pollutants established by 42 U.S.C. 7412(b)(1).

[FR Doc. 03–28787 Filed 11–20–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 501

[FRL–7589–7]

Water Pollution Control; State Program Requirements; Program Modification Application by Arizona To Administer the Sewage Sludge Management (Biosolids) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application and public comment period.

SUMMARY: The State of Arizona has submitted a program modification application to EPA, Region 9 to administer the sewage sludge (biosolids) management program. According to the State's application, this program would be administered by the Arizona Department of Environmental Quality (ADEQ). The application from Arizona is complete and is available for inspection and copying.

DATES: The public comment period on the State's request for approval to administer the proposed AZPDES biosolids program will be from the date of publication until January 5, 2004. Comments postmarked after this date may not be considered.

ADDRESSES: *Viewing/Obtaining Copies of Documents.* You can view Arizona's application for modification from 8 a.m. until 5 p.m. Monday through Friday, excluding holidays, at the Arizona Department of Environment Quality, Records Management Center, 1110 W. Washington St., Phoenix, AZ 85007. Please call (602) 771–4378 to set up an appointment. A copy of Arizona's application is also available for viewing from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at EPA Region 9, 12th floor, Water Division, 75 Hawthorne St., San Francisco, CA. Part or all of the State's application may be copied, for a minimal cost per page, at ADEQ's office in Phoenix or EPA's office in San Francisco. ADEQ's submission documents are also available on the Internet at: *http://www.adeq.state.az.us/environ/water/compliance/assurance.html#bio.*

Comments. Electronic comments are encouraged and should be submitted to mitchell.*matthew@epa.gov.* Please send a copy to *varga.chris@ev.state.az.us.* Written comments may be sent to Matthew Mitchell (WTR–5), EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Please send an additional copy to Chris Varga, Surface Water Permits Unit, Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007. Public comments may be sent in either electronic or paper format. EPA requests that electronic comments include the commentor's postal mailing address. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 8.0 format or ASCII file format. If submitting comments in paper format, please submit the original and three copies of your comments and enclosures. Commentors who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope.

FOR FURTHER INFORMATION CONTACT: Matthew Mitchell at the above address by phone at (415) 972–3508, or by e-mail at *mitchell.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, the EPA may issue permits allowing discharges of pollutants from point sources into waters of the United States, subject to various requirements of the CWA. These permits are known as National Pollutant Discharge Elimination System (NPDES) permits. Section 402(b) of the CWA, 33 U.S.C. 1342(b), allows states to apply to the EPA for authorization to administer their own NPDES permit programs.

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 some of the NPDES permits which it issues. The rules developed under section 405(d) are also self-implementing, and the standards are enforceable whether or not a permit has been issued. Section 405(c) of the CWA provides that a state may submit an application to EPA for administering its own sewage sludge program within its jurisdiction. EPA is required to approve each such submitted state program unless EPA determines that the program does not meet the requirements of sections 304(i) and/or 402(b) and 405 of the CWA or the EPA regulations implementing those sections.

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). The Arizona NPDES program (known as AZPDES) was approved by EPA on December 5, 2002. Prior to its submission of the AZPDES program application, Arizona determined that it would submit a separate application for the CWA Section 405 biosolids program at a later date. EPA received the biosolids program submittal from Arizona on November 29, 2002. Arizona's application for the biosolids 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.

Biosolids and the State Biosolids Management Program

Biosolids, or sewage sludge, are the solids separated from liquids during treatment at a domestic or municipal wastewater treatment plant and treated to stabilize and reduce pathogens. EPA in 1993 adopted standards for management of biosolids generated during the process of treating municipal wastewater. 40 CFR part 503. The part 503 rules establishes standards under which biosolids may be land applied as a soil amendment, disposed in a surface disposal site, or incinerated, and requirements for compliance with 40 CFR part 258 if placed in a municipal landfill. The standards, 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 imposes requirements on wastewater treatment plants, biosolids appliers, 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 applier to register an application site with ADEQ before biosolids is applied to the site.

Indian Country

Arizona is not authorized to carry out its biosolids management program in Indian Country, as defined in 18 U.S.C. 1151.

Public Notice and Comment Procedures

Copies of all submitted statements and documents shall become a part of the record submitted to EPA. All comments or objections presented in writing to EPA, Region 9 and postmarked within 45 days of this document will be considered by EPA before it takes final action on Arizona's request for program modification approval. All written comments and questions regarding the biosolids management program should be addressed to Matthew Mitchell at the above address. The public is also encouraged to notify anyone who may be interested in this matter.

Public Hearing Procedures

At the time of this notice, a decision has not been made as to whether a public hearing will be held on Arizona's request for program modification. During the comment period, any interested person may request a public hearing by filing a written request which must state the issues to be raised to EPA, Region 9. The last day for filing a request for a public hearing is 45 days from the date of this notice; the request should be submitted to Matthew Mitchell at the above address. In appropriate cases, including those where there is significant public interest, EPA may hold a public hearing. Public notice of such a hearing will occur in the **Federal Register** and in enough of the largest newspapers in Arizona to provide statewide coverage and will be mailed to interested persons at least 30 days prior to the hearing.

