

**APRIL 2008 – Rick Stevens, US EPA sewage sludge “regulator and technical expert” acknowledges that federal laws authorize localities to enact sludge rules more stringent than EPA Parts 503 and 501 regulations:**

-----Original Message-----

From: [Stevens.Rick@epamail.epa.gov](mailto:Stevens.Rick@epamail.epa.gov)

Date: Thu, **3 Apr 2008** 15:41:31

To: "JOHN STICHT" <[bisonlady1@verizon.net](mailto:bisonlady1@verizon.net)>

Cc: Smith.James@epamail.epa.gov, "nancy holt"

<[fg325@aol.com](mailto:fg325@aol.com)>, [Colletti.John@epamail.epa.gov](mailto:Colletti.John@epamail.epa.gov), [Swietlik.William@epamail.epa.gov](mailto:Swietlik.William@epamail.epa.gov),

"Jacob Howdyshell"

<[Jacob.Howdyshell@epa.state.oh.us](mailto:Jacob.Howdyshell@epa.state.oh.us)>, [Bastian.Robert@epamail.epa.gov](mailto:Bastian.Robert@epamail.epa.gov), "maureen

Reilly" <[maureen.reilly@sympatico.ca](mailto:maureen.reilly@sympatico.ca)>

Subject: Fw: Progress in Cadiz

"Dear Karen,

As a regulator and technical expert on the biosolids team at EPA, I have certain roles and responsibilities, **but none that let me override local and regional jurisdictions. "**

**(2) I write to Rick Stevens in response to his above email:**

----- Original Message -----

From: [Helane Shields](mailto:Helane.Shields)

To: [Stevens.Rick@epamail.epa.gov](mailto:Stevens.Rick@epamail.epa.gov)

Cc: [bisonlady1@verizon.net](mailto:bisonlady1@verizon.net) ; [maureen.reilly@sympatico.ca](mailto:maureen.reilly@sympatico.ca) ; [Bastian.Robert@epamail.epa.gov](mailto:Bastian.Robert@epamail.epa.gov) ;

[Jacob.Howdyshell@epa.state.oh.us](mailto:Jacob.Howdyshell@epa.state.oh.us) ; [Swietlik.William@epamail.epa.gov](mailto:Swietlik.William@epamail.epa.gov) ;

[Colletti.John@epamail.epa.gov](mailto:Colletti.John@epamail.epa.gov) ; [fg325@aol.com](mailto:fg325@aol.com) ; [DR. JIM SMITH, EPA, CINCINNATI](mailto:DR.JIM.SMITH@EPA.CINCINNATI)

Sent: Thursday, April 03, 2008 6:07 PM

Subject: to Rick Stevens - Ohio - local jurisdiction

Hi, Rick . . . could you please clarify your statement below on being unable to override "local" jurisdiction (as opposed to the ongoing bullying by state "regulators", waste industry, and EPA to force unwilling rural communities into being disposal sites for toxic/pathogenic sewage sludge from urban and industrial sources ? ) .

Were you referring to the fact that the federal Clean Water Act says sludge use or disposal is a local determination ? . . . and/or were you referring to sections in 40 CFR parts 501 and 503 which say sludge use or disposal is a local determination, and localities can enact more stringent sludge ordinances than state or federal rules . . . ?

thank you for your explanation. . . . Helane Shields, sludge researcher, Alton, NH  
<http://www.sludgevictims.com>

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(3) Rick Stevens answers me:

"

----- Original Message -----

From: <[Stevens.Rick@epamail.epa.gov](mailto:Stevens.Rick@epamail.epa.gov)>  
To: "Helane Shields" <[hshields@worldpath.net](mailto:hshields@worldpath.net)>  
Sent: Friday, April 04, 2008 9:09 AM  
Subject: Re: to Rick Stevens - Ohio - local jurisdiction  
Hi Helane,

**I was referring mostly to the fact that use or disposal options are local decisions. Also, Ohio is a designated state, meaning they regulate and enforce (or are supposed to) Part 503 standards, plus any additional state regulations, as if they were EPA.**

If there are state or local issues that we can't resolve, then we involve and work through the regional office in EPA Region 5. However, as EPA representatives, we act on behalf, and in the concern, of US citizens to deal with their issues and problems. As public servants the public is our constituency. When the public has a local concern, with site-specific facts and characteristics, we will investigate the issue (as we are in Ohio) and hopefully resolve all issues to everyone's satisfaction.

