

following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

**DATES:** Comments must be submitted on or before January 31, 2000.

**ADDRESSES:** The proposed settlement is available for public inspection at USEPA, 290 Broadway, New York, New York 10007-1866. A copy of the proposed settlement may be obtained from Cynthia Psoras, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007-1866, (212) 637-3169. Comments should reference the Pyridium Mercury Disposal Superfund Sites #1 & #2 located in the Village of Harriman, Orange County, New York, EPA Index No. CERCLA-02-99-02007, and should be addressed to Cynthia Psoras, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007-1866. The Agency's response to any comments received will be available for public inspection at the Monroe Free Public Library located at 44 Millpond Parkway, Monroe, NY 10950 (914) 783-4411, and at the EPA, 290 Broadway, New York, New York 10007-1866.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Psoras, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007-1866, (212) 637-3169.

**SUPPLEMENTARY INFORMATION:** None.

Dated: December 14, 1999.

**William J. Muszynski,**

*Acting Regional Administrator.*

[FR Doc. 99-33955 Filed 12-29-99; 8:45 am]

BILLING CODE 6560-50-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6517-2]

### Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; South Bay Asbestos Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(I) of the Comprehensive

Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the South Bay Asbestos Site in the Alviso district of San Jose, California was executed by the Agency on December 16, 1999. The proposed settlement resolves an EPA claim under Sections 106 and 107 of CERCLA against the following Respondents: CertainTeed Corporation and T&N Limited; T&N Industries Inc. The proposed settlement was entered into under the authority granted EPA in Section 122(h) of CERCLA, and requires the Respondents to pay \$800,000 to the Hazardous Substances Superfund in settlement of past costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: Environmental Protection Agency, Region 9, Superfund Record Center, 4th floor, 95 Hawthorne Street, San Francisco, California, 94105.

**DATES:** Comments must be submitted on or before January 31, 2000.

**ADDRESSES:** The proposed settlement as set forth in the Administrative Consent Order may be obtained from Jeannie Cervera, Assistant Regional Counsel (ORC-2), Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Comments regarding the proposed settlement should be sent to Jeannie Cervera at the address provided above, and should reference the South Bay Asbestos site located in San Jose, California (EPA Docket No. 99-06).

**FOR FURTHER INFORMATION CONTACT:** Jeannie Cervera, Assistant Regional Counsel, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1395.

Dated: December 17, 1999.

**Keith Takata,**

*Director, Superfund Division.*

[FR Doc. 99-33953 Filed 12-29-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6500-4]

### State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Maine

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of application for approval of the Maine Pollutant Discharge Elimination System.

**SUMMARY:** The State of Maine has submitted a request for approval of the Maine Pollutant Discharge Elimination System (MEPDES) Program pursuant to Section 402 of the Clean Water Act. If EPA approves the MEPDES program, the State will administer this program, which regulates the discharges of point sources to navigable waters, subject to continuing EPA oversight and enforcement authority, in place of the National Pollutant Discharge Elimination System (NPDES) program now administered by EPA in Maine. Today, EPA is requesting comments on the State's request and providing notice of a public hearing and comment period on that proposal. EPA will either approve or disapprove the State's request after considering all comments it receives.

**DATES:** EPA Region I will hold a public hearing on February 16, 2000 beginning at 7:00 p.m. for submission of oral or written comments on Maine's request for program approval. EPA Region I will continue to accept written comments through February 29, 2000 at its office in Boston, MA. EPA requests that copies of such written comments also be provided to the Maine Department of Environmental Protection (MEDEP).

**ADDRESSES:** The February 16, 2000, public hearing will be held at the Augusta Civic Center (Capital Pine Tree Room), Augusta, ME.

Written comments must be submitted to: Stephen Silva, USEPA Maine State Office, 1 Congress Street—Suite 1100 (CME), Boston, MA 02114-2023. EPA requests that a copy of each comment be submitted to: Dennis Merrill, MEDEP, Statehouse Station #17, Augusta, ME 34003.

Copies of documents Maine has submitted in support of its program approval request may be reviewed during normal business hours, Monday through Friday, excluding holidays, at: EPA Region I, 11th Floor Library, 1 Congress Street—Suite 1100, Boston, MA 02114-2023, 617-918-1990 or 1-888-372-5427; and MEDEP, Ray Building, Hospital Street, Augusta, ME.

**FOR FURTHER INFORMATION CONTACT:**

Stephen Silva at the address listed above or by calling (617) 918-1561 or Dennis Merrill at the address listed above or by calling (207) 287-7788. The State's submissions (which comprise approximately 128 pages in the application, 382 pages in the appendix, and 11 pages in a supplement with an additional 688 pages of attachments) may be copied at the MEDEP office in Augusta, or EPA office in Boston, at a cost of 15 cents per page. A copy of the entire initial submission (not including the supplement) may be obtained from the MEDEP office in Augusta for a \$20 fee.

Part of the State's program submission and supporting documentation is available electronically at the following Internet address:

<http://www.state.me.us/dep/blwq/delegation/delegation.htm>

**SUPPLEMENTARY INFORMATION:** Section 402 of the Clean Water Act (Act) created the NPDES program under which EPA may issue permits for the discharge of pollutants to waters of the United States under conditions required by the Act. Section 402 also provides that EPA may approve a State to administer an equivalent State program upon a showing that the State has the necessary authority and a program sufficient to meet the Act's requirements. The basic requirements for State program approval are listed in 40 CFR part 123. EPA Region I considers the documents submitted by the State of Maine complete and believes they address each of the requirements of the regulations found at 40 CFR part 123. EPA will take final action after all public comments have been considered.

By letter dated October 13, 1999, the Governor of Maine requested NPDES program approval and submitted a program description (including funding, personnel requirements and organization, and enforcement procedures), an Attorney General's statement, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA Region I and the Commissioner of MEDEP. EPA received this package of materials on November 18, 1999. By letter dated December 15, 1999, Maine submitted a supplement to its application describing its Continuing Planning Process (cpp). This supplement was received by the EPA on December 17, 1999 and makes the application complete as of December 17, 1999.

As discussed in more detail below, Maine is applying to implement and

enforce its MEPDES program in Indian country. In determining that Maine's application is complete, the EPA has not made any decision regarding this issue. Rather, the EPA will make its decision on this issue as part of its decision approving or disapproving Maine's program, after consideration of public comments.

Maine is applying to administer both the permit program for direct dischargers to State waters and the pretreatment program (which covers industrial sources discharging to publicly owned treatment works). However, Maine has asked to assume responsibility for these programs in phases, pursuant to CWA 402(n)(4). Maine's submission appears to meet the requirements for such a phased approach. Thus, any approval of the program regarding direct dischargers would take effect immediately following approval. If approved, responsibility for operating the pretreatment program would be transferred to the State only later—effective December 31, 2000, unless an earlier transfer date was announced in the **Federal Register**. Note, however, that a decision whether to transfer the entire program (direct dischargers and pretreatment) would be made following the current public comment period. Thus, any comments related to any part of the State's program must be submitted during the current public comment period. Maine's MEPDES program generally covers all discharges of pollutants subject to the federal NPDES program, but does not regulate the disposal of sewage sludge. If it approves the State program, EPA will continue to regulate sewage sludge disposal in Maine in accordance with Section 405 of the Act and 40 CFR Part 503.

Pursuant to 40 CFR 123.21 and 123.61(b), the EPA must approve or disapprove the submitted Maine program (which has been determined to be complete) within 90 days of receipt, unless this review period is extended by EPA-State agreement. To obtain approval, the State must show, among other things, that it has authority to issue permits that comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. After close of the comment period, EPA's Regional Administrator will decide to approve or disapprove the MEPDES program, based on the requirements of section 402 of the CWA and 40 CFR Part 123. If he approves the Maine program, the Regional Administrator will so notify the State. Notice would be

published in the **Federal Register** and, as of the date of program approval, EPA would suspend issuance of NPDES permits in Maine (except for: sewage sludge permits under CWA Section 405 and 40 CFR part 503 and permits for which EPA has issued public notice prior to program approval). EPA would, however, retain the right to object to MEPDES permits proposed by MEDEP, and if the objections are not resolved, issue the permit itself. EPA would also retain jurisdiction over all existing NPDES permits it has issued in Maine until MEDEP reissued them as MEPDES permits. EPA would also oversee the State's implementation of other aspects of the program. Finally, the EPA would retain its full inspection and enforcement authorities as provided for in the CWA, to address any CWA violations in Maine. These authorities would continue to operate in addition to State inspection and enforcement authorities. If the program is approved, the EPA and State will enter into a Memorandum of Agreement (MOA) specifying particular State and EPA responsibilities in program implementation, including enforcement, but this MOA is not intended to restrict EPA's statutory enforcement responsibilities or to create any rights for persons not a party to the MOA.

