



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

MAR 13 2008

C-14J

VIA FEDERAL EXPRESS DELIVERY

The Honorable William B. Moran
Administrative Law Judge
United States Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460-2001

Re: In the Matter of Logan County Water Pollution Control, Indian Lake
District - Docket No. CWA-05-2007-0004

Dear Judge Moran:

Enclosed for your file in the above-referenced matter, is a copy of Complainant's Pre-hearing Exchange. The original was filed today with the Regional Hearing Clerk, and opposing counsel is being served by certified mail, with a copy of this letter, on this date.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Diana L. Embil".

Diana L. Embil
Associate Regional Counsel

enclosure

cc: Kevin P. Braig, Esq. (w/enclosure, via Federal Express delivery)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

Logan County Water Pollution Control,)
Russells Point, Ohio)

Indian Lake District)
1015 Orchard Island Road, South,)

Respondent.)

Docket No. CWA-05-2007-0004

Judge William B. Moran

COMPLAINANT'S MOTION REQUESTING
LEAVE TO FILE INITIAL PRE-HEARING EXCHANGE, INSTANTER

Pursuant to the Presiding officer's Pre-hearing Oder dated December 12, 2007, and Section 22.16 of the Consolidated Rules, 40 C.F.R. § 22.16, Complainant hereby respectfully requests leave to file its Initial Pre-hearing Exchange, *instanter*, for the following reasons.

1. On March 10, 2008, Complainant's counsel requested a brief extension of time to March 12, 2008, to file the Pre-hearing Exchange.
2. Complainant's counsel has been working very hard to catch up with her workload as she continues to recover from several illnesses, as well as an unexpected hospitalization about one month ago.
3. Complainant's counsel expected to file the Pre-hearing Exchange, yesterday, March 12, 2008, but she was required to attend a mandatory meeting during the afternoon and several additional work demands prevented the filing before the Regional Hearing Clerk's office closed for the day at 4:30 p.m.
4. Complainant's counsel has received the mailing package containing Respondent's Pre-hearing Exchange, but she has refrained from opening it, in order to avoid the appearance or possibility of any prejudice to Respondent resulting from Complainant's later filing of its Pre-hearing Exchange.

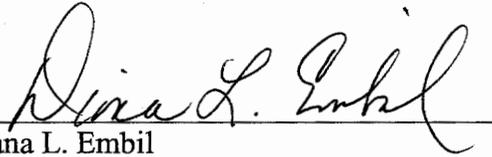
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US EPA REGION V

5. Complainant is agreeable to any plan to allow Respondent additional time for filings related to its Pre-hearing Exchange.

WHEREFORE, Complainant respectfully requests leave to file its pre-hearing Exchange, *instanter*.

Respectfully submitted,



Diana L. Embil
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604 – 3590

CERTIFICATE OF SERVICE

I DIANA L. EMBIL hereby certify that the foregoing Complainant's Motion Requesting Leave to File Initial Pre-hearing Exchange, Instanter, was sent on this 13th day of March, 2008, via Federal Express, to the following:

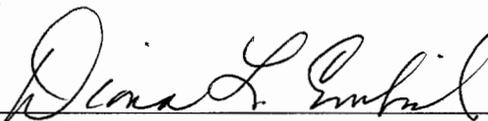
Judge William B. Moran
U.S. Environmental Protection Agency
Office of the Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460

Mr. Kevin P. Braig
Dinsmore & Shohl, LLP
One Dayton Centre
One South Main Street – Suite 1300
Dayton, Ohio 45402

Counsel for Respondent

And by hand Delivery to:

Sonja Brooks-Woodard
Regional Hearing Clerk
U.S. EPA
77 West Jackson Boulevard
Chicago, IL 60604-3590



Diana L. Embil

3/13/2008
Date

Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604 – 3590

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. CWA-05-2007-0004
)	Judge William B. Moran
)	
Logan County Water Pollution Control,)	Proceeding to Assess a
Indian Lake District)	Class II Civil Penalty
1015 Orchard Island Road, South,)	Pursuant to Section 309(g)
Russells Point, Ohio)	of the Clean Water Act,
)	33 U.S.C. § 1319(g).
)	

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

The Complainant, the Division, Region 5, United States Environmental Protection Agency ("U.S. EPA"), by and through its attorney, Diana L. Embil, in accordance with the Presiding Officer's Order of December 12, 2007, hereby files its Pre-hearing Exchange in this matter.

