

US EPA ARCHIVE DOCUMENT

OKLAHOMA ATTORNEY GENERAL'S STATEMENT FOR FINAL
AUTHORIZATION FOR NON-HSWA CLUSTER IV AND HSWA CLUSTER I
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 January 26, 1989, effective May 11, 1989. Note that the regulations in Bulletin 0525 supersede previous regulations issued in the previous Bulletin 0525.

The new regulations in 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, 1988, 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 January 26, 1989, effective May 11, 1989. 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, 1988.

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 controlled under the following Federal regulations as indicated in the designated Revision Checklists:

- (3) TDI, DNT and TDA wastes, 40 CFR 261.32 and 261.33(f), as amended October 23, 1985 [50 FR 42936-43], Revision Checklist 18.
- (4) Spent solvents, 40 CFR 261.31, as amended December 31, 1985 [50 FR 53319-20] and January 21, 1986 [51 FR 2702], Revision Checklist 20.

- (5) EDB wastes, 40 CFR 261.32, as amended February 13, 1986 [51 FR 5330], Revision Checklist 21.
- (6) Four spent solvents, 40 CFR 261.31 and 261.33(f), as amended February 25, 1986 [51 FR 6541], Revision Checklist 22.
- (8) Listing of commercial chemical products and Appendix VIII constituents, 40 CFR 261.33 and Appendix VIII, as amended July 10, 1987 [52 FR 26012], Revision Checklist 41; and as amended April 22, 1988 [53 FR 13382], Revision Checklist 46.
- (9) EBDC wastes, 40 CFR 261.32, as amended on October 24, 1986 [51 FR 37725], Revision Checklist 33.

[Federal Authority: RCRA §3001(b).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2002 and 1-2005. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR Part 261 by reference. Title 63 O.S. Supp. 1988, 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".

B. State statutes and regulations define hazardous waste so as to control the generation, transportation, treatment, storage and disposal of hazardous waste produced by small quantity generators of between one hundred and one thousand kilograms/month as indicated in Revision Checklist 23. State statutes and regulations also require small quantity generators to certify good faith efforts to minimize waste generation and to select the best available and affordable treatment, storage or disposal alternatives, 40 CFR 262 as amended October 1, 1986 [51 FR 35190], Revision Checklist 32 (see Item IX below).

[Federal Authority: RCRA §3001(d); 40 CFR Parts 260-263 and 270 as amended March 24, 1986 (51 FR 10174) and October 1, 1986 (51 FR 35190).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2002, 1-2004(7), 1-2004(8), 1-2004.2(9), 1-2005. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt the federal provisions by reference. Authority to adopt rules governing controlled industrial waste activities by "small quantity" generators appears adequate under 63 O.S. §1-2005(A), which authorizes rules for the "listing, characterization, treatment, disposal, transportation, storage and recycling of controlled industrial waste and recyclable materials in Oklahoma..." Authority to require waste minimization certifications and efforts is specifically provided by 63 O.S. §§1-2004(7) and (8) and 1-2004.2(9).

C. (Not applicable; State has no delisting mechanism.)

III. MANAGEMENT OF DIOXIN WASTES

A. State statutes and regulations contain the following requirements regarding dioxin wastes as indicated in Revision Checklist 14:

- (1) Dioxin wastes are listed and otherwise identified as hazardous wastes so as to encompass all such wastes controlled under 40 CFR 261.5(e), 261.7(b), 261.30(d), 261.31, and 261.33(f).
- (2) Special management and permitting standards for facilities managing dioxin wastes and prohibitions applicable to interim status facilities, as provided in 40 CFR Parts 264, 265, and 270.

[Federal Authority: §§3001, 3004; 40 CFR Parts 261, 264, 265 and 270 as amended January 14, 1985 (50 FR 1978-2006).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2002, 1-2004 and 1-2005; see also §1-2004.2(3).
Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR Parts 261, 264, 265 and 270 by reference. As noted earlier, Title 63 O.S. Supp 1988, §1-2005(A) 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. Section 1-2005(A) also authorizes rules and regulations governing the management of such waste. 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". Section 1-2004 further authorizes the Department of Health, inter alia, to prohibit or restrict the use of specific disposal methods or practices for a specific controlled industrial waste material or class, and to issue permits containing any conditions necessary to protect human health and the environment.

