



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

NOV 16 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5939 4588

Mr. Joseph B. Brillling, Executive Director
Washington County Sewer District II
17 Cortland Street, P.O. Box 288
Fort Edward, New York 12828

**Re: Notice of Proposed Assessment of an Administrative Penalty
Docket No. CWA-02-2011-3403
In the Matter of the Washington County Regional Sludge Composting Facility
NYSDEC Solid Waste Permit No. 5-5344-00063/00001**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 NOV 18 P 3:04
REGIONAL HEARING
CLERK

Dear Mr. Brillling:

Enclosed is a document entitled "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing Thereon", hereinafter referred to as the "Complaint". We have filed this Complaint against the Washington County Sewer District II under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. §1319(g). Washington County Sewer District II owns and operates in Kingsbury, New York, a sewage sludge composting process that produces compost to be distributed for land application. In the Complaint, the U.S. Environmental Protection Agency ("EPA") alleges that the Washington County Sewer District II has violated various provisions of the Clean Water Act ("CWA"), and its implementing regulations at 40 Code of Federal Regulation ("C.F.R") Part 503. The violations EPA alleges are specifically set out in Section II of the Complaint. The amount of the penalty proposed to be assessed is \$75,000.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the Consolidated Rules of Practice ("CROP"), 40 C.F.R Part 22, which the Agency follows in cases of this kind. Please note the requirements for an Answer at §22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2
290 Broadway
New York, New York 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2010 NOV 18 P 3: 04
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Washington County Sewer District II
17 Cortland Street, PO Box 288
Fort Edward, NY 12828

Respondent

Proceeding to Assess Class II
Administrative Penalty Under Clean Water
Act, Section 309(g)

DOCKET NO.
CWA-02-2011-3403

**ADMINISTRATIVE COMPLAINT, FINDINGS OF VIOLATION,
NOTICE OF PROPOSED ASSESSMENT OF AN ADMINISTRATIVE PENALTY,
AND NOTICE OF OPPORTUNITY TO REQUEST A
HEARING THEREON**

I. **Statutory Authority**

The following Findings are made, and Notices given under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), ("CWA" or "the Act"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 2, who has subsequently redelegate them to the Director, Division of Enforcement and Compliance Assistance, EPA Region 2, who hereby issues this Complaint and Notice.

II. **Findings of Violation**

1. The Washington County Sewer District II ("Respondent") is a duly organized municipality and is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).
2. Respondent owns and operates a sewage sludge composting facility in Kingsbury, New York. Over the past 2 years, this facility has treated and distributed an average of 400 dry metric tons of compost per year to be land applied. Respondent is therefore subject to the requirements of Section 405(d) of the Act and its implementing regulations at 40 CFR Part 503.
3. Under the authority of Section 405(d) of the Act and the Standards for the Use and/or Disposal of Sewage Sludge ("40 CFR Part 503"), the Respondent is required to comply with the 40 CFR Part 503

standards (the Class A pathogen requirements in §503.32(a) or the Class B pathogen requirements and site restrictions in §503.32(b), one of the vector attraction reduction requirements in §503.33(b)(1) through (b)(10) and the pollutant limits in §503.13 when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site).

4. On January 3, 2008, the Respondent, was issued an Administrative Order (Docket CWA-02-2008-3006) ("2008 ORDER") for failure to comply with the Class A fecal coliform limit of 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis) in four (4) out of seven (7) samples, collected during a sludge sampling inspection conducted by representatives from EPA on October 17, 2007, and to request documentation describing the disposition of the compost that exceeded the Class A fecal coliform limit of 1000 MPN per gram of total solids during calendar year 2006. In addition, in the 2008 ORDER, the Respondent, was ordered to comply with all subsequent 40 CFR Part 503 requirements and to ensure that all compost samples, that are collected to be analyzed for fecal coliform and/or salmonella, are analyzed within 24 hours of the time of collection and, during that time, the compost samples remain chilled to four (4) degrees Celsius.

5. On April 1, 2010, the Respondent, was issued an Administrative Order (Docket CWA-02-2010-3028) ("2010 ORDER") for failure to comply with the Class A fecal coliform limit of 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis) in samples collected during 2009 and for failure to analyze the compost samples with 24 hours from the time of collection for samples collected during 2009. As a result, the Respondent was requested in the 2010 ORDER to submit all fecal coliform laboratory results and the chain of custody forms for the compost produced and distributed by the Washington County Compost Facility during 2007 and 2008, to this office, within thirty (30) days of receipt of the 2010 ORDER. In addition, the Respondent, was requested to submit supporting documentation describing the disposition of the compost that exceeded the fecal coliform Class A limit of 1000 MPN/gram of total solids for the samples specified in the 2010 ORDER that were collected during 2009, to this office, within thirty (30) days of receipt of the 2010 ORDER. Also, the Respondent was requested to submit temperature readings collected of all the sewage sludge composting piles constructed, including temperature readings collected during the curing phase of the composting process, for calendar years 2007, 2008 and 2009, to this office, within thirty (30) days of receipt of the 2010 ORDER.

6. On September 29, 2010, the Respondent had completed its submittals of the information requested in the 2010 ORDER and other information requested by EPA to complete its review and to make a determination on the extent of violations.

