ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 501

[FRL–6145–8]

RIN 2040–AC87

Streamlining the State Sewage Sludge Management Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today amending its regulations that establish the conditions for States seeking EPA approval to operate sewage sludge permit programs pursuant to the Clean Water Act (CWA). Existing requirements were modeled on the National Pollutant Discharge Elimination System (NPDES) requirements for EPA authorization of State wastewater effluent discharge programs. Many States, however, manage sewage sludge through State solid waste programs that are often structured quite differently from the NPDES programs. As a result, existing State sewage sludge programs would require significant changes for EPA approval under the current requirements. EPA is eager for States with well-run sewage sludge management programs to obtain approval to operate their own permit programs under the CWA without having to make unnecessary administrative and programmatic changes unrelated to protection of public health and the environment. Consequently, today's changes streamline the current regulations to ease the authorization process for States. These changes will provide flexibility to States in implementing their permit programs, and, at the same time, ensure that permitting determinations are based on environmental and public health considerations.

EFFECTIVE DATE: The final rule is effective on September 23, 1998. Section 501.15(d)(1)(i)(B) is stayed until the future publication of 40 CFR 122.21(q). EPA will publish a document announcing the effective date of § 501.15(d)(1)(i)(B).

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SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are governmental entities responsible for implementation of the State Sewage Sludge Management Program. Regulated entities include:

Category	Examples of regulated entities
State and Tribal government	States and Tribes that request authorization of their sewage sludge management program.
Federal government	EPA Regional offices that approve State sewage sludge management programs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in parts 123 and 501 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Information in the preamble is organized as follows:

I. Background

Implementation of the CWA has increased the extent to which wastewater is treated before being discharged to surface waters. At publicly owned treatment works (POTWs), implementation of secondary and advanced treatment requirements under the NPDES Program has improved effluent quality while increasing the amount of sewage sludge being generated. EPA estimates that 7 million dry metric tons of sewage sludge is generated by about 19,500 domestic wastewater facilities. Proper management of this growing amount of sewage sludge is becoming increasingly important as efforts to remove pollutants from wastewater become more effective.

Several options exist for dealing with these vast quantities of sewage sludge. One such option is beneficial use. EPA considers sewage sludge a valuable resource since it contains nutrients and has physical properties that make it useful as a fertilizer and soil conditioner. Sewage sludge has been used for its beneficial qualities on agricultural lands, in forests, for landscaping projects, and to reclaim strip-mined land. EPA will continue to encourage such practices.

Regulation of the use or disposal of sewage sludge is important because improper use or disposal can adversely affect surface water, ground water, wetlands, and public health through a variety of exposure pathways. The multi-media nature of the risks and exposure pathways requires a comprehensive approach to protect public health and the environment in order to promote the beneficial use of sewage sludge and ensure that solving problems in one medium will not create problems for another.

EPA notes that the term ''biosolids'' is now being used by professional organizations and other stakeholders in place of ''sewage sludge'' to emphasize that it is a resource that can be recycled beneficially. EPA plans to work with these stakeholders to establish a definition for ''biosolids'' that is consistent with the definition of ''sewage sludge'' in the CWA. In the meantime, EPA encourages the use of the term ''biosolids'' in order to promote public acceptance of beneficial uses for these residuals of wastewater treatment.

A. Water Quality Act of 1987

Section 406 of the Water Quality Act of 1987, which amended section 405 of the CWA, established a comprehensive program for reducing the risks to public health and the environment from the use or disposal of sewage sludge. This program included a requirement for EPA promulgation of sewage sludge standards. Furthermore, the 1987

amendments required that all NPDES permits issued to POTWs and other treatment works treating domestic sewage (TWTDS) contain conditions implementing sewage sludge standards, unless such conditions are included in other permits. The other permits may either be other federal permits or State permits issued under approved State programs. The amendments also provided that the Administrator may issue separate sewage sludge permits to TWTDS that are not subject to section 402 of the CWA or to any of the other listed permit programs. However, the amendments provided that the standards for use or disposal are enforceable directly against any user or disposer of sewage sludge under section 405(e) of the CWA. In other words, a TWTDS and any other user or disposer must comply with the standards by the statutory compliance deadlines whether or not a permit incorporating the standards has been issued to the TWTDS.

B. EPA's Sewage Sludge Management Program

In 1989, EPA published regulations that establish the requirements and procedures a State must follow to obtain approval to operate a State sewage sludge management program under section 405(f)(1) of the CWA. These regulations established the requirements for States that chose to implement their sewage sludge programs through existing State NPDES programs (40 CFR part 123) as well as requirements for States that chose non-NPDES sewage sludge programs (40 CFR part 501) as the vehicle for managing sewage sludge in their States. These regulations also revised the NPDES permit requirements and procedures (parts 122 and 124) to incorporate sewage sludge permitting requirements. See 54 FR 18716 (May 2, 1989). On February 19, 1993 (58 FR 9404) these regulations were modified to allow for phased permit application submittal procedures. The basic requirements and procedures for States which seek EPA approval to administer a sewage sludge management program are the same under part 123 and part 501. EPA published the requirements in both places based on the belief that States that choose to add sewage sludge to their NPDES programs would find it easier if the requirements and approval procedures for the sewage sludge program were included along with the other NPDES requirements in part 123.

State assumption of the sewage sludge program is optional and until State sewage sludge programs are authorized, EPA will administer the program. Two States (Utah and Oklahoma) have been authorized at this time. EPA is working with a number of other States seeking authorization for the Federal sewage sludge permit and management program.

In discussions with these States, EPA found that the sewage sludge management program regulations were often a barrier to authorization. Given the wide and successful regulation of sewage sludge use or disposal by a number of States, EPA undertook a review of its regulations looking at ways to simplify the approval process.

In order to provide greater flexibility to the States, EPA is modifying its sewage sludge management program regulations to accommodate more administrative and programmatic variations in State programs. EPA stresses that its willingness to allow greater variation in the State permit programs does not mean that the Agency will retreat from its responsibility to ensure public participation and protection of public health and the environment. EPA will not approve State programs that do not provide adequate protection.

II. Description of Today's Final Rule and Response to Comments

A. General

EPA started the process that led to today's rule by reviewing information provided by States with active State sewage sludge programs. EPA then solicited input on two successive draft proposals from various stakeholders, including States, associations and environmental groups. The March 11, 1997 proposal was an outgrowth of that process and today's final rule continues to incorporate many of the suggestions made by commenters received on both preproposal drafts. EPA today finalizes changes to parts 123 and 501 that will provide more flexibility to States and ease the process of authorization. Under the previous regulations, States that chose to implement sewage sludge requirements through their NPDES programs had to meet the requirements and follow the procedures in part 123. States that wanted to obtain approval for existing non-NPDES programs had to comply with the procedures and requirements in part 501. These requirements for authorization under an NPDES or other type of program were very similar.

As part of an overall effort to eliminate unnecessary regulations, EPA is deleting the provisions of part 123 that contain State program requirements applying solely to sewage sludge. These provisions simply repeat the requirements in part 501, and EPA does not believe both sets of regulations are necessary. Under today's rule, States seeking approval to operate State sewage sludge management programs under section 405(f)(1) must meet the requirements and procedures in part 501 when submitting sewage sludge management programs. A State is free to operate an approvable sewage sludge management program as part of its existing State NPDES regulatory program or as part of its State solid waste management program or as part of another program. The requirements and procedures for approval are the same. Today's rule is not intended to preclude States from amending their existing, approved NPDES programs to include sewage sludge. In fact, EPA believes that many States will choose this route when they seek approval of their sewage sludge programs. States that intend to rely on their existing NPDES programs for regulation of sewage sludge may need to modify their programs to comply with part 501.

All sewage sludge programs approved under part 501 must provide for citizen suits and public participation in State enforcement proceedings, whether a State program is managed through an NPDES program or not. Section 501.17(d) contains the same requirements for public participation in State enforcement proceedings as § 123.27(d). Further, it should be noted that, under section 505 of the CWA, citizen suits are authorized for any violation of the regulations containing the standards for the use or disposal of sewage sludge (40 CFR part 503).

Because part 501 was modeled on the NPDES program, States that manage their sewage sludge through solid waste or other programs may heretofore have had difficulties in meeting some of its procedural requirements because these programs have different requirements. Today's rule modifies some of the requirements in part 501 to make it easier for States with well-run sewage sludge programs to obtain approval for their programs.

B. Part 123

Part 123 establishes the program requirements and approval procedures for States that seek EPA approval to administer NPDES permit programs pursuant to section 402 of the CWA. Today's rule modifies part 123 by deleting certain specific references to sewage sludge requirements in order to make it clear that all State sewage sludge programs (both NPDES and non-NPDES) are subject to the requirements in part 501. The deleted references occur in §§ 123.1, 123.2, 123.22, 123.24 through 123.26, and 123.45. The rule

also amends §§ 123.42, 123.44, and 123.62 through 123.64 to clarify the cross-references in the part 123 sections that apply to sewage sludge and NPDES State programs. EPA received only supporting comments on this part, and it is unchanged from the proposal.

C. Part 501

1. Purpose and Scope

Section 501.1 describes the general requirements for EPA approval of a State sewage sludge program. Today's rule modifies § 501.1(b) to explain that part 501 specifies the requirements and procedures for approval of all State sludge management programs, including those programs that are operated under the aegis of a State's NPDES program as well as those operated under other non-NPDES programs.

Section 501.1(d)(1) and the rest of paragraph (d) have been renumbered because the existing text does not have a § 501.1(d)(2). Today's rule deletes the requirement in § 501.1(d)(1) that a State sludge management program have the authority to address sewage sludge transport and storage. This requirement is deleted because there are no Federal standards that regulate the storage of sewage sludge for less than two years or sewage sludge transport. Where sewage sludge remains on the land for longer than two years, it is deemed to be surface disposal rather than storage under 40 CFR 503.20(b) and is regulated under part 503. EPA is working with the Department of Agriculture to develop a guidance document that provides information on appropriate sewage sludge storage methods.

The current language in this section includes a requirement that a State sewage sludge program must include the authority to regulate Federal facilities. This requirement is not being changed in today's rule. A State does not have to have the authority to regulate Federal facilities under its approved NPDES program in order for its sewage sludge program to be approved. If a State does not have NPDES Federal facility authority, the State must have authority to regulate sewage sludge from the State's Federal facilities under a non-NPDES program.

The language in this section clarifies that a State must have the authority to regulate only those sewage sludge management activities covered by part 503. A State does not need the authority to regulate a practice not covered by part 503, such as making bricks out of sewage sludge.

Section 501.1(d)(1)(ii) contains a list of the covered sewage sludge use or disposal practices. For consistency with the terminology used in part 503, today's rule deletes the phrase ''distribution and marketing'' since this sewage sludge use is regulated as ''land application,'' and clarifies that ''landfilling'' takes place at ''municipal solid waste landfills.''

Section 501.1(d)(1) contained a reference to a nonexistent section—40 CFR 123.30. Today's rule replaces this with a reference to a new paragraph (m) that is added to this section. Section 501.1(m) specifies the requirements for a partial sewage sludge program.

CWA section 405(f) authorizes the Administrator to approve State programs so long as the programs will assure compliance with section 405 requirements. Pursuant to this authority, EPA is providing for approval of partial sewage sludge management programs under part 501. Section 501.1(m) allows a State to submit a partial sewage sludge management program covering one or more of the sludge use and disposal practices falling under the jurisdiction of the administering State agency or department. The State agency seeking program approval is required to assume a complete management program with respect to the covered practice(s). Some States regulate septage use and disposal under different management programs than sewage sludge. In the case of those States, EPA will approve a partial program for land application, for example, that regulates only sewage sludge and excludes septage from its regulatory scope.

Section 405(f)(1) of the Clean Water Act (CWA) requires that any NPDES permit issued to a publicly owned treatment works or other treatment works treating domestic sewage must include conditions to implement the sewage sludge regulations issued under section 405(d) unless these conditions have been included through certain other specified permits, including permits under a State permit program if EPA determines ''such programs assure compliance with any applicable requirements'' of section 405. The provisions of § 501.1(c)(2) require that any complete sludge management program submitted for approval must include such authority. EPA is implementing its approval of partial programs in the same manner. An approvable partial program must include the authority to permit both POTWs and other TWTDS associated with the identifiable use and disposal option for which the State seeks authorization.

With respect to the practice(s) covered by the partial program, the State agency is required to meet the requirements of CWA section 405, and has to be able to implement the applicable requirements of 40 CFR part 503. The State must be able to clearly identify who falls within the State program, and there must be no area in which authority over a particular group is unclear.

The rule also clarifies requirements for the partial program with respect to the Attorney General's Statement, the Program Description, and the Memorandum of Agreement (MOA) between EPA and the State.

In addition to the information required for the Program Description under § 501.12, the State submission must explain how the program will operate, including the relationship between the partial program and the unassumed part which will remain under EPA control. In addition to the information required for the MOA under § 501.14, the State submission must delineate responsibilities of both the State and EPA in administering the partial program.

EPA received several favorable comments on the partial program requirements and two comments that asked for clarification on approval of partial programs that exclude septage. One commenter stated that the proposed partial program language only referred to TWTDS and a ''permitting program.'' This was never EPA's intent and the term ''permitting program'' has been changed to ''management program'' in the final rule. Any sewage sludge management program, partial or complete, must include requirements for monitoring compliance and provisions for enforcement of the Part 503 standards for all users and disposers of sewage sludge that are part of the sludge management program.

A commenter asked whether a State must have a regulatory program for septage somewhere other than in its sewage sludge program in order to secure partial program authorization for land application of sewage sludge excluding septage. EPA is willing to approve such a partial program irrespective of whether septage is regulated by another program or not regulated at all. In this situation, compliance with the Federal septage requirements in part 503 would continue to be enforced by EPA.

2. Definitions

Today's rule adds a definition of ''TWTDS,'' the acronym for ''treatment works treating domestic sewage.'' The acronym replaces the phrase throughout the regulation.

3. Elements of a Sludge Management Program Submission

Section 501.11 lists the required elements of any sewage sludge management program that a State submits for approval. EPA received one comment objecting to these requirements. EPA did not propose to change this language nor did the Agency solicit comment on it, so EPA is not responding to the objections.

4. Program Description

In order to ensure that a State program can be properly run, § 501.12 requires a description of various program elements. Today's rule amends the current regulation to reduce the level of detail required by §§ 501.12(b), (d), and (f) for the State program description. As modified, the regulation requires only the minimal information that EPA believes is necessary in a program description.