VI. PAINT FILTER TEST

State statutes and regulations require the use of a paint filter test to determine the absence or presence of free liquids in either a containerized or bulk waste as indicated in Revision Checklist 16, 17F and 25.

[Federal Authority: RCRA §§3004, 3005; 40 CFR Parts 260, 264, 265, and 270 as amended April 30, 1985 (50 FR 18370), July 15, 1985 (50 FR 28702) and May 28, 1986 (51 FR 19176).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §1-2005; see also §§1-2004.2(1) and 1-2006.1(B). Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR Parts 260, 264, 265 and 270 by reference. Title 63 O.S. Supp. 1988, §1-2005(A) and (C) appears to provide adequate authority, particularly in light of the Legislature's clear intention to regulate liquids in landfills and surface impoundments; see 63 O.S. §§1-2004.2(1) and 1-2006.1(B).

VII. NATIONAL UNIFORM MANIFEST SYSTEM AND RECORDKEEPING

A. State statutes and regulations require generators to use the national uniform manifest as indicated in Revision Checklist 32.

[Federal Authority: RCRA §§2002, 3002, 3003 and 40 CFR Parts 260 and 262 as amended October 1, 1986 (51 FR 35190).]

Citation of Laws and Regulations

63 O.S. Supp. 1988 §§1-2004(5), (8), 1-2004.2(9), 1-2005; 63 O.S. 1981, §1-2010. Rules 200 through 240, 301, 420.

Remarks of the Attorney General

Title 63 O.S. §§1-2004(5) and 1-2010 authorize the Department to prescribe manifest forms. The State has adopted the uniform manifest in its entirety, including certifications, by virtue of its adoption of 40 CFR Part 262 by reference. Section 1-2010 and Rules 301 and 420 require the generator's disposal plan number to be noted on the manifest; to this extent the State program is more stringent than the federal program. Sections 1-2004(8) and 1-2004.2(9) specifically authorize requirements for the reduction of volume or quantity and toxicity of hazardous waste, and for the certification of such efforts on manifests.

C. State statutes and regulations require that the following be recorded, as it becomes available, and maintained in the operating record, until facility closure, as indicated in Revision Checklist 45: monitoring, testing or analytical data, corrective action where required by Subpart F and §§264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, 264.347, and 264.602.

[Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.73(b) as amended December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations

63 O.S. Supp. 1988 §§1-2004, 1-2005. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR Part 264 by reference. Title 63 O.S. Supp. 1988, §1-2005 appears to provide adequate general statutory authority; additionally Section 1-2004 would allow these requirements in the form of permit conditions.

VIII. BIENNIAL REPORT

A. State statutes and regulations contain the following reporting requirements as indicated in Revision Checklist 30.

(1) The biennial report contains the information indicated in 40 CFR 262.41(a).

(2) Facilities must submit groundwater monitoring data annually to the State Director as indicated in 40 CFR 265.94.

[Federal Authority: RCRA §§3002, 3004; 40 CFR Parts 262 and 265 as amended August 8, 1986 (51 FR 28566).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(7) through (9), (16), (25), 1-2005 1-2008(G). Rules 200 through 240, 320, 510.

Remarks of the Attorney General

Rules 200 through 240 adopt the federal requirements by reference. The authority to do so was recognized in the earlier Attorney General's Statement signed on January 14, 1988. State Rule 320 requires quarterly reports from generators and Rule 510 requires monthly reports from treatment, storage and disposal facilities, so in this respect the State program is more stringent.

Specifically with respect to waste minimization reports and groundwater monitoring data, see 63 O.S. §1-2004(8), (16) and (25).

IX. WASTE MINIMIZATION

State statutes and regulations contain the following requirements regarding waste minimization as indicated in Revision Checklists 17D, 30 and 32 (see Item I.B. above).

- (1) Generators must submit report and manifest certifications regarding efforts taken to minimize the amounts and toxicity of wastes.

[Federal Authority: RCRA §3002(a)(6), (b); 40 CFR 262.41, 264.75 and 265.75 as amended July 15, 1985 (50 FR 28702), August 8, 1986 (51 FR 28556) and October 1, 1986 (51 FR 35190).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(8), 1-2005. Rules 200 through 240. See also 63 O.S. Supp. 1988, §1-2004.2(9).

Remarks of the Attorney General

Title 63 O.S. Supp. 1988, §1-2004(8) specifically authorizes the Department of Health to require reports or manifest certifications regarding programs and efforts to reduce the volume or quantity and toxicity of controlled industrial waste. Rules 200 through 240 implement this by adopting the federal requirements by reference.

