

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
City of Cozad, Nebraska)	Docket No. CWA-07-2019-0217
)	
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, EPA, Region 7 and Respondent, the City of Cozad, Nebraska, 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 a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, 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 Division Director of the Enforcement and Compliance Assurance Division of EPA Region 7.

5. Respondent is the City of Cozad (hereafter “City” or “Respondent”), a

municipality organized under the laws of the state of Nebraska.

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 Nebraska Department of Environmental Quality ("NDEQ") is the state agency with the authority to administer the federal NPDES program in Nebraska 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 Nebraska has not applied for nor 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 Nebraska, 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(w), "sewage sludge" is solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works.

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

16. 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.

17. Pursuant to Section 503(4) of the CWA, 33 U.S.C. § 1362(4), and 40 C.F.R. § 503.9(o), a "municipality" is defined to mean a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

18. 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 a municipality.

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

20. 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.

21. 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

22. The Authority 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.

23. At all relevant times, Respondent has owned and/or operated publicly owned treatment works ("POTW"), as defined by 40 C.F.R. § 403.3(q), including the Cozad Wastewater Treatment Facility located at 515 Disposal Road, Cozad, Nebraska 69130 (hereinafter, referred to as the "Facility"). Respondent utilized this Facility for the "treatment of sewage sludge" as defined in 40 C.F.R. § 503.9(z).

24. 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.

25. Respondent is a "person who prepares sewage sludge," as defined at 40 C.F.R. § 503.9(r), and is subject to Section 405 of the CWA, 33 U.S.C. § 1345, and 40 C.F.R. Part 503, Subpart B. NDEQ issued NPDES Permit Number NE0112828 to Respondent's Cozad Wastewater Treatment Facility on April 1, 2015. NPDES Permit Numbers NE0112828 reiterate Respondent's responsibility to comply with Section 405 of the CWA and 40 C.F.R. Part 503.

26. 40 CFR § 503.14(d) provides that bulk sewage sludge shall be applied to agricultural land, forest, a public contact site, or a reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk sewage sludge.

27. 40 CFR § 503.15(b) provides that pathogen requirements in §503.32(c)(1) or (c)(2) shall be met when domestic sludge is applied to agricultural land, forest, or a reclamation site.

28. Respondent is required by 40 C.F.R. § 503.18 and its NPDES Permit to submit an annual report to the permitting authority, i.e., the EPA, each year by no later than February 19th regarding its sludge activities for the preceding calendar year.

29. Respondent submitted the annual report to the EPA covering calendar year 2017 (hereafter "2017 annual report"), on February 14, 2018. The report contains a summary of Respondent's testing results and land application information for sludge.

30. Respondent provided additional information to the EPA on March 25, 2019, in response to an EPA March 11, 2019 Information Request, in accordance with Section 308 of the CWA, 33 U.S.C. § 1318.

31. The 2017 annual report and Section 308 response submitted by Respondent documented that that sampling of sewage sludge revealed a Molybdenum concentration above the ceiling level at 110.3 mg/kg. The ceiling concentration for Molybdenum is listed in Table 1 of 40 C.F.R. § 503.13 as 75 mg/kg. The sewer sludge exceeding the ceiling limit concentration for Molybdenum was then land applied.

32. 40 C.F.R. § 503.13(a)(1) states, "Bulk sewage sludge or sewage sludge sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of 40 C.F.R. § 503.13.

EPA's Specific Allegations

33. The facts stated above are herein incorporated.

34. Based on information presented by Respondent in its 2017 annual report and Section 308 response, 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 way:

Count 1
Land Application of Sewage Sludge (Biosolids) Containing Pollutants in Excess of Permitted Ceiling Limits

35. Respondent land applied bulk sewage sludge on at least one occasions between September 1, 2017, and December 31, 2017, containing Molybdenum concentrations in excess of the ceiling limits permitted by 40 C.F.R. § 503.13.

36. Respondent's failure to comply with the pollutant ceiling concentration limitations described 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, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

CONSENT AGREEMENT

37. 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 Six Thousand and Five Hundred Dollars (\$6500).

38. Respondent and the 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.

39. 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.

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

41. 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.

42. 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.

43. 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.

44. 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.

45. Respondent certifies by signing this CA/FO 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.

46. 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

47. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a civil penalty of **Six Thousand Five Hundred Dollars (\$6500)** 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.

48. Respondent shall pay the penalty identified above 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-07-2019-0217 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>.

49. 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, Kansas 66219

and

Melissa Bagley
Office of Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard

Lenexa, Kansas 66219.

50. 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.

51. Respondent understands that, pursuant to 40 C.F.R. § 13.18, its failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. 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

52. Respondent's payment of the entire Authority penalty pursuant to this Consent Agreement/ Final Order 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.

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

54. 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.

55. 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 or administrative 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.

56. 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

57. 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.

58. 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, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

59. 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.

60. 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

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

Melissa Bagley
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7

For the Respondent, City of Cozad, Nebraska:

6-10-19
Date


Signature

Name: Marcus K. Kloeping

Title: Mayor

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 Marcus Klopping
Mayor, City of Cozad
215 West 8th Street/P.O. Box 309
Cozad, Nebraska 69130-0065

Copy emailed to Attorney for Complainant:

Melissa Bagley
U.S. Environmental Protection Agency - Region 7
bagley.melissa@epa.gov

Copy by First Class Mail to the Nebraska Department of Environmental Quality:

Jim Macy, Director
Nebraska Department of Environmental Quality
1200 N Street, The Atrium
Lincoln, NE 68509-8922

Date

Lisa Haugen
Hearing Clerk, Region 7