7. On September 30, 2010, EPA completed review of the above mentioned submittals by the Respondent and determined that the Respondent failed to comply with: a) the pathogen reduction requirements in §503.32(a)(7) which requires that, when using the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55 degrees Celsius or higher for three consecutive days from October 2006 to September 2009 at Blowers 8.45, 15.5, 11.43 and 11.58. b) the vector attraction reduction requirements in §503.33(b)(5) which requires that, when using the static aerated pile composting method, sewage sludge shall be treated in an aerobic process for fourteen (14) days or longer. During that time, the temperature of the sewage sludge shall be higher than 40°C and the average temperature of the sewage sludge shall be higher than 45°C. Respondent failed to ensure that the 40°C was met for fourteen (14) consecutive days at the same time as pathogen reduction or after pathogen reduction was met from March

2006 through May 2010 at Blowers 1.38, 14.39, 9.41, 11.43, 13.45, 11.45, 8.45, 5.45, 4.45, 2.45, 7.46, 7.47, 15.49, 6.49, 5.49, 15.5, 14.5, 8.5, 2.5, 9.54, 7.54, 5.54, 4.54, 12.55, 13.55, 14.55, 10.55, 6.55, 5.55, 14.57, 10.57, 9.57, 5.57, 6.57, 8.57, 12.58, 11.58, 9.58, 7.58, 8.58, 14.59, 5.58, 4.58, 15.59, 13.59, 11.59, 10.59, 9.59, 7.59, 6.59, 5.59, 4.59, 8.59, 6.6, 12.6, 12.61 and 15.61. c) the fecal coliform Class A limit of 1000 MPN/gram of total solids for samples collected from January 2007 to April 2010 for Samples 070117V01, 070725D01, 070801M01, 070912F01, 64589, 76973, 19930, 40871, 53205, 69730, 71617, 74113, 26295, 28190, 29986, 31787, 37542, 48383, 50659, 53275, 58249, 62215, 70101, 80328, 88223, 96955, 99217, 19941, 22425, 33788, 36127, 40586, 43206, 84642, 98131 and 98132.

8. The Respondent could not provide EPA with information on the disposition of the compost that exceeded the fecal coliform Class A limit of 1000 MPN/gram of total solids and the compost that did not comply with the pathogen and vector attraction reduction requirements in Part 503.

9. Based on the findings above, the Respondent has violated Sections 308(a) and 405(d) of the Act, and has violated 33 U.S.C. §§1318(a) and 1345(d) and 40 CFR §§503.32(a)(7) and 503.33(b)(5).

III. Notice of Proposed Order Assessing an Administrative Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a penalty of \$75,000. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondents ability to pay the proposed penalty.

IV. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which have been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. §22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor (Room 1631)
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. §22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. §22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing. 40 C.F.R. §22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. §22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. §22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. §22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. §22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. §22.15(d). If Respondent fails to file a timely [*i.e.*, in accordance with the thirty (30) day period set forth in 40 C.F.R. §22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion 40 C.F.R. §22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations 40 C.F.R. §22.17(a). Following a default by Respondent for a failure to timely file

an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. §22.17(c).

Any penalty assessed in the Default Order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. §22.27(c). 40 C.F.R. §22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

V. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. §22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. §22.18. Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Nadine Orrell, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3244

The parties may engage in settlement discussions regardless of whether Respondent has requested a hearing. 40 C.F.R. §22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. §22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. §22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. §22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. §22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VI. Resolution of this Proceeding Without Hearing or Conference

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment 40 C.F.R. §22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America**", in the full amount of the penalty assessed in this complaint to the following addressee:

**Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
P.O. Box 979077
St. Louis, MO 63197-9000**

Pursuant to 40 C.F.R. §22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. §22.18(a)(3). In accordance with 40 C.F.R. §22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. §22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. Filing of Documents

1. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

**Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor (Room 1631)
New York, New York 10007-1866**

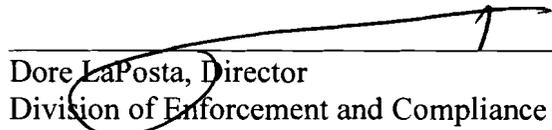
2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

**Nadine Orrell, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
(212) 637-3244**

VIII. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 16th DAY OF NOVEMBER, 2010.


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

CWA-02-2011-3403

To: Mr. Joseph B. Brillling, Executive Director
Washington County Sewer District II
17 Cortland Street
PO Box 288
Fort Edward, New York 12828

ATTACHMENT A
[WHO MUST BE SERVED - CROP §22.05(b)(1)]

If Respondent is domestic or foreign corporation, partnership or unincorporated association:

**Corporate Officer, e.g., President, Vice President,
Secretary
Partner Managing or General Agent**

Any other person authorized by appointment or by Federal or State law to receive service of process (there is usually "agent for service of process" registered with Secretary of State's office in each state in which corporation is authorized to do business).

If Respondent is State or local unit of government, agency, department, corporation or other instrumentality:

**Chief Executive Officer, e.g., Commissioner,
Executive Director
As otherwise permitted by law.**

If Respondent is officer or Agency of the United States

**Agency head, e.g., Secretary, Administrator
As otherwise permitted by law.**

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Washington County Sewer District II
17 Cortland Street, PO Box 288
Fort Edward, NY 12828

Respondent

Proceeding to Assess Class II
Administrative Penalty Under
Clean Water Act, Section 309(g)

Docket No.
CWA-02-2011-3403

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," (40 Code of Federal Regulations Part 22 (July 1, 2000) to the following person at the address listed below:

**Mr. Joseph B. Brillling, Executive Director
Washington County Sewer District II
17 Cortland Street
PO Box 288
Fort Edward, New York 12828**

**Mr. James DeZolt, P.E., Director
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506**

I [hand carried/mailed] the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: 11/17/10
New York, New York


[Signature of Sender]
[NOTE: must be over 18]