

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2016 APR 14 PM 2:31

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Brent's Biffies, Inc.)
D/b/a BBS, Inc. and)
Bakken's Best Sanitation)
4667 Shadow Lane W)
Saginaw, Minnesota 55779,)

) Docket No. CWA-08-2016-0007

) Respondent.)

) **ADMINISTRATIVE ORDER**
) **ON CONSENT**

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

INTRODUCTION

1. The United States Environmental Protection Agency (EPA) and Brent's Biffies, Inc., d/b/a BBS, Inc. and Bakken's Best Sanitation (Respondent), voluntarily enter into this Administrative Order on Consent (Consent Order). 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 officials. EPA Region 8 has authority in North Dakota and EPA Region 5 has authority in Minnesota.
2. The Findings of Fact and of Violation in paragraph numbers 13 through 29, 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 states of Minnesota and North Dakota have 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 Minnesota and 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.

Recordkeeping

12. 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

13. Brent's Biffies, Inc. (Respondent) is a Minnesota corporation.
14. 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 or disposing of the sewage sludge at a wastewater treatment plant.
15. 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).
16. The EPA sent the Respondent a request for information pursuant to section 308 of the Act, 33 U.S.C. § 1318, on October 9, 2015, 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.
17. The Respondent responded to the EPA's information request on November 9, 2015.
18. In its response to the EPA's information request, the Respondent indicated that it had land applied domestic septage on two separate dates, October 28, 2014, and May 29, 2014, at the following location in St. Louis County, near the City of Saginaw, Minnesota: Northeast Regional Corrections Center, 6102 Abrahamson Rd., Saginaw, Minnesota 55779.
19. In its response to the EPA's information request, the Respondent indicated during each of the land applications referenced in paragraph 18 above, the Respondent met the requirements under 40 C.F.R. § 503.17(b)(1) by providing the longitude and latitude of each site where domestic septage was applied.
20. In its response to the EPA's information request, the Respondent indicated during each of the land applications referenced in paragraph 18 above, the Respondent met the requirements under

- 40 C.F.R. § 503.17(b)(2) by documenting the number of acres to which domestic septage was applied.
21. In its response to the EPA's information request, the Respondent indicated during each of the land applications referenced in paragraph 18 above, the Respondent met the requirements under 40 C.F.R. § 503.17(b)(3) by documenting the date for each instance that the Respondent applied domestic septage to the site.
 22. In its response to the EPA's information request, the Respondent indicated during each of the land applications referenced in paragraph 18 above, the Respondent met the requirements under 40 C.F.R. § 503.17(b)(7) and 40 C.F.R. § 503.32(c)(2) by performing and documenting how the pathogen requirements were met for each site by applying lime to the domestic septage and keeping the pH at 12 or higher for 30 minutes.
 23. In its response to the EPA's information request, the Respondent indicated during each of the land applications referenced in paragraph 18 above, the Respondent met the requirements under 40 C.F.R. § 503.17(b)(8) and 40 C.F.R § 503.33(b)(12) by performing and documenting how the vector attraction reduction requirements were met for each site by applying lime to the domestic septage and waiting for the pH of the domestic septage to be raised to 12 or higher for 30 minutes.
 24. In its response to the EPA's information request and in subsequent communications with the EPA, the Respondent also indicated that it had land applied domestic septage, on four separate occasions (September 12, 2014, March 23, 2015, April 13, 2015 and May 4, 2015), at the following location in North Dakota near Mandaree on the western shore of Lake Sakakawea and potentially other locations near the following coordinates: latitude: 47°39'50.2;" longitude: -102°17'49.39."

25. In its response to the EPA's information request and in subsequent communications with the EPA, the Respondent also indicated that it documented these four land applications in North Dakota, referenced in paragraph 24 above; however, those documents were not provided in the Respondent's section 308 response and this information could not be verified through further efforts.

VIOLATIONS

26. For each instance in which the Respondent land applied domestic septage as referenced in paragraph 18, above, the Respondent failed to provide recordkeeping documentation of the nitrogen requirement for the crop or vegetation grown on each site for a 365-day period as required by 40 C.F.R. § 503.17(b)(4). The Respondent's records did document that the crop or vegetation for each site was grass or hay, but failed to document the information required by 40 C.F.R. 503.12(e)(1) and 40 C.F.R. 503.13(c). Each such instance constitutes a separate violation of 40 C.F.R. § 503.17(b)(4), 40 C.F.R. 503.13(c) and section 405 of the Act, 33 U.S.C. § 1345.
27. For each instance in which the Respondent land applied domestic septage as referenced in paragraph 18, above, the Respondent failed to provide recordkeeping documentation of the rate, in gallons per acre per 365-day period at which domestic septage was applied at each site as required by 40 C.F.R. § 503.17(b)(5). Each such instance constitutes a separate violation of 40 C.F.R. § 503.17(b)(4) 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 18, above, the Respondent failed to provide and sign a certification statement pursuant 40 C.F.R. § 503.17(b)(6). Each such instance constitutes a separate violation of 40 C.F.R. § 503.17(b)(6) and section 405 of the Act, 33 U.S.C. § 1345.

