

“(1) To ensure opportunities for Federal agency participation in mitigation banking, the Secretary of the Army, acting through the Chief of Engineers, shall issue regulations establishing performance standards and criteria for the use, consistent with section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), of on-site, off-site, and in-lieu fee mitigation and mitigation banking as compensation for lost wetlands functions in permits issued by the Secretary of the Army under such section. To the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, provide flexibility for regional variations in wetland conditions, functions and values, and apply equivalent standards and criteria to each type of compensatory mitigation.

“(2) Final regulations shall be issued not later than two years after the date of the enactment of this Act [Nov. 24, 2003].”

REGULATORY PROGRAM

Pub. L. 106-377, §1(a)(2) [title I], Oct. 27, 2000, 114 Stat. 1441, 1441A-63, provided in part that: “For expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, \$125,000,000, to remain available until expended: *Provided*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use funds appropriated herein to: (1) by March 1, 2001, supplement the report, Cost Analysis For the 1999 Proposal to Issue and Modify Nationwide Permits, to reflect the Nationwide Permits actually issued on March 9, 2000, including changes in the acreage limits, preconstruction notification requirements and general conditions between the rule proposed on July 21, 1999, and the rule promulgated and published in the Federal Register; (2) after consideration of the cost analysis for the 1999 proposal to issue and modify nationwide permits and the supplement prepared pursuant to this Act [H.R. 5483, as enacted by section 1(a)(2) of Pub. L. 106-377, see Tables for classification] and by September 30, 2001, prepare, submit to Congress and publish in the Federal Register a Permit Processing Management Plan by which the Corps of Engineers will handle the additional work associated with all projected increases in the number of individual permit applications and preconstruction notifications related to the new and replacement permits and general conditions. The Permit Processing Management Plan shall include specific objective goals and criteria by which the Corps of Engineers’ progress towards reducing any permit backlog can be measured; (3) beginning on December 31, 2001, and on a biannual basis thereafter, report to Congress and publish in the Federal Register, an analysis of the performance of its program as measured against the criteria set out in the Permit Processing Management Plan; (4) implement a 1-year pilot program to publish quarterly on the U.S. Army Corps of Engineer’s Regulatory Program website all Regulatory Analysis and Management Systems (RAMS) data for the South Pacific Division and North Atlantic Division beginning within 30 days of the enactment of this Act [Oct. 27, 2000]; and (5) publish in Division Office websites all findings, rulings, and decisions rendered under the administrative appeals process for the Corps of Engineers Regulatory Program as established in Public Law 106-60 [113 Stat. 486]: *Provided further*, That, through the period ending on September 30, 2003, the Corps of Engineers shall allow any appellant to keep a verbatim record of the proceedings of the appeals conference under the aforementioned administrative appeals process: *Provided further*, That within 30 days of the enactment of this Act, the Secretary of the Army, acting through the Chief of Engineers, shall require all U.S. Army Corps of Engineers Divisions and Districts to record the date on which a section 404 individual permit application or nationwide permit notification is filed with the Corps of Engineers: *Provided further*, That the Corps of Engineers, when reporting permit processing times, shall track both the date a permit application is first received and the date the application is

considered complete, as well as the reason that the application is not considered complete upon first submission.”

AUTHORITY TO DELEGATE TO STATE OF WASHINGTON FUNCTIONS OF THE SECRETARY RELATING TO LAKE CHELAN, WASHINGTON

Pub. L. 95-217, §76, Dec. 27, 1977, 91 Stat. 1610, provided that: “The Secretary of the Army, acting through the Chief of Engineers, is authorized to delegate to the State of Washington upon its request all or any part of those functions vested in such Secretary by section 404 of the Federal Water Pollution Control Act [this section] and by sections 9, 10, and 13 of the Act of March 3, 1899 [sections 401, 403, and 407 of this title], relating to Lake Chelan, Washington, if the Secretary determines (1) that such State has the authority, responsibility, and capability to carry out such functions, and (2) that such delegation is in the public interest. Such delegation shall be subject to such terms and conditions as the Secretary deems necessary, including, but not limited to, suspension and revocation for cause of such delegation.”

DREDGED MATERIAL DISPOSAL

Pub. L. 114-322, title I, §1189, Dec. 16, 2016, 130 Stat. 1681, provided that: “Disposal of dredged material shall not be considered environmentally acceptable for the purposes of identifying the Federal standard (as defined in section 335.7 of title 33, Code of Federal Regulations (or successor regulations)) if the disposal violates applicable State water quality standards approved by the Administrator of the Environmental Protection Agency under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313).”

