demonstration SIP uses November 15, 2007 as the ozone attainment date. The chosen 2007 attainment date reflects the statutory attainment date for the HGA area, as the DFW area is downwind of the HGA area and is affected by transport from HGA.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Attainment, Hydrocarbons, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 4, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–1346 Filed 1–17–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL–6933–3]

Water Pollution Control; Program Modification Application by South Dakota To Administer the Sludge Management (Biosolids) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; second notice of application and public comment period.

SUMMARY: The State of South Dakota has submitted an application to EPA to revise the existing South Dakota Pollutant Discharge Elimination System (SDPDES) program to include administration and enforcement of the sludge management (biosolids) program. According to the State's proposal dated March 23, 1998, this program would be administered by the South Dakota Department of Environment and Natural Resources (SDDENR).

The application was described in a **Federal Register** notice dated October 5, 2000 (65 FR 59385) and in notices published in the Rapid City Journal and the Sioux Falls Argus-Leader on October 20, 2000. Notices were mailed to persons known to be interested in such matters, including all persons on appropriate State and EPA mailing lists and all permit holders and applicants within the State. There were no comments received during the public comment period. The **Federal Register** notice provided for a 45–day comment period but did not state that a public hearing could be requested and would be considered by EPA. Therefore, EPA is extending the public comment period.

The application from South Dakota is complete and is available for inspection and copying. EPA has reviewed the State's request for delegation for completeness and adequacy and has found that the proposal meets Federal equivalency regulations.

DATES: Comments on this proposed rule received on or before March 5, 2001 will be considered before issuing a final rule. Comments postmarked after this date may not be considered.

ADDRESSES: You can view and copy South Dakota's application for modification from 8:00 a.m. until 5:00 p.m. Monday through Friday, excluding holidays, at the South Dakota Department of Environment and Natural Resources; Joe Foss Building, Pierre, South Dakota or at the EPA Regional Office at 999 18th Street, Denver, Colorado. Requests for copies should be addressed to Kelli Buscher, South Dakota Department of Environment and Natural Resources at the above address or at telephone number 605–773–3351. (There will be a $15 charge for copies.) Electronic comments are encouraged and should be submitted to brobst.bob@epa.gov or send written comments to Robert Brobst, U.S. EPA/8P–WP, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Robert Brobst at the above address by phone at (303) 312–6129, or by e-mail at *brobst.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 405 of the Clean Water Act (CWA), 33 U.S.C. Section 1345, created the sludge management program, allowing EPA to issue permits for the disposal of sewage sludge under conditions required by the CWA. Section 405(c) of the CWA provides that a state may submit an

application to EPA for administering its own program for issuing sewage sludge permits 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) of the CWA or the EPA regulations implementing those sections.

South Dakota's application for 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, amendments to the SDPDES Program Description, and amendments to the SDDENR/EPA Memorandum of Agreement (MOA) executed by the Regional Administrator, Region 8, EPA, and the Secretary, Department of Environment and Natural Resources.

The State of South Dakota has existing environmental self-evaluation laws and rules. These provide evidentiary privilege and limited immunity for certain disclosures made in an environmental self-evaluation. SDCL section 1–40–35 provides that no privilege or immunity exists for information required to be collected, developed, maintained, or reported to the department according to State law, rule, regulation, or permit.

South Dakota has incorporated Federal sludge management regulations by reference into its State rules. These rules require record keeping and reporting for certain technical monitoring and assessment, management practices, and certain certifications of compliance. Because these requirements and any requirement in sludge permits would be excluded from the self-evaluation privilege, EPA believes that South Dakota has the authority necessary to administer the sludge management program to assure protection of public health and the environment, and invites comment on this issue.

EPA discussed the SDDENR program application with the South Dakota Office of the U.S. Fish and Wildlife Service and received their concurrence dated June 29, 2000 stating that the proposed program authorization was unlikely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species.

By Letter dated October 20, 1999, EPA discussed the program application with the South Dakota State Historic Preservation Officer and received concurrence by letter dated November 5, 1999. The State Historic Preservation Officer determined that no historic properties would be affected by the addition of the biosolids program.

