

From: [HertzWu, Sara](#)
To: [ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC](#)
Cc: [Christopher Gallus](#); [Kleffner, Erin](#)
Subject: RE: ADAMAS Reply Lame Deer Lagoon CjG
Date: Tuesday, October 15, 2019 12:43:00 PM

Mr. Pierce: While we appreciate you sending the additional information, the complaint EPA filed contains two violations: (1) failure to maintain records required by 40 CFR 503.17 and (2) failure to respond to the CWA Section 308 information request letter. Recordkeeping is of vital importance to the biosolids regulations. The intent of the statute and regulations is thwarted when a land applier fails to develop and/or maintain the records required to determine whether land application was properly conducted. Are you stating by your email that you do not have the records required by 40 CFR 503.17?

We would note that the signed contract you provided did not mention recordkeeping and reporting obligations. There is no provision of the regulation that would transfer any responsibility to maintain the records to another entity. Further, over time, EPA has not received a consistent message about who was responsible for the land application. Regardless, the records were not maintained and you did not respond to the 308 request, thus providing the basis for our complaint.

You are required to provide an answer to the complaint within 30 days from the receipt of the complaint.

EPA remains open to settlement of this matter and would consider a settlement offer from Adamas. As stated in the pre-filing letter sent on March 4, 2019, EPA always considers a company's ability to pay. If you would like to make such a claim, we can forward you the information necessary to do so.

Please feel free to contact us with any questions.

Regards,

Sara Hertz Wu
Senior Counsel
EPA Region VII
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913)551-7316
Email: hertzwu.sara@epa.gov

From: ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC <adamas.mt.406@gmail.com>
Sent: Wednesday, October 09, 2019 5:05 PM
To: HertzWu, Sara <HertzWu.Sara@epa.gov>
Cc: Christopher Gallus <chrisjgalluslaw@gmail.com>; Kleffner, Erin <kleffner.erin@epa.gov>
Subject: Re: ADAMAS Reply Lame Deer Lagoon CjG

Hi Sara,

I was served with the complaint from your agency last week via Certified. I want to point out some things that are factually inaccurate.

To dat your request have been related to the land application or application of sewer sludge
My attorney and I have previously stated to EPA officials that neither myself or my company applied
any bio solids or sewer sludge to any land on this or any other project. The attached contract shows
the land owner was contracted to apply the sludge and NCUC was the prime contractor and
ultimately responsible to complaint with EPA regulations.

Please find the replies to some of the factual allegations in your complaint i think you will see based
on those replies and the attached documents the fines and complaint are not need. I did not include
all my replies just the one that point out some factual inaccuracies.

31. *Respondent Adamas and NCUC entered into a contract for Respondent to land apply
sewage sludge generated by NCUC.*

The respondent denies this claim –

Reasons:

- a. The respondent entered into a contract for the respondent to act as
a project manager and technical consultant to the NCUC, only, with
the responsibility to help or assist NCUC with the project, including
hiring additional subcontractors.
- b. The Respondent, Adamas, with the knowledge and permission of
the NCUC, Subcontracted, Tom Robinson, the **LAND OWNER** and
brother in law of IHS field inspector George Cummings, to haul and
apply the sludge to his own property. (see attached Contract –
Respondent ‘A’)

32. *On or about August 22,2018, Respondent Adamas applied sewage approximately
1,000,000 gallons of Class B sewage sludge from Cell #2 of the Lame Deer treatment lagoon to
land
application property in or near Lame Deer, Montana.*

The respondent denies this claim –

Reasons:

a. The respondent not the apply any sewer sludge related to this or any other project. The Respondent, Adamas, with the knowledge and permission of the NCUC, Subcontracted, Tom Robinson, the **LAND OWNER** and brother in law of IHS field inspector George Cummings, to haul and apply the sludge to his own property.

33. *On or about August 28,2018, Indian Health Service visited the land application property*

after receiving a complaint from the landowner regarding the application.

The respondent denies this claim –

Reasons:

a. The Respondent, Adamas, with the knowledge and permission of the NCUC, Subcontracted, Tom Robinson, the **LAND OWNER** and brother in law of IHS field inspector George Cummings, to haul and apply the sludge to his own property. If the land owner was complaining about improper application it was due to the Land owners own action and not the action of Adamas or Nathan Pierce.

34. *On August 29,2018 Indian Health Service observed, as noted in its site report, that the*

sludge was not appropriately spread during land application.

