

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

SHAWANO COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

FILED
SHAWANO COUNTY

SEP 15 2009

SUSAN M. KRUEGER
CLERK OF COURTS

Plaintiff,

v.

RANDY M. SOPER
5612 Downtown Lane
Gillett, Wisconsin ~~54214~~ 54004
D.O.B.: 6/21/1958,

Case No. 09CM988

and

R.T. SANITATION, LLC
State Highway 22
Pulcifer, Wisconsin 54124,

Case No. _____

Defendants.

CRIMINAL COMPLAINT

Stefan Fabian, being first duly sworn on oath, complains to the Court as follows:

COUNT ONE

On two occasions each month from August 2006 until June 2008, defendants Randy Soper and R.T. Sanitation, LLC, owners and operators of a septage treatment facility that generates grit and screenings, at N7236 Mosling Road, Pulcifer, Shawano County, Wisconsin, did willfully dispose of the grit and screenings and not at a licensed

facility, to wit: the defendants did land apply grit and screenings from the tan shed generated by the septage treatment facility owned and operated by them onto a field and not at a licensed facility, in violation of Wis. Admin. Code § NR 204.12 (a rule promulgated under Wis. Stat. ch. 283) and Wis. Stat. § 939.05, an offense punishable under Wis. Stat. § 283.91(3) of not more than six months in prison or a fine of not less than \$10 nor more than \$25,000 per day of violation, or both.

COUNT TWO

On two occasions each month from August 2006 until June 2008, defendants Randy Soper and R.T. Sanitation, LLC, owners and operators of a treatment works that generates sludge, at N7236 Mosling Road, Pulcifer, Shawano County, Wisconsin, did willfully dispose of and land apply sludge from the treatment works, without obtaining a Wisconsin pollutant discharge elimination system (WPDES) permit issued by the Department of Natural Resources, to wit: without a WPDES permit, the defendants did land apply sludge from one of the tanks generated by the treatment works owned and operated by them onto a field behind the treatment works, in violation of Wis. Admin. Code § NR 204.05(1) (a rule promulgated under Wis. Stat. ch. 283) and Wis. Stat. § 939.05, an offense punishable under Wis. Stat. § 283.91(3) of not more than six months in prison or a fine of not less than \$10 nor more than \$25,000 per day of violation, or both.

COUNT THREE

During the years 2006, 2007, and 2008, defendants Randy Soper and R.T. Sanitation, LLC, owners and operators of a treatment works that generates sludge, at N7236 Mosling Road, Pulcifer, Shawano County, Wisconsin, did willfully dispose of sludge from the treatment works, without obtaining a WPDES permit issued by the Department of Natural Resources, to wit: without a WPDES permit, the defendants discharged sewage into the treatment works knowing sludge generated by the treatment works was ultimately discharged onto the ground from an outfall pipe located near the treatment works, in violation of Wis. Admin. Code § NR 204.05(1) (a rule promulgated under Wis. Stat. ch. 283) and Wis. Stat. § 939.05, an offense punishable under Wis. Stat. § 283.91(3) of not more than six months in prison or a fine of not less than \$10 nor more than \$25,000 per day of violation, or both.

COUNT FOUR

On August 31, 2007, defendants Randy Soper and R.T. Sanitation, LLC, at N7236 Mosling Road, Pulcifer, Shawano County, Wisconsin, did willfully discharge a pollutant into a water of the state and such discharge was not done under a WPDES permit issued by the Department of Natural Resources, to wit: the defendants discharged sewage, a pollutant, into an unnamed creek that discharges into the Oconto River, a water of the state, in violation of Wis. Stat. §§ 283.31(1) and 939.05, an offense punishable under Wis. Stat. § 283.91(3) of not more than six months in prison or a fine of not less than \$10 nor more than \$25,000 per day of violation, or both.

COUNT FIVE

On April 24, 2008, defendants Randy Soper and R.T. Sanitation, LLC, at N7236 Mosling Road, Pulcifer, Shawano County, Wisconsin, did willfully discharge a pollutant into a water of the state and such discharge was not done under a WPDES permit issued by the Department of Natural Resources, to wit: the defendants discharged sewage, a pollutant, into two separate wetlands, said wetlands being waters of the state, in violation of Wis. Stat. §§ 283.31(1) and 939.05, an offense punishable under Wis. Stat. § 283.91(3) of not more than six months in prison or a fine of not less than \$10 nor more than \$25,000 per day of violation, or both.