Heretofore, the language in §§ 501.12(b) (2) and (3) called for information on State program costs and funding sources for a program's first two years. The purpose of this requirement was to demonstrate that a State had the resources to properly carry out a new sewage sludge management program. In fact, many States have had programs established for many years. Consequently, for States that have at least 2 years of active experience implementing a sewage sludge regulatory program, cost and funding information is not necessary since they have already shown that they have the necessary resources to run effective programs. EPA has therefore amended the rule to require this information on program costs and funding sources only for State programs that have been in existence for less than two years.

EPA received several comments supporting the changes in this section. EPA also received one comment that stated that all the proposed information requirements are unnecessary for an existing program because EPA already has a working knowledge of existing State programs.

EPA disagrees with this commenter's belief that EPA always has a working knowledge of existing State programs. The rule promulgated today reduces the requirements for submission of information for existing programs. EPA, however, has concluded that the remaining program description requirements are the minimum necessary to ensure that EPA has a complete understanding of a State program.

Section 501.12(d) now requires submittal of forms that the State intends to use in its program. EPA wants to ensure that the State obtains the information necessary to implement an effective program but does not intend to require use of specific forms. Therefore, EPA has amended this section to provide for either submittal of applicable forms or the procedures used for obtaining information.

Section 501.12(f)(1) requires a State seeking to administer a sludge management program to provide an inventory of all TWTDS subject to part 503 and subject to the State's program. EPA believes that, in implementing an effective program, States will need an inventory of all TWTDS but should not be required to develop an inventory of land application sites in order to obtain approval for their programs. If a State is submitting a partial program, the inventory need only list the TWTDS that would be regulated under the State's program. The language in § 501.12(f) has been modified accordingly.

EPA received two comments about the required inventory. The first comment stated that a State should not be required, as the current rule provides, to submit other Federal and State permit numbers as part of the TWTDS inventory.

The submittal of existing permit numbers allows EPA to determine how many TWTDS are already permitted under different Federal or State programs. EPA agrees that permit numbers for permits unrelated to a sewage sludge program should not be required. EPA is changing the language in § 501.12(f)(1)(iv) to clarify that the only permit numbers required as part of the inventory are those that contain sewage sludge requirements.

EPA also received a comment that only land application programs should be included in the inventory. The commenter believes that including other TWTDS would be redundant because they are already permitted under other programs.

The inventory requirement is for all TWTDS that are subject to part 503 and the State's program, which includes facilities that use land application, surface disposal, incineration, or disposal in a municipal solid waste landfill, unless the State is submitting a partial program. The fact that a facility is permitted under another program does not necessarily mean that the permit includes all the part 503 requirements.

5. Memorandum of Agreement With the Regional Administrator

The changes to § 501.14(a) adopted today clarify that it is the Regional Administrator who must approve the memorandum of agreement (MOA) before the MOA is effective.

EPA has modified § 501.14(b)(1)(i) to clarify that EPA will only transfer permit-related information to a State with respect to the portion of the State program for which the State has obtained approval. For example, if a State is seeking a partial program for land application, EPA will not transfer information on pending incinerator permit applications or compliance information for incinerators to the State.

EPA has also amended § 501.14(b) to modify some of the current waiver prohibitions. The current regulations prohibit waiver of EPA review of permits issued to ''Class 1 sludge management facilities.'' EPA has removed this provision because EPA believes that the need for review of such permits should be decided by the affected State and EPA Regional office based on circumstances in the affected State. EPA has concluded, in any event, that the Regional Administrator should retain the authority to terminate a waiver after providing a written explanation of the reason for the termination to the Director of the State program.

Section 501.14(c) currently requires that the MOA provide for prompt transmission of all permit-related documents to EPA. Today's amendment modifies this provision to require that the MOA describe the circumstances in which these documents must be sent to EPA. In some cases, EPA may not want to see any permit-related documents unless the Region makes a specific request. In other cases, the Region may want the MOA to list conditions that would require automatic submittal of documents to EPA. This change will eliminate the transmission of documents that EPA does not intend to review but will not reduce EPA's ability to obtain any permit-related documents. The current regulation now provides in § 501.19 that State sewage sludge management programs must comply with § 123.41. This provision requires a State to make available to EPA ''any information obtained or used in the administration of a State program.''

One commenter objected to any requirements for States to submit permit documents to EPA and for joint EPA/State inspections. The requirements of § 501.14 list what must be discussed in the MOA. If a Region believes that a State has been operating a very good sewage sludge management program, it may decide that little oversight is necessary. In other situations, such as when a State has newly developed a program, a Region may feel that

extensive oversight is required. The Region also needs the ability to change the amount of information it requires for oversight based on a State's performance in operating its program. The proposed changes to this section provide EPA and the States flexibility in deciding what degree of oversight is necessary. The final language is essentially unchanged from the proposal except for the insertion of some clarifying language.

Currently, § 501.14 provides that the Regional Administrator would normally notify the State at least 7 days before an EPA facility inspection. Today's rule adopts the proposal to delete that language and allow the Region and State to decide whether such a time period should be included in the MOA.

6. Requirements for Permitting

The provisions of § 501.15 describe the procedural requirements that a State must follow in issuing permits in order to obtain EPA authorization to operate a section 405(f) sewage sludge management program. Many States operate well-managed sewage sludge programs that are organized differently from the NPDES model. EPA believes that the specific permitting procedures currently prescribed in § 501.15 are not always necessary to ensure compliance with the part 503 regulations and may have provided unnecessary obstacles to authorization of State sludge management programs. EPA considered removing the majority of these requirements from § 501.15. However, a number of States have laws that prohibit the State's adoption of more stringent requirements than EPA. EPA was concerned that removal of these permitting procedural requirements—a move aimed at simplifying the approval process—could, because of these State law provisions, have the perverse result of requiring a State to modify its existing program in order to obtain EPA approval for the program. In this case, deletion of the permitting requirements could effectively make the authorization process more difficult for some States while easing it for others.

The two comments that EPA received on this issue asserted that commenters' States could be more stringent than EPA although they would have to defend their reasons for differing from the Federal rules. EPA received one comment that recommended the deletion of all (or almost all) the specific permitting requirements in § 501.15. The majority of commenters supported the proposed language retaining most of the requirements but providing flexibility by allowing adoption of comparable provisions in State laws.

EPA is adopting the provision as proposed. Today's rule retains most of the current permitting requirements that are conditions for approval but allows States to follow their existing practices in many instances. In some cases, the Regional Administrator must decide whether the State's minimum permit conditions or issuance requirements establish conditions and permit issuance procedures comparable to those required by this provision. EPA recognizes that this may result in differences between State programs but believes that such differences are not a significant concern and that the added flexibility far outweighs any potential problems.

EPA received four comments on a mechanism to address differences in interpretation of program approval conditions between EPA Regions. The commenters all suggested that EPA should provide a method to resolve disputes between Regions and States through an internal policy or a provision in the rule for an ''appeal'' process to headquarters. Differences in approach between Regions are always a possibility due to EPA's decentralization. EPA has delegated the authority for approval of State sewage sludge programs to its Regions because of their intimate knowledge of these State programs and close working relationship with State officials. EPA headquarters will always attempt to resolve any differences that are brought to its attention, and thus does not believe a rule provision or policy is needed.

