

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
American Water Enterprises, Inc.)	Docket No. CWA-07-2017-0102
)	
Respondent)	
)	COMPLAINT AND
Proceedings under)	CONSENT AGREEMENT/
Section 309(g) of the Clean Water Act,)	FINAL ORDER
33 U.S.C. § 1319(g))	
_____)	

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 EPA, Region 7 and Respondent, the American Water Enterprises, Inc., 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 failed to comply with the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

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 Water, Wetlands and Pesticides Division of EPA, Region 7 ("Complainant").

5. Respondent is the American Water Enterprises, Inc. (hereafter "Respondent"), a corporation organized under the laws of the state of Delaware.

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 its 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 state of Illinois 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 Illinois.

11. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), prohibits the disposal of sludge from a 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.

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(q), a "person" is defined to include a corporation.

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. § 503.11(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 a 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 Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and Section 503(9)(q) of the CWA, 33 U.S.C. § 1363(9)(q).

18. 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 Adams County, Illinois.

19. The city of Quincy, Illinois Sewage Treatment Plant located at 700 West Lock and Dam Road, Quincy, Illinois, is required by its NPDES Permit Number IL0030503 to submit an annual report to EPA each year regarding its sludge activities for the preceding calendar year.

20. Pursuant to the requirements of 40 C.F.R. § 503 and NPDES Permit Number IL0030503, Respondent, on behalf of the city of Quincy, Illinois, submitted annual reports covering calendar years 2013 and 2014 on February 17, 2014 and February 17, 2015, respectively. The report contains a summary of the testing results and application information for sludge pursuant to 40 C.F.R. § 503.18.

21. In the annual sewage sludge reports described above, a representative of the Respondent certified that the site restrictions, management practices, vector attraction reduction requirements, Class B pathogen requirements, and land owner notices, required pursuant to 40 C.F.R. § 503, were met under their direct supervision and in accordance with a system designed to ensure qualified personnel properly gathered and evaluated the required information.

22. In the annual sewage sludge reports described above, Respondent reported that one thousand four hundred and six (1,406) dry metric tons of sewage sludge in 2013 and two thousand nine hundred sixty-seven (2,967) dry metric tons of sewage sludge in 2014 generated at the Quincy Illinois Sewage Treatment Plant was land applied.

23. The regulation at 40 C.F.R. § 503.16 requires the frequency of monitoring for pathogen density once per sixty days (six times per year) for facilities that land apply equal to or greater than 1,500 but less than 15,000 dry metric tons of sewage sludge per year and once per quarter (four times per year) for facilities that land apply equal to or greater than 290 but less than 1,500 dry metric tons of sewage sludge per year.

24. In 2013, Respondent was required to monitor for pathogen density once per quarter (four times per year) and in 2014, Respondent was required to monitor for pathogen density once per sixty days (six times per year).

25. The regulation at 40 C.F.R. § 503.15(a) requires that the Class A or Class B pathogen requirements at 40 C.F.R. § 503.32 (a) or (b) shall be met when bulk sewage sludge is applied to the land.

26. The pathogen requirements of 40 C.F.R. § 503.32(b) require one of three alternatives be met. Alternative one of 40 C.F.R. § 503.32(b)(2) requires the geometric mean of the density of fecal coliform in the samples collected shall be less than either 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).

27. In the 2013 and 2014 sewage sludge annual reports described above, the Respondent certified that the sewer sludge applied to the land was in bulk and complied the Class B pathogen requirements of 40 C.F.R. § 503.32(b) by meeting the Alternative 1 requirements of 40 C.F.R. § 503.32(b)(2).

28. The sewage sludge annual report submitted by Respondent on or about February 17, 2014, indicated that on or about April 16, 2013, sewage sludge from the Quincy Illinois Wastewater Treatment Plant was sampled and analyzed. The analysis concluded that the geometric mean of the density of fecal coliform bacteria in the samples from two basins exceeded the requirements to meet Alternative 1 or 40 C.F.R. § 503(b)(2). The levels were 2,700,000 and 2,200,000 most probable number per gram of total solids in each of the basins.

