
ENVIRONMENTAL PROTECTION AGENCY

Water Pollution Control; State Program Requirements; Approval Of Program Modification To Administer the Sewage Sludge (Biosolids) Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; approval of application.

SUMMARY: On [March 31, 2004], pursuant to section 402(b) of the Clean Water Act (CWA), the Regional Administrator for EPA, Region 9, approved the State of Arizona's application to administer a state sewage sludge (biosolids) management program where it has jurisdiction.

FOR FURTHER INFORMATION CONTACT: Matthew Mitchell, (415) 972-3508, WTR-5, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94707, or John Calkins, (602) 771-4651, Water Quality Compliance Assurance Unit, Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007. The State's program submission is available electronically at the following Internet address: <http://www.adeq.state.az.us/environ/water/permits/bio.html#to>

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" means EPA.

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I. Background

Section 405 of the Clean Water Act (CWA), 33 U.S.C. 1345, created the sewage sludge management program, requiring EPA to set standards for the use and disposal of sewage sludge and requiring EPA to include sewage sludge conditions in the National Pollutant Discharge Elimination System (NPDES) permits which it issues to treatment works treating domestic sewage. The rules developed under section 405(d) are also self-implementing, and the standards are enforceable whether or not a permit has been issued. Pursuant to regulations promulgated in

accordance with Section 405(f) of the CWA, a state may apply to EPA for authority to administer the sewage sludge program within its jurisdiction. EPA is required to approve each such submitted state program application unless EPA determines that the program does not meet the requirements of those regulations, set forth at 40 C.F.R. Part 501.

On June 11, 2002, Arizona submitted an application to EPA for approval of a state-administered NPDES permit program pursuant to CWA section 402(b) of the CWA. The Arizona NPDES program (known as AZPDES) was approved by EPA on December 5, 2002. Approval of Arizona's application for its sewage sludge program is a program modification since ADEQ intends to administer its sewage sludge program in conjunction with the AZPDES program.

EPA received the sewage sludge program submittal from Arizona on November 29, 2002. Arizona's application for the sewage sludge management program approval contains a letter from the Governor requesting program approval, an Attorney General's Statement, copies of pertinent State statutes and regulations, a Program Description, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA, Region 9 and the Director of ADEQ. The State submitted a modification of its Attorney General's Statement, which EPA received on October 10, 2003.

Sewage sludge, also known as "biosolids," is the solid separated from liquids during treatment at a domestic or municipal wastewater treatment plant and treated to stabilize and

reduce pathogens. In 1993, EPA adopted standards for management of sewage sludge generated during the process of treating domestic sewage. 40 CFR part 503. The part 503 regulations establish standards under which sewage sludge may be applied to land as a soil amendment, disposed in a surface disposal site, or incinerated. The regulations also allow for disposal in a municipal solid waste landfill that meets the requirements of 40 CFR part 258. The standards in part 503, designed to protect public health and the environment, include pollutant limits, pathogen reduction requirements, vector attraction reduction requirements, and management practices specific to the use or disposal option selected.

The Arizona biosolids management program has standards for land application, surface disposal, and placement of sewage sludge in a municipal landfill. It imposes requirements on wastewater treatment plants, biosolids land applicators, and surface disposal site operators. It also provides for the issuance of permits under certain conditions, enforcing the standards as necessary, and providing guidance and technical assistance to members of the regulated community. The program also includes a state-specific feature requiring a land applicator to register an application site with ADEQ before biosolids are applied to the site. State rules prohibit incineration of sewage sludge.

II. Was Notice Provided Seeking Public Comments on Arizona's Program Submittal?

Arizona's application was described in the November 21, 2003 Federal Register (68 FR 65663), in which EPA requested public comments for a period of 45 days. Further notice was

provided by way of publication in the following newspapers on December 5, 2003: The Arizona Republic; The Tucson Citizen, and the Arizona Daily Star. EPA also provided public notice to the following interested persons and parties: permitted facilities, Indian tribes, other Federal and state agencies, and environmental groups within Arizona. Copies of ADEQ's application package were available for public review at the offices of EPA, Region 9 and ADEQ.

III. Was a Public Hearing Held?

A public hearing was not held. The above notice explained that a hearing had not been scheduled and how a hearing could be requested. EPA holds a public hearing whenever the Regional Administrator finds, on the basis of requests, a significant degree of public interest. No request for a hearing was received during the public comment period and therefore, no hearing was held.

IV. Did EPA Receive Any Public Comments?

Pursuant to the public notice, we accepted written comments from the public postmarked on or before January 5, 2004. During the comment period, we received one comment. The commenter fully supports the modification of the state's AZPDES program to include the administration and enforcement of a biosolids management program. This comment is addressed in EPA's Response to Comment Document, dated March 26, 2004.

V. Does EPA's Approval Affect Indian Country (18 U.S.C. 1151) in Arizona?

ADEQ did not seek approval to administer and enforce the state biosolids management program for activities occurring in Indian Country. Our approval does not authorize ADEQ to carry out its biosolids program in Indian Country. Therefore, our approval of the state's biosolids management program will have no effect in Indian Country where EPA continues to implement and administer the NPDES program.

VI. Conclusion

The Arizona Department of Environmental Quality has demonstrated that it adequately meets the requirements for approval of a state administered biosolids management program (specifically, the application of biosolids to land, surface disposal of biosolids, and the landfilling of biosolids) as defined in the Clean Water Act and 40 CFR parts 501 and 503.

VII. Administrative Requirements

A. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(2), requires that federal agencies insure, in consultation with the United States Fish & Wildlife Service (FWS),

that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of Federally-listed threatened or endangered species (listed species) or result in the destruction or adverse modification of critical habitat designated for such listed species.

EPA, Region 9 initiated informal ESA section 7 consultation with the FWS regarding Arizona's request for approval of its biosolids management program. On November 12, 2003, the FWS concurred with EPA's Biological Evaluation, concluding that EPA's approval of Arizona's biosolids management program may affect, but is not likely to adversely affect, endangered species or their designated critical habitat. Issuance of the FWS concurrence concluded the consultation process required by ESA section 7(a)(2) and reflects the FWS's agreement with EPA that the approval of the State program meets the substantive requirements of the ESA.

B. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), requires Federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on such undertakings. Under the ACHP's regulations (36 CFR part 800), agencies consult with the appropriate State Historic Preservation Officer (SHPO) on federal undertakings that have the potential to affect historic properties listed or eligible for listing in the National Register of

Historic Places.

On January 16, 2004, EPA provided the Arizona State Parks Board (which includes the SHPO) with EPA's determination that approval of Arizona's application would have no effect on historic properties in Arizona. On March 12, 2004, the Arizona State Parks Board concurred with EPA's determination.

C. Other Provisions

Based on General Counsel Opinion 78-7 (April 18, 1978), EPA has long considered a determination to approve or deny a State Clean Water Act (CWA) program submission to constitute an adjudication because an "approval," within the meaning of the Administrative Procedure Act (APA), constitutes a "licence," which, in turn, is the product of an "adjudication." For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here.

List of Subjects in 40 CFR Parts 501 and 503.

Environmental protection, Administrative practice and procedures, Sewage sludge use and disposal, Water pollution control, Waste treatment and disposal, Indian lands, Intergovernmental relations.

Authority: Clean Water Act 33, U.S.C. 1251 et seq.

Dated: _____

Wayne Nasti,

Regional Administrator, Region IX

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