Among its actions today, EPA is renumbering § 501.15(a)(2) as § 501.15(a)(4). This provision requires that an approvable State sewage sludge program must contain certain specific information requirements in permit applications. The retention and renumbering of this provision is necessary because the provision that will replace it, § 501.15(d)(1)(i)(B), will not be effective until 40 CFR 122.21 is amended to add a new subsection (q). Although today's rule includes § 501.15(d)(1)(i)(B), which requires the information called for in 40 CFR 122.21(q), EPA is postponing the effective date of § 501.15(d)(1)(i)(B) until § 122.21(q) goes into effect. EPA proposed revisions to part 122 on December 6, 1995 (60 FR 62546) and expects to promulgate the final § 122.21(q) requirements within several months of publication of today's rule.

EPA does not believe retaining the existing information requirements until all of the new permit application requirements are in place will delay States that are considering applying for authorization. The application requirements are just one small part of a State program. EPA believes that any State preparing an application under the current application requirements of § 501.15(a)(2), now § 501.15(a)(4), will also meet the requirements of § 122.21(q).

As proposed, § 122.21(q) would reduce the burden on permittees by allowing State directors to waive information requirements if they have access to substantially identical information, and by modifying the land application plan requirements to require advance public notice in the manner prescribed by State and local law.

Several commenters repeated the comments that they submitted on proposed § 122.21(q) and mentioned that it was hard to separate the two rules. EPA realizes that the two rulemaking procedures are intricately connected and plans to finalize both rules as close together as possible. EPA has not responded to the comments received on proposed § 122.21(q) in the docket for today's rule, but will respond to those comments as part of its other rulemaking action.

Today's rule also removes current §§ 501.15(a) (3) and (4). The requirements of these provisions are repeated in § 501.15(b). The CWA limits the terms of NPDES permits to no more than five years. In addition, EPA is today also modifying current § 501.15(a)(5) to allow a State to issue non-NPDES sewage sludge permits for terms of no more than 10 years. EPA believes this is a good compromise between those who want to limit all sewage sludge permits to 5 years to insure that the permitting authority is aware of changed circumstances and those who believe permits do not need to expire, but should simply be modified if circumstances change.

EPA received several comments supporting ten year permits. One commenter stated that their State issues permits that do not automatically expire. This type of system allows a problem situation to continue unabated unless it is brought to the attention of the permitting authority. EPA believes that requiring a permit to be reexamined every ten years is not overly burdensome and forces the permitting authority to examine the situation to make sure that the permittee is still meeting the permit conditions.

EPA is also modifying current § 501.15(a)(6)(ii) to clarify that a permit's schedule of compliance should only require interim dates if appropriate.

EPA is modifying § 501.15(b) to require that all permits issued by the

State include certain listed permit conditions unless comparable conditions are provided for in the MOA. This provides flexibility to both the Region and the State. This change is not intended to imply that permittees can choose which conditions to put into permits, but rather recognizes that States have different types of permitting systems. Some of the permit conditions in § 501.15(b) are established by States as regulatory requirements for all TWTDS. Other conditions are required by 40 CFR part 503. Since all users or disposers of sewage sludge must comply with part 503 whether or not they have a permit, requirements contained in part 503 do not have to be spelled out in a permit in order to require compliance.

This section also contains several other specific changes. The language that requires a minimum of once per year monitoring is deleted from § 501.15(b)(10). This change is necessary for consistency with the proposed modifications to part 503 (60 FR 54771) that allow less than once per year monitoring. EPA will decide the final monitoring requirement when it promulgates the modifications to part 503.

EPA has also deleted the last sentence in current § 501.15(b)(13) because this permit condition has already been required in § 501.15(b)(2). EPA is also modifying § 501.15(b)(14) to clarify that a permittee that has applied for reissuance of a permit does not need to cease operations if the new permit is not issued before the term of an existing permit expires. This provision is consistent with section 558(b) of the Administrative Procedures Act that provides for the continuing effectiveness of permits and licenses when the permittee has filed a timely and sufficient application for renewal.

Today's rule modifies § 501.15(d) to require the listed permit procedures unless comparable State requirements are in place. As previously explained, this provision provides flexibility for accommodating varying State requirements that protect public health and the environment and provide public accountability.

EPA is changing § 501.15(d)(1)(i) to clarify which TWTDS must apply for a permit. The amended regulations provide that permit applications are only required from TWTDS whose use or disposal method is regulated under part 503. For example, a POTW that makes bricks out of all of its sewage sludge is not required to apply for a permit. In addition, an industrial facility is not required to apply at this time because such facilities are not currently covered by part 503. See 54 FR 18727 and 58 FR 9406.

In addition, permit applications are to be submitted to the State only for a use or disposal practice for which the State has obtained approval to operate a section 405(f) sewage sludge management program. Thus, if a State implements a partial program, permit applications for use or disposal practices not covered by the State program must still be submitted to the EPA Region.

Finally, the application time for TWTDS that do not yet have an individual or general permit containing sewage sludge use or disposal conditions is different than the reapplication time for those TWTDS that already have such a permit. In cases where a TWTDS is covered under a State's sewage sludge general permit, the TWTDS should follow the State's notification procedures rather than submit an individual permit application.

A TWTDS that already has an individual sewage sludge permit must submit a renewal application 180 days before its permit expires. If the permit is an NPDES permit, an application must be submitted every five years. If a State issues sewage sludge permits for a longer time period (up to ten years as allowed by 501.15(a)(2)(ii)), the permit renewal application must be submitted 180 days before the sewage sludge permit expires. Section 501.15(d)(1)(ii) has been added to clarify the renewal requirements.

EPA is also deleting existing § 501.15(d)(1)(ii)(A). This provision was intended to address those circumstances in which an incinerator or other TWTDS requested site-specific pollutant limits. However, there have been few requests for site-specific permits. In addition, proposed changes to part 503 (60 FR 54771) will make the incineration standard totally self-implementing along with the rest of the rule, i.e., the standard must be met whether or not a permit is issued. Therefore, this paragraph is no longer necessary. However, as provided in § 501.15(d)(1)(i)(D), the Director may require permit applications from any TWTDS at any time if necessary to protect public health and the environment. This provides the Director with the flexibility to first address the largest public health or environmental threat.

EPA is redesignating § 501.15(d)(1)(ii)(B)–(E) as § 501.15(d)(1)(i)(A),(C),(D), and (E) and adding a new § 501.15(d)(1)(i)(B). These paragraphs contain the application time frames and have been moved from § 501.15(d)(1)(ii) to § 501.15(d)(1)(i) to help clarify that they apply to TWTDS that do not yet have an effective sewage sludge permit. Section 501.15(d)(1)(i)(B) has been added to separate the application time frames from the required application information. As previously mentioned, § 501.15(d)(1)(i)(B) will not be effective until § 122.21(q) becomes effective. Language will be added to the § 122.21(q) rulemaking to delete § 501.15(a)(4) once § 122.21(q) becomes effective. Until then, the application information is specified in § 501.15(a)(4) and the time frames applicable to a permit application are specified in § 501.15(d)(1)(i)(A),(C),(D) and (E).

Section 501.15(d)(1)(i)(C) lists the limited background information requested of non-NPDES TWTDS. EPA is modifying its paragraph (3) to be consistent with the full permit information requirements as proposed in § 122.21(q). If sewage sludge meets the ''exceptional quality'' requirements, no additional information is required about land application sites or facilities that further treat the sewage sludge.

Section 501.15(d)(4) requires fact sheets for draft permits containing case-by-case permit conditions or land application plans. They are also required for Class I sludge management facilities or draft permits that are the subject of widespread public interest or raise major issues. EPA is revising this section to require a fact sheet only when a permit is the subject of widespread public interest or raises major issues. In addition, EPA is revising this provision to delete the list of the specific information required to be included in a fact sheet.