The respondent denies this claim –

Reasons:

a. The Respondent, Adamas, with the knowledge and permission of the NCUC, Subcontracted, Tom Robinson, the **LAND OWNER** and brother in law of IHS field inspector George Cummings, to haul and apply the sludge to his own property. If there was improper application of the sludge it was due to the Land owners own actions and not the actions of Adamas or Nathan Pierce. IHS did not bring issue to Adamas or Nathan Pierce nor was any notice sent to Adamas.

35. On August 28, 2018, Indian Health Service observed, as noted in its site report, that the Respondent refused to provide target application rates for the sludge, laboratory tests, and application logs to the landowner.

The respondent denies this claim –

Reasons:

a. The Respondent, Adamas, specifically states in his subcontract with, Tom Robinson, the **LAND OWNER** and brother in law of IHS field inspector George Cummings, target application rates to apply the sludge to his own property. As the Land owner was subcontracted to apply the sludge it was his responsibility to create his own application logs and share them with Adamas, the violations are from Tom Robinsons actions and not the actions of Adamas or Nathan Pierce. Tom Robinson the land owner was given a copy of the lab test at the signing of the contract he was also aware of the bid packet and reviewed the IHS bid packet before signing the subcontract agreement. The land of Tom Robinson was identified in the IHS bid packet as the land to apply the sludge to.

As previously stated "We believe there may be issue of IHS employees or individuals using the USEPA as a way to cause harm to our business and further frustrate payments to ADAMAS. The factual inaccuracies seem to support our claim and show a pattern of dishonesty from IHS and I hope you will now see them for what they are and drop the complaint against me and my company.

Respectfully submitted,

On Thu, Jul 18, 2019 at 1:18 PM HertzWu, Sara <HertzWu.Sara@epa.gov> wrote:

Nathan: We have reviewed the response you provided on July 2, 2019. Based on what you submitted, EPA still does not have a response to Question 7 of the 208. Question 7 states as follows:

7. For each land application of biosolids by Adamas Construction and Development services, since January 1, 2018, provide the information listed below:
- a. The street address or legal description of the location;
 - b. The date(s) upon which the location was used for the land application of biosolids;
 - c. The number of acres upon which biosolids were land applied;
 - d. The number of loads applied;

e. A description of how the site restrictions of 40 CFR 503.32(b)(5) were met;
and
f. The annual application rate of biosolids as calculated.

We request that you provide documents responsive to this request or let us know that you do not have these documents by **July 23, 2019**. As a land applier, you are not exempt from Section 503 of the regulations and are required to keep this type of documentation.

This matter was referred to us by Region 8. EPA Region 7 handles biosolids matters for all EPA regions.

Please let me know if you would like to discuss this further or if you have any questions.

Regards,

Sara Hertz Wu
Assistant Regional Counsel
EPA Region VII
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913)551-7316
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Fax: (913) 551-7925

From: HertzWu, Sara
Sent: Monday, July 08, 2019 8:34 AM
To: ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC <adamas.mt.406@gmail.com>
Cc: Christopher Gallus <chrisgalluslaw@gmail.com>; Kleffner, Erin <kleffner.erin@epa.gov>
Subject: RE: ADAMAS Reply Lane Deer Lagoon CjG

Nathan: Thank you for your response. We will review and be in touch soon.

Regards,

Sara Hertz Wu
Assistant Regional Counsel
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From: ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC

[<adamas.mt.406@gmail.com>](mailto:adamas.mt.406@gmail.com)

Sent: Tuesday, July 02, 2019 11:08 PM

To: HertzWu, Sara [<HertzWu.Sara@epa.gov>](mailto:HertzWu.Sara@epa.gov)

Cc: Christopher Gallus [<chrisgalluslaw@gmail.com>](mailto:chrisgalluslaw@gmail.com); Kleffner, Erin [<kleffner.erin@epa.gov>](mailto:kleffner.erin@epa.gov)

Subject: Re: ADAMAS Reply Lame Deer Lagoon CjG

Hi Sara,

Here is our response.

Our company was as given the directive from NCUC GM Sheri Bement and Northern Cheyenne tribal president Jace Killsback to proceed with sludge removal and application and; a.) NCUC would take the sludge samples or would be responsible for sludge samples, there are several witnesses to this b.) the land the sludge was being applied to belonged to the Tribe a sovereign nation according to Killsback and Bement and was only leased, therefore exempt, Vernon Smalls from NC land Authority and Wayne from northern Cheyenne Environment Department can be called as witness to this c.) the attached pre-construction meeting minutes show clearly that IHS informed NCUC they were responsible for all work and they specifically state at bullet point #4 "NCUC is ultimately responsible for following 503 regulation or requirements d.) despite this breach of duty by NCUC, we attempted to make a good faith effort to comply with the requirements after learning of NCUC's failure to comply, see attached lab results e.) the land the sludge was applied to was tested and identified by IHS in the bid packet and fixed price agreement and the soil testing was the only test identified by IHS, despite this we took samples f.) the attached email shows we communicated to NCUC and IHS our request that NCUC comply with the requirements, it also show we gave updates on amounts of sludge removed and informed IHS of lab tests despite their claims otherwise g.) see attached email where we reached out to tribal president Killsback to inform him of issue with NCUC.

