

§ 239.8

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,

40 CFR Ch. I (7-1-04 Edition)

(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