

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