THE BASIS FOR YOUR COMPLAINANT'S CHARGE OF SUCH OFFENSES IS AS FOLLOWS:

Your complainant is an environmental warden employed by the State of Wisconsin Department of Natural Resources (DNR). Your complainant was employed in such capacity at all time material hereto, and was assigned to an investigation involving the above-named defendants and violations of Wisconsin's water pollution control laws in Shawano County, Wisconsin. Based upon your complainant's personal knowledge, and upon your complainant's information and belief as set forth below your complainant states as follows:

In February of 2007 your complainant began an investigation of R.T. Sanitation, LLC and Randy M. Soper. R.T. Sanitation, LLC is a licensed septage hauler from Pulcifer, Wisconsin located in rural Shawano County. The company is owned and

operated by Randy M. Soper. DNR received complaints about the company disposing of sewage on unapproved sites and your complainant was requested to investigate.

On February 14, 2007, your complainant arrived at approximately 8:30 a.m. at the property located at N7236 Mosling Road, Pulcifer, Shawano County, Wisconsin. Your complainant knows this property to be owned by Randy Soper. Your complainant walked through the wooded section of the property beginning at the eastern side of the property near Pulcifer Road. Your complainant noticed there was a snow-covered dirt road that traversed the property from Pulcifer Road on the east to Mosling Road on the west. While walking the road your complainant noticed a strong sewage smelling odor and a dark colored substance that had been sprayed on the snow on the south side of the road. This dark colored substance continued for about 200 feet before it stopped. While walking in a westerly direction, your complainant observed three similar areas where he could smell a strong sewage odor and see a swath of a dark colored substance that had been sprayed on the ground on the south side of the road. Each section was about 7 feet wide and 200 feet in length. Your complainant collected samples of the dark colored substance which were analyzed by the State Laboratory of Hygiene. Sample results showed the substance was consistent with sewage.

Your complainant returned to the site during the spring and summer of 2007 and observed long sections along the private gravel road which had a dark brownish, black colored residue and white chalky residue on the ground and in the vegetation. In addition, your complainant further observed areas along the road containing large numbers of feminine hygiene items and areas where the vegetation was dying. Your

complainant observed a dark brownish, black colored residue and chalky white residue in the stream which crosses the property, on the vegetation above the stream, and along the road which drains into the stream.

On April 13, 2007, your complainant set up surveillance of the site. Your complainant observed that some of the dark substance covered pine branches five feet above the surface of the road. Your complainant documented tankers from Randy M. Soper's company, R.T. Sanitation, LLC, hauling wastewater as well as sewage to the site.

During September, October, and November of 2007 your complainant conducted more surveillance of the site through both covert video and personal observations. On each of these occasions your complainant observed tank trucks labeled "R.T. Sanitation" enter the site and dump sewage. Samples of the substance dumped at the site were taken. On several occasions while the R.T. Sanitation trucks were on the site your complainant heard a strange sweeping-like metal noise. Your complainant associated this noise with a pump running, and observed the sewage being pumped onto a rock filter, as described below.

Your complainant states that through observation and surveillance in the summer and fall of 2007 he observed a hidden treatment works on the defendants' property, which he photographed on November 7 and 14, 2007 and again on March 12, 2008. Your complainant states that the treatment works that he observed consists of a series of connected, large underground storage tanks, a rock filter along with a solids removal shed (tan shed) containing a grit and screenings removal system. The sewage is pumped

automatically through the system as the pump in each of the tanks is activated by a float. Some of the solids are removed during the process. Sludge is ultimately discharged from a pipe directly onto the ground. Additional samples of sludge, sewage, and soil were taken in April and June of 2008, and analyzed by the State Laboratory of Hygiene. The results were consistent with substances taken from and around a centralized septage treatment facility.

Your complaint states that through interviews of employees of the defendants he has learned that the sludge, grit, and screenings the system removes, are stored in a tan shed, and along with the sludge removed from the bottom of the storage tanks, are landspread on a site located behind the hidden treatment works. This site is not approved by DNR for landspreading, nor is it a licensed facility. Your complainant further observed that all of the sewage dumped into the system is ultimately disposed of through an outfall pipe which discharges onto the ground, allowing the sludge to seep into the soils at the site.

