



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX – PACIFIC SOUTHWEST REGION
75 Hawthorne Street
San Francisco, CA 94105-3901**

March 30, 2022

Sent Via Email

Maura Bonnarens
East Bay Municipal Utility District
P.O. Box 24055, MS #59
Oakland, CA 94623
maura.bonnarens@ebmud.com

RE: Request for Information under Clean Water Act, Section 308(a) – Special District No. 1
Main Wastewater Treatment Plant, EPA Docket No. CWA-308-9-22-004

Dear Maura Bonnarens:

The U.S. Environmental Protection Agency, Region IX (EPA) formally requests information from the East Bay Municipal Utility District (EBMUD), regarding the Special District No. 1 Main Wastewater Treatment Plant located at 2020 Wake Ave., Oakland, CA 94607 (“Facility”), subject to the National Pollutant Discharge Elimination System Permit, CA0037702 (NPDES Permit), and/or 40 C.F.R. Part 503.

This Request for Information encompasses information regarding the Facility’s compliance with the requirements of Section 405 of the Clean Water Act (CWA), 33 U.S.C. § 1345 and 40 C.F.R. Part 503, *Standards for Use or Disposal of Sewage Sludge*. The request is made pursuant to EPA’s information-gathering authority under Section 308 of the CWA, 33 U.S.C. § 1318, which authorizes EPA to require persons subject to the CWA to furnish information, conduct monitoring, provide right of entry to the Administrator or authorized representatives to applicable premises, and make reports as may be necessary to carry out the objectives of the CWA.

EPA requests that EBMUD provide the information specified in the attached Request for Information, Attachment 1, **by April 29, 2022**. Please read the instructions and questions in the attachments carefully before preparing your response.

Please send your response by email to the following email address:

Susanne Perkins
perkins.susanne@epa.gov

All submittals in response to this letter must be accompanied by the following certification signed by a responsible corporate officer or authorized representative in accordance with 40 C.F.R. § 122.22:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, 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.”

EBMUD may not withhold from EPA any information on the grounds that it is confidential business information. However, you have the discretion to assert, at the time of submission, a claim of business confidentiality for part or all of the requested information by following the requirements at 40 C.F.R. § 2.203(b). EPA will not disclose business information covered by such claim except as authorized by 40 C.F.R. Part 2, Subpart B. If no claim of business confidentiality accompanies your submission, EPA may make the information available to the public without further notice to you. All confidentiality claims are subject to EPA verification.

Please be advised that EPA may disclose the information requested to one or more of its private contractors for the technical review, analysis, and evaluation. Consistent with 40 C.F.R. § 2.302(h), EPA possesses the authority to disclose to any authorized representative of the United States information which might otherwise be entitled to confidential treatment.

Failure to comply with this Request for Information can result in an enforcement action for appropriate remedies, including penalties, under Section 309 of the CWA, 33 U.S.C. § 1319. Compliance with this Request for Information does not relieve EBMUD of its obligation to comply with the CWA or other applicable laws and permits.

The Request for Information is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is an exempt activity under 44 U.S.C. § 3518(c) and 5 C.F.R. § 1320.4.

Thank you for your cooperation and prompt attention to this letter. If you have any questions regarding this Request for Information, please contact Susanne Perkins of the Enforcement and Compliance Assurance Division at 415-972-3208 or perkins.susanne@epa.gov. Please direct any

legal questions to Sara Goldsmith of the Office of Regional Counsel at 415- 972-3931 or goldsmith.sara@epa.gov.

Sincerely,

ERIC MAGNAN Digitally signed by ERIC MAGNAN
Date: 2022.03.30 15:44:12 -07'00'

Eric Magnan, P.E.
Manager, Water Section I
Enforcement and Compliance Assurance Division

Enclosure

cc (via email):

Brian Thompson, San Francisco Bay Regional Water Quality Control Board,
brian.thompson@waterboards.ca.gov

Jessica Watkins, San Francisco Bay Regional Water Quality Control Board,
jessica.watkins@waterboards.ca.gov

ATTACHMENT 1: Request for Information, EPA Docket No. CWA-308-9-22-004

Under the authority of Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), the United States Environmental Protection Agency, Region IX (EPA) requests the East Bay Municipal Utility District (EBMUD) to provide to EPA the information described below (Request for Information) for its 2020 Wake Ave., Oakland, CA 94607 Facility.

