

## § 239.5

## 40 CFR Ch. I (7–1–11 Edition)

the permit program and description of the coordination and communication responsibilities of the lead state agency to facilitate communications between EPA and the state if more than one state agency has implementation responsibilities;

(b) An explanation of how the state will ensure that existing and new facilities are permitted or otherwise approved and in compliance with the relevant Subtitle D federal revised criteria;

(c) A demonstration that the state meets the requirements in §§ 239.6, 239.7, 239.8, and 239.9;

(d) The number of facilities within the state's jurisdiction that received waste on or after the following dates:

(1) For municipal solid waste landfill units, October 9, 1991.

(2) For non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste, January 1, 1998.

(e) A discussion of staff resources available to carry out and enforce the relevant state permit program.

(f) A description of the state's public participation procedures as specified in § 239.6(a) through (c).

### § 239.5 State legal certification.

(a) A state must submit a written certification from the state Attorney General that the laws, regulations, and any applicable guidance cited in the application are enacted at the time the certification is signed and are fully effective when the state permit program is approved. This certification may be signed by the independent legal counsel for the state rather than the Attorney General, provided that such counsel has full authority to independently represent the lead state agency in court on all matters pertaining to the state program.

(b) If guidance is to be used to supplement statutes and regulations, the state legal certification must discuss that the state has the authority to use guidance to develop enforceable permits which will ensure compliance with relevant standards issued pursuant to RCRA section 4010(c) and that the guidance was duly issued in accordance with state law.

(c) If any laws, regulations, or guidance are not enacted or fully effective when the legal certification is signed, the certification should specify what portion(s) of laws, regulations, or guidance are not yet enacted or fully effective and when they are expected to be enacted or fully effective.

The Agency may make a tentative determination of adequacy using this legal certification. The state must submit a revised legal certification meeting the requirements of paragraph (a) of this section and, if appropriate, paragraph (b) of this section along with all the applicable fully enacted and effective statutes, regulations, or guidance, prior to the Agency making a final determination of adequacy. If the statutes, regulations or guidance originally submitted under § 239.3(d) and certified to under this section are modified in a significant way, the Regional Administrator will publish a new tentative determination to ensure adequate public participation.

### Subpart C—Requirements for Adequate Permit Programs

#### § 239.6 Permitting requirements.

(a) State law must require that:

(1) Documents for permit determinations are made available for public review and comment; and

(2) Final determinations on permit applications are made known to the public.

(b) The state shall have procedures that ensure that public comments on permit determinations are considered.

(c) The state must fully describe its public participation procedures for permit issuance and post-permit actions in the narrative description required under § 239.4 and include a copy of these procedures in its permit program application.

(d) The state shall have the authority to collect all information necessary to issue permits that are adequate to ensure compliance with the relevant 40 CFR part 257, subpart B or 40 CFR part 258 federal revised criteria.

(e) For municipal solid waste landfill units, state law must require that:

(1) Prior to construction and operation, all new municipal solid waste

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landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section;

(2) All existing municipal solid waste landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section by the deadlines identified in 40 CFR 258.1;

(3) The state shall have the authority to impose requirements for municipal solid waste landfill units adequate to ensure compliance with 40 CFR part 258. These requirements shall include:

(i) General standards which achieve compliance with 40 CFR part 258, subpart A;

(ii) Location restrictions for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart B;

(iii) Operating criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart C;

(iv) Design criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart D;

(v) Ground-water monitoring and corrective action standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart E;

(vi) Closure and post-closure care standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart F; and

(vii) Financial assurance standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart G.

(f) For non-municipal, non-hazardous waste disposal units that receive CESQG waste, state law must require that:

(1) Prior to construction and operation, all new non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste shall have a permit incorporating the conditions identified in paragraph (f)(3) of this section;

(2) All existing non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste shall have a permit incorporating the conditions identified in paragraph (f)(3) of

this section by the deadlines identified in 40 CFR 257.5;

(3) The state shall have the authority to impose requirements for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste adequate to ensure compliance with 40 CFR part 257, subpart B. These requirements shall include:

(i) General standards which achieve compliance with 40 CFR part 257, subpart B (§257.5);

(ii) Location restrictions for non-municipal, non-hazardous waste disposal units which achieve compliance with 40 CFR 257.7 through 257.13;

(iii) Ground-water monitoring and corrective action standards for non-municipal, non-hazardous waste disposal units which achieve compliance with 40 CFR 257.21 through 257.28; and,

(iv) Recordkeeping for non-municipal, non-hazardous waste disposal units which achieves compliance with 40 CFR 257.30.

### **§ 239.7 Requirements for compliance monitoring authority.**

(a) The state must have the authority to:

(1) Obtain any and all information necessary, including records and reports, from an owner or operator of a Subtitle D regulated facility, to determine whether the owner or operator is in compliance with the state requirements;

(2) Conduct monitoring or testing to ensure that owners and operators are in compliance with the state requirements; and

(3) Enter any site or premise subject to the permit program or in which records relevant to the operation of Subtitle D regulated facilities or activities are kept.

(b) A state must demonstrate that its compliance monitoring program provides for inspections adequate to determine compliance with the approved state permit program.

(c) A state must demonstrate that its compliance monitoring program provides mechanisms or processes to:

(1) Verify the accuracy of information submitted by owners or operators of Subtitle D regulated facilities;

(2) Verify the adequacy of methods (including sampling) used by owners or