

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

IN THE MATTER OF)
)
ADAMAS CONSTRUCTION AND) AMENDED COMPLAINT AND
DEVELOPMENT SERVICES, PLLC) NOTICE OF OPPORTUNITY FOR
HEARING
)
AND)
)
NATHAN PIERCE,)
)
Respondents) Docket No. CWA-07-2019-0262
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))

AMENDED 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 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. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondents, Adamas Construction and Development Services, PLLC, (Adamas) and Nathan Pierce have violated Section 405 of the CWA, 33 U.S.C. § 1345 and the regulations promulgated thereunder and codified at 40 C.F.R. Part 503.

Parties

3. 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, as the national-program manager for the Biosolids Center, who in turn has delegated it to the Director of Enforcement and Compliance Assurance Division of EPA Region 7 (Complainant).

4. Respondents are Adamas, a professional limited liability company, under the laws of the state of Montana, and Nathan Pierce.

Statutory and Regulatory Framework

5. 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.

6. 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 any person who prepares sewage sludge or applies sewage sludge to the land. 40 C.F.R. §§ 503(a) and (b).

7. The Northern Cheyenne Indian Tribe 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 on the Northern Cheyenne Indian Reservation.

8. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), prohibits the disposal of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage sludge for any use for which regulations have been established pursuant to subsection (d) of that Section by any person, except in accordance with such regulations.

9. 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).

10. 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.

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

12. Pursuant to Section 503(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 503.9(q), a “person” is defined to include an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

13. Pursuant to 40 C.F.R. § 503.7, any person who prepares sewage sludge shall ensure that the applicable requirements in this part are met when the sewage sludge is applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.

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

15. Pursuant to 40 C.F.R. § 503.9(z), “treat or treatment of sewage sludge” is the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

16. Pursuant to 40 C.F.R. § 503.10(a), this subpart [Part 503] applies 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 on the land, and on the land on which sewage sludge applies.

17. 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 the crops or vegetation grown in the soil.

18. Class B sewage sludge is defined as the geometric density of fecal coliform less than 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis). 40 C.F.R. § 503.32(b)(2)(ii).

19. Pursuant to 40 C.F.R. § 503.17 (a)(5)(ii), the person who applies the bulk sewage sludge shall develop the following information, retain the information in § 503.17(a)(5)(ii)(A) through (a)(5)(ii)(G) indefinitely, and retain the information in § 503.17(a)(5)(ii)(H) through (a)(5)(ii)(M) for five years.

20. Also pursuant to 40 C.F.R. § 503.17(a)(5)(ii), the following records shall be retained by the person who applies bulk sewage sludge:

- a. The location, by either street address or latitude and longitude, of each site on which bulk sewage sludge is applied.
- b. The number of hectares in each site on which bulk sewage sludge is applied.
- c. The date bulk sewage sludge is applied to each site.
- d. The cumulative amount of each pollutant (i.e. kilograms) listed in Table 2 of § 503.13 in the bulk sewage sludge applied to each site, including the amount in § 503.12(e)(2)(iii).
- e. The amount of sewage sludge (i.e. metric tons) applied to each site.
- f. The following certification statement: *I certify, under penalty of law, that the information that will be used to determine compliance with the requirement to obtain information § 503.12(e)(2) was prepared for each site on which bulk sewage sludge was applied 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.*
- g. A description of how the requirements to obtain information in § 503.12(e)(2)

are met.

- h. The following certification statement: *I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in § 503.14 was prepared for each site on which bulk sewage sludge was applied 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.*
- i. A description of how the management practices in §503.14 are met for each site on which bulk sewage sludge is applied.
- j. The following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in § 502.32(b): I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in §503.32(b)(5) for each site on which Class B sewage sludge was applied was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information.
- k. A description of how the site restrictions in § 503.32(b)(5) are met for each site on which Class B bulk sewage sludge is applied.
- l. The following certification statement when the vector attraction reduction requirement in either § 503.33(b)(9) or (b)(10) is met: *I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in (insert either § 503.33(b)(9) or § 503.33(b)(10)) 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.*
- m. If the vector attraction reduction requirements in either § 503.33(b)(9) or (b)(10) are met, a description of how the requirements are met.

21. Pursuant to 40 C.F.R. § 503.11(b), “agronomic rate” means the whole sludge application rate (dry weight basis) designed: (1) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and (2) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.

22. Section 308 of the CWA, 33 U.S.C. § 1318 provides EPA the authority to request and have access to and a copy of any records required under Section 1318(a)(A) of the CWA.

23. 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 308, 33 U.S.C. § 1318, or Section 405 of the CWA, 33 U.S.C. § 1345.

Factual Background

24. Section 405 of the CWA and the biosolids regulations created a self-implementing and self-monitoring program intended to ensure that sewage sludge is disposed in a manner that protects human health and the environment.

25. Respondent Adamas is a professional limited liability that was registered in the state of Montana. Respondent Adamas' website states that it provides start to finish onsite water management services.