INSTRUCTIONS

1. Separate Response for Separate Question. Provide a separate narrative answer to, and segregate responsive documents by each question or its subpart. Precede each answer with the number of the corresponding question or its subpart.
2. Best Information Available. Respond to the best of your ability, even if documents are not available. Explain any qualified response. If you do not have the responsive information but know the person from whom the information may be obtained, identify the person.
3. Document Submission. Whenever requested to provide documents, provide copies of all responsive documents in your possession, custody or control. If a responsive document was, but no longer is, in your possession, custody or control, explain what was done with it. If another person has possession, custody or control of the document, identify the person. If the document was disposed of, explain when and why it was disposed of and who disposed of it.
4. Use of Document in Place of Answer. If a document provides the complete answer to a question, you may use it in place of a written answer by supplying the document and appropriately identifying the applicable portion of the document as answering a specific numbered question.
5. Document Alteration or Deletion. Explain the reason and identify the person responsible for any deleted, altered or redacted portion of a submitted document.
6. Obligation to Correct. If you later discover that any submitted information is incorrect, submit a corrected response as soon as possible.
7. No Effect on Other Legal Obligations. This information request in no way alters or relieves you of other legal responsibilities or restrictions.

DEFINITIONS

The following terms shall have the following definitions for this Request for Information; if there is any inconsistency between the definitions below and their meaning pursuant to 40 C.F.R. Part 503, the regulatory definition controls:

1. "Document" means all written, recorded, computer generated, or visually or aurally reproduced materials of any kind in any medium in your possession, custody or control or known by you to exist, including all originals, drafts and non-identical copies. The term includes, without limitation, all reports, studies, surveys, plans, transcripts, permits, licenses, deeds, maps, drawings, schematics, specifications, instructions, calculations, monitoring data, rental records, contracts, agreements, bid documents, purchase orders, work orders, invoices, manifests, payment records, spreadsheets, communication records, correspondence, notes, memoranda, photographs, and videos.
2. "Facility" means the Special District No. 1 Main Wastewater Treatment Plant, including the building or buildings located at 2020 Wake Ave., Oakland, CA 94607.
3. "You" means EBMUD, its employees, and its contractors and consultants.
4. "Treatment works" is defined at 40 C.F.R. § 503.9(aa) and means either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of liquid nature.
5. "Sewage sludge" is defined at 40 C.F.R. § 503(9)(w) and means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.
6. "Biosolids," while not defined in EPA's regulations at 40 C.F.R. Part 503, means the commonly used term for sewage sludge material that is placed on or applied to land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer. EPA uses the term "biosolids" in its Annual Report forms to clarify that information about beneficially used sewage sludge (i.e., biosolids) should be reported on the Annual Report form.
7. "Land application" is defined at 40 C.F.R. § 503.11(h) and 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.
8. "Person" is defined at 40 C.F.R. § 503.9(q) and means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

9. “Preparer” consistent with 40 C.F.R. § 503.9(r) means 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.
10. “Applier” consistent with 40 C.F.R. § 503.10 means any person who applies sewage sludge to the land and is subject to EPA regulations at 40 CFR Part B - Land Application.
11. “Denali” means Denali Water Solutions, LLC, which is a Delaware limited liability company, and a subsidiary of Dispatch Acquisition Holdings, LLC. “Denali” also means Denali’s related companies and any subsidiaries, including but not limited to, Solid Solutions, LLC, Terra Renewal, and d/b/a names used by Denali Water Solutions, LLC from 2018 to the present, that accept, haul, and land apply biosolids or sewage sludge for municipalities located throughout the United States, including from municipalities located in California.
12. “Agronomic rate” is defined at 40 C.F.R. § 503.11(b) and means the whole sludge application rate (dry weight basis) designed: (1) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and (2) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.
13. “Municipality” is defined at 40 C.F.R. § 503.9(o) and means 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; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201(e) of the CWA, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

REQUEST FOR INFORMATION

The following excerpts explaining 40 C.F.R. § 503.7 are from the preamble to EPA’s Final Rule implementing the *Standards for the Use or Disposal of Sewage Sludge*, 58 Federal Register (Fed Reg) 9248-01 (February 19, 1993), and are provided as background reference.

Requirement for a Person Who Prepares Sewage Sludge (Section 503.7)

The purpose of this general provision is to ensure the part 503 requirements are met. The Agency concluded that the person who generates the sewage sludge or the person who derives a material from sewage sludge should be responsible for ensuring the sewage sludge is used or disposed properly. For this reason, the final part 503 regulation makes that person responsible for ensuring the applicable part 503 requirements are met when sewage sludge prepared by the person is applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator. 58 FR at 9325

Land Application

If the treatment works uses a commercial sewage sludge applier that does not change the quality of the sewage sludge for land application, the treatment works will still be held accountable under today's rule and through its permit for the commercial applier's compliance with the part 503 standards, since the Agency considers that the treatment works still retains control over the quality of the sewage sludge. In this case, as the generator of sewage sludge, the treatment works cannot limit its responsibility for the use and disposal of the sewage sludge in compliance with the standards merely by transferring the sludge to a commercial applier. The applier would, however, also be governed directly by the part 503 standards.

