

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of

The City of Largo,

Respondent

Proceedings under Section 309(g) of
the Clean Water Act, 33 U.S.C.
§ 1319(g)

)
) Docket No. CWA-07-2022-0120

)
) COMPLAINT AND CONSENT
) AGREEMENT/FINAL ORDER

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 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. The authority to take action under Section 309(g) of the CWA is vested in the Administrator of the 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 (“Complainant” or “the EPA”).

3. Respondent, the City of Largo, Florida, is a municipality that owns and/or operates a wastewater treatment facility (“WWTF”) located at 5000 150th Avenue N., Clearwater, Florida 33760.

4. 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 regulations promulgated thereunder and codified at 40 C.F.R. Part 503.

5. The EPA and Respondent 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).

Statutory and Regulatory Framework

Definitions

6. Pursuant to 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 (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law.

7. Pursuant to 40 C.F.R. §503.9(q), a “person” is “an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.”

8. 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.

9. 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.

10. Pursuant to 40 C.F.R. § 503.9(a), “apply sewage sludge or sewage sludge applied to land” means land application of sewage sludge.

11. Pursuant to 40 C.F.R. § 503.9(r), “person who prepares sewage sludge” means 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.

Applicable Regulations

12. 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 sewage sludge and the utilization of sludge for various purposes.

13. Pursuant to Section 405(d)(1) of the CWA, the EPA promulgated regulations governing the standards for the final use or disposal of sewage sludge, which are set forth at 40 C.F.R. Part 503 (the “Sludge Management Program”). These regulations establish, as relevant here, standards for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in treatment works.

14. The EPA directly implements the sludge management program in the state of Florida because Florida has not obtained primary authority to administer and enforce the sludge management program pursuant to 40 C.F.R. Part 501.

15. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), prohibits the disposal of sludge from a 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.

16. 40 C.F.R. § 503.7 provides that “[a]ny person who prepares sewage sludge shall ensure that the applicable requirements in this part are met when the sewage sludge is applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.”

17. 40 C.F.R. § 503.13(a)(1) provides that “[b]ulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of § 503.13.”

18. 40 C.F.R. § 503.13(a)(1) provides that if sewage sludge is sold or given away in a bag or other container for application to the land, either: (i) The concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 3 of § 503.13; or (ii) The product of the concentration of each pollutant in the sewage sludge and the annual whole sludge application rate for the sewage sludge shall not cause the annual pollutant loading rate for the pollutant in Table 4 of § 503.13 to be exceeded.

19. Table 1 of § 503.13 provides that the ceiling concentration of cadmium in sewage sludge shall not exceed 85 mg/kg.

20. Table 3 of § 503.13 provides that the monthly average concentration of cadmium in sewage sludge shall not exceed 39 mg/kg.

Allegations of Fact and Conclusions of Law

21. Respondent is a municipality, so is a person within the meaning of 40 C.F.R. §503.9(q).

22. Respondent is and was at all relevant times a person who prepares sewage sludge. Specifically, Respondent processed sewage sludge from a wastewater treatment facility serving the City of Largo, Florida, and sold the pelletized sludge to a third party for application to the land as these terms are defined by 40 C.F.R. §§ 503.9 and 503.11, respectively.

23. In response to an information request pursuant to section 308 of the CWA, 33 U.S.C. § 1319, Respondent provided the EPA with information about the biosolids it sold or gave away between January 1, 2019 and the date of the request.

Findings of Violation

24. The facts stated above are herein incorporated.

25. Between March of 2020 and December of 2021, Respondent sold or gave away sewage sludge for application to the land with cadmium concentrations that violated the applicable monthly average and/or ceiling concentration limit in nine months as follows.

Date	Year	Average Cd Concentration	Maximum Cd Concentration	Cumulative % Exceeded	Ceiling % Exceeded	Amount Sold	Amount Landfilled
May	2020	82	96	110%	13%	174.78	0

June	2020	62	120	59%	41%	192.37	0
July	2020	65	88	67%	4%	97.76	16.33
August	2020	81	99	108%	16%	147.15	16.39
September	2020	118.5	140	204%	65%	39.84	8.06
October	2020	130	140	233%	65%	201.09	0
November	2020	200	280	413%	229%	47.75**	88.25
June	2021	100	120	156%	41%	245.82	0.25
September	2021	87	87	123%	2%	22.8	15.73

26. Respondent's failure to comply with the cadmium concentration limitations set forth in 40 C.F.R. § 503.13 is a violation of Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503.

Consent Agreement

General Provisions

27. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of this CAFO.

28. 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 any portion of this CAFO.

29. Respondent and Complainant agree to bear their own costs and attorney's fees incurred as a result of this action.

30. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$106,673, as set forth in the Penalty section below.

31. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CAFO.

32. Respondent neither admits nor denies the factual allegations asserted above by the EPA.

33. Respondent certifies by the signing of this CAFO that Respondent is in currently and will remain in compliance with Section 405 of the CWA, 33 U.S.C. § 1345, and 40 CFR Part 503

34. The effect of settlement is conditional upon the accuracy of the Respondent's representations to the EPA in this CAFO.

Reservation of Rights

35. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. With respect to matters not addressed in this CAFO, 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.

36. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

37. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of this CAFO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

Penalty

38. Respondent agrees to pay a civil penalty of **One Hundred Six Thousand, Six Hundred and Seventy-Three Dollars (\$106,673)** pursuant to the authority of Section 309 of the CWA, 33 U.S.C. § 1319, within thirty (30) days of the Effective Date of this CAFO.

39. The payment of penalties must reference docket number CWA-07-2022-0120 and be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

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

40. Copies of the checks or verification of another payment method for the penalty payments remitted shall be emailed to:

Natasha Goss
Attorney Advisor
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
r7_hearing_clerk_filings@epa.gov

41. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

42. Respondent understands that its failure to timely pay any portion of the civil penalty described in herein may result in the commencement of a civil action in the United States District Court for the Middle District of Florida to recover the full remaining balance, along with penalties and accumulated interest.

43. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Signatories

44. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this CAFO. The CAFO may be signed in part and counterpart by each party.

Parties Bound

45. This CAFO 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 CAFO.

Executed Agreement Filed

46. This executed Complaint and Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Electronic Service

47. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: *dmanson@mansonbolves.com*.

For the Respondent, the City of Largo:

Signature: DocuSigned by:
Henry Schubert
163BE8E1B55D4A2...

Date: 5/10/2023

Name: Henry Schubert

Title: City Manager

ATTEST:

DocuSigned by:
Diane Bruner
AE91E3945E014BF...
Diane Bruner, City Clerk

REVIEWED AND APPROVED:

DocuSigned by:
Alan S. Zimmet
B81EB8D7B4F1462...
Alan S. Zimmet, City Attorney

For the Complainant, U.S. Environmental Protection Agency, Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Natasha Goss
Attorney-Advisor
Office of Regional Counsel

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.

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.

Date

Karina Borromeo
Regional Judicial Officer

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Consent Agreement and Final Order by electronic mail, to:

For Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Seth Draper
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
draper.seth@epa.gov

For Respondent:

The Honorable Louis (Woody) L. Brown
201 Highland Avenue North
Largo, Florida 33779
wobrown@largo.com

Douglas Manson
Counsel for Respondent
109 North Brush Street, Suite 300
Tampa, FL 33602
dmanson@mansonbolves.com

Date

Signature