Please be informed that we have filed an Administrative Tort Claim with DPHHS, submitted under the Federal Tort Claims Act (FTCA) against members of IHS. We believe there may be issue of these individuals using the USEPA as a way to cause harm to our business. AS such, we request the following information;

1. How and when did you or the USEPA Region 7 office become aware of the involvement of ADAMAS with this project.
2. Have you or anyone from your office been contacted or are you in contact with members or employees of the Indian Health Services regarding this project. (If so, who)

Best regards,

On Fri, Jun 21, 2019 at 12:57 PM HertzWu, Sara [<HertzWu.Sara@epa.gov>](mailto:HertzWu.Sara@epa.gov) wrote:

Chris and Nathan: Thank you for your response. The deadline for providing a response to the 308 information request letter is July 2, 2019. If you need another copy of the letter, please let me know.

Regards,

Sara Hertz Wu
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EPA Region VII
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Email: hertzwu.sara@epa.gov
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From: Christopher Gallus <chrisgalluslaw@gmail.com>
Sent: Friday, June 21, 2019 12:15 PM
To: ADAMAS CONSTRUCTION And DEVELOPMENT SERVICES PLLC
<adamas.mt.406@gmail.com>; HertzWu, Sara <HertzWu.Sara@epa.gov>
Subject: Re: ADAMAS Reply Lame Deer Lagoon CjG

Sara,

Thank you for the communication. You are specifically authorized by me to communicate with my client Nathan Pierce, or his spouse Michelle, on this matter. As I do continue to represent him I do ask that I be copied and have an opportunity to provide counsel where circumstances permit or necessitate, but Mr. Pierce is a sophisticated client with respect to these matters and direct communication will facilitate having this matter expedited.

Nathan, please provide the documents to Sara and sign any appropriate certifications or authorization. I'm happy to continue to help, but realize cost considerations are a factor. If you have questions please contact me. If you have a conference or meeting involving legal documents or discussions please feel free to include me.

Thank you, both, Chris

On Fri, Jun 21, 2019 at 10:13 AM HertzWu, Sara <HertzWu.Sara@epa.gov> wrote:

Chris: Thank you for providing that response. However, the documents requested in the CWA Section 308 letter still need to be provided to EPA. EPA is unable to prove the veracity of the claims you are making regarding the waste without the appropriate documentation. If your client does not have those documents, that response must be provided as well, along with a certification as stated in the 308 letter. Failing to respond to the information request is a separate violation of the Clean Water Act.

Further, the reporting requirements under 40 CFR 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. See 503.10(a). Therefore, your client should have the required records available to provide to EPA.

Your client also contacted me directly. Because he is represented by counsel, I did not return his call. Unless specifically authorized by you, I will only communicate with him through his counsel. If you are no longer his counsel, please advise.

EPA requests that compliance with the CWA Section 308 letter within 10 days. The original letter was sent 10 months ago and we have yet to receive a response. Your client either possesses the documents or he does not. Either way, a response is required.

If you wish to set up a call to discuss, please let me know.

Regards,

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From: Christopher Gallus <chrisjgalluslaw@gmail.com>

Sent: Friday, June 14, 2019 4:48 PM

To: Kleffner, Erin <kleffner.erin@epa.gov>

Subject: ADAMAS Reply Lame Deer Lagoon CjG

Erin,

I apologize, but this is the only manner in which I can provide a response today. When I return to my office I will scan the letter, but the content is the exact same as is being provided here. Thanks, CjG

Chris J. Gallus, Attorney at Law
Law, Elections & Gov't Relations
1423 East Otter Road
Helena, Montana 59602
Ph. 406.459.8676

chrisjgalluslaw@gmail.com

June 14, 2019

Erin Kleffner, Compliance Officer
U.S. EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

**RE: Lame Deer Lagoon Desludging and Land Application
Northern Cheyenne Reservation**

Dear Ms. Kleffner:

I appreciated receiving your letter of June 11, 2019 regarding my client ADAMAS Construction. We accept your offer to conduct pre-filing negotiations and we are providing you the requested information.

