

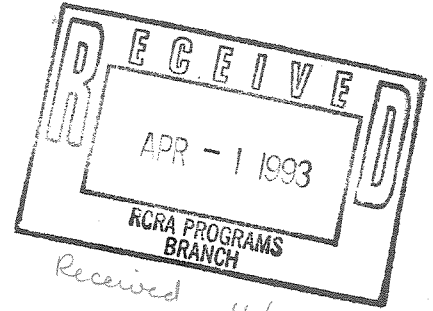
US EPA ARCHIVE DOCUMENT



**MICHAEL C. TURPEN  
ATTORNEY GENERAL**

STATE OF OKLAHOMA

STATE CAPITOL, OKLAHOMA CITY, OKLAHOMA 73105



January 20, 1984

Joan K. Leavitt, M.D.  
Commissioner of Health  
Oklahoma State Department of Health  
P.O. Box 53551  
Oklahoma City, Oklahoma 73152

Re: Statement and Memorandum of Law Concerning Authority  
for Final Authorization under 42 USC 6926 (b)

Dear Dr. Leavitt:

I hereby certify, pursuant to Section 3006(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended (42 USC 6901, et seq., "RCRA"), and 40 CFR 271, that in my opinion the laws of the State of Oklahoma provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Oklahoma State Department of Health ("OSDH"), and meet the applicable requirements of 40 CFR 271 Subparts A and B. The specific authorities provided, which are contained in lawfully enacted statutes or regulations which are in full force and effect, are described below. This also amends, recertifies and supplements the statements of this office, dated October 15, 1980 (concerning Phase I), dated August 30, 1982 (concerning Phase II, Components A and B) and dated March 7, 1983 (concerning Phase II, Component C).

Enabling legislation for this program is found in the Oklahoma Public Health Code (Title 63 of the Oklahoma Statutes). The hazardous waste portion is specifically contained in the Controlled Industrial Waste Disposal Act, 63 O.S. 1981, Sections 1-2001 et seq. (as amended 1982, hereinafter referred to as "the CIWDA"). Paragraph C of Section 1-2005 of the CIWDA specifically

provides, in part, that the "rules and regulations may incorporate by reference the hazardous waste regulations of the U.S. Environmental Protection Agency." The State Board of Health can adopt such EPA rules unless otherwise prohibited. The procedure is described at 75 O.S. 1981, § 251(b) and the Rules have been adopted in conformity with that procedure. Administrative regulations for this program are Rules and Regulations for Industrial Waste Management (herein referred to as "the Rules"). The CIWDA has not been amended since it was last certified by this office on March 7, 1983. The Rules were last amended on January 12, 1984 (effective February 6, 1984).

## I. IDENTIFICATION AND LISTING

A. State statutes and regulations define hazardous waste so as to control all the hazardous waste controlled under 40 CFR 261 as indicated in Checklist I A.

Section 1-2002(1) of the CIWDA defines controlled industrial waste. Rule 2.1 adopts 40 CFR 261 by reference. This also includes tank bottoms containing heavy metallic ions and infectious materials. Domestic sewage is excluded. Further, recyclable materials are controlled industrial wastes which are not discarded but are processed into a product of beneficial use.

B. State statutes and regulations contain a list of hazardous wastes and characteristics for identifying hazardous waste which encompass all wastes controlled under 40 CFR 261 as indicated in Checklist I B and C.

Section 1-2004.1 of the CIWDA authorizes rules and regulations "concerning the listing and characterization of controlled industrial waste...." The Department has jurisdiction over materials that may be controlled industrial waste until the Department determines whether or not such materials are toxic [§1-2002(1)].

## II. STANDARDS FOR GENERATORS

State statutes and regulations provide coverage of all the generators covered by 40 CFR 262 as indicated in Checklist II.

Chapter 3 of the Rules incorporates such by reference (see Rules 3.1, 3.11-15). Although the CIWDA does not define a generator, the definitions of person [§ 1-2002(6)], controlled industrial waste facility [§ 1-2002(12)] and storage facility [§ 1-2002(11)], manifest such intent in the duty of the Department of Health to inspect "controlled industrial waste facilities and

recycling, transporting and generating facilities to determine the extent to which the Department's rules and regulations are complied with;" [§ 1-2004(3)].

### III. STANDARDS FOR TRANSPORTERS

State statutes and regulations provide coverage of all the transporters covered by 40 CFR 263 as indicated in Checklist III.

Section 1-2005(A)(4) of the CIWDA provides that the regulations "shall not be more stringent than those of the U.S. Department of Transportation." Transporter standards are found in chapter 4 of the Rules.

### IV. STANDARDS FOR FACILITIES

A. State statutes and regulations provide permit standards for hazardous waste management facilities covered by 40 CFR 264 as indicated in Checklist IV A.

The CIWDA provides for such standards at §§ 1-2004 and 1-2005(A), while excluding radioactive waste [§ 1-2005(A)(1)] and oil and gas production wastes [§ 1-2005(A)(2)]. Specific rule authority is at § 1-2007.

B. State statutes and regulations provide for interim status and include interim status standards for hazardous waste management facilities covered by 40 CFR 265 as indicated in Checklist IV B. This is authorized by § 1-2009.1 of the CIWDA and specified in Rule 7.1.6.

1. State statutes and regulations authorize owners and operators of hazardous waste management facilities which would qualify for interim status under the federal program to remain in operation until a final decision is made on the permit application (§ 1-2009.1).

2. State law and regulations authorize continued operation of hazardous waste management facilities provided that owners and operators of such facilities comply with standards at least as stringent as EPA's interim status standards at 40 CFR 265 (§ 1-2009.1).

3. State law and regulations include requirements concerning changes in interim status at least as stringent as the requirements set forth at 40 CFR 270.72 (§§ 1-2005(c) and 1-2009.1; Rule 8.7.5.6.5).

C. Disposal is defined at CIWDA § 1-2002 and is all-inclusive because it disregards intent.

## V. REQUIREMENTS FOR PERMITS

State statutes and regulations provide requirements for permits as indicated in Checklist V.

The CIWDA provides for two permits - one for construction of a facility (§1-2006) and one for operation of a facility (§§ 1-2006 and 1-2008). Permitting procedures are contained in Chapter 8 of the Rules. Pursuant to 75 O.S. 1981, § 301, the permit process is not a rulemaking proceeding. The process authorizes two types of permit hearings - adjudicative hearings (CIWDA § 1-2006) and public meetings (CIWDA § 1-2006; Rule 8.8.2.2.4). The Department has the discretion to offer meetings upon request by anyone. Storage beyond 90 days requires a permit (Rules 3.15 and 3.17).

## VI. INSPECTIONS

State law provides authority for officers engaged in compliance evaluation activities to enter any conveyance, vehicle, facility or premises subject to regulation or in which records required for program operation are kept in order to inspect, monitor, or otherwise investigate compliance with the state program, including compliance with permit terms and conditions and other program requirements (§ 1-2004(3)).

The CIWDA at § 1-2004(3) authorizes such inspections to determine compliance with the Rules. Of course, if entry is refused, an administrative or criminal search warrant must be obtained prior to entry.

## VII. ENFORCEMENT REMEDIES

State statutes provide the following:

A. Authority to restrain immediately by order or by suit in State court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

The CIWDA at § 1-2012(3) authorizes such actions in the District Courts. Further, 63 O.S. 1981, § 1-908, authorizes a hearing where waters of the state are polluted, and where the Commissioner determines "that any of the waters of the state have

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been, or are being, polluted in a manner prejudicial to the health of any of the inhabitants of the state, the Commissioner shall make an order requiring such pollution to cease within a reasonable time, or requiring such manner of treatment or of disposition of the sewage or other polluting material as may in his judgment be necessary to prevent the further pollution of such waters." The responsible party need not be a licensee under Health Department statutes. 10 OKL.OP.A.G. 650. This authority could be exercised beyond the 30 year closure period of CIWDA § 1-2009.

B. Authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit. CIWDA § 1-2012(3); see, 73 C.J.S. Public Administrative Law and Procedure §38; and Board of Governors of Registered Dentists v. Melton, 428 P.2d 205 (Okla., 1967).

C. Authority to sue to recover in court civil penalties in the amount of \$10,000.00 per day for any program violation. The CIWDA at § 1-2012 (4) provides that such civil penalty shall not exceed \$10,000.00 per day.

D. Authority to obtain criminal penalties in the amount of \$10,000.00 per day for each violation, and imprisonment for six months against any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for the purposes of program compliance. The CIWDA provides at § 1-2011 criminal penalties of not less than \$200.00 per day nor more than \$10,000.00 per day.

E. Authority to revoke or temporarily suspend permits in whole or in part (CIWDA § 1-2012).

#### VIII. PUBLIC PARTICIPATION IN THE STATE ENFORCEMENT PROCESS

State laws and regulations provide for public participation in the state enforcement process by providing assurances that the Health Department will not oppose intervention by any citizen where permissive intervention may be authorized by statute, rule, or regulation (CIWDA § 1-2013.1). The Department has the further discretion to:

A. Investigate and provide written response to all citizen complaints duly submitted. 63 O.S. 1981, § 1-106.

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B. Publish and provide at least 30 days for public comment on any proposed settlement of a state enforcement action. 63 O.S. 1981, § 1-106.

#### IX AUTHORITY TO SHARE INFORMATION WITH EPA

State statutes and regulations provide authority for any information obtained or used in the administration of the state program to be available to EPA upon request. Section 1-2004(12) of the CIWDA provides that the Department shall "cooperate and share information with the U.S. Environmental Protection Agency...."

#### X. AUTHORITY OVER INDIAN LANDS

State jurisdiction may be exercised over Indian lands if (a) the field has not been preempted by the federal government (b) there is a legitimate state interest and (c) there is no infringement on tribal self-government. Organized Village of Kake v. Egan, 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed. 2d 573 (1962). Article 1, Section 3 of the Oklahoma Constitution is a disclaimer of right, title and interest to Indian lands; it is a disclaimer of proprietary rather than governmental interests. Oklahoma may waive its claim to any right or title to the lands and still have all of its political or police power with regard to the actions of the people on those lands as long as that does not affect the title. Ahboah v. Housing Authority of the Kiowa Tribe of Indians, Okl., 660 P.2d 625 (1983); Curry v. Corporation Commission, Okl., 617 P.2d 177 (1980). Authority to carry out this program on Indian lands is not denied to Oklahoma. The Enabling Act for Territory of Oklahoma and the Indian Territory (34 U.S.St. at Large, pp 267-278) provides at § 19 that the courts of original jurisdiction of the State of Oklahoma shall be deemed to be the successor of all courts of original jurisdiction of these territories. Article VI, § 7, Oklahoma Constitution, provides that the District Courts shall have unlimited original jurisdiction of all justiciable matters. Whether or not there exists land in Oklahoma which qualifies as "Indian Country" under 18 U.S.C. § 1511 is a question of fact which must be determined on a case-by-case basis.

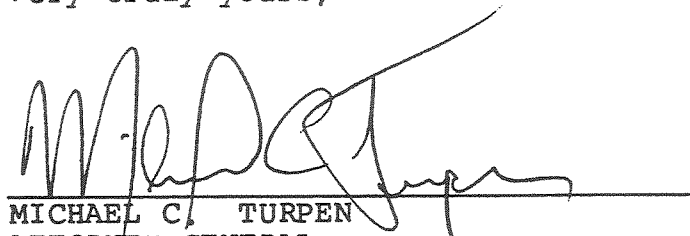
Please find enclosed the EPA "checklists" by which this office has compared the Oklahoma requirements to the federal rules. I further certify that the Board of Health is authorized, by virtue of 75 O.S. 1981, Section 302, to adopt rules of practice and procedure.

Joan K. Leavitt, M.D.


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We trust this will enable the Environmental Protection Agency to complete their review of your application.

Very truly yours,



MICHAEL C. TURPEN  
ATTORNEY GENERAL



SARA J. DRAKE  
Assistant Attorney General  
Public Protection Division