- (2) RCRA permits for the treatment, storage, or disposal of hazardous waste on the premises where the waste was generated must contain a certification by the permittee regarding efforts taken to minimize the amount and toxicity of the generated wastes.

[Federal Authority: RCRA §3004(p); 40 CFR 264.90(b).]

Citation of Laws and Regulations

[Same as Subsection (A), immediately above.]

Remarks of the Attorney General

Subsections 200 through 240 adopt the federal variance provisions, as well as the general rules, by reference. See Subsection (A), immediately above.

XII. BURNING AND BLENDING OF HAZARDOUS WASTES

A. State statutes and regulations provide the following requirements:

- (1) The burning of fuel containing hazardous waste in a cement kiln is prohibited as specified in 40 CFR 266.31 and Revision Checklist 17J.

[Federal Authority: RCRA §3004(q); 40 CFR 266.31 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. §§1-2004(17), 1-2004.2(5), 1-2005. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR 266.31 by reference. Statutory authority is explicit in 63 O.S. §§1-2004(17) and 1-2004.2(5).

- (2) Fuels containing hazardous waste and all persons who produce, distribute and market fuel containing hazardous wastes must be regulated as indicated in Revision Checklists 17J and 17K.

[Federal Authority: RCRA §§3004(q)-(s); 40 CFR 261.33; 266.34 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004.2(5) and 1-2005. Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are incorporated by reference by Rules 200 through 240. Title 63 O.S. §1-2004.2(5) provides explicit statutory authority.

- B. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations provide exceptions to these requirements as specified in §§3004(q)-(s).

[Federal Authority: RCRA §§3004(q)-(s).]

Citation of Laws and Regulations

Not applicable.

Remarks of the Attorney General

There are no variance provisions in the State statutes and regulations.

- C. State statutes and regulations provide that with regard to groundwater monitoring, all land based hazardous waste treatment, storage, and disposal facilities analyze for a specified core list (Part 264, Appendix IX) of chemicals plus those chemicals specified by the Regional Administrator on a site-specific basis as indicated in Revision Checklist 40.

[Federal Authority: RCRA §§1006, 2002(a), 3001, 3004, and 3005; 40 CFR Parts 264.98, 264.99, Appendix IX of 264, and 270.14 as amended July 9, 1987 (52 FR 25942).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(23) and (25), 1-2005, 1-2008(G). Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are adopted by reference by Rules 200 through 240. Statutory authority for groundwater monitoring in 63 O.S. §§1-2004(25) and 1-2008(G) along with the more general permitting and rulemaking authorities of Sections 1-2004(23) and 1-2005 appear adequate to support these regulations.

XIII. CORRECTIVE ACTION

A. State statutes and regulations contain the following corrective action requirements as indicated in Revision Checklist 17L:

- (1) Corrective action is required for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit, regardless of when the waste was placed in the unit, in all permits issued after November 8, 1984.

[Federal Authority: RCRA §3004(u); 40 CFR 264.90; .101; 270.60.]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2005 and 1-2012.3(A). Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are incorporated by reference. Statutory authority is explicit in 63 O.S. §1-2012.3(A).

- (2) Corrective action is required beyond a facility's boundary, in accordance with RCRA §3004(v). (States now may impose these requirements through a permit or a corrective action order. Once EPA promulgates the regulations required by RCRA §3004(v), states will need authority to impose corrective action in a permit following the §3004(v) regulations.)

[Federal Authority: RCRA §3004(v)(1); 40 CFR Part 264 Subpart F.]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2005, 1-2012.1(3) and 1-2012.3(A). Rules 200 through 240.

Remarks of the Attorney General

The Department of Health may require corrective action beyond a facility's boundary under either an administrative order or a permit, pursuant to the cited statutes. The Federal regulatory requirements in 40 CFR Part 264 Subpart F are adopted by reference.

- (3) Corrective action is required beyond a facility's boundary in accordance with §3004(v) for all landfills, surface impoundments and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

[Federal Authority: RCRA §3004(v)(2); 40 CFR Part 264 Subpart F.]

Citation of Laws and Regulations

[Same as Subsection (2), immediately above.]

Remarks of the Attorney General

[Same as Subsection (2), immediately above.]

- (4) There is evidence of financial responsibility for corrective action on and off site.

