

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-07-2020-0101
)
Respondent)
)
Proceedings under) FINDINGS OF VIOLATION AND
Section 309(a) of the Clean Water Act,) ADMINISTRATIVE ORDER
33 U.S.C. § 1319(a)) FOR COMPLIANCE ON CONSENT
)
_____)

I. Preliminary Statement

1. The FINDINGS OF VIOLATION are made and the ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT is issued pursuant to the authority vested in the Administrator of 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), as delegated by the Administrator to the Regional Administrator, EPA, Region 7, to implement EPA’s Biosolids Center of Excellence and further delegated to the Director, Enforcement and Compliance Assurance Division, EPA, Region 7.
2. Respondent is the City of Clanton (hereafter “Respondent”), a municipality organized under the laws of the state of Alabama.
3. EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” and the proper use and disposal of sewage sludge.
4. It is the Parties’ intent through entering into this Order to address Respondent’s alleged noncompliance with the CWA and violation of its National Pollutant Discharge Elimination System (“NPDES”) permit. 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 NPDES permit.
5. By entering into this Order on Consent, Respondent (1) consents to and agrees not to contest the EPA’s authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on

Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein. Respondent also 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.

II. Jurisdiction and Finding of Fact

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 Section 405, 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. 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.

18. 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.

19. 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.

20. 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.

21. 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/Preparer on its own land.

22. 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).

23. 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.

24. Respondent reported in 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 on its own land as of the April 24, 2019, date of the Information Request.

25. 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).

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

27. 40 C.F.R. § 503.13(a) states that bulk sewage sludge 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.

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

III. Findings of Violation

29. Based on the review of available information, EPA alleges that Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e), and the terms and conditions of its NPDES permit.

30. Respondent land applied approximately one hundred and twenty-seven (127) 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.

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

IV. Order for Compliance

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

33. Immediately upon the Effective Date of this Order, Respondent shall take whatever actions are necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance Section 405(e) of the CWA and with all the applicable requirements of its NPDES permit.

34. Within thirty (30) calendar days of receipt of this Order, Respondent shall provide EPA a proposed Compliance Plan, for EPA's review and approval, which shall describe in detail how Respondent intends to eliminate future violations of its NPDES permit. At a minimum, the proposed Compliance Plan shall include:

- a. A description of actions Respondent proposes to undertake at the Walnut Creek WWTP to remove solids from the influent prior to the plant lift station or installation of an additional clarifier or the increase to the WWTP capacity for drying and storing of sewage sludge, and continuing to ensure metals ceiling concentrations are met for land applied sludge; and
- b. The schedule for implementation shall address a timeline for the proposed Walnut Creek WWTP modification(s) and summary of action to ensure ceiling concentrations are met for land applied sewage sludge. The schedule for implementation shall include a date for completion as reasonable as possible, but in no event later than March 31, 2023.

35. EPA will review the proposed Compliance Plan, as described in Paragraph 34 above, and notify Respondent in writing of EPA's approval, disapproval, or modification of the submittal, or any part thereof. Upon receipt of EPA's approval or notice of modification(s), Respondent shall commence work and implement any approved submittal in accordance with the schedule and provisions contained therein. EPA approved submittals shall be deemed incorporated into and enforceable as part of this Order.

36. With each submittal to EPA pursuant to the requirements of this Order the Respondent shall include a written statement signed by a principal executive officer or ranking elected official, or by a duly authorized representative of that person, that contain the following certification:

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 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.

Submissions

37. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Erin Kleffner
Water Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

38. A copy of documents required to be submitted to Alabama Department of Environmental Quality by this Order, shall be submitted by mail to:

Emily Anderson
Municipal Section Chief
Water Division
Alabama Department of Environmental Quality
P.O. Box 301463
Montgomery, AL 36130-1463.

V. General Provisions

Effect of Compliance with the Terms of this Order for Compliance

39. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to correct the violations described above, including, but not limited to, actions to protect the health or welfare of persons or the environment, or 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.

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

Access and Requests for Information

41. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

42. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial 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

43. This Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated there from unless otherwise provided in this Order.

Termination

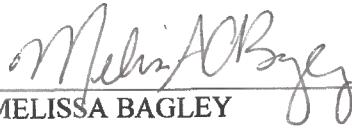
44. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Issued this 18th day of February, 2020.



DAVID COZAD
Director
Enforcement and Compliance Assurance Division



MELISSA BAGLEY
Senior Counsel
Office of Regional Counsel

FOR THE CITY OF CLANTON, ALABAMA

Billy Joe Driver
Signature

2-10-2020
Date

mayor - clanton
Title

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class 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

2/24/2020
Date