Complainant brings this action pursuant to Section 309 (g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and U.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 ("Rules"), including 40 C.F.R. § 22.1(a)(6) and 40 C.F.R. § 22.38 (2007). Complainant initiated this action by filing an Administrative Complaint (Complaint) with the Regional Hearing Clerk on April 17, 2007. Complainant filed an Amended Complaint with the Regional Hearing Clerk on May 10, 2007.

- I. **The names of all expert and other witnesses Complainant intends to call at the hearing, together with a brief narrative summary of their expected testimony, including copies of all documents and exhibits to be introduced into evidence.**

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A. Mr. Valdis Aistars

U.S. EPA may call Valdis Aistars as a witness in this matter. Mr. Aistars is an Environmental Engineer in the Water Division, U.S. EPA Region 5. He may testify to the nature and origins of sewage sludge, relevant U.S. EPA publications and guidance, the purpose and background of the regulations involved in this matter, and the substantive requirements of those regulations that must be met in order to maintain compliance. Mr. Aistars may testify as to information developed by U.S. EPA in this matter as part of the development and prosecution of this enforcement action and as documented in U.S. EPA's enforcement files in this matter. He may testify about the April 17, 2007, Complaint and the May 10, 2007, Amended Complaint filed against Respondent pursuant to Sections 309(a) of the CWA, 33 U.S.C. § 1318 and 1319(a), and subsequent follow-up letters. He may testify about U.S. EPA's requests for information from Respondent and information received by U.S. EPA from Respondent. He may testify to the facts taken into consideration by Complainant in determining the penalty proposed in the Amended Complaint. He may also testify as to facts relevant to the statutory penalty factors set forth in Section 309(g) (3) of the Clean Water Act, 33 U.S.C. § 1319(3)(g). Mr. Aistars may provide testimony sufficient to authenticate documents.

B. John Colletti

U.S. EPA may call John Colletti as a witness in this matter. Mr. Colletti is an Environmental Engineer in the Water Division, U.S. EPA Region 5. Mr. Colletti may testify to the nature and origins of sewage sludge, the purpose and background of the regulations involved in this matter, and the substantive requirements of those regulations that must be met in order to maintain compliance. Mr. Colletti may provide testimony sufficient to authenticate documents.

C. Sandra Leibfritz

U.S. EPA may call Ms. Sandra Leibfritz as a witness in this matter. Ms. Leibfritz is with Permits and Compliance, Division of Surface Water, Southwest District Office, of the Ohio Environmental Protection Agency (OEPA). She may testify as to the Division's functions and organization and her duties. She may testify as to her inspections of the Respondent's facility conducted on May 18, 2000, March 27, 2001, May 16, 2002, June 19, 2003, March 3, 2004, and March 17, 2005, inspection reports, annual sludge reports and certification statements concerning the facility. She may also testify as to the rules and regulations governing the NPDES program in Ohio, and its history. She may also testify as to any NPDES permit applications and permits, and any sludge and bio-solids management plans received from, or issued to, or applicable to Respondent's facility. She may testify as to her involvement, including conversations and other contacts, including written contacts, with the Respondent. Ms. Leibfritz may provide testimony sufficient to authenticate documents.

D. Suzanne Matz

U.S. EPA may call Ms. Suzanne Matz as a witness in this matter. Ms. Matz is with Permits and Compliance, Division of Surface Water, OEPA. She may testify as to the Division's functions and organization and her duties. She may testify as to her inspection of the Respondent's facility conducted on March 3, 2004, the inspection report, annual sludge reports and certification statements concerning the facility. She may also testify as to the rules and regulations governing the NPDES program in Ohio, and its history. She may also testify as to any NPDES permit applications and permits, and any sludge and bio-solids management plans received from, or issued to, or applicable to Respondent's facility. She may testify as to her involvement, including conversations and other contacts, including written contacts, with the Respondent. Ms. Matz may provide testimony sufficient to authenticate documents.

