

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
The Water Works & Sanitary Sewer	)	
Board of the City of Montgomery	)	Docket No. CWA-07-2019-0034
	)	
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 Water Works & Sanitary Sewer Board of the City of Montgomery, Alabama 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 Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

5. Respondent is the Water Works & Sanitary Sewer Board of the City of Montgomery, (hereafter "Respondent"), a public corporation organized under the laws of the state of Alabama.

### **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 Alabama 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 Alabama.

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(o), a “municipality” is defined to mean a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law.

14. Pursuant to 40 C.F.R. §503.9(q), a “person” is defined to include a municipality.

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

16. 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.

17. 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**

18. 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).

19. 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 Montgomery County, Alabama.

20. Respondent’s Catoma Water Pollution Control Plant Water Pollution Control Plant, located at 6000 Richard E. Hanan Drive, Montgomery, AL 36108 is required by its NPDES Permit Number ALL027863 to submit an annual report to EPA each year regarding its sludge activities for the preceding calendar year.

21. Pursuant to the requirements of 40 C.F.R. § 503 and NPDES Permit Number ALL027863, Respondent submitted an annual report covering calendar year 2016 on February 13, 2017. The report contains summary of the testing results and application information for sludge pursuant to 40 C.F.R. §503.18.

22. In the annual sewage sludge report described above, Respondent reported that 1,642 dry metric tons of bulk sewage sludge generated at the Respondent’s Water Pollution Control Plant was land applied by Respondent/Preparer on its own land.

23. The regulation at 40 C.F.R. § 503.16 requires the frequency of monitoring for regulated pollutants once per sixty (60) 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.

24. In 2016, Respondent was required to monitor for pollutants six times per year.

25. The sewage sludge annual report submitted by Respondent on or about February 13, 2017, indicated that between March 1, 2016 and April 30, 2016, sewage sludge from the Catoma Water Pollution Control Plant was sampled and analyzed. The analysis concluded that the maximum concentration of Nickel in the sampled sludge applied to Farm Site 2 was 459 milligrams per kilogram (mg/kg).

26. The sewage sludge annual report submitted by Respondent on or about February 13, 2017, indicated that between May 1, 2016 and June 30, 2016, sewage sludge from the Catoma Water Pollution Control Plant was sampled and analyzed. The analysis concluded that the maximum concentration of Nickel in the sampled sludge applied to Farm Site 2 was 528 mg/kg).

27. The sewage sludge annual report submitted by Respondent on or about February 13, 2017, indicated that between July 1, 2016, and August 31, 2016, sewage sludge from the Catoma Water Pollution Control Plant was sampled and analyzed. The analysis concluded that the maximum concentration of Nickel in the sampled sludge applied to Farm Site 2 was 455 mg/kg.

28. 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.

29. Table 1 of § 503.13 lists the ceiling concentration mg/kg of Nickel as 420.

#### **EPA's Specific Allegations**

30. The facts stated in Paragraphs 1 through 29, above, are herein incorporated.

31. 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**

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

32. Respondent land applied approximately 730.8 metric tons of sewage sludge between March 2, 2016 and August 3, 2016, on sixty occasions that contained concentrations of Nickel in excess of the ceiling concentration permitted in Table 1 of 40 C.F.R. § 503.13.

33. Failure by Respondent to meet the pollutant ceiling concentration requirements or bulk sewage sludge applied to the land is a violation of 40 C.F.R. § 503.13(a).

45. 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.

46. Respondent shall pay a civil penalty of Thirty-Two Thousand Dollars (\$32,000) within thirty (30) days of the effective date of this Final Order. Payment shall identify the Respondent by name and docket number "CWA-07-2019-0034" 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  
Lenexa, Kansas 66219

and

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

47. 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.

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

49. 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.

50. 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

**CONSENT AGREEMENT**

34. 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 Thirty-Two Thousand Dollars (\$32,000).

35. 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.

36. 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.

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

38. 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.

39. 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.

40. 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.

41. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent is in compliance with all requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, and all regulations promulgated there under.

42. 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.

43. 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.

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

legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

51. 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.

52. 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  
Director  
Water, Wetlands and Pesticides Division

\_\_\_\_\_  
Melissa Bagley  
Office of Regional Counsel



**FOR THE RESPONDENT,  
WATER WORKS & SANITARY SEWER BOARD OF THE CITY OF MONTGOMERY,  
ALABAMA:**

18 Dec 2018  
Date

  
Signature

Name: Richard Hagan

Title: Chairman

**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.

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Date

**CERTIFICATE OF SERVICE**

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by certified mail, return receipt requested to:

Richard Hanan, Chairman of the Board of Directors  
Water Works & Sanitary Sewer Board of the City of Montgomery  
2000 Interstate Park Drive  
Montgomery, Alabama 36109

and by first class mail to:

Daniel J. O'Lone, Chief  
Stormwater and Residuals Enforcement Section  
NPEB/WPD, Region 4  
61 Forsyth Street SW – 9T25  
Atlanta, Georgia 30303

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name