

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271**

(HW-8-FRL-2744-8)

Oklahoma: Decision on Final Authorization of State Hazardous Waste Management Program**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of Final Determination on Oklahoma's application for Final Authorization.

SUMMARY: Oklahoma has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Oklahoma's application and has reached a final determination that Oklahoma's Hazardous Waste Program satisfies all of the requirements necessary for Final Authorization. Thus EPA is granting Final Authorization to the State to operate its program in lieu of the Federal program in Oklahoma.

EFFECTIVE DATE: Final Authorization for Oklahoma for purposes of judicial review shall be effective January 10, 1985.

FOR FURTHER INFORMATION CONTACT: H.J. Parr, State Programs Section (6AW-HP), Hazardous Materials Branch, U.S. Environmental Protection Agency, Region VI, 1201 Elm St., Dallas, Texas 75270, (214) 767-2645.

SUPPLEMENTARY INFORMATION: Section 3006 of RCRA allows the EPA to authorize State hazardous waste management programs to operate in the State in lieu of the Federal program. To qualify for Final Authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other authorized State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6228(b)).

On June 22, 1984, Oklahoma submitted a complete application to obtain Final Authorization to administer a RCRA program. On September 24, 1984, EPA published a tentative decision announcing its intent to grant Oklahoma Final Authorization. Further background on the tentative decision appears at 49 FR 37432, September 24, 1984.

Along with the tentative determination, EPA announced the availability of the State's application for public review and comment and the date of a public hearing on the application and EPA's tentative determination. The public hearing was

held on October 24, 1984, at 7:00 p.m. in Oklahoma City, Oklahoma.

The State of Oklahoma received Phase I, Interim Authorization on January 14, 1981; Phase II, Components A and B Interim Authorization on December 13, 1982, and Component C of Phase II, Interim Authorization on June 24, 1983. Therefore, there will be no change in the status of permits or permitting authority on the effective date of this final determination.

During the review of the State's program, EPA noted that Oklahoma's Controlled Industrial Waste Disposal Act (CIWDA) § 1-2009 provides "after a controlled industrial waste facility has been closed, its owner or operator shall properly maintain and monitor the controlled industrial waste facility for a period of *not more than thirty (30) years* as determined by the Department at the time of issuance of the permit and shall make such repairs or improvements as deemed necessary by the Department to ensure that no migration of controlled industrial waste material will occur from the controlled industrial waste facility." (Emphasis added).

EPA has found that this provision of the State's statute conflicts with 40 CFR 264.117(a)(2)(ii) of the Federal regulations which states: "Prior to the time that the post-closure care period is due to expire, the Regional Administrator may extend the post-closure care period if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of waste at levels which may be harmful to human health and the environment)."

Ordinarily such a gap would preclude the authorization of the State. Oklahoma, however, has made the argument, and EPA agrees, that the State's program is equivalent to EPA's with the exception of extending the 30 year post-closure care period and that the authority to require the extension of a post-closure care period would not be needed until the last few years of the 30 year period.

The State of Oklahoma has agreed in the Memorandum of Agreement to seek a change in § 1-2009 of CIWDA which would authorize regulations by which the State could require extension of the post-closure care period beyond the 30 years.

EPA agrees to this approach for two reasons:

- (1) There will be a significant amount of time before the State would be required to exercise the authority to extend a post-closure care period; and
- (2) The State has agreed to seek this authority from the Oklahoma Legislature

within a reasonable amount of time (within 2 years of authorization).

EPA is concerned that this authority be available to the State at the earliest possible time. Therefore, if the State has not obtained the authority to extend the post-closure care period beyond 30 years for cause and implemented this authority through appropriate regulations within two (2) years of the effective date of the State's Final Authorization, EPA will commence proceedings under 40 CFR 271.23(b) to withdraw approval of the State's program. Criteria for withdrawing approval of State programs is found in 40 CFR 271.22.

