

US EPA ARCHIVE DOCUMENT

LETTER OF INTENT

BETWEEN THE STATE OF OKLAHOMA AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6
FOR FINAL AUTHORIZATION OF
THE STATE HAZARDOUS WASTE MANAGEMENT PROGRAM

Base
Signed by RA
12/5/84

This Letter of Intent is entered into by the United States Environmental Protection Agency, Region 6, (hereinafter "EPA") and the Oklahoma State Department of Health (hereinafter the "State") for the purpose of setting out agreements between EPA and the State in order to assure the implementation of a quality hazardous waste program in the State for Final Authorization under the Federal Resource Conservation and Recovery Act of 1976 (as amended) (RCRA).

This Letter of Intent supplements the Memorandum of Agreement for Final Authorization between the State and EPA and the Cooperative Agreement entered into by the State and EPA for funding under Section 3011 of RCRA.

EPA Region 6 and the State of Oklahoma agree to implement the actions specified in this Letter of Intent to insure that the hazardous waste program implemented in the State meets the criteria for a quality program. This Letter of Intent shall not expire but shall be reviewed annually and revised as necessary. The effective date of this Letter of Intent shall be the effective date of the State's Final Authorization unless otherwise set out herein.

CAPABILITY ASSESSMENT

Oklahoma received Interim Authorization for Phase I on January 14, 1981; Interim Authorization for Phase II, Components A and B, on December 13, 1982; and Component C on June 24, 1983.

EPA has examined and evaluated the approved Oklahoma program to determine the State's capability to meet the criteria for a quality State program under Final Authorization. This assessment was based on the fiscal year 1983 End-of-Year RCRA Review and the fiscal year 1984 RCRA Midyear Review of the State's program, along with the FY 84 End-of-Year Review and additional information collected from State files and visits. The assessment focused on the main elements that form the State program under Interim Authorization as set out in the FY 83 and in the FY 84 Cooperative Agreements -- compliance and enforcement, permitting, and program management (see attached Capability Assessment Checklist and Narrative).

Compliance and Enforcement

Region 6 has examined the State's compliance and enforcement and found that the State met or exceeded its FY 84 commitments for inspections and record reviews. The State submitted a draft Compliance Monitoring and Enforcement Strategy on November 5, 1984, and plans to submit a revised Strategy to EPA (incorporating EPA's comments on the draft) by December 31, 1984. Oklahoma was the first State in Region 6 to sign an Enforcement Memorandum of Understanding with EPA. The State referred ten cases to EPA in FY 84 for enforcement actions and plans to refer four more during the first quarter of FY 85.

The State takes timely first-level enforcement actions; however, second-level enforcement activity did not meet the national quality criteria for timely and appropriate action, particularly with regards to Class I violations. In addition, the particular level of enforcement action often did not correlate with the severity of the violation.

The State lost three inspectors during the last half of FY 84. The State was successful in advertising and hiring three new inspectors shortly after the vacancies occurred. All three are now on board and received training on November 26-29 and are scheduled for more training on December 18-19, 1984.

Data relevant to an enforcement case was not always efficiently documented and readily available for review.

Permitting

The review of the State's permitting process indicates:

The State accelerated its Land Disposal call-ins in FY 84 (17 actual versus a 10 commitment). All incinerators were called in FY 83. The State will complete 3 land disposal and 1 incinerator Final Determinations in FY 85, leaving a total of 23 Land Disposal Final Determinations to be accomplished in FY 86 and FY 87. The State exceed its grant commitment for Final Determinations in FY 84 (9 actual versus 8 commitment).

The State has not been issuing Warning Letters with the first Notice of Deficiency (NOD). The Enforcement Memorandum of Understanding (MOU) signed by the State and EPA, effective October 1, 1984, commits the State to issuing a Warning Letter with the first NOD.

Program Management

The State's management practices, which include program development and reporting to EPA, were found to be acceptable. The State utilizes the workyears in accordance with the RCRA grant. In FY 85, the State has 10 more workyears assigned to the RCRA program than is covered in the RCRA grant. The State has instituted a management tracking system to monitor the grant progress in FY 85 toward accomplishments of commitments on a monthly basis.

The State needs to improve in the area of reporting. In FY 84 the State was required to submit reports by the 20th day of the month, starting with January 20, 1984. The State was late in submitting the January, February, April and May reports. In June the State agreed that future reports would be submitted in time for them to reach EPA by the 20th of the month. The June 20th report was received by EPA on June 18, 1984, and the July report was received on July 20. The August and September reports were done jointly by EPA and the State via HWDMS since the State was just coming on-line. Accuracy is improving; the State has reassigned one of its employees the full responsibility of improving reporting and tracking permitting activities. This is an indication that the State is making an effort in this endeavor.

ACTION PLAN

Compliance and Enforcement

The State and EPA agree to carry out the following activities in order to implement a quality hazardous waste program in Oklahoma:

- ° The State will implement its Compliance Monitoring and Enforcement Strategy once it is approved by EPA.
- ° The details and specifications of the needed enforcement activities are contained in an Enforcement Memorandum of Understanding (MOU) entered into between the State and EPA on September 28, 1984. The MOU consolidates the criteria, operational guidance, and responsibilities for enforcement and compliance priorities and goals of EPA and the State. The Enforcement MOU is a part of this Letter of Intent.

