

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR



IN THE MATTER OF:)
)
)
)
)
Go-Fer Sanitation, Inc.)
)
Respondent)
)
Proceedings under)
Section 309(g) of the Clean Water Act,)
33 U.S.C. § 1319(g))
_____)

Docket No. CWA-07-2023-0064

COMPLAINT AND
CONSENT AGREEMENT/
FINAL ORDER

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the United States Environmental Protection Agency's (“EPA”) Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”).

2. Complainant, the United States Environmental Protection Agency, Region 7 (“EPA”) and Respondent, Go-Fer Sanitation, Inc., have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent violated Section 405 of the CWA, 33 U.S.C. § 1345, and regulations promulgated thereunder and codified at 40 C.F.R. Part 503.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the

Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA, Region 7 (“Complainant”).

5. Respondent, Go-Fer Sanitation, Inc., is a North Dakota corporation, located at 1331 Ackerman Drive, Devil’s Lake, North Dakota 58301 (“Respondent”).

Statutory and Regulatory Framework

6. Section 405(d)(1) of the CWA, 33 U.S.C. § 1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

7. Pursuant to Section 405(d)(1) of the CWA, the EPA promulgated regulations governing the Standards for the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Part 503 (the "Sludge Management Program"). These regulations establish standards which consist of general requirements, pollutant limits, management practices, and operational standards applicable to any person who prepares sewage sludge or applies sewage sludge to the land. 40 C.F.R. § 503.1(a) and (b).

8. The state of North Dakota has not applied for nor obtained primary authority to administer and enforce the sludge management program pursuant to Sections 402(b) or 405(c) of the CWA, 33 U.S.C. §§ 1342(b) or 1345(c), and 40 C.F.R. Part 503. The EPA directly implements the sludge management program in the state of North Dakota and on the Spirit Lake Nation Tribal Reservation.

9. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), prohibits the disposal 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 that Section, except in accordance with such regulations.

10. The regulations found in Subpart B of 40 C.F.R. Part 503 apply 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. 40 C.F.R. §§ 503.1 and 503.10(a).

11. Pursuant to 40 C.F.R. § 503.9(w), “sewage sludge” is solid, semi-solids, or liquid residue generated during the treatment of domestic sewage in a treatment works and includes “domestic septage.”

12. Pursuant to 40 C.F.R. § 503.9(g), “domestic sewage” is waste or wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

13. Pursuant to 40 C.F.R. § 503.9(aa), “treatment works” include “privately owned device[s] or system[s] used to treat (including recycle or reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.”

14. Pursuant to 40 C.F.R. § 503.9(f), “domestic septage” is “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.”

15. Pursuant to 40 C.F.R. § 503.9(z), “treatment of sewage sludge” is the preparation of sewage sludge for final use or disposal.

16. Pursuant to Section 503(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 503.9(q), a “person” is defined to include an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

17. Pursuant to 40 C.F.R. § 503.12(a), “no person shall apply sewage sludge to the land except in accordance with the requirements in this subpart.”

18. Pursuant to 40 C.F.R. § 503.9(a), “apply sewage sludge or sewage sludge applied to land” means land application of sewage sludge.

19. Pursuant to 40 C.F.R. § 503.10(a), this subpart [Part 503] 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.

20. Pursuant to 40 C.F.R. § 503.11(h), “land application” means the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below 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.

21. Pursuant to 40 C.F.R. § 503.11(a), “agricultural land” is land on which a food crop, feed crop, or fiber crop is grown. This includes range land and land used as pasture.

22. Pursuant to 40 C.F.R. § 503.17(b), any person who “applies” domestic septage shall develop and retain information listed therein for a period of five years.

23. Section 308 of the CWA, 33 U.S.C. § 1318 provides EPA the authority to request and have access to a copy of any records required under Section 1318(a)(A) of the CWA.

24. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of penalty against any person who violates Section 405 of the CWA, 33 U.S.C. § 1345, or a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

EPA’s General Allegations

25. The Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. 503.9(q).

26. On July 20, 2021, EPA Region 8 received a complaint that Respondent applied domestic septage on July 15, 2021, to a farm field located at 47.868, -98.885 in Wood Lake, North Dakota which is within the boundaries of the Spirit Lake Nation Tribal Reservation.