Oklahoma is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

Responsiveness Summary

In addition to the Federal Register notice of tentative determination cited above, EPA publicized the notice of determination, the availability of the State's application for review and comment, and the public hearing by providing for publication of the notice in enough newspapers of general circulation to ensure State wide coverage and by mailing notices to persons on the State and EPA mailing lists. Approximately one (1) week prior to the hearing EPA mailed a follow-up notice to the major media outlets in the State.

EPA received comments from four (4) persons on the Tentative Decision to grant Final Authorization to Oklahoma.

Comments are summarized and responded to below. The comments are grouped, to the extent possible, according to common areas for ease of response.

This grouping is not meant to indicate any special significance or lack of significance of any comment. All comments have been carefully considered in reaching the decision to grant Final Authorization to the State of Oklahoma.

1. *Comment:* Two commenters support authorization of the Oklahoma program.

Response: EPA appreciates these comments and has certainly taken them into consideration in reaching a decision. The primary standard against which EPA measures the Oklahoma program are those set out in Section 3006(b) of RCRA.

2. *Comment:* One commenter wrote neither supporting nor opposing authorization but with complaints regarding a specific facility. The commenter did state that it appeared that rules and regulations are not

enforced, that there appears to be a problem with the interpretation of the State's rules and regulations, and that several departments have been operating independently in regard to the matter and each is unaware of what the others are doing.

Response: EPA appreciates and solicits comments concerning the administration of a State's program either as relating to an individual facility or as to its effectiveness throughout the State. EPA considers these comments both in reaching the decision to grant authorization and in the continuing process of overseeing the authorized State's implementation of its program. Specific complaints regarding an individual facility are investigated and responses provided directly to the complainant. EPA feels that the authorization process is not the proper forum for responding to complaints regarding individual facilities except as the complaints would reflect on the State's implementation of the authorized program.

Regarding the facility the commenter complains about, EPA has found that, while the State has been taking appropriate action, further action may be warranted. EPA is assessing the findings of a recent investigation of the facility and will assure that any necessary actions are taken after assessment of those findings.

3. *Comment:* One commenter supports authorization of the State's program but points out that the State's requirements for disposal plans create situations where the generator may not be able to ship materials because a transporter or treatment, storage or disposal facility does not have State approval. The commenter requests that the State consider revision of the waste disposal plan. Specific recommendations are made by the commenter.

Response: Section 3009 of RCRA allows States to impose requirements which are more stringent than the federal requirements. The Oklahoma requirements for waste disposal plans have been reviewed by EPA and have been found to be in keeping with both the provisions of Section 3009 of RCRA and the requirements of 40 CFR 271.4 which prohibits any aspect of a State's program which unreasonably restricts, impedes, or operates as a ban on the free movement across the State border of hazardous wastes from or to other States for treatment, storage or disposal at facilities authorized to operate under the federal or an approved State program.

EPA will continuously overview the State's implementation of the waste disposal plan requirements and if the provisions of 40 CFR 271.4 are violated EPA will initiate steps to withdraw the State's authorization.

The commenter's concerns and specific suggestions regarding the waste disposal plans have been forwarded to the State for consideration and appropriate action.

Decision

After reviewing the public comments, re-evaluating the State's submittal in light of the public comments, and considering the State's performance under Interim Authorization, it is my conclusion that Oklahoma's application for Final Authorization meets all of the regulatory and statutory requirements established by RCRA.

Accordingly, Oklahoma is granted Final Authorization to operate its hazardous waste management program in lieu of the federal program in Oklahoma. This means that Oklahoma now has responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out

all other aspects of the RCRA program. Oklahoma also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement action under Sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this Final Determination from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Oklahoma's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burden on small entities. This Final Determination therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This Final Determination is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 2912(a), 6926, 6974(b) and EPA delegation 8-7.

Dated: December 5, 1984.

Dick Whittington,

Regional Administrator.

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