The Enforcement MOU provides a cooperative framework for the State and EPA to aggressively address RCRA noncompliance problems. This MOU establishes national minimal enforcement performance expectations. Through this mutually reinforcing partnership, EPA and the State of Oklahoma will insure that the currently noncompliance problems will be corrected by quick detection of violations and prompt enforcement response. In those cases where the State does not meet the national minimal enforcement performance expectations, EPA will increase its presence, particularly in conducting inspections and in direct enforcement actions.

OSDH will follow the guidance it issued October 4, 1984, which includes the criteria EPA outlined in its May 18, 1984, letter to OSDH concerning Warning Letters. During the montly visits, EPA will review Warning Letters issued by OSDH to ensure the Warning Letters contain the required criteria. EPA will provide OSDH with a written summary of its monthly findings within two weeks of the end of each visit. This will continue until EPA is satisfied that OSDH is routinely issuing quality Warning Letters.

OSDH will implement a "tickler system" to track first-level enforcement actions and will ensure that second-level enforcement is taken in a timely manner. OSDH agrees to follow the criteria outlined in its Enforcement Memorandum of Understanding with regards to timeliness and appropriate action. EPA will monitor progress in this area through monthly file reviews and visits.

OSDH has designated a "liaison" person to ensure that the program area's referrals to the State Attorney and District Attorneys are acted upon in the timeframe identified in the Enforcement Memorandum of Understanding.

During FY 85, on a quarterly basis EPA will compare the FY 84 violation rate of 45% to the FY 85 violation rate to determine if progress is being made to decrease the violation rate. For cases referred to the

appropriate judicial authority which become unduly delayed, the State of Oklahoma and EPA agree to discuss the anticipated progress of the cases and, if necessary, EPA may choose to initiate a parallel Federal action. In addition, EPA may recommend the State seek legislative approval for administrative civil penalty authority, if the Oklahoma program proves cumbersome and not effective in establishing a deterrent.

- ° OSDH will ensure that data relevant to an enforcement case can be found quickly and efficiently. The State will ensure that materials are placed in the proper files and that a notation is made in the files when a document is removed for review or has been received but not yet placed in the file, showing where the document can be located if needed.

Permitting

The State and EPA agree to carry out the following activities in order to implement a quality hazardous waste program in Oklahoma.

- ° The State developed and submitted a draft Multiyear Permit Strategy based on EPA guidance and State negotiations. The draft was submitted to EPA on November 5, 1984. A revised Multiyear Permit Strategy (incorporating EPA's comments) will be submitted to EPA by December 31, 1984. The State will amend its Permit Decision Schedule to reflect the requirements in the reauthorization of RCRA signed by the President on November 8, 1984. EPA will approve the Strategy by January 15, 1985, and the State will commence implementing it on January 15, 1985. The State and EPA will review the FY 85 RCRA grant work plan and revise it where needed to accommodate reauthorization.
- ° The State will implement a late and incomplete Part B policy that is compatible with the EPA national policy or request enforcement assistance from EPA if the State is unable to obtain the required Part B application information from a facility. This policy is outlined in the Enforcement MOU and the State's Multi-year Permit Strategy.
- ° EPA will evaluate progress in meeting quarterly permitting commitments. Resources will be distributed evenly over the year by the State to meet these commitments. Also, EPA will provide technical assistance on land disposal applications. However, if quarterly commitments are not met, EPA will meet with the State to consider: 1) schedule changes; 2) an increase of EPA technical assistance; or 3) the reprogramming of grant funds into EPA's National Contract. The State has also requested an IPA be assigned the State in FY 85 and FY 86. The IPA will be a Civil Engineer and will assist in the processing of permits. EPA is currently making plans to assign an IPA to the State during the second quarter of FY 85.

Program Management

The State and the EPA agree to carry out the following activities in order to implement a quality hazardous waste reporting program in Oklahoma.

- ° The State will utilize the Hazardous Waste Data Management System (HWDMS) for reporting RCRA activities. The State has committed in FY 85 to updating the data in the System no later than the 10th of each month.
- ° EPA will make every effort to utilize HWDMS for data and information needs. However, in certain unique situations EPA needs information on short notice which is not readily available. The State will attempt to be responsive to EPA data needs in these situations so that EPA can adequately report hazardous waste activities in Oklahoma to Headquarters, to the general public, to the media, and to Congress when this data is not available in HWDMS or in EPA files.
- ° The State will ensure that the assigned person in its Permitting group is responsible for entering accurate and timely data into HWDMS. Since the State is now on-line with HWDMS, the entering of accurate data will increase in FY 85. This has been the experience with all States that enters its own reporting data.

AGREEMENT

The foregoing commitments are agreed to in order to assure that the hazardous waste program implemented in the State of Oklahoma meets the minimum federal standards. The Letter of Intent is a multiyear strategy for meeting the Criteria for Quality State Programs. It will be reviewed by the State and EPA on an annual basis in light of legislative, regulation and policy changes. The State and EPA agree to implement the Criteria for a Quality State Program. The State has the lead responsibility for implementing the Criteria and EPA will provide necessary support. The State and EPA are dedicated to implementing an outstanding program.

Mark S. Coleman

Mark S. Coleman
Deputy Commissioner of Health
Oklahoma State Department
of Health

Dick Whittington

Dick Whittington, P.E.
Regional Administrator
EPA, Region 6

Date 12-6-84

Date Dec. 5, 1984