Thanks,  
Rick Stevens  
202-566-1135  
202-566-1139 fax  
[stevens.rick@epa.gov](mailto:stevens.rick@epa.gov) "

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(4) I write to Rick Stevens again, in response to his above email:

----- Original Message -----

From: "Helane Shields" <[hshields@worldpath.net](mailto:hshields@worldpath.net)>  
To: <[Stevens.Rick@epamail.epa.gov](mailto:Stevens.Rick@epamail.epa.gov)>  
Sent: Friday, April 04, 2008 12:05 PM  
Subject: Re: to Rick Stevens - Ohio - local jurisdiction

**Well, Rick, if Ohio is a designated state, wouldn't 40 CFR Part 501 apply?  
Helane**

"

- 40CFR Part 501 -- State sludge management program regulations = local law can be more stringent

(i) Nothing in this part precludes a State or political subdivision thereof, or interstate agency, from adopting or enforcing requirements established by State or local law that are more stringent or more extensive than those required in this part or in any other federal statute or regulation."

\*\*\*\*\*

**(5) Rick Stevens, US EPA acknowledges local control:**

----- Original Message -----

From: <[Stevens.Rick@epamail.epa.gov](mailto:Stevens.Rick@epamail.epa.gov)>  
To: "Helane Shields" <[hshields@worldpath.net](mailto:hshields@worldpath.net)>  
Sent: Friday, April 04, 2008 1:51 PM  
Subject: Re: to Rick Stevens - Ohio - local jurisdiction

**Yes.**

Rick Stevens  
202-566-1135  
202-566-1139 fax  
[stevens.rick@epa.gov](mailto:stevens.rick@epa.gov)

\*\*\*\*\*

----- Original Message -----

From: "Helane Shields" <[hshields@worldpath.net](mailto:hshields@worldpath.net)>  
To: <[Stevens.Rick@epamail.epa.gov](mailto:Stevens.Rick@epamail.epa.gov)>  
Sent: Friday, April 04, 2008 5:31 PM  
Subject: Re: to Rick Stevens - local jurisdiction - in non-designated states ?

**So Rick - 40 CFR Part 503 says substantially the same thing - that localities can enact sludge rules more stringent than state or federal . . .**

**- 40 CFR Part 503 (federal sludge rules) Sec. 503.5(b) a political subdivision of a state may impose requirements for use or disposal of sewage sludge more stringent than part 503 rule.**

**("political subdivisions" of a state include cities, towns, counties, townships, parishes, etc.)**

**40 CFR Part 503.6 "(b) Selection of a use or disposal practice. This part does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is a local determination."**

Wouldn't these sections apply to localities in "non-designed" states ?

Helane

----- Original Message -----

From: <[Stevens.Rick@epamail.epa.gov](mailto:Stevens.Rick@epamail.epa.gov)>

To: "Helane Shields" <[hshields@worldpath.net](mailto:hshields@worldpath.net)>

Sent: Saturday, April 05, 2008 8:28 PM

Subject: Re: to Rick Stevens - local jurisdiction - in non-designated states ?

**Yes.**

**Am I getting in trouble here?**

**What are you driving home?**

Rick Stevens

202-566-1135

202-566-1139 fax

[stevens.rick@epa.gov](mailto:stevens.rick@epa.gov)

\*\*\*\*\*

----- Original Message -----

**From:** [Helane Shields](mailto:Helane.Shields)

**To:** [Stevens.Rick@epamail.epa.gov](mailto:Stevens.Rick@epamail.epa.gov)

**Sent:** Sunday, April 06, 2008 6:30 PM

**Subject:** to Rick Stevens - local jurisdiction - in all states

Hi, Rick . . . how could you get in trouble for telling the truth? The only problem is, you are not telling the truth to the right people.

