

US EPA ARCHIVE DOCUMENT

Base  
Signed by RA  
12/5/84

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF OKLAHOMA  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VI**

**I. General**

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities and procedures pursuant to 40 CFR 271.8 for the State of Oklahoma hazardous waste management program authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") of 1976 (Public Law 94-580, 42 USC §6901 et seq.) and the United States Environmental Protection Agency Regional Office for Region VI (hereinafter "EPA"). This Agreement further sets forth the manner in which EPA will coordinate with the State in administering the State hazardous waste management program.

This Agreement is entered into by the Commissioner of Health (hereinafter "Commissioner") of the Oklahoma State Department of Health (hereinafter "Department") and the Regional Administrator for EPA Region VI (hereinafter "Regional Administrator").

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under the provisions of RCRA. Additionally, nothing in this Agreement shall be construed to contravene any provision of 40 CFR 271.

The parties shall review this Agreement jointly at least once a year during negotiation of the annual RCRA Federal Assistance Grant Work Program (hereinafter "State Work Program") in accordance with the Federal assistance provisions under Section 3011 of RCRA. This Agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications or for any other purpose mutually agreed upon. Any revision or modification must be in writing and must be signed by the Commissioner and the Regional Administrator.

This Agreement shall remain in effect until such time as State program authorization is withdrawn by, or is voluntarily transferred to, EPA according to the criteria and procedures established in 40 CFR 271.22 and 40 CFR 271.23.

This Agreement shall be executed by the Commissioner and the Regional Administrator and shall become effective at the time final authorization of the State program takes effect, which shall be the date set out in the Federal Register announcing EPA's final determination to grant authorization to the State.

**II. POLICY STATEMENT**

The Department will not exempt from regulation any waste listed in the State universe of hazardous wastes which is also listed in the Federal universe of hazardous wastes, which would result in a State program less stringent than or not equivalent to the Federal program.

The Department may, however, pursuant to the provision of Rule 2.2 of the Rules and Regulations for Industrial Waste Management, exempt wastes listed in the State universe of hazardous wastes which are not listed in the Federal universe of hazardous wastes, provided that it can be demonstrated that a specific waste does not exhibit a characteristic of a hazardous waste.

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting final authorization by EPA, the Department assumes primary responsibility for implementing the State hazardous waste management program under RCRA, within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation in the event the Department is unable to act. The Commissioner and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the State program.

EPA assumes an oversight role upon granting final authorization to the State. EPA shall oversee Department program implementation in order to ensure full execution of the requirements of RCRA, to promote national consistency in implementation of the hazardous waste management program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste management program, and to encourage the State and EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with the improper management of hazardous wastes. Oversight will be accomplished by EPA through reasonable written reporting requirements, permit overview, compliance and enforcement overview, and annual review of the State program.

The State agrees to seek an amendment to Section 1-2009 of the Controlled Industrial Waste Disposal Act (OCIWDA) in order to provide authority to extend post-closure care periods beyond thirty (30) years if the Commissioner finds that the extended period is necessary to protect human health and the environment. The State agrees to seek this authority from the Oklahoma Legislature within two (2) years of the effective date of this Agreement. If the State fails to obtain this authority within the two (2) years, EPA will commence proceedings under 40 CFR 271.23(b) to withdraw approval of the State's program.

### **III. STATE PROGRAM REVIEW**

#### **A. General**

EPA shall assess Department administration and enforcement of the State hazardous waste management program on a continuing basis for equivalence and consistency with RCRA, with all applicable Federal requirements and policies, with this Agreement and for adequacy of enforcement. This assessment shall be accomplished by EPA review of information submitted by the Department in accordance with this Agreement and the annual State Work Program, permit overview, compliance and enforcement overview, and annual review of State program activities. EPA may also consider, as part of this assessment, written comments about the Department's administration and enforcement of the State program that are received from the regulated community, the public, or Federal, State and local agencies. Copies of any such comments received by EPA shall be provided to the Department for its review.

To ensure effective program review, the Department agrees to allow EPA access to all files and other information requested by EPA that is deemed

necessary for reviewing Department administration and enforcement of the State program.

Review of Department files may be scheduled at quarterly intervals, if necessary. Program review meetings between Department and EPA personnel shall be scheduled at least annually to review specific Department procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings shall be scheduled at least fifteen (15) days in advance unless otherwise agreed upon by both parties. A tentative agenda for each review meeting shall be prepared by EPA.

