



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

JUL 28 1994

MEMORANDUM

SUBJECT: Authorization of Partial State Sewage Sludge Programs

FROM: Michael B. Cook, Director *Michael B. Cook*
Office of Wastewater Management (4201)
Office of Water

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Water Division (2355)

TO: Robert F. McGhee, Acting Director
Water Management Division, Region IV

On June 9, 1994, you wrote to the Office of Water concerning State sewage sludge program authorization. In particular, you have requested its view as to whether the State of Georgia may seek authorization for a partial sewage sludge permit program that addresses all Part 503 sewage sludge use or disposal practices with the exception of incineration. You believe that EPA has the authority to approve such a State program. We agree, as discussed below.

Section 405(f) of the Clean Water Act (CWA) requires that any National Pollutant Discharge Elimination System (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. These permits are: 1) permits under other specified Federal statutes¹ or 2) permits under a State permit program where EPA determines "such programs assure compliance with any applicable requirements" of section 405. Section 405(f) further requires EPA to promulgate regulations establishing procedures for approving State sewage sludge permit programs that will assure compliance with section 405.

¹ Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. § 6921, et seq., Part C of the Safe Drinking Water Act, 42 U.S.C. § 300h et seq., the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. § 1401, et seq. or the Clean Air Act, 42 U.S.C. § 7401, et seq.



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We conclude that EPA may adopt a case-by-case approach to approval of partial sewage sludge programs in the absence of regulations establishing the partial program approval criteria. However, such an approach will require EPA to articulate clearly, in any individual program approval proceeding, the Agency's approval criteria. The Agency must also provide an opportunity for the public to comment on the approval criteria, and EPA must fully explain its reasons for approval of any specific State partial sewage sludge permit program.

You have specifically asked whether EPA may approve partial State sewage sludge permit programs which do not cover all areas within the jurisdiction of the administering State agency. We believe we could do so.³ A State may request approval for a partial State sewage sludge permit program that covers a primary category of the sewage sludge use or disposal practices or facilities falling under the jurisdiction of the administering State agency or department. The submission must constitute a significant and identifiable part of the State's sludge management activities or facilities. For example, the partial program may address one or more of the following categories of sewage sludge use or disposal practices: incineration, land application, and surface disposal. A State, at a minimum, must administer a complete permit program, including permit development, issuance, compliance and enforcement responsibilities with respect to the area for which it requests partial program approval.

As with any State seeking sewage sludge program authorization, Georgia must develop and submit for EPA approval a program submission meeting the requirements of Part 123 (for NPDES program submittals) or Part 501 (non-NPDES program submittals). This includes the development of appropriate State legal authorities, a program description, an Attorney General's Statement, and a memorandum of agreement. The public must have an opportunity to comment on whether EPA should approve the Georgia partial program submittal during the formal program approval process under 40 C.F.R. Part 123 or 501. We will be happy to work with Region IV staff and Georgia during the program development process.

³ The statutory conditions for approval of State NPDES discharge programs under section 402 differ from those for approval of sewage sludge permit programs under section 405(f). Thus, section 405(f) would authorize EPA to approve a partial sewage sludge permit program administered through the State NPDES program under less restrictive conditions than those required for CWA discharge permit programs under section 402(n). Of course, the conditions of section 402(n), however, would apply to NPDES partial programs that regulated discharges of sewage sludge to navigable waters.

In 1989, EPA promulgated the regulations required by section 405(f). 54 Fed. Reg. 18716, et seq. (May 2, 1989). The requirements for State sewage sludge permit programs administered under the umbrella of a State's NPDES permit program are codified at 40 C.F.R. Parts 122, 123 and 124. Requirements for State sewage sludge permit programs that are administered outside the framework of the NPDES program are codified at 40 C.F.R. Part 501.

Part 501 (State Sludge Management Program Regulations) explicitly provides for submission of partial sewage sludge permit programs (see 40 C.F.R. § 501.1(d)(1)). However, the requirements and procedures in Parts 122, 123 and 124 addressing NPDES sewage sludge permit programs are silent on whether partial sewage sludge programs are authorized. At the time EPA promulgated these regulations, EPA stated its intention to propose further changes that would spell out the criteria for approval of partial sewage sludge permit programs administered either through an authorized State NPDES or a Part 501 program.² 54 Fed. Reg. at 18750 (May 2, 1989). But, as you know, the Agency has never proposed the planned omnibus NPDES rulemaking it considered some years ago. Consequently, EPA has never promulgated regulations outlining its criteria for partial program approval.

We understand that Region IV staff have expressed concern about whether, in light of this history, EPA may approve partial State sewage sludge program submissions without Part 123 partial program criteria. We do not view the absence of regulatory criteria as a legal impediment to case-by-case approval of partial programs for the following reasons. First, the grant of authority in section 405(f) is broad and general. Second, unlike section 402(n), there is no specific statutory limitation on approval of partial sewage sludge programs in section 405. Finally, the Part 501 sewage sludge permit program regulations have explicitly recognized that, in appropriate circumstances, partial programs could be authorized. Consequently, where EPA can conclude that a State partial sewage sludge permit program does, in fact, assure compliance with section 405, section 405 would authorize EPA approval of the partial program and EPA retention of authority over the unauthorized elements of the program.

² As a result, section 501.1(d)(1) now refers the reader to a non-existent provision. The regulation requires that a State Sludge Management Program must address all sewage sludge management practices in the State "unless the State is applying for partial sludge program approval in accordance with Part 40 CFR 123.30."

You also note that it may be difficult for some States to seek "complete" State sewage sludge program authorization due to the complexity of regulating septage use or disposal. We are aware of the need for flexibility in order to accommodate various approaches to regulating septage under an approvable program. We will work with the Regions and specific States to develop approvable programs which include or do not include septage regulation, where appropriate.

If you would like to discuss this matter further, please call Richard Witt at (202) 260-7715 or Cynthia Dougherty at (202) 260-9545.

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