EPA's Decision

After the close of the public comment period, EPA will decide whether to approve or disapprove Arizona's application for approval of its biosolids management program. EPA will consider and respond to all significant comments received before taking final action on Arizona's request for the biosolids program approval. The decision will be based on the requirements of sections 405, 402 and 304(i) of the CWA and EPA regulations promulgated thereunder. If the Arizona biosolids management program is approved, EPA will so notify the State. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will no longer serve as the primary program and enforcement authority for biosolids use and disposal within Arizona. EPA will remain the authority for biosolids use and disposal in Indian Country within Arizona. The State's program will operate in lieu of the EPA-administered program. However, EPA will retain the right, among other things, to object to AZPDES permits proposed by Arizona and to take enforcement actions for violations, as allowed by the CWA. If EPA disapproves Arizona's biosolids management program, EPA will notify the State of the reasons for disapproval and of any revisions or modifications to the State program that are necessary to obtain approval.

Other Federal Statutes

National Historic Preservation Act

Section 106 of the National Historic Preservation Act, 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. EPA, Region 9 is currently in discussions with the Arizona State Parks Board (which includes the SHPO) regarding its determination that approval of the State biosolids management program would have no effect on historic properties within the State of Arizona.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA) requires that all federal agencies, in consultation with the U.S. Fish and Wildlife Service, insure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any Federally-listed threatened or endangered species or result in the destruction or adverse modification of their designated critical habitat. Regulations for consultation under ESA section 7 are codified at 50 CFR part 402. EPA, Region 9 has initiated informal ESA section 7 consultation with the U.S. Fish and Wildlife Service regarding Arizona's request for approval of its biosolids management program.

Regulatory Flexibility Act

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 project of an ''adjudication.'' For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq*. Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the APA, after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule. Even if the CWA program approval were a rule subject to the RFA, the Agency would certify that approval of the State proposed CWA program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve a CWA program merely recognizes that the necessary elements of the program have already been enacted as a matter of State law; it would, therefore, impose no additional obligation upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this Arizona biosolids management program, even if a rule, would not have significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective

or lease burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's decision includes no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''Federal intergovernmental mandate'' affects an annual Federal entitlement program of $500 million or more which are not applicable here. Arizona's request for approval of its biosolids management program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its biosolids management program approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of EPA, thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a biosolids management program, regulation is left to EPA. EPA's approval of state programs generally may reduce compliance costs for the private sector, since the State, by virtue of the approval, may now administer the program in lieu of EPA and exercise primary enforcement. Hence, owners and operators of biosolids management facilities or businesses generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's decision is not subject to the requirements of sections 202 and 205 of the UMRA. The Agency recognizes that small governments may own and/or operate biosolids management facilities that will become subject to the requirements of an approved State biosolids management program. However, small governments that own and/or operate biosolids management facilities are already subject to the requirements in 40 CFR parts 123 and 503 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own biosolids management program and any revisions to that program, these same small governments will be able to own and operate their biosolids management facilities or businesses under the approved State program, in lieu of the Federal program. Therefore, EPA has determined that this document contains no regulatory requirements that might significantly or uniquely affect small governments.

Dated: November 10, 2003.

Alexis Strauss,

Acting Regional Administrator, Region 9.

[FR Doc. 03–29177 Filed 11–20–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 53

[WC Docket No. 03–228; FCC 03–272]

Section 272(b)(1)'s ''Operate Independently'' Requirement for Section 272 Affiliates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document initiates an inquiry regarding the Commission's rules implementing section 272(b)(1) of the Communications Act of 1934, as amended, (the Act) seeking comment on whether the Commission should modify the rules adopted to implement section 272(b)(1)'s ''operate independently'' requirement. Specifically, the Commission seeks comment on whether the operating, installation, and maintenance (OI&M) sharing prohibition is an overbroad means of preventing cost misallocation or discrimination by Bell operating companies (BOCs) against unaffiliated rivals. It also seeks comment on whether the prohibition against joint ownership by BOCs and their section 272 affiliates of switching and transmission facilities, or the land and buildings on which such facilities are located, should be modified or eliminated.

DATES: Comments are due December 8, 2003, and Reply Comments are due December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1686 or via the Internet at *christi.shewman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 03–228, FCC 03–272, adopted November 3, 2003, and released November 4, 2003. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. In this proceeding, the Commission seeks comment on whether the Commission should modify or eliminate its rules implementing the ''operate independently'' requirement of section 272(b)(1) of the Act. The Commission's seven years of experience in implementing the Telecommunications Act of 1996 leads it to re-examine the rules designed to ensure that section 272 affiliates ''operate independently'' as required by the statute. The Commission seeks to determine whether these rules continue to strike an appropriate balance between allowing the BOCs to achieve efficiencies within their corporate structures and protecting ratepayers against improper cost allocation and competitors against discrimination.

2. *Background.* Sections 271 and 272 establish a comprehensive framework governing BOC provision of ''interLATA service.'' Pursuant to section 271, neither a BOC nor a BOC affiliate may provide in-region, interLATA service prior to receiving section 271(d) authorization from the Commission. Section 272 requires BOCs, once authorized to provide in-region, interLATA services in a state under section 271, to provide those services through a separate affiliate until the section 272 separate affiliate requirement sunsets for that particular state. Section 272 imposes structural and transactional requirements on section 272 separate affiliates, including the requirement under section 272(b)(1) to ''operate independently'' from the BOC.

3. In the *Non-Accounting Safeguards Order,* (62 FR 2927, January 21, 1997), the Commission concluded that the ''operate independently'' language of section 272(b)(1) imposes requirements