

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Thomas Kepler d/b/a)
Tom Kepler Sanitation & Excavating)
Jamestown, Ohio)
)
Respondent.)
_____)

Consent Agreement
And
Final Order

Docket No.

US EPA REGION 5
PROTECTION DIVISION
MAR 16 12:15
REGISTRATION
CWA-05-2006-0001
[Signature]

STATUTORY AUTHORITY

This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA), pursuant to the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq, (the Act or CWA). The Administrator of U.S. EPA has delegated the authority to take this action to the Regional Administrator of Region 5, who has redelegated the authority to the Water Division Director, U.S. EPA, Region 5.

CONSENT AGREEMENT

Complainant and the Respondent, consent to the issuance of this CAFO before the taking of any testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this CAFO.

Section I - General Allegations

1. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).

2. Respondent collects domestic septage, liquid and solid material from domestic septic tanks, cesspools, portable toilets and other domestic waste collection devices in Jamestown, Ohio.
3. Respondent recycles and reclaims the domestic septage by applying it to agricultural land.
4. As required by Section 405(d) of the Act, 33 U.S.C. §1345(d), U.S. EPA developed Standards for the Use or Disposal of Sewage Sludge, 40 C.F.R. Part 503 Subpart B. Said regulations were published on February 19, 1993, (58 Fed. Reg. 9387), and subsequently amended on February 25, 1994, (59 Fed. Reg. 9095), and on October 25, 1995, (60 Fed. Reg. 206) and apply to Respondent.
5. Since at least January 2000, Respondent has been collecting domestic septage and applying the septage at his farm.
6. Respondent collected "domestic septage" as that term is defined in 40 C.F.R. § 503.9(f).
7. Respondent collected "domestic sewage" as that term is defined in 40 C.F.R. § 503.9(g).
8. Pursuant to 40 C.F.R. Part 503.2(a) and Section 405(d)(2)(D) of the CWA, 33 U.S.C. §1345(d)(2)(D), compliance with the standards and reporting requirements in Subparts B, C, and D of 40 C.F.R. Part 503 were to be achieved as expeditiously as practicable, but in no case later than February 19, 1994.
9. Pursuant to 40 C.F.R. Part 503.2(c), compliance with all other requirements for frequency of monitoring, recordkeeping, and reporting are effective July 20, 1993.
10. On May 6, 2005, the Respondent was sent an information request pursuant to Section 308(a) of the CWA, 33 U.S.C. §1318(a).

11. Based on the information received, the Respondent's operations failed to comply with the following requirements: failed to develop and retain records of the land application of domestic septage, in violation of 40 C.F.R. §503.17 (b); (2) applied domestic septage to land that did not meet the vector attraction reduction requirements in violation of 40 C.F.R. §503.15(d); (3) applied domestic septage to land that did not meet the pathogen reduction requirements in violation of 40 C.F.R. §503.15(b); and (4) exceeded the agronomic application rate in violation of 40 C.F.R. §503.13 (c) .

12. Respondent's failure to comply with the requirements set forth in paragraph 11 constituted violations of Section 405 of the Act, 33 U.S.C. § 1345 and the regulations promulgated thereunder.

Section II-Specific Terms of Settlement

13. Complainant and Respondent agree that this CAFO is a complete settlement of all administrative claims and causes of action that arose out of the alleged violations listed in paragraph 11.

14. Respondent admits that the U.S. EPA has jurisdiction over the alleged violations pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g).

15. Respondent waives all rights to an administrative hearing pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), regarding any issue of fact or law regarding the violations.

16. Respondent waives all rights to file a petition for judicial review in the United States Court of Appeals pursuant to Section 309(g)(8) of the Act, 33 U.S.C. § 1319(g)(8), regarding any term of settlement set forth in this CAFO.

17. Respondent certifies that the alleged violations at issue have been properly remedied.
18. Respondent agrees to comply with the requirements of 40 CFR Part 503 when land applying domestic septage
18. Respondent has cooperated with EPA to resolve the matters covered by this CAFO, and has shown good faith and cooperation in settling this matter.
19. Pursuant to Section 309(g) of the Act, and based upon the foregoing, the nature of the alleged violations, information exchanged by the parties, consideration of the steps Respondent took to ensure compliance, and other relevant factors, including Respondent's financial condition, EPA has determined that an appropriate civil penalty to resolve this action is in the amount of \$2,750, and Respondent is hereby assessed a civil penalty in the amount of \$2,750.
20. Respondent agrees to the assessment of a civil penalty in the amount of \$2,750, as provided in this CAFO.

III. Penalty Payment

21. Respondent shall pay the civil penalty by forwarding a cashier's or certified check within sixty (60) calendar days of the date a copy of the fully executed CAFO is received by the Respondent. The check shall be made payable to the order of the "Treasurer of the United States of America" in the amount of \$2,750, and mailed to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

The check shall bear the case docket number "CWA-05-2006-0001".