#### B. Identification of Major Controlled Industrial Waste Handlers

The Department agrees to develop with EPA, a list of controlled industrial waste generators, transporters and treatment, storage and disposal facilities in the State designated, by the Department, as "major" controlled industrial waste handlers. This designation is intended to identify, for administrative purposes, environmentally significant controlled industrial waste handlers to be used in concentrating inspection, permitting and reporting resources on those handlers. The list shall be submitted, reviewed and updated in accordance with the annual State Work Program and amendment to the list shall not require a formal amendment to this Agreement.

From the list of "major" handlers, the Department agrees to develop and annually review with EPA a list of treatment, storage and disposal facilities whose permit applications and draft permits shall be reviewed by EPA. This smaller list constitutes major facilities for purposes of EPA permit overview.

### IV. INFORMATION SHARING

#### A. EPA

1. EPA shall keep the Department informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives and any other factors that affect the State hazardous waste management program, and shall provide general technical guidance to the Department, as necessary, in order to assist the Department in implementing the State program. EPA shall also share with the Department any reports developed by EPA resulting from data submitted to EPA in accordance with the reporting requirements established in this Agreement and the annual State Work Program.
2. EPA agrees to provide the Department notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement. Copies of the original notification forms and/or a computer print-out containing all of the notification information shall be provided to the Department. Such information shall be provided to the Department within thirty (30) days of the effective date of this Agreement. EPA shall also forward, on a monthly basis, notification information including newly assigned EPA identification numbers, submitted by generators, transporters and treatment, storage and disposal facilities located in the State after the effective date of this Agreement. This information shall be submitted to

the Department within ten (10) days of the end of each month for the preceeding month.

3. EPA agrees to assign EPA identification numbers to generators, transporters and treatment, storage and disposal facilities that submitted notification information to the Department after the effective date of this Agreement. EPA shall do this after receiving a copy of the notification information from the Department as provided in Section IV.B.6 of this Agreement.
4. EPA agrees to transfer to the Department any pending Part A and Part B treatment, storage or disposal facility permit applications originally submitted to EPA pursuant to 40 CFR 270.10 by facilities located in the State and which have not already been transferred to the Department, together with all pertinent file information. Pertinent file information may include permit applications including accompanying narratives, plans, maps and other related documents, draft permits, public notices, administrative notices, fact sheets and related correspondence. Such materials shall be provided to the Department within thirty (30) days after the effective date of the Agreement and according to any arrangements the Department and EPA may make regarding the priority of transfer.
5. EPA agrees to provide the Department, within five (5) days of receipt, Part A and B treatment, storage and disposal facility permit applications submitted directly to EPA by facilities located in the State after the effective date of this Agreement.
6. EPA agrees to provide the Department copies of any reports and data resulting from compliance inspections within thirty (30) days of completion of the inspection reports.
7. EPA shall make available to the Department other relevant information, as requested, which the Department deems necessary in implementing the State hazardous waste management program.

B. State

1. The Department agrees to inform EPA of any proposed or adopted changes to the State hazardous waste management program which could affect the Department's ability to implement the authorized State program. Changes of concern may include modification of the State's legal authorities (i.e. statutes, regulations and judicial or legislative actions affecting those authorities), modification of memoranda of agreement or understanding with other agencies and modification of resource levels (i.e. available or budgeted personnel and funds). The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR 271.21.
2. The Department shall provide compliance monitoring and enforcement information to EPA in accordance with the reporting requirements established in the annual State Work Program.
3. The Department shall provide EPA with information indicating the status of the Department's treatment, storage and disposal facility permitting

activities in accordance with the reporting requirements established in the annual State Work Plan.

