

5. 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. 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. 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. 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. 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 March 1, 2004, to November 30, 2004, 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 Maple Ridge Township, Isanti County, Minnesota,

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 Meet Recordkeeping Requirements (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, for 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 pathogen requirements in [insert either § 503.32(c)(1) or § 503.32(c)(2)] and the vector attraction reduction requirements in [insert § 503.33(b)(9), § 503.33(b)(10), or § 503.33(b)(12)] have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. 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 failed to prepare records setting forth the following information it was required to prepare and keep:

- (a) the number of acres at the site on which domestic septage was applied, as required by 40 C.F.R. § 503.17(b)(2);

- (b) the date and time domestic septage was applied to the site, as required by 40 C.F.R. § 503.17(b)(3);
- (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 it met pathogen reduction requirements and vector attraction requirements, 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 \$ 137,500.

In the course of pre-filing communications with the Administrator’s enforcement staff, Respondent raised as an issue his “ability to pay” a penalty, and submitted records relevant to the his financial status. The CWA requires that in determining an appropriate amount of penalty for its violation, the Administrator’s officers and staff must consider a respondent’s “ability to pay” a penalty. 33 U.S.C. § 1319(g)(3). Upon review of Respondent’s financial records by a financial analyst retained by the Administrator for purposes of addressing “ability to pay” claims, the Complainant has concluded that Respondent does not have an “ability to pay” the \$137,500 Complainant would otherwise propose in this Complaint.

Consequently, in this Administrative Complaint, Complainant proposes that a civil penalty of \$1,000 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:

Richard R. Wagner
Senior Attorney
Office of Regional Counsel (C-14J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Valdis Aistars
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, 2007) (“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 Richard R. Wagner, Senior Attorney, (address above). Mr. Wagner’s telephone number is (312) 886-7947.

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, U.S. 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. Valdis Aistars; Water Division (WC-15J); EPA; 77 West Jackson Boulevard; Chicago, Illinois 60604-3590. You may also telephone Mr. Aistars at (312) 886-0264.


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
77 West Jackson Boulevard
Chicago, Illinois 60604

Dated: 1/27/10

RECEIVED
FEB 03 2010
REGIONAL HEARING CLERK
USEPA
REGION 5

Facility Name: Maple Ridge Sewer Service, Inc.
Stanchfield, MN

Docket No: **CWA-05-2010-0003**

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of this Administrative Complaint was filed with the Regional Hearing Clerk on February 3, 2010 the above referenced document was sent Certified Mail to:

CERTIFIED MAIL 7001 0320 0006 0190 8049
RETURN RECEIPT REQUESTED

Mr. Richard Weller
Maple Ridge Sewer Service, Inc.
38700 Verdin Street, N.W.
Stanchfield, MN 55080

RECEIVED
FEB 03 2010

**REGIONAL HEARING CLERK
USEPA
REGION 5**

CERTIFIED MAIL 7001 0320 0006 0190 8056
RETURN RECEIPT REQUESTED

Mr. Jeff Connell
Manager, Industrial Enforcement Section
Industrial Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Denise Moore Denise Moore
Title: Program Assistant
Date: February 3, 2010