If EPA's Regional Administrator disapproves the MEPDES program, he will notify MEDEP of the reasons for disapproval and of any revisions or modifications to the program which are necessary to obtain approval.

**Public Hearing Procedures**

The following procedures will be used at the January 16, 2000 public hearing:

1. The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may impose reasonable time limits. Any person may submit written statements or documents for the record at the hearing or otherwise during the comment period.

2. The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program.

3. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator.

4. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of

this Notice to allow any person time to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing or other comments submitted during the comment period.

5. Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record. Statements should summarize any extensive written materials. All comments received by EPA Region I by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the Maine request for NPDES program approval.

### **Summary of the Maine Pollution Discharge Elimination System (MEPDES) Permitting Program Submission**

The MEPDES program is fully described in documents the State has submitted in accordance with 40 CFR 123.21, *i.e.*, a Memorandum of Agreement (MOA) for execution by MEDEP and EPA; a Program Description outlining the procedures, personnel and protocols that will be relied on to run the State's permitting and pretreatment program; a Statement signed by the Attorney General that describes the State's legal authority to administer a program equivalent to the federal NPDES program; and a description of the State's Continuing Planning Process.

#### *I. The EPA/MEDEP MOA*

The requirements for MOAs are found in 40 CFR 123.24. A Memorandum of Agreement is a document signed by both the State and the EPA. The MOA specifies program responsibilities and provides structure for the State's program management and EPA's program oversight. The MOA submitted by the State of Maine has been signed by the Commissioner of the Department of Environmental Protection. The Regional Administrator of U.S. EPA Region I will sign the document if the program has been determined approvable and all comments received during the comment period have been considered.

#### *II. Program Description*

A program description submitted by a State seeking program approval must meet the minimum requirements of 40 CFR 123.22. It must provide a narrative description of the scope, structure, coverage and processes of the State program; a description of the organization, staffing and position descriptions for the lead State agency; and itemized costs and funding sources for the program. It must describe all

applicable State procedures (including administrative procedures for the issuance of permits and administrative or judicial procedures for their review) and include copies of forms used in the program. It must further contain a complete description of the State's compliance and enforcement tracking program. The State has submitted such a program description.

#### *III. Attorney General's Statement*

An Attorney General's Statement is required and described in regulations found at 40 CFR 123.23. Legal counsel representing the State must certify that the State has lawfully adopted statutes and regulations that provide the State agency with the legal authority to administer a program in compliance with 40 CFR part 123. The Attorney General's Statement from Maine certifies that the State has the legal authority to administer the MEPDES program in accordance with the regulations in 40 CFR part 123.

The Attorney General's Statement also includes the State's analysis, submitted pursuant to 40 CFR 123.23(b), asserting that the State has authority to implement the MEPDES program in Indian country. The Statement argues that the Maine Indian Claims Settlement Act (MICSA), 25 U.S.C. 1721-35, and the Maine Implementing Act, 30 MRSA §§ 6201-14, grant the State jurisdiction to enforce the program on the reservations and other Indian country of the five federally-recognized Indian tribes in the State. The State also asserts that the federal trust responsibility to federally-recognized tribes does not operate in Maine. EPA is seeking comment on the Attorney General's analysis regarding the State's jurisdiction and the EPA role in Indian country in Maine.

Finally, in anticipation of the State's assertion of jurisdiction in Indian country, EPA has already initiated consultations with representatives of the federally-recognized tribes in Maine pursuant to EPA's Indian policy of November 8, 1984 and the President's memorandum of April 1, 1993 on government-to-government relations with Indian tribes. While those consultations have been informative, EPA wishes to remind the public that any comments that any party wishes EPA to consider and address on the record in this action must be submitted during the comment period provided for in this notice.

#### *IV. Continuing Planning Process*

The State has submitted a description of its Continuing Planning Process in accordance with CWA Section 303(e)

and 40 CFR 130.5. This document describes the State's planning processes for developing effluent limitations, total maximum daily loads (TMDLs) and water quality standards, among other things. This document is being separately reviewed by EPA pursuant to CWA Section 303(e) and 40 CFR 130.5, but also has been included as part of the State's application for the NPDES Program.

#### *Comments on the Described Program*

The program submitted by the State of Maine has been determined to be complete in accordance with the regulations found at 40 CFR part 123. EPA and MEDEP want to encourage public participation in this authorization process so that the citizens of Maine will understand the program in their State. Therefore, EPA requests that the public review the program that MEDEP has submitted and provide any comments they believe are appropriate. EPA will consider all comments on the MEPDES program and/or its authorization in its decision.

#### **Other Federal Statutes**

##### *National Historic Preservation Act*

Section 106 of the National Historic Preservation Act (NHPA) requires all federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. The Agency must consult with the appropriate State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) on all federal undertakings that have the potential to cause effects on historic properties or sites listed or eligible for listing in the National Register of Historic Places. Regulations controlling Section 106 consultation are found at 36 CFR Part 800 (1999). EPA approval of the State permitting program under section 402 of the Clean Water Act would be a federal undertaking within the meaning of the NHPA. The EPA is currently in discussions with the appropriate SHPO and THPOs regarding its determination that approval of the State permitting program itself would have no effect on the preservation of historic properties within the State of Maine.

##### *Endangered Species Act*

Section 7 of the Endangered Species Act (ESA) requires that all federal agencies consult with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), as appropriate, to insure their

actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the designated critical habitat of such species. Section 7 also requires federal agencies to confer on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Regulations controlling interagency cooperation under Section 7 are codified at 50 CFR Part 402 (1999). EPA approval of the State permitting program under section 402 of the Clean Water Act would be a federal action subject to these requirements, however, subsequent State MEPDES permit actions would not. Pursuant to the ESA, the EPA is currently engaged in informal consultation and conferencing with both FWS and NMFS.

#### *Magnuson-Stevens Fishery Conservation and Management Act*

Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) on agency actions that may adversely affect essential fish habitat. Regulations controlling consultation under Section 305(b)(2) are codified at 50 CFR Part 600, Subpart K (1999). EPA approval of the State permitting program under section 402 of the Clean Water Act would be a federal actions requiring consultation, however, subsequent State MEPDES permit actions would not. Pursuant to the Magnuson-Stevens Act, the EPA is currently engaged in consultation with NMFS.

#### *Coastal Zone Management Act*

Pursuant to section 307(c)(1)(C) of the Coastal Zone Management Act, Federal agencies carrying out an activity which affects any land or water use or natural resource with the Coastal Zone of a state with an approved Coastal Zone Management Plan must determine whether that activity is, to the maximum extent practicable, consistent with the enforceable requirements of the Plan and provide its determination to the State agency responsible for implementation of the Plan for review. Maine's approved Coastal Zone Management Plan is administered by the Maine Office of State Planning. Maine's permit actions are themselves subject to consistency review under State law; thus approval of the MEPDES program would not affect Maine's Coastal Zone and would be consistent with the enforceable requirements of Maine's Coastal Zone Management Plan.

#### *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 NPDES program submission to constitute an adjudication because an "approval", within the meaning of the APA, constitutes a "license," 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. 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 Administrative Procedure Act (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 is the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed MEPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

**Authority:** This action is taken under the authority of Section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: December 20, 1999.

**John P. DeVillars,**

*Regional Administrator, Region I.*

[FR Doc. 99-33776 Filed 12-29-99; 8:45 am]

BILLING CODE 6560-50-M

#### FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 99-295, FCC 99-404]

#### **Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, Inter-LATA Service in the State of New York**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission grants Bell Atlantic's section 271 application for authority to enter the inter-LATA toll market in the state of New York. The Commission grants Bell Atlantic's application based on our conclusion that Bell Atlantic has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

**DATES:** Effective December 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Claudia Pabo or Andrea Kearney, Attorneys, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418-1580, or via the Internet at [cpabo@fcc.gov](mailto:cpabo@fcc.gov) or [akearney@fcc.gov](mailto:akearney@fcc.gov), respectively. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, CY-A257, 445 12th Street, Washington, DC 204554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This document is a brief description of the Commission's Memorandum Opinion and Order adopted December 21, 1999, and released December 22, 1999. The full text also may be obtained through the World Wide Web, at <http://www.fcc.gov/ccb/Orders/index6.html>; or may be purchased from the Commission's copy contractor, International Transcription Service Inc. (ITS), CY B-400, 445 12th Street, SW, Washington, DC.

#### **Synopsis of the Memorandum Opinion and Order**

1. *The New York Commission's Evaluation.* The New York Commission advised the Commission that, following two and one-half years of review, testing, and process improvements, Bell Atlantic-NY had met the checklist requirements of section 271(c). Specifically, the New York Commission stated that Bell Atlantic had met its obligation under section 271(c)(1)(A) by entering into more than 75