

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

IN THE MATTER OF:	)	
	)	Docket No. CWA 309(a)-09-016
<b>City of Corcoran</b>	)	
	)	
Respondent	)	<b>Findings of Violation</b>
	)	<b>and</b>
	)	<b>Order for Compliance</b>
	)	
	)	Proceedings under Sections 308 and
	)	309(a) of the Clean Water Act,
	)	33 U.S.C. §§ 1318 and 1319(a)
	)	

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AUTHORITY

The following findings are made and Order issued pursuant to the authorities vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Sections 308 and 309(a) of the Clean Water Act, as amended (“CWA” or “the Act”), 33 U.S.C. §1318 and §1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region IX, who has in turn delegated them to the Director of the Water Division (“Director”), EPA, Region IX.

FINDINGS OF VIOLATION

1. Under CWA Section 405(e), 33 U.S.C. §1345(e), it is unlawful for any person to dispose of sewage 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 Section 405(d), except in accordance with such regulations.
2. Pursuant to Section 405(d)(1) of the Act, 33 U.S.C. §1345(d)(1), EPA promulgated regulations establishing the Standards for the Use or Disposal of Sewage Sludge, set forth at 40 CFR Part 503.
3. A “Person” is an individual, corporation, partnership, association, State, municipality,

commission, or political subdivision of a State, or any interstate body. CWA section 502(5), 33 U.S.C. §1362(5). 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. 40 CFR 503.9(r). The City of Corcoran (“Corcoran”) is thus a “person who prepares sewage sludge”. The City of Corcoran’s wastewater treatment facility has a design flow of greater than one million gallons per day.

4. 40 CFR 503.13(a)(1) sets ceiling concentration limits for nine pollutants in sewage sludge that is land applied: “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 pollutants in Table 1 of §503.13.” The ceiling concentration for arsenic is 75 mg/kg.

5. 40 CFR 503.16(a) sets frequency of monitoring requirements for the pollutants listed in section 503.13. A wastewater treatment plant that has between 290 and 1500 metric tons (100% dry weight basis) of sewage sludge land applied during a calendar year must collect and analyze at least four representative samples of the sludge prior to land application.

6. 40 CFR 503.18 requires Publicly Owned Treatment Works with design flows of greater than 1 million gallons per day whose sewage sludge is land applied in a given year to submit an annual report to EPA with the information and certifications required in 40 CFR 503.17 by February 19 of the following calendar year.

7. In January 2009, EPA obtained a copy of a sewage sludge pre-application report prepared by Quad Knopf, a contractor for the City of Corcoran. The report stated that 716 dry tons of sewage sludge would be applied to Corcoran State Prison fields C-2, C-4, and C-6, over a total of 168.8 acres, for growing sudan grass. The report included only one set of analytical results from BSK Analytical Laboratories for pollutants regulated under 40 CFR 503, from a sewage sludge sample collected on June 17, 2008. The report stated that the sample was a composite from 40 samples taken throughout the pile of sewage sludge to be applied. This pile had been generated during 2006 and 2007.

8. The one set of laboratory results from the report showed an arsenic concentration of 180 mg/kg.

9. On February 2, 2009, the City of Corcoran informed EPA that the sewage sludge had been applied in late 2008 to the Corcoran State Prison fields as indicated in the pre-application report. As of March 30, 2009, EPA has not received an annual report from Corcoran with the required data.

10. EPA, therefore, finds the City of Corcoran in violation of the following requirements and, thus, of Section 405(e) of the Act, 33 U.S.C. §1345(e): a) to refrain from land applying sewage sludge if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentrations of Table 1 of 40 CFR 503.13 (in this case, the arsenic concentration exceeded 75 mg/kg); b) to collect and analyze at least four samples for the volume of sewage sludge in question, and c) to submit an annual report to EPA by February 19 of the following year regarding the actual application.

## ORDER

Based on the foregoing FINDINGS OF VIOLATION and pursuant to the authorities of CWA Sections 308 and 309(a) of the Act, 33 U.S.C. §§1318 and 1319(a), it is hereby ORDERED:

1. The City of Corcoran shall immediately comply with all applicable provisions of 40 CFR 503, Standards for the Use or Disposal of Sewage Sludge.

2. The City of Corcoran shall prepare a sampling plan to assess current levels of arsenic in fields C-2, C-4, and C-6 at the Corcoran State Prison. This plan shall include collection of at least two composite samples from each field, each composite consisting of at least six grabs collected at depths of 2" to 16". The sampling plan shall be submitted to EPA within 15 calendar days of receipt of this Order. Upon approval of the sampling plan, Corcoran shall have the samples collected and analyzed. Results of the analyses shall be submitted to EPA within 60 calendar days of receipt of the sampling plan approval.

3. Before the next instance of sewage sludge removal from the wastewater treatment plant, the City of Corcoran shall provide written notification to EPA's Clean Water Act Compliance Office at least 30 calendar days prior to removal of sewage sludge from its wastewater treatment plant for use or disposal. The notification submittal shall include all pertinent monitoring data for the use or disposal practice being proposed, per the requirements of 40 CFR 503.

4. Corcoran shall submit its annual sewage sludge report for 2008 to EPA within 10 calendar days of receipt of this Order.

5. All submissions required by this Order shall be mailed to:

U.S. Environmental Protection Agency  
Attn: Lauren Fondahl  
Clean Water Act Compliance Office  
75 Hawthorne St.  
San Francisco, CA 94105-3901

6. All submittals required under this Order shall include the following certification signed by Respondent or Respondent's duly authorized representative:

"I certify under penalty of law that this document and all attachments were prepared under my direct supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those who manage the system or are directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations under the Clean Water Act and 18 U.S.C. ' 1001."

7. This Order is not a permit under the CWA, and does not waive or modify Respondent's

obligations and responsibility to ascertain and comply with all applicable federal, state or local laws, regulations, ordinances, permits or licenses.

8. EPA has promulgated regulations to protect the confidentiality of the business information it receives at 40 CFR Part 2, Subpart B. A claim of business confidentiality may be asserted in the manner specified by 40 CFR 2.203(b) for part or all of the information requested. EPA will disclose business information covered by such a claim only as authorized under 40 CFR Part 2, Subpart B. If no such claim accompanies the business information at the time EPA receives it, EPA may make it available to the public without further notice. Respondent may not withhold from EPA any information on the grounds that it is confidential business information.

9. This requirement of information is not subject to review by the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act because it is not a “collection of information” within the meaning of 44 U.S.C. §3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. §3518(c)(1) and 5 CFR 1320.4(a)(2).

10. This Order shall be binding upon Respondent, and Respondent’s officers, directors, agents, servants, employees, heirs, successors and assigns.

11. Issuance of this Order shall not be an election by EPA to forego any remedies available to it under the law, including without limitation any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this Order and to enforce this Order.

12. CWA Section 309(a), (b), (d) and (g), 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or civil judicial relief for failure to comply with the CWA. Section 309(c) of the Act, 33 U.S.C. §1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.

13. This Order shall become effective upon the date of receipt by Respondent.

<Original signed by>

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Alexis Strauss  
Director, Water Division

2 April 2009

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Dated