

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

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

2016 MAY 18 AM 9:12

IN THE MATTER OF)
)
City of Rexburg, Idaho) Docket No. CWA-07-2016-0028
)
Respondent)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
)

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

Preliminary Statement

1. Complainant, the U.S. Environmental Protection Agency, Region 7 (“EPA”), and Respondent, the city of Rexburg, Idaho, have agreed to this action and consent to the entry of this Consent Agreement and Final Order (“CA/FO”) before taking testimony and without any adjudication of issues of law or fact herein.
2. 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 EPA 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”).
3. This CA/FO serves as notice that the EPA has reason to believe that Respondent violated Section 405 of the CWA, 33 U.S.C. § 1345, and regulations promulgated thereunder at 40 C.F.R. Part 503.
4. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken and without any admission of violation, or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO. Respondent hereby agrees to comply with the terms of this CA/FO.

Parties

5. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations of Section 405 of the CWA, 33 U.S.C. § 1345, and its implementing regulations, is vested in the Administrator of the EPA. The Administrator has delegated this authority to the

Regional Administrator, EPA, Region 7, as the national-program manager for the Biosolids Center of Excellence, who in turn has delegated the authority to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (collectively referred to as the “Complainant”).

6. Respondent is the city of Rexburg, Idaho, a municipality organized under the laws of the State of Idaho.

Statutory and Regulatory Framework

7. 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.

8. 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.

9. 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.

10. 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.

11. The State of Idaho has not applied for or obtained primary authority to administer and enforce the sludge management program pursuant to Section 402(b) or 405(c) of the CWA, 33 U.S.C. §§ 1342(b) or 1345(c). The EPA directly implements the sludge management program in Idaho, 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 as described at 40 C.F.R. § 503.10(a).

14. The regulations found in Subpart C of 40 C.F.R. Part 503 apply to any person who prepares sewage sludge that is placed on a surface disposal site, to the owner/operator of a surface disposal site, to the sewage sludge placed on a surface disposal site, and to a surface disposal site as described at 40 C.F.R. § 503.20(a).

15. 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.

16. 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.

17. Pursuant to 40 C.F.R. § 503.21(n) and (p), respectively, “sewage sludge unit” means land on which only sewage sludge is placed for final disposal, and “surface disposal site” means an area of land that contains one or more active sewage sludge units.

18. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), in relevant part, authorizes assessment of an administrative 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 and Determinations

19. Respondent 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.

20. At all relevant times, Respondent has owned and/or operated a publicly owned treatment works (“POTW”), as defined by 40 C.F.R. § 403.3(q), (hereinafter, referred to as the “Facility”) located at 525 North 5th West in Rexburg, Idaho. Respondent used the Facility for the “treatment of sewage sludge” as defined in 40 C.F.R. § 503.9(z).

21. Respondent prepares sewage sludge that is placed on land for the purpose of either land application, as defined in 40 C.F.R. § 503.11(h), or for the purpose of surface disposal in a surface disposal site, as defined in 40 C.F.R. § 503.21(p).

22. Respondent is subject to section 405 of the CWA, 33 U.S.C. § 1345, and 40 C.F.R. Part 503, Subparts B and/or C, because it is a “person who prepares sewage sludge,” as defined at 40 C.F.R. § 503.9(r).

23. The regulations at 40 C.F.R. §§ 503.15(a)(1) and 503.25(a) require that the Class A or Class B pathogen requirements shall be met when sewage sludge is land applied or surface disposed.

24. The regulations at 40 C.F.R. § 503.32(b) require that for a sewage sludge to be classified Class B with respect to pathogens, one of the alternatives of 40 C.F.R. § 503.32(b)(2), (3), or (4) shall be met, and additionally, if Class B is applied to land, the site restrictions of 40 C.F.R. § 503.32(b)(5) shall be met.

25. The alternatives of 40 C.F.R. § 503.32(b)(2), (3), or (4) require that for a sewage sludge to be classified as Class B with respect to pathogens, it must meet one of the following alternatives: 1) the geometric mean of the density of fecal coliform, based upon seven representative samples, shall be below the level specified; 2) the sewage sludge shall be treated in one of the Processes to Significantly Reduce Pathogens described in Appendix B to 40 C.F.R. Part 503; or, 3) the sewage sludge shall be treated in a process that is equivalent to a process to Significantly Reduce Pathogens as determined by the permitting authority.

26. The regulations at 40 C.F.R. §§ 503.16(a), Table 1, and 503.26(a), Table 1, require monitoring for pollutants, pathogen density and vector attraction reduction requirements at a frequency of once per year for greater than zero but less than 290 dry metric tons of sewage sludge applied to the land or placed on an active sewage sludge unit. These regulations further require monitoring for pollutants, pathogen density and vector attraction reduction requirements at a frequency of once per quarter (four times per year) for greater than 290 but less than 1,500 dry metric tons of sewage sludge applied to the land or placed on an active sewage sludge unit.

27. The regulations at 40 C.F.R. §§ 503.18(a) and 503.28(a) require POTWs with a design flow rate equal to or greater than one million gallons per day and POTWs that serve 10,000 people or more shall submit the information specified therein to the permitting authority on February 19 of each year for the previous calendar year. Such information is commonly referred to as the Annual Biosolids Report.

28. Respondent submitted no Annual Biosolids Reports, as described in Paragraph 27, above, to the EPA for calendar years 2011 through 2014.

29. By letter dated February 12, 2015, the EPA issued to Respondent an information request (hereafter referred to as the "EPA Information Request"), under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), seeking information to determine Respondent's compliance with the Section 405 of the CWA, 33 U.S.C. § 405, and the sludge management program requirements at 40 C.F.R. Part 503.

30. By letter dated March 20, 2015, Respondent submitted its response to the EPA Information Request.

31. Respondent's response to the EPA Information Request, included the following information and representations:

- a. Respondent's Facility has a design flow of 5.4 million gallons per day and serves approximately 30,000 people;

- b. Respondent intended for the sewage sludge treated at its Facility to meet the Class B pathogen requirements;
- c. Respondent intended to meet the Class B requirements of 40 C.F.R. § 503.32(b) by demonstrating the geometric mean of the density of fecal coliform was below the level specified, and provided documentation of all sampling events during calendar years 2011 through 2014; no information was provided demonstrating the sewage sludge was treated in one of the Processes to Significantly Reduce Pathogens described in Appendix B to 40 C.F.R. Part 503, or in a process that is equivalent to a process to Significantly Reduce Pathogens as determined by the permitting authority; and
- d. Respondent produced and transported for land application or surface disposal the following annual amounts of sewage sludge:
 - 2011 – 122 dry metric tons during May, June and July
 - 2 calendar quarters – 1 fecal coliform pathogen density sample taken
 - 2012 – 148 dry metric tons during April, August, October and December
 - 3 calendar quarters – 2 fecal coliform pathogen density samples taken
 - 2013 – 123 dry metric tons during June and July
 - 1 calendar quarter – 2 fecal coliform pathogen density samples taken
 - 2014 – 392 dry metric tons during March, April, May, June, July and September
 - 3 calendar quarters – 1 fecal coliform pathogen density samples taken

EPA's Specific Allegations and Determinations

32. The facts stated in Paragraphs 19 through 31 above are herein incorporated.

33. Based on review of available information, the EPA alleges that Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e), and the sludge management program requirements of 40 C.F.R. Part 503, in at least the following ways:

Count I

Failure to Submit Annual Reports

34. Respondent violated 40 C.F.R. §§ 503.18(a) and 503.28(a) by failing to submit the information specified therein to the permitting authority for the years 2011, 2012, 2013, and 2014.

Count II

Failure to Demonstrate Sewage Sludge Meets Pathogen Requirements

35. Respondent violated 40 C.F.R. § 503.32(b) by failing to demonstrate the geometric mean of the density of fecal coliform based upon seven representative samples in calendar years 2011 through 2013. According to Respondent's response to the EPA Information Request, Respondent collected and analyzed for fecal coliform density only one sample in 2011, two samples in 2012 and two samples in 2013.

36. Respondent violated 40 C.F.R. §§ 503.16(a), Table 1, and 503.26(a), Table 1, in calendar year 2014 by failing to monitor for fecal coliform pathogens at the required minimum frequency. According to Respondent's response to the EPA Information Request, Respondent produced and transported for land application or surface disposal 392 dry metric tons of sewage sludge in three separate quarters in 2014. At that volume, Respondent was required to monitor fecal coliform pathogen density once per quarter in 2014. According to Respondent's response to the EPA's Information Request, one sample for fecal coliform pathogen density was collected and analyzed in 2014.

37. Respondent's violations of the annual Biosolids reporting requirements, described in Count I above, and pathogen monitoring requirements, as described in Count II above, are violations of Section 405(e), 33 U.S.C. § 1345(e), and implementing regulations.

38. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth in Paragraph 47 below.

TERMS OF SETTLEMENT

39. Respondent admits the jurisdictional allegations set forth in this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or in any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

40. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

41. Respondent waives any right to contest any issue of fact or law set forth above and its right to appeal this Consent Agreement and the accompanying Final Order.

42. Respondent and Complainant each agree to resolve the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

43. As required by Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, the EPA has determined that an appropriate penalty to settle this action is Twenty-two Thousand Dollars (\$22,000).

44. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

45. Respondent understands and agrees that this CA/FO 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 CA/FO.

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

Penalty Payment

47. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a civil penalty of **Twenty-two Thousand Dollars (\$22,000)** 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 30 days after the effective date of this CA/FO as set forth below.

48. Respondent shall pay the penalty identified in Paragraph 47 by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name, facility address, and docket number CWA-07-2016-0028 to:

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

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

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

51. 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

52. Respondent's payment of the entire city penalty pursuant to this CA/FO 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 CA/FO. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

53. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 47 of this CA/FO.

54. Nothing contained in this CA/FO 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.

55. Notwithstanding any other provision of this CA/FO, the EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial collection 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.

56. With respect to matters not addressed in this CA/FO, 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

57. The Parties acknowledge that this CA/FO 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.

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


59. The State of Idaho 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).

60. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

61. Respondent and Complainant agree that this CA/FO may be signed in part and counterpart.

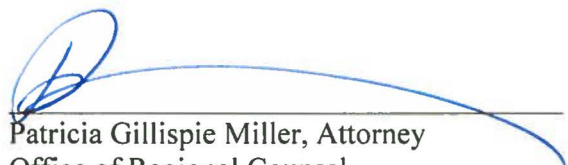
FOR COMPLAINANT:

5-10-16
Date



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency – Region 7

5/10/2016
Date

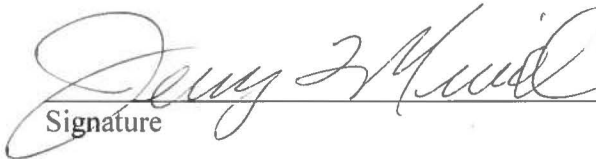


Patricia Gillispie Miller, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

FOR RESPONDENT:

2/19/16
Date

JERRY L. MERRILL
Name


Signature

MAYOR
Title

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

IN THE MATTER OF)
)
City of Rexburg, Idaho,)
)
Respondent.)
_____)

Docket No. CWA-07-2016-0028

FINAL ORDER

In accordance with 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, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

May 18, 2016
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Rexburg, Idaho, Docket No. CWA-07-2016-0028, were filed and copies of the same were mailed to the parties as indicated below:

Via U.S. First Class Mail:

John Millar, P.E.
Public Works Director
City of Rexburg
P.O. Box 280
Rexburg, Idaho 83440

Gregory Eager
Engineering Manager
DEQ Idaho Falls Regional Office
900 N. Skyline Drive, Suite B
Idaho Falls, ID 83402

Via Interoffice Mail:

email HR
Patricia Gillispie Miller
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66215.



Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 7

Dated: 5/18/16