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

§ 1345. Disposal or use of sewage sludge

(a) Permit

Notwithstanding any other provision of this chapter or of any other law, in any case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 1292 of this title (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 1342 of this title.

(b) Issuance of permit; regulations

The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to subsection (a) of this section and section 1342 of this title. Such regulations shall require the application to such disposal of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title.

(c) State permit program

Each State desiring to administer its own permit program for disposal of sewage sludge subject to subsection (a) of this section within its jurisdiction may do so in accordance with section 1342 of this title.

(d) Regulations

(1) Regulations

The Administrator, after consultation with appropriate Federal and State agencies and

other interested persons, shall develop and publish, within one year after December 27, 1977, and from time to time thereafter, regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes. Such regulations shall—

(A) identify uses for sludge, including disposal;

(B) specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs);

(C) identify concentrations of pollutants which interfere with each such use or disposal.

The Administrator is authorized to revise any regulation issued under this subsection.

(2) Identification and regulation of toxic pollutants

(A) On basis of available information

(i) Proposed regulations

Not later than November 30, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

(ii) Final regulations

Not later than August 31, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

(B) Others

(i) Proposed regulations

Not later than July 31, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).

(ii) Final regulations

Not later than June 15, 1988, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

(C) Review

From time to time, but not less often than every 2 years, the Administrator shall review the regulations promulgated under this paragraph for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements of this paragraph.

(D) Minimum standards; compliance date

The management practices and numerical criteria established under subparagraphs (A), (B), and (C) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance as expeditiously as practicable but in no case later than 12 months after their publication, unless such regulations require the construction of new pollution control facilities, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

(3) Alternative standards

For purposes of this subsection, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2), the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the Administrator's judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(4) Conditions on permits

Prior to the promulgation of the regulations required by paragraph (2), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 1342 of this title or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

(5) Limitation on statutory construction

Nothing in this section is intended to waive more stringent requirements established by this chapter or any other law.

(e) Manner of sludge disposal

The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.

(f) Implementation of regulations

(1) Through section 1342 permits

Any permit issued under section 1342 of this title to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d)

of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.], the Marine Protection, Research, and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.], or the Clean Air Act [42 U.S.C. 7401 et seq.], or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1986, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

(2) Through other permits

In the case of a treatment works described in paragraph (1) that is not subject to section 1342 of this title and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.

(g) Studies and projects

(1) Grant program; information gathering

The Administrator is authorized to conduct or initiate scientific studies, demonstration projects, and public information and education projects which are designed to promote the safe and beneficial management or use of sewage sludge for such purposes as aiding the restoration of abandoned mine sites, conditioning soil for parks and recreation areas, agricultural and horticultural uses, and other beneficial purposes. For the purposes of carrying out this subsection, the Administrator may make grants to State water pollution control agencies, other public or nonprofit agencies, institutions, organizations, and individuals. In cooperation with other Federal departments and agencies, other public and private agencies, institutions, and organizations, the Administrator is authorized to collect and disseminate information pertaining to the safe and beneficial use of sewage sludge.

(2) Authorization of appropriations

For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is authorized to be appropriated for fiscal years beginning after September 30, 1986, not to exceed \$5,000,000.

(June 30, 1948, ch. 758, title IV, §405, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 884; amended Pub. L. 95-217, §§54(d), 68, Dec. 27, 1977, 91 Stat. 1591, 1606; Pub. L. 100-4, title IV, §406(a)-(c), (f), Feb. 4, 1987, 101 Stat. 71, 72, 74.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (f)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

The Safe Drinking Water Act, referred to in subsec. (f)(1), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended. Part C of the Act is classified generally to part C (§300h et seq.) of subchapter XII of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in subsec. (f)(1), is Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended, which is classified generally to chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

The Clean Air Act, referred to in subsec. (f)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

1987—Subsec. (d). Pub. L. 100-4, §406(a), designated existing provision as par. (1), inserted heading, redesignated former pars. (1) to (3) as subpars. (A) to (C), and added pars. (2) to (5).

Pub. L. 100-4, §406(f), inserted heading “Regulations” and aligned par. (1) with par. (3) and subpars. (A) to (C) of par. (1) with subpar. (C) of par. (2).

Subsec. (e). Pub. L. 100-4, §406(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The determination of the manner of disposal or use of sludge is a local determination except that it shall be unlawful for the owner or operator of any publicly owned treatment works to dispose of sludge from such works for any use for which guidelines have been established pursuant to subsection (d) of this section, except in accordance with such guidelines.”

Subsecs. (f), (g). Pub. L. 100-4, §406(c), added subsecs. (f) and (g).

