

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
The City of Troy, Missouri) Docket No. CWA-07-2019-0281
)
Respondent)
)
Proceedings under) COMPLAINT AND
Section 309(g) of the Clean Water Act,) CONSENT AGREEMENT/
33 U.S.C. § 1319(g)) FINAL ORDER
)
_____)

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”) 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, the United States Environmental Protection Agency Region 7 (“EPA” or “Complainant”) and Respondent, the city of Troy, Missouri (hereafter, “City” or “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).

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 city of Troy, Missouri, a municipality organized under the laws of the state of Missouri and authorized to conduct business in the state of Missouri.

Statutory and Regulatory Framework

6. 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.

7. Section 405(f) of the CWA, 33 U.S.C. § 1345(f) provides that any permit issued under section 1342 of this title to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of Section 405.

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. Pursuant to Section 402, EPA authorizes states to issue NPDES permits that, among other things, prescribe conditions whereby a discharge may be authorized, and establish design, construction, operation, and maintenance requirements for the permit holder, including the requirements of CWA Section 405(f).

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 Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA.

12. The state of Missouri 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 Missouri, and is therefore the "permitting authority," as defined by 40 C.F.R. § 503.9(p), for purposes of the sludge management program.

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(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.

15. 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.

16. 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

17. The City 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.

18. At all relevant times, Respondent has owned and/or operated two publicly owned treatment works ("POTW"), as defined by 40 C.F.R. § 503.3(q), (hereinafter, referred to as the "Facilities"). The Troy "Highway 47 Wastewater Treatment Facility" is located at 364 East Highway 47, Troy, Missouri 63379. The Troy "Southeast Wastewater Treatment facility" is located at 1011 Buenemen Lane, Troy, Missouri 63379. The Respondent uses both facilities for the "treatment of sewage sludge," as defined in 40 C.F.R. § 503.9(z).

19. 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 Class B sewage sludge at on its own land in Troy, Missouri.

20. Respondent is subject to Section 405 of the CWA, 33 U.S.C. § 1345, and 40 C.F.R. Part 503, Subpart B, because it is a "person who prepares sewage sludge," as defined at 40 C.F.R. § 503.9(r). The Respondent's NPDES Permits (MO-0054623, and MO-0131296), issued for the Respondent's POTWs by the MDNR, each reiterate the Respondent's responsibility to comply with Section 405 of the CWA and 40 C.F.R. Part 503 (See Part III, Sludge and Biosolids from Domestic and Industrial Wastewater Treatment facilities).

21. 40 C.F.R. § 503.13(a) provides that bulk sewage sludge shall not be applied to land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of § 503.13. 40 C.F.R. § 503.13(a) Table 1 limits the ceiling

concentration for Cadmium in sewage sludge applied to the land to 85 milligrams per kilogram (“mg/kg”).

22. 40 C.F.R. 503.12(e) states that “the person who applies sewage sludge to the land shall obtain information needed to comply with the requirements in this subpart.”

23. 40 C.F.R. 503.12(f) states that “when a person who prepares bulk sewage sludge provides the bulk sewage sludge to a person who applies the bulk sewage sludge to the land, the person who prepares the bulk sewage sludge shall provide the person who applies the sewage sludge notice and necessary information to comply with the requirements in this subpart.”

24. Respondent is required by 40 C.F.R. § 503.18 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.

25. Respondent submitted an annual report to the EPA covering calendar year 2018 (hereafter “2018 annual report”), pursuant to the requirements of 40 C.F.R. Part 503. The report contains a summary of Respondent’s testing results and land application information for sludge, including land application sites, dates of land application and quantities of sludge applied to each site for each application. The 2018 report documented that biosolids were tested with the April 11, 2018 sample showing levels of cadmium of 650 mg/kg, in excess of the ceiling concentration of 85 mg/kg permitted by 40 C.F.R. § 503.13(a) Table 1.

26. On July 15, 2019, EPA Region 7 issued Respondent a Request for Information (“Request for Information”) pursuant to the authority of Section 308 of the CWA, 33 U.S.C. 1318, that requested information regarding the City's compliance with the biosolids requirements of Section 405 of the CWA. EPA received Respondent’s response to the Request for Information on August 21, 2019 (“Response”).

