

US EPA ARCHIVE DOCUMENT

OKLAHOMA ATTORNEY GENERAL'S STATEMENT FOR FINAL
AUTHORIZATION FOR NON-HSWA CLUSTER III CHANGES TO THE
FEDERAL RCRA PROGRAM

I hereby certify, pursuant to my authority as Attorney General and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6901 et seq.), and 40 CFR Part 271 that in my opinion the laws of the State of Oklahoma provide statutory authority as set forth below for the regulation of hazardous waste and hazardous waste activities by the Oklahoma State Department of Health. The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which are in effect now.

Statutory authority is provided by the Oklahoma Controlled Industrial Waste Disposal Act, as amended, 63 O.S. 1981 Sections 1-2001 et seq. The Act was last amended March 25, 1988. Pursuant to this Act, the Oklahoma State Department of Health issued Rules and Regulations for Industrial Waste Management, ODH Bulletin 0525, as last amended on April 28, 1988. Note that the regulations in Bulletin 0525 supersede previous regulations issued in the previous Bulletin 0525.

The new regulations, [Rules 200-240], incorporate by reference the U.S. Environmental Protection Agency's Hazardous Waste Management Regulations, 40 CFR Parts 260 - 266, 268, and 270, as amended through July 1, 1987, except for 40 CFR 260.20 through 260.22.

Further, Rule 210 incorporates those provisions of Part 124 which are required by 40 CFR 271.14. This incorporation by reference was duly adopted under the laws of Oklahoma in 63 O.S. 1981 §§ 1-2001 et seq. which authorizes the Oklahoma State Department of Health to issue Rules and Regulations for Industrial Waste Management, ODH Bulletin 0525, as last amended on April 28, 1988. This incorporation does not operate to incorporate prospectively future changes to the incorporated sections of the Code of Federal Regulations, and no other Oklahoma law or regulation reduces the scope of coverage or otherwise affects the authority provided by these incorporated by reference provisions. Further, Oklahoma interprets these incorporated provisions to provide identical authority to the federal provisions. Thus, Rule 210 provides equivalent and no less stringent authority than the federal Subtitle C program in effect as of July 1, 1987.

Note: For convenience, the organization of this Statement corresponds to EPA's State Consolidated RCRA Authorization Manual (SCRAM). Because only certain sections and paragraphs of the SCRAM model are applicable to this Revision Authorization Application, the alpha-numeric section and paragraph designation system in this Statement is not sequential.

I. IDENTIFICATION AND LISTING

- A. State regulations incorporate by reference the lists of hazardous wastes contained in the following federal regulations as indicated in the designated Revision Checklists:

- (8) List of commercial chemical products and Appendix VIII constituents, 40 CFR 261.33 and Appendix VIII, as amended August 6, 1986 (51 FR 28296), Revision Checklist 29.

[Federal Authority: RCRA Section 3001(b).]

Citation of Laws and Regulations

63 O.S. Supp. 1987, Sections 1-2002 and 1-2005. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 and 210 adopt 40 CFR Part 261 by reference. Title 63 O.S. Supp. 1987, Section 1-2005 authorizes the Board of Health to prepare rules, regulations and minimum standards for the listing and characterization of controlled industrial waste, subject to the general definitional framework established in Section 1-2002. In the exercise of this jurisdiction, the Board, in Section 1-2005(C), is specifically charged to adopt rules and regulations "in reasonable accord with the hazardous waste regulations of the U.S. Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act", and is specifically authorized to "incorporate by reference the hazardous waste regulations of the U.S. Environmental Protection Agency".

F. State statutes and regulations incorporate the most recent edition and updates to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846) as indicated in Revision Checklist 35.

[Federal Authority: RCRA §§ 2002, 3001 and 40 CFR 260.11 and 270.6(a) as amended December 4, 1984 (49 FR 47391) and March 16, 1987 (52 FR 8072).]

Citation of Laws and Regulations

63 O.S. Supp. 1987 Section 1-2005 and 63 O.S. 1981 Section 1-2007. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt the Federal requirements by reference. The authority to do so (under 63 O.S. §§ 1-2005 and 1-2007) with respect to the document in question was recognized in the previous Revision Application submittal of December 30, 1987.

G. State statutes and regulations define controlled industrial wastes to include the hazardous components of radioactive mixed wastes, July 3, 1986 (51 FR 24504).

[Federal Authority: RCRA §§ 1006 and 3001(b).]

Citation of Laws and Regulations

63 O.S. Supp. 1987, Sections 1-2002 and 1-2005.

Remarks of the Attorney General

The definition of controlled industrial waste in 63 O.S. Section 1-2002 does not explicitly address radioactive mixed waste. However, there is nothing within that definition or elsewhere in the Oklahoma Controlled Industrial Waste Disposal Act to establish that a waste component which otherwise would be a controlled industrial waste is excluded from regulation under OCIWDA or derivative regulations by virtue of its mixture with radioactive waste. Furthermore, radioactive waste is under the regulatory jurisdiction of the Oklahoma State Department of Health through its Radiation Division [Title 63 O.S. 1981 Sections 1-1501 et seq. and 1-2005(A)(1)].

