 2010

REPLY TO THE ATTENTION OF: WC-15J

**CERTIFIED MAIL 7001 0320 0006 0190 9787**  
**RETURN RECEIPT REQUESTED**

Mr. David Brickles  
d/b/a Jack's Septic Service, LLC  
39825 Gold Ridge Road  
Pomeroy, Ohio 45769

Subject: Notice of Proposed Assessment of a Class II  
Administrative Penalty Pursuant to Section 309(g) of  
the Clean Water Act  
Docket No. CWA-05-2010-0012

Dear Mr. Brickles:

Enclosed is a copy of an "Administrative Complaint," which I have filed against you, d/b/a Jack's Septic Service, under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). In the Complaint, the U.S. Environmental Protection Agency alleges that your company violated Section 405(e) of the Act. The Complaint describes the alleged violations.

Your company may request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. I invite you to pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If Jack's Septic Service fails to request a hearing within 30 days of receipt of the Complaint, then it waives its right to a hearing and may become liable for the entire proposed civil penalty. If Jack's Septic Service requests a hearing, then it may seek the representation of an attorney, or represent itself at any point in these proceedings.

The rules governing these proceedings are 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," 40 C.F.R. Part 22, 64 Fed. Reg. 40.138 (July 23, 1999). I have enclosed a copy for your reference.


Whether or not your company requests a hearing, I invite Jack's Septic Service to confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. Again, your company may seek representation by an attorney at any conference, whether the meeting occurs in person or by telephone. EPA encourages all parties to pursue settlement during an informal conference. If the parties reach a satisfactory settlement, a mutually negotiated and executed Consent Agreement will resolve this matter. The issuance of such a Consent Agreement will constitute a waiver by Jack's Septic Service of its right to a hearing on, and judicial appeal of, the agreed civil penalty.

A request for an informal conference does not extend the 30 days during which Jack's Septic Service may request a hearing on the proposed penalty assessment. You may pursue the two procedures simultaneously. If Jack's Septic Sewer Service has any questions or wishes to discuss settlement of this matter, please contact Newton Ellens, Water Division (WC-15J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Mr. Ellens at (312) 353-5562. For questions regarding legal issues, please contact Joseph Williams, Associate Regional Counsel at (312) 886-6631.

We urge your prompt attention to this matter.

Sincerely,



 Tinka G. Hyde  
Director, Water Division

Enclosures

cc: Abbot Stevenson, OEPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 04 2010

REPLY TO THE ATTENTION OF: WC-15J

**CERTIFIED MAIL** 7001 0320 0006 0190 9794  
**RETURN RECEIPT REQUESTED**

Chris Korleski, Director  
Ohio Environmental Protection Agency  
Post Office Box 1049  
Columbus, Ohio 43216-1049

Subject: Notice of Proposed Administrative Assessment of  
Class II Civil Penalty: Mr. David Brickles, d/b/a Jack's Septic Service, LLC  
Docket No. **CWA-05-2010-0012**


Dear Mr. Korleski:

Enclosed is a copy of the administrative complaint which the U.S. Environmental Protection Agency has issued to Mr. David Brickles, d/b/a Jack's Septic Service, LLC for violations of Section 405(e) of the Clean Water Act (Act). Region 5 has issued the Complaint to assess administratively a Class II civil penalty against Jack's Septic Service for violations of Section 405 of the Clean Water Act. Because the violations have occurred in Ohio, EPA would like to offer you an opportunity to confer with us regarding the proposed assessment.

You may request a conference with EPA anytime within twenty (20) days of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed assessment. A copy of EPA's procedures governing the assessment of Class II administrative penalties under the Act is also enclosed.

If you wish to request a conference or if you have any comments or questions regarding this matter, please call Newton Ellens at (312) 353-5562. For questions regarding legal issues, please contact Joseph Williams at (312) 886-6631.

Sincerely,

  
Tinka G. Hyde  
Director, Water Division

Enclosures



5. That 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.”

6. That 40 C.F.R. § 503.3(b) provides 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.”

7. That 40 C.F.R. § 503.10 provides that: “This subpart applies to any person who prepares sewage sludge that is applied to the land, to any person who applies sewage sludge to the land, to sewage sludge applied to the land, and to the land on which sewage sludge is applied.”

