

## § 501.23

## 40 CFR Ch. I (7-1-04 Edition)

in this part for assumption of the State program.

[58 FR 67984, Dec. 22, 1993, as amended at 59 FR 64346, Dec. 14, 1994]

### § 501.23 Request by an Indian Tribe for a determination of eligibility.

An Indian Tribe may apply to the Regional Administrator for a determination that it qualifies pursuant to section 518 of the Act for purposes of seeking sludge management program approval. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 501.22. The application shall include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior;

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This statement should:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts authority under section 518(e)(2) of the Act; a statement by the Tribal Attorney General (or equivalent official authorized to represent the Tribe in all legal matters in court pertaining to the program for which it seeks approval) which describes the basis for the Tribe's assertion (including the nature or subject matter of the asserted regulatory authority); copies of those documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which the Tribe believes are relevant to its assertion under section 518(e)(2) of the Act.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective, environmentally sound sludge management program. The statement should include:

(1) A description of the Indian Tribe's previous management experience which may include the administration of programs and service authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(2) A list of existing environmental or public health programs administered by the Tribal governing body, and a copy of related Tribal laws, regulations, and policies;

(3) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(4) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and administering a sludge management program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(5) A description of the technical and administrative abilities of the staff to administer and manage an effective, environmentally sound sludge management program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(e) The Regional Administrator may, at his discretion, request further documentation necessary to support a Tribe's eligibility.

(f) If the Administrator or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the sludge management program

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which is requested by the Regional Administrator.

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### § 501.24 Procedures for processing an Indian Tribe's application.

(a) The Regional Administrator shall process an application of an Indian Tribe submitted pursuant to § 501.23 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) The Regional Administrator shall follow the procedures described in subpart C of this part in processing a Tribe's request to assume the sludge management program.

[58 FR 67985, Dec. 22, 1993, as amended at 59 FR 64346, Dec. 14, 1994]

### § 501.25 Provisions for Tribal criminal enforcement authority.

To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority as required under §§ 501.1(c)(5) and 501.17, the Federal Government will exercise primary criminal enforcement responsibility. The Tribe, with the EPA Region, shall develop a procedure by which the Tribal agency will refer potential criminal violations to the Regional Administrator, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the Tribe is incapable of exercising the enforcement requirements of §§ 501.1(c)(5) and 501.17. This agreement shall be incorporated into a joint or separate Memorandum of Agreement with the EPA Region, as appropriate.

[58 FR 67985, Dec. 22, 1993]

## Subpart C—Program Approval, Revision and Withdrawal

### § 501.31 Review and approval procedures.

(a) EPA shall approve or disapprove a State's application for approval of its State sludge management program within 90 days after receiving a complete program submission.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its sub-

mission is complete. If EPA finds that a State's submission is complete, the 90-day review period will be deemed to have begun on the date of the completeness determination. If EPA finds that a State's submission is incomplete, the review period will not begin until all the necessary information is received by EPA.

(c) After determining that a State program submission is complete, EPA will publish notice of the State's application in the FEDERAL REGISTER and in enough of the largest newspapers in the State to attract statewide attention. EPA will mail notices to persons known to be interested in such matters, including all persons on appropriate State and EPA mailing lists and all treatment works treating domestic sewage listed on the inventory required by § 501.12(f) of this part. The notice will:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide opportunity for a public hearing within the State to be held no less than 30 days after notice is published in the FEDERAL REGISTER and indicate when and where the hearing is to be held, or how interested persons may request that a hearing be held if a hearing has not been scheduled. EPA shall hold a public hearing whenever the Regional Administrator finds, on the basis of requests, a significant degree of public interest in the State's application or that a public hearing might clarify one or more issues involved in the State's application.

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(d) Within 90 days after determining that the State has submitted a complete program, the Administrator shall approve or disapprove the program based on the requirements of this part