

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
)	
Newport Utilities)	Docket No. CWA-07-2019-0185
)	
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”) 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, Newport Utilities, 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 the 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 Water, Wetlands and Pesticides Division of EPA Region 7 (“Complainant”).

5. Respondent owns and/or operates the Wastewater Treatment Plant located at 465 Lesega Blvd, Newport, Tennessee 37821.

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 state of Tennessee 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 Tennessee.

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 municipality.

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 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 40 C.F.R. 503(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 Cocke County, Tennessee.

19. Respondent's Wastewater Treatment Plant is required by its NPDES Permit Number TN0020702 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 TN0020702, the city of Newport submitted an annual report covering calendar year 2017 on February 16, 2018. The report contains summary of the testing results and application information for sludge pursuant to 40 C.F.R. §503.18.

21. In the annual sewage sludge report described above, the city of Newport reported that three hundred and forty-one and seventeen hundredths (341.17) dry metric tons of bulk sewage sludge generated at the Wastewater Treatment Plant was land applied.

22. The regulation at 40 C.F.R. § 503.16 requires the frequency of monitoring for regulated pollutants 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.

23. The sewage sludge annual report submitted by the city of Newport on or about February 16, 2018, indicated that between April 1, 2017 and June 30, 2017, sewage sludge from the Newport Wastewater Treatment Plant was sampled and analyzed. The analysis concluded that the concentration of Nickel in the sampled sludge was 493 milligrams per kilogram (mg/kg).

24. 40 C.F.R. § 503.13(a) states that 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 § 503.13.

25. Table 1 of § 503.13 lists the ceiling concentration (milligrams per kilogram) of Nickel as 420 mg/kg.

EPA's Specific Allegations

26. The facts stated in Paragraphs 1 through 25, above, are herein incorporated.

27. Based on observations documented during the review of available information, EPA alleges that the Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e), and 40 C.F.R. 503.13, in at least the following ways:

Count 1

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

28. Respondent land applied approximately 341.17 dry metric tons of sewage sludge between April 1, 2017 and June 30, 2017, that contained concentrations of Nickel in excess of the ceiling concentration permitted in Table 1 of 40 C.F.R. § 503.13.

29. Respondent's failure to meet the pollutant ceiling concentration requirements for bulk sewage sludge applied to the land is a violation of 40 C.F.R. § 503.13(a).

CONSENT AGREEMENT

30. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g) and the nature of the violations, the EPA has determined that an appropriate civil penalty to settle this action is Eight Thousand and Three Hundred Dollars (\$8,300).

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

32. 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.

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

34. 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.

35. 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.

36. Nothing contained in this Compliant and Consent Agreement/Final Order shall relieve the 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.

37. 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.

38. 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.

39. 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.

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

41. 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.

42. Respondent shall pay a civil penalty of Eight Thousand and Three Hundred Dollars (\$8,300) within thirty (30) days of the effective date of this Final Order. Payment shall identify the Respondent by name and docket number "CWA-07-2019-0185" and shall be made by 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:

Lisa Haugen
Regional Hearing Clerk
U.S. Environmental Protection Agency
11201 Renner Boulevard

and Lenexa, Kansas 66219

Liz Huston
Office of Regional Counsel
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219.

43. 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.

Supplemental Environmental Project (SEP)

44. Respondent shall expend a minimum of \$60,000 (Total SEP Expenditure) in approvable costs for the purposes of decommissioning septic systems and connecting customers to the City's sewer line on a voluntary basis. Newport shall be responsible for all permits and inspections. Approvable costs shall include the costs for labor and equipment/materials, but shall not include administrative costs.

45. Respondent shall provide notice of completion that includes a detailed description of the SEP, certification that the SEP has been implemented in accordance with this CAFO, and an itemized list of costs along with documentation of the costs incurred by Respondent to EPA upon completion of the SEP. The costs shall be certified as accurate by the Respondent.

46. Upon receipt of the notice of completion, EPA will evaluate the cost documentation provided by Respondent and make a determination as to the sum of the approvable costs incurred by the Respondent. This determination shall be within the sole discretion of the EPA. Upon satisfactory completion of the SEP, EPA will provide Respondent with written notification that the SEP has been completed.

47. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

48. Any public statement in print, film or other communications media, oral or written, made by Respondent making reference to the SEP shall include the following language: "This

project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency.”

Stipulated Penalties for Non-Performance of SEP

49. In the event Respondent fails to satisfactorily complete the SEP the Respondent shall pay a stipulated penalty of \$30,000. Failure to complete the SEP by January 1, 2022 will result in a stipulated penalty of \$30,000. However, the parties agree that EPA may extend the completion date. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed \$30,000 that shall be based upon a pro-rata share of the costs incurred to implement the SEP in relation to the portion of the penalty mitigated by the SEP (i.e., \$30,000 multiplied by the percentage of unexpended costs in relation to the Total SEP Expenditures).

50. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

51. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The payment shall be in accordance with the provisions set forth above.

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

53. 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.

54. 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.

55. 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.

56. 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:**

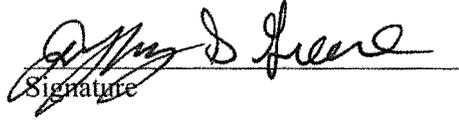
Date

DeAndre Singletary
Acting Director
Enforcement and Compliance Assurance Division

Elizabeth Huston
Office of Regional Counsel

**FOR THE RESPONDENT,
NEWPORT UTILITIES:**

7-18-19
Date


Signature

Name: Jeffery S. Greene

Title: Attorney

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

CERTIFICATE OF SERVICE

I certify that on the date noted below, I filed the original and one true and correct copy of the signed original Consent Agreement and Final Order with the Regional Hearing Clerk, Region 7. 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 Consent Agreement and Final Order to the following:

Jeffery S. Greene
Attorney at Law
McSween, McSween, & Greene, PLLC
321 E. Broadway
Newport, TN 37821

Name

Date