29. The sewage sludge annual report submitted by Respondent on or about February 17, 2015, indicated that on or about December 15, 2014, sewage sludge from the Quincy Illinois Wastewater Treatment Plant was sampled and analyzed. The analysis concluded that the geometric mean of the density of fecal coliform bacteria in the samples from two basins exceeded the requirements to meet Alternative 1 or 40 C.F.R. § 503(b)(2). The levels were 4,700,000 and 2,000,000 most probable number per gram of total solids in each of the basins.

30. The 2013 sewage sludge annual report submitted by Respondent, provided that a total of approximately thirty-eight (38) dry metric tons of sewage sludge were land applied on the following dates:

- a. 4/16/13 – 21.86 dry tons
- b. 5/1/13 – 16.49 dry tons

31. The 2015 sewage sludge annual report submitted by Respondent, provided that a total of approximately one thousand six hundred and eighty-seven (1,687) dry tons or one thousand five hundred and thirty (1,530) dry metric tons of sewage sludge were land applied on the following dates:

- a. 11/8/14 - 64 dry tons
- b. 11/9/14 – 261 dry tons
- c. 11/10/14 – 324 dry tons
- d. 11/12/14 – 123 dry tons
- e. 11/13/14 – 294 dry tons
- f. 11/23/14 – 23 dry tons
- g. 11/28/14 – 44 dry tons
- h. 11/29/14 – 104 dry tons
- i. 12/1/14 – 183 dry tons
- j. 12/2/14 – 267 dry tons

EPA's Specific Allegations

32. The facts stated in Paragraphs 1 through 31 above, are herein incorporated.

33. Based on observations documented during the review of available information, EPA alleges that Respondent violated Section 405(e) of the act, 33 U.S.C. § 1345(e), and the terms and conditions of its NPDES permit, in at least the following ways:

Count 1

Failure to Comply with Pathogen Density Requirements

34. Respondent land applied approximately 38 dry metric tons of sewage sludge on or about April 16, 2013 and May 1, 2013, and 1,530 dry metric tons of sewage sludge on ten occasions between November 8, 2014 through December 2, 2014, which did not the pathogen requirements of 40 C.F.R. § 503.32 (b)(2).

35. Failure by Respondent to meet the pathogen density requirements is a violation of 40 C.F.R. § 503.32 (b)(2).

CONSENT AGREEMENT

36. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, the EPA has determined that an appropriate civil penalty to settle this action is Twenty-Eight Thousand Eight Hundred Dollars (\$28,800).

37. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

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

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

40. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and the accompanying proposed Final Order.

41. 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.

42. Nothing contained in this Complaint and Consent Agreement/Final Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

43. Respondent consents that the civil penalty payment made pursuant to this Complaint and Consent Agreement/Final Order will not be deducted for purposes of federal taxes.

44. Respondent certifies by signing this Consent Agreement/Final Order that Respondent that is presently in compliance with Administrative Order for Compliance on Consent, EPA Docket No. CWA-07-2017-0102, to achieve compliance with all requirements of Section 405 of the CWA, 33 U.S.C. § 1345, and its NPDES permit.

45. 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.

46. The effect of settlement described is conditioned upon the accuracy of the Respondent's representations to EPA, memorialized in this Consent Agreement.

47. Each signatory to this Consent Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order.

48. Respondent shall pay a civil penalty of Twenty-Eight Thousand Eight Hundred Dollars (\$28,800) within thirty (30) days of the effective date of this Final Order. Payment shall identify the Respondent by name and docket number "CWA-07-2017-0102" and shall be made by consistent with Attachment A, and/or if certified or cashier's check, made payable to "Treasurer, United States of America," and remitted to:

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

Copies of the check shall be mailed to:

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

and

Melissa A.C. Bagley
Office of Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219.

49. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the 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 and interest thereon.

50. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

51. The EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

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

53. This Consent Agreement/Final Order shall be entered and become effective only after the conclusion of the period of 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, and receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

54. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

**FOR THE COMPLAINANT,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 7:**

Date

Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

Melissa A.C. Bagley
Office of Regional Counsel

**FOR THE RESPONDENT,
AMERICAN WATER ENTERPRISES, INC.:**

6/28/17
Date


Signature

Name: John Fogarty

Title: Vice President

FINAL ORDER

Pursuant to 40 C.F.R. 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

Karina Borromeo
Regional Judicial Officer

Date: _____