

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
Emerald Coast Utilities Authority)	Docket No. CWA-07-2019-0242
)	
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 EPA and Respondent, the Emerald Coast Utilities Authority (hereafter, “ECUA” 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), for violations of Section 405 of the CWA, 33 U.S.C. § 1345, and its implementing regulations, is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, as the national-program manager for the Biosolids Center, who in turn has delegated the authority to the Director of the Enforcement and

Compliance Assurance Division of EPA Region 7 (collectively referred to as the "Complainant").

5. Respondent is the Emerald Coast Utilities Authority, a special district of Escambia County, Florida, treated as a municipality under the laws of the state of Florida.

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 Florida Department of Environmental Protection ("FDEP") is the state agency with the authority to administer the federal NPDES program in Florida 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 Florida 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 Florida, 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 ECUA 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 the Central Water Reclamation Facility wastewater treatment plant, which is a publicly owned treatment works ("POTW"), as defined by 40 C.F.R. § 503.3(q), (hereinafter, referred to as the "Facility") located at 2980 Old Chemstrand Road, Cantonment, Florida 32533. 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 offers Class A sewage sludge within Escambia County, Florida that is sold or is given away to the public.

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.

21. NPDES Permit Number FL0559351, was issued by the FDEP for Respondent's Central Water Reclamation Facility. The Permit recognizes the Respondent's responsibility to comply with Section 405 of the CWA. The most recent Permit was issued with an effective date of December 14, 2018.

22. 40 C.F.R. § 503.8(a) requires collection and analysis of representative samples of sewage sludge this is applied to the land, placed on a surface disposal site or field in a sewage sludge incinerator.

23. 40 C.F.R. § 503.15(a)(3) requires that the Class A pathogen requirements in § 503.32(a) must be met when bulk sewage sludge is sold or given away in a bag or other container for application to the land.

24. 40 C.F.R. § 503.16 requires that persons who produce bulk sewage sludge equal to or greater than 290 metric tons (dry weight basis) of sewage sludge per 365-day period, but less than 1,500 metric tons, that is applied to the land or prepared for sale or give-away in a bag or other container for application to the land must sample at least once per quarter, or four times per year.

25. 40 C.F.R. § 503.32(a)(1) requires that Class A sewage sludge must meet the pathogen requirements of § 503.32(a)(2) and one of the alternative pathogen methods identified in § 503.32(a)(3) through (a)(8), identified as Alternatives 1 through 6, respectively.

26. Pathogen compliance Alternatives 1 through 6 identified in 40 C.F.R. § 503.32(a)(3) through (a)(8), respectively, all require that for sewage sludge to be classified as Class A, the density of fecal coliform in the sewage sludge must be less than 1000 most probable number ("MPN") per gram of total solids (dry weight basis), or the density of *Salmonella*, sp. bacteria in the sewage sludge shall be less than 3 MPN per 4 grams of total solids (dry weight basis): at the time the sewage sludge is used or disposed; or at the time the sewage sludge is prepared for sale or given away in a bag or other container for application to land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of § 503.10(b), (c), (e) or (f).

27. 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.

28. Respondent submitted an annual report to the EPA covering calendar year 2018 (hereafter "2018 annual report"), on February 12, 2019. The 2018 annual report included the results of pollutant monitoring required by 40 C.F.R. Part 503, including results for pathogens as required by 40 C.F.R. § 503.32.

29. Respondent's 2018 annual report documented that Respondent produced a total of 6,508 dry metric tons of Class A sewage sludge in calendar year 2018, and that 2,550 dry metric tons of its bulk sewage sludge was offered for distribution and marketing as compost and that Respondent used Alternative 5, composting, pursuant to 40 C.F.R. § 501.32(a)(7), and 40 C.F.R. Part 503 Appendix B, Section A., Processes to Significantly Reduce Pathogens ("PSRP"), Option 4, composting, to comply with pathogen reduction requirements. Respondent attached a copy of a letter dated April 30, 2018, to the 2018 annual report regarding noncompliance with the sewage sludge limitation for *Salmonella*, sp. bacteria.

EPA's Specific Allegations

Failure to Comply with Pathogen Limitations

30. The facts stated above are herein incorporated.

31. Respondent's 2018 annual report documents that results for sampling of Class A bulk sewage sludge, which was offered land application through distribution and marketing as compost, exceeded the limitation for *Salmonella*, sp. bacteria in the first quarter of 2018. Specifically, a sample collected on March 20, 2018, demonstrated a result for *Salmonella*, sp. bacteria of 13 MPN per 4 grams of total solids (dry weight basis), which exceeded the limitation for density of less than 3 MPN per 4 grams of total solids (dry weight basis).

32. Respondent further reported that 194.8 dry tons of the Class A bulk sewage sludge described in Paragraph 31 that exceeded the limitation for *Salmonella*, sp. bacteria was distributed to the public as compost after collection of samples for *Salmonella*, sp. bacteria analysis, but before the sample results were received.

33. Respondent represented to the EPA that upon receipt of the March 20, 2018, *Salmonella*, sp. bacteria sample results:

- a. Respondent immediately ceased distribution of material, contacted via telephone all customers for which the compost was distributed, and offered to recollect the materials from each customer;
- b. Respondent was able to recollect some of the contaminated compost the from customers; and
- c. Respondent did not recommence distribution of Class A bulk sewage sludge until test results confirmed it was in compliance with all applicable requirements of 40 C.F.R. Part 503.

34. Respondent's failure to comply with the pathogen limitations for Class A sewage sludge, as 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.

35. 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

36. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.
37. 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.
38. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.
39. 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.
40. 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.
41. 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.
42. 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.
43. 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.
44. 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.
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.

Penalty Payment

46. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Five Thousand Two Hundred Dollars (\$5,200)** 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.

47. Respondent shall pay the penalty identified in Paragraph 45 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-07-2019-0242 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>.

48. Respondent shall simultaneously send by mail or e-mail copies of the transmittal letter and the check, as directed above, to each the following:

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

haugen.lisa@epa.gov

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

miller.patriciag@epa.gov

49. 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.

50. 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

51. 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.

52. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 44 of this Consent Agreement/Final Order.

53. 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.

54. 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.

55. 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

56. 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.

57. 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.

58. The state of Florida 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).

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

David Cozad
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, Emerald Coast Utilities Authority:

10-14-19
Date


Signature

Stephen E. Sorrell
Executive Director

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:

Lois Benson, Chair
Emerald Coast Utilities Authority
9255 Sturdevant Street
Pensacola, Florida 32514

Copy by email to Attorney for Complainant:

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

Copy by email to:

Dan O'Lone
U.S. Environmental Protection Agency - Region 4
olone.dan@epa.gov

Becky Garnett
U.S. Environmental Protection Agency - Region 4
garnet.beck@epa.gov

Maurice Barker,
Florida Department of Environmental Protection
maurice.baker@dep.state.fl.us

Date

Lisa Haugen
Hearing Clerk, Region 7