What are biosolids? Biosolids are, in effect, a slow release nitrogen fertilizer with low concentrations of other plant nutrients. In addition to significant amounts of nitrogen, biosolids also contain phosphorus, potassium, and essential micronutrients such as zinc and iron. Many western soils are deficient in micronutrients. Biosolids are rich in organic matter that can improve soil quality by improving water holding capacity, soil structure and air and water transport. Proper use of biosolids can ultimately decrease topsoil erosion. When applied at agronomic rates (the rates at which plants require nitrogen during a defined growth period), biosolids provide an economic benefit in addition to their environmental benefits.

How do biosolids differ from sewage sludge? Most simply, biosolids is the new name for what had previously been referred to as sewage sludge. Biosolids are primarily treated organic solids at wastewater treatment plants—with the emphasis on the word treated—that are suitable for recycling as a soil amendment. Sewage sludge now refers to untreated primary and secondary organic solids. This differentiates biosolids that have received stabilization treatment at a municipal wastewater treatment plant from other types of existing sludge (such as oil and gas field wastes) that cannot be beneficially recycled as soil amendments.

What are the traditional practices in this region? Until 25 years ago, the traditional practice in this Region was to landfill or incinerate what was then called sewage sludge. During the past quarter century the practice changed to recycling biosolids as soil amendments. States in Region 8 recycle 85% of the biosolids generated in the six state Region.

What Are the Federal Requirements?

The EPA in 1993 set forth requirements for management of all biosolids generated during the process of treating municipal wastewater, commonly called the 503 rule. The 503 rule encourages the beneficial reuse of biosolids, and establishes strict standards under which wastewater residuals can be beneficially recycled as soil amendments. The EPA believes that biosolids are an important resource that can and should be safely recycled. The 503 rule is designed to protect public health and the environment. Most of the requirements were based on the results of extensive multimedia risk assessment and on more that 25 years of independent research. The 503 rule establishes standards for pathogen destruction and for levels of metals that can be present in biosolids. It also governs the agricultural practices, site restrictions, and crop harvesting restrictions and the stability of the materials by reducing the attraction of disease vectors (such as flies).

Indian Country

South Dakota is not authorized to carry out its Biosolids program in Indian Country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian reservations located within the State of South Dakota:

A. Cheyenne River Indian Reservation,
B. Crow Creek Indian Reservation,
C. Flandreau Indian Reservation,
D. Lower Brule Indian Reservation,
E. Pine Ridge Indian Reservation,
F. Rosebud Indian Reservation,
G. Standing Rock Indian Reservation, and
H. Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and the extent of Indian Country within the State of South Dakota. In a forthcoming **Federal Register** notice, EPA will respond to the comments that have been received and more specifically identify Indian Country areas in the State of South Dakota.

Public Notice 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 8 and postmarked within 45 days of this notice will be considered by EPA before it takes final action on South Dakota's request for program modification approval. All written comments and questions regarding the sludge management program should be addressed to Robert Brobst at the above address. The public is also encouraged to notify anyone who may be interested in this matter. A public hearing may be requested. A public hearing will be held if response to this notice indicates significant public interest.

EPA's Decision

EPA will consider and respond to all significant comments received before taking final action on South Dakota's request for Sludge program approval. If no substantial comments are received,

EPA will approve South Dakota's sludge management program. 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 South Dakota program modifications are approved, EPA will so notify the State and anyone who has submitted significant comments. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of federal NPDES sludge management permits in South Dakota (except, as discussed above, for those dischargers in ''Indian Country''). 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 SDNPDES permits proposed by South Dakota and to take enforcement actions for violations, as allowed by the CWA.

If EPA disapproves South Dakota's sludge management program, EPA will notify the State and anyone who submitted significant comments of the reasons for disapproval and of any revisions or modifications to the State program that are necessary to obtain approval.

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 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 an 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 FRA, the Agency would certify that approval of the State proposed SDPDES 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 obligation upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this 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 WPA 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. South Dakota's request for approval of its budget management program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its sludge 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 sludge 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 sludge 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 sludge management facilities that will become subject to the requirements of an approved State sludge management program. However, small governments that own and/or operate sludge 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 sludge management program and any revisions to that program, these same small governments will be able to own and operate their sludge 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: January 4, 2001.

William P. Yellowtail,

Regional Administrator, Region 8.

[FR Doc. 01–1347 Filed 1–17–01; 8:45 am]

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