

FILED

May 13, 2025

12:34PM

U.S. EPA REGION 7  
HEARING CLERK

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2024-0155
aSkag LLC,	)	
	)	ADMINISTRATIVE ORDER
Respondent	)	ON CONSENT
	)	
Proceedings under Section 309(a) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)	)	
	)	

**Jurisdiction**

1. This Administrative Order on Consent (“Order”) is issued pursuant to the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S. C. §§ 1319(a)(3), to Respondent aSkag LLC., (“Respondent”).

2. The EPA and Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the objective 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.”

3. By entering into this Order, the parties intend to address Respondent’s noncompliance with Section 405 of the CWA, 33 U.S.C § 1345, 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 implementing regulations.

4. 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 Order, (2) consents to personal service by electronic mail, (3) agrees to undertake all actions required by the terms and conditions of this Order, and (4) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual or legal allegations in this Order, except that Respondent admits the jurisdictional allegations herein. 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.

### **Parties**

5. The authority to take action under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(a) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”) with concurrence of the Regional Counsel.

6. Respondent aSkag LLC, is and was, at all times relevant, a limited liability company, organized under the laws of the state of Colorado.

### **Statutory and Regulatory Framework**

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 and is applicable to any person who prepares sewage sludge or applies sewage sludge to the land.

9. The Colorado Department of Public Health and Environment (“CDPHE”) is the state agency with the authority to administer the federal NPDES program in Colorado pursuant to Section 402 of the CWA.

10. The state of Colorado has not applied for or 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 the sludge management program in Colorado, and is therefore the “permitting authority,” as defined by 40 C.F.R. § 503.9(p), for purposes of the sludge management program.

11. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), states that “the determination of the manner of disposal or use of sludge is a local determination, except that 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 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(w), “sewage sludge” is solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works.

14. Pursuant to 40 C.F.R. § 503.9(f), “domestic septage” is “either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage [and] does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.”

15. Pursuant to 40 C.F.R. § 503.9(z), “treatment of sewage sludge” is the preparation of sewage sludge for final use or disposal.

16. Pursuant to 40 C.F.R. § 503.9(r), a “person who prepares sewage sludge” is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

17. Pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 503.9(q), a “person” is defined to mean an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

18. Pursuant to 40 C.F.R. § 503.9(a), “apply sewage sludge or sewage sludge applied to land” means land application of sewage sludge.

19. 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.

20. Pursuant to 40 C.F.R. § 503.31(f), “pathogenic organisms” is defined as “disease-causing organisms, including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.”

21. Pursuant to 40 C.F.R. § 503.13(c), the annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated pursuant to 40 C.F.R. § 503.13(c).

22. Pursuant to 40 C.F.R. § 503.15(b), whenever domestic septage is applied to agricultural land, a forest, or a reclamation site, the requirements of either 40 C.F.R. § 503.32(c)(1) or (c)(2) must be met.

23. Pursuant to 40 C.F.R. § 503.32(c)(1), certain site restrictions set forth in 40 C.F.R. § 503.32(b)(5) apply. These include the following time limitations for harvesting crops, grazing animals, and allowing public access after sludge is applied:

- (i) For 14 months after application, no harvesting food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface,

- (ii) for 20 months after application, no harvesting food crops with harvested parts below the surface of the land, when the sewage sludge remains on the land surface for four months or longer prior to incorporation in the soil,
- (iii) for 38 months after application, no harvesting food crops with harvested parts below the surface of the land, when the sewage sludge remains on the land surface for less than four months prior to incorporation in the soil,
- (iv) for 30 days after application, no harvesting food crops, feed crops, or fiber crops,
- (v) for 30 days after application, no grazing animals on the land,
- (vi) for one year after application, no harvesting turf grown on the land, where the turf is placed on either land with a high potential for public exposure or a lawn,
- (vii) for one year after application, restrict public access to land with a high potential for public exposure, and
- (viii) for 30 days after application, restrict public access to land with a low potential for public exposure.

24. Pursuant to 40 C.F.R. § 503.31(k), “vector attraction” is defined as “the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.”

25. 40 C.F.R §503.33(a)(1) provides that “one of the vector attraction reduction requirements in §503.33(b)(1) through (b)(10) shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.”

26. Pursuant to 40 C.F.R. § 503.17(b), when domestic septage is applied to agricultural land, the person who applies the domestic septage shall develop the following information for each site on which domestic septage is applied and shall retain this information for five years:

- (i) the location, by either street address or latitude and longitude,
- (ii) the number of acres,
- (iii) the application date,
- (iv) the nitrogen requirement for the crop or vegetation grown during a 365-day period,
- (v) the application rate in gallons per acre per 365-day period,
- (vi) the following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in either § 503.32(c)(1) or § 503.32(c)(2), and the vector attraction reduction requirement in § 503.33(b)(9), 503.33(b)(10), or § 503.33(b)(12), was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment;

- (vii) a description of how the pathogen requirements in either 40 C.F.R. § 503.32(c)(1) or (c)(2) are met; and
- (viii) a description of how the vector attraction reduction requirements in 40 C.F.R. § 503.33(b)(9), (b)(10), or (b)(12) are met.

