

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER BUREAU

In the matter of administrative
proceedings against:

ACO-FTO-SEP 07-002

Date Entered: _____

Mr. Ralph Kingsley, Septage License #40-04
Ralph's Septic Pumping and Excavating
7560 Rapid City Road
P.O. Box 175
Rapid City, Michigan 49676

ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order (ACO) results from allegations by the Department of Environmental Quality (DEQ), Water Bureau (WB), identified in the Notice of Intent To Revoke License (NOI) dated February 26, 2007. The DEQ alleges that Ralph Kingsley (Respondent), d.b.a. Ralph's Septic Pumping and Excavating, who owns and operates a septage waste hauling and disposal company located at 7560 Rapid City Road, Rapid City, Michigan, Kalkaska County, is in violation of Part 31, Water Resources Protection (Part 31), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 et seq., and the rules promulgated under Part 31. Respondent is also in violation of Part 117, Septage Waste Servicers (Part 117), of the NREPA, MCL 324.11701 et seq. Respondent and the DEQ agree to resolve the violations set forth in the NOI by entry of this ACO.

I. STIPULATIONS

Respondent and the DEQ stipulate as follows:

- 1.1 The NREPA, MCL 324.101 et seq. is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Part 31 of the NREPA, MCL 324.3101 et seq., and rules promulgated pursuant thereto, provide for the protection, conservation, and the control of pollution of the water resources of the state.
- 1.3 The DEQ is authorized by Section 3112(4) of Part 31 to enter orders requiring persons to abate pollution. The director of the DEQ or his designee has authority to enter into this

ACO with the Respondent in accordance with Section 301(b) of the NREPA, MCL 324.301(b).

- 1.4 Part 117 of the NREPA, MCL 324.11701(z) et seq., regulates cleaning, removing, transporting, or disposing, by application to land or otherwise, of septage waste. The Respondent is currently licensed under Part 117.
- 1.5 Part 117 of the NREPA, MCL 324.11716 allows certification of a city, county, or district health department to carry out certain powers and duties as agents of the DEQ. The Northwest Michigan Community Health Agency (NWMCHA) is duly authorized under the provisions of a contract with the DEQ to carry out said duties.
- 1.6 Act 306 of 1969, as amended, the Administrative Procedures Act (APA) specifies, among other things, certain state agency administrative procedures for licensing, license revocation or suspension, and the disposition of contested cases.
- 1.7 The Respondent stipulates to the issuance and entry of this ACO to comply by consent and stipulates that the resolution of this matter by a final order to be entered as an ACO is proper and acceptable. The Respondent further agrees not to contest the issuance of this ACO. This ACO, thus, shall be considered a final order of the DEQ and shall become effective on the date it is signed by the chief of the WB, as designee of the director, pursuant to Section 301(b) of the NREPA.
- 1.8 The Respondent and the DEQ agree that the signing of this ACO is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated.
- 1.9 The Respondent shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section II, Compliance Program, of this ACO.

II. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the Respondent will take the following actions to prevent further violations of Parts 31 and 117, of the NREPA.

- 2.1 According to Part 117, domestic septage must be screened through a screen of not greater than 1/2-inch mesh or through slats separated by a gap of not greater than 3/8 inch prior to land application. The respondent shall comply with Part 117 by properly screening septage prior to any land application activities. Evidence of screen construction (a photograph and materials receipt) shall be provided to the DEQ no later than July 2, 2007. Screening refuse shall be properly disposed.
- 2.2 According to Part 117, septage waste disposed of on land shall be applied uniformly at agronomic rates. This shall be achieved by the use of a distribution device, such as a splash plate or the equivalent. The respondent shall submit photographic evidence of an installed distribution device and a materials receipt to the DEQ by July 2, 2007. The respondent may also utilize an injection device in lieu of the distribution device. If this option is selected, a receipt for the equipment and photographic evidence must also be provided by July 16, 2007.
- 2.3 The Respondent shall discontinue land application of septage at the previously approved 77-acre site located in the E 1/2 of the NW 1/4, Section 23, Helena Township, Antrim County, upon the effective date of this order. If any septage from previous applications remains on the surface of the soil, the septage shall be incorporated by thorough discing of the site no later than 24 hours following receipt of the finalized order.
- 2.4 In accordance with Appendix A, found in the "Guidance Manual for the Land Application of Septage Waste," incorporated herein by reference as an enforceable element of this consent order, the Respondent shall collect soil samples at the site, including segregated samples from the areas where winter application took place. The samples shall be submitted to Michigan State University soil laboratory for agronomic analysis. The results of the analysis shall be provided to the DEQ no later than July 16, 2007. Once the samples have been taken and the discing/incorporation is complete, land application may resume.
- 2.5 The Respondent agrees to a probationary period of three (3) years commencing on the effective date of this ACO. The Respondent shall henceforth maintain compliance with all provisions of Part 117, Part 31, and all other applicable laws, rules, and regulations.