EPA is making these changes to provide additional flexibility to States in operating their sewage sludge permit programs. EPA believes that the basis for a permit should be available to the public but does not believe that a fact sheet should be the only available option for a State to provide information to the public on a proposed permit. For example, in some States the basis for the permit may be the State's sewage sludge regulations. In this situation a fact sheet is not necessary.

In addition, EPA is amending § 501.15(d)(5) to insert the phrase ''meeting or hearing'' in place of ''hearing'' throughout the section. This change simplifies the approval process for States whose public participation requirements for permit issuance call for public ''meetings'' rather than ''hearings.'' This modification in the regulations obviates the need for a change in State law in States with such procedures in order to obtain approval.

Today's rule also modifies the requirement that the State provide at least a 30-day comment period on the draft permit. Some States require public notification of a permit application so the public has the opportunity to review the application and request a public hearing before a draft permit is issued. In this situation a 30-day comment period after issuance of a draft permit may not be necessary. Today's rule also deletes the requirement for 30 days notice before a meeting or hearing. These changes are not intended to suggest that a State should not provide an adequate comment period or adequate advance notice of any hearing or meeting. State law must provide the public both timely and meaningful opportunity to participate in its permitting determinations. This means that a State's procedures must be reasonably calculated to apprise the public of the nature of any proposed permitting action as well as provide the public with an opportunity to submit its view on the proposed permitting action.

Today's changes are merely intended to allow the States the flexibility to follow their current public notice procedures that may provide for public notice at different times in the permitting process.

Changes to § 501.15(d)(5) allow the State flexibility in the method used to provide public notice. The MOA could be used to specify required methods, if deemed necessary by an EPA Region.

EPA received four comments on this proposed change. One of the commenters asserted that the proposed language could be interpreted to require public notice in all newspapers along the entire route used to transport biosolids from a generator to a land application site. EPA has changed the language in this section to provide flexibility to States with different types of public notification procedures while ensuring that members of the public that are affected by the sewage sludge use or disposal are notified. EPA did not intend the phrase ''area affected by the facility or activity'' to mean the route of sewage sludge transportation. EPA's objective in modifying the rule language is to ensure actual public notice—not publication in a newspaper unlikely to be read by those people living near the sewage sludge use or disposal site(s).

Other commenters thought that the public notice requirements for permits should be the same as the proposed land application plan public notice requirements that allow States to use any type of public notification process that is consistent with existing State and local laws.

The land application plan is part of the permit application and is therefore subject to public notice and comment as part of the permit. When part 501 was developed in 1989, EPA decided to not require permit modifications for new land application sites in part because the permit required adequate public notice to the affected parties (54 FR 18738). EPA wants to ensure that adequate public notice remains part of the permit process. EPA believes the revised language accomplishes this while providing the States with the desired flexibility. Any State that requires some type of public notice of permits in the area affected by the sewage sludge use or disposal should have no problem meeting the requirements of today's rule. EPA has promulgated the provisions of § 501.15 as proposed, with a slight language change to clarify the public notice methods in § 501.15(d)(5)(ii).

7. Requirements for Enforcement Authority

EPA is revising the language of § 501.17 to clarify the intent of the section. A State must have the authority to assess civil penalties or criminal fines in, at least, the amounts listed. States are not required to impose these or any other specific penalties in any civil or criminal proceeding, and State law may, of course, authorize the imposition of larger penalties.

The one commenter on this section thought EPA should provide for State environmental enforcement discretion. As mentioned above, the States must have the authority to impose fines up to the listed amounts but they do not have to impose penalties in any specific penalty amount. EPA has promulgated this provision as proposed.

8. Program Reporting to EPA

The current requirements in § 501.21 require extensive information on noncompliance to be reported semiannually to EPA by the State program director. EPA is attempting to streamline all of its reporting requirements, including the information requested from States. Today's rule reduces the information required from States and requires annual reports that contain only the information that EPA believes is of most value in reviewing a States's sludge management program.

EPA received three comments on this section. One supported the proposed changes; the other two thought that EPA should be even more flexible. The proposed requirements are a significant reduction from what is required in the existing rule. Given EPA's limited experience in overseeing State sewage sludge programs, EPA believes the requested information is the minimum that should be reported annually about a sewage sludge program. EPA has revised § 501.21(b)(2) for consistency with the changed language for reporting permit numbers in § 501.12(f)(1)(iv). EPA is promulgating the rest of this section as proposed.

9. Procedures for Revision of State Programs

The language in § 501.32 required a State to revise its program within one or two years of promulgation of changes to the sewage sludge regulations. Today's change allows EPA and the State to agree to a different schedule in the MOA. As the MOA is part of the State program submittal, comments on this or any other issue in the MOA can be raised when the State program is published in the **Federal Register**. Because the sewage sludge regulations are directly enforceable, users or disposers of sewage sludge must comply with any new Federal sewage sludge requirements, whether or not the State has modified its regulations to conform with the Federal rule. EPA received no comments on this section and it is promulgated as proposed.

III. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action''. As such, this action was

submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875, entitled Enhancing the Intergovernmental Partnership, on October 28, 1993 (58 FR 58093). Under Executive Order (E.O.) 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government unless the federal government provides the necessary funds to pay the direct costs incurred by the State, local or Tribal government or EPA provides to the Office of Management and Budget a description of the extent of the Agency's prior consultation and written communications with elected officials and other representatives of affected State, local or Tribal governments, the nature of their concerns, and an Agency statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

EPA has determined that E.O. 12875 does not apply since this rule does not create a mandate upon State, local, or tribal governments. This rule imposes no enforceable duty on any State, local, or tribal government or the private sector.

C. Paperwork Reduction Act

The information collection requirements for parts 123 and 501 were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (OMB Control No. 2040–0057). The rule changes are designed to streamline the regulatory process and will not impose any new information collection requirements.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, provides that, whenever an agency promulgates a final rule under section 553 of the Administrative Procedures Act, after being required by that section or any other law to publish a general notice of rulemaking, the agency generally must prepare a final regulatory flexibility analysis (FRFA). The agency must prepare a FRFA for a final rule unless the head of the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Today's rule will only apply to those States and tribes that choose to seek EPA authorization for their sewage sludge permit programs. As previously explained, today's changes streamline the regulations to ease the authorization process and provide States and tribes flexibility in implementing their permit programs. These changes will reduce the burden on all affected entities. The Administrator therefore certifies, pursuant to section 605(b) of the RFA, that this rule will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, or tribal governments or the private sector because the UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. This rule imposes no enforceable duty on any State, local, or tribal government or the private sector. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The amendments provide additional flexibility to the States in complying with current regulatory requirements and reduce the burden on affected governments. As noted above, there are no costs associated with today's changes. Thus, today's rule is not subject to the requirements in sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirements in section 203 of UMRA. The amendments will not significantly affect small governments because as explained above, the amendments provide additional flexibility in complying with pre-existing regulatory requirements. The only small governments affected by this rule are tribal governments and they are subject to the same requirements as States if they choose to seek authorization of their sewage sludge program.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 23, 1998.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practice, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This final rule does not prescribe any technical standards, so the Agency has determined that the NTTAA requirements are not applicable.

H. Executive Order 13045

The Executive order, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) ''economically significant'' as defined under E.O. 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. EPA interprets the E.O. 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation.

