

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

OFFICE OF  
WATER

MAY 21 1987

MEMORANDUM

SUBJECT: Implementation of Section 406 of the Water Quality Act of 1987: Sewage Sludge Permitting and State Programs

FROM: Martha G. Prothro, Director  
Permits Division, OWE (EN-336)

TO: Permits and Compliance Branch Chiefs  
Sludge Coordinators, Construction Grants Program  
Regions I - X

On February 4, 1987, Congress passed the Water Quality Act of 1987 which included revisions to Section 405 of the Clean Water Act dealing with sewage sludge regulation and permitting. These amendments clarified some ambiguities regarding the implementation of the Part 503 sludge technical criteria. There were, however, several implementation activities already underway, such as Regions' working with States on planning the implementation of the proposed 501 State program regulations, and States' developing inventories of sludge facilities. Passage of the amendments apparently has resulted in a delay in at least some of these activities, and may have led to some confusion as EPA and the States have sought to understand and comply with the new statutory requirements.

Attached for your information is a copy of an April 3 memorandum to the Regional Water Division Directors on the implementation of the permitting requirements of Section 405. It will not answer all of your questions, but it does describe the direction of Office of Water Enforcement and Permits' (OWEP's) plans for program implementation and highlight some of the activities that are currently underway. There are two areas of concern to the Regions and States that I would like to specifically address here.

501 Regulations. The 501 State sludge management program regulations were proposed by the Office of Municipal Pollution Control on February 4, 1986. Several of you have expressed concern about the delay in going forward with this rulemaking and the impact of the uncertainty on current State efforts to develop programs.

The final rulemaking was held up when amendments to the Clean Water Act, which included requirements on sludge program implementation, were imminent. We currently expect that the 501 regulations will be repropose to provide the public with an opportunity to comment on the rules within the context of the amendments, including some additional requirements mandated by the Water Quality Act (most importantly, the requirement that programs implementing Section 405 must be permit programs). The Administrator's Tracking System (ATS) schedule calls for publication of the reproposal in the Federal Register by mid-December 1987. We hope to have a draft regulation for your comment this summer. Although we would encourage States to move forward with development of State programs for permitting sludge in accordance with EPA's to-be-promulgated §405(d) technical criteria, as of yet we cannot be certain what the minimum requirements will be for approvable State sludge programs. However, we are committed to the basic approach of flexibility for States that was reflected in the February 4, 1986 proposal.

Several of you have questioned whether NPDES-approved States need to obtain separate approval of their sludge programs before they can implement the Section 405 requirements through NPDES permits. It also has been pointed out that at least in some cases State authority to regulate sludge was included in the review and approval of the NPDES program. However, consistent with jurisdictional limitations on NPDES coverage of sludge prior to the Water Quality Act, NPDES approval of sludge regulatory authority extended only to discharges of sludge to surface waters. While a State may have gone beyond this in its State regulatory authority, this was not part of the NPDES program for purposes of NPDES program review and approval. State sludge programs need to be evaluated in terms of their ability to carry out the new requirements of Section 405, which are much more comprehensive than prior law. However, in developing the State sludge permitting program regulations, we expect to propose a separate set of approval procedures for NPDES States that wish to regulate sludge through NPDES permits, along the lines of a program modification under 40 CFR 123.62. Thus, NPDES States seeking approval of their sludge programs would submit addendums to the original program submission where needed, to demonstrate that they have the additional authority to implement the requirements of Section 405.

Another important aspect of State sludge programs is that, although in the long term States will have to be formally approved before implementing Section 405, in the interim (i.e., prior to the promulgation of the Part 503 technical criteria) we have much more flexibility. (See amendments to 405, which require that prior to the criteria, the Administrator shall impose sludge conditions in POTWs' NPDES permits, or take other appropriate measures to protect public health and the environment.)

We are in the process of setting up a system whereby in the interim we can defer as much as possible to adequate State sludge programs to carry out interim sludge permitting. This should also facilitate formal program approval later on. We expect to have a draft memorandum explaining the interim permitting process and deferral to existing State programs available for your review and comment within the next couple of weeks.

State Inventories. With regard to State inventories of sludge handling facilities, the FY'88 Guide to the Office of Water Accountability System and Mid-Year Evaluations (Appendix B, Definition/Performance Expectation) provides:

The expectation is that each State will have an up-to-date assessment of existing sludge management facilities by the end of FY 88 as a starting point for developing their own sludge management program. An inventory of sludge management facilities should at a minimum provide an estimate of the quantity/quality of sludge being handled at each facility, an identification of each facility's use/disposal practice, and a summary of the quality/quantity of sludge being handled by each of the major use/disposal practices.

OWEP and OMPC currently have a contract underway to develop software to enable input of this information into Agency computers and easier access by the States and Regions. There soon will be a draft for your comment.

OWEP is leading a workgroup on sludge permitting issues with members from Headquarters, Regions and States. (A membership list is attached.) This workgroup had its first meeting on May 8; we expect that hereafter most transactions will be by telephone or mail. This group serves an important function in developing the Section 405 sludge program, by providing input on what the States are currently doing and by commenting on the various options for implementation being considered by Headquarters. Any Region not now participating is encouraged to do so. Please contact Greg McBrien at (FTS) 475-9527.

Changes to the Clean Water Act will necessarily result in some temporary delays in establishing final sludge program requirements. It will also require coordination between permits personnel and sludge management experts in the Construction Grants area in Headquarters, Regions and the States. We look forward to working with you in this important and challenging endeavor. If you have any further questions or comments please feel free to contact me at (FTS) 475-9545 or Martha Kirkpatrick of my staff at (FTS) 475-9517.

Attachments

cc: Bob Blanco, OMPC

bcc: Jim Elder  
Frank Hall  
Bill Diamond  
Geoff Grubbs  
Jim Gallup  
Tom Lavery  
Ed Gross, OMPC

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