E. Megan Carr

U.S. EPA may call Ms. Megan Carr as a witness in this matter. Ms. Carr was with Permits and Compliance, Division of Surface Water, Southwest District Office, of the OEPA. She may testify as to her inspection of the Respondent's property conducted on March 3, 2004, and inspection report. He may testify as to her involvement, including conversations and other contacts with the Respondent. Ms. Carr may provide testimony sufficient to authenticate documents.

F. Thomas W. Weer

U.S. EPA may call Mr. Weer as a witness in this matter. Mr. Weer was the Respondent's manager and/or employee and represented Respondent as the signatory on certain certification statements submitted to OEPA. Given that Mr. Weer was the Respondent's manager and /or employee and representative, Complainant requests the right to treat Mr. Weer as an adverse or hostile witness and to examine him through the use of leading questions should it become necessary for Complainant to call Mr. Weer as a witness in its direct case. Mr. Weer may be examined on his background in general. Mr. Weer may be examined as to Respondent's past practices of managing, handling, treating, disposing of, and reporting concerning sewage sludge. Mr. Weer may be examined on his certification statements on annual sludge reports and annual sludge reports submitted and required to be submitted by Respondent. Mr. Weer may be examined as to his involvement and contacts with the OEPA regarding NPDES and NPDES compliance inspections. Mr. Weer may provide testimony sufficient to authenticate documents.

G. Ronald Jacob

U.S. EPA may call Mr. Ronald Jacob as a witness in this matter. Mr. Jacob is the Respondent's Operations Manager. Given that Mr. Jacob is the Respondent's Operations Manager, Complainant requests the right to treat Mr. Jacob as an adverse or hostile witness and

to examine him through the use of leading questions should it become necessary for Complainant to call Mr. Jacob as a witness in its direct case. Mr. Jacob may be examined on his background in general. Mr. Jacob may be examined as to Respondent's past and current practices of managing, handling, treating, disposing of, and reporting concerning sewage sludge. Mr. Jacob may be examined on certification statements on annual sludge reports and annual sludge reports submitted and/or required to be submitted by Respondent. Mr. Jacob may be examined as to his involvement and contacts with the OEPA regarding NPDES and NPDES compliance inspections. Mr. Jacob may be examined concerning Respondent's responses to U.S. EPA's information requests, and his communications and correspondence with U.S. EPA in this matter. Mr. Jacob may provide testimony sufficient to authenticate documents.

H. Garis Pugh

U.S. EPA may call Mr. Garis Pugh as a witness in this matter. Mr. Jacob is the Respondent's General Manager. Given that Mr. Pugh is the Respondent's General Manager, Complainant requests the right to treat Mr. Pugh as an adverse or hostile witness and to examine him through the use of leading questions should it become necessary for Complainant to call Mr. Pugh as a witness in its direct case. Mr. Pugh may be examined on his background in general. Mr. Pugh may be examined as to Respondent's past and current practices of managing, handling, treating, disposing of, and reporting concerning sewage sludge. Mr. Pugh may be examined on certification statements on annual sludge reports and annual sludge reports submitted and/or required to be submitted by Respondent. Mr. Pugh may be examined as to his involvement and contacts with the OEPA regarding NPDES and NPDES compliance inspections. Mr. Pugh may be examined concerning Respondent's responses to U.S. EPA's information requests, and his communications and correspondence with U.S. EPA in this matter. Mr. Pugh may provide testimony sufficient to authenticate documents.

I. Financial Expert(s) to be Determined

If Respondent is allowed to claim an inability to pay, Complainant may call a financial expert to examine Complainant's finances and to testify as to Respondent's ability to pay.

J. Expert(s) on Potential Harm to be Determined

Complainant may amend its Pre-hearing Exchange to include a witness to testify as to hazards to human health and environment and posed by Respondent's management, handling, treatment and disposal of sewage sludge. The witness may testify to the nature and origins of sewage sludge, and the purpose and background of the regulations violated. The witness may also testify as to the inspections of Respondent's facility and reports concerning inspections and/or operations of Respondent's facility. Upon amendment of its pre-hearing exchange to provide this expert, Complainant will submit the expert's resume. If necessary, the witness will provide testimony sufficient to authenticate documents submitted for evidence at hearing.

