UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

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| IN THE MATTER OF | ) | Docket No.CWA-7-2002-0211 |
| | ) | |
| The City of Cuba, Missouri | ) | |
| Respondent | ) | FINDINGS OF VIOLATION |
| | ) | AND ORDER FOR COMPLIANCE |
| Proceedings under Section 309(a)(3) | ) | |
| of the Clean Water Act, | ) | |
| 33 U.S.C. § 1319(a)(3) | ) | |
| | ) | |

## I. Statutory Authority

This FINDINGS OF VIOLATION is made and ORDER FOR COMPLIANCE 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" or the "Act"), 33 U.S.C. § 1319(a)(3), as delegated by the Administrator to the Regional Administrator, EPA Region VII, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA Region VII.

## II. Background

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the Act, 33 U.S.C. § 1342. Section 402 of the Act 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.

2. The Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal NPDES program pursuant to Section 402 of the Act, implementing regulations, and a Memorandum of Understanding between EPA and MDNR, dated October 30, 1974. The EPA maintains concurrent authority with authorized state programs for violations of NPDES permits.

3. Section 405(d)(1) of the Act, 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.

4. Pursuant to Sections 405(d)(1) of the Act, EPA promulgated the regulations governing the Standards for the Use or Disposal of Sewage Sludge, which are set forth at 40 C.F.R. Parts 501 and 503, on February 19, 1993. Said Standards became effective March 22, 1993. These regulations include record keeping 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.

5. The State of Missouri has not been authorized to administer the Sludge Management Program, however, by an agreement between EPA Region VII, the State of Missouri, and the Missouri Department of Natural Resources (MDNR) has undertaken certain administrative functions of the program, including the establishment of sewage sludge disposal requirements pursuant to 40 C.F.R. Parts 501 and 503 in state issued NPDES permits. EPA remains responsible for enforcement of the requirements of the Federal Sludge Management Program until such time as the State would be authorized to administer the program in its entirety.

## III. Findings of Violation

6. The City of Cuba, Missouri, ("Respondent"), a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), owns and operates a "treatment works treating domestic sewage" as defined by 40 C.F.R. §122.2. Respondent is therefore subject to the provisions of the Act.

7. Respondent generates "sewage sludge" that is used for "land application" on "agricultural land," as these terms are defined by 40 C.F.R. §§ 503.9(w), 503.11(h) and 503.11(a), respectively. Respondent land applies its sewage sludge at locations identified and numbered as Fields 1 through 6,

8. On June 29, 2001, MDNR modified Respondent's NPDES Permit Number MO0094919, to include the requirements for Sludge & Biosolids from Domestic Wastewater Treatment Facilities, incorporating the requirements of Section 405 of the Act, 33 U.S.C. § 1345, and the implementing federal regulations at 40 C.F.R. Part 503.

9. Respondent is required by its NPDES Permit Number MO0094919 to submit an annual report to MDNR each year regarding its sludge activities for the preceding calendar year.

10. Pursuant to the requirements of 40 C.F.R. Part 503 and NPDES Permit Number MO0094919, Respondent has submitted annual reports covering each of the calendar years 1997 through 2001. Each report contains summaries of Respondent's testing results and application information for sludge.

11. On or about March 6, 2002, EPA issued Respondent a request for information, pursuant to the authority of Section 308(a) of the Act, 33 U.S.C. § 1318(a). This request for information required Respondent to submit certain information to EPA regarding compliance with its NPDES Permit Number MO0094919 and the requirements of Section 405 of the Act and 40 C.F.R. Part 503.

12. Respondent's undated response (hereafter "Response") to the information request referenced in Paragraph 11 above was received by EPA on April 2, 2002.

**COUNT I**

13. The facts stated in Paragraphs 1 through 12 are hereby incorporated by reference.

14. Table 1 of 40 CFR § 503.13 establishes ceiling concentrations for numerous pollutants. The ceiling concentrations include a limit for Nickel at 420 milligrams per kilogram, dry weight (mg/kg). 40 CFR § 503.13(a) states that bulk sewage sludge shall not be applied to land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of § 503.13.

15. The annual reports and Response submitted by Respondent indicate that laboratory analysis of the Respondent's sludge done on December 1, 1999 showed Respondent's sludge contained 467.7 mg/kg nickel.

16. During the period in 1999 and 2000 that Respondent's sampling demonstrates that Respondent's sludge exceeded the allowable ceiling concentration for nickel, Respondent land applied sludge on at least 21 occasions, in violation of § 503.13(a).

17. The annual reports and Response submitted by Respondent indicate that laboratory analysis of the Respondent's sludge of a sample taken on September 12, 2001 contained 565.66 mg/kg nickel.

18. During the period in 2001 that Respondent's sampling demonstrates that Respondent's sludge exceeded the allowable ceiling concentration for nickel, Respondent land applied sludge on at least 10 occasions, in violation of § 503.13(a).

## IV. Order for Compliance

Based on the foregoing FINDINGS OF VIOLATION and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED AS FOLLOWS:

1. Immediately upon receipt of this Order, Respondent shall comply with the requirements of 40 C.F.R. Part 503, including, but not limited to meeting all ceiling concentrations for land application of sewage sludge in accordance with Table 1 of 40 C.F.R. § 503.13.

2. Within ninety (90) days of receipt of this order Respondent shall develop and submit to EPA Region VII for approval a work plan that will detail policy and procedures for ensuring that all land applied sludge meets the ceiling concentrations for land application of sewage sludge in accordance with Table 1 of 40 C.F.R. § 503.13.

3. Within ninety (90) days of receipt of this Order Respondent shall develop and submit to EPA Region VII a metals sampling plan of its sludge. The sampling plan shall be subject to review and approval in accordance with Paragraph 4 below.

4. All documents required to be submitted to EPA Region VII for review and approval by this Order for Compliance shall be submitted to the addresses listed in paragraph IV.2 below. Respondent shall upon receipt of comments from EPA:

(a) if directed to modify the document by EPA's response, resubmit the document with such modifications to EPA Region VII within fifteen (15) days of receipt of EPA's comments (or such other time as directed in writing by EPA); and

(b) when directed by EPA's response, execute the provisions of the document as directed by this Order.

## IV. General Provisions

1. The provisions of this Order are severable. If any provision of this Order is determined to be unenforceable, the remaining provisions shall remain in full force and effect.

2. All correspondence, documents and reports required to be submitted pursuant to this Order to EPA or MDNR shall be sent to the following:

Cynthia Sans
NPDES and Facilities Management Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

Mr. Kevin Mohammadi, Chief
Enforcement Section
Bureau of Water
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

3. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 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 Act, 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 Act for any violation whatsoever.

4. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

This Order shall become effective upon the date of receipt by Respondent.

Issued this 16th day of September, 2002.

Leo J. Alderman, Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

9/16/02

Howard Bunch
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

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, 901 North 5th Street, Kansas City, Kansas 66101.

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 Findings of Violation and Administrative Order for Compliance to:

The Honorable John Koch
Mayor of the City of Cuba
202 North Smith Street
Cuba, Missouri 65453

Mr. Kevin Mohammadi, Chief
Enforcement Section
Bureau of Water
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Sept 17, 2002
Date

Debby Buffington White
Legal Technician