



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

REPLY TO THE ATTENTION OF:  
WC-15J

January 21, 2009

**CERTIFIED MAIL – 7004 2510 0001 9556 1608**  
**RETURN RECEIPT REQUESTED**

Mr. Michael Aukerman  
d/b/a as Michael Aukerman Excavating  
3180 County Road 203  
McComb, OH 45858

Re: Docket No: CWA-05-2008-0004  
BD # **2750943W002**

Dear Mr. Aukerman:

I have enclosed one copy of the fully executed Consent Agreement and Final Order (CAFO) in the resolution of the above case. It was filed January 21, 2009, with the Acting Regional Hearing Clerk.

The penalty amount agreed upon is \$1,000 which is due 30 days after the effective date of this CAFO. A Certified or Cashier Check should be made payable to the "Treasurer, United States of America," at the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**When submitting your check, please be sure that the Case Docket No. and the Billing Docket No. (BD) is included at the bottom of your check.**

**There is now an On Line Payment Option available through the Department of Treasury at <https://www.pay.gov>; which allows you to make payments using your credit card, checking or saving account. Using the Search Public Forms field (left side of page) enter "SFO 1.1" to access the EPA Miscellaneous Payments-Cincinnati Finance Center Form. Follow the instructions for payment.**

As indicated in your CAFO a copy of the check or electronic transfer must be sent to:

Ms. Twanna Greene (R-19J)  
Acting Regional Hearing Clerk  
U.S. EPA  
77 W. Jackson Blvd.  
Chicago, IL 60604

Valdis Aistars (WC-15J)  
Sludge Program Manager  
U.S. EPA  
77 W. Jackson Blvd.  
Chicago, IL 60604

Richard R. Wagner (C-14J)  
Associate Regional Counsel  
U.S. EPA  
77 West Jackson Blvd  
Chicago, IL 60604

If you have any questions, please contact Valdis Aistars, at (312) 886-0264.

Sincerely yours,



Sally K. Swanson, Chief  
Water Enforcement and Compliance Assurance Branch

Enclosure

cc: Mark Mann, OEPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
JAN 21 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY.

\_\_\_\_\_) )  
**In the Matter of:** ) )  
 ) )  
**MICHAEL AUKERMAN, d/b/a** ) **Proceeding to Assess a**  
**AUKERMAN EXCAVATING** ) **Class II Civil Penalty**  
 ) **Pursuant to Section 309(g)**  
 ) **of the Clean Water Act,**  
 ) **33 U.S.C. § 1319(g)**  
**Respondent** ) )  
\_\_\_\_\_) **Docket No.: CWA-05-2008-0004**

**CONSENT AGREEMENT AND FINAL ORDER**

**CONSENT AGREEMENT**

**Preliminary Statement**

1. Complainant, the Director of the Water Division, Region 5, United States Environmental Protection Agency (U.S. EPA), brought this administrative action seeking a civil penalty under Section 309(g) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g).

2. On June 18, 2008, Complainant, on delegated authority of the Administrator, filed the Administrative Complaint (Complaint) against Respondent, Michael Aukerman, d/b/a as Aukerman Excavating. In four counts, the Complaint alleges that Respondent violated Section 405(e) of the Act, 33 U.S.C. § 1345(e), and 40 C.F.R. §§ 503.17(c), 503.15(b), 503.15(d), and 503.14(d) in the course of operating his septage hauling and disposal business in McComb County, Ohio. In the Complaint, Complainant proposed that a civil penalty amount of \$102,000 be assessed for Respondent's violations.

3. Pursuant to 40 C.F.R. § 22.38, notice of the filing of the Complaint was provided to the State of Ohio.

4. On or about August 20, 2008, Respondent filed his answer in this matter (Answer), denying that he committed the violations, and otherwise challenging the proposed penalty amount. In his Answer, Respondent raised a claim that he is unable to pay the \$102,000 penalty amount proposed.

#### **Terms of Settlement**

5. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.

6. Respondent waives any right to contest the allegations of the Complaint, and waives any right to contest the terms and conditions of this Consent Agreement and Final Order (CAFO).

7. Respondent certifies that he is no longer engaged in land applying septage, and consequently is no longer subject to the requirements of 40 C.F.R. §§ 503.17(b)(4), 503.17(b)(6), 503.17(b)(7), and 503.17(b)(8). Respondent acknowledges that, should he in the future engage in land applying septage, he must comply with all regulations of the Administrator which govern that activity, as codified at 40 C.F.R. Part 503.