1977—Subsec. (a). Pub. L. 95-217, §68(a), substituted “under section 1342 of this title” for “under this section”.

Subsec. (b). Pub. L. 95-217, §§54(d)(1), 68(b), (c), substituted “sewage sludge subject to subsection (a) of this section and section 1342 of this title” for “sewage sludge subject to this section” and struck out “, as the Administrator determines necessary to carry out the objective of this chapter” after “permit issued under section 1342 of this title”.

Subsec. (c). Pub. L. 95-217, §§54(d)(2), 68(d), substituted “disposal of sewage sludge subject to subsection (a) of this section within its jurisdiction may do so in accordance with section 1342 of this title” for “disposal of sewage sludge within its jurisdiction may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this chapter”.

Subsecs. (d), (e). Pub. L. 95-217, §54(d)(3), added subsecs. (d) and (e).

REMOVAL CREDITS

Pub. L. 100-4, title IV, §406(e), Feb. 4, 1987, 101 Stat. 73, provided that: “The part of the decision of Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency, No. 84-3530 (3d. Cir. 1986), which ad-

dresses section 405(d) of the Federal Water Pollution Control Act [33 U.S.C. 1345(d)] is stayed until August 31, 1987, with respect to—

“(1) those publicly owned treatment works the owner or operator of which received authority to revise pretreatment requirements under section 307(b)(1) of such Act [33 U.S.C. 1317(b)(1)] before the date of the enactment of this section [Feb. 4, 1987], and

“(2) those publicly owned treatment works the owner or operator of which has submitted an application for authority to revise pretreatment requirements under such section 307(b)(1) which application is pending on such date of enactment and is approved before August 31, 1987.

The Administrator shall not authorize any other removal credits under such Act [33 U.S.C. 1251 et seq.] until the Administrator issues the regulations required by paragraph (2)(A)(ii) of section 405(d) of such Act, as amended by subsection (a) of this section.”

§ 1346. Coastal recreation water quality monitoring and notification

(a) Monitoring and notification

(1) In general

Not later than 18 months after October 10, 2000, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), and after providing public notice and an opportunity for comment, the Administrator shall publish performance criteria for—

(A) monitoring and assessment (including specifying available methods for monitoring) of coastal recreation waters adjacent to beaches or similar points of access that are used by the public for attainment of applicable water quality standards for pathogens and pathogen indicators; and

(B) the prompt notification of the public, local governments, and the Administrator of any exceeding of or likelihood of exceeding applicable water quality standards for coastal recreation waters described in subparagraph (A).

(2) Level of protection

The performance criteria referred to in paragraph (1) shall provide that the activities described in subparagraphs (A) and (B) of that paragraph shall be carried out as necessary for the protection of public health and safety.

(b) Program development and implementation grants

(1) In general

The Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.

(2) Limitations

(A) In general

The Administrator may award a grant to a State or a local government to implement a monitoring and notification program if—

(i) the program is consistent with the performance criteria published by the Administrator under subsection (a);

(ii) the State or local government prioritizes the use of grant funds for particular

coastal recreation waters based on the use of the water and the risk to human health presented by pathogens or pathogen indicators;

(iii) the State or local government makes available to the Administrator the factors used to prioritize the use of funds under clause (ii);

(iv) the State or local government provides a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided that specifies any coastal recreation waters for which fiscal constraints will prevent consistency with the performance criteria under subsection (a); and

(v) the public is provided an opportunity to review the program through a process that provides for public notice and an opportunity for comment.

(B) Grants to local governments

The Administrator may make a grant to a local government under this subsection for implementation of a monitoring and notification program only if, after the 1-year period beginning on the date of publication of performance criteria under subsection (a)(1), the Administrator determines that the State is not implementing a program that meets the requirements of this subsection, regardless of whether the State has received a grant under this subsection.

(3) Other requirements

(A) Report

A State recipient of a grant under this subsection shall submit to the Administrator, in such format and at such intervals as the Administrator determines to be appropriate, a report that describes—

(i) data collected as part of the program for monitoring and notification as described in subsection (c); and

(ii) actions taken to notify the public when water quality standards are exceeded.

(B) Delegation

A State recipient of a grant under this subsection shall identify each local government to which the State has delegated or intends to delegate responsibility for implementing a monitoring and notification program consistent with the performance criteria published under subsection (a) (including any coastal recreation waters for which the authority to implement a monitoring and notification program would be subject to the delegation).

(4) Federal share

(A) In general

The Administrator, through grants awarded under this section, may pay up to 100 percent of the costs of developing and implementing a program for monitoring and notification under this subsection.

(B) Non-Federal share

The non-Federal share of the costs of developing and implementing a monitoring and notification program may be—