

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2019 AUG 15 AM 10: 17

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Henry County Water Authority) Docket No. CWA-07-2019-0056
)
Respondent)
) COMPLAINT AND
Proceedings under) CONSENT AGREEMENT/
Section 309(g) of the Clean Water Act,) FINAL ORDER
33 U.S.C. § 1319(g))
_____)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with the United States Environmental Protection Agency's ("EPA's") Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

2. Complainant, EPA Region 7, and Respondent, the Henry County Water Authority, have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 405 of the CWA, 33 U.S.C. § 1345, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder and codified at 40 C.F.R. Part 503.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7.

5. Respondent is the Henry County Water Authority (hereafter “Authority” or “Respondent”), a special district created by and organized under the laws of the state of Georgia.

Statutory and Regulatory Framework

6. Section 405(a) of the CWA, 33 U.S.C. § 1345(a), prohibits the disposal of sewage sludge resulting from the operation of a treatment works where the disposal would result in any pollutant from such sewage sludge entering the navigable waters, except in accordance with a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

8. Section 405(d)(1) of the CWA, 33 U.S.C. § 1345(d)(1), provides that the Administrator shall develop and publish regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.

9. Pursuant to Section 405(d)(1) of the CWA, the EPA promulgated regulations governing the Standards for the Use or Disposal of Sewage Sludge which are set forth at 40 C.F.R. Part 503 (the “Sludge Management Program”). These regulations establish recordkeeping and reporting requirements, pollutant limits and site management practices applicable to owners or operators of treatment works treating domestic sewage, and standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.

10. The Environmental Protection Division of the Georgia Department of Natural Resources (“GDNR”) is the state agency with the authority to administer the federal NPDES program in Georgia pursuant to Section 402 of the CWA.

11. The state of Georgia has not applied for or obtained primary authority to administer and enforce the sludge management program pursuant to Sections 402(b) or 405(c) of the CWA, 33 U.S.C. §§ 1342(b) or 1345(c), and 40 C.F.R. Part 503. The EPA directly implements the sludge management program in Georgia, and is therefore the “permitting authority,” as defined by 40 C.F.R. § 503.9(p), for purposes of the sludge management program.

12. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), prohibits the disposal of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of that Section, except in accordance with such regulations.

13. The regulations found in Subpart B of 40 C.F.R. Part 503 apply to any person who prepares sewage sludge that is applied to the land, to any person who applies sewage sludge to the land, to sewage sludge applied to the land, and to the land on which sewage sludge is applied. 40 C.F.R. § 503.10(a).

14. Pursuant to 40 C.F.R. § 503.9(w), “sewage sludge” is solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works.

15. Pursuant to 40 C.F.R. § 503.9(z), “treatment of sewage sludge” is the preparation of sewage sludge for final use or disposal.

16. Pursuant to 40 C.F.R. § 503.9(r), a “person who prepares sewage sludge” is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

17. Pursuant to Section 503(4) of the CWA, 33 U.S.C. § 1362(4), and 40 C.F.R. §503.9(o), a “municipality” is defined to mean a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

18. Pursuant to Section 503(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. §503.9(q), a “person” is defined to include a municipality.

19. Pursuant to 40 C.F.R. §503(9)(a), “apply sewage sludge or sewage sludge applied to land” means land application of sewage sludge.

20. Pursuant to 40 C.F.R. § 503.11 (h), “land application” means the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

21. Pursuant to 40 C.F.R. § 503.11 (b), “agronomic rate” means the whole sludge application rate (dry weight basis) designed: (1) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and (2) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.

22. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of penalty against any person who violates Section 405 of the CWA, 33 U.S.C. § 1345, or a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

EPA’s General Allegations

23. The Authority is a “municipality” and a “person” as defined by Sections 502(4) and (5) of the CWA, 33 U.S.C. §§ 1362(4) and (5), and 40 C.F.R. §§ 503.9(o) and (q), respectively.

24. At all relevant times, Respondent has owned and/or operated publicly owned treatment works (“POTW”), as defined by 40 C.F.R. § 403.3(q), including the Indian Creek Water Reclamation Facility located at 1601 Lester Mill Road, Locust Grove, Georgia 30248 and

the Walnut Creek Water Reclamation Facility located at 1682 North Ola Road, McDonough, Georgia 30252 (hereafter "Facilities"). Respondent utilized these Facilities for the "treatment of sewage sludge" as defined in 40 C.F.R. § 503.9(z).