27. Respondent’s response documented that Respondent had sampled its biosolids before application for all four quarters for 2018. Samples were taken on January 31, 2018, April 11, 2018, July 18, 2018, and October 3, 2018. Results for metals, including cadmium, were provided for the January, April and October samples. Upon further inquiry from EPA, Respondent stated that, though requested its independent lab did not analyze for the metals for the 3rd quarter of 2018 (July 2018 sample).

28. The sample results for the April 11, 2018 sample documented the presence of cadmium at 650 mg/kg, in excess of the ceiling concentration of 85 mg/kg permitted by 40 C.F.R. § 503.13(a) Table 1. The October 2018 sample results for cadmium were 27 mg/kg, below the ceiling concentration of 85 mg/kg permitted by 40 C.F.R. § 503.13(a) Table 1.

29. Respondent’s response documented that Respondent had land applied biosolids, on its own land, characterized by the April 11, 2018 sample for cadmium of 650 mg/kg on the following dates (eleven times, and 44 tons):

- a. September 4, 2018
- b. September 5, 2018
- c. September 11, 2018
- d. September 12, 2018
- e. September 13, 2018
- f. September 14, 2018
- g. September 17, 2018
- h. September 18, 2018
- i. September 27, 2018
- j. September 27, 2018
- k. September 28, 2018

EPA's Specific Allegations

Failure to Comply with Ceiling Concentration Limitations

30. The facts stated above are herein incorporated.

31. Based on information presented by Respondent in its 2018 annual report and its Response to EPA's Request for Information, Respondent land applied bulk sewage sludge on eleven occasions between September 4, 2018 and September 28, 2018, and the prior test of April 11, 2018 showed cadmium concentrations in excess of the ceiling concentration of 85 mg/kg permitted by 40 C.F.R. § 503.13(a) Table 1.

32. Respondent's failure to comply with the ceiling concentration limitations described in Paragraph 31, above, is a violation of Respondent's NPDES permit, Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503.

Failure to Comply with documentation requirements for land application of biosolids

33. The facts stated above are herein incorporated.

34. Based on Respondent's statements to EPA and its Response to EPA's Request for Information, Respondent failed to have the sampling documentation needed to demonstrate compliance with the ceiling concentrations for cadmium permitted by 40 C.F.R. § 503.13(a) Table 1 for the biosolid land applications that occurred in September 2018, and/or to provide such documentation to the persons performing the land applications, in violation of 40 C.F.R. §§ 503.12(e) and (f).

35. Respondent's failure to comply with documentation requirements described in Paragraph 34, above, is a violation of Respondent's NPDES permit, Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503.

36. As alleged by the EPA above, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$21,933 per day for each day during which the violation continues, up to a maximum of \$274,159.

CONSENT AGREEMENT

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

38. 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.

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

40. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

41. 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.

42. 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 in determining the appropriate penalty settlement amount to resolve this action.

43. 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.

44. 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.

45. Respondent certifies by signing this Consent Agreement/Final Order that 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.

46. This Consent Agreement/Final Order addresses all civil administrative claims for the specific 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

47. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of Eleven Thousand, Five Hundred Dollars (\$11,500) pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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.

48. Respondent shall pay the penalty identified in Paragraph 48 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-07-2019-0041 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>.

49. 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

Howard Bunch
Office of Regional Counsel
U.S. Environmental Protection Agency
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 Consent Agreement/Final Order 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, 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 civil penalty and completion of the Supplemental Environmental Project, or payment of applicable stipulated penalties, pursuant to this Consent Agreement/Final Order resolve 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.

53. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 45 of this Consent Agreement/Final Order.

54. 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.

55. 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 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 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

57. 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.

58. 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.

59. The state of Missouri 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 Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

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

For the Respondent, City of Troy, Missouri:

2-5-2020
Date

Ron Sconce
Signature

Name: RON SCONCE

Title: Mayor

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

Date

David Cozad, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7

Howard Bunch

Howard Bunch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7

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.

Date

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

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

Copy via email to representative of the Respondent, City of Troy, Missouri:

Jesse A. Granneman,
Attorney for the City of Troy, Missouri
jesse@jglaw.us

Copy via email to representatives for the Complainant:

Howard Bunch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
bunch.howard@epa.gov

Seth Draper, Compliance Officer
EPA Region 7 Enforcement and Compliance Assurance Division
draper.seth@epa.gov

Dated

Lisa Haugen
Hearing Clerk, Region 7