- 2.6 If, at any time after the effective date of this Consent Agreement, the DEQ determines that the Respondent has violated the terms and conditions of the agreement or Parts 117 and 31, it is specifically understood that his license may be immediately suspended or revoked.
- 2.7 In the event that the Respondent's license is suspended and/or revoked pursuant to Item 2.6, the Respondent agrees that he shall not apply for a Septage Waste Servicers License through, or as an agent for, any other business or legal entity of which he is a member, officer, director, employee or is in any other way affiliated with that entity.
- 2.8 The Respondent, by signing this ACO, acknowledges that the DEQ has provided a copy of Part 117 and Part 31 and that the Respondent has read and understands said documents.
- 2.7 The Respondent shall submit all written responses to the On-Site Wastewater Unit, WB, P.O. Box 30273, Lansing, Michigan 48909-7773. The cover letter with each submittal shall identify the specific paragraph and requirement of this ACO that the submittal is intended to satisfy.

III. REPORTING

- 3.1 The Respondent shall verbally report any violation(s) of the terms and conditions of this ACO to the On-Site Wastewater Unit by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five (5) business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). The Respondent shall report any anticipated violation(s) of this ACO to the above-referenced individual in advance of the relevant deadlines whenever possible.

IV. RETENTION OF RECORDS

- 4.1 Upon request by an authorized representative of the DEQ, the Respondent shall make available to the DEQ all records, plans, volume logs, and other documents required to be maintained under this ACO or pursuant to Part 117 and Part 31 or its rules. All such

documents shall be retained by the Respondent for a period of at least five (5) years from the date of generation of the record, unless a longer period of record retention is required by Part 31 or its rules.

V. RIGHT OF ENTRY

- 5.1 The Respondent shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this ACO. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

VI. PENALTIES

- 6.1 The Respondent shall pay a civil fine of **\$800** (**\$300** to the state of Michigan, **\$500** to the NWMCHA, Antrim County, to partially reimburse the costs of investigation on behalf of the DEQ for the violations specified in the NOI dated February 26, 2007. Payment shall be made on or before the following dates:

August 1, 2007	\$ 500.00 (NWMCHA)
September 1, 2007	<u>\$ 300.00 (DEQ)</u>
Total	\$ 800.00

Payment shall be made in accordance with paragraph 6.3.

- 6.2 For each failure to comply with any requirement of this ACO, including payment of the civil fine pursuant to paragraph 6.1, the Respondent shall pay stipulated penalties of **\$500** per violation per day for each day of violation. Payment of penalties accrued under this paragraph shall be made within thirty (30) days after receiving written demand by the DEQ and in accordance with paragraph 6.3.
- 6.3 The Respondent shall pay all funds due pursuant to this ACO to the DEQ by check made payable to the **State of Michigan** and delivered to the DEQ, Revenue Control Unit,

P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments to the state made pursuant to this ACO must include the Payment Identification Number **WTR1047**. Further, the Respondent agrees to pay all funds due to the NWMCHA by check in accordance with their approved procedures. The respondent shall provide a copy of said check to the DEQ.

- 6.4 The Respondent agrees not to contest the legality of the civil fine paid pursuant to paragraph 6.1 above. The Respondent further agrees not to contest the legality of any stipulated penalties assessed pursuant to paragraph 6.2 above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties is made.

VII. GENERAL PROVISIONS

- 7.1 With respect to any violations not specifically addressed and resolved by this ACO, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Respondent to comply with the requirements of the NREPA and its rules.
- 7.2 The DEQ and the Respondent consent to enforcement of this ACO in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 et seq., and enforcement pursuant to Part 117, MCL 324.1701 et seq.
- 7.3 This ACO in no way affects the Respondent's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 7.4 Nothing in this ACO is or shall be considered to affect any liability the Respondent may have for natural resource damages caused by the Respondent's ownership and/or operation of the business. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 7.5 The provisions of this ACO shall apply to, and be binding upon, the parties to this action and their successors and assigns.

7.6 This ACO constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

IX. TERMINATION

8.1 This ACO shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, the Respondent shall submit a request to the WB, On-Site Wastewater Unit, consisting of a written certification that the Respondent has fully complied with the requirements of this ACO and has made payment of any fines, including stipulated penalties, required in this ACO. Specifically, this certification shall include all of the following:

- a. The date of compliance with each provision of the compliance program in Section II, and the date any fines or penalties were paid.
- b. A statement that all required information has been submitted.
- c. Confirmation that all records required to be maintained pursuant to this ACO are being maintained at the facility.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this ACO to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

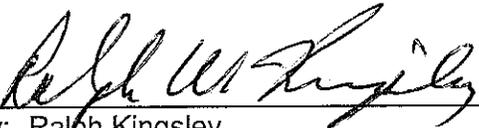
DEPARTMENT OF ENVIRONMENTAL QUALITY



Richard A. Powers, Chief
Water Bureau

9/29/07
Date

Ralph's Septic Pumping and Excavating

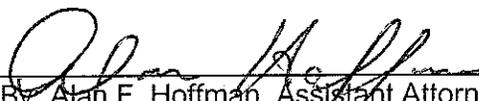


By: Ralph Kingsley

owner
Title:

8/8/07
Date

APPROVED AS TO FORM:



By: Alan F. Hoffman, Assistant Attorney General
For: S. Peter Manning, Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

9/20/07
Date