26. Although the currently available information states that Respondent Adamas involuntarily dissolved on September 1, 2018, Respondent Adamas' website is still active. <http://www.biomicrobicsmontana.com/projects/> (accessed August 2019). Further, Respondent Adamas, or Nathan Pierce on Adamas' behalf, is a party in active litigation with Indian Health Services.

27. Respondent Adamas is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 503.9(q).

28. Respondent Nathan Pierce is a private individual who is the sole member¹ of Adamas.

29. Respondent Nathan Pierce is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 503.9(q).

30. Respondent Nathan Pierce controlled the activities of Adamas at all times relevant to this action.

31. At all times relevant to this action, Respondent Mr. Pierce held himself out to the EPA and Indian Health Service as the primary contact of Adamas for environmental compliance.

32. At all times relevant to this action, Mr. Pierce managed, directed, or made decisions about environmental compliance for Adamas.

33. At all times relevant to this action, Respondents were the "operators" of the Lame Deer Publicly Owned Treatment Works (POTW), a "point source" as defined by 33 U.S.C. §502(14) and as referenced in 33 U.S.C. § 1318(a)(A).

34. The Lame Deer POTW discharges wastewater into Lame Deer Creek pursuant to an NPDES Permit.

35. At all times relevant to this action, Respondents were the "preparers~~s~~ of sewage sludge" as that term is defined in 40 C.F.R. § 503.9(r).

36. At all times relevant to this action, Respondent Adamas was a subcontractor of the Northern Cheyenne Utilities Commission (NCUC).

¹ Owners of a PLLC are often called members.

37. Respondents Adamas and NCUC entered into a contract for Respondents to land apply sewage sludge generated by NCUC.

38. On or about the week of July 9, 2018, Respondents pumped and dewatered approximately 1,000,000 gallons of Class B sewage sludge from Cell #2 of the Lame Deer treatment lagoon.

39. On or about August 22, 2018, Respondents or their subcontractors, applied approximately 1,000,000 gallons of Class B sewage sludge from Cell #2 of the Lame Deer treatment lagoon to land application property in or near Lame Deer, Montana.

40. On or about August 28, 2018, Indian Health Service visited the land application property after receiving a complaint from the landowner regarding the application.

41. On August 29, 2018, Indian Health Service observed, as noted in its site report, that the sludge was not appropriately spread during land application.

42. On August 28, 2018, Indian Health Service observed, as noted in its site report, that the Respondents refused to provide target application rates for the sludge, laboratory tests, and application logs to the landowner.

43. On September 25, 2018, EPA issued Respondent Adamas a CWA Section 308, 33 U.S.C. § 1318, information request for information related to the August 22, 2018, land application of sewage sludge. On October 17, 2018, Respondent Adamas requested an extension to respond and was granted a 30-day extension on October 29, 2018. On March 7, 2019, EPA sent a letter to Respondents requesting a response to the information request and notifying Respondents of the violations associated with improper land application of sewage sludge and failure to respond to the information request and a potential enforcement action associated with those violations.

44. On June 11, 2019, after Respondents failed or refused to respond to the EPA's September 28, 2018 information request, EPA again issued the March 7, 2019 EPA correspondence to Respondents by electronic mail through the listed counsel.

45. Respondents provided an incomplete response to the June 11, 2019, Section 308 information request on July 2, 2019. The Respondents failed or refused to provide a response that contained the following information Respondents are required to develop and maintain by 40 C.F.R. § 503.17(5)(ii):

- a. The street address or legal description of the location;
- b. The date(s) upon which the location was used for the land application of biosolids;
- c. The number of acres upon which biosolids were land applied;
- d. The number of loads applied;
- e. A description of how the site restrictions of 40 C.F.R. § 503.32(b)(5) were met; and
- f. The annual application rate of biosolids as calculated.

46. At all times relevant to this action, Respondents were persons who “applied sewage sludge” pursuant to 40 C.F.R. § 503.10(a).

47. At all times relevant to this action, Respondents were persons who “prepared sewage sludge” pursuant to 40 C.F.R. § 503.7.

48. Based on the information provided in response to the Section 308 information request, the sewage sludge applied was Class B sewage sludge.

49. 40 C.F.R. § 503.17 requires Respondents to keep certain records. The documentation requirements of 40 C.F.R. § 503.17(5) allow the EPA to evaluate compliance. The intent of the statute and the regulations is thwarted when a land applicer fails or refuses to develop and maintain documentation necessary to ensure proper land application and evaluation of compliance.

50. In this instance, the EPA believes it is highly likely the Respondents failed to apply the Lame Deer Treatment Plant sewage sludge at agronomic rates and in a manner that protects human health and the environment. However, the Respondents’ failure to develop and maintain required documentation and/or refusal to fully comply with EPA’s information requests make it impossible for EPA to evaluate Respondents’ compliance or possible threats to human health and the environment.

51. To date, despite repeated requests pursuant to Section 308 of the CWA, Respondents have not provided records it is required to develop and maintain to EPA.

Findings of Violation

Claim 1: Failure to Develop and Maintain Records

52. Paragraphs 1 through 51 are incorporated by reference herein.

53. Based on the information available to EPA, Respondents have failed to develop and maintain records required by 40 C.F.R. § 503.17.