This rule is not subject to E.O. 13045 because it is not an economically significant action as defined by E.O. 12866 and it does not involve decisions regarding environmental health or safety risks. This rule streamlines the regulations and authorization procedures for States seeking authorization to implement the Federal Sewage Sludge Management Program.

List of Subjects

40 CFR Part 123

Environmental protection, Confidential business information, Hazardous materials, Penalties, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 501

Environmental protection, Confidential business information, Publicly owned treatment works, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal.

Dated: August 11, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 123 and 501 of title 40 of the Code of Federal Regulations are amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 123.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs and the requirements State programs must meet to be approved by the Administrator under sections 318, 402, and 405(a) (National Pollutant Discharge Elimination System—NPDES) of the CWA. This part also specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under section 405(f) (sludge management programs) of the CWA. The requirements that a State sewage sludge management program must meet for approval by the Administrator under section 405(f) are set out at 40 CFR part 501.

* * * * *

(c) The Administrator will approve State programs which conform to the applicable requirements of this part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405(a) will not be approved independent of a section 402 program.

* * * * *

3. Section 123.2 is revised to read as follows:

§ 123.2 Definitions.

The definitions in part 122 apply to all subparts of this part.

4. Section 123.22 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

5. Section 123.24 is amended by removing paragraph (d)(8).

6. Section 123.25 is amended by revising the introductory text of paragraph (a) and paragraph (a)(37) to read as follows:

§ 123.25 Requirements for permitting.

(a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

* * * * *

(37) 40 CFR parts 129, 133, and subchapter N; and

* * * * *

7. Section 123.26 is amended by revising paragraph (e)(5) to read as follows:

§ 123.26 Requirements for compliance evaluation programs.

* * * * *

(e) * * *

(5) Inspecting the facilities of all major dischargers at least annually.

8. Section 123.42 is amended by revising the introductory paragraph to read as follows:

§ 123.42 Receipt and use of Federal information.

Upon approving a State permit program, EPA will send to the State agency administering the permit program any relevant information which was collected by EPA. The Memorandum of Agreement under § 123.24 (or, in the case of a sewage sludge management program, § 501.14 of this chapter) will provide for the following, in such manner as the State Director and the Regional Administrator agree:

* * * * *

9. Section 123.44 is amended by revising paragraphs (d)(1), (d)(2), (e), and (j) to read as follows:

§ 123.44 EPA review of and objection to State permits.

* * * * *

(d) * * *

(1) Will consider all data transmitted pursuant to § 123.43 (or, in the case of a sewage sludge management program, § 501.21 of this chapter);

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If

this request is made within 30 days of receipt of the State submittal under § 123.43 (or, in the case of a sewage sludge management program, § 501.21 of this chapter), it will constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review will recommence when the Regional Administrator has received such record or portions of the record; and

* * * * *

(e) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or interstate agency or any interested person may request that a public hearing be held by the Regional Administrator on the objection. A public hearing in accordance with the procedures of § 124.12 (c) and (d) of this chapter (or, in the case of a sewage sludge management program, § 501.15(d)(7) of this chapter) will be held, and public notice provided in accordance with § 124.10 of this chapter, (or, in the case of a sewage sludge management program, § 501.15(d)(5) of this chapter), whenever requested by the State or the interstate agency which proposed the permit or if warranted by significant public interest based on requests received.

* * * * *

(j) The Regional Administrator may agree, in the Memorandum of Agreement under § 123.24 (or, in the case of a sewage sludge management program, § 501.14 of this chapter), to review draft permits rather than proposed permits. In such a case, a proposed permit need not be prepared by the State and transmitted to the Regional Administrator for review in accordance with this section unless the State proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment.

10. Section 123.45 is amended by removing paragraph (e).

11. Section 123.62 is amended by revising paragraphs (b)(3), and (c) to read as follows:

§ 123.62 Procedures for revision of State programs.

* * * * *

(b)* * *

(3) The Administrator will approve or disapprove program revisions based on the requirements of this part (or, in the case of a sewage sludge management program, 40 CFR part 501) and of the CWA.

* * * * *

(c) States with approved programs must notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and must identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.22(b) (or, in the case of a sewage sludge management program, § 501.12(b) of this chapter) must be revised and resubmitted.

* * * * *

12. Section 123.63 is amended by revising the introductory text of paragraph (a) and paragraph (a)(4) to read as follows:

§ 123.63 Criteria for withdrawal of State programs.

(a) In the case of a sewage sludge management program, references in this section to ''this part'' will be deemed to refer to 40 CFR part 501. The Administrator may withdraw program approval when a State program no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

* * * * *

(4) Where the State program fails to comply with the terms of the Memorandum of Agreement required under § 123.24 (or, in the case of a sewage sludge management program, § 501.14 of this chapter).

* * * * *

13. Section 123.64 is amended by revising the introductory text of paragraph (a) and paragraph (b)(1) to read as follows:

§ 123.64 Procedures for withdrawal of State programs.

(a) A State with a program approved under this part (or, in the case of a sewage sludge management program, 40 CFR part 501) may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

* * * * *

(b) * * *

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this part as set forth in § 123.63 (or, in the case of a sewage sludge management program, § 501.33 of this chapter). The Administrator will respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph will fix a time and place for the commencement of the hearing and will specify the allegations against the State which are to be considered at the hearing. Within 30 days the State must admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program will have the burden of coming forward with the evidence in a hearing under this paragraph.

* * * * *

PART 501—[AMENDED]

14. The authority citation for part 501 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

15. Section 501.1 is amended by revising paragraphs (b) and (d), and adding paragraph (m) to read as follows:

§ 501.1 Purpose and scope.

* * * * *

(b) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State sludge management programs under section 405(f), and the requirements State programs must meet to be approved by the Administrator under section 405(f) of CWA. Sludge Management Program submissions may be developed and implemented under any existing or new State authority or authorities as long as they meet the requirements of this part.

* * * * *

(d) In addition, any complete State Sludge Management Program submitted for approval under this part must have authority to regulate all sewage sludge management activities subject to 40 CFR part 503, unless the State is applying for partial sludge program approval in accordance with paragraph (m) of this section. The State sludge management program must include authority to regulate all Federal facilities in the State. Sludge management activities must include as applicable:

(1) Land application;

(2) Landfilling in a Municipal Solid Waste Landfill regulated under 40 CFR part 258;

(3) Incineration;
(4) Surface disposal; and
(5) Any other sludge use or disposal practices that may subsequently be regulated by 40 CFR part 503.
* * * * *
(m) A State whose sludge management program has not been approved under this part may submit to the Regional Administrator an application for approval of a partial sewage sludge program. The following are the requirements for approval of a partial program:
(1) A partial program submission must constitute a complete management program covering one or more categories of sewage sludge use or disposal. The program must also apply to anyone engaged in the sewage sludge use or disposal practice that is the subject of the partial program. A complete management program is one that provides for the issuance of permits, the monitoring of compliance and, in the event of violations, possible enforcement action.
(2) The partial program submission must also address the following requirements:
(i) The Attorney General's Statement, in addition to the information required by § 501.13, must clearly explain the jurisdiction of the administering agency or department;
(ii) The program description, in addition to the information required by § 501.12, must explain how the program will operate, including which use and disposal practice(s) the State will cover. The program description must also explain the relationship and coordination between the proposed partial sewage sludge program and that part of the program for which EPA will remain the permitting authority, including a discussion of the division of permitting, enforcement, and compliance monitoring responsibilities between the State and EPA; and
(iii) The Memorandum of Agreement between EPA and the State, in addition to the information required by § 501.14, must set out the responsibilities of EPA and the State in administering the partial program, including specific provisions for transfer of information and determination of which users or disposers of sewage sludge are included in the partial program.
16. Section 501.2 is amended by adding a definition to read as follows:

§ 501.2 Definitions.

