



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2013-0022

IN THE MATTER OF:

LIQUID WASTE MANAGEMENT, INC.

204 South Bowen
Longmont, CO 80501,

Respondent.

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 5th Day of August, 2013.

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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HEARING CLERK

IN THE MATTER OF:)
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Liquid Waste Management, Inc.)
204 South Bowen)
Longmont, CO 80501,)
)
Respondent.)

Docket No. **CWA-08-2013-0022**
**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 (Complainant or EPA), and Respondent, Liquid Waste Management, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

AUTHORITY

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b) and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. Complainant has jurisdiction over this matter pursuant to sections 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g), which authorizes the EPA Administrator to make findings and to assess civil penalties for violations of sections 301, 302, 306, 307, 308, 318, and 405 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1328, and 1345, or any permit condition or limitation implementing any such sections of the Act in a permit issued by the Administrator under section 402 of the Act.

GENERAL ALLEGATIONS

3. Respondent is a corporation organized under the laws of the State of Colorado and authorized to do business in the State of Colorado. Respondent's principal office is located in Longmont, Colorado.
4. Respondent is a "person" as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
5. Respondent is a contractor that specializes in biosolids or sewage sludge removal from wastewater treatment facilities.
6. The EPA, pursuant to section 405(d)(1) of the Act, 33 U.S.C. § 1345(d)(1), promulgated regulations providing guidelines for the disposal of sludge and use of sludge for various purposes at 40 C.F.R. part 503. Pursuant to 40 C.F.R. § 503.1(b), the regulations apply to any person who prepares sewage sludge or applies sewage sludge to the land.
7. The State of Colorado has not applied for or obtained primary authority to administer and enforce the sludge management program pursuant to 40 C.F.R. part 501.
8. The EPA directly implements the sludge management program in Colorado.
9. The EPA Region 8 issued a biosolids general permit (COG650000) (permit), effective October 19, 2007, for the permitting of EPA Region 8 facilities/operations that generate, treat, and/or use or dispose of sewage sludge by means of land application, landfill, and surface disposal.
10. Respondent is permitted to use and/or dispose of sewage sludge by means of land application, landfill, and surface disposal in accordance with specific limitations, monitoring requirements, management practices and other conditions set forth in the permit. The biosolids

can be land applied as a fertilizer if the biosolids meet the state and federal treatment standards.

11. Pursuant 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.

12. Pursuant to 40 C.F.R. § 503.13(a), no sewage sludge shall be land applied if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutants in Table 1 of 40 C.F.R. § 503.13(a). Table 1 of 40 C.F.R. § 503.13 lists the ceiling concentration for nickel as 420 milligrams per kilogram (mg/kg).

13. Section 4.1.1.1 of the permit states if the sewage sludge is to be land applied to agricultural land, forest land, a public contact site, or a reclamation site it must meet at all times: the maximum pollutant concentrations listed in Table 1 and the cumulative pollutant loading rates in Table 2; or the maximum pollutant concentrations in Table 1 and the monthly average pollutant concentrations in Table 3. Table 1 lists the ceiling concentration for nickel as 420 mg/kg. If the sewage sludge does not meet these requirements, it cannot be land applied.

14. Section 8.6.2 of the permit states the following occurrences of noncompliance shall be reported by telephone to the EPA by the first workday following the day the permittee became aware of the circumstances: any violation of a maximum pollutant limitation for any of the chemicals (including nickel) listed in Table 1 of Part 4.1.1.5 of the permit for sewage sludge that has been distributed or land applied.

15. On or about February 7, 2012, Respondent sampled the biosolids removed from the St. Vrain wastewater lagoon. The results of the analysis dated February 27, 2012 showed that the nickel concentration of the sludge was 438.6 mg/kg.

16. Respondent land applied the sludge from the St. Vrain wastewater lagoon at the following Liquid Waste Management sites: 249, 507, 514 and 541.

17. Respondent did not notify the EPA or the State of Colorado of the nickel maximum pollutant limitation exceedance for sewage sludge that was land applied at the Liquid Waste Management sites: 249, 507, 514 and 541.

18. Respondent's land application of nickel in excess of the maximum pollutant limitation and failure to report the violation to the EPA and the State of Colorado constitutes violations of the permit, 40 C.F.R. § 503.13(a) and the Act.

CONSENT AGREEMENT

19. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

20. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or this Consent Agreement. Respondent further waives its right to appeal the Final Order.

21. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA, and upon Respondent, its successors and assigns/officers and employees. Any change in ownership or corporate status by Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

22. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the assessment of a Class I civil penalty of up to \$16,000 per violation of section 301 of the Act, 33 U.S.C. § 1311, up to a maximum of \$37,500 for violations occurring after January 12, 2009. These amounts

have been adjusted for inflation by 40 C.F.R. part 19. For purposes of determining the amount of any civil penalty to be assessed, section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), requires the EPA to take into account the following factors: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, economic benefit or savings gained from the violation, and such other matters as justice may require.

23. Based on the factors listed in paragraph 22, EPA proposes a civil penalty of Four Thousand Five Hundred Dollars (\$4,500) to settle this action.

24. Respondent consents, for the purpose of settlement, to the issuance of a final order in this matter and agrees to pay the civil penalty cited in paragraph 23 above as follows:

- a. Payment is due within thirty (30) calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by U.S. Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case, for this amount, payable to "**Treasurer, United States of America,**" as follows:

If sent by regular U.S. mail:

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

**If sent by any commercial
overnight carrier:**

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

If sent by transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message
should read "D 68010727 Environmental
Protection Agency "

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Emilio Llamozas
U.S. EPA Region 8 (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202-1129

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in (c) above, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within ninety (90) days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

PUBLIC NOTICE

25. As required by section 309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A), prior to filing this Consent Agreement with the Regional Judicial Officer and requesting that it, including the penalty assessed, be incorporated into a Final Order, the EPA will provide the public notice of and reasonable opportunity to comment on the penalty agreed to herein.

GENERAL PROVISIONS

26. Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the Act. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

27. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

28. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

29. The undersigned representative of Liquid Waste Management certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Liquid Waste Management to the terms and conditions of this Consent Agreement.

30. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

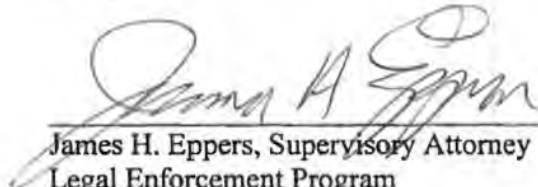
31. Each party shall bear its own costs and attorney fees in connection with this matter.

32. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this Consent Agreement.

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


Date:

6/10/2013


James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date:

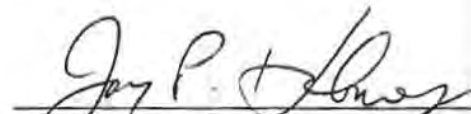
06/10/2013


Gwenette C. Campbell, Unit Chief
NPDES Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

LIQUID WASTE MANAGEMENT
Respondent.

Date:

6-4-13


Jay P. Holmes, President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter of **LIQUID WASTE MANAGEMENT, INC. ; DOCKET NO.: CWA-08-2013-0022**. The **CONSENT AGREEMENT** was filed with the Regional Hearing Clerk on June 18, 2013 and the **FINAL ORDER** was filed on August 5, 2013.

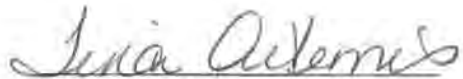
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on August 5, 2013, to:

Jay P. Holmes, President
Liquid Waste Management, Inc.
204 South Bowen
Longmont, CO 80501

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 5, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk