



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 25 1993

OFFICE OF
WATER

MEMORANDUM

SUBJECT: OWEC State Sewage Sludge Management Program

FROM: Michael B. Cook, Director
Office of Wastewater Enforcement and Compliance

TO: Water Management Division Directors
Regions I-X

The Office of Water is focusing its programs to protect watershed-based ecosystems. Emphasis is shifting to the management of diffuse sources of pollution, habitat changes, nutrients, and ecological effects of toxics. To achieve such a holistic approach, the fullest range of tools needs to be available to enable essential assessments of ecological conditions, evaluation of alternative management strategies, and implementation of decisions. Consistent with these new directions, the Strategic Plan of the Office of Wastewater Enforcement and Compliance (OWEC) calls for high priority to be placed on developing and approving effective State sludge management programs and issuing sewage sludge permits. The specific five-year objectives for the sludge program are:

- o To work with the States to get quality programs in place that promote the beneficial use of sewage sludge.
- o In the first round of sludge permitting, to rely on the self-implementing aspects of the Part 503 technical standards. Permits will be issued to those "treatment works treating domestic sewage" (TWTDS) in one of the following high priority categories:
 - Sludge incinerators because they will need site-specific permits.
 - Facilities designated by the permitting authority as posing a threat to human health or the environment and/or which need to be fully evaluated in the context of permit development.
 - Facilities for which a permit is deemed to be necessary in order to fully support or promote beneficial use and the use and disposal requirements under our national sludge regulation.

- Facilities whose NPDES permit comes up for reissuance during the normal permitting cycle.
- o To issue a large number of "sludge-only" permits in the first permit cycle following promulgation of the technical standards to TWTDS that are not also NPDES permittees. Such permittees will be prioritized according to the permitting authority's determination of the threat they pose to human health and the environment.
- o To provide implementation guidance and training for Regional and State permitting authorities.
- o To provide outreach to POTWs and the rest of the regulated community in order to foster understanding of the Part 503 regulation and to facilitate compliance with the self-implementing and permitting requirements of the regulation.
- o To provide implementation guidance and training for Regions, States, and POTWs in order to: (1) allow a common understanding of the Part 503 regulation; and (2) allow municipalities the ability to meet the self-implementing requirements prior to obtaining a permit.
- o To develop and issue general permits to broad categories of TWTDS.
- o To provide guidance to septage haulers so that they can comply with the regulation in the absence of a permit.

Accomplishing this will require resources. In order to best use our limited resources, our work with the States to assume authority under the Federal sewage sludge management program is the major objective of EPA's sludge permitting program activities. In addition, many States already have effective sludge management programs in place; and States obtaining program approval will eliminate overlapping Federal/State permits, allow States to maintain primacy, and assure national standards are met.

The Permits Division is committed to assisting States obtain authorization for sewage sludge management programs. The State Sludge Management Program Guidance Manual was issued in December of 1990 to provide a centralized source of information on the steps to be taken to obtain sewage sludge management authority. However, many States chose to wait for publication of the final "Standards for the Use or Disposal of Sewage Sludge" before pursuing authorization. The regulation was published on February 19, 1993, and many States are now starting to take the necessary steps toward authorization. This process has brought up additional questions and requests for assistance. The attached State Sewage Sludge Program Summary and Status describes

the background of the program, steps that States must take when seeking program approval, tools and activities to assist States and Regions, and answers to the most frequently asked questions about program submissions.

We appreciate the work that you have done so far to encourage your States. The Multi-media section of the Permits Division has begun working with States in several Regions and is available to help in any way that is needed. If you have any questions regarding the sewage sludge program authorization process, please call me or have your staff contact Elaine Brenner, Chief of the Pretreatment and Multi-media Branch at (202) 260-4933.

Attachment

cc: Regional Permits Branch Chiefs
Regional Sludge Coordinators

OWEC STATE SEWAGE SLUDGE MANAGEMENT PROGRAM SUMMARY AND STATUS

OCTOBER 1, 1993

I. BACKGROUND

A. 1987 AMENDMENTS TO THE CLEAN WATER ACT (CWA)

In the 1987 amendments to the CWA, Congress determined that standards for sewage sludge use and disposal should be implemented through permits issued either by the U.S. EPA or by a State under a Federally approved program.

B. MAY 2, 1989, REGULATIONS

- o Established requirements for developing sewage sludge permit conditions in NPDES permits (and for sludge-only permits).
- o Established requirements for State program approvals either as a modification to an existing NPDES program, or as a separate program (e.g., under a State solid waste program).

C. OCTOBER 1990, STATE SLUDGE MANAGEMENT PROGRAM GUIDANCE MANUAL PUBLISHED

- o This document presents the steps towards program approval, the minimum statutory and regulatory authority needed by a State, the detailed contents of a program submission, and the Memorandum of Agreement between a State and EPA. (See item II below for a summary of the necessary State steps and program submission requirements.)

D. OCTOBER 2, 1992, NATIONAL APPROACH TO SEWAGE SLUDGE IMPLEMENTATION MEMORANDUM

- o Regional permitting activities and Regional implementation strategies
- o Regional enforcement of the technical standards
- o State sludge program activity
- o Need for communication and Centers of Excellence

E. FEBRUARY 19, 1993, REGULATIONS

- o Part 503 technical standards for the use or disposal of sewage sludge were promulgated.
- o Revisions were made to the May 2, 1989, regulations to require permit applications in phases.

II. STEPS TOWARDS PROGRAM APPROVAL

- A. STATE CONDUCTS SELF-EVALUATION OF LEGAL AUTHORITY AND RESOURCES
- B. STATE MEETS WITH EPA REGIONAL STAFF TO SEEK INPUT AND ASSISTANCE ON DEVELOPMENT OF PROGRAM SUBMISSION
- C. STATE SUBMITS DRAFT PROGRAM TO REGION
- D. REGION AND HEADQUARTERS COMMENT ON DRAFT
- E. STATE REVISES DRAFT AND FORMALLY SUBMITS PROGRAM, WHICH MUST INCLUDE THE FOLLOWING ELEMENTS, TO REGIONAL ADMINISTRATOR
 - 1. Governor's letter requesting program approval
 - 2. Program description
 - 3. Attorney General's statement indicating the existence of adequate authority
 - 4. Memorandum of Agreement between the State and EPA
 - 5. Statutes and Regulations
- F. REGION AND HEADQUARTERS REVIEW AND DETERMINE IF ADDITIONAL INFORMATION IS NEEDED
- G. PROPOSED APPROVAL IS PUBLICLY NOTICED BY REGION
- H. EPA CONSIDERS COMMENTS AND EITHER REQUIRES REVISIONS OR PUBLICLY NOTICES APPROVAL

III. TOOLS & ACTIVITIES

- A. DISTRIBUTION OF GUIDANCE MATERIALS TO REGIONS AND TO THEIR STATES

To make the approval process as easy as possible, we have generated various items to assist States, including:

- 1. State Sludge Management Program Guidance Manual
- 2. Model documents on disk
- 3. Regulations on disk (Part 501 is currently available and Parts 122 and 123 will be available soon)
- 4. CWA Section 104(b)(3) Guidance

5. Interim Application Guidance
6. Interim Sewage Sludge Permit Application Form
7. Question and Answer Notebook Series

The State program guidance document was distributed when published, but we redistributed it along with the model documents on disk and the guidance on CWA Section 104(b)(3) grants in October 1992. The Interim Application Guidance was distributed in July 1993. The Interim Sewage Sludge Permit Application Form is currently undergoing OMB review. We are still working on the getting the Part 122 and 123 regulations on disk and compiling the Question and Answer Notebook Series. These last items will be distributed in FY 94.

B. CONTRACTOR ASSISTANCE

We have surveyed the Regions to determine existing, ongoing, and planned activities. Many Regions have already begun to work with their States. Some have provided contractor assistance to perform preliminary statutory and regulatory reviews for consistency with the Federal program. Attached is a preliminary inventory of activities by State. This inventory will be updated periodically.

C. WORK WITH INTERESTED STATES ON AN AD-HOC BASIS

We have committed to working through the Regions with those States showing current interest in receiving program approval. We will try to provide staff from headquarters to perform site-visits to these States to assist them in developing their programs for submission.

D. SEND OUT LETTER FROM THE ASSISTANT ADMINISTRATOR

To encourage States to seek program approval, we have drafted a letter to be sent from the Assistant Administrator for Water to the States addressing the sewage sludge program. We will continue to work with the Regions to determine specific State recipients and appropriate contents. We expect the new Assistant Administrator to sign these letters in the first quarter of FY 1994.

E. CWA SECTION 104(b)(3) GRANTS

We have provided oversight and guidance (July 14, 1992 memorandum from Michael B. Cook to Regional Water Management Division Directors) to the Regions for approving CWA Section 104(b)(3) grants for sewage sludge projects.

IV. FLEXIBILITY ISSUES IN DETERMINING ADEQUATE PROGRAM SUBMISSIONS

In approving State programs, we are trying to balance the need to provide detailed guidance with the need to allow maximum flexibility. Our regulations set out to provide flexibility by enabling States to choose to implement approved sewage sludge management programs as part of their NPDES programs or as a separate program. Many States already have a sewage sludge program and wish to blend the Federal program with their existing program. This leads to many issues that must be decided on a case-by-case basis.

In October 1990, we published the State Sludge Management Program Guidance Manual. This manual details the different components of a State Program submission and provides model documents. There is still room, however, for flexibility.

There are three common issues that arise in addressing flexibility. First, will all legal authorities need to be spelled out in the statutes and regulations, or will EPA accept broad authorities with a corresponding statement from the State's Attorney General? EPA generally prefers to have authorities specified in the statutes and regulations so that authorities are clear. However, on a case-by-case basis, we will consider broad authority provided the Attorney General makes the determination that such authority is adequate to implement the program.

Second, will EPA approve a program where all of the statutory and regulatory changes have not yet been promulgated? Our regulations are very clear that all authorities must be in effect (i.e., promulgated) at the time of program approval. States are, however, encouraged to submit other components of the program submission so that EPA can review and comment on them while statutory or regulatory changes are being promulgated.

Finally, when a State intends to implement the sewage sludge program as part of its NPDES program (i.e., under Part 123), will the entire NPDES program be reviewed or only the portions related to implementing the sewage sludge program? EPA does not intend to use this opportunity to reopen and evaluate a State's entire NPDES program. However, where there are NPDES authorities that directly impact the sewage sludge program (e.g., appropriate enforcement authority), EPA must ensure that they are adequate.