[Federal Authority: RCRA §§3004(a)(6); (u); 40 CFR 264.90; .101.]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§ 1-2004.2(8), 1-2005 and 1-2012.3(A). Rules 200 through 240.

Remarks of the Attorney General

The federal requirements in 40 CFR Part 264 are incorporated by reference. Authorization is explicit in 63 O.S. §§ 1-2004.2(8) and 1-2012.3(A).

- B. Additional information and engineering feasibility plan requirements regarding groundwater contamination detected at the time of Part B permit application as indicated in Checklist 38 (52 FR 23447, June 22, 1987 and 52 FR 33936, September 9, 1987).

[Federal Authority: Sections 1006, 2002, 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6974); 40 CFR 270.14(c).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(23) and (25), 1-2005, 1-2008 and 1-2012.3. Rules 200 through 240.

Remarks of the Attorney General

The State's adoption by reference of these requirements and its authority to do so were recognized in the earlier Attorney General's Statement of December 22, 1988. The technical correction of adding the word "complete" before the words "permit application" in 40 CFR 270.14(c)(8)(v) does not affect this.

- F. State statutes and regulations require that miscellaneous units comply with regulations (Subpart F) regarding releases from solid waste management units when necessary to comply with §§264.601 through 264.603 as indicated in Revision Checklist 45.

[Federal Authority: RCRA 3004(u); 40 CFR 264.90(d) as amended December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(23), (25), 1-2005 1-2008(G) and 1-2012.3(B); 63 O.S. 1981, §1-2006(B). Rules 200 through 240.

Remarks of the Attorney General

The federal requirements in 40 CFR Parts 264 and 270 are adopted by reference. While there is nothing in the statutes explicitly addressing this issue, the broad rulemaking, permitting and groundwater monitoring powers granted by the referenced statutes appear sufficient to authorize such rules.

XIV. HAZARDOUS WASTE EXPORTS

State statutes and regulations require generators and transporters of hazardous waste destined for export outside the United States to comply with standards equivalent to those as indicated in Revision Checklist 17R and Revision Checklist 31.

[Federal Authority: RCRA §3017; 40 CFR 262.50 as amended July 15, 1985 (50 FR 28702) and August 8, 1986 (51 FR 28664).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(6) and (7), 1-2005. Rules 200 through 240, 300 through 320, and 400 through 430.

Remarks of the Attorney General

The Oklahoma Controlled Industrial Waste Disposal Act does not explicitly address requirements for the export of a hazardous waste to a foreign country. The disposal plan and disposal reporting requirements of 63 O.S. §1-2004, along with the authorization granted by 63 O.S. §1-2005 to regulate the transportation and disposal of hazardous waste in or from Oklahoma and to conform Oklahoma's regulations to the federal regulations as nearly as possible, probably provide sufficient authority for imposing the referenced

standards, which have been incorporated by reference by Rules 200 through 240.

XV. STANDARDS FOR FACILITIES

A. State statutes and regulations prohibit the land disposal of hazardous waste prohibited under 40 CFR Parts 264 and 265 as indicated in Revision Checklist 17E. Land disposal includes, but is not limited to, placement in landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves. Deep injection well means a well used for the underground injection of hazardous wastes other than a well to which §7010(a) of RCRA applies.

[Federal Authority: RCRA §§3004(b)-(q); 40 CFR 264.18, 265.18 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(10), (17) and (18), 1-2005. Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are incorporated by reference. "Land ban" authority is clear from the cited statutes.

B. Effective on November 8, 1984 State statutes and regulations prohibit the placement of any non-containerized or bulk liquid hazardous waste in any salt dome or salt bed formation or in any underground mine or cave except as provided in §264.18(c) and §265.18(c) as indicated in Revision Checklist 17E. Furthermore,

State statutes and regulations prohibit the placement of any other hazardous waste in such formations until a permit is issued.

[Federal Authority: RCRA §3004(b); 40 CFR 264.18 and 265.18 as amended July 15, 1985 (50 FR 28702); 40 CFR 264.600 et seq., December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations

[Same as Subsection (A), immediately above.]

Remarks of the Attorney General

[Same as Subsection (A), immediately above.]

C. State statutes and regulations prohibit the use of waste oil or other materials contaminated with hazardous wastes (except ignitable wastes) as a dust suppressant as indicated in Revision Checklist 17G.

