

§ 145.25 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). When existing permits are transferred from EPA to State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

NOTE: For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and en-

forcement of the approved program. State reports may be combined with grant reports where appropriate.

(4) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(5) When appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs. See § 124.4.

(6) Provisions for modification of the Memorandum of Agreement in accordance with this part.

(c) The Memorandum of Agreement, the annual program and grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

NOTE: Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.

Subpart D—Program Approval, Revision and Withdrawal

§ 145.31 Approval process.

(a) Prior to submitting an application to the Administrator for approval of a State UIC program, the State shall issue public notice of its intent to adopt a UIC program and to seek program approval from EPA. This public notice shall:

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(1) Be circulated in a manner calculated to attract the attention of interested persons. Circulation of the public notice shall include publication in enough of the largest newspapers in the State to attract Statewide attention and mailing to persons on appropriate State mailing lists and to any other persons whom the agency has reason to believe are interested;

(2) Indicate when and where the State's proposed program submission may be reviewed by the public;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which interested persons may comment on the proposed UIC program;

(5) Schedule a public hearing on the State program for no less than 30 days after notice of the hearing is published;

(6) Briefly outline the fundamental aspects of the State UIC program; and

(7) Identify a person that an interested member of the public may contact for further information.

(b) After complying with the requirements of paragraph (a) of this section any State may submit a proposed UIC program under section 1422 of SDWA and §145.22 of this part to EPA for approval. Such a submission shall include a showing of compliance with paragraph (a) of this section; copies of all written comments received by the State; a transcript, recording or summary of any public hearing which was held by the State; and a responsiveness summary which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and responds to these comments. A copy of the responsiveness summary shall be sent to those who testified at the hearing, and others upon request.

(c) After determining that a State's submission for UIC program approval is complete the Administrator shall issue public notice of the submission in the FEDERAL REGISTER and in accordance with paragraph (a)(1) of this section. Such notice shall:

(1) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the hearing. The notice may require persons wishing to present

testimony to file a request with the Regional Administrator, who may cancel the public hearing if sufficient public interest in a hearing is not expressed;

(2) Afford the public 30 days after the notice to comment on the State's submission; and

(3) Note the availability of the State submission for inspection and copying by the public.

(d) The Administrator shall approve State programs which conform to the applicable requirements of this part.

(e) Within 90 days of the receipt of a complete submission (as provided in §145.22) or material amendment thereto, the Administrator shall by rule either fully approve, disapprove, or approve in part the State's UIC program taking into account any comments submitted. The Administrator shall give notice of this rule in the FEDERAL REGISTER and in accordance with paragraph (a)(1) of this section. If the Administrator determines not to approve the State program or to approve it only in part, the notice shall include a concise statement of the reasons for this determination. 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. The responsiveness summary shall be sent to those who testified at the public hearing, and to others upon request.

§ 145.32 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.

(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