

§501.16

40 CFR Ch. I (7-1-07 Edition)

board or body which approves all or portions of permits is subject to, and certifies that it meets, a conflict-of-interest standard imposed as part of another EPA-approved State permitting program or an equivalent standard.

[54 FR 18786, May 2, 1989, as amended at 58 FR 9414, Feb. 19, 1993; 58 FR 67984, Dec. 22, 1993; 63 FR 45125, Aug. 24, 1998; 64 FR 42470, Aug. 4, 1999; 70 FR 59889, Oct. 13, 2005]

§501.16 Requirements for compliance evaluation programs.

State sludge management programs shall have requirements and procedures for compliance monitoring and evaluation as set forth in §123.26.

§501.17 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

NOTE: This paragraph ((a)(1)) requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit; and

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties will be recoverable for the violation of any permit condition; any applicable standard or limitation; any filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Program Director. The State must at a minimum, have the authority to assess penalties of up to \$5,000 a day for each violation.

(ii) Criminal fines will be recoverable against any person who willfully or negligently violates any applicable

standards or limitations; any permit condition; or any filing requirement. The State must at a minimum, have the authority to assess fines of up to \$10,000 a day for each violation. States which provide the criminal remedies based on "criminal negligence," "gross negligence" or strict liability satisfy the requirement of this paragraph (a)(3)(ii) of this section.

(iii) Criminal fines will be recoverable against any person who knowingly makes any false statement, representation or certification in any program form, or in any notice or report required by a permit or State Program Director, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Program Director. The State must at a minimum, have the authority to assess fines of up to \$5,000 for each instance of violation.

(b)(1) The civil penalty or criminal fine will be assessable for each instance of violation and, if the violation is continuous, will be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act.

NOTE: For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Program Director under paragraph (a)(3) of this section shall be appropriate to the violation.

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a)(1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will: