

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>TH</sup> STREET

KANSAS CITY, KANSAS 66101

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7

2012 JUN 18 AM 9:50

IN THE MATTER OF )

The City of Fairbury )

Respondent )

Proceedings under Section )  
309(a)(3) of the Clean Water Act, )  
33 U.S.C. § 1319(a)(3). )

) Docket No. CWA-07-2012-0034

) FINDINGS OF VIOLATION  
) AND ORDER FOR COMPLIANCE

**Preliminary Statement**

1. The following Findings are made and Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Director of the EPA Region 7's Water, Wetlands and Pesticides Division.
2. The Respondent is the City of Fairbury, a political subdivision of the state organized under the laws of Nebraska (Respondent).
3. The State of Nebraska is not authorized to administer the Sludge Management Program established pursuant to Section 405(d)(1) of the CWA, 33 U.S.C. § 1345(d)(1). Therefore, the EPA directly implements the Sludge Management Program in Nebraska and is responsible for enforcement of the requirements of the Sludge Management Program.

**Regulatory Framework**

4. 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.
5. 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.

6. Pursuant to 40 C.F.R. § 503.18(a), Class I sludge management facilities, Publicly Owned Treatment Works (POTWs) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 or more, shall submit the information regarding sewage sludge use required by 40 C.F.R. § 503.18(a) to the EPA by February 19, annually. Similar reporting requirements apply to POTW surface disposal practices pursuant to 40 C.F.R. § 503.28(a) and to incineration practices pursuant to 40 C.F.R. § 503.48(a).

7. Pursuant to 40 C.F.R. § 501.2, the term Publicly Owned Treatment Works means a treatment works treating domestic sewage that is owned by a municipality or State.

### Findings

8. Respondent is a "municipality" as defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and is therefore a "person," as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. Respondent owns and operates a Wastewater Treatment Facility (WWTF), located at 904 Sewer Plant Road, Fairbury, NE, which is a "treatment works treating domestic sewage," as defined by 40 C.F.R. § 122.2.

10. The Respondent's WWTF is a POTW with a design flow rate equal to or greater than one million gallons per day.

11. The Respondent's WWTF constitutes a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

12. Sewage sludge is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 502(6).

13. As a POTW with a design flow of a rate greater than or equal to one million gallons per day, Respondent is required to submit to the EPA the information required by 40 C.F.R. § 503(18)(a), 503.28(a) or 503.48(a), as applicable, for use, disposal or incineration activities each year by February 19.

14. To date, Respondent has failed to submit to the EPA the information required by 40 C.F.R. § 503.18(a), 503.28(a) or 503.48(a) in calendar year 2011, which was due by February 19, 2012.

15. As a result of Respondent's continuing failure to comply with the regulatory reporting requirements for use or disposal of sewage sludge, the EPA finds that Respondent is in a state of noncompliance with the requirements of Section 405(a) of the CWA, and regulations promulgated thereunder at 40 C.F.R. Part 503.

16. Pursuant to Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1311(a)(5)(A), having taken into account the seriousness of the violations, and considering further the actions Respondent may undertake to comply with the reporting requirements of 40 C.F.R. Part 503, the EPA finds

that fifteen (15) days is a reasonable time for Respondent to comply with such requirements.

**Section 309(a)(3) Compliance Order**

Based on foregoing Findings and pursuant to authority of Section 309(a)(3) of the CWA, IT IS HEREBY ORDERED:

No later than fifteen (15) calendar days following the receipt of this Order, Respondent is required to submit to the EPA a complete annual report for sludge use or disposal activities conducted in calendar year 2011. The report must include all of the information required by 40 C.F.R. § 503.18(a), 503.28(a) or 503.48(a), as applicable. The report shall be submitted to:

Robert Bryant  
Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

**General Provisions**

- A. Issuance of this Section 309(a)(3) Compliance Order shall not be deemed an election by the EPA to forego any civil or criminal action to seek civil penalties, fines, or other appropriate relief under the CWA for the violations set forth in the Findings.
- B. Issuance of this Section 309(a)(3) Compliance Order does not affect the EPA's ability to enforce or implement the CWA.
- C. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, or any other authority.
- D. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
- E. Failure to comply with the terms of this Order may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under the Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court for the District of Nebraska may impose such penalties if, after notice and opportunity for a hearing, the court determines that Respondent has violated the CWA as described above and failed to comply with the terms of this Order. In determining the amount of any penalty, the court will consider the seriousness of Respondent's violations, Respondent's economic benefit (if any) resulting from the violations, any history Respondent may have of such violations, any good faith efforts Respondent has made to comply with legal requirements, the economic impact a penalty may have upon Respondent, and such other matters as just may

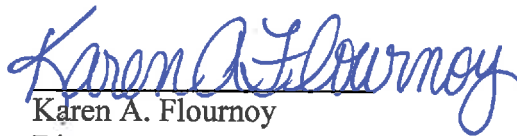
require. The district court has the authority to impose separate civil penalties for any violations of the CWA and any violations of this Order.

F. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

G. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

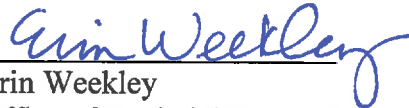
H. This Order shall become effective upon the date of receipt by Respondent.

Issued this 15<sup>th</sup> day of June, 2012.



Karen A. Flournoy  
Director

Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency, Region 7



Erin Weekley  
Office of Regional Counsel

U.S. Environmental Protection Agency, Region 7

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Docket Clerk, United States Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Administrative Order for Compliance to:

Homer Ward  
Mayor, City of Fairbury  
City Hall  
612 D Street  
P.O. Box 554  
Fairbury, NE 68352

and to:

Reuel Anderson  
Nebraska Department of Environmental Quality  
1200 "N" Street, Suite 400  
PO Box 98922  
Lincoln, Nebraska 68509

6/8/12  
\_\_\_\_\_  
Date

Kimberly Good  
\_\_\_\_\_  
Signature