

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:)	
)	
The City of Augusta, Kansas)	Docket No. CWA-07-2021-0091
)	
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 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 U.S. Environmental Protection Agency Region 7 (“EPA” or “Complainant”) and Respondent, the City of Augusta, Kansas (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 Sections 301(a), 402, and 405(e) of the CWA, 33 U.S.C. §§ 1311(a), 1342, and 1345(e) and regulations promulgated thereunder by the discharge and/or disposal of sewage sludge and in violation of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342,

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 Augusta, Kansas, a municipality organized under the laws of the state of Kansas and authorized to conduct business in the state of Kansas.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states that “except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.”

7. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362 to include, among other things, biological materials and sewage waste discharged to water.

8. “Discharge of pollutant” is defined by Section 504(12) of the CWA, 33 U.S.C. § 1362(12), to include “any addition of any pollutant to navigable waters from any point source.”

9. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation ... from which pollutants are or may be discharged.”

10. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the “waters of the United States,” which in turn has been defined to include, inter alia, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

11. 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. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

12. Section 405(a) of the CWA states “Notwithstanding any other provision of this chapter or of any other law, in any case where the disposal of sewage sludge resulting from the operation of a treatment works ... (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit” issued under Section 402.

13. 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.

14. Section 405(e) of the CWA, 33 U.S.C. § 1345(e) states it “shall be unlawful for any person to dispose 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 this section, except in accordance with such regulations.”

15. Section 405(f) of the CWA, 33 U.S.C. § 1345(f) provides that any permit issued under Section 402 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.

16. 40 C.F.R. § 503.1 states that the requirements of the sludge management program apply to sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator. 40 C.F.R. § 503.3(b) states “no person shall use or dispose of sewage sludge through any practice for which requirements are established except in accordance with such requirements.”

17. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

18. The state of Kansas, however, has not applied for nor 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 and enforces the sludge management program in Kansas.

19. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of penalty against any person who discharges pollutants without permit authorization in violation of Section 301, who violates Section 405 of the CWA, 33 U.S.C. § 1345, and/or who violates a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

EPA’s General Allegations

20. 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.

21. At all relevant times, Respondent has owned and/or operated a publicly owned treatment works, as defined by 40 C.F.R. § 503.3(q), (hereinafter, referred to as the “Augusta POTW Facility”). The Augusta POTW Facility is located at 101 SW Highway 77, Augusta, Kansas 67010.

22. The Augusta POTW Facility is a point source that directly discharges wastewater to the Walnut River and is subject to an NPDES permit issued by KDHE on September 1, 2017 (Kansas Permit No. MWA03-0002), that is effective until August 21, 2022. Respondent's NPDES permit only authorizes discharges from Outfall 001 at the POTW Facility.

23. Directly adjacent to and south-southwest of Respondent's POTW Facility is a field where Respondent stockpiles and then land applies sewage sludge generated by the Augusta POTW. The field slopes to the south and is directly adjacent to the Walnut River to the south. This field is located in a FEMA regulatory floodplain and the southern portion of the field has previously flooded.

24. Part D of Respondent's NPDES permit states "Sludge Disposal shall be in accordance with the 40 C.F.R. Part 503 regulations."

25. 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 on its own land in Augusta, Kansas.

26. 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). Part C of the Respondent's NPDES Permit states that all biosolids disposal shall be done in accordance with the requirements of 40 C.F.R. Part 503.

27. Respondent is required by 40 C.F.R. § 503.18 to submit an annual report to the EPA, each year by no later than February 19 regarding its sludge activities for the preceding calendar year.

28. On July 7, 2020, Respondent submitted a "Wastewater Incident Report" to KDHE stating that between June 29, 2020 and July 6, 2020, an estimated 43.22 dry tons of biosolids generated from Respondent's POTW Facility had discharged into the Walnut River. Respondent's Incident Report stated "We have piled sludge on the field in at least 2 previous years without incident. The issue this time was that I didn't specify where in the field the sludge was to be piled. The crew moving it piled the sludge at the extreme South West edge of the field which is approximately 20 feet lower in elevation and when the river came up due to rain most of the sludge was pulled into the river. I asked why they put it there and was told they were trying to keep the smell away from the highway."

29. On February 17, 2021, Respondent filed its 2020 annual report for biosolids generated by its POTW Facility with the EPA, as required by 40 C.F.R. § 503.18, and reported non-compliance with the requirements of 40 C.F.R. Part 503. Respondent's annual report stated "We lost 43.22 dry tons to a flood in the June of 2020. It was meant to be temporary storage, but it was washed away by floods."

30. On August 5, 2021, 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. The EPA received Respondent's response to the Request for Information on August 6, 2021 ("Response").

31. Respondent's Response stated that "The amount of sludge remaining after the flood: Less than 1 dry ton of sludge. We did not have enough to pick up with a loader so we incorporated it into the soil like we normally would for sludge application."

32. The biosolids disposed of and/or discharged by Respondent into the Walnut River were a "pollutant" from a "point source" as defined by Section 502 of the CWA, 33 U.S.C. § 1362.

33. The Walnut River is a "navigable water" and a "water of the United States" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

EPA's Specific Allegations

Unauthorized Discharge and/or disposal of Sewage Sludge

34. The facts stated above are herein incorporated.

35. Respondent's disposal and/or discharge of no less than 42.22 dry tons of sewage sludge into the Walnut River was in violation of the requirements for disposal set forth in 40 C.F.R Part 503 (by land application, disposal into a surface disposal unit, or incineration), in violation of Section 405(e) of the CWA, 33 U.S.C. § 1345(e), and 40 C.F.R. 503.3(b).

36. Respondent's 2020 disposal of and/or discharge of no less than 42.22 dry tons of sewage sludge into the Walnut River, was without authorization by Respondent's NPDES permit, and in violation of Section D of the permit and therefore was in violation of Sections 301(a), 402 and/or 405(e) of the CWA, 33 U.S.C. §§ 1311(a), 1342, and/or 1345(e).

37. 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 \$22,584 per day for each day during which the violation continues, up to a maximum of \$282,293.

CONSENT AGREEMENT

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

39. 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.

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

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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 and its NPDES permit.

47. 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

48. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of Eight Thousand, Three Hundred and Forty Dollars (\$8,340) 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.

49. 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-07-2021-0091 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>.

50. Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to the following:

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.

51. 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.

52. 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

53. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves 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.

54. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 46 of this Consent Agreement/Final Order.

55. 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.

56. 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.

57. 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

58. 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.

59. 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.

60. The state of Kansas 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).

61. 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.

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

For the Respondent, City of Augusta, Kansas:

10/18/21
Date

Josh Shaw
Signature

Name: Josh Shaw

Title: City Manager

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

Date

Wendy Lubbe, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7

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

Copy by email to Respondent:

Mr. Shane Noland
Wastewater Superintendent, City of Augusta
113 E. 6th Street
Augusta, Kansas 67010
Snoland@augustagov.org

Copy by email to Attorney for Complainant:

Howard Bunch
U.S. Environmental Protection Agency - Region 7
bunch.howard@epa.gov

Copy by email to the Kansas Department of Health and Environment:

Shelly Shores-Miller
Kansas Department of Health and Environment
Water Permitting and Compliance, Section Chief
100 SW Jackson Street
Topeka, Kansas 66612
Shelly.Shores-Miller@ks.gov

Date

Amy Gonzales
Hearing Clerk, Region 7