

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
City of Lodi, California)	
)	Docket No. CWA-07-2020-0033
)	
Respondent)	
)	COMPLAINT AND
Proceedings under)	CONSENT AGREEMENT/
Section 309(g) of the Clean Water Act,)	FINAL ORDER
33 U.S.C. § 1319(g))	
_____)	

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’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. Complainant, the United States Environmental Protection Agency Region 7 (“EPA”) and Respondent, the city of Lodi, California 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 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 (“Complainant”).

5. Respondent is the city of Lodi, California (hereafter “Respondent”), a municipality organized under the laws of the state of California.

Statutory and Regulatory Framework

6. Section 405(a) of the CWA, 33 U.S.C. § 1345(a), prohibits the disposal of sewage sludge resulting from the operation of a treatment works where the disposal would result in any pollutant from such sewage sludge entering the navigable waters, except in accordance with a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. 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.

8. 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.

9. 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.

10. The state of California has not applied for or obtained primary authority to administer and enforce the sludge management program pursuant to 40 C.F.R. Part 501. The EPA directly implements the sludge management program in California.

11. 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.

12. 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).

13. 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.

14. Pursuant to 40 C.F.R. §503.9(q), a “person” is defined to include a municipality.
15. Pursuant to 40 C.F.R. §503(9)(a), “apply sewage sludge or sewage sludge applied to land” means land application of sewage sludge.
16. 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.
17. 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

18. The Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and Section 503(9)(q) of the Clean Water Act, 33 U.S.C. §1363(9)(q).
19. Respondent “applies sewage sludge” to “agricultural land,” as these terms are defined by 40 C.F.R. §§ 503.9 and 503.11, respectively. Respondent land applies sewage sludge at locations within San Joaquin County, California.
20. Respondent’s White Slough Water Pollution Control Facility, located at 1331 South Hamm Lane, Lodi, California, is required by its NPDES Permit Number CAL079243 to submit an annual report to EPA each year regarding its sludge activities for the preceding calendar year.
21. Pursuant to the requirements of 40 C.F.R. § 503 and NPDES Permit Number CAL079243, Respondent submitted Annual Reports covering respective calendar years 2016, 2017, and 2018. The reports contain summaries of the testing results and application information for sludge pursuant to 40 C.F.R. §503.18.
22. Pursuant to the regulation at 40 C.F.R. § 503.14(d), bulk sewage sludge shall be applied to agricultural land at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk sewage sludge.
23. The 2017 and 2018 Sewage Sludge (Biosolids) Annual Reports each state that bulk sewage sludge was land applied during the calendar years 2016 and 2017 to six agricultural fields at a whole sludge application rate exceeding agronomic loading rates.
24. The 2018 Sewage Sludge (Biosolids) Annual Report stated that Respondent failed to provide the owner or lease holder of the land, on which bulk sludge was applied during the calendar year 2017, notice and necessary information to comply with the requirements in this subpart 40 C.F.R. § 503.12(h).

25. The regulation at 40 C.F.R. § 503.15(d) requires that the vector attraction reduction requirements of 40 C.F.R. § 503.33 (b)(9), (b)(10) or (b)(12) shall be met when domestic septage is applied to agricultural land, forest or a reclamation site. The regulations at 40 C.F.R. § 503.33 (b)(9), (b)(10) or (b)(12) specify that vector attraction reduction shall be achieved by injection into the soil, incorporation into the soil within six hours after application, or the pH shall be raised to 12 or higher by alkali addition, (and without the addition of more alkali, shall remain at 12 or higher for 30 minutes).

26. The 2018 Sewage Sludge (Biosolids) Annual Reports each state that Respondent failed to achieve 38 percent volatile solids reduction with anaerobic digestion in 40 C.F.R. § 503.33; the combined annual average volatile solids reduction observed in the City's three active digesters was 35.6 percent.

EPA's Specific Allegations

27. The facts stated in Paragraphs 1 through 26, above, are herein incorporated.

28. Based on observations documented during the review of available information, EPA alleges that Respondent violated Section 405(e) of the Act, 33 U.S.C. § 1345(e), and the terms and conditions of its NPDES permit, in at least the following ways:

Count 1

29. Respondent land applied approximately 1280 dry metric tons of sewage sludge between January 1, 2016 through December 31, 2017, on at least 8 occasions that exceeded the agronomic rate.

30. Failure by Respondent to meet the agronomic rate requirements for bulk sewage sludge applied to the land is a violation of 40 C.F.R. § 503.14(d).

Count 2

31. Respondent land applied approximately 1240 dry metric tons of sewage sludge between January 1 and December 31, 2018, on at least 4 occasions that failed to achieve the required 38% volatile solids reduction. The average volatile solids reduction for the four occasions was 35.6%.

32. Failure by Respondent to achieve the percent volatile solids reduction is a violation of 40 C.F.R. § 503.15(d), that requires the vector attraction reduction.

CONSENT AGREEMENT

33. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, the EPA has determined that an appropriate civil penalty to settle this action is

Twenty-eight Thousand Eight Hundred and Ninety Dollars (\$28,890).

34. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

35. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement/Final Order.

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

37. 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 this Consent Agreement and the accompanying proposed Final Order.

38. 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.

39. Nothing contained in this Complaint and Consent Agreement/Final Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

40. Respondent consents that the civil penalty payment made pursuant to this Complaint and Consent Agreement/Final Order will not be deducted for purposes of federal taxes.

41. This Consent Agreement/Final Order addresses all civil administrative claims for 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.

42. Respondent certifies by signing this CA/FO that, to the best of its knowledge, 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.

43. The effect of settlement described is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in this Consent Agreement.

44. Each signatory to this Consent Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order.

45. Respondent shall pay a civil penalty of Twenty-eight Thousand Eight Hundred and Ninety Dollars (\$28,890) within thirty (30) days of the effective date of this Final Order.

Payment shall identify the Respondent by name and docket number "CWA-07-2020-0033" and shall be made 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-07-2020-0033 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Copies of the check shall be mailed to:

Lisa Haugen
Regional Hearing Clerk
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Melissa Bagley
Office of Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219.

46. 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. 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 and interest thereon.

47. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

48. EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

49. With respect to matters not addressed in this Consent Agreement/Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

50. This Consent Agreement/Final Order shall be entered and become effective only after the conclusion of the period of 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, and receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

**FOR THE COMPLAINANT,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7:**

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

for J. Daniel Breedlove

Melissa Bagley
Office of Regional Counsel

**FOR THE RESPONDENT,
THE CITY OF LODI, CALIFORNIA:**

1-7-2020
Date


Signature

Name: Stephen Schwabauer

Title: City Manager

Approved as to Form:


JANICE D. MAGDICH
City Attorney

FINAL ORDER

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

Karina Borromeo
Regional Judicial Officer

Date: _____

CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by certified mail, return receipt requested to:

Honorable Doug Kuehne
Mayor of City of Lodi
P.O. Box 3006
Lodi, California 95240

Mr. Charles E. Swimley, Jr.
Public Works Director
Lodi White Slough WPCF
1331 South Ham Lane
Lodi, California 95241

and by electronic copy to:

Johnny Gonzales
jgonzales@waterboards.ca.gov

Date

Name