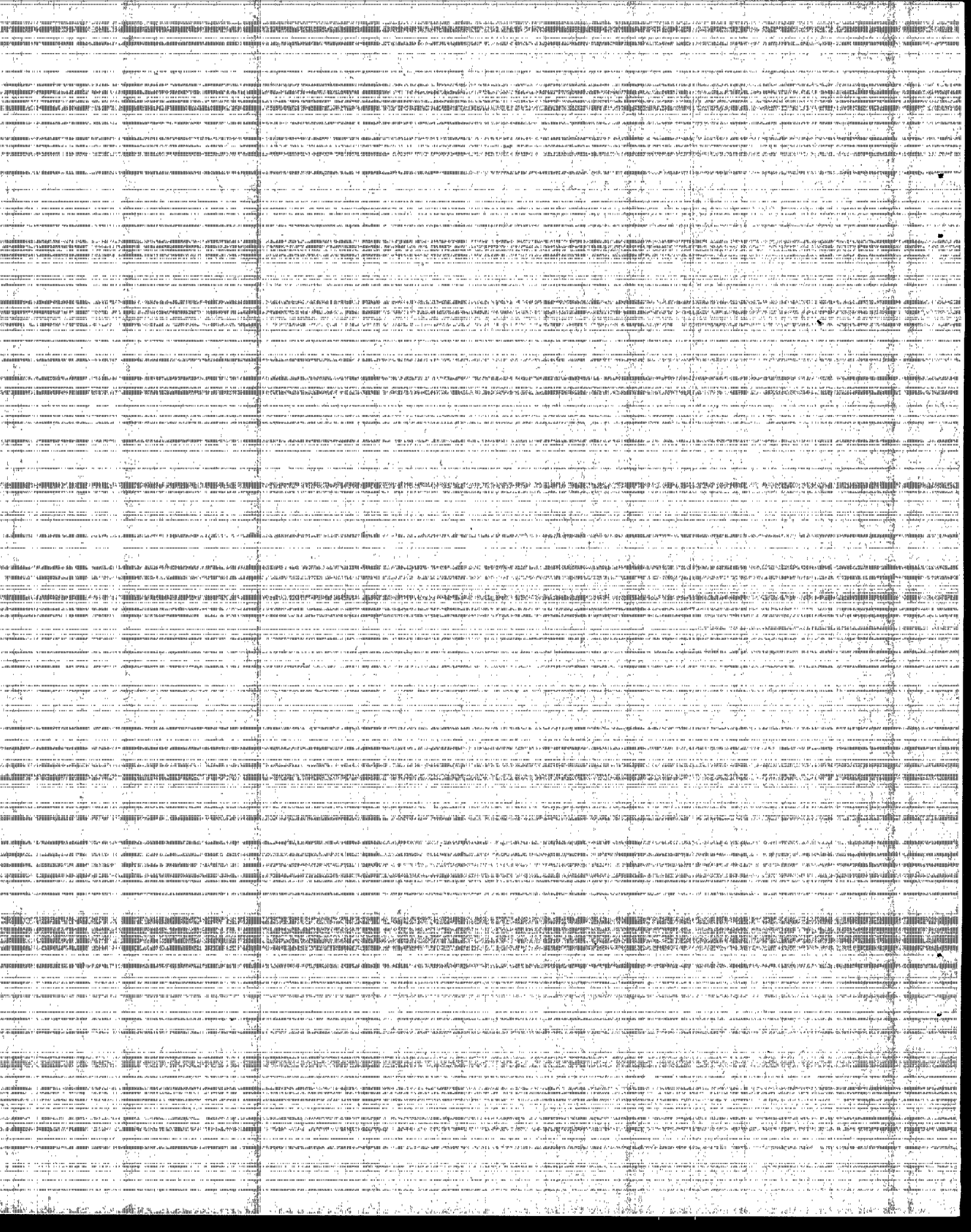




# State Sludge Management Program Guidance Manual



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

DEC 20 1990

OFFICE OF  
WATER

MEMORANDUM

SUBJECT: Sludge Program Guidance

FROM: James R. Elder, Director  
Office of Water Enforcement and Permits

TO: Users of the State Sludge Management Program Guidance

In the 1987 Amendments to Section 405 of the Clean Water Act (CWA), Congress determined that standards for sludge use and disposal should be implemented through permits issued either by EPA or by a State under an approved program. Accordingly, EPA promulgated regulations on May 2, 1989 which establish requirements for developing sludge permit conditions in NPDES permits (40 CFR Parts 122 and 124) and for approval of State sludge management programs that are administered either through NPDES programs (40 CFR Part 123) or through non-NPDES programs (40 CFR Part 501). The State Sludge Management Program Guidance is designed to assist State personnel in the development of State sludge management programs that meet the requirements of the May 2, 1989 regulation. It will also assist EPA Regional and Headquarters personnel in the evaluation of those submissions.

The guidance manual is divided into the following chapters: (1) Introduction; (2) Procedures for State Program Approval, Modification, and Withdrawal; (3) Legal Authority; (4) Program Description; and (5) Memorandum of Agreement. Checklists and model documents are included to facilitate the development of an approvable program. The Statutory and Regulatory Requirements checklist follows Chapter 3; the Program Description checklist follows Chapter 4; and the model Memoranda of Agreement follow Chapter 5. The model Attorney General's Statement and organizational charts are presented in appendices. This manual closely follows the State program regulations and should be used in conjunction with them. It also encourages State/Regional interaction in both program development and evaluation.

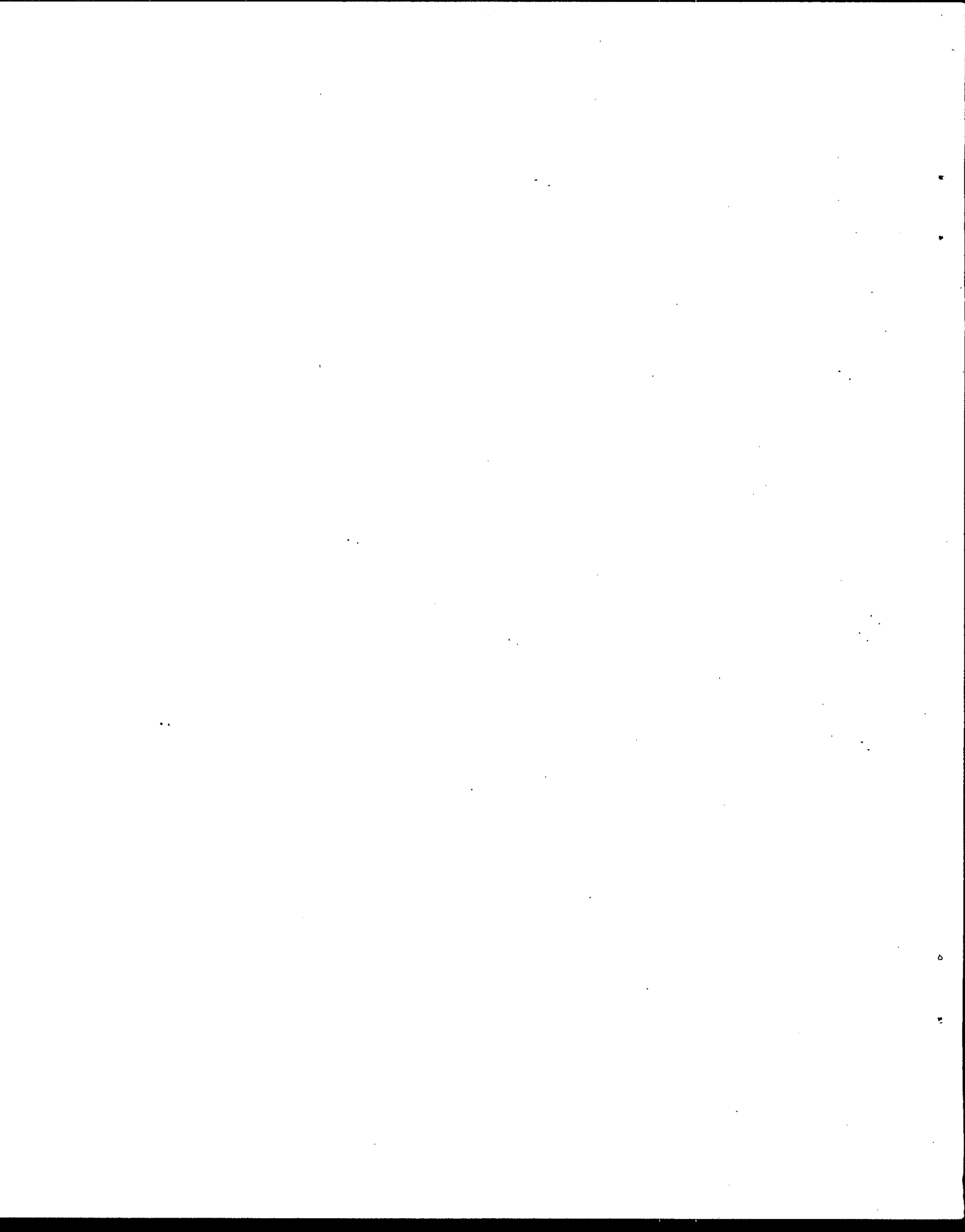
EPA encourages States to begin developing program submissions as soon as possible so that approved State sludge programs can be in place when technical standards for sludge use and disposal are promulgated. (Technical standards are currently scheduled for promulgation in late 1991 or early 1992.) Early program approval will also minimize the disruption of existing

State programs and help to fulfill the Congressional intent and EPA policy to have sludge management remain primarily a matter of State and local concern.

I hope that you will find this guidance useful in producing approvable State programs. For further information concerning this guidance, or for questions concerning State program requirements, please contact Lynn Holloway of my staff at (202) 475-9520.

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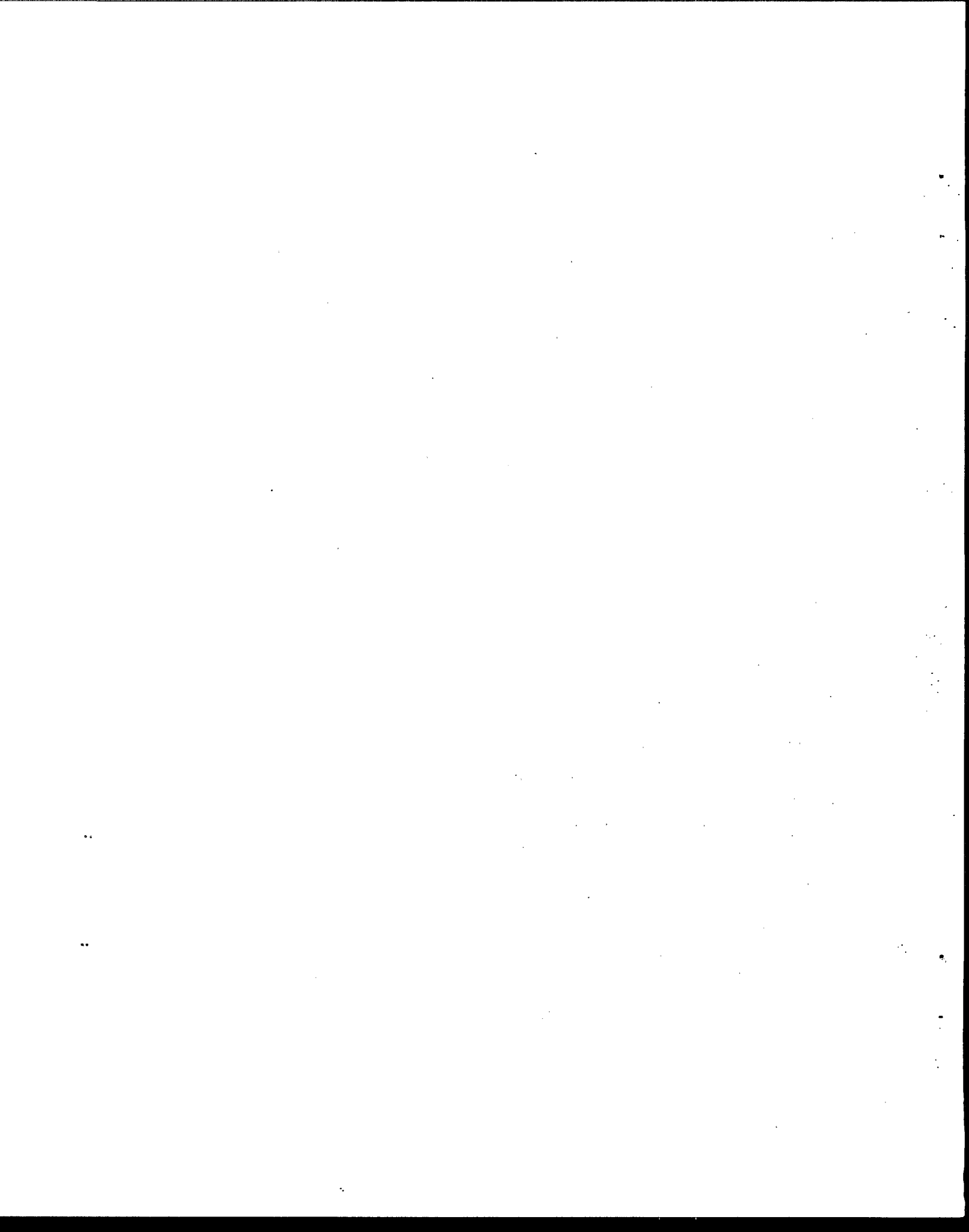
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## 1. ORGANIZATION AND USE OF THIS MANUAL

### 1.1 PURPOSES OF THIS MANUAL

This manual has two purposes. First, it provides guidance to State personnel for assembling a State sludge program application. Second, it specifies the procedures by which the U.S. Environmental Protection Agency (EPA) will evaluate the State sludge program application. The manual is intended to provide guidance to both State and Federal personnel who are either preparing or evaluating the State sludge program application.

The manual describes requirements for a State program under the two options specified in the Federal regulations:

- Under 40 Code of Federal Regulations (CFR) Part 123, if the State decides to modify its National Pollutant Discharge Elimination System (NPDES) program to add sludge permitting requirements; or
- Under 40 CFR Part 501, if the State decides to administer a non-NPDES program.

Each chapter of this manual discusses State sludge program requirements both for NPDES program revisions and for non-NPDES programs. The requirements for either type of program are essentially the same. This manual also contains checklists on legal authority and program requirements. These checklists will assist State personnel in developing complete and approvable programs, and will also assist EPA staff in evaluating program submissions by facilitating a comparison of the State's program with EPA's requirements. The manual also includes sample Memoranda of Agreement (MOA), an Attorney General's statement, and an organizational chart which States can modify to reflect their own sludge programs.

The surest way to prepare a successful program submission and to minimize time-consuming difficulties later in the process is for State personnel to work closely with EPA Regional and Headquarters staff, who can assist and speed the State's efforts. The State should establish communication with its EPA Region early in the process so that Agency staff can comment on proposed regulations and draft program documents to ensure their approvability.

## 1.2 BACKGROUND OF THE SLUDGE PROGRAM

For nearly two decades, the focus of EPA and State wastewater control programs has been to prevent pollutants from reaching surface waters. The vigorous administration of the NPDES permits program under the Clean Water Act (CWA) has forced the development and installation of technologies capable of achieving significant pollutant removal from industrial and municipal wastestreams. However, the success in cleaning the Nation's waterways has led to a concern that toxic and nonconventional pollutants removed from wastewaters by the treatment process are ending up in the sewage sludge, thus contaminating the sludge and making it more difficult to take advantage of its beneficial properties. The challenge facing Federal, State, and local governments is to control the generation, use, and disposal of sewage sludge to maximize its beneficial uses and ensure that it is safely disposed of in a manner that protects public health and the environment.

CWA Section 405 requires EPA to promulgate standards for the use and disposal of sewage sludge that protect public health and the environment. On February 6, 1989, EPA proposed such standards for five sludge use and disposal practices (54 Fed. Reg. 5746). These rules are scheduled to be promulgated in late 1991. In addition, when the U.S. Congress amended the CWA on February 4, 1987, it amended Section 405 to require that sludge standards be implemented through permits issued by EPA or by a State pursuant to an approved program. On May 2, 1989, EPA promulgated regulations establishing sludge permitting requirements and procedures, as well as requirements for State sludge programs (see 54 Fed. Reg. 18746). These regulations are set forth in 40 CFR Parts 122, 123, 124, and 501. Prior to the promulgation of the technical standards, EPA will focus on regulating Publicly Owned Treatment Works (POTWs) through NPDES permits issued under CWA Section 402, under EPA's Interim Permitting Strategy.<sup>1</sup>

## 1.3 STATE INVOLVEMENT IN THE CLEAN WATER ACT SLUDGE PROGRAM

The CWA amendments and the promulgation of Federal sludge permitting and State program regulations establish a legal and programmatic framework for a national sludge use and disposal program. Like the NPDES program, Congress intended the sludge management program to be implemented and enforced primarily at the State level. EPA believes that sludge management remains a local concern that should be handled at the State and local levels (see EPA's 1984 Policy

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<sup>1</sup>States may participate in this interim program by entering into an informal agreement with EPA or by obtaining full program approval. See the Sewage Sludge Interim Permitting Strategy, Office of Water Enforcement and Permits, September 1989.

on Municipal Sludge Management). Thus, EPA encourages States to assume responsibility for implementing the sludge permitting program by submitting a program application for approval.

Through the program approval process, a State demonstrates that it has an effective sludge program that will implement and enforce Federal standards. There are several advantages to obtaining Federal approval of State sludge management programs:

- Many States already have effective sludge management programs in place. Their experience and expertise can ensure implementation of the Federal sludge standards (40 CFR Part 503) in an efficient and comprehensive manner;
- States are in a better position to apply Federal and State standards in a manner that encourages beneficial use and promotes sludge as a resource;
- States obtaining program approval will retain maximum control over State and local decisions and policies governing safe use and disposal of sewage sludge; and
- States obtaining program approval will eliminate disruption to existing sludge programs. (Unless the State obtains approval for its own sludge program, EPA will be required to permit all treatment works in the State which treat domestic sludge. Thus, these facilities could be required to obtain both Federal and State permits.)

Section 405 of the CWA allows States two options for seeking EPA approval of a State sludge management program. A State with an approved NPDES program (these States are listed in Table 1-1) may choose to integrate sludge use and disposal regulations into its NPDES program. To obtain approval for this revised NPDES program, a State need only augment the materials previously submitted under 40 CFR Part 123 to explain how sludge management will be implemented through its NPDES program. Similarly, a State seeking approval of its NPDES program may include a sludge management component in its program submission.

Alternatively, a State may choose to issue sludge permits separately from NPDES, such as through a solid waste program that manages land disposal or an air program that manages sewage sludge incinerators. It is not necessary for a State to have an approved NPDES program to gain approval for a sludge management program. Dividing the sludge permitting responsibilities among several State agencies is also an option. These non-NPDES programs are submitted and evaluated using the procedures set forth in 40 CFR Part 501.

**TABLE 1-1. STATES APPROVED TO ADMINISTER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)  
PERMITTING PROGRAM**

• Alabama	• Arkansas	• California
• Colorado	• Connecticut	• Delaware
• Georgia	• Hawaii	• Illinois
• Indiana	• Iowa	• Kansas
• Kentucky	• Maryland	• Michigan
• Minnesota	• Mississippi	• Missouri
• Montana	• Nebraska	• Nevada
• New Jersey	• New York	• North Carolina
• North Dakota	• Ohio	• Oregon
• Pennsylvania	• Rhode Island	• South Carolina
• Tennessee	• Utah	• Vermont
• Virgin Islands	• Virginia	• Washington
• West Virginia	• Wisconsin	• Wyoming

EPA intends to propose regulations which will authorize States to submit a partial sludge management program. States may choose to submit a partial sludge management program, for example, where a State agency has responsibility for fully regulating a particular use or disposal practice. The program may be administered as part of an existing program, e.g., the State's solid waste program. This approach gives the States maximum flexibility in adapting Federal sludge requirements to existing State programs.

A State submission for a partial program must clearly identify which aspects of the program it plans to assume. The State should explain why it is unable to assume a full program. A partial State sludge program will be allowed only where a State agency has a complete permit program, including permit development, issuance, compliance monitoring, and enforcement responsibilities. This permit program must cover all facilities using the particular sludge use or disposal practice that falls within the jurisdiction of the State agency or department. All users and disposers under a particular practice would be subject to the partial program, even if not required to obtain a permit.

EPA will provide additional guidance on partial sludge programs once the regulations have been finalized. Until that time, EPA will assist States interested in partial programs on a case by case basis.

#### 1.4 SUPPLEMENTAL SOURCES OF INFORMATION

The State can obtain additional information on EPA's sludge management program from the following documents:

- Guidance for Writing Case-by-Case Permit Requirements for Municipal Sewage Sludge, Office of Water, May 1990
- Sewage Sludge Interim Permitting Strategy, Office of Water, September 1989
- Summary of Environmental Profiles and Hazard Indices for Constituents of Municipal Sludge, July 1985
- Guidance on Sampling and Analysis of Municipal Sewage Sludge, Office of Water, August 1989
- Final Permitting and State Program Regulations, May 2, 1989, 54 FR 18716
- Criteria for Classification of Sewage Sludge Disposal Facilities, September 13, 1979, 44 FR 53460
- Proposed Standards for the Disposal of Sewage Sludge, February 6, 1989, 54 FR 5746

- Standards of Performance for New Stationary Sources - Sewage Treatment Plants, October 6, 1988, 53 FR 39412
- Proposed Codisposal Sewage Sludge Regulations, August 30, 1988, 53 FR 33314.

## 1.5 ORGANIZATION OF THIS MANUAL

The remainder of this manual is organized into four chapters and two appendices. Chapter 2 reviews the basic contents of a program application and outlines EPA's procedures for program approval. Chapter 3 presents minimum statutory and regulatory authority which the State needs to implement and enforce a sludge program. Chapter 4 details the contents of the program submission, including the program's organization; necessary resources; and procedures for reviewing permit applications, drafting and issuing permits, conducting compliance monitoring, and taking enforcement actions. Chapter 5 discusses the Memorandum of Agreement between the State and the EPA Regional Office, which explains how they will work together after the program is approved. Example MOA appear at the end of that chapter.

Two appendices are also contained in this manual. Appendix A contains a model Attorney General's statement. Appendix B provides example organizational charts of a State agency administering the State's sludge program.

## **2. PROCEDURES FOR STATE PROGRAM APPROVAL, MODIFICATION, AND WITHDRAWAL**

This chapter addresses the process by which a State sludge program application is assembled and explains the steps EPA will follow in evaluating the documents, including public involvement, prior to a decision on approval. The chapter also briefly discusses the procedures for program revision and withdrawal.

### **2.1 APPROVAL OF STATE PROGRAMS**

CWA Section 405 provides flexibility with regard to State organization of sludge management programs by establishing two approaches for program approval:

- Expanding a State's existing NPDES program authority (40 CFR Part 123); or
- Establishing a non-NPDES sludge program (40 CFR Part 501).

Both approaches require the preparation of the documents listed in Table 2-1, although approved State NPDES programs need only revise their previously approved documents to address sludge management.