8. That Section 405(e) of the CWA, 33 U.S.C. § 1345(e), in part, 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.”

9. That Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), provides 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) of the CWA, 33 U.S.C. § 1319(g)].”

## **GENERAL ALLEGATIONS**

10. That Respondent is a "person," a term defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 501.2.
11. That from August 2002, to July 2007, Respondent collected domestic septage, liquid and solid material from domestic septage tanks, cesspools, portable toilets or other waste collection devices, and applied that material to agricultural land in Long Bottom, Ohio.
12. That the materials collected by Respondent and applied to agricultural land, as identified in Paragraph 11, are "sewage sludge" as defined at 40 C.F.R. § 503.9(w).
13. That the sources from which Respondent collected materials, identified in Paragraph 11, were "treatment works treating domestic sewage" subject to the Standards for the Use or Disposal of Sewage Sludge, 40 C.F.R. § 503, to which the requirement of Section 405(e) of the CWA, 33 U.S.C. § 1345(e), was applicable.

## **ALLEGED VIOLATION**

### **Failure to Develop and Maintain Records (40 C.F.R. § 503.17)**

14. That Paragraphs 1-13 are hereby incorporated by reference.
15. That 40 C.F.R. § 503.17(b) provides 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, or 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 and time 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 § 503.33(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.

16. That with regard to each instance in which Respondent applied domestic septage to agricultural land, as identified in Paragraph 11, Respondent did not prepare records that contained the following information required to be kept:

- (a) the number of acres in each site on which domestic septage was applied, as required by 40 C.F.R. § 503.17(b)(2);
- (b) the nitrogen requirement for the crop or vegetation grown on each site during a 365 day period, as required by 40 C.F.R. § 503.17(b)(4);
- (c) the rate, in gallons per acre per 365 day period, at which domestic septage was applied to each site, as required by 40 C.F.R. § 503.17(b)(5); and
- (d) certification that information used to determine compliance with pathogen reduction requirements and vector attraction requirements were prepared

under Respondent's direction and supervision, in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information; as required by 40 C.F.R. § 503.17(b)(6).

17. That Respondent's failure to prepare and keep records, as identified in Paragraph 16 constitutes violations of 40 C.F.R. § 503.17(b), and, consequently, violations of Section 405(e) of the CWA, 33 U.S.C. § 1345(e), subjecting Respondent to civil penalties under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

### **PROPOSED CIVIL PENALTY**

Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Administrator may assess a Class II civil penalty not to exceed \$10,000 per day for each day during which a violation continues, not to exceed \$125,000 for violations of Section 405 of the CWA, 33 U.S.C. § 1345. In 1990, Congress enacted the Debt Collection Improvement Act of 1986, Pub. L. 101-410, 104 Stat. 890 (November 5, 1990), as amended, Pub. L. 104-134, Title III, § 31001(s)(1), 110 Stat. 1321-1373 (April 26, 1996), which authorizes federal agencies which collect penalties pursuant to statutory authority to adjust their statutory maximum penalties by rule, to account for inflation. Effective January 31, 1997, EPA modified the statutory maximum penalty under 309(g) of the CWA, 33 U.S.C. § 1319(g), increasing the maximum penalty per day of violation to \$11,000, and the maximum penalty per action to \$137,500; effective March 15, 2004, EPA modified the statutory maximum penalty under 309(g) of the CWA, 33 U.S.C. § 1319(g), increasing the maximum penalty per action to \$157,500. *See* 40 C.F.R. § 19.4.

In Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), Congress provides that, “[i]n determining the amount of any penalty assessed under this subsection, the Administrator . . . shall



take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.”

In determining the penalty amount proposed in this Administrative Complaint, Complainant has analyzed the known evidence in this case, in consideration of the penalty criteria identified at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

The penalty amount initially determined appropriate for the violation alleged in this Complaint was \$ 92,844.

