ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 501

[FRL–5702–1]

RIN 2040–AC87

Streamlining the State Sewage Sludge Management Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today proposes to amend its regulations that establish the requirements for States seeking approval to operate sewage sludge permit programs pursuant to section 405(f)(1) of the Clean Water Act. These requirements are now found at 40 CFR parts 123 (for National Pollutant Discharge Elimination System (NPDES) programs) and 501 (for non-NPDES programs). Both sets of requirements were modeled on the NPDES requirements for authorization of wastewater effluent discharge programs. Many States manage sewage sludge through their solid waste programs which are often structured differently from the NPDES programs. As a result, existing State sewage sludge programs may require significant changes in order to meet all the requirements of parts 123 or 501. EPA is eager for States with well-run sewage sludge management programs to obtain approval to operate their own permit programs under section 405(f)(1) without having to make unnecessary administrative and programmatic changes unrelated to protection of public health and the environment. The proposed changes would streamline the regulations to ease the authorization process for States, provide flexibility to States in implementing their permit programs and ensure that permitting determinations are based on environmental and public health considerations.

DATES: In order to be considered, comments must be received on or before May 12, 1997.

ADDRESSES: Comments should be addressed to State Sewage Sludge Management Rule Comment Clerk, Water Docket MC–4101; U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Commenters are requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by May 12, 1997. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time), May 12, 1997. EPA is experimenting with electronic commenting; therefore commenters may want to submit both electronic comments and duplicate paper comments. This document has also been placed on the Internet for public review and downloading at the following location: gopher.epa.gov.

The public may inspect the administrative record for this rulemaking at EPA's Water Docket, 401 M Street, SW., Washington, DC 20460, Room L–102 between the hours of 9 a.m. and 3:30 p.m. on business days. For access to docket materials, please call (202) 260–3027 for an appointment during the aforementioned hours. A reasonable fee will be charged for copying.

FOR FURTHER INFORMATION CONTACT: Wendy Bell, (202) 260–9534, Permits Division (4203), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

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 government	States that request authorization of their State sewage sludge management program.
Federal government	EPA regional offices that approve State sewage sludge management programs.
Local government	Owners and operators of treatment works treating domestic sewage.

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 Clean Water Act (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. 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, however, 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 recognizes 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 intends 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 beneficial use of 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, including 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. Moreover, 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, as well as any 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 National Pollutant Discharge Elimination System (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 & 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 program 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 proposing modifications to its sewage sludge management program regulations that accommodate more 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 approve State programs that do not provide adequate public health and environmental protection.

II. Discussion of Proposed Rule

A. General

EPA started the process that led to today's proposal 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. Today's proposal is an outgrowth of that process and incorporates many of the comments received on both drafts. EPA today proposes changes to Parts 123 & 501 that will provide more flexibility to States and ease the process of authorization. Under the current regulations, States that choose to implement sludge requirements through their NPDES program must meet the requirements and follow the procedures in Part 123. States that want to obtain approval for an existing non-NPDES program must comply with the procedures and requirements in Part 501. However, these requirements for authorization under an NPDES or other type of program are very similar.

As part of an overall effort to eliminate unnecessary regulations, EPA is today proposing to delete the provisions of Part 123 that contain State program requirements applying solely to sewage sludge. Under today's proposal, States seeking approval to operate a State sewage sludge management program under section 405(f)(1) would meet the requirements and procedures in Part 501 when submitting sewage sludge management programs. A State would be 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 proposal 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 program 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). Section 505 of the CWA allows citizen suits to be brought for any violation of Part 503 or an equivalent State regulation.

Because existing Part 501 was modeled on the NPDES program, States that manage their sewage sludge through solid waste or other programs may have difficulties in meeting some of its procedural requirements because these programs have different requirements. Today's proposal 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 an NPDES permit program pursuant to section 402 of the CWA. Today's proposal would modify 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) would be 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 proposal 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.

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 proposal would modify § 501.1(b) to explain that Part 501 specifies the requirements and procedures for approval of all State sludge management programs, both NPDES and non-NPDES.