...

After it is generated, sewage sludge generally will be land applied according to one of the following three scenarios: (1) The treatment works (or a commercial applier that does not change the quality of the sewage sludge) applies the sewage sludge to the land (i.e., under the wording of today's rule, the "person who prepares" is also the "person who applies"); (2) the treatment works provides the sewage sludge to another treatment works treating domestic sewage that further changes sludge quality and assumes responsibility for ultimate land application (i.e., the "person who prepares" provides the sewage sludge to another "person who prepares"); or (3) the treatment works demonstrates that the sewage sludge meets certain minimum quality requirements and that, as described above, no further sewage sludge management requirements (except for certain monitoring, recordkeeping and reporting requirements) apply.

An explanation for each scenario follows:

(1) If the treatment works applies its sewage sludge to the land (or sends it to a commercial applier that does not change the quality of the sludge), the treatment works retains direct control over the quality of the sewage sludge and is responsible for ensuring that the part 503 standards are met. 58 FR at 9360-9361.

Please provide the following information and documents where requested by April 29, 2022. If no such information and/or documents exist, then state so explicitly.

1. For the years 2018 through 2021 provide the final comparative bid package summaries and bid awards or like documents where Denali was selected as the applier for biosolids or sewage sludge generated at your Facility. This request seeks documents that describe the basis for and/or recommendation of the selection of Denali as the land applier for biosolids or sewage sludge generated at your Facility.
2. For the years 2018 through 2021 identify the then controlling applicable laws, regulations, requirements, and/or policies for accepting contractor bids within your Municipality that governed the selection of Denali as the third-party applier for biosolids or sewage sludge generated at your Facility. If the controlling authorities are

referenced in any documents produced in response to Question 1 above, please indicate accordingly and identify the applicable authorities and/or policies.

3. EPA regulations at 40 C.F.R. § 503.7 provide in relevant part that “[a]ny person who prepares sewage sludge **shall ensure that the applicable requirements** in this part [40 C.F.R. Part 503] are met when the sewage sludge is applied to the land.” (emphasis added).
 - a. One of the applicable Part 503 regulations is 40 C.F.R. § 503.14(d), which requires that bulk sewage sludge shall be applied to agricultural land at a rate that is equal to or less than the agronomic rate. Agronomic rate is the rate designed to provide the amount of nitrogen needed by the crop and to minimize the amount of nitrogen that passes below the root zone of the crop to the ground water. For the years 2018 through 2021 describe how your Facility and/or governing Municipality ensured Denali and the farmers who received biosolids or sewage sludge from your Facility met the agronomic rate requirement, as defined at 40 C.F.R. § 503.11(b), for the crops that were grown on the fields receiving the biosolids or sewage sludge. Also include a list that identifies the primary documents that support your answer. EPA may request such documents at a later date.
 - b. Another applicable Part 503 regulation is 40 C.F.R. § 503.12(e)(1), which requires the applier to obtain the information necessary to comply with the requirements of subpart B (land application) of 40 CFR Part 503. For the years 2018 through 2021 describe how your Facility and/or governing Municipality ensured Denali met this requirement and include a list that identifies the primary documents that support your answer. EPA may request such documents at a later date.
 - c. Additionally, 40 C.F.R. § 503.12(h) requires an applier to provide the owner or lease holder of the fields information that includes what crops the land applier believes are in cultivation, the basis for agronomic rate calculations, and the amount of biosolids or sewage sludge that are applied. For the years 2018 through 2021 describe how your Facility and/or governing Municipality ensured Denali met this requirement and include a list that identifies the primary documents that support your answer. EPA may request such documents at a later date.
 - d. Please describe any additional efforts by your Facility or governing Municipality that you have not already provided in response to the questions above that demonstrate how you ensured that for the years 2018 through 2021 that Denali was in compliance with the applicable land application requirements pursuant to Part 503 and/or any applicable NPDES permits. Include a list that identifies the primary documents that support your answer. EPA may request such documents at a later date.

4. Please describe any additional current practices you employ at your Facility to ensure compliance with 40 C.F.R. § 503.7 with respect to land application of biosolids or sewage sludge generated at your Facility. Include a list that identifies the primary documents that support your answer. EPA may request such documents at a later date.