29. During each instance in which the Respondent land applied domestic septage as referenced in paragraph 24, above, the Respondent failed to develop and retain recordkeeping information for five years pursuant to 40 C.F.R. §§ 503.17(b), (b)(1)-(8). Each such instance constitutes a separate violation of 40 C.F.R. §§ 503.17(b), (b)(1)-(8) and section 405 of the Act, 33 U.S.C. § 1345.

ORDER

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

30. 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 recordkeeping requirements of 40 C.F.R. § 503.17(b).
31. For four 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 April 15, 2016, and shall cover the time period from the date of the signature on this Consent Order through March 31, 2016. Subsequent reports are due July 15, 2016 (covering April 1, 2016 - June 30, 2016), October 15, 2016 (covering July 1, 2016 – September 30, 2016), and January 15, 2017 (covering October 1, 2016 to December 31, 2016). For the purpose of quarterly reporting, the Respondent shall use the form attached as Exhibit 1 for each land application.
32. The Respondent's quarterly reports shall describe in detail how it has complied with the recordkeeping requirements of 40 C.F.R. § 503.17(b).

33. 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.
34. If the Respondent disposed of any domestic septage during a quarter by any means other than land application, the Respondent's report shall describe the amount of septage, where, when, and how the Respondent disposed of each septage load.
35. 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

36. 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.
37. 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).
38. 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.

39. 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.
40. 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.
41. This Consent Order shall be effective immediately upon execution by both parties.

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

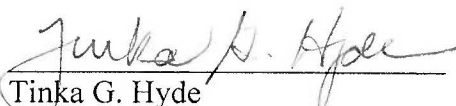
Date: _____

4/14/16


Suzanne Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 5**


Date: 4/7/16



Tinka G. Hyde
Director, Water Division

BRENT'S BIFFIES, INC.

Date: 3-11-16



James Tanski
Owner

Exhibit 1

- 1. Source of Septage: _____
- 2. Gallons of Septage: _____
- 3. Address or GPS coordinates of Septage Disposal: _____
- 4. Number of Acres Septage Applied to: _____

Nitrogen Requirements

- 5. Crop to be farmed and expected yield: _____
- 6. Soil Nitrogen test specific to this site (attach test results to this form): _____
- 7. Nitrogen requirements of crop per acre per year specific to this site: _____
Information on the amount of Nitrogen required for the expected crop yield under local soil and climatic conditions should be obtained from a qualified, knowledgeable person, such as your local agricultural extension agent.
- 8. Annual Application Rate (AAR) in gallons per acre per year: _____

$$AAR \text{ (gallons/ac/yr)} = \frac{N}{0.0026}$$

*Annual application rate (AAR) = Annual application rate in gallons per acre per 365 day period
N = the amount of nitrogen in lbs/acre/year required by the crop grown*

- 9. Treatment for Pathogens (Check one)
 - a. None (Must use either 10a or 10b below) [40 C.F.R. § 503.32(c)(1)]
Describe Site Access Restrictions: _____
 - b. pH 12 for 30 minutes [40 C.F.R. § 503.32(c)(2)]
- 10. Treatment for Vector Attraction Reduction (Check One)
 - a. Injected below the surface [40 C.F.R. § 503.33(b)(9)]
 - b. Plowed into the soil within 6 hours [40 C.F.R. § 503.33(b)(10)]
 - c. pH 12 for 30 minutes [40 C.F.R. § 503.33(b)(12)]
- 11. Monitoring Requirements
pH of container before application _____

I certify, under penalty of law, that the pathogen requirements and the vector attraction reduction requirements described above 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.

- 12. Signed: _____
- 13. Date: _____

Exhibit 2

Statement of Certification

Brent's Biffies, Inc.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature

Date

Printed Name

Official Title

IN THE MATTER OF: BRENT'S BIFFIES
DOCKET NO.: CWA-08-2016-0007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true and correct copy of the foregoing **ADMINISTRATIVE ORDER ON CONSENT** were hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail to the following Thursday, April 14, 2016 as indicated below:

to:

James Tanski, Owner
Brent's Biffies, Inc.
4667 West Shadow Lane
Saginaw, Minnesota 55779
Certified Mail # 7009 3410 0000 2600 4925

and by regular mail, copies were sent to the following:

Edmund Baker, Environmental Director
Three Affiliated tribes
404 Frontage Road
New Town, North Dakota 58763-9404

Tony Petruska
Water Enforcement Branch
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Christopher Grubb
Assistant Regional Counsel
U.S. EPA Region 5 (Mail Code C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Date: Thursday, April 14, 2016

By: *Dayle Aldinger*
Dayle Aldinger