States are free to choose the approach that best suits their organization and needs. If a State does not currently have an approved NPDES program, or sludge will be regulated by a State entity other than its NPDES agency, it will need to apply for sludge program approval through the 40 CFR Part 501 process. If a State has an approved NPDES program and the State NPDES agency will be assuming sludge management responsibilities, application for approval through the 40 CFR Part 123 process should be less burdensome because only modifications to its NPDES program may be required. The two approaches differ from one another primarily in relation to the amount of documentation a State must submit to show that its program satisfies CWA Section 405 and related program requirements.

#### **2.1.1 Overview of the Approval Process**

A State's decision to seek approval of its sludge management program triggers a process designed to ensure that the State agency implementing the program has sufficient legal authority, procedures, and resources to manage and operate the program properly. There are a number

**TABLE 2-1. ELEMENTS OF STATE PROGRAM SUBMISSION**

- **Governor's Letter** - a letter from the Governor of the State requesting program approval. This letter need not provide any substantive information about the contents of the submission. For program modification, the request may be submitted by the Director of the State sludge management program agency instead of the Governor.
- **Program Description** - a description of program protocols and procedures including organization, permitting, compliance monitoring, enforcement procedures (including copies of any forms to be used), and resources and funding. The requirements for a program description are outlined in Chapter 4.
- **Attorney General's Statement** - a statement from the Attorney General (or independent legal counsel of the State agency) indicating that adequate authority exists under State law to administer the program. The State Attorney General must explain the basis for his/her certification of authority. The contents of an Attorney General's statement are explained in detail in Chapter 3 and a model statement appears in Appendix A.
- **Memorandum of Agreement (MOA)** - a formal agreement between the State and EPA that outlines the respective program responsibilities of each agency. The contents of the MOA are set out in Chapter 5, including examples of a new MOA and a revised NPDES MOA which addresses sludge.
- **Statutes and Regulations** - copies of all statutes and regulations that form the basis for the State's program, including all authorities cited by the Attorney General and any judicial decisions that may impact the adequacy of those authorities. Chapter 3 describes the necessary State legal authority.

of phases and activities in this process that must be jointly undertaken by EPA and the State. Each step is important to the successful approval of the State's proposed program, although they may not always occur in the order outlined (see Figure 2-1). Also, repeating some steps may be necessary in order to develop a successful program that will be operated in full compliance with the CWA.

#### **State Review of EPA Regulations and Guidance**

Prior to assembling its program submission, a State should review EPA's regulations at 40 CFR Parts 122, 123, 124, and 501, which detail the program's purposes, scope, and requirements. The State should also monitor EPA's progress in establishing technical standards for sludge use and disposal (40 CFR Part 503), since each approved State will have to adopt these standards when promulgated.



### State Self-Evaluation

Once a State becomes familiar with the contents and purposes of the Federal program, the next steps are to analyze its own legal authority to administer a similar program and to estimate the resources needed to run it effectively. The State's legal analysis should examine statutes, regulations, and applicable judicial decisions to determine whether there is a need for additional statutory authority or revised regulations. The State must also explore sources of funding necessary to administer the program.

### Meeting with EPA

At this point, if a State has not already done so, it should alert the EPA Regional Office of its intentions and seek input and assistance on development of its program submission. The State should meet with the EPA Regional staff to review State legal authorities, to anticipate program needs, and to establish a timetable for assembling the program submission. This will ensure that all relevant issues are raised at an early stage.

After the initial meeting with EPA, the State should revise its authorities, if necessary. Since legislative enactments are a common source of delay in the approval process, these changes, if needed, should be pursued as quickly as possible. By addressing EPA's comments at this early juncture, the remainder of the State's program approval process can proceed quickly. The State may then turn its attention to other documents required for the program submission. Once the State has assembled its draft submission, it is forwarded to the EPA Regional Office for detailed review and comment.

### EPA Review of Draft Submission

The EPA Regional Office will provide EPA Headquarters [i.e., the Office of Water Enforcement and Permits (OWEP)] with copies of the State's draft submission. Both Headquarters and the Region will then review the application to determine its consistency with the Clean Water Act and the Federal sludge management program regulations. EPA Headquarters and the Regional Office will coordinate their findings and provide the State with a single set of written comments. Upon receipt of EPA's comments on the draft program submission, the State may need to revise program application documents to incorporate or otherwise resolve outstanding EPA concerns.

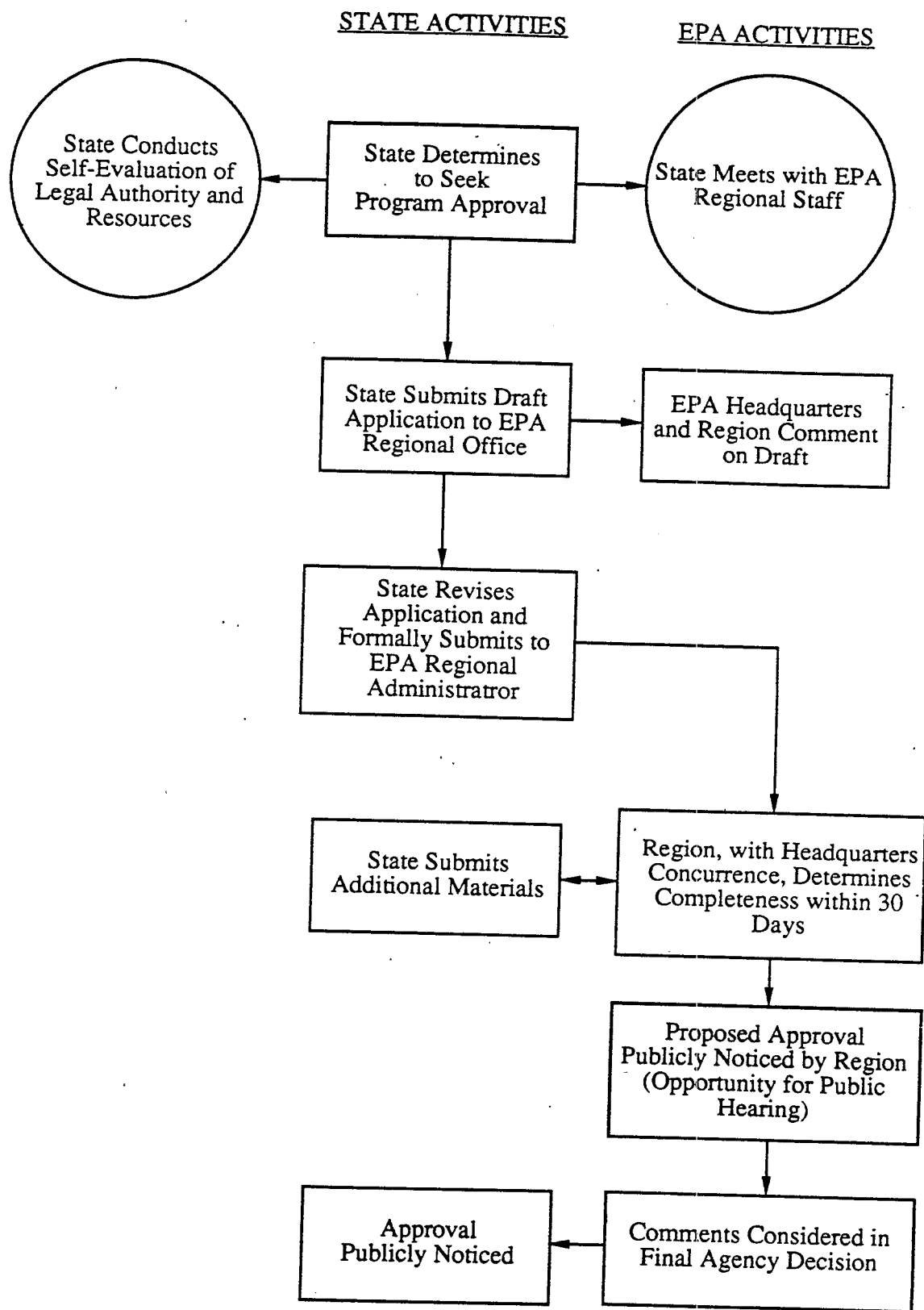


FIGURE 2-1. OVERVIEW OF THE STATE PROGRAM APPROVAL PROCESS

### State's Formal Submission

Once a State revises its draft submission to address EPA comments, the State's Governor should formally transmit the final submission to the EPA Regional Administrator [as provided by 40 CFR 501.11(a)(1) or, for States modifying their NPDES program, in 40 CFR 123.21(a)]. The State needs to submit three copies of the final program submission to EPA.

### Final EPA Review

The procedures for reviewing a State's formal program submission are set out in 40 CFR 501.31 and 123.61. Within 30 days of receipt of a State program submission, the Regional Administrator must determine whether the submission is complete. As a practical matter, if the State has worked closely with EPA, there is little chance of a negative finding at this juncture. Prior to issuing this finding, the Region will seek the concurrence of the Director of OWEP and the Associate General Counsel for Water at EPA Headquarters. Assuming the State's submission is complete, EPA has 90 days to approve or deny the request for State program approval, although this period can be extended if the State agrees. If the State's submission is incomplete, the 90-day "clock" will not commence until EPA receives the additional materials it needs.

### Public Comment

Once a completeness determination is made, the EPA Region publishes notice of a State's application for approval of its sludge management program in the Federal Register and in the largest newspapers in the State to attract Statewide attention. The EPA Region also mails notices of the State's application to all persons known to be interested in such matters, including all persons on appropriate State and EPA permitting mailing lists and all treatment works treating domestic sewage listed on the inventory which is submitted as part of the State's application. The notice provides a comment period of at least 45 days to allow interested members of the public to express their views about the State's program submission.

In addition, the notice indicates when and where any public hearings will be held, or if one has not been scheduled, how interested members of the public may request that a hearing be held.<sup>1</sup> It specifies where and when the State's submission will be available to the public and indicates the cost

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<sup>1</sup>EPA must provide at least 30 days notice to the public of the date and place of any hearing which is scheduled.

of obtaining a copy. The notice outlines the fundamental aspects of the State's proposed program. Finally, the notice directs interested members of the public to an EPA Regional contact who can provide additional information on the State's application.

### **EPA's Decision**

Following the close of public comment period, EPA considers all significant comments in making its decision on program approval. The Regional Administrator, again with the concurrence of the Director of OWEF and the Associate General Counsel for Water, determines whether to approve the State's program.

### **Notice of an Approved Program**

If the program is approved, the Governor of the State is notified and a public notice (including a summary of responses to significant public comments) is published in the Federal Register and mailed to all interested parties [see 40 CFR 124.10(c) for a list of interested parties]. This public notice explains the basis for EPA's decision. If a State's program is not approved, EPA notifies the State and indicates the reasons for disapproval and the revisions necessary for subsequent approval.

## **2.2 PROGRAM MODIFICATION PROCESS**

### **2.2.1 Submission of State Program Modification**

State programs are expected to change over time. Such changes might include, for example, addition of a new method of sludge use or disposal; the use of general permits; adoption of new or revised disposal standards; transfer of the program administration from one State agency to another; or the adoption of revised State forms. In such cases, a State must request a modification to its approved program.

Section 501.32(a) specifies that an approved State shall revise its program within one year after promulgation of new or revised Federal regulations. If the State must amend or enact a statute in order to make the required revision, such revision must occur within two years. This type of program modification is necessary to avoid inconsistencies between the State program and the Federal regulations.

Program modifications can be "substantial," thereby triggering public notice requirements, or "nonsubstantial." The procedures for substantial program modification are similar to the original

program approval process with one significant difference: The time periods (i.e., 30 days for completeness determinations and 90 days for EPA review) do not apply. There are no time limits for reviewing program modifications (see 40 CFR 123.62).

Minor changes in forms, procedures, and regulations will generally be considered nonsubstantial modifications. If the Regional Administrator determines that a State's proposed modification is nonsubstantial with concurrence of EPA Headquarters, the Regional Administrator may approve or deny the revision without providing public notice and opportunity to comment.

As with program approvals, early EPA involvement will facilitate action on program modification. The EPA Region will help the State determine the documentation necessary for each program modification.

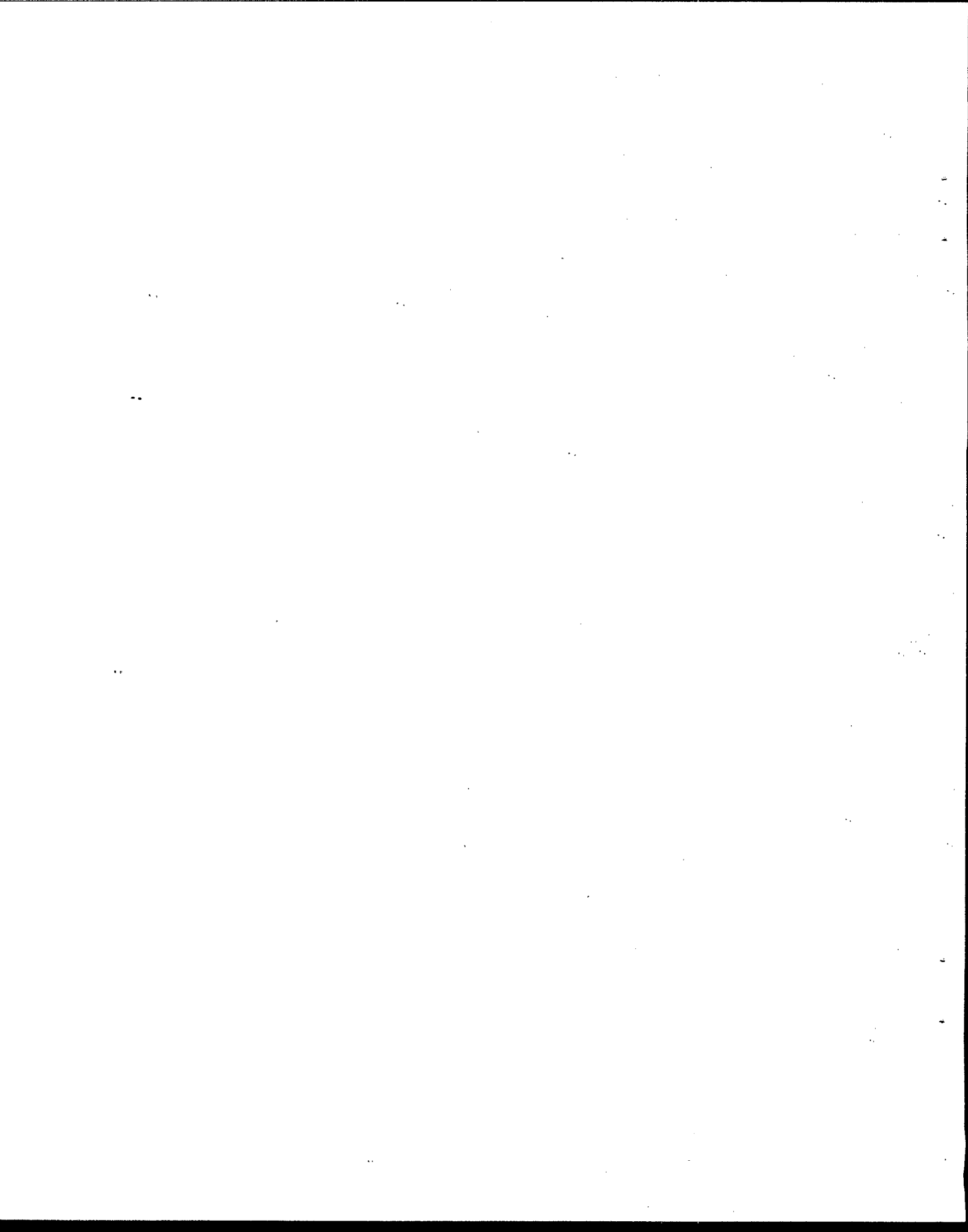
## **2.3 WITHDRAWAL OF STATE PROGRAMS**

### **2.3.1 Voluntary Withdrawal**

Under 40 CFR 123.64(a) and 501.34, a State may voluntarily transfer program responsibilities back to EPA by giving the Regional Administrator 180 days notice, and by providing a plan for the orderly transfer of relevant program information to EPA. The Regional Administrator will publicly notice the transfer, in the same manner as the program approvals, at least 30 days in advance. States must relinquish all sludge program administration previously approved by EPA.

### **2.3.2 Involuntary Withdrawal**

CWA Section 402(c)(3) and EPA regulations in 40 CFR 123.64(b) and 501.33 provide for EPA withdrawal of its approval of a State program that no longer complies with Federal requirements. Program withdrawal is considered an extreme remedy, but will be invoked if a State is unable or unwilling to take required corrective action to solve State program deficiencies. A more detailed description of the withdrawal procedures may be found in 40 CFR 123.64(b)(3), incorporated by reference into 40 CFR 501.34.



### 3. LEGAL AUTHORITY

In order to demonstrate a State's ability to implement and enforce sludge use and disposal requirements, EPA requires that State program submissions include copies of the State's statutes and regulations. These State laws establish the legal basis to implement and enforce the sludge program and must be at least as stringent as Federal requirements.

This chapter is designed to assist a State and EPA in reviewing its legal authorities to determine whether the scope and stringency of State statutes and regulations are equivalent to Federal requirements. Those States planning to administer the Federal sludge program as a part of the NPDES program should have much of the basic structure needed for a sludge program already in place. A State with an existing sludge management program need only supplement its current authority to conform with EPA's minimum requirements.

In addition to submitting copies of its laws and regulations, a State must also provide a written opinion from its Attorney General that the existing legal authority is sufficient to implement and enforce the program described in the program description (see Chapter 4).<sup>1</sup> This "Attorney General's statement" is discussed in greater detail in Section 3.3 below; Appendix A contains a model Attorney General's statement.

A checklist outlining the statutory and regulatory requirements for a sludge program appears at the end of this chapter. It follows the same order as the text of this chapter and provides citations to the applicable Federal regulations. By using the checklist, the State can ensure that its legal authority satisfies Federal requirements.

#### 3.1 STATUTORY AUTHORITY

A State agency's legal authority to regulate sludge use and disposal is derived from several sources. First, the State Constitution must provide the State government with the power to make laws ensuring public health and welfare. Second, the State legislature must authorize a State agency

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<sup>1</sup>When the State agency implementing the sludge program has independent legal counsel, this statement may be signed by that counsel, if he or she is authorized to represent the agency in court on all matters. If sludge is to be regulated by two or more State agencies (e.g., a State Water Board and a Solid Waste Management Commission), and each has separate in-house counsel, both will be required to submit statements for their respective agencies.

to regulate sludge use and disposal. Finally, the State agency must define how these broad statutory powers will be used through its adoption of administrative rules and regulations. This section addresses the broad powers which must be conferred upon the State agency by the legislature.

### **3.1.1 Statutory Authority for a Program Under NPDES**

A State agency implementing a sludge management program under the auspices of an existing NPDES program must review its current statutory authority to ensure it meets Federal requirements. At a minimum, the State must have the statutory authority to:

- Regulate all sludge use and disposal methods proposed to be managed under the program;
- Require compliance with sludge standards by any user or disposer;
- Abate hazards to public health and the environment caused by improper sludge transportation, storage, or disposal;
- Issue permits implementing Federal sludge standards to treatment works treating domestic sewage;
- Require submission of sludge use and disposal information by permit applicants;
- Require submission of information from the regulated community;
- Modify, revoke, and reissue or terminate permits for cause;
- Require public and governmental access to information;
- Require members of permitting agency to meet a conflict-of-interest provision;
- Enter, inspect, and sample to determine compliance with applicable regulations and permits;
- Abate violations of the sludge management program;
- Seek injunctive relief where warranted; and
- Seek civil and criminal penalties against violators.

EPA will not approve a sludge management program under 40 CFR Part 123 when a State lacks the authority to perform any of the functions listed above. The State must establish that legal authority exists to issue NPDES permits for sludge use and disposal. Existing State statutory and regulatory provisions regarding inspection, monitoring, reporting, and enforcement must be broad enough to include implementation of sludge requirements under the State's current NPDES program.



States may need to expand the scope of authority for their NPDES programs through minor amendments addressing sludge management. For example, additional statutory authority may be needed to enable the State to issue sludge use and disposal permits to nondischarging treatment works (i.e., those not covered by an NPDES permit). The State may also need to expand its jurisdiction to all environmental media affected by sludge use and disposal. In addition, the State must submit an addendum to the Attorney General's statement and revisions to the MOA.

### **3.1.2 Statutory Authority for a Program Under Part 501**

Federal regulations require that a State desiring to administer a sludge management program in lieu of EPA must have the authority to implement and enforce such a program. Each State agency responsible for program activities must have complete authority over facilities or practices subject to its jurisdiction. For example, an agency with exclusive jurisdiction over sludge incinerators must have all of the requisite powers to implement and enforce the sludge program as it relates to incinerators. The following discussion identifies the minimum authority which a State statute(s) must give to the agency(ies).

#### **Authority to Require Persons Using or Disposing of Sewage Sludge to Comply With All Applicable Federal and State Sludge Requirements**

A State submission must demonstrate that the scope of the State sludge management program is at least as comprehensive as EPA's program. It must also demonstrate that the State has the authority to impose Federal and State standards and requirements and that the State will enforce these requirements within the designated time frame for compliance set out in the CWA. These three items are discussed in the subsections below.

#### **Scope of the State Program**

Under the Federal program, all persons using or disposing of sewage sludge are regulated and subject to EPA requirements. While all such persons will not be required to obtain a permit (only treatment works treating domestic sewage sludge are required to be permitted under the CWA), all persons who are users or disposers must comply with the technical use and disposal requirements developed by EPA. Consequently, a State administering a sludge program on EPA's behalf must also have authority to ensure compliance by all persons using or disposing of sewage sludge.

Many States that have not sought program approval have existing sludge programs which are not as broad in scope as the Federal program. For example, EPA has defined sewage sludge to include specific materials (see Table 3-1). If a State statute defines sludge in a narrower manner (e.g., septage is excluded from the State's current definition of sewage sludge), this definition will need to be amended to be consistent with the Federal definition. It is not necessary for a single State agency to have responsibility for all methods of sludge use and disposal. However, the authority of all interested State agencies combined must be as broad in scope as EPA's program, and each agency must be represented in the State's submission.

**TABLE 3-1. FEDERAL DEFINITION OF SEWAGE SLUDGE**

**SEWAGE SLUDGE IS DEFINED AS:**

Any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage, including:

- Solids removed during primary, secondary, or advanced wastewater treatment
- Scum
- Septage
- Pumping from portable toilets
- Pumping from Class III marine sanitation devices
- Sewage sludge products

**SEWAGE SLUDGE DOES NOT INCLUDE:**

- Grit and screenings
- Incinerator ash
- Septage or portable toilet pumping discharged to POTWs

### Authority to Impose Federal Requirements

The State must be able to impose either Federal standards or equivalent State standards to regulate sludge use and disposal. Existing Federal requirements for sludge use and disposal on land and in landfills are found at 40 CFR Part 257. EPA recently proposed comprehensive technical use and disposal standards and requirements at 40 CFR Part 503. In anticipation of the promulgation of these Federal standards, a State statute must authorize the State agency to adopt State use and disposal standards. Further, these standards should be self-implementing, i.e., enforceable whether or not they are imposed by a permit. Upon Federal promulgation, these standards should be set out, either verbatim or through incorporation by reference, in the State agency's regulations. A State should be aware that incorporation by reference of unpromulgated Federal regulations may be considered invalid as an improper delegation of legislative powers from a State to EPA. Thus, the State program submission should clearly indicate the State's intention to adopt the standards, once promulgated, and should indicate the timetable for their adoption.

### Federal Compliance Deadlines

State statutes for implementing a sludge management program must allow imposition of the CWA deadlines for compliance with EPA's use and disposal standards and requirements. Existing Federal requirements at 40 CFR Part 257 are currently effective and require immediate compliance. Section 405(d)(2)(D) of the CWA requires compliance with EPA's technical use and disposal regulations as soon as feasible but in no case later than 12 months after promulgation (unless construction is necessary for compliance, in which case, compliance must occur no later than 24 months from the date of promulgation). A State statute must reflect these time frames.

### Authority to Take Actions to Protect Public Health and the Environment

The State agency applying for program approval must have the authority to respond to any public health or environmental threat posed by sludge use and disposal. A State must be able to act quickly to order persons responsible for creating such threats to cease their activities. Alternatively, the State agency should be authorized to abate the threats through direct and immediate corrective or remedial action, such as injunctive relief to prevent threatened or continuing hazards or the right to enter private premises to take corrective action when necessary to protect public health and the environment.

### Authority to Issue Permits to Treatment Works Treating Domestic Sewage

A State statute must also provide the State agency with the authority to require Publicly Owned Treatment Works (POTWs) and other treatment works treating domestic sewage to obtain permits for sludge use and disposal. EPA has defined "treatment works treating domestic sewage" as any facility, including Federal facilities and any privately owned treatment works which stores, treats, recycles, or reclaims sewage sludge [see 40 CFR 122.2 and 501.2]. This definition includes facilities which generate or process sludge, or which control either sludge quality or the manner in which it is disposed. Examples are incinerators, commercial sludge handlers which process POTW sludge for distribution and sale, and owners and operators of sludge disposal facilities.

The following three categories of persons are not considered "treatment works treating domestic sewage," and hence are exempt from the permit requirement:

- Owners of land used for the beneficial reuse of sludge, such as farm lands and home gardens;
- Commercial distributors/disposers which do not alter the nature of the sludge prior to distribution or disposal; and
- Individual septic systems as well as septage pumpers and haulers,<sup>2</sup> including those pumping residues from portable toilets or Type III marine sanitation devices.<sup>3</sup>

The State is free to require permits of any or all of these persons since States may enact sludge requirements which are more stringent than Federal requirements.

At a minimum, it is recommended that the State statute contain broad authority which will enable the agency to require treatment works treating domestic sewage to obtain a permit in order to engage in these activities. Further, the statute should set out the basic contents of these permits (e.g., conditions imposing the technical use and disposal standards, self-monitoring and reporting requirements, and such other conditions as a State agency deems necessary to carry out the purposes

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<sup>2</sup>While these persons are not "treatment works treating domestic sewage" and therefore, do not require a permit, their activities remain subject to the Federal use and disposal standards and requirements. As discussed above, the State must have the authority to require compliance by these users and disposers.

<sup>3</sup>Septage treatment and disposal systems are considered "treatment works treating domestic sewage" and thus must be covered by a permit.

of the statute). As with the NPDES program, the statute should indicate that a sludge permit will not be issued if the EPA Regional Administrator objects to its contents.

Finally, EPA's regulations limit the duration of permits to a maximum of five years. If a State statute authorizes a permit duration longer than five years (e.g., a ten-year permit), the statute must be amended. However, statutes containing a more stringent standard (i.e., a period of less than five years) need not be amended.

#### Authority to Require Submission of Information from the Regulated Community

State law must give the agency responsible for implementation of a sludge management program the authority to require information from the regulated community. The State must be able to require the following information as part of a permit application:

- Activities which require the applicant to obtain a permit;
- Name, address, and location of treatment works for which permit is being sought;
- Operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity;
- Whether or not facility is located on Indian lands;
- Relevant environmental permits held, or for which application has been submitted;
- Topographic map;
- Sludge monitoring data;
- Description of sludge use and disposal practices;
- Land application plan;
- Annual sludge production volume;
- Information required to determine appropriate permitting standards under 40 CFR 503; and
- Any other information the State Director needs to assess sludge use or disposal practices, to determine whether to issue a permit, or to ascertain appropriate permit requirements.

In addition to permit applications, the State must have the authority to require compliance information from the regulated community and information necessary to determine whether or not cause exists for the modification, revocation and reissuance, or termination of the permit. Finally,

the permittee is also required to provide copies of all records which must be kept pursuant to its permit, including monitoring reports, to the State Director.

#### Authority to Modify, Revoke, and Reissue or Terminate Permits for Cause

State law must also give the agency the authority to modify, revoke and reissue, or terminate a permit for cause (see Table 3-5 for the causes for permit modification). Causes for modification or revocation and reissuance include situations where cause for termination exists but the Director determines modification or revocation and reissuance is more appropriate. Causes for termination of a permit include:

- Permittee's noncompliance with any permit condition;
- Permittee's misrepresentation of, or failure to disclose, relevant information;
- Determination that the permitted activity endangers public health and the environment, and that the best way to bring this activity to acceptable levels is to modify or terminate the permit; and
- Change in any condition which requires either a temporary or permanent reduction or elimination of the permitted activity.

#### Authority to Provide Public Access to Information

All programs administered under the CWA are required to involve the public to the maximum extent possible. Consequently, an approvable sludge management program must ensure that the following information is accessible to the public:<sup>4</sup>

- Name and address of permittees;
- Permit applications (with attachments);
- Permits (with attachments); and
- Effluent data and sludge quality and disposal information.

The State must allow EPA access to any information, including confidential information.

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<sup>4</sup>"Access" does not mean that the State may not charge a reasonable fee for photocopying and mailing such information to interested persons.

### Conflict of Interest

The Clean Water Act contains "conflict of interest" provisions for State agency personnel. Under Section 304(i) of the Act, a State agency or board which approves all or portions of permits may not include in its membership any person who receives (or who during the past two years received) a significant portion of income either directly or indirectly from permit holders or permit applicants.<sup>5</sup> In this way, the State can avoid any appearance of favoritism or undue influence.

EPA has defined "significant portion of income" to mean 10 percent or more of a person's gross income over a calendar year if the person is under 60 years of age. For persons over 60 years of age, it means more than 50 percent of the gross income if received as part of a pension, retirement, or other similar benefit [see 40 CFR 123.25(c)]. States submitting a program application under 40 CFR Part 123 (i.e., as a component of an approved NPDES program) must meet these requirements. For States submitting an application under 40 CFR Part 501, the Administrator may waive these requirements if the agency or board meets a conflict-of-interest standard imposed under another EPA-approved State permitting program, or an equivalent standard.<sup>6</sup> In the event that more than one State agency will administer the program, all of the agencies involved must satisfy this requirement. Similarly, if the State intends to delegate all or any portion of the State sludge program to a local entity (e.g., a County Board), that entity must also satisfy the conflict of interest requirement.

### Authority to Enter, Inspect, and Sample

The State agency must have the ability to enter all treatment works treating domestic sewage as well as other facilities and sites used for sludge use and disposal to determine whether the facilities are in compliance with Federal and State standards and requirements. This minimum Federal requirement will be satisfied if the State agency can obtain a warrant to enter the facility in the event that voluntary consent to enter is denied by the owner or operator of the premises. If State authority does not currently extend to sludge sampling and the inspection of sludge facilities, including disposal sites, a statutory amendment must be pursued.

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<sup>5</sup>The fact that a State agency has an NPDES or sludge permit does not mean that its employees are considered "permit holders or applicants."

<sup>6</sup>For example, the Clean Air Act's conflict of interest provision at Section 128 requires that State air agencies which approve permits or enforcement orders have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits and orders and that any potential conflicts of the Director are disclosed.

In addition to authorizing the State agency to enter and inspect sludge facilities, the State must be able to require persons using or disposing of sewage sludge to monitor and report on their compliance. The authority to compel this information is an important tool in program implementation and enforcement.

### **Authority to Enforce Sludge Standards and Requirements**

The Clean Water Act and EPA regulations establish minimum enforcement measures which a State must be able to take. For violations of State program requirements, the State must have the authority to:

- Seek injunctive relief [40 CFR 501.17(a)(2)];
- Seek civil penalties of at least \$5,000 per day per violation [40 CFR 501.17(a)(3)(i)];
- Seek criminal fines of \$5,000 for knowingly making a false statement, or for falsification of information, or for tampering with a monitoring device [40 CFR 501.17(a)(3)(iii)]; and
- Seek criminal penalties of at least \$10,000 per day per violation for other instances of noncompliance [40 CFR 501.17(a)(3)(ii)].

A State must be able to seek injunctive relief to compel compliance or to immediately restrain any person from engaging in activities which violate sludge use and disposal standards, whether or not that person has a permit. Additionally, a State must have the authority to seek the civil and criminal penalties listed above.

## **3.2 REGULATORY AUTHORITY**

### **3.2.1 Introduction**

This section addresses the specific requirements which must appear in the State agency's regulations in order to be at least as stringent as the Federal program administered by EPA. A regulation checklist appears at the end of this chapter.

### **3.2.2 Regulatory Authority for a Program Under NPDES**

States which choose to implement a sludge management program in conjunction with an existing NPDES program probably have much of the regulatory framework required by Federal regulations.



Changes will be necessary to make the State NPDES regulations apply to sewage sludge use and disposal. At a minimum, the State should have the following seven regulatory provisions:

- Scope of program/definitions;
- Sludge standards and conditions;
- Permit applications and signatories;
- Permit contents;
- Permit issuance;
- Entry and inspection; and
- Enforcement.

These provisions are discussed in more detail in the following sections.

### **3.2.3 Regulatory Authority for a Program Under Part 501**

Under Federal requirements, a State desiring to run its own sludge management program must have the regulatory framework to implement and enforce it. A State sludge program under 40 CFR Part 501 must contain the same seven regulatory provisions listed above. The following discussion describes each provision in more detail.

#### **Scope of Program/Definitions**

The "Definitions" section of the regulations assists in establishing the scope and applicability of the State program. A State must define terms so that the scope and applicability of its program is as broad as that of the Federal program. For example, in defining "person," the State must include Federal and State facilities as well as individuals, corporations, associations, partnerships, and municipalities in order to achieve the same programmatic scope as EPA. Table 3-2 contains a number of terms which should be used and defined in State regulations. In reviewing a State's legal authority, EPA will pay particular attention to definitions for such phrases as "sewage sludge," "treatment works treating domestic sewage," "dedicated land," and other terms whose meaning or scope will be critical to understanding the State's ability to implement and enforce Federal standards.

#### **Sludge Standards and Requirements**

The State must adopt Federal sludge standards and requirements as State law or adopt more stringent State standards. The State must adopt the requirements set out in 40 CFR Part 257 to gain

**TABLE 3-2. TERMS WHICH SHOULD BE DEFINED IN STATE LEGAL AUTHORITIES**

- Sewage sludge
- Treatment works treating domestic sewage
- Class I sludge management facility
- Sludge use and disposal standard
- Person
- Septage
- Land application
- Dedicated land
- Reclaimed land
- Agricultural land
- Nonagricultural land
- Silvicultural land
- Monofill
- Floodplain
- Base flood
- Surface impoundment
- Distribution and marketing
- Incineration

program approval. As mentioned earlier, EPA is currently developing comprehensive sludge use and disposal standards and requirements (to be set out in 40 CFR Part 503). States approved prior to the formal announcement of these standards will be required to adopt them once they have been promulgated. States seeking approval after they are promulgated must adopt them as State standards prior to program approval.

There are two basic methods of converting Federal standards into State standards. First, a State may insert the Federal standards into its regulations verbatim. Although this method clearly places the regulated community on notice of these requirements, it is time consuming and duplicative.<sup>7</sup> Second, the State can incorporate the Federal standards into its regulations by reference. This involves a statement of intent to incorporate, citation to the materials being incorporated, and a date. An example of incorporation by reference is shown in Table 3-3. The State should examine requirements of State law regarding the exact format for an incorporation by reference.

States that seek to incorporate by reference prospectively (i.e., by expressing the intent to automatically adopt future regulations upon their promulgation) are cautioned that a number of State Courts have held prospective incorporation by reference to be an unconstitutional delegation of legislative authority to EPA. Therefore, unless the State has upheld prospective incorporation, States should wait until the Federal standards are final before adopting them. Moreover, since EPA intends to periodically review and revise these standards, States incorporating them by reference will have to periodically reincorporate the correct standards to ensure their enforceability and consistency with Federal law.

C/834-03-301-02c/TABLE.3-3

**TABLE 3-3. EXAMPLE INCORPORATION BY REFERENCE LANGUAGE**

The Federal sewage sludge use and disposal standards set out in 40 Code of Federal Regulations (CFR) Part 257, as they appear on (today or an earlier date), are hereby incorporated by reference and are enforceable requirements under State law.

<sup>7</sup>Where the program is administered by several State agencies, each agency need only adopt those Federal standards for which it will be responsible.

### Permit Applications and Signatories

No permit system can be successful unless the permit writer has sufficient information about the facility. In order to ensure the availability of this information, EPA regulations require that every treatment works treating domestic sewage submit a permit application containing all pertinent data. State regulations must require treatment works treating domestic sewage to submit the requisite application information in a similar manner and time frame as specified by EPA. States are free to design their own application form as long as it solicits the requisite information.

The application must be signed and certified by an appropriate signatory to ensure that the treatment works remains accountable for the contents [see 40 CFR 122.22 and 501.15(a)(4)]. Moreover, the regulations should include the deadlines for the submission of application information established in the Federal regulations, as follows:

- Treatment works with current NPDES permits must submit this information when their next NPDES permit application is due or 120 days after promulgation of applicable use and disposal standards, whichever is sooner;
- All other existing treatment works must submit these data within 120 days of the promulgation of applicable use and disposal standards unless the Director (State agency) requests it sooner; and
- New treatment works are required to submit permit applications at least 180 days prior to commencing operations.

### Permit Contents

Developing permit conditions for sludge often involves professional judgment regarding proper use and disposal. Therefore, permit conditions must be clearly enforceable and as free from challenge as possible. One method of limiting uncertainties is to put as much detail as possible concerning potential permit contents into the State regulations. This precaution will help delineate the extent of a State agency's discretion in putting requirements in permits.

At a minimum, the State regulations must expressly note that the following conditions are to be included in each treatment works' permit:

- Federal and State sludge use and disposal standards;
- Compliance schedule;

- Self-monitoring, reporting and record keeping requirements;
- Standard conditions; and
- Other conditions to carry out the objectives of the statute and regulations as necessary .

These items are discussed in each subsection below.

### Sludge Standards and Requirements

The adoption of Federal sludge standards as State standards was previously discussed. Even though these standards are enforceable in the absence of a permit, a State's regulations should specifically direct the State agency to include them, when appropriate, in the permits of treatment works treating domestic sewage. Once in the permit, the treatment works is put on actual notice of the standards and is required to submit compliance information.

### Compliance Schedules

As noted earlier, the CWA establishes a deadline of one year from promulgation for final compliance with the Federal sludge use and disposal standards (except where construction is needed for compliance, in which case the deadline is two years). Consequently, any permit issued prior to this deadline should place the treatment works on a schedule to come into compliance within this time frame. In no case may a compliance schedule extend beyond the statutory deadlines [see 40 CFR 501.15(a)(6) for further information].

### Self-Monitoring, Reporting, and Record Keeping

State regulations must authorize the State agency to impose self-monitoring, reporting, and record keeping requirements through permits. The self-monitoring conditions should address the sampling location(s), type, frequency, and analytical methods to be used. The location must be representative of the sludge quality. The analytical methods and sample types used must be those set out in 40 CFR Part 136, unless Part 503 (when promulgated) directs otherwise. Sampling techniques for sludge are discussed in EPA's POTW Sludge Sampling and Analysis Guidance Document, August 1989.

The monitoring frequency will be determined on a permit-by-permit basis after considering the nature of the permittee's sludge quality; use and disposal methods; and the State agency's need to know. Monitoring shall occur at least once per year [see 40 CFR 501.15(b)(10)(i), and EPA's Sewage Sludge Interim Permitting Strategy, September 1989]. Unless a State agency designs a self-monitoring reporting form for the treatment works to use, the permittee should attach its sludge monitoring data to an NPDES Discharge Monitoring Report (DMR). The State must require the permittee to prepare and retain records of its monitoring activities for at least five years [see 40 CFR 122.41(j)(3) and 501.15(b)(10)(iii) for a complete description of these records]. The technical standards to be promulgated at 40 CFR Part 503 may establish minimum monitoring frequencies and record retention periods.

### Standard Conditions

EPA regulations expressly require a number of standard conditions to be placed in all treatment works permits (see Table 3-4). These provisions establish automatic notification requirements and impose additional duties and obligations on the permittee (e.g., the responsibility of notifying the Director of planned changes in the facility, anticipated noncompliance, and incidents of other noncompliance). A State agency's regulations should indicate that every State permit will include these conditions as well as any other standard conditions deemed necessary by the State agency.

### Other Conditions as Necessary

Even after EPA's sludge use and disposal standards are promulgated, they will not address all pollutants of potential concern or all possible sludge use and disposal methods. Consequently, EPA and State personnel will continue to rely on best professional judgment or case-by-case permitting for those methods and/or pollutants not covered. Therefore, State regulations must provide the State agency with the flexibility to impose such conditions as may be necessary to protect public health and the environment.

### General Permits

EPA regulations allow a single permit to cover a category of treatment works employing the same sludge use and disposal method (e.g., all treatment works involved in silviculture). These "general permits" reduce potential administrative burdens on the State agency without compromising the quality or enforceability of the permit program. If a State is interested in using general permits, it must include similar issuance procedures as in Federal regulations [see 40 CFR 122.28 and

**TABLE 3-4. STANDARD CONDITIONS TO BE PLACED IN ALL SLUDGE  
USE AND DISPOSAL PERMITS**

- Duty to comply
- Compliance with standards
- State enforcement penalties
- Need to halt or reduce activities is not a defense
- Duty to mitigate noncompliance
- Proper operation and maintenance
- Duty to provide information as requested
- Duty to allow inspection and entry
- Monitoring, record keeping, and reporting  
(generally)
- Signatory/certification requirements
- Notice of planned changes
- Notice of anticipated noncompliance
- Reporting other noncompliance
- Transferability of the permit
- Reopener
- Duty to reapply

501.15(e)(2); see also EPA's Guidance for the Use of NPDES General Permits, 1988]. Since 40 CFR 501 does not provide a separate general permit program approval, States approved under Part 501 may issue general permits. However, the intended general permits and the legal authority to issue them must be discussed in the program submission (see Chapter 4).

### Permit Issuance

The Clean Water Act encourages public participation in the development of EPA programs. To this end, EPA regulations contain a series of specific steps which must be taken prior to the issuance of permits. These issuance procedures can be grouped together under the following headings:

- Public notice and comment requirements;
- Permit appeals procedures; and
- Causes for modifying and terminating permits.

These procedures are highlighted in the subsections below.

**Public Notice and Comment Requirements.** In order for the public to have a meaningful role in the sludge permitting program, EPA regulations at 40 CFR Part 124 and 501.15(d) require writers to prepare draft permits and a fact sheet or rationale explaining the draft. The draft permit is then publicly noticed in a prescribed manner (e.g., a newspaper notice) for at least 30 days, during which time the public is invited to submit comments. In the event that the comments reflect widespread interest, the State may schedule a public meeting to discuss the permit. The time and place for this meeting must also be publicly noticed at least 30 days in advance. After the comment period has ended, the State finalizes the permit, taking "significant" (substantive) comments into consideration.

**Permit Appeals.** EPA has also set out a permit appeals system in its regulations. An interested party must file an appeal request within 30 days of permit issuance. After 30 days, all parties forfeit their right to appeal. The regulations also address the appeal process itself [see 40 CFR Part 124, Subpart E]. States are encouraged to adopt regulations which provide similar finality to the permit appeals process.

**Causes for Modifying and Terminating Permits.** EPA has identified several good causes for which it believes permit modification is justified; permits can only be revised under these



circumstances. These reasons for modification applicable to sludge permits are listed in Table 3-5. As the table indicates, some of these reasons are considered major modifications, whereas others are considered minor. Major permit modifications must undergo a public notice and comment process. Although a State agency may adopt any or all of the causes listed in 40 CFR 501.15(e)(2)(ii) or 40 CFR 122.62 and 122.63, it may not add others to the list.

**TABLE 3-5. GOOD CAUSES FOR PERMIT MODIFICATION**

- Substantial alterations at the treatment works
- New information since issuance
- New regulations since issuance
- Compliance schedule extensions
- To implement a reopener clause in the permit
- Adding land application plans
- Correct technical or legal mistakes
- Correcting typographical errors\*
- Imposing additional self-monitoring or reporting\*
- Change of interim compliance data in schedule of compliance\*
- Changes in ownership/operator\*

\*Indicates modification is considered minor

Several other concerns must also be addressed. First, like NPDES permits, the duration of a sludge permit may not be extended beyond the original five year period through a modification. Second, either the State agency or any interested person must be allowed to initiate the modification process. Modification requests submitted to the State must be in writing and supported by reasons for the change.

A treatment works has no inherent right to its permit. The permit may be terminated if the permittee violates any of its conditions or if changes in conditions require the elimination of the permitted activity. State regulations must provide the State with the authority to terminate permits during their effective period. Finally, EPA regulations allow the State agency to administratively continue expired permits beyond their expiration dates where the permittee has submitted a complete application for renewal but the permit has nevertheless not been reissued in a timely manner [40 CFR 501.16(e)(1) and 122.6].

### Entry and Inspection

The existence of sludge standards alone will not ensure that public health and the environment will be protected from improper use and disposal. The State must be authorized to conduct compliance monitoring activities to ensure that these standards are followed. Compliance activities include:

- Entering treatment works and other use and disposal facilities at reasonable times;
- Inspecting the premises for compliance with standards and permits where applicable;<sup>8</sup>
- Sampling the sludge quality before it leaves the treatment works or after it has been used or disposed; and
- Accessing and copying the permittee records concerning sludge.

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<sup>8</sup>EPA regulations require that approved States inspect all Class I sludge management facilities at least once per year [40 CFR 123.5(e) and 501.16]. Class I sludge management facilities are POTWs required to have an approved pretreatment program or which have sludge use or disposal practices that have the potential to adversely affect public health or the environment.

## Enforcement

As previously noted, the State must have the authority to address violations quickly and effectively. Where a State statute has specifically set out available administrative and judicial enforcement powers, the regulations need only cross reference the statutory provisions.

In addition to a State agency's own enforcement powers, the regulations should also indicate how the public will be involved in the enforcement process. While the State need not provide for direct citizen suit against noncompliant persons, there must be some opportunity to become involved in the State's enforcement actions. EPA's regulations allow the States to choose between several public participation alternatives which are also used in the NPDES program. First, interested citizens may be granted the right to intervene in enforcement actions (administrative or civil litigation, but not criminal actions). Second, where interested citizen intervention is not a right, the State may still agree not to oppose such intervention. If this latter alternative is selected, the State must also agree to investigate and respond to citizen complaints and publicly notice proposed settlements of enforcement actions for at least 30 days.

### **3.3 ATTORNEY GENERAL'S STATEMENT**

As part of its submission, a State program application must include a certification by the State Attorney General (or State agency's independent legal counsel) that the State agency has adequate legal authority to implement and enforce a State sludge program in accordance with minimum Federal requirements. This document will explain the State agency's authority to undertake the various program functions. It must discuss the scope of the State agency's legal authority as derived from statutory, regulatory, and judicial sources. The statement should analyze the State agency's power to adopt and enforce Federal standards, issue permits, conduct surveillance activities, and take enforcement actions.

Where the Attorney General identifies significant differences (either more or less stringent) between the Federal and proposed State program, those differences should be discussed in the statement. Finally, the Attorney General must certify that all of the legal authorities cited in the program submission either have been adopted or will be fully effective at the time of program approval. If new or revised statutory or regulatory provisions are being drafted, it is advisable to provide a copy of the draft to EPA for comment. This approach will expedite final program approval. A model Attorney General's statement for the State to review is found in Appendix A.

### 3.4 STATUTORY AND REGULATORY REQUIREMENTS CHECKLIST

#### A. STATUTORY AUTHORITY REQUIREMENTS

##### I. General Program Requirements

State Statutory Authority  
(citations)

- A. Authority to regulate use and disposal of sewage sludge  
[40 CFR 501.1(d)(1)(ii)] [40 CFR 122.1(b)(3)(4)]

1. Land application
2. Landfilling (sludge monofill)
3. Distribution and marketing
4. Incineration
5. Surface disposal sites
6. Other(specify:)

- B. Authority to regulate transportation and storage of sewage  
sludge [40 CFR 501.1(d)(1)] [40 CFR 122.1(g)(7)]

- C. Authority to regulate the use or disposal of sewage sludge  
by users or disposers of sewage sludge [40 CFR 501.1(c)(1)(2)]  
[40 CFR 122.1(g)(6)(7)]

- D. Authority to take actions to protect public health and the  
environment from any adverse effects [40 CFR 501.1(c)(4)]  
[40 CFR 122.1(b)(4) and (g)(5)]

##### II. Permit Requirements

- A. Authority to issue permits to any POTW or other treatment  
works treating domestic sewage (including Federal facilities)  
[40 CFR 501.1(c)(2)] [40 CFR 122.1(b)(3) and (g)(6)]

- B. Authority to require permit applicants to submit information  
on their sludge use and disposal practices [40 CFR 501.15(a)(2)]  
[40 CFR 122.21(c)(2) and (d)(3)(ii)]

- C. Authority to modify, revoke and reissue, or terminate permits  
for cause [40 CFR 501.15(b)(7)(8) and (d)(2)] [40 CFR 122.62]  
[40 CFR 122.5(a)(1)]

##### III. Access to Information

- A. Public access to permit applications, permits, and effluent/sludge  
information [40 CFR 501.15(a)(1)] [40 CFR 122.7(b)]

IV. Conflict of Interest

State Statutory Authority  
(citations)

- A. Statement indicating that no member of any permit-approving board or body shall receive a significant portion of income from permit holders or applicants [40 CFR 501.15(f)(1)] [40 CFR 123.25(c)]; or \_\_\_\_\_
- B. For non-NPDES programs only, certification from the board or body that it meets a conflict-of-interest standard imposed as part of another EPA-approved State permitting program [40 CFR 501.15(f)(2)] \_\_\_\_\_

V. Compliance Monitoring

- A. Authority to inspect and conduct surveillance to independently determine compliance or noncompliance with regulations and permits [40 CFR 501.15(b)(9)] [40 CFR 123.26] \_\_\_\_\_
- B. Authority to require submission of technical data by regulated community [40 CFR 501.15(b)(8)] [40 CFR 122.41(h) and (l)] \_\_\_\_\_

VI. Enforcement Authority [40 CFR 501.17]

- A. Authority to abate violations of State sludge program requirements [40 CFR 501.1(c)(5)] [40 CFR 123.27] \_\_\_\_\_
- B. Specific remedies for violations of State sludge program requirements [40 CFR 501.17] [40 CFR 123.27(a) and (b)] \_\_\_\_\_
  - 1. Authority to seek injunctive relief \_\_\_\_\_
  - 2. Authority to assess or seek civil penalties in the amount of at least \$5,000 per day per violation \_\_\_\_\_
  - 3. Authority to assess criminal penalties of at least \$10,000 per day per willful or negligent violation \_\_\_\_\_

## B. REQUIRED STATE PROGRAM REGULATIONS

### I. Definitions [40 CFR 501.2] [40 CFR 122.2] [40 CFR 123.2] [40 CFR 124.2] (optional)

State Regulatory Authority  
(citations)

Are State regulatory definitions or their equivalents, where provided, consistent with those found in the Federal regulations for the following terms:\*

#### A. Definitions with general applications

1. Treatment works treating domestic sewage (to include Federal facilities)
2. Sewage sludge
3. Class I sludge management facility
4. Septage
5. Disposal practice
6. Distributor
7. Facility
8. Generator
9. Sludge management practice
10. State Program Director
11. State sewage sludge management agency
12. Use or utilization practice
13. User
14. Disposer

#### B. Definitions related to land application

1. Annual pollutant loading rate
2. Cumulative pollutant loading rate
3. Annual whole sludge application rate

#### C. Definitions related to sewage sludge monofill

1. Sewage sludge monofill
2. Sewage sludge unit
3. New sewage sludge unit

#### D. Definitions related to incineration

1. Reference air concentration
2. Sewage sludge incinerator
3. New Source Performance Standards (NSPS)  
[40 CFR Part 60]

\*NOTE: Definitions associated with specific sludge use or disposal practices may change upon final promulgation of the Part 503 technical standards.

State Regulatory Authority  
(citations)

4. National Emissions Standards for Hazardous Air Pollutants (NESHAPS) [40 CFR Part 61]
5. National Ambient Air Quality Standards (NAAQS) [40 CFR Part 50]
6. New Source Review Standards [40 CFR Part 51.18]
7. Prevention of Significant Deterioration (PSD) [40 CFR Part 52.21]

E. Definitions related to distribution and marketing

1. Annual production application rate
2. Distribution
3. Sludge product

II. Requirements for Permitting

A. Contents of a permit application [40 CFR 501.15(a)(2)]  
[40 CFR 122.21(d)(3)(ii)]

1. Operator's name, address, telephone number, ownership status
2. Located on Indian Lands?
3. Numbers of all environmental permits held
4. Activities conducted by applicant
5. Description of sludge use and disposal practices
6. Annual sludge production volume
7. Topographic map extending one mile from property boundaries and depicting location of sludge management facilities, water bodies and wells within 1/4 mile of property boundaries
8. Any sludge monitoring data, including ground water data
9. Location of site(s) for sludge treatment or disposal
10. Name of person or entity land-applying sludge, if applicable
11. Land application site plan
12. Any information required to determine the appropriate permitting under 40 CFR Part 503
13. Any other information the Program Director may request
14. Signature by responsible officer
15. Certification of data accuracy

B. Standard permit conditions, applicable to all permits [40 CFR 501.15(b)] [40 CFR 122.41]

[illegible]

- 3-26

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11. Notice requirements

- a. Any planned physical alterations or additions to permitted facility
- b. Significant changes planned in the permittee's sludge use or disposal practice(s) or sites
- c. Anticipated noncompliance resulting from planned changes
- d. Permit is nontransferable except after due notice to Director
- e. Other noncompliance reporting  
Other relevant information which the Director requests

12. CWA penalties for violation of permit conditions

- a. Civil - \$25,000/day/violation
  - b. Criminal (negligent) not less than \$2,500 nor more than \$25,000/day/violation and/or imprisonment of one year
  - c. Criminal (knowing violation) -- not less than \$5,000 nor more than \$50,000 per day of violation, and/or imprisonment for not more than 3 years
13. Need to halt or reduce permitted activity is not a defense
14. Use of reopener -- unexpired permit to be reopened if any more stringent standard promulgated under CWA Section 405
15. Duration of permit not longer than 5 years
16. Duty to reapply

C. Regulations on permit issuance procedures  
[40 CFR 501.15(d)] [40 CFR 122.62] [40 CFR 122.64]  
[ 40 CFR 124.3, 124.5, 124.6, 124.8, 124.10,  
and 124.58]

1. Permit application

- a. NPDES POTWs must submit application information with their next application for NPDES permit, or within 120 days of the promulgation of an applicable standard
- b. For sludge-only POTWs and other treatment works treating domestic sewage, submit an application if the Director determines that a permit is necessary

State Regulatory Authority  
(citations)

- c. A new source submits an application at least 180 days prior to commencing operations
  - d. A permit will not be processed until the applicant has fully complied with the application requirements
2. Draft permits
- a. Issue whenever decision is made to issue, modify, or revoke and reissue a permit
  - b. Draft permit must include all required permit conditions
3. Fact sheets for draft permits
- a. Fact sheets shall be prepared for:
    - Class I sludge management facilities
    - Permits requiring case-by-case conditions
    - Permits which are the subject of widespread public interest or raise major issues
  - b. Fact sheets shall include:
    - Brief description of facility or activity
    - Calculations/explanation of derivation of conditions for sludge use and disposal
    - Brief description of how each of the required elements of the land application plan area is addressed, where applicable
4. Public notice of permit actions and public comment period
- a. Types of notification
    - Notice of intent to issue a permit
    - Notice of intent to terminate a permit
  - b. 30 days for public comment
  - c. 30 days notice before any scheduled public hearing

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(citations)

d. Notification sent to the following:

- Applicant
- Any other agency (including EPA) which must issue a permit (RCRA, UIC, PSD, NPDES, MPRDS, or 404) for the same facility or activity
- Any State agency responsible for plan development
- State or local governmental entity with jurisdiction over the proposed location of the facility
- Any person who requests a copy

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e. Methods of notice:

- Class I permits and permits that require land application plans newspaper publication
- In a manner constituting legal notice to the public under State law
- Any other method

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f. Contents of notice

- Name and address of the office processing the permit
- Name and address of the applicant
- Brief description of the activity described in the permit application
- Name, address, and telephone number for further information
- Description of comment procedures, including method to request public hearing (if not scheduled in advance)
- Statement that no permit will be issued over the objection of EPA

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g. Hearings

- Public hearing shall be held whenever a significant degree of public interest exists

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h. Public notices for hearings shall include the following:

- Date of previous public notices relating to the permit
- Date, time, and place of the hearing

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State Regulatory Authority  
(citations)

- Description of the nature and purpose of the hearing
- Written comments and/or request for a public hearing may be submitted during the comment period

i. Response to significant comments at time of permit issuance shall:

- Specify which provisions, if any of the draft permit were changed in final permit
- Describe and response to all significant comments on draft permit

5. Permit Actions

a. Transfer permits -- by modification to identify new owner and incorporate any other such requirements as may be necessary to assure compliance with the CWA by:

- Major modification
- Minor modification
- Revocation and reissuance
- Automatic transfer

b. Causes for modification or revocation and reissuance

- Alterations to the permitted facility or activity
- New information received by the Director
- New regulations promulgated under CWA Section 405(d)
- Director determines that good cause exists for modification of a compliance schedule required under the permit
- When required by a permit condition to incorporate, revise, or add a land application plan

c. Causes for modification or revocation and reissuance

- Inspection of facility or receipt of required information
- Review of permit file
- Permittee request

State Regulatory Authority  
(citations)

d. Causes for termination or denial of a permit application or permit renewal include the following:

- Noncompliance by the permittee with any condition of the permit
- Permittee's failure in the application or during the permit issuance process to disclose fully, or any misrepresentation of any material facts
- Determination that the permitted activity endangers human health or the environment
- Changed conditions requiring reduction or elimination of any permitted activity

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D. Regulations applicable to specific sludge use and/or disposal practices [40 CFR 501.1(d)(1)]  
[40 CFR 122.1(b)(4) and (g)(7)]

1. Landfill -- monofill
2. Land application -- agricultural land
3. Land application -- nonagricultural land
4. Distribution and marketing
5. Incineration
6. Surface impoundments
7. Other \_\_\_\_\_

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E. Optional program provisions [40 CFR 501.15(e)]

1. Continuation of expiring permits [40 CFR 122.6].  
Expired permit continues in force until the effective date of a new permit.

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a. Expired permit remains fully effective and enforceable

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b. When permittee is not in compliance with the conditions of the new or expired permit, the State may do one of the following:

- Initiate enforcement action based on the permit which has been continued
- Issue a notice of intent to deny the new permit
- Issue a new permit with appropriate conditions
- Take other actions authorized by the Federal regulations

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State Regulatory Authority  
(citations)

2. General permit [40 CFR 122.28]

- a. Written to cover a category of discharges or sludge use or disposal practices or facilities within a geographic area or political boundaries
- b. Written to cover facilities with same activities and subject to same standards and requirements
- c. Individual facility, whether or not covered by general permit, may be required to obtain an individual permit
- d. Any owner or operator may request to be excluded from the coverage of the general permit by applying for an individual permit
- e. Applicability of general permit to a particular individual is automatically terminated upon the effective date of an individual permit
- f. Individual excluded from a general permit solely because individual permit exists may request that the individual permit be revoked, and that it be covered by the general permit

3. Minor modification of permits [40 CFR 122.63]

- a. Correct typographical errors
- b. Require more frequent monitoring or reporting
- c. Change an interim compliance date
- d. Allow for a change in ownership when no other change occurs

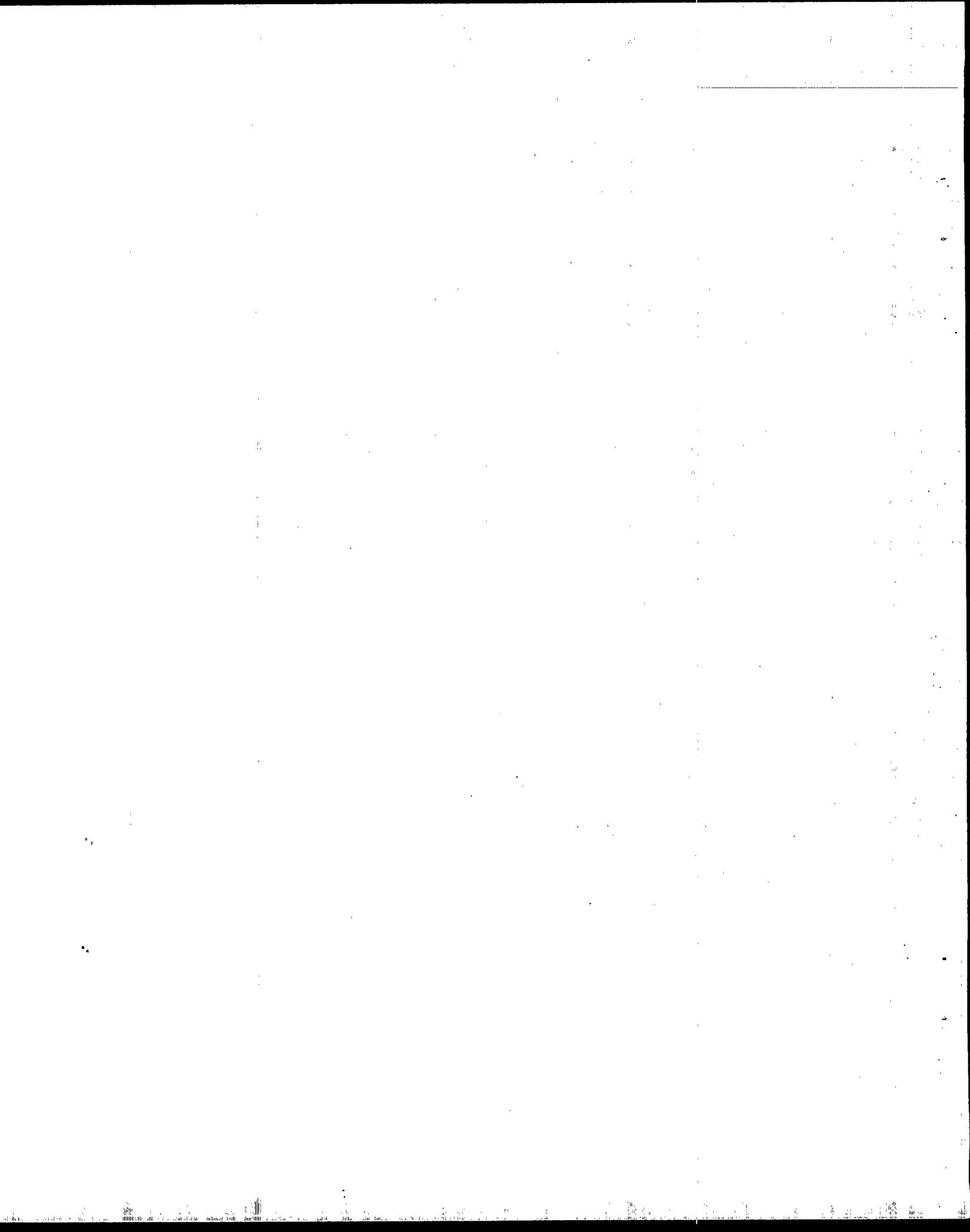
IV. Requirements for Enforcement Authority  
[40 CFR 501.17]

A. Specific remedies for violations of State sludge program requirements [40 CFR 501.17(a)(b)]  
[40 CFR 123.27]

1. Injunctive relief
2. File suit to seek civil penalties in the amount of at least \$5,000/day for each violation
3. Press criminal charges, seeking monetary penalties of at least \$10,000/day for each willful or negligent violation
4. The maximum civil penalty or criminal fine is assessable on a per violation per day basis

State Regulatory Authority  
(citations)

5. False statements - Knowingly makes any false statement, misrepresentation, or certification; knowingly renders inaccurate any monitoring device or method, punishable by a fine of \$5,000 per violation
- B. Burden of proof -- degree of knowledge or intent is not greater than that required by Clean Water Act [40 CFR 501.17(b)(2)] [40 CFR 123.2(b)(2)]
- C. Public participation -- provide for public participation in State enforcement process by either [40 CFR 501.17(d)] [40 CFR 123.27(d)]
  1. Allowing intervention as a right by any interested citizen in any civil or administrative action
  2. Not opposing citizen intervention when permissive intervention is authorized, and
    - a. Investigating and providing responses to all citizen complaints [123.26(b)(4)], and
    - b. Providing published notice and a 30 day public comment period regarding any proposed settlement of an enforcement action.
- D. Additional enforcement remedies (optional)
  1. Authority to issue an administrative order to abate any violation [40 CFR 123.27(a)(1)]
  2. Authority to assess fines on an administrative basis [40 CFR Part 22]





#### 4. PROGRAM DESCRIPTION

The State sludge program application must describe the organization administering the program, and detail procedures for implementing the sludge management program. According to Federal regulations, the program description is required to contain the following nine components:

- Narrative description of program scope, structure, and implementation procedures;
- Organizational chart;
- Narrative description of organization and structure of responsible State agency or agencies, including:
  - Designation of lead agency
  - Responsibilities of each agency
  - Interagency/intra-agency coordination procedures
  - Description of participating State staff, including the number, occupations, and general duties;
- Itemized estimate of resource requirements and program costs for the first two years;
- Estimate of sources and amounts of funding for the first two years;
- Inventory of all POTWs and other treatment works treating domestic sewage;
- Narrative description of applicable State program procedures for:
  - Permitting
  - Compliance tracking
  - Enforcement; and
- Copies of permit application forms, permit forms, and reporting forms.

This chapter discusses how the State drafts its program description. It specifies the information necessary to document the State's organization, management, resources, and procedures for permitting, compliance tracking, enforcement, and maintaining a sludge inventory. It addresses both States pursuing approval under an existing NPDES program and States which do not have NPDES programs. A checklist to guide States and EPA in determining the completeness and adequacy of the program description appears at the end of the chapter.

#### 4.1 PROGRAM SCOPE [40 CFR 123.22 and 501.12(a)]

The program description must clearly identify the scope of the organizational structure supporting the program and the administrative procedures that implement it. This section describes requirements for expanding the scope of the State NPDES program and defining the scope of a non-NPDES State sludge management program.

##### 4.1.1 NPDES Program Scope

If the State decides to incorporate sludge permitting requirements under its existing NPDES program, this NPDES program must be revised to incorporate sewage sludge generation, treatment, use and disposal. The State's NPDES program must be made applicable to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit.

A State seeking approval of a sewage sludge management program is required to have the authority to regulate any person using or disposing of sewage sludge within the State (including Federal facilities) through the six methods regulated under 40 CFR Part 503:

- Land application;
- Monofill (and co-disposal landfill);
- Distribution and marketing;
- Incineration;
- Surface disposal; and
- Any other sludge use and disposal practices that may be covered by Federal regulations implementing CWA Section 405.

The State need only have the legal authority to regulate the transportation and storage of sewage sludge so that it can take action where necessary to protect public health and the environment.

If any of the practices covered by the 40 CFR Part 503 technical standards are not currently being used in the State, the program description should indicate this. A State must have the authority to regulate sewage sludge sent to a co-disposal landfill even though it is not required to have a program to regulate the landfill itself. Due to the infeasibility of regulating sludge quality for

co-disposal landfills under 40 CFR Part 503, EPA decided to regulate the disposal of sludge in co-disposal landfills through landfill design and operation requirements under 40 CFR Part 258.

However, Part 503 will require POTWs sending their sludge to a co-disposal landfill to meet the Part 258 requirements for material that a landfill may accept (e.g., that the sludge not be hazardous and that it pass the Paint Filter Liquids Test), and a State must be able to impose these requirements on the sending POTW. The submission should also include a discussion of the practices that will be regulated in addition to those listed above.

#### **4.1.2 Part 501 Scope**

According to 40 CFR 501.12(a), the program application must describe the scope of the program the State intends to administer. Since the scope of a State sludge management program approved under Part 501 is the same as the scope of a program approved under Part 123, a State developing a 501 sludge program should make sure that its submission addresses the points discussed above in Section 4.1.1.

#### **4.1.3 Partial Program Scope**

EPA anticipates revising the NPDES regulations to provide regulatory language for partial sludge management program approvals. Pending proposal of those revisions, EPA is willing to work with States that are interested in partial sludge program delegation to prepare submissions for approval. (After the regulations are effective, EPA will issue more specific guidance on partial sludge programs). A partial sludge program will be allowed where a State agency has responsibility for regulating one or more of the use or disposal practices listed in Section 4.1.1 above. As stated in Chapter 1, partial sludge programs will be allowed either under Part 123 as a component of an NPDES program, or under Part 501 as a non-NPDES partial program.

The State agency must have a complete permit program to qualify for partial program approval, including permit development, issuance, compliance monitoring, and enforcement responsibilities. The program will be required to cover all facilities utilizing the particular sludge use or disposal practice falling within the State agency's jurisdiction. The program must be consistent with the maximum extent of the agency's authority under State law. The State should be prepared to explain why it is unable or unwilling to assume full program delegation. In addition, all users and disposers under a particular practice are subject to the partial program, even if not required to obtain a permit.

For example, a State agency regulating land application would be able to apply for program approval based on that practice alone. The partial program would be required to cover all permittees using land application, as well as ultimate users and disposers (even if they are not required to have a permit). Alternatively, a State agency with jurisdiction over all sludge use and disposal practices in the State except for incineration would be able to submit a program based on all sludge use and disposal practices except incineration.

The sludge management activities or facilities not covered by the partial program will be administered by EPA. This division of authority should not lead to conflicting obligations for permittees; for example, requiring them to obtain sludge permits from both EPA and the State. The program should make it clear whether the permit issuing authority is the State or EPA.

#### **4.2 PROGRAM ORGANIZATION AND ADMINISTRATIVE STRUCTURE [40 CFR 123.22 and 501.12(b)]**

The program submission must describe the organization of the agency or agencies responsible for administering the State's sludge management program. This description must identify, all State agencies that will have any responsibilities in the program by name, detail these responsibilities, and outline interagency and/or intra-agency coordination. In addition, the application should identify and indicate the scope and function of any advisory body which exerts influence or contributes to policy development or decision making on sludge use and disposal. Also, any other State offices that play a role in the administration of this program, such as the Attorney General's office and wildlife or coastal zone management offices, should be identified.

This narrative description must be accompanied by one organization chart for each agency implementing the State's program. If multiple State agencies are involved, an overall organizational chart which clearly shows the position of each agency in the State governmental hierarchy is necessary. The State needs to clearly describe which offices within the agency(ies) are responsible for administering different aspects of the program. For example, if the State agency has a permits section and a compliance section, the program submission should indicate the responsibilities of each in administering the program. Any assignment of program responsibilities to local agencies and the corresponding State oversight must be described. Example organizational charts appear in Appendix B.

#### **4.2.1 NPDES Program Organization**

If the sludge program is to be part of the State's NPDES program, the program submission only needs to identify organizational and administrative changes which reflect personnel involved in sludge use and disposal. This brief description should be accompanied by an organizational chart which illustrates delegation of responsibility for implementation and oversight of the sludge management program.

#### **4.2.2 Part 501 Program Organization**

If the State intends to implement its sludge program under Part 501, the organizational description of the program must be more comprehensive than the comparable description under a State's NPDES program. Since no framework for the program exists, more detail is required to explain to EPA exactly which agencies are involved, what their responsibilities are, and how they interact. The following subsections indicate the organizational issues which must be clarified in the State's program submission.

#### **Multiple State Agencies With Sludge Management Responsibilities**

States regulating, or intending to regulate, various classes of sewage sludge use and disposal commonly have management responsibilities in more than one State agency (or divisions within an agency). The State may have as many agencies involved in sludge management as it has regulated methods of sludge use and disposal. Its program description needs to identify the agency responsible for each method specified in the program's scope and to delineate clearly the jurisdiction of each agency involved in the program. For example, a State may have one agency responsible for land application of sewage sludge and another agency responsible for landfills, or one agency with statewide jurisdiction for POTWs while another administers the program to all other treatment works (i.e., privately owned facilities, Federal facilities, and commercial sludge treatment and distribution or disposal facilities). The program submission must clearly detail both the division of responsibilities within and between the agencies and their procedures for coordination. This discussion should also explain any overlap of responsibilities between the agencies. If interagency or intra-agency agreements will be necessary, a copy of these agreements should be included in the program submission. Interagency agreements may be submitted as draft, but must be final at the time of program approval.

### Lead Agency

Section 501.12(b) of 40 CFR stipulates that if more than one State agency is to be involved in the sludge management program, a lead agency must be designated which will be responsible for overall program coordination as well as for coordination between the State and EPA. Though not required, identifying a central coordinator within the lead agency is recommended. Central coordination is necessary to convey information on activities throughout the State's program in the most expeditious manner possible. The time demands for program coordination should not be underestimated.

### Delegation to Local Agencies

EPA encourages States to use existing sludge management programs to the extent practicable. Therefore, 40 CFR 501.12(15)(f) allows a State sludge management agency to assign portions of its program functions to a local agency, as long as that agency does not own or operate a POTW or other facility subject to the sewage sludge regulations. A State agency intending to use this approach must identify which responsibilities will be delegated to the local agency and must demonstrate the agency's capabilities to carry out the assigned functions. Documents which assign functions and specify the respective State/local sludge management responsibilities must be submitted with the program description.

Any assignment of program responsibilities to a local agency must be certified in the Attorney General's Statement as being valid under both State and local law. The MOA must provide for adequate State agency oversight of implementation by the local agency. Under 40 CFR 501.1(1), the State sludge management agency remains responsible for all reports required to be submitted to EPA. Finally, the State sludge management agency must retain full authority and ultimate responsibility for administering all aspects of the State's approved program.

### **4.3 RESOURCES [40 CFR 123.22 and 501.12(b)]**

The program submission must demonstrate that the State possesses adequate resources (including sufficient funding) and qualified personnel to operate the described program.

#### **4.3.1 NPDES Program Resources**

Since the State's NPDES program description describes the personnel and funding necessary to administer the NPDES permitting program, this description needs only to be supplemented to demonstrate that resources such as staffing are adequate to implement the sludge management program.

#### **4.3.2 Part 501 Program Resources**

The State program submission must address staffing, itemize costs, and estimate funding to effectively administer the sludge management program. Each of these areas is described separately below.

##### **Staffing [40 CFR 501.12(b)(1)]**

The staff description must include the number of employees with program responsibilities, their occupations and duties (e.g., administration, permitting, compliance, or enforcement). The State's program description is not required to contain individual job descriptions, but should describe general minimum qualifications (academic and/or experience) required for personnel in each program area. The staff description should delineate whether these positions have actually been filled, and if not, when they are scheduled to be filled. In addition, the description should identify the following special considerations, when appropriate:

- Personnel dividing time between two or more functions (care should be taken not to double count available personnel);
- Persons who may be working part-time; and
- Additional assistance from other offices (i.e., technical expertise or legal support from other offices).

##### **Itemized Estimate of Costs [40 CFR 501.12(b)(2)]**

The program description must contain an itemized estimate of costs expected to be incurred in the first two years for program development and implementation. This description should project personnel and resource needs and translate these resources into work-years or FTEs (full-time employees). EPA recommends that the State conduct a workload analysis and present it in the program application. This analysis should address each component of the program (e.g., applications processing, permitting, compliance monitoring, and enforcement). The State should be sure to use a

reasonable estimate of the time necessary to perform each function and the number of times the function will be performed. For example, if the State estimates that permits for 40 Class I sludge management facilities will be issued in the next two years and that the State will need three workdays to develop sludge conditions for each, then estimated workload for this activity is 120 workdays or 0.55 work-years.

The State should break down itemized costs by agency and include the following:

- Personnel
  - Administrative personnel
  - Technical personnel (e.g., for inspections and sampling)
  - Clerical personnel; and
- Equipment.

Once the State has determined its estimated resource requirements, it should compile a list of personnel and equipment currently available to each agency to fulfill its requirements. These available resources should be listed in the program description. The description should also clearly identify any staffing or other resource shortfalls and explain how they will be handled without impairing program performance.

#### Estimate of Funding

The program description must estimate the expected available funding for the program and the source(s) for this funding [40 CFR 501.12(b)(3)]. The description should also discuss how each agency will obtain budget approval for its requisite resources.

#### **4.4 PERMITTING [40 CFR 123.25 and 501.15]**

Specific Federal sludge permitting requirements are presented in detail in 40 CFR 123.25 and 501.15, which incorporate the permit provisions of 40 CFR Part 122 by reference. The State's rules and regulations must define State permitting requirements (see Chapter 3). However, as required by 40 CFR 123.21(c) and 501.12(c), the program submission must describe permitting procedures. Aspects to be considered in the State's permitting procedures are outlined in the checklist at the end of this chapter.



#### **4.4.1 NPDES Program Permitting**

Since approved NPDES States seeking approval of a State sludge management program under 40 CFR Part 123 already have permitting procedures in place, these States need only submit changes made to incorporate sludge permitting activities. The State's program description should include new or revised permit application forms and standard conditions for permits. Changes to current procedures for reviewing permit applications, drafting permit conditions, taking permit actions, and providing public notice, if any, should also be described in the program description. For a detailed description of these changes, the State should refer to the following discussion of permitting requirements for the Part 501 program submission.

#### **4.4.2 Part 501 Program Permitting**

The checklist at the end of the chapter describes three major elements in the permitting process: permit application; permit development and contents; and permit issuance. To assist State personnel in developing a program submission, these elements are described below.

##### **Permit Application**

The program submission should describe procedures for identifying those facilities or sludge use and disposal methods that will be permitted. It should also describe the procedures that permittees will be required to follow to obtain a permit under the State's program. For example, the State may choose to send a formal letter transmitting the State sludge regulations, a permit application and the name and phone number of a State contact person to whom the applicant may direct questions, or rely on some other method to inform treatment works of their obligation to obtain a permit.

In accordance with 40 CFR 501.12(d), a sample permit application form must be provided in the State's submission. The State should compare its application information requirements with the minimum application information required by the Federal regulations [40 CFR 501.15(a)(2) and 122.21(c)], as listed in the checklist at the end of this chapter. If the State's applications differ from agency to agency, the State should submit a copy of each application form, designating the types of facilities for which it will be used.

The permitting process discussion should outline the administrative procedures used to review applications. This description may take the form of a chart or flow diagram depicting the administrative steps. It should describe how the agency will follow up receipt of the application and obtain all requisite information. The description should also establish time frames for the review period in which a permit must be either drafted or denied. Further, the permitting description should include procedures for administrative, judicial, and EPA review, and to the extent that the State regulations are not specific, briefly highlight the State's permit appeals process.

### Permit Development and Contents

In describing development of the draft permit, the submission should identify when fact sheets will be used and how they will be prepared.<sup>1</sup> The State should also examine its procedures to ensure that fact sheets will contain the minimum information required by Federal regulations:

- Brief description of the type of facility;
- Type and quantity of sludge;
- Brief summary of the reason for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record; and
- Any calculations or other necessary explanation of the derivation of the following sludge limitations and conditions, including a citation to the applicable standard provisions and reasons why they are applicable:
  - Limitations to control toxic pollutants
  - Limitations on indicator pollutants
  - Limitations on a case-by-case basis.

In addition, all fact sheets should include:

- Name and telephone number of the permit writer or other contact person;
- For every permit issued to a treatment works owned by a person other than the State or a municipality, an explanation of the Director's reasons for permitting the facility; and

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<sup>1</sup>The Federal regulations require all draft permits to be accompanied by a fact sheet. Fact sheets are required for every Class I sludge management facility permit and for any other draft permit that: Requires conditions developed on a case-by-case basis to implement Section 405(d)(4) of the Clean Water Act; includes a sewage sludge land application plan; or the State finds is the subject of public interest or raises major issues.

- A sketch or detailed description of the location of the facility described in the application.

The program submission should also specify procedures for developing appropriate permit conditions. All permits must contain the minimum standard conditions specified by the Federal regulations (see 40 CFR 123.41 and 501.15). These standard conditions are listed in Table 3-4 in Chapter 3.

The program description must also contain a sample permit form. If permit forms differ for different sludge use or disposal methods, a sample of each form should be enclosed.

### Permit Issuance

Each State agency participating in the sewage sludge management program must have procedures to transfer, modify, revoke and reissue, or terminate permits. If these procedures are contained in State regulations, additional narrative descriptions may not be necessary. However, if State regulations allow broad discretion in the transfer of permits, the State may want to describe the criteria and procedures that will govern such transfers. These requirements are found at 40 CFR 501.15(c).

General Permits. Under 40 CFR 501.15(e), the State has the option of applying for approval to issue general permits to treatment works with similar operations and sludge use or disposal practices. The treatment works must be within the same geographic area or political boundaries, and may include sewer districts or authorities, cities, counties, or the State. The treatment works to be included under the general permit must also all be subject to the same standards, conditions, and monitoring requirements. General permits may not be appropriate for Class I facilities, which usually require case-by-case permit conditions. The program description must discuss potential groups of sludge users or disposers which may be regulated under a general permit, as well as modifications to permit procedures which are peculiar to general permits.

Each agency must also provide the opportunity for facilities covered under existing individual permits to apply for coverage under an applicable general permit. Likewise, facilities covered under general permits must have the opportunity to "opt out" and apply for an individual permit. The program description must include such procedures.

**Public Notice of Permit Actions.** The program description must delineate each agency's procedures for ensuring public participation in the permitting process. The agency must provide public notice of all draft permits, permit modifications, permit revocation and reissuance, and permit termination actions. If public notice procedures are detailed in the State regulations (see Chapter 3), additional narrative descriptions of these procedures may not be necessary. If the public notice details are contained in agency policy or a procedures manual, it is helpful to include a brief description of these procedures in the State's program description along with a copy of the manual. Public hearing procedures should also be described.

#### **4.5 COMPLIANCE EVALUATION PROGRAM [40 CFR 123.26 and 501.16]**

Compliance monitoring activities are central to an effective sludge management program. It is through these activities that the State identifies facilities whose practices threaten public health or the environment. Consistent and accurate data collection and documentation are critical elements in a reputable compliance evaluation program. The checklist at the end of this chapter outlines the compliance activities which should be addressed in the State's program submission.

##### **4.5.1 NPDES Program Compliance Monitoring**

An approved NPDES State seeking a State sludge management program under 40 CFR Part 123 will most likely rely on compliance evaluation procedures used in its NPDES program. Such States need only submit changes to these procedures which incorporate sludge compliance activities. States must ascertain the applicability of water compliance procedures to sampling, inspection, and analysis requirements for sludge, and modify those procedures to satisfy sludge requirements if necessary. The following section on requirements for Part 501 programs contains more information on this topic.

##### **4.5.2 Part 501 Program Compliance Monitoring**

A State seeking approval of a sludge management program under 40 CFR Part 501 must provide a detailed description of its compliance evaluation program. This program must reflect the compliance monitoring procedures and requirements set forth in 40 CFR 123.26. These requirements consist of:

- Procedures to maintain a comprehensive inventory of facilities and a schedule of reports to be submitted by each facility;

- Procedures to receive, evaluate, retain, and investigate self-monitoring reports for possible enforcement actions;
- Procedures to inspect facilities and related activities to determine compliance (Class I sludge management facilities at least once a year);
- Procedures for sampling to:
  - Determine compliance
  - Verify accuracy of self-monitoring results
  - Verify accuracy of self-monitoring sampling and analysis procedures;
- Chain-of-custody procedures to ensure admissibility of evidence;
- Procedures for the public to report information;
- Procedures to investigate reports of violation, including receiving and considering reports submitted by the public; and
- Procedures to maintain a management information system to support compliance evaluation activities.

The State's description of its compliance monitoring program must address each of these considerations, discussed below. If more than one agency is involved in the sludge program each has different protocols, their description should be presented separately to eliminate possible confusion.

**Maintaining a Comprehensive Inventory of Facilities [40 CFR 501.12(f) and 123.22(f); 40 CFR 501.16 and 123.26(e)(1)]**

States applying for approval of a State sludge management program must submit an inventory of all treatment works treating domestic sewage in the State. The inventory must include the following information for each facility:

- Name, location, and ownership status (e.g., public, private, Federal);
- Sludge use or disposal practice(s);
- Annual sludge production volume;
- Permit numbers of all environmental permits held, if any; and
- Compliance status.

At a minimum, the initial inventory in the program submission should include all facilities that are or will be required to obtain a permit (i.e., all publicly and privately owned treatment works, and Federal facilities treating sewage sludge). It should also include sewage sludge commercial distributors which the State plans to permit. Industrial treatment works treating domestic sewage will not be regulated under Phase I of 40 CFR Part 503. If these facilities become subject to regulation under subsequent rulemakings, then the State's program and inventory will have to be expanded to cover these facilities.

Additionally, the inventory must include all sewage sludge use and disposal sites, including the name, location, and permit number (if any) for each site. An inventory of the beneficial use sites that receive sludge through a distribution and marketing program (i.e., home gardens) is not required. If the State does not choose to submit this additional inventory of use and disposal sites with the rest of the program application, the description should indicate how the State will complete the inventory within five years of program approval.

As part of the compliance monitoring program, each State is required to update and maintain the inventory. Updating is required to add new or changed facilities and sites that could require a new or modified permit. Procedures for updating the inventory may include:

- Requiring existing facilities and sites to report any substantive changes as a permit condition;
- Reliance on inspections to verify reported changes and identify unreported ones;
- Arrangements with cities and counties to be notified of any new facilities or sites locating within their jurisdictions; or
- Arrangements with nonparticipatory State agencies for notification of facilities or sites coming to their attention during the course of business.

The program description must describe how each agency will accomplish this task. For example, the State can require all newly identified or substantially changed facilities to submit a revised permit application.

**Receipt, Evaluation, and Retention and Investigation of Permittee Self-Monitoring Reports [40 CFR 501.16 and 123.26(a)]**

The program description must explain how each agency will receive, track, and evaluate all notices and reports required to be submitted by permittees. Since States will use these procedures to determine whether to seek enforcement against permittees, the procedures must be comprehensive enough to evaluate and accurately track the information over time.

**Inspections [40 CFR 501.16 and 123.26(b)(2)]**

The Federal regulations require inspections of all Class I sludge management facilities at least annually. All other sludge management facilities should be inspected on a routine basis. The inspection should include sludge treatment and use or disposal sites and practices, where appropriate. Inspections of facilities and activities subject to regulation are required in order to determine compliance; to verify the accuracy of information submitted by permittees; and to verify the adequacy of sampling, monitoring, and other methods used by permittees to submit information.

**Compliance Sampling [40 CFR 501.16 and 123.26(d)]**

States must have the authority to conduct investigatory inspections, which include sampling and other information gathering. Sampling must be conducted in accordance with appropriate "chain-of-custody" procedures to ensure the admissibility of evidence in an enforcement proceeding or in court.

**Public Participation [40 CFR 501.16 and 123.26(b)(3),(4)]**

The sludge management program must encourage public participation. Often, violations may be spotted by conscientious employees or private citizens before a State can identify them through its inspections or sampling. The program description should describe procedures for receiving information submitted by the public as well as the procedures for responding to public reports of suspected violations.

**Compliance Tracking Management System [40 CFR 501.16 and 123.26(e)(4)]**

The program submission must also describe each agency's procedures for maintaining a management information system which supports compliance evaluation activities. The compliance management program should address the inventory, flow of information, enforcement screening, and a data management system.

## **4.6 ENFORCEMENT [40 CFR 501.17 and 123.27]**

At a minimum, all State sludge management programs must have the authority to invoke timely and effective enforcement remedies. The checklist at the end of the chapter outlines both required and suggested components of a comprehensive enforcement management strategy for the State sludge management program. Those requirements are briefly discussed in the following sections.

### **4.6.1 NPDES Program Enforcement**

The enforcement authorities required for the sludge management program are identical to those required for the existing NPDES program. The State NPDES enforcement authorities should be compared to the Federal regulations to verify consistency and ensure they are adequate to implement sludge requirements. More detailed information about enforcement authorities is provided in the following section on Part 501 program requirements.

### **4.6.2 Part 501 Program Enforcement**

In addition to ensuring adequate enforcement authority, a State seeking approval under 40 CFR Part 501 should describe its enforcement strategy and procedures. The narrative description of this enforcement strategy should discuss the State's informal and formal enforcement remedies, strategies, and policies. The minimum enforcement requirements are discussed in greater detail in Chapter 3.

It is very important that any limitations and restrictions governing the use of the enforcement remedies be disclosed. Thus, if State law requires certain actions be taken prior to initiating enforcement actions (e.g., a conciliation meeting, a show cause hearing), they must be explained in the program description. Obstacles which prevent the State from achieving the minimum enforcement requirements must be removed.

### **Civil, Criminal, and Administrative Penalties**

The State's program must describe each agency's process for pursuing administrative fines, civil litigation, and criminal prosecution, and the appropriate range of penalties for violations. The discussion of the enforcement program must also include a synopsis of the relationship and coordination between the permitting office, the inspection/compliance office, and State legal officials (e.g., the Attorney General's office). Finally, the enforcement discussion must address provisions to



ensure the public's right to participate in, and have adequate notice of, enforcement actions. These requirements are discussed in greater detail in Chapter 3.

#### 4.7 PROGRAM DESCRIPTION CHECKLIST

##### I. PROGRAM SCOPE

A. Will the State's program regulate:

- ☐ 1. Sludge-only monofills
- ☐ 2. Co-disposal landfills
- ☐ 3. Land application
- ☐ 4. Distribution and marketing
- ☐ 5. Incineration
- ☐ 6. Surface disposal
- ☐ 7. Other (Specify: \_\_\_\_\_)

B. If the program will regulate landfills, does the submission specify the following:

1. Sludge-only monofills

- ☐ a. Municipal
- ☐ b. Privately owned

2. Co-disposal landfills

- ☐ a. Municipal
- ☐ b. Privately owned

C. If the program will regulate land application, does the submission specify the following:

- ☐ 1. Agriculture
- ☐ 2. Silviculture
- ☐ 3. Grazing lands
- ☐ 4. Reclaimed lands
- ☐ 5. Dedicated land disposal sites
- ☐ 6. Other (Specify: e.g., highway medians, parks, golf courses)

☐ D. Will the State's program regulate Federal facilities? Will the State's program require permits for facilities other than treatment works treating domestic sewage? If so, which facilities or persons?

☐ E. Is the submission's description of the program's scope clear and comprehensive?

##### II. PROGRAM ORGANIZATION AND ADMINISTRATIVE STRUCTURE

☐ A. Will the State program be administered by more than one agency/ department?

☐ B. Are two (or more) agencies responsible for one sludge use and disposal method?

☐ C. Does the submission include an organizational chart?

- ☐ D. Does the chart indicate each agency/department responsible for each regulated disposal method listed in the scope?
- ☐ E. Does the organizational chart or the submission clearly designate the lead agency that will report to EPA?
- ☐ F. Does the chart specify positions responsible for the following:
  - ☐ 1. Review of permit application
  - ☐ 2. Permit issuance
  - ☐ 3. Inspection and monitoring
  - ☐ 4. Compliance tracking
  - ☐ 5. Enforcement
- ☐ G. Does the submission include a narrative of the State's program organization?
- ☐ H. Is the narrative description consistent with the organizational chart?
- ☐ I. Does the narrative clearly state the sludge use and disposal methods for which each agency is responsible?
- ☐ J. Is interagency/interdepartmental coordination described?
- ☐ K. Are coordination activities adequate to provide comprehensive reporting to EPA?
- ☐ L. Does the submission describe the role of local agencies?

### III. RESOURCES

- ☐ A. Does the submission specify the work years to be provided by each agency/department to administer this program?
- ☐ B. Does the submission contain charts showing all positions responsible for implementation of the program?
- ☐ C. Does the description include personnel for the following:
  - ☐ 1. Permit preparation
  - ☐ 2. Inspections
  - ☐ 3. Sampling
  - ☐ 4. Analysis
  - ☐ 5. Data review
  - ☐ 6. Enforcement
  - ☐ 7. Legal
  - ☐ 8. Clerical
- ☐ D. Are the work years to be provided sufficient to accomplish the activities described?

- E. Does the submission specify the equipment to be provided by each agency/department for the following:
- ☐ 1. Sampling equipment
  - ☐ 2. Analytical equipment
  - ☐ 3. Vehicles
  - ☐ 4. Data management system
  - ☐ 5. Safety equipment
- ☐ F. Does the equipment appear sufficient to accomplish the activities described?
- ☐ G. Does the submission provide an itemized estimate of costs to establish and administer this program for the first two years?
- ☐ H. Does the level of itemization contain distinct costs for each program activity described in Item C above?
- ☐ I. Are the costs consistent with the personnel, equipment, and administrative activities described?
- ☐ J. Does the submission describe the sources and amounts of funding to meet the costs for the first two years?

#### IV. PERMITTING PROCEDURES

##### A. Permit application:

- ☐ 1. Does the submission clearly describe how treatment works will be required to submit a permit application?
- ☐ 2. Does the submission contain permit application form(s) that cover each sludge use and disposal method?
- ☐ 3. Does the permit application require all information required by 40 CFR Parts 123 or 501?
  - ☐ a. Activities conducted by the applicant which require it to obtain a permit
  - ☐ b. Name, mailing address, and location of the treatment works treating domestic sewage for which the application is submitted
  - ☐ c. Operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity
  - ☐ d. Whether the facility is located on Indian lands
  - ☐ e. List of all permits or construction approvals applied for or received
  - ☐ f. Topographic map extending one mile beyond the property boundaries of the treatment works, depicting the location of the sludge management facilities, water bodies within 1/4 mile outside of the property boundary, and wells used for drinking water
  - ☐ g. Any sludge monitoring data the applicant may have, including available groundwater monitoring data with the description of the well locations and approximate depth to groundwater
  - ☐ h. Description of the applicable sludge use and disposal practices (including, where applicable, the location of any sites where the applicant transfers sludge for treatment and/or disposal, as well as the name of the applicator or contractor who applies or distributes the sludge, if different from the applicant)

- ☐ i. Information on each land application site, demonstrating its suitability on a land application site selection plan which, at a minimum:
    - Describes the geographical area covered by the plan
    - Identifies site selection criteria
    - Describes how sites will be managed
    - Provides the permitting authority advance notice and opportunity to object
    - Provides for public notice
  - ☐ j. Annual sludge production volume
  - ☐ k. Any information required to determine the appropriate standards for permitting under 40 CFR Part 503
  - ☐ l. Any other information deemed necessary
- ☐ 4. Are the data required in permit application(s) appropriate and adequate to develop permit limits and requirements?

B. Permit development and contents:

- ☐ 1. Does the program description include a copy of a permit form for each sludge use and disposal method to be regulated?
- ☐ 2. Does the permit form contain the required contents and standard conditions specified by 40 CFR 123 or 501?
- ☐ 3. Does the program description clearly indicate that fact sheets will be developed for each Class I facility permit?
- ☐ 4. Does the program description clearly describe the review process for prepared permits?

C. Permit issuance:

- 1. Does the permit review/approval process include:
  - ☐ a. EPA review/approval
  - ☐ b. Administrative review/approval
- 2. Does the program description clearly establish time frames and identify personnel positions and responsibilities?
  - ☐ a. Permit application
  - ☐ b. Permit review and issuance of draft permit
  - ☐ c. Final permit issuance
  - ☐ d. Permit appeal
- ☐ 3. Does the program description clearly describe the State's public notice/public hearing process for permits to be issued?
- 4. Does this process include:
  - ☐ a. Formal public notice in newspaper
  - ☐ b. Is the newspaper circulated in the geographic area affected
  - ☐ c. Comment time period
  - ☐ d. Procedures for commenting
- ☐ 5. Does the submission describe the State's procedures to appeal the permit?

#### IV. COMPLIANCE TRACKING

- ☐ A. Does the submission state that all Class I facilities will be inspected at least annually?
- ☐ B. Does the submission state the frequency that each sludge use and disposal practice will be sampled?
- ☐ C. Does the submission state the frequency that all other facilities (non - Class I) will be inspected and sampled?
- ☐ D. Is the frequency adequate to ensure a compliance determination?
- ☐ E. Does the submission describe the type of sampling and analyses which will be performed by the State for each sludge use and disposal method to be regulated:
  - ☐ 1. Monofills
  - ☐ 2. Co-disposal landfills
  - ☐ 3. Land application
  - ☐ 4. Distribution and marketing
  - ☐ 5. Incineration
  - ☐ 6. Surface disposal
  - ☐ 7. Other (Specify: \_\_\_\_\_)
- ☐ F. Are the sampling methods described consistent with applicable regulations?
- ☐ G. Are the analysis methods described consistent with applicable regulations?
- ☐ H. Does the submission identify the laboratories to be used or are capable of conducting the analyses?
- ☐ I. Does the submission include copies of sampling and analytical documentation forms and chain-of-custody forms?
- ☐ J. Does the submission describe procedures to review State compliance monitoring data and facility self-monitoring data?
- ☐ K. Do the review procedures include referral procedures for violations identified?
- ☐ L. Does the program description describe the data management system for tracking permit expiration, self-monitoring reports, violations, and enforcement?

#### V. ENFORCEMENT

- ☐ A. Does the submission provide a plan for taking enforcement actions in response to violations?
  - ☐ 1. Delineation of roles of the technical and legal staff
  - ☐ 2. Procedures to compile background information to support the enforcement action
  - ☐ 3. Procedures for interaction with other affected programs
  - ☐ 4. Time frames for conducting technical evaluation and determining appropriate response

- ☐ 5. Procedures to compile all material to serve as compliance history and support for any future actions
- ☐ 6. Tracking system to follow the progress of the enforcement action
- ☐ 7. Guidelines, including time frames, for escalating the enforcement action
- ☐ 8. Procedures to close out the enforcement action when compliance is achieved.

B. Does the plan describe which violations will result in the following:

- ☐ 1. Warning notices
- ☐ 2. Administrative orders
- ☐ 3. Administrative penalties
- ☐ 4. Compliance schedules
- ☐ 5. Civil penalties
- ☐ 6. Criminal penalties
- ☐ 7. Termination of permit

☐ C. Does the plan specify time frames to respond to violations and the personnel position and responsibilities?

☐ D. Does the plan specify time frames for permittee opportunity to respond?

☐ E. Does the submission describe procedures for public notice of enforcement actions?

☐ F. Does the plan provide procedures for reinstating terminated permits?

## VI. INVENTORY

☐ A. Does the submission include an inventory of all municipal and nonmunicipal treatment works subject to regulation?

B. Does this inventory include:

- ☐ 1. Name
- ☐ 2. Location
- ☐ 3. Ownership status (e.g., public, private or Federal)
- ☐ 4. Sludge use or disposal practices
- ☐ 5. Annual sludge production volume
- ☐ 6. Applicable permit number(s) (NPDES, UIC, RCRA, Clean Air Act, State)
- ☐ 7. Compliance status

☐ C. Does the submission include an inventory of all other sludge disposal sites not included in Item VI.B. above? (This list need not include sites which meet distribution and marketing requirements.)

D. Does this inventory include:

- ☐ 1. Name
- ☐ 2. Location
- ☐ 3. Permit number(s)
- ☐ 4. Source of sewage sludge

- ☐ E. If the submission does not include comprehensive inventories, does it include the information required under Item VI.B.1 and 2 above?
- ☐ F. If the submission provides only this partial inventory, does it include a detailed plan for completing the inventory within five years?
- ☐ G. Does the submission describe in detail the procedures to develop and maintain an inventory?



## **5. MEMORANDUM OF AGREEMENT**

EPA's approval of a State sludge management program is signified by the MOA negotiated and executed by the State Director(s) and the EPA Regional Administrator. A State seeking approval of a sludge management program under either 40 Part 123 or 501 must execute an MOA. The requisite elements of the MOA are set forth at 40 CFR 123.24 and 501.14. The MOA establishes the following:

- Transfers the administration of existing EPA permits and pending permit applications to the State;
- Indicates classes of permits which must be reviewed by EPA;
- Details the extent to which EPA will waive its right to review, object to, or comment upon State issued permits;
- Describes the frequency and content of reports required to be submitted to EPA;
- Outlines the coordination of compliance monitoring and enforcement activities between the State and EPA;
- Specifies when permits will be jointly processed by EPA and the State; and
- Details when the MOA must be modified.

The MOA, the Annual 106 Work Plan, and the State/EPA agreement should be consistent. Detailed program priorities and specific arrangements will change and are more appropriately negotiated in the context of the annual State/EPA agreement rather than in the MOA. However, it is still appropriate for the MOA to specify the basis for detailed requirements, such as a provision specifying how to determine which facilities will be inspected as part of the annual State/EPA agreement. An example MOA and examples of amendments to existing MOAs appear at the end of this chapter.

### **5.1 MEMORANDUM OF AGREEMENT FOR A NPDES PROGRAM**

The MOA between the State and EPA submitted as part of a NPDES sludge program will consist of an addendum to the original NPDES MOA. This addendum must contain terms and conditions concerning the State's sludge management program. Any State wishing to implement a

sludge program as part of its NPDES program should review the discussion on MOAs for a Part 501 program contained in the following section.

## **5.2 MEMORANDUM OF AGREEMENT FOR A PART 501 PROGRAM**

The MOA between the State and EPA, negotiated as part of a Part 501 sludge management program, addresses the elements cited above. Each of these elements is described briefly in the subsections below.

### **5.2.1 Transfer Administration of Permits**

The MOA must provide for the transfer of program administration from the EPA Region to the State. All pending permit applications and supporting data (e.g., sludge quality data), should be transferred to the appropriate State agency(ies). If a State does not have the authority to enforce EPA-issued permits, then it should agree to reissue them with identical provisions. Similarly, copies of EPA's permit files must also be transferred to the State.

### **5.2.2 Classes of Permits Which Must Be Reviewed by EPA**

The MOA between a State and EPA must specify the classes and categories of proposed or draft permits which the State will send to EPA for review. Under no circumstances may Class I sludge management facilities be exempted from review. In addition, the EPA Region should probably review all general permits and other permits of concern (e.g., permits for agricultural land application and/or incinerators). Further, the State must agree to forward copies of all final permits to EPA, including applications and fact sheets.

### **5.2.3 Waiver of EPA Permit Review**

Except for permits issued to Class I sludge management facilities, EPA may waive its right to review, object to, or comment on State-issued permits. The extent of EPA's waiver must be specified in the MOA. Additionally, the MOA shall contain a statement that the EPA retains the right to terminate the waiver as to future permit actions.

### **5.2.4 Reporting Requirements**

The MOA between the State and EPA must specify the frequency and content of reports and other information which the State will submit to EPA. In addition, the MOA should set out agreed

upon procedures for EPA review of State records, reports, and files relevant to program administration and enforcement. Table 5-1 lists the reports required to be submitted to EPA.

**TABLE 5-1. REPORTS TO EPA**

- **SEMIANNUAL SLUDGE VIOLATION REPORT**
  - Noncomplying Class I facilities
  - Type and date(s) of noncompliance events
  - Type and date(s) of action(s) taken
  - Status of action(s) taken and date(s) of resolution
- **ANNUAL REPORT**
  - Semiannual sludge violation report information
  - Updated inventory
  - Non-class I facility noncompliance information
  - Number and type of Class I and Non-class I violations for FY
  - Class I and Non-class I facilities brought into compliance for FY
  - Facilities 6 months behind compliance schedules
  - State compliance monitoring results

#### **5.2.5 Compliance Monitoring and Enforcement**

The MOA must specify provisions for coordination of compliance monitoring activities by the State and EPA. Such provisions may include the basis on which EPA will select facilities or activities for its own inspections. The MOA must provide for notification to EPA of scheduled State inspections so that EPA may elect to participate in such activities. Furthermore, the MOA should provide that EPA will notify the State of the inspections which it plans to perform (normally seven days notice). EPA would not be required, however, to notify the State of any "surprise inspections" designed to uncover possible criminal activity.

The MOA should also specify that periodic enforcement reports will be forwarded to EPA. The contents of the reports required to be submitted appear in Table 5-1. Coordination of sampling activities between the State and EPA should also be set out in the MOA. Finally, it must also describe the coordination of enforcement activities between the State and EPA.

#### **5.2.6 Joint Processing of Permits**

The MOA must contain provisions which specify procedures for joint processing of permits by the State and EPA, if applicable. For example, in the event that EPA remains responsible for administering specific permits (e.g., permits with a history of enforcement problems, or subject to ongoing litigation), the MOA should provide for State/EPA coordination on the issuance of an EPA sludge rider to the State permit.

#### **5.2.7 Modification of MOA**

The MOA becomes effective after it has been signed by the Regional Administrator and approved by the Administrator. After its effective date, either the State or EPA may initiate procedures to modify it. EPA will initiate such action when necessary to ensure State compliance with all applicable Federal requirements. Modifications must be in writing and signed by the State Director and Regional Administrator.

### **5.3 MODEL MEMORANDA OF AGREEMENT**

The model Memoranda of Agreement is provided on the following pages.

MODEL

STATE SLUDGE MANAGEMENT PROGRAM  
UNDER 40 CFR PART 501

MEMORANDUM OF AGREEMENT  
BETWEEN THE  
STATE AGENCY  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION \_\_\_\_

Section I. General

This Memorandum of Agreement (hereafter "Agreement" or "MOA") establishes policies, responsibilities and procedures pursuant to 40 CFR Part 501 and defines the manner in which the (State) Sludge Management Program will be administered.

The (State Director) and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination in a partnership to assure successful and effective administration of the Sludge Management Program. If requested by either party, meetings between the State and EPA will be scheduled at reasonable intervals to review specific operating procedures, resolve problems, or discuss the administration of the State's permit program.

In this partnership, EPA will provide to the (State Agency), on a continuing basis, technical and other assistance on permit matters as requested. The (State Agency) has primary responsibility for implementing the Sludge Management Program in accordance with Section 405 of the Federal Clean Water Act (CWA), 33 U.S.C. §1251 et. seq. (hereafter CWA), applicable State legal authority, the requirements of 40 CFR Part 501, and any other applicable Federal regulations.

The strategies and priorities for issuance, compliance monitoring, and enforcement of permits, as established in this MOA, may be set forth in more detail in the annual State 106 program plan and the State/EPA Enforcement Agreement signed by the (State Agency) and the Regional Administrator of EPA Region \_\_\_\_\_. This MOA, the State 106 program plan, the State/EPA Enforcement Agreement, and any other State/EPA agreement(s) should be consistent as required by 40 CFR §501.14.

The State and EPA will negotiate priorities for implementation of a Sludge Management Program and inspection of POTWs and other sludge users and disposers. The program must contain a list of permits to be issued and facilities to be inspected. The State's noncompliance with any term contained herein is grounds for withdrawal of EPA approval of the Sludge Management Program.

A. (State Agency) Responsibilities

In accordance with the priorities and procedures established in this Agreement, the (State Agency) will:

1. Develop and maintain the legal authority (including State regulations) and the resources required to carry out all aspects of the State Sludge Management Program, including development of procedures to ensure adoption of up-to-date EPA regulations. The State agrees to incorporate the requirements of 40 CFR Part 503 within \_\_\_\_ days of their promulgation.
2. Process, issue, reissue, or modify all sludge permits in a timely manner.
3. Comprehensively evaluate and assess compliance with schedules, limitations, and other conditions in permits.

4. Maintain a vigorous enforcement program by taking timely and appropriate actions in accordance with the CWA and State statutes and regulations.

5. Maintain an adequate public file, accessible to EPA, at the appropriate regional or central office, for each permittee. At a minimum, such files must include copies of:

- a. Permit application;
- b. Issued permit;
- c. Public notice and fact sheet;
- d. Self monitoring data, including any groundwater data;
- e. All inspection reports;
- f. All enforcement actions; and
- g. Other pertinent information and correspondence.

6. Cooperate with EPA in the administration of Sludge Management Program in accordance with EPA program policies and guidance.

7. Submit to the Regional Administrator the information described in section V of this Agreement and in applicable portions of 40 CFR Part 501. Additionally, upon request by the Regional Administrator, the (State Agency) shall submit specific information and allow continuing access to all documents necessary for evaluating (State Agency) administration of the Sludge Management Program.

8. Provide assurance that it has procedures to enforce the conflict of interest provisions contained in 40 CFR Part 501 and that these procedures are being followed.

9. Develop and issue sludge use and disposal general permits. After identifying those users or disposers appropriately regulated by a general permit, the State will collect sufficient sludge data to draft a general permit. Each draft will be accompanied by a fact sheet and will be forwarded to:

Water Management Division Director  
U.S. EPA, Region \_\_\_\_  
(Address)

The Regional Water Management Division Director will have \_\_\_\_ days to review the draft permit and respond to the State. EPA will provide to the State in writing any objections, the reasons for the objections, and the actions necessary to eliminate the objections. The State has a right to a public hearing on the objection pursuant to 40 CFR 501.14(b)(2).

B. EPA Responsibilities

1. EPA will provide technical support and assistance to the (State Agency) in the following areas:

- a. Interpretations of regulations at 40 CFR Part 123 and 501, relating to Sludge Management Programs
- b. General technical assistance in processing permit applications.

2. EPA will ensure that the (State Agency) is kept fully informed and up-to-date concerning:

- a. EPA contractor reports; EPA development documents; and regulations relating to sludge use and disposal practices

- b. Settlement agreements between EPA and litigants which concern the interpretation or modification of regulations related to sludge use and disposal practices
- c. EPA regulations, technical guidance, policies, and procedures which pertain to implementation of the Sludge Management Program.

3. EPA will provide the (State Agency) with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep the (State Agency) informed of development of Sludge Management Program policy statements, strategies, and related guidance, and provide for input by the (State Agency) when appropriate.

4. EPA will oversee the administration of the State Sludge Management Program on a continuous basis for consistency with the CWA, this Agreement, the annual program plan (if any), and all applicable Federal regulations and policies. As a part of its assessment, EPA will review permits, reports, and enforcement actions submitted by the (State Agency). EPA may also consider comments from permittees, the public, and Federal and local agencies concerning the (State Agency's) administration of its Sludge Management Program. Any such comments considered by EPA will be brought to the attention of the (State Agency) by written correspondence. (If the commenting party has not previously communicated this comment to the (State Agency). Any information obtained or used by the (State Agency) under the Sludge Management Program shall be available to EPA upon request, without restriction. If the information has been submitted to the (State Agency) under a claim of confidentiality, the (State Agency) shall inform EPA of that claim. Claims of confidentiality will be treated in accordance with 40 CFR Part 2, Subpart B; and 40 CFR 501.15(a)(1).

5. Upon approval of the MOA, EPA will promptly deliver to the State Program Director all pending permit applications on which no final action has been taken. Other information pertinent to program operation such as support files, monitoring reports, and any previously issued permits should be transferred to the State Program Director along with permit applications. EPA shall deliver the above information within \_\_\_ days of approval of this MOA. This information shall be addressed to:

State Program Director  
(address)

6. Sludge permits currently in effect shall remain in effect after approval of a State Sludge Management Program. EPA shall transfer duties of permit administration to the State Director within \_\_\_ days of approval of this MOA. All information in EPA's possession which is pertinent to program operation should accompany those permits to the State Director at the address listed above.

7. If the State lacks the authority to administer Federally issued permits, the State will issue a permit with provisions identical to the EPA-issued permit currently in effect, which will be simultaneously dissolved.

8. If the State does not have the legal authority to implement provisions in the permit originally issued by EPA, EPA may nevertheless dissolve that permit and allow the State to issue one containing provisions has authority to administer. Alternatively, EPA may object to the State's administration of a permit it does not have full authority to administer, and may retain control over the implementation of that permit.

9. A permit applicant or permittee shall be given \_\_\_ days notice of any prospective transfer of administrative program duties from EPA to the State Program Director.

### Section III. Permit Review and Issuance

The (State Agency) is responsible for expeditiously drafting, providing public notice for, issuing, modifying, reissuing, and terminating permits in accordance with 40 CFR Part 501 and any other applicable regulations.

A. Receipt of New Permit Applications by the State Agency

Within \_\_\_\_ working days of the receipt of a complete permit application, the (State Agency) will enter all required information into EPA's National Permit Compliance System (PCS) (when it becomes available to accept the data).

B. Permit Reissuance

All expiring sludge permits shall be reissued on or before the date of expiration. If such timely reissuance is not possible, the (State Agency) will notify the Regional Administrator of the reasons for the delay. In no event will permits administratively continued beyond an expiration date be modified or revised.

C. EPA Review of Draft Permits and Permit Modifications

1. The (State Agency) shall consult with the Regional Administrator before issuing public notice of a draft permit to ensure that the permit will comply with Federal guidelines and requirements. The (State Agency) shall transmit appropriate portions of working documents to the Regional Administrator, in connection with the consultation.

2. Unless otherwise waived, EPA will review all draft permits. EPA will always review all Class I permits. At the time of issuance of the public notice, the (State Agency) shall send the EPA one copy of the public notice, the draft permit, and the fact sheet (when prepared) for each facility. In the case of a Class I facility, the permit application must also be submitted for review.

EPA shall have up to 90 days to comment upon, object to, or make recommendations with respect to the draft permit. The time for EPA review shall be extended up to 90 days upon request of EPA. EPA will send to the (State Agency) written agreement, comments, or objections to each draft permit, including a statement of the reasons for the comments or objections and the sections of the CWA, regulations, or guidelines which support them. A copy of all comments will also be sent to the permit applicant. In the event EPA files a "general objection" to a draft permit, it shall have 90 days from receipt of the draft permit to supply the specific grounds for objection, and the terms and conditions which should be included in the permit. If the initial permit information supplied by the (State Agency) is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, EPA may file an "interim objection" under 40 CFR 123.44(d) and request the (State Agency) to transmit the complete record (or portion thereof) of the (State Agency) permit proceedings. The full period for EPA review shall recommence upon receipt of the requested information. If the State issues a general permit for sludge use or disposal, the Office of Water Enforcement and Permits may conduct the permit review on the Region's behalf [40 CFR 501.14(b)(2) and by reference, 40 CFR 123.44(a)(2)].

3. In the event the Regional Administrator objects to a permit under paragraph C.2 above, the Regional Administrator shall so notify the (State Agency) in writing as to the reasons for the objection and the actions necessary to eliminate the objection. EPA's objections must be based on one or more of the criteria identified in 40 CFR 123.44(c). The (State Agency) has the right to a public hearing on the objection. If EPA's concerns are not satisfied within (90) days of the notice of objection (or within 30 days of the Regional Administrator's decision following a public hearing on the objection), exclusive authority to issue the permit vests in EPA. No permit will be issued over the written objection of EPA.

D. Waiver of Permit Review by EPA

1. At this time, EPA waives the right to comment on, or object to, the sufficiency of permit applications, draft permits, proposed final permits, and final (issued) permits, with the exception of the categories described below:

- a. Class I Sludge Management facilities as defined in 40 CFR 501.2.
- b. Sludge use and disposal practices which may affect another state.



2. With respect to modifications or revocations and reissuances of permits, EPA waives the right to review any permit for which either the right to review the original permit was waived (unless the modification would put the permit into one of the categories in paragraph D.1 above) or the modification qualifies as minor as defined in 40 CFR 122.63 [40 CFR 501.15(e)(3)].

3. EPA reserves the right to terminate the waivers in paragraphs D.1 and D.2 above, in whole or in part, at any time. Any such termination shall be made in writing to the (State Agency).

4. The foregoing waiver shall not be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal laws, regulations, or guidelines, nor to relinquish the right of EPA to petition the (State Agency) for review of any action or inaction because of violation of Federal laws, regulations, or guidelines.

