

## Environmental Protection Agency

## § 239.10

operators in developing that information;

(3) Produce evidence admissible in an enforcement proceeding; and

(4) Receive and ensure proper consideration of information submitted by the public.

### § 239.8 Requirements for enforcement authority.

Any state seeking approval must have the authority to impose the following remedies for violation of state program requirements:

(a) To restrain immediately and effectively any person by administrative or court order or by suit in a court of competent jurisdiction from engaging in any activity which may endanger or cause damage to human health or the environment.

(b) To sue in a court of competent jurisdiction to enjoin any threatened or continuing activity which violates any statute, regulation, order, or permit which is part of or issued pursuant to the state program.

(c) To sue in a court of competent jurisdiction to recover civil penalties for violations of a statute or regulation which is part of the state program or of an order or permit which is issued pursuant to the state program.

### § 239.9 Intervention in civil enforcement proceedings.

Any state seeking approval must provide for intervention in the state civil enforcement process by providing either:

(a) Authority that allows intervention, as a right, in any civil action to obtain remedies specified in § 239.8 by any citizen having an interest that is or may be adversely affected; or,

(b) Assurance by the appropriate state agency that:

(1) It will provide notice and opportunity for public involvement in all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment); and,

(2) It will investigate and provide responses to citizen complaints about violations; and,

(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

## Subpart D—Adequacy Determination Procedures

### § 239.10 Criteria and procedures for making adequacy determinations.

(a) The State Director seeking an adequacy determination must submit to the appropriate Regional Administrator an application in accordance with § 239.3.

(b) Within 30 days of receipt of a state program application, the Regional Administrator will review the application and notify the state whether its application is administratively complete in accordance with the application components required in § 239.3. The 180-day review period for final determination of adequacy, described in paragraph (d) of this section, begins when the Regional Administrator deems a state application to be administratively complete.

(c) After receipt and review of a complete application, the Regional Administrator will make a tentative determination on the adequacy of the state program. The Regional Administrator shall publish the tentative determination on the adequacy of the state program in the FEDERAL REGISTER. Notice of the tentative determination must:

(1) Specify the Regional Administrator's tentative determination;

(2) Afford the public at least 30 days after the notice to comment on the state application and the Regional Administrator's tentative determination;

(3) Include a specific statement of the areas of concern, if the Regional Administrator indicates the state program may not be adequate;

(4) Note the availability for inspection by the public of the state permit program application; and

(5) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period. The Regional Administrator may determine when such a hearing is necessary to clarify issues involved in the tentative adequacy determination. If held, the public hearing will be scheduled at least 45 days from public

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notice of such hearing. The public comment period may be continued after the hearing at the discretion of the Regional Administrator.

(d) Within 180 days of determining that a state program application is administratively complete, the Regional Administrator will make a final determination of adequacy after review and consideration of all public comments, unless the Regional Administrator, after consultation with the State Director, agrees to extend the review period. The Regional Administrator will give notice of the final determination in the FEDERAL REGISTER. The document must include a statement of the reasons for the determination and a response to significant comments received.

(e) For all states that do not submit an application, the Administrator or Regional Administrator may issue a final determination of inadequacy in the FEDERAL REGISTER declaring those state permit programs inadequate to ensure compliance with the relevant Subtitle D federal revised criteria. Such states may apply later for a determination of adequacy.

**§ 239.11 Approval procedures for partial approval.**

(a) EPA may partially approve state permit programs that do not meet all of the requirements in § 239.6(e)(3) (i.e., do not incorporate all of the relevant Subtitle D federal revised criteria). Such permit programs may be partially approved if:

(1) The appropriate Regional Administrator determines that the state's permit program largely meets the technical requirements of § 239.6 and meets all other requirements of this part;

(2) Changes to a specific part(s) of the state permit program are required in order for the state program to fully meet the requirements of § 239.6; and

(3) Provisions not included in the partially approved portions of the state permit program are clearly identifiable and separable subsets of the relevant Subtitle D federal revised criteria.

(b) A state applying for partial approval must include in its application a schedule to revise the necessary laws, regulations, and/or guidance to obtain

full approval within two years of final approval of the partial permit program. The Regional Administrator and the State Director must agree to the schedule.

(c) The application for partial approval must fully meet the requirements of subparts B and C of this part.

(d) States with partially approved permit programs are only approved for those relevant provisions of the Subtitle D criteria included in the partial approval.

(e) Any partial approval adequacy determination made by the Regional Administrator pursuant to this section and § 239.10 shall expire two years from the effective date of the final partial program adequacy determination unless the Regional Administrator grants an extension. States seeking an extension must submit a request to the appropriate Regional Administrator, must provide good cause for missing the deadline, and must supply a new schedule to revise necessary laws, regulations, and/or guidance to obtain full approval. The appropriate Regional Administrator will decide if there is good cause and if the new schedule is realistic. If the Regional Administrator extends the expiration date, the Region will publish a document in the FEDERAL REGISTER along with the new expiration date. A state with partial approval shall submit an amended application meeting all of the requirements of this part and have that application approved by the two-year deadline or the amended date set by the Regional Administrator.

(f) The Regional Administrator will follow the adequacy determination procedures in § 239.10 for all initial applications for partial program approval and follow the adequacy determination procedures in § 239.12(f) for any amendments for approval for unapproved sections of the relevant Subtitle D federal revised criteria.

**§ 239.12 Modifications of state programs.**

(a) Approved state permit programs may be modified for various reasons, such as changes in federal or state statutory or regulatory authority.

(b) If the federal statutory or regulatory authorities that have significant