

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

IN THE MATTER OF)
)
ADAMAS CONSTRUCTION AND)
DEVELOPMENT SERVICES, PLLC)
)
AND)
NATHAN PIERCE,)
)
Respondents)
Proceedings under Section 309(g) of)
the)
Clean Water Act, 33 U.S.C. § 1319(g))
)
)

RESPODENT’S MOTION
TO DISMISS
Docket No. CWA-07-2019-
0262

RESPONDENT’S MOTION TO DISMISS

Comes Now, The RespondentS, Adamas Construction And Development Services, Pllc and Nathan Pierce (hereafter “Respondent”), Pro Se, and pursuant to 40 C.F.R. §§ 22.16(a) and 22.20(a), and Fed. R. Civ. P. 12(h)(3); and Rule 12(b)(1), files this Motion requesting that the Honorable Presiding Officer issue an Order dismissing this action, because Complainant has failed to demonstrate that the Environmental Protection Agency (“EPA”) has jurisdiction to initiate the penalty proceeding. Specifically, Complainant has failed to establish the existence of Subject Matter Jurisdiction, and the Complainant has failed to establish such a prima facie case or there are other grounds which show no right to relief on the

part of the Complainant and the Complaint is demonstrably facially false, as such the Respondents submits this Motion to Dismiss based on the information that follows;

INTRODUCTION

1. A. 12(b)(1) Motions The Consolidated Rules of Practice provide that “[t]he Presiding Officer, upon motion of respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of complainant.” 40 C.F.R. § 22.20(a) (emphasis added). Section 22.14 of the Rules of Practice requires a complaint to include, among other elements, “[a] concise statement of the factual basis for each violation alleged.” 40 C.F.R. § 22.14(a)(3). A respondent may challenge the sufficiency of a complaint pursuant to Section 22.20, which authorizes the presiding Administrative Law Judge to dismiss a proceeding, upon motion of the respondent, “on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.” 40 C.F.R. § 22.20(a). The Complainant in this case has failed to establish such a prima facie case or there are other grounds which show no right to relief on the part of the Complainant, as they fail to allege the critical elements of liability that would entitle them to relief,

among other things.

Background

2. This proceeding was initiated on September 16, 2019, by Complainant, the United States Government (“USA GOV”), by and through the Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency (“EPA”), Region 7, filing a Complaint and Notice of Opportunity for Hearing (“Complaint”) against Respondents, Adamas Construction and Development Services, PLLC, and Nathan Pierce, pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, 33 U.S.C. § 1319(g), alleging the respondent failed to respond to a request for information pursuant to the CWA.
3. Through counsel, Respondents filed an Answer and Request for Hearing on October 16, 2019. In its Prehearing Exchange the Respondent submitted exhibits in defense of their claim they had not made any violations. See Respondents Prehearing exchange and supplemental exhibits.
4. In its Initial Prehearing Exchange, Complainant submitted many exhibits and named several witnesses in its attempt to establish jurisdiction. See Complainant Prehearing Exchange exhibits.

5. Complainant filed an Amended Complaint on January 2, 2020.
6. The Complainant filled a motion for Accelerated Decision for the determination of liability On May 1, 2020.
7. The court issued an order Denying the Complainants Motion and the Respondents Motion to Dismiss on April 20, 2022.
8. The time for both parties to file dispositive and non-dispositive motions ordered by this court has passed and therefore leave of this court is necessary.
9. The hearing on this matter has been scheduled for the week of August 22, 2022.

For the reasons listed herein the respondent request that is case be dismissed as a matter of justice;

Arguments

10. Failure to Establish a Prima Facie Case

This motion is based on the contention that EPA failed to establish a prima facie case or failed to establish other grounds to show a right to relief. Should be dismissed “on the basis of failure to establish a prima facie or other grounds which show no right to relief on the part of the complainant." Id. There are no set of facts alleged in the Complaint or Amended Complaint that could establish a violation on the part of the

Respondents. Section 22.14 of the Rules of Practice requires a complaint to include, among other elements, “[a] concise statement of the factual basis for each violation alleged.” 40 C.F.R. § 22.14(a)(3). A respondent may challenge the sufficiency of a complaint pursuant to Section 22.20, which authorizes the presiding Administrative Law Judge to dismiss a proceeding, upon motion of the respondent, “on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.” 40 C.F.R. § 22.20(a). The Complainant in this case has failed to establish such a prima facie case or there are other grounds which show no right to relief on the part of the Complainant, as they fail to allege the critical elements of liability that would entitle them to relief, among other things. As the tribunal noted in its AD order, the “Complainant has not alleged any facts in the Amended Complaint from which to conclude that Respondents were operators of the Facility other than the allegation in paragraph 38 that “on or about the week of July 9, 2018, Respondents pumped and dewatered approximately 1,000,000 gallons of sewage sludge from Cell #2 of the Lane Deer treatment lagoon.” Amended Compl. ¶ 38. Complainant in several filings before this court asserts that Ms. Bement’s testimony would help resolve the question of whether Respondents were an “operator” at the Site. As Complainant notes, such a determination is central to its charge that Respondents violated the