[Federal Authority: RCRA §3004(1); 40 CFR 266.23 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004.2(3), 1-2005. Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are incorporated by reference, as explicitly authorized by 63 O.S. §1-2004.2(3).

D. State statutes and regulations allow direct action by third parties against the insurer or guarantor of an owner/operator's financial responsibilities if an owner/operator is in bankruptcy reorganization or arrangement or where (with reasonable diligence) juris-

diction in any state or federal court cannot be obtained over an owner/operator likely to be solvent at time of judgment.

[Federal Authority: RCRA §3004(t).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §1-2008(H).

Remarks of the Attorney General

The cited statute is directly on point and is self-implementing.

- G. State statutes and regulations require compliance with closure/post-closure and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklist 45.

[Federal Authority: RCRA §§3004 and 3005, 40 CFR 260, 264, 265, and 270 as amended December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2005, 1-2008 and 1-2009; 63 O.S. 1981, §1-2009.1. Rules 200 through 240, 520.

Remarks of the Attorney General

Rules 200 through 240 adopt the federal requirements by reference. The authority to do so for these requirements was previously recognized in the Attorney General's Statement of January 14, 1988. The expansion of the regulated universe to include the so-called "miscellaneous" units should not affect this authority.

- H. [OPTIONAL: This is a reduced requirement.] State statutes and regulations allow qualified companies that treat, store or dispose

of hazardous waste to use a corporate guarantee to satisfy liability assurance requirements as indicated in Revision Checklist 43.

[Federal Authority: RCRA §§2002, 3004, and 3005, 40 CFR 264.147, 264.151, and 265.147 as amended November 18, 1987 (52 FR 44314).]

Citation of Laws and Regulations

63 O.S. 1988, §§1-2005 and 1-2008. Rules 200 through 240, 520.

Remarks of the Attorney General

The State's authority to adopt this item by reference was previously recognized in the Attorney General's Statement of December 22, 1988. The tightening of the universe of eligible guarantors does not affect that authority. The State adopted by reference the new, "tighter" regulations by reference in its amended rules which were effective May 11, 1989.

- 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; 40 CFR 260, 261, 262, 264, 265 and 270 as amended August 15, 1986 (51 FR 29430).]

Citation of Laws and Regulations

63 O.S. Supp. 1988 §§1-2004(24), 1-2005. Rules 200 through 240.

Remarks of the Attorney General

The authority of the State to adopt (by reference) tank standards was recognized in the earlier Attorney General's Statement of December 22, 1988. The expansion of the regulated universe to include small quantity generators does not affect this authority, inasmuch as the State's authority to regulate

small quantity generators was recognized earlier in this Statement [see Section I(B)].

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J. State statutes and regulations require environmental performance standards; monitoring, testing, analytical data, inspection, response and reporting procedures; and post-closure care for miscellaneous units as indicated in Revision Checklist 45.

[Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.600, 264.601, 264.602, and 264.603 as amended December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations

63 O.S. Supp. 1988 §§1-2004, 1-2005, 1-2008 and 1-2009; 63 O.S. 1981, §§1-2006 and 1-2009.1. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt the federal requirements by reference. State statutes do not specifically address so-called "miscellaneous" units, but authority for the same types of requirements for other categories of units has been previously recognized, and there appears to be nothing that would preclude or diminish their applicability to miscellaneous units.

XVI. REQUIREMENTS FOR PERMITS

A. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations allow a facility (1) to construct an approved TSCA facility for burning PCBs without first obtaining a RCRA permit and (2) to subsequently apply for a RCRA permit in accordance with Revision Checklist 17M.

[Federal Authority: RCRA §3005(a); 40 CFR 270.10(f)(3) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

(Omitted.)

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR 270.10(f)(3) by reference. However, it is doubtful that this is consistent with the controlled industrial waste permit requirements of 63 O.S. §§1-2006, 1-2008 and 1-2009.1. Accordingly, this optional provision probably should be considered inapplicable in Oklahoma.

- B. State statutes and regulations require review of land disposal permits every five years and modification of such permits as necessary to assure compliance with the requirements in Parts 264, 266, and 270, as indicated in Revision Checklist 17N.

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.41(a)(6), 270.50(d) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. 1988, §§1-2005 and 1-2012.3(B). Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt the federal requirements by reference. Title 63 O.S. §1-2012.3(B) provides explicit statutory authority.

- C. State statutes and regulations require permits to contain any conditions necessary to protect human health and the environment in addition to any conditions required by regulations as indicated in Revision Checklist 170.