**You need to tell the waste industry, Synagro, et al; all 10 EPA Regional Administrators; and all 50 state sludge/biosolids coordinators IN WRITING that federal law says localities have the right to enact sludge rules more stringent than the EPA's 40 CFR Parts 501 and 503.**

And under the Supremacy Clause of the US Constitution, federal laws trump state laws. Therefore, **the states do not have the right to rescind, preempt, withhold or overrule localities from exercising their local control rights granted to them by Congress and federal law.** Federal law even trumps the so-called "Dillon Rule" states who seek to nullify and overrule the local control specifically granted to cities, towns, counties, townships, parishes, etc. **by Congress, federal law and federal regulations.**

As you well know, sludge bullies in the waste industry and in Virginia and Pennsylvania state "regulatory" agencies have been forcing this toxic/pathogenic waste from urban and industrial sources on unwilling rural communities for years. And those PA and VA localities that try to fight back, find themselves hauled into court by the litigious waste industry with seemingly bottomless legal fees warchests. Now even the PA Attorney General has used taxpayer funds to file suit to force sludge on an unwilling community, East Brunswick Township.

**You need to promptly tell the truth in writing to Virginia, Pennsylvania, and all the other states. that federal law grants localities the right to enact more stringent sludge rules. And states cannot rescind or overrule those federal laws.**

Attached is a file discussing how the courts apply the Supremacy Clause in the face of conflicting state laws.

One more point - as we both know the federal Clean Water Act states sludge use or disposal is a local determination. Some, such as Al Rubin and Bob Bastian, have suggested that this is a POTW option and not a receiving community option. So I remind you of what the California Appeals Court, Fifth Circuit said on this subject:

**" Note [73] Plaintiffs argue the statutory phrase "local determination" refers only to the decisions made by a wastewater treatment agency and excludes ordinances adopted by land use agencies such as County. We reject this statutory construction because, among other things, it cannot be reconciled with the EPA's regulation concerning local imposition of requirements for the use or disposal of sewage sludge. (See 40 C.F.R. § 503.5(b) (2005).) "**

By separate email, I am sending you 4 letters which clearly indicate the EPA and waste industry acknowledge local control over sludge.

I would appreciate hearing from you as to whether you intend to set the record straight about who controls what when it comes to sludge spreading. It would be unconscionable for EPA to continue to allow the states to bully and force sludge on unwilling rural communities without telling the states and communities that localities have the right to regulate more stringently. Of course, we can always do a grass roots effort to notify the press and all states, but it really is the responsibility of the EPA.

best wishes, Helane Shields

<http://www.sludgevictims.net>

<http://www.sludgevictims.com>

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**SEE VIRGINIA ATTORNEY DENIS O'BRIEN ON LOCAL CONTROL AND THE SUPREMACY CLAUSE of the US Constitution -**

<http://www.virginiabiosolids.org/July07.htm>

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**SEPTEMBER 2008 - SECOND EMAIL EXCHANGE – RICK STEVENS, EPA SLUDGE ADMINISTRATOR, JACOB HOWDYSHELL, OHIO SLUDGE ADMINISTRATOR, Helane Shields, sludge researcher:**

"Helane Shields"

<[hshields@worldp  
ath.net](mailto:hshields@worldp<br/>ath.net)>

To

09/25/2008 04:35 PM  
Rick [Stevens/DC/USEPA/US@EPA](mailto:Stevens/DC/USEPA/US@EPA),  
"Jacob Howdysshell"  
<[Jacob.Howdysshell@epa.state.oh.us](mailto:Jacob.Howdysshell@epa.state.oh.us)  
>

