

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, IOWA 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
The City of Jefferson, Iowa) Docket No. CWA-07-2019-0213
)
Respondent)
)
Proceedings under) COMPLAINT AND
Section 309(g) of the Clean Water Act,) CONSENT AGREEMENT/
33 U.S.C. § 1319(g)) FINAL ORDER
_____)

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 United States Environmental Protection Agency’s (“EPA’s”) 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. Complainant, the United States Environmental Protection Agency, Region 7 (“EPA” or “Complainant”) and Respondent, the city of Jefferson, Iowa (hereafter, “City” or “Respondent”), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 405 of the CWA, 33 U.S.C. § 1345, and regulations promulgated thereunder and codified at 40 C.F.R. Part 503.

Parties

4. 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, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA, Region 7.

5. Respondent is the city of Jefferson, Iowa, a municipality organized under the laws of the state of Iowa and authorized to conduct business in the state of Iowa.

Statutory and Regulatory Framework

6. Section 405(a) of the CWA, 33 U.S.C. § 1345(a), prohibits the disposal of sewage sludge resulting from the operation of a treatment works where the disposal would result in any pollutant from such sewage sludge entering the navigable waters, except in accordance with a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. 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.

8. 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.

9. 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.

10. The Iowa Department of Natural Resources ("IDNR") is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

11. The state of Iowa 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 501. The EPA directly implements the Sludge Management Program in Iowa, and is therefore the "permitting authority," as defined by 40 C.F.R. § 503.9(p), for purposes of the sludge management program.

12. 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 for any use for which regulations have been established pursuant to subsection (d) of that Section, except in accordance with such regulations.

13. 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).

14. 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.

15. 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.

16. 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 405 of the CWA, 33 U.S.C. § 1345, or a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

EPA's General Allegations

17. The City is a "municipality" and a "person" as defined by Sections 502(4) and (5) of the CWA, 33 U.S.C. §§ 1362(4) and (5) and 40 C.F.R. §§ 503.9(o) and (q), respectively.

18. At all relevant times, Respondent has owned and/or operated a publicly owned treatment works ("POTW"), as defined by 40 C.F.R. § 503.3(q), (hereinafter, referred to as the "Facility") located at 605 W. Russell St., Jefferson, Iowa 50129. Respondent used the Facility for the "treatment of sewage sludge" as defined in 40 C.F.R. § 503.9(z).

19. 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 Class B sewage sludge at locations within Greene County, Iowa.

20. Respondent is subject to Section 405 of the CWA, 33 U.S.C. § 1345, and 40 C.F.R. Part 503, Subpart B, because it is a "person who prepares sewage sludge," as defined at 40 C.F.R. § 503.9(r), that is applied to land. NPDES Permit Number IA0021300, issued for Respondent's POTW by the IDNR on October 1, 2015, and amended on April 1 and December 1, 2017, reiterates the Respondent's responsibility to comply with Section 405 of the CWA and 40 C.F.R. Part 503.

21. 40 C.F.R. § 503.13(a) provides, in pertinent part, that bulk sewage sludge shall not be applied to land if it exceeds the pollutant concentration and loading rates listed in 40 C.F.R. § 503.13(b), Tables 1 through 4, including the ceiling concentration for the pollutant in Table 1.

22. 40 C.F.R. § 503.13(b) Table 1 limits the ceiling concentration for Arsenic in sewage sludge applied to the land to 75 milligrams per kilogram, and Table 4 limits the annual pollutant loading rate for Arsenic to 2.0 kilograms per hectare per 365-day period.

23. The regulations at 40 C.F.R. § 503.16 identify the frequency for monitoring sewage sludge that is applied to land, including the frequency for monitoring the pollutants listed in 40 C.F.R. § 503.13, Tables 1 through 4. Pursuant to 40 C.F.R. § 503.16(a), Table 1, if the amount of sewage sludge applied to land is greater than zero, but less than 290 metric tons in a 365-day period, the monitoring frequency is once per year.

24. Respondent is required by 40 C.F.R. § 503.18 to submit an annual report to the permitting authority, i.e., the EPA, each year by no later than February 19 regarding its sludge activities for the preceding calendar year. Such information is commonly referred to as the Annual Biosolids Report.

25. Respondent submitted annual reports to the EPA covering calendar year 2016 (hereafter "2016 annual report"), on August 14, 2018, and covering calendar year 2017 (hereafter "2017 annual report"), on August 13, 2018. Respondent reported that 48 dry metric tons of its sewage sludge was applied to 24 acres in 2016 and 81 dry metric tons of its sewage sludge was applied to 40 acres in 2017. However, because Respondent failed to perform any of the required pollutant monitoring in 2016 or 2017, Respondent's 2016 and 2017 annual reports provided only estimated pollutant levels and application rates derived by extrapolating data from calendar years 2011, 2012, 2014, 2015 and 2018.

26. Respondent submitted its annual report to the EPA covering calendar year 2018 (hereafter "2018 annual report") on May 14, 2019. The 2018 annual report includes the results of pollutant monitoring required by 40 C.F.R. § 503.16 and documents that in the second quarter of 2018, 65.2 metric tons of Respondent's sewage sludge were applied to 50 acres.