recordkeeping requirements of Section 308 of the CWA, 33 U.S.C. § 1318. However, the Complainant has informed the Respondents that they will not be calling Ms. Bement as a witness and the remaining witness the Complainant intends to call will not be able to resolve this question as they were not representatives for NCUC, therefore the Complainant will not be able to demonstrate the Respondents were operators and fail to point to any evidence in the record to support such a claim and therefore they cannot prove they are entitled to the relief they seek in their claim. The Respondent also feel the decision to not call Ms. Bement is, dirty play by the Complainant to limit the evidence or testimony in this case and to go against due process and fundamental fairness in this case. If the Complainant has evidence that would go against their own claim they have an obligation to disclose it rather than limit that evidence.

According to the EPA's own "A Plain English Guide to the EPA Part 503 Biosolids Rule", part 503 does not have requirements for Treatment of Biosolids and describes it as the Processes used to treat sewage sludge prior to final use or disposal (e.g.. thickening, dewatering, storage, heat drying), it also says there are no applicable federal regulations, as these are the alleged actions of the Respondent as described by the Complainant they are not entitled to the relief they seek. (See Respondents Prehearing exhibits Pg 11 Figure 1-2) Therefore the

Claimant has not and will not be able to meet the element necessary to prove the elements of liability already discuss by this court in it Accelerated Decision Order and they are not entitled to the relief they request. As complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face and the Complaint fails to meet this standard this matter should be dismissed. As for Claim One, as note in the courts AD order, The Complainant “has not pointed to any proposed evidence in the record, or even seemingly alleged any facts in the Amended Complaint, in support of the third, fourth, and fifth elements of liability such that the recordkeeping requirements of 40 C.F.R. § 503.17(a)(5)(ii) would be invoked here and fails to establish sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. As such the Complainant has failed to establish such a prima facie case or there are other grounds which show no right to relief on the part of the Complainant, as they fail to allege the critical elements of liability that would entitle them to relief, among other things.

11. Complainants’ complaint is demonstrably and facially false

The EPA brings this complaint against the respondent claiming the respondent failed to respond to a request for information pursuant to the provision of the CWA. As demonstrated by the attached letters that the respondents attorney sent to EPA Administrator, Jeffery Robichaud, not

only did the respondent respond, but the respondent reserved the right to even be obligated to respond and attempted to be cooperative by informing or alerting the EPA that the Northern Cheyenne Utility Commission (NCUC) was the Prime contractor and the NPEDS permit holder for this project and under the Doctrine of Respondeat Superior, the NCUC was responsible to respond to the requested information.

(SEE Respondent Motion to Dismiss Exhibit - RMDX3) The Respondent also provided the EPA with many emails and other documents that clearly show the NCUC was told by many agencies of the US Government including IHS and the EPA that, "They", the NCUC had the ultimate responsibility to comply with all applicable EPA rules and regulation.

Clearly the Respondent did reply to the request for information and the Complainant will be unable to prove otherwise. Also, in filings to this Court the Complainant has admitted to receiving the information they sought from other parties, parties the respondent directed the Complainant to for them to obtain the information they sought. . There are no set of facts alleged in the Complaint or Amended Complaint that could establish a violation on the part of the Respondents. As such this case should be dismiss in the interest of justice.

12. Because its conduct has been oppressive and dishonest, the United states government by and through the USEPA must pay the reasonable

attorney's fees incurred defending this suit. Attorney fees have been awarded to other defendant for these very same reasons in other case involving the USEPA and they should be awarded to the Defendant in this case. [United States v. Lipar, No. H-10-1904, 2015 U.S. Dist. LEXIS 115821 \(S.D. Tex. Aug. 30, 2015\)](#)

13. For the above stated reasons, the Respondent, respectfully request the court grant the respondents motion to dismiss this matter with prejudice and to grant the respondent attorney fees and costs associated with this matter.

RESPECTFULLY SUBMITTED this 19th day of July 2022.

Nathan Pierce

Nathan Pierce
Respondent
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Email: adams.mt.406@gmail.com

CERTIFICATE OF SERVICE

I certify that the foregoing Respondent's MOTION FOR LEAVE TO FILE OUT OF TIME, Docket No. CWA-07-2019-0262, has been submitted to Judge Coughlin electronically using the OALJ E-Filing System. A copy was sent by email to:

Copy by Electronic Mail to:
Christopher Muehlberger, Esq.
Katherine Kacsur, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
Email: muehlberger.christopher@epa.gov
Email: kacsur.katherine@epa.gov
Attorneys for Complainant
Date: Tuesday, July 19th, 2022

Nathan Pierce

/s/ Nathan Pierce

Nathan Pierce

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