CC

"OHIO JOHN STICHT"  
<[bisonlady1@verizon.net](mailto:bisonlady1@verizon.net)>, "CANADA  
- MAUREEN REILLY"  
<[maureen.reilly@sympatico.ca](mailto:maureen.reilly@sympatico.ca)>,  
<[chris@nidellaw.com](mailto:chris@nidellaw.com)>, "Paul  
Novak"  
<[Paul.Novak@epa.state.oh.us](mailto:Paul.Novak@epa.state.oh.us)>,  
"Chris Moody"  
<[Chris.Moody@epa.state.oh.us](mailto:Chris.Moody@epa.state.oh.us)>,  
James [Smith/CI/USEPA/US@EPA](mailto:Smith/CI/USEPA/US@EPA),  
<[fg325@aol.com](mailto:fg325@aol.com)>, <[BynJam@aol.com](mailto:BynJam@aol.com)>

**Subject :**                    **to Rick Stevens,US EPA and Jacob  
Howdysshell, OEPA - federal law  
provides for local control = more  
stringent sludge rules than  
federal sludge rules**

**Dear Mr. Howdysshell:**

**Thank you for including me in the loop re Ohio sludge spreading. However, the issue of Ohio non-compliance with federal sludge rules -- both part 503 and part 501 -- which provide for local control remains unresolved . Attached are emails between Mr. Stevens and me, wherein he acknowledges Ohio is a designated state, and that under 40 CFR Part 501, localities in Ohio can enact sludge rules more stringent than state or federal sludge rules.**

**Respectfully submitted, Helane Shields, Alton, NH, sludge  
researcher**

**<http://www.sludgevictims.com>**

[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr501\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr501_main_02.tpl)

§ 501.1 Purpose and scope.

(a) These regulations are promulgated under the authority of sections 101(e), 405(f), 501(a), and 518(e) of the CWA, and implement the requirements of those sections.

(b) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State sludge management programs under section 405(f), and the requirements State programs must meet to be approved by the Administrator under section 405(f) of CWA. Sludge Management Program submissions may be developed and implemented under any existing or new State authority or authorities as long as they meet the requirements of this part.

**(i) Nothing in this part precludes a State or political subdivision thereof, or interstate agency, from adopting or enforcing requirements established by State or local law that are more stringent or more extensive than those required in this part or in any other federal statute or regulation.**

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**REPLY FROM RICK STEVENS, EPA SLUDGE ADMINISTRATOR**

----- Original Message -----

From: <[Stevens.Rick@epamail.epa.gov](mailto:Stevens.Rick@epamail.epa.gov)>

To: "Helane Shields" <[hshields@worldpath.net](mailto:hshields@worldpath.net)>

Cc: "Chris Moody" <[Chris.Moody@epa.state.oh.us](mailto:Chris.Moody@epa.state.oh.us)>; "Jacob Howdyshell" <[Jacob.Howdyshell@epa.state.oh.us](mailto:Jacob.Howdyshell@epa.state.oh.us)>; <[Smith.James@epamail.epa.gov](mailto:Smith.James@epamail.epa.gov)>; "Paul Novak" <[Paul.Novak@epa.state.oh.us](mailto:Paul.Novak@epa.state.oh.us)>; <[Colletti.John@epamail.epa.gov](mailto:Colletti.John@epamail.epa.gov)>

Sent: Sunday, September 28, 2008 12:41 PM

Subject: Re: to Rick Stevens, US EPA and Jacob Howdyshell, OEPA - federal law provides for local control = more stringent sludge rules than federal sludge rules

**Ms. Shields,**

**The operative word in your message is "can."**

**Nothing in either Part 501 or Part 503 require more stringent rules.**

**There is no basis for your statement that compliance remains unresolved.**

**Rick Stevens U.S. Environmental Protection Agency Office of Water  
202-566-1135**

202-566-1140 fax  
[stevens.rick@epa.gov](mailto:stevens.rick@epa.gov)

## VICTORY - EPA SAYS LOCALITIES "CAN" ENACT MORE STRINGENT SLUDGE RULES . . . .

(EPA sludge administrator, Rick Stevens' gratuitous comment that nothing "requires" more stringent rules is obvious and goes without saying !!)

