

## Environmental Protection Agency

## § 239.4

*Guidance* means policy memorandum, an application for approval under this Part, or other technical or policy documents that supplement state laws and regulations. These documents provide direction with regard to how state agencies should interpret their permit program requirements and must be consistent with state laws and regulations.

*Implementing agency* means the state and/or local agency(ies) responsible for carrying out an approved state permit program.

*Lead state agency* means the state agency which has the legal authority and oversight responsibilities to implement the permit program or other system of prior approval and conditions to ensure that facilities regulated under section 4010(c) of Subtitle D of RCRA comply with the requirements of the approved state permit program and/or has been designated as lead agency.

*Permit or prior approval and conditions* means any authorization, license, or equivalent control document issued under the authority of the state regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

*Permit documents* means permit applications, draft and final permits, or other documents that include applicable design and management conditions in accordance with the Subtitle D federal revised criteria, found at 40 CFR part 257, subpart B and 40 CFR part 258, and the technical and administrative information used to explain the basis of permit conditions.

*Regional Administrator* means any one of the ten Regional Administrators of the U.S. Environmental Protection Agency or any authorized representative.

*State Director* means the chief administrative officer of the lead state agency responsible for implementing the state permit program for Subtitle D regulated facilities.

*State program or permit program* means all the authorities, activities, and procedures that comprise the state's system of prior approval and conditions for regulating the location, design, operation, ground-water monitoring, clo-

sure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

*Subtitle D regulated facilities* means all solid waste disposal facilities subject to the revised criteria promulgated by EPA under the authority of RCRA Section 4010(c).

(c) The definitions in 40 CFR part 257, subpart B and 40 CFR part 258 apply to all subparts of this part.

### Subpart B—State Program Application

#### § 239.3 Components of program application.

Any state that seeks a determination of adequacy under this part must submit an application to the Regional Administrator in the appropriate EPA Region. The application must identify the scope of the program for which the state is seeking approval (i.e., which class of Subtitle D regulated facilities are covered by the application). The application also must demonstrate that the state's authorities and procedures are adequate to ensure compliance with the relevant Subtitle D federal revised criteria and that its permit program is uniformly applicable to all the relevant Subtitle D regulated facilities within the state's jurisdiction. The application must contain the following parts:

(a) A transmittal letter, signed by the State Director, requesting program approval. If more than one state agency has implementation responsibilities, the transmittal letter must designate a lead agency and be jointly signed by all state agencies with implementation responsibilities or by the State Governor;

(b) A narrative description of the state permit program in accordance with § 239.4;

(c) A legal certification in accordance with § 239.5;

(d) Copies of all applicable state statutes, regulations, and guidance.

#### § 239.4 Narrative description of state permit program.

The description of a state's program must include:

(a) An explanation of the jurisdiction and responsibilities of all state agencies and local agencies implementing

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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.

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(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