### **EPA's General Allegations**

27. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
28. At all times relevant to this action, Respondent owned, operated, or otherwise controlled the facility located at 14097 Wandcrest Park Road, Bailey, Colorado (the "Facility" or "Site"). Respondent's Facility is a domestic septage disposal facility.
29. 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 sewage sludge to at least one location in the state of Colorado currently used for agriculture.
30. The EPA sent the Respondent a request for information pursuant to section 308 of the CWA, 33 U.S.C. § 1318, on June 29, 2023, to determine compliance with section 405 of the Act, 33 U.S.C. § 1345, and its implementing regulations at 40 C.F.R part 503.
31. The Respondent responded to the EPA's information request on January 26, 2024.
32. In its response to the EPA's information request, the Respondent indicated that it had land applied domestic septage at property classified as agricultural land located at 270 Silver Springs Road, and 14803 S. Wandcrest Park Road, Bailey CO 80421.

### **EPA's Findings**

33. The paragraphs above are restated and herein incorporated.

#### **Count 1**

##### **Failure to Calculate and/or Document Annual Application Rate**

34. Respondent was unable or unwilling to provide documentation of calculation of annual application rates, therefore Respondent failed to calculate and/or failed to document annual application rates in accordance with 40 C.F.R. § 503.13(c) and 40 C.F.R. § 503.17(b)(5).
35. Each instance in which Respondent land applied domestic septage and failed to calculate and/or document an annual application rate in accordance with 40 C.F.R. § 503.13(c) and 40 C.F.R. § 503.17(b)(5) constitutes a separate violation of 40 C.F.R. § 503.13(c), 40 C.F.R. § 503.17(b)(5), and section 405 of the CWA, 33 U.S.C. § 1345.

#### **Count 2**

### **Failure to Meet and/or Document Pathogen Reduction Requirements**

36. Respondent was unable or unwilling to provide documentation of satisfaction of pathogen reduction requirements, therefore Respondent land applied domestic septage that failed to meet and/or Respondent failed to document meeting the pathogen reduction requirements of 40 C.F.R. § 503.13(b) and 40 C.F.R. § 503.17(b)(7).

37. Each instance in which Respondent land applied domestic septage that failed to meet and/or failed to document meeting the pathogen reduction requirements of 40 C.F.R. § 503.13(b) constitutes a violation of 40 C.F.R. § 503.13(b), 40 C.F.R. § 503.17(b)(7) and section 405 of the CWA, 33 U.S.C. § 1345.

### **Count 3**

### **Failure to Meet and/or Document Vector Attraction Reduction Requirements**

38. Respondent was unable or unwilling to provide documentation of satisfaction of the vector attraction reduction requirements, therefore Respondent land applied domestic septage that failed to meet and/or Respondent failed to document meeting the vector attraction reduction requirements of 40 C.F.R. § 503.15(d), 40 C.F.R. § 503.33, and 40 C.F.R. § 503.17(b)(8).

39. Each instance in which Respondent land applied domestic septage that failed to meet and/or failed to document meeting the vector reduction requirements of 40 C.F.R. § 503.13(b) constitutes a violation of 40 C.F.R. § 503.15(d), 40 C.F.R. § 503.33, 40 C.F.R. § 503.17(b)(8) and section 405 of the CWA, 33 U.S.C. § 1345.

### **Order for Compliance on Consent**

40. Based on the EPA Findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), the EPA hereby ORDERS the Respondent, and the Respondent hereby AGREES, to take the actions described below.

41. The Respondent shall submit quarterly reports to the EPA that contain the information required to be developed and maintained pursuant to 40 C.F.R. § 503.17(b) for each load of domestic septage that the Respondent has land applied during that quarter. Quarterly reports are due within 30 days of the final day of each quarter following the Effective Date of the order until the order is terminated. For the purpose of quarterly reporting, the Respondent shall use Attachment 1 for each land application event. The data requirements for each quarterly report shall include the following:

- a. The date(s) and time(s) upon which any location was used for land application of sewage sludge;
- b. The agronomic rate at which the sewage sludge was applied as calculated and the nitrogen requirements for the crop or vegetation grown;
- c. The gallons of sewage sludge applied and percent solids;

- d. A description of how the pathogen and vector requirements were met for each batch of sewage sludge land applied;
- e. A description of any treatment of the sewage sludge prior to land application;
- f. A description of the process used to land apply the sewage sludge. If the sewage sludge was incorporated into the soil, include the amount of time between application and incorporation;
- g. A description of any crop restrictions, grazing restrictions, or site restrictions used at the site as described in 40 C.F.R. § 503.32(b)(5); and
- h. Copies of all sample analyses including dates and methods for sampling, test methods, chain of custody, and holding times.