Complainant respectfully reserves the right to expand or otherwise modify the scope, extent, and areas of testimony of any of these potential witnesses, where appropriate, and upon adequate notice to the Presiding Officer and the Respondent. Complainant reserves the right to call any witnesses listed in Respondent's Pre-hearing Exchange. Complainant further reserves its right to amend, supplement, and modify its witness list and to call additional witnesses on its behalf, upon adequate notice to the Presiding Officer and the Respondent.

If Complainant makes any modifications described in the preceding paragraph, Complainant shall, by filing an Amendment to this Pre-hearing Exchange, provide the Presiding Officer and the Respondent a reasonable opportunity to review the new or revised witness list. Such changes may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, pre-hearing stipulations of fact between the parties, rulings on motions, or for any other legitimate purpose.

Complainant hereby submits the following list of exhibits it intends to introduce at hearing:

Complainant's
Exhibit No.

Description of Exhibit

- 1 Letter from Ohio EPA re: Compliance Evaluation Inspection of Indian Lake Water Pollution Control District, including attachments, to Mr. Garis Pugh, dated March 29, 2004.
- 2 Reserved
- 3 E-mail correspondence between Sandy Leibfritz, Ohio EPA, Division of Surface Water and Valdis Aistars re: Inspection of Indian Lake Water Pollution Control District.(February 13 and 20, 2004)
- 4 Notes from Indian Lake Facility Sludge Inspection, dated March 3, 2004 by Megan Carr and Suzanne Matz.
- 5 Letter from Sally Swanson, Water Enforcement, EPA re: Notice of Intent to File a Civil Administrative Complaint Pursuant to Section 309 of Clean Water Act for Indian Lake Water Pollution Control District, to Mr. Garis Pugh, dated December 1, 2004.
- 6 Letter from Jo Lynn Traub re: Request for Information Pursuant to 33 U.S.C. § 1318 of Clean Water Act to Mr. Garis Pugh, Indian Lake Pollution Control District, with enclosure, dated May 21, 2004.
- 7 Cover letter from Richard L. Shank, OEPA, to Logan County Board of Commissioners re. Logan County Indian Lake Sanitary Sewer District, Sludge Management Plan, dated August 13, 1987, with plan enclosed.
- 8 Ohio EPA Authorization to Discharge Under the National Pollutant Discharge Elimination System issued to Logan County Board of Commissioners on August 30, 1996.
- 9 Ohio EPA Authorization to Discharge Under the National Pollutant Discharge Elimination System issued to Logan County Board of Commissioners on October 1, 2001.
- 10 Ohio EPA Modification of NPDES permit issued on January 15, 2003.

- 11 Letter from Christopher Jones, Ohio EPA, Director,
to Logan County Water Pollution Control, Attn: Mr. Garis Pugh, dated
June 25, 2003, re: enclosed Bio-Solids Management Plan for Logan
County Water Pollution Control.
- 12 Ohio EPA, Division of Surface Water, Annual Sludge Report
Form for calendar year 1999, dated January 10, 2000.
- 13 Ohio EPA, Division of Surface Water, Annual Sludge Report
Form, for calendar year 2000, dated January 8, 2001.
- 14 Ohio EPA, Division of Surface Water, Annual Sludge Report
Form, for calendar year 2001, dated January 9, 2002.
- 15 Ohio EPA, Division of Surface Water, Annual Sludge Report
Form, for calendar year 2002, dated January 9, 2003.
- 16 Ohio EPA, Division of Surface Water, Annual Sludge Report
Form, for calendar year 2003, dated January 13, 2004, and cover letter
from Mr. Garis Pugh to OEPA, Southwest District Office.
- 17 Telephone Conversation Record between Mr. Ronald Jacob
Indian Lake Water Pollution Control District, and Valdis Aistars
dated May 27, 2004.
- 18 Letter response from Mr. Ronald J. Jacob re: Request for Information
pursuant to 33 U.S.C. § 1318 of the Clean Water Act, to Valdis Aistars
dated June 8, 2004.
- 19 Interim Clean Water Act Settlement Penalty Policy
dated March 1, 1995.
- 20 Letter from Ronald J. Jacob, Re: Indian Lake Water Pollution
Control Facility 40 CFR 503, Annual Report for Disposal of
Biosolids (2003) dated February 18, 2004, to U.S. EPA, Water
Enforcement and Compliance Assurance Branch.
- 21 U.S. EPA Narrative (prepared by Valdis Aistars - Proposed CWA Class II
Administrative Penalty
- 22 Clean Water Act – Revised Civil Penalty Work Sheet, prepared by
Valdis Aistars, August 13, 2007.