* * * * *
''TWTDS'' means treatment works treating domestic sewage.
17. Section 501.12 is amended by revising paragraphs (b), (d), (f)(1) introductory text, (f)(1)(iv), (f)(1)(v), and (f)(2), and removing paragraph (f)(3) to read as follows:

§ 501.12 Program description.

* * * * *
(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program. If more than one agency is responsible for administration of a program, the responsibilities of each agency, and their procedures for coordination must be set forth, and an agency must be designated as a ''lead agency'' (i.e., the ''State sludge management agency'') to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by federal law, the information provided under this paragraph must indicate the resources dedicated to administering the federally required portion of the program. This description must include:
(1) A description of the general duties and the total number of State agency staff carrying out the State program;
(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval including cost of the personnel described in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support, except where a State is seeking authorization for an established sewage sludge management program that has been in existence for a minimum of two years and is at least as stringent as the program for which the State is seeking authorization; and
(3) An estimate of the sources and amounts of funding for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, except where a State is seeking authorization for an established sewage sludge management program that has been in existence for a minimum of two years and is at least as stringent as the program for which the State is seeking authorization.
* * * * *
(d) Copies of the permit, application, and reporting forms or a description of the procedures the State intends to employ for obtaining information needed to implement its permitting program.
* * * * *
(f)(1) An inventory of all POTWs and other TWTDS that are subject to regulations promulgated pursuant to 40 CFR part 503 and subject to the State program, which includes:
* * * * *
(iv) Permit numbers for permits containing sewage sludge requirements, if any, and;
(v) Compliance status.
(2) States may submit either:
(i) Inventories which contain all of the information required by paragraph (f)(1) of this section; or
(ii) A partial inventory with a detailed plan showing how the State will complete the required inventory within five years after approval of its sludge management program under this part.
* * * * *
18. Section 501.14 is amended by revising paragraphs (a), (b)(1)(i), (b)(2), (b)(3), and (c) to read as follows:

§ 501.14 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part must submit a Memorandum of Agreement. The Memorandum of Agreement must be executed by the State Program Director and the Regional Administrator and will become effective when approved by the Regional Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator will not approve any Memorandum of Agreement which contains provisions which restrict EPA's exercise of its oversight responsibility.
(b) * * *
(1)(i) Provisions for the prompt transfer from EPA to the State of pending permit applications applicable to the State program (or portion of the State program for which the State seeks approval) and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement must contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the federal government, a procedure may be established to transfer responsibility for these permits.
* * * * *
(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the

State will send to the Regional Administrator for review, comment and, where applicable, objection. These provisions must follow the permit review procedures set forth in 40 CFR 123.44.

(3) The Memorandum of Agreement must also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits.

* * * * *

(c) The Memorandum of Agreement must also provide for the following:

(1) The circumstances in which the State must promptly send notices, draft permits, final permits, or related documents to the Regional Administrator; and

(2) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(3) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs (see for example 40 CFR 124.4).

(4) Provisions for modification of the Memorandum of Agreement in accordance with this part.

* * * * *

19. Section 501.15 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(10)(i), (b)(13), (b)(14), the introductory text of paragraph (d), paragraph (d)(1), and (d)(4) through (d)(8), to read as follows:

§ 501.15 Requirements for permitting.

(a) *General requirements.* All State programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) *Confidentiality of information.* Claims of confidentiality will be denied for the following information:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and sewage sludge data. This includes information submitted on the permit application forms themselves and any attachments used to supply information required by the forms.

(2) *Duration of permits.* (i) NPDES permits issued to treatment works treating domestic sewage pursuant to section 405(f) of the CWA will be effective for a fixed term not to exceed five years.

(ii) Non-NPDES Permits issued to treatment works treating domestic sewage pursuant to section 405(f) of the CWA will be effective for a fixed term not to exceed ten years.

(3) *Schedules of compliance.* (i) General. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and the requirements of this part. Any schedules of compliance under this section must require compliance as soon as possible, but not later than any applicable statutory deadline under the CWA.

(ii) *Interim dates.* If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule must set forth interim requirements and the date for their achievement, as appropriate.

(iii) *Reporting.* The permit must be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee must notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(3)(ii) of this section is applicable.

(4) *Information requirements.* All treatment works treating domestic sewage shall submit to the Director within the time frames established in paragraph (d)(1)(ii) of this section the following information:

(i) The activities conducted by the applicant which require it to obtain a permit.

(ii) Name, mailing address, and location of the treatment works treating domestic sewage for which the application is submitted.

(iii) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(iv) Whether the facility is located on Indian lands.

(v) A listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management program under RCRA.

(B) UIC program under SDWA.

(C) NPDES program under CWA.

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(E) Nonattainment program under the Clean Air Act.

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(G) Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act.

(H) Dredge or fill permits under section 404 of CWA.

(I) Other relevant environmental permits, including State or local permits.

(vi) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the treatment works treating domestic sewage, depicting the location of the sludge management facilities (including disposal sites), the location of all water bodies, and the location of wells used for drinking water listed in the public records or otherwise known to the applicant within ¼ mile of the property boundaries;

(vii) Any sludge monitoring data the applicant may have, including available ground water monitoring data, with a description of the well locations and approximate depth to ground water, for landfills or land application sites (see appendix I to 40 CFR part 257);

(viii) A description of the applicant's sludge use and disposal practices (including, where applicable, the location of any sites where the applicant transfers sludge for treatment and/or disposal, as well as the name of the applicator or other contractor who applies the sludge to land if different from the applicant, and the name of any distributors when the sludge will be disposed of through distribution and marketing, if different from the applicant);

(ix) For each land application site the applicant will use during the life of the permit, the applicant will supply information necessary to determine if the site is appropriate for land application and a description of how the site is (or will be) managed. Applicants intending to apply sludge to land application sites not identified at the time of application must submit a land application plan which at a minimum;

(A) Describes the geographical area covered by the plan;

(B) Identifies site selection criteria;

(C) Describes how sites will be managed;

(D) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to the sludge application; and

(E) Provides for advance public notice as required by State and local law, but

in all cases requires notice to landowners and occupants adjacent to or abutting the proposed land application site.

(x) Annual sludge production volume;

(xi) Any information required to determine the appropriate standards for permitting under 40 CFR part 503; and

(xii) Any other information the Program Director may request and reasonably require to assess the sludge use and disposal practices, to determine whether to issue a permit, or to ascertain appropriate permit requirements.

(b) *Conditions applicable to all permits.* In addition to permit conditions which must be developed on a case-by-case basis in order to meet applicable requirements of 40 CFR part 503, paragraphs (a)(1) through (a)(3) of this section, and permit conditions developed on a case-by-case basis using best professional judgment to protect public health and the environment from the adverse effects of toxic pollutants in sewage sludge, all permits must contain the following permit conditions (or comparable conditions as provided for in the Memorandum of Agreement):

* * * * *

(10) *Monitoring and records.* (i) The permittee must monitor and report monitoring results as specified elsewhere in this permit with a frequency dependent on the nature and effect of its sludge use or disposal practices. At a minimum, this will be as required by 40 CFR part 503.