4. The Department also agrees to submit the following reports to EPA within the specified time periods:
  - a) biennial report summarizing the quantities and types of controlled industrial waste generated, transported and treated, stored or disposed within the State, in accordance with the annual State Work Program, by October 1 of each even-numbered year; and
  - b) additional reports in accordance with the annual State Work Program.
5. The Department may grant regulatory exemptions or variances pursuant to the provision of Rule 8.9.2 of the Rules and Regulations for Industrial Waste Management. However, the Department will not grant any exemption or variance which would result in a State program less stringent than or not equivalent to the Federal program.
6. For those major controlled industrial waste treatment, storage and disposal facilities identified for EPA permit overview, the Department agrees to make available to EPA the following information within the time frames described:
  - a) copies of complete facility permit applications, and subsequent revisions and additions to these applications, within thirty (30) working days of their receipt by the Department;
  - b) copies of draft permits and proposed permit modifications, including accompanying explanatory material and public notices, within five (5) working days of their completion, provided that the Department may exceed this time frame due to extenuating circumstances in which case the Department shall notify EPA of any anticipated delay; and
  - c) copies of final permits or permit modifications, within thirty (30) working days of their completion.
7. So that EPA may issue EPA identification numbers and maintain a national inventory of all hazardous waste handlers, the Department agrees to provide EPA with the following notification information submitted to the Department after the effective date of this Agreement by new generators, transporters, and treatment, storage and disposal facilities located in the State:
  - name and location of the handler
  - mailing address of the handler
  - name and telephone number of a contact person
  - type of hazardous waste activity
  - process codes (if the handler is a facility)

The Department shall also submit to EPA any updates or changes in notification information previously submitted to EPA. This information shall be provided to EPA within ten (10) days of receipt of the information.

8. The Department agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions in a timely manner, if EPA requests such information.

### C. Site Visits

If EPA determines that it needs to obtain certain information beyond that submitted by the Department in accordance with the reporting requirements established in this Agreement and the annual State Work Program, EPA shall first attempt to acquire this information from the Department. The Department agrees to supply EPA with this information, if it is readily available and as resources allow. If the Department is unable to provide the information, or, if it is necessary to supplement the additional information provided by the Department, EPA may conduct a special survey or perform site visits in order to collect the information, only after notifying the Department of its intentions. EPA shall share with the Department any reports developed by EPA as a result of such information collection efforts.

### D. Emergency Situations

Upon receipt of any information that the generation, transportation, and subsequent treatment, storage or disposal of controlled industrial waste within the State is endangering human health or the environment, the Department or EPA shall immediately notify by telephone the other party to this Agreement, of the existence of such situation.

The Department may be notified through its twenty-four (24) hour emergency telephone number at (405) 271-5221.

EPA, Region VI, may be notified through its twenty-four (24) hour emergency telephone number at (214) 962-2666.

### E. Confidentiality

1. Any information obtained or used in the administration of the State hazardous waste management program shall be available to EPA upon request without restriction. If any information has been submitted to the Department under a claim of confidentiality, the Department shall submit that claim to EPA when providing information. Any information obtained from the Department and subject to a claim of confidentiality shall be treated accordingly in accordance with 40 CFR 2.
2. EPA agrees to provide the Department any information requested that is deemed necessary in implementing the State hazardous waste management program. Subject to the conditions in 40 CFR 2, EPA shall provide the Department information submitted to EPA under a claim of confidentiality that is deemed necessary in implementing the State program. All information EPA agrees to submit to the Department shall be transferred in accordance with 40 CFR 2.

## V. PERMIT ISSUANCE

### A. EPA Permitting

Upon final authorization of the State hazardous waste management program, EPA shall suspend issuance of Federal RCRA permits for controlled industrial waste treatment, storage and disposal facilities located in the State.

EPA intends to promulgate new technical facility standards for types of treatment, storage and disposal facilities or components not currently covered under 40 CFR 264. Upon promulgation of any new standards, EPA shall process, issue and enforce Federal RCRA permits in the State for the types of facilities or components covered by the new standards, until the State receives final authorization for those components. At the time the State hazardous waste management program is approved for any new component, EPA shall suspend issuance of Federal RCRA permits in the State. EPA shall also transfer any pending permit applications, draft permits, public notices, completed permits and other pertinent file information to the Department within thirty (30) days of the approval of the State program for any new component, in conformance with the conditions of this Agreement.

#### B. EPA Overview of State Permits

While EPA may comment on any permit application or draft permit, EPA's overview function shall focus primarily on those treatment, storage and disposal facilities identified by the State and EPA as major facilities for permit overview.

EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application, within thirty (30) days of its receipt by EPA. Where EPA indicates in a comment that issuance of the permit would be inconsistent with the approved State hazardous waste management program, EPA shall include in the comment:

1. a statement of the reasons for the comment, including the section of the State regulations that support the comment; and
2. the actions that should be taken by the Department in order to address the comments including the conditions which the permit would include if it were issued by EPA.