27. Respondent “applied domestic septage” to “agricultural land,” as these terms are defined by 40 C.F.R. §§ 503.9 and 503.11, respectively.

28. Respondent’s land application equipment as described in the complaint meets the definition of a point source that may discharge under CWA Section 502(14), 33 U.S.C. § 1362(14).

29. Respondent owned or operated the land application equipment that dumped or land applied domestic septage to the farm field within the boundaries of the Spirit Lake Nation Tribal Reservation.

30. EPA Region 8 referred the complaint to EPA Region 7 because Region 7 implements EPA’s Biosolids Center of Excellence. Region 7 has the delegated authority to enforce the requirements of CWA Section 405 and the regulations promulgated thereunder for the EPA.

31. Pursuant to Section 308 of the CWA and 40 C.F.R. § 503.17, EPA Region 7 issued Respondent a “Request for Information” (Request) on September 15, 2021, to provide information related to Respondent’s July 15, 2021, land application of domestic septage. After EPA did not receive a response to its Request, EPA issued a second. Request on November 23, 2021.

32. EPA received an email response on January 4, 2022. The response did not include any of the requested information. However, in its response the Respondent affirmed that it had “dumped” septage and asserted this practice is legal under state law.

33. Follow up with the North Dakota Department of Environmental Quality by the EPA confirmed that Department records indicate that Respondent takes septage to the Publicly Owned Treatment Works (“POTW”) of Devil’s Lake, North Dakota for treatment. The state also confirmed there were no state-approved multi-use land application sites for Respondent in the state and that land application sites located within the boundary of the tribal reservations are outside of the Department’s authority.

34. On April 5, 2022, EPA issued a third Request seeking the same information as requested in the September 15, 2021, “Request for Information”. No response was received from Respondent.

35. On December 2, 2022, EPA issued an Order for Compliance CWA-07-2023-0013, ordering Respondent to respond fully to the CWA Section 308 Request for Information. EPA received information from the Respondent via email on January 12 and 13, 2023, detailing amount of septage hauled to the Devil's Lake POTW and information regarding the land application of septage within the boundaries of the Spirit Lake Nation Tribal Reservation.

EPA's Specific Allegations

Count 1 Failure to Respond

36. The facts stated above are incorporated herein by reference.

37. Respondent did not provide a complete and timely response to the September 15, 2021, or April 5, 2022, Information Requests sent by EPA pursuant to authority Section 308 of the CWA, 33 U.S.C. § 1318.

38. Respondent's failure to provide records as requested by EPA and required by the CWA is a violation of Section 308 of the CWA, 33 U.S.C. § 1318.

Count 2 Failure to Maintain Records

39. The facts above are incorporated herein by reference.

40. 40 C.F.R. § 503.17(b) states 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:

- a. Location of each site on which domestic septage is applied;
- b. Number of acres in each site on which domestic septage is applied;
- c. Date of application
- d. Nitrogen requirement for the crop or vegetation grown on each site during a 365-day period;
- e. The rate at which domestic septage is applied to each site;
- f. A certification statement;
- g. Description of how pathogen requirements are met; and
- h. Description of how vector attraction reduction requirements are met.

41. In the January 13, 2023, response, Respondent stated that they do not maintain a list of land application sites and, as such, maintain no other records as required by Part 503 for the land application of domestic septage.

42. Failure by Respondent to maintain required records is a violation of 40 C.F.R. § 503.17(b).

**Count 3
Failure to Meet Vector Attraction Reduction Requirements**

43. The facts above are incorporated herein by reference.

44. 40 C.F.R. § 503.33(5) states that one of 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, or a reclamation site.

45. 40 C.F.R. § 503.33(b)(9) states that sewage sludge shall be injected below the surface of the land and no significant amount shall be present on the land surface within one hour after the sewage sludge is injected.

46. 40 C.F.R. §503.33(b)(10) states that sewage sludge applied to the land surface shall be incorporated into the soil within six hours after application

47. 40 C.F.R. §503.33(b)(12) states that the pH of domestic septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes.

48. In the January 13, 2023, response, Respondent stated that domestic septage applied at the Wood Lake site was not treated prior to land application and was applied to the surface of the land with no incorporation or injection.

49. Failure by the Respondent to meet vector attraction reduction requirements for domestic septage is a violation of 40 C.F.R. § 503.33(5).