[Define "can" - <http://www.merriam-webster.com/dictionary/can>

". . . f: be inherently able or designed to <everything that money can buy> g: be logically or axiologically able to <2 + 2 can also be written 3 + 1> h: **be enabled by law**, agreement, or custom to2: **have permission to** —used interchangeably with may<you can go now if you like>

usage Can and may are most frequently interchangeable in senses denoting possibility; because the possibility of one's doing something may depend on another's acquiescence, they have also become interchangeable in the sense denoting permission. The use of can to ask or grant permission has been common since the 19th century and is well established, although some commentators feel may is more appropriate in formal contexts. "

**SO THERE YOU HAVE IT – TWO EMAILS FROM US EPA SLUDGE BIOSOLIDS ADMINISTRATOR RICK STEVENS, ACKNOWLEDGING THAT FEDERAL SLUDGE LAWS SAY LOCALITIES CAN ENACT MORE STRINGENT SLUDGE RULES.**

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Under the Supremacy Clause of the US Constitution, federal law trumps state law . . . therefore, states cannot revoke, rescind, repeal, overrule, rights specifically granted to localities by federal law.

<http://sparkcharts.sparknotes.com/legal/civilprocedure/section5.php>

## The Erie Doctrine

In many circumstances, federal courts are required to hear state law disputes rather than federal law disputes, and are faced with the choice of whether to apply state or federal law. This choice-of-law problem arises most commonly when the federal court's jurisdiction is based on diversity of citizenship or supplemental jurisdiction.

The Rules of Decision Act (RDA)

When to apply federal law: Under the RDA, applicable provisions of the federal Constitution, treaties, and constitutional **statutes enacted by Congress always take precedence over state law.**

When to apply state law: In the absence of on-point federal constitutional or statutory law, federal courts must apply relevant state law.

Common law: The RDA made no specific mention of which body of law would be applicable if there were neither federal nor state law on point. This led to many federal judges applying, on a case by case, ad hoc basis, their own precedent (“federal common law”).

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Federal Clean Water Act - “disposal or use of sludge is a LOCAL determination”

Title 33, Chapter 26, Subchapter IV, Sec. 1345 – Disposal or use of sewage sludge

(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.”

findlaw federal law trumps state law, the supremacy clause - findlaw - u s government sites

<http://lawcrawler.findlaw.com/more.html> state by state search

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<http://research.lawyers.com/news-headline/Feds-seek-to-trump-states-inquiry-into-phone-records-1:410868657.html>

**Epstein said the supremacy clause of the U.S. Constitution "basically says the lowliest federal regulation, if valid, trumps an inconsistent state law no matter how lofty."**

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<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/preemption.htm>

### Introduction

The preemption doctrine derives from the Supremacy Clause of the Constitution which states that the "Constitution and the laws of the United States...shall be the supreme law of the land...anything in the constitutions or laws of any State to the contrary notwithstanding." This means of course, that **any federal law--even a regulation of a federal agency--trumps any conflicting state law.**

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<http://www.carreonandassociates.com/articles/supremacy-law.htm>

The Supremacy Clause and Federal Preemption  
State Law versus Federal- Which rules?

**[THE SUPREMACY CLAUSE Article. VI. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.]**

**Any federal law *does* trump any conflicting state law**

Issues like credit reporting and debt collector abuse are researched by millions of consumers each and every day. Commonly, there is confusion as to whether the law to consider is a state or federal law and which one will finally rule. **The Supremacy Clause in the Constitution explains that federal law always trumps state law which means federal always wins if there is a conflict between the two. If there is no conflict then the state law will be used but if there is any question or conflict of the two reading as the same, then the federal rule would win.**