EPA shall send a copy of any written comments on a permit application or draft permit to the permit applicant. EPA shall withdraw such comments when satisfied that the Department has met or refuted EPA concerns and shall also provide the permit applicant with a copy of such withdrawal.

Under Section 3008(a)(3) of RCRA, EPA may terminate a State RCRA permit in accordance with the procedures of 40 CFR 124, Subpart E, or bring enforcement action in accordance with the procedures of 40 CFR 22 in cases involving a violation of any State hazardous waste management program requirement. In exercising these authorities, EPA shall observe the conditions established in 40 CFR 271.19(e).

#### C. State Permitting

The Department is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating State RCRA permits for all treatment, storage and disposal facilities and shall do so in a manner consistent with RCRA, with all applicable Federal requirements, with this Agreement and with the Program Description.

Federal RCRA permits issued by EPA prior to approval of the State hazardous waste management program for final authorization shall be expeditiously reviewed

for consistency with State requirements, and may be either reissued or modified and reissued in accordance with the Oklahoma Controlled Industrial Waste Disposal Act (OCIWDA), as amended, including rules and regulations promulgated pursuant to the Act and the Oklahoma 'Administrative Procedures Act'. All applicable provisions of OCIWDA, as amended, including the rules and regulations shall be included as permit conditions by the Department, as appropriate. Furthermore, any compliance schedules contained in State RCRA permits issued by the Department shall require compliance with applicable standards as soon as possible.

The Department agrees to issue, modify and reissue all permits in accordance with the Oklahoma Controlled Industrial Waste Disposal Act (OCIWDA), as amended, including rules and regulations promulgated pursuant to the Act and the 'Oklahoma Administrative Procedures Act' and to include as permit conditions all applicable State provisions. This Agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

The Department agrees to consider all comments EPA makes on permit applications and draft permits. The Department agrees to incorporate those conditions, terms and standards contained in EPA comments on draft permits to the extent where such conditions, terms and standards are necessary for the State issued RCRA permits to be consistent with State requirements. The Department shall satisfy or refute EPA's concerns on any permit application, proposed permit modification or draft permit in writing before issuing a State RCRA permit or making a modification.

The Department agrees to provide public notice of the issuance of a draft permit, along with the scheduled date, time and location of a public meeting on a draft permit, by mailing a copy of the notice to the following persons: the applicant, any other agency which has issued or is required to issue a permit for the same facility or activity, State and Federal agencies with jurisdiction over fish, shellfish, and wildlife resources, and the Advisory Council on Historic Preservation, State Historic Preservation Officers and other appropriate State and Federal government authorities, including any affected states, as well as to any unit of local government having jurisdiction over the area where the facility is proposed to be located, and to each State agency having authority under State law with respect to the construction or operation of such facility. In addition, the Department agrees to provide copies of draft permits and, if applicable, copies of fact sheets to any other agency upon request. Copies of permit applications will be made available for review at the Department.

The Department agrees that a response to comments prepared at the time a final permit decision is issued shall specify which provisions, if any, of the draft permit have been changed in the final permit decision, including the reason(s) for the change.

If the State receives written notice of opposition to the Department's intention to issue a permit, and receives a request for a hearing within forty-five (45) days of the published notice, the Commissioner agrees to hold a public meeting (informal public hearing) pursuant to Rule 8.8.2.2.4(h) on whether the permit should be issued for the proposed facility. The State further agrees to provide notice of such opportunity for a public meeting (informal public hearing) in each notice of draft permit.

## VI. PERMIT ADMINISTRATION

### A. EPA

EPA shall terminate any Federal RCRA permits it has issued to treatment, storage and disposal facilities located in the State when the Department either incorporates the terms and conditions of the Federal RCRA permits in State RCRA permits or issues State RCRA permits to those facilities. EPA shall subsequently rely on the Department to enforce the terms and conditions of the State RCRA permits.

### B. State

The Department agrees to review all State permits which were issued prior to the effective date of this Agreement and to modify or revoke and reissue such permits as necessary to require compliance with the Oklahoma Controlled Industrial Waste Disposal Act (OCIWDA), as amended, including rules and regulations promulgated pursuant to the Act. The Department agrees to modify or revoke and reissue these permits, as necessary, any State RCRA permits in accordance with the schedules established in the annual State Work Program.

