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IX. Statutory and Executive Order Reviews

This notice is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nevertheless, OMB participated in an interagency review of this notice and any comments or suggestions received during that review, have been addressed.

Since this notice does not impose any requirements, and instead seeks comments and suggestions for the Agency to consider in developing its approach for selecting the first group of chemicals to be screened in the Agency's EDSP, the various other review requirements that apply when an agency imposes requirements do not apply to this notice. As a part of your comments on this document, however, you may include any comments or information that would facilitate the Agency's consideration of approaches for selecting the first group of chemicals to be screened in the Agency's EDSP,

including but not limited to potential impacts on small entities covered by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the availability of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), and potential paperwork burden and costs, as well as any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, related to the collection of this information as described by the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). The Agency will consider such comments during the development of the approach and will take appropriate steps to address any applicable requirements.

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides and pests.

Dated: December 23, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02-32853 Filed 12-24-02; 11:49 am]

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ENVIRONMENTAL PROTECTION AGENCY

FRL-7432-2]

State Program Requirements; Approval of Application by Arizona To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On December 5, 2002, the Regional Administrator for the Environmental Protection Agency, Region IX (EPA), approved the application by the State of Arizona to administer and enforce the Arizona Pollutant Discharge Elimination System (AZPDES) Program, for all areas within the State, other than Indian country. The authority to approve State programs is provided to EPA in section 402(b) of the Clean Water Act (CWA). The State will administer the approved program through the Arizona Department of Environmental Quality (ADEQ), subject to continuing EPA oversight and enforcement authority, in place of the National Pollutant Discharge

Elimination System (NPDES) program previously administered by EPA in Arizona. The program is a partial program to the extent described in the section of this Notice entitled National Pollutant Discharge Elimination System (NPDES) program "Scope of the AZPDES Program." In making its decision, EPA considered and addressed all comments and issues raised during the public comment period.

DATES: Pursuant to 40 CFR 123.61(c), the AZPDES program was approved and became effective on December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Mitchell, USEPA Region IX (WTR-5), 75 Hawthorne Street, San Francisco, CA, 94105, (415) 972-3508 or Chris Varga, Federal Permits Unit, Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ, 85007, (602) 771-4665. Part of the State's program submission and supporting documentation is available electronically at the following Internet address: <http://www.adeq.state.az.us/environ/water/permits/federal.html>

SUPPLEMENTARY INFORMATION: Arizona's application was described in the **Federal Register** (67 FR 49916) on August 1, 2002, in which EPA requested comments. Notice of Arizona's application was published in the Arizona Republic on August 13, 2002. A public hearing on the application was held on September 4, 2002, in Phoenix, AZ.

Section 402 (c)(1) of the CWA provides that ninety days after a State has submitted an application to administer the NPDES program, EPA's authority to issue such permits is suspended unless EPA disapproves or approves the State's application. 40 CFR 123.21(b)(1). This ninety day statutory review period ended on October 8, 2002. However, because of the many complex issues that were raised with respect to the State's program and the need to address them in a comprehensive manner, EPA was unable to make a final decision by October 8, 2002. Thus, EPA suspended issuance of NPDES permits in Arizona on October 8, 2002. However, failure to make a decision by the October 8, 2002 deadline did not mean that the State automatically gained NPDES authority. It is EPA's interpretation that a State agency does not gain NPDES authority unless and until EPA approves the State program, consistent with CWA section 402(b) and 40 CFR 123.1. As of December 5, 2002, the ADEQ is now authorized to issue AZPDES permits under the CWA in all areas within the State, except for in Indian country.

A. Scope of the AZPDES Program

The AZPDES program is a partial program which conforms to the requirements of section 402(n)(3) of the CWA. Specifically, Arizona is being approved to administer both the NPDES permit program covering point source dischargers to State waters and the pretreatment program covering industrial sources discharging to publicly owned treatment works.

Pursuant to CWA section 402(d), in specified circumstances EPA retains the right to object to AZPDES permits proposed by ADEQ, and if the objections are not resolved, to issue the permits itself. EPA also will retain jurisdiction over all NPDES permits it has issued in Arizona until ADEQ reissues them as AZPDES permits. Finally, EPA and State have agreed that EPA may retain permitting authority in certain limited circumstances, as set forth in the Memorandum of Agreement between EPA and ADEQ.

As part of operating the approved program, ADEQ generally will have the lead responsibility for enforcement. However, EPA will retain its full statutory enforcement authorities under CWA sections 308, 309, 402(i) and 504. Thus, EPA may continue to bring federal enforcement action under the CWA in response to any violation of the CWA, as appropriate. In particular, if EPA determines that the State has not taken timely and/or appropriate enforcement action against a violator in Arizona, EPA may take its own enforcement action.

B. Public Comments

The EPA received numerous public comments concerning the Arizona program.

Several commenters urged the EPA to approve the State's program. The EPA agrees that the State program should be approved at this time outside Indian country.