25. Respondent generates "sewage sludge" that is used for "land application" as these terms are defined by 40 C.F.R. §§ 503.9(w) and 503.11(h), respectively. Respondent land applies its sewage sludge at locations within Henry County, Georgia.

26. Respondent is a "person who prepares sewage sludge," as defined at 40 C.F.R. § 503.9(r), and is subject to Section 405 of the CWA, 33 U.S.C. § 1345, and 40 C.F.R. Part 503. GDNR issued NPDES Permit Number GAJ020137 to Respondent's Walnut Creek Water Reclamation Facility on October 29, 2013. GDNR issued NPDES Permit Number GAJ020250 to Respondent's Indian Creek Water Reclamation Facility on May 1, 2017. NPDES Permit Numbers GAJ020137 and GAJ020250 reiterate Respondent's responsibility to comply with Section 405 of the CWA and 40 C.F.R. Part 503.

27. 40 C.F.R. § 503.14(d) provides that bulk sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk sewage sludge.

28. 40 C.F.R. § 503.15(a)(1) provides that the Class A pathogen requirements in § 503.32(a) or the Class B pathogen requirements and site restrictions in § 503.32(b) shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

29. 40 C.F.R. § 503.15(a)(3) provides that the Class A pathogen requirements in § 503.32(a) shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

30. Respondent is required by 40 C.F.R. § 503.18 and its NPDES Permits to submit an annual report to the permitting authority, i.e., the EPA, each year by no later than February 19 regarding its sludge activities for the preceding calendar year, including the information in 40 C.F.R. § 503.17(a) regarding a description of how the Class A pathogen requirements in § 503.32(a) or Class B pathogen requirements in § 503.32(b) are met.

31. Respondent submitted annual reports to the EPA covering calendar year 2017 (hereafter "2017 annual reports"), on February 16, 2018. The 2017 annual reports contain a summary of Respondent's testing results and land application information for sludge, including land application sites, dates of land application, quantities of sludge applied to each site for each application, and quantities of sludge prepared for sale or given away in a bag or other container for application to the land.

32. Respondent provided additional information to the EPA on November 2, 2018 and November 11, 2018 in response to an EPA information request issued on July 25, 2018 in accordance with Section 308 of the CWA, 33 U.S.C. § 1318 (hereafter "Section 308 responses").

33. Respondent stated in its 2017 annual report for NPDES Permit #GAL020137 and its Section 308 responses that its treatment of sewage sludge is intended to meet the Class A pathogen reduction requirements provided in 40 C.F.R. 503.32(a), and specifically Alternative 5 provided in 40 C.F.R. § 503.32(a)(7), which require that the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids at the time the sewage sludge is prepared for sale or given away in a bag or other container for application to the land or to meet the requirements for land application in § 503.10(b), (c), (e), (f).

34. The 2017 annual reports and Section 308 responses submitted by Respondent documented that sewage sludge was applied to the Richard Echols Farm Site #3 (associated with NPDES Permit #GAL020137), which has an annual agronomic rate of 3.66 English Tons/Acre, and that sewage sludge was applied to the Jim Strickland Site #2 (associated with NPDES Permit #GAL020250), which has an annual agronomic rate of 0.81 English Tons/Acre.

35. The 2017 annual reports and Section 308 responses submitted by Respondent documented that sewage sludge was applied to the Richard Echols Farm Site #3 at a rate of analysis of 5.15 English Tons/Acre and to the Jim Strickland Site #2 at a rate of analysis of 2.92 English Tons/Acre.

36. The 2017 annual report for NPDES Permit # GAL020137 and Section 308 responses submitted by Respondent documented that sewage sludge with fecal coliform that exceeded 1,000 colony forming units (cfu) per grams (g) Total Solids (TS) or 1,000 cfu/gTS was applied to the Richard Echols Farm Site #3 and prepared for sale or given away in a bag or other container for application to the land.

EPA's Specific Allegations

Count 1

Failure to Comply with Pathogen Requirements

37. The facts stated above are herein incorporated.

38. Based on information presented by Respondent in its 2017 annual reports and Section 308 responses, EPA alleges that Respondent land applied bulk sewage sludge to the Richard Echols Farm Site #3 on at least two separate occasions between March 1, 2017, and November 30, 2017, and sold or gave away sewage sludge in a bag or other container for application to the land, containing fecal coliform concentrations in excess of the Class A pathogen requirements in 40 C.F.R. § 503.32(a).