Specifically, on August 31, 2007, your complainant observed the discharged sewage in an unnamed creek that discharges into the Oconto River. Similarly, on April 24, 2008, your complainant observed the discharged sewage in two separate wetlands located near the treatment works, described below.

Your complainant interviewed DNR Water Management Specialist Scott Koehnke who identified two of the discharge sites observed on April 24, 2008 as wetlands. Koehnke further stated that the unnamed creek observed on August 31, 2008, is considered waters of the state and drains into the Oconto River.

Your complainant states that on April 7, 2008, he interviewed Wayne Reed at his residence in Gillett, Wisconsin. Reed told him that he was a former employee of R.T. Sanitation, LLC and that he had driven a tanker for the company for approximately six years, until about December of 2003. Reed told your complainant that Randy and Tim Soper designed and installed the treatment works for R.T. Sanitation. Reed learned from Randy Soper how the system operated and identified photographs of the system. Reed stated that he personally observed the wastewater being discharged onto the ground. Reed further stated that when it was extremely cold he would occasionally discharge the wastewater onto the ground in the woods or onto the field north of the shop, at Soper's direction. Reed stated that the treatment works was operated every day that he worked at R.T. Sanitation and that some of the sludge that was collected by R.T. Sanitation was spread on the field behind the shop. Reed stated that Randy Soper trained Reed on how to operate the treatment works and directed him to dispose of the wastewater that was collected into the system and to discharge the sludge from the pipe over the hill.

Your complainant interviewed Michael Clements on April 9, 2008, at his residence in Suring, Wisconsin. Clements stated that he worked for R.T. Sanitation for four months during the summer of 2005. During that summer he drove an R.T. Sanitation truck tanker and a semi tanker and picked up wastewater from holding tanks and septic tanks. Clements stated that he disposed of approximately five to nine truckloads per day of wastewater in the R.T. Sanitation treatment works and in the woods along the gravel road between Mike's Plumbing shop and the R.T. Sanitation shop, at the direction of Randy Soper. Clements stated that during that summer the solids removal

system in the treatment works was not working so Randy Soper directed him to pump the wastewater onto the hill for final disposal.

Your complainant interviewed Stephanie Cox at her residence in Gillett, Wisconsin on April 12, 2008. Cox stated that she was the secretary for R.T. Sanitation from 1998 until June of 2005. Cox stated that the drivers picked up work orders from her in the morning so they knew which customers had to have their septic tank or holding tank pumped each day. Cox stated that the drivers would complete the work and finish filling out the work order which was used as a receipt. Cox stated that R.T. Sanitation disposed of wastewater at the R.T. Sanitation disposal system. Cox further stated that at the end of the year she and Randy Soper would fill out annual reports. Cox stated that Soper told her to "fudge the numbers" in the annual reports when they put too much wastewater on a field so as to not appear that they overapplied sludge on any site. Cox further indicated that the R.T. Sanitation treatment works located at the shop was intended to be a secret operation and that loads disposed of into the system were never mentioned in the annual reports.

Your complainant states that on April 26, 2008, he interviewed Alan Shepherd at his residence in Oconto Falls, Wisconsin. Shepherd stated that he worked at R.T. Sanitation from August 2005 until December 2005 and again from April 2006 through August 2006. Shepherd was able to explain the R.T. Sanitation treatment works to your complainant and identify the system through your complainant's photos. Shepherd said that he hauled about two semi loads per day of wastewater and dumped it into the receiving station of the R.T. Sanitation treatment works. Shepherd further stated

that he had observed R.T. Sanitation employees dump the solids from the dumpster into a manure spreader and spread the solids on a local field. Shepherd stated that he kept track of each load and that if they disposed of loads in the R.T. Sanitation wastewater disposal system they would write "RT" on the slip. Shepherd stated that he observed R.T. Sanitation employees dump about two loads of wastewater per week from the septic truck into the woods behind the R.T. shop and Mike's Plumbing shop. Shepherd stated that all of these activities were done at the direction of Randy Soper and/or other R.T. Sanitation employees.