#### E. Public Participation

1. Permit applications, draft permits, public notices, and fact sheets or statement of basis (when prepared) will be made available to any party upon request and payment of applicable State duplicating fees.

2. The (State Agency) will prepare and distribute copies of all public notices and fact sheets in accordance with 40 CFR 501.15(d)(4) and (5) unless otherwise waived by the specific organization.

3. All Class I sludge permits shall be public noticed in a daily or weekly newspaper within the area affected by the activity, in accordance with 40 CFR 501.15(d)(5)(B).

#### F. Issuance of Permits or Notice of Intent to Deny

1. If the final determination is to issue the permit, the final permit will be forwarded to the permit applicant, along with a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to EPA within \_\_\_\_ days.

2. If the final determination is to deny the permit, notice of intent to deny shall be given to EPA and to the applicant in accordance with Sludge Management Program within \_\_\_\_ days.

3. If a facility must be permitted by both the State and EPA under different programs, the State and EPA may agree to consolidate processing of permits. The State and EPA may coordinate the expiration dates of new and existing permits so that processing of renewal applications may be consolidated. The following procedures shall be used for joint State/EPA permit processing: \_\_\_\_\_

#### G. Termination, Modification, Revocation and Reissuance of Permits

Except as waived in paragraph D.2 above, the (State Agency) shall notify EPA whenever it intends to terminate an issued sludge use or disposal permit. In addition, the (State Agency) shall transmit to EPA a copy of any permit which it proposes to modify or revoke and reissue with the proposed changes clearly identified. The procedure set forth in paragraphs C.2 and 3 above shall be followed with respect to modifications by the (State Agency) of any issued permit. For purposes of this agreement, each permit proposed to be modified shall be deemed a newly proposed draft permit, except for minor modifications as described in 40 CFR 122.63 [40 CFR 501.16(e)(B)].

#### H. Administrative or Court Action

If the terms of any permit, including any permit for which review has been waived pursuant to paragraph D above, are affected in any manner by administrative or court action, the (State Agency) shall immediately transmit a copy of the permit, with changes identified, to the Regional Administrator and shall allow \_\_\_\_ days for EPA to make written objections to the changed permit.

I. Class I Sludge Management Facilities List

There shall be included, as a part of either the program description or the annual State 106 program plan, a Class I Sludge Management facilities list. This list shall include all POTWs identified under 40 CFR 403.8(a) as requiring a pretreatment program and any other treatment works which the Regional Administrator, in conjunction with the State Program Director, classifies as a Class I Sludge Management Facility due to the potential of its sludge use or disposal practices to adversely affect public health or the environment.

J. Evidentiary Hearings

1. EPA will retain responsibility over permit appeals or requests for modification which are pending at the time of program approval. In the event that such permit appeals or requests for modification remain unresolved at the time the EPA-issued permit expires, the (State Agency) will assume jurisdiction over the appeal or request unless it agrees that a particular matter should be resolved by EPA.

2. The (State Agency) will provide EPA with a copy of all precedent setting settlements and administrative or judicial decisions which affect the (State Agency's) ability to implement the Sludge Management Program in accordance with Federal requirements.

Section IV. Enforcement

The (State Agency) agrees to maintain a vigorous enforcement program (including a compliance assessment of sludge users and disposers) and to take timely and appropriate enforcement actions where warranted. Sludge use and disposal practices endangering public health shall receive immediate and paramount attention.

A. Compliance Monitoring

The (State Agency) shall operate a timely and effective compliance monitoring program, including an automatic data processing (ADP) and/or manual tracking system, to determine compliance with permit conditions and pretreatment requirements (when applicable). For purposes of this MOA, the term "compliance monitoring" includes all activities taken by the (State Agency) to assure full compliance with the Sludge Management Program requirements. The (State Agency's) monitoring program shall consist of two main activities:

1. Compliance Review - The (State Agency) shall conduct timely and substantive reviews and shall keep complete records of all written materials relating to the compliance status of sludge permittees, including: compliance schedule reports, discharge monitoring reports (if applicable), compliance inspection reports, and any other reports that permittees may be required to submit under the terms and conditions of a sludge use or disposal permit, approved program, or court order.

The (State Agency) shall operate a system to determine if:

- Self-monitoring reports required by permit or sludge management regulations are submitted;
- Submitted reports are complete and accurate; and
- Permit conditions and any other applicable requirements are met.

The (State Agency) and EPA shall have periodic enforcement conferences to decide priorities for initiating enforcement actions and to coordinate enforcement activities.

The (State Agency) shall initiate appropriate enforcement actions whenever required performance is not achieved or when reports are not received. In the case of violation by a Class I facility, the (State Agency) shall initiate an appropriate enforcement action within \_\_\_ days of the date such report was or should have been received by the State. Priorities for reviewing these reports and for initiating enforcement actions will be specified in procedures set out in the program description.

2. Compliance Inspection - The (State Agency) shall conduct field activities, including sampling and nonsampling inspections, to determine the status of compliance with permit requirements. Inspection procedures will be in accordance with State procedures for compliance monitoring and evaluations pursuant to 40 CFR 501.16 (and by reference, 40 CFR 123.26). For purposes of this MOA, the term compliance inspections includes (but is not limited to): evaluation inspections, sample inspections, toxicity testing inspections, sludge sampling, and groundwater sampling.

The (State Agency) and the Regional Administrator will develop lists of permittees subject to State compliance inspections, pursuant to a neutral inspection scheme. The (State Agency) shall conduct compliance inspections of all Class I permittees at least annually. The list may be modified with the concurrence of both parties. The (State Agency) shall also furnish an estimate of the number of other compliance inspections to be performed during the year. The (State Agency) will give EPA at least \_\_\_ days notice and the opportunity to participate in its inspection activities.

EPA or the (State Agency) may determine that additional compliance inspections are necessary to assess permit compliance. If EPA makes a determination that additional compliance inspections are necessary, it shall notify the (State Agency) and may request it to conduct these inspections. EPA retains the right to perform compliance inspections of any permittee at any time, but will normally provide seven days notice to the (State Agency) to give it an opportunity to participate. EPA will otherwise keep the (State Agency) informed of its plans and results.

The (State Agency) shall also be responsible for entering all inspection data into the PCS (if the State Agency has the capability to do so and the system is available to accept the data) and preparing a list of all noncomplying Class I permittees in accordance with the regulations at 40 CFR 501.21.

Reports on compliance inspections shall be available for review by the (State Agency) or the Regional Administrator, as appropriate, within \_\_\_ days of the date of inspection. The (State Agency) shall review each report to determine what, if any, enforcement action shall be initiated. Where the results of the inspection(s) indicate that the permittee is in violation, the (State Agency) shall initiate enforcement action within \_\_\_ days of the date of the inspection(s) or make a decision in writing not to take any action. Priorities for the review of these inspection reports and for initiating enforcement action will be specified in procedures set out in the program description.

3. Information Requests - Whenever either party requests information concerning a specific permittee and the requested information is available from the files, that information will be provided within \_\_\_ days.

B. Action Against Violators

The (State Agency) is responsible for taking timely and appropriate enforcement actions against persons in violation of any sludge use or disposal practice requirements, compliance schedules, limitations, reporting requirements, and other permit conditions, including violations detected by State or Federal surveys. The State will notify EPA of all impending enforcement actions. EPA reserves the right to take timely and appropriate enforcement action in the first instance when warranted (e.g., in interstate disputes).

The (State Agency) shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations. If EPA determines that the (State Agency) has not initiated timely and appropriate enforcement action against a violator, EPA may proceed with any or all of the enforcement options available under section 309 of the CWA after notice to and consultation with the (State Agency). Prior to proceeding with an enforcement action, EPA shall give the (State Agency) \_\_\_ days to initiate such enforcement action. This notification may be made either at the periodic enforcement meetings, by telephone, or through written communication. Such notifications shall not be required when EPA is exercising its emergency power under section 504 of the CWA. Additionally, EPA may join in any enforcement action taken by the State.

The (State Agency) shall immediately notify the Regional Administrator of any situation posing a substantial endangerment to health, welfare, or the environment resulting from any actual or threatened, direct or indirect, sewage sludge use or disposal practice.

Section V. Reporting and Transmittal of Information

A. The (State Agency) will submit the following to EPA:

<u>Item</u>	<u>Frequency of Submission</u>
1. A copy of all permit applications (except those for which EPA has waived review).	Within ____ days of receipt
2. Copies of all draft sludge use or disposal permits and permit modifications, including fact sheets (except those for which EPA has waived review).	When placed on public notice
3. A copy of all public notices, (except those for which EPA has waived review).	As issued
4. A copy of all proposed and modified sludge use or disposal permits.	As issued
5. A copy of all sludge permits issued to a Class I sludge management facility.	As issued
6. A copy of all other permits issued to a Class I sludge management facility.	As needed
7. A copy of all permit applications and public notices for which EPA has waived review.	Upon request
8. A letter of transmittal which lists permittee's name, facility, location, date signed, effective date, and expiration date.	Monthly - by the 5th working day of each month
9. A copy of settlements and decisions in permit appeals.	As issued
10. A list of Class I facilities scheduled for compliance inspections, and a list of all other facilities scheduled for compliance inspections.	Annually
11. Proposed revisions to the scheduled compliance inspections.	As needed
12. A list of compliance inspections performed during the previous quarter.	Quarterly

<u>Item</u>	<u>Frequency of Submission</u>
13. Copies of all compliance inspection reports, report forms, data, and transmittal letters to Class I permittees.	Within 30 days of inspection
14. Copies of all compliance inspection reports and data transmittal letters to all other permittees.	As requested
15. For Class I permittees, a semiannual noncompliance report as specified in 40 CFR 501.21(a).	Semiannually, as specified in 40 CFR 501.21(a)
16. For other permittees, an annual report as specified in 40 CFR 501.21(b) which indicates the status of the Sludge Management Program, updates the inventory of sludge generators and disposal facilities, and reports on incidents of noncompliance.	Within ____ days of the end of the calendar year as specified in 40 CFR 501.21(b)
17. Copies of all enforcement actions against permit violators (including letters, notices of violation, administrative orders, initial determinations, and referrals to the Attorney General).	As issued
18. Copies of correspondence pertaining to administration of the Sludge Management Program.	As issued or received
19. Copies of all notifications of noncompliance required to be reported pursuant to 40 CFR 501.21(a) and 501.14(b)(12)(iv).	Within ____ days of incident
20. Any other pertinent information requested by EPA.	As requested
B. EPA shall transmit the following information to the State:	
1. A list of compliance inspections EPA intends to conduct jointly with the State.	Annually
2. Proposed revisions to the schedule of compliance inspections.	As needed
3. Copies of all EPA compliance inspection reports and data.	Within 30 days of inspection

Item

Frequency of Submission

- |                                                                                                                                                  |              |
|--------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 4. Copies of all EPA enforcement actions against permit violators (including notice of violation, and administrative orders).                    | As performed |
| 5. A review of the State administration of the Sludge Management Program based on State reports, meetings with State officials, and file audits. | As performed |
- C. The State shall transmit a copy of every issued sludge use or disposal permit to any affected State no later than \_\_\_ days after its issuance.

Section VI. Program Review

- A. To fulfill its responsibility for assuring the Sludge Management Program requirements are met, EPA shall:
1. Review the information submitted by the (State Agency);
  2. Meet with State officials from time to time to discuss and observe the data handling, permit processing, and enforcement procedures, including both manual and ADP processes;
  3. Examine the files and documents at the (State Agency) regarding selected facilities to determine: a) whether permits are processed and issued consistently with Federal requirements; b) whether the (State Agency) is able to discover permit violations when they occur; c) whether (State Agency) reviews are timely; and d) whether (State Agency) selection of enforcement action is appropriate and effective. EPA shall notify the (State Agency) in advance of any examination under this paragraph so that appropriate State officials may be available to discuss individual circumstances and problems. EPA need not reveal to the (State Agency) in advance the files and documents to be examined. A copy of the examination report shall be transmitted to the State when available;
  4. Review, from time to time, the legal authority upon which the State's program is based, including State statutes and regulations;
  5. When appropriate, hold public hearings on the (State Agency's) Sludge Management Program; and
  6. Review the (State Agency) public participation policies, practices, and procedures.
- B. Prior to taking any action to propose or effect any substantial amendment, recision, or repeal of any statute, regulations, directive, or form which has been approved by EPA, and prior to the adoption of any new statute, regulation, directive or form, the (State Agency) shall notify the Regional Administrator and shall transmit the text of any such proposed change or new form to the Regional Administrator. These changes may necessitate a program revision which must be approved by EPA pursuant to 40 CFR 501.32 (and by reference, 40 CFR 123.62).
- C. If an amendment, recision, or repeal of any statute, regulations, directive, or form described in paragraph (B) above shall occur for any reason, including action by the (State) legislature or a court, the (State Agency) shall within \_\_\_ days of such event, notify the Regional Administrator and transmit a copy of the text to the Regional Administrator.
- D. Prior to the approval of any test method other than those specified for sludge use and disposal in 40 CFR Part 136, or when adopted, Part 503, the (State Agency) shall obtain the approval of the Regional Administrator [40 CFR 501.14(10)(iv)].
- E. The (State Agency) shall seek and adopt such regulations, provide Attorney General opinions, and take further actions necessary to preserve and maintain any compliance with Sludge Management Program requirements.

### Section VIII. Independent EPA Powers

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to sections 308, 309, 405, 504, or other sections of the CWA, or to limit its oversight responsibility with respect to Sludge Management Program administration. This MOA is for the administrative convenience of EPA, and does not confer any rights on violators.

### Section IX. Computations of Time

A. In computing any period of time prescribed by this MOA, the day on which the designated period of time begins shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which case the period extends until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

B. For the purpose of EPA review of permit applications, draft or proposed permits, or permit modifications, the period for review shall not commence until received by EPA.

### Section X. Modification

This MOA shall take effect immediately upon approval by the Administrator. Either the (State Agency) or EPA may initiate action to modify this MOA at any time. If the Administrator determines that any modification to the MOA initiated by the (State Agency) does not conform to the requirements of section 402(b) or 405 of the CWA, the requirements of 40 CFR Part 501, or to any other applicable Federal regulation, the Administrator shall notify the (State Agency) in writing of any proposed revision, or modifications which must be in this agreement. Any proposed amendments or revisions must be in writing and signed by the (State Director) and the Regional Administrator, with the prior concurrence of the Director, EPA Office of Water Enforcement and Permits and EPA Associate General Counsel for Water. In no event may any State/EPA agreement override this Memorandum of Agreement.

### Section XI. Incorporation by Reference

Wherever a State is required to adopt Federal standards or requirements, it may do so by incorporation by reference. Unless permissible under State law, States will not prospectively incorporate unpromulgated regulations by reference.

In witness whereof, the parties execute this agreement.

FOR STATE AGENCY:

\_\_\_\_\_  
Director  
State Agency

\_\_\_\_\_  
(Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
Regional Administrator,  
Region \_\_\_\_

\_\_\_\_\_  
(Date)

AMENDMENT  
TO THE  
(STATE) SEWAGE SLUDGE MANAGEMENT PROGRAM  
MEMORANDUM OF AGREEMENT  
BETWEEN  
(STATE AGENCY)  
AND THE  
UNITED STATE ENVIRONMENTAL PROTECTION AGENCY, REGION \_\_

Section 1. General

The Memorandum of Agreement (MOA) between the (State Agency) and the Administrator of the United States Environmental Protection Agency (hereafter EPA), approved on \_\_\_\_\_, is hereby modified to define (State Agency) and EPA responsibilities for the establishment, implementation, and enforcement of the (State) Sludge Management Program, approved pursuant to section 405 of the Clean Water Act, as follows.

The (State Agency) has primary responsibility for enforcement against sludge use and disposal methods contrary to Federal and state regulations or permit conditions.

The (State Agency) shall perform inspection, surveillance and monitoring activities which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with sludge use and disposal requirements incorporated into the POTW permit.

FOR STATE AGENCY:

\_\_\_\_\_  
State Director (Date)  
State Agency

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
Regional Administrator, (Date)  
Region \_\_\_\_



ADDENDUM  
TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN  
(State Agency)  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION \_\_\_\_  
TO INCORPORATE AGREEMENT CONCERNING SLUDGE USE AND DISPOSAL

The Memorandum of Agreement (MOA) between the (State) and the Regional Administrator of the U.S. Environmental Protection Agency (EPA), approved on \_\_\_\_\_, is hereby modified to define the State and EPA's respective responsibilities for the establishment, implementation, and enforcement of the State's Sludge Management Program in accordance with regulations promulgated under sections 402 and 405 of the Clean Water Act, and as described in the program description.

Section I. General

1. Nothing in this Agreement should be interpreted to restrict EPA's oversight responsibility for all aspects of a Sludge Management Program.
2. This Agreement shall become effective when approved by the Administrator.
3. Nothing in this chapter shall limit or relieve the parties of responsibilities established by the NPDES MOA of which this is an addendum.
4. The State and EPA will negotiate priorities for implementation of a Sludge Management Program and inspection of POTWs and other sludge users and disposers.
5. The State's noncompliance with any of the terms contained herein is grounds for withdrawal of EPA approval of the State's Sludge Management Program.

Section II. Transfer of Permit Administration

1. Upon approval of this MOA, EPA will promptly deliver to the State Program Director all pending permit applications on which no final action has been taken. Other information relevant to these applications and to program operations in general, including support files, monitoring reports, compliance reports and previously issued permits, shall accompany these pending permit applications. This information shall be transferred to the State Program Director within \_\_\_\_ days of approval of this MOA at the following address:

State Sludge Management Program Director  
(address)

2. Sludge permits currently in effect shall remain in effect after approval of a State Sludge Management Program. EPA shall transfer the duties of permit administration to the State Director within \_\_\_\_ days of approval of this MOA. All information relevant to the administration of the State permit program shall accompany these permits.
3. If the State lacks the authority to administer Federally issued permits, the State will issue a permit with provisions identical to the EPA-issued permit currently in effect, which will simultaneously be dissolved.

4. If the State does not have the legal authority to implement one or more provision(s) in the permit originally issued by EPA, EPA may nevertheless dissolve that permit and allow the State to issue one containing those provisions which it does have the authority to administer. [Alternatively, EPA may retain control over the implementation of that permit.]

5. If a sludge user or disposer is required to get a permit from both EPA and the State under different programs, the State and EPA may consolidate processing of permits under written procedures which ensure adequate notice to all affected permittees. The State and EPA may coordinate the expiration dates of new and existing permits so that processing of renewal applications may be consolidated.

### Section III. Review and Waiver

1. The Program Director will forward copies of the permit applications, draft or proposed permits, and fact sheets of all Class I facilities for review comment and objection. Such review may not be waived by EPA.

2. For all other permit applications, the State Program Director shall forward copies of permit applications, draft or proposed permits, and fact sheets unless such review is waived by EPA.

3. When the State issues a general permit for sludge use or disposal, the review required by 40 CFR 123.44(a)(2) for NPDES general permits by the Office of Water Enforcement and Permits will not apply. General permits should be forwarded to:

Water Management Division Director,  
U.S. EPA, Region \_\_\_\_  
(address)

4. EPA specifically waives its right to review, object to, or comment on the State issued permits listed below:

- a.
- b.
- c.

5. The Regional Administrator reserves the right to terminate any waiver with respect to further permit actions listed in Section III.4 above. Such termination, which may be in whole or in part, is effective upon written notification to the State Director.

### Section IV. Reporting Requirements

1. The State Program Director will submit a semiannual sludge violation report containing information on incidents of noncompliance occurring within the previous six months by Class I sludge management facilities. The semiannual report will include, but not be limited to, the following:

- a. significant failure to comply with minimum Federal requirements for sludge use and disposal practices;
- b. significant failure to comply with permit conditions;
- c. failure to complete construction of essential elements of a sludge management facility or to meet key milestone dates specified in the permit;
- d. failure to provide compliance monitoring reports or submission of reports so deficient that they impede review of compliance status;
- e. significant noncompliance with other program requirements.

2. The semiannual report will retain the name and reference number of a noncomplying facility, the type of noncompliance, including a description and date of the occurrence, the date and type of action taken to ensure compliance, and status of incident(s) of noncompliance, with dates of resolution and any mitigating circumstances.

#### Section V. Reporting

The reporting provisions contained in the NPDES MOA shall remain in effect. In addition:

1. The State will transfer to the Regional Administrator notice of every action taken by the State related to any permit application, including a general permit, except for those actions for which permit review has been waived.
2. The State will forward all permit applications to EPA unless review has been waived.
3. A copy of every permit issued to a Class I sludge management facility will be transmitted by the State to the Regional Administrator. Copies of other final permits issued to other treatment works treating domestic sewage shall be transmitted to the Regional Administrator at his/her request.
4. The State will forward a list of all facilities scheduled for compliance inspections to EPA.

#### Section VI. Enforcement and Compliance Monitoring

The enforcement and compliance monitoring provisions contained the NPDES MOA between (State) and the Regional Administrator shall apply to treatment works treating domestic sewage and to sludge users and disposers and to sludge uses and disposal practices. Additionally, the following provisions have been agreed upon:

1. The State and EPA shall coordinate enforcement activities, including the following:
  - a. The State will notify EPA of all impending enforcement action.
  - b. EPA may request that a State conduct a compliance inspection, or conduct one itself. EPA will normally provide the State with seven (7) days notice of its intent to perform a compliance inspection (exclusive of inspections designed to uncover possible criminal conduct).
2. For purposes of sludge management facilities, compliance inspections may include toxicity testing, sludge sampling and groundwater sampling.

#### Section VII. Program Review

The program review section of the NPDES MOA shall remain in effect. In addition, the responsibilities delineated in this section shall apply to the sludge management program implemented under 40 CFR Part 123.

#### Section VIII. Independent EPA Powers

The Independent EPA Powers section of the NPDES MOA shall remain in effect. In addition, nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to its powers under the CWA or to limit its oversight responsibilities with respect to sludge management program administration. This MOA is for the administrative convenience of EPA, and does not confer any rights to violators.

Section IX. Incorporation by Reference

Whenever the State is required to adopt Federal standards or requirements, it may do so by reference. Unless permissible under State law, the State will not prospectively incorporate regulations by reference.

In witness whereof, the parties execute this agreement

FOR STATE AGENCY:

\_\_\_\_\_  
Director  
State Agency

\_\_\_\_\_  
(Date)

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
Regional Administrator,  
Region \_\_\_\_

\_\_\_\_\_  
(Date)

**APPENDIX A**

**MODEL ATTORNEY GENERAL'S STATEMENT**

99/100X



Instructions:

An Attorney General's statement outlining adequate legal authority to administer a State sludge management program is required as part of the State program submission (see 40 CFR 501.13). The following is a form which, when completed and certified, may be submitted to fulfill this requirement. Use of this form is optional.