II. DEFINITION OF SOLID WASTE

A. State regulations include the technical corrections of June 5, 1987 to 40 CFR 261.33 and 266.20(a)(2) and the deletion of 266.20(a)(3), clarifying the non-waste status of certain recycled commercial chemical products, and removing an unintended "loophole" in federal law through which certain hazardous wastes and waste-derived products might be deemed exempt from hazardous waste transportation and storage requirements if they are to

be applied to the land in a manner defined as recycling.
See 52 FR 21306 and Revision Checklist 37.
(Federal Authority: RCRA §§ 3001, 3004.)

Citation of Laws and Regulations

63 O.S. Supp. 1987, §§ 1-2002 and 1-2005.
Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt the Federal requirements by reference. The subject changes represent clarification of provisions relating to recycling which were discussed in the December 30, 1987 Revision Application submittal. The changes appear consistent with Oklahoma law which distinguishes recycling from disposal but which imposes similar management (including transportation and storage) standards upon handlers of hazardous waste and recyclable materials. Title 63 O.S. Supp. 1987, § 1-2004; 63 O.S. 1981, § 1-2009.1.

XIII. CORRECTIVE ACTION

State regulations contain the following requirement as indicated in Revision Checklist 38.

- (5) Provisions regarding the submittal of programs, reports and an engineering feasibility plan regarding groundwater contamination which has been detected at the time of Part

B permit application for surface impoundments, piles, land treatment units, and landfills as indicated in Checklist 38 (52 FR 23447, June 22, 1987).

[Federal Authority: Sections 2002 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912 and 6925), unless otherwise noted.]

Citation of Laws and Regulations

63 O.S. Supp. 1987, §§ 1-2004, 1-2005, 1-2008 and 1-2012.3.
Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt the Federal requirements by reference. In addition to general permitting and rulemaking authority in 63 O.S. §§ 1-2005 and 1-2008, and general corrective action authority in § 1-2012.3, specific authority is given to the Department in Section 1-2004(23) and (25) to issue permits containing any conditions necessary to protect human health and the environment and to require groundwater monitoring for any landfill, surface impoundment, land treatment site or pile.

XV. STANDARDS FOR FACILITIES

G. State statutes and regulations require compliance by owners and operators of interim status hazardous waste surface impoundments with closure/post-closure requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklist 36.

[Federal Authority: RCRA §§ 3004 and 3005, 40 CFR 260, 264, 265, and 270 as amended May 2, 1986 (51 FR 16422) and March 19, 1987 (52 FR 8704).]

Citation of Laws and Regulations

63 O.S. Supp. 1987, §§ 1-2005 and 1-2009, and 63 O.S. 1981, § 1-2009.1.

Rules 200 through 240.

Remarks of the Attorney General

The ability of the State to adopt closure/post-closure regulations for interim status facilities was recognized in the previous submittal of December 30, 1987. Rules 200 through 240 adopt the Federal requirements by reference.

H. State statutes and regulations allow companies that treat, store or dispose of hazardous waste to demonstrate alternate coverage for liability insurance in the form

of a corporate guarantee as indicated in Revision Checklist 27.

[Federal Authority: RCRA §§ 2002, 3004, and 3005, 40 CFR 264.147 and 264.151 as amended July 11, 1986 (52 FR 25350).]

Citation of Laws and Regulations

63 O.S. Supp. 1987, §§ 1-2005 and 1-2008.

Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt the Federal provision by reference. Title 63 O.S. Supp. 1987, § 1-2008 specifically contemplates liability insurance or alternate assurance acceptable to the Department. However, § 1-2008 does not definitionally limit potential guarantors to corporate parents or siblings (as federal regulations do), so it is questionable whether state regulations may impose such a limitation. It is arguable that the class of potential guarantors is broader under state law.

- I. State statutes and regulations require companies that generate, treat or store hazardous waste to comply with tank standards equivalent to those indicated in Revision Checklist 28.

[Federal Authority: RCRA §§1006, 2002, 3001 - 3007, 3010, 3014, 3017 - 3019 and 7004; provisions of 40 CFR Parts 260-265 and 270 referenced in Checklist 28 as amended July 14, 1986 (51 FR 25422) and August 15, 1986 (51 FR 29430).]

Citation of Laws and Regulations

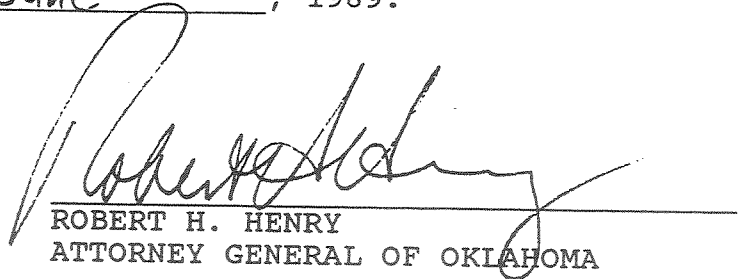
63 O.S. 1981, §1-2005.

Rules 200 through 240.

Remarks of the Attorney General

Title 63 O.S. 1981, §1-2005 provides sufficient authority to promulgate rules governing the management of hazardous waste in tanks. Rules 200 through 240 adopt the Federal requirements by reference.

Dated this 7th day of June, 1989.


ROBERT H. HENRY
ATTORNEY GENERAL OF OKLAHOMA

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