

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2022-0015
The City of Joplin,)	
)	FINDINGS OF VIOLATION AND
Respondent)	ORDER FOR COMPLIANCE ON
)	CONSENT
Proceedings under Section 309(a)(3) of the)	
Clean Water Act, 33 U.S.C. § 1319(a)(3))	

Preliminary Statement

1. The following Findings of Violation and Administrative Order for Compliance on Consent (“Order”) are made and issued pursuant to Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). This Authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7’s Enforcement and Compliance Assurance Division.

2. The city of Joplin (“Respondent”) is the owner and/or operator of a publicly owned treatment works (“POTW”) located at 602 South Main Street, Joplin, Missouri, 64801.

3. The EPA and the Respondent enter into this Section 309(a)(3) Order in support of the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the parties’ intent through entering into this Order to address Respondent’s noncompliance with Section 405 of the CWA, which governs the disposal or use of sewage sludge. As set forth in this Order on Consent, the Parties have amicably reached agreement regarding the timeframes for Respondent to attain compliance with the CWA and its National Pollution Discharge Elimination System (“NPDES”) permit.

Statutory and Regulatory Framework

5. 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 of the United States, except in accordance with a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of an NPDES permit issued pursuant to that Section.

7. 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.

8. 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.

9. The state of Missouri has not 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 Missouri.

10. 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.

11. 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).

12. 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.

13. Pursuant to 40 C.F.R. § 503.9(q), a “person” is “an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.”

14. Pursuant to 40 C.F.R. § 503.9(a), “apply sewage sludge or sewage sludge applied to land” means land application of 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. Pursuant to 40 C.F.R. § 503.9(w), “sewage sludge” is “solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works.”

17. 40 C.F.R. § 503.13(a)(1) provides that “[b]ulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of [40 C.F.R.] § 503.13.”

18. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the issuance of a compliance order to any person who violates Section 405 of the CWA, 33 U.S.C. § 1345.

FACTUAL BACKGROUND

19. Respondent is a municipality, and, accordingly, is a “person” as defined in Section 503(5) of the CWA.

20. Respondent operates a POTW with a design flow rate of at least one million gallons per day, and as such, is subject to the reporting requirements of 40 CFR Part 503.

21. Pursuant to the requirements of 40 C.F.R. § 503 and NPDES Permit Number MO-0103349, Respondent submitted Annual Reports covering respective calendar years 2017, 2018, 2019, and 2020. The reports contain summaries of the testing results and application information for sludge pursuant to 40 C.F.R. §503.18. In those reports, Respondent disclosed the following violations of ceiling pollutant limits:

- a. In 2017, Respondent land applied liquid sludge that “occasionally” exceeded the applicable ceiling pollutant limits for zinc and cadmium.
- b. In January 2018, Respondent land applied sludge that exceeded the applicable ceiling pollutant limit for zinc. In April and June of 2018, Respondent land applied liquid sludge that exceeded the applicable ceiling pollutant limit for zinc and cadmium.
- c. On February 10, 2020, Respondent submitted a biosolids annual report for the 2019 calendar year stating that the Turkey Creek Wastewater Treatment Plant land applied liquid sludge that exceeded the applicable ceiling pollutant limit for zinc on one day in August and 5 days in September of 2019, and that a total of approximately 34 dry tons of noncompliant liquid sludge was land applied.

- d. On February 10, 2021, Respondent submitted a biosolids annual report for the 2020 calendar year stating that it had land applied liquid sludge that exceeded the applicable ceiling pollutant limit for zinc between April and June of 2020.

FINDINGS OF VIOLATION

22. The facts stated above are herein incorporated.
23. Based on 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:
 - a. Respondent land applied liquid sewage sludge that contained zinc concentrations in excess of the ceiling concentration of 7,500 mg/kg permitted by Table 1 of 40 C.F.R. 503.13(a) during at least eight (8) months between January 2017 and December 2020.
 - b. In 2018, food crops, feed crops, or fiber crops were harvested within 30 days after Respondent applied sewage sludge.
 - c. Respondent land applied liquid sewage sludge that contained cadmium concentrations in excess of the ceiling concentration of 85 mg/kg permitted by Table 1 of 40 C.F.R. 503.13(a) during at least two (2) months between January 2017 and December 2020.
24. Respondent's failure to comply with the ceiling concentration limitations is a violation of Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503.
25. By harvesting food crops, feed crops, and fiber crops within 30 days after application of sewage sludge," Respondent violated 40 CFR 503.32(b)(5)(iv).

Order for Compliance

26. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED and AGREES to take the actions described below.
27. Within thirty (30) days of the effective date of this Order, Respondent will implement the attached Procedure for Land Application of Biosolids for the Turkey Creek Wastewater Treatment Facility dated February 8, 2022 ("Operating Plan") that describes the procedures for the POTW to achieve compliance with the requirements of 40 CFR Part 503 for the land application of domestic septage. The Operating Plan requires Respondent to have

analytical results in hand demonstrating that the biosolids in question meet all applicable ceiling pollutant concentrations for metals before such solids will be land applied.

28. All documents or other communications to be submitted to EPA by this Order, shall be submitted by electronic mail to:

draper.seth@epa.gov
Seth Draper, or his successor
U.S. Environmental Protection Agency Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219

General Provisions

29. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein.

30. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701–706.

Effect of Compliance with the Terms of this Order

31. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

32. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d), or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

33. Nothing in this Order shall limit 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 and/or any other authority.

Severability

34. If any provision or authority of this Order, or the application of this Order to Respondent, is found, by a court of competent jurisdiction, 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.

Effective Date

35. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.

Termination

36. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

37. The EPA shall not unreasonably decline to terminate this order upon request provided Respondent has demonstrated consistent compliance with its terms.

Reporting

38. Respondent shall notify EPA within 30 days of any noncompliance with the approved Operating Plan and/or any applicable Part 503 regulation.

Issued this _____ day of March, 2022.

Wendy Lubbe
Acting Director
Enforcement and Compliance Assurance Division

Natasha Goss
Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance on Consent by electronic mail, to:

Regional Hearing Clerk:

U.S. Environmental Protection Agency
R7_Hearing_Clerk_Filings@epa.gov

Representative(s) for Respondent:

The Honorable Ryan Stanley
Mayor of the City of Joplin
Joplin, Missouri 64801
ryan.stanley@joplinmo.org

Mr. Jeff Stephenson
Pretreatment Coordinator
602 S. Main Street
Joplin, Missouri 64801
jstephen@joplinmo.org

Representatives for Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
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Seth Draper
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
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Date

Signature

