

Environmental Protection Agency

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and in enough of the largest newspapers in the State to attract statewide attention, and shall mail notice 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. The notice shall:

- (1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;
- (2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the FEDERAL REGISTER;
- (3) Indicate the cost of obtaining a copy of the State's submission;
- (4) Indicate where and when the State's submission may be reviewed by the public;
- (5) Indicate whom an interested member of the public should contact with any questions; and
- (6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(b) Within 90 days of the receipt of a complete program submission under § 123.21 the Administrator shall approve or disapprove the program based on the requirements of this part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(c) If the Administrator approves the State's program he or she shall notify the State and publish notice in the FEDERAL REGISTER. The Regional Administrator shall suspend the issuance of permits by EPA as of the date of program approval.

(d) If the Administrator disapproves the State program he or she shall notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985]

§ 123.62 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities. Grounds for program revision include cases where a State's existing approved program includes authority to issue NPDES permits for activities on a Federal Indian reservation and an Indian Tribe has subsequently been approved for assumption of the NPDES program under 40 CFR part 123 extending to those lands.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator will approve or disapprove program revisions based on the requirements of this part (or, in the case of a sewage sludge management program, 40 CFR part 501) and of the CWA.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the FEDERAL REGISTER. Notice of approval of non-substantial program revisions may be given by a letter from the

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Administrator to the State Governor or his designee.

(c) States with approved programs must notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and must identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under §123.22(b) (or, in the case of a sewage sludge management program, §501.12(b) of this chapter) must be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) *State NPDES programs only.* All new programs must comply with these regulations immediately upon approval. Any approved State section 402 permit program which requires revision to conform to this part shall be so revised within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within 2 years, except that revision of State programs to implement the requirements of 40 CFR part 403 (pretreatment) shall be accomplished as provided in 40 CFR 403.10. In addition, approved States shall submit, within 6 months, copies of their permit forms for EPA review and approval. Approved States shall also assure that permit applicants, other than POTWs, submit, as part of their application, the information required under §§124.4(d) and 122.21 (g) or (h), as appropriate.

(f) Revision of a State program by a Great Lakes State or Tribe (as defined in 40 CFR 132.2) to conform to section 118 of the CWA and 40 CFR part 132

shall be accomplished pursuant to 40 CFR part 132.

[48 FR 14178, Apr. 1, 1983, as amended at 49 FR 31842, Aug. 8, 1984; 50 FR 6941, Feb. 19, 1985; 53 FR 33007, Sept. 6, 1988; 58 FR 67983, Dec. 22, 1993; 60 FR 15386, Mar. 23, 1995; 63 FR 45123, Aug. 24, 1998]

§ 123.63 Criteria for withdrawal of State programs.

(a) In the case of a sewage sludge management program, references in this section to "this part" will be deemed to refer to 40 CFR part 501. The Administrator may withdraw program approval when a State program no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

(1) Where the State's legal authority no longer meets the requirements of this part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) Where the operation of the State program fails to comply with the requirements of this part, including:

(i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this part; or

(iii) Failure to comply with the public participation requirements of this part.

(3) Where the State's enforcement program fails to comply with the requirements of this part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) Where the State program fails to comply with the terms of the Memorandum of Agreement required under §123.24 (or, in the case of a sewage sludge management program, §501.14 of this chapter).