42. The quarterly reports required above shall describe, in detail, how Respondent has complied with the site restriction requirements for pathogen and vector reduction (i.e., the requirements of 40 C.F.R. § 503.32(b)(5)(i)-(viii), which apply if the Respondent does not adjust pH in accordance with 40 C.F.R. § 503.32(c)(2), or, alternatively, the requirements of 40 C.F.R. § 503.32(b)(5)(i)-(iv), which apply if the Respondent adjusts pH in accordance with 40 C.F.R. § 503.32(c)(2)). The quarterly reports shall include a description of site access restrictions, fencing, and signage, and a description of the nature and uses of the surrounding properties.

43. If the Respondent does not land apply domestic septage during a calendar quarter, the Respondent's report for that quarter shall state that the Respondent did not land apply domestic septage.

44. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject the Respondent to penalties as provided under the section 309(d) of the Act, 33 U.S.C. § 1319(d).

45. This Consent Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(g) of the Act, 33 U.S.C. § 1319(g), as adjusted for inflation by 40 C.F.R. part 19, authorizes administrative penalties of up to \$26,685 per day for each day for which a violation continues. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes civil penalties of up to \$66,712 per day for each violation of the Act. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

46. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve the Respondent of its obligation to comply with any applicable federal, state, or local law, permit, or regulation.

47. The undersigned representative of the Respondent certifies that it is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent to the terms and conditions of this Consent Order.

48. By signing this AOC, Respondent acknowledges that this AOC may be available to the public and represents that, to the best of Respondent's knowledge and belief, this AOC does not contain any confidential business information or personally identifiable information from Respondent.

**Reports/Submissions**

49. Submittals. All documents required to be submitted to EPA by this Order, including the certification statement in Paragraph 52 below, shall be submitted by electronic mail to:

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

50. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard copy to the address provided above.

51. All documents required to be submitted pursuant to this Order shall also be submitted by electronic mail EPA Region 8 to the address provided below:

Brit Rustad,  
rustad.brit@epa.gov  
U.S. Environmental Protection Agency Region 8  
Enforcement and Compliance Assurance Division  
1595 Wynkoop Street  
Denver, Colorado 80202

52. Each submission requirement of this Order shall contain the following certification signed by an authorized official, as described at 40 C.F.R. § 122.22:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



### **General Provisions**

#### **Effect of Compliance with the Terms of this Order for Compliance**

53. Respondent's failure to comply with the terms of this Section 309(a)(3) Administrative Order on Consent may result in liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the Act and failed to comply with the terms of the Order.

54. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.

55. The provisions of this AOC shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of the Respondent.

56. 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. The 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 the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

57. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and associated with the implementation or enforcement of this AOC, including any costs related to resolution of any dispute arising regarding this AOC.

### **Access and Requests for Information**

58. Nothing in this Order shall limit the 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**

59. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judiciary authority 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**

60. 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 the EPA.

**Modification**

61. At the EPA's sole discretion, extensions of the compliance schedules / deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA's consent for a requested extension will not be unreasonably withheld. All other modifications to this Order may only be made by mutual agreement of the parties, pursuant to a written amendment signed by each party.

**Termination**

62. This Order shall remain in effect until terminated by an authorized representative of the EPA.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Cozad  
Director  
Enforcement and Compliance Assurance Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kristina Gonzales  
Office of Regional Counsel

**For the Respondent, aSkag LLC:**

05/01-2025  
Date

  
Signature

Adam Shirley  
Printed Name

Owner  
Title

## CERTIFICATE OF SERVICE

I certify that on the date noted below I delivered a true and correct copy of the Administrative Order on Consent in the following manner to the addressees:

Regional Hearing Clerk:

U.S. Environmental Protection Agency Region 7  
*R7\_Hearings\_Clerk\_Filings@epa.gov*

Copy emailed to Respondent:

Adam Shirley  
*adam@sspwaste.com*  
aSkag LLC  
14097 Wandcrest Park Drive  
Bailey, Colorado 80421

Copy emailed to Attorney for Complainant:

Kristina Gonzales  
*Gonzales.kristina@epa.gov*  
U.S. Environmental Protection Agency Region 7

Carrie Venerable | New Solutions Workforce  
*Venerable.Carrie@epa.gov*  
U.S. Environmental Protection Agency Region 7

Copy emailed to the Colorado Department of Public Health and Environment:

Heather Young  
*heather.young@state.co.us*  
Colorado Department of Public Health and Environment

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Date