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.32 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(23), 1-2005 and 1-2012.3(B). Rules 200 through 240.

Remarks of the Attorney General

The federal regulatory provision in 40 CFR 270.32 is adopted by reference; statutory authority is explicit in 63 O.S. §§1-2004(23) and 1-2012.3(B).

D. State statutes and regulations require that:

- (1) For land disposal facilities granted interim status prior to November 8, 1984, interim status terminates November 8, 1985; unless a Part B application and certification of compliance with applicable groundwater monitoring and financial responsibility requirements are submitted by November 8, 1985, as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(c) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004.2(7) and 1-2005. Rules 200 through 240.

Remarks of the Attorney General

The federal requirement is incorporated by reference. Statutory authority is clearly set out in 63 O.S. §1-2004.2(7).

- (2) For land disposal facilities in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit and which is granted interim status, interim status terminates twelve months after the date the facility first becomes subject to such permit

requirement unless a Part B application and certification of compliance with applicable groundwater monitoring and financial responsibility requirements are submitted by that date as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(d) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

[Same as Subsection (1), immediately above.]

Remarks of the Attorney General

[Same as Subsection (1), immediately above.]

- (3) Interim status terminates for incinerator facilities by November 8, 1989 unless the owner/operator submits a Part B application by November 8, 1986 as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(c)(2)(C); 40 CFR 270.73(e) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

[Same as Subsections (1) and (2), immediately above.]

Remarks of the Attorney General

[Same as Subsections (1) and (2), immediately above.]

- (4) Interim status terminates for any facility other than a land disposal or an incineration facility by November 8, 1992 unless the owner/operator submits a Part B application by November 8, 1988 as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(c)(2)(C); 40 CFR 270.73(f) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

[Same as Subsections (1), (2) and (3), immediately above.]

Remarks of the Attorney General

[Same as Subsections (1), (2) and (3), immediately above.]

- E. [OPTIONAL: This is a reduced requirement.] State statutes and regulations allow facilities to qualify for interim status if they (1) are in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirement to have a permit and (2) comply with §270.70(a) as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(d) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §1-2005; 63 O.S. 1981, §1-2009.1. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR 270.73(d) by reference. However, it is arguable whether 63 O.S. 1981, §1-2009.1 will permit this temporary "grandfathering" of interim status due to regulatory changes. This should be resolved by appropriate legislation. Because this allowance is optional, authorization for the State program should not be affected.

- F. State statutes and regulations provide that facilities may not qualify for interim status under the State's analogue to Section 3005(e) if they were previously denied a Section 3005(c) permit or

if authority to operate the facility has been terminated as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.70(c) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §1-2005; 63 O.S. 1981, §1-2009.1. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt 40 CFR 270.70(c) by reference. This appears valid under 63 O.S. §1-2009.1 which conditions interim status upon compliance with the rules therefor which are set by the Board of Health.

- G. [OPTIONAL: This is a reduced requirement.] State statutes and regulations allow the issuance of a one-year research, development, and demonstration permit (renewable three times) for any hazardous waste treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated as indicated in Revision Checklist 17Q. If adopted, however, the State must require the facility to meet RCRA's financial responsibility and public participation requirements and retain authority to terminate experimental activity if necessary to protect health or the environment.

[Federal Authority: RCRA §3005(g); 40 CFR 270.65 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(19) through (21), 1-2005. Rules 200 through 240.

Remarks of the Attorney General

The federal regulation is incorporated by reference. Explicit statutory authority is contained in 63 O.S. §1-2004(19) through (21).

- H. State statutes and regulations require landfills, surface impoundments, land treatment units, and waste piles that received waste after July 26, 1982 and which qualify for interim status to comply with the groundwater monitoring, unsaturated zone monitoring, and corrective action requirements applicable to new units at the time of permitting as indicated in Revision Checklist 17L.

[Federal Authority: RCRA §3005(i); 40 CFR 264.90(a) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(16) and (25), 1-2005, 1-2008(G), 1-2012.1(3); 63 O.S. 1981, §1-2009.1. Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are incorporated by reference. Authority to impose corrective action requirements on facilities, including interim status facilities, is addressed earlier in this statement. Authority to require groundwater monitoring at any facility is explicit in 63 O.S. §1-2004(25) and 1-2008(G).