Complainant respectfully reserves the right to elect not introduce any of the foregoing exhibits at the hearing and/or, if the Presiding Officer grants leave, to introduce into evidence additional exhibits not listed above. The need to modify the foregoing exhibit list may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, pre-hearing stipulations of fact between the parties, or any other legitimate reason.

Should Complainant wish to introduce at the hearing any exhibits not set forth in this Pre-hearing Exchange, Complainant shall, by filing an Amendment to this Pre-hearing Exchange, provide the Court and Respondent a reasonable opportunity to review the

II. **Complainant's view as to the place for the hearing and estimated amount of time needed to present its direct case.**

Complainant requests that the hearing in this matter be held at a suitable location in or near Cincinnati, Ohio. Complainant's witnesses will come from the Dayton, Ohio area, as well as Chicago, Illinois. Complainant expects that it will require two days to present its direct case.

III. **Complainant's statement explaining in detail how the proposed penalty was determined in accordance with the Clean Water Act statutory factors.**

A. **Introduction**

In determining the penalty proposed in the Complaint for four violations of Section 405(e) of the CWA, 33 U.S.C § 1345(e), Complainant took into account the factors listed in Section 309(g) (3) of the Clean Water Act, 33 U.S.C. § 1319(3) (g). Section 309(g) (3) provides:

“In determining the amount of any penalty assess under this subsection, the Administrator . . . shall take into account the nature, circumstance, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.”

Nature, Circumstances, Extent, and Gravity of Count I: Failure to Submit Annual Sewage Sludge Reports to U.S. EPA for 2002 and 2003 Calendar Years as Required under 40 C.F.R. § 503.18

One of the purposes of the regulation is to aid U.S. EPA in quickly determining compliance or, as in this case, the lack of compliance. Failure to submit the Annual Sludge Report with required certifications to U.S. EPA impedes U.S. EPA’s ability to know whether (and in a timely manner) operators who land apply sewage sludge are in compliance and whether the public health in that regard is being protected. In this case, the failure of the Respondent to submit annual sludge reports (for 2002 and 2003) to U.S. EPA to report its compliance required the Agency to expend significant time and resources in making that determination. The reporting requirement is designed to encourage compliance and allow land applicers to voluntarily report their compliance with Part 503 requirements without expenditures of environmental compliance resources. The fact that reports were not submitted to U.S. EPA is indicative of the other violations that were also occurring at Respondent’s facility.

Nature, Circumstances, Extent, and Gravity of Counts II and III: Failures to Meet Pathogen Reduction Requirements under 40 C.F.R. § 503.15(a) (1) and Vector Attraction Reduction Requirements under 40 C.F.R. § 503.15(c)(1).

This case involves Respondent’s noncompliance with federal requirements in applying sewage sludge to land. In this case, the sewage sludge was a solid, semi-solid, or liquid residue

generated in, and pumped from septic tanks. In other words, the sewage sludge was the type of material that might be flushed down the toilet, emptied into the sink, or put through a garbage disposal. Respondent disposed of the sewage sludge by land applying it to an area near its facility. In this case, we considered only Respondent's application of the sewage sludge occurred from April 2002 through June 2003, a period of approximately 300 days. Since Respondent processed sewage sludge each day that it operated (seven days a week), U.S. EPA assumed that the sludge was applied at least 5 days a week.

The purpose of the pathogen reduction requirement is to reduce characteristics of sewage sludge (*e.g.*, pathogens, such as bacteria, viruses, protozoa and eggs of parasitic worms) that make it attractive to rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents. The purpose of the vector attraction reduction requirement is to reduce the potential spread of disease by such vectors. In promulgating the Standards for Use and Disposal of Sewage Sludge, the Administrator determined that: “[v]irtually all sewage sludge contains [a] . . . significant numbers of pathogens (*e.g.*, bacteria, viruses, protozoa, and eggs of parasitic worms)”. 58 Fed. Reg. 9248, 9256 (February 19, 1993). Further, the Administrator determined that:

“In the case of sewage sludge applied to the land or disposed of in or on surface disposal sites, the final rule establishes requirements for pathogenic organisms or pathogenic indicator organisms such as fecal coliform. The rule also includes requirements for destroying or reducing those characteristics of sewage sludge that attract birds, insects, rats and other animals (so-called "vectors"). "Vector" exposure to the pathogenic organisms in sludge can cause transfer of pathogens (and consequently spread disease) from these disease vectors to humans. The final rule consequently requires measures for reducing the attraction of vectors to sewage sludge. These measures could include destruction of the odor causing properties of sludge that lure insects and animals.” “58 Fed. Reg. 9248, 9254 (February 19, 1993).

Finally, in promulgating the Standards for Use and Disposal of Sewage Sludge, the Administrator determined that:

“The operational standards for pathogens and for vector attraction reduction protect public health and the environment from the reasonably anticipated adverse effect of pathogenic organisms (*e.g.*, certain bacteria, enteric viruses, and helminth ova) in sewage sludge and from the characteristics (*e.g.*, odor) of the sewage sludge that attract vectors (*e.g.*, mosquitoes and flies), respectively.” 58 Fed. Reg. 9248, 9322 (February 19, 1993).

During the relevant time period, the Respondent used anaerobic digestion as the treatment method for reducing the pathogens in its sewage sludge. Anaerobic digestion must be operated at specific temperatures and for specific periods of time (between 15 days at 35 to 55 degrees Celsius and 60 days at 20 degrees Celsius) in order to meet the Part 503 requirements. Respondent did not record on a regular basis the temperatures or time periods for operation of its anaerobic digestion process. If temperatures and time periods are not measured (and recorded) when the sludge is in the anaerobic digester, it would not be possible to determine whether the required anaerobic digestion conditions were being met. If the sludge was not treated to the extent that pathogens were reduced, the sewage sludge presented a public health hazard when it was applied to the land’s surface and allowed to remain there.

During the relevant time period, the method that Respondent purportedly was using to gauge reduction of the vector attractiveness of its sewage sludge during treatment was by calculating the reduction in volatile solids by at least 38 percent. Respondent did not record this calculation on a consistent basis and those calculations that were recorded for reports submitted to regulatory agencies differed from the calculations from data at the facility. Without performing this calculation consistently, it was not possible know whether the sludge’s vector attraction was sufficiently reduced. When applied to land’s surface, the sludge may have

attracted vectors that contributed to the spread of disease. In considering the extent of these two violations, Complainant considered that Respondent land applied at least 280 dry tons of sewage sludge over a period of approximately fifteen months without complying with two requirements designed to safeguard the public against the spread of disease. Among other factors that Complainant considered was the fact that Respondent also had no records available showing that it followed requirements concerning site restrictions (40 C.F.R. § 503.32(b)(5) and management practices (40 C.F.R. § 503.14).

Nature, Circumstances, Extent, and Gravity of Count IV: Failure to Land Apply the Sewage Sludge at an Agronomic Rate as Required Under 40 C.F.R. § 503.14.

The purpose of this requirement is to ensure against the introduction of excessive amounts of nitrogen into surface and ground water. In other words, human health and the environment are protected against nitrogen contamination in surface and ground waters by this requirement that sewage sludge be applied to land at a rate comparable to the nitrogen requirement of the vegetation at the site.

In taking into account the extent of the violation, Complainant considered that Respondent's Sewage sludge is Class B sludge, which typically contains pathogens such as nitrogen. Complainant considered that Respondent's Class B sewage sludge did not undergo the necessary anaerobic digestion treatment to reduce the amount of pathogens present in it. Respondent applied at least 280 dry tons of this untreated sewage sludge over a period of approximately fifteen months and failed to apply it at an agronomic rate. In considering the seriousness of the violation, Complainant considered that Respondent's several failures served to compound the potential for nitrogen contamination of the groundwater.

B. Prior History of Such Violations

An analysis of Respondent's compliance record concerning Section 405(e) of the CWA, indicates no prior violations of the Part 503 regulations.

C. Ability to Pay a Penalty

U.S. EPA reviewed documentation provided by Respondent concerning its financial condition based on Respondent's assertion that it was unable to pay the proposed penalty. U.S. determined that Respondent was in a position to pay the proposed penalty.