54. Respondents’ failure to develop and maintain these records is a violation of Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503.

Claim 2: Failure to Provide Records

55. Paragraphs 1 through 54 are incorporated by reference herein.

56. Respondents did not provide a complete and timely response to the September 25, 2018 or the June 11, 2019, Information Requests sent by EPA pursuant to authority of Section 308 of the CWA, 33 U.S.C. § 1318.

57. Respondents' failure to provide records as requested by EPA and required by the CWA is a violation of Section 308 of the CWA, 33, U.S.C. § 1318.

Relief

58. For violations of CWA Sections 405, 33 U.S.C. § 1345, Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum total penalty of \$125,000. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule of 2019, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701), and pursuant to EPA's implementing regulations at 40 C.F.R. Part 19, civil administrative penalties may be assessed in the following amounts: for violations on or before November 2, 2015, up to \$16,000 per day for each day during which a violation continues; for violations after November 2, 2015, up to \$21,933 per day for each day during which a violation continues; and for penalties assessed on or after January 15, 2019, up to a maximum total penalty of \$274,159.

59. Based on the foregoing Findings of Violations, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA Region 7 hereby proposes to issue a Final Order Assessing an Administrative Penalty against the Respondents for the violations cited above, in the amount of \$59,583.

60. The proposed penalty is based upon the facts stated in this Complaint, the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violation, the degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require.

61. The penalty proposed in this Complaint is based upon the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the Respondents establish bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

62. As required by Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter, and present evidence in the event a hearing is held.

63. EPA Region 7 has notified EPA Region 8 and the Northern Cheyenne Tribe regarding this proposed action by mailing a copy of this document to the appropriate contacts.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

64. Respondents may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules, a copy of which is enclosed herein.

65. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondents must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondents have any knowledge, or shall clearly state that Respondents have no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondents dispute; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested. Said answer shall be filed with the following:

Regional Hearing Clerk
U. S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

66. Failure to admit, deny or explain any material factual allegation in this Complaint constitutes an admission of the allegation.

67. A hearing upon the issues raised by this Complaint and the answer may be held if requested by Respondents in the answer. If Respondents do not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

68. In any hearing on the proposed penalty for this Complaint, members of the public to whom EPA is obligated to give notice of this proposed penalty action, will have the right, under Section 309(g) (4) (B) of CWA, 33 U.S.C. § 1319(g) (4) (B), to be heard and present evidence on the merits of the proposed CWA penalty assessment. If no hearing is held, EPA will issue a Final Order Assessing Administrative Penalties pursuant to the CWA, and only members of the public who submitted timely comments on the proposed penalty assessment will have an additional thirty (30) days to petition to set aside the said Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioners' evidence is material and was not considered by EPA in the issuance of the Final Order.

69. If Respondents fail to file a written answer within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, Respondents may be found in default. Such default by Respondents constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed herein shall become due and payable unless the record clearly demonstrates that the requested relief is inconsistent with the CWA.

70. Whether or not Respondents request a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Sara Hertz Wu
Senior Counsel
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Telephone: (913) 551-7955

71. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

72. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order (CAFO) issued by the Regional Judicial Officer, EPA Region 7. The issuance of such a CAFO shall constitute a waiver of Respondents' right to request a hearing on any matter stipulated therein.

12/17/19
Date



David Cozad
Director
Enforcement and Compliance Assurance Division

12/17/19
Date



Sara Hertz Wu
Senior Counsel

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I hand delivered the original and one true copy of this Amended Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Amended Complaint and Notice of Opportunity for Hearing and a copy of 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, to the following person:

Nathan Pierce
Adamas Construction and Development Services, PLLC
16550 Cottontail Trail
Shepherd, Montana 59079

I further certify that on the dated noted below I sent a copy of the foregoing Complaint and Notice of Opportunity for Hearing by first class mail to the following persons:

Chris J. Gallus, Attorney at Law
1423 East Otter Road
Helena, Montana 59602

Stephanie DeJong
Colleen Rathbone
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

The Honorable Rynalea Whiteman Pena, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, Montana 59043

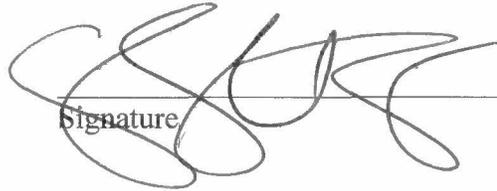
I further certify that on the dated noted below I sent a copy of the foregoing Complaint and Notice of Opportunity for Hearing by electronic mail to the following persons:

Charlene Alden, Director,
Northern Cheyenne Tribe Department of Environmental Protection and Natural
Resources
charlene.alden@cheyennenation.com

James Courtney, Environmental Engineer, Indian Health Service
James.courtney@ihs.gov

Jim White, Director, SFC, DSFC, Indian Health Service
Jim.white@ihs.gov

12/17/19
Date


Signature

Sara Hertz Wu
Printed Name