## VII. COMPLIANCE MONITORING AND ENFORCEMENT

### A. EPA

Nothing in this Agreement shall restrict EPA's right to inspect any generator, transporter or treatment, storage or disposal facility located in the State or bring enforcement action against any person believed to be in violation of State hazardous waste management program requirements. Before conducting any inspection of a generator, transporter or facility, EPA shall give the Department at least seven (7) days notice of its intent to inspect in accordance with 40 CFR 271.8(b)(3)(i). If the Department performs a compliance inspection and submits a report and supportive data relevant thereto within that time to EPA, no EPA inspection shall be made unless EPA determines that the Department report and data is inadequate.

In case of an imminent hazard to human health and the environment, EPA may shorten or waive altogether the notice period, except that every effort shall be made to notify the Department as soon as possible of any EPA action in the State. The following person(s) shall be considered as contacts for imminent hazard situations:

Donald A. Hensch  
(405) 271-5338  
(405) 947-6454

H. A. Caves  
(405) 271-5338  
(405) 329-2645.

The frequency of EPA oversight and training inspections shall be specified in the annual State Work Program. Normally, EPA shall accompany the Department on no more than five (5%) percent of the Department's compliance inspections.

EPA may take enforcement action under Section 3008(a)(2) of RCRA against any person determined to be in violation of RCRA. EPA shall take enforcement

action only upon determining that the Department has not taken timely and appropriate enforcement action. Prior to issuing a compliance order under Section 3008 of RCRA, EPA shall give notice to the Department. EPA also retains its right to issue compliance orders and bring action under Section 3013 and Section 7003 of RCRA and any other applicable Federal statute.

After notice to the Department, EPA may take action under Section 3008 of RCRA against any holder of a State RCRA permit on the basis that the permittee is not complying with a condition of that permit. In addition, EPA may take action under Section 3008 of RCRA against a holder of a State RCRA permit on the basis that the permittee is not complying with the conditions that EPA, in commenting on that permit application or draft permit, stated were necessary to implement approved State hazardous waste management requirements, whether or not that condition was included in the final permit.

#### B. State

The Department agrees to carry out a timely and effective compliance monitoring program of generators, transporters, and treatment, storage and disposal facilities with applicable State hazardous waste management program requirements. The State shall conduct compliance inspections to assess compliance with generator and transporter standards including manifest requirements, as well as facility standards, permit requirements, compliance schedules and other applicable requirements. Compliance monitoring activities and priorities shall be conducted in accordance with the annual State Work Program and shall be consistent with RCRA, all applicable Federal requirements and with the Program Description.

The Department agrees to take timely and appropriate enforcement action against all persons in violation of generator and transporter standards including manifest requirements as well as facility standards, permit requirements, compliance schedules and all other applicable State requirements, including violations detected by State or Federal compliance inspections. The Department shall also maintain procedures for receiving and insuring proper consideration of information about violations submitted by the public.

Appropriate enforcement response may include not more than two (2) warning letters, issued by the Division, for any violation, followed by timely initiation and prosecution through enforcement proceedings which may be, as determined on a case-by-case basis, administrative or judicial nature. Any civil penalty assessed, sought, or agreed upon by the Department shall be appropriate to the violation as defined in 40 CFR 271.16(c). All records shall be retained by the Department for at least three (3) years unless there is an enforcement action pending, in which case all records shall be retained until such action is resolved.

### VIII. REGULATION OF RADIOACTIVE WASTES

By virtue of 63 O.S. 1981, Sections 1-1501 et seq. and 63 O.S. 1981, Sections 1-2001 et seq., as amended 1982, the Department has the authority to regulate both controlled industrial wastes and radioactive wastes. The Department agrees to regulate all radioactive wastes, unless the regulation of such waste is preempted by the U.S. Nuclear Regulatory Commission, in accordance with statutory, regulatory and procedural standards at least as stringent as the standards adopted by the

Department under the Oklahoma Controlled Industrial Waste Disposal Act and the standards of the Resource Conservation and Recovery Act.

OKLAHOMA STATE DEPARTMENT  
OF HEALTH

U.S ENVIRONMENTAL  
PROTECTION AGENCY

BY: Joan K. Leavitt, M.D.  
Joan K. Leavitt, M.D.

TITLE: Commissioner of Health

DATE: \_\_\_\_\_

Dick Whittington

REGIONAL ADMINISTRATOR

Dec. 5, 1984