- I. State statutes and regulations require:

- (1) Surface impoundments in existence on November 8, 1984 [or subsequently becoming subject to RCRA pursuant to §3005(j)(6)(A) or (B)] to comply with the double liner, leachate collection, and groundwater monitoring requirements applicable to new units by

November 8, 1988 [or the date specified in §3005(j)(6)(A) or (B)] or to stop treating, receiving, or storing hazardous waste, unless the surface impoundment qualifies for a special exemption under §3005(j).

[Federal Authority: RCRA §3005(j)(6)(A).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §1-2004(16) and (25); 63 O.S. 1981, §1-2009.1.

Remarks of the Attorney General

The State provisions do not mention dates, but do broadly authorize the imposition of, e.g., double liner and groundwater monitoring requirements on any surface impoundment or class of surface impoundments.

- (2) Surface impoundments to comply with the double liner, leachate collection and groundwater monitoring requirements if the Agency allows a hazardous waste prohibited from land disposal under §3004(d), (e) or (g) to be placed in such impoundments.

[Federal Authority: RCRA §3005(j)(11).]

Citation of Laws and Regulations

[Same as Subsection (1), immediately above.]

Remarks of the Attorney General

[Same as Subsection (1), immediately above.]

- (3) (Not applicable; State has not adopted these variance provisions.)

0. State statutes and regulations require that all owners and operators of units that treat, store, or dispose of hazardous waste in miscellaneous units must comply with the general application

requirements (including Part A permit requirements), the Part B general application requirements of §270.14, and specific Part B information requirements for miscellaneous units as indicated in Revision Checklist 45.

[Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.600, 270.14 and 270.23 as amended December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(1) and (23), 1-2005, 1-2008; 63 O.S. 1981, §1-2006. Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are incorporated by reference. Ample authority over all phases of hazardous waste facility permitting is provided by the cited statutes.

XVII. MINIMUM TECHNOLOGICAL REQUIREMENTS

- A. State statutes and regulations require that new units, expansions, and replacements of interim status waste piles meet the requirements for a single liner and leachate collection system in regulations applicable to permitted waste piles as indicated in the Revision Checklist 17H.

[Federal Authority: RCRA §3015(a); 40 CFR 265.254.]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §1-2005; 63 O.S. 1981, §1-2009.1. Rules 200 through 240.

Remarks of the Attorney General

The federal requirements are incorporated by reference. Title 63 O.S. §1-2009.1 in conjunction with Section 1-2005 appears to provide adequate general authority.

B. State statutes and regulations require that:

- (1) New units, expansions, and replacement units at interim status landfills and surface impoundments and permitted landfills and surface impoundments meet the requirements for double liners and leachate collection systems applicable to new permitted landfills and surface impoundments in 40 CFR 264.221 and .301 and 265.221 and .301 as indicated in Revision Checklist 17H.
- (2) [OPTIONAL: This is a reduced requirement.] Facilities which comply in good faith need not retrofit at permit issuance unless the liner is leaking as provided in §§265.221(e) and 265.301(e) as indicated in Revision Checklist 17H.
- (3) Variances from the above requirements are optional. However, the availability of such variances is restricted as provided in §§265.221(c) and 265.301(c) as indicated in Revision Checklist 17H.

[Federal Authority: RCRA §3015(b); 40 CFR 264.221 and 265.221.]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004(16), 1-2005, 1-2009.1. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 incorporate the federal requirements by reference. The 63 O.S. §1-2004(16) in conjunction with the rulemaking and adoption-by-reference provisions of Section 1-2005 provide the necessary authority.

XVIII. EXPOSURE ASSESSMENTS

- A. State laws and regulations require permit applicants for landfills or surface impoundments to submit exposure information as indicated in Revision Checklist 17S.

[Federal Authority: RCRA §3019(a); 40 CFR 270.10(j).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2005, 1-2012.3(C). Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 adopt the federal requirement by reference. Explicit statutory authority is contained in 63 O.S. §1-2012.3(C).

- B. State laws and regulations allow the State to make assessment information available to the Agency for Toxic Substances and Disease Registry. (See CERCLA §104(i).)

[Federal Authority: RCRA §3019(b).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §1-2012.3(C).

Remarks of the Attorney General

The referenced statute provides explicit authorization to meet this requirement.

XX. BURNING OF WASTE FUEL AND USED OIL FUEL IN BOILERS AND INDUSTRIAL FURNACES

- A. State statutes and regulations contain the following requirements regarding the burning of waste fuel and used oil fuel for energy recovery in boilers and industrial furnaces as indicated in Revision Checklist 19:

(1) Waste fuels and used oil fuels are identified as solid wastes so as to encompass all such wastes controlled under 40 CFR 261.3, 261.5 and 261.6.

(2) Special management standards for generators, transporters, marketers and burners of hazardous waste and used oil burned for energy, as provided in 40 CFR 264.340, 265.340, 266.30-35 and 266.40-45.

[Federal Authority: §§3001, 3004, 3014(a); 40 CFR Parts 261, 264, 265 and 266 as amended November 29, 1985 [50 FR 49164 - 49212], November 19, 1986 [51 FR 41900 - 41904] and April 13, 1987 [52 FR 11819 - 11822].)

Citation of Laws and Regulations

63 O.S. Supp. 1988, §§1-2004.2(5), 1-2005. Rules 200 through 240.

Remarks of the Attorney General

Rules 200 through 240 incorporate the federal requirements for generators, transporters, marketers and burners of fuel which is, or is mixed with, hazardous wastes. Statutory authority is explicit in 63 O.S. §1-2004.2(5). Authority to regulate under RCRA used oil fuels which are not mixed with hazardous wastes is not apparent in the Oklahoma Controlled Industrial Waste Disposal Act. The State RCRA program should not be deemed to be authorized for this "used oil" component until this is resolved by appropriate legislation. Used oil activities would be regulated under the State Health Department's Solid Waste Division.

B. State statutes and regulations provide the authority to obtain criminal penalties for violations of the waste fuel and used oil fuel requirements, as provided in 40 CFR 266.40-45.

[Federal Authority: §3006(h), §3008(d), 3014; 40 CFR 271.16.]

Citation of Laws and Regulations

63 O.S. 1981, §1-1701.

Remarks of the Attorney General

Title 63 O.S. §1-1701 provides criminal penalties for violations of the Public Health Code and regulations adopted thereunder.

XXI. LAND DISPOSAL RESTRICTIONS

- A. State statutes and regulations provide for the restrictions of the land disposal of certain spent solvents and dioxin-containing hazardous wastes as indicated in Revision Checklist 34.

[Federal Authority: §3004(d)-(k) and (m); 40 CFR Parts 260, 261, 262, 263, 264, 265, 268 and 270 as amended on November 7, 1986 (51 FR 40572) and as amended on June 4, 1987 (52 FR 21010).]

Citation of Laws and Regulations

63 O.S. Supp. 1988, §1-2004(10), (17) and (18), 1-2004.2(2), 1-2005. Rules 200 through 240.

Remarks of the Attorney General

The federal restrictions are incorporated by reference. Statutory authority is particularly clear in 63 O.S. §1-2004(10) and (17) and 1-2004.2(2).

- B. State statutes and regulations provide for the restriction of land disposal of certain California list wastes, including liquid hazardous waste containing polychlorinated biphenyls (PCBs) above specified concentrations, and hazardous waste containing halogenated organic compounds (HOCs) above specified concentrations as indicated in Revision Checklist 39.

[Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Parts 262, 264, 265, 268 and 270 as amended on July 8, 1987 (52 FR 25760) and October 27, 1987 (52 FR 41295).]

Citation of Laws and Regulations

[Same as Subsection (A), immediately above.]

Remarks of the Attorney General

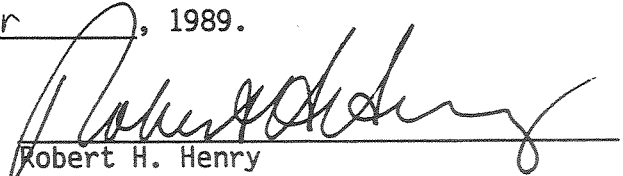
[Same as Subsection (A), immediately above.]


XXII. MEMORANDUM OF AGREEMENT (MOA)

With respect to the Memorandum of Agreement included within this Revision Application package,

- (1) The State has the authority to enter into the agreement and to carry out the agreement (see, e.g., 63 O.S. Supp. 1988, §1-106(b)(12), and
- (2) No applicable State statute (including the State Administrative Procedures Act) requires that the agreement be promulgated as a rule in order to be binding.

Dated this 20th day of November, 1989.


Robert H. Henry
Attorney General of Oklahoma


Brita E. Haugland
Assistant Attorney General