23. A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall send a copy of the check and transmittal

letter to:

- a) Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (MF-19J)
Chicago, Illinois 60604;
- b) Valdis Aistars
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (WC-15J)
Chicago, Illinois 60604; and
- c) Peter Felitti
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604.

24. Respondent's failure to timely pay the assessed penalty may also subject Respondent to a civil action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. §1319 (g)(9), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below. In any such collection action, the validity, amount and appropriateness of this CAFO or the penalty and charges assessed hereunder shall not be subject to review.

25. Pursuant to 33 U.S.C. § 1319(g)(9) and 31 U.S.C. §§ 3717, 3731, Respondent shall pay interest and penalties on debts owed under this Consent Order to the United States and a charge to cover the costs of debt collection, including processing and handling costs and attorneys fees. Respondent shall pay the following amounts:

a. Interest. Any unpaid portion of the assessed penalty under this Consent Order shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) [see 4 C.F.R. § 102.13(c)] from the date a copy of this CAFO as issued is mailed to Respondent, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the date such copy of this CAFO is mailed to Respondent. In addition, no interest shall be payable on any portion of the assessed penalty that is suspended and deferred and is not subsequently required to be paid.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the assessed penalty is more than thirty (30) days past due.

c. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the full amount of the assessed penalty, interest and handling charges under this Consent Order, Respondent shall be liable to pay the United States' enforcement and collection expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

V. General Provisions

26. Entry of this CAFO, and Respondent's compliance herewith, shall constitute full accord, satisfaction and settlement of all civil liability of Respondent arising out of the alleged violations in paragraph 11.

27. By entering into this CAFO and complying with its terms, Respondent ~~does~~ admits to the violations set forth in paragraph 11 of this CAFO.

28. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

29. The penalty specified in Paragraph 22 shall represent civil³ penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
30. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CWA and other Federal, State or local laws or statutes.
31. Nothing in this CAFO shall be construed to be a ruling on, or determination of, any issue related to any Federal, State or local permit.
32. This CAFO shall be binding upon all Parties to this action, and their successors and assigns. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.
33. Each party shall bear its own costs, attorney fees and disbursements in this action.
34. This CAFO constitutes the entire agreement between the parties.
35. Respondent and EPA agree to issuance of the accompanying Consent Order.
36. This CAFO will be completed upon payments of all moneys due and owed under its terms.
37. The effective date of this CAFO is the date the Regional Administrator, or his designated representative, signs the accompanying Final Order.

Tom Kepler Sanitation & Excavating
Jamestown, Ohio
Docket No: CWA-05-2006-0001
BD No:

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of this Consent Agreement and Final Order was filed with the Regional Hearing Clerk on _____. The above referenced document was sent certified mail to:

CERTIFIED MAIL 7099 3400 0000 9587 5958
RETURN RECEIPT REQUESTED

Tom Kepler Sanitation & Excavating
1750 Charles Road
Jamestown, Ohio 45335

CERTIFIED MAIL 7099 3400 0000 9587 5927
RETURN RECEIPT REQUESTED

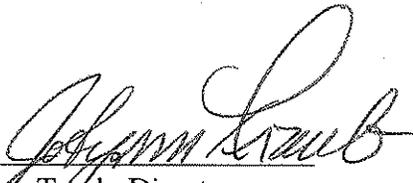
Mr. Mark Mann, Supervisor
Env. Unit Div. of Surfacewater
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

Denise Moore
Title: Program Assistant
Date:

The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry:

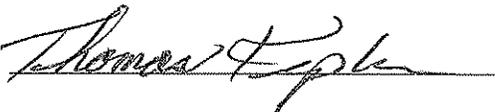
**U.S. ENVIRONMENTAL PROTECTION
AGENCY, COMPLAINANT**

Date: 3/10/06

By: 
Jo Lynn Traub, Director
Water Division
U.S. Environmental Protection
Agency, Region 5 (WC-15J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Thomas Kepler d/b/a Tom Kepler Sanitation & Excavating,
RESPONDENT

Date: 2/21/06

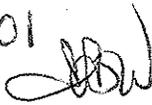
By: 

CWA-05-2006-0001



Consent Agreement and Final Order

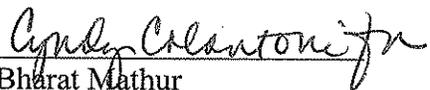
Thomas Kepler d/b/a Tom Kepler Sanitation & Excavating

Docket No. CWA-05-2006-0001 

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

Dated: 5/24/06


Bharat Mathur
Acting Regional Administrator
Region 5
U.S. Environmental Protection
Agency

US ENVIRONMENTAL
PROTECTION AGENCY
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REGION V
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