

§ 123.63

40 CFR Ch. I (7-1-13 Edition)

(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 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 At-

torney 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

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(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).

(5) Where the State fails to develop an adequate regulatory program for developing water quality-based effluent limits in NPDES permits.

(6) Where a Great Lakes State or Tribe (as defined in 40 CFR 132.2) fails to adequately incorporate the NPDES permitting implementation procedures promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132 into individual permits.

(b) [Reserved]

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985, as amended at 54 FR 23897, June 2, 1989; 60 FR 15386, Mar. 23, 1995; 63 FR 45123, Aug. 24, 1998]

### § 123.64 Procedures for withdrawal of State programs.

(a) A State with a program approved under this part (or, in the case of a sewage sludge management program, 40 CFR part 501) may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other man-

ner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program.

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this part as set forth in §123.63 (or, in the case of a sewage sludge management program, §501.33 of this chapter). The Administrator will respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph will fix a time and place for the commencement of the hearing and will specify the allegations against the State which are to be considered at the hearing. Within 30 days the State must admit or deny these allegations in a written answer. The party seeking