OFFICE OF THE  
ATTORNEY GENERAL

STATEMENT ON THE LEGAL AUTHORITY TO  
IMPLEMENT A SEWAGE SLUDGE MANAGEMENT PROGRAM

Date

I. Background

Due to its longstanding concern for environmental protection and its continuing regulation of the use and disposal of sewage sludge, the State (Commonwealth) of (\_\_\_\_\_) is preparing an application package to be submitted to the United States Environmental Protection Agency (hereafter referred to as "EPA") for approval of a State Sludge Management Program. Federal approval of this program shifts primary responsibility from EPA to the Department(s) of (\_\_\_\_\_) of the State (Commonwealth) of (\_\_\_\_\_) for issuing permits to implement and enforce standards for use and disposal of sewage sludge and for taking other appropriate measures to protect human health and the environment from the adverse effects of sewage sludge in accordance with Section 405 of the Clean Water Act (CWA).

EPA regulations allow a State (or Commonwealth) to choose whether to administer its sewage sludge program as a component of the National Pollutant Discharge Elimination System (NPDES) water pollution control program or as an independent activity. The State has elected to implement its sludge program [as a component of/independently of] the NPDES program.<sup>1</sup> Federal law also requires that this application include a statement by the Attorney General [or the State Agency's attorney for those State Agencies which have independent legal counsel] which discusses the State's legal authority to impose and enforce sewage sludge management requirements which are at least as stringent as the Federal program administered by EPA, as set forth in 40 Code of Federal Regulations (CFR) Part 123 (40 CFR Part 501).

I hereby certify that, in my opinion, the laws of the State (or Commonwealth) provide adequate authority to carry out all tasks necessary to implement an effective sewage sludge management program as set forth in EPA

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<sup>1</sup>Note: If the State intends to submit its program as a component of its NPDES program, the Attorney General should indicate that this Statement supplements the earlier Attorney General's Statement addressing NPDES authorities.

regulations. This opinion is based on the reasoning, assumptions, and limitations set forth in the sections below. Copies of all relevant legal authorities (both statutory, regulatory, and case law) are attached to this statement.

## II. The Department's Authority to Regulate Sewage Sludge Management Generally

State law provides the Department(s) with authority to regulate the storage, transportation, and use or disposal of sewage sludge by treatment works treating sewage sludge or other end users or disposers. The sections below discuss this authority in detail.

### A. Authority to Regulate Persons Storing, Transporting, Using, or Disposing of Sewage Sludge

State law provides the authority to regulate persons involved in storage, transportation, and use or disposal of sewage sludge. This includes the authority to require compliance with standards issued under Section 405(d) of the CWA, as required by 40 CFR 122.1(b)(3) and 40 CFR 122.4 [or 40 CFR 501.1(c)(1)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

### B. Authority to Regulate Methods of Storage and Transportation of Sewage Sludge

State law authorizes the regulation of methods of sewage sludge storage and transportation, as required by 40 CFR 122.1(b)(4) [or 40 CFR 501.1(d)(1)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:



C. Authority to Regulate Sewage Sludge Use and Disposal Practices

State law authorizes the regulation of sewage sludge use and disposal, as required by 40 CFR 122.1(b)(4) [or 40 CFR 501.1(d)(1)(ii)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

D. Emergency Response Authority

State law authorizes such action as may be necessary to abate any situation which presents, or could potentially present, an imminent danger to public health or the environment, as required by 40 CFR 123.27(a)(1) and (2) [or 40 CFR 501.1(c)(4) and 40 CFR 501.17(a)(1)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

III. The Department's Authority to Issue Sludge Management Permits

State law provides the Department with the authority to issue and enforce permits for the use and disposal of sewage sludge. The sections below discuss this authority in detail.

A. Authority to Issue Sewage Sludge Management Permits

State law provides the authority to issue permits for the generation, use, and disposal of sewage sludge, as required by 40 CFR 122.1(b)(3) [or 40 CFR 501.1(c)(2)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

B. Authority to Require Permit Application Information

State law requires each permit applicant to submit an application containing at least that information required by 40 CFR 122.21 and 40 CFR 123.25(a)(4) [or 40 CFR 501.15(a)(2)(i-xii)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

C. Authority to Impose Permit Conditions

State law authorizes imposing conditions in sludge use and disposal permits at least to the same extent as required by 40 CFR 122.41(a)-(n) and 40 CFR 123.25(a)(12) [or 40 CFR 501.15(b)(1-14)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

D. Authority to Modify, Transfer, Revoke and Reissue, and Terminate Permits for Cause

State law allows permits to be modified, transferred, revoked, reissued, and terminated at least to the extent required by EPA in 40 CFR 122.61, 40 CFR 122.62, 40 CFR 122.63, 40 CFR 122.64, 40 CFR 123.25(a)(21-25), and 40 CFR 124.5 [or 40 CFR 501.15(c)(1-3)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

**IV. Authority to Conduct Compliance Monitoring Activities**

Although the State's Sludge Management Program relies, in large part, on its permit program, the State's sludge standards and requirements are enforceable, even in the absence of a permit. Consequently, to ensure that proper sludge use and disposal practices are observed, compliance monitoring and enforcement activities must also be authorized and carried out. State law provides the Department with authority for State personnel to enter private premises, to inspect and sample sludge quality, and to require self-monitoring and reporting by permit holders. The sections below discuss this authority in detail.

**A. Authority to Enter and Inspect Treatment Works or Other Use and Disposal Premises**

State law provides the authority to enter and inspect premises used for generation, use, and/or disposal of sewage sludge, as required by EPA in 40 CFR 123.26(c) [or 40 CFR 501.15(b)(9)(i-iv) and 40 CFR 501.16] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

**B. Authority to Sample Sludge Quality**

State law provides the authority to take independent, representative samples of sludge to determine its quality and to determine compliance with applicable sludge standards, as required by EPA in 40 CFR 123.26(a)-(d) [or 40 CFR 501.15(b)(9)(iv)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

C. Authority to Require Self-Monitoring and Reporting

State law provides the authority to require self monitoring and reporting on use or disposal practices and sludge quality, as required by EPA in 40 CFR 122.48(b)(c) and 40 CFR 123.25(a)(19) [or 40 CFR 501.15(10)(i-v)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

V. Remarks on the Attorney General's Authority to Enforce the Sewage Sludge Management Program

The Department(s) designated is a duly constituted body of the State's Executive Branch and has been granted enforcement powers. The sections below discuss this authority in detail.

A. Authority to Abate Violations of State Law

State law provides the authority to abate violations of State law as required by EPA in 40 CFR 123.27(a)(1) [or 40 CFR 501.1(c)(5) and 40 CFR 501.17(a)(1)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

B. Authority to Assess Administrative Penalties

State law provides the authority to assess administrative penalties in the amount of \$ \_\_\_\_\_ per day per violation.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

C. Authority to Seek Injunctive Relief

State law provides the authority to seek both temporary and permanent injunctive relief, as required by EPA in 40 CFR 123.27(a)(1) and (2) [or 40 CFR 501.17(a)(1) and (2)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

D. Authority to Seek Civil Penalties

State law provides the authority to seek civil penalties in the amount of \$5,000 per day for each violation, as required by EPA in 40 CFR 123.27(a)(3)(i) [or 40 CFR 501.1(c)(5) and 40 CFR 501.17(a)(3)(i)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

E. Authority to Seek Criminal Penalties

State law provides the authority to seek criminal penalties in the amount of \$10,000 per day for each violation as required by EPA in 40 CFR 123.27(a)(3)(ii - iii) [or 40 CFR 501.1(c)(5) and 40 CFR 501.17(a)(3)(ii)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

## VI. The Department's Other Miscellaneous Authorities

State law provides the Department with the authority to provide the public with access to information on sludge practices throughout the State and on the compliance status of individual persons. State law also requires that Department personnel be free from conflicts of interest with permit holders or applicants. The sections below discuss this authority in detail.

### A. Authority for Public Access to Information

State law provides the authority to grant public access to sludge use and disposal information to the extent required by EPA in 40 CFR 123.25(a)(3) and 40 CFR 122.7 [or 40 CFR 501.15(a)(1)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

### B. Authority Prohibiting Conflict of Interest

State law prohibits Department personnel from having any conflict of interest with permittees or applicants as required by EPA in 40 CFR 123.25(c) [or 40 CFR 501.15(f)] to gain program approval.

State Statutory and Regulatory Authority and Case Law:

Remarks of the Attorney General:

## VII. State Delegation to Local Agency (Part 501 State Programs Only)

State law provides for the delegation of program responsibilities by a State agency to a local agency provided that the conditions required by EPA in 40 CFR 501.1(l) are met.

## VIII. Certification of Effectiveness of the Law and Regulations

I, the undersigned, certify that all of the laws and regulations discussed in Sections ( ) of this document have been duly adopted according to the legislative and rulemaking procedures prescribed under State law, and that these laws and regulations are now effective and enforceable or will be as of the date of program approval.

**IX. Certification of the Signatory**

I, the undersigned, certify that I hold the position of ( ) in the State and, as such, hold sufficient authority to act on behalf of the Attorney General for purposes of executing this statement.

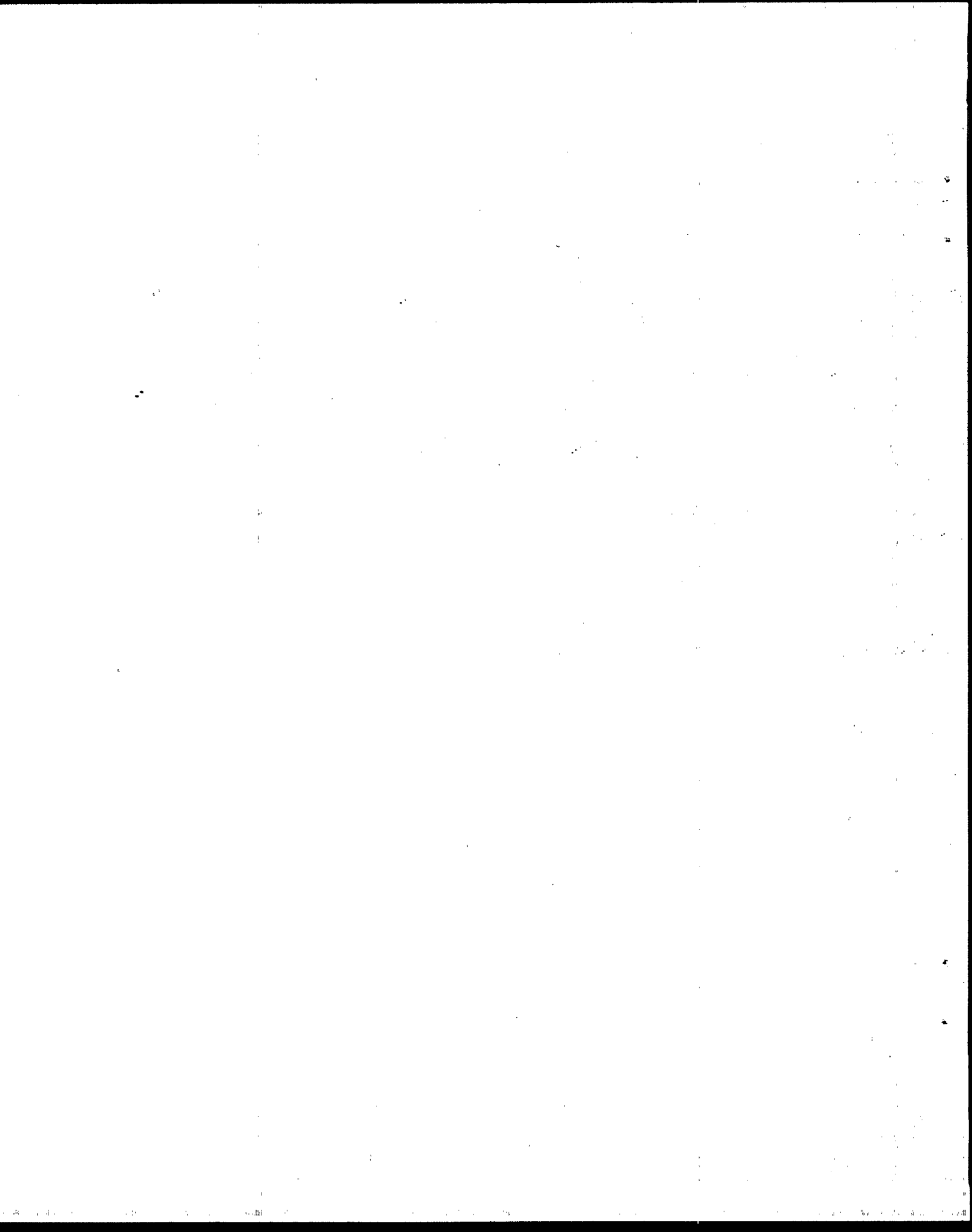
**X. Summary**

It is my considered opinion that the statutes and regulations of the State provide the Department(s) with adequate authority to administer a State Sewage Sludge Management Program which is at least as stringent as the program administered by EPA; that all of the State statutes and regulations cited herein are fully effective and enforceable (or will be by the time of program approval); that there are no judicial precedents which substantially restrict the Department's(s') exercise of this authority; and that this authority is sufficient to receive program approval from EPA.

CERTIFIED on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the City of \_\_\_\_\_, State  
of \_\_\_\_\_.

BY: \_\_\_\_\_  
(Name)

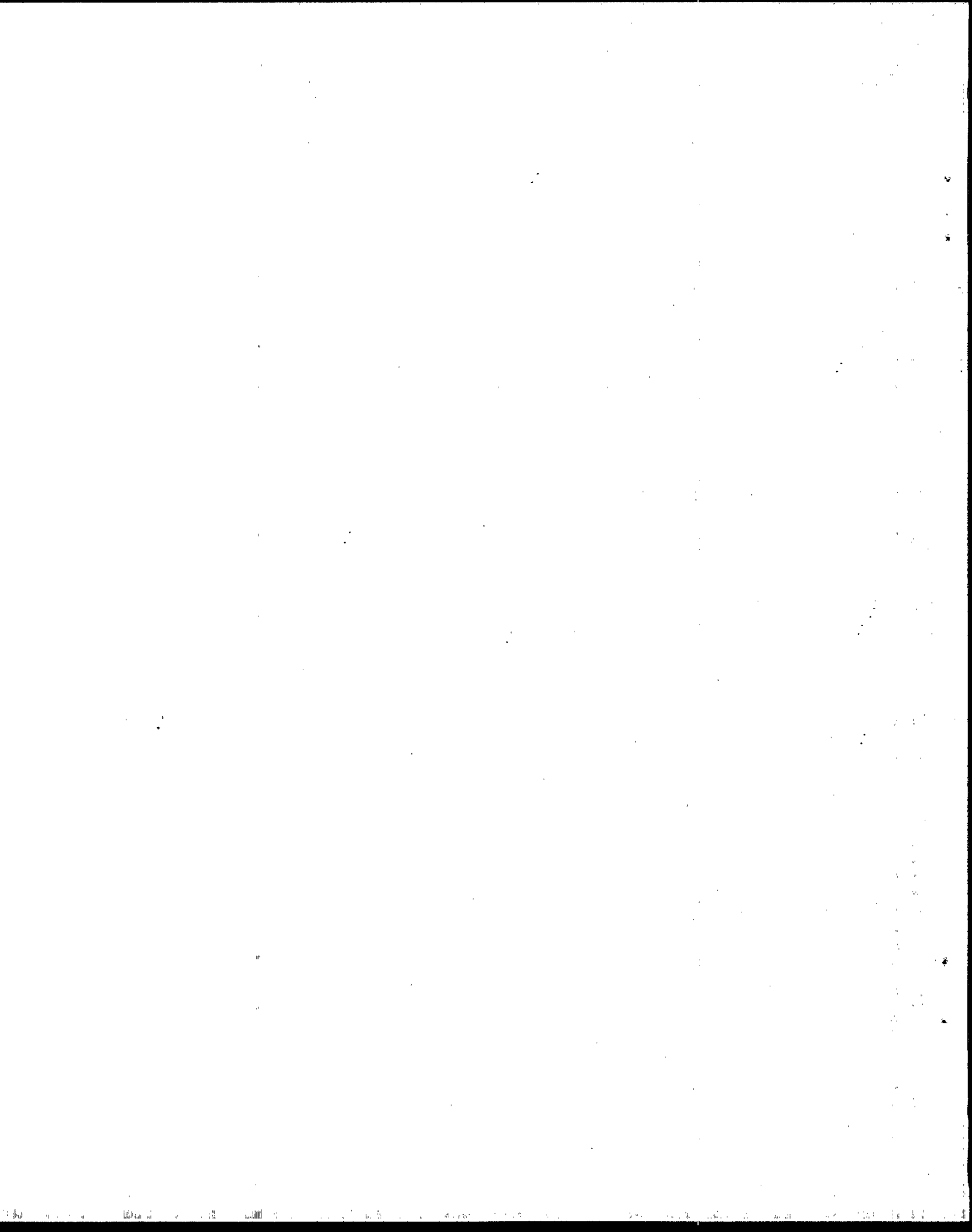
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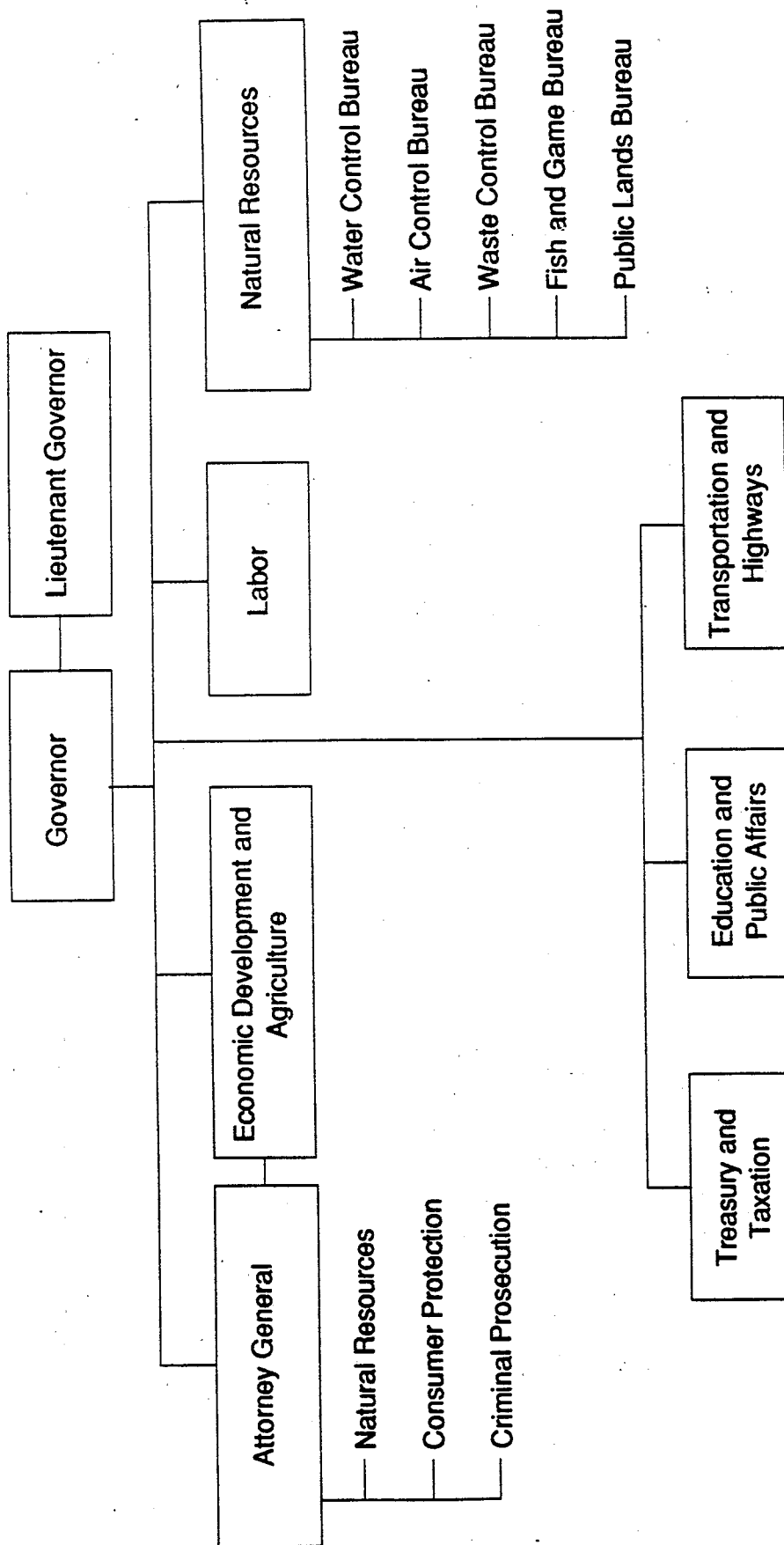




**APPENDIX B**  
**ORGANIZATIONAL CHARTS**

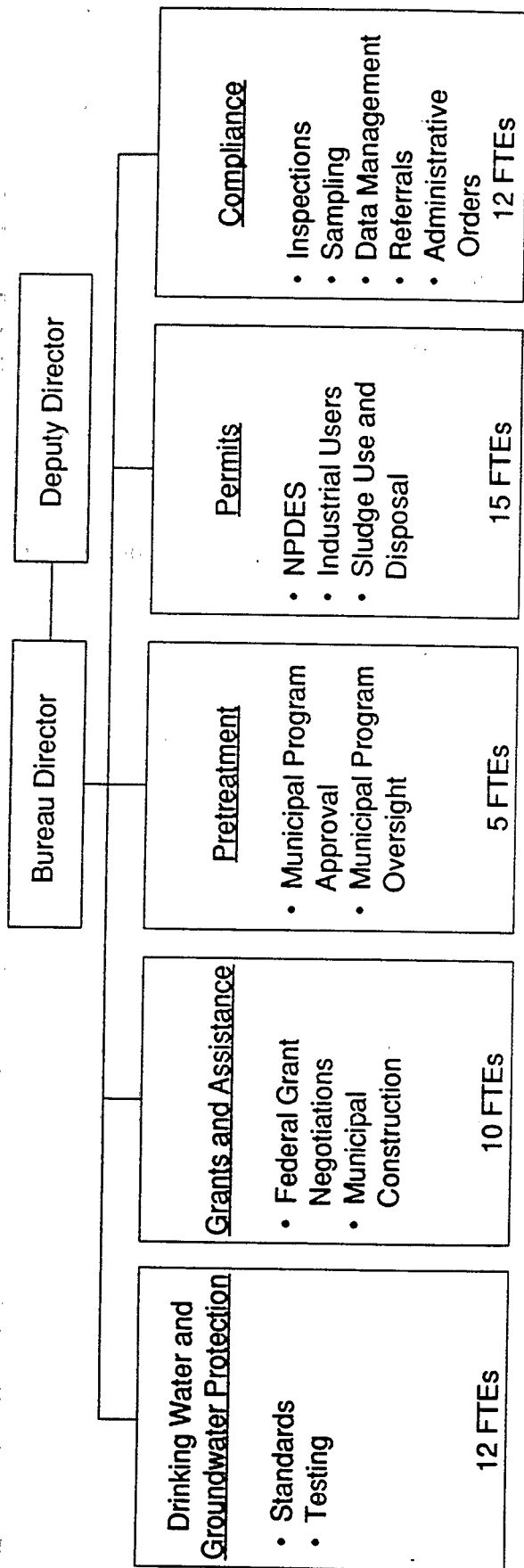
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EXAMPLE STATE ORGANIZATION CHART

# WATER CONTROL BUREAU



114/15X16 K  
HCL