Your complainant states that on June 5, 2008, he interviewed Robert Koslowski at his residence in Lena, Wisconsin. Koslowski said that he began working for R.T. Sanitation in 2006 until he quit on May 16, 2008. Koslowski explained the treatment works located at the R.T. Sanitation shop to your complainant while referencing photographs of that system. Koslowski's explanation of the treatment works was consistent with other statements of former employees. Koslowski stated that at Soper's direction he dumped about two truckloads of wastewater into the treatment works every weekday throughout the year, including loads of industrial wastewater approximately two times each month. Koslowski added that Soper instructed him to dump loads of wastewater onto the ground in the woods along the gravel drive that traverses the property. In addition, Koslowski indicated that he dumped about two loads per month along the drive in the winter and about one load per week or more along the drive in the summer. Koslowski indicated that he took the sludge from the tan shed and dumped it into the manure spreader behind the shop. He further indicated that Soper

spread the sludge onto a field east of the disposal system about twice a month. Koslowski further indicated that approximately two times each summer he himself would pump additional sludge from a second wastewater tank onto a pile near the same location where Soper spreads the sludge from the manure spreader. Koslowski identified these locations for your complainant through photographs. Koslowski indicated that the last time he dumped sludge from the tank was in April of 2008.

Your complainant discussed the unpermitted treatment works at the R.T. Sanitation site with DNR Hydrogeologist Dave Johnson. Johnson showed your complainant a map reflecting groundwater flow direction in the area. The groundwater flows in an east-southeast direction from the area of the treatment works towards the church on STH 22 in Pulcifer, Wisconsin. The church's well water has a history of increasing nitrate levels over time. Your complainant collected samples of the sludge that was disposed of at the treatment works. The sample analyzed by the State Laboratory of Hygiene showed high levels of nitrogen. Johnson reported that there was another well in close proximity to the church well that was replaced due to "bad water." There are many other private residences located downgradient of the treatment works. These residences have private drinking water wells.

On June 21, 2008 your complainant executed a search warrant at the site. At 6:50 a.m. your complainant interviewed Randy Soper at the R.T. Sanitation office in Pulcifer, Wisconsin. Soper stated that he was the current owner of the site where the treatment works is located. Soper stated that it would have been too expensive to hire an engineer so he decided to put in his own system with the help of his brother Tim. Soper

indicated the system was built and used in the last five to ten years and it cost about \$30,000 to \$40,000 to install. Soper estimated that two to five loads a day were placed into his homemade treatment works. Soper stated that about once every one to two weeks, he would have an employee pump the sludge from the tank and do the landspreading of the sludge created by the system onto the field behind the system. As recently as two to three years ago he stated, he himself spread the sludge.

Your complainant verified with the DNR that at the time these activities took place R.T. Sanitation had a septage hauling license. Neither R.T. Sanitation or Randy Soper has a WPDES permit to treat or discharge sewage or sludge.

Your complainant has reviewed and is familiar with the Wisconsin Administrative Code provisions regulating the discharge of pollutants and sludge. The treatment works described in this complaint is consistent with regulatory definitions found at Wis. Admin. Code §§ NR 204.03(68) and (11). The sludge referred to in this complaint meets the criteria described in the definition at Wis. Admin. Code §§ NR 204.03(55). The grit and screenings referred to in this Complaint meets the criteria described in the definition at Wis. Admin. Code § NR 204.03(26) and (53). The sewage and/or wastewater described in this complaint is a pollutant as described in Wis. Stat. § 283.01(13).

Your complainant believes the records of the DNR to be truthful and reliable because they are kept in the normal course of business. Your complainant believes the statements of the various citizen informants to be truthful and reliable because they observed the events they described and are citizen informants. Your complainant

believes the statements of law enforcement and DNR employees to be truthful and reliable because they personally observed the events they describe.

Dated this day 9th of September 2009.

Stefan H Fabian

STEFAN H. FABIAN
Environmental Warden

APPROVED FOR FILING:

Subscribed and sworn to before me pursuant to Wis. Stat. § 968.01(2) and approved for filing this 9th day of September 2009.

Cynthia R Hirsch

CYNTHIA R. HIRSCH
Assistant Attorney General
Notary Public, State of Wisconsin
My commission is permanent.

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