State Activities for Sewage Sludge Program Approval

October 19, 1993

Region	State	Activities
I	CT	Statutory and regulatory review underway.
	RI	Statutory and regulatory review underway.
	VT	Statutory and regulatory review underway.
II	NJ	Statutory and Regulatory review will begin shortly for approval under Part 123 and 501. State is currently doing program "self evaluation." State is considering pursuing authorization under 123 and 501 so it can keep its current regulatory structure. Region II and the state are holding monthly meetings— Region II and NJ attorneys are involved. NJ submitted CWA §104 (b)(3) grant proposal. State is hoping to have program approved by 2/94.
	NY	NY is still working out which State program will be the lead. Statutory and regulatory review will begin shortly. NY submitted CWA §104 (b)(3) grant proposal.
III	WV	Statutory and Regulatory review for approval under 123 completed 1/24/92. Region and HQ reps. met with State in October 1992. State agency met with State Legislators. WV filed an emergency rule with the Legislative rule-making review committee. West Virginia's CWA §104(b)(3) grant proposal has been approved.
	DE	Statutory and regulatory review for approval under Part 123 and Delaware's land treatment regulations completed 9/24/92. Region and HQ met with Delaware on 7/2/93 to discuss program authorization. DE submitted a CWA §104(b)(3) grant proposal.
	PA	Statutory and regulatory review for approval under Part 501 completed 12/5/91. EPA Region III met with PADER Bureau of Water Quality and Bureau of Air and Waste Management on 6/29/93 to discuss program authorization. PA submitted a CWA §104(b)(3) grant proposal.
	MD	Statutory and Regulatory review for approval under Part 501 completed 9/6/91. Statutory and Regulatory review for partial approval under Part 123 completed 5/18/93. MD submitted a CWA §104(b)(3) grant proposal.
	VA	EPA reviewed VA draft VPDES regulations and provided comments. VA appears to be adopting 503 as is except possibly incineration.

IV	GA	Statutory and regulatory review for approval under Part 123 completed 1/6/92. Completed draft of program description.
	KY	Statutory and regulatory review for approval under Part 123 completed 12/5/91. State has established a task force to work on program authorization. KY submitted a CWA §104(b)(3) grant proposal.
	NC	On-going development of program description.
	TN	Has expressed interest in program.
	AL	Has expressed interest in program. AL submitted a CWA §104(b)(3) grant proposal.
	MS	Started regulatory review.
	SC	Started regulatory review. SC submitted a CWA §104(b)(3) grant proposal.
V	WI	Statutory and regulatory review for approval under Part 123 completed 6/26/92. Met with State and HQ reps. 12/92. Draft schedule has been established for authorization in 7/95. WI submitted a CWA §104(b)(3) grant proposal.
	IN	Statutory and regulatory review for approval under Part 501 completed 7/3/91. State working internally to develop regulations. IN submitted a CWA §104(b)(3) grant proposal.
	OH	On-going statutory and regulatory review for program approval. Draft review submitted to regional sludge coordinator. OH submitted a CWA §104(b)(3) grant proposal.
	MI	Due to a lack of resources, MI is considering ending State program and saying compliance with Part 503 is compliance with State laws.
	MN	On-going statutory and regulatory review. State and Region have met to discuss issues. MN submitted a CWA §104(b)(3) grant proposal.
VI	AR	Internal "legal review" (self-evaluation): Will probably not pursue program approval due to lack of resources.
	TX	Has proposed new sludge regulations but no action is likely in the near future.
VII	KS	Statutory and regulatory review currently in draft form. Region expects program approval submission spring '94.
	MO	Statutory and regulatory review currently in draft form. Region expects program approval submission spring '94. MO submitted a CWA §104(b)(3) grant proposal.
	NE	Statutory and regulatory review currently in draft form.
	IA	Statutory and regulatory review is being drafted. Region is optimistic that a program approval application will be submitted in '94.

VIII	CO	Statutory and regulatory review for program approval under Part 123 completed fall 1989. On-going internal amendment and review of NPDES program to include sludge. CO is working under the presumption that if NPDES program is acceptable the sludge program will be acceptable.
	UT	Is interested in program, but is balking because of a lack of federal money to administer the approved State program.
IX	HI	On-going statutory and regulatory review for program approval. Hawaii's CWA §104(b)(3) grant proposal has been approved.
	AZ	The Region is not currently willing to consider program submissions from Arizona until State receives NPDES program approval. This is not currently an issue because AZ has not shown interest in sludge, and its NPDES submission has already been rejected once.
	NV	Nevada's CWA §104(b)(3) grant proposal has been approved.
X	WA	Legislature passed law requiring WA DOE to look into program authorization. Washington's CWA §104 (b)(3) grant has been approved.
	OR	Consultation between regulated community and State agency to determine if OR wants to pursue authorization.