Mr. Pierce has previously responded to EPA Region 8 officials. As you will read, it is the position of ADAMAS that the size of the entity involved excluded 503 regulation, as is being asserted. ADAMAS maintains that it complied with EPA regulations and did not violate any provisions of law. To the extent the EPA determines a violation occurred, as explained, it is not a violation by ADAMAS, for reasons provided herein.

Please find a summary of our position prepared by Mr. Peirce. I will instruct him to complete and send his signed Statement of Certification, if you determine one is required. Mr. Pierce is currently traveling and has limited access to technology. We are happy to discuss this matter at your convenience.

You should be aware that ADAMAS filed a notice to file tort claims against IHS agents connected with this particular project because these agents engaged in retaliatory acts against ADAMAS and Mr. Peirce. Mr. Pierce has also requested Congressional assistance to resolve matters pertaining to the Lame Deer Lagoon Project, and U.S. Senator Steve Daines is assisting Nathan and I in that regard.

That information provided, we understand your agency is separate and apart from IHS and we certainly intend to participate and comply with any of your applicable regulations. As such, we provide the following information and summary pertaining to your request:

SUMMARY:

The land the sludge was applied to was identified in IHS Bid packet BI16N39 and is owned by the Northern Cheyenne Nation and is leased by the Northern Cheyenne Tribal Land Authority to Tom Robinson the leasehold tenant. IHS also gave an estimate of the application rate of the sludge to the land and this information was relayed to Tom before application. It is

important to note that Tom Robinson is the Brother-in-Law of IHS construction inspector George Cummings. (Bid Packet, available upon request)

IHS construction inspector George Cummings was on site when sludge was being applied and can confirm details of how and when it was applied and the manner his brother-in-law, Tom Robinson, complied with the 503 regulations. Tom Robinson was the person or persons who applied the sludge to the land using his own equipment and his is the Leasehold tenant of the property.

The sludge was tested by IHS and the Lab Analytical Report was included in the bid packet. According to the Lab Analytical Report the Sludge, the sewage sludge from the Lame Deer Lagoons meets the most stringent limits for all three of the sewage sludge quality parameters and is referred to as Exceptional Quality (EQ) sewage sludge. (See attached Bid Packet and Lab Analytical Report)

According to the 'EPA Land Application of Sewage Sludge - A Guide for Land Appliers on the Requirements of the Federal Standards for the Use or Disposal of Sewage Sludge, 40 CFR Part 503', "EQ sludge is considered comparable to standard fertilizer products. Therefore, land appliers of EQ sewage sludge have no requirements to meet under the Rule." This would seem to be a clear indication that my client has no requirements to meet from the EPA and does not need to meet any requirements for payment of the application portion of the contract. (See attached EPA Land Application Guide, Page 5)

According to 2.8 Reporting (40 CFR 503.18) The reporting requirements under Part 503 apply to major municipal NPDES permittees and Class I Sludge Management Facilities. Major municipal NPDES permittees are publicly owned treatment works (POTWs) with a design flow rate equal to or greater than 1 million gallons per day and POTWs with a service population of 10,000 people or more. Class I sludge management facilities are usually POTWs that are required to have an approved pre-treatment program under 40 CFR 403.8(a), including any POTW located in a State that has elected to assume local pretreatment program responsibilities under 40 CFR 403.10(e). In addition, the EPA Regional Administrator may use his or her discretion to designate other treatment works treating domestic sewage (TWTDS) as Class I sludge management facilities. Land appliers are not TWTDS unless designated as such by the EPA Regional Administrator. In order to have reporting requirements under Part 503, a land applier must be designated both a TWTDS and a Class I sludge management facility.

Neither my client nor the Lame Deer Lagoons qualify as a POTW and are therefore exempt from reporting under the rule. As such my client should not need to meet any additional requirements for payment of the application portion of the contract. (See EPA Land Application Guide, page 29)

Despite having no requirements to meet under the Rule, my client did relay to Tom Robinson that he should comply with, Vector Attraction Reduction Option 10 (40 CFR 503.33) "Sewage sludge applied to the land shall be incorporated into the soil within 6 hours after

application to the land. - When sewage sludge that is incorporated into the soil is Class A for pathogens, the sewage sludge shall be applied to the land within 8 hours after being discharged from the pathogen treatment process." George Cummings IHS Construction inspector also witnessed and ensured this vector attraction reduction option was used.

I appreciate your consideration and your attention to this important matter. Please feel free to call me at your convenience.

Sincerely,

/s/ Chris J. Gallus

Chris J. Gallus
Attorney for ADAMAS Construction

Sent from my iPhone

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Nathan Pierce - Owner/General Manager

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CONTRACTOR REGISTRATION# 228703

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--
Nathan Pierce - Owner/General Manager

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