

40 C.F.R. § 233.53

Withdrawal of program approval.

(a) A State with a program approved under this part may voluntarily transfer program responsibilities required by Federal law to the Secretary by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

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

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

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of transfer in the Federal Register and in a sufficient number 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, Corps and State mailing lists.

(b) 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) When 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) When 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) 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) When 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 to
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implement alternative enforcement methods approved by the Administrator; or

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

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under S 233.13.

(c) 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 the Administrator's 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 subsection (b) of this section. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal review 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 shall fix a time and place for the commencement of the hearing, shall specify the allegations against the State which are to be considered at the hearing, and shall be published in the Federal Register. Within 30 days after publication of the Administrator's order in the Federal Register, the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

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