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). Section 501.1(d)(1) currently requires a State sludge management program to have the authority to address sewage sludge transport and storage. Today's proposal would delete this requirement 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 considering development of a guidance document to provide information on appropriate sewage sludge storage methods.

The existing language in this section includes a requirement for State sewage sludge programs to include Federal facilities. This requirement is not being changed in today's proposal. A State does not have to have Federal facility authority for NPDES in order for its sewage sludge program to be approved. If a State does not have Federal facility authority, these facilities would be regulated under a non-NPDES program, whether or not other facilities are regulated under NPDES.

The proposed language in this section would clarify that a State must have the authority to regulate only those sewage sludge management activities covered by Part 503. A State would not need the authority to regulate a practice not covered by Part 503, such as making bricks out of sewage sludge. The current § 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 proposal would delete the phrase ''distribution and marketing'' since this sewage sludge use is regulated as ''land application,'' and clarify that ''landfilling'' takes place at ''municipal solid waste landfills.'

Existing § 501.1(d)(1) contains a reference to a nonexistent section—40 CFR 123.30. Today's proposal replaces this with a reference to a new paragraph (m) that is added to this section. Proposed § 501.1(m) describes the requirements for a partial sewage sludge program.

CWA Section 405(f) authorizes the Administrator to approve State programs which assure compliance with section 405 requirements. Pursuant to this authority, EPA is proposing in today's notice to allow partial sewage sludge management programs under Part 501. Proposed § 501.1(m) would allow 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 would be required to assume a complete permitting 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 would approve a partial program for land application, for example, that regulated only sewage sludge and excluded 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 current § 501.1(c)(2) require that any complete sludge management program submitted for approval must include such authority. EPA is proposing to implement its approval of partial programs in the same manner. An approvable partial program must include the authority to permit both POTWs and other treatment works 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 would be required to meet the requirements of CWA section 405, and would have 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 proposal would also clarify 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 would have to explain how the program will operate, including the relationship between the partial program and the unassumed part which would remain under EPA control. In addition to the information required for the MOA under § 501.14, the State submission would have to delineate responsibilities of both the State and EPA in administering the partial program.

2. Definitions

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

3. Program Description

In order to ensure that a State program can be properly run, § 501.12 requires a description of various program elements. EPA does not believe the current level of detail is necessary. Today's proposal would revise the language in §§ 501.12(b) and 501.12(d) to contain the information that EPA believes is necessary in a program description.

The current language in §§ 501.12(b)(2) and (3) requests information on program costs and funding sources for a program's first two years. This information is necessary to show that a State has the resources to properly carry out a new sewage sludge management program. Many States have had programs established for many years. 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. The proposed language would require this information only for State programs that have been in existence for less than two years.

The current language in § 501.12(d) requires submittal of forms that the State intends to use in its program.

EPA wants to ensure that the required information is collected but does not require use of specific forms. Therefore, the proposed language would require either submittal of forms or the procedures used for obtaining information.

EPA agrees with several commenters that States should have an inventory of all TWTDS but should not be required to develop an inventory of land application sites. The language in proposed § 501.12(f) has been modified accordingly.

4. Memorandum of Agreement With the Regional Administrator

The proposed changes to § 501.14(a) would clarify that the Regional Administrator approves the memorandum of agreement (MOA).

The proposed change to § 501.14(b)(1)(i) would clarify that permit-related information is only transferred from EPA to a State with respect to the portion of the State program for which the State has obtained approval. For example, if a State were seeking a partial program for land application, information on pending permit applications or compliance information for incinerators would not be transferred to the State.

The other changes in § 501.14(b) would delete some of the current waiver prohibitions. EPA believes that waiver of review of permits for ''Class 1 sludge management facilities'' is an issue that should be decided by the affected State and EPA Regional office. EPA believes that the Regional Administrator should be able to terminate a waiver, but only after providing a written explanation of the reason for the termination.

The current language in § 501.14(c) requires all permit related documents to be sent to EPA. The proposed language would require documents to be sent only when requested by EPA. This would eliminate the transmission of documents that EPA does not intend to review. This change would not reduce EPA's ability to obtain any permit related documents. Section 501.19 requires compliance with § 123.41, the NPDES section that requires a State to make available to EPA ''any information obtained or used in the administration of a State program'.

Section 501.14 also States that the Regional Administrator will normally notify the State at least 7 days before an EPA facility inspection. Today's rule would delete that language and allow the region and State to decide whether such a time period should be included in the MOA.

5. Requirements for Permitting

The current 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 than the NPDES model. EPA believes that the specific permitting requirements 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 is concerned that removal of these permitting procedural requirements—a move aimed at simplifying the approval process—may, 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 make the authorization process more difficult for some States while easing it for others. EPA is asking for further information on this issue.

Today's proposal would retain most of the requirements for permitting but would allow States to follow their existing practices in many instances. In some cases the Regional Administrator would have to decide whether the State's procedural requirements are comparable to those required by this provision. EPA recognizes that this may result in inconsistency in State program implementation, but believes that procedural inconsistency is not a significant concern in this program and that the added flexibility far outweighs any potential problems. EPA requests comments on this approach.

EPA is proposing to delete § 501.15(a)(2) that contains the specific information requirements for permit applications. Instead, in § 501.15(d)(1)(ii), EPA proposes to require the information listed in 40 CFR 122.21(q). EPA proposed these revised requirements on December 6, 1995 (60 FR 62546). EPA is currently reviewing all comments received on that proposal. 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.

Today's proposal would also remove §§ 501.15(a)(3) and (4) because these requirements are repeated in § 501.15(b). The CWA limits the terms of NPDES permits to no more than five years. Today's proposal would modify 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 realizes that some States issue permits for longer than 10 years and requests comments on this issue of how best to use scarce resources effectively and insure adequate protection of public health and the environment.

Today's proposal would modify § 501.15(b) to require that all permits issued by the State include the listed permit conditions unless comparable conditions are provided for in the MOA. This would provide flexibility to both the Region and the State. This proposed change is not intended to imply that permittees can choose which conditions to put into permits. EPA 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 repeated in a permit to require compliance.

This section also contains several other specific proposed changes. Section 501.15(b)(10) would delete the language that requires a minimum of once per year monitoring. This change is necessary if Part 503 is modified as proposed to allow less than once per year monitoring. This proposal was published on October 25, 1995 (60 FR 54771).

The last sentence in § 501.15(b)(13) would be deleted because this permit condition has already been stated in § 501.15(b)(2). EPA is also proposing to modify § 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 Procedure 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 proposal would modify § 501.15(d) to require the listed permit procedures unless comparable State requirements are in place. This provision would provide flexibility for accommodating varying State requirements that protect public health and the environment.

EPA is proposing to change § 501.15(d)(1)(i) to clarify which TWTDS must apply for a permit. Applications are only required from TWTDS whose use or disposal method is regulated under part 503. A POTW that made bricks out of all of its sewage sludge would not be required to submit an application. An industrial facility (except a privately owned treatment works treating domestic sewage) would also not be required to apply at this time because such facilities are not currently covered by part 503. See 54 FR 18727 and 58 FR 9406.

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. 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, if a TWTDS is covered under a State's sewage sludge general permit, it would follow the State's notification procedures rather than submit an individual permit application.

EPA is proposing to delete existing § 501.15(d)(1)(ii)(A). This provision was intended to allow the permitting authority to obtain applications for incinerators and others who requested site-specific pollutant limits before other applications because these permits would take the most time to issue and incinerators were believed to pose the greatest risk to public health. However, there have been few requests for site-specific permits. In addition, proposed changes to Part 503 (60 FR 54771) would 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. As described in § 501.15(d)(1)(ii)(C), the Director may require permit applications from any TWTDS at any time if necessary to protect public health and the environment.

EPA is proposing to redesignate existing § 501.15(d)(1)(ii)(B) as § 501.15(d)(1)(ii)(A) and to change the regulatory citation for the required application information.

EPA is proposing to redesignate existing § 501.15(d)(1)(ii)(C) as § 501.15(d)(1)(ii)(B). This section lists the limited background information requested of non-NPDES TWTDS. EPA is also proposing to modify proposed § 501.15(d)(1)(ii)(B)(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) currently 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 proposing to revise 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 would revise this provision to delete the list of the specific information required to be included in a fact sheet.

EPA is proposing 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 is the only available option. For example, in some States the basis for the permit may be the State's sewage sludge regulations. In this situation a fact sheet would not be necessary.

EPA is proposing to change § 501.15(d)(5) by inserting the phrase ''meeting or hearing'' in place of ''hearing'' throughout the section. This change would simplify the approval process for States whose public participation requirements for permit issuance call for public ''meetings'' rather than ''hearings''. This modification in the regulations would obviate the need in States with such requirements for a change in State law in order to obtain approval.

Today's proposal would modify 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 proposal would also delete 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 proposal is 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.

Proposed changes to § 501.15(d)(5) would 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.

6. Requirements for Enforcement Authority

EPA is proposing to revise 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.

7. 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. The proposal would reduce the information required from States and would require annual reports that contain only the information that EPA believes would be of most value in reviewing a States's sludge management program.

8. Procedures for Revision of State Programs

The current language in § 501.32 requires a State to revise its program within one or two years of promulgation of changes to the sewage sludge regulations. The proposed change would allow 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 public noticed in the Federal Register. Because the sewage sludge regulations are directly enforceable, TWTDS must comply with any new Federal sewage sludge requirements, whether or not the State has modified its regulations to conform with the Federal rule.

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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 12875

Under Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, the Agency is required to develop an effective process to permit elected officials and other representatives of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals.

EPA began development of today's proposal by soliciting suggested changes from a group of volunteer States. Their suggestions were used to develop a first draft of proposed rule changes that was sent on February 7, 1996 to States, tribes, environmentalists, and other stakeholders. On May 10, 1996, EPA sent out a second draft to the same stakeholders. The comments received on both drafts were used to develop today's rule.

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.* (See OMB 2040–0057, June 14, 1995.) The proposed rule changes are designed to streamline the regulatory process and will not impose any new information collection requirements.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, EPA must prepare a regulatory flexibility analyses for regulations that have a significant impact on a substantial number of small entities.

Today's proposal would only apply to States seeking to obtain EPA authorization for their State sewage sludge permit programs and States are not considered small entities under the RFA. EPA is not proposing to establish any requirements that are applicable to small entities as defined by the statute. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies 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), Public Law 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, or 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. 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 or tribal governments or the private sector in any one year. The proposed amendments provide additional flexibility to the States in complying with current regulatory requirements and lesson the burden on affected governments. As noted above, there are no costs associated with the changes proposed today. Thus, today's proposed 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. The proposed amendments would not significantly affect small governments because as explained above, the proposed amendments would provide additional flexibility in complying with pre-existing regulatory requirements. The proposed amendments also would not uniquely affect small governments because the increased flexibility provided by the proposed changes would be available to POTWs operated by small governments to the same extent as to other sewage sludge users or disposers.

List of Subjects

40 CFR Part 123

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

40 CFR Part 501

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

Dated: February 28, 1997.

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 proposed to be amended as follows:

PART 123—STATE PROGRAM REQUIREMENTS

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 States 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 shall 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.

* * * * *

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 shall 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) shall provide for the following, in such manner as the State Director and the Regional Administrator shall 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) Shall consider all data transmitted pursuant to § 123.43 (or, in the case of a sewage sludge management program, § 501.21);

(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), it shall 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 shall 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) (or, in the case of a sewage sludge management program, § 501.15(d)(7)) shall be held, and public notice provided in accordance with § 124.10, (or, in the case of a sewage sludge management program, § 501.15(d)(5)), 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), 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 shall 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 shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall 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)) shall 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'' shall 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).

* * * * *

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). The Administrator shall 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 shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

* * * * *

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

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 shall have authority to address all sewage sludge management activities used in the State that are practiced or planned to be practiced in the State and are covered by 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 shall also be applicable to all federal facilities in the State. Sludge management activities shall 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 as may be regulated by 40 CFR part 503.

* * * * *

(m) A State whose sludge permitting program has not been approved under part 501 may submit to the Regional Administrator an application for approval of a partial sewage sludge program that meets the following requirements:

(1) A partial program submission must constitute a complete permitting program covering one or more categories of sewage sludge use or disposal. A complete permitting program includes the issuance of permits, the monitoring of compliance and, in the event of violations, enforcement action for all TWTDS engaging in the sewage sludge use or disposal practice that is the subject of the partial program.

(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 in detail 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 in detail the responsibilities of EPA and the State in administering the partial program, including specific provisions for transfer of information and determination of which TWTDS 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)(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 shall indicate the resources dedicated to administering the federally required portion of the program. This description shall 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 procedures the State intends to employ in its program.

* * * * *

(f)(1) * * *

(iv) NPDES, UIC, RCRA, Clean Air Act, and State permit number, if any, and;

(v) Compliance status.

(2) States may submit either:

(i) Inventories which contain all of the information required by paragraph (f)(1); 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 shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Program Director and the Regional Administrator and shall 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 shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's oversight responsibility.

(b) * * *

(1)(i) Provisions for the prompt transfer from EPA to the State of pending permit applications applicable to the State program 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 shall 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 shall follow the permit review procedures set forth in 40 CFR 123.44.

(3) The Memorandum of Agreement shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall set forth interim requirements and the date for their achievement. The time between interim dates shall not exceed six months.

(iii) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall 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.

(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 (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 shall contain the following permit conditions (or comparable conditions as provided for in the Memorandum of Agreement):

* * * * *

(10) *Monitoring and records.* (i) The permittee shall 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 shall 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 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 shall 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 40 CFR part 503 and covered under the State program, except TWTDS covered by sewage sludge general permits, shall complete, sign, and submit to the Director an application for a permit within the time specified in paragraph (d)(1)(ii) of this section.

(ii)(A) TWTDS with a currently effective NPDES permit must submit the application information required by 40 CFR 122.21(q) when the next application for NPDES permit renewal is due.

(B) Other existing TWTDS not addressed under paragraph (d)(1)(ii)(A) of this section must submit the information listed in paragraphs (d)(1)(ii)(B)(1) through (5) of this section, to the Director within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s). The Director shall determine when such 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 requirements of 40 CFR 122.21(q)(8)(iv), the description shall 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.

(C) Notwithstanding paragraph (d)(1)(ii)(A) or (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.

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

(iii) The Director shall 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 shall be prepared for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall 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 shall give public notice that the following actions have occurred:

(A) A draft permit has been prepared. At least 30 days shall be allowed for public comment on the draft permit unless there has been a previous public comment period such as during 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 shall 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 potentially affected or requesting notice of the action, including 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 shall 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 shall 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 shall be in writing and shall State the nature of the issues proposed to be raised in the meeting or hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (d)(8) of this section.

(7) *Public meetings or hearings.* The Director shall 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 shall issue a response to comments. The response to comments shall be available to the public, and shall:

(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) and (b)(1) to read as follows:

§ 501.17 Requirements for enforcement authority.

(a)* * *

(3)* * *

(i) Civil penalties shall 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 shall at a minimum, have the authority to assess penalties of up to $5,000 a day for each violation.

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any permit condition; or any filing requirement. The State shall 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).

(iii) Criminal fines shall 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 shall 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 shall be assessable for each instance of violation and, if the violation is continuous, shall 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 shall prepare annual reports as detailed in this section and shall submit any reports required under this section to the Regional Administrator. These reports shall 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 shall submit these reports to the Regional Administrator according to a mutually agreed-upon schedule. The reports specified in this section may be combined with other reports to EPA (e.g., existing NPDES or RCRA reporting systems) where appropriate and shall 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) NPDES, UIC, RCRA, Clean Air Act, and State permit number, if any;

(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 approved State program which requires revision to comply with

amendments to federal regulations governing sewage sludge use or disposal (including revisions to this part) shall 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 shall take place within 2 years; or a different schedule is established under the Memorandum of Agreement.

* * * * *

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