27. The 2018 annual report submitted by Respondent documents that Respondent's bulk sewage sludge applied to land in 2018 contained a concentration of Arsenic of 178 milligrams per kilogram (mg/kg), which was in excess of the ceiling concentration of 75 mg/kg permitted by 40 C.F.R. § 503.13(b), Table 1.

28. On or about July 19, 2019, Respondent submitted information regarding biosolids data for May and June 2019 (hereafter "2019 second quarter data"). The 2019 second quarter data includes the results of pollutant monitoring required by 40 C.F.R. § 503.16 and documents that in June 2019, 136 dry metric tons of Respondent's sewage sludge were applied to 70 acres.

29. The 2019 first quarter data submitted by Respondent documents that Respondent's bulk sewage sludge applied to land in June 2019 contained a concentration of Arsenic of 111 mg/kg, which was in excess of the ceiling concentration of 75 mg/kg permitted by 40 C.F.R. § 503.13(b), Table 1.

EPA's Specific Allegations

Failure to Sample Biosolids

30. The facts stated above are herein incorporated.

31. Based on the information provided by the Respondents for the 2016 and 2017 reporting year, Respondent land applied bulk sewage sludge in 2016 and 2017 without monitoring for pollutants as required by the regulations at 40 C.F.R. §§ 503.13 and 503.16.

32. Respondent's failure to comply with the monitoring requirements described in Paragraph 31, above, is a violation of Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503.

Failure to Timely Submit Biosolids Annual Reports

33. The facts stated above are herein incorporated.

34. Based on the information review of Respondent's 2016, 2017 and 2018 annual reports, Respondent failed to timely submit its annual biosolids report each year by no later than February 19 regarding its sludge activities for the preceding calendar year. Annual reports for 2016 and 2017 were not submitted until August 2018, and the annual report for 2018 was not submitted until May 2019.

35. Respondent's failure to comply with the reporting requirements described in Paragraph 34, above, is a violation of Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503.

Failure to Comply with Ceiling Concentration Limitations

36. The facts stated above are herein incorporated.

37. Based on information presented by Respondent in its 2018 annual report and 2019 second quarter data, Respondent's bulk sewage sludge was land applied in 2018 and 2019 contained Arsenic concentrations in excess of the ceiling concentration of 75 mg/kg permitted by 40 C.F.R. § 503.13(b) Table 1.

38. Respondent's failure to comply with the ceiling concentration limitations described in Paragraph 37, above, is a violation of Section 405 of the CWA, 33 U.S.C. § 1345, and implementing regulations at 40 C.F.R. Part 503.

39. As alleged by the EPA above, and pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as adjusted pursuant to 40 C.F.R. § 19.4, for violations that occurred after November 2, 2015, where penalties are assessed on or after February 6, 2019, Respondent is liable for civil penalties of up to \$21,933 per day for each day during which the violation continues, up to a maximum of \$54,833.

CONSENT AGREEMENT

40. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

41. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement/Final Order.

42. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

43. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

44. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

45. As required by Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors in determining the appropriate penalty settlement amount to resolve this action.

46. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

47. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

48. Respondent certifies by signing this Consent Agreement/Final Order that, to the best of its knowledge, Respondent is currently in compliance with all requirements of the CWA and its implementing regulations, including, but not limited to, the requirements of 40 C.F.R. Part 503.

49. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

Penalty Payment

50. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Thirteen Thousand Nine Hundred Dollars (\$13,900)** pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), to be paid in full no later than thirty (30) days of the effective date of this Consent Agreement/Final Order as set forth below.

51. Respondent shall pay the penalty identified in Paragraph 50 by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number CWA-07-2019-0213 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

52. Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to the following:

Lisa Haugen
Regional Hearing Clerk
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Iowa 66219

and

Patricia Gillispie Miller
Office of Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Iowa 66219.

53. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

54. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the

commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

55. Respondent's payment of the entire civil penalty resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

56. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 48 of this Consent Agreement/Final Order.

57. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

58. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial collection action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

59. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

60. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

61. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry of the Final Order and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Iowa 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

62. The state of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

63. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

64. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

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


Date

DeAndre Singletary
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 7

Patricia Gillispie Miller
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

For the Respondent, City of Jefferson, Iowa:

08/30/19
Date


Signature
CRAIG J. BERRY
~~Mayor of Jefferson~~

Mayor of Jefferson, Ia.
Name
Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by First Class Mail to Respondent:

The Honorable Craig Berry, Mayor
City of Jefferson
220 N. Chestnut Street
Jefferson, Iowa 50129

Copy emailed to Attorney for Complainant:

Patricia Gillispie Miller
U.S. Environmental Protection Agency - Region 7
miller.patriciag@epa.gov

Copy by First Class Mail to the Iowa Department of Health and Environmental:

Jessica Montana
Iowa Department of Natural Resources
Field Office 4 Supervisor
1401 Sunnyside Ln.
Atlantic, Iowa 50022

Date

Lisa Haugen
Hearing Clerk, Region 7