* * * * *

(13) *Reopener.* If a standard for sewage sludge use or disposal applicable to permittee's use or disposal methods is promulgated under section 405(d) of the CWA before the expiration of this permit, and that standard is more stringent than the sludge pollutant limits or acceptable management practices authorized in this permit, or controls a pollutant or practice not limited in this permit, this permit may be promptly modified or revoked and reissued to conform to the standard for sludge use or disposal promulgated under section 405(d) of the CWA.

(14) *Duty to reapply.* If the permittee wishes to continue an activity regulated by the this permit after the expiration date of this permit, the permittee must apply for a new permit.

* * * * *

(d) *Permit procedures.* All State programs approved under this part must have the legal authority to implement, and be administered in accordance with, each of following provisions, unless the Regional Administrator determines that the State program includes comparable or more stringent provisions.

(1) Application for a permit. (i) Any TWTDS whose sewage sludge use or disposal method is covered by part 503 and covered under the State program, and who does not have an effective sewage sludge permit, must complete, sign, and submit to the Director an application for a permit within the following time frames.

(A) TWTDS with a currently effective NPDES permit must submit the required application information when the next application for NPDES permit renewal is due.

(B) The required application information is listed in 40 CFR 122.21(q).

(C) Other existing TWTDS not addressed under paragraph (d)(1)(i)(A) of this section must submit the information listed in paragraphs (d)(1)(i)(C)(*1*) through (d)(I)(i)(C)(*5*) of this section, to the Director within one year after publication of a standard applicable to their sewage sludge use or disposal practices. The Director will determine when such a TWTDS must submit a full permit application.

(*1*) Name, mailing address and location of the TWTDS;

(*2*) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public or other entity;

(*3*) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites;

(*4*) Annual amount of sewage sludge generated, treated, used or disposed (dry weight basis); and

(*5*) The most recent data the TWTDS may have on the quality of the sewage sludge.

(D) Notwithstanding paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section, the Director may require permit applications from any TWTDS at any time if the Director determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(E) Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal must submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

(ii) All TWTDS with a currently effective sewage sludge permit must submit a new application at least 180 days before the expiration date of their existing permit.

(iii) The Director will not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

* * * * *

(4) Fact sheets. A fact sheet must be prepared for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director will send this fact sheet to the applicant and, on request, to any other person.

(5) Public notice of permit actions and public comment period. (i) The Director must give public notice that the following actions have occurred:

(A) A draft permit has been prepared. At least 30 days must be allowed for public comment on the draft permit unless the Director has previously provided for public comment, for example after receipt of the permit application.

(B) A meeting or hearing has been scheduled.

(ii) Methods. Public notice of activities described in paragraph (d)(5)(i) of this section must be given in the area affected by these activities by any method reasonably calculated to give actual notice of the action in question to any person affected or requesting notice of the action. Public notice may include publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity, press releases, or any other forum or medium to elicit public participation.

(*iii*) Contents.

(A) *All public notices.* All public notices issued under this part must contain the following minimum information:

(*1*) Name and address of the office processing the permit action for which notice is being given;

(*2*) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(*3*) A brief description of the activity described in the permit application (including the inclusion of land application plan, if appropriate);

(4) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application;

(*5*) A brief description of the comment procedures required by § 501.15(d)(6) and the time and place of any meeting or hearing that will be held, including a Statement of procedures to request a meeting or hearing (unless a meeting or hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

(*6*) Any additional information considered necessary or proper.

(B) *Public notices for meetings or hearings.* In addition to the general public notice described in paragraph (d)(5)(iii)(A) of this section, the public notice of a meeting or hearing must contain the following information:

(*1*) Date, time and place of the meeting or hearing; and

(*2*) A brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures.

(6) *Public comments and requests for public meetings or hearings.* During the public comment period, any interested person may submit written comments on the draft permit and may request a public meeting or hearing, if no meeting or hearing has already been scheduled. A request for a public meeting or hearing must be in writing and must state the nature of the issues proposed to be raised in the meeting or hearing. All comments will be considered in making the final decision and must be answered as provided in paragraph (d)(8) of this section.

(7) *Public meetings or hearings.* The Director will hold a public meeting or hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. The Director may also hold a public meeting or hearing at his or her discretion, (e.g. where such a hearing might clarify one or more issues involved in the permit decision).

(8) *Response to comments.* At the time a final permit is issued, the Director will issue a response to comments. The response to comments must be available to the public, and must:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any meeting or hearing.

* * * * *

20. Section 501.17 is amended by revising paragraphs (a)(3)(i) through (a)(3)(iii) and (b)(1) to read as follows:

§ 501.17 Requirements for enforcement authority.

(a) * * *

(3) * * *

(i) Civil penalties will be recoverable for the violation of any permit condition; any applicable standard or limitation; any filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Program Director. The State must at a minimum, have the authority to assess penalties of up to $5,000 a day for each violation.

(ii) Criminal fines will be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any permit condition; or any filing requirement. The State must at a minimum, have the authority to assess fines of up to $10,000 a day for each violation. States which provide the criminal remedies based on ''criminal negligence,'' ''gross negligence'' or strict liability satisfy the requirement of this paragraph (a)(3)(ii) of this section.

(iii) Criminal fines will be recoverable against any person who knowingly makes any false statement, representation or certification in any program form, or in any notice or report required by a permit or State Program Director, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Program Director. The State must at a minimum, have the authority to assess fines of up to $5,000 for each instance of violation.

(b)(1) The civil penalty or criminal fine will be assessable for each instance of violation and, if the violation is continuous, will be assessable up to the maximum amount for each day of violation.

* * * * *

21. Section 501.21 is revised to read as follows:

§ 501.21 Program reporting to EPA.

The State Program Director must prepare annual reports as detailed in this section and must submit any reports required under this section to the Regional Administrator. These reports will serve as the main vehicle for the State to report on the status of its sludge management program, update its inventory of sewage sludge generators and sludge disposal facilities, and provide information on incidents of noncompliance. The State Program Director must submit these reports to the Regional Administrator according to a mutually agreed-upon schedule. The reports specified below may be combined with other reports to EPA (e.g., existing NPDES or RCRA reporting systems) where appropriate and must include the following:

(a) A summary of the incidents of noncompliance which occurred in the previous year that includes:

(1) The non-complying facilities by name and reference number;

(2) The type of noncompliance, a brief description and date(s) of the event;

(3) The date(s) and a brief description of the action(s) taken to ensure timely and appropriate action to achieve compliance;

(4) Status of the incident(s) of noncompliance with the date of resolution; and

(5) Any details which tend to explain or mitigate the incident(s) of noncompliance.

(b) Information to update the inventory of all sewage sludge generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports, including:

(1) Name and location;

(2) Permit numbers for permits containing sewage sludge requirements;

(3) Sludge management practice(s) used; and

(4) Sludge production volume.

22. Section 501.32 is amended by revising paragraph (a) to read as follows:

§ 501.32 Procedures for revision of State programs.

(a) Any State with an approved State program which requires revision to comply with amendments to federal regulations governing sewage sludge use or disposal (including revisions to this part) must revise its program within one year after promulgation of applicable regulations, unless either the State must amend or enact a statute in order to make the required revision, in which case such revision must take place within 2 years; or a different schedule is established under the Memorandum of Agreement.

* * * * *

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