CONSENT AGREEMENT

50. Respondent and EPA agree to the terms of this Consent Agreement/Final Order.

51. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement/Final Order.

52. Respondent neither admits nor denies the factual allegations contained in this Complaint and Consent Agreement/Final Order.

53. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and the accompanying proposed Final Order.

54. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

55. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors in determining the appropriate penalty settlement amount to resolve this action.

56. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contracts, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

57. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

Penalty Payment

58. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Fifteen Thousand and Twenty-Three Dollars (\$15,023) plus interest, as set forth below.

59. By signing this Order, Respondent certifies that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship. In addition to this statement, Respondent has submitted a signed and certified statement to EPA of its current financial condition articulating a basis for its contention that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship, appropriate supporting federal tax documentation, and financial statements.

60. EPA has considered the appropriateness of the penalty pursuant to Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), and has determined that based on Respondent's signed, certified statement to EPA, the information provided, and EPA's best interests, the appropriate penalty for the violations is \$15,023 to be paid in four quarterly installments. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Fifteen Thousand and Twenty-Three Dollars (\$15,023), plus interest of Two Hundred and Eighty-One Dollars and Sixty-Eight Cents (\$281.68) over a period of not more than 12 months for a total payment of [penalty + interest] Fifteen Thousand Three Hundred and Four Dollars and Sixty-Eight Cents (\$15,304.68). The total penalty payment shall be paid in the following installments:

- a. Payment #1 shall be made for Three Thousand Eight Hundred Twenty-Six Dollars and Seventeen Cents (\$3,826.17) within 30 days after the Effective Date of the Final Order.
- b. Payment #2 shall be made for Three Thousand Eight Hundred Twenty-Six Dollars and Seventeen Cents (\$3,826.17) within four months of the Effective Date of the Final Order.
- c. Payment #3 shall be made for Three Thousand Eight Hundred Twenty-Six Dollars and Seventeen Cents (\$3,826.17) within seven months of the Effective Date of the Final Order.
- d. Payment #4 shall be made for Three Thousand Eight Hundred Twenty-Six Dollars and Seventeen Cents (\$3,826.17) within ten months of the Effective Date of the Final Order.

61. Respondent shall pay each penalty payment identified above by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number "CWA-07-2023-0064" to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000.

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to Amy Gonzales, EPA Region 7, Regional Hearing Clerk, at gonzales.amy@epa.gov and Anna Landis, EPA Region 7, Attorney, at landis.ann@epa.gov.

62. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

63. Interest will be set at the effective rate for debts to the United States as of the effective date of the Consent Agreement and Final Order. As of April 1, 2023, the rate is 3% per annum. Upon the due date of the first installment, interest shall begin to accrue on the remaining penalty balance. Interest will not be compounded, and interest will be calculated based on a 360-day year. At any time, Respondent may make advance payment of the remaining penalty balance and interest due, after obtaining a payoff figure and date from EPA.

64. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

Effects of Settlement and Reservation of Rights

65. Respondent's payment of the entire civil penalty resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

66. The effect of the settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Consent Agreement/Final Order.

67. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

68. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial collection action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

69. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties, and damages.

General Provisions

70. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

71. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry of the Final Order and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

72. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall only affect interpretation of this Consent Agreement/Final Order.

Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart. Respondent agrees to electronic service of this Complaint and Consent Agreement/Final Order at the following address: gofersanitation@gondtc.com.

**FOR THE COMPLAINANT,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 7:**

Date

David Cozad
Director
Enforcement Compliance and Assurance Division

Anna Landis
Office of Regional Counsel

**FOR THE RESPONDENT,
GO-FER SANITATION, INC.:**

5-26-23
Date

Missy Abrahamson
Signature

Name: Missy Abrahamson

Title: Secretary

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the Effective Date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by email to Respondent:

Go-Fer Sanitation, Inc.
Attention: Travis Abrahamson
1331 Ackerman Drive
Devil's Lake, North Dakota 58301
gofersanitation@gondtc.com

Copy by email to Attorney for Complainant:

Anna Landis
U.S. Environmental Protection Agency – Region 7
landis.anna@epa.gov

Erin Kleffner
U.S. Environmental Protection Agency – Region 7
kleffner.erin@epa.gov

Name

Date