In the course of pre-filing communications, the Administrator’s enforcement staff gave Respondent the opportunity to present any information that it believed should be considered. Relevant information might include evidence that Respondent did not violate the law; evidence that Respondent relied on compliance assistance from EPA or a State agency; evidence that EPA has identified the wrong party; or financial data bearing on Respondent’s ability to pay a penalty. Respondent did not provide any such information in its response to the Administrator’s enforcement staff.

Consequently, in this Administrative Complaint, Complainant proposes that a civil penalty of \$92,844 be assessed by the Administrator for the violations of Respondent identified in this Administrative Complaint.

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check, payable to “Treasurer, the United States of America,” delivered to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to:

Joseph Williams  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Newton Ellens  
Water Enforcement and Compliance Assurance Branch (WC-15J)  
Water Division  
EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

#### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), provides that any civil penalty assessed by the Administrator “shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with [Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.]” This Administrative Complaint provides to you that notice. Consequently, you have the right to request a hearing to challenge the facts alleged

in the Administrative Complaint and the amount of civil penalty proposed to be assessed by the Administrator.

Any hearing and pre-hearing issues that may occur will be governed in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22 (July 1, 2009) ("the Administrator's Rules"). A copy of the Administrator's Rules accompanies this Complaint.

**If you wish to avoid being found in default, you must file a written answer to the Complaint with the Regional Hearing Clerk (address above), within thirty (30) days of your receipt service of this Complaint. 40 C.F.R. § 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. 40 CFR 22.7(a).**

**By rule, 40 C.F.R. § 22.15(b), the Administrator provides that your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Administrative Complaint with respect to which you have any knowledge, or, where you have no knowledge of a particular factual allegation, so state. In 40 C.F.R. § 22.15(b), the Administrator provides that your Answer also must state:**

- 1. The circumstances or arguments that you allege constitute the grounds of defense;**
- 2. The facts that you dispute;**

**3. The basis on which you dispute the proposed relief, that being the amount of penalty proposed; and**

**4. Whether you request a hearing.**

**Your failure to admit, deny or explain any material factual allegation in the Complaint will constitute an admission of the allegation. See 40 C.F.R. § 22.15(d).**

**You should further note that the Administrator provides that any hearing that shall be held will be a “hearing upon the issues raised by the complaint and answer.” See 40 C.F.R. § 22.15(c). Consequently, your failure to raise an issue in your answer may preclude you from addressing the issue at any hearing which may be held.**

A copy of the Answer, and any subsequent documents filed by you in this action, should be sent to Joseph Williams, Associate Regional Counsel, (address above). Mr. Williams’ telephone number is (312) 886-6631.

Notwithstanding any request you may make for a hearing, if you fail to file an answer within thirty (30) days of your receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. 40 C.F.R. § 22.15(a); 40 C.F.R. § 22.17. Issuance of this Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to a hearing on those factual allegations. Any civil penalty determined appropriate in the Default Order shall then become due and payable, without further proceedings, on becoming a final order under 40 C.F.R. § 22.27(c). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty, and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default

penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. EPA will impose a late payment handling charge of \$15.00 after thirty (30) days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.


***SETTLEMENT CONFERENCE:***

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent should contact: Mr. Newton Ellens (address above). You may telephone Mr. Ellens at (312) 353-5562.

**Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint.** Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

***CONTINUING OBLIGATION TO COMPLY***

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

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

Date: 5/27/2010

**RECEIVED**  
JUN - 4 2010

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

CWA-05-2010-0012

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of this Administrative Complaint were filed with the Regional Hearing Clerk on 6-4-10, and that a true and correct copy was mailed along with a copy of the Consolidated Rules of Practice to the addressees as follows:

**CERTIFIED MAIL 7001 0320 0006 0190 9787**  
**RETURN RECEIPT REQUESTED**

Mr. David Brickles  
d/b/a Jack's Septic Service  
39825 Gold Ridge Road  
Pomeroy, Ohio 45769

RECEIVED  
JUN - 4 2010

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Date: 6-4-10

**CERTIFIED MAIL 7001 0320 0006 0190 9794**  
**RETURN RECEIPT REQUESTED**

Mr. Chris Korleski, Director  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43216-1049

Date: 6-4-10

Denise Moore  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson, WC-15J  
Chicago, Illinois 60604