

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
The City of Clanton, Alabama) Docket No. CWA-07-2020-0100
)
Respondent)
)
Proceedings under) COMPLAINT AND
Section 309(g) of the Clean Water Act,) CONSENT AGREEMENT/
33 U.S.C. § 1319(g)) FINAL ORDER
)
_____)

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 U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondent, the city of Clanton, Alabama 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 its permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and 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 Clanton (hereafter "Respondent"), a municipality organized under the laws of the state of Alabama.

Statutory and Regulatory Framework

6. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), provides 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.

7. Section 405(f) of the CWA, 33 U.S.C. § 1345(f) provides that any permit issued under section 1342 of this title 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.

8. 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. Pursuant to Section 402, EPA authorizes states to issue NPDES permits that, among other things, prescribe conditions whereby a discharge may be authorized, and establish design, construction, operation, and maintenance requirements for the permit holder, including the requirements of CWA Section 405(f).

9. 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.

10. 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.

11. The state of Alabama 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 Alabama.

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).

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 Chilton County, Alabama.

20. Respondent’s Walnut Creek Wastewater Treatment Plant is required by its NPDES Permit Number ALL0054631 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 ALL0054631, Respondent submitted an annual report covering calendar year 2018 on January 9, 2019. The report contains summary of the testing results and application information for sludge pursuant to 40 C.F.R. §503.18.

22. The regulation at 40 C.F.R. § 503.16 requires the frequency of monitoring for regulated pollutants once per year for facilities that land apply less than 290 dry metric tons of sewage sludge per year.

23. In the annual sewage sludge report described above, Respondent reported that one hundred and seven and eight tenths (107.8) dry metric tons of bulk sewage sludge generated at the Respondent’s Wastewater Treatment Plant (“WWTP”) was land applied by Respondent n.

24. The sewage sludge annual report submitted by the city of Clanton on January 9, 2019 indicated that sewage sludge from the WWTP had a Nickel concentration of 2120 milligrams per kilogram (mg/kg).

25. On April 24, 2019, the city of Clanton was issued a Request for Information pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a) for recent documentation of sewage sludge application. A response was received May 24, 2019.

26. Respondent reported as of its May 24, 2019 response that nineteen and twenty-five hundredths (19.25) dry metric tons of bulk sewage sludge generated at the Respondent's WWTP was land applied by Respondent.

27. The May 24, 2019 response submitted by the city of Clanton, documented that the most recent 2019 sludge samples analyzed from the WWTP had a Nickel concentration of 2580 milligrams per kilogram (mg/kg).

28. On June 13, 2019, the city of Clanton was sent a letter of warning by the EPA regarding the on-going land application of biosolids.

29. 40 C.F.R. § 503.13(a) states that bulk 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 § 503.13.

30. Table 1 of § 503.13 lists the ceiling concentration (milligrams per kilogram) of Nickel as 420.

31. Respondent's failure to meet the pollutant ceiling concentration requirements for bulk sewage sludge applied to the land is a violation of 40 C.F.R. § 503.13(a).

EPA's Specific Allegations

32. The facts stated in Paragraphs 1 through 31, above, are herein incorporated.

33. Based on its 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.

Land Application of Sewage Sludge (Biosolids) Containing Pollutants in Excess of Permitted Ceiling Limits

34. Respondent land applied approximately one hundred and twenty-seven (127) dry metric tons of sewage sludge between May 2018 and April 2019, on 35 occasions that contained concentrations of Nickel in excess of the ceiling concentration permitted in Table 1 of 40 C.F.R. § 503.13.

35. Failure by Respondent to meet the pollutant ceiling concentration requirements or bulk sewage sludge applied to the land is a violation of 40 C.F.R. § 503.13(a), Section 405(e) of

the Act, 33 U.S.C. § 1345(e), and the terms and conditions of its NPDES permit.

CONSENT AGREEMENT

36. 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 Fifteen Thousand Dollars (\$15,000).

37. 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.

38. 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.

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

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. The effect of settlement described is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in this Consent Agreement. Respondent certifies by the signing of this Consent Agreement/Final Order that Respondent is in compliance with all requirements of Sections 402 and 405 of the CWA, consistent with and pursuant to the Administrative Compliance Order, Docket No. CWA-07-2020-0101.

46. The effect of settlement is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 45 above, of this CA/FO.

47. 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.

48. Respondent shall pay a civil penalty of Fifteen Thousand Dollars (\$15,000) within thirty (30) days of the effective date of this Final Order. Payment shall identify the Respondent by name and docket number "CWA-07-2020-0100" and shall be made by certified or cashier's check made payable to "Treasurer, United States of America," and remitted 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.

49. 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.

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

51. 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.

52. 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.

53. 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.

54. 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

Melissa Bagley
Office of Regional Counsel

**FOR THE RESPONDENT,
CITY OF CLANTON, ALABAMA:**

2-10-2020
Date

Billy Joe Driver
Signature

Name: Billy Joe Driver

Title: mayor

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 Respondents are 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.

Karina Borroneo
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:

Mayor Billy Joe Driver
City of Clanton
505 2nd Avenue North
Clanton, Alabama 35045

and by first class mail to:

Daniel J. O'Lone, Chief
Stormwater and Residuals Enforcement Section
NPEB/WPD, Region 4
61 Forsyth Street SW – 9T25
Atlanta, Georgia 30303.

Date

Name