8. Respondent consents to all terms of this Consent Agreement and Final Order (CAFO).

9. On behalf of the Administrator, Complainant accepts the terms and conditions of this CAFO in full satisfaction as appropriate remedial action occasioned by the matters raised in the Complaint.

**Civil Penalty**

10. On August 20, 2008, Respondent submitted to Complainant financial information to support his claim that he is unable to pay the proposed civil penalty amount of \$102,000. Complainant has analyzed this information, and recognizes that Respondent's ability to pay a penalty amount is limited.

11. In consideration of Respondent's financial circumstances, and, given the statutory penalty criteria "ability to pay," which the Administrator must take into account in determining an appropriate amount of penalty for violations of the Act, Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), Complainant finds it appropriate that Respondent pay a penalty amount of \$1,000 to resolve this matter.

12. Respondent agrees to pay the penalty amount of \$1,000.

13. Respondent shall pay the agreed penalty amount by cashier's or certified check, payable to the "Treasurer, United States of America."

14. Respondent must send the penalty payment check to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Payment of this penalty is due no later than 30 days after the effective date of this CAFO.

15. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany each payment made. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Valdis Aistars (WC-15J)  
Water Enforcement and Compliance Assurance Branch  
Water Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Richard R. Wagner (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

16. The billing document number, identified in Paragraph 15, will be provided to Respondent by Complainant with a copy of the fully executed CAFO.

17. Respondent acknowledges that the \$1,000 civil penalty payment he is required to make under the CAFO is not deductible for federal tax purposes, and he shall not attempt to so deduct it.

18. Respondent's failure to pay the assessed civil penalty in accordance with Paragraph 14, above, will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review, and, in addition, Respondent shall be required to pay interest established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty. Such nonpayment penalty shall be in an amount equal to

20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

**General Provisions**

19. Nothing in this CAFO restricts the Administrator's authority to enforce Respondent's compliance with the Act, or any other applicable law or regulation, nor does anything in the CAFO affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

20. The terms of this CAFO bind any successors and assigns of Respondent.

21. Each party to this CAFO agrees to bear its own costs and fees in this action.


22. This CAFO constitutes the entire agreement between the parties.

**Public Notice**

23. In accordance with section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), this Final Order will become effective on its execution by the Regional Administrator. No person responded to the public notice of the commencement of this action pursuant to 33 U.S.C. § 1319(g)(4)(A), and thus no interested persons need be notified of the issuance of the Final Order in this matter under section 309(g)(9)(c) of the CWA, 33 U.S.C. § 1319(g)(9)(C).

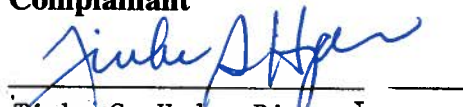
**Michael Aukerman**  
**Respondent**

Dated: 12-10-08

  
Michael Aukerman

**Complainant**

Dated: 1-12-09

  
Tinka G. Hyde, Director  
Water Division  
U.S. Environmental Protection Agency, Region 5  
Chicago, Illinois




**In the Matter of: Michael Aukerman, d/b/a as Michael Aukerman Excavating  
Docket No. CWA-05-2008-0004**

**FINAL ORDER**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. Respondent Michael Aukerman is hereby ordered to comply with all of the terms of the preceding Consent Agreement, effectively immediately.

Dated: 1/15/09

  
\_\_\_\_\_  
Lynn Buhl  
Regional Administrator  
U.S. Environmental Protection Agency Region 5  
Chicago, Illinois

**RECEIVED**  
JAN 21 2009

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY,**

Facility Name: Michael Aukerman d/b/a  
Aukerman Excavating  
McComb, OH

Docket No: CWA-05-2008-0004

BD No: 2750943W002 JJ.

### CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of this Administrative Complaint was filed with the Acting Regional Hearing Clerk on January 21, 2009. The above referenced document was sent Certified Mail to:

CERTIFIED MAIL 7004 2510 0001 9556 1608  
RETURN RECEIPT REQUESTED

Mr. Michael Aukerman  
d/b/a as Michael Aukerman Excavating  
3180 County Road 203  
McComb, OH 45858

CERTIFIED MAIL 7000 0600 0022 9221 7039  
RETURN RECEIPT REQUESTED

Mr. Mark Mann, Supervisor  
Enforcement Unit  
Division of Surfacewater  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, OH 43216-1049

RECEIVED  
JAN 21 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Denise Moore Denise Moore  
Title: Program Assistant  
Date: 1-21-09