D. Culpability

Respondent had responsibility under Part 503 to ensure that only properly treated sewage sludge was land applied in a manner that would ensure that public health and the environment are protected. It failed to meet that responsibility during 2002 and 2003.

E. Economic Benefit

U.S. EPA believes that there is probably some economic benefit associated with Respondent's disposal of its sewage sludge on its own nearby property, but it would probably be *de minimis*.

F. Other Factors as Justice May Require

Respondent has a continuing responsibility to monitor its waste treatment system and by products given the potential for transmission of pathogens and creation of a public health risk.

IV. Complainant's statement regarding applicability of the Paperwork Reduction Act, and whether there is a current Office of Management and Budget control number.

The Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3501-3520 requires federal agencies to determine the information collection burdens associated with its regulations. The federal agencies are further required to obtain Office of Management and Budget (OMB) approval for the information collection burdens associated with the federal agencies' regulations. In approving information collection burdens, OMB determines whether the information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility. The OMB assigns a control number for the collection of information.

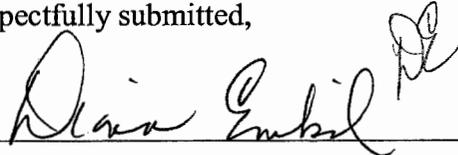
"Subpart B," entitled "Land Application," of the "Standards for the Use or Disposal of Sewage Sludge" contains the regulations governing the land application of sewage sludge. The Subpart B regulations are codified at 40 C.F.R. §§ 503.10 – 503.18, and are the regulations at issue in this matter. The Subpart B regulations, particularly, 40 C.F.R. § 503.17(b) require the collection of information.

The regulations at issue in this matter are currently covered by OMB Control No. 2040-0004. The U.S. EPA has determined the information collection burdens associated with the regulations at issue and submitted those determinations for approval to OMB in the form of Information Collection Requests (ICR). The information collection burdens for the regulations at issue for the relevant time period (September 30, 1998 to May 31, 2005) are contained in EPA ICR Nos. 0229.11, 0229.13, 0229.15. The OMB has approved those ICRs under OMB Control No. 2040-0004 for the relevant time period (September 30, 1998 to May 31, 2005). 63 Fed. Reg. 57677, 57678, October 28, 1998; 65 Fed. Reg. 65307, November 1, 2000; 66 Fed. Reg. 51035, October 5, 2001; 67 Fed. Reg. 36171, 36172, May 23, 2002; 70 Fed. Reg. 15082, March 24, 2005.

V. **Reservation of rights**

Complainant respectfully reserves the right to call all witnesses called by the Respondent, to recall any of its witnesses in rebuttal, and to modify or supplement the names of witnesses and exhibits prior to the Adjudicatory Hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to the Respondent and the Presiding Officer.

Respectfully submitted,

A handwritten signature in cursive script, reading "Diana Embil", is written over a horizontal line. To the right of the signature, there are two small, stylized initials or marks.

Diana Embil, Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604
Telephone: (312) 886-7889

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

CERTIFICATE OF SERVICE

I, Diana Embil, certify that I filed the original and one copy of **Complainant's Prehearing Exchange** and attachments, Docket No. CWA-05-2007-0004 with the EPA Region 5 Regional Hearing Clerk.

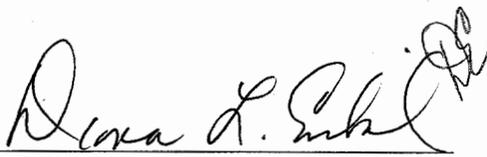
I also certify that I sent a copy of the **Complainant's Prehearing Exchange** and attachments, Docket No. CWA-05-2007-0004, by first class mail, to:

Mr. Kevin P. Braig
, OH 45154

I also certify that I sent a copy of the **Complainant's Prehearing Exchange** and attachments, Docket No. CWA-05-2007-0004, by Federal Express delivery to:

The Honorable William B. Moran
Office of Administrative Law Judges
Mailcode 1900L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

on the 13 day of March, 2008

Signed: 
U.S. EPA Region 5
Office of Regional Counsel

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US EPA REGION 5
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MAIL ROOM