Several commenters were concerned about impacts on endangered species and historic properties associated with EPA's approval of the AZPDES program. In addition, a few commenters urged that the EPA reject Arizona's program application on a variety of grounds.

All public comments are addressed in EPA's Response to Comments Document, dated December 5, 2002. In addition, EPA actions taken in accordance with the requirements of the Endangered Species Act and the National Historic Preservation Act are described below in Section C.

C. Other Federal Statutes

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(2), requires that federal agencies ensure, 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 listed threatened or endangered species (listed species) or result in the destruction or adverse modification of critical habitat designated for such listed species.

EPA consulted with the FWS under section 7(a)(2) of the ESA regarding the effects of the AZPDES program approval on listed species and designated critical habitat. On December 3, 2002, the Service issued a biological opinion concluding that EPA's approval of Arizona's NPDES application is not likely to jeopardize the continued existence of listed threatened or endangered species or result in the destruction or adverse modification of their critical habitat. In the opinion, the FWS also stated that it does not anticipate that EPA's action will result in the incidental take of listed species. Issuance of the biological opinion with these findings concludes the consultation process required by ESA section 7(a)(2) and reflects the Service's agreement with EPA that the approval of the State program meets the substantive requirements of the ESA.

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), the Agency consults with the appropriate State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer on federal undertakings that have the potential to affect historic properties listed or eligible for listing in the National Register of Historic Places. During EPA's review of the Arizona NPDES application, EPA engaged in discussions with the Arizona SHPO regarding EPA's determination that approval of the State permitting program would have no effect on historic properties.

On August 23, 2002, EPA provided the Arizona SHPO's Office with EPA's determination that approval of Arizona's application would have no effect on historic properties in Arizona.

As part of the coordination process, the SHPO's Office raised certain issues regarding approval of the Arizona program for further discussions. By letter dated September 23, 2002, the SHPO withdrew these issues for consideration and informed EPA that it was working with ADEQ to coordinate its activities in the protection of Arizona's cultural resources. On October 18, 2002, the SHPO and ADEQ entered into a Memorandum of Understanding (MOU) assuring the SHPO that it would receive notices of certain proposed permit actions. This MOU further provides for coordination between ADEQ and the SHPO to resolve any identified issues to ensure that AZPDES permits will comply with Arizona water quality standards and Arizona laws protecting historic properties. For those permits with the potential to adversely affect historic properties, ADEQ and the SHPO agreed to seek ways to avoid, minimize or mitigate any adverse effects to historic properties stemming from the proposed permit. EPA believes that the agreement between ADEQ and the SHPO is consistent with EPA's determination that approval of the State permitting program would have no effect on historic properties.

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 if the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed AZPDES 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.

E. Notice of Decision

I hereby provide public notice that EPA has taken final action authorizing Arizona to implement the NPDES program in all areas of the State except for Indian Country.

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 5, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02-32907 Filed 12-27-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7432-1]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and Solicitation of Requests for a Public Hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the National Primary Drinking Water Regulations Implementation that the Commonwealth of Pennsylvania is revising its approved Public Water System Supervision Program. Pennsylvania has adopted an Interim Enhanced Surface Water Treatment Rule (IESWTR) to improve control of microbial pathogens in drinking water, including specifically the protozoan *Cryptosporidium*, and a Stage 1 Disinfectants/Disinfection Byproducts Rule (DBPR), setting new requirements to limit the formation of chemical disinfection byproducts in drinking water. EPA has determined that these revisions are no less stringent than the corresponding Federal

regulations outside of two minor omissions to their regulations. The two items concern turbidity monitoring reporting requirements under IESWTR for systems that use alternative filtration technologies and selection of disinfection byproduct monitoring locations under the DBPR for surface water systems serving at least 10,000 people. These omissions are being addressed through an EPA/Pennsylvania Department of Environmental Protection signed letter agreement that includes required interim actions to cover the deficiencies and a schedule for correcting the deficiencies. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by January 29, 2003. This determination shall become effective on January 30, 2003 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.
- Pennsylvania Department of Environmental Protection, Bureau of Water Supply and Wastewater Management, 11th Floor Rachael Carson State Office Building Harrisburg, 400 Market Street, Harrisburg, PA 17105-8467.

FOR FURTHER INFORMATION CONTACT: Jason Gambatese, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814-5759 or fax (215) 814-2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional

Administrator. However, if a substantial request for a public hearing is made by January 29, 2003, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: December 11, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02-32898 Filed 12-27-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1446-DR]

Guam; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Territory of Guam, (FEMA-1446-DR), dated December 8, 2002, and related determinations.

EFFECTIVE DATE: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Territory of Guam is hereby amended to include Individual Assistance for The Territory of Guam determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 2002:

The Territory of Guam for Individual Assistance (already designated for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program, including direct Federal assistance at 75 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537,