



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 8 0 1979

11-79-3

OFFICE OF ENFORCEMENT

MEMORANDUM

TO: Regional Enforcement Division Directors

FROM: Deputy Assistant Administrator for Water Enforcement (EN-335)

SUBJECT: EPA Procedures for Review and Approval of State Pretreatment Program Submissions

We have already reached the March 27, 1979, deadline for receipt of State applications for pretreatment program approval. Applications have been received from several States. Other States, and several Regional Offices, have asked for greater flexibility in the procedures for approving or denying applications for program approval. In response to these requests, we have been working with several Regional Offices to develop more flexible procedures. Problem areas have recently been resolved and the form of these new procedures was settled upon. We would like you to be aware that §403.11 of the general pretreatment regulations is going to be amended in the near future to incorporate these new procedures (see attached draft amendments) and to conform the pretreatment regulations to the final NPDES regulations. The process for review, public notice and approval of State pretreatment programs will be different. The new procedural responsibilities should be divided between Headquarters and the Regions as indicated below.

In general, EPA should make a determination on the request for State pretreatment program approval within 90 days after the receipt of a complete submission; however, there will be no specific deadline for EPA action. Upon the receipt of a complete submission, the Regional Office should contact EPA Headquarters and issue a public notice of the request for State pretreatment program approval. This public notice should provide for a comment period of not less than 30 days and should also provide an opportunity for a hearing. Publication of the notice need only appear in enough of the largest newspapers in the State to provide statewide coverage. The Region is responsible for issuing the public notice, receiving and analyzing comments on the State submission, and holding a public hearing, where appropriate. Whenever a hearing is going to be held, Headquarters should be informed and sent a copy of the notice of the hearing. Based on the State's submission and comments received the Regional Administrator will make a recommendation in an

Action Memorandum to the Administrator, on whether to approve or not approve the State program. The Office of Enforcement will be responsible for processing the package at Headquarters, and concurring or non-concurring with the Regional Administrator's recommendations. Office of General Counsel also has a concurrence role. The final decision will be made by the Administrator.

Since we would like to process these submissions in 90 days, it is desirable to track the program approval process as closely as possible to ensure that actions are completed on schedule. We are requesting the Regional Offices keep the Permits Division at Headquarters notified of key developments in the program approval process. EPA can thereby maintain an accurate estimate of the progress of the implementation of the program nationwide.

Therefore, we would request that the Regional Offices notify Headquarters of the progress of the State pretreatment program approval process as set out below.

Processing the State Submission. Upon receipt of an application for State pretreatment program approval, the Regional Office should send a copy of the State's submission to the Permits Division at Headquarters for the attention of Bill Diamond and notify him by telephone at 755-0750 (FTS). In forwarding this submission, the Region should indicate the date it was received at the Regional Office.

If the submission is subsequently determined to be sufficient under §403.10, you should proceed to public notice and notify the Permits Division. If the submission is not complete, the State should be notified of the deficiencies by a letter from the Regional Administrator. In case of any doubt as to the completeness of the submission, please consult with this office. In order to be deemed complete, the package must contain all the elements required by §403.10. Any statutory or regulatory authority the State needs to implement pretreatment requirements must be fully promulgated before the submission can be approved. We cannot conditionally approve a program which lacks the required legal authority.

Work on the Regional Administrator's Action Memorandum should begin during the comment period. Likewise, negotiations on amendments to the State/EPA Memorandum of Agreement, if any, should be conducted during this time.

Action Memo Setting Forth Recommendation on State Program Requests. Within 65 days from the receipt of a submission meeting the requirements of the pretreatment regulations, the Regional Administrator should submit a recommendation in an Action Memorandum to the Administrator, on

whether the State pretreatment program should be approved. A copy of this Action Memorandum should be forwarded to the Permits Division at the same time. My staff will provide you with a sample Action Memorandum upon request.

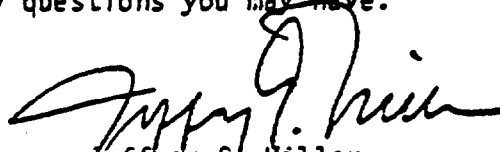
The Action Memorandum should include the following attachments:

1. A copy of the public notice published in the Federal Register and circulated by mail and in the news media.
2. If a hearing is held, a copy of the notice of a public hearing on the State submission.
3. Copies of all comments received or a summary of these comments. The Action Memorandum should discuss significant issues that are raised and respond to them.
4. An analysis by the Regional Counsel, or an attorney in the Enforcement Division, on the adequacy of the legal authority of the State to implement the requirements of 40 CFR Part 403.
5. Three originally signed copies of any amendments to the State/EPA Memorandum of Agreement. Such amendments will be signed by the Administrator when the State program is approved.
6. Such other documentation deemed appropriate by the Region, for example, a memorandum analyzing the adequacy of State resources.

Upon receipt of the Regional recommendation, the Office of Enforcement will process the Region's package and indicate concurrence or non-concurrence with the recommendation.

If a State fails to submit an application for pretreatment program approval within a reasonable time after the deadline, the Regional Office should notify Headquarters and should also contact the State and remind it of the need to submit an application.

Nancy Hutzel and David Schnapf in the Permits Division are available to assist you. They can be reached at 755-0750 (FTS). Please do not hesitate to call them with any questions you may have.



Jeffrey G. Miller

Attachment

cc: Permit Branch Chiefs, Regions I-X

§403.10 (amended)

\* \* \* \* \*

(g)

\* \* \*

(3) Any modifications or additions to the Memorandum of Agreement (required by 40 CFR §123.7) which may be necessary for EPA and the State to implement the requirements of this Part. <sup>6</sup>

\* \* \* \* \*

(i) §403.10 is amended by revising paragraph (h)(2) to read as follows:

§403.10 (amended)

\* \* \* \* \*

(h)

\* \* \*

(2) Commence the program revision process set out in 40 CFR §123.61. For purposes of that section all requests for approval of State pretreatment programs shall be deemed substantial program modifications. A comment period of at least 30 days and the opportunity for a hearing shall be afforded the public on all such proposed program revisions.

\* \* \* \* \*

(j) §403.10(i) is amended by substituting the words "this Part" for the words "paragraph (g) of this section" in both places they appear.

<sup>h</sup>  
(k) The reading of §403.11 is revised to read as follows:

403.11 Approval Procedures for POTW Pretreatment Programs and Revision  
of Categorical Pretreatment Standards.

f  
(j) §403.11 is amended by revising the first sentence to read as  
follows:

§403.11 (amended)

The following procedures shall be followed in approving or denying  
requests for POTW Pretreatment Program approval:

\* \* \* \* \*

(m) §403.11 is amended by deleting all references to §403.10(f) and (g).

(n) §403.11(a) is amended by changing the reference in two places from  
"403.9(e) and (f)" to "403.9(d) and (e)."

(o) §403.11(b)(1)(i) is amended by deleting from the first sentence  
the words "shall be published in the Federal Register in the case of a  
State Submission and"

"  
(p) §403.11(b)(1)(i)(A) deleted and subparagraphs (B) and (C) are  
redesignated to (A) and (B) respectively.

(q) §403.11<sup>1</sup> is amended by revising subparagraph (b)(1)(i)(B), (formerly  
(b)(1)(i)(C)), to read as follows:

§403.11 (amended)

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(3) Publication of a notice of request for approval of the Submission in the largest daily newspaper within the jurisdiction(s) served by the POW.

\* \* \* \* \*

(r) §403.11 is amended by substituting the words "30 days" wherever the words "45 day" appear.

(s) §403.11(b)(2)(ii) is amended by deleting the words "a State or".

(t) §403.11(e) is amended by deleting the words "or Director".

(d) If the Administrator approves the State's section 404 program he or she shall notify the State and the Secretary and publish notice in the Federal Register. The Secretary shall suspend the issuance of section 404 permits by the Corps of Engineers within the State, except for those waters specified in section 404(g)(1) of the Act as identified in the Memorandum of Agreement between the State and the Secretary (see §123.5(a)).

(e) If the Administrator denies the State program he or she shall notify the State of the reasons for the denial and of any revisions or modifications to the State program which are necessary to obtain approval.

#### Subpart G - Revisions to Approved Programs

##### §123.61 Procedure for revision of State programs.

(a) Program revision may be initiated at the request of either EPA or the State. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State Director 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 other documents as are necessary under the circumstances.

(2) If EPA determines that the proposed program modification(s) is substantial, the Agency shall issue public notice and provide at least 30 days for the public to comment. The public notice shall be mailed to interested parties and shall be published in enough of the largest newspapers in the State to attract statewide coverage. The public notice shall summarize the proposed modifications and provide for the opportunity to request a public hearing. A hearing will be held if there is significant public interest.

(3) The program modification shall become effective upon the approval of the Administrator. Notice of approval of substantial program modifications shall be published in the Federal Register. Non-substantial program modifications may be approved by a letter from the Agency.

(c) The State Director shall notify EPA whenever the State proposes to transfer all or part of any program from the approved State agency to any other agency, and shall 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. Organizational charts required under §123.4(b) shall be revised and resubmitted.

(d) If the Administrator has reason to believe that circumstances may have changed with respect to a State program, he or she may request, and the State shall provide a supplemental Attorney General's Statement, program description, other document or information as necessary.