39. Respondent's failure to comply with the pathogen requirements described above is a violation of Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503, and a condition of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 2

Failure to Report How Pathogen Requirements Are Met

40. The facts stated above are herein incorporated.

41. Respondent asserts that the bulk sewage sludge land applied to the Richard Echols Farm Site #3 meets the Class B pathogen requirements in 40 C.F.R. § 503.32(b), but failed to provide a description in its 2017 annual report of how the Class B pathogen requirements in 40 C.F.R. § 503.32(b) are met in violation of in 40 C.F.R. § 503.18(a)(1).

42. Respondent's failure to report how pathogen requirements are met is a violation of Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503, and a condition of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Count 3

Failure to Comply with Calculated Agronomic Rates

43. The facts stated above are herein incorporated.

44. Based on information presented by Respondent in its 2017 annual reports and Section 308 responses, EPA alleges that Respondent land applied bulk sewage sludge to the Jim Strickland Site #2 on at least thirty-three separate occasions between February 6, 2017 and August 15, 2017, and to the Richard Echols Farm Site #3 on at least fifteen separate occasions between August 29, 2017 and November 8, 2017, in amounts that exceeded the calculated annual agronomic rate for the designated land application area in violation of 40 C.F.R. § 503.14(d).

45. Respondent's failure to comply with the calculated agronomic rates described above is a violation of Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503, and a condition of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

CONSENT AGREEMENT

46. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

47. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement/Final Order.

48. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

49. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and the accompanying proposed Final Order.

50. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

51. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

52. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

53. Respondent certifies by signing this CA/FO that, to the best of its knowledge, Respondent is currently in compliance with all requirements of the CWA and its implementing regulations, including but not limited to the requirements of 40 C.F.R. Part 503.

54. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

Penalty Payment

55. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a civil penalty of Twenty Thousand Five Hundred Dollars (\$25,000) pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), to be paid in full no later than thirty (30) days of the effective date of this Consent Agreement/Final Order as set forth below.

56. Respondent shall pay the penalty identified above by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number CWA-07-2019-0056 to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

57. Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to the following:

Lisa Haugen
Regional Hearing Clerk
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Shane McCoin
Office of Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219.

58. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

59. Respondent understands that, pursuant to 40 C.F.R. § 13.18, its failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

60. Respondent's payment of the entire penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

61. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Consent Agreement/Final Order.

62. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

63. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

64. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

65. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

66. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry of the Final Order and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

67. The state of Georgia has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

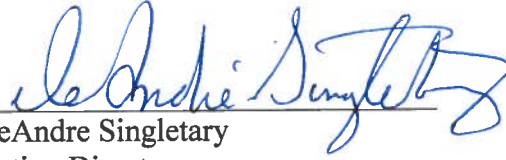
68. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

69. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency Region 7:

8-8-19

Date



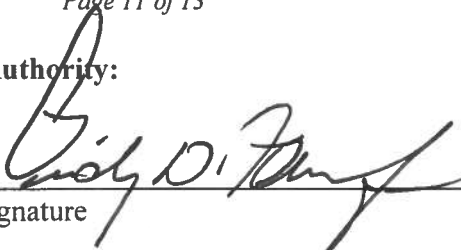
DeAndre Singletary
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 7



Shane McCoin
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

For the Respondent, Henry County Water Authority:

6/19/19
Date


Signature

Name: LINDY D. FARMER

Title: GENERAL MANAGER

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Aug. 15, 2019
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by First Class Mail to Respondent:

Lindy D. Farmer, Jr., General Manager
Henry County Water Authority
1695 Highway 20 West
McDonough, Georgia 30253

Copy emailed to Attorney for Complainant:

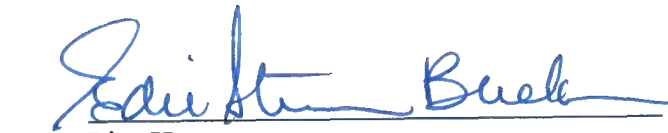
Shane McCoin
U.S. Environmental Protection Agency - Region 7
mccoin.shane@epa.gov

Copy by First Class Mail to the Georgia Department of Natural Resources:

Richard E. Dunn, Director
Georgia Department of Natural Resources
Environmental Protection Division
2 Martin Luther King, Jr. Dr.
Atlanta, Georgia 